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April 2004

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## EXECUTIVE SUMMARY

- In 2002, 22.7% of Nebraskans over the age of 18 were current smokers, accounting for approximately 389,000 smokers.
- Since 1995, the prevalence of adult tobacco use in Nebraska has remained about 1 percentage point below the national average, but per capita tobacco consumption in Nebraska has been falling more slowly than the United States as a whole.
- The tobacco industry has directly been a major political force in Nebraska through lobbying and campaign contributions. The tobacco industry spent over \$1,027,000 on lobbying from 1997-2002. The tobacco industry made direct campaign contributions to the members of the 2003-2004 Nebraska Legislature totaling almost \$93,000 over the course of their legislative careers.
- Only 20 of the 49 members of the 2003-2004 Legislature have never accepted money from the tobacco industry.
- The tobacco industry has also worked to increase its political influence in Nebraska by recruiting, often through financial contributions, third-party allies such as the Nebraska Restaurant Association, the Nebraska Chamber of Commerce, the Nebraska Retail Grocers Association, the Nebraska Petroleum Marketers and Convenience Store Association, the Nebraska Retail Federation, the Nebraska Association of Tobacco and Candy Distributors and the Nebraska Licensed Beverage Association.
- Despite opposition from the tobacco industry and its allies and the lack of a well-established grassroots tobacco control community, Nebraska was an early leader in passing statewide clean indoor air laws. Due largely to the efforts of state Senator Shirley Marsh, the Nebraska Legislature passed its first clean indoor air law in 1974, only one year after Arizona passed the first law in the nation that required smoking restrictions in some public places.
- In 1979, the Nebraska Legislature passed the Nebraska Clean Indoor Air Act, which was sponsored by state Senator Larry Stoney. The Nebraska Clean Indoor Air Act was stronger than similar legislation that was proposed in New York, Connecticut and Massachusetts at the same time. The tobacco industry and its allies responded by mobilizing against the implementing rules and regulations for the Act and succeeded in weakening these regulations.
- The Nebraska Clean Indoor Air Act was not strengthened for 20 years until 1999 when the Legislature passed a bill that required that almost all state buildings and vehicles become smokefree.
- From 2000 -2003, the Legislature also strengthened the Nebraska Clean Indoor Air Act by requiring that commercial daycare facilities be smokefree and extending its enforcement provisions to include business owners.

- From 1999-2004, the Nebraska Legislature has rejected three different attempts by state Senator Nancy Thompson to make restaurants throughout Nebraska smokefree.
- Using tobacco settlement money, in 2000, the Nebraska Legislature approved \$7 million per year for three years to increase funding for a preexisting state tobacco control program, Tobacco Free Nebraska.
- Due to pressure from tobacco control advocates, the Nebraska Legislature approved a \$0.30 cigarette excise tax increase in 2002, but the Legislature was only willing to pass this increase during a budget crisis and no earmark was provided for tobacco control.
- Citing budget concerns in 2003, the Legislature cut funding for Tobacco Free Nebraska from \$7 million per year to \$405,000, despite several different options for continuing funding for tobacco control.
- In 2003, the Lincoln-Lancaster County Health Department led the push to pass Nebraska first comprehensive smokefree workplaces ordinances, but due to pressure from the tobacco industry and its allies, the Lincoln City Council passed a weakened and confusing ordinance that exempted bars and allowed separately ventilated “smoking rooms.”
- Tobacco control advocates have made progress in Nebraska, but they have not yet mobilized the political resources necessary to avoid suffering significant defeats at the hands of the tobacco industry.

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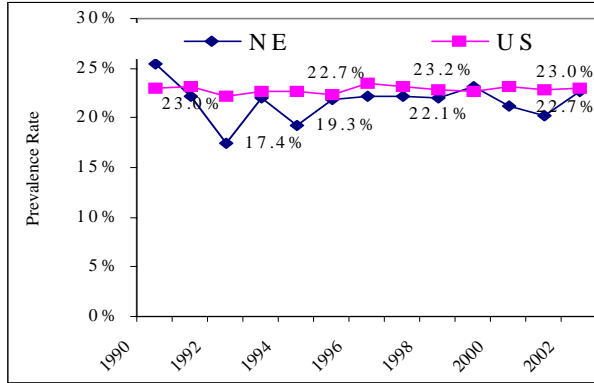
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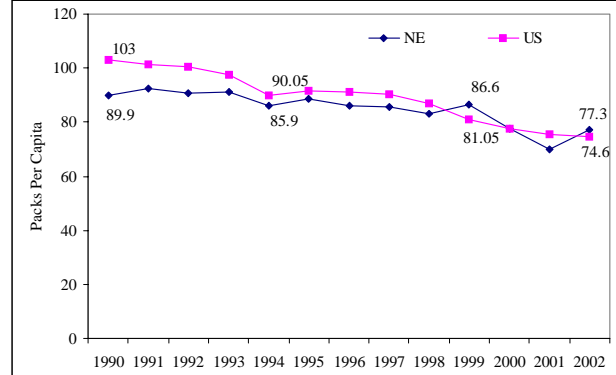
## INTRODUCTION

Nebraska is located in the heart of the United States covering 76,878 square miles.<sup>1</sup> The state has a population of 1.7 million people with 89% of the population being white and approximately 26% of Nebraskans are under the age of 18. For Nebraskans over the age of 18, 22.7% were current smokers as of 2002<sup>2</sup>, accounting for approximately 389,000 smokers. Since 1990, the prevalence rate of tobacco use has fluctuated from a high of 25.4% in 1990 to a low of 17.1% in 1992 and then reaching a plateau of about 22% through the late 1990s and early 2000s (Figure 1). Since 1995, the prevalence of adult tobacco use in Nebraska has remained about 1 percentage point below the national average. Per capita tobacco consumption in Nebraska has been falling more slowly than the United States as a whole (Figure 2).

For decades, the tobacco industry has opposed any meaningful efforts to protect the health of Nebraskans through tobacco control. They have weakened efforts to keep tobacco out of the hands of children (See Youth Access section), opposed any attempt to increase the excise



**Figure 1:** Smoking prevalence in US and NE, 1990-2002 (Source: Centers for Disease Control, BRFSS)



**Figure 2:** Per Capita Cigarette Consumption in US and NE, 1990-2002 (Source: Tobacco Tax Burden, 2002)

tax on cigarettes (See Excise Tax sections) and fought against laws to protect the public from exposure to secondhand smoke (See Clean Indoor Air section). The tobacco industry regularly spends large amounts of money to employ the most influential lobbyists in the state, as well as to make direct contributions to candidates and elected officials (See Appendix). They have also established close relationships, often by providing money, with other business groups such as the Nebraska Restaurant Association, the Nebraska Chamber of Commerce, the Nebraska Retail Grocers Association, the Nebraska Petroleum Marketers and Convenience Store Association, the Nebraska Retail Federation, the Nebraska Association of Tobacco and Candy Distributors and the Nebraska Licensed Beverage Association.<sup>3-5</sup> It is a common strategy of the tobacco industry to mobilize third party allies to mask its own involvement in opposing tobacco control progress.

In the 1970s, Nebraska lacked a substantial tobacco control community and, therefore, lacked community-based political pressure to enact policy changes.<sup>6</sup> Despite this hindrance, two state senators, Shirley Marsh of Lincoln and Larry Stoney of Omaha, were successful in establishing Nebraska as an early leader in passing clean indoor air legislation (See Clean Indoor Air section). The Nebraska Legislature passed its first clean indoor air law in 1974, one year after Arizona passed the first law in the nation that required separate smoking and nonsmoking sections in some public places.<sup>6,7</sup> Nebraska followed in the footsteps of Minnesota, which

enacted the nation's first comprehensive clean indoor air law in 1975, when the Legislature passed the Nebraska Clean Indoor Air Act in 1979, which required separate nonsmoking and smoking sections in almost all public places.<sup>8,9</sup> This law was stronger than similar legislation that was proposed in New York, Connecticut and Massachusetts at the same time.<sup>10</sup>

Despite the early success seen in Nebraska, a lack of commitment from the Legislature resulted in a lull in tobacco control policymaking in Nebraska during the 1980s.<sup>6</sup> Legislators, led by Shirley Marsh, tried numerous times to strengthen the Nebraska Clean Indoor Air Act, especially its enforcement provisions, but they were unsuccessful due to opposition from the tobacco industry.<sup>11</sup>

Since that time, the tobacco control community in Nebraska has grown extensively, both in numbers and in organization. Since 1989, the Smokeless Nebraska coalition and its offshoot, Citizens for a Healthy Nebraska, were formed as was the much smaller grassroots group, Group to Alleviate Smoking Pollution (GASP) of Nebraska.<sup>12,13</sup> During that same time period, local coalitions were formed in Nebraska's larger cities and the Nebraska Health and Human Services Department formed a statewide tobacco control division, Tobacco Free Nebraska. While the emergence of these groups resulted in much more activity around tobacco control during the 1990s, including youth access legislation at both the local and state level (See Youth Access section), a petition-based initiative to increase the state's cigarette excise tax (See Early Excise Tax section), and several different efforts to protect the public from the secondhand smoke (See Clean Indoor Air section), the decade was mostly a series of victories for the tobacco industry and its allies because they were successful in defeating or weakening almost all of the proposed tobacco policies. The major exception was the Legislature's decision in 1999 to make almost all state buildings and vehicles smokefree, which represented the first change to the Nebraska Clean Indoor Air Act in almost 20 years of existence.<sup>14,15</sup> The reason for the success of this measure was largely the determination of Senator Don Preister of Omaha (a member of the Legislature who refused to accept tobacco industry campaign contributions) who pushed for over five years to get state buildings smokefree (See Clean Indoor Air section).

Between 2000 and 2003, there was a series of highs and lows for tobacco control, due largely to a budget crisis that afflicted the state. In 2000, health advocates were successful in getting the Legislature to fund tobacco control at \$21 million over three years but this amount was cut by 94% in 2003, leaving only \$405,000 per year for tobacco control (See Funding Cut section). In 2000 and 2001, attempts by Senator Nancy Thompson of Papillion (another legislator who refused tobacco industry campaign contributions) to broaden the Nebraska Clean Indoor Air Act to make restaurants smokefree were defeated, but she was successful in 2003 in getting the Act's enforcement provisions strengthened so that the Act can be enforced against business owners (See Clean Indoor Air section). In 2000 and 2001, health advocates were unable to convince the Legislature to pass a large cigarette excise tax increase, but in 2002, a \$0.30 increase was approved (See Citizens' Excise Tax Section). In 2003, the Lincoln-Lancaster County Health Department attempted to pass Nebraska's first local 100% smokefree workplace ordinance, but the City Council gave in to pressure from the tobacco industry and bar owners to pass a confusing ordinance that was weakened to allow smoking in bars and separately ventilated breakrooms and "smoking rooms" (See Clean Indoor Air section). The beginning of the new millennium was a series of three steps forward, two steps back for tobacco control in Nebraska.

## POLITICS IN NEBRASKA

### *A Unicameral Legislature*

Nebraska is the only state in the United States to have a single-house legislature, also known as a unicameral system. Nebraska's legislature is also unique in that it is nominally nonpartisan. While state senators may be affiliated with a political party, this information is not listed on the election ballot and leadership positions are not determined by political party such as in the common majority-minority system. In this report, the political affiliation of legislators that are in office as of 2003 (as designated in the legislative biographies contained in the *Nebraska Blue Book*) are listed.<sup>1</sup> The *Nebraska Blue Book* is published biennially by the Clerk of the Legislature and contains copious amounts of information about Nebraska. Much of the information about Nebraska legislative process and its history is discussed in the *Nebraska Blue Book*; therefore, unless otherwise indicated, the information provided in this section is from the *Nebraska Blue Book*.<sup>1</sup>

Both of Nebraska's unique legislative features came about on November 6, 1934, when voters approved a constitutional amendment that eliminated the previous bicameral system in favor of a unicameral one. Thus, the form of the Nebraska Legislature shares more in common with local governing bodies than the federal system.

There are benefits of Nebraska's unicameral system over the two-chamber system. First, the relative simplicity of the unicameral system makes the legislative process more transparent. For example, there are no conference committees in the unicameral system. Conference committees are usually formed in an *ad hoc* manner in order to resolve any differences that exist between similar bills passed by both houses. This role often makes conference committees extremely powerful in bicameral legislatures because of its members' role in determining the final language of a bill and because there is little oversight of their activities. While the Nebraska Legislature does utilize committees to conduct public hearings and to decide whether a bill will be sent for debate on the floor of the full Legislature, it is the responsibility of the full Legislature to finalize the language of a bill, not that of a particular *ad hoc* committee.

Second, a unicameral system is smaller and less expensive than a bicameral system. When the unicameral system was implemented in 1937, the number of Nebraska legislators, dropped from 133 to 43, committees were reduced from 61 to 18, half as many bills were introduced but more bills were passed and the session was shorter by 12 days. The cost of the last bicameral session in 1935 was \$202,593. The first unicameral session almost halved this amount with a final cost of \$103,445. Over sixty years later, the number of legislators has only risen by six, to 49, and there are still only 18 committees: 14 standing committees that hold public hearings on bills and 4 select committees that conduct administrative tasks for the Legislature.

The most common criticism leveled against unicameralism is that one house is not capable of maintaining checks and balances. However, it should be remembered that legislative bodies at the local level do not usually consist of two separate bodies. Also, the governor's veto and the ability of the judicial branch to deem laws unconstitutional are in place to check the power of the Nebraska Legislature.

## *Nebraska's Legislative Process*

The Legislature meets every year beginning on the first Wednesday after the first Monday in January. During odd-numbered years, it meets for a 90-day session; for even-numbered years, the session lasts 60 days. During 90-day sessions, bills that are not advanced but are not killed are carried over to the following 60-day session. Most bills are introduced during the first 10 days of the session. All legislators in Nebraska are referred to as state senators.

Introduction of a bill occurs when it is filed with the Clerk of the Legislature, who reads the title of the bill into record and then assigns it a number. Bills are usually abbreviated LB (for Legislative Bill) followed by this number.

After a bill has been introduced, the nine-member Reference Committee assigns it to one of the 14 standing committees. Committees are required to conduct a public hearing for almost all bills. It is at the public hearing that individuals or groups may testify for or against a particular bill. After listening to public comments on a bill, the committee may advance an amendment to the bill by a majority vote. It is also the committee's role to decide whether or not to advance the bill to General File, where it is debated on the floor of the full Legislature. On the floor of the Legislature, it takes a majority of the full Legislature (25 votes) to advance a bill or adopt an amendment.

It is usually after a bill has been placed on General File that a senator or committee decides to designate it as a priority bill. Priority bills are debated by the full Legislature before other bills so designating a bill as a priority helps to ensure that it will be debated during the current legislative session. Each senator is allowed one priority bill, each committee may select two, and the Speaker of the Legislature, who introduces bills at the request of the governor, may designate 25 priority bills. The reason why senators wait until a bill has been placed on General File before designating it a priority bill is because designating a bill as a priority bill does not ensure that it will advance out of committee and if this bill died in committee the senator would lose his or her priority bill for that legislative session.

If a bill is advanced at the General File stage, it goes on Select File. Select File is the term for the second time in which a bill is read, debated and voted on by the full Legislature. Once again, 25 votes are required to adopt a new amendment or to advance the bill to Final Reading.

The legislative bill may not be debated or amended when it is on Final Reading, but it may be returned to Select File. Bills may not be passed until at least five days after they were introduced and at least one day after it was advanced to Final Reading.

Final passage of a bill requires more than the normal 25 votes if it contains an emergency clause. An emergency clause allows the bill to take effect immediately after it is signed by the governor or the governor's veto is overridden by the Legislature. Bills that contain an emergency clause require 33 votes (two-thirds) to be sent to the governor.

Once the governor receives the bill, he or she has five days (excluding Sundays) to sign the bill, veto it, or decline to act on it. If he or she signs it or declines to act on the bill, it becomes state law, but if the governor vetoes it, 30 votes are required for the Legislature to override the veto. Bills that do not contain an emergency clause usually go into effect three calendar months after the Legislature adjourns.

The tobacco industry recognized the unique structure of the Nebraska Legislature and recognized that it created special opportunities and difficulties for the industry. One of these features is the fact that legislation can be brought up for debate and amended at any time while on General File or Select File if 25 senators vote in favor of such an action. Because of this aspect of Nebraska's system, the tobacco industry and its lobbyists must remain vigilant in monitoring the status of bills in which they take an interest. The tobacco industry recognized this fact in a 1987 State of the States Report that stated, "The most unnerving aspect of this system is that legislation can be reconsidered by a simple majority vote at any step before Final Reading."<sup>11</sup>

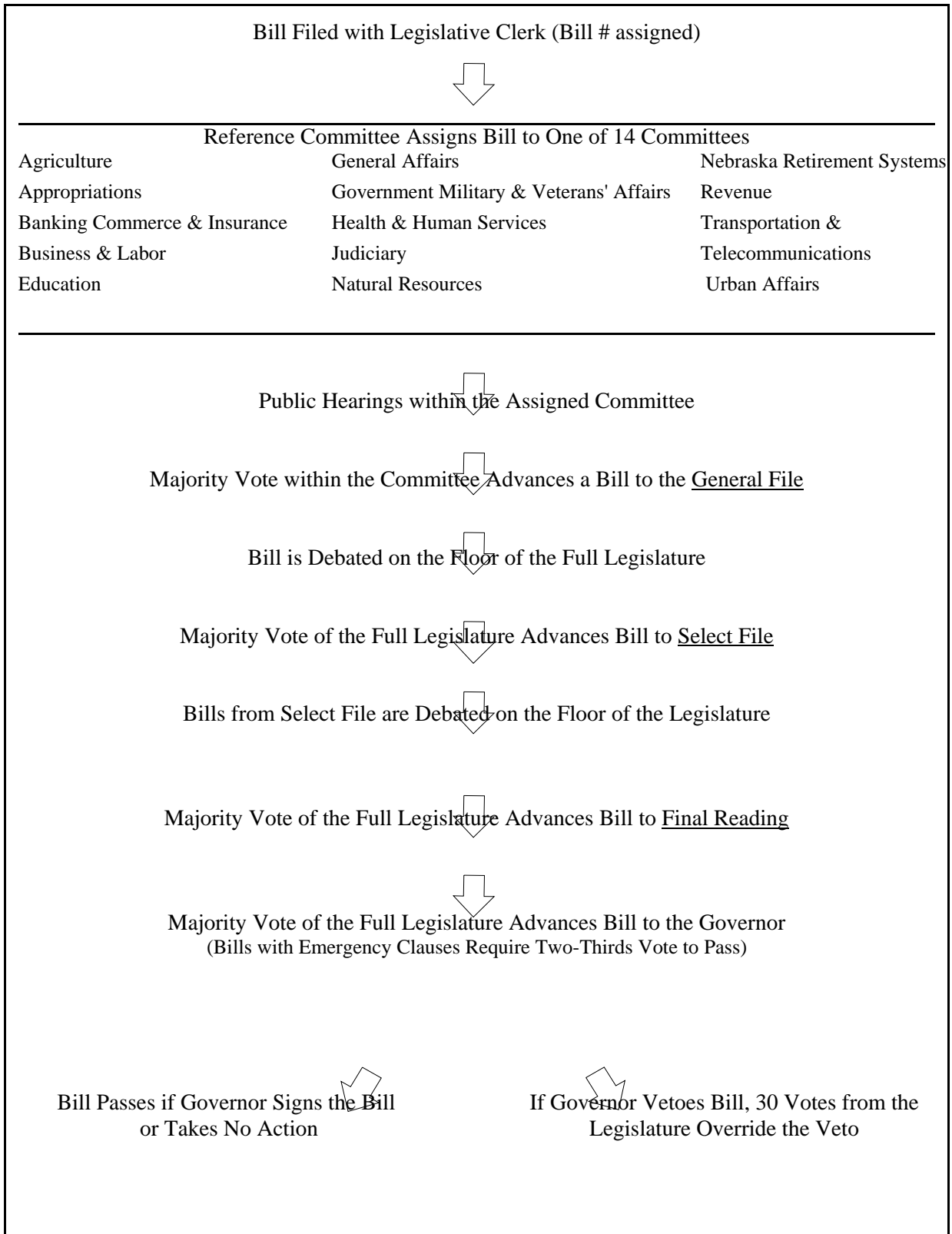
The smaller size of Nebraska's Legislature also has consequences for the tobacco industry. An R.J. Reynolds' State Tax Plan from 1989 noted that "Nebraska's unique unicameral legislation reduces the number of legislative contacts that have to be made for a successful effort. Conversely, with only 49 senators, efforts to block legislation can be difficult if an issue has momentum."<sup>16</sup>

### *Term Limits*

During the 1990s, citizens throughout the U.S. that were dissatisfied with the current political climate attempted to enact some measure of reform by limiting the number of terms that could be served by state and federal elected officials. Proponents argued that term limits would help prevent elected officials from becoming professional politicians who had lost touch with their constituents. Opponents believed that term limits would lead to inexperienced, and thus ineffectual, leadership.

During this time period, Nebraskans passed three separate constitutional amendment voter initiatives in 1992, 1994 and 1996 that would have set term limits on state senators, but each time the measure did not survive the courts.<sup>17</sup> The Nebraska Supreme Court threw out the first vote when it was later determined that not enough signatures had been collected to put it on the ballot, while the other two votes were deemed unconstitutional as part of rulings by the U.S. Supreme Court.<sup>17</sup> Attempts to get the Nebraska Legislature to pass term limit legislation also failed. In 2000, Guy Curtis, the lawyer who led the Nebraska Term Limits Committee, observed "We've been trying to get legislators to enact term limits for years, but a hog won't butcher itself."<sup>18</sup>

In 2000, however, voters approved Initiative Measure 415, which limits state senators to no more than two consecutive four-year terms.<sup>17</sup> As of 2003, these term limits have not been



**Figure 3:** Summary of Nebraska's Legislative Process



deemed unconstitutional. The term limits will apply for the first time in the 2006 election. This will apply to legislators that were elected in 1998 and again in 2002.

As a result of the term limits that go into effect in 2006 over one-third of the current Legislature will have to be replaced. The effect this will have on the makeup of the Legislature is uncertain, but it is clear that the Legislature will be less stable due to the many years of experience will be lost. It remains to be seen whether the effect of the shake-up to the Legislature will have positive or negative effects for tobacco control in Nebraska.

One major consequence of term limits for both tobacco control advocates and the tobacco industry will be the need to invest more resources toward educating new legislators on tobacco-related policies. It is likely that the future of tobacco control in the Nebraska Legislature will largely be determined by whether the tobacco industry or health advocates are more successful in educating the large number of incoming senators on the issue of tobacco.

## TOBACCO INDUSTRY POLITICAL EXPENDITURES IN NEBRASKA

The use of political expenditures in Nebraska is a key way for the tobacco industry to exert influence over tobacco-related policy making. The tobacco industry spent a total of \$422,517 in Nebraska during the 2001-2002 legislative session (Table 1), which includes campaign contributions to individual legislators and legislative candidates and lobbying expenditures. This represents a \$41,034 increase (11%) from the previous legislative session

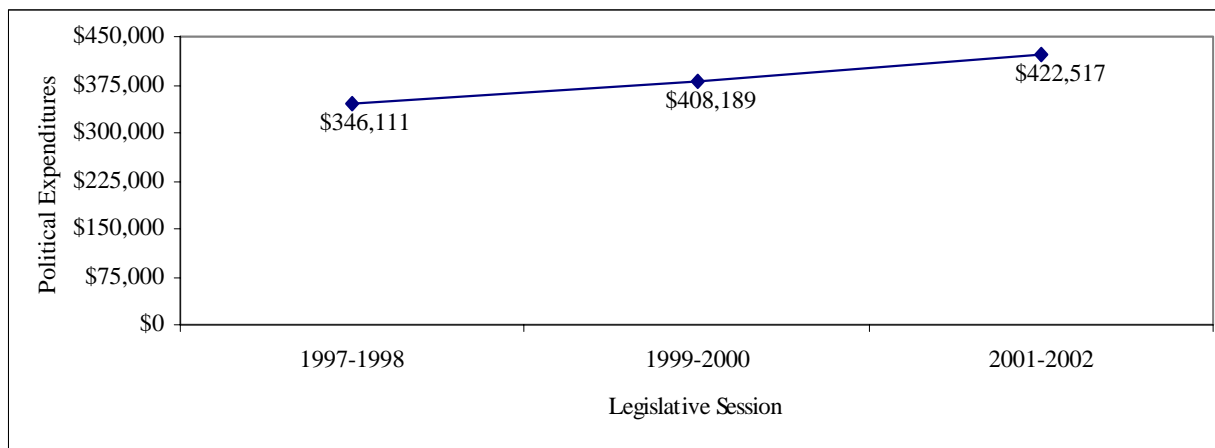
**Table 1:** Tobacco Industry Expenditures to Influence Policy Making in Nebraska, 1999-2002

Company	Legislature, 1999-2000	Lobbying, 1999-2000	Legislature, 2001-2002	Lobbying, 2001-2002	Constitutional Officers, 1999-2002	1999-2002 Grand Total
Philip Morris (PM)	\$12,750	\$129,515	\$7,500	\$103,391	\$500	\$253,656
Kraft	\$0	\$0	\$0	\$0	\$12,500	\$12,500
Miller	\$0	\$0	\$0	\$0	\$2,500	\$2,500
RJ Reynolds (RJR)	\$18,000	\$75,932	\$21,049	\$101,063	\$500	\$216,544
Brown & Williamson (BW)	\$0	\$41,058	\$0	\$35,009	\$0	\$76,067
Lorillard (LOR)	\$0	\$0	\$0	\$25,000	\$0	\$25,000
Smokeless Tobacco Council (STC)	\$0	\$0	\$0	\$15,100	\$0	\$15,100
U.S. Tobacco (UST)	\$4,800	\$102,000	\$1,000	\$102,782	\$0	\$210,582
NE Restaurant PAC	\$2,878	\$0	\$1,100	\$0	\$0	\$3,978
Others	\$21,256	\$0	\$9,523	\$0	\$7,560	\$38,339
<b>TOTALS</b>	<b>\$59,684</b>	<b>\$348,505</b>	<b>\$40,172</b>	<b>\$382,345</b>	<b>\$23,560</b>	<b>\$854,266</b>

Note: Others includes contributions from the Petroleum and Retail Political Action Committees, Nebraska Association of Candy and Tobacco Distributors and Walter Radcliffe.

during which the tobacco industry spent \$381,483. In addition, the tobacco industry and its allies spent an additional \$23,560 on contributions to constitutional officers between 1999 and 2002.

Political expenditures by the tobacco industry in Nebraska have consistently increased by about 10% during the last two legislative sessions, from a total of \$346,111 in campaign contributions and lobbying expenses in 1997/98 to \$408,189 in 1999/2000 and \$422,517 in 2001/02 (Figure 4).



**Figure 4:** Trend in Tobacco Industry Campaign Contributions and Lobbying Expenses, 1997/98 - 2001/02

*Data on Political Expenditures in Nebraska*

According to the Institute on Money in State Politics, a nationwide, nonpartisan, nonprofit organization that seeks to document and research campaign finance at the state level, the average amount of money raised by the winner of Nebraska Legislature elections in 2002 was \$41,576.<sup>19</sup> This level of campaign contributions is far less than many larger states, such as California, so the amount of money received from the tobacco industry is correspondingly smaller than for many other states.

The data on political expenditures made by the tobacco industry in the state of Nebraska were collected from disclosure statements filed with Nebraska Accountability and Disclosure Commission. The following organizations were included and defined as “tobacco industry” sources of funds: Brown and Williamson, Lorillard Tobacco Company, Philip Morris Inc. (which changed its name to Altria in 2003), R.J. Reynolds, Smokeless Tobacco Council, the Tobacco Institute, and US Tobacco. Kraft and Miller Brewing (both owned by Altria) were also included for state constitutional officers because these two companies did not make any substantial contributions to state legislators but large contributions were made to members of the executive branch.

The contributions from organizations that were included as tobacco industry allies were the Nebraska Association of Tobacco and Candy Distributors, the Nebraska Petroleum Marketers and Convenience Stores Association, the Nebraska Restaurant Association and the Nebraska Retail Federation. Other tobacco industry allies such the Nebraska Licensed Beverage Association were not included because they made almost no campaign contributions. Campaign contributions from tobacco industry lobbyists and their lobbying companies were included in Others except for contributions from Walt Radcliffe or Radcliffe and Associates which was give its own column due to the level of contributions (generally over \$2,000 per election cycle). Contributions from the Nebraska Retail Grocers Association (which made large contributions to one legislator) can also be found under Others. These groups were identified as third-party allies

of the tobacco industry based on internal tobacco industry documents describing them as such.<sup>3-5,</sup>  
20

The information provided in this report includes contributions to individual legislators, legislative candidates, state constitutional officers and candidates and expenditures made for lobbying legislative and administrative officials. We collected contribution data on candidates and elected officials from the Legislature between the 1979-1980 election cycle and the 2001-2002 election cycle. Data on constitutional officers were collected for the same time period, however, this information was reported on a four year cycle as this reflects the election cycle for constitutional officers. Lobbying expenditures were collected from 1997 to 2002. A complete list of all candidates and elected officials for the 2003 election and their tobacco industry campaign contributions, as well as lobbying expenditures are listed in the Appendix.

It should be noted that the time period for which data were collected was a period in which the Nebraska Accountability and Disclosure Commission was expanding and refining the level of information collected on campaign contributions. As a result, the election cycle for 1981-1982 shows substantially lower levels of contributions (\$3,950 total amount of contributions) compared to 1983-1984 (\$22,844 total amount of contributions), which is likely to be an indication of the level of reporting that was required at that time rather than the level of campaign contributions that were given by the tobacco industry and its allies.<sup>21, 22</sup>

For the 1999-2000 and the 2001-2002 election cycles, the Nebraska Accountability and Disclosure Commission changed the level of contribution that had to be reported from greater than \$100 to greater than \$250 as part of its decision to report campaign contributions online at <http://nadc.nol.org/>. Given that the typical tobacco contribution increment for Nebraska during these years was \$500, it is unlikely that this change had a substantial effect on the amount of contributions reported. For the election cycles of 1999-2000 and 2001-2002, campaign contribution data were collected from this online source; for earlier years the information was collected from biannual reports published by the Commission.<sup>21-29</sup>

Lobbying expenditures were collected from the reports that are filed quarterly by lobbyists and principals with the Clerk of the Legislature and maintained by the Nebraska Accountability and Disclosure Commission.<sup>30</sup>

### *Tobacco Policy Scores*

In order to relate the information on political expenditures by the tobacco industry to legislative behavior, “tobacco policy scores” were created for each member of the 2003 Legislative Session (Appendix A). The score was obtained from polling six individuals with extensive knowledge of policy making in Nebraska. Each legislator was evaluated based on a scale of 0 to 10. A score of 0 represented an extremely pro-tobacco legislator and a score of 10 represented an extremely pro-tobacco control legislator. The average for each legislator is reported. Legislators with scores ranging from 0.0 to 3.9 are considered pro-tobacco industry, scores ranging from 4.0 to 6.0 are considered neutral, and scores ranging from 6.1 to 10.0 are considered pro-tobacco control.

The legislators in office during the 2003 legislative session were scored and the Legislature received an average tobacco policy score of 5.0. It should be remembered that

Nebraska legislators are officially nonpartisan but that party affiliations were determined from biographies in the Nebraska Blue Book.<sup>1</sup> Among the 13 Democratic legislators, the average tobacco policy score was 5.8; the 3 Independent legislators received an average score of 5.9; and the 33 Republican legislators received an average score of 4.6. The lowest tobacco policy score, indicating a pro-tobacco industry position, was 1.5 and was received by Douglas Cunningham (R-Wausa; 1.5 policy score; \$2,449 lifetime industry total), Ramon Janssen (D-Nickerson; 1.5 policy score; \$8,550 lifetime industry total), and Gene Tyson (R-Norfolk; 1.5 policy score; \$250 lifetime industry total). The highest tobacco policy scores was 8.8 and was received by Donald Preister (D-Omaha; 8.8 policy score, \$0 lifetime industry total), who is also the Vice Chairperson of the Committee on Committees.

### *Legislative Officeholder and Candidates*

During the 2001-2002 legislative cycle, the tobacco industry and its allies contributed a total of \$31,472 to 29 legislators. Of this group of legislators, nine accepted contributions totaling \$3,920 from tobacco industry allies but not tobacco companies themselves. This is a \$11,657 decrease from the previous legislative session when a total of \$43,129 was contributed by the tobacco industry and its allies to 26 legislative office holders or candidates (Table 2). The average tobacco policy score for the 2003 legislature was 5.0. Ten of the thirteen Democratic legislators accepted a total of \$8,876 for an average tobacco industry campaign contribution of \$683. One of the three Independent legislators accepted \$1,000 in tobacco industry campaign contributions. Finally, 18 of the 33 Republican legislators accepted a total of \$21,596 for an average contribution of \$654.

### *Elected Officials Receiving the Highest Amounts of Tobacco Industry Contributions*

Table 3 lists Nebraska legislators and candidates who accepted \$1,000 or more from the tobacco industry and its allies during the 2001-2002 legislative session. Among these 16 legislators, the average tobacco policy score was 3.2. Four of the legislators were Democrats (25%), one was Independent (6%), and eleven were Republican (69%). Both Speaker Curt Bromm (R-Wahoo; 4.5 policy score; \$6,550 lifetime industry total) and Chairperson of the Executive Board Pat Engel (D-South Sioux City; 3.2 policy score; \$5,750 lifetime industry total) accepted \$1,500 in tobacco industry campaign contributions and Speaker Bromm accepted an additional \$250 from a tobacco industry ally. Among the leadership of the individual committees, the following individuals were top recipients: Chair Pedersen (R-Elkhorn; 3.5 policy score; \$7,600 lifetime industry total) of the Committee on Committees, Chair Engel and Vice Chair Cudaback (R-Riverdale; 2.5 policy score; \$5,350 lifetime industry total) of the Committee on Reference, Chair Hudkins (R-Malcolm; 4.2 policy score; \$6,000 lifetime industry total) and Vice Chair Baker (R-Trenton; 2.0 policy score; \$4,000 lifetime industry total) of the Committee on Rules, Vice Chair Pederson (R-North Platte; 5.2 policy score; \$2,000 lifetime industry total) of the Committee on Appropriations, and Vice Chair Maxwell (I-Omaha; 4.6 policy score; \$2,000 lifetime industry total) of the Committee on Education.

**Table 2: Tobacco Industry Contributions to Members of the 2003 Nebraska Legislature**

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total	Total	
Aguilar, Ray	35	R	5	\$0	\$1,026	\$0	\$0	\$0	\$1,026	\$0	\$1,026	8.2
Baker, Tom	44	R	5	\$1,500	\$2,500	\$1,500	\$2,699	\$3,000	\$5,199	\$4,000	\$6,721	2.0
Beutler, Chris	28	D	21	\$0	\$500	\$0	\$250	\$0	\$750	\$5,000	\$6,827	8.0
Bourne, Patrick	8	D	5	\$2,000	\$2,000	\$1,500	\$1,716	\$3,500	\$3,716	\$4,000	\$4,468	1.8
Brashear, Kermit	4	R	9	\$1,500	\$2,000	\$1,500	\$1,500	\$3,000	\$3,500	\$7,000	\$8,551	2.8
Bromm, Curt	23	R	11	\$2,000	\$2,800	\$1,500	\$1,750	\$3,500	\$4,550	\$6,550	\$8,050	4.5
Brown, Pam	6	D	9	\$250	\$250	\$0	\$350	\$250	\$600	\$2,750	\$4,152	7.3
Burling, Carroll	33	R	3	\$0	\$500	\$0	\$0	\$0	\$500	\$0	\$500	4.4
Byars, Dennis	30	R	13	\$1,250	\$1,250	\$500	\$750	\$1,750	\$2,000	\$3,150	\$4,178	7.7
Chambers, Ernie	11	I	33	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Combs, Jeanne	32	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	4.2
Connealy, Matt	16	D	5	\$500	\$500	\$500	\$900	\$1,000	\$1,400	\$1,500	\$2,050	7.2
Cudaback, Jim	36	R	13	\$1,500	\$1,500	\$1,000	\$1,000	\$2,500	\$2,500	\$5,350	\$6,151	2.5
Cunningham, Doug	40	R	3	\$1,400	\$9,946	\$1,049	\$2,506	\$2,449	\$12,452	\$2,449	\$12,452	1.5
Engel, Pat	17	D	11	\$1,500	\$1,500	\$1,500	\$1,500	\$3,000	\$3,000	\$5,750	\$6,045	3.2
Erdman, Philip	47	R	3	\$0	\$0	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	1.8
Foley, Mike	29	R	3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	5.0
Friend, Mike	10	R	1	\$0	\$0	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	3.0
Hartnett, Paul	45	D	19	\$0	\$770	\$1,000	\$1,000	\$1,000	\$1,770	\$1,750	\$3,840	2.3
Hudkins, Carol	21	R	11	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$6,000	\$6,357	4.2
Janssen, Ray	15	D	11	\$2,300	\$2,600	\$500	\$800	\$2,800	\$3,400	\$8,550	\$9,798	1.5
Jensen, Jim	20	R	9	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$427	8.5
Johnson, Joel	37	R	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Jones, Jim	43	R	11	\$750	\$1,250	\$0	\$500	\$750	\$1,750	\$1,500	\$3,050	4.8
Kremer, Bob	34	R	5	\$0	\$0	\$0	\$541	\$0	\$541	\$0	\$875	4.7
Kruse, Lowen	13	D	3	\$0	\$0	\$500	\$733	\$500	\$733	\$500	\$773	7.6
Landis, David	46	D	25	\$0	\$0	\$0	\$327	\$0	\$327	\$3,550	\$6,910	5.4
Louden, LeRoy	49	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	4.0
Maxwell, Chip	9	I	3	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	4.6
McDonald, Vickie	41	R	3	\$0	\$0	\$0	\$500	\$0	\$500	\$0	\$500	6.2
Mines, Mick	18	R	1	\$0	\$0	\$0	\$700	\$0	\$700	\$0	\$700	3.8
Mossey, Ray	3	R	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	3.4
Pedersen, Dwite	39	R	11	\$2,650	\$4,029	\$1,000	\$1,500	\$3,650	\$5,529	\$7,600	\$11,612	3.5
Pederson, Don	42	R	8	\$500	\$500	\$500	\$1,098	\$1,000	\$1,598	\$2,000	\$2,840	5.2
Preister, Donald	5	D	11	\$0	\$679	\$0	\$0	\$0	\$679	\$0	\$2,284	8.8
Price, Marian	26	R	5	\$0	\$0	\$0	\$252	\$0	\$252	\$0	\$352	7.7
Quandahl, Mark	31	R	5	\$1,400	\$2,617	\$1,500	\$1,800	\$2,900	\$4,417	\$2,900	\$4,417	2.6
Raikes, Ron	25	I	7	\$0	\$0	\$0	\$0	\$0	\$0	\$750	\$1,899	5.5
Redfield, Pam	12	R	6	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	6.8
Schimek, DiAnna	27	D	15	\$0	\$300	\$0	\$0	\$0	\$300	\$1,550	\$5,215	8.0
Schrock, Ed	38	R	13	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$100	5.8
Smith, Adrian	48	R	5	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300	1.7
Stuhr, Elaine	24	R	9	\$500	\$500	\$500	\$500	\$1,000	\$1,000	\$1,250	\$1,492	4.3
Stuthman, Arnie	22	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	2.7
Synowiecki, John	7	D	3	\$0	\$0	\$1,000	\$1,300	\$1,000	\$1,300	\$1,000	\$1,300	5.7
Thompson, Nancy	14	D	7	\$0	\$371	\$0	\$0	\$0	\$371	\$0	\$926	8.7
Tyson, Gene	19	R	7	\$0	\$0	\$0	\$0	\$0	\$0	\$250	\$250	1.5
Vrtiska, Floyd	1	R	11	\$0	\$1,241	\$0	\$0	\$0	\$1,241	\$1,100	\$2,265	6.2
Wehrbein, Roger	2	R	17	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$50	7.5
<b>TOTALS</b>				\$23,500	\$43,129	\$22,049	\$31,472	\$45,549	\$74,601	\$92,749	\$144,703	5.0

## *Elected Officials Who Did Not Accept Tobacco Industry Contributions*

Table 4 lists the legislators and candidates who did not accept tobacco industry campaign contributions during the 2001-2002 legislative session. The average tobacco policy score for these 20 legislators was 5.8. Three legislators were Democrats (15%), two were Independents (10%), and the remaining 15 were Republicans (75%). In addition, there were eight legislators who accepted contributions from tobacco industry allies, but not directly from the tobacco companies, including: Mick Mines (R-Blair; 3.8 policy score, \$0 lifetime industry total), Bob Kremer (R-Aurora; 4.7 policy score; \$0 lifetime industry total), Jim Jones (R-Eddyville; 4.8 policy score; \$1,500 lifetime industry total), Vickie McDonald (R-Rockville; 6.2 policy score; \$0 lifetime industry total), Pam Brown (D-Omaha; 7.3 policy score; \$2,750 lifetime industry total), David Landis (D-Lincoln; 5.4 policy score; \$3,550 lifetime industry total), Marian Price (R-Lincoln; 7.7 policy score; \$0 lifetime industry total), and Chris Beutler (D-Lincoln; 8.0 policy score; \$5,000 lifetime industry total).

## *Relationship Between Campaign Contributions and Legislative Behavior*

Previous research has demonstrated a relationship between campaign contributions from the tobacco industry and policy making behavior among legislators.<sup>31, 32</sup> We sought to test this relationship in Nebraska using the 2001-2002 campaign contribution data. The hypothesis was that tobacco industry campaign contributions were associated with sympathetic behavior towards the tobacco industry *and* that the tobacco industry may continue to provide or increase contributions to legislators who have acted in the tobacco industry's best interest in the past. Simultaneous regression equations using two stage least squares was used to test the hypothesis.

The simultaneous equations regression model consists of two equations. The first equation predicts the tobacco policy score received in 2001-2002 from the total tobacco industry campaign contributions received during the 2001-2002 election cycle and political affiliation.

**Table 3:** Top Recipients of Campaign Contributions from the Tobacco Industry in Nebraska, 2001-2002

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total	Total	
Baker, Tom	44	R	5	\$1,500	\$2,500	\$1,500	\$2,699	\$3,000	\$5,199	\$4,000	\$6,721	2.0
Cunningham, Doug	40	R	3	\$1,400	\$9,946	\$1,049	\$2,506	\$2,449	\$12,452	\$2,449	\$12,452	1.5
Friend, Mike	10	R	1	\$0	\$0	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	3.0
Quandahl, Mark	31	R	5	\$1,400	\$2,617	\$1,500	\$1,800	\$2,900	\$4,417	\$2,900	\$4,417	2.6
Bromm, Curt	23	R	11	\$2,000	\$2,800	\$1,500	\$1,750	\$3,500	\$4,550	\$6,550	\$8,050	4.5
Bourne, Patrick	8	D	5	\$2,000	\$2,000	\$1,500	\$1,716	\$3,500	\$3,716	\$4,000	\$4,468	1.8
Brashear, Kermit	4	R	9	\$1,500	\$2,000	\$1,500	\$1,500	\$3,000	\$3,500	\$7,000	\$8,551	2.8
Engel, Pat	17	D	11	\$1,500	\$1,500	\$1,500	\$1,500	\$3,000	\$3,000	\$5,750	\$6,045	3.2
Pedersen, Dwite	39	R	11	\$2,650	\$4,029	\$1,000	\$1,500	\$3,650	\$5,529	\$7,600	\$11,612	3.5
Synowiecki, John	7	D	3	\$0	\$0	\$1,000	\$1,300	\$1,000	\$1,300	\$1,000	\$1,300	5.7
Pederson, Don	42	R	8	\$500	\$500	\$500	\$1,098	\$1,000	\$1,598	\$2,000	\$2,840	5.2
Cudaback, Jim	36	R	13	\$1,500	\$1,500	\$1,000	\$1,000	\$2,500	\$2,500	\$5,350	\$6,151	2.5
Erdman, Philip	47	R	3	\$0	\$0	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	1.8
Hartnett, Paul	45	D	19	\$0	\$770	\$1,000	\$1,000	\$1,000	\$1,770	\$1,750	\$3,840	2.3
Hudkins, Carol	21	R	11	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$6,000	\$6,357	4.2
Maxwell, Chip	9	I	3	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	4.6
TOTALS				\$17,950	\$32,162	\$19,549	\$24,369	\$37,499	\$56,531	\$61,349	\$87,804	3.2

**Table 4:** Elected Officials and Candidates Who Did Not Accept Tobacco Industry Campaign Contributions, 2001-2002

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total	Total	
Aguilar, Ray	35	R	5	\$0	\$1,026	\$0	\$0	\$0	\$1,026	\$0	\$1,026	8.2
Burling, Carroll	33	R	3	\$0	\$500	\$0	\$0	\$0	\$500	\$0	\$500	4.4
Chambers, Ernie	11	I	33	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Combs, Jeanne	32	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	4.2
Foley, Mike	29	R	3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	5.0
Jensen, Jim	20	R	9	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$427	8.5
Johnson, Joel	37	R	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Louden, LeRoy	49	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	4.0
Mossey, Ray	3	R	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	3.4
Preister, Donald	5	D	11	\$0	\$679	\$0	\$0	\$0	\$679	\$0	\$2,284	8.8
Raikes, Ron	25	I	7	\$0	\$0	\$0	\$0	\$0	\$0	\$750	\$1,899	5.5
Redfield, Pam	12	R	6	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	6.8
Schimek, DiAnna	27	D	15	\$0	\$300	\$0	\$0	\$0	\$300	\$1,550	\$5,215	8.0
Schrock, Ed	38	R	13	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$100	5.8
Smith, Adrian	48	R	5	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300	1.7
Stuthman, Arnie	22	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	2.7
Thompson, Nancy	14	D	7	\$0	\$371	\$0	\$0	\$0	\$371	\$0	\$926	8.7
Tyson, Gene	19	R	7	\$0	\$0	\$0	\$0	\$0	\$0	\$250	\$250	1.5
Vrtiska, Floyd	1	R	11	\$0	\$1,241	\$0	\$0	\$0	\$1,241	\$1,100	\$2,265	6.2
Wehrbein, Roger	2	R	17	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$50	7.5
TOTALS				\$0	\$4,117	\$0	\$0	\$0	\$4,117	\$3,650	\$15,242	5.8

The second equation predicts the total tobacco industry campaign contributions received during the 2001-2002 election cycle from the tobacco policy score and political affiliation. The total campaign contributions used here include contributions from the tobacco industry as well as tobacco industry third party allies.

**Table 5:** Relationship Between Tobacco Industry Campaign Contributions and Legislative Behavior During the 2001-2002 Nebraska Legislative Session

Variable	Coefficient	Standard Error	t-value	p
Dependent Variable = Tobacco Policy Scores (0-10)				
Constant	7.06	0.61	11.56	<0.0001
Contributions (dollars in thousands)	-1.81	0.52	-3.51	0.001
Republican	-0.66	0.31	-2.13	0.039
R <sup>2</sup> =0.27				
Dependent Variable = Tobacco Industry Campaign Contributions (dollars in thousands)				
Constant	3.51	0.81	4.32	<0.0001
Tobacco Policy Score	-0.49	0.13	-3.70	0.0006
Republican	-0.32	0.17	-1.84	0.0726
R <sup>2</sup> =0.23				

**Table 6:** Tobacco Industry Contributions to Nebraska's Congressional Delegation, 1989-2002

Senate Candidate	Party	2001-2002	1999-2000	1997-1998	1995-1996	1993-1994	1991-1992	1989-1990	Total
Hagel, Chuck	R	\$10,000	\$1,000	\$15,000	\$10,000				\$36,000
Nelson, Ben	D	\$5,500	\$11,000		\$12,500				\$29,000
Kerrey, Bob	D	-\$1,000	\$10,750	\$2,000	\$3,000	\$23,500	\$12,250		\$50,500
Exon, Jim	D						\$500	\$11,999	\$12,499
Stenberg, Donald	R		\$2,000						\$2,000
Moore, Scott	R		\$1,000						\$1,000
<b>Total Senate Contributions</b>		\$14,500	\$25,750	\$17,000	\$25,500	\$23,500	\$12,750	\$11,999	\$130,999

House Candidate	Party	2001-2002	1999-2000	1997-1998	1995-1996	1993-1994	1991-1992	1989-1990	Total
Terry, Lee	R	\$500	\$500						\$1,000
Bereuter, Doug	R		\$2,050	\$3,000	\$2,000	\$1,000	\$900	\$1,000	\$9,950
Barrett, Bill	R			\$1,000	\$2,000	\$1,500	\$1,800	\$2,250	\$8,550
Christensen, Jon	R				\$3,500				\$3,500
Davis, James Martin	D				\$500				\$500
Hoagland, Peter	D					\$6,000	\$1,500	\$1,500	\$9,000
<b>Total House Contributions</b>		\$500	\$2,550	\$4,000	\$8,000	\$8,500	\$4,200	\$4,750	\$32,500

<b>Total Congressional Contributions</b>		\$15,000	\$28,300	\$21,000	\$33,500	\$32,000	\$16,950	\$16,749	\$163,499
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The results of this analysis are presented in Table 5 demonstrate strong relationships between legislative behavior and tobacco industry campaign contributions. First, for every \$1,000 increase in the campaign contributions received by the tobacco industry, the legislator's tobacco policy score decreased (i.e., became more pro-tobacco industry) by an average of 1.8 points. On average, Republican legislators had tobacco policy scores that were 0.66 points below their Democratic colleagues receiving the same amount of tobacco industry campaign contributions. Second, on average, for every one point increase in a legislator's tobacco policy score, tobacco industry campaign contributions decreased by \$490. While most of the findings were statistically significant ( $p < 0.05$ ), the overall fit of the models was low due to a small sample size ( $n=49$ ).

### *The Nebraska Legislature Versus the United States Congress*

In 2001-2002, the tobacco industry contributed more money to the Nebraska Legislature than Nebraska's candidates for the U.S. Congress. During the 2001-2002 legislative session, the tobacco industry contributed a total of \$15,000 to members of Nebraska's Congressional delegation, while it contributed \$40,172 to the Nebraska Legislature. Both of Nebraska's current U.S. Senators (as of March 2004), Republican Chuck Hagel (\$36,000 lifetime industry total) and Democrat Ben Nelson (\$29,000 lifetime industry total (as U.S. Senator)), have accepted money from the tobacco industry (Table 6). Two of Nebraska's three current members of the U.S. House of Representatives, Republican Doug Bereuter (District 1 - \$9,950 lifetime industry total) and Lee Terry (District 2 - \$1,000 lifetime industry total), have received tobacco industry contributions. Only Republican Congressman Tom Osborne (District 3) has not taken tobacco industry contributions out of Nebraska five members of the U.S. Congress.

### *Legislative Leaders*

During 2003, the Nebraska Legislature was dominated by individuals identifying themselves as Republicans. As such, the Speaker of the Legislature was Republican Curt Bromm



who accepted a total of \$1,750 during 2001-2002 and a total of \$8,050 during his political career from the tobacco industry and its allies. Senator Bromm received a neutral tobacco policy score of 4.5. Chairperson of the Executive Committee Pat Engel received \$3,250 from the tobacco industry and its allies during 2001-2002 and a total of \$6,045 during his political career. Senator Engel received a pro-tobacco industry policy score of 3.2. (Table 7)

*Legislative Committees*

In addition to the influence that may be exerted by legislative leadership, the leadership and individual members of select committees can also play a significant role in tobacco control policymaking. The organizational committees, including the Committee on Committees, Enrollment and Review, Reference and Rules, may determine the fate and direction of tobacco-related legislation. During the late 1990s and into the 2000s, there were also several committees that reviewed tobacco-related bills, including the Committee on Appropriations, Revenue, Health and Human Services, and Education. The Appropriations Committee and the Revenue Committee deal with the budget for the state with cigarette excise tax increase proposals being assigned to the Revenue Committee. The Health and Human Services Committee has reviewed proposed legislation on clean indoor air and youth access to tobacco. The Education Committee was responsible for LB 1436, the legislative bill which eventually granted \$7 million for each of three years to tobacco control in Nebraska.

*Committee on Committees*

Chairperson of the Committee on Committees, Dwite Pedersen, accepted \$1,500 in contributions from the tobacco industry during 2001-2002 and received a tobacco policy score of 3.5. The Vice Chairperson, Donald Preister, did not accept any contributions from the tobacco industry and received the highest tobacco policy score of anyone in the legislature, 8.8. Nine members of the Committee on Committees accepted a total of \$9,086 during the 2001-2002 legislative session and received an average tobacco policy score of 5.3 Contributions ranged from \$1,716 accepted by Patrick Bourne (D-Omaha; \$4,000 lifetime industry total) who received a tobacco policy score of 1.8 to a low of \$252 accepted by Marian Price who received a tobacco policy score of 7.7. In addition, three members of the committee (Jim Jensen (R-Omaha; 8.5 policy score; \$0 lifetime industry total), DiAnna Schimek (D-Lincoln; 8.0 policy score; \$1,550 lifetime industry total) and Ed Schrock (R-Elm Creek; 5.8 policy score; \$0 lifetime industry total) did not accept any donations from the tobacco industry (Table 8).

**Table 7:** Tobacco Industry Contributions to the 2003 Nebraska Legislative Leadership

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total		
Bromm, Curt (Speaker)	23	R	11	\$2,000	\$2,800	\$1,500	\$1,750	\$3,500	\$4,550	\$6,550	\$8,050	4.5
Engel, Pat (Chair of Exec. Board)	17	D	11	\$1,500	\$1,500	\$1,500	\$1,500	\$3,000	\$3,000	\$5,750	\$6,045	3.2
TOTALS				\$3,500	\$4,300	\$3,000	\$3,250	\$6,500	\$7,550	\$12,300	\$14,095	3.8

**Table 8: Tobacco Industry Campaign Contributions to the 2003 Committee on Committees**

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total		
Pedersen, Dwite (Chairperson)	39	R	11	\$2,650	\$4,029	\$1,000	\$1,500	\$3,650	\$5,529	\$7,600	\$11,612	3.5
Preister, Donald (Vice Chairperson)	5	D	11	\$0	\$679	\$0	\$0	\$0	\$679	\$0	\$2,284	8.8
Bourne, Patrick	8	D	5	\$2,000	\$2,000	\$1,500	\$1,716	\$3,500	\$3,716	\$4,000	\$4,468	1.8
Brashear, Kermit	4	R	9	\$1,500	\$2,000	\$1,500	\$1,500	\$3,000	\$3,500	\$7,000	\$8,551	2.8
Bromm, Curt	23	R	11	\$2,000	\$2,800	\$1,500	\$1,750	\$3,500	\$4,550	\$6,550	\$8,050	4.5
Cudaback, Jim	36	R	13	\$1,500	\$1,500	\$1,000	\$1,000	\$2,500	\$2,500	\$5,350	\$6,151	2.5
Jensen, Jim	20	R	9	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$427	8.5
Jones, Jim	43	R	11	\$750	\$1,250	\$0	\$500	\$750	\$1,750	\$1,500	\$3,050	4.8
Kremer, Bob	34	R	5	\$0	\$0	\$0	\$541	\$0	\$541	\$0	\$875	4.7
Landis, David	46	D	25	\$0	\$0	\$0	\$327	\$0	\$327	\$3,550	\$6,910	5.4
Price, Marian	26	R	5	\$0	\$0	\$0	\$252	\$0	\$252	\$0	\$352	7.7
Schimek, DiAnna	27	D	15	\$0	\$300	\$0	\$0	\$0	\$300	\$1,550	\$5,215	8.0
Schrock, Ed	38	R	13	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$100	5.8
TOTALS				\$10,400	\$14,558	\$6,500	\$9,086	\$16,900	\$23,644	\$37,100	\$58,045	5.3

**Table 9: Tobacco Industry Campaign Contributions to the 2003 Committee on References**

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total		
Engel, Pat (Chairperson)	17	D	11	\$1,500	\$1,500	\$1,500	\$1,500	\$3,000	\$3,000	\$5,750	\$6,045	3.2
Cudaback, Jim (Vice Chairperson)	36	R	13	\$1,500	\$1,500	\$1,000	\$1,000	\$2,500	\$2,500	\$5,350	\$6,151	2.5
Beutler, Chris	28	D	21	\$0	\$500	\$0	\$250	\$0	\$750	\$5,000	\$6,827	8.0
Bromm, Curt	23	R	11	\$2,000	\$2,800	\$1,500	\$1,750	\$3,500	\$4,550	\$6,550	\$8,050	4.5
Chambers, Ernie	11	I	33	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Janssen, Ray	15	D	11	\$2,300	\$2,600	\$500	\$800	\$2,800	\$3,400	\$8,550	\$9,798	1.5
Jones, Jim	43	R	11	\$750	\$1,250	\$0	\$500	\$750	\$1,750	\$1,500	\$3,050	4.8
Thompson, Nancy	14	D	7	\$0	\$371	\$0	\$0	\$0	\$371	\$0	\$926	8.7
Tyson, Gene	19	R	7	\$0	\$0	\$0	\$0	\$0	\$0	\$250	\$250	1.5
Wehrbein, Roger (ex officio)	2	R	17	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$50	7.5
TOTALS				\$8,050	\$10,521	\$4,500	\$5,800	\$12,550	\$16,321	\$32,950	\$41,147	5.0

*Committee on Enrollment and Review*

In 2003, there was one member of the Committee on Enrollment and Review: Chairperson Ray Mossey (R-Papillion; 3.4 policy score; \$0 lifetime industry total). Senator Mossey did not receive any contributions from the tobacco industry during 2001-2002 and had not accepted any tobacco contributions throughout his political career. However, Senator Mossey received a pro-tobacco industry policy score of 3.4. Senator Mossey was appointed to his position after the previous senator, Jon Bruning (Sarpy County - \$1750 lifetime industry total (as state Senator)/\$1,000 lifetime industry total (as Attorney General)), resigned to run for Attorney General; therefore, Senator Mossey has yet to participate in an election.

**Table 10: Tobacco Industry Campaign Contributions to the 2003 Committee on Rules**

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total		
Hudkins, Carol (Chairperson)	21	R	11	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$6,000	\$6,357	4.2
Baker, Tom (Vice Chairperson)	44	R	5	\$1,500	\$2,500	\$1,500	\$2,699	\$3,000	\$5,199	\$4,000	\$6,721	2.0
Beutler, Chris Bromm, Curt (ex officio)	28	D	21	\$0	\$500	\$0	\$250	\$0	\$750	\$5,000	\$6,827	8.0
Pedersen, Dwite	23	R	11	\$2,000	\$2,800	\$1,500	\$1,750	\$3,500	\$4,550	\$6,550	\$8,050	4.5
Stuhr, Elaine	39	R	11	\$2,650	\$4,029	\$1,000	\$1,500	\$3,650	\$5,529	\$7,600	\$11,612	3.5
TOTALS	24	R	9	\$500	\$500	\$500	\$500	\$1,000	\$1,000	\$1,250	\$1,492	4.3
				\$7,650	\$11,329	\$5,500	\$7,699	\$13,150	\$19,028	\$30,400	\$41,059	4.4

**Table 11: Tobacco Industry Campaign Contributions to the 2003 Committee on Appropriations**

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total		
Wehrbein, Roger (Chairperson)	2	R	17	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$50	7.5
Pederson, Don (Vice Chairperson)	42	R	8	\$500	\$500	\$500	\$1,098	\$1,000	\$1,598	\$2,000	\$2,840	5.2
Beutler, Chris Cudaback, Jim	28	D	21	\$0	\$500	\$0	\$250	\$0	\$750	\$5,000	\$6,827	8.0
Engel, Pat	36	R	13	\$1,500	\$1,500	\$1,000	\$1,000	\$2,500	\$2,500	\$5,350	\$6,151	2.5
Kruse, Lowen	17	D	11	\$1,500	\$1,500	\$1,500	\$1,500	\$3,000	\$3,000	\$5,750	\$6,045	3.2
Price, Marian	13	D	3	\$0	\$0	\$500	\$733	\$500	\$733	\$500	\$773	7.6
Synowiecki, John	26	R	5	\$0	\$0	\$0	\$252	\$0	\$252	\$0	\$352	7.7
Thompson, Nancy	7	D	3	\$0	\$0	\$1,000	\$1,300	\$1,000	\$1,300	\$1,000	\$1,300	5.7
TOTALS	14	D	7	\$0	\$371	\$0	\$0	\$0	\$371	\$0	\$926	8.7
				\$3,500	\$4,371	\$4,500	\$6,133	\$8,000	\$10,504	\$19,600	\$25,264	6.2

**Table 12: Tobacco Industry Campaign Contributions to the 2003 Committee on Revenue**

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total		
Landis, David (Chairperson)	46	D	25	\$0	\$0	\$0	\$327	\$0	\$327	\$3,550	\$6,910	5.4
Connealy, Matt (Vice Chairperson)	16	D	5	\$500	\$500	\$500	\$900	\$1,000	\$1,400	\$1,500	\$2,050	7.2
Baker, Tom	44	R	5	\$1,500	\$2,500	\$1,500	\$2,699	\$3,000	\$5,199	\$4,000	\$6,721	2.0
Bourne, Patrick	8	D	5	\$2,000	\$2,000	\$1,500	\$1,716	\$3,500	\$3,716	\$4,000	\$4,468	1.8
Hartnett, Paul	45	D	19	\$0	\$770	\$1,000	\$1,000	\$1,000	\$1,770	\$1,750	\$3,840	2.3
Janssen, Ray	15	D	11	\$2,300	\$2,600	\$500	\$800	\$2,800	\$3,400	\$8,550	\$9,798	1.5
Raikes, Ron	25	I	7	\$0	\$0	\$0	\$0	\$0	\$0	\$750	\$1,899	5.5
Redfield, Pam	12	R	6	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	6.8
TOTALS				\$6,300	\$8,370	\$5,000	\$7,442	\$11,300	\$15,812	\$24,100	\$35,686	4.1

**Table 13: Tobacco Industry Campaign Contributions to the 2003 Committee on Health and Human Services**

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry		Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total	Grand Total	
Jensen, Jim (Chairperson)	20	R	9	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$427	8.5
Byars, Dennis (Vice Chairperson)	30	R	13	\$1,250	\$1,250	\$500	\$750	\$1,750	\$2,000	\$3,150	\$4,178	7.7
Cunningham, Doug	40	R	3	\$1,400	\$9,946	\$1,049	\$2,506	\$2,449	\$12,452	\$2,449	\$12,452	1.5
Erdman, Philip	47	R	3	\$0	\$0	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	1.8
Johnson, Joel	37	R	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Maxwell, Chip	9	I	3	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	4.6
Stuthman, Arnie	22	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	2.7
TOTALS				\$3,650	\$12,196	\$3,549	\$5,256	\$7,199	\$17,452	\$8,599	\$20,057	4.9

### *Committee on References*

Six of the ten members of the Committee on References accepted tobacco industry campaign contributions from the tobacco industry in 2001-2002 and the committee received an average tobacco policy score of 5.0. Both Chairperson Engel and Vice Chairperson Cudaback accepted tobacco industry donations, \$1,500 and \$1,000 respectively, and received pro-tobacco industry policy scores, 3.2 and 2.5, respectively (Table 9).

### *Committee on Rules*

All six members of the Committee on Rules accepted tobacco industry contributions during the 2001-2002 legislative session, ranging from a high of \$2,699 to a low of \$250, earning the committee an average tobacco policy score of 4.4. Chairperson Hudkins accepted \$1,000 and received a tobacco policy score of 4.2. Vice Chairperson Baker accepted \$2,699 and received a tobacco policy score of 2.0. Of the remaining members of the committee, only one member (Senator Beutler) received a pro tobacco control policy score (8.0) (Table 10).

### *Committee on Appropriations*

Seven of the nine members of the Committee on Appropriations accepted tobacco industry campaign contributions for a total of \$6,133. The committee received an average tobacco policy score of 6.2. Chairperson Wehrbein (R-Plattsmouth; 7.5 policy score; \$0 lifetime industry total) did not accept any contributions and received a pro tobacco control policy score of 7.5, while Vice Chairperson Pederson accepted \$1,098 from the tobacco industry and received a tobacco policy score of 5.2. The remaining members of the committee accepted a high of \$1,500 (Pat Engel) to a low of \$252 (Marian Price). Senators Cudaback and Engel were the only members to receive pro tobacco industry policy scores (Table 11).

### *Committee on Revenue*

Six of the eight members of the Committee on Revenue accepted tobacco industry contributions during 2001-2002, totaling \$7,442. The committee received an average tobacco policy score of 4.1. Chairperson Landis accepted \$327 and received a tobacco policy score of 5.4

and Vice Chairperson Connealy (D-Decatur; \$1,500 lifetime industry total) accepted \$900 and received a tobacco policy score of 7.2. Of the remaining four members who accepted tobacco industry contributions (ranging from \$2,699 to \$800), all four members received pro tobacco policy scores (Table 12)

*Committee on Health and Human Services*

Four of the seven members of the Committee on Health and Human Services accepted a total of \$5,256 in campaign contributions from the tobacco industry and the committee received an average tobacco policy score of 4.9. Both Chairperson Jensen and Vice Chairperson Byars (R-Beatrice; \$3,150 lifetime industry total) received pro-tobacco control policy scores of 8.5 and 7.7, respectively. However, Vice Chairperson Byars accepted \$750 from the tobacco industry during 2001-2002. Two of the remaining committee members who accepted tobacco industry donations, Cunningham and Erdman (R-Bayard; 1.8 policy score; \$1,000 lifetime industry total), also received pro tobacco industry policy scores. The final recipient of tobacco money (Chip Maxwell) received a neutral tobacco policy score of 4.6 (Table 13).

*Committee on Education*

Of the eight members of the Committee on Education, only two members did not accept tobacco industry contributions: Chairperson Ron Raikes (I-Lincoln; 5.5 policy score; \$750 lifetime industry total) and Senator Ed Schrock. The remaining members of the committee accepted a total of \$5,966 in contributions from the tobacco industry during 2001-2002. The committee received an average tobacco policy score of 4.8. Vice Chairperson Chip Maxwell received \$1,000 in campaign contributions from the tobacco industry and a tobacco policy score of 4.6. The remaining five legislators received tobacco industry contributions ranging from \$1,716 to \$500 (Table 14).

*Constitutional Officers*

Constitutional officers and candidates for the 1999-2002 term accepted a total of \$1,000 from the tobacco industry and an additional \$22,560 from tobacco industry allies. Attorney General Jon Bruning (\$1,000 lifetime industry total (as Attorney General) was the only

**Table 14:** Tobacco Industry Campaign Contributions to the 2003 Committee on Education

Name of Candidate	Dist.	Party	Years in Office	Tobacco Industry		Tobacco Industry		Tobacco Industry		Lifetime Tobacco Industry	Lifetime Grand Total	Policy Score
				1999-2000	1999-2000	2001-2002	2001-2002	1999-2002	1999-2002	Total		
Raikes, Ron (Chairperson)	25	I	7	\$0	\$0	\$0	\$0	\$0	\$0	\$750	\$1,899	5.5
Maxwell, Chip (Vice Chairperson)	9	I	3	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	4.6
Bourne, Patrick	8	D	5	\$2,000	\$2,000	\$1,500	\$1,716	\$3,500	\$3,716	\$4,000	\$4,468	1.8
Brashear, Kermit	4	R	9	\$1,500	\$2,000	\$1,500	\$1,500	\$3,000	\$3,500	\$7,000	\$8,551	2.8
Byars, Dennis	30	R	13	\$1,250	\$1,250	\$500	\$750	\$1,750	\$2,000	\$3,150	\$4,178	7.7
McDonald, Vickie	41	R	3	\$0	\$0	\$0	\$500	\$0	\$500	\$0	\$500	6.2
Schrock, Ed	38	R	13	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$100	5.8
Stuhr, Elaine	24	R	9	\$500	\$500	\$500	\$500	\$1,000	\$1,000	\$1,250	\$1,492	4.3
<b>TOTALS</b>				\$6,250	\$6,750	\$5,000	\$5,966	\$11,250	\$12,716	\$18,150	\$23,188	4.8

**Table 15:** Tobacco Industry Campaign Contributions to Constitutional Officers and Candidates, 1999-2002

<b>Name of Candidate</b>	<b>Party</b>	<b>1999-2002 Industry Total</b>	<b>1999-2002 Total</b>
<i>Governor</i>			
Johanns, Mike	R	\$0	\$14,871
Dean, Stormy	D	\$0	\$0
Rosberg, Paul	I	\$0	\$0
<i>Lt. Governor</i>			
Heineman, Dave	R	\$0	\$2,500
Chesterman, M.	D	\$0	\$0
Richards, Barry	I	\$0	\$0
<i>Attorney General</i>			
Bruning, Jon	R	\$1,000	\$2,324
Meister, Mike	D	\$0	\$0
<i>Auditor of Public Accounts</i>			
Witek, Kate	R	\$0	\$2,000
Wilken, D.	D	\$0	\$0
Rosberg, Kelly	I	\$0	\$0
<i>Secretary of State</i>			
Gale, John	R	\$0	\$1,865
Stoddard, Jay	D	\$0	\$0
Rosberg, Jos.	I	\$0	\$0
Lewis, Tudor	I	\$0	\$0
<i>State Treasurer</i>			
Byrd, Lorelee	R	\$0	\$0
Sheckler, Bob	I	\$0	\$0
<b>Total</b>		\$1,000	\$23,560

constitutional officer to accept a donation from the tobacco companies. Governor Mike Johanns (\$0 lifetime industry total) accepted the highest amount of contributions from tobacco industry allies: \$14,871, which includes \$9,500 and \$1,000 from tobacco company-owned Kraft and Miller Brewing, respectively. In addition, Lt. Governor Dave Heineman, Attorney General Jon Bruning, Auditor of Public Accounts Kate Witek, and Secretary of State John Gale accepted contributions from tobacco industry allies. All of the candidates who accepted contributions

**Table 16:** Tobacco Industry Lobbying Expenditures in Nebraska, 1997-2002

<b>Tobacco Company</b>	<b>1997 Total</b>	<b>1998 Total</b>	<b>1999 Total</b>	<b>2000 Total</b>	<b>2001 Total</b>	<b>2002 Total</b>	<b>Grand Total</b>
Philip Morris	\$56,336	\$75,671	\$61,692	\$67,823	\$38,667	\$64,724	\$364,913
R. J. Reynolds	\$35,707	\$38,501	\$35,301	\$40,631	\$55,063	\$46,000	\$251,202
United States Tobacco	\$45,000	\$45,000	\$54,000	\$48,000	\$51,000	\$51,782	\$294,782
Lorillard	\$0	\$0	\$0	\$0	\$0	\$25,000	\$25,000
Brown & Williamson	\$0	\$0	\$22,558	\$18,500	\$10,000	\$25,009	\$76,067
Smokeless Tobacco Council	\$0	\$0	\$0	\$0	\$0	\$15,100	\$15,100
<b>Total Lobbying Expenditures Reported</b>	\$137,043	\$159,172	\$173,550	\$174,954	\$154,730	\$227,615	\$1,027,064

from the tobacco industry or tobacco industry allies were Republicans. Only candidates for the office of State Treasurer did not accept tobacco company or tobacco ally contributions (Table 15).

### *Lobbying Expenditures*

In addition to a total of \$40,172 in campaign contributions to elected officials and candidates, the tobacco industry and its allies in Nebraska spent \$382,345 on their lobbying efforts in 2001-2002 (Table 16).

Since 1997, the tobacco industry has steadily increased its lobbying expenditures. There was a 16% increase in expenditures between 1997 and 1998, which then slowed to a 9% increase between 1998 and 1999 and a less than 1% increase between 1999 and 2000. Between 2000 and 2001, lobbying expenditures actually decreased by \$20,000 (11% decrease) and then rebounded in 2002, when there was a 47% increase in expenditures.

The tobacco industry lobbyists, especially Walt Radcliffe, are among the most powerful lobbyists in the state and several of them have been working for the tobacco industry for over 15 years. As a result, they can be very effective in opposing tobacco control legislation in Nebraska. It is not surprising that the tobacco industry spends so much money in lobbying expenditures in comparison to direct campaign contributions.

## **CLEAN INDOOR AIR**

### *The First Clean Indoor Air Legislation - LB 600 (1974)*

The first major clean indoor air legislation passed in Nebraska occurred in 1974 during the first term of state Senator Shirley Marsh (Lincoln; \$0 lifetime industry total), who would be a major proponent of tobacco control throughout her 16 years serving in the Legislature.<sup>6</sup> At the time, Senator Marsh was the only female legislator; she was also the wife of the lieutenant governor<sup>33</sup>. After being elected, Senator Marsh attended a conference for the Order of Women Legislators during the summer of 1973 where she learned about the first statewide smoking restriction that had just passed in Arizona.<sup>6,34</sup> Because Senator Marsh had asthma and allergies which made her very sensitive to tobacco smoke, the idea presented in the Arizona legislation of restricting the number of areas where smoking was permitted appealed to her greatly and she made the decision to introduce a similar bill in Nebraska during the next legislative session.<sup>6</sup>

When the legislative session began, Senator Marsh introduced LB 600, which stated

Whereas smoking of tobacco in any form is dangerous to the health and welfare of each person, and whereas such smoking if done in any elevator, indoor theater, library, art museum, concert hall, or bus which is used by or open to the public is harmful to the public health, smoking of tobacco in any form in any area specified in this section is prohibited, except that such prohibition shall not apply in any area designated as a smoking area.<sup>7</sup>

Since it is not possible to establish a smoking area in such a confined space, one effect of this bill was to make elevators smokefree.

The only change that was made from the Arizona legislation came from the passage of an amendment that made LB 600 stronger. The amendment added patient rooms in hospitals as another area where smoking was not permitted unless it was specifically designated as a smoking area.<sup>6,7</sup>

LB 600 also provided for a penalty for smoking in a nonsmoking area. Such an action made the individual that was smoking guilty of a misdemeanor which was punishable by a fine of not less than ten dollars but not more than one hundred dollars<sup>7</sup>.

While Senator Marsh was the driving force behind LB 600, she also gained the support of health workers. At the public hearing before the Public Health and Welfare Committee, Marjorie Bartels, who was the Executive Secretary of the Lancaster County Tuberculosis and Respiratory Disease Association and was also representing the American Lung Association of Nebraska testified in favor of the bill as did Helen Paetzel, a nurse, who was concerned about the effect of smoking in hospitals<sup>35</sup>.

Testifying against the bill was a former Nebraska Governor Robert Crosby. A Republican governor from 1953-1955, Crosby was representing the interests of the Nebraska Association of Tobacco Distributors at the hearing.<sup>1,35</sup> He argued that this issue was often addressed at the local level by city ordinances; therefore, it was unnecessary for the state to take any action on clean indoor air<sup>35</sup>. In fact, there were no local ordinances in effect in Nebraska at this time that dealt with clean indoor air.

Despite the opposition from a former governor, Senator Marsh was successful in passing LB 600. The way that the bill was worded meant that any area within the locations designated was to be a nonsmoking area unless it was specifically designed a smoking area. In principle, this meant that smoking was not permitted in patient rooms, elevators, indoor theaters, libraries, art museums, concert halls and on buses unless signs were posted to establish that location as a smoking area, but the law did not require the posting of “no smoking” signs. Because the failure of the law to require posting “no smoking” signs, combined with the fact that smoking everywhere was the norm, the law had little practical effect.

The importance of LB 600 came in its significance as Nebraska first clean indoor air law and not in the level of protection that it initially provided from secondhand smoke. As Senator Marsh stated when asked to comment on the fact that no fines were actually levied during the first year of LB 600, she said, “My intent was not to have people arrested, it was to raise the social awareness that nonsmokers also have rights. To a great extent the law has done that.”<sup>36</sup> Due to the limitations of LB 600, it became necessary to clarify the distinction between smoking and nonsmoking areas in later bills.

The first attempt to remedy this problem occurred the next year, in 1975. According to a bulletin released by the Tobacco Merchants Association of the U.S.,<sup>37</sup> a bill numbered LB 75 was passed to require the posting of “no smoking” signs in elevators but not in the other locations mentioned in LB 600. While representing a modest improvement in the signage requirements, LB 75 also removed the penalty for smoking in nonsmoking areas, which had been a \$10-\$100 fine, effectively negating any effort at meaningful enforcement of the limited



provisions in LB 600. It was not until 1977 that a penalty re-codification measure, LB 38, passed to reestablish a penalty.<sup>37</sup> Once again, smoking in a nonsmoking areas became a misdemeanor punishable by a fine.

*First Attempt to Enact the Nebraska Clean Indoor Air Act - LB 648 (1978)*

The first attempt to significantly expand Senator Marsh's clean indoor air bill occurred in 1978, when Senator Larry Stoney (Omaha) sponsored LB 648, his first bill to establish the Nebraska Clean Indoor Air Act.<sup>38</sup> The major thrust of this bill was to include restaurants and bars and other workplaces as public spaces in which smoking was prohibited except in designated smoking areas. According to Senator Marsh, Senator Stoney was a nonsmoker who wanted to be able to eat in a restaurant without being subjected to secondhand smoke.<sup>6</sup> Senator Stoney had based his bill on the Minnesota Clean Indoor Air Act, which had passed in 1975.<sup>39,</sup><sup>40</sup> The Minnesota Clean Indoor Air Act was the nation's first comprehensive clean indoor air law in that it required separate smoking and nonsmoking sections in almost all public places and it has passed rather easily because the tobacco industry was largely caught off-guard by the developments in Minnesota.<sup>9</sup> The passage of the Nebraska Clean Indoor Air Act would be under much more difficult circumstances because the tobacco industry was now prepared to fight the passage of such laws.

The purpose of Senator Stoney's bill was to "protect the public health, comfort and environment by prohibiting smoking in public places and at public meetings except in designated smoking areas" which included, but was not limited to, "restaurants, retail stores, offices and other commercial establishments, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas, and meeting rooms," but excluded "private, enclosed offices occupied exclusively by smokers even though such offices may be visited by nonsmokers."<sup>38</sup>

On January 23, 1978, a hearing was held on LB 648 before the Public Health and Welfare Committee. Testifying for the bill were doctors, individuals that were allergic to tobacco smoke, the Women's Christian Temperance Union, the American Lung Association, and the Nebraska Clean Indoor Air Council.<sup>40</sup> The Nebraska Clean Indoor Air Council was an early attempt to create a grassroots tobacco control coalition in Nebraska, but it received little support and was subsequently dissolved. Bess Popp, a Lincoln woman who stated that she had a severe allergy to tobacco testified that secondhand smoke made her so sick that her "lifestyle is severely limited" and she also stated that current restrictions on secondhand smoke were inadequate.<sup>40,41</sup> Patrick Lynch, the chairman of the Nebraska Clean Indoor Air Council, told the committee that, in addition to people with allergies, children and all nonsmokers needed to be protected from tobacco smoke.<sup>40</sup> He said, "I believe the state and the municipalities have the duty to intervene in our behalf."<sup>41</sup>

Despite this support, LB 648 was not able to withstand the opposition that the tobacco industry brought to bear on it. The bill was once again opposed by the former governor, Robert Crosby, who was now representing the Tobacco Institute.<sup>40</sup> In addition, the bill was also opposed by the Police Officers' Association of Nebraska, the mayors of Lincoln and Crete, the Nebraska Restaurant Association, and Ray Oliverio, the Director of Public Affairs for the Tobacco Institute.<sup>40</sup>

Table 17: History of Clean Indoor Air Activity in the Nebraska Legislature (Key Bills from 1974-2003)

Year	Bill	Primary Sponsor	Description	Status
1974	LB600	Sen. Shirley Marsh (Lincoln)	Prohibited smoking in elevators, indoor theaters, libraries, art museums, concert halls, or buses unless it was specifically designated a smoking area; an amendment was added to include patient rooms in hospitals. Nebraska's first statewide clean indoor air law.	Passed
1978	LB648	Sen. Larry Stoney (Omaha)	First attempt to include restaurants, bars and other workplaces as public spaces in which smoking was not allowed except in designated smoking areas.	Failed
1979	LB344	Sen. Stoney	Included restaurants, bars and other workplaces as public spaces in which smoking was not allowed except in designated smoking areas. Designated the Nebraska Clean Indoor Air Act.	Passed
1994	LB1064	Sen. Donald Preister (Omaha)	First attempt to make state buildings and vehicles smokefree.	Failed
1995	LB121	Sen. Preister	Second attempt to make state buildings and vehicles smokefree.	Failed
1997	LB375	Sen. Preister	Third attempt to make state buildings and vehicles smokefree.	Failed
1999	LB211	Sen. Jerry Schmitt (Ord)	Introduced as a bill to make only the Capitol smokefree. Amended to make almost all state buildings and vehicles smokefree. First change to the Nebraska Clean Indoor Air Act in 20 years of existence.	Passed
1999	LB750	Sen. Nancy Thompson (Papillion)	First attempt to amend the Nebraska Clean Indoor Air Act to make all restaurants in Nebraska smokefree.	Failed
2000	LB 1194	Sen. Thompson	Amended the Nebraska Clean Indoor Air Act to make commercial daycare facilities smokefree.	Passed
2001	LB227	Sen. Thompson	Second attempt to make all restaurants in Nebraska smokefree.	Failed
2003	LB45	Sen. Thompson	Extended enforcement provisions of the Nebraska Clean Indoor Air Act to include businesses.	Passed
2003	LB546	Sen. Thompson	Third attempt to make all restaurants in Nebraska smokefree.	Undecided

Crosby argued that LB 648 “is an example of very excessive intervention in the business of private citizens,” and continued, “My granddaughter has an allergy to milk; I don’t propose to outlaw milk.”<sup>41</sup> Don Dunn, who represented the Police Officers’ Association at the hearing, claimed that the bill would be unenforceable and that it would distract law enforcement from more important duties.<sup>40</sup> These claims were also echoed by Ray Oliverio, the executive from the Tobacco Institute.<sup>41</sup> Over the next two years, Oliverio would be heavily involved in opposing the passage of clean indoor air legislation in Nebraska.

These arguments were part of a well-coordinated attack on the feasibility of LB 648 orchestrated by the Tobacco Institute. In a letter sent out to 23 other tobacco industry executives three days after he testified before the Public Health and Welfare Committee, Oliverio spoke about the plan that was organized to defeat LB 648.<sup>42</sup> He wrote to these executives saying, “In preparation for the hearing we contacted and enlisted the support of the Police Officers’ Association of Nebraska, the Tobacco Wholesalers’ Association of Nebraska, the Nebraska Restaurant Association, and the Liquor Wholesalers’ Association.”<sup>42</sup> Don Dunn, who served as the lobbyist for the Police Officers’ Association at the committee hearing, also represented the Tobacco Wholesalers’s Association of Nebraska and the Nebraska Restaurant Association.<sup>43</sup>

The concerted attack on LB 648 at the hearing had the tobacco industry’s desired effect. As Oliverio relates in his letter to fellow Tobacco Institute executives three days after the hearing, “The day following that hearing the Committee met in executive session and voted 5 to 1 not to report the bill out of committee. Significantly, the only senator on the Public Health and Welfare Committee to vote in favor of reporting the bill out of committee was not present at the hearing on the previous day.”<sup>42</sup>

The success of the tobacco industry against LB 648 may have led them to become overconfident in their attitude towards future legislative attempts at clean indoor air laws in Nebraska. As Oliverio wrote to senior executives throughout the tobacco industry, “LB 648 is dead for this year and because of the overwhelming vote (5 to 1) against it we are hopeful that it will not be reintroduced next year.”<sup>42</sup> The head of the Public Health and Welfare Committee apparently did nothing to dissuade this opinion. Richard Safley, the Field Sales Manager for Lorillard Tobacco stated in a letter sent on October 24, 1978, to Art Stevens, a member of the Legal Department at Lorillard, “The opinion expressed by the Committee Leader was that unless stimulated by anti-[smoking] group movements, the bill probably would not be introduced at the next session.”<sup>43</sup> This would not be the case; at the next session, Senator Stoney would sponsor LB 344, which was passed as the Nebraska Clean Indoor Air Act.

#### *Passage of the Nebraska Clean Indoor Air Act - LB 344 (1979)*

Despite the failure of LB 648 to be voted out of committee, Senator Larry Stoney introduced a similar bill on January 16, 1979. The only differences between the two bills were some minor alterations to the wording, but in effect, no substantial changes were made. Similar to the smoking restrictions that had previously been established by Senator Marsh’s bill<sup>7</sup>, LB 344 was worded so that the entirety of a public place was assumed to be nonsmoking unless it was specifically designated as a smoking area.<sup>44</sup> As of 2004, this same assumption applies in Nebraska.

In the original version of LB 344, the State Board of Health had the responsibility of developing rules and regulations to implement the law.<sup>44</sup> This section was later amended so that the Department of Health was responsible for developing these regulations.<sup>8</sup> The State Board of Health was a politically appointed body while the Department of Health consisted of government employees. This section was also amended so the Department of Health was required to “consult with interested persons and professional organizations before promulgating such rules and regulations.”<sup>8</sup> These changes to LB 344 would have major ramifications for developing these implementing rules and regulations..

While a concerted effort was made to prevent the passage of this bill, the tobacco industry’s strategy seemed to differ from the previous year. Instead of utilizing an impressive list of individuals to testify before the Public Health and Welfare Committee, the tobacco industry turned to the Tobacco Action Network (TAN) to provide most of the opposition to LB 344.

TAN was organized by the tobacco industry to create a network of tobacco industry workers that could be mobilized to oppose any tobacco control activities. As Philip Morris’ manual for employee participation in this organization explained, “TAN is an umbrella organization formed by the member companies of the Tobacco Institute (TI). Its purpose is to bring together and coordinate all segments of the tobacco family – growers, manufacturers, wholesalers, retailers, and vendors – as well as our allies.”<sup>45</sup> A different version of the same manual explained that the purpose of TAN was to “oppose the enactment of restrictive laws and the imposition of punitive taxation.”<sup>46</sup> This version also detailed how the organization was structured:

TAN is headed by a national director in Washington. D.C. The national director works closely with a TAN Corporate Coordinators Committee made up of senior executives from each of the major participating cigarette manufacturers.

TAN is also organized on the state level in many states. Each TAN organization is headed up by a state director ... The State TAN Director works closely with a State TAN Advisory Committee made up of representatives from each segment of the tobacco industry in the state or area, including representatives from the participating cigarette manufacturers and the Tobacco Institute legislative counsel for that state.”<sup>46</sup>

In stark contrast to the previous year, the tobacco industry did not effectively mobilize until after LB 344 had been reported out of committee. It was not until LB 344 was scheduled for its first reading before the full Legislature, over a month after it been voted out of committee by a 5-4 vote, that the tobacco industry became very active in voicing their opposition to the new bill. On March 28, Raymond Oliverio, the man who had testified against LB 648 the previous year, sent a letter to the six Corporate Coordinators for TAN concerning LB 344.<sup>47</sup> The Corporate Coordinators were all senior executives in the companies that participated in the Tobacco Institute: Phillip Morris, Brown & Williamson, Lorillard, Liggett & Myers, United States Tobacco, and R.J. Reynolds. At the time, five of the six members of the Corporate Committee also served on the Board of Directors of the Tobacco Institute.<sup>48</sup>

In his letter, Oliverio requested that a letter-writing and telephone campaign conducted by tobacco company sales personnel commence immediately. He also included the arguments

the participants should make when contacting their state senators. The arguments proposed by Oliverio were:

- “LB 344 is an attempt to legislate courtesy.”
- “There is no estimate of the cost involved to implement LB 344.”
- “There is no medical evidence of a health problem associated with secondhand tobacco smoke.”
- “This is a further example of government intrusion into the private sector.”<sup>47</sup>

He also stated, “All of these arguments play well in Nebraska, and these letters should commence immediately.”<sup>47</sup> These arguments would be repeated throughout the campaign against LB 344 and have continually been used in Nebraska against any clean indoor air efforts such as during Lincoln’s attempt to pass a comprehensive local smokefree workplace ordinance in 2003 (See Below).

On April 3, the day after LB 344 passed its first reading on the floor of the Legislature, the Lincoln law firm of Ryan and Matt sent out a legislative bulletin to all tobacco distributors and wholesalers in Nebraska.<sup>49</sup> The bulletin points out that it requires 25 votes for a bill to pass and LB 344 had only received a vote of 25-10 to pass its first reading. It also goes on to state, “According to information received from sources, the Clean Air Act in Minnesota has resulted in a reduction of the sale of cigarettes by about 6 percent from 1975 to 1977, or 5,475,000 cartons.”<sup>49</sup> Since the enactment of the Nebraska Clean Indoor Air Act would likely lead to similar reductions in cigarette consumption throughout the state and harm the industry’s bottom line, the distributors and wholesalers were urged to voice their opposition to LB 344 by contacting their state senators before a second vote took place later that week.

That same day a note was sent from J.R. Cherry, the Senior Associate General Counsel for Lorillard, to A.J. Stevens, a Tobacco Institute Board of Directors member. Cherry informed Stevens that Ray Oliverio’s assistant had called to request that they start the calls against LB 344 since it had passed its first reading on the floor of the Legislature.<sup>50</sup> It appears that no calls had been initiated before this time.

Three days later, on April 6, Cherry sent a letter to Safley, the Field Sales Manager for Lorillard, which included contact information on Nebraska legislators and informed Safley, “Now would appear to be the appropriate time for our people to register their opposition.”<sup>51</sup> The letter also included the same four talking points detailed by Oliverio.

While TAN was working behind the scenes in contacting state senators, the Nebraska Restaurant Association was successful in getting an amendment added to the bill that allowed restaurants with less than 1,200 square feet of dining space to be exempted from having a nonsmoking section; thus, these restaurants were permitted to have smoking in their entirety.<sup>52</sup>

On April 21, the *Omaha World-Herald* took an official position against LB 344 in an editorial entitled, “Smoke Bill Goes Too Far.”<sup>53</sup> The editorial stated that the bill “ventures a good deal farther into authoritarianism than can be countenanced in a free society.” It agreed with Senator Stoney’s claim that LB 344 protects both the rights of smokers and nonsmokers, but stated that the *World-Herald* found the bill objectionable because it went too far in telling

private citizens how to control their private property. The editorial concluded by saying LB 344 “represents a benign tyranny, but a tyranny nonetheless.”<sup>53</sup> It should be remembered that the primary effect of LB 344 was to establish separate smoking and nonsmoking sections in public places.

Before the final vote, State Senator Rex Haberman (Imperial; \$2,300 lifetime industry total) sent a letter to the Attorney General Paul Douglas’ office requesting a decision on the constitutionality of LB 344. Haberman was opposed to the bill and was attempting to derail the bill by questioning its constitutionality.<sup>6</sup>

On May 9, 1979, Attorney General Douglas (R-\$0 lifetime industry total), and Assistant Attorney General Lynne Fritz, sent a response to Senator Haberman.<sup>54</sup> The first part of the letter was a response to Haberman’s concern that the title of LB 344 did not adequately express the content of the bill. Article III, Section 14, of the Nebraska Constitution stated, “. . . No bill shall contain more than one subject, and the same shall be clearly expressed in the title. . . .”<sup>54</sup> Haberman seemed to believe that LB 344’s title, “FOR AN ACT to adopt the Nebraska Clean Indoor Air Act,” did not adequately express that the purpose of LB 344 was to limit smoking in public places. The Attorney General disagreed saying, “In our opinion, the above mentioned sections of the act are germane to its general purpose.”<sup>54</sup>

Senator Haberman’s other area of concern regarding LB 344 was that the bill delegated legislative authority to the Department of Health in a manner that violated Article II, Section 1, of the Nebraska Constitution.<sup>54</sup> In this area, the Attorney General’s office sided with Senator Haberman and concluded that LB 344 was “constitutionally suspect.”<sup>54</sup> The two sections discussed in the Attorney General’s response were Section 10 and Section 11 of LB 344. Section 10 of LB 344 stated:

The Department of Health shall, not later than January 1, 1980, adopt and promulgate rules and regulations necessary and reasonable to implement the provisions of this act. The Department of Health shall consult with interested persons and professional organizations before promulgating such rules and regulations.<sup>54</sup>

In Section 11 it was written:

The Department of Health may, upon request, waive the provisions of this act if it determines there are compelling reasons to do so and a waiver will not significantly affect the health and comfort of nonsmokers (emphasis in original).<sup>54</sup>

The emphasis in both quotes was added by the Attorney General’s office because it was this wording that was key to their decision. Based on previous court decisions,

the question to be resolved is whether sections 10 and 11 of LB 344 contain sufficiently clear and definite standards so as to guide the agency in determining how to administer the power which it is granted. In our opinion, the act does not meet this requirement.<sup>54</sup>

After receiving this response, Senator Haberman used the opinion of the Attorney General to argue against passage of LB 344 on the floor of the Legislature.

While the tobacco industry was still concerned about LB 344 because of the strength of the bill, this legal decision by the attorney general only increased the tobacco industry's confidence that the bill would be defeated. In a memo dated May 11, 1979 from J. Kendrick Wells, a lawyer for Brown & Williamson, to numerous executives within his company, Wells points out that LB 344 would have a broader reach than legislation that was pending in New York, Connecticut and Massachusetts. He goes on to say, "Important Nebraska allies joined the tobacco industry's opposition to the bill during the week of May 7 and, although the nose count is close, we do not expect the passage of the Nebraska bill."<sup>10</sup> Although it is not clear if Wells meant the Attorney General when he referred to new allies, his memo indicated that the tobacco industry still thought LB 344 would be defeated.

Not to be outdone, Senator Stoney asked the Judiciary Committee Staff to review the constitutionality of the bill. On May 14, the Judiciary Committee Staff disagreed with the finding of the Attorney General that Section 10 and 11 were constitutionally suspect and commented, "There is . . . convincing case law to the contrary which would indicate that the language of LB 344, uses language which would meet constitutional guidelines."<sup>55</sup> In the same memo, the Judiciary Committee Staff cited court cases from four other states and one case from Nebraska which they believed supported their claim that LB 344 did not violate the Nebraska Constitution by improperly granting legislative authority to the Department of Health.

The day after the Judiciary Committee Staff issued their opinion, LB 344 was passed by a vote of 30-18-1.<sup>56</sup> While the Attorney General stated that the language of LB 344 was constitutionally suspect because the bill was too vague and thus granted legislative authority to the Department of Health, this did not prevent its passage by the Legislature. However, this was an argument that would be used later to weaken the rules and regulations that were adopted by Department of Health.

After losing in the Legislature, the tobacco industry set their sights on convincing Governor Charles Thone (R) to veto the bill. Once again, the services of the law firm of Crosby, Guenzel, Davis, Kessner & Kuester were utilized to write a four page letter on behalf of the Tobacco Institute that was to be hand delivered to the governor.<sup>56</sup> It was also blind carbon-copied to the Tobacco Institute's Raymond Oliverio.

Since Oliverio was directly involved with the effort to get LB 344 vetoed, it is not surprising that the arguments in the letter correspond to talking points drafted by Oliverio early on in the campaign against LB 344. For example, the fifth paragraph of the letter from the Lincoln law firm states, "Although the possibility of enforcing such an unrealistic extension of governmental regulation is virtually nonexistent, such an analysis clearly shows the unprecedented reach of the government of the State of Nebraska into the private lives of its citizens."<sup>56</sup> This argument refers to two of the four talking points that Oliverio said would play well in Nebraska, specifically, "There is no estimate of the cost involved to implement LB 344," and "This is a further example of government intrusion into the private sector."<sup>47</sup>

Another talking point was used when the letter claims, "For many years activist anti-smoking groups have asserted that non-smokers are harmed by smokers. Such an assertion has never been supported by credible evidence."<sup>47, 56</sup> This tactic of attacking science that shows a

link between secondhand smoke and negative health outcomes, such as lung cancer and heart disease, has often been used by the tobacco industry.<sup>957-59</sup> In line with Oliverio's argument that "LB 344 is an attempt to legislate courtesy," the letter to Governor Thone also states, "Eliminating the health issue leaves the bill only protecting the "comfort" of the nonsmoker from a possible annoyance not wholly unlike an alcoholic breath, a sweating body, a cheap perfume, a crying baby or an undisciplined child. If the State chooses to take this unprecedented step into the area of protecting some persons from annoyances by others, where do we reasonably and responsibly draw the line?"<sup>47, 56</sup>

The letter also indicated that the Tobacco Institute might sue if the Nebraska Clean Indoor Air Act was adopted, after citing the opinion of the Attorney General: "Our Courts are presently burdened enough without creating additional legislative problems, particularly when we are forewarned that the legislation is constitutionally suspect."<sup>56</sup> (While the tobacco industry often makes such threats, it is rarely successful in challenging clean indoor air legislation in court, and then only when challenging local ordinances where there is a clearly preemptive state law.<sup>60</sup>)

Despite the arguments posed in the letter and threat of a lawsuit, Governor Thone signed LB 344 on May 21, 1979, thus adopting the Nebraska Clean Indoor Air Act.<sup>61</sup> According to a 232 page legislative report prepared by Brown & Williamson Tobacco, the passage of LB 344 represented the "biggest setback of the year" in the United States for the tobacco industry.<sup>62</sup>

#### *Fighting Effective Implementing Regulations*

While the passage of LB 344 was harmful to the tobacco industry, they regrouped and quickly set about the task of weakening the effect of the law. The same day that the governor signed LB 344, Oliverio issued a Legislative Bulletin to senior executives in the tobacco industry regard this development.<sup>63</sup> In his bulletin, he stated why the tobacco industry had not fought harder to prevent passage. He wrote:

We had been virtually assured that the bill would not be passed and forwarded to the Governor this legislative session after the Nebraska Attorney General issued an opinion on May 9, 1979, asserting that LB 344 ". . . improperly delegates authority [to the Department of Health] and is constitutionally suspect."<sup>63</sup>

Oliverio's bulletin also discussed plans for weakening the impact of the Nebraska Clean Indoor Air Act which involved the help of governor. He stated, "We have been informed that Governor Thone believes that the bill is too broad, but that he will work with the Department of Health to limit its scope."<sup>63</sup>

Also written on May 21 was a memo from Alexander King, the Tobacco Institute's Public Affairs Manager - Northwest, to Michael Kerrigan, a Tobacco Institute vice president. In the memo, King questioned Kerrigan on how to best use the Attorney General's opinion to the advantage of the tobacco industry. King wrote, "Based on his conclusion regarding improper delegation of legislative powers, can we consider, [sic] legal challenge? If successful, a challenge may render LB 344 invalid, and/or at least give us an opportunity to delay an effective date until we consider the pros & cons of going back for a repeal."<sup>64</sup> The



courts were not the forum that the tobacco industry eventually used to weaken the effect of LB 344. Their strategy was to weaken the bill by challenging the attempts by the Department of Health to adopt rules and regulations for the implementation of the Nebraska Clean Indoor Air Act.

As required by LB 344, the next step to putting Nebraska's new law into effect was for the Department of Health to develop the regulations that would actually detail how businesses were to comply with the law. For example, LB 344 required the posting of signs and the arrangement of seating to limit the amount of smoke to which individuals in the nonsmoking section were exposed, but the law did not specify where signs were to be posted or what constituted an acceptable seating arrangement.<sup>8</sup> After being signed into law, the task of developing such rules and regulations fell to the Department of Health.

Initially, the Department of Health decided to utilize the rules and regulations that were adopted in Minnesota for their clean indoor air law.<sup>65</sup> Since the Nebraska Clean Indoor Air Act had been modeled on its Minnesota counterpart and the rules and regulations developed for Minnesota Clean Indoor Air Act had been implemented with little controversy,<sup>9</sup> it was reasonable for the Department of Health to use the Minnesota regulations as a template.

It was at the Department of Health's first public hearing that the tobacco industry's strategy became clear. The Nebraska Restaurant Association and the Nebraska Licensed Beverage Association mobilized to fight against the effectiveness of the new law.<sup>65</sup> At the first hearing, the contested issue was what constituted an "acceptable smoke-free area."<sup>66, 67</sup> In the first draft, the Department of Health modeled their rules and regulations on Minnesota's so that nonsmoking areas were to be separated from smoking areas by at least a 56 in high barrier or a 4 ft wide space. This requirement was supported by Senator Stoney and the Nebraska chapters of the American Lung Association and the American Cancer Society.<sup>65</sup>

The Nebraska Restaurant Association, the Nebraska Licensed Beverage Association, and other business groups' idea of a nonsmoking area was an area where signs were posted designating it as such *or* an area that was mechanically ventilated.<sup>67</sup> They argued that requiring restaurants and bars to create a physical barrier using a 56 in high barrier or a 4 ft wide space would be prohibitively expensive. This argument ignored the fact that the 4 ft wide space could still contain tables where patrons could be served, but the buffer area would not be considered part of the acceptable smoke-free area and individuals seated within this section could not smoke. Echoing the Attorney General's decision, these tobacco industry allies told officials from the Department of Health that requiring physical barriers exceeded their authority.<sup>65, 66</sup> At the first hearing on July 24, 1979, the opposition to the physical barrier requirement was so vehement that the Department of Health removed it from their second draft.<sup>66</sup>

At the second public hearing in August, it was the tobacco control advocates' turn to attack the rules and regulations. Presented with the second draft which did not contain the physical barrier requirement, Senator Stoney and the health groups protested. At the hearing, Stoney said a "well-organized and handsomely paid" group of opponents were trying to "destroy the intent" of his bill by watering down its provisions.<sup>66</sup> Alan Wass, Director of the American Lung Association of Nebraska, commented on the new draft saying, "The Nebraska

Clean Indoor Air Act would be emasculated by this second draft.”<sup>65</sup> He also stated his opposition to the ventilation provision because he said that ventilation does not address the issue of the health effects of carbon monoxide present in secondhand smoke that would not be removed by ventilation.<sup>65</sup>

As a result of the efforts by Senator Stoney and the health advocates, the third draft of the Department of Health’s rules and regulations contained the physical barrier provision but it also allowed for an exemption to this requirement if:

The ventilation system in the room containing both a smoking-permitted and no-smoking area has total air circulation (recirculated plus outside air) of not less than six air changes per hour including supply of tempered outside air.<sup>68</sup>

While the reinstatement of the physical barrier provision was a significant accomplishment, the insertion of the ventilation exemption was a win for the tobacco industry and its allies and meant that this third draft still remained weaker than the implementing regulations for the Minnesota Clean Indoor Air Act.<sup>69</sup>

In September the first public hearing on the third draft was still so contentious that Department of Health officials began to talk about sending the issue to the more powerful State Board of Health for a resolution.<sup>67</sup> Jack Daniel, Assistant Director of Housing and Environmental Health for the Department of Health, told the *World-Herald* that in his ten years of working for the Department of Health he had never seen such divisive disagreements over rules.<sup>67</sup> More hearings were held throughout the state, but an acceptable compromise was not reached so the third draft was not revised by the Department of Health. Instead, another public hearing was scheduled for October 26, 1979.

In order to ensure that the tobacco industry had a presence at this meeting, Jack Kelly, National Director of the Tobacco Action Network (TAN) sent a memo to all the TAN Corporate Coordinators. The memo began:

This is to request your authorization to have your employees who live or work in the Lincoln and Omaha, Nebraska area to attend [sic] a public hearing that will be held by the Department of Health of the State of Nebraska on Friday, October 26, 1979, ... for the purpose of considering the adoption of proposed regulations for the implementation of the Nebraska Clean Indoor Air Act (LB 344, 1979 Laws).<sup>70</sup>

According to an R.J. Reynolds Tobacco summary of the proceedings that focused on the activities of the tobacco industry’s allies, Richard Lutz of the Nebraska Restaurant Association stated that his organization was considering court action against the state if the final rules and regulations were not satisfactory.<sup>71</sup> The R.J. Reynolds summary also reported that James Moylan of the Nebraska Licensed Beverage Association, J.T. Frazier of the Nebraska Council of Commerce and Industry, George Dudley of the Norfolk Chamber of Commerce and Calvin Robinson of the Woodmen of the World Insurance Society also stated their opposition to the third draft of the rules and regulations. Moylan would later become the lobbyist for R.J. Reynolds in Nebraska and continues to be the lobbyist for both R.J. Reynolds and the Nebraska Licensed Beverage Association as of 2003.<sup>30</sup>

The implementing rules and regulations for the Nebraska Clean Indoor Air Act were stalled in Fall 1979. The intense opposition from the tobacco industry and their allies had prevented the Department of Health from creating regulations to implement the new law so the responsibility fell to the State Board of Health. It was at this venue that the tobacco industry was able to finally eliminate the physical barrier requirement.<sup>61, 72</sup>

On March 15, 1980, the Public Affairs Department of Philip Morris released a summary report on recent legislation that included a description of recent activity regarding the Nebraska Clean Indoor Air Act. It stated:

On January 22, the Nebraska State Board of Health adopted a set of substantially watered-down regulations for the implementation of the Nebraska Clean Indoor Air Act.

The approved regulation defines a “designated smoking area” to be “reasonably proper to the users and so located as to obtain the maximum effect of existing physical barriers and ventilating system”. [sic]

On March 7, the State Attorney General vetoed the proposed regulations. The Nebraska State Board of Health must now promulgate new guidelines.<sup>72</sup>

In the rules and regulations that were finally adopted in June, 1980 – over five months late – there was no requirement for any type of physical barriers to separate the smoking and nonsmoking sections.<sup>61</sup>

While rules and regulations that were adopted had been weakened to exclude physical barriers, the signage provisions remained similar to Minnesota’s law. The regulations for both states required the posting of both “smoking permitted” and “no smoking” signs at the entrances of separate smoking and nonsmoking sections to distinguish these two areas.

While Nebraska was quick to follow the lead of Minnesota and was successful in passing a statewide clean indoor air bill that was stronger than similar legislation in New York, Connecticut and Massachusetts,<sup>10</sup> the tobacco industry and its allies were able to weaken the effect of this law by mobilizing against the rules and regulations to implement the 1979 Nebraska Clean Indoor Air Act. It would not be until January 2003, that stronger rules and regulations for the Nebraska Clean Indoor Air Act would be adopted.

#### *Twenty Years of No Change to the Nebraska Clean Indoor Air Act*

During the early 1980s, it became clear to pro-tobacco control legislators that the biggest weakness in the Nebraska Clean Indoor Air Act was its enforcement provisions.<sup>6</sup> Specifically, the law only provided for fines for individual smokers that violated the law and had no enforcement mechanism for businesses that failed to comply with the law.<sup>13, 15</sup> By 1987, five attempts had been made by legislators, including Shirley Marsh, to strengthen the Nebraska Clean Indoor Air Act but were unsuccessful.<sup>11</sup> It was not until 1999, with the passage of LB 211, which made state facilities and vehicles smokefree, that the law was broadened.<sup>14</sup> It was not until 2003, with the passage of LB 45, which allowed an injunction to

also be brought against businesses and not just individuals, that the enforcement provisions of the law were strengthened.<sup>73</sup>

### *Smokefree State Property*

The first change to the Nebraska Clean Indoor Air Act did not occur until 20 years later when, in 1999, the Legislature passed a bill that required that almost all state facilities and vehicles to be smokefree.

Achieving smokefree state facilities in Nebraska was not a short process. One of the first steps occurred in 1993 when several state senators sought to prohibit smoking in the legislative chamber of the State Capitol Building. This effort was headed by Senator C.N. "Bud" Robinson who had the lung and kidney ailment called Wegener's disease.<sup>74</sup> Robinson and several others surveyed the senators to see if they would support a rules change to accomplish this goal. The Rules Committee oversees such actions and 30 votes are required for a rules change. One of the senators that was highly supportive of such an action was Don Preister who was a first-year senator in 1993. Preister had been a victim of carbon monoxide poisoning and was sensitive to secondhand smoke.<sup>74</sup> Throughout the years, he would be a key proponent of smokefree state facilities. Robinson and Preister were successful in garnering wide support for making the Legislative Chamber smokefree and over 30 senators sponsored the rules change which passed by a vote of 40-1.

While these actions were proceeding in the Legislature, the student government of the University of Nebraska - Lincoln (UNL), following a trend for universities around the country, formally urged the administration to make university buildings smokefree; however, the student body president stated the resolution did include dormitory rooms.<sup>75</sup> At the time, UNL's smoking policy limited smoking to designated areas in dormitories and building lounge and private offices that contained a filtering device.<sup>75</sup> After some consideration and consultation with the student government and school officials, Chancellor Graham Spanier announced that smoking and smokeless tobacco would be prohibited in all university buildings and vehicles.<sup>76</sup>

Of particular note was the fact that Spanier's initial plan was to include Memorial Stadium, home field for the Nebraska Cornhuskers. After receiving some complaints from smokers about including Memorial, Spanier weakened the changes so that smoking would be permitted in designated areas that were inside the stadium but were not near seating areas.<sup>76</sup>

In 1994, Senators Preister and Robinson again sought to strengthen smoking restrictions regarding state facilities. They sponsored LB 1064 which would have made virtually all state buildings and vehicles smokefree.<sup>77</sup> The bill included any buildings or vehicles that were owned, leased or occupied by the state.<sup>78</sup> Preister told reporters that his main reason for sponsoring this legislation centered on children. He said, "I am particularly concerned about children who come to the Capitol to view the Legislature. They pass through the Rotunda, which on a given day is filled with smoke."<sup>78</sup> Preister said that he was also concerned about the example that this set for these schoolchildren and about the damage cause to the Capitol and its artwork by the smoke. Despite the efforts of Senator Preister and Senator Robinson, LB 1064 was not successful.

The next year, in 1995, Senator Preister introduced another bill that was very similar to LB 1064. Designated LB 121, it prohibited smoking within 50 feet of the entrance to a state building in addition to making most state buildings and vehicles smokefree.<sup>79</sup> University residence halls, veterans' homes, state prisons and overnight facilities at state parks were exempted. At its hearing before the Health and Human Services Committee, LB 121 was supported by the American Lung Association. It was opposed by Bill Peters, a lobbyist for the Tobacco Institute, who cited the tobacco industry's claim that accommodation is the proper stance for governments by stating that there was no need to change the law because both nonsmokers and smokers were accommodated by the current situation.<sup>79</sup> LB 121 was advanced out of committee by a vote of 4-1 but after being debated for three straight days, it fell short of passing the first round by four votes.<sup>79,80</sup>

In 1996, officials at the University of Nebraska-Lincoln decided to make Memorial Stadium smokefree.<sup>81</sup> Three years earlier, the chancellor attempted to make Memorial Stadium smokefree along with the rest of the University but he had decided to allow designated smoking areas away from the seating areas after receiving complaints about the new policy. According to Butch Hug, the Director of Events for the Athletic Department, the decision to make the stadium smokefree had been in response to repeated complaints from fans that the smoking areas were not honored. The decision was first announced as part of a high school all-star game. "When it was announced, it was received very well," said Hug. "As I recall, there was a lot of applause."<sup>81</sup> While making a stadium smokefree may not seem highly significant, the home games for the Nebraska Cornhuskers football team represent an extremely popular sporting event in the state so making Memorial Stadium smokefree represented an important event in tobacco control in Nebraska.

In 1997, Senator Preister again attempted to make state buildings and vehicles smokefree. LB 375, which was very similar to previous bills, advanced out of committee by a vote of 6-0 but once again, did not survive the floor of the Legislature.<sup>82</sup>

State buildings and vehicles finally became smokefree in 1999 after five years of attempting to pass such legislation.<sup>14</sup> This time around Senator Preister did not introduce the bill. Senator Jerry Schmitt introduced LB 211 with a much more modest goal: he was only seeking to make the State Capitol Building smokefree to halt the damage that was being done to the Capitol and its artwork due to tobacco smoke.<sup>83</sup> The Health and Human Services Committee advanced LB 211 by a vote of 6-0 after hearing testimony from Cathy Shipp of Metro Omaha Tobacco Awareness Coalition (MOTAC), Susie Dugan of PRIDE-Omaha and Leon Vinci of the Lincoln-Lancaster County Health Department.<sup>84</sup> No one testified against LB 211.<sup>84</sup> MOTAC and PRIDE-Omaha are both health organizations located in Omaha that work closely together with MOTAC focusing on tobacco and PRIDE-Omaha working to decrease the use of alcohol, tobacco and other drugs (ATOD). In 1999, many other tobacco control advocates were focusing on an cigarette excise tax bill and were not heavily involved with supporting LB 211 (See Citizens' Excise Tax section).

On the floor of the Legislature, state senators went to work trying to expand the scope of LB 211. During the first round of debate, an amendment proposed by Senator Gene Tyson was adopted which included all state buildings in the bill. The amendment was so broadly worded that senators felt it was necessary to propose additional amendments to clarify the

intent and scope of the bill.<sup>85</sup> Another amendment that was offered during the first round of debate by Senator Chris Beutler of Lincoln would have also included any buildings leased to the state or building leased by the state to other institutions, such as fraternities or sororities, but this amendment failed after Senator Landis of Lincoln expressed concerns that the amendment was too broad to pass without conducting a public hearing to determine the legal ramifications.<sup>83</sup> LB 211 passed the first round by a vote of 28-6 with Tyson's amendment attached.

During the second round of debate, another amendment was introduced by Senator Preister that attempted to clarify the scope of LB 211. The amendment sought to make all state owned vehicles and almost all state owned buildings smokefree.<sup>86</sup> The buildings that were exempted from being completely smokefree were veterans homes, private residences, buildings under the control of Health and Humans Services, lodging facilities run by the Game and Parks Commission, facilities at the State Fair that possessed a liquor license and residential housing at state universities; however, it was designated in the amendment that no more than 25% of the overnight facilities, 50% of the beer halls at the Fair and 40% of the university housing could permit smoking.<sup>87</sup> It also prohibited smoking within 10 feet of a state-owned building. This final provision regarding the 10-foot barrier proved to be a sticking point in the debate over the amendment and it was only able to received 21 votes so it failed to be adopted.<sup>86, 87</sup>

Two weeks later in March, 1997, Senator Preister sponsored a very similar amendment that had the 10 foot buffer area removed.<sup>87</sup> This amendment was adopted by a vote of 33-0 and LB 211 was enacted by the Legislature by a vote of 43-0 and was subsequently signed by Governor Johanns.<sup>88</sup> There was no opposition to Senator Preister's amendment in this last round of debate.

The final outcome of LB 211 was that the Nebraska Clean Indoor Air Act was amended so that the majority of state buildings, including the Capitol, and all state-owned or state-leased vehicles were made smokefree. The passage of this bill represented the first time in twenty years that the Nebraska Clean Indoor Air Act was strengthened.

#### *A Smokefree Restaurant Bill - LB 750 (1999 -2000)*

In 1999, Senator Nancy Thompson (D - Papillion; 8.7 policy score; \$0 lifetime industry total) introduced a bill in the Nebraska Legislature with the primary intention of making restaurants smokefree by revising the Nebraska Clean Indoor Air Act.<sup>89</sup> Senator Thompson appreciated that by 1999 much more was known about the dangers of secondhand smoke than in 1979 when the Nebraska Clean Indoor Air Act was passed and felt it only made sense to change the state law to coincide with current scientific understanding.<sup>90</sup> At the time, four states, California, Utah, Maine and Vermont, had enact statewide smokefree restaurant laws.<sup>91</sup>

The most substantial change to be made by LB 750 was that it would have made the Nebraska's restaurants (except for bar areas) smokefree. The language in LB 750 regarding public places stated:

There shall be no designated smoking areas: (a) In a common area of an enclosed, indoor place of public access, including, but not limited to, hallways, restrooms,

lobbies, waiting areas, entries, exits, and check-out counters; and (b) In a enclosed, indoor area of a restaurant, except (i) in a full-service retail area of an establishment required to have a Class C, I, or M license for the sale of alcoholic liquor for consumption on the premises under the Nebraska Liquor Control Act if such an area is separate from the restaurant and (ii) that the owner or proprietor may allow smoking in an adjoining party or meeting room used for private parties or private social functions.<sup>89</sup>

LB 750 also sought to make two other substantial changes to the Nebraska Clean Indoor Air Act. First, it sought to eliminate the exemption that allowed a restaurant that had a serving area of less than twelve hundred square feet to be considered a smoking area in its entirety. LB 750 also sought to clarify the definition of a public place by including grocery stores, convenience stores, assisted-living facilities and bowling centers within the definition of a public place.<sup>89</sup> The inclusion of bowling centers resulted in several bowling groups joining together with the Nebraska Restaurant Association and the Nebraska Licensed Beverage Association to ally themselves with the tobacco industry.

Beginning first in the 1970s, when clean indoor air laws concerning public places first began appearing through the country, the tobacco industry has worked to convince the hospitality industry (restaurants, bars, bowling centers, casinos, etc.) that any limitations on smoking would cut into the hospitality industry's profits.<sup>92</sup> While a large number of studies have shown that smokefree laws have either no effect or a positive effect on business revenues,<sup>93</sup> the tobacco industry has been successful in convincing members of the hospitality industry to oppose smokefree legislation.<sup>92</sup> In this manner, the tobacco industry, which has little public credibility, can remain behind the scenes by allowing the hospitality industry to serve as the public face of the opposition to smokefree laws. This pattern would occur in the debate over three smokefree restaurant bills proposed in the Legislature and a smokefree workplace ordinance that was attempted in Lincoln.

At the public hearing for LB 750, held before the Health and Human Services Committee, three individuals representing bowling interests testified against Senator Thompson's smokefree bill.<sup>94</sup> These individuals were Butch Rasmussen of Cedar Bowl, Inc., Jim Dill of the Nebraska Bowling Proprietor's Association and Steven Sempeck of Bowling Centers and the Nebraska Bowling Proprietor's Association. An internal Philip Morris document listed Dill and his organization, Nebraska Bowling Proprietors' Association, as hospitality industry allies.<sup>95</sup> While only three people testified, there were over a dozen bowling center owners or managers that attended the hearing in opposition to LB 750.<sup>96</sup>

These bowling groups mobilized under false pretenses. It was their understanding that the addition of the term bowling alleys to the definition of public places meant their status under the Nebraska Clean Indoor Act changed but these was not the case.<sup>96</sup> As Senator Thompson explained during the hearing, the only effect that LB 750 would have had on bowling centers was to clarify that they were included in the definition of a public place.<sup>96</sup> Senator Thompson had consulted with the Department of Health and Human Services and was informed that LB 750 would not change the smoking status for bowling centers or other places that would have been explicitly included in the definition of public places.<sup>96</sup>

Also testifying against LB 750 were two individuals from more traditional allies of the tobacco industry.<sup>94</sup> Jim Moylan stated that he was representing the Nebraska Licensed

Beverage Association but Moylan was also a lobbyist for R.J. Reynolds as well (see Lobbyist Expenditures); Mark Lutz of the Nebraska Restaurant Association also spoke against the bill.<sup>94</sup> The Nebraska Restaurant Association has a long history of opposing clean indoor air legislation dating back to the first introduction of clean indoor air bills in Nebraska and at this time, had receiving money from the tobacco industry at least as recently as 1997.<sup>4, 92</sup>

Oddly, bowling proprietors outnumbered health advocates testifying in favor of LB 750. Susie Dugan of PRIDE-Omaha and Mark Welsch of the Group to Alleviate Smoking Pollution (GASP) of Nebraska were the only tobacco control advocates that testified in favor of LB 750 at the committee hearing.<sup>94</sup> PRIDE-Omaha was a grassroots organization of parents and community health groups formed to lower drug use by youth in Omaha including tobacco use and GASP of Nebraska has focused primarily on reducing exposure to tobacco smoke. Both groups were still active as of 2003. None of the large health groups (i.e., American Cancer Society, American Heart Association, American Lung Association) spoke out in support of the bill.

The failure of Nebraska's tobacco control advocates – particularly the large established health groups – to provide support for LB 750 also manifested itself in newspaper accounts throughout the course of the bill. While Senator Thompson's position (and the opinion of the Nebraska Restaurant Association) was often quoted, voices from the tobacco control groups in Nebraska were largely unheard.<sup>90, 9791, 98</sup>

Health advocates were not more supportive of LB 750 for two reasons. First, the tobacco industry is more powerful at the state level so in virtually all states, there is a strong view that working to pass local smokefree ordinances is a more productive strategy in the long run.<sup>99-101</sup> At the very least (unless there is state preemption), local ordinances are usually passed before attempting a state law.

The second reason was that many health advocates were fighting for the passage of LB 505, a bill that sought to raise the state's excise tax from \$0.34 to \$1.00 and would also have provided funds for tobacco control efforts (See Citizens' Excise Tax section).<sup>102</sup> The most prominent coalition in the state was SmokeLess Nebraska, which was a recipient of a Smokeless States grant from the Robert Wood Johnson Foundation and was comprised of the Nebraska divisions of the American Cancer Society, the American Heart Association, the American Lung Association, Health Education Inc., PRIDE-Omaha, the Nebraska Association of Hospitals and Health Systems, the Nebraska Dental Association and the Nebraska Medical Association.<sup>103</sup> Prior to the 1999 legislative session, the members of SmokeLess Nebraska decided to form a second coalition that would focus primarily on increasing the state's excise tax.<sup>12</sup> This new coalition was named Citizens for a Healthy Nebraska.

Despite the lack of active support by most of the health community, LB 750 was voted out of committee by a vote of 5-1.<sup>94</sup>

No action was taken on LB 750 by the full Legislature during the 1999 session so the bill was carried over until the 2000 session. It was on January 18 that LB 750 came up for debate.<sup>104</sup> The week prior to the floor debate on LB 750, the excise tax increase, LB 505, which had also been carried over to the 2000 session, was rejected by the Legislature.<sup>98</sup> The



fate of LB 750 was also disappointing for tobacco control in Nebraska. It failed to advance to the second round of debate by a vote of 23-19<sup>105</sup>, two short of the number required to advance a bill. If LB 750 passed, Nebraska would have become only the fifth state - behind California, Utah, Maine and Vermont - to have statewide smokefree restaurants.<sup>91</sup>

### *Smokefree Daycare Facilities*

While the smokefree restaurant bill was not passed in 2000, Senator Thompson was successful on another front. During the 2000 session she introduced two bills that were eventually incorporated in the annual clean-up bill for the Health and Human Services Committee as amendments.<sup>106</sup> The first amendment, initially introduced as LB 1194, made it illegal to smoke in commercial daycare facilities.<sup>106, 107</sup> Daycare facilities that were operated out of the home of an individual were exempted from this regulation. The second amendment, introduced as LB 1033, required that the 10 feet in front of an entrance to a state building be made smokefree.<sup>106, 108</sup> (The year before, when state facilities were made smokefree, the 10 foot barrier had been an area of contention had been dropped.)

The reason why these amendments were significant was because when LB 1115, the Health and Human Services clean-up bill, was passed, they represented only the second time in the twenty year history of the Nebraska Clean Indoor Air Act that it had been strengthened.

### *Second Attempt at Smokefree Restaurants - LB 227 (2001)*

In the 2001 legislative session, Senator Thompson again introduced a bill to make restaurants smokefree.<sup>109</sup> The language in LB 227 which would have made restaurants smokefree differed very little from the language in LB 750, which had failed to advance by two votes in 2000. Restaurants with a liquor license were still allowed to have smoking in a room separate from the restaurant and a party or meeting room could be designated as a smoking area in a restaurants if the room was being used for a private function.<sup>109</sup>

LB 227 did contain two notable additions. The first was an anti-preemption clause which stated, "Nothing in the act shall be construed to restrict or prohibit a governing body of a county, city, or village from establishing and enforcing ordinances at least as stringent as, or more stringent than, the provisions of the act."<sup>109</sup> State preemption of local ordinances is a major tobacco industry strategy<sup>110</sup> and LB 227 was designed to make it absolutely clear that there was no such preemption in Nebraska.

The second major addition was the definition of a bar:

Bar means a business establishment devoted primarily to providing entertainment, dancing, and the sale of alcoholic beverages to the public and not devoted primarily to the service of food. The revenue generated from the sale of food shall be less than the revenue generated from the sale of alcoholic beverages plus the revenue generated from the provision of entertainment and dancing.<sup>109</sup>

Defining a business as a bar or restaurant based on the percentage of its revenues that come from the sale of food is a relatively common practice for smokefree laws, but it has several disadvantages. For example, it is unclear how new businesses are to be defined since they haven't established a revenue pattern. Also, enforcement is more difficult because the

line between a restaurant or bar is only distinguished by financial records. In a subsequent bill, Senator Thompson would change the definition of a bar to avoid these problems.

A notable omission was that LB 227 did not contain language that sought to include other types of businesses within the definition of public spaces. In Senator Thompson's previous bill, the attempt to include bowling centers within the definition of a public space had created opposition from bowling associations even though their inclusion within the definition would not have produced any change in their status under the Nebraska Clean Indoor Air Act.

As a result of this change in LB 227, the bowling associations did not testify against LB 227 at the public hearing which was once again heard by the Health and Human Services Committee. The individuals who did oppose LB 227 were Jim Moylan, a lobbyist for R.J. Reynolds, but who testified for the Nebraska Licensed Beverage Association and Mark Lutz of the Nebraska Restaurant Association.<sup>111</sup> Along standard tobacco industry lines, they argued that the passage of LB 227 would represent a economically detrimental form of government inference into the rights of business owners.<sup>112</sup>

The health advocates that testified in favor of LB 227 were Mark Welsch and Phyllis Vosta, who were both with GASP of Nebraska, and Dr. Dan Noble of the Nebraska Medical Association and the Lancaster County Medical Society.<sup>111, 112</sup> Dr. Noble said that he was testifying not only as a representative of the Nebraska Medical Association but also because he has lost his father and an uncle to smoking. "They represent the personal side to this ongoing American tragedy," Dr. Noble testified. "You have even greater opportunity than my colleagues and I do to save lives."<sup>113</sup> The testimony of Dr. Noble was also notable because the Nebraska Medical Association was the only member of SmokeLess Nebraska/Citizens for a Healthy Nebraska that testified in person at the hearing for LB 227. The large voluntary health associations again remained silent.

Also testifying was Rebecca Hasty of the National Organization of Women who said that she supported LB 227 because it is often waitresses that are the victims of secondhand smoke in restaurants.<sup>113</sup> Jennifer Taute and her son, Jared, also testified in favor of the bill because they are both asthmatics and cannot go to restaurants because of the danger to them from secondhand smoke.<sup>112</sup>

Once again, Senator Thompson's smokefree restaurant bill was advanced out of committee, this time by a vote of 5-2.<sup>111</sup> This vote took place on February 1, 2001.

The next day, R.J. Reynolds began organizing a phone-banking campaign to defeat LB 227. Phone-banking is a common tobacco industry tactic to make opposition from the tobacco industry seem like spontaneous grassroots-level opposition.<sup>101</sup> On February 2, a letter was sent from Frank Lester, an executive in R.J. Reynolds State Government Relations, to Jim Moylan, the lobbyist for R.J. Reynolds in Nebraska, which outlined R.J. Reynolds' plan.<sup>114</sup> Lester's letter describes how R.J. Reynolds was planning on mobilizing "grassroots" opposition to LB 227 in two phases using phone, mail and media outreach methods.

Phase 1 of the plan, which was to run from February 2 to 9, was to focus on a phone-bank campaign. The letter stated for Phase 1:

Immediately initiate consumer direct connect calls to all forty-nine members of the legislature at a rate of three per day, per legislator. Direct connect calls are when we call a consumer (or restaurant), educate them on the issue and connect them directly to the member's office . . .<sup>114</sup>

For Phase 2, if necessary, phone calls were to continue but the mailing campaign and media outreach portions were also to begin. Regarding the ally outreach portion of the mailing campaign, Lester stated:

The Nebraska Licensed Beverage Association (NLBA) is communicating with approx. 4000 restaurants/bars on their list.

Possible second stand alone mailer to 2500 restaurants directly affected by the legislation . . .<sup>114</sup>

Another portion of the mailing campaign was to target legislators. Lester wrote:

Narrow legislator target to 20 "key" members and initiate letterdesk operation to those targets. Letterdesk is when we call a restaurant or consumer, educate them on the issue, write the letter for them over the phone, send them the letter with a stamped, self-addressed envelope and ask them to mail to their legislator . . .

Identify any opportunities to participate in ally functions where we could send in a team to conduct an on-ground letterdesk operation. Specifically, we would send team(s) to, for example, a NLBA function (e.g. trade show), engage participant, write letter on the spot for them, get them to sign and we would mail to legislator. These would primarily be to twenty "leadership targets," although we may expand the list to areas with particularly vehement opposition and/or larger metro locations.

If there are no events scheduled, we have a couple of options:

- Have a meeting in major cities inviting restaurants to attend where we would educate, hand out buttons, etc and initiate a letterdesk operation.
- Identify restaurants and bars. Prearrange with management and send teams in to conduct letterdesk operations with employees and customers . . .<sup>114</sup>

Lester's memo to Moylan goes on to describe how Phase 2 would also include a print campaign:

Work with hospitality associations to identify 20 - 30 restaurant owners willing to submit letters-to-the-editor. Prepare letters and/or provide information to facilitate . . .<sup>114</sup>

Finally, R.J. Reynolds was also considering conducting on radio campaign around the time of a floor vote if it became necessary. Lester wrote:

Possibly conduct a radio tour around the state with a third-party ally. A radio tour is when a service calls radio stations in a specific geographical location, books an interview then, at a predetermined time, connects the spokesperson to the station.

Generally the tours are conducted from 6:30 am to around 10 am (drive-time). The spokesperson stays in one location (home if he/she wishes), and the service connects them via telephone to the radio station where they conduct live and/or recorded interviews.<sup>114</sup>

The script that the phone-bank operators were to use when contacting individuals about LB 227 was located in R.J. Reynolds' files.<sup>115</sup> The script is notable because it represents the caller as representing an apparent grass roots group of concerned citizens rather than a major tobacco company. It reads:

I'm calling on behalf of Nebraska Smokers' Rights with an urgent message.

There is a bill, LB 227, before the state legislature that would severely restrict smoking in all public places, including restaurants and restaurant bars. The bill has passed out of committee and may soon come up for a full Senate vote. If this bill passes, you may never again be allowed to enjoy a cigarette at your favorite restaurant.

Nebraskans don't need big government dictating behaviors, especially concerning legal products. That's why it's important that citizens like you take action now and stop this unreasonable smoking ban.

The best way to prevent this ban from passing is for you to contact Senator \_\_\_\_\_ right now and speak out against smoking bans. If you'd like, I can connect you directly to Senator \_\_\_\_\_'s office so that you may call and protest the smoking ban. Can I do that for you?

*(If yes, then continue, else terminate)*

Now, the next voice you hear will be in the office of Senator \_\_\_\_\_. When the phone is answered, ask to leave a message for Senator \_\_\_\_\_. Then in your own words, tell him/her to vote against LB 227, the public smoking restrictions proposal. Let him/her know Nebraska citizens and businesses are smart enough to make their own choices regarding smoking in public places. Let him/her know how important this issue is to citizens like you.

Thank you for your time (emphasis in original).<sup>115</sup>

Because of the negative public perception surrounding the tobacco industry, tobacco companies often create front groups with legitimate sounding names (like Nebraskans for Smokers Rights) to keep the tobacco industry's involvement a secret.<sup>92</sup> However the spontaneous creation of such groups in opposition to efforts to advance tobacco control measures does not constitute opposition from the public itself; rather this shows that the tobacco industry can mobilize quickly to attempt to cloak their efforts. The language utilized in the script about government interference is also standard tobacco industry rhetoric.<sup>92</sup>

By the beginning of March, the *Lincoln Journal Star* and other state news sources began reporting about all the calls received by state senators about LB 227.<sup>116, 117</sup> When asked whether she had received many calls about LB 227, State Senator Pam Brown of (D-Omaha) responded, "Lots of them. They're all, I think, telemarketers. When I started getting them, I asked my staff to find out if they're constituents. So far, none of them have known."<sup>117</sup>

Senators reported that calls opposing LB 227 outnumber those for the bill by a ratio of 8 to 1 or 9 to 1.<sup>117</sup>

Within a few days, Senator Thompson had some proof that these calls were part of a phone bank campaign against her bill when her voicemail recorded a conversation between one of her constituents and the telemarketer in which the telemarketer was coaching the constituent in how the conversation with the senator's office should proceed.<sup>118</sup> Despite being able to show that a phone bank operation was in place, it was still not possible to prove that it was the tobacco industry that was involved.

Despite the fact that R.J. Reynolds was involving itself so heavily in opposing LB 227, the bill continued to receive little support from the majority of tobacco control advocates. Citizens for a Healthy Nebraska was once again focused on increasing the state's tobacco excise tax so they provided little defense for LB 227 in the media or with legislators.

Despite the evidence that these calls were not spontaneous, the tobacco industry was successful in defeating LB 227. On March 7, the Legislature voted to reject LB 227. The vote count was 19 in favor and 29 opposed.<sup>119</sup> During debate, senators from rural areas that opposed the bill argued that small cafes in their districts would be hurt by LB 227.<sup>120</sup> Other senators argued that the bill would create an unfair playing field between bars that serve food and restaurants. Another argument leveled against LB 227 was that it overextended the government's authority to regulate private businesses. These arguments are all standard tobacco industry rhetoric and have been used in almost every place that has attempted to pass a smokefree law.<sup>92</sup>

On March 17, the *Omaha World-Herald* reported that R.J. Reynolds had been responsible for the telemarketing campaign against LB 227.<sup>121</sup> Since LB 227 was already defeated and they were required to disclose the money that had spend as part of their lobbying effort to the Nebraska Accountability and Disclosure Commission in their April 15 filing, R. J. Reynolds confirmed that it was behind the campaign.<sup>121</sup> In fact, a spokesperson for R.J. Reynolds defended the company's actions to a reporter from the *World-Herald*. Speaking about the phone banking, the spokeswoman, Maura Payne, said, "We will do that upon occasion to make it easy for people to call their senators."<sup>121</sup> Payne also stated, "We're educating people who might not be aware of the issue and then giving them an opportunity, with some ease, to give their opinion to their legislator."<sup>121</sup> Payne also claimed that it did not matter who was responsible for initiating the calls so long as individuals were able to express their opinion to their legislator. "That's the beauty of our system. People on both sides get to speak out and say how they feel about any pending piece of legislation," Payne said.<sup>121</sup>

### *Tobacco Free Hall County's Media Campaign*

In August 2001, Tobacco Free Hall County, to further their goal of passing a local smokefree workplace ordinance, rolled out six ads as part of their "Secondhand smoke kills" campaign.<sup>122</sup> Hall County, located in central Nebraska, approximately 100 miles west of Lincoln, includes Grand Island, and was still active as of 2004. According to the 2000 Census, Grand Island was the fourth largest city in Nebraska after Omaha, Lincoln, and Bellevue which borders Omaha.<sup>1</sup> In 2001, Collette Shaughnessy and Susan Haeker, the leaders

of Tobacco Free Hall County, the local tobacco control coalition, convinced Bailey Lauerman and Associates, a Lincoln advertising agency (which had previously developed ads for Philip Morris), to generously donate their time to develop a strong media campaign against secondhand smoke.<sup>122</sup> The ads developed by TFHC and Bailey Lauerman ran in several national magazines and won numerous awards.<sup>123</sup>

Initially, the campaign was only supposed to be comprised of one ad, but it grew to six because so many ideas were generated. According to Rob Sacks of Bailey Lauerman, “We had such a good time coming up with these images that we wanted to see if it could become a campaign, and it was a good cause. And Tobacco Free Hall County was a great group to work with. They’re taking a chance on these ads, just to get the word out there.”<sup>122</sup> The purpose of the advertisements was to catch people’s attention and to educate about the dangers of secondhand smoke. Haeker and Shaughnessy made it clear that they were attacking the smoke and not the smokers, which directly responds to one of the main arguments made by smokers. According to Haeker, “This is really nonsmokers saying that this is no longer socially acceptable ... The idea isn’t to bash the smokers. That’s not what we want to do. But we are going to work hard to get these images distributed all around Hall County.”<sup>122</sup>

Not only was Tobacco Free Hall County able to spread their images around Hall County, they were soon being seen throughout Nebraska and the rest of the country. Tobacco Free Nebraska, the statewide tobacco control program quickly announced plans to disseminate 300 copies of each advertisement to other local tobacco control coalitions around the state.<sup>124</sup> Jeff Soukup, Tobacco Free Nebraska’s community health educator, explained why they decided to distribute the advertisements state-wide:

I think the edginess of it does a number of different things. The ads can draw more attention to themselves than is usually centered around public health issues. I also think, because of the number of media messages out there, something that catches the eye is important. We’re not just competing with the tobacco industry but with all other images out there.<sup>124</sup>

Soon it was not just Nebraskans that were talking about Tobacco Free Hall County and Bailey Lauerman’s smokefree images. *Reader’s Digest* ran a feature on one of the advertisements in its January 2002 issue.<sup>125</sup> The national trade publications *AdWeek* and *Advertising Age* also discussed the campaign in print.<sup>126</sup><sup>123</sup> In addition to the national press, the campaign also won numerous awards including a gold ADDY for creative excellence in June of 2002.<sup>127</sup> The ADDY is the most prestigious award in advertising worldwide.

It is not surprising that the tobacco control advocates at Tobacco Free Hall County were thrilled by their success. Speaking about winning the ADDY, Haeker said, “This is the world’s largest ad competition and the toughest category in that competition. We’re very pleased at the award this campaign has won, and we’re sure that Bailey Lauerman is as well.”<sup>127</sup> Shaughnessy added, “This has exceeded our wildest, wildest expectations. It’s been before so many people, and I think it’s recognizable to people. But now it’s recognizable throughout the country, and we think that’s pretty spectacular.”<sup>127</sup>

Following up on the success of “Secondhand Smoke Kills,” Tobacco Free Hall County and Bailey Lauerman unveiled a new campaign in 2003, which featured three new

advertisements specifically directed to the issue of smoking in the workplace. After the more general ads about the dangers of secondhand smoke, Tobacco Free Hall County wanted to focus attention on the workplace to further the coalition's goal of passing a local smokefree workplace ordinance.<sup>128</sup>

The media campaigns created by Tobacco Free Hall County and Bailey Lauerman provide an excellent example of a collaboration between a local tobacco coalition and a private for-profit company that benefitted both partners.

### *Tri-Cities Implement Smokefree Parks*

As of 2003, Tobacco Free Hall County has not succeeded in passing a comprehensive local smokefree ordinance; however, they were successful in getting city facilities smokefree.<sup>129</sup> In 2002, Tobacco Free Hall County began pushing the City Council of Grand Island to make all city property smokefree including city-owned parks.<sup>128</sup> The impetus for the decision to include city parks was complaints by youth working with Tobacco Free Hall County that they were bothered by both the smoke and the example set by adults smoking at ballgames and playgrounds.<sup>128</sup>

As part of their efforts, the youth were able to recruit their congressman, Tom Osborne (R - District 3; \$0 lifetime industry contributions) to support their cause. Before being elected to the House of Representatives, Osborne was the head coach of the University of Nebraska football team from 1973 until 1999 and he was arguably the most beloved man in the state as a result. On March 29, 2002, Osborne sent a letter to Tobacco Free Hall County supporting their efforts to make Grand Island's city property smokefree.<sup>130</sup> Two days later, Tobacco Free Hall County went public with their goal. They announced that later that week they would go before the City Council with their goal of making city property smokefree.<sup>131</sup>

At the city council hearing, the Council was generally supportive of making city building and vehicles smokefree, but they had many more reservations about including city parks.<sup>132</sup> Their concerns mostly focused on the perceived difficulty in enforcement. Testifying in favor of including city parks were students from all three Grand Island high schools, the boys' basketball coach for one of those high schools and Susan Haeker and Collette Shaugnessy of Tobacco Free Hall County. The letter from Congressman Osborne and also a letter from State Senator Ray Aguilar (R- Grand Island; 8.2 policy score; \$0 lifetime industry total) were introduced in support of the proposed goal of smokefree city facilities including city parks.<sup>133</sup>

Though the City Council left unconvinced that night, Grand Island youth and Tobacco Free Hall County remained persistent on the issue, and in the end, they were successful. In May, the City Council again addressed the issue and voted 5 - 4 in favor of a resolution that made city vehicles and facilities smokefree, which including fenced park areas, bleachers, grandstands and athletics fields.<sup>133</sup> The City Council split 4-4 but Mayor Ken Gnadt voted in favor to decide the outcome. The reason why the City Council passed this smokefree change as a resolution instead of an ordinance was because if had been passed as an ordinance, the City of Grand Island would have been responsible for enforcing the outdoor components, which it was unwilling to do. Because it was passed as a resolution, the "no smoking" signs

that had to be posted were only advisory in nature; however, this did not mean that the whole resolution was unenforceable. Under the Nebraska Clean Indoor Air Act, smoking is not permitted in any indoor public places that are not specifically designated as a smoking area; therefore, since city-owned buildings in Grand Island could not contain smoking sections, smoking within this buildings could be punished under state law.<sup>134</sup> While the resolution was not without its limitations, the high school students that were instrumental in securing its passage believed strongly that just the posting of “no smoking” signs would have a positive effect on the smoking habits and attitudes of Grand Island’s youth.<sup>134</sup>

Within a year, the neighboring cities of Hastings and Kearney, which, combined with Grand Island, are termed the Tri-Cities, passed similar resolutions that make city parks smokefree.<sup>135</sup> As with Grand Island, these smokefree policies do not carry the force of local law but represent a cultural shift regarding tobacco control in Nebraska.

### *Improving the Implementing Regulations for the Nebraska Clean Indoor Air Act*

In 2000, with the passage of two bills that changed the Nebraska Clean Indoor Air Act, one that made state buildings and vehicles smokefree<sup>14</sup> and one that made commercial daycare centers smokefree,<sup>106</sup> it became necessary for Health and Human Services to update the rules and regulations for the Nebraska Clean Indoor Air Act. Part of this process included updating the definitions for several terms such as common area, bar, and public place. These terms had been originally included in the Nebraska Clean Indoor Air Act, but they had never been specifically defined. In addition, several terms, such as non-state building and child care program, were now included in the Nebraska Clean Indoor Air Act as a result of the changes made to it by the laws passed in 1999 and 2000;<sup>136</sup> therefore, Health and Human Services also sought to define these new terms as well. According to Molly Goedeker, the Health and Human Services employee who was responsible for enforcing the Nebraska Clean Indoor Air Act and who also drafted these new rules and regulations, the changes that were made were an attempt to clarify Health and Human Services’ interpretation of the rules and regulations associated with the Act.<sup>15</sup>

Understanding that these rules and regulations might be challenged by the tobacco industry or its allies, in drafting these regulations, Molly Goedeker had four different attorneys review the language to ensure that Health and Human Services had the authority to make such changes and two public hearings were held in December 2001.<sup>15</sup> By covering these bases, Goedeker helped to ensure that, though the process began two years earlier, little challenge could be brought against the new rules and regulations. As a result, they were approved by the Attorney General and then signed by Governor Mike Johanns in January 2003.<sup>15</sup>

One significant change to the rules and regulations was made based on public comments received during the hearings. Craig Lutz of the Nebraska Restaurant Association requested that bars and restaurants not be categorized based on percentage of revenue from food, because he said it created a slippery slope and was different from definitions used by other state agencies, and instead suggested that the definitions from the Nebraska Food Code be used, which defined a restaurant as a place that served food from a kitchen.<sup>137</sup> Because using the Nebraska Food Code definition was clearer and would define more establishments as a restaurant instead of a bar (and because the fact that the recommendation was made by the



Nebraska Restaurant Association provided political cover), the definitions in the Health and Human Services rules and regulations were changed to correspond to the Nebraska Food Code.<sup>137</sup>

### *Improving Enforcement of the Nebraska Clean Indoor Air Act - LB 45 (2003)*

In 2003, Senator Thompson introduced LB 45 which sought to revise the Nebraska Clean Indoor Air Act to harmonize the Act with the new Health and Human Services (HHS) rules and regulations and to make the Act more enforceable.<sup>138</sup> The far more important aspect was making the Nebraska Clean Indoor Air Act more enforceable. Previously, Section 71-5713 of the Nebraska Clean Indoor Air Act stated “The Department of Health and Human Services Regulation and Licensure, a local board of health, or any affected party may institute an action in any court with jurisdiction to enjoin any violation of section 71-5707.”<sup>73</sup> Since section 71-5707 only dealt with individuals smoking in a nonsmoking area, a conservative interpretation of this section meant that only an individual smoker could be penalized for violating the Nebraska Clean Indoor Act. LB 45 sought to make it clear that the entire Act was enforceable; thus, business owners as well as individual smokers could be punished for failing to comply with the Nebraska Clean Indoor Air Act.

LB 45 also contained language that specifically included grocery stores, convenience stores, and assisted-living facilities as public places,<sup>73</sup> in addition to defining common areas to include “hallways, stairwells, water fountain areas, restrooms, lobbies, waiting areas, entrances, exits, and check-out counters.” Language in LB 45 also eliminated some exemptions in the Act such as smoking in private offices and the ability to designate an entire room or hall a smoking section for a private social function.<sup>73</sup>

The public hearing for LB 45 was conducted by the Health and Human Services Committee. The only individuals testifying in favor of LB 45 were Senator Thompson, as the introducer of the bill, and Mark Welsch, the president of GASP of Nebraska.<sup>139</sup> Throughout the legislative process, LB 45 received only minimal support from the majority of tobacco control advocates in Nebraska.<sup>118</sup>

There were four opponents to the bill. Two individuals claimed to be testifying for themselves, R.J. Brown and Walt Radcliffe.<sup>139</sup> Radcliffe has been a longtime tobacco lobbyist, and as of 2003, represented United States Tobacco (See Lobbyist Expenditures). Also opposing LB 45 were Tim Keigher of the Nebraska Petroleum Marketers and Convenience Store Association and Kathy Siefken, representing the Nebraska Grocery Industry Association. Both these organizations have received money from the tobacco industry and have been listed on internal tobacco industry lists of allies within the state of Nebraska.<sup>4, 20</sup>

The objections of these two organizations seemed to focus on the revised definitions and the removal of exemptions and not the enforcement section of LB 45. They complained that LB 45 would prevent convenience stores from creating smoking areas for their customers and that it would prevent smoking in private offices. As Keigher stated, “This is a total ban on smoking in convenience stores.”<sup>140</sup>

Senator Thompson was aware of all the changes to the implementing regulations that had recently been developed by Health and Human Services. Except for the enforcement clause, LB 45 was a clean-up bill that sought to harmonize the language of the Nebraska Clean Indoor Air Act with the rules and regulations that would enforce it. After the hearing she told reporters, “They can’t now (have smoking areas), with or without LB45. LB45 simply puts in statute what is already in the new rules and regulations, so it is easier for people to read the law and know exactly what it does.”<sup>140</sup>

To reporters, Keigher and Siefken both seemed surprised to find out that the Health and Human Services changes had very similar effects as LB 45. “That’s news to me,” claimed Keigher. “It sounds to me like this is a total smoking ban. And it is banned by the rules. Interesting.”<sup>140</sup> Siefken responded by saying, “That is amazing. They don’t have the authority to do that. They have to follow what the Legislature intended them to do.”<sup>140</sup> According to Goedeker, Keigher and Siefken’s surprise was feigned. She said that Health and Human Services had conducted meetings and exchanged correspondence with both the Nebraska Petroleum Marketers and Convenience Store Association and the Nebraska Grocery Industry Association to explain the effect that the new rules and regulations would have for them so both organizations were aware that LB 45 simply sought to clarify regulations that were already in effect. “I believe it was a good press opportunity for them,” Goedeker said. “They knew what was going on, they knew that it wasn’t effecting their businesses any differently than it had before, but it was a good opportunity to confuse the media and confuse the public.”<sup>15</sup>

The activities of the lobbyists seemed to have their desired effect on the language of LB 45. Two senators on the Health and Human Services Committee, Philip Erdman (R-Bayard) and Doug Cunningham (R-Wausa), both stated publicly that they were willing to send LB 45 on to the full Legislature if everything but the enforcement section measure was stripped from the bill, which was what happened.<sup>140</sup> The Health and Human Services Committee drafted an amended version of LB 45 that removed twelve sections so that only the enforcement section remained, and then the bill was passed by a vote of 7-0.<sup>139</sup> To Senator Thompson, this was an acceptable compromise because she felt the enforcement measure was the important new piece of the bill.

The next hurdle for LB 45 was concern over the fact that the original language of the Nebraska Clean Indoor Air Act stated that “any affected party” could seek to bring an injunction against an establishment that was not in compliance with the Nebraska Clean Indoor Air Act.<sup>8</sup> Some legislators were worried that this language would allow any individual to take a business to court over its smoking policy. During the second round of debate, an amendment was passed that removed the ability of an individual or a local board of health to seek an injunction requiring a business to comply with the law.<sup>141</sup> Instead, the new language allowed local public health departments to seek an injunction in court. Individuals were to file their complaints with these local health departments.

Another change was that previously, proprietors were required to ask smokers to refrain from smoking “upon request of a client or employee suffering discomfort from the smoke.”<sup>8</sup> Because LB 45 actually made such a provision enforceable against business owners, legislators

decided to amend LB 45 so that proprietors of businesses were only required to ask smokers to refrain from smoking if the smoker was smoking in the nonsmoking section.<sup>142</sup>

After these changes were made, LB 45 was approved by the Legislature by a 43-0 vote on March 14, 2003. It was signed into law by the governor on March 20<sup>143</sup>.

Even with the compromises that were made to LB 45, the passage of the bill meant that the State of Nebraska finally has the means to ensure that businesses, and not just smokers, are in compliance with the Nebraska Clean Indoor Air Act.

*Third Attempt at Smokefree Restaurants - LB 546 (2003; carried over to 2004)*

In the 2003 legislative session, Senator Thompson once again introduced a smokefree restaurant bill.<sup>144</sup> In her new bill, LB 546, Senator Thompson decided to use the Health and Human Services' new definitions of a restaurant or a bar, which were part of the rules and regulations approved by the governor in January 2003.<sup>15, 144</sup> Rather than focusing on the percentage of revenue that came from foods sales as LB 227 had done, a restaurant was defined as a place where food is prepared in a kitchen; therefore, an establishment could not be considered a bar if food was served from a kitchen. Because this language defined more businesses as a restaurant, the introduced version of LB 546 meant that if passed, more establishments would have to be smokefree than would have been the case if either LB 750 or LB 227 was passed. This language also made deciding whether a business counts as a restaurant or bar easier which facilitates enforcement.

At the committee hearing, a greater number of people testified in favor of the bill than in 1999 and 2001, including Mike Wadum from the American Lung Association, Mark Welsch from GASP and Jack Cheloha on behalf of the City of Omaha.<sup>145</sup> A representative from the City of Omaha also testified in favor of the bill at the hearing because tobacco control advocates in Omaha had pushed the City Council to adopt a resolution in support of LB 1436. The resolution which the Omaha City Council adopted stated:

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Omaha, Nebraska that the City of Omaha supports such legislation to make restaurants smoke-free **if** the bill does not take away local control of this issue, and that the bill would not pre-empt any local government from establishing and enforcing policies at least as stringent as or more stringent than, the proposed state legislation.<sup>146</sup> [emphasis in original]

Once again, Mark Lutz of the Nebraska Restaurant Association and Jim Moylan of the Nebraska Licensed Beverage Association (and R. J. Reynolds) testified against the bill.<sup>145</sup>

During the 2003 session, LB 546 was advanced out of the Health and Human Services Committee without amendments by a vote of 4-3.<sup>145</sup> It did not come up for a vote on the floor of the Legislature so it carried over until the 2004 legislative session.

## *Lincoln's 2003 Attempt to Pass a Comprehensive Smokefree Workplace Ordinance*

In 2003, the Lincoln-Lancaster County Health Department headed an effort to pass a 100% smokefree workplace ordinance for the city of Lincoln, the capital of Nebraska and its second largest city. The other groups who also fought for this ordinance were the Lincoln-Lancaster County Board of Health, Tobacco Free Lincoln (the local tobacco control coalition), the Lancaster County Medical Association and the Nebraska chapters of the American Heart Association, American Lung Association and the American Cancer Society, attempted to pass a 100% smokefree workplace ordinance for the city of Lincoln. However, the Lincoln City Council caved in to pressure from the tobacco industry and its ally, the hospitality industry, to pass a confusing and weakened ordinance that allowed separated ventilated “smoking rooms” and exempted bars.

In preparation for an attempt to pass a smokefree workplace ordinance in Lincoln, the Lincoln-Lancaster County Health Department requested a study of the harm caused by secondhand smoke to workers in the hospitality industry in Lincoln. James Repace, a health physicist who had conducted numerous similar studies, was contacted to measure the cotinine levels present in the blood of workers in Lincoln.<sup>147</sup> Cotinine is a biomarker for nicotine exposure which is used to predict health risks.<sup>148</sup> On May 5, 2003, Repace’s findings were released, which found that the cotinine levels for nonsmoking bar employees in Lincoln were 18 times higher than the national median and based on these findings, he estimated that 17 hospitality industry workers in Lincoln die each year from the exposure to secondhand smoke they receive in their workplace.<sup>148</sup>

In an effort to protect the health of workers and the general public, the Lincoln-Lancaster County Health Department announced in August 2003 that it would put before the city council an ordinance that would require all indoor places of employment and all indoor public places in Lincoln, including bars and restaurants, to be 100% smokefree.<sup>149</sup> In their proposed draft of the ordinance, entitled the “Lincoln Smokefree Air Act,” which was released on August 19, places of employment were defined as “an indoor area under the control of an owner that employees access during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways.”<sup>150</sup> The ordinance defined public places as “an indoor area to which the public is invited or in which the public is permitted.”<sup>150</sup> The only exceptions to this smokefree ordinance were that hotel and motel rooms could be designated as smoking rooms (but not more than 20% of all rooms) and smoking was permitted if it was being conducted as part of medical research. By requiring that all places of employment and public places be completely smokefree, the Health Department sought to provide comprehensive protection from secondhand smoke to the general public but also more specifically to employees.<sup>149</sup>

The Health Department’s draft of the ordinance also sought to avoid some of the problems that had plagued the Nebraska Clean Indoor Air Act such as enforcing the law against individual smokers. The effectiveness of the Nebraska Clean Indoor Air Act had been weakened by the fact that it could only be enforced against individual smokers, until the passage of LB 45 in 2003, so the proposed ordinance addressed this area by providing for \$100-\$500 fines against the owners of businesses that failed to comply with the law as well as against individual smokers.<sup>150</sup> The draft ordinance also stated that failure to comply with its

provisions was a sufficient cause to justify the revocation or suspension of an license granted to that establishment by the City of Lincoln.

Another section of the ordinance, as originally proposed, was its signage provisions, which required the posting of at least one “no smoking” sign at all entrances used by the public or employees.<sup>150</sup> In the Health Department’s first draft, the only acceptable “no smoking” signs were ones provided by the Health Department or the State of Nebraska, but this was changed to any sign using the international “no-smoking” symbol of a cigarette with a red circle and slash.

Two other characteristics of the Health Department’s first ordinance proposal were important. First, the law was to apply not only to establishments within Lincoln but also to establishments within three miles past the corporate limits of the city.<sup>150</sup> The Lincoln City Council has zoning jurisdiction over this three mile area in order to deal with city growth, so by including this area the Health Department was attempting to expand the effect of the law as far as possible.<sup>151</sup> The first draft of the Lincoln Smokefree Air Act also stated that if a business had a food establishment permit that included an outdoor area, then this outdoor area was also required to be smokefree.<sup>150</sup> This outdoor area provision, which mainly affected outdoor cafes and beer gardens, was included at the recommendation of Tony Messineo, a restaurant owner and member of the Lincoln-Lancaster County Board of Health.<sup>103</sup>.

Following the announcement by the Health Department that it would propose a smokefree workplace ordinance, it became clear that the debate in Lincoln would be little different from the debate over the passage of the Nebraska Clean Indoor Air Act in 1979. At that time the tobacco industry and its allies in the hospitality industry had argued that the Legislature should not establish separate smoking and nonsmoking areas because they said there was little evidence that secondhand smoke was harmful, that it would have a harmful economic impact and that it was unreasonable government interference into private businesses.<sup>47</sup> The tobacco industry used these arguments in 1979, because, as Ray Oliverio, the Director of Public Affairs for the Tobacco Institute, said, “All of these arguments play well in Nebraska.”<sup>47</sup> In 2003, over twenty years later, the tobacco industry and its ally, the hospitality industry, would use these same arguments to successfully oppose the passage of Lincoln smokefree workplace ordinance.

The subtitle for the *Lincoln Journal Star*’s article the day after the announcement of the Health Department’s proposed ordinance for Lincoln accurately captured the nature of the debate that would continue for months in Lincoln. It read, “The Health Department and supporters call it an issue of employee health; to opponents, it’s a matter of free choice.”<sup>149</sup> In the article, Brian Kitten, co-owner of a Lincoln bar named Brewsky’s, echoed tobacco industry rhetoric saying, “My belief: There will always be a market for an environment where a smoker can go in and have a meal and have a drink. Why make that illegal?”<sup>149</sup> Kitten also said that he was skeptical about the harm caused by secondhand smoke. He asked, “Who do you believe?” and stated that different studies came to different conclusions.<sup>149</sup> In the coming months, Kitten would serve as the primary spokesperson for the opponents of the local smokefree ordinance.

In an effort to allay fears about the proposed ordinance, Bruce Dart, the Director of the Health Department, met with the Nebraska Restaurant Association, the Downtown Lincoln Association, the Lincoln Independent Business Association and the Chamber of Commerce following the release of the ordinance.<sup>152</sup> The Health Department also sent out 3,100 letters to business owners to invite them to attend hearings conducted by Dart and Ed Schneider, President of the Lincoln-Lancaster County Board of Health, where they would explain the effect of the proposed law; however, less than two dozen businesspeople attended the hearings.<sup>103, 152</sup> One of the few that did attend however was Walt Radcliffe, a longtime tobacco industry lobbyist who was working for United States Tobacco at the time (See Lobbyist Expenditures). While Radcliffe claimed to be only representing himself and not the tobacco industry, he stated in his parting comments that he would see everyone at the meetings before the City Council.<sup>152</sup> While continuing to maintain that he was only representing himself, Radcliffe would continue to play a leading role in opposing the passage of the smokefree workplace ordinance.<sup>103</sup>

While the Health Department's hearings were not well-attended by business leaders, it was not because the hospitality industry, especially bar owners, were not mobilizing in opposition. In explaining why very few people came to the meetings, Brian Kitten told the Lincoln Journal Star, "We felt it was just a dog-and-pony show. They [health officials] want to ram it through any way they can. The real battle is with the City Council members."<sup>153</sup>

In the months following the Health Department's announcement that it would pursue a comprehensive smokefree workplace ordinance, the editorial pages of local newspapers were filled with numerous op-eds on both sides. The issue was also covered extensively in newspapers and television stations throughout the state. Shortly after the Health Department's decision, the two main newspapers in Lincoln printed conflicting editorials. The city's major newspaper, the *Journal Star*, came out in favor of smokefree workplaces. The *Journal Star's* editorial stated:

There is one certainty in the sure-to-come debate over going smoke-free. Research, both anecdotal and statistical, disproves those who would complain that the proposed ban will egregiously damage their businesses . . . In fact in Boulder, Colo., and Corvallis, Ore., restaurant sales increased after smoking bans went into effect. And University of California researchers found no adverse revenue impact from that state's ban on smoking in restaurants and bars . . . The smoking ban also would be in keeping with the image Lincoln wants to project as a very livable, family-friendly city. Put simply, the time for a smoking ban has come, and there's no reason it shouldn't be implemented as soon as possible.<sup>154</sup>

On the other hand, the *Daily Nebraskan*, the student newspaper for the University of Nebraska-Lincoln, came out against smokefree workplaces. Its editorial said:

The proposed smoking ban would eliminate smoking in any establishment housing employees, as well as public places within three miles of Lincoln city limits [sic]. And, the way we see it, the ban also would eliminate choice . . . We here at the Daily Nebraskan oppose the ban on smoking for that reason – bar and restaurant owners, acting under consideration of their employees, should be able to determine whether smoking should be barred in an establishment . . . Lincoln offers plenty of places to

avoid secondhand smoke. Let the business owners and smokers choose for themselves just how much personal harm they're willing to risk.<sup>155</sup>

Throughout the debate over the proposed 100% smokefree workplace ordinance, these two papers would maintain these positions with the *Journal Star* supporting smokefree environments while the *Daily Nebraskan* sided with the tobacco industry's position that smokefree workplace laws violated the rights of business owners.

Following hearings with business owners that were sparsely attending and after receiving comments from other city officials, the Health Department decided to make some changes to the draft of the ordinance. At the request of Lancaster County Board of Commissioners, the three mile area outside the city limits was removed so that only businesses within Lincoln would be effected.<sup>153</sup> According to County Commissioner Larry Hudkins, this request was made not because the board disagreed with the intent of the proposed law but because they felt extending the smokefree changes further into Lancaster County only complicated the issue.<sup>153</sup> Another change was the elimination of outdoor areas at restaurants and bars from the smokefree requirements, which was taken out after health advocates were unable to find research that specifically addressed the effect of secondhand smoke in an outdoor setting.<sup>153</sup> Businesses that were located in private residences, which included daycare centers, were exempted from the smokefree requirement to avoid legal concerns about inspecting private homes without a warrant.

After the Health Department finalized its draft in early October, a hearing before the Lincoln City Council was set for November 3, 2003. On October 14, the Lincoln-Lancaster County Board of Health held a meeting to recommend that the City Council approve the proposed law. The board's president, Ed Schneider, said "It's time we try to protect these innocent people who are not smokers . . . 80 percent of the public who have been adversely affected by secondhand smoke."<sup>156</sup>

Despite the elimination of workplaces located in private residences from the requirements of being smokefree, Walt Radcliffe, the lobbyist for United States Tobacco, released a memo on October 23 that said that the enforcement provisions of the Health Department's proposed ordinance would violate the Fourth Amendment of the United States Constitution.<sup>157</sup> Specifically, Radcliffe felt that the language in the Lincoln Smokefree Air Act, which said, "The Health Director and law enforcement agencies are hereby authorized to inspect a place of employment or public place at any reasonable time to determine compliance with this Chapter," would allow warrantless inspections that violated the Fourth Amendment.<sup>157</sup> (Despite several attempts, the tobacco industry has never succeed in challenging a local tobacco control ordinance on Constitutional grounds.<sup>60</sup>)

The following day, October 24, Cindy Wostrel, Chairperson of Tobacco Free Lincoln Coalition, and David Holmquist, Governmental Relations Manager for the Nebraska chapter of the American Cancer Society, held a press conference to release the results of a poll conducted by Harstad Strategic Research that surveyed 402 likely voters from October 9-14, 2003, that showed strong support for making all workplaces smokefree:

- Would you favor or oppose a local ordinance in Lincoln that would ban smoking in all indoor public places and workplaces, including restaurants and bars?
  - 61% said that they strongly favored a smokefree ordinance
  - 12% said that they somewhat favored a local smokefree ordinance.
  - 9% somewhat opposed a smokefree ordinance.
  - 17% strongly opposed a local smokefree ordinance.<sup>158</sup>
  
- “If restaurants and bars in Lincoln were smoke-free, would you honestly say you would visit restaurants and bars in Lincoln more often, less often, or about the same amount as you do now?”]
  - 33% of respondents said they would visit restaurants and bars more often.
  - 56% said about the same.
  - 8% said less often.<sup>158</sup>

Despite this evidence of popular support, Brian Kitten and Mark Lutz, administrator for the Nebraska Restaurant Association, continued to tell reporters that they thought a smokefree workplaces would hurt businesses in Lincoln.<sup>159</sup> (The Nebraska Restaurant Association has a history of financial ties with the tobacco industry.<sup>4, 92</sup>) Mirroring standard tobacco industry arguments, Kitten said that he had been calling bar owners in other cities with smokefree ordinances. “Everything I found out was that it does negatively impact the bar, bar-and-restaurant, nightclub-type business,” he said. “You see really negative impact on communities that institute a ban when surrounding communities don’t.”<sup>159</sup> (In fact, every objective scientific study of the impact of such legislation on the hospitality industry has shown either no effect or a positive effect.<sup>93</sup>) Lutz also stated this position to reporters, saying that he expected establishments within the city limits to lose business while the ones outside the city would gain.<sup>159</sup> Another argument that Lutz used in opposing the Lincoln local ordinance was to argue that any smokefree legislation should be passed by the Nebraska Legislature and not by local communities. He said, “There has to be one set of rules for the Lincoln, Omaha and Scottsbluff areas.”<sup>160</sup> Despite articulating this position, Lutz’s organization, as discussed earlier in this report, the Nebraska Restaurant Association, actively opposed attempts to pass statewide legislation to make restaurants smokefree.

At the hearing before the Lincoln City Council on November 3, almost 40 people testified concerning the proposed ordinance.<sup>161</sup> The testimony heard by the City Council differed little from the positions that had been publicly expressed by both sides prior to the hearing. A formal vote on the issue was tentatively set for November 24.

Three days after the hearing, on November 6, the Lincoln City Council met with members of the Omaha City Council to discuss common issues. At that meeting, at least one member of the Lincoln City Council told his Omaha counterparts that the Lincoln City Council was almost certain to pass the ordinance but not without making some changes first.<sup>162</sup> “My guess is we will pass an ordinance of some kind,” said Council member Glenn Friendt. “I think we’ll have some amendments.”<sup>162</sup>

Within a few days, council members had introduced numerous amendments to weaken the proposed ordinance.<sup>163</sup> Three members, Glenn Friendt, Annette McRoy and Jon Camp introduced amendments to allow smoking in bars with their amendments differing in how a bar



was defined. Council member Patte Newman introduced an amendment to exempt truck stops and coffeehouses. At the time, Council member Terry Werner told reporters that he was considering introducing an amendment to allow separately ventilated areas where smoking was permitted, a position promoted by the tobacco industry.<sup>164</sup> Ignoring the fact that such ventilation systems do not address the health problems associated with secondhand smoke for employees, he stated, “There has to be a little room for compromise. Maybe there’s a way to do it without compromising people’s health.”<sup>163</sup> The reason why Werner felt ventilation was a possible compromise was because health advocates had not presented a united front in opposing ventilation. The American Cancer Society and an environmental health representative from the Health Department stated that the ordinance would better protect the health of the public in the form proposed by the Health Department but that ventilation would be an acceptable compromise.<sup>103</sup> Other health advocates continued to reiterate their position that the ordinance should not be weakened in any way including ventilation. Werner would go on to introduce an amendment to allow separately ventilated “smoking rooms” in businesses,<sup>165</sup> but he and Ken Svoboda were the two council members that were most supportive of passing a strong smokefree ordinance.

Health advocates responded by publicly criticizing the actions of the City Council. Concerning the amendments, Ed Schneider, President of the Board of Health, said, “I think that [the adoption of the proposed amendments] will not give the protection to the public or employees we need. We have some empathetic, intelligent, caring council people. What we have to do is remain focused on the health issue.”<sup>163</sup>

With the Lincoln City Council already contemplating weakening the proposed ordinance, Jerry Irwin, the owner of a Lincoln strip bar called the Foxy Lady, began circulating petitions in 30 to 40 bars for patrons and employees to sign opposing the ordinance.<sup>166</sup> Irwin stated that he was hoping to gather thousands of signatures to present to at the next City Council meeting. He said, “There will be a ton of people. The first hearing, that was just the first wave. There will be a lot of bar employees saying (smoking) is not a problem.”<sup>166</sup>

By the second hearing on November 17, no changes had been made to the Health Department’s proposed ordinance but more than 15 amendments had been introduced by council members, almost all seeking to weaken the smokefree provisions within the ordinance. During the hearing, health advocates continued to focus on the health benefits to workers and the general public and testified against the tobacco industry positions raised by bar owners that their business would be harmed and that smokefree ordinances represented improper government interference.<sup>165</sup> The health advocates also argued that separately ventilated rooms were ineffective in protecting employees and the public from secondhand smoke.

Following the second hearing, Lincoln *Journal Star* printed an editorial calling on the City Council to not weaken the proposed ordinance. It concluded, “Creating exceptions to the ban will only create problems and weaken its effect. Banning smoking in all workplaces is healthier, fairer and simpler. The City Council should approve the ban in its current form.”<sup>167</sup>

With the City Council still undecided, the original date for a final vote, set for November 24, came and went with no changes being made to the ordinance but no vote being

taken either. Individuals from both sides of the debate continued to mobilize in support of their position by contacting the members of the City Council and the media.

It was at the next meeting on December 1, that the City Council finally decided take action on the Lincoln Smokefree Air Act. Due to pressure exerted through the hospitality industry, Council Members Patte Newman and Annette McRoy, had introduced an amendment which sought to exempt bars. This amendment required that to receive an exemption the bar had to file an affidavit annually with City Clerk's office stating that less than 60% of its gross revenue came from the sale of food. At this meeting, health advocates were able to convince the City Council to reject this bar exemption by a vote of 3 - 4 with Newman, McRoy and Friendt voting in favor.<sup>168</sup>

The turning point in the Lincoln Smokefree Air Act came after the City Council's decision to not exempt bars. Instead of voting on the Health Department's proposed ordinance, the City Council continued to seek a compromise position and then sets its sights on the amendment introduced by Terry Werner that sought to allow any workplace to have separately ventilated breakrooms and "smoking rooms."<sup>169</sup> The language of the amendment did not make it clear whether these "smoking rooms" would be simply a room where people could go to smoke or whether it would serve as a smoking section for a restaurant or bar where employees would have to work. The amendment did limit the size of the "smoking room" by saying that it could comprise no more than 35% of the square footage of the place.<sup>170</sup> Despite the fact that the language of the amendment did not make its intent clear, the City Council decided to adopt it by a vote of 4 - 3 with Werner, Svoboda, Cook and Camp voting in favor and the three council members who wanted to exempt bars entirely voting against it.<sup>169</sup> Because the City Council had adopted this amendment, the vote on passing the ordinance was delayed for another week for to allow for further examination of the modified ordinance.<sup>168</sup> The City Council's decision to weaken the law by allowing ventilation and the subsequent delay that it caused would have further ramifications for the outcome of the ordinance.

Neither side was happy with this compromise and since the vote was delayed, both health advocates and members of the hospitality industry continued to press the City Council. At the next meeting, on December 8, Patte Newman reintroduced her amendment to allow smoking in bars that took in less than 60% of their revenue from food sales. Having already rejected that amendment the previous week, some council members were surprised at Newman's action. Council member Werner stated, "This certainly wasn't typed up in the last five minutes. Why didn't we have it? . . . It certainly gives the appearance of trying to hide something."<sup>168</sup> During the meeting, Newman placed a stack of petitions gathered by bar owners about 1 ½ feet high in front of her and, ignoring the polling data released by health advocates, said, "I believe the community has spoken. The exemption for bars is an exemption the community wants to see."<sup>168</sup>

Despite its failure the week before, the Lincoln City Council decided to adopt the amendment to exempt bars by a 4 - 2 vote with Jon Camp switching his vote in favor.<sup>168</sup> Jonathan Cook was absent from the meeting due to illness. Camp said that he decided to change his vote after he sequestered himself from the public for several days to read a book about personal freedom and responsibility written by his late father.<sup>168</sup> During this meeting, the City Council also decided to remove the language limiting smoking in motel and hotels

rooms to no more than 20% of the total number of rooms and 35% of total square footage for the separately ventilated “smoking room.” They replaced these hard limits with language similar to the Nebraska Clean Indoor Air Act so that the area where smoking was allowed was to be “reasonably proportionate to the preference of the users.”<sup>171</sup> Because of Council member Cook’s illness, the City Council decided to delay its vote until the next week’s meeting on December 15.

With the ordinance now exempting bars and allowing separately ventilated “smoking rooms” in other places, health advocates were angered by the actions of the City Council. Following the City Council meeting, Cindy Wostrel, chairperson of Tobacco Free Lincoln, told the press, “This defeats the intent of the legislation and the will of city voters.”<sup>168</sup> With these changes, the health advocates stated that it would be better for the ordinance to be defeated than to pass in its current form. Ed Schneider, the President of the Lincoln-Lancaster County Board of Health, said, “We’d rather not have any ordinance at all. This does not protect the health in this form.”<sup>170</sup>

The City Law Department was also critical of Newman’s amendment. They stated, “This amendment lacks consistency between exempted places of employment and public places. This amendment is also inconsistent with the intent of the proposed ordinance and the Nebraska Clean Indoor Air Act. In addition, this amendment raises many legal concerns.”<sup>168</sup> The legal concerns that the Law Department was referring to were that the City could be open to lawsuits from businesses claiming that the ordinance created unequal treatment.<sup>168</sup>

Another problem with the amended ordinance was that the City Council still had not clarified whether or not employees would have to work in the separately ventilated “smoking rooms.” Regarding smoking breakrooms, the ordinance stated, “The smoking breakroom shall not serve as a work area and no employee shall be required to enter the smoking breakroom in order to reach the employee’s work area. The prohibition shall not apply to employees providing janitorial and maintenance within the smoking breakroom,”<sup>171</sup> but the only protection provided to employees regarding the “smoking rooms” was a section which stated, “No member of the public nor any employee shall be required to enter the smoking room in order to access common areas of the place of employment or public place, including but not limited to, hallways, restrooms, lobbies, and waiting rooms.”<sup>171</sup>

At the next meeting on December 15, health advocates attempted to get the City Council to vote up or down on the original draft that was submitted by the Health Department. Council member Werner made a motion to adopt the original form of the ordinance but it was rejected 3 - 4 with Werner, Svoboda and Cook voting in favor.<sup>172</sup> Following this setback, the health advocates tried at the meeting to get the weakened version of the ordinance defeated, but once again, they were unsuccessful. The Lincoln City Council voted 5 - 2 in favor of adopting the ordinance that allowed separately ventilated rooms and exempted bars.<sup>172</sup> The two opposing votes were from Werner and Svoboda.

The members of the hospitality industry were thrilled by their victory. “I’m excited. I think it was a good compromise. I think the democratic process was followed,” said Brian Kitten.<sup>172</sup>

Meanwhile, health advocates turned their attention to Lincoln's mayor, Coleen Seng, calling on her to veto the weak ordinance. They were joined in this call by the *Lincoln Journal Star*, which stated in an editorial on December 18:

Tobacco smoke is a known killer. Secondhand smoke is listed as a Class A carcinogen. Government has a right to put limits on the use of dangerous and addictive products. Ken Svoboda and Terry Werner were the only council members with the conviction to stand firm for a smoking ban that deserves the name. The final version of the ban is ineffective, complicated and unfair. Mayor Seng would be wise to veto it.<sup>173</sup>

That same day, Mayor Seng vetoed the ordinance passed by the City Council writing:

The original Smokefree Air Act as introduced contained the key features of being fair and equitable, simple to enforce and easy to understand. I respect the City Council's rightful role in hearing public testimony and following the legislative process. But in reviewing what the council approved, I have concluded this ordinance is unfair, unenforceable and legally questionable.<sup>174</sup>

Following Mayor Seng's veto, health advocates began working to convince one of the five council members who had voted in favor of the ordinance to change his/her position because five votes was the number needed to override a veto; however, they were unsuccessful. Despite the efforts of health advocates, warnings from the Law Department and the Police Department that the ordinance was on shaky legal and enforcement grounds and the veto of the mayor, the Lincoln City Council once again voted 5 - 2 on December 22, 2003, to override the veto;<sup>175</sup> thus enacting, at best, an extremely confusing smokefree ordinance and setting a bad precedent for the rest of Nebraska.

Peter Hanauer, a lawyer at Americans for Nonsmokers' Right and expert on local smokefree ordinance language, described the problem with the ordinance wording:

The exception allowing smoking in enclosed, separately ventilated employee breakrooms is quite typical of laws that provide for 100% smokefree work areas at places of employment, but still allow for an indoor smoking room for employees away from their work stations during their breaks. This portion of the ordinance is clear and should not provide any difficulties with implementation or enforcement.

However, the exception for enclosed, separately ventilated smoking rooms is confusing for two reasons: 1) Given the exception for employee breakrooms, it does not seem reasonable to also provide for such smoking rooms in the office workplace. 2) Although the exception applies to both public places and places of employment, the language of the exception is more typical of provisions governing only public places, such as restaurants.

Although it is conceivable that the provisions for separately ventilated breakrooms and smoking rooms could co-exist (i.e., there could be separate rooms for smoking while performing work, as well as separate rooms for smoking while on break), in my analysis of several hundred laws relating to smoking in the workplace, I do not recall seeing both provisions in the same law. Work areas for smoking employees are almost never enclosed, separately ventilated, rooms, because they would be too costly and impractical. For these reasons, it seems unlikely that it was the intent of the Council to

allow smoking in work areas of office workplaces.

One possible interpretation for the smoking rooms would be that such rooms in public places are exempt from the smokefree requirements but that these rooms could not serve as a work area (e.g., a room in a restaurant where smokers could carry their own food to smoke while eating, but in which there was no table service). Another interpretation would be that these smoking rooms are exempt from the smokefree requirements and that these rooms can serve as a work area (e.g., a smoking room in a restaurant where waitstaff would have to work and would therefore be exposed to secondhand smoke).

In any event, these exceptions are confusing and overlapping. Although the smoking room exception purports to apply to both public places and workplaces, taken as a whole and in light of the breakroom exception, it more reasonably would only apply to public places, such as restaurants. (Bars may obtain an exemption from the ordinance.) In order to be certain about whether smoking rooms in public places can also be part of the work area, I believe there must either be a clear statement of legislative intent with respect to the smoking room exception or an amendment of the ordinance that clearly sets forth the applicability of that exception.<sup>176</sup>

As of March 2004, the City Council of Lincoln still has not specified whether their intent was to allow these “smoking rooms” to function work areas or not. The actual effect of the ordinance will depend on how the Lincoln City Council (and possibly the courts) chooses to interpret the confusing language about the “smoking rooms.” If the provisions for smoking rooms are interpreted in a way similar to the provision about smoking breakrooms, so that the “smoking rooms” cannot serve as a work area, then the practical effect will be to make most workplaces and public places (except bars) smokefree. If, on the other hand, they interpret the “smoking room” provision as allowing these rooms to function as work area, then employees would continue to be subjected to secondhand smoke and the ordinance would be so weak that it would represent a major victory for the tobacco industry.

## **ADVERTISING AND SAMPLING**

While the issues of tobacco advertising and the distribution of tobacco samples have not been as hotly contested in Nebraska compared to clean indoor air (and excise taxes), several tobacco control attempts in these areas have been made with only limited success.

### *Nebraska Attempts Warning Labels - LB 368 (1963)*

The clean indoor air laws proposed in Nebraska beginning in the 1970s were not the first tobacco control efforts in Nebraska. The very first attempt at tobacco control occurred in 1963 when state Senator T. C. Reeves of Central City sponsored a bill in the Legislature that would have made it illegal to sell cigarettes in the state unless the pack of cigarettes were labeled with the phrase, “Used excessively, this product will endanger human health,” in such a manner that this wording was distinguishable from the other printed material on the package.<sup>177</sup> Later the wording was changed to read, “Use of this product will endanger human health.”<sup>178</sup> This effort to include warning labels on cigarettes occurred before the first Surgeon General’s Report (released in 1964)<sup>179</sup> which concluded that smoking caused lung cancer and was two years before the US Congress enacted the Federal Cigarette Labeling and Advertising

Act in 1965, which preempted state and local action and required the weaker warning label: “Caution: Cigarette smoking may be hazardous to your health.”

This bill was supported by Dr. Henry Lemon, the director of the Eppley Institute for Research in Cancer and Allied Diseases at the University of Nebraska Medical Center, and Nebraska football star Bill (Thunder) Thornton, both of whom cited health concerns regarding smoking as their reason for supporting LB 368.<sup>180</sup> Dr. Lemon made the case for the bill by saying, “This is not a matter of morals. It is a matter of the science of health. If we label dangerous drugs, then we should so label cigarettes.”<sup>180</sup> Senator Reeves attacked the tobacco industry itself when he charged that they “have no moral conscience,” and said, “They never concern themselves with the suffering and misery which is the aftermath of the cigaret habit.”<sup>180</sup>

Even though four Nebraska wholesale companies opposed the bill at hearing, LB 368 was passed in the Public Health Committee by a vote of 5 to 2.<sup>180</sup> While the bill was later killed by the full Legislature by a vote of 26 against and 9 in favor, the effort did receive widespread attention and was covered in the press at least as far away as Milwaukee and Dallas.<sup>178, 181-183</sup>

#### *Free Samples of Spit Tobacco Prohibited - LB 48 (1989)*

In 1989, the Nebraska Legislature passed LB 48, which was sponsored by state Senator M. L. “Cap” Dierks. LB 48 sought to prohibit the distribution of free samples of spit tobacco.<sup>184</sup> This bill was significant for two reasons: 1) very few states prohibited distribution of free samples of any form of tobacco product, and 2) LB 48 was primarily pushed by dentists, specifically the Nebraska Dental Association.

The motivation for the Nebraska Dental Association’s involvement in tobacco control was that witnessing many cases of mouth cancer caused by spit tobacco prompted them to question whether such a substance should be distributed for free and in a manner that lent itself more easily to access by youth.<sup>185</sup> The first year that they attempted to pass this type of legislation was in 1987. Though it failed that year and again in the 1988 legislative session, the third time proved to be the charm.

As would be expected, the primary opposition to LB 48 came from the spit tobacco companies and not cigarette manufacturers. The Smokeless Tobacco Council (STC) was a group founded to represent the interests of companies that manufactured spit tobacco, just as the Tobacco Institute represented the cigarette companies. A memo dated January 31, 1989 from Kurt Malmgren, Senior Vice President of State Activities for the Tobacco Institute to Samuel Chilcote, Jr., President of the Tobacco Institute, describes a meeting of key individuals involved in the plan to defeat LB 48.<sup>186</sup> Lobbyists for the Smokeless Tobacco Council and U.S. Smokeless Tobacco, which manufactures Skoal and Copenhagen, met with the Tobacco Institute’s Nebraska lobbyists at the time, Walt Radcliffe and Bill Peters, in order to “discuss the coordination of plans to defeat LB48.”<sup>186</sup> It was noted that a telephone bank was in place if calls were needed for certain “targeted districts.” One option that was also discussed if it appeared that LB 48 could not be defeated was to offer an alternative bill which would only prohibit free samples of spit tobacco to individuals under the age of 18.<sup>186</sup>

Despite the efforts of the tobacco industry, the Nebraska Legislature passed LB 48 on March 2, 1989 and the bill was signed into law by Republican Governor Kay Orr (\$3,000 lifetime industry total) four days later.<sup>187</sup> With the passage of LB 48, free samples of spit tobacco could not be distributed in the state of Nebraska. Furthermore, the Nebraska Dental Association has remained involved in tobacco control efforts, including being a member of the SmokeLess Nebraska coalition, and its Executive Director, Tom Bassett, has been active in writing op-ed pieces against pro-tobacco industry legislative efforts such as a preemption bill in 1996.<sup>188</sup>

### *Efforts to Prohibit Tobacco Advertising at the Local Level*

In December, 1994, Mark Welsch of the Group to Alleviate Smoking Pollution (GASP) began pushing the Bellevue City Council to prohibit cigarette advertising on billboards within city limits.<sup>189</sup> According to the 2000 Census, Bellevue was the third largest city in Nebraska.<sup>1</sup> It is located just south of Omaha but it generally falls within the Omaha metropolitan area.

In 1994, the City Council was considering prohibiting any new billboards from being established.<sup>190</sup> The original purpose of the ordinance was to prevent an expansion of billboards along the Kennedy Expressway, which runs through Bellevue.<sup>190</sup> Because the city council was already debating billboards restrictions, Welsch and GASP saw this ordinance as an opportunity to initiate efforts to stop cigarette advertising through billboards.<sup>189</sup>

GASP's argument was that the tobacco industry used billboards to promote smoking to children, particularly because billboards were more likely to be seen by them than advertising in newspapers or magazines. This argument was supported by the American Council on Science and Health which conducted a review of relevant studies and concluded that advertising by the tobacco industry, including billboards, was often targeting minors.<sup>189</sup>

GASP's attempt stalled before the Bellevue City Council and no action was taken. Cigarette advertising throughout the state was not addressed until the passage of the Master Settlement Agreement (MSA) in 1998. One of the conditions of the settlement was that the tobacco industry could not advertise using billboards.

## **YOUTH ACCESS RESTRICTIONS**

Laws which seek to reduce the availability of tobacco products to children, generally known as youth access laws, have also been a focus of tobacco control efforts in Nebraska, especially at the local level. Even though youth access laws are not effective at reducing youth tobacco use,<sup>191</sup> the tobacco industry still opposes them and works to weaken proposed youth access laws and attempts to undermine the enforcement of the laws that have been passed.

### *Cigarette Vending Machine Restrictions - LB 130 (1991)*

In 1991, Senator DiAnna Schimek (D-Lincoln) sought to protect Nebraska's youth from tobacco by introducing a bill related to cigarette vending machines. Part of Senator Schimek's decision to introduce this bill was the result of lobbying done by the American Lung Association of Nebraska, which wrote the original version of the bill that was

introduced.<sup>192</sup> In its original form, LB 130 would have made it illegal to sell tobacco products from a vending machine in Nebraska. The last half of Section 1 of LB 130 stated, “To ensure that the use of tobacco products among minors is discouraged to the maximum extent possible, it is the intent of the Legislature to ban the use of vending machines and similar devices to dispense tobacco products within Nebraska.”<sup>193</sup>

LB 130 was assigned to the Judiciary Committee, which decided that it did not want to completely prohibit sales from a vending machine so by a vote of 5-2, the members of the Judiciary Committee voted to send LB 130 to the floor of the Legislature with an amendment that changed the language of the bill so that vending machines would only be prohibited “in facilities, buildings, or areas which are open to the general public.”<sup>194</sup>

Due to large number of bills introduced during the legislative session, LB 130 was not voted on by the full Legislature during the 1991 legislative session so it carried over to the 1992 session. At this time, Senator Schimek decided to declare LB 130 her priority bill to guarantee that it would be heard before the Legislature.<sup>195</sup>

LB 130 came up for debate at the end of January 1992. At this stage, Senator Scott Moore of Seward (\$2,750 lifetime industry total) successfully proposed an amendment that exempted any business that owned a liquor license from the vending machine restrictions.<sup>196</sup> The amendment also moved the date in which the new regulations would go into effective from January 1, 1993 to January 1, 1994.<sup>196, 197</sup> When interviewed by the *Omaha World-Herald*, Moore said that he felt that the bill was well-intentioned but that it would not actually keep cigarettes out of the hands of minors and he claimed, “What you’ll do is provide a lot of inconvenience for people who smoke.”<sup>196</sup>

Senator Ernie Chambers (I - Omaha; 7.7 policy score; \$0 lifetime industry total) attacked Moore’s actions and said that the amendment showed that legislators were just talk when it came to preventing minors from smoking. “There will be places available for minors to get cigarettes, thanks to Senator Moore and the others that voted with him. The tobacco industry and those making money from vending machines are calling the shots,” Chambers commented.<sup>196</sup>

Senator Schimek conceded that her bill had been watered down, but still felt that it would do some good. Machines would have to be removed in restaurants without liquor licenses, grocery stores, and laundromats, which vending companies claimed contained half of all the cigarette vending machines in the state.<sup>196</sup>

Despite the weakening of the bill by still allowing vending machines in some public places, the final version of LB 130 still provided relatively strong penalties for violators. LB 130 stated:

Any person violating this section shall be guilty of a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the offender’s license to sell tobacco in any and, upon conviction for a third or subsequent offense, the court shall order the permanent revocation of the offender’s license to sell tobacco if any.<sup>197</sup>



With the passage of LB 130 during the 1992 legislative session, cigarette vending machines in Nebraska could no longer be located in public places such as laundromats or arcades but they were still permitted in bars, bowling alleys, and many restaurants.<sup>197</sup>

#### *Omaha's Controversial Youth Access Law - Ordinance #32972 (1993)*

While Senator Schimek's effort to restrict vending machines was proceeding in the Legislature, work was underway in Omaha to pass an even stronger youth access ordinance. For over two years, numerous individuals and organizations such as members of the City Council, Mayor P.J. Morgan, the Omaha Police, GASP of Nebraska, the American Lung Association of Nebraska and PRIDE-Omaha and other members of the Omaha Community Partnership had worked to craft a city ordinance that dealt with the issue of access to tobacco by minors.<sup>198, 199</sup> PRIDE-Omaha was Omaha's leading drug prevention group and the Omaha Community Partnership was a group of community leaders who were involved in preventing drug use by minors.<sup>199</sup>

On April 27, 1993, the Omaha City Council passed Ordinance #32972, which placed specific restrictions on the location of vending machines, prohibited the distribution of free samples of tobacco products, and established stronger penalties for selling tobacco products to minors.<sup>199</sup> Because so many groups had been involved in developing this ordinance, the Omaha City passed it unanimously.<sup>200</sup>

The ordinance provided for a fine of no less than \$50 to no more than \$100 for a first violation. For getting caught selling to minors a second time, the establishment would be fined at least \$100 but not more than \$300 and would have their license to sell tobacco suspended for at least one day but not more than ten days. For all subsequent violations, the ordinance required increasing fines and increasing lengths of suspension after a hearing.<sup>201</sup> The license that could be suspended after a hearing was granted by the state, which would have serious repercussions for the future of the ordinance as discussed below.

Another key aspect of the new ordinance was that it would be enforced by using teens to attempt to make illegal purchases. The ordinance stated:

Such procedures may provide for using individuals who are less than 18 years of age to test compliance with this ordinance. It is appropriate to utilize individuals under the statutory age for the purposes of law enforcement or monitoring compliance with this ordinance if such endeavors are supervised by sworn law enforcement personnel.<sup>201</sup>

The Omaha Police Department quickly set about enforcing this ordinance. It went into effect in June and by early August, the Omaha Police had conducted compliance checks for tobacco and found that 77 out of 113 license holders sold to minors.<sup>199</sup> No citations were issued to the 68% of merchants that violated the youth access ordinance; instead letters were sent to them that offered free education but also informed them that citations would be issued in the future to merchants that were not in compliance.

In September, the Omaha Police Department established the STOPP Unit (Strategy To Overcome Peer Pressure). The formation of the unit was the result of a \$202,000 grant that the

Omaha Community Partnership received from the Robert Wood Johnson Foundation to fund Project STOPP,<sup>199</sup> most of which went to the STOPP Unit of the Police Department. The grant stipulated that at least three compliance checks had to be conducted in order to determine the effectiveness of the program. The check in August of the previous month was to function as the baseline. On March 9, 1994, compliance checks for both tobacco and alcohol were again conducted by the police. For this time, 39 businesses out of 116 were not in compliance (34%) for either tobacco and alcohol.<sup>199</sup>.

By March 1994, retailers began to oppose enforcement of the ordinance. They consisted primarily of individuals who had been cited for selling tobacco to minors. On April 29, 1994, an article appeared in the *Omaha World-Herald* in which James Martin Davis, an attorney representing a number of merchants who had been cited for violating the youth access ordinance regarding tobacco, commented on his clients' views of the ordinance. Davis said that the police practice of using minors as part of the undercover compliance checks was unfair; he said "It's preposterous that the police are creating offenses that, except for the police activity, would have never occurred."<sup>202</sup> He also stated his belief that the city ordinance was "unconstitutional." This was the opening salvo by Omaha retailers in an attempt to overturn Ordinance #32972.

On September 21, the STOPP unit conducted 88 compliance checks for businesses that sold tobacco. Out of these 88, 27 sold tobacco to a minor (31%).<sup>199</sup>

On September 29, 25 restaurant and bar owners picketed Police Headquarters in protest of the compliance checks.<sup>203</sup> The individuals represented restaurants, bars, services stations and other stores that sell tobacco.

Supporters of Ordinance #32972 and the efforts of the police were quick to mobilize to counteract the pressure from the retailers. By September 30, child advocacy, drug use prevention, and health groups met and formed a coalition named the Prevention Coalition for Children.<sup>199</sup> This coalition would play a major role in the coming months in combating attempts to weaken Omaha's tobacco control ordinance and its enforcement.

In response, Police Chief James Skinner held a press conference on October 7 to respond to the pressure from retailers by saying that the Omaha Police Department would continue to make random compliance checks to ensure that businesses which sold tobacco products were not illegally selling to minors.<sup>203</sup> Skinner defended the focus to preventing minors from getting access to tobacco and alcohol by commenting on the relationship between criminal behavior and the use of tobacco and alcohol and stated, "We're concentrating on prevention, so we don't continue to have young kids killing each other. We're sticking our head in the sand if we don't realize that."<sup>203</sup> At the press conference, representatives from the Prevention Coalition for Children and several others groups expressed their support of the police's efforts to enforce youth access laws including the superintendents or spokesperson for four school districts in and around Omaha and a representative from the mayor's office.<sup>203</sup>

### *Vending Companies' Lawsuit*

After Police Chief Skinner and the Omaha Police Department refused to give in to the demands of retailers, on October 21, 1994, four vending companies sought to get an injunction against the Omaha ordinance by filing a lawsuit in the Douglas County Circuit Court.<sup>204, 205</sup> The four vending companies were D.J.M. Amusements, Variety Vending, Dahl Vendors and Host Coffee. Named in the suit were the City of Omaha, Police Chief Skinner, and the Omaha Police Department.<sup>204</sup>

The vending companies argued that the ordinance was unconstitutional because it was vague, failed to provide adequate notice and hearing procedures to individuals affected by the ordinance and conflicted with state law.<sup>206</sup> They also argued that the manner in which police were enforcing the law was unconstitutional because the police were conducting undercover operations against businesses for which they had no indication that the ordinance was being violated and because the people who were ticketed (the owners) were not present at the time of the sale of tobacco to underage youth.

The retailers also began to pressure the Omaha City Council and mayoral candidates, three of whom were city council members. The retailers' lawyer, Davis, stated, "If the mayoral candidates don't publicly disapprove of these tactics, then they'll find pickets, by registered voters, in front of their campaign headquarters."<sup>207</sup>

During this time, the Prevention Coalition for Children remained active. In October, they gathered almost 2,000 petition signatures in support of strong youth access laws and their enforcement, got several op-ed pieces published in the *World-Herald*, and met with the City Council and mayoral candidates.<sup>199</sup> During the course of the lawsuit, members attended the court proceeding and contacted the media to maintain coverage on the fact that retailers were suing so that they did not have to comply with the city's youth access ordinance regarding tobacco.

In July, 1995, a Douglas County Circuit Court judge ruled that the ordinance was constitutional and provided adequate due process to individuals who are accused of violating the ordinance.<sup>208</sup> Judge Richard Spethman said that the ordinance was clear and that guidelines for enforcement were adequate. Spethman said, "The ordinance provides definitions that are not confusing to the average citizen."<sup>208</sup>

Predictably, the owners of the vending companies and their attorney spoke out against the decision, and city officials, the police, and tobacco control advocates applauded it. Representatives from PRIDE-Omaha, had attended the court hearings regarding the lawsuit were thrilled by the outcome. Cathy Shipp, the Youth Project Director of PRIDE-Omaha's Teen Advisory Panel, was quoted as saying, "We have received many, many phone calls of support from parents who want to see laws upheld regarding tobacco sales to teens."<sup>208</sup> Mark Welsch, President of Nebraska's Group to Alleviate Smoking Pollution (GASP) also commented on the decision by saying, "I think retailers that break our law are selling an addictive, poisonous drug to our kids, and they should be stopped."<sup>208</sup>

Following the dismissal of the lawsuit by the vending companies, the Prevention Coalition for Children was disbanded;<sup>199</sup> however, the legal troubles of Ordinance #32972 were not yet over.

### *The Baker's Supermarkets Lawsuit*

On August 18, 1995, the Omaha Police Department again conducted tobacco compliance checks on 84 businesses; 24 of these merchants (29%) sold to minors.<sup>199</sup> During this set of checks, several Baker's Supermarket stores sold to minors, a second offense at four locations; therefore, they were required by the city ordinance to suspend selling tobacco for at least one day.<sup>209</sup> Angered by this requirement to suspend sales, Fleming Supermarkets, the parent company of Baker's, filed a lawsuit in the District Court of Douglas County against the City of Omaha and the Administrative Board of Appeals of the City of Omaha on the grounds that Omaha's ordinance conflicted with state law.<sup>209</sup>

While Omaha's youth access ordinance was able to survive the lawsuit brought by the vending companies, the lawsuit brought by Baker's Supermarkets was more successful. One significant reason for this success was that Baker's had learned from the example set by the vending companies and the other retailers opposed to Omaha's ordinance that a battle in public over youth access would not be to the advantage of retailers who sought to weaken the law and its enforcement. As a result, Baker's did not take their appeal to the media or to public officials. Instead the company quietly took their case to court. No evidence could be found that the proceedings of the lawsuit or its eventual result were ever written about in the media.

On August 14, 1996, the lawsuit filed by Baker's parent company challenging the ordinance was heard by Douglas County District Judge Stephen A. Davis. The members of the Prevention Coalition for Children were unaware that this lawsuit was proceeding.<sup>199</sup>

On September 19, Judge Davis ruled that the portions pertaining to hearing procedures and punishments of the Omaha ordinance were in conflict with state laws and thus, were void. Specifically, Judge Davis ruled that it was not permissible for the City of Omaha to suspend a license granted by the State of Nebraska because state law did not provide for suspensions.<sup>209</sup>

Davis' ruling eliminated the ability of the Omaha Police Department and its STOPP Unit to aggressively enforce the city's youth access ordinance by removing the penalties against retailers that were provided in Ordinance #32972.<sup>199</sup> While the remaining portions of the ordinance (such as the tobacco sample restrictions) are still written into law, the ordinance as a whole can no longer be enforced strongly by the Omaha Police Department as they were before the lawsuit by Baker's Supermarkets because penalties provided by the ordinance were removed.

### *Cooperation from State Officials*

Under a federal law known as the Synar Amendment, states must demonstrate that tobacco retailers are complying with youth access laws and that illegal sales to youth are below 20%.<sup>210</sup> Failure to maintain compliance rates can result in the loss of federal funding from the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) to be used for substance abuse treatment.<sup>211</sup> As of 2004, if Nebraska fails to meet the requirements of the Synar Amendment, the state stands to lose \$2.9 million.<sup>210</sup>

On the initiative of the tobacco industry,<sup>212, 213</sup> Governor Benjamin Nelson (D-\$43,261 lifetime industry total (as Governor)), the Nebraska Department of Public Institutions, the State Patrol and the Nebraska Department of Health collaborated with traditional tobacco industry allies such as the Nebraska Retail Grocers Association, the Nebraska Petroleum Marketers and the Nebraska Retail Federation to create the “Stop the Sale” retailer education campaign with the nominal purpose of meeting the requirements of the Synar Amendment. Such tobacco industry inspired programs are designed to provide the appearance of addressing the problem of youth smoking while not engaging in any meaningful activities that will actually reduce youth smoking.<sup>214</sup> Not surprisingly, later, Philip Morris attempted to use this collaboration to pass youth access legislation that was favorable to the tobacco industry by introducing a weak youth access bill that included state preemption of stronger local laws as will be discussed below. Because the tobacco industry has historically been more effective at the state level, the tobacco industry uses state preemption to keep local communities from passing strong tobacco control ordinance including 100% smokefree workplace ordinances.<sup>110</sup>

As was done elsewhere, including Missouri,<sup>211214</sup> the tobacco industry sought to utilize the Synar Amendment for their own benefit. In a December 13, 1993, Hurst Marshall, a Vice President for the Tobacco Institute, wrote Roger Mozingo, a former Vice President at the Tobacco Institute and later, R.J. Reynolds’ Vice President of State Government Relations, summarizing the industry’s ADAMHA legislative plans for Nebraska. He wrote:

After a meeting between industry personnel and Governor Nelson, the governor informed the Department of Health that an ad hoc committee is to be established between the two groups to develop language which meets ADAMHA [Synar] regulations. We expect legislation or an executive order to be reasonable [from the tobacco industry’s point of view] and hopefully, include preemption.<sup>212</sup>

In another summary from Marshall to Mozingo on February 1, 1994, Marshall updated developments in Nebraska. He stated:

Governor Nelson has authorized the Liquor Enforcement division to develop rules dealing with ADAMHA with input from tobacco retail trade. TI lobbyist is part of working group dealing with the administration to ensure industry concerns are implemented.<sup>213</sup>

In May, 1995, the collaboration between the tobacco industry, tobacco retailers and the State of Nebraska took another step forward when the Department of Health decided to use part of a video produced by R.J. Reynolds in their own video to educate Nebraska retailers on not selling tobacco to minors.<sup>215</sup> The request was detailed in a letter from Bill Lindquist, a sales executive for R.J. Reynolds, to Tom Griscom, the Executive Vice President of External Relations for R.J. Reynolds. In the letter, Lindquist wrote:

We were contacted by the Nebraska Department of Health who want to put part of our Support The Law video in a video they are producing specifically for NE retailers. They are working together with the NE Retailers Assoc., and Tobacco Lobbyists (Only one name given - Walt Radcliffe, who Hurst Marshall says is with the smokeless tobacco group). They felt that of all the videos available on this issue, our video was one of the best in dealing with the issue of educating and training retailers on not selling cigarettes to youth. They want to include the section that shows various

attempts by minors to purchase cigarettes and the steps the retailer goes through in refusing to sell.<sup>215</sup>

This request by the Nebraska Department of Health – wanting to implement part of a tobacco industry program – was so unusual that Lindquist was suspicious of their motive at first. He continued in the letter, “I spoke with the person at the NE Dept. of Health and she seems on the level. Plus, given who else is involved with this project I don’t see any concerns.” Handwritten on the bottom of the letter is the words, “We gave our permission.”<sup>215</sup>

During October, 1995, “Stop the Sale” free workshops were held in nine locations across Nebraska. As Dwayne Richard, President of the Nebraska Retail Federation (NRF), told “Select NRF Members,” these workshops were “the result of eight months of work by the Nebraska Retail Federation, Nebraska Retail Grocers Association, Nebraska Petroleum Marketers, Nebraska Department of Health, Department of Public Institutions and the Nebraska Highway Patrol.”<sup>216</sup> These workshops consisted of education about Nebraska’s youth access laws, training about the prevention of sales to minors which included a video presentation (though it is not known if this video contained scenes from R.J. Reynolds’ “Support the Law” video) and the distribution of signage and other materials.<sup>216</sup>

On November 22, 1995, Governor Nelson publicly stated his support for the efforts made by the state agencies and tobacco retailers. In a press release and press conference that took place at a Q4Quik convenience store in Lincoln, Nelson applauded the results of the collaboration. At the press conference, he stood between one sign saying “We Check IDs” and another sign of Joe Camel.<sup>217</sup> In the press release Nelson stated, “Together, they have found a common ground and have come up with a non-regulatory, common-sense strategy designed to decrease tobacco use by our young people.”<sup>218</sup>

This collaboration between the governor, three state agencies and tobacco retailers publically seemed to show that youth access was an area where the government and the tobacco industry could work together to improve the welfare of the public; however, the next legislative session, Philip Morris tried to use this legitimacy to try to pass preemption in Nebraska, but the Nebraska Department of Health helped to dispel this legitimacy by actively opposing the preemption attempt.

#### *Philip Morris’ Attempt to Pass Preemption - LB 1350 (1996)*

During the middle of the 1990 session, Philip Morris was actively promoting its “Action Against Access” (AAA) program which focused on using retailer education as a means to comply with the Synar Amendment. In addition, the “Action Against Access” plan also called for introducing weak youth access laws that often included preemption.<sup>219</sup> After collaborating with state agencies the previous year on retailer education, Philip Morris attempted to pass preemption in Nebraska in 1996.

During the 1996 legislative session, Senators Dan Fisher of Grand Island (\$3,000 lifetime industry total), John Hilgert of Omaha (\$4,500 lifetime industry total), Carol Hudkins of Malcolm (R-4.2 policy score; \$6,000 lifetime industry total), Dan Lynch of Omaha (\$6,800 lifetime industry total), Dwite Pedersen of Elkhorn (R-3.5 policy score; \$7,600 lifetime industry total), Carol Pirsch of Omaha (\$4,450 lifetime industry total) and Jennie Roback of

Columbus (\$7,800 lifetime industry total) sponsored a youth access bill that contained preemption, reduced tobacco licensing fees, and made it a crime for anyone to conduct compliance checks without involvement from law enforcement officers.<sup>220</sup> (This later provision would have made it impossible, for all practical purposes, for local health departments to enforce youth access laws.) This bill was pushed by Nebraska's retail community and interestingly, the tobacco industry did not try to hide their support of the bill.

Fisher, Hilgert, Hudkins, Lynch and Pedersen were running for office in 1996 and everyone received money from Philip Morris except Hilgert who received money from R.J. Reynolds (See Appendix). Hilgert later dropped himself from the bill. Pirsch and Robak both received money from Philip Morris during their last election in 1994 (See Appendix). As of 2003, Hudkins and Pedersen remained state senators.

The preemption clause of LB 1350 stated:

Such sections shall be applicable and uniform throughout the state, and unless specifically allowed by state law, no political subdivision, including an home rule charter city, or department, board, or agency thereof and no other department, or agency of the state, shall enact new or enforce existing laws, ordinances, or rules regulating the sale, distribution, marketing, display, or promotion of tobacco products.<sup>220</sup>

Nebraska's health advocates did not remain silent on LB 1350. On February 12, their position appeared in the *Omaha World-Herald's* Public Pulse section. Written by Daniel Wherry of the American Cancer Society, it noted that the sponsors of the bill had "put their names on the line as advocates for the tobacco industry."<sup>221</sup> Wherry added, "This bill, under the guise of raising penalties, tries to make it a crime for anyone to conduct compliance checks of vendors without law enforcement involvement."<sup>221</sup> He also made sure to discuss preemption by concluding, "Most importantly, this bill proposes a preemption clause that prohibits any community from passing any tobacco law or ordinances that are tougher than the watered-down rules proposed by the bill or ones already on the books, which are not being enforced."<sup>221</sup>

The retail community, on behalf of the tobacco industry, also tried to utilize the editorial pages. In a guest column entitled "Uniform Cigarette Law Needed", Fred Stone, Executive Director of the Nebraska Petroleum Marketers and Convenience Store Association, Kathy Siefken, Executive Director of the Nebraska Retail Grocers Association, and Dwayne Richard, President of the Nebraska Retail Federation, wrote of the Nebraska retail community's support for LB 1350.<sup>222</sup> The authors cited their cooperation with the State Patrol and the Department of Health Services as proof of their good intentions concerning underage tobacco use. "Last year, Nebraska's retail trade associations joined state law enforcement and health officials to launch a program aimed at preventing tobacco sales to minors," they wrote, adding later:

This year, retailers are building on their commitment by supporting legislation to toughen Nebraska's minimum age laws. LB 1350 is a comprehensive measure which provides for licensing of retailers who sell cigarettes, requires unannounced compliance testing by law enforcement officers and slaps fines on repeat offenders. In addition, retailers convicted of a third offense could have their license suspended.<sup>222</sup>

The op-ed also makes clear the retailers' position on preemption:

Particularly important from our point of view is that the measure establishes uniform statewide standards that would apply to all businesses regardless of where they operate. Uniform regulation is good public policy and good business policy. It is preferable to a patchwork quilt of local laws that is confusing to consumers and inconvenient to businesses that operate in more than one locality. Worst of all, in the absence of uniform regulations, businesses can be placed at a competitive disadvantage when they are located in a town that has more restrictive laws than its neighbors. Uniform legislation provides a level playing field on which all business can compete.<sup>222</sup>

They conclude, "State Sens. Dan Fisher, Carol Hudkins, Dan Lynch, Dwite Pedersen, Carol Pirsch and Jennie Robak should be commended for introducing LB 1350 as a solution to a problem confronting the state of Nebraska."<sup>222</sup>

Within a few days, health advocates had responded with an op-ed of their own in the *World-Herald*. On March 2, a piece written by Tom Bassett, Executive Director of the Nebraska Dental Association, was published that countered the retailers' position.<sup>188</sup> Bassett attacked tobacco retailers and tobacco lobbyists for trying to misinform legislators, the governor and the public about the intent of LB 1350 in their efforts to get it passed and called it "a con job of major proportions." He noted that the bill was opposed by the Nebraska Dental Association, the American Lung Association, the American Cancer Society, the Nebraska Network of Drug Free Youth, PRIDE-Omaha, the PTA and other health groups. Bassett also stated that LB 1350 was a "tobacco lobbyist's dream come true" because it contained preemption. As he wrote, "It would take all authority away from towns and counties to enact ordinances that would be tougher on tobacco issues than state law provides. It's called a pre-emption clause, and it's part of the tobacco industry's national plan to keep all the power in state capitals where its lobbyists have the most influence." Bassett concluded by saying, "LB 1350 should be so soundly defeated that in the future senators will ask lots of questions before they sign a bill presented to them by the tobacco lobbyists and their cohorts."<sup>188</sup>

The efforts of tobacco control advocates were successful and the bill did not even make it out of committee. Not only did the bill die in committee, but both Hudkins and Pirsch withdrew their names from the bill.<sup>223</sup>

### *The Rudman Report*

In 1997, Warren Rudman, former U.S. Senator from New Hampshire, and the New York City-based law firm of Paul, Weiss, Rifkind, Wharton & Garrison prepared a document entitled "Report to the Management of Philip Morris U.S.A Regarding Implementation of the Action Against Access Program."<sup>219</sup> The report was prepared to coincide with June 27, 1996, the one year anniversary of the start of the Philip Morris' Action Against Access Program.

In June, 1996, Philip Morris prepared a document which detailed the purpose of the Rudman Report. The Philip Morris document stated:

Media and ally awareness of the success of this program [Action Against Access] needs to be enhanced. There is a distinct need for a two pronged, continuing education



strategy to clearly communicate the achievements of the program to reach government leaders and the general public.

Members of Congress . . . need both cover for their actions on behalf of PM and the rest of the industry, and a better understanding of the positive actions being undertaken by PM.

Secondly, the constant battle to get the traditional media to provide both substantial and fair coverage of PM's efforts has become more difficult in light of recent events. The following proposed actions have been developed to stress the significance and positive (but as yet unheralded) actions by Philip Morris to keep kids away from cigarettes.<sup>224</sup>

The Rudman Report, though presented as an independent evaluation, was crafted by Philip Morris to accomplish these two tasks. The Philip Morris document stated it this way, "The release of this audit/report on June 26<sup>th</sup>, will be the news hook around which this proposal is based."<sup>224</sup>

The findings detailed in the Rudman Report concerning Nebraska provide an analysis of the tobacco industry's failure to pass "Action Against Access" legislation from Philip Morris' point of view. Indeed, Philip Morris representatives and allies provided much of the information for this report. The following were some of the findings from the Rudman Report for Nebraska:

The legislation [LB 1350] was supported by a coalition of retail interests and tobacco manufacturers. This coalition had previously worked with the state Department of Health to develop tobacco sales training programs for retail employees. However, despite retail and tobacco industry support for legislation in 1996, the Nebraska Department of Health did not support legislative action in 1996 and specifically opposed local preemption and the requirement that law enforcement officers participate in retail compliance testing. Anti-tobacco organizations opposed the legislation, objecting in particular to local preemption and the prohibition on using private citizens in retail compliance testing.

According to PMUSA representatives, the "short session" in 1996 (60 days, versus 90 days in 1997), worked to frustrate consideration of the legislation in 1996. The legislation's sponsor<sup>110</sup> informed PMUSA that there was inadequate time to complete action on the bill in 1996, and thus there would be committee hearings but no committee vote on the matter. PMUSA requested that the Governor's office intercede and encourage consideration of the bill, but it was reportedly told that no time existed to consider the bill in 1996. A representative of the Nebraska Retail Federation with whom we spoke did not disagree with this assessment, but did note that the presence of tobacco industry support for the legislation did cause some concern among some state legislators. PMUSA representatives disagreed with this observation, observing that while the political climate in some states required PMUSA to play a secondary role in AAA legislation, Nebraska was not such a case. Newspaper articles tend to support PMUSA's interpretation. PMUSA's representatives are optimistic that the legislation will pass in the longer 1997 session, and predict that the local preemption provision might not be included in next year's bill.<sup>219</sup>

While Philip Morris' attempt to utilize the cooperation between tobacco retailers and the State of Nebraska in order to pass preemption in a youth access bill was not successful, it

does represent a cautionary tale about how the tobacco industry and its allies are willing to utilize previous cooperation, in this case on employee education, to pass legislation that is harmful to the health of the public.

### *Youth Possession Ordinances*

During the summer of 1997, three cities that lie along Interstate 80 passed ordinances that outlawed the possession of tobacco by a minor.<sup>225</sup> Spearheading these ordinances were the police chiefs of North Platte, Gothenburg and Cozad.<sup>225</sup> Their reason for pushing for the possession ordinances was that they said it was frustrating for officers to attempt to enforce Nebraska's tobacco laws which made it a crime for minors to use tobacco or purchase it but not to possess it. Much of this difficulty came from police efforts to crack down on minors smoking during their lunch break. Groups of high school students would often smoke across the street from their school during that break. The penalty for violating these new youth possession ordinances was a fine of up to \$100.<sup>225</sup>

The response of health advocates was to praise the intent of the ordinances in seeking to address the problem of underage smoking, but they also cautioned that youth possession ordinances would not solve the problem. As Jeff Soukup of Tobacco Free Nebraska stated, "It wasn't too long ago that people would just shrug their shoulders over teen-age smoking. It's commendable that communities are recognizing it as the number one preventable health problem."<sup>225</sup> Despite the praise seeking to address the issue, both Soukup and Corrie Kielty of the Smokeless Nebraska Coalition stated their position that other steps, such as effective education efforts and enforcement of laws that penalized the sale of tobacco to minors, needed to be taken to address underage smoking. Kielty said, "Our concern is that we hold kids accountable and we hold adults accountable, too. It's not the kids that are profiting from the sale of tobacco. It's the adults."<sup>225</sup> Because youth possession laws focus responsibility on children instead of businesses and have not been shown to be effective in reducing tobacco use, the tobacco industry is supportive of youth possession ordinances.<sup>226, 227</sup>

The cautioning of advocates did not prevent the *Omaha World-Herald's* editorial staff from downplaying the need for an educational component to reduce youth smoking. In a September 3 editorial entitled "Sensible Approach to Tobacco Problem" they presented an argument that making tobacco possession by a minor illegal would work better than an educational campaign. They argued:

If hearts and minds can be converted by a clever slogan, wonderful. But the first priority is to keep tobacco out of the mouths - and smoke out of the lungs - of children. Fines of up to \$100 in Cozad, Gothenburg and North Platte may do more than television commercials to stop a teen-ager from smoking or chewing. Certainly the fines should help increase the vigilance of parents.<sup>228</sup>

Later the editors add:

The city councils of three Nebraska cities have come up with a better way to deal with smoking. Prohibiting possession of tobacco as well as its purchase and use by minors plugs a gap in the law. It makes minors accountable. These council members have shown a caring attitude toward the young people of their communities.<sup>228</sup>

By early October, Kearney, another city along I-80, had passed a tobacco possession ordinance similar to the others.<sup>229</sup> By February, 1998, the *World-Herald* reported that at least 11 communities had passed ordinances that made possession of tobacco by a minor illegal.<sup>230</sup> As of 2003, a total of 19 cities had passed youth possession ordinances in Nebraska (Table 18).<sup>231</sup>

Table 18: Cities in Nebraska that passed youth tobacco possession ordinances as of 2003

Ainsworth	Fremont	Holdredge	Shelton
Alliance	Gibbon	Kearney	Sidney
Cozad	Gothenburg	Maywood	Wayne
Curtis	Grand Island	North Platte	Yutan
Eustis	Hastings	Plattsmouth	

### *Plattsmouth & Omaha Pass Youth Access Ordinances*

In 2002, two neighboring cities, Plattsmouth and Omaha, were both successful in passing youth access bills that required vendor assistance in order to access any tobacco products. Plattsmouth is much smaller than Omaha with a population of only about 7,000 but it is the largest city within Cass County, which had a total population of approximately 25,000 in 2000.<sup>1</sup> Omaha, which is the largest city in Nebraska, has a metropolitan area that encompasses Douglas and much of Sarpy Counties which have a combined population of approximately 587,000 in 2000.<sup>1</sup>

An initial step toward passing both of these ordinances was “Operation Storefront.” In 1999, the local tobacco control coalitions for both cities participated in this nationwide project which sought to “document the presence, locations and types of retail tobacco advertising, promotion and product placement in their communities.”<sup>232</sup> Teams of high school youth and adult sponsors visited local retail outlets in an effort to answer four general questions:

1. Are tobacco products placed near products which attract children (candy, toys, soda pop, snacks, etc.)? Or are they near adult products (laundry, home repair or automobile products)?
2. Are tobacco products placed behind the counter so they require face-to-face transactions with clerks or are they located near doors, at child’s-eye level, or away from the clerk’s view and easily shoplifted?
3. Are there more tobacco ads or promotions in inner-city or lower income neighborhoods than in middle or high-income neighborhoods?
4. Are tobacco products or advertising placed below 3 feet? Since it is illegal for children to purchase or use tobacco products, and it is fairly difficult for adults to bend down to the 3-foot level, any placement or advertising below 3 feet would be cause for question.<sup>232</sup>

In Omaha, these efforts were conducted by the Metropolitan Omaha Tobacco Awareness Coalition (MOTAC) and Our Healthy Community Partnership. MOTAC was Omaha's local tobacco control coalition and was still operating as of 2003. Our Healthy Community Partnership was a consortium of various health-related groups in Omaha such as health care providers, social service agencies and health insurers. On October 30, 1999 "Operation Storefront" teams visited over 150 businesses in metropolitan Omaha to survey their product and advertising placement.<sup>232</sup>

The following week, on November 6, 1999, a smaller but similar "Operation Storefront" was carried out in neighboring Cass County, including Plattsmouth.<sup>232</sup> This effort was conducted by Cass County Tobacco is A Drug (TAD). Cass County TAD was the local tobacco control coalition within that county and was still active as of 2003.

These "Operation Storefront" activities found that stores within these communities had cigarettes and other tobacco products at a level that could be reached by children and that these tobacco products were in open displays that could be accessed by anyone. Examples such as cigarettes being placed close to the door of the store, which allowed them to be easily shoplifted, were also found. The youth access ordinances that were eventually passed by Omaha and Plattsmouth were designed to eliminate the abilities of minors to access tobacco products with the ease that was seen in "Operation Storefront;" however, it would take several more years for local tobacco control advocates to be successful in getting their respective city councils to pass stronger youth access legislation.

In 2001, Cass County TAD hired Sandy Thomas as its Tobacco Prevention Coordinator, which was its first paid staff position.<sup>233</sup> One of the first actions that Thomas undertook was an educational campaign to increase the community's awareness about the need for tobacco control. In October, 2001, she organized a meeting to discuss the Communities of Excellence manual developed by American Cancer Society, which focused on the steps that local communities could take to reduce the harm done by tobacco.<sup>233</sup>

Three Plattsmouth city council members, John Porter, Doug Derby and Paul Lambert, attended this meeting.<sup>234</sup> One of the topics discussed in the manual was the need to prevent minors from shoplifting tobacco products by requiring that all such products could only be accessed by a store employee. In practice, this requirement meant that tobacco products had to be behind a counter or locked in a cabinet. The three council members left convinced that such an ordinance was an important step for preventing tobacco use by minors and that it would be possible to pass.<sup>233</sup> They began collaborating with Cass County TAD to educate the rest of the city council on this issue.

As a result of this effort, on March 18, 2002, the Plattsmouth City Council passed a youth access ordinance unanimously which stated:

No person may (a) sell, permit to be sold, or offer for sale tobacco or tobacco products by means other than Vendor-Assisted Access, or (b) display tobacco or tobacco products in a manner allowing customers access to tobacco or tobacco products without vendor assistance.<sup>235</sup>

This ordinance passed through the city council with little resistance. While some local merchants were opposed, many store owners in Plattsmouth had already placed tobacco behind

a counter to avoid shoplifting.<sup>233</sup> As a result, the opposition from local retailers was not strong enough to defeat a bill that was being pushed by three council members.

Almost seven months later, Omaha passed a similar youth access ordinance on October 8, 2002.<sup>236</sup> MOTAC had not been as fortunate as Cass County TAD with regard to council members willing to push for youth access legislation, but they were able to secure one legislative champion. In 2001, Councilman Garry Gernandt decided to help after meeting with MOTAC's youth groups, Get Involved Fight Tobacco (GIFT).<sup>237</sup> The youth presented Gernandt with the results from Operation Storefront and later surveys that were conducted by GIFT of local stores that sold tobacco products. These presentations convinced him to propose a youth access ordinance that required vendor assistance for an access to tobacco products.<sup>237</sup>

With the support of a legislative champion and continued pressure from MOTAC and its affiliated youth group, the ordinance passed the city council of Omaha unanimously.<sup>238</sup> While the language between the Plattsmouth and Omaha ordinances were very similar, the Omaha ordinance also provided for a punishment of a \$200 fine for the first offense and a \$500 fine for any subsequent offense.<sup>236</sup>

One of reasons why the Omaha ordinance passed unanimously was because, as in Plattsmouth, the opposition from retailers was weak because many retailers in Omaha already had moved their tobacco products behind the counter or placed them under lock and key.<sup>238</sup> One local supermarket chain, No Frills, spoke out against the ordinance at the public hearing claiming that it should be left to the businesses to make product placement decisions. Overall, the retail community, including Baker's Supermarkets, who had filed a lawsuit to weaken a previous youth access ordinance in Omaha, was silent.<sup>238</sup>

It did not escape the attention of Councilman Gernandt and members of MOTAC that this ordinance was putting into law what many retailers had already done. Therefore, they recognized that the ordinance was only a part of efforts needed to reduce the number of minors that use tobacco products. As Kathy Burson, President of MOTAC and Tobacco Prevention Coordinator of PRIDE-Omaha, stated, "There's not one magic bullet that will completely eliminate the problem. But the youth-access issue is a very important component of a comprehensive approach."<sup>237</sup> Speaking about the effect of the ordinance on youth smoking, Councilman Gernandt told the *Omaha World-Herald*, "This is just a small baby step."<sup>237</sup>

In Nebraska, the tobacco industry and its allies have worked to ensure the passage of weak youth access laws and have actively opposed the effective enforcement of these laws. Furthermore, in 1996, Philip Morris unsuccessfully attempted to use the issue of youth access to pass preemption in Nebraska.

## **EARLY CIGARETTE EXCISE TAX INCREASES**

Historically, the Nebraska Legislature has increased the cigarette excise tax rarely and in small increments. For example, it was increased from \$0.14 to \$0.18 in 1982, from \$0.18 to \$0.23 in 1986 and from \$0.23 to \$0.27 in 1987. (More recent excise tax increase efforts are shown in Table 19). Often these smaller tax increases are the result of hard economic times that forced the Legislature to increase the excise tax to balance the budget. The tobacco

industry has shown little concern over these small tax hikes. When health advocates have pushed for excise tax increases, they have tried for more substantial increments to reduce cigarette consumption (and, in one case, finance environmental programs), generally without success. Health advocates have also attempted to secure a portion of an excise tax increase to be dedicated to funding tobacco control efforts, again with little success.

*Nebraska Clean Environment Act*

By early 1992, a group of environmentalists in Nebraska had been working for over a year preparing for an initiative drive to increase the excise tax on a pack of cigarettes by 25 cents.<sup>239</sup> This money would have gone to fund a tree planting program, a statewide recycling effort, cancer research and smoking cessation programs. This group called themselves the Nebraska Clean Environment Committee and they were led by Francis Moul, an avid environmentalist and the husband of the lieutenant governor. While health advocates in the state were in favor of the Nebraska Clean Environment Committee’s campaign to raise the state’s cigarette excise tax, the tobacco control community in Nebraska was not well-organized at the time and could not provide a high level of support.

The actions of the Clean Environment Committee did not go unnoticed by the tobacco industry. A news summary prepared by the State Activities Division of the Tobacco Institute on October 10, 1991 indicates that the tobacco industry was monitoring the progress of the Clean Environment Committee before the petition drive was announced; however, the industry did not seem concerned about the possibility of an initiative until advocates began their petition drive.<sup>240</sup>

The tobacco industry was aware of the launch of the petition drive almost as soon as the membership of the committee itself. Within a week of when he sent it to his donors, Moul's letter announcing the start of the petition campaign was in the hands of the R.J. Reynolds’ Government Relations Department which forwarded it on to Philip Morris.<sup>239</sup> The letter that R.J. Reynolds and Philip Morris had in their possession was addressed to Rita Sanders. Sanders worked for the Nebraska Licensed Beverage Association, which has long been allied with R. J. Reynolds and both organizations have shared the same lobbyist in Nebraska, Jim Moylan.<sup>5, 241</sup>

Table 19: Summary of Efforts to Increase Tobacco Excise Tax in Nebraska (Key Events)

<b>Year</b>	<b>Sponsor</b>	<b>Bill Number (if applicable)</b>	<b>Proposed Increase</b>	<b>Status</b>
1992	Nebraska Clean Environment Committee		Initiative that attempted to increase the tobacco excise tax by \$0.25 to fund environmental efforts and smoking cessation.	Failed due to insufficient number of signatures

1993	Sen. Jerome Warner (Waverly)	LB 22	Increased the excise tax by \$0.05 to help balance the state budget	Passed
1993	Sen. John Lindsay (Omaha)	LB 595	Increased the excise tax by \$0.02 to pay for cancer research at the University of Nebraska Medical Center and Creighton University	Passed
1999	Sen. David Landis (Lincoln)	LB 505	Attempted to increase the excise tax by \$0.66. Approximately \$0.14 earmark for tobacco control.	Failed
2001	Sen. Jim Jensen (Omaha)	LB 792	Attempted to increase the excise tax by \$0.30. \$0.05 earmark for tobacco control.	Failed
2002	Sen. Jensen	LB 1149	Attempted to increase the excise tax by \$0.50. \$7 million per year was designated for tobacco control.	Failed
2002	Revenue Committee	LB 1085	Tax increase bill that increased the excise tax by \$0.30 to help meet budget constraints. No earmark for tobacco control.	Passed

The initial strategy taken by the tobacco industry was discussed by Matt Paluszek, Government Affairs Regional Director for Philip Morris, in a memo to other senior Philip Morris executives.<sup>242</sup> He stated, “Our short-term strategy is to make it known that there is broad-based opposition to this initiative, so as to undermine efforts to raise money for the campaign and to get the 42,000 valid signatures needed.”<sup>242</sup> Paluszek also wrote that all press inquires would be handled by Bill Peters, the Tobacco Institute’s lobbyist for Nebraska, and he named possible allies in their fight against the initiative, namely, “NE Retailer Federation, Farm Bureau, NE Consumer Packaging Council, Higher Education representatives (and possibly smoker’s rights).”<sup>242</sup>

Another list which appears to include possible allies was found in tobacco industry documents that was handwritten on a copy of the Clean Environment Committee’s donation information sheet, but it is not known who wrote this list. This list included the “NE Tax Research Council, Chamber [of Commerce], Farm Bureau, Solid Waste (NE Consumer Packaging Council) - Retail Merchants, Smokers, Retail Grocers, University [of Nebraska], Cancer Research, Every Group That Is Currently Recieving (sic) Funding.”<sup>243</sup>

While the Clean Environment Committee was just getting their petition off the ground, the tobacco industry had their hands full with several other initiatives. Similar tax initiatives were further along in Massachusetts, Colorado and Oregon, and new ones were beginning in Arkansas and Oklahoma as well.<sup>244</sup> The tobacco industry was already focused on these other initiatives and they did not take the threat posed by the Francis Moul and his group very seriously. As a result, the initial response by the tobacco industry was to simply monitor the progress of the Nebraska Clean Environment Committee. As Robert McAdam, Tobacco Institute Vice President of State Affairs for Initiatives, Referendums, and Special Projects, and Daniel Wahby, Director of Special Projects for the Tobacco Institute, stated in a memo to the Tobacco Institute Coordinating Committee, "It has been consistently believed that the proponents of this issue were not politically sophisticated enough to qualify this issue for the ballot. Now that they have filed this issue for circulation, we will be monitoring their activity closely to determine their progress."<sup>244</sup> Both McAdam and Wahby would lead the tobacco industry's opposition to the Nebraska Clean Environment Act.

Through the middle of May, the tobacco industry mainly focused on monitoring the progress of signature-gathering. A memo from McAdam to the Tobacco Institute Coordinating Committee on May 19, 1992 stated, "There is still little evidence that the proponents of this initiative have organized sufficiently to qualify this issue for the ballot. While they did have some petition gatherers located at polling places during this state's primary election, they did not have the coverage necessary to obtain sufficient signatures."<sup>245</sup>

At the same time, however, the tobacco industry started to spend money to fight the petition. On May 20, McAdam wrote to the Tobacco Institute Management Committee saying, "In an attempt to pay for some preparatory legal work and for a possible survey should the petition gatherers appear to be reaching their goal, I believe we need to allocate \$40,000 for this campaign at this time."<sup>246</sup> By the middle of June, McAdam was beginning to take the initiative campaign in Nebraska more seriously. His memo to the Tobacco Institute Coordinating Committee on June 15 stated, "While the proponents of the tax increase initiative in this state continue to appear somewhat disorganized, they have recently hired a professional consulting firm to help them gather signatures throughout the state. They have indicated to reporters that they plan to pay signature gatherers on an hourly basis. While it is still too early to determine if they will be successful, we have organized our legal approach to challenging certain aspects of the initiative, as well as the individual signatures that the proponents may submit."<sup>247</sup>

By June 17, the first assessment for funds to combat the Nebraska initiative was prepared and sent to senior executives within Philip Morris, R.J. Reynolds, Lorillard and American Tobacco with the total amount being the \$40,000 requested by McAdam, divided between the companies on the basis of market share.<sup>248</sup>

This money was to be sent to the Nebraska Executive Committee c/o Bill Peters, who was the Tobacco Institute's lobbyist for Nebraska.<sup>4, 249, 250</sup> These "Executive Committees" and other front groups with neutral to positive-sounding names, were led by the Tobacco Institute lobbyist in states where an initiative was underway.<sup>251</sup> For example, money from the tobacco industry to defeat the initiative in Arizona was sent to the Arizona Executive Committee and in New Jersey, the checks were mailed to John O'Conner in the Tobacco Institute's office in



Albany, New York, but the checks were to be made payable to Citizens for Representative Democracy in West Trenton, New Jersey.<sup>248</sup>

In July, the Nebraska Clean Environment Committee submitted an estimated 48,000 signatures to the Secretary of State for certification.<sup>250</sup> The total number of signatures that was needed to be placed on the ballot was 41,058.<sup>252</sup> By then, the tobacco industry was actively attempting to recruit new allies to help in its fight against this environmental initiative. In addition to the “traditional” tobacco industry allies, which included business and tax groups,<sup>4,</sup><sup>20</sup> the Tobacco Institute was attempting to enlist the aid of WIFE, which stands for Women Involved in Farm Economics. WIFE is a national organization whose president in 1992 was Elaine Stuhr, who was elected a Nebraska state senator from Bradshaw in 1994 and remained in the Legislature as of 2003 (R - 4.3 policy score; \$1,250 lifetime industry total). In a letter to Stuhr, Daniel Wahby, the Director of Special Projects for the Tobacco Institute, wrote, “First of all, I would like to take this opportunity to thank you and your organization for your interest in assisting our efforts in defeating the proposed 25 cents per pack excise tax on tobacco products.”<sup>253</sup> Wahby tells Stuhr that he has asked Bill Peters to get in touch with her to give her more information. He states, “I apologize for not having specific information in writing as it relates to the farm community in Nebraska but I trust your conversation with Mr. Peters will give you some information to go on.”<sup>253</sup>

The tobacco industry also began threatening a lawsuit if the issue was placed on the ballot. Bill Peters, the Tobacco Institute’s lobbyist, told reporters that the true number of signatures that needed to be obtained was more than 61,000 and not the 41,058 that the secretary of state said was necessary.<sup>254</sup> The conflict came over whether language in the Nebraska Constitution required the number of signatures to exceed a percentage of the citizens that were registered to vote in the last election for governor or a percentage of citizens that actually voted in the last election for governor.

While the tobacco industry was threatening a lawsuit, their first tactic was trying to disqualify the signatures that had been submitted. Another memo from McAdam to the Tobacco Institute Management Committee, dated July 21, 1992 detailed the tobacco industry plan for dealing with the initiative at this stage. McAdam wrote:

The narrow margin of signature submitted by the proponents of this initiative leads us to believe that through diligent efforts to disqualify signatures, we may be able to avoid facing this issue on the ballot this year. To that end, our legal team continues to focus on issues that can be raised in court that would result in this issue being stricken from the ballot. In the interim, we are working with Pancho Hays to use the computer program established for the Colorado effort to compare petition signatures with voter registration records with the hope that we will find enough incorrectly validated signatures to disqualify the petition.<sup>255</sup>

The memo goes on to state that the tobacco industry was planning on challenging the verification findings made by the county clerks if they were not favorable to the industry. McAdam also says in case the disqualification efforts are unsuccessful, a budget and campaign plan are being organized to fight the initiative on the ballot.<sup>255</sup>

The tobacco industry carried out their plans to disqualify signatures by taking a copy machine to the Secretary of State's office to make photocopies of all the petitions that were submitted so that they could be reviewed for any mistakes.<sup>256</sup> McAdam indicated that this review process included hiring handwriting experts to compare signatures.<sup>255</sup>

The budget that McAdam spoke about was sent to high level executives for the participating companies on the next day. Now the Tobacco Institute was asked for an additional \$145,000 to combat the Nebraska Clean Environment Committee, again based on market share, bringing the total to date to \$185,000.<sup>257</sup>

By the middle of August, McAdam was reporting that the Secretary of State, Allen Beermann, was on vacation but would finish determining if there were a sufficient number of signatures for the issue to be placed on the ballot for the November election when he returned. As of August 13, McAdam was reporting that there seemed to be only 12 more signatures than the minimum needed.<sup>258</sup> By August 18, McAdam was reporting that the last count done by the office of the Secretary of State showed that the petition was now short just 4 signatures.<sup>259</sup> Both memos also discussed the strategy of the tobacco industry. As McAdam stated:

In anticipation of the possibility of having to run a campaign, we are launching a survey to determine the arguments that would be necessary to win. We are also putting together the elements of a campaign plan and an appropriate budget. Once we receive an indication of the direction the Secretary of State intends to take, we will have a better idea how much of an effort we will need to wage in this situation.<sup>258259</sup>

Such a campaign was not necessary. The tobacco industry's efforts to challenge the signatures were successful and on September 2, 1992, Secretary of State Beerman issued his finding that the Nebraska Clean Environment Committee had failed to gather enough signatures. The final count was 40,803 signatures, 255 short of certification. While it cannot be known for certain whether or not the Secretary of State would have certified enough signatures for the Nebraska Clean Environment Act to get on the ballot if not for the tobacco industry's campaign to defeat the initiative, it seems clear that the petitions submitted by the Nebraska Clean Environment Committee were subjected to a much higher level of scrutiny than was normally the case. This was also the case in other states, such as Colorado, where the tobacco industry was successful in fighting against an initiative to raise the cigarette excise tax.<sup>251</sup>

Following the secretary of state's ruling, Francis Moul and the organizers of the petition drive challenged the decision in court. In the Lancaster County District Court, they argued that 550 signatures that had been rejected by Beermann because the petition gatherers were not registered voters should have been deemed valid under a Nebraska Supreme Court ruling earlier that year.<sup>260</sup> On September 22, Judge William Blue deemed that the Nebraska Supreme Court's previous ruling only permitted individuals to gather signatures outside of the county in which they were registered not that individuals did not have to be registered voters to gather signatures.<sup>261</sup> With this ruling, the drive to get the Clean Environment Act on the ballot in 1992 was over.

The tobacco industry appears to have spent over \$400,000 in its successful effort to stop the tax initiative. Just prior to the ruling by Judge Blue, on September 18, 1992, James

Cherry, the Senior Associate General Counsel for Lorillard, sent a check in the amount of \$53,469 to the Nebraska Executive Committee in order to pay for Lorillard’s portion of Assessment 3.<sup>262</sup> While a copy of Assessment 3 could not be found in the industry documents, it is possible to determine the total amount for Assessment 3 by dividing the amount Lorillard paid by its market share as reported in Assessment 1 and Assessment 2.

The fact that Assessment 3 was equal to the amount determined by using this formula is confirmed by a later document dated October 20 from McAdam to Kurt Malmgren, Senior Vice President of State Activities for the Tobacco Institute, in which McAdam wrote, “We have spent approximately \$225,134 of the original \$619,495 assessment.”<sup>263</sup> Table 20 shows the amounts requested by the Tobacco Institute to defeat the initiative, but it should be noted that because of the failure of the petition to get on the ballot, the tobacco industry did have to spend all of the money they allocated. The October 20 memo from McAdam to Malmgren stated that RJR and American [Tobacco] had not paid their portions of Assessment 3 at that time, but Philip Morris’ and Lorillard’s portions were sufficient to cover the expenses.<sup>263</sup> A memo dated November 20 from a vice president of American Tobacco to Donald Johnston, the President and CEO, showed that the American Tobacco Company did contribute to Assessment 3 in the amount of \$14,961.39.<sup>264</sup> It could not be determined whether R.J. Reynolds paid their portion of Assessment 3 or skipped out on the bill. By adding together the full amounts for

Table 20: Summary of Tobacco Industry Contributions Assessed to Defeat the 1992 Attempt to Increase the Tobacco Tax

<b>Tobacco Company</b>	<b>Assessment 1</b>	<b>Assessment 2</b>	<b>Assessment 3</b>
Philip Morris	\$20,262	\$73,450	\$313,805
R.J. Reynolds	\$12,974	\$47,029	\$200,927
Lorillard	\$3,452	\$12,515	\$53,469
American Tobacco	\$3,312	\$12,006	\$51,294
<b>TOTAL</b>	<b>\$40,000</b>	<b>\$145,000</b>	<b>\$619,495</b>

Assessment 1 and Assessment 2 and the \$225,134 from Assessment 3 that was actually spend indicates that the tobacco industry spend a total of \$410,134 on the defeat of the Nebraska Clean Environment Act petition drive.

*1993 Excise Tax Increases*

The year following the defeat of the Clean Environment Act was another year in which the Legislature proposed small increases in the cigarette excise tax to meet budget needs. A national recession was being felt in Nebraska so one bill, LB 22, was passed which raised the excise tax by \$0.05 to help balance the state’s budget, while another bill, LB 595, raised the excise tax by \$0.02 to pay for cancer research at the University of Nebraska Medical Center and Creighton University.<sup>265</sup> These bills increased Nebraska’s excise tax from \$0.27 to \$0.34. Nebraska’s excise tax would not be increased again until 2002.

## THE MASTER SETTLEMENT AGREEMENT

### *Early Conflict Concerning a Lawsuit Against the Tobacco Industry*

In August, 1996, Nebraska began publically showing interest in initiating a lawsuit against the tobacco industry. At the time, 14 other states had filed lawsuits including neighboring Kansas.<sup>266</sup> The Liggett Group, the smallest of the tobacco companies that was being sued by the states, had broken ranks with the large tobacco companies and had agreed to a settlement to avoid bankruptcy.<sup>267</sup> This settlement by Liggett represented the first time that a tobacco company had agreed to settle a lawsuit over the harm caused by cigarettes and represented a major turning point in efforts to sue the tobacco industry.

Due to these circumstances, Governor Ben Nelson (D) and Don Leuenberger, the Director of the Nebraska Department of Social Services, began approaching the Attorney General Don Stenberg (R-\$4,000 lifetime industry total) about the feasibility of Nebraska filing suit. As detailed in an *Omaha World-Herald* article on September 4, Leuenberger sent a letter to Attorney General Stenberg the previous week asking him, “What action will you take on behalf of the State of Nebraska to curb smoking by children and to recover Nebraska Medicaid funds?”<sup>266</sup> According to an aide for Nelson, the letter from Leuenberger was sent with the backing of the governor. Trent Nowka, Governor Nelson’s chief lobbyist, said, “If it can be done, he [Nelson] wants to do it. If there’s an opportunity for the state to recover these costs, we should explore the options.”<sup>266</sup> Members of Nebraska’s Smokeless States coalition, Smokeless Nebraska, which was funded by the Robert Wood Johnson Foundation, GASP of Nebraska, local tobacco control advocates and some state senators, most notably, Senator Don Preister of Omaha (D - 8.8 policy score), had also been calling on Stenberg to initiate a lawsuit.<sup>266</sup> A spokesperson for the Attorney General’s office said that Stenberg would take at least a week to review the request by Leuenberger.<sup>266</sup>

On September 6, the *World-Herald* applauded the fact that Stenberg had not initiated litigation to that point in an editorial entitled “Individual Rights, Responsibilities Are Caution Signs in Tobacco Suit.”<sup>268</sup> The editorial also cautioned against the idea of using government regulations to prevent the tobacco industry from marketing to children because of the possibility that such actions would be struck down by the courts. The paper’s reason for not supporting a lawsuit was that it said the way to get people to not smoke was through:

education, social pressure and tough enforcement of the laws against the purchase, possession or use of tobacco products by minors. Nebraska should try to improve the effectiveness of these methods. It shouldn’t place its faith in the curbing of speech or in the hope of receiving a financial windfall from an industry that has attracted powerful enemies.<sup>268</sup>

On September 9, 1996, Attorney General Stenberg issued a confrontational reply to Leuenberger’s letter, which was later quoted in the press.<sup>269</sup> (The full letter was located in R. J. Reynolds’ files.<sup>270</sup>) Before he addressed either of Leuenberger’s concerns, Stenberg questioned his motives for sending the letter by writing,

However, I first must confess that the timing of your letter raises political questions. The Nelson Administration has been in office for more than 5-1/2 years and never

before have you or any member of the Nelson Administration sought my advice concerning these tobacco issues. In those 5-1/2 years, I am not aware of any major Nelson Administration initiatives to educate Nebraskans concerning the dangers of smoking, nor has the Nelson Administration proposed legislation to curb smoking by children. As you note in your letter, Mississippi filed suit concerning this issue on May 23, 1994, more than two years ago, and for more than two years, you did not seek my advice concerning this legal question. It was only after the Democrats, at their National Convention, highlighted tobacco issues, and only a day or two after Governor Nelson returned from that Democratic convention, that this letter was sent to me. According to news accounts, the letter was sent to me with the Governor's express approval. This raises serious questions as to whether your letter is a good faith request for my advice, or simply political posturing for the benefit of Ben Nelson's U.S. Senate campaign.<sup>270</sup>

Stenberg's reply continued, stating that despite his belief that Leuenberger's letter was politically motivated, he was willing to answer his questions.<sup>270</sup> Regarding efforts to reduce smoking by minors, Stenberg avoided saying how the office of the Attorney General could help the problem. Instead, he listed various actions that he felt Governor Nelson and Director Leuenberger could take to address the issue of smoking by minors. Stenberg encouraged them to support legislation that would establish tougher laws and enforce current laws regarding underage smoking. For example, he noted that currently it was not illegal for minors to purchase or possess cigarettes and suggested legislation that would deny welfare benefits to individuals who allow their children to smoke. Stenberg also stated that Nelson could appoint judges who view underage smoking as a serious problem and would therefore revoke the licenses of any business caught selling tobacco products to minors. Stenberg informed Leuenberger that he would be willing to participate in a television or radio campaign to educate young people not to smoke. Attorney General Stenberg's use of pro-tobacco industry positions, such as punishing the children that purchased cigarettes and not the adults that sold them illegally, seems to represent an effort by Stenberg to deflect all responsibility for lowering the amount of smoking by children from himself (and the tobacco industry) to Governor Nelson.

As for the possibility of litigation against the tobacco industry – something within Stenberg's authority – Stenberg informed Leuenberger that he had contacted the Attorney General of Mississippi about that state's settlement with Liggett and the Attorney General of Texas concerning its lawsuit and that his office had reviewed both cases.<sup>270</sup> He also stated that he was aware of actions taken by other states against the tobacco industry.

Stenberg further stated, "It is my position that if Nebraska is legally entitled to recoup Medicaid costs from tobacco companies, then such action should be pursued. The bottom line at this time is that Nebraska should neither rush into litigation, nor rule out the possibility. Many important legal and policy questions must first be assessed. [emphasis in original]"<sup>270</sup> In the letter, Stenberg proceeded to lay out the questions that he wanted to be evaluated and then he provided preliminary answers to them. Every one of Stenberg's answers were in opposition to a lawsuit against the tobacco companies.

Stenberg continued by stating, "In order to further access the above factors, I would invite the Department of Social Services to identify any legal theory which the courts have upheld that would enable the State to recover from tobacco companies. How would you deal

with the problem created by the legal doctrine of assumption of risk? [emphasis in original]”<sup>270</sup> Mirroring the tobacco industry’s arguments in other cases to recover Medicaid costs incurred by the state because of smoking-induced illnesses, Stenberg requested that Leuenberger have his staff examine every Medicaid file from the last 12 months in order to demonstrate the impact of tobacco use in the Medicaid population in Nebraska and asked Leuenberger for his estimate of the amount of money Nebraska would receive from the Liggett settlement and how much of this money the State would have to pay to the federal government.<sup>270</sup>

Stenberg summed up his position in his concluding paragraph:

My personal opinion is that smoking is bad for a person’s health and that the Nelson Administration should be doing more to prevent children from smoking. In the spirit of bi-partisan cooperation, I have made a number of suggestions which you and the Governor may pursue to accomplish that goal. So far as a lawsuit against tobacco companies is concerned, I will review the matter further after you have responded to my request for information and after litigation in other states has progressed to the extent that we can better evaluate whether any viable legal theory exists on which the State might be able to make some recovery.<sup>270</sup>

Stenberg’s reply was not without political ramifications. The *World Herald* quickly picked up on the story that Stenberg was accusing the governor of using a possible lawsuit against the tobacco companies as a ploy for his U.S. Senate campaign. In a September 11, 1996 article entitled, “Stenberg: Suit Smells Of Politics, Timing Questioned On Tobacco Issue,” the newspaper quoted from Stenberg’s letter and presented the reasons why he was opposed to a lawsuit.<sup>269</sup> (Stenberg and Nelson ran against each other in the U.S. Senate race 4 years later, in 2000; Nelson won.)

In the same article, the Department of Social Services responded by saying that it was Stenberg who was using this issue for political gain. Deb Thomas, the Deputy Director of the Department of Social Services, said, “I thought it was a very political response to a nonpolitical request for a legal opinion.”<sup>269</sup> Thomas also stated that the issue of a lawsuit against the tobacco industry had been discussed within the Department of Social Services for the past two months and she said her department’s interest stemmed from the recent settlement between Liggett and the State of Mississippi. Thomas also questioned why Stenberg, the state’s chief legal officer, had posed legal questions directly to Leuenberger, a doctor. “I don’t think it’s appropriate for a client to tell his attorney what legal theories exist,” she remarked. “That’s what we were asking him.”<sup>269</sup> Thomas said that her department wanted to work together with the office of the Attorney General to discuss the possibility of a lawsuit. She said, “What we want to do is have a conversation, not politically tinged, with the attorney general’s staff on the legal merits and whether they want to pursue this legally.”<sup>269</sup>

Governor Nelson’s response was delivered by his Press Aide, Dara Troutman. She defended the governor’s record on tobacco control by saying that Nelson had worked to prevent youth smoking by signing a law which placed restrictions on vending machine sales, had backed compliance checks on tobacco merchants by the State Patrol and had also supported grants by the Health Department which went to local tobacco control advocates to be used to prevent smoking by minors.<sup>269</sup> Troutman also accused Stenberg of playing politics when she said “It’s unfortunate the attorney general turned this into a political issue.”<sup>269</sup>

Once again, the *World-Herald* sided with Stenberg. In an editorial on September 12, the newspaper supported Stenberg's position on the possibility of filing a lawsuit by writing, "Nebraska Attorney General Don Stenberg has made a logical case for using caution on the question of whether the State of Nebraska should join in a suit against the tobacco industry."<sup>271</sup> Regarding the second part of Leuenberger's question to Stenberg about preventing smoking by children, the editorial expressed concern about a "potential abridgement of commercial speech." The editorial concluded by saying, "The question of what Nebraska should do is more important than the politics that may have caused it to be raised. Stenberg's view is reasonable. If the state's best legal minds see a good chance that the benefits would outweigh the costs, Nebraska should join. But if the most that can be achieved is standing in line with other states and bashing the villain of the month, it's hardly worth the trouble."<sup>271</sup>

Stenberg prevailed. Nebraska did not initiate a lawsuit against the tobacco industry. In Nebraska, there was little more public debate about the issue during the end of 1996 and the beginning of 1997. Meanwhile, more and more states filed lawsuits. On March 20, 1997, the details of Liggett's settlement with 22 states was disclosed. In exchange for legal immunity, Liggett Group agreed to hand over internal documents, put warning labels on its cigarettes packs which stated that cigarettes are addictive and pay one-quarter of its pretax profit to aid other lawsuits against other tobacco companies.<sup>272</sup> With this announcement, the larger tobacco companies began talking seriously with the states about also settling the lawsuits against them.

### *The Global Settlement Agreement*

Once the possibility of a settlement of tobacco litigation that could generate substantial money for the state developed, Nelson and Stenberg appeared to put aside their political differences to work together to possibly recoup Medicaid costs due to smoking. On April 23, 1997, they jointly sent a letter to Geoffrey Bible, Chairman of Philip Morris Companies, and Steve Goldstone, Chairman of RJR Nabisco, Inc,<sup>273</sup> which attempted to take advantage of the fact that Nebraska had not joined the litigation against the tobacco industry. Nelson and Stenberg wrote:

To date, the State of Nebraska has not joined in the tobacco litigation now being carried on by 23 of the 50 states. Among the reasons Nebraska has not joined in this litigation at this point are the great expense involved in pursuing a lawsuit and because of the traditional legal defenses which may be available to the tobacco companies.

On the other hand, there is no question that tobacco is a contributing cause to a number of illnesses including lung cancer, lung disease, heart disease and other medical problems.

It has now been reported by the Wall Street Journal that both of you personally met with attorneys general from several suing states and discussed the possibility of a settlement of tobacco litigation for a possible payment of \$300 billion over the next 25 years. To say the least, this suggests more than a little concern on the part of the tobacco companies that they face possible substantial legal liability.

We do not wish to clog the courts with additional litigation or incur substantial legal expenses unnecessarily. However, we have an obligation to Nebraska's taxpayers to recover Medicaid expenses when possible.

As Nebraska continues to evaluate its position concerning tobacco litigation, it would be very helpful to have a direct answer to the following question:

Will you at this time give us your written assurance that in the event of a settlement of the current tobacco litigation with one or more of the now litigating states, that the State of Nebraska will be given the opportunity, without filing suit, to participate in that settlement on terms no less favorable than that given to any of the now litigating states?

The answers from each of you concerning this question will be a significant factor in Nebraska's consideration of how to proceed on this issue. The failure to make a timely response to our letter would also weigh significantly in our deliberations.<sup>274</sup>

The *World-Herald* reported that Nelson and Stenberg had sent a letter to the two tobacco companies concerning Nebraska's status in the event of a settlement. The article stated, "Stenberg said that Nebraska is in a position to ride the coattails of the lawsuit filed by others, should a settlement be reached."<sup>275</sup> Stenberg also told reporters that the possibility of a lawsuit had not been ruled out. Commenting on other states that had not filed a lawsuit, Stenberg told reporters that Colorado had sent a similar letter to tobacco companies and that others states were still weighing their options. Nelson and Stenberg also informed the press that in the letter they had requested a written assurance that Nebraska would be included in any settlement. When asked what would happen if they did not receive a favorable response from the tobacco companies, Nelson responded that "it would be pretty hard for us not to file suit."<sup>275</sup>

Most of the remaining states filed lawsuits and two months later, on June 20, 1997, it was announced that the tobacco companies had agreed to a \$368 billion settlement with the 40 states that had sued as well as with the attorneys who had brought private lawsuits on behalf of private individuals or groups.<sup>276</sup> This settlement between the states and the tobacco industry was dubbed the Global Settlement Agreement.<sup>277</sup> Broadly speaking, the Global Settlement involved trading the tobacco industry effective immunity from further private and public legal action in exchange for payments to the states, establishing a fund to pay injured smokers, and for the tobacco industry to accept some limitations on its marketing practices as well as limited regulation by the U.S. Food and Drug Administration.<sup>278</sup>

Nebraska was one of only ten states that had not initiated litigation. They had also not received a reply from Philip Morris or R.J. Reynolds.<sup>276</sup> When the settlement was announced, no information was presented concerning what would happen to the states that had not filed suit, so it was unclear whether Nebraska would participate in the settlement.

With Nebraska's status in "legal limbo," as the *World-Herald* dubbed it, tobacco control advocates criticized the inaction of Nelson and Stenberg in pursuing a lawsuit.<sup>276</sup> "I wish our attorney general was a party to this so we could ask him what's going on," declared Mark Welsch of GASP. "I don't feel right calling the attorney general of Mississippi to ask him these questions."<sup>276</sup> The Director of PRIDE-Omaha, Susie Dugan, said, "Tobacco is the



No. 1 cause of death in Nebraska. The state could have been a lot more aggressive in protecting the health of Nebraskans.<sup>276</sup>

Both Nelson and Stenberg stated they were confident that Nebraska would receive its share in the settlement even if that meant filing a lawsuit. Karl Bieber, a spokesperson for Nelson, said, “The governor feels that if the State of Nebraska is left out of this process, we will pursue litigation to make sure we get our fair share.”<sup>276</sup> Despite such statements and an Associated Press article that stated it was likely that the ten states that had not filed suit would still be included,<sup>279</sup> Nelson was still uncertain enough to send another letter to Geoffrey Bible, Chairman of Phillip Morris Companies.<sup>273</sup> Dated June 23, 1997, Nelson wrote:

As you may recall, on April 23, 1997, I, together with Nebraska Attorney General Don Stenberg, wrote you regarding the tobacco litigation being pursued by a number of the states (copy enclosed). To date, I have not received a response.

In light of the pending settlement to this litigation, I would appreciate your immediate response.<sup>273</sup>

Fortunately for Nebraska, within a couple of days, it was announced that the states that had not sued would still share in the settlement. On July 2, a press conference was held by Nelson and Stenberg to discuss the nature of the settlement agreement.<sup>280</sup> Stenberg told reporters that the settlement was separate from the costs of litigation; therefore, the states that bore those costs were to be reimbursed by the tobacco companies through separate agreements from the Global Settlement Agreement.<sup>280</sup>

On August 12, Bible of Philip Morris Companies and Goldstone of RJR Nabisco finally drafted a letter in response to the one sent by Nelson and Stenberg,<sup>281</sup> but it is unknown if the letter was actually sent. The letter claimed that the settlement discussions were underway which precluded them from responding at the time. The letter stated that it was the tobacco companies’ position during deliberations that the states be treated on an equal basis and that because the Attorneys General agreed to that position, it would not be necessary for Nebraska to initiate legal action. The letter concluded by making the point that the settlement would only take effect if ratified by Congress; therefore, Nelson and Stenberg were urged to support the settlement and encourage Nebraska’s senators and representatives to do likewise.<sup>281</sup> With these further assurances, it seemed that the state of Nebraska was guaranteed a share of the tobacco settlement without having to initiate a lawsuit against the tobacco industry.

### *Collapse of the Global Settlement Agreement*

Because of the Global Settlement’s immunity and regulatory provisions, it was not a “settlement” in the strict legal sense, but rather a proposal for legislation. As a result, it had to be enacted by Congress before any of the states were to receive any money. By February, 1998, U.S. Senator Bob Kerrey (D- NE) was already warning members of the Legislature not to spend the money to be received from the settlement because it was “bogged down in Washington.”<sup>282</sup> This warning was particularly apt because the Global Settlement – particularly the immunity provisions – was extremely controversial within the public health community nationwide.<sup>278</sup>

While the Global Settlement Agreement was being debated in Washington, the benefits that Nebraska was to receive from the settlement dwindled in scope. In the initial version of this settlement, Nebraska was to receive \$32 million a year, but after calculating how much would go to the federal government and taking into consideration the drop in revenue from smokers quitting due to higher prices, the Legislature estimated that Nebraska's share would only be around \$10 million per year.<sup>283</sup>

By March, David E. Corbin, President of the Nebraska Public Health Association, was publicly calling for Nebraska to file a lawsuit against the tobacco industry in order to ensure that the cigarette makers were forced to pay for the harm that they had caused.<sup>284</sup> As Corbin said, "The evidence is overwhelming against the tobacco industry. Mississippi, Florida and Texas have already negotiated large state settlements. In the meantime, we in Nebraska sit back and pray to win a lottery for which we didn't even buy a ticket."<sup>284</sup> In addition, a number of state senators were criticizing Attorney General Stenberg for not filing a lawsuit as 40 other states had already done.<sup>285</sup>

Ultimately, opponents of the immunity sections were successful in removing these provisions from the legislation to implement the Global Settlement Agreement (authored by Arizona Senator John McCain) as well as strengthening other public health provisions. The tobacco industry then turned against the deal and the bill died in Congress.<sup>278</sup>

On June 30, Governor Nelson announced that Nebraska would have to file its own lawsuit and he told reporters, "If Congress is not going to permit that settlement to go through, we cannot be left on the outside looking in."<sup>286</sup> Soon after this announcement, Attorney General Stenberg began making preparations for the lawsuit.

On August 18, 1998, the members of SmokeLess Nebraska told Stenberg what aspects of a possible settlement between the State of Nebraska and the tobacco industry should be included.<sup>287</sup> SmokeLess Nebraska was a coalition of tobacco control groups which was headed by Health Education Inc., a Lincoln-based advocacy group, and also included the American Cancer Society, the American Lung Association, the American Heart Association, the Nebraska Medical Association, the Nebraska Dental Association, as well some local groups such as PRIDE-Omaha. David Holmquist of the Heartland Division of the American Cancer Society said that the primary issues were that the settlement force the tobacco industry to stop advertising to youth, prevent sales of tobacco to minors and provide money for tobacco control and smoking cessation programs.<sup>287</sup>

Four days later, on August 22, 1998, Nebraska finally became the 41<sup>st</sup> state to sue the tobacco industry when Attorney General Stenberg filed a lawsuit in the Lancaster County District Court on behalf of the state against Phillip Morris Inc., R.J. Reynolds Tobacco Co., B.A.T. Industries, American Tobacco Corp., Brown & Williamson Tobacco Corp., Lorillard Tobacco Co., the Council for Tobacco Research U.S.A. Inc., and the Tobacco Institute.<sup>288</sup>

### *Signing the Master Settlement Agreement*

While Nebraska was filing suit, a team of attorneys general were negotiating with the tobacco industry to create a new settlement to replace the Global Settlement Agreement.

Having learned from the failure of the Global Settlement, the attorneys general decided to limit their settlement negotiations with the tobacco industry to issues that they had the full authority to settle directly, rather than including legislative proposals. The deal that they brokered became the Master Settlement Agreement.<sup>289</sup>

In exchange for payments to the states determined by a complex formula related to cigarette consumption and inflation that extended indefinitely (estimated to total \$206 billion over the first 25 years for the 46 settling states), public access to tobacco industry documents, limitations on advertising and promotions and disbanding the Council for Tobacco Research, the Council for Indoor Air Research and the Tobacco Institute, the states agreed to drop their lawsuits.<sup>278, 290</sup> In addition, the tobacco industry, having learned that a lengthy debate on the merits did not serve its interests, insisted that the individual states had to decide whether they would participate within seven days following announcement of the Settlement.<sup>290</sup>

This last component of the Master Settlement Agreement raised some concern with tobacco control advocates in Nebraska. Before the deal had been finalized between the attorneys general and the tobacco industry, the members of SmokeLess Nebraska and Mark Welsch of GASP were publicly worrying that seven days would not permit the State of Nebraska, particularly Attorney General Stenberg, to closely examine the details of the settlement before deciding whether or not to sign the agreement.<sup>290</sup> Dave Holmquist of the American Cancer Society stated, “We just think seven days is an awfully short time to make a decision on something that will affect the American people for a long time to come.”<sup>290</sup>

When the Master Settlement Agreement was formally announced on Saturday November 14, 1998, it seemed highly likely that Nebraska would participate. By Monday Attorney General Stenberg and Governor Nelson came out in favor the settlement.<sup>291</sup> Stenberg, who had final say on whether to sign the Master Settlement Agreement, said that he wanted to consult State Senator Roger Wehrbein (R-Plattsmouth; 7.5 policy score; \$0 lifetime industry total), Chairperson of the Appropriations Committee, and State Senator Don Wesely (Lincoln; \$1,550 lifetime industry total), Chairperson of the Health and Human Services Committee, before making his final decision.<sup>291</sup> Stenberg explained his rationale for favoring the settlement, saying, “It is unlikely that Nebraska would obtain a judgement of more than \$1 billion [the estimated value of the MSA to the state over the first 25 years] if we refuse this settlement and continue our own lawsuit.”<sup>291</sup>

Early Tuesday November 17, 1998, Attorney General Stenberg announced that he had decided to accept the Master Settlement Agreement.<sup>292</sup> Once again, Stenberg reiterated his position that he felt Nebraska would not receive as much in its own lawsuit as it would receive by participating in the Master Settlement Agreement. Governor Nelson stated that he felt that the settlement was not perfect but that it was acceptable; he said “I’ve never been one to let my desire for the perfect get in the way of the good.”<sup>291</sup>

By signing the Master Settlement Agreement, Nebraska’s share of the settlement over the first 25 years was estimated to be \$1.17 billion.<sup>292</sup> Annual MSA payments for Nebraska are between \$38.1 and \$49.9 million.<sup>293</sup>

## **USE OF THE TOBACCO SETTLEMENT FUNDS**

*The Establishment of Trust Funds for the Tobacco Settlement Money - LB 1070 (1998)*

In 1998, Nebraska established trust funds for the tobacco settlement money that the state was expecting to receive from the Global Settlement Agreement and which it eventually received under the Master Settlement Agreement. While the Legislature, responding to pressure from Governor Nelson, decided early on that the settlement money would be used for improvements to the state's health infrastructure, the Legislature was less committed using the money received as a result of the state's Medicaid expenditures due to smoking to actually reduce the harm done by smoking through tobacco prevention and control efforts.

During the 1998 legislative session, when Nebraska was anticipating receiving money from the Global Settlement Agreement, Governor Nelson and state legislators, such as Don Wesely of Lincoln, the Chairperson of the Health and Human Services Committee, and Jim Jensen of Omaha (R - 7.5 policy score) stated their desire to ensure that the settlement money be applied to improving the healthcare system of the state. To safeguard this goal, Wesely introduced LB 1070 at the request of Governor Nelson.<sup>294</sup>

LB 1070 required that the money that Nebraska was to receive from any settlement with the tobacco industry was to be deposited in the Tobacco Settlement Trust Fund to be invested so that it would generate interest that could be spent.<sup>294</sup> While this fund was originally created with the Global Settlement Agreement in mind, the death of that agreement and Nebraska subsequent decision to participate in the Master Settlement Agreement meant that the money the state received from the Master Settlement Agreement was deposited in the Tobacco Settlement Trust Fund.

LB 1070 specified not only where the settlement money would be deposited but also how it would be disbursed. The interest that accrued from the investment of the settlement money was to be deposited in another trust fund, entitled the Excellence in Health Care Trust Fund. A six-member council appointed by the governor, entitled the Excellence in Health Care Trust Fund Council, was to review applications and then, subject to the approval of the Director of Health and Human Services Finance and Support, award the interest income in the Excellence in Health Care Trust Fund through grants and loan guarantees.<sup>294</sup>

LB 1070 stipulated who was eligible to receive tobacco settlement dollars by stating that the Excellence In Health Care Trust Fund Council was only authorized to provide grants and loan guarantees to eight specific areas; tobacco prevention and control was not one of them.<sup>293, 294</sup>

**Table 21: Approved Areas for Spending the Excellence in Health Care Trust Fund**

- 1) conversion of nursing homes to assisted-living facilities or other alternatives to nursing homes
- 2) public health services
- 3) trauma and emergency medical services
- 4) conversion of rural hospitals to “limited-service” rural hospitals
- 5) recruitment, retention and education of health professionals for underserved populations
- 6) development of the health infrastructure to support a “telemedicine” capability
- 7) expansion and development of community-based services for senior citizens
- 8) state’s matching share for the Children’s Health Insurance Program (CHIP)

Source: (National Governor's Association Center for Best Practices, 2000)

It was only under the public health services funding section (Area #2 in Table 21) that tobacco prevention and control was mentioned as a possible use of tobacco settlement dollars and then it was only mentioned as one of ten public health activities that were specifically deemed to be eligible for funding (Table 22).

While the Global Settlement Agreement was dying in Congress, the Legislature passed LB 1070 with strong support of Governor Nelson.<sup>295</sup> Nebraska had now dedicated the funds that the state would eventually receive as part of the Master Settlement Agreement to health improvements, but it had failed to establish tobacco prevention and control measures as a funding priority.

Even with funding for tobacco control so weakly prioritized in law, at the time, health officials expressed confidence that tobacco settlement money would be used to reduce the harm done by smoking. Soon after it was announced that Nebraska would participate in the settlement, Deb Thomas, Policy Secretary of Health and Human Services, told the press that

one of the primary purposes of the Excellence in Health Care Trust Fund would be to support education and research on smoking in addition to smoking prevention efforts, but at this time

**Table 22: Public Health Activities Deemed Eligible for Use of Excellence in Health Care Trust Fund**

<ul style="list-style-type: none"> <li>• Community programs to reduce tobacco use</li> <li>• Chronic disease programs</li> <li>• School programs</li> <li>• Statewide programs</li> <li>• Enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• Counter marketing</li> <li>• Cessation programs</li> <li>• Surveillance and evaluation</li> <li>• Administration</li> <li>• Teen Tobacco Education &amp; Prevention Project</li> </ul>
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Source: Bohlke, A. Legislative Bill 1436 - Final Reading. Legislature of Nebraska: January 20, 2000.

there was little to support her belief.<sup>295</sup>

### *Developments Regarding the Tobacco Settlement During 1999*

In April, 1999, the newly-elected governor, Republican Mike Johanns, made his appointments to the Excellence in Health Care Trust Fund Council – David Corbin, President of the Nebraska Public Health Association, Joel Gajardo, President of the Nebraska Minority Health Association, Sandra Massey, a consumer, Cordelia Okoye, a Director of a public health program and registered nurse, John Klosterman, a farmer, and Dr. Dale Michels, a physician and chairperson of the council.<sup>296</sup> Johanns had been elected governor in a landslide victory over his Democratic challenger in the 1998 election. (The former governor, Democrat Ben Nelson, won the U.S. Senate contest in 2000 against Attorney General Don Stenberg.) One reason why Johanns won so easily was that he ran on an anti-tax platform which appealed to the traditionally conservative voters in Nebraska. Johanns' stance toward tax increases would play a major role in the future of Nebraska's tobacco control efforts.

In October, 1999, Harold W. Andersen, a contributing editor for the *World-Herald*, lamented the low priority that the Nebraska Health Care Trust Fund Act (LB 1070) seemed to place on ensuring that the settlement money would be used for tobacco control in an op-ed piece entitled, "Too Little of Bonanza Goes to Stop Smoking."<sup>297</sup> As he stated, "But while the 1998 Nebraska law acknowledges that the money comes from 'tobacco-related litigation for compensation for the costs of treating smoking-related illnesses,' there's no emphasis at all on efforts to discourage smoking."<sup>297</sup> Andersen also added, "Would it be appropriate that the 2000 Legislature take another look at the Nebraska Health Care Trust Fund Act and insist that a significant portion of the funds be directed to discouraging cigarette smoking? That, after all, is the national health problem which is the primary reason ... why state governments have all those billions to spend."<sup>297</sup>

At the time of Andersen's op-ed piece, Nebraska still had not received its first payments from the settlement so neither the Excellence in Health Care Trust Fund Council nor the Legislature had actually established whether or not tobacco control would be a funded from the settlement money, but when the Council announced its top five funding priorities prior to the 2000 legislative session, tobacco control was not included.<sup>298</sup> While not surprising given the language of LB 1070, this failure on the part of the Council to include programs to combat smoking as a primary focus prompted health advocates to push the Legislature to become involved in determining the use of the settlement dollars during the 2000 legislative session.

On December 14, 1999, Nebraska received its first payment under the Master Settlement Agreement which totaled \$14.7 million, and by the end of December, the state also received another \$12.6 million.<sup>299</sup>

### *Funding for Tobacco Free Nebraska - LB 1436 (2000)*

Saying that she was distressed by the fact that the Excellence in Health Care Trust Fund Council had not included efforts to reduce smoking among youth in its top five funding priorities, State Senator Ardyce Bohlke of Hastings, who was the Chairperson of the Education Committee, decided to bypass the council's grant process by introducing a bill in the

Legislature to annually allocate the first \$560,000 in interest generated by the investment of the tobacco settlement to fund a tobacco control media campaign that was to be developed by youth.<sup>298</sup> Thirty-six other state senators co-sponsored this bill, designated LB 1436.<sup>300</sup> Bohlke felt that a media campaign designed by teenagers would be the most effective means of lowering the number of teenage smokers and she cited Florida's Truth campaign, which included aggressive media spots designed to expose the tobacco industry's lies,<sup>301, 302</sup> as an example. Her program, named the Teen Tobacco Education and Prevention Project, was to allow a 12 member committee to review proposals from high school students and then select four each year to fund for up to \$100,000 each.<sup>298</sup>

The health advocates in Nebraska were not supportive of Senator Bohlke's proposal because they felt it would be largely ineffectual on its own and that more substantial funding was needed to reduce the level of tobacco use in the state. At the hearing before the Education Committee, Brian Krannawitter, who was representing the American Heart Association, and Mark Welsch, the President of GASP, testified against the bill because of those reasons.<sup>303</sup> Testifying in favor of the LB 1436 were individuals from the Nebraska Board of Education, the Nebraska State Education Association, the Independent Colleges and Universities Association, Omaha Public Schools and some students. No health advocates testified in support of Bohlke's original proposal. Despite the opposition from two tobacco control organizations, LB 1436 was voted out of committee by a vote of 8-0 with the annual funding reduced to \$500,000.<sup>303</sup>

LB 1436 had a total of 37 sponsors – 12 more than was necessary to advance the bill on the floor of the Legislature.<sup>300</sup> While the Legislature as a whole was highly supportive of Senator Bohlke's proposal, there was still disagreement over her methods for funding the program. While some also agreed with health advocates that Senator Bohlke's proposal did not go far enough in funding tobacco control, the primary objection stated by these few legislators was that by avoiding the Excellence in Health Care Trust Fund Council's grant-awarding process, the settlement's trust fund was being "raided."<sup>298</sup>

Typical of the senators that opposed the bill was Senator Jim Jensen of Omaha (R- 8.5 policy score) who stated his support for the goal of the bill (reducing smoking among teenagers) but said that Bohlke's idea should compete for a grant from the Trust Fund Council just like any other public health measure. "It has destroyed that whole grant process," he stated. "The grant process doesn't mean anything - you can go to the Legislature and get it funded out of there."<sup>298</sup> Senator Thompson of Papillion (D - 8.7 policy score) was another state senator that was opposed to the original version of LB 1436. She said, "This is too early in the process [for the Legislature] to begin opening up the trust fund - no matter how worthy the cause."<sup>298</sup> While these few legislators protested loudly, the bill seemed destined to be passed by the Legislature.

While on the floor of the Legislature, health advocates began pressuring state senators to increase the amount of funding for tobacco control to a level which would be more effective at reducing the amount of tobacco use. Prior to this refocusing on LB 1436, Citizens for a Healthy Nebraska had been fighting to secure increased funding for the pre-existing statewide tobacco control program, Tobacco Free Nebraska, through an earmark in an cigarette excise tax increase (See Citizens' Excise Tax section). When that proposal died on the floor of the

Legislature in January 2000 due to opposition from the tobacco industry and its allies, Citizens for a Healthy Nebraska began focusing their lobbying and grassroots efforts on increasing the budget for Tobacco Free Nebraska using LB 1436 instead of an excise tax increase as a way of increasing funding to tobacco control. To accomplish this goal, they proposed that the Legislature fund Tobacco Free Nebraska at a level of \$7 million per year. While this level of funding was only roughly half of the CDC's minimum recommended level of \$13.31 million per year,<sup>304</sup> increasing the funding for tobacco control to this level would rank Nebraska 16<sup>th</sup> out of the states that had already made decision about how to use their settlement money and was similar to the amount of funding adopted by the neighboring states of Iowa and Colorado.<sup>305</sup>

On February 20, 2000, the *Omaha World-Herald* also spoke out against the original form of LB 1436 in an editorial entitled "Good Goal, Questionable Tactic."<sup>306</sup> It stated:

This newspaper bows to no one in its desire to curb teen smoking. But Bohlke's bill elbows ahead of other health-care projects that are supposed to be funded by the Excellence in Health Care Trust Fund. That fund is backed by Nebraska's \$1.17 billion share of a national settlement with tobacco companies.

The trust fund is supposed to be administered by a six-member council that evaluates proposals and issues grants outside the pressures of the political process. It is expected to issue its first grant this summer. But Bohlke's bill scoops up the first \$500,000, leaving the remaining \$6.5 million to all the rest.

This bill may be unstoppable, but if it passes it sets a troubling precedent.<sup>306</sup>

With pressure being applied on one side by health advocates that wanted to see the amount of money being spent on tobacco control increased and from the other side by legislators that were opposed to "raiding" the trust fund, Senator Bohlke decided to offer an amendment to her bill. Her teen media campaign remained in the bill but the amendment added \$7 million per year for the next three years which was devoted to Tobacco Free Nebraska.<sup>307</sup> On the day that Bohlke proposed her amendment, March 16, 2000, the Legislature adopted it by a vote of 31-2.<sup>308</sup>

The amendment that was adopted called for the creation of the Tobacco Prevention and Control Cash Fund, which was to be credited with \$7 million dollars annually for fiscal year 1999-00, 2000-01 and 2001-2002.<sup>307</sup> This fund was to be used for a comprehensive statewide tobacco control program (preexisting in the form of Tobacco Free Nebraska) that was to include, but was not limited to:

- (1) Community programs to reduce tobacco use, (2) chronic disease programs,
- (3) school programs, (4) statewide programs, (5) enforcement, (6) counter marketing,
- (7) cessation programs, (8) surveillance and evaluation, (9) administration, and (10) the Teen Tobacco Education and Prevention Project.<sup>307</sup>

The amendment stipulated that the money that was to be credited to the Tobacco Prevention and Control Cash Fund was to come from the Tobacco Settlement Trust Fund. This meant that Tobacco Free Nebraska was to be funded out of the principal of the tobacco settlement and not the interest generated by the investment of the principal.



Another change made by this amendment to LB 1436 was that it eliminated the former repository for the interest generated by the settlement payments, the Excellence in Health Care Trust Fund, and instead placed the interest in a preexisting fund, Nebraska Health Care Cash Fund.<sup>106</sup> To accommodate this change, the Excellence in Health Care Trust Fund Council was renamed the Nebraska Health Care Cash Fund Council and their membership was increased from six to nine.<sup>106</sup> The Nebraska Health Care Cash Fund was already receiving money from Medicaid transfers from the federal government so the Legislature was consolidating two different funds into one<sup>294, 307</sup>. It was the Nebraska Health Care Cash Fund, which now contained Medicaid transfers from the federal government and interest from tobacco settlement, that would be used to provide \$50 million per year for health-related expenditures as part of LB 692, which was passed the following year in 2001 (See Below).<sup>307</sup>

The health advocates that had fought against the original version of LB 1436 as insufficient applauded the change to LB 1436. “This will save lives,” said Rich Lombardi, a lobbyist for Citizens for a Healthy Nebraska, who added, “It’s a significant step and something I think everyone will be proud of.”<sup>308</sup>

Many of the senators that had originally opposed LB 1436 also spoke out in favor of this change. Senators Jim Jensen, Nancy Thompson and Dennis Byars of Beatrice (R - 7.7 policy score) had disagreed with Bohlke’s method of getting the money for her program by raiding the settlement trust fund, but these three legislators were also strong tobacco control proponents so they supported the new version of LB 1436 as being an appropriate reason to modify the trust fund. “I think I can convince myself, rationalize to myself, that we are appropriately using this fund and that it is important to public health in this state,” stated Byars.<sup>308</sup>

The *World-Herald* was also supportive of the change to LB 1436. An editorial entitled “Worthy Anti-Smoking Push” stated:

When a World-Herald editorial last month criticized Nebraska State Sen. Ardyce Bohlke’s effort to put \$500,000 into an anti-smoking for teen-agers, it wasn’t because of any quarrel with the goal. Our concern was that it circumvented the Legislature’s previously developed plan for the Excellence in Health Care Trust Fund, under which a six-member council was to evaluate proposals and issue grants.

But a surprise amendment by Bohlke, overwhelmingly endorsed by the lawmakers on Thursday, abandoned the multi-grant approach and advanced a new plan - one that is easier to support. By devoting \$21 million over three years to anti-smoking education, stop-smoking clinics and public relations campaigns to discourage teens from taking up the habit, the amendment would put all the monetary eggs . . . into one basket.

It’s the right basket. After all, the trust fund exists because Nebraska participated in a national settlement with tobacco companies, an agreement that grew out of the harm tobacco inflicts on the nation’s collective health. What, then, could be more fitting than using the money to throw a counterpunch?

...

Rich Lombardi, lobbyist for a coalition of seven public health-care groups, points to this: While Nebraska has been spending only about \$200,000 a year on smoking-cessation programs, tobacco companies have spent \$32 million in the state for

marketing. With this new plan, the industry's expenditures will still outstrip the state's almost 5-to-1, but at least now there's an opportunity to play catch-up. . . .<sup>309</sup> Bohlke's amended bill is now just one round of debate away from passage, and the lopsided vote on Thursday leaves little room for doubt that it will get it. We urge the Legislature to provide that final OK and urge Gov. Mike Johanns to sign it. It's bound to be a lifesaver.<sup>309</sup>

The Legislature proceeded to vote unanimously, 45-0, to approve LB 1436 and Governor Johanns signed it into law on March 29, 2000.<sup>307, 310</sup> With the passage of LB 1436, the State of Nebraska was funding tobacco control at \$7 million per for each of three years (per capita expenditure of \$4.22). At the time, the Centers for Disease Control recommended that Nebraska fund tobacco control between \$13.3 million and \$31 million (per capita expenditure of \$8.03 to \$18.73)<sup>305</sup>; while Nebraska was only spending roughly half the minimum amount that CDC recommended, this ranked Nebraska at 16<sup>th</sup> out of the 46 states that had decided how their settlement money would be spent.<sup>305</sup> This level of tobacco control spending placed Nebraska just ahead of its neighbors, Colorado and Iowa, which were ranked 17<sup>th</sup> and 18<sup>th</sup> respectively, and far ahead of South Dakota and Kansas, ranked 35<sup>th</sup> and 44<sup>th</sup>.<sup>305</sup> The Legislature's decision to pass LB 1436 represented a significant achievement for tobacco control advocates in Nebraska, but the Legislature's decision to provide funds for only three years would have serious repercussions in 2003 when tobacco control advocates attempted to get Tobacco Free Nebraska refunded in the middle of budgetary crisis.

#### *Settlement Funding for Health Improvements - LB 692 (2001)*

One consequence of the funding increase that Tobacco Free Nebraska was able to receive during the 2000 legislative session was that medical groups began clamoring for a portion of the settlement dollars. The two loudest voices were those of the University of Nebraska Medical Center, the state's medical school, and Creighton University, a private university in Omaha that also has a medical school.<sup>311</sup> By June, 2000, these two institutions were calling for a large portion of the settlement money to be used biomedical research. "Tobacco use has resulted in significant health problems in Nebraska and for citizens in general and that leads to enormous health-care costs," stated Dr. Roderick Nairn, the Chairperson of Creighton Medical School's Department of Medical Microbiology and Immunology. I think the research we would do would be to develop a much better understanding of smoking-related diseases and its underlying causes and cures."<sup>311</sup> Ron Withem, a spokesperson for the University of Nebraska, told reporters that Michigan has set aside \$1 billion of its settlement dollars for research and said, "There needs to be more of a legacy for the state, and we think medical research, particularly with the outstanding medical research centers we have in the state, would really provide a cutting-edge difference in the state."<sup>311</sup> Withem had also served as a state senator from Papillion from 1983 until 1997, receiving lifetime tobacco industry contributions of \$3,300 and an additional \$7,964 from tobacco industry allies (See Appendix).

Dr. Dale Michels, Chairperson of the Nebraska Health Care Cash Fund Council, responded to this lobbying in June by saying that the grant process should be given time to work. The Council was planning on awarding its first grants that fall. The council had received 174 application – 24 from the University of Nebraska Medical Center and one from Creighton Medical School – requesting a total of \$34 million for the \$3 million that the would

be awarding at that time.<sup>311</sup> Michels said, “Lawmakers have set up a plan to finance public health care across the state, and some people are already set to change it before we get the plan off the ground.”<sup>311</sup> Responding specifically to the desire to use the settlement money for biomedical research, Michels stated, “My concern is that what we have set up is going to benefit all the people in the State of Nebraska as opposed to a research project that may or may not benefit all of the state’s citizens.”<sup>311</sup>

Lawmakers also were talking about the desire of the Legislature to have a greater say in how the settlement money would be spent. In particular, concern was expressed regarding the fact that such a large amount of money was to be disbursed by only nine people. “Some of my colleagues definitely feel that with the magnitude of dollars there, the Legislature should have more control,” said Senator Jensen, the chairperson of the Health and Human Services Committee.<sup>312</sup>

For the next few months, the University of Nebraska Medical Center and Creighton University continued to lead efforts calling on the Legislature to dispense the tobacco settlement instead of relying on the grant process.<sup>311</sup> In September, Governor Johanns weighed in on the issue. He said that he supported splitting the settlement in three ways: one-third to remain for Nebraska Health Care Cash Fund grants, one-third to be distributed by the Legislature and one-third to go toward medical research at Creighton University and the University of Nebraska.<sup>311</sup> Regarding the research opportunities, Johanns said, “I think it is a great opportunity to literally lift Nebraska and put it on the map,” but he added that he thought one-third of the money should remain in the grant process because, “These grants have great potential to improve access and delivery of health-care services to medically underserved areas, improve the quality of health-care services and strengthen public health in Nebraska.”<sup>311</sup>

With all this prior discussion on how best to spend the tobacco settlement money, it was not surprising that when the 2001 legislative session began in January numerous bills dealing with using settlement money for health improvements were introduced. By combining the interest generated from the investment of the tobacco settlement dollars and money received from federal Medicaid transfers, the Health Care Fund was estimated at \$50 million per year.<sup>294, 307, 313</sup> This \$50 million was separate from the \$7 million that Tobacco Free Nebraska was receiving directly from the settlement payments for three years. The Speaker of the Legislature, Doug Kristensen of Minden, introduced a bill on behalf of Governor Johanns that included one-third of the \$50 million to be going to biomedical research.<sup>313</sup> Senators Jensen, Jennie Robak of Columbus and Thompson all separately introduced bills that focused largely on improvements to Nebraska mental health services, Senator Lowen Kruse of Omaha (D - 7.6 policy score; \$500 lifetime industry total) introduced a bill that would have raised state Medicaid payment rates for mental health services, and Senator Byars introduced three bills that sought to increase the amount spent on respite care and developmental disabilities.

The focus on public health and specifically on mental health was not surprising. Historically, Nebraska’s funding per capita for public health had been either 49<sup>th</sup> or 50<sup>th</sup> out of all states,<sup>311</sup> and as Susan Boust, a community mental health service provider from Omaha testified at the Appropriations Committee and Health and Human Services Committee’s public hearing for all these bills, Nebraska was spending \$8.36 per person on community-based mental health efforts while the national average was \$32.<sup>313</sup>

Rather than pass a hodgepodge of different bills, the members of the Appropriations and Health and Human Services Committees set out to draft a single compromise bill. “It is our goal to blend all of the bills into one of them and to use it as a vehicle to bring it to the Legislature,” said Senator Jensen.<sup>313</sup>

By February 22, the two committees involved had hammered out a bill regarding how the \$50 million from the settlement investment income in the Nebraska Health Care Cash Fund would be spent annually. The disbursement was as follows:

- \$19 million for mental health services
- \$10 million for biomedical research
- \$8.5 million for improvements to the state’s public health infrastructure (\$6 million to establish public health offices in 69 counties and improve the offices in 24 counties and \$2.5 million to improve in minority health in counties that had a minority population of at least 5%)
- \$5 million in public health grants to be awarded by the Nebraska Health Care Cash Fund Council
- \$3 million for services for developmental disabilities
- \$3 million in unallocated dollars
- \$1 million for respite care
- \$500,000 for a one-time mental health study<sup>314</sup>

The language for this distribution was incorporated into LB 692, which was originally one of the bills introduced by Senator Byars. Because of the importance of this bill, Senator Byars chose to designate LB 692 as his priority bill. In the Nebraska Legislature, each senator is permitted to designate one bill as their priority bill, which virtually guarantees that it will be addressed by the Legislature before the session ends.

The \$10 million that was included for medical research was to be given to Nebraska’s four leading research institutions: the University of Nebraska Medical Center, Creighton University Medical Center, the University of Nebraska-Lincoln and the Boys Town National Research Hospital.<sup>315</sup> While most of the other areas listed in LB 692 were only funded for two years (FY2002 and FY2003), the heavy lobbying by the state’s two medical schools and the support of the governor resulting in language in LB 692 in which biomedical research had no sunset date included and the amount of funding was to increase from \$10 million to \$12 million after two years and then from \$12 million to \$14 million after another 2 years and then was to continue at the \$14 million level<sup>316</sup>.

Of the \$8.5 million to go directly for public health, \$6 million was to be used to establish public health offices in the 69 counties that didn’t have one and to improve the capabilities of the offices in the other 24 counties while the remaining \$2.5 million was to go to improvements in minority health in counties that had a minority population of at least 5%.<sup>315</sup>

Originally, the number of counties that met that criteria was calculated to be 24 but this number was revised to 30 when more accurate Census data were examined.<sup>317</sup>

The vast majority of the Legislature was content with this bill. By a vote of 39-1, they advanced LB 692 out of the first round of debate.<sup>315</sup> The lone dissenting vote was from Senator Ernie Chambers of Omaha (I - 7.7 policy score), the only African-American senator in the Legislature. In the Nebraska Legislature, one dissenting vote can be easily shrugged off unless that vote is from Senator Chambers. He has been serving as a state senator since 1970 so he is an expert on Nebraska's legislative procedures and has brought numerous bills down singlehandedly.<sup>1</sup> Chambers' argued in general the amount designated to public health improvements was too low and specifically, the \$2.5 million allocated in LB 692 for minority health was too low in a state where the infant mortality rate for African-Americans is one of the worst in the nation – roughly three times higher than that for whites.<sup>315, 317</sup> Chambers also asserted that the benefit of biomedical research was much less apparent than that produced by public health measures.<sup>317</sup> He argued, "I don't want a situation where we give it to individuals and groups, and after the money has been spent, there is nothing to show for it except that we spent some money."<sup>317</sup>

In the end, Senator Chambers was successful in getting more money for minority health concerns included in LB 692. The total amount directed specifically to minority health was raised from the \$2.5 million to over \$4.2 million.<sup>318</sup> This increase came when legislators decided to dedicate \$700,000 of the \$10 million in research money for minority health, another \$700,000 from the public health grants to minority programs and finally \$220,000 was to be used for the creation of three minority health satellite offices located in Omaha, Lincoln and rural Nebraska.<sup>318</sup>

While the passage of LB 692 was an important step toward improving public health in Nebraska, the immense support for this bill would become a serious hurdle for tobacco control advocates in 2003, when they sought to secure funding for Tobacco Free Nebraska because legislators were unwilling to jeopardize the funding of these programs to fund tobacco prevention and control efforts out of the tobacco settlement money.

### *2001 and 2002 Budget Shortages*

After the 2001 session, it became apparent that the weakening economy affecting the entire country would not leave Nebraska untouched. With tax receipts lower than expected, the state was faced with approximately a \$220 million shortfall in the two-year \$5.5 billion budget approved during the 2001 session.<sup>319</sup> (This amount represented a 4% shortfall.) In response, Governor Johanns called for a special session of the Legislature in October and he proposed a \$173 million cut to the state budget and called on the Legislature to not pass any tax increases.<sup>319</sup> During the special session, the Legislature followed fairly closely the budget proposed by Johanns. Most notably, no new taxes were passed, state aid to K-12 education, which was approximately one-quarter of the budget, was untouched and the University of Nebraska system bore the deepest cuts.<sup>320</sup> The cuts passed during the special session solved \$171 million of the shortfall with the remaining \$50 million shortfall to be addressed during the regular session in 2002.

Unfortunately for the state, the biennium budget numbers continued to worsen. When new revenue figures came in early during the 2002 legislative session the anticipated \$50 million shortfall rose to \$186 million and then to \$222 million in March, another 5%.<sup>321</sup>

Once again, Governor Johanns reiterated his position that the budget deficit should be remedied through spending cuts and not tax increases.<sup>321</sup> Having already cut \$171 million from the budget during the 2001 special session, legislators viewed the governor's position toward tax increases as unreasonable. Over the governor's veto, the Legislature passed temporary increases in the state income tax, sales tax and cigarette excise tax (See Citizens' Excise Tax section) as well as made spending cuts including the state's K-12 school system.<sup>322</sup> Previously, Governor Johanns said that the only tax increase he would support was on the cigarette excise tax.<sup>322</sup> Governor Johanns was willing to support an excise tax increase because an excise tax increase was less likely to have political repercussions for him with Nebraska voters than a sales or income tax increase.<sup>323</sup> Despite the fact that during the 2001 special session and the 2002 legislative session the Legislature had made \$295 million in spending cuts and transfers and raised taxes by \$142 million – \$25 million from the cigarette excise tax increase – a shortfall of \$130 million still remained by the end of the 2002 legislative session.<sup>324</sup>

One major consequence of the budget crisis facing the Legislature in 2002 was that Tobacco Free Nebraska lost \$5 million from its \$21 million total.<sup>325</sup> In 2000, Tobacco Free Nebraska had been allocated \$7 million for FY2000 but it was not possible for the program to scale up fast enough to spend this money during the first year. Because of the need to following standard government procurement rules (writing and advertising requests for proposals and soliciting competitive bids), only about \$2 million of the \$7 million appropriated was spent.<sup>325</sup> With this money not being spent by the end of biennium in FY2001, the Legislature considered this \$5 million "unobligated." Rather than treating these funds as encumbered for contracts being in the process of awarded, during the 2002 session, the Legislature decided, as part of LB1310, to reallocate this money to cover a shortfall for the Children's Health Insurance Program.<sup>326</sup> Tobacco Free Nebraska was not alone in this respect. Dozens of programs lost money that had been allocated to them during the previous biennium budget which had not been spent and thus had become unobligated.<sup>325</sup>

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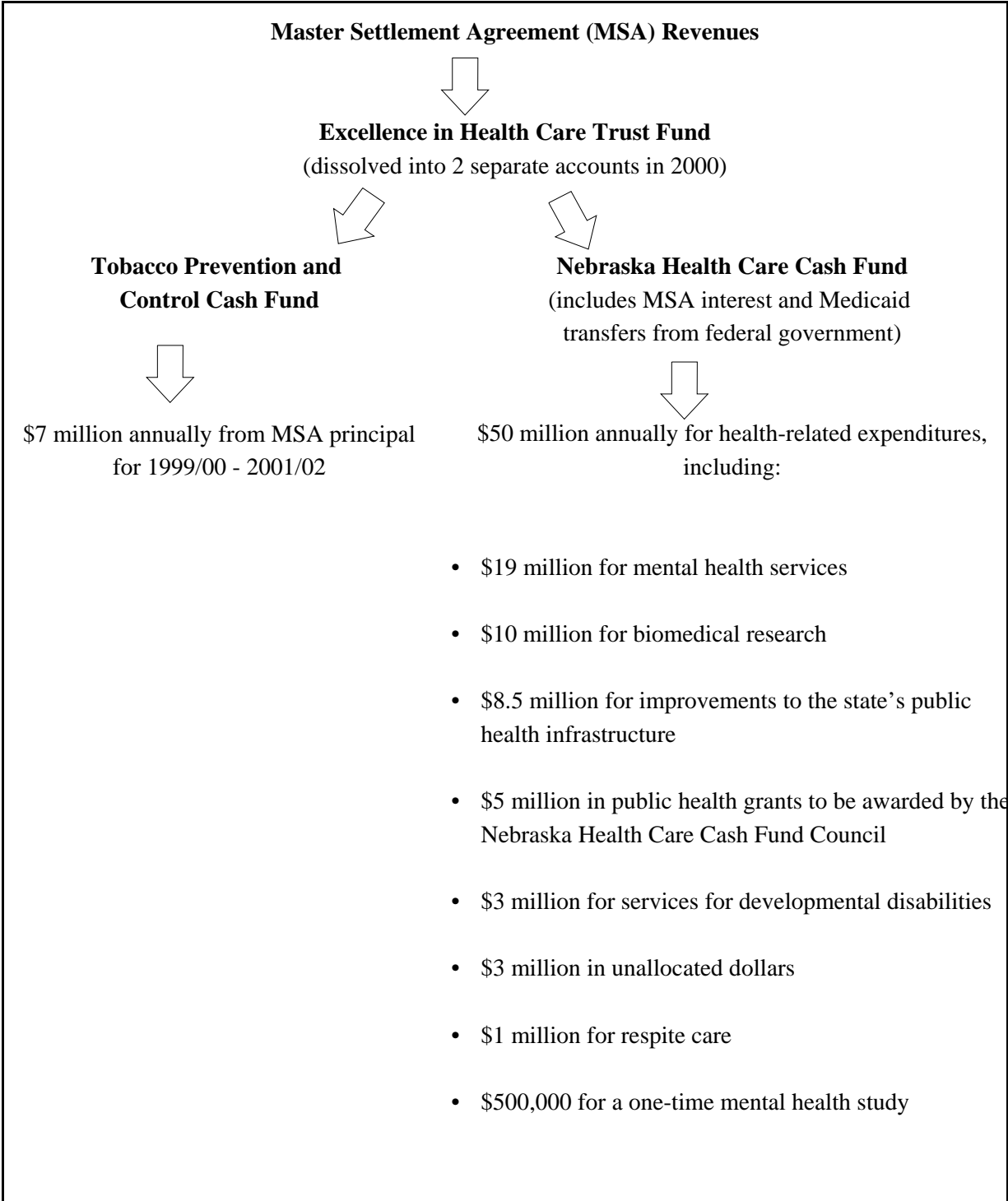
Once again, Governor Johanns reiterated his position that the budget deficit should be remedied through spending cuts and not tax increases.<sup>321</sup> Having already cut \$171 million from the budget during the 2001 special session, legislators viewed the governor's position toward tax increases as unreasonable. Over the governor's veto, the Legislature passed temporary increases in the state income tax, sales tax and cigarette excise tax (See Citizens' Excise Tax section) as well as made spending cuts including the state's K-12 school system.<sup>322</sup> Previously, Governor Johanns said that the only tax increase he would support was on the cigarette excise tax.<sup>322</sup> Governor Johanns was willing to support an excise tax increase because an excise tax increase was less likely to have political repercussions for him with Nebraska voters than a sales or income tax increase.<sup>323</sup> Despite the fact that during the 2001 special

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While Tobacco Free Nebraska lost \$5 million from its FY2000 allocation, the Legislature did not touch the program’s budget for FY2001 and FY2002; therefore, Tobacco Free Nebraska was able to obligate \$7 million a year for both of these years.<sup>325</sup> Because of the reallocation that occurred during the 2002 legislative session, Tobacco Free Nebraska only received \$16 million over three years and not the \$21 million over three years that had been originally budgeted for the program as part of LB 1436 in 2000.<sup>307</sup>

Table 22: Summary of Allocation of Master Settlement Agreement Funds, 2001





With a shortfall of \$130 million remaining after the 2002 legislative session, the governor once again called a special session in July, 2002<sup>322</sup> and froze spending for all state agencies. With tax receipts for the preceding eleven months falling short of projections, the estimated budget deficit that state senators were faced with rose from \$130 million to \$233 million.<sup>324</sup> Later it was determined that the actual deficit number for the biennium was much higher than the \$233 million figure that was estimated by the Governor's budget office. The \$233 million figure was calculated by assuming that many expenditures would not increase, but when projected increases to Medicare, state aid to school, employee salaries and health insurance were factored in, the deficit figure rose to \$778 million.<sup>327</sup>

Similar to the special session in 2001, the special session of 2002 cut over \$15 million from the University of Nebraska system – half of which was taken from the largest campus, the University of Nebraska-Lincoln.<sup>328</sup> In addition, approximately 19,000 people were removed from Medicaid enrollment by changing eligibility requirements which was supposed to save approximately \$20 million.<sup>329</sup> While tobacco control was unaffected by the special session of 2002, the Legislature was unable to solve the budgetary crisis facing the state. This massive deficit remained for the 2003 legislative session came at a very unfortunate time for Tobacco Free Nebraska.

## **CITIZENS FOR A HEALTHY NEBRASKA'S EXCISE TAX INCREASE ATTEMPTS**

### *First Attempt for a Tax Increase - LB 505 (1999 - 2000)*

Believing that the Master Settlement Agreement earlier that year did not do enough to prevent underage smoking, the members of SmokeLess Nebraska decided to create a new coalition in November, 1998, with the specific goal of reducing smoking by minors by making cigarettes more costly through an excise tax.<sup>330</sup> Named Citizens for a Healthy Nebraska, the new coalition was comprised of the Nebraska divisions of the American Cancer Society, the American Heart Association, the American Lung Association, Health Education Inc., the Nebraska Association of Hospitals and Health Systems, the Nebraska Dental Association and the Nebraska Medical Association.<sup>331</sup>

While no specific amount for an excise tax increase was announced, Rich Lombardi, the coalition's lobbyist, stated that \$1.00 would be a good goal.<sup>331</sup> Only Alaska and Hawaii had excise taxes that high at the time. Citizens for a Healthy Nebraska's announcement that it would pursue an excise tax increase came right on the heels of a nationwide announcement the day before by Philip Morris and R.J. Reynolds that they had raised the wholesale price of a pack of cigarettes by \$0.45<sup>331</sup> to recoup the money they had to pay as part of the Master Settlement Agreement.

The coalition's reason for pushing for a large excise tax increase was that it viewed it as the most effective means of getting smokers, especially teenage smokers, to quit. "Our group understands that the real solution is to keep kids out of the market by increasing the cost of a pack of cigarettes so that kids won't smoke," according to Sherry Miller at the coalition's first press conference.<sup>331</sup> Miller was the former President of the Nebraska Parent Teachers Association. It was Miller and Dr. Chris Caudill, a Lincoln cardiologist, that announced the

formation of Citizens for a Healthy Nebraska. Speaking about the plans to increase the excise tax, Caudill said, “It is the number one way we can get kids to stop smoking.”<sup>330</sup>

Following standard tobacco industry rhetoric,<sup>332</sup> the day after the Citizens for a Healthy Nebraska’s announcement, cigarette smuggling was already being proposed as a reason to forgo an excise tax increase. State Senator Bob Wickersham of Harrison, who later voted against LB 505 in committee, stated, “You do have to examine whether it will work or, in fact, whether it would be an incentive for bootlegging and other activities.”<sup>330</sup> Wickersham was repeating one of the tobacco industry’s primary arguments to combat excise taxes is to argue that large excise tax increases lead to increased levels of cigarette smuggling.<sup>332</sup> Cigarette smuggling typically means purchasing cigarettes in a state with a lower excise tax and then selling them for a profit in a neighboring state which has a higher excise tax. The tobacco industry argues that cigarette smuggling leads to increased levels of organized crime. They also claim that excise tax increases lead to economic hardship for retailers due to revenue lost to neighboring states. The tobacco industry and its allies usually base their claims on studies paid for by the tobacco industry, while independent studies show that smuggled cigarettes only account for 2% to 6% of total consumption.<sup>332</sup>

These claims would all be employed in Nebraska by the tobacco industry and its allies in 1999 to defeat a \$0.66 excise tax increase that Citizens for a Healthy Nebraska got introduced by Senator David Landis of Lincoln.

Citizens for a Healthy Nebraska was successful in getting their proposed excise tax considered by the Legislature. In the 1999 session, Senator David Landis (D - Lincoln) introduced LB 505, which sought to raise the excise tax on a pack of cigarettes from \$0.34 to \$1.00.<sup>102</sup> In addition to raising the tax, LB 505 sought to establish the Tobacco Prevention, Control, and Enforcement Fund with approximately \$0.14 of the \$0.66 increase going to this fund. This would generate an estimated \$14 million annually to fund tobacco control efforts in Nebraska, which was the CDC’s minimum recommended level of funding for tobacco control in Nebraska.<sup>305</sup> The Tobacco Prevention, Control, and Enforcement Fund was to be administered by the Health and Human Services’ Health Promotion and Education Division, which was part of the Office of Preventive Health and Public Wellness.<sup>305</sup> This effort was prior to the passage of LB 1436, the bill that designated \$21 million over three years to a statewide tobacco control program, so if LB 505 would have been successful, it would have been responsible for funding a statewide tobacco control program. The purpose of this fund as defined in LB 505 was for “enforcement, counter-marketing, education, and outreach programs that specifically address the cause and prevention of smoking-related diseases and smoking prevention and cessation.”<sup>102</sup>

The intent of the large increase in the excise tax, as explained by Senator Landis in his Statement of Intent was “to create an economic impediment to the purchase of cigarettes by adolescents in Nebraska. National Cancer Institute studies show that a 20% increase in the price of a pack of cigarettes should result in a 30% decrease in teenage smoking.”<sup>333</sup>

The tobacco industry’s response was to disseminate their typical smuggling arguments. For example, Brown and Williamson produced a report entitled “LB 505's Effect on Nebraska Retailers” which detailed the tobacco industry’s key points for opposing LB 505,<sup>334</sup> which

seemed targeted to retailers. It even used language that makes it seem that the reasons are coming from another retailer and not Brown and Williamson. For example, the first sentence of the document was “This tax will only punish our stores and our legal consumers” and the last line was “Most of these sales and profits will simply be shifted to our neighbors who are not burdened by this tax.”<sup>334</sup> In between these two lines were a litany of figures for lost sales, lost profits and lost workers that Brown and Williamson indicated would result from smokers purchasing their cigarettes from places other than Nebraska retail outlets. Nowhere in the document was the source of these figures cited.<sup>334</sup>

The testimony of Dennis Rasmussen, lobbyist for Philip Morris, at the Revenue Committee’s hearing on LB 505 focused on the same themes. Citing studies conducted by the industry-funded American Economics Group and Incontext, Inc.,<sup>335</sup> Rasmussen’s handout to legislators contained sections entitled “Sales and Jobs Lost to Surrounding States,” “Lost Retail Sales,” “Unfair Burden,” and “An Unregulated Black Market in Cigarettes.”<sup>336</sup> William Peters, the lobbyist for both Brown & Williamson and Lorillard, David Schulte for the Nebraska Association of Tobacco and Candy Distributors and Bob Skochdopole for the Smokeless Tobacco Council<sup>337</sup> also testified against the tax increase.

Testifying in favor of LB 505 were numerous representatives from the members of Citizens for a Healthy Nebraska, the American Association of Retired Persons (AARP), nine individuals from Loup County Public School and representatives from Creighton University and the University of Nebraska Medical Center.<sup>337</sup>

LB 505 was advanced out of by a vote of 5-3 but the committee added an amendment so that the tax increase would sunset after three years on December 31, 2002.<sup>337</sup>

After LB 505 advanced out of committee, the Americans For Tax Reform, (listed in a Philip Morris document as one of the company's “core allies”<sup>338</sup>) sided with the tobacco industry. In a letter to State Senator Jim Jensen, Grover Norquist, President of the American For Tax Reform, reminded Jensen that he had signed the Americans for Tax Reform’s Taxpayer Protection Pledge. Norquist stated, “As you know, there is a proposal in the Nebraska legislature which would raise taxes on tobacco products. Unless this tax increase is matched dollar for dollar by a tax cut, it would violate the terms of the Pledge.”<sup>339</sup> The letter then urged Senator Jensen to vote against LB 505. Handwritten on the copy of this letter (that was located in tobacco industry files) was a note indicating that it was to be faxed to Betsy Giles, a senior executive with Philip Morris.<sup>339</sup> It is not known if similar letters were sent to other members of the Legislature.

While LB 505 was on the floor of the Legislature, high level tobacco executives were monitoring its status. In the Weekly Status Report for the State Government Relations Department for R.J. Reynolds, Roger Mazingo, the Vice President for that department, informed T. J. Payne, R.J. Reynolds Senior Vice President of External Relations, that, as of March 18, LB 505 had not yet been scheduled for debate. Mazingo added, “A vote count of ‘hard votes’ was taken earlier this week and 20 no’s and 9 yes’s were counted. There are 49 members of the Nebraska legislature, which leaves 20 ‘swayable’ votes. An extensive grassroots effort is underway by the industry.”<sup>340</sup>

Later that month, the American Legislative Exchange Council (ALEC) sponsored a luncheon for state senators. ALEC is an association for state legislative members. Two of its major funding sources are Philip Morris and R.J. Reynolds.<sup>341</sup> At that luncheon, Michael Flynn, Director of Legislation and Policy for ALEC repeated the tobacco industry position that passing LB 505 could produce a black market for smuggled cigarettes that was run by the mob. After telling senators that a semitrailer full of smuggled cigarettes could produce over a half of a million dollars in profit for the smuggler, he added, “That’s quite a temptation for organized crime – a cash bonanza.”<sup>341</sup> Flynn cited Michigan as an example of a state which had seen an increase in cigarette smuggling as a result of increasing its excise tax. He also reiterated the tobacco industry’s stance that Nebraska would lose cigarette sales to neighboring states with lower excise taxes which would result in lower tax revenue.<sup>341</sup>

Citizens for a Healthy Nebraska responded to the luncheon by making sure that senators were informed that ALEC received funding from the tobacco industry.<sup>341</sup> As part of this effort, they disseminated ALEC literature that thanked Philip Morris and R.J. Reynolds for their “generous contributions” in sponsoring a States & Nation Policy Summit in 1998.<sup>341</sup> They received some help in this effort from Senator Donald Preister who was a member of ALEC at the time but was also a strong tobacco control proponent (8.8 policy score). He noted to reporters that ALEC received money from the tobacco industry and he said he recalled an 1993 ALEC “orientation” for newly elected legislators that he attended in which cigarettes and lighters were given out to the state legislators that attended.<sup>341</sup>

Their efforts, however, did not prevent the bootlegging message from being ascribed some credibility. Major Gale Griess of the Nebraska State Patrol was quoted in an Associated Press article saying that if LB 505 passed, “Bootlegging will be a problem.”<sup>341</sup>

By March 31, LB 505 still had not come up for debate on the floor of the Legislature. In another weekly status report from Roger Mozingo to T. J. Payne, Mozingo wrote, “Grassroots efforts continue at a heavy pace. WKA has prepared economic impact books that will be delivered to many of the legislators the first of next week.”<sup>342</sup> It is not known what WKA stands for but it likely refers to one the companies that produces economic studies that are paid for by the tobacco industry.

At the same time, another study was released by InContext, Inc., which produces studies paid for by the tobacco industry, that predicted that if LB 505 passed then it would “drive more shoppers and jobs” to Nebraska’s neighbors.<sup>343</sup> This new report that focused on Nebraska received mention in the *Omaha World-Herald*. It was also reported that the study was funded by Philip Morris.<sup>335</sup> When asked how much Philip Morris paid for this study, William Lilley III, chairman of InContext Inc. and former economics professor at Yale University, declined to answer the question.<sup>335</sup>

The tobacco industry efforts seemed to have the desired effect. When LB 505 came up for debate on the floor of the Legislature, Landis and other senators in support of an excise tax increase offered an amendment that would cut the increase more than in half, from \$0.66 to \$0.30.<sup>344</sup> Even so, supporters of the amendment were only able to garner 24 votes, one short of the 25 needed to pass an amendment.<sup>344</sup> The Legislature adjourned with no further action being taken on LB 505.

During the 1999 session, Senator Landis designated LB 505 as his priority bill. Since only a handful of priority bills remained from the previous legislative session, LB 505 was one of the first bills to be debated during the 2000 session. Once again, proponents of the bill tried to amend the bill so that it only contained an increase of \$0.30 but this time only 23 senators voted in favor of the amendment.<sup>345</sup> As a result, Landis pulled LB 505 from the legislative agenda rather than have it get killed in a floor vote.

Despite the failure of LB 505, Citizens for a Healthy Nebraska regrouped and later during the 2000 legislative session helped convince the Legislature to pass LB 1436 which appropriated \$21 million over three years from the tobacco settlement to be used for tobacco control (See Use of MSA Money Section)

### *Second Attempt at Passing a Large Excise Tax Increase - LB 792 (2001)*

The following year, in 2001, Citizens for a Healthy Nebraska again pushed for a large excise tax increase which was sponsored this time by Senator Jim Jensen (R - Omaha). On January 17, 2001, Senator Jensen introduced LB 792, which sought to raise the state's excise tax by \$0.30.<sup>346</sup> Newspaper reports dubbed LB 792 a "something-for-everyone" bill because the over \$30 million that would be raised by the excise tax increase was to be given to foster care, water-quality monitoring, juvenile justice, emergency services, rural health and urban redevelopment projects in Omaha and Lincoln.<sup>347</sup> It also included a \$0.05 earmark for Tobacco Free Nebraska, which was already being funded at \$7 million per year as part of LB 1436.<sup>348</sup> This tax increase was to continue until July 1, 2008 so it would have provided funds for Tobacco Free Nebraska until FY2008 as compared to LB 1436 which only funded Tobacco Free Nebraska through FY2002.<sup>307, 348</sup>

Befitting a bill that would have funded numerous different areas, there was a sizable turnout of individuals in favor of LB 792 at its hearing before the Revenue Committee. In total, 25 people testified in favor of the bill.<sup>349</sup> From the tobacco control community, five individuals comprising most of the member groups of the Citizens for a Healthy Nebraska coalition testified in favor of LB 792.<sup>349</sup> Also testifying in support was Mark Welsch, President of GASP of Nebraska, and Richard Hunt, the founder of GASP of Nebraska.

Numerous individuals from the tobacco industry and their allies appeared again to oppose an excise tax increase in Nebraska. Included were Walter Radcliffe, lobbyist for United States Smokeless Tobacco, Jim Moylan of the Nebraska Licensed Beverage Association (and lobbyist for R. J. Reynolds), David Menke of No Frills Supermarkets and the Nebraska Grocery Industry Association, Derek Crawford, lobbyist for Philip Morris, Cara Potter of the Nebraska Retail Federation and David Schulte of the Nebraska Association of Tobacco and Candy Distributors.<sup>349</sup> During the testimony before the Revenue Committee, the tobacco industry and its allies focused on themes similar to those expressed during the debate of LB 505 the previous two years. Radcliffe also criticized Senator Jensen's strategy of providing earmarks to numerous interests in LB 792. Radcliffe stated, "It gives the money to different people in hopes that those people will be able to persuade enough senators to vote for the increase this year. I don't think they can."<sup>347</sup>

The supporters of LB 792 were not able to convince the Revenue Committee of the bill's merits. They voted 5 to 2 to kill the bill by indefinitely postponing it.<sup>349</sup>

While Nebraska's excise tax remained at \$0.34, two other events during the 2001 legislative session that would figure prominently into tobacco control in Nebraska. One was the passage of LB 692 which allocated the investment income from the tobacco settlement money to improvements in healthcare (See Disbursement Section). The other was the announcement that the state was facing a huge deficit due to the downturn in the national economy (See Disbursement Section).

*Passage of a \$0.30 Excise Tax Increase - LB 1085 (2002)*

Nebraska's eventual passage of a 30 cent excise tax increase in 2002 first began with LB 1149, a bill sponsored by Senator Jim Jensen.<sup>350</sup> Undeterred by the failure of LB 792 the previous year and believing that an excise tax increase could help the state balance the budget, Senator Jensen proposed to raise the state's excise tax by \$0.50 from \$0.34 to \$0.84, which it was estimated would generate approximately \$58 million per year which was to be placed in a trust fund created by the bill called the Nebraska Tobacco Tax Trust Fund.<sup>350, 351</sup> Once again, Citizens for a Healthy Nebraska led the push to pass this bill, primarily through lobbying efforts.

A key provision of this bill was that \$7 million was to be taken from the Tobacco Tax Trust Fund and placed in the Tobacco Prevention and Control Cash Fund which is the funding source for Tobacco Free Nebraska<sup>350</sup>. At the time, Tobacco Free Nebraska was receiving funding at \$7 million per year. If LB 1149 had been passed in its original form, Tobacco Free Nebraska would have continued at \$7 million with the funding source being excise tax money instead of the tobacco settlement.

Another \$5 million was to go to Nebraska's Medicaid program to be used to provide health coverage for children from middle-level income homes. The funding for that program was set to expire at the end of FY 2002-2003.<sup>352</sup> The remaining amount of the Tobacco Tax Trust Fund was to be placed in the Health Care Cash Fund which was the funding source for the health-related improvements designated by LB 692. This remainder of the money from the excise tax, estimated to be \$46 million, could have been used to help balance the state's budget but only by paying for health-related expenses.<sup>351</sup>

Before LB 1149's hearing before Revenue Committee, Senator Jensen, Citizens for a Healthy Nebraska, and other proponents of the bill received some support for the tax increase from an unexpected source. Republican Governor Mike Johanns had been elected by running on an anti-tax platform. Throughout the budget crisis, he preached spending cuts as the only way to solve the fiscal crisis.<sup>351</sup> On February 4, 2002, Governor Johanns expressed interest in a possible \$0.50 excise tax increase after a meeting with Citizens for a Healthy Nebraska. "I'll take a very, very close look at what they're proposing," he said. "It depends on what the legislation looks like."<sup>351</sup> Members of Citizens for a Healthy Nebraska were pleased by the possibility of support from the governor. "We don't expect him to come out here and start lobbying on our behalf, but it's an encouraging sign," said Dave Holmquist, the lobbyist for the American Cancer Society in Nebraska.<sup>351</sup>

It was Holmquist and Dr. Paul Paulman of the Nebraska Medical Association that made Citizens for a Healthy Nebraska's case for an excise tax increase before the Revenue Committee. Also testifying in favor of the bill from the tobacco control community in Nebraska was Mark Welsch of GASP of Nebraska.<sup>353</sup>

Many of the same names from previous years opposed LB 1149. Testifying against an excise tax increase again were Radcliffe of United States Smokeless Tobacco, Schulte of the Nebraska Association of Tobacco and Candy Distributors, Crawford from Philip Morris, Moylan of the Nebraska Licensed Beverage Association (and R. J. Reynolds).<sup>353</sup> The newcomers were Lon Alexander, a Tobacco Hut owner, Timothy Keigher of the Nebraska Petroleum Marketers Association and Bill Peters, formerly with the Tobacco Institute, and now testifying for Lorillard and Brown & Williamson.

On February 28, 2002, Governor Johanns unveiled his budget which included a \$0.50 excise tax increase in LB 1149, but, unlike LB 1149, the revenue <is the way I edited it correct?> from the tax increase was to go to the General Fund and not to health expenses.<sup>354</sup>

During March, the Revenue Committee still had not decided whether or not to advance LB 1149 out of committee. Instead, they were spending their time working to craft a tax increase bill to help balance the state's budget. The bill that was advanced out of committee, LB 1085, was written to raise \$90 million in revenue primarily by expanding the sales tax base and increasing the cigarette excise tax by only \$0.20.<sup>355</sup> Eighteen of the twenty cents in the Revenue Committee's excise tax increase went to the General Fund with the remaining two cents going to the Building Renewal Allocation Fund. With an excise tax increase included in their tax bill, the Revenue Committee decided 6-0 to gut LB 1149 and replace it with a Medicaid eligibility amendment.<sup>353</sup>

At this point, the excise tax increase no longer contained an earmark for the Tobacco Prevention and Control Cash Fund.<sup>353</sup> On March 25, Senator Jensen attempted to get support for an amendment that would raise the excise tax increase back up to \$0.50, but unable to find the support necessary for such an amendment, Jensen began working toward a \$0.30 tax increase.<sup>356</sup> In the morning of March 26, he was successful in getting an amendment to LB 1085 passed by a vote of 28-15 that increased the excise tax to \$0.30.<sup>356</sup>

By the afternoon, Jensen's amendment had been jettisoned due to intense opposition from Senator Ernie Chambers (I - Omaha). Chambers, the Legislature's only African-American senator, was strongly opposed to an excise tax increase because he felt it was unfair to target a minority of taxpayers especially since that minority contained more individuals who were poor and non-white.<sup>357</sup> Thirty-three votes were needed to overcome a Chambers' filibuster so, with only 28 vote, the amendment was removed. Instead, the Legislature began focusing on using sales and income tax increases to balance the budget.<sup>358</sup>

The reversal did not surprise the members of Citizens for a Healthy Nebraska. "This was always going to come down to the 11<sup>th</sup> hour," said Rich Lombardi, one of the lobbyists for the coalition. "We'll be here right to the very end."<sup>357</sup> Governor Johanns was not happy with the Legislature's decision to utilize sales and income tax increases to balance the budget and promised a veto.<sup>358</sup> He accused the Legislature of trying to tax their way out of the budget

crisis instead of making the cuts he recommended.<sup>358</sup> On April 8, a cigarette excise tax increase was again incorporated into LB 1085.<sup>359</sup> It had become apparent that the sales and income tax increases would not be enough to balance the budget so, by a vote of 32-16, the Legislature again added an amendment to LB 1085 which increased the excise tax by \$0.30.<sup>359</sup> This excise tax increase was written to sunset after two years.<sup>360</sup>

Governor Johanns made good on his threat and vetoed LB 1085 because it increased the state's sales and income taxes. The Legislature responded by voting 30-19 to override the governor's veto.<sup>361</sup> With that vote by the Legislature, Nebraska increased its excise tax on a pack of cigarettes from \$0.34 to \$0.64 for two years. As a result of further budget woes, the sunset clause for the \$0.30 tax increase was removed in 2003 so that the increase became permanent (See Use of the Settlement Section). None of the revenues were ever allocated to tobacco control.

## **HUGE FUNDING CUT FOR TOBACCO FREE NEBRASKA IN 2003**

### *Governor Johanns' Budget*

At the beginning of the 2003 session of the Legislature in January, Nebraska was facing a \$673 million gap in the budget.<sup>362</sup> Unfortunately for health advocates in Nebraska, it was in this climate that they had to pressure legislators to continue funding Tobacco Free Nebraska at \$7 million per year because the program (as part of LB 1436) was only funded out of the tobacco settlement through FY2002.<sup>307, 325</sup> In previous years, Citizens for a Healthy Nebraska had pushed for an earmark for Tobacco Free Nebraska as part of an cigarette excise tax increase (See Excise Tax Section). While they had been successful in getting a temporary \$0.30 excise tax passed in 2002, the Legislature was unwilling to provide an earmark for tobacco control because legislators wanted to use all of the increase to deal with the budget crisis.

Despite the fact that during the 2002 regular session, \$5 million had not been reallocated to Tobacco Free Nebraska and the Legislature had been unwilling to provide continued funding for the program through an excise tax earmark, health advocates had some reason to be optimistic at the beginning of the 2003 session in January. On January 15, 2003 Governor Johanns unveiled his biennium budget which called for making the \$0.30 excise tax increase (which was scheduled to expire on October 1, 2004) permanent and enacting an additional \$0.20 excise tax increase that would be devoted to the General Fund.<sup>363</sup> Due in part to the increased funds that the state would be taking in from the \$0.20 excise tax increase that was proposed, Johanns' budget also included \$3 million per year from the General Fund for each of the next two years (FY2004 and FY 2005) to support Tobacco Free Nebraska.

Two characteristics of Johanns' budget would have serious consequences for tobacco control in Nebraska: it contained no other tax increases other than the cigarette excise tax increase and the \$3 million for Tobacco Free Nebraska came out of the General Fund (because the increased revenues from the \$0.20 increase in cigarette excise taxes would be deposited in the General Fund) and not directly from the cigarette excise tax or the tobacco settlement.



Due to the fact that, once again, Johanns stuck to his anti-tax mantra and insisted on no new taxes except an increase in the cigarette excise tax, his budget was largely discounted by legislators as unfeasible to deal with such a large budget deficit. To avoid raising taxes, Johanns' solution was to cut funding to K-12 and to higher education by 10% for each of the next two years.<sup>364</sup> His budget also called for a similar 10% cut for most state agencies. Many in the Legislature were very displeased that Johanns seemed willing to make such deep cuts to avoid increasing taxes. Some senators went so far as to say that the governor was avoiding the idea of raising taxes so the Legislature would take all the political heat for increasing taxes. "The way he's handled it (the budget crisis) is fairly typical of the way governors in the past have handled it - they usually do turn it over to the Legislature for the realistic solution," stated Senator Chris Beutler of Lincoln (D- 8.0 policy score). "What he suggested certainly isn't realistic. We need to do it ourselves."<sup>365</sup> Another critic of Governor Johanns' budget was Senator Nancy Thompson (D-Papillion). She said, "A lot of us think he's just abdicating his leadership role - he just lobbed it over here."<sup>365</sup>

Because legislators were upset at the governor's insistence that the budget crisis should be remedied almost exclusively through spending cuts, a critical eye was turned towards the \$3 million annually that he had in his budget for Tobacco Free Nebraska. Since the program had previously been funded out of the tobacco settlement and not out of the General Fund, many legislators viewed the \$3 million as new spending from the General Fund.<sup>325</sup> This \$3 million was, however, a small fraction of the approximately \$20 million that the \$0.20 increase in cigarette excise taxes would bring in to the General Fund. The fact that the funding for Tobacco Free Nebraska in the governor's proposed budget was seen as new spending from the General Fund while the Governor was also calling for 10% cuts to many other programs, such as education,<sup>364</sup> that had long be paid for out of the General Fund would be a huge pitfall for health advocates in Nebraska.

The deep cuts to education were particularly unpalatable to many legislators and much of the 2003 legislative session consisted of legislators attempting to find a way to moderate the governor's proposed cuts and still lower the budget deficit. This effort was rendered even more difficult when the budget deficit figure rose to \$761 million in April.<sup>366</sup> At this point, senators were debating which taxes could be raised to best help with the budget deficit. One proposal, initially advanced in Governor Johann's budget was to make the \$0.30 excise tax increase passed in 2002 (and set to sunset in 2004) permanent.<sup>366</sup> Increasing the tax the previous year and now making it permanent, however, meant that the Legislature was unwilling to pass the additional excise tax increase of \$0.20 proposed by Johanns. On May 6, the Legislature voted 34-7 to advance LB 285 which extended the temporary excise, sales and income tax increases passed in 2002 from the first round of debate.<sup>367</sup> It was estimated that enacting LB 285 would bring in \$235 million over two years and by factoring in additional sales, income and alcohol tax increases that the Legislature was considering, the total in revenue raised by all the tax increases was estimated to be \$315 over the next two years. Even so, all these tax increases combined with spending cuts still left the Legislature \$40 million short of a balanced budget.<sup>367</sup>

### *Funding Source Amendments*

Up until early May 2003, tobacco control advocates in Nebraska had been unable to convince the Legislature to return the funding level for Tobacco Free Nebraska to \$7 million per year; the \$3 million per year proposed by the Governor, however, still remained in the budget bill. With the legislative session almost over, legislator began reviewing this budget bill (LB 407) for any additional areas that could be cut. On May 8, Senator Ronald Raikes of Lincoln (I - 5.5 policy score), chairperson of the Education Committee, proposed an amendment (AM 1802) to the budget bill to completely remove the \$3 million per year that Tobacco Free Nebraska was to receive. The same day, Speaker of the Legislature Curt Bromm of Wahoo (R - 4.5 policy score) introduced an amendment (AM 1783) to the tax package bill (LB 759) that sought to increase the cigarette excise tax by \$0.03 to \$0.67, which was estimated to raise approximately \$3.3 million, to all be placed in the Tobacco Prevention and Control Cash Fund, Tobacco Free Nebraska's funding source.

With these two major amendments introduced on the same day, the health advocates in Nebraska rapidly stepped up their lobbying efforts. Telephone calls and e-mails went out to individuals to mobilize them to contact their state senator to urge him or her to vote no on Senator Raikes' amendment and yes on Senator Bromm's. Tobacco control advocates also held a press conference at the State Capitol. In addition, they flooded Senator Raikes' office with calls protesting his amendment. His response was that it was not his intention to gut the Tobacco Free Nebraska program but that he felt that the program should be funded out of the tobacco settlement and not out of the General Fund.<sup>368</sup> He had not, however, introduced such legislation or included a provision to do so in his amendment.

Throughout the legislative session, tobacco control advocates had been attempting to garner more money for Tobacco Free Nebraska out of the tobacco settlement, without any success. All of the interest generated by the settlement was already committed to the \$50 million per year in health-related expenses funded by LB 692 which was passed in 2001.<sup>316</sup> In contrast to earlier willingness to fund Tobacco Free Nebraska out of the settlement money, many legislators stated their preference for funding tobacco control using an excise tax increase instead of the tobacco settlement. The reason why some of these legislators were not supportive of using the tobacco settlement was because they were afraid that using the tobacco settlement money for anything other than the package of programs funded through LB 692 would jeopardize the funding source for these programs. Two of the senators that pushed for excise tax increases instead of using tobacco settlement money were the heads of the Health and Human Services Committee, Jim Jensen and Dennis Byars. In 2001, both senators had been major architects of LB 692 and had pushed for the tobacco settlement to be used for public health improvements with Senator Jensen focusing on mental health services and Senator Byars pushing for developmental disabilities and respite care (See Above).<sup>316</sup> During the 2003 session, these two senators introduced and passed LB 468, which refunded out of the tobacco settlement all of the health-related programs first funded as part of LB 692.<sup>369</sup> While the funding for these programs was not increased due to the budget crisis, they were not cut from their previous levels of funding either. Biomedical research, which had been scheduled to jump from \$10 million to \$12 billion for FY2004 and FY2005 remained at \$10 million.<sup>369</sup> The result was that biomedical research, which was already received over \$10 billion a year in funding from the National Institutes of Health and other sources, continued to receive more money from the tobacco settlement than the tobacco control program.

Five days after it had been introduced, the Legislature voted 26-14 on May 13 to pass Senator Raikes' amendment which stripped Tobacco Free Nebraska of the \$3 million it was to receive annually from the General Fund. There was no evidence that the tobacco industry directly lobbied for this amendment. Because this amendment dealt exclusively with the funding of a tobacco control program, if the tobacco industry had done so it would have constituted a violation of the Master Settlement Agreement.<sup>289</sup> The tobacco industry, however, has a long history of using allies and third parties to lobby on its behalf on such matters.<sup>101, 370</sup> The passage of Senator Raikes' amendment rendered a similar amendment, introduced by Philip Erdman of Bayard (R - 1.8 policy score), which would also have stripped Tobacco Free Nebraska's funding out of the budget moot. As of May 13, 2003, Tobacco Free Nebraska had been zeroed out by the Nebraska Legislature.

With the possibility of receiving funding out of the tobacco settlement looking slim, tobacco control advocates focused their efforts in support of Senator Bromm's amendment to increase the cigarette excise tax by \$0.03 to fund Tobacco Free Nebraska. The tobacco industry and its allies were permitted by the Master Settlement Agreement to lobby against excise tax increases so they did lobby strongly in opposition to Senator Bromm's amendment to LB 759.

On May 15, Senator Bromm's amendment was defeated when it failed by two votes (23-8) to garner the 25 votes necessary to pass an amendment. Especially disheartening for tobacco control advocates was that six senators were not present for the vote. Only one of these senators was strongly pro-tobacco industry, Jim Cudaback of Riverdale (R- 2.5 policy score) and two of these senators, Ray Aguilar of Grand Island (R - 8.2 policy score) and DiAnna Schimek of Lincoln (D - 8.0 policy score), who would have almost certainly voted in favor of the amendment had they been present. These two senators and Senator Vickie McDonald of Rockville (R - 6.2 policy score) later voted in favor of an almost identical amendment to raise the tobacco excise tax by \$0.03 to fund Tobacco Free Nebraska. During the vote on Senator Bromm's amendment, Senator Aguilar was at a doctor's appointment, Senator Schimek was out of the state and Senator McDonald had left the floor of the Legislature over a comment made about her deceased husband.

Because the vote on Senator Bromm's amendment was so close, Senator Thompson introduced an almost identical amendment, AM 7153, to get funding to Tobacco Free Nebraska through a \$0.03 excise tax increase, but this amendment failed by a larger margin of 17-17 because it was later in the session and more legislators were absent.

#### *Funding at \$405,000 Per Year*

By this point, tobacco control advocates were frantic because it was very late in the session and they still were without any funding. They continued lobbying senators to fund Tobacco Free Nebraska and finally had some measure of success. They were able to convince Senator David Landis of Lincoln (D - 5.4 policy score) to introduce an amendment, AM 2113, to an appropriation bill, Legislative Bill 285A, on May 28 that sought to provide Tobacco Free Nebraska with \$405,000 per year for FY2004 and FY2005.<sup>371</sup> During the special session in 2002, the Legislature had decided to reduce the discount that tobacco wholesalers are given for what it costs them to put tax stamps on cigarettes from 3.4% to 1.7%, but the Legislature had

not decided how to allocate the modest savings created by this change.<sup>372</sup>

The Legislature voted 29-17 to adopt Senator Landis' amendment and it passed final reading by a vote of 36-1 on May 30<sup>th</sup>, the last day possible.<sup>372</sup>

The final result of the 2003 legislative session was that state funding for tobacco control efforts in Nebraska dropped from \$7 million per year to \$405,000 per year. Tobacco Free Nebraska suffered a 94% cut program while biomedical research and the other programs funded out of the tobacco settlement were not cut at all.

## CONCLUSIONS

The tobacco industry has a long history of undermining efforts to protect the health of Nebraskans. Through the use of third-party allies, false arguments, lobbyists and campaign contributions, the tobacco industry has been active in opposing efforts to reduce the harm caused by smoking by preventing the strengthening of laws to protect the public from secondhand smoke (See Clean Indoor Air section), by weakening laws that keep tobacco out of the hands of children (See Youth Access section) and by opposing cigarette excise tax increases which reduce tobacco consumption (See Excise Tax sections). In an effort to influence policymakers, tobacco companies spent over \$1 million on lobbying expenditures from 1997 to 2002 and approximately \$315,000 in direct contributions to elected state officials from 1979 to 2002 (See Appendix). Their investment has often paid off.

It is often difficult to expose the extent of the tobacco industry's role in weakening tobacco control policies, especially due to the use of third-party allies such as the hospitality industry; however, the tactics and rhetoric used by the tobacco industry have essentially remained the same for the past twenty-five years in Nebraska. For example, the arguments that the tobacco industry used to oppose the creation of separate smoking and nonsmoking sections in Nebraska in 1979<sup>47</sup> are the same arguments used in 2003 in the Legislature to oppose making all restaurants smokefree and in Lincoln to make all workplaces and public places smokefree. In both 1979 and in 2003, the hospitality industry represented the public face for the tobacco industry's rhetoric. This pattern of operating behind third-party allies and front groups is no different that what was been seen in numerous other states when the tobacco industry fights against tobacco control policies that would save lives.<sup>9, 101, 211, 251, 301</sup>

The tobacco industry has remained a steadfast and powerful player in state politics leaving the actions of health advocates, including those in elected offices, to determine the outcome of tobacco control debates. During the 1970s, it was largely senators within the Nebraska Legislature, such as Shirley Marsh of Lincoln in 1974 and Larry Stoney of Omaha in 1979, that were responsible for Nebraska's decisions to follow the examples set by Arizona and Minnesota in enacting state clean indoor air laws (See Clean Indoor Air section). Another example of when a health advocate in government was largely responsible for a tobacco control policy change was the five years of effort devoted to making state buildings and vehicles smokefree by Senator Don Preister until he was successful in 1999 (See Clean Indoor Air section). Furthermore, these examples seem to demonstrate how aggressive and persistent efforts by even a single legislative champion are generally much more key to overcoming lobbying by the tobacco industry than weak support by a larger number of legislators.

In more recent years, health advocates outside of government have begun to play a much larger role in tobacco control politics in Nebraska by devoting more time and energy to policy change at both the state and local level; however, they are not sufficiently powerful and organized to be consistently effective in opposing the tobacco industry. From 1999-2002, the largest tobacco control coalition in Nebraska, Citizens for a Healthy Nebraska, focused its activities in the Legislature on passing a large cigarette excise tax increase in an effort to reduce youth smoking and increase funding for tobacco control (See Citizens' Excise Tax section). While coalition members were able to convince many legislators to support an excise tax increase as a way to improve the health of Nebraskans, the tobacco industry was effective in playing to the unpopularity of tax increases, thereby preventing excise tax increase proposals from garnering the necessary number of votes on several different occasions.

During this same period, there were several efforts emerging in the Legislature to strengthen and modernize the state's clean indoor air law by making all restaurants in the state smokefree (See Clean Indoor Air section). Due to a narrow focus on achieving a cigarette excise tax increase, the majority of tobacco control advocates did not mobilize to support these bills. The tobacco industry, with its resources and lobbyists, was not limited to focusing on one issue and was active in opposing these smokefree restaurant bills which included a phone-banking operation that was conducted by R.J. Reynolds.<sup>114</sup> In spite of the imbalance between efforts of health advocates and the tobacco industry, a bill requiring smokefree restaurants was almost passed by the Legislature in 2000.<sup>105</sup>

After two failed attempts to pass a cigarette excise tax increase in prior years, Citizens for a Healthy Nebraska was successful in getting a \$0.30 increase passed in 2002.<sup>360</sup> While this increase would not have come about without hard work by tobacco control advocates, the large budget deficit faced by Nebraska in 2002 as a result of the nationwide economic slump was a major contributing factor. With the state's budget in the red, the economic benefits of an excise tax increase (and not the health benefits) convinced some legislators to vote in favor of the proposed \$0.30 increase. While the Legislature did pass this cigarette excise tax increase, all the money raised was devoted to dealing with the budget crisis and none was earmarked for tobacco control efforts.<sup>360</sup>

The budget deficit helped tobacco control advocates secure the passage of a cigarette excise tax increase in 2002; however, it was also largely responsible for the massive cut suffered by the state's tobacco control program in 2003.<sup>12, 118</sup> In 2000, after failing to provide funding for tobacco control through a previous cigarette excise tax increase attempt, health advocates switched their focus and were effective in convincing the Legislature and Governor to appropriate \$7 million per year for three years for tobacco control out of the funds provided to Nebraska from the Master Settlement Agreement, which was about half the minimum level of funding recommended by the US Centers for Disease Control. (This level of funding put Nebraska at 16 out of the 50 states.<sup>305</sup>) The Department of Health and Human Services used these funds to expand its existing Tobacco Free Nebraska program. After this promising start, the program came under financial attack due to the deteriorating state budget. Tobacco control had not been established in the eyes of many legislators as an important and necessary government function for improving the health and well-being of Nebraskans. To provide political cover for themselves, the Legislature and the governor haggled over what the funding

source should be (General Fund, cigarette excise tax increase or settlement money) instead of insuring that the program was funding irregardless of the source.

This situation allowed the Legislature and the Governor to provide nominal support for the tobacco control program while allowing it to suffer a massive 94% cut in 2003,<sup>372</sup> which far surpassed the level of cuts to most state programs. At the same time, funding for biomedical research – which poses no short term threat to the tobacco industry and focused on treatment instead of prevention – was maintained at \$10 million per year.<sup>369</sup>

Another example was Nebraska's first attempt to pass a 100% smokefree workplace ordinance at the local level. Previously most tobacco control successes in Nebraska at the local level had focused on youth access (See Youth Access section) or passing ordinances that only made city or county facilities smokefree (See Clean Indoor Air section), but in 2003, the Lincoln-Lancaster Health Department and other tobacco control proponents proposed a local workplace ordinance before the Lincoln City Council.<sup>150</sup> Due to pressure from the tobacco industry and the hospitality industry, especially bar owners, the members of the Lincoln City Council passed a confusing ordinance that was weakened to allow separately ventilated "smoking rooms" and also allowed bars to be exempted.<sup>172-174</sup> As of March 2004, it has not been determine whether or not these "smoking rooms" can serve as work areas; thus, exposing employees to the health hazards of secondhand smoke.

The following are lessons that can be learned from tobacco control activities in Nebraska:

- The tobacco industry and its allies used the same rhetoric in 1979 in opposing separate smoking and nonsmoking sections in public places that they used in 2003 to oppose smokefree public places. The attention of the public and elected officials should be drawn to the fact that the same arguments are used to paint smokefree efforts as unreasonable as were formerly used to portray separate smoking and nonsmoking sections as "a further example of government intrusion into the private sector."<sup>47</sup>
- The tobacco industry understands that its reputation is its biggest liability in a public debate. Health advocates must educate the public and elected officials about the role that third-party allies play in any tobacco control fight.
- The tobacco industry has enough resources and influence to fight on many different fronts at one time. Health advocates need to become organized and strong enough to mobilize on more than one issue at a time or else they will be constantly losing in some areas while they gain in others.
- Unless tobacco control is well-established as a funding priority, legislators will use the money taken in by the state from excise taxes and the tobacco settlement to fund areas that have little impact on the tobacco industry because these areas, such as medical research, are politically safer.

Whether tobacco control advocates in Nebraska can consolidate their past successes and learn from their failures in an effort to establish effective tobacco control as a priority in Nebraska at both the state and local level remains to be seen.

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## APPENDICES

### Appendix 1: Summary of Tobacco Industry Campaign Contributions and Tobacco Policy Scores for Members of the 2003 Nebraska Legislature

Name of Candidate	Dist.	Party	Years in Office	Industry			Industry			Lifetime		Policy Score
				1999-2000	1999-2000	2001-2002	1999-2002	1999-2002	Industry Total	Lifetime Total		
Aguilar, Ray	35	R	5	\$0	\$1,026	\$0	\$0	\$0	\$1,026	\$0	\$1,026	8.2
Baker, Tom	44	R	5	\$1,500	\$2,500	\$1,500	\$2,699	\$3,000	\$5,199	\$4,000	\$6,721	2.0
Beutler, Chris	28	D	21	\$0	\$500	\$0	\$250	\$0	\$750	\$5,000	\$6,827	8.0
Bourne, Patrick	8	D	5	\$2,000	\$2,000	\$1,500	\$1,716	\$3,500	\$3,716	\$4,000	\$4,468	1.8
Brashear, Kermit	4	R	9	\$1,500	\$2,000	\$1,500	\$1,500	\$3,000	\$3,500	\$7,000	\$8,551	2.8
Bromm, Curt	23	R	11	\$2,000	\$2,800	\$1,500	\$1,750	\$3,500	\$4,550	\$6,550	\$8,050	4.5
Brown, Pam	6	D	9	\$250	\$250	\$0	\$350	\$250	\$600	\$2,750	\$4,152	7.3
Burling, Carroll	33	R	3	\$0	\$500	\$0	\$0	\$0	\$500	\$0	\$500	4.4
Byars, Dennis	30	R	13	\$1,250	\$1,250	\$500	\$750	\$1,750	\$2,000	\$3,150	\$4,178	7.7
Chambers, Ernie	11	I	33	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Combs, Jeanne	32	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	4.2
Connealy, Matt	16	D	5	\$500	\$500	\$500	\$900	\$1,000	\$1,400	\$1,500	\$2,050	7.2
Cudaback, Jim	36	R	13	\$1,500	\$1,500	\$1,000	\$1,000	\$2,500	\$2,500	\$5,350	\$6,151	2.5
Cunningham, Doug	40	R	3	\$1,400	\$9,946	\$1,049	\$2,506	\$2,449	\$12,452	\$2,449	\$12,452	1.5
Engel, Pat	17	D	11	\$1,500	\$1,500	\$1,500	\$1,500	\$3,000	\$3,000	\$5,750	\$6,045	3.2
Erdman, Philip	47	R	3	\$0	\$0	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	1.8
Foley, Mike	29	R	3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	5.0
Friend, Mike	10	R	1	\$0	\$0	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	3.0
Hartnett, Paul	45	D	19	\$0	\$770	\$1,000	\$1,000	\$1,000	\$1,770	\$1,750	\$3,840	2.3
Hudkins, Carol	21	R	11	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$6,000	\$6,357	4.2
Janssen, Ray	15	D	11	\$2,300	\$2,600	\$500	\$800	\$2,800	\$3,400	\$8,550	\$9,798	1.5
Jensen, Jim	20	R	9	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$427	8.5
Johnson, Joel	37	R	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	7.7
Jones, Jim	43	R	11	\$750	\$1,250	\$0	\$500	\$750	\$1,750	\$1,500	\$3,050	4.8
Kremer, Bob	34	R	5	\$0	\$0	\$0	\$541	\$0	\$541	\$0	\$875	4.7
Kruse, Lowen	13	D	3	\$0	\$0	\$500	\$733	\$500	\$733	\$500	\$773	7.6
Landis, David	46	D	25	\$0	\$0	\$0	\$327	\$0	\$327	\$3,550	\$6,910	5.4
Louden, LeRoy	49	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	4.0
Maxwell, Chip	9	I	3	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	4.6
McDonald, Vickie	41	R	3	\$0	\$0	\$0	\$500	\$0	\$500	\$0	\$500	6.2
Mines, Mick	18	R	1	\$0	\$0	\$0	\$700	\$0	\$700	\$0	\$700	3.8
Mossey, Ray	3	R	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	3.4
Pedersen, Dwite	39	R	11	\$2,650	\$4,029	\$1,000	\$1,500	\$3,650	\$5,529	\$7,600	\$11,612	3.5
Pederson, Don	42	R	8	\$500	\$500	\$500	\$1,098	\$1,000	\$1,598	\$2,000	\$2,840	5.2
Preister, Donald	5	D	11	\$0	\$679	\$0	\$0	\$0	\$679	\$0	\$2,284	8.8
Price, Marian	26	R	5	\$0	\$0	\$0	\$252	\$0	\$252	\$0	\$352	7.7
Quandahl, Mark	31	R	5	\$1,400	\$2,617	\$1,500	\$1,800	\$2,900	\$4,417	\$2,900	\$4,417	2.6
Raikes, Ron	25	I	7	\$0	\$0	\$0	\$0	\$0	\$0	\$750	\$1,899	5.5
Redfield, Pam	12	R	6	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	6.8
Schimek, DiAnna	27	D	15	\$0	\$300	\$0	\$0	\$0	\$300	\$1,550	\$5,215	8.0
Schrock, Ed	38	R	13	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$100	5.8
Smith, Adrian	48	R	5	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300	1.7
Stuhr, Elaine	24	R	9	\$500	\$500	\$500	\$500	\$1,000	\$1,000	\$1,250	\$1,492	4.3
Stuthman, Arnie	22	R	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	2.7
Synowiecki, John	7	D	3	\$0	\$0	\$1,000	\$1,300	\$1,000	\$1,300	\$1,000	\$1,300	5.7
Thompson, Nancy	14	D	7	\$0	\$371	\$0	\$0	\$0	\$371	\$0	\$926	8.7
Tyson, Gene	19	R	7	\$0	\$0	\$0	\$0	\$0	\$0	\$250	\$250	1.5
Vrtiska, Floyd	1	R	11	\$0	\$1,241	\$0	\$0	\$0	\$1,241	\$1,100	\$2,265	6.2
Wehrbein, Roger	2	R	17	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$50	7.5
<b>TOTALS</b>				\$23,500	\$43,129	\$22,049	\$31,472	\$45,549	\$74,601	\$92,749	\$144,703	5.0



Appendix 2: Summary of Tobacco Industry Campaign Contributions to Members of the 2001-02 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	2001-2002	2001-2002
													Industry Total	Total
Wehrbein, Roger	2												\$0	\$0
Kentsmith, David	2												\$0	\$0
Brashear, Kermit	4	\$500	\$1,000										\$1,500	\$1,500
Brown, Pam	6									\$350			\$0	\$350
Pendrell, Tim	6		\$500										\$500	\$500
Synowiecki, John	7	\$500	\$500					\$100		\$100	\$100		\$1,000	\$1,300
Bourne, Patrick	8	\$500	\$1,000						\$216				\$1,500	\$1,716
Friend, Mike	10	\$500	\$500			\$1,000							\$2,000	\$2,000
Suttle, Deb	10									\$400			\$0	\$400
Redfield, Pam	12												\$0	\$0
Koile, Bill	12												\$0	\$0
Thompson, Nancy	14												\$0	\$0
Allen, Brad	14												\$0	\$0
Connealy, Matt	16		\$500					\$400					\$500	\$900
Mines, Mick	18									\$700			\$0	\$700
Kovarik, James	18		\$500										\$500	\$500
Jensen, Jim	20												\$0	\$0
Stuthman, Armie	22												\$0	\$0
Robak, Jennie	22	\$1,000	\$1,000										\$2,000	\$2,000
Stuhr, Elaine	24	\$500											\$500	\$500
Price, Marian	26								\$252				\$0	\$252
Sullivan, Brice	26												\$0	\$0
Beutler, Chris	28											\$250	\$0	\$250
Byars, Dennis	30		\$500									\$250	\$500	\$750
Combs, Jeanne	32												\$0	\$0
Biba, Dave	32												\$0	\$0
Kremer, Bob	34								\$268	\$273			\$0	\$541
Willhoft, Jerry	34												\$0	\$0
Cudaback, Jim	36		\$1,000										\$1,000	\$1,000
Johnson, Joel	37												\$0	\$0
Schrock, Ed	38												\$0	\$0
Scheierman, Scott	38												\$0	\$0
Cunningham, Doug	40	\$500	\$549					\$300	\$278	\$878			\$1,049	\$2,506
Dierks, Cap	40								\$300				\$0	\$300
McDonald, Vickie	41									\$500			\$0	\$500
Schmitt, Jerry	41		\$500										\$500	\$500
Pederson, Don	42		\$500					\$300	\$298				\$500	\$1,098
Munoz, Dave	42												\$0	\$0
Baker, Tom	44	\$500	\$1,000							\$449		\$750	\$1,500	\$2,699
Landis, David	46									\$327			\$0	\$327
Carter, John	46												\$0	\$0
Smith, Adrian	48												\$0	\$0
Louden, LeRoy	49												\$0	\$0
<b>Cycle Total</b>		<b>\$4,500</b>	<b>\$9,549</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$1,100</b>	<b>\$1,612</b>	<b>\$3,978</b>	<b>\$100</b>	<b>\$1,250</b>	<b>\$15,049</b>	<b>\$23,089</b>
<b>Off-Cycle</b>														
Hilgert, John	7	\$500	\$500										\$1,000	\$1,000
Maxwell, Chip	9		\$1,000										\$1,000	\$1,000
Kruse, Lowen	13		\$500						\$233				\$500	\$733
Janssen, Ray	15		\$500							\$300			\$500	\$800
Engel, Pat	17	\$500	\$1,000										\$1,500	\$1,500
Hudkins, Carol	21	\$500	\$500										\$1,000	\$1,000
Bromm, Curt	23	\$500	\$1,000									\$250	\$1,500	\$1,750
Quandahl, Mark	31	\$500	\$1,000						\$300				\$1,500	\$1,800
Coordsen, George	32		\$1,500										\$1,500	\$1,500
Kristensen, Doug	37	\$500	\$500										\$1,000	\$1,000
Pedersen, Dwite	39		\$1,000									\$500	\$1,000	\$1,500
Jone, Jim	43											\$500	\$0	\$500
Hartnett, Paul	45		\$1,000										\$1,000	\$1,000
Erdman, Phil	47		\$1,000										\$1,000	\$1,000
Wickersham, Bob	49		\$500									\$500	\$500	\$1,000
<b>Off-Cycle Total</b>		<b>\$3,000</b>	<b>\$11,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$533</b>	<b>\$300</b>	<b>\$0</b>	<b>\$1,750</b>	<b>\$14,500</b>	<b>\$17,083</b>
<b>Total</b>		<b>\$7,500</b>	<b>\$21,049</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$1,100</b>	<b>\$2,146</b>	<b>\$4,278</b>	<b>\$100</b>	<b>\$3,000</b>	<b>\$29,549</b>	<b>\$40,172</b>

Appendix 3: Summary of Tobacco Industry Campaign Contributions to Members of the 1999-2000 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE Candy					1999-2000		
							& Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	Industry Total	1999-2000 Total
Vrtiska, Floyd	1							\$650	\$330	\$261			\$0	\$1,241
Bartels, Lavern	1												\$0	\$0
Bruning, John	3	\$500	\$500										\$1,000	\$1,000
Preister, Don	5							\$300	\$379				\$0	\$679
Hilgert, John	7	\$500	\$1,000					\$628		\$387			\$1,500	\$2,515
Maxwell, Chip	9					\$1,000							\$1,000	\$1,000
Knudsen, Scott	9												\$0	\$0
Chambers, Ernie	11												\$0	\$0
Kruse, Lowen	13												\$0	\$0
Lynch, Daniel C.	13		\$1,000						\$526				\$1,000	\$1,526
Janssen, Ramon	15	\$500	\$1,000			\$800					\$300		\$2,300	\$2,600
Engel, L. Patrick	17	\$500	\$1,000										\$1,500	\$1,500
Cunningham, Doug	18	\$500	\$500			\$400		\$250		\$300	\$650	\$7,346	\$1,400	\$9,946
Dickey, Bob	18							\$200	\$236	\$200	\$100		\$0	\$736
Tyson, Gene	19												\$0	\$0
Hudkins, Carol	21	\$1,000											\$1,000	\$1,000
Bromm, Curt	23	\$500	\$1,500					\$300				\$500	\$2,000	\$2,800
Raikes, Ronald	25												\$0	\$0
Schimck, DiAnna R.	27									\$300			\$0	\$300
Edwards, Paul	27												\$0	\$0
Foley, Mike	29												\$0	\$0
Hewitt, Jim	29	\$500											\$500	\$500
Quandahl, Mark	31	\$500	\$500			\$400		\$300	\$462	\$455			\$1,400	\$2,617
Burling, Carroll	33											\$500	\$0	\$500
Odom, Phil	33		\$500										\$500	\$500
Aguilar, Ray	35							\$250	\$470	\$306			\$0	\$1,026
Logan, Lonnie	35					\$400							\$400	\$400
Kristensen, Doug	37	\$500	\$500										\$1,000	\$1,000
Pedersen, Dwite	39	\$1,250	\$1,000			\$400			\$1,079	\$300			\$2,650	\$4,029
McDonald, Richard	41					\$1,000							\$1,000	\$1,000
Wells, Errol	41	\$500	\$500									\$600	\$1,000	\$1,600
Jones, Jim	43	\$750										\$500	\$750	\$1,250
Trimble, Cleve	43												\$0	\$0
Hartnett, D. Paul	45								\$330	\$440			\$0	\$770
Erdman, Philip	47												\$0	\$0
Matzke, Gerald	47												\$0	\$0
Wickersham, Bob	49	\$500	\$500			\$400			\$443	\$285			\$1,400	\$2,128
Cooley, Dana	49												\$0	\$0
<b>Cycle Total</b>		<b>\$8,500</b>	<b>\$10,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,800</b>	<b>\$0</b>	<b>\$2,878</b>	<b>\$4,255</b>	<b>\$3,234</b>	<b>\$1,050</b>	<b>\$9,446</b>	<b>\$23,300</b>	<b>\$44,163</b>
<b>Off-Cycle</b>														
Brashear, Kermit	4	\$1,000	\$500									\$500	\$1,500	\$2,000
Brown, Pam	6	\$250											\$250	\$250
Boume, Patrick	8	\$1,000	\$1,000										\$2,000	\$2,000
Suttle, Deb	10									\$400			\$0	\$400
Thompson, Nancy	14								\$371				\$0	\$371
Connealy, Matt	16		\$500										\$500	\$500
Robak, Jennie	22		\$1,000									\$500	\$1,000	\$1,500
Stuhr, Elaine	24	\$500											\$500	\$500
Beutler, Chris	28											\$500	\$0	\$500
Byars, Dennis	30	\$250	\$1,000										\$1,250	\$1,250
Coordsen, George	32	\$250	\$1,500										\$1,750	\$1,750
Cudaback, Jim	36	\$500	\$1,000										\$1,500	\$1,500
Pederson, Don	42		\$500										\$500	\$500
Baker, Tom	44	\$500	\$1,000									\$1,000	\$1,500	\$2,500
<b>Off-Cycle Total</b>		<b>\$4,250</b>	<b>\$8,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$371</b>	<b>\$400</b>	<b>\$0</b>	<b>\$2,500</b>	<b>\$12,250</b>	<b>\$15,521</b>
<b>Total</b>		<b>\$12,750</b>	<b>\$18,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,800</b>	<b>\$0</b>	<b>\$2,878</b>	<b>\$4,626</b>	<b>\$3,634</b>	<b>\$1,050</b>	<b>\$11,946</b>	<b>\$35,550</b>	<b>\$59,684</b>

## Appendix 4: Summary of Tobacco Industry Campaign Contributions to Members of the 1997-1998 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE Candy	NE Rest	Petro	Walter	Retail	Others	1997-1998	1997-1998
							& Tobacco	PAC	PAC	Radcliffe*	PAC		Industry Total	Total
Wehrbein, Roger	2												\$0	\$0
Howard, Robert	2												\$0	\$0
Brashear, Kermit	4	\$1,500	\$1,500					\$504					\$3,000	\$3,504
Brown, Pam	6	\$750	\$1,000					\$232	\$225	\$100	\$125		\$1,750	\$2,432
Anderson, Paul	6												\$0	\$0
Bourne, Patrick	8		\$500						\$152	\$100			\$500	\$752
Thomsen, Paul	8												\$0	\$0
Suttle, Deb	10							\$253	\$133	\$100	\$33		\$0	\$518
Kerrigan, R.L.	10		\$500										\$500	\$500
Redfield, Pam	12												\$0	\$0
Richards, Linda	12		\$500								\$100		\$500	\$600
Thompson, Nancy	14							\$160	\$145	\$100	\$150		\$0	\$555
Alcala, Richard	14	\$250											\$250	\$250
Connealy, Matt	16		\$500							\$100	\$50		\$500	\$650
Ruwe, Paul	16							\$316					\$0	\$316
Schellpeper, Stan	18	\$1,750	\$500					\$218	\$133				\$2,250	\$2,601
Jensen, Jim	20							\$120		\$100			\$0	\$220
Potter, Tim	20												\$0	\$0
Robak, Jennie	22	\$1,750	\$1,250					\$222	\$129				\$3,000	\$3,351
Stuhr, Elaine	24	\$250						\$100					\$250	\$350
Elwell, Bob	24												\$0	\$0
Raikes, Ron	25	\$250	\$500					\$100	\$276	\$286	\$200	\$286	\$750	\$1,899
Zager, Dennis	25												\$0	\$0
Price, Marian	26										\$100		\$0	\$100
Schneider, Ed	26							\$300	\$252	\$230	\$180		\$0	\$963
Beutler, Chris	28	\$250	\$1,500					\$128					\$1,750	\$1,878
Byars, Dennis	30		\$500					\$130			\$100	\$248	\$500	\$978
Matzke, Stan, Jr.	30							\$500					\$0	\$500
Coordsen, George	32	\$1,000	\$1,500										\$2,500	\$2,500
Casson, Joseph	32												\$0	\$0
Kremer, Bob	34							\$334					\$0	\$334
Willhoft, Jerry	34	\$500	\$500					\$182	\$372		\$598		\$1,000	\$2,152
Cudaback, Jim	36	\$250	\$1,550					\$100	\$124	\$124	\$124		\$1,800	\$2,271
Schrock, Ed	38												\$0	\$0
Dierks, Merton	40												\$0	\$0
Pederson, Don	42	\$500	\$500					\$242					\$1,000	\$1,242
Baker, Thomas	44	\$500	\$500					\$250	\$244		\$28		\$1,000	\$1,522
Smith, Steven	44												\$0	\$0
Landis, David	46	\$1,000						\$276	\$554		\$130		\$1,000	\$1,960
Price, Edward	46												\$0	\$0
Smith, Adrian	48							\$300					\$0	\$300
Hillman, Joyce	48							\$324	\$127	\$127	\$227		\$0	\$806
<b>Cycle Total</b>		<b>\$10,500</b>	<b>\$13,300</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,250</b>	<b>\$4,814</b>	<b>\$2,610</b>	<b>\$1,251</b>	<b>\$2,279</b>	<b>\$23,800</b>	<b>\$36,004</b>
<b>Off-Cycle</b>														
Bruning, John	3	\$250	\$500									\$100	\$750	\$850
Hilgert, John	7	\$500	\$1,000					\$460		\$200	\$148		\$1,500	\$2,309
Kiel, Shelley	9							\$109					\$0	\$109
Abboud, Chris	12	\$250											\$250	\$250
Lynch, Dan	13	\$750						\$500			\$100		\$750	\$1,350
Withem, Ron	14	\$250											\$250	\$250
Janssen, Ramon	15	\$250	\$1,000							\$100	\$100		\$1,250	\$1,450
Engel, L. Patrick	17	\$250	\$500										\$750	\$750
Tyson, Gene	19	\$250											\$250	\$250
Hudkins, Carol	21	\$500											\$500	\$500
Bromm, Curt	23	\$250	\$500										\$750	\$750
Wesely, Don	26	\$500											\$500	\$500
Schimek, DiAnna R.	27							\$227		\$100	\$100		\$0	\$427
Bohlike, Ardyce	33	\$250											\$250	\$250
Kristensen, Doug	37	\$250											\$250	\$250
Pedersen, Dwite	39	\$750						\$578			\$127		\$750	\$1,455
Elmer, Owen	44	\$250											\$250	\$250
Hartnett, Daniel P.	45							\$245			\$100		\$0	\$345
Wickersham, Bob	49	\$500	\$500					\$398		\$100	\$100		\$1,000	\$1,598
<b>Off-Cycle Total</b>		<b>\$6,000</b>	<b>\$4,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,517</b>	<b>\$0</b>	<b>\$500</b>	<b>\$875</b>	<b>\$10,000</b>	<b>\$13,892</b>
<b>Total</b>		<b>\$16,500</b>	<b>\$17,300</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,250</b>	<b>\$7,332</b>	<b>\$2,610</b>	<b>\$1,751</b>	<b>\$3,154</b>	<b>\$33,800</b>	<b>\$49,896</b>

## Appendix 5: Summary of Tobacco Industry Campaign Contributions to Members of the 1995-1996 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	NE					1995-1996			
						Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	Industry Total	1995-1996 Total	
Vrtiska, Floyd	1	\$100						\$100	\$601	\$121		\$321	\$100	\$1,244
Stalder, John	1												\$0	\$0
Bruning, John	3												\$0	\$0
Avery, Mike	3	\$500	\$1,500		\$200				\$348	\$398	\$48	\$233	\$2,200	\$3,228
Preister, Don	5								\$705	\$200		\$700	\$0	\$1,605
Krajicek, Tim	5	\$750	\$1,000								\$27		\$1,750	\$1,777
Hilgert, John	7		\$500						\$419	\$269		\$169	\$500	\$1,356
Christiansen, Craig	7									\$348			\$0	\$348
Kiel, Shelley	9								\$100				\$0	\$100
Sivick, Robert	9		\$500						\$25	\$225	\$23		\$500	\$773
Chambers, Ernie	11												\$0	\$0
Lynch, Daniel C.	13	\$1,700	\$500		\$300	\$500			\$1,143	\$229		\$130	\$3,000	\$4,502
Kruse, Lowen	13												\$0	\$0
Janssen, Ramon	15	\$1,000	\$1,500						\$152			\$152	\$2,500	\$2,803
Elliott, Ronald	15												\$0	\$0
Engel, L. Patrick	17	\$750	\$1,000						\$200		\$47	\$47	\$1,750	\$2,045
Tyson, Gene	19								\$100				\$0	\$100
Klein, Leland	19		\$500						\$156			\$156	\$500	\$811
Hudkins, Carol	21	\$1,000	\$500			\$500			\$136			\$136	\$2,000	\$2,271
Yoakum, Carol	21												\$0	\$0
Bromm, Curt	23	\$1,000	\$1,000		\$300				\$450				\$2,300	\$2,750
Pokorny, John	23												\$0	\$0
Warner, Jerome	25	\$750	\$1,000										\$1,750	\$1,750
Dumas, Hal, III	25												\$0	\$0
Schimek, DiAnna R.	27	\$250							\$727	\$350	\$300	\$150	\$250	\$1,777
Nichols, Barb	27							\$100					\$0	\$100
Crosby, LaVon	29	\$250	\$750										\$1,000	\$1,000
Witek, Kate	31	\$950	\$825						\$100				\$1,775	\$1,875
Heintzman, Mimi	31												\$0	\$0
Bohlke, Ardyce	33	\$500	\$1,000						\$200	\$156		\$108	\$1,500	\$1,964
Peterson, Chris	35												\$0	\$0
Fisher, Dan	35	\$500	\$1,000		\$500				\$700	\$400		\$200	\$2,000	\$3,300
Kristensen, Doug	37	\$750	\$1,500						\$200				\$2,250	\$2,450
Pedersen, Dwite	39	\$1,200	\$1,500		\$500				\$778			\$100	\$3,200	\$4,078
Stephens, Roy	39												\$0	\$0
Schmitt, Jerry	41												\$0	\$0
Hickman, Jerry	41												\$0	\$0
Pederson, Don W.	42								\$142				\$0	\$142
Margritz, Dale	42												\$0	\$0
Jones, James	43	\$250											\$250	\$250
Hartnett, D. Paul	45									\$200			\$0	\$200
Matzke, Gerald	47								\$200				\$0	\$200
Wickersham, Bob	49	\$250	\$1,500		\$500				\$449			\$155	\$2,250	\$2,854
Ostrander, Cash	49												\$0	\$0
<b>Cycle Total</b>		<b>\$12,450</b>	<b>\$17,575</b>	<b>\$0</b>	<b>\$1,800</b>	<b>\$1,500</b>	<b>\$0</b>	<b>\$200</b>	<b>\$8,030</b>	<b>\$2,896</b>	<b>\$445</b>	<b>\$2,756</b>	<b>\$33,325</b>	<b>\$47,652</b>
<b>Off-Cycle</b>														
Brashear, Kermit	4	\$500											\$500	\$500
Brown, Pam	6	\$500											\$500	\$500
Will, Eric	8	\$500							\$35				\$500	\$535
Pirsch, Carol McBride	10								\$26		\$26	\$26	\$0	\$79
Abboud, Chris	12	\$500						\$400	\$125			\$123	\$500	\$1,148
Withem, Ron	14	\$500											\$500	\$500
Schellpeper, Stan	18	\$500											\$500	\$500
Robak, Jennie	22	\$500										\$100	\$500	\$600
Beutler, Chris	28	\$500											\$500	\$500
Maurstad, David	30	\$500											\$500	\$500
Coordsen, George	32	\$500											\$500	\$500
McKenzie, Janis	34	\$500											\$500	\$500
Elmer, W. Owen	44	\$500											\$500	\$500
Landis, David	46	\$500											\$500	\$500
<b>Off-Cycle Total</b>		<b>\$6,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$400</b>	<b>\$187</b>	<b>\$0</b>	<b>\$26</b>	<b>\$250</b>	<b>\$6,500</b>	<b>\$7,363</b>
<b>Total</b>		<b>\$18,950</b>	<b>\$17,575</b>	<b>\$0</b>	<b>\$1,800</b>	<b>\$1,500</b>	<b>\$0</b>	<b>\$600</b>	<b>\$8,216</b>	<b>\$2,896</b>	<b>\$472</b>	<b>\$3,006</b>	<b>\$39,825</b>	<b>\$55,015</b>

Appendix 6: Summary of Tobacco Industry Campaign Contributions to Members of the 1993-1994 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE		Petro PAC	Walter Radcliffe*	Retail PAC	Others	1993-1994	
							Candy & Tobacco	NE Rest PAC					Industry Total	1993-1994 Total
Wehrbein, Roger	2												\$0	\$0
Howard, Robert	2												\$0	\$0
Brashear, Kermit	4	\$500							\$447		\$100		\$500	\$1,047
Monen, Jim	4		\$500						\$47			\$26	\$500	\$574
Brown, Pam	6	\$250							\$40	\$190	\$100	\$40	\$250	\$620
Skutt, Tom	6		\$500						\$225			\$25	\$500	\$750
Will, Eric	8	\$250	\$500		\$200				\$57	\$491		\$508	\$950	\$2,006
Folsom, John	8												\$0	\$0
Pirsch, Carol McBride	10	\$500	\$750		\$500				\$100	\$550			\$1,750	\$2,400
Suttle, Deb	10												\$0	\$0
Abboud, Chris	12	\$850	\$750		\$300				\$20	\$1,082		\$20	\$1,900	\$3,021
Withem, Ron	14	\$500	\$250						\$408	\$1,463	\$200	\$137	\$750	\$2,957
Kelly, Gene	14												\$0	\$0
Robinson, C.N. "Bud"	16	\$400	\$250						\$400		\$100		\$650	\$1,150
Marvin, Larry	16												\$0	\$0
Engel, Leo "Pat"	17		\$250										\$250	\$250
Schellpeper, Stan	18	\$1,250	\$1,250		\$500				\$228	\$228	\$100		\$3,000	\$3,555
Axen, L.Gail	18												\$0	\$0
Jensen, Jim	20								\$54	\$154			\$0	\$207
Rasmussen, Jessie	20	\$350						\$500	\$26	\$226		\$126	\$350	\$1,228
Robak, Jennie	22	\$600	\$250										\$850	\$850
Stuhr, Elaine	24									\$142			\$0	\$142
Hartmann, Bill	24								\$100		\$100	\$100	\$0	\$300
Wesely, Don	26	\$250						\$50	\$30	\$180		\$480	\$250	\$991
Van Valkenberg, Robert	26												\$0	\$0
Beutler, Chris	28	\$250	\$250						\$400	\$249	\$100	\$200	\$500	\$1,449
McShane, Carol	28												\$0	\$0
Maurstad, David	30	\$500	\$250						\$500	\$200		\$100	\$750	\$1,550
Bennett, Bev	30												\$0	\$0
Coordsen, George	32	\$1,000	\$750		\$300						\$200		\$2,050	\$2,250
Eret, Don	32												\$0	\$0
McKenzie, Janis	34	\$500	\$250						\$151	\$384	\$100	\$484	\$750	\$1,869
Arnold, Gene	34												\$0	\$0
Cudaback, Jim	36	\$800	\$250						\$165	\$165			\$1,050	\$1,380
Smith, Glade	36												\$0	\$0
Schrock, Ed	38										\$100		\$0	\$100
Miller, Kae	38												\$0	\$0
Dierks, Merton	40												\$0	\$0
Bernard-Stevens, David	42												\$0	\$0
Elmer, W. Owen	44	\$500	\$250							\$200			\$750	\$950
Richards, Barry Fay	44												\$0	\$0
Landis, David	46	\$500	\$250			\$1,000		\$200	\$250	\$917		\$225	\$1,750	\$3,343
Reinsch, Charles	46												\$0	\$0
Matzke, Gerald	47	\$250	\$250							\$170			\$500	\$670
Nielsen, Elaine	47												\$0	\$0
Hillman, Joyce	48				\$300								\$300	\$300
<b>Cycle Total</b>		<b>\$10,000</b>	<b>\$7,750</b>	<b>\$0</b>	<b>\$2,100</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$750</b>	<b>\$3,848</b>	<b>\$6,789</b>	<b>\$1,200</b>	<b>\$2,471</b>	<b>\$20,850</b>	<b>\$35,907</b>
<b>Off-Cycle</b>														
Vrtiska, Floyd	1								\$21				\$0	\$21
Lindsay, John	9								\$100			\$25	\$0	\$125
Lynch, Dan	13								\$250				\$0	\$250
Witek, Kate	31								\$100				\$0	\$100
Fisher, Dan	35								\$400		\$100		\$0	\$500
Pedersen, Dwite	39								\$100				\$0	\$100
<b>Off-Cycle Total</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$971</b>	<b>\$0</b>	<b>\$100</b>	<b>\$25</b>	<b>\$0</b>	<b>\$1,096</b>
<b>Total</b>		<b>\$10,000</b>	<b>\$7,750</b>	<b>\$0</b>	<b>\$2,100</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$750</b>	<b>\$4,819</b>	<b>\$6,789</b>	<b>\$1,300</b>	<b>\$2,496</b>	<b>\$20,850</b>	<b>\$37,004</b>

## Appendix 7: Summary of Tobacco Industry Campaign Contributions to Members of the 1991-1992 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	1991-1992					1991-1992			
							NE Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	Industry Total	1991-1992 Total	
Vrtiska, Floyd	1	\$500				\$500						\$1,000	\$1,000		
Morrissey, Spencer	1		\$500					\$350	\$339			\$500	\$1,189		
Avery, Michael	3							\$50	\$200		\$100	\$0	\$350		
Thorpe, Lynda	3	\$300			\$200	\$500		\$250	\$242		\$42	\$1,000	\$1,533		
Preister, Don	5											\$0	\$0		
Munnely, Brian	5	\$300	\$500			\$500			\$238			\$1,300	\$1,538		
Hall, Tim	7	\$500	\$1,000		\$250	\$1,500			\$339		\$100	\$3,250	\$3,827		
Damasauskas, Teresa	7											\$0	\$0		
Lindsay, John C.	9	\$500	\$1,000			\$700			\$400	\$999	\$158	\$2,200	\$3,756		
Brown, William J. Beatty	9											\$0	\$0		
Chambers, Ernie	11											\$0	\$0		
Jones, Rick	11											\$0	\$0		
Lynch, Daniel C.	13	\$300	\$500			\$700			\$437	\$137		\$1,500	\$2,074		
Janssen, Ramon	15	\$500	\$500			\$1,000			\$122		\$22	\$2,000	\$2,145		
Claasen, Donald	15											\$0	\$0		
Hohenstein, Kurt	17											\$0	\$0		
Conway, Gerald A.	17	\$500	\$1,000		\$750	\$1,000			\$200		\$77	\$3,250	\$3,527		
Day, Connie	19											\$0	\$0		
Dungan, Richard "Dick"	19											\$0	\$0		
Maltas, Carl	19											\$0	\$0		
Scheer, Jim	19											\$0	\$0		
Hudkins, Carol	21	\$500				\$1,000			\$43		\$43	\$1,500	\$1,586		
Sapp, Bill	21		\$500						\$1,000			\$500	\$1,500		
Bromm, Curt	23											\$0	\$0		
Schmit, Loran	23	\$500	\$1,500	\$500	\$750	\$500			\$1,750			\$3,750	\$5,500		
Warner, Jerome	25	\$300	\$500		\$200			\$250	\$200	\$211	\$100	\$50	\$1,000	\$1,811	
Wickenkamp, Mary	25											\$0	\$0		
Schimek, DiAnna R.	27	\$300			\$500			\$100	\$100	\$344		\$100	\$800	\$1,444	
Svoboda, Gerald	27											\$0	\$0		
Crosby, LaVon	29	\$300							\$100		\$100	\$300	\$500		
Witek, Kathleen	31								\$240		\$100	\$47	\$0	\$388	
Huff, Kathy	31	\$300	\$500			\$1,000			\$251		\$27	\$1,800	\$2,078		
Bohlke, Ardyce	33	\$300			\$200	\$500			\$200			\$1,000	\$1,200		
Krueger, Clarence	33											\$0	\$0		
Fisher, Dan	35	\$500				\$500						\$1,000	\$1,000		
Nelson, Arlene	35								\$260	\$118		\$0	\$378		
Kristensen, Doug	37	\$300	\$1,000		\$450	\$200			\$400			\$1,950	\$2,350		
Ponticello, Nicholas	37											\$0	\$0		
Pedersen, Dwrite	39								\$200	\$250		\$0	\$450		
Humpal, Mike	39	\$500	\$500		\$500	\$500		\$50	\$200	\$176	\$50	\$100	\$2,000	\$2,576	
Schmitt, Jerry	41											\$50	\$0	\$50	
Rogers, Carson	41								\$500	\$263	\$311	\$100	\$199	\$0	\$1,372
Jones, James	43	\$500							\$550			\$500	\$1,050		
Kirkpatrick, Jeff	43				\$300	\$1,000				\$160		\$1,300	\$1,460		
Hartnett, D. Paul	45		\$500		\$250				\$100	\$200	\$100	\$100	\$750	\$1,250	
Foster, Clifton	45											\$0	\$0		
Baack, Dennis	47	\$750	\$500			\$500			\$200	\$1,223		\$1,750	\$3,173		
Rhodes, Everett	47											\$0	\$0		
Wickersham, Bob	49	\$500	\$800			\$2,400			\$500	\$905	\$100	\$99	\$3,700	\$5,304	
Knight, Eva	49				\$200							\$200	\$200		
<b>Cycle Total</b>		<b>\$8,950</b>	<b>\$11,300</b>	<b>\$500</b>	<b>\$4,550</b>	<b>\$14,500</b>	<b>\$0</b>	<b>\$1,650</b>	<b>\$9,173</b>	<b>\$4,833</b>	<b>\$750</b>	<b>\$1,352</b>	<b>\$39,800</b>	<b>\$57,558</b>	
<b>Off-Cycle</b>															
Abboud, Chris	12								\$100	\$100			\$0	\$200	
Landis, David	46											\$100	\$0	\$100	
<b>Off-Cycle Total</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$100</b>	<b>\$100</b>	<b>\$0</b>	<b>\$100</b>	<b>\$0</b>	<b>\$300</b>	
<b>Total</b>		<b>\$8,950</b>	<b>\$11,300</b>	<b>\$500</b>	<b>\$4,550</b>	<b>\$14,500</b>	<b>\$0</b>	<b>\$1,750</b>	<b>\$9,273</b>	<b>\$4,833</b>	<b>\$850</b>	<b>\$1,352</b>	<b>\$39,800</b>	<b>\$57,858</b>	

## Appendix 8: Summary of Tobacco Industry Campaign Contributions to Members of the 1989-1990 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE		Petro PAC	Walter Radcliffe*	Retail PAC	Others	1989-1990	
							Candy & Tobacco	NE Rest PAC					Industry Total	1989-1990 Total
Wehrbein, Roger	2												\$0	\$0
Horgan, Thomas	4				\$250				\$300				\$250	\$550
Henson, Denny	4		\$500										\$500	\$500
Butler, Matt	4									\$768			\$0	\$768
Ashford, Brad	6	\$300	\$500		\$450		\$950		\$150	\$136		\$250	\$1,250	\$2,736
Will, Eric	8		\$500		\$250	\$500							\$1,250	\$1,250
Beck, Sharon	8	\$300							\$625	\$314	\$150		\$300	\$1,389
Pirsch, Carol McBride	10	\$300		\$500	\$500				\$350	\$200	\$200		\$1,300	\$2,050
Bohn, Don	10												\$0	\$0
Abboud, Chris	12	\$500	\$1,000		\$250				\$500			\$300	\$1,750	\$2,550
Stroh, Don	12									\$200			\$0	\$200
Withem, Ron	14	\$300	\$500	\$500	\$500				\$126	\$500			\$1,800	\$2,426
Stevenson, Earlene "Dig"	14												\$0	\$0
Robinson, C.N. "Bud"	16	\$300											\$300	\$300
Robb, George	16												\$0	\$0
Schellpeper, Stan	18	\$500	\$1,000		\$500				\$200	\$134			\$2,000	\$2,334
Langemeier, Roland	18												\$0	\$0
Rasmussen, Jessie	20							\$1,000					\$0	\$1,000
Riha, Jim	20		\$500						\$150				\$500	\$650
Robak, Jennie	22	\$300			\$150				\$200				\$450	\$650
Volnek, Kathi	22												\$0	\$0
Moore, Scott	24	\$500		\$500	\$1,050				\$200	\$2,293		\$250	\$2,050	\$4,543
Havlet, Marvin	24												\$0	\$0
Wesely, Don	26	\$300			\$500					\$470			\$800	\$1,270
Beutler, Chris	28	\$300	\$500		\$750	\$500							\$2,050	\$2,050
Tooley, William	28												\$0	\$0
Byars, Dennis	30	\$400	\$500						\$300				\$900	\$1,200
Korslund, Paul	30				\$500								\$500	\$500
Coordsen, George	32	\$300	\$500		\$300		\$500		\$300				\$1,100	\$1,900
Molthan, Debra	32												\$0	\$0
Johnson, Rod	34	\$300	\$5,000										\$5,300	\$5,300
Hansen, Gary	34												\$0	\$0
Jones, Larry	34												\$0	\$0
Cudaback, Jim	36												\$0	\$0
Langford, Lorraine	36	\$500	\$500	\$500	\$1,050				\$216	\$216			\$2,550	\$2,982
Elmer, W. Owen	38	\$300	\$500		\$500					\$300			\$1,300	\$800
Dierks, Merton	40	\$300							\$158				\$300	\$158
Lingenfelter, Bob	40												\$0	\$0
Bernard-Stevens, David	42	\$500			\$500	\$500			\$250				\$1,500	\$1,250
Bade, Steven	42												\$0	\$0
Haberman, Rex	44	\$500	\$300		\$500	\$500				\$500			\$1,800	\$1,500
Owens, Judith	44												\$0	\$0
Landis, David	46	\$300							\$300				\$300	\$300
Codr, Robert	46												\$0	\$0
Hillman, Joyce	48	\$400				\$500							\$900	\$500
Brower, Tom	48												\$0	\$0
<b>Cycle Total</b>		\$7,700	\$12,300	\$2,000	\$8,500	\$2,500	\$1,450	\$1,000	\$4,326	\$6,031	\$350	\$800	\$33,000	\$43,607
<b>Off-Cycle</b>														
<b>Off-Cycle Total</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>		\$7,700	\$12,300	\$2,000	\$8,500	\$2,500	\$1,450	\$1,000	\$4,326	\$6,031	\$350	\$800	\$33,000	\$43,607

## Appendix 9: Summary of Tobacco Industry Campaign Contributions to Members of the 1987-1988 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE					1987-1988		
							Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	Industry Total	1987-1988 Total
Morrissey, Spencer	1												\$0	\$0
Remmers, R. Wiley	1		\$1,000		\$400		\$500		\$100	\$225	\$100		\$1,400	\$2,325
Beyer, Emil E., Jr.	3						\$225				\$100		\$0	\$325
Miller, Wayne	3												\$0	\$0
Labeledz, Bernice	5				\$200		\$500		\$100				\$200	\$800
Hall, Tim	7		\$500		\$500	\$250	\$500	\$100	\$350		\$100		\$1,250	\$2,300
Buzzello, Gene	7												\$0	\$0
Lindsay, John C.	9				\$500		\$225			\$262	\$100	\$125	\$500	\$1,212
Mendenhall, Frances	9												\$0	\$0
Chambers, Ernie	11												\$0	\$0
Pluth, Michael	11												\$0	\$0
Beck, James W.	11												\$0	\$0
Bryant, Ernest E.	11												\$0	\$0
Guy, John A.	11												\$0	\$0
Hytche, Goldmon	11												\$0	\$0
Lund, Mark T.	11												\$0	\$0
Lynch, Daniel C.	13					\$250	\$500				\$100		\$250	\$850
Hoer, Martin R.	13												\$0	\$0
Johnson, Lowell C.	15										\$100		\$0	\$100
Conway, Gerald A.	17		\$500	\$250	\$500		\$500		\$200				\$1,250	\$1,950
Nelson, Tore	17												\$0	\$0
Hefner, Elroy M.	19						\$100		\$200		\$100		\$0	\$400
Evans, Bert M.	19												\$0	\$0
Peterson, Richard	21						\$225				\$100		\$0	\$325
Stinson, T. Patrick	21												\$0	\$0
Robak, Jennie	22										\$50		\$0	\$50
Cambell, Helen	22		\$500				\$225			\$340			\$500	\$1,065
Schmit, Loran	23					\$250	\$500		\$300				\$250	\$1,050
Fauver, James	23												\$0	\$0
Warner, Jerome	25												\$0	\$0
Schimek, DiAnna R.	27		\$500				\$500			\$267			\$500	\$1,267
Crosby, LaVon	29								\$200		\$100		\$0	\$300
Lineweber, Ray L.	29		\$500				\$1,000		\$100	\$200			\$500	\$1,800
Chizek, Gerald	31		\$500	\$250	\$500		\$500		\$100	\$150	\$300	\$120	\$1,250	\$2,420
Dulaney, David Michael	31										\$25		\$0	\$25
Smith, Jacklyn	33						\$225				\$100		\$0	\$325
Nelson, Arlene	35									\$384	\$100		\$0	\$484
Quandt, Gary	35												\$0	\$0
Kristensen, Doug	37		\$1,000						\$200		\$50		\$1,000	\$1,250
Miller, Jerry D.	37								\$100				\$0	\$100
Barrett, William E.	39						\$225				\$100		\$0	\$325
Rogers, Carson	41						\$225			\$250	\$100		\$0	\$575
Bredthauer, Jake	41												\$0	\$0
Bernard-Stevens, David	42					\$250	\$500		\$141		\$100		\$250	\$991
Bieber, Carl E.	42												\$0	\$0
Lamb, Howard A.	43								\$162		\$100	\$262	\$0	\$524
Kirkpatrick, Jeff	43												\$0	\$0
Hartnett, D. Paul	45						\$500		\$100		\$100		\$0	\$700
Cash, Mel	45												\$0	\$0
Baack, Dennis	47			\$250			\$225						\$250	\$475
Scofield, Sandra	49			\$250			\$225		\$100				\$250	\$575
<b>Cycle Total</b>		\$0	\$5,000	\$1,000	\$2,600	\$1,000	\$8,125	\$100	\$2,453	\$2,077	\$2,025	\$507	\$9,600	\$24,888
<b>Off-Cycle</b>														
Johnson, Vard	8						\$500						\$0	\$500
Pirsch, Carol McBride	10										\$200		\$0	\$200
Schellpeper, Stan	18								\$50				\$0	\$50
Moore, Scott	24								\$100		\$100		\$0	\$200
Owen, W. Elmer	38								\$150				\$0	\$150
<b>Off-Cycle Total</b>		\$0	\$0	\$0	\$0	\$0	\$500	\$0	\$300	\$0	\$300	\$0	\$0	\$1,100
<b>Total</b>		\$0	\$5,000	\$1,000	\$2,600	\$1,000	\$8,625	\$100	\$2,753	\$2,077	\$2,325	\$507	\$9,600	\$25,988



## Appendix 10: Summary of Tobacco Industry Campaign Contributions to Members of the 1985-1986 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE					1985-1986		1985-1986 Total	
							Tobacco & Candy	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	Industry Total		
Wehrbein, Roger R.	2											\$50		\$0	\$50
Hallstrom, Robert H.	2											\$50		\$0	\$50
Hannibal, Gary	4		\$500		\$1,000		\$750		\$100		\$626	\$100		\$1,500	\$3,076
Henson, Denny	4													\$0	\$0
Ashford, Brad	6						\$750							\$0	\$750
Cunningham, Robert G.	6						\$750	\$100	\$200			\$100		\$0	\$1,150
Johnson, Vard	8						\$750		\$200		\$777			\$0	\$1,727
Beck, Sharon	8													\$0	\$0
Pirsch, Carol McBride	10		\$500		\$900			\$100	\$350		\$250	\$100		\$1,400	\$2,200
Stock, Bob	10													\$0	\$0
Abboud, Chris	12		\$500		\$900		\$500	\$100	\$400		\$246	\$150		\$1,400	\$2,796
Koch, Jerry	12								\$100					\$0	\$100
Withem, Ron	14						\$750	\$60	\$400		\$796	\$75		\$0	\$2,081
Hirsch, John	14													\$0	\$0
Korshoj, Frank	16													\$0	\$0
Severens, Kathleen S.	16													\$0	\$0
Schellpeper, Stan	18								\$100			\$100		\$0	\$200
Reininger, Roger	18													\$0	\$0
Goodrich, Glenn A.	20						\$250	\$100	\$100			\$150		\$0	\$600
Rupp, Lee	22				\$200		\$750					\$200		\$200	\$1,150
Ternes, Dick	22													\$0	\$0
Moore, Scott	24		\$500		\$200		\$500				\$224			\$700	\$1,424
Hartman, Bill	24								\$272			\$295		\$0	\$566
Wesely, Don	26						\$250	\$300	\$800			\$100		\$0	\$1,450
Van Valkenburg, Robert	26													\$0	\$0
McFarland, James	28			\$200			\$500					\$100		\$200	\$800
Parker, Virgil	28								\$100			\$100		\$0	\$200
Morehead, Patricia	30				\$200		\$750				\$661	\$150		\$200	\$1,761
Maurstad, David I.	30							\$100	\$150			\$50		\$0	\$300
Coordsen, George	32								\$200					\$0	\$200
Eret, Don	32		\$500		\$900		\$500	\$100			\$150	\$50		\$1,400	\$2,200
Johnson, Rod	34				\$500				\$400		\$510			\$500	\$1,410
Langford, Lorraine	36						\$750		\$160			\$131		\$0	\$1,041
Knapp, James M.	36				\$200									\$200	\$200
Elmer, W. Owen	38				\$200		\$500		\$550			\$100		\$200	\$1,350
Vickers, Tom	38		\$500					\$100			\$211			\$500	\$811
Dierks, Merton L.	40						\$750		\$200					\$0	\$950
DeCamp, John	40				\$1,500		\$750		\$100		\$1,213	\$200	\$200	\$1,500	\$3,963
Pappas, James E.	42							\$100	\$400		\$450	\$389		\$0	\$1,339
Hord, William D.	42													\$0	\$0
Haberman, Rex	44			\$500			\$250		\$350		\$544	\$150		\$500	\$1,794
McDermott, Sandra	44													\$0	\$0
Landis, David M.	46							\$50						\$0	\$50
Weihing, John L.	48						\$500							\$0	\$500
Morrison, Clinton	48								\$200					\$0	\$200
<b>Cycle Total</b>			\$0	\$3,000	\$0	\$7,400	\$0	\$11,250	\$1,210	\$5,832	\$6,658	\$2,890	\$200	\$10,400	\$38,439
<b>Off-Cycle</b>															
Higgins, Marge	9								\$100					\$0	\$100
Lynch, Dan	13								\$125			\$154		\$0	\$279
Hartnett, Paul	45								\$150			\$25		\$0	\$175
<b>Off-Cycle Total</b>			\$0	\$0	\$0	\$0	\$0	\$0	\$375	\$0	\$179	\$0	\$0	\$0	\$554
<b>Total</b>			\$0	\$3,000	\$0	\$7,400	\$0	\$11,250	\$1,210	\$6,207	\$6,658	\$3,069	\$200	\$10,400	\$38,993

## Appendix 11: Summary of Tobacco Industry Campaign Contributions to Members of the 1983-1984 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE					1983-1984		
							Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	Industry Total	1983-1984 Total
Remmers, Wiley R.	1							\$50	\$200	\$462	\$50	\$0	\$762	
Merz, Nelson	1											\$0	\$0	
Beyer, Emil E., Jr.	3							\$150	\$600		\$100	\$0	\$850	
Garvin, Linda	3				\$200							\$200	\$200	
Labedz, Bernice	5				\$600				\$100			\$600	\$700	
Hall, Tim	7								\$200			\$0	\$200	
Buzzello, Gene	7								\$300			\$0	\$300	
Keenan, Carol	7											\$0	\$0	
Higgins, Marge	9	\$100			\$500				\$700	\$500	\$100	\$600	\$1,900	
Davis, C. Bruce	9											\$0	\$0	
Chambers, Ernie	11											\$0	\$0	
Lynch, Dan	13				\$300				\$500	\$675	\$250	\$300	\$1,725	
Duda, Walter J.	13											\$0	\$0	
Withem, Ronald E.	14	\$325			\$100				\$500	\$466		\$425	\$1,391	
Harrison, Tracey	14											\$0	\$0	
Johnson, Lowell C.	15							\$100	\$200		\$100	\$0	\$400	
Larsen, Judy	15											\$0	\$0	
Conway, Gerald A.	17				\$300					\$399		\$300	\$699	
Von Minden, Merle	17							\$50	\$600	\$433	\$150	\$0	\$1,233	
Hefner, Elroy M.	19	\$300			\$200			\$50			\$50	\$500	\$600	
Evans, Bert M.	19											\$0	\$0	
Peterson, Richard	21							\$50	\$400		\$100	\$0	\$550	
Peterson, J. R.	21											\$0	\$0	
Schmit, Loran	23	\$300			\$500			\$50	\$700	\$200	\$250	\$800	\$2,000	
Matulka, Erwin	23											\$0	\$0	
Warner, Jerome	25											\$0	\$0	
Gove, Charles	25											\$0	\$0	
Harris, Bill	27	\$300			\$200			\$40	\$200		\$100	\$500	\$840	
Hoffman, Pat	27											\$0	\$0	
Marsh, Shirley	29							\$50		\$210	\$25	\$0	\$285	
Dankert, Eugene	29											\$0	\$0	
Chizek, Jerry	31	\$300			\$700				\$500	\$350	\$250	\$1,000	\$2,100	
Sigerson, Chuck	31								\$100			\$0	\$100	
Smith, Jacklyn	33										\$150	\$0	\$150	
Crowley, Jack	33										\$450	\$0	\$450	
Nelson, Arlene	35				\$100							\$100	\$100	
Peterson, Howard L.	35							\$100	\$400		\$50	\$0	\$550	
Miller, Jerry D.	37								\$100	\$250		\$0	\$350	
Kahle, Martin F.	37								\$600			\$0	\$600	
Barrett, William E.	39										\$100	\$0	\$100	
Rogers, Carson	41				\$200				\$560	\$160	\$339	\$200	\$1,259	
Rademacher, Harold C.	41											\$0	\$0	
Lamb, Howard A.	43							\$50	\$400			\$0	\$450	
Kemp, Karl R.	43											\$0	\$0	
Hartnett, Paul	45											\$0	\$0	
Fenger, George	45	\$300			\$300							\$600	\$600	
Baack, Dennis	47								\$200		\$150	\$0	\$350	
Narjes, Ed	47								\$200			\$0	\$200	
Scotfield, Sandra	49							\$50	\$300			\$0	\$350	
Bowen, Robert W.	49											\$0	\$0	
<b>Cycle Total</b>		\$1,925	\$0	\$0	\$4,200	\$0	\$0	\$790	\$8,560	\$4,104	\$2,764	\$0	\$6,125	\$22,344
<b>Off-Cycle</b>														
Johnson, Rod	34										\$100	\$0	\$100	
DeCamp, John	40								\$200		\$200	\$0	\$400	
<b>Off-Cycle Total</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$200	\$0	\$300	\$0	\$0	\$500
<b>Total</b>		\$1,925	\$0	\$0	\$4,200	\$0	\$0	\$790	\$8,760	\$4,104	\$3,064	\$0	\$6,125	\$22,844

Appendix 12: Summary of Tobacco Industry Campaign Contributions to Members of the 1981-1982 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	NE					1981-1982		
							Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC	Others	Industry Total	1981-1982 Total
Carsten, Calvin F.	2								\$220				\$0	\$220
Linder, Boyd	2												\$0	\$0
Hannibal, Gary	4												\$0	\$0
Christie, Wanda L.	4												\$0	\$0
Lating, Bev	4												\$0	\$0
Hoagland, Peter	6												\$0	\$0
Stock, Gayle L.	6												\$0	\$0
Johnson, Vard	8												\$0	\$0
Hohndorf, Wayne	8												\$0	\$0
Pirsch, Carol McBride	10							\$200					\$0	\$200
Beutel, Jim	10												\$0	\$0
Abboud, Chris	12												\$0	\$0
Koch, Gerald D.	12				\$200								\$200	\$200
Doyle, Thomas	14				\$200			\$200	\$150				\$200	\$550
Withem, Ron	14												\$0	\$0
Goll, James E.	16												\$0	\$0
Schmidt, Shirley	16												\$0	\$0
Chronister, Harry B.	18												\$0	\$0
Goodrich, Glenn A.	20												\$0	\$0
Rupp, Lee	22												\$0	\$0
Sand, Francis	22												\$0	\$0
Sieck, Harold F.	24				\$200								\$200	\$200
Marxhausen, Dorris	24												\$0	\$0
Wesely, Don	26							\$200					\$0	\$200
Brown, Jim L.	26								\$200				\$0	\$200
Beutler, Christopher	28				\$200								\$200	\$200
Butler, John	28												\$0	\$0
Morehead, Patricia	30												\$0	\$0
Pentz, Gordon C. "Bud"	30												\$0	\$0
Eret, Don	32												\$0	\$0
Apking, Sharon	32				\$200								\$200	\$200
Johnson, Rod	34									\$200			\$0	\$200
Regier, Ted	34												\$0	\$0
Lundy, Ray E.	36				\$200								\$200	\$200
Langford, Lorraine	36												\$0	\$0
Vickers, Tom	38												\$0	\$0
DeCamp, John W.	40								\$200				\$0	\$200
Lingenfelter, Bob	40									\$200			\$0	\$200
Wolf, Jim	40												\$0	\$0
Pappas, James E.	42								\$250				\$0	\$250
Jochum, Corinne J.	42												\$0	\$0
Haberman, Rex	44												\$0	\$0
Landis, David	46							\$200		\$130			\$0	\$330
Heider, Stanley L.	46												\$0	\$0
Nichols, William E.	48								\$200		\$200		\$0	\$400
Brower, Tom	48												\$0	\$0
<b>Cycle Total</b>		\$0	\$0	\$0	\$1,200	\$0	\$0	\$800	\$1,220	\$530	\$200	\$0	\$1,200	\$3,950
<b>Off-Cycle</b>														
<b>Off-Cycle Total</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>		\$0	\$0	\$0	\$1,200	\$0	\$0	\$800	\$1,220	\$530	\$200	\$0	\$1,200	\$3,950

Appendix 13: Summary of Tobacco Industry Campaign Contributions to Members of the 1979-1980 Nebraska Legislature

Name of Candidate	Dist.	PM	RJR	STC	TI	UST	1979-1980					1979-1980 Total		
							NE Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Radcliffe*	Retail PAC		Others	Industry Total
Remmers, R. Wiley	1											\$0	\$0	
Merz, Nelson N.	1											\$0	\$0	
Beyer, Emil E., Jr.	3											\$0	\$0	
Keyes, Orval A.	3							\$200				\$0	\$200	
Labedz, Bernice	5							\$200				\$0	\$200	
Landmichael, T. L.	5											\$0	\$0	
Kilgarin, Karen	7											\$0	\$0	
Venditte, Patrick L.	7							\$300				\$0	\$300	
Higgins, Marge	9							\$200				\$0	\$200	
Powers, Ray	9							\$200	\$200			\$0	\$400	
Newell, David R.	13								\$285			\$0	\$285	
Syas, George	13							\$1,000				\$0	\$1,000	
Johnson, Lowell C.	15											\$0	\$0	
Reutzel, Barry L.	15								\$250			\$0	\$250	
Von Minden, Merle	17							\$400				\$0	\$400	
Conway, Gerald A.	17											\$0	\$0	
Peterson, Richard	21							\$200				\$0	\$200	
McIntosh, Paul	21											\$0	\$0	
Schmit, Loran	23							\$500	\$500			\$0	\$1,000	
Warner, Jerome	25							\$300				\$0	\$300	
Fowler, Steve	27											\$0	\$0	
Sellentini, Jerry L.	27							\$1,000		\$200		\$0	\$1,200	
Marsh, Shirley	29											\$0	\$0	
Crosby, LaVon	29											\$0	\$0	
Wiitala, Steve J.	31											\$0	\$0	
Sawyer, Russell E., Jr.	31							\$400				\$0	\$400	
Walker, Neal R.	31											\$0	\$0	
Marvel, Richard D.	33											\$0	\$0	
Peterson, Howard	35							\$200				\$0	\$200	
Wagner, Donald L.	41											\$0	\$0	
Fenger, George	45											\$0	\$0	
Lewis, Frank	45								\$300			\$0	\$300	
Clark, Robert L.	47							\$400				\$0	\$400	
<b>Cycle Total</b>			\$0	\$0	\$0	\$0	\$0	\$0	\$5,500	\$1,535	\$200	\$0	\$0	\$7,235

Appendix 14: Summary of Tobacco Industry Campaign Contributions to Constitutional Officers and Candidates  
Nebraska, 1999-2002

Name of Candidate	Party	PM	RJR	SIC	TI	UST	Kraft	Miller	NE			Retail PAC	Others	1999-2002 Industry Total	1999-2002 Total	
									Candy & Tobacco	NE Rest PAC	Petro PAC					
<i>Governor</i>																
Johanns, Mike	R						\$9,500	\$1,000			\$1,051	\$3,320		\$0	\$14,871	
Dean, Stormy	D													\$0	\$0	
Rosberg, Paul	I													\$0	\$0	
<i>Lt. Governor</i>																
Heinenman, Dave	R						\$1,500	\$1,000						\$0	\$2,500	
Chesteman, M	D													\$0	\$0	
Richards, Bary	I													\$0	\$0	
<i>Attorney General</i>																
Bruning, Jon	R	\$500	\$500								\$500	\$824		\$1,000	\$2,324	
Meister, Mike	D													\$0	\$0	
<i>Auditor of Public Accounts</i>																
Witek, Kate	R						\$1,500	\$500						\$0	\$2,000	
Wilken, D.	D													\$0	\$0	
Rosberg, Kelly	I													\$0	\$0	
<i>Secretary of State</i>																
Gale, John	R										\$1,340	\$525		\$0	\$1,865	
Stoddard, Jay	D													\$0	\$0	
Rosberg, Jos.	I													\$0	\$0	
Lewis, Tudor	I													\$0	\$0	
<i>State Treasurer</i>																
Byrd, Lorelee	R													\$0	\$0	
Sheckler, Bob	I													\$0	\$0	
<b>Total</b>		\$500	\$500	\$0	\$0	\$0	\$12,500	\$2,500	\$0	\$0	\$2,891	\$4,669	\$0	\$0	\$1,000	\$23,560

Appendix 15: Summary of Tobacco Industry Campaign Contributions to Constitutional Officers and Candidates in Nebraska, 1995-1998

Name of Candidate	Party	PM	RJR	STC	TI	UST	NE					1995-1998	
							Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Raddiffe*	Retail PAC	Others	Industry Total
<i>Governor</i>													
Johanns, Mike	R						\$2,235		\$1,317	\$200	\$2,234	\$0	\$5,986
Hoppner, Bill	D									\$200	\$1,025	\$0	\$1,225
<i>Lt. Governor</i>													
Maurstad, Dave	R	\$250							\$613	\$500		\$250	\$1,363
Batallion, Pamela	D											\$0	\$0
<i>Attorney General</i>													
Stenberg, Don	R	\$1,000							\$500			\$1,000	\$1,500
Knapp, Pat	D											\$0	\$0
Sullivan, Andrew	I											\$0	\$0
<i>Auditor of Public Accounts</i>													
Witek, Kate	R	\$250										\$250	\$250
Hahn, Kandra	D											\$0	\$0
Lieske, Gus	I											\$0	\$0
<i>Secretary of State</i>													
Moore, Scott	R	\$2,000					\$550	\$121	\$221		\$293	\$2,000	\$3,185
Bembeck, Kent	D											\$0	\$0
<i>State Treasurer</i>													
Heineman, Dave	R								\$200			\$0	\$200
Tagart, David	D											\$0	\$0
Spilker, Sam	I											\$0	\$0
<b>Total</b>		\$3,500	\$0	\$0	\$0	\$0	\$0	\$2,785	\$121	\$2,852	\$900	\$3,552	\$13,710

Appendix 16: Summary of Tobacco Industry Campaign Contributions to Constitutional Officer and Candidates  
Nebraska, 1991-1994

Name of Candidate	Party	PM	RJR	STC	TI	UST	NE					1991-1994		
							Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Raddcliffe*	Retail PAC	Others	Industry Total	1991-1994 Total
<i>Governor</i>														
Nelson, Ben	D	\$13,800	\$10,000	\$1,750	\$1,000	\$16,711		\$250	\$552	\$5,458	\$3,811	\$2,012	\$43,261	\$55,344
Spence, Gene	R												\$0	\$0
<i>Lt. Governor</i>														
Robak, Kim	D									\$518	\$837		\$0	\$1,355
Witek, Kate	R												\$0	\$0
<i>Attorney General</i>														
Stenberg, Don	R	\$2,500			\$500		\$500	\$190		\$400			\$3,000	\$4,090
Scher, Steve	D												\$0	\$0
<i>Auditor of Public Accounts</i>														
Breslow, John	D												\$0	\$0
<i>Secretary of State</i>														
Moore, Scott	R	\$1,000				\$500				\$3,544		\$234	\$1,500	\$5,278
Eurek, Allan	D												\$0	\$0
<i>State Treasurer</i>														
Heineman, Dave	R												\$0	\$0
Rockey, Dawn	D									\$419			\$0	\$419
<b>Total</b>		\$17,300	\$10,000	\$1,750	\$1,500	\$17,211	\$500	\$440	\$552	\$10,338	\$4,648	\$2,246	\$47,761	\$66,485

Appendix 17: Summary of Tobacco Industry Campaign Contributions to Constitutional Officers and Candidates  
Nebraska, 1987-1990

Name of Candidate	Party	PM	RJR	SIC	TI	UST	NE					1987-1990		
							Candy & Tobacco	NE Rest PAC	Petro PAC	Walter Raddiffe*	Retail PAC	Others	Industry Total	1987-1990 Total
<i>Governor</i>														
Nelson, Ben	D											\$1,566	\$0	\$1,566
Orr, Kay	R	\$2,000			\$1,000							\$125	\$150	\$3,275
Sullivan, Mort	I												\$0	\$0
<i>Lt. Governor</i>														
Moul, Maxine	D												\$0	\$0
Maddux, Jack	R												\$0	\$0
<i>Attorney General</i>														
Stenberg, Don	R								\$200	\$600			\$0	\$800
Crump, Gene	D												\$0	\$0
<i>Auditor of Public Accounts</i>														
Breslow, John	D												\$0	\$0
Johnson, Ray A. C.	R									\$170			\$0	\$170
<i>Secretary of State</i>														
Beerman, Allen	R												\$0	\$0
Hansen, Nancy Sue	D												\$0	\$0
<i>State Treasurer</i>														
Rockey, Dawn	D												\$0	\$0
Marsh, Frank	R												\$0	\$0
<b>Total</b>		\$2,000	\$0	\$0	\$1,000	\$0	\$0	\$0	\$200	\$2,462	\$0	\$150	\$3,000	\$5,812



Appendix 18: Summary of Tobacco Industry Campaign Contributions to Constitutional Officers and Candidates in Nebraska, 1983-1986

Name of Candidate	Party	PM	RJR	STC	TI	UST	NE Candy & NE Rest					Retail PAC	Walter Raddiffe*	Others	1983-1986	1983-1986
							Tobacco	PAC	PAC	PAC	PAC				Industry Total	Total
<i>Governor</i>																
Orr, Kay	R														\$0	\$0
Boosalis, Helen	D														\$0	\$0
<i>Lt. Governor</i>																
Nichol, William	R											\$3,960			\$0	\$3,960
McGinley, Donald	D													\$161	\$0	\$161
<i>Attorney General</i>																
Spire, Robert	R														\$0	\$0
Glaser, Bernard Sr.	D														\$0	\$0
<i>Auditor of Public Accounts</i>																
Johnson, Ray A. C.	R														\$0	\$0
Wilken, David	D														\$0	\$0
<i>Secretary of State</i>																
Beeman, Allen	R														\$0	\$0
Stein, Harold	D														\$0	\$0
<i>State Treasurer</i>																
Marsh, Frank	R											\$346			\$0	\$346
Schimek, DiAnna	D														\$0	\$0
<b>Total</b>			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,307	\$0	\$161	\$0	\$4,468

Appendix 19: Summary of Tobacco Industry Campaign Contributions to Constitutional Officers and Candidate  
Nebraska, 1979-1982

Name of Candidate	Party	PM	RJR	STC	TI	UST	NE Candy & NE Rest Petro Walter Retail Tobacco PAC PAC Radcliffe* PAC Others					1979-1982	1979-1982	
							Tobacco	PAC	PAC	Radcliffe*	PAC	Others	Industry Total	Total
<i>Governor</i>														
Kerrey, Robert	D												\$0	\$0
Thone, Charles	R												\$0	\$0
<i>Lt. Governor</i>														
McGinley, Donald	D												\$0	\$0
Luedtke, Roland	R									\$700			\$0	\$700
<i>Attorney General</i>														
Douglas, Paul	R												\$0	\$0
Chambers, Ernest	D												\$0	\$0
<i>Auditor of Public Accounts</i>														
Johnson, Ray A. C.	R												\$0	\$0
Naumann, Darl Allen	D												\$0	\$0
<i>Secretary of State</i>														
Beerman, Allen	R												\$0	\$0
<i>State Treasurer</i>														
Orr, Kay	R												\$0	\$0
Keyes, Orval	D												\$0	\$0
<b>Total</b>			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$700	\$0	\$0	\$0	\$700

Appendix 20: Summary of Tobacco Industry Lobbying Expenditures in Nebraska, First Quarter - Third Quarter

<b>Lobbyist Reports</b>	<b>Lobbyist Compensation</b>	<b>Lobbyist Reimbursement</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Jensen, Ronald (Philip Morris)	\$11,220	\$0	\$214	\$0	\$11,434
Rasmussen, Dennis (Philip Morris)	\$26,026	\$1,336	\$1,285	\$0	\$28,646
Young, Philip (Philip Morris)	\$1,500	\$100	\$0	\$0	\$1,600
Moylan, James (R. J. Reynolds)	\$32,250	\$772	\$0	\$0	\$33,022
Radcliffe, Walter (United States Tobacco)	\$53,000	\$0	\$529	\$0	\$53,529
<b>Total Lobbying Expenditures Reported</b>	<b>\$123,996</b>	<b>\$2,208</b>	<b>\$2,027</b>	<b>\$0</b>	<b>\$128,231</b>

<b>Company Reports</b>	<b>Lobbyist Compensation</b>	<b>Lobbyist Reimbursement</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Philip Morris	\$37,789	\$1,435	\$1,235	\$0	\$40,459
R. J. Reynolds	\$32,250	\$0	\$0	\$5,958	\$38,208
United States Tobacco	\$53,000	\$0	\$0	\$0	\$53,000
<b>Total Lobbying Expenditures Reported</b>	<b>\$123,039</b>	<b>\$1,435</b>	<b>\$1,235</b>	<b>\$5,958</b>	<b>\$131,666</b>

Appendix 21: Summary of Tobacco Industry Lobbying Expenditures in Nebraska, 2002

<b>Lobbyist Reports</b>	<b>Lobbyist Compensation</b>	<b>Lobbyist Reimbursement</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Jensen, Ronald (Philip Morris)	\$16,532	\$100	\$49	\$0	\$16,681
Rasmussen, Dennis (Philip Morris)	\$33,796	\$100	\$1,092	\$0	\$34,988
Mylan, James (R.J. Reynolds)	\$46,000	\$1,423	\$0	\$811	\$48,235
Reddiffe, Walter (United States Tobacco)	\$51,000	\$0	\$643	\$0	\$51,643
Peters, William (Lorillard and Brown & Williamson)	\$50,000	\$0	\$0	\$0	\$50,000
Kelley, Michael (Smokeless Tobacco Council)	\$15,100	\$0	\$82	\$11	\$15,193
<b>Total Lobbying Expenditures Reported</b>	<b>\$212,428</b>	<b>\$1,623</b>	<b>\$1,867</b>	<b>\$822</b>	<b>\$216,740</b>

<b>Company Reports</b>	<b>Lobbyist Compensation</b>	<b>Lobbyist Reimbursement</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Philip Morris	\$53,340	\$200	\$1,092	\$10,092	\$64,724
R.J. Reynolds	\$46,000	\$0	\$0	\$0	\$46,000
United States Tobacco	\$51,000	\$0	\$0	\$782	\$51,782
Lorillard	\$25,000	\$0	\$0	\$0	\$25,000
Brown & Williamson	\$25,009	\$0	\$0	\$0	\$25,009
Smokeless Tobacco Council	\$15,100	\$0	\$0	\$0	\$15,100
<b>Total Lobbying Expenditures Reported</b>	<b>\$215,449</b>	<b>\$200</b>	<b>\$1,092</b>	<b>\$10,874</b>	<b>\$227,615</b>

Appendix 22: Summary of Tobacco Industry Lobbying Expenditures in Nebraska, 2001

<b>Lobbyist Reports</b>	<b>Lobbyist Compensation</b>	<b>Lobbyist Reimbursement</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Jensen, Ronald (Philip Morris)	\$15,155	\$0	\$684	\$3	\$15,842
Rasmussen, Dennis (Philip Morris)	\$33,576	\$645	\$1,101	\$0	\$35,322
Moylan, James (R. J. Reynolds)	\$41,000	\$1,644	\$0	\$770	\$43,414
Radcliffe, Walter (United States Tobacco)	\$51,000	\$0	\$922	\$0	\$51,922
Peters, William (Brown & Williamson)	\$10,000	\$0	\$0	\$0	\$10,000
<b>Total Lobbying Expenditures Reported</b>	<b>\$150,731</b>	<b>\$2,289</b>	<b>\$2,707</b>	<b>\$773</b>	<b>\$156,501</b>

<b>Company Reports</b>	<b>Lobbyist Compensation</b>	<b>Lobbyist Reimbursement</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Philip Morris	\$36,467	\$64	\$2,136	\$0	\$38,667
R. J. Reynolds	\$41,000	\$0	\$150	\$13,913	\$55,063
United States Tobacco	\$51,000	\$0	\$0	\$0	\$51,000
Brown & Williamson	\$10,000	\$0	\$0	\$0	\$10,000
<b>Total Lobbying Expenditures Reported</b>	<b>\$138,467</b>	<b>\$64</b>	<b>\$2,286</b>	<b>\$13,913</b>	<b>\$154,730</b>

Appendix 23: Summary of Tobacco Industry Lobbying Expenditures in Nebraska, 2000

<b>Lobbyist Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Jensen, Ronald (Philip Morris)	\$20,000	\$86	\$55	\$20,141
Rasmussen, Dennis (Philip Morris)	\$46,051	\$1,732	\$0	\$47,783
Moylan, James (R. J. Reynolds)	\$41,430	\$0	\$631	\$42,061
Radcliffe, Walter (United States Tobacco)	\$48,000	\$1,779	\$558	\$50,337
Peters, William (Brown & Williamson)	\$18,500	\$0	\$126	\$18,626
<b>Total Lobbying Expenditures Reported</b>	<b>\$173,980</b>	<b>\$3,597</b>	<b>\$1,370</b>	<b>\$178,947</b>

<b>Company Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Philip Morris	\$66,051	\$1,745	\$28	\$67,823
R. J. Reynolds	\$40,000	\$0	\$631	\$40,631
United States Tobacco	\$48,000	\$0	\$0	\$48,000
Brown & Williamson	\$18,500	\$0	\$0	\$18,500
<b>Total Lobbying Expenditures Reported</b>	<b>\$172,551</b>	<b>\$1,745</b>	<b>\$659</b>	<b>\$174,954</b>

Appendix 24: Summary of Tobacco Industry Lobbying Expenditures in Nebraska, 1999

<b>Lobbyist Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Jensen, Ronald (Philip Morris)	\$18,333	\$99	\$0	\$18,432
Rasmussen, Dennis (Philip Morris)	\$41,594	\$1,764	\$0	\$43,358
Moylan, James (R. J. Reynolds)	\$35,490	\$375	\$667	\$36,531
Radcliffe, Walter (United States Tobacco)	\$54,000	\$2,070	\$0	\$56,070
Peters, William (Brown & Williamson)	\$16,500	\$0	\$69	\$16,569
<b>Total Lobbying Expenditures Reported</b>	<b>\$165,916</b>	<b>\$4,308</b>	<b>\$736</b>	<b>\$170,960</b>

<b>Company Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Philip Morris	\$59,927	\$1,765	\$0	\$61,692
R. J. Reynolds	\$32,972	\$1,662	\$667	\$35,301
United States Tobacco	\$54,000	\$0	\$0	\$54,000
Brown & Williamson	\$16,500	\$0	\$6,058	\$22,558
<b>Total Lobbying Expenditures Reported</b>	<b>\$163,399</b>	<b>\$3,427</b>	<b>\$6,725</b>	<b>\$173,550</b>

Appendix 25: Summary of Tobacco Industry Lobbying Expenditures in Nebraska, 1998

<b>Lobbyist Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Jensen, Ronald (Philip Morris)	\$24,000	\$394	\$0	\$24,394
Rasmussen, Dennis (Philip Morris)	\$49,722	\$2,220	\$87	\$52,029
Moylan, James (R. J. Reynolds)	\$39,461	\$375	\$1,126	\$40,962
Radcliffe, Walter (United States Tobacco)	\$45,000	\$1,082	\$275	\$46,357
<b>Total Lobbying Expenditures Reported</b>	<b>\$158,184</b>	<b>\$4,072</b>	<b>\$1,487</b>	<b>\$163,742</b>

<b>Company Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Philip Morris	\$73,722	\$1,949	\$0	\$75,671
R. J. Reynolds	\$37,000	\$375	\$1,126	\$38,501
United States Tobacco	\$45,000	\$0	\$0	\$45,000
<b>Total Lobbying Expenditures Reported</b>	<b>\$155,722</b>	<b>\$2,324</b>	<b>\$1,126</b>	<b>\$159,172</b>



Appendix 26: Summary of Tobacco Industry Lobbying Expenditures in Nebraska, 1997

<b>Lobbyist Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Jensen, Ronald (Philip Morris)	\$12,000	\$545	\$0	\$12,545
Rasmussen, Dennis (Philip Morris)	\$41,833	\$1,763	\$594	\$44,190
Moylan, James (R. J. Reynolds)	\$36,378	\$0	\$697	\$37,075
Radcliffe, Walter (United States Tobacco)	\$45,000	\$1,521	\$42	\$46,562
<b>Total Lobbying Expenditures Reported</b>	<b>\$135,212</b>	<b>\$3,829</b>	<b>\$1,332</b>	<b>\$140,372</b>

<b>Company Reports</b>	<b>Lobbyist Compensation</b>	<b>Entertainment Expenses</b>	<b>Miscellaneous Expenses</b>	<b>Total</b>
Philip Morris	\$53,833	\$2,503	\$0	\$56,336
R. J. Reynolds	\$35,000	\$0	\$707	\$35,707
United States Tobacco	\$45,000	\$0	\$0	\$45,000
<b>Total Lobbying Expenditures Reported</b>	<b>\$133,833</b>	<b>\$2,503</b>	<b>\$707</b>	<b>\$137,043</b>