

# **Blowing Smoke Out of the Bayou: The Battle for Tobacco Control in Louisiana**

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## Executive Summary

- Louisiana consistently ranks nearly last for health and smoking in the United States.
- As of 2018, Louisiana had above average smoking prevalence for adults (20.5%) and youth (13.5% of high school and 3.8% for middle school students) in the United States (44th for adults).
- The tobacco industry dominated Louisiana tobacco control policymaking during the 1970s, 1980s and 1990s.
- The tobacco industry hired lobbyists that worked for state business associations, helping it forge strong alliances with the state business community.
- Third party allies helped the tobacco industry block clean air laws, tobacco taxes and strong youth access laws while enacting industry-favored changes to tort law in the 1980s and 1990s.
- The tobacco industry, led by Philip Morris, RJ Reynolds, and the Tobacco Institute, gave state and local candidates in Louisiana nearly \$2.2 million in 2019 dollars (\$1.6 million current dollars) from 1983 to 2015.
- From 1983 to 1999 Democrats received the majority of tobacco industry contributions; Republicans received greater contributions beginning in the 2003 election cycle as they increased their presence in the state legislature.
- The Louisiana Supreme Court ruled that businesses were liable for inherently dangerous products in 1986, prompting legislative efforts at tort reform by the state's business community and the tobacco industry.
- In 1988, the state business community and the tobacco industry secured legislation removing liability for harm caused by "inherently dangerous products."
- The tobacco industry developed and participated in the state business community's Citizens Against Lawsuit Abuse Coalition in the 1990s to advance its tort reform objectives in Louisiana.
- The Louisiana Department of Health and Hospitals (DHH) created the Louisiana Tobacco Control Program (LTCP) in 1993.
- DHH initially funded tobacco control activities using only federal grants, receiving no money for tobacco control activities from the state until it allocated \$500,000 in Fiscal Year 2001 from proceeds of the 1998 Master Settlement Agreement (MSA).
- The tobacco industry helped prevent passage of 61 state clean indoor air bills between 1970 and 1993.
- Early state clean air bills were not comprehensive 100% smokefree policies, and generally sought to restrict or limited smoking in certain workplaces and locations. Between 1970 and 1991, all but 1 bill restricting smoking in the arena area of the Superdome failed.

- Louisiana localities considered 16 ordinances and passed 8 between 1990 and 1992, mostly to limit smoking in local government buildings. Although local legislation in Louisiana was weak, the Tobacco Institute included it in a 22-state smoking restriction preemption plan.
- In 1992 and 1993 the industry obtained weak statewide smoking accommodation legislation that permitted smoking in most workplaces; the 1993 legislation preempted local smoking restrictions.
- Louisiana lawmakers only passed cigarette pack tax increases in 1984 and 1990 (5¢ and 4¢, to a total of 20¢) despite rolling budget crises in the 1980s and early 1990s; none of the money went to tobacco control.
- In 1992, the Tobacco Institute helped repeal a local cigarette tax adopted by the City of New Orleans in 1984.
- Louisiana was one of five states that still allowed tobacco product sales to minors until 1991, when the Legislature established 18 as the minimum age to purchase tobacco.
- The federal government's adoption of the 1992 Synar Amendment led Louisiana lawmakers to adopt youth access laws in 1994 that established a licensing and enforcement system for tobacco sellers with industry-friendly provisions and instituted preemption of local youth access laws in 1994.
- Louisiana lawmakers passed legislation in 1995 that eliminated the state's tobacco licensing system and required law enforcement to perform tobacco retail compliance checks, effectively preventing the state from enforcing youth access laws.
- Poor youth access compliance jeopardized state funding under the Synar Amendment, which led the Legislature to adopt a new licensing and enforcement system for tobacco sellers in 1997 that brought Louisiana from one of the highest violation rates of sales to minors to one of the lowest nationally by 1999.
- Louisiana incorporated e-cigarettes into youth access laws for tobacco products in 2014.
- In 1996, Louisiana became the sixth state of over 40 to sue the tobacco industry, part of a series of lawsuits by state attorneys general to recoup Medicaid funds lost treating tobacco-related illnesses that culminated in the 1998 MSA.
- Louisiana's involvement caused Liggett and Myers to settle in 1996, providing states access to internal tobacco industry documents and information critical to enabling the MSA.
- Louisiana Lawmakers placed approximately 70% of their state's MSA settlement reward into a protected trust for health and education initiatives.
- Louisiana securitized \$2.4 billion of its first 25 years of MSA payments in 2001 for an upfront payment of \$1.2 billion.
- Health and tobacco control advocates secured a 12¢ increase to the cigarette tax in 2002 with dedicated funding for tobacco control that led to the creation of nonprofit tobacco control program The Louisiana Campaign for Tobacco-Free Living (TFL).
- LTCP and TFL aligned and integrated their programming from 2006-2010, bolstering their capabilities and effectiveness.

- Tobacco control advocates developed increased capacity and coordination in Louisiana, allowing them to partially repeal preemption of smokefree air laws covering workplaces and restaurants without alcohol licenses in 2003.
- Passage of local ordinances built support for passage a statewide smokefree law in 2006 that prohibited smoking in most public places and workplaces and completely repealed preemption over local legislation.
- Louisiana declined to the 49th highest cigarette tax rate nationwide until 2015, when a tax increase raised it to 36<sup>th</sup> that year; in 2016 it improved to 33<sup>rd</sup> until declining to 37<sup>th</sup> by 2020.
- 28 cities and parishes adopted comprehensive, 100% smokefree laws between 2012 and January 2020 to cover exemptions in the 2006 Louisiana Smoke-Free Air Act.
- Local, state, and national organizations used multilevel campaigns and coalitions to secure comprehensive smoke-free legislation in New Orleans in 2015 and Baton Rouge in 2017.
- Comprehensive smokefree laws protected only 27.9% of Louisianans as of 2020, much lower than the national average of 61.1%.
- Tobacco control advocates lacked a powerful presence in Louisiana before the 1990s and 2000s. The Louisiana Tobacco Control Program formed in 1993, the Coalition for a Tobacco-Free Louisiana in 2001 and Tobacco Free Living in 2004, gradually bolstering tobacco control presence, capacity, and efforts.
- Tobacco control advocates established multilevel coalitions at the state and local levels to overturn pro-tobacco industry laws and secure tobacco control legislation to obtain effective statewide smoking restrictions and comprehensive local smoke-free laws despite strong business community opposition.
- While smoking prevalence has declined in Louisiana because of concerted efforts by health and tobacco control proponents, the spread between Louisiana is growing.
- Advocates need to continue aggressively pursuing tobacco control policies in order to reduce smoking prevalence at a faster pace and save lives.

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# Chapter 1: Introduction

- Louisiana consistently ranks near the bottom for health, including smoking, in the United States.
- As of 2018, Louisiana had above average smoking rates for adults (20.5%) and youth (12.3% of high school and 3.8% for middle school students) in the United States (44<sup>th</sup> for adults).
- As of 2020, only 27.9% of Louisianans were protected by comprehensive smokefree laws
- Louisiana's cigarette tax rate was 49<sup>th</sup> in the country until tax increases in 2015 and 2016 brought it to 33<sup>rd</sup> nationwide (37<sup>th</sup> as of 2020).
- The tobacco industry dominated tobacco control policy battles during the 1970s, 1980s and 1990s, securing favorable bills and preventing adoption of meaningful public health legislation.
- Tobacco control advocates secured effective tobacco control legislation in Louisiana by developing their presence, capacity and resources in the state.
- Tobacco control forces' policy victories are reducing tobacco use in Louisiana.

## Louisiana's Poor Health and Smoking Outcomes

The State of Louisiana has struggled to maintain the wellbeing of its residents relative to other states. The United Health Foundation's America's Health Rankings of health and welfare in the United States consistently finds Louisiana is one of the worst states in terms of health outcomes, ranking it 50<sup>th</sup> in 2015, 49<sup>th</sup> in 2016, 49<sup>th</sup> in 2017, 48<sup>th</sup> in 2018, and 49<sup>th</sup> in 2019.<sup>1</sup>

Louisiana's poor health outcomes partially result from high tobacco smoking rates, with the United Health Foundation ranking Louisiana 46<sup>th</sup> for smoking in 2015, 43<sup>rd</sup> in 2016, 47<sup>th</sup> in 2017, 48<sup>th</sup> in 2018, and 43<sup>rd</sup> in 2019.<sup>1</sup>

America's Health Rankings ... consistently finds Louisiana is one of the worst states in terms of health outcomes, ranking it 50<sup>th</sup> in 2015, 49<sup>th</sup> in 2016, 49<sup>th</sup> in 2017, 48<sup>th</sup>, in 2018, and 49<sup>th</sup> in 2019.

Louisiana adults smoke at significantly higher rates than the rest of the United States. In 2018, the last year available for US Centers for Disease Control and Prevention (CDC) Behavioral Risk Factors Surveillance System (BRFSS), 20.5% of adult Louisianans were current cigarette smokers (Figure 1.1). The State's adult cigarette prevalence was higher than the 16.1% US average but about the same as the 21% prevalence rate for "Tobacco Nation," the Truth Initiative's designation for the 13 states with the highest smoking rates in the country.<sup>2</sup> Louisiana's high adult smoking rate ranked it the 6<sup>th</sup> highest among states as of 2020.<sup>3</sup>

Louisiana's adult cigarette use rate has been above the US average since 1994 (Figure 1.1). While the state's rate slowly decreased over time, it has also grown farther apart from the faster declining national average (Figure 1.1). Current electronic cigarette (e-cigarette) use was similar to the US as a whole for adults at 4.5% (Figure 1.1).

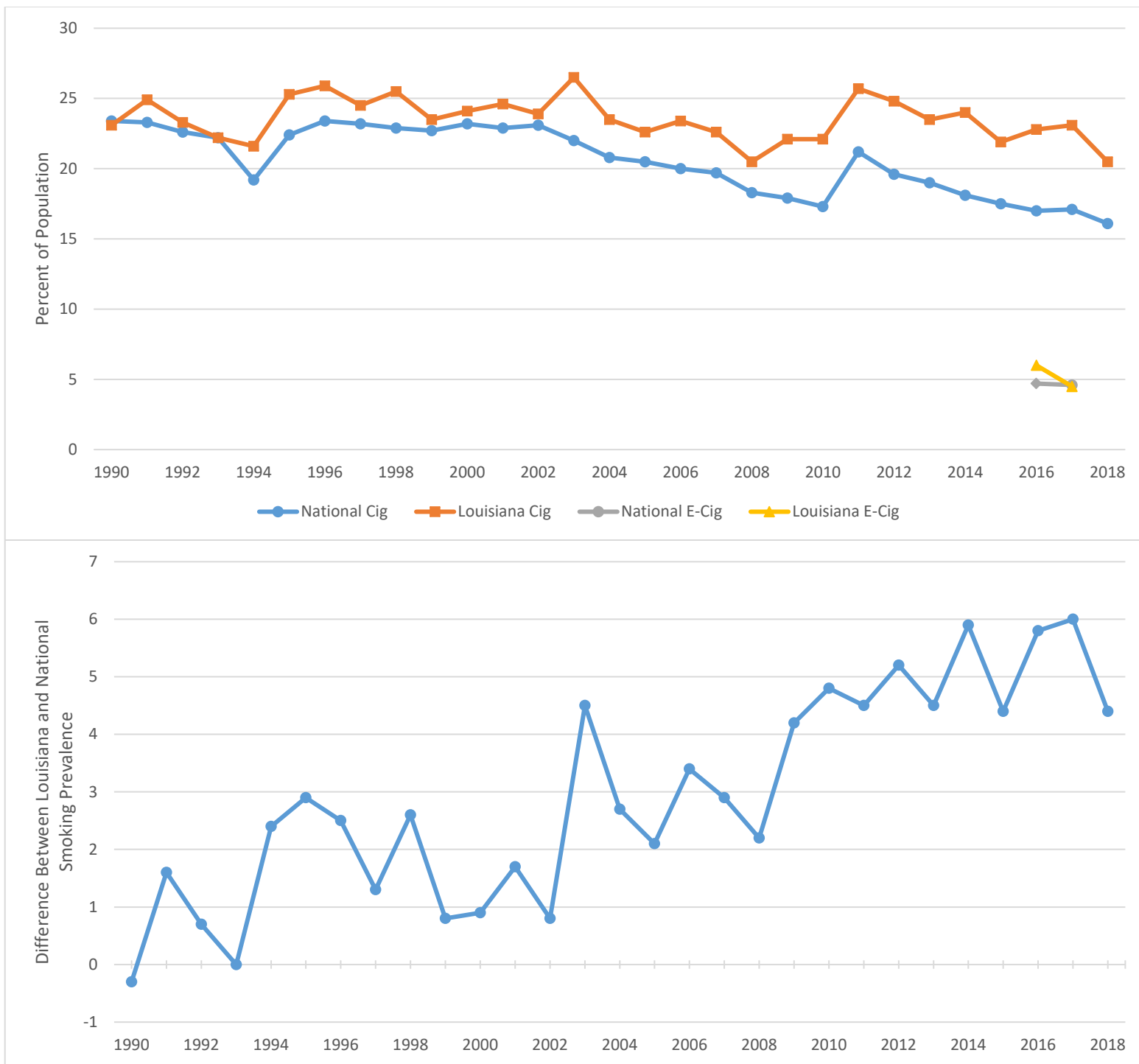


Figure 1.1: (top) Current Cigarette and E-Cigarette Prevalence in Louisiana and the United States.<sup>4</sup> (bottom) The difference between Louisiana and the US average grew over time for cigarettes. (There was a methods change to BRFSS in 2010 that created a new baseline for BRFSS results 2011-2018 that cannot be compared to previous BRFSS results.<sup>5</sup>)

Louisiana youth also smoke at higher rates than the national average. In 2017, the last year of data available from the High School YRBS, 12.3% of high school students currently used cigarettes (Figure 1.2).<sup>6</sup> Louisiana's cigarette use rate among high school students was worse

than the national average that year, 8.8%. However, Louisiana high school smoking rates generally trended similar to the US high school smoking average over time.

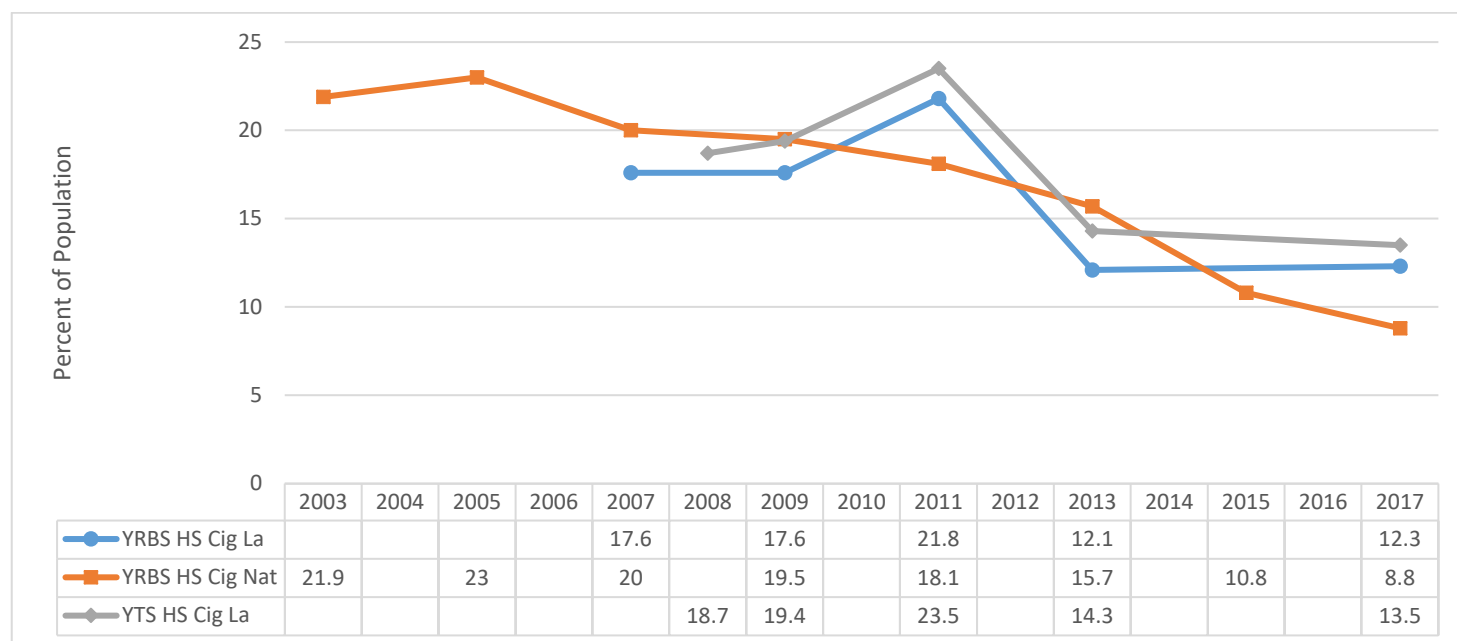


Figure 1.2: National and Louisiana Current Cigarette and E-Cigarette Use Rates Among High School Students<sup>6, 7</sup>  
 \*YRBS and Youth Tobacco Survey (YTS) are separately administered surveys with different methodologies.<sup>8, 9</sup>

Current E-cigarette use in Louisiana was similar to traditional cigarette use, with 12.2% of high school students being active users in 2017 according to High School YRBS data.<sup>6</sup> According to results from the 2019 National Youth Tobacco Survey, current e-cigarette use rates among high school students nationwide was 27.5% in 2020.<sup>10</sup>

As smoking rates have declined in Louisiana, the share of its population protected by comprehensive smokefree laws covering workplaces, restaurants, and bars has grown. Louisiana did not have any comprehensive local laws until 2012, when Louisiana’s nonprofit tobacco control program, the Louisiana Campaign for Tobacco-Free Living (TFL), began running local campaigns to pass comprehensive ordinances. TFL, subsequently joined by national and state health and tobacco control organizations, would help secure 28 local smokefree laws by January 2020. Besides covering workplaces, restaurants and bars, all of Louisiana’s comprehensive local smokefree laws also prohibited smoking in casinos (We define “comprehensive smokefree laws” as including workplaces, restaurants, bars and casinos in Chapter 12). As of 2020, 27.9% of Louisianans were protected by comprehensive smokefree laws covering workplaces, restaurants and bars, less than the national population average of 61.1%.<sup>11</sup> 35 states safeguard more of the public from secondhand smoke, with 27 having comprehensive statewide laws to protect all of their residents and 8 states holding local laws that covered a greater share of their citizens than Louisiana.<sup>11</sup>

As of 2020, 27.9% of Louisianans were protected by comprehensive smokefree laws ... less than the national population average of 61.1%.

Louisiana was also below Tobacco Nation’s average, which had 45% of its population covered my smokefree laws as of June 2019.<sup>2</sup>

Louisiana’s cigarette tax lagged most states until the mid-2010s. The state infrequently raised the tax per cigarette pack, failing to levy an increase after 1990 (20 cents) until 2000 (Figure 1.3). Louisiana next raised its cigarette tax by 12-cents per pack in 2002, and then allowed its rate to stagnate at 34th and become the 2<sup>nd</sup> lowest in the country by 2014 (Chapter 11). Two tax increases in 2015 (50-cents) and 2016 (22-cents) cumulatively established a \$1.08 rate per cigarette pack, 33<sup>rd</sup> highest in the country at the time of implementation. However, by January 2020 Louisiana dropped to having the 37th highest cigarette tax in the country, below the national average of \$1.81 per pack.<sup>12</sup> Louisiana’s \$1.08 cigarette tax per pack in January 2020 is nearly the same as Tobacco Nation’s average tax was in June 2019, which was \$1.07 per pack.<sup>2</sup>

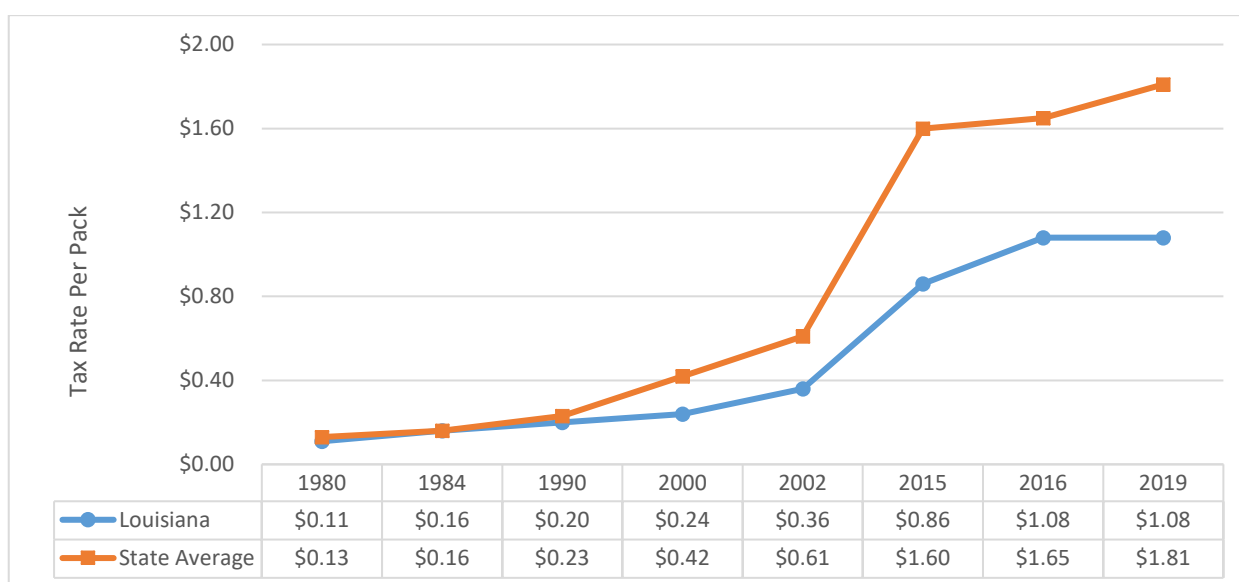


Figure 1.3: Louisiana and the National Average Cigarette Tax Rate Per Pack over Time (Chapters 6 and 11).<sup>13</sup>

Tobacco use inflicts major health and economic costs on Louisiana. Smoking causes approximately 7,200 deaths annually in the state<sup>14, 15</sup> and 32.6% of all cancer deaths.<sup>15</sup> Smoking-linked illnesses also inflicted \$1.9 billion in healthcare costs during 2009.<sup>14, 15</sup> Louisiana would save \$31.7 million in Medicaid funds the following year if it reduced absolute smoking prevalence by just 1%.<sup>16</sup>

### Tobacco Industry Presence in Louisiana

One reason for Louisiana’s poor health outcomes are the powerful business interests that dominate the state, in particular the tobacco industry. The tobacco industry has worked since the 1970s to influence policy outcomes to its advantage in Louisiana, initially relying on its own employee activists (Chapter 2). During the 1980s and 1990s, the tobacco industry also used campaign contributions, influential and connected lobbyists, as well as alliances with other businesses and business associations to try to prevent meaningful tobacco control legislation. In

contrast to the tobacco industry, health and tobacco control advocates had a weak presence in Louisiana before the 2000s that could not counter the industry's influence and resources.

**Tobacco industry interference negatively influenced Louisiana's tobacco control policy outcomes in the 1970s, 1980s and 1990s.**

Tobacco industry interference negatively influenced Louisiana's tobacco control policy outcomes in the 1970s, 1980s and 1990s. During that period, over 60 statewide smoking restriction bills died in the legislature because of tobacco industry opposition. In addition, statewide smoker accommodation laws, which establish weak restrictions supported by the industry that permit smoking indoors and are designed to prevent adoption of stronger smokefree legislation,<sup>17</sup> passed in Louisiana in 1992 and 1993 (Chapter 5). The laws failed to protect Louisianans from secondhand smoke and preempted stronger local smoking restrictions for over ten years.

The tobacco industry hampered public health progress in other policy spheres besides smoking restrictions. The industry aggressively lobbied against tobacco tax increases in the 1980s and 1990s, preventing most legislation from passing despite Louisiana chronically suffering from budget crises (Chapter 6). Louisiana lawmakers adopted a weak minimum age of sale law in 1991 secretly supported by the tobacco industry, which tied it to the Tobacco Institute's ineffective voluntary regulation program "It's the Law" (Chapter 7). The tobacco industry also helped the state business community convince Louisiana Lawmakers to pass product liability protections in the 1980s and 1990s that shielded tobacco companies from liability for harm caused by their products and made it more difficult to sustain lawsuits against them (Chapter 8). Efforts by tobacco control supporters to pass any meaningful tobacco control legislation repeatedly failed amid opposition from the tobacco industry, state lawmakers friendly to it, and the state business community (Chapters 5, 6, and 7).

### **The Development of Tobacco Control in Louisiana**

Health and tobacco control advocates were slow to establish a presence in Louisiana effective enough to counter tobacco industry influence, which contributed to the poor tobacco control legislative outcomes in the 1970s, 1980s, and 1990s. Only medical professionals, advocates and health voluntaries promoted tobacco control in the state during the 1970s and 1980s. The state did not form a tobacco control program until 1993, when it created the Louisiana Tobacco Control Program (LTCP) under its Department of Health and Hospitals (DHH) using funding from the Centers for Disease Control and Prevention (CDC) (Chapter 4). LTCP relied entirely on limited federal money until the state began providing \$500,000 annually to the program in fiscal year 2001 from its Master Settlement Agreement (MSA) proceeds, which resulted from state litigation against the major cigarette companies (Chapter 9).

Tobacco control programs and advocates secured another tobacco control program for Louisiana by developing their presence and capacity in the state. LTCP helped create a network of tobacco control grassroots advocates and advocacy groups to denormalize tobacco use as well as generate public support for tobacco control (Chapter 4). While LTCP established a tobacco control base in Louisiana, state and national health advocates and voluntaries reformed an earlier

coalition, the Coalition for a Tobacco-Free Louisiana (CTFLA) in 2001 to advance tobacco control policies in the state (Chapter 4). The coalition then helped secure a tobacco tax increase in 2002 with dedicated funding for tobacco control programming not administered by the state (Chapter 11). Health and tobacco control advocates and voluntaries maintained CTFLA and their partnerships to coordinate future policy campaigns.

Although tobacco control funding was well below CDC recommended best practice levels,<sup>18</sup> the 2002 tax increase with dedicated tax funds led to the creation of nonprofit tobacco control program the Louisiana Campaign for Tobacco-Free Living (TFL) that conducted additional tobacco control initiatives and provided more resources to the state (Chapter 4). TFL, similar to LTCP, would also lead grassroots development programs that created tobacco control advocates and increased support for tobacco control initiatives in Louisiana. TFL's formation as a nonprofit also allowed it to engage in advocacy and policy campaigns and participate in advocate coalitions.

LTCP and TFL did not initially coordinate their activities. The devastation of Hurricane Katrina caused the programs to align their efforts with Emory University's Tobacco Technical Assistance Consortium (TTAC) from 2006-2010 to enable greater synergy and efficiency between them. LTCP and TFL subsequently coordinated and collaborated on some programming after streamlining with TTAC's assistance. The development of tobacco control's presence and capacity in Louisiana enabled it to overcome industry interference and advance public health in Louisiana.

### **Tobacco Control Capacity Improvements Lead to Public Health Policy Victories**

The creation of LTCP, the development of the CTFLA coalition and ties between its members, the formation of TFL and its ability to engage in policy advocacy, and the alignment of LTCP and TFL's programming led to passage of increasingly stronger tobacco control legislation in the 2000s and 2010s in Louisiana. LTCP fostered a grassroots network of tobacco control advocates and backers in Louisiana to support the advancement of tobacco control policies in Louisiana (Chapter 4). State and national partners of CTFLA used the coalition to help pass the 12-cent cigarette tax increase in 2002 that spurred TFL's creation in 2004 and provided more resources for tobacco control efforts in Louisiana (Chapter 11). CTFLA then led a policy campaign that partially repealed state preemption of local smoking restrictions in 2003 and a campaign that secured a statewide smokefree law and fully eliminated preemption in 2006, overturning the ineffective accommodation laws the tobacco industry helped install in 1992 and 1993 (Chapter 10). TFL later administered local campaigns to pass comprehensive smokefree ordinances covering bars and casinos starting in 2012, when statewide smokefree efforts stalled (Chapter 12). TFL secured numerous ordinances, and with assistance from state and national partners from CTFLA, ran effective policy campaigns to obtain comprehensive smokefree laws in New Orleans (2015) and Baton Rouge in 2017. CTFLA partners and TFL also formed a coalition to help secure the cigarette tax increases in 2015 and 2016 that brought Louisiana's cigarette tax from 49th in the country to at that time the 33<sup>rd</sup> highest nationwide (Chapter 11).



## Conclusion

The formation of CTFLA, a strong coalition of national and state health advocates and voluntaries, and TFL's ability as a nonprofit to engage in advocacy and policy coalitions, enabled policy victories in the 2000s and 2010s that reduced tobacco use in Louisiana, albeit slowly. From 2006 to 2010, the time period that Louisiana's statewide smoking restriction law was adopted, cigarette taxes stagnated and local comprehensive smokefree ordinance

The formation of CTFLA, a strong coalition of national and state health advocates and voluntaries, and TFL's ability as a nonprofit to engage in advocacy and policy coalitions, enabled policy victories in the 2000s and 2010s that reduced tobacco use in Louisiana, albeit slowly.

campaigns had not started, the state's adult smoker rate only declined from 23.4% to 22.1% overall (Figure 1.1). Adult smoking prevalence experienced greater decline in Louisiana between 2011 and 2015, from 25.7% to 21.9% (Figure 1.1). During that time, tobacco control forces obtained comprehensive smokefree laws in major metropolitan areas as well as small towns and secured the first state cigarette tax since 2002 in 2015 (Figure 1.3). However, adult cigarette smoking began increasing in 2016 despite passage of another cigarette tax hike that year (Figure 1.3), and by 2017 increased to 23.1% (Figure 1.1). In 2018, as smoking rates declined again nationally and advocates continued securing additional local smokefree laws in Louisiana, the state's smoking rate declined to its lowest point in the 2010s, 20.5%, but remained above the national average.

While advocates have helped decrease overall adult smoking rates in Louisiana, the state is increasingly falling behind the rest of the United States. During the 1990s, Louisiana's smoking rate ranged between 2.9% to 0.8% higher than the national average (Figure 1.1). The difference between Louisiana's adult smoking rate and the US smoking average gradually worsened, peaking at 6.0% higher than the national average in 2017 until settling at 4.4% higher in 2018, the last year of data available. The data indicates tobacco control forces operating in Louisiana need to take aggressive action on smokefree policies and programming for Louisiana to lower smoking as fast or faster than the nation's decline.

High school smoking rates in Louisiana declined erratically compared to adult smoking according to High School YRBS data (Figure 1.2). After the state's smoking restriction law passed in 2006, youth smoking hovered at 17.6% between 2007-2009, below the national average. However, smoking rates among Louisiana high school students increased to 21.8%, above the national average of 18.1%, by 2011. Louisiana high school smoking rates fell to 12.1% in 2013, as tobacco control advocates began securing comprehensive local ordinances and helped pass a 2013 law that required higher education institutions to implement smokefree policies (Chapter 12). High school smoking rates remained around 12% in Louisiana as of 2017, despite additional local smokefree ordinances and two statewide cigarette tax increases passing (Chapters 11, 12).

Louisiana's tobacco control experience demonstrates that tobacco control capacity and coalition building are critical to overturning tobacco industry laws, countering industry interference, and securing effective legislation to advance public health despite limited funding and resources, a strong industry presence and a business-friendly state government. Tobacco control advocates, programs and organizations effort' have reduced smoking in Louisiana. However significant improvements in tobacco control policy remain necessary to reduce the state's high smoking rates among adults and youth as well as lower the health and economic costs that burden Louisiana as a result.

## Chapter 2: Tobacco Industry Political Organization and Presence in Louisiana

- The tobacco industry had a strong political presence and impact in Louisiana.
- The tobacco industry retains lobbyists that previously worked for state business associations, helping to establish strong alliances with other business associations.
- Third party allies fought on behalf of the industry to block clean air regulation, tobacco taxes, and industry favored changes to tort law primarily in the 1980s and 1990s.
- The Louisiana Restaurant Association and the Louisiana Hotel-Motel Association participated in voluntary tobacco industry programs to avoid clean indoor air laws and strong youth sales restrictions during the 1980s and 1990s.

Louisiana's tobacco control history in the 1970s, 1980s, and early 1990s is similar to other states, with excise tax increases and attempts to secure clean air legislation opposed by a well-organized tobacco industry. The tobacco industry weakened or defeated tobacco control policy through extensive lobbying of state and local lawmakers, campaign contributions, coalition building, and, when needed, helping create and use front groups such as Citizens Against Lawsuit Abuse (Chapter 8). The Tobacco Institute, the major cigarette companies' political and public relations arm based in Washington, D.C., led political efforts in Louisiana, supplemented by efforts from individual cigarette manufacturers, most notably Philip Morris.

During the 1970s the tobacco industry, including businesses ranging from manufacturers to wholesalers, relied on employees to monitor and oppose adverse legislation in Louisiana as part of its nationwide Tobacco Action Network.<sup>1, 2</sup> In addition, the tobacco industry collaborated with third party allies and formed front groups to oppose tobacco control efforts throughout the United States. Third party allies in Louisiana included The Louisiana Wholesale Tobacco and Candy Distributors Association (LWTCDA), the Louisiana Restaurant Association (LRA), Wholesale Grocers Association, the Louisiana Hotel-Motel Association,<sup>3, 4</sup> and Louisiana Association of Business and Industry (LABI). Tobacco industry lobbyists, discussed later in this chapter, previously worked for some of these state-based associations and aided the tobacco companies' efforts to collaborate with them. Extensive tobacco industry lobbying and coalition building in Louisiana hindered progress on tobacco control for decades in the state.

Extensive tobacco industry lobbying and coalition building in Louisiana would hinder progress on tobacco control for decades in the state.

### Tobacco Industry Trade Organizations

Three national tobacco trade associations were active in Louisiana since at least the 1980s: the Tobacco Merchants Association (TMA) in the early 1980s, the Tobacco Institute (TI), and Tobacco Tax Council (TTC).

## ***Tobacco Merchants Association***

At the beginning of the Twentieth Century, major tobacco manufacturers developed the Tobacco Merchants Association to collect and analyze legislative reports and governmental records in the United States.<sup>5, 6</sup> In 1982, the TMA produced a quarterly review of the anti-tobacco legislative situation in all the states and distributed it to its members, which included nearly all tobacco companies, distributors, wholesalers and retailers. Because it was a 501(c)(3) nonprofit educational organization, The Tobacco Merchant's Association did not directly lobby or engage in policymaking. Instead, the TMA produced research the industry and its allied organizations could use to respond to legislative developments at the federal, state, and local levels.

## ***The Tobacco Institute***

As it did nationally and in other states, the Washington, D.C.-based Tobacco Institute, a trade and lobbying association for the US tobacco industry, coordinated political and public relations efforts in Louisiana on behalf of the tobacco industry. The Tobacco Institute formed in 1958 as the tobacco industry's political arm.<sup>7</sup> To advance the industry's position on health and economic issues, Tobacco Institute representatives lobbied politicians, attended legislative hearings, and functioned as a unified voice for tobacco companies (RJ Reynolds (RJR), Philip Morris (PM), Brown & Williamson (BW), Liggett & Meyers (LM), the United States Tobacco Co. (USTC), and six smaller companies) for 40 years. The Tobacco Institute operated until early 1999,<sup>8</sup> when the organization disbanded as required by settlements of several state lawsuits as well as the 1998 Master Settlement Agreement, which settled the lawsuits of 46 states, D.C., and 5 territories against the 5 major tobacco companies.<sup>9</sup> In particular, the Tobacco Institute's State Activities Division dealt with state, parish (county), and municipal activities to defeat or promote legislation in accordance with member companies' interests. In Louisiana and other states, the State Activities Division mission was to "maintain relations with state, county, and municipal legislative leaders; journalists; and key personnel in the health and education fields in their areas [of expertise]."<sup>10</sup>

In 1982, the Tobacco Institute increased its annual national budget by 38% to \$21.9 million (\$57.8 million in 2018 dollars) to pay for lobbyists, enhance public relations, and to monitor federal, state, and local legislative developments that threatened the industry. The increased budget covered the Tobacco Institute's Administrative Division, Federal Relations Division, Public Relations Division, State Activities Division, and Scientific Affairs Division. The State Activities Division received a 14% budget increase from 1981 (\$435,800 or \$1.25 million in 2018 dollars) giving it a budget of \$5.9 million, or approximately 27% of the Tobacco Institute's total budget in 1982. The increase in funding for the State Activities Division covered the "start-up costs and expansion into 10 southeastern states," including Louisiana.<sup>11</sup>

Important Tobacco Institute personnel oversaw and managed the industry's legislative and political activity in Louisiana (Table 2.1).

Table 2.1: Tobacco Institute Key Personnel		
Position	Year	Person
Tobacco Institute President	1981-1997	Samuel Chicolte <sup>12</sup>
	1978-1983	Jack Kelly

Senior Vice President of the State Activities Division	1982-1988	Roger Mozingo <sup>13</sup>
	1989-1996	Kurt Malmgren <sup>14</sup>
	1995-1998	Patrick Donoho <sup>15</sup>
Regional Vice President	1983-1991	Ronald Morris <sup>16</sup>
	1991-1992	David Hooper
	1992-1995	Weldon Denman <sup>17</sup>
	1995-1996	Ronald Morris <sup>17</sup>
	1996-1998	Gary Anderson <sup>18-20</sup>
Senior Vice President Southern Sector	1983-1986	Hurst Marshall <sup>21, 22</sup>
	1987-1992	George Minshew <sup>23, 24</sup>
	1992-1993	Ronald Morris <sup>23</sup>
State Activities Division Regional Director	1982	Ronald Morris <sup>16</sup>
	1982-1984	John Hightower <sup>25</sup>
	1985-1988	Jack Shoemaker <sup>26</sup>
	1989-1991	Patrick McWhorter <sup>27</sup>
Senior Vice President of Legislative Support/Administration	Unknown	William Cannell <sup>29</sup>
Vice President of State Activities	1984-1987 <sup>28</sup>	
Regional Director of Government Affairs	Unknown	Unknown
Director of Legislative Information	Unknown	Cathey Yoe
Director of Communications	Unknown	Walter Woodson
Manager of Legislative Issues	Unknown	Paula Duhaime
Director of Economic Issues	Unknown	William Orzechowski
Manager of Public Affairs	1980	Dan Alverson <sup>30</sup>
Louisiana and Southern Texas State Director	1980	Paul S. Harris <sup>30</sup>

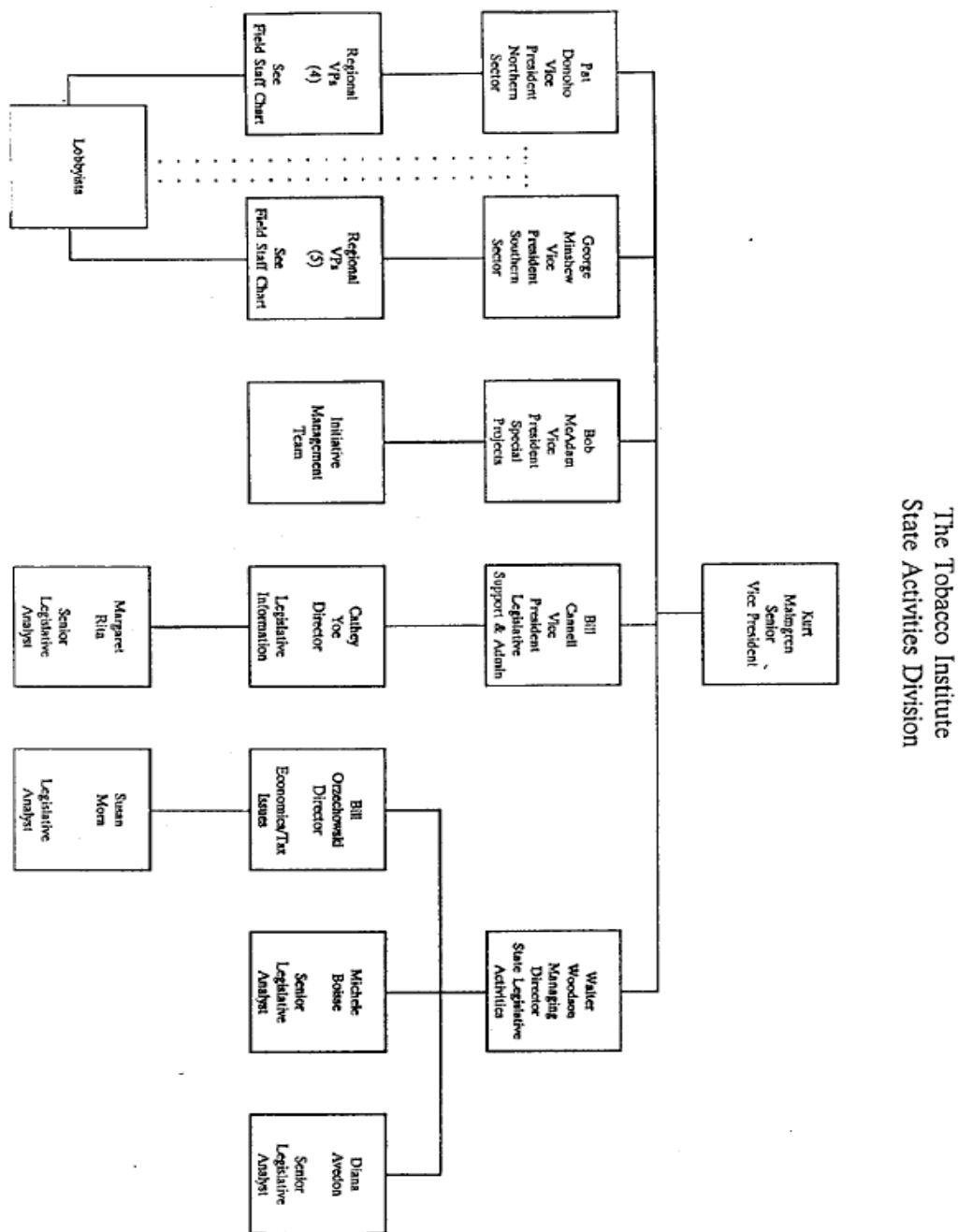


Figure 2.1: Tobacco Institute State Activities Division Organizational Chart, September 1990<sup>31</sup>

### ***The Tobacco Tax Council***

The Tobacco Tax Council (TTC) was an industry trade organization developed in 1949 by tobacco manufacturers to analyze state legislative affairs, in particular tobacco tax proposals. Membership overlapped between the Tobacco Institute and TTC, which led the two

organizations to work together on state activities on tobacco taxes throughout the 1960s and 1970s until TTC merged into the Tobacco Institute in 1982.

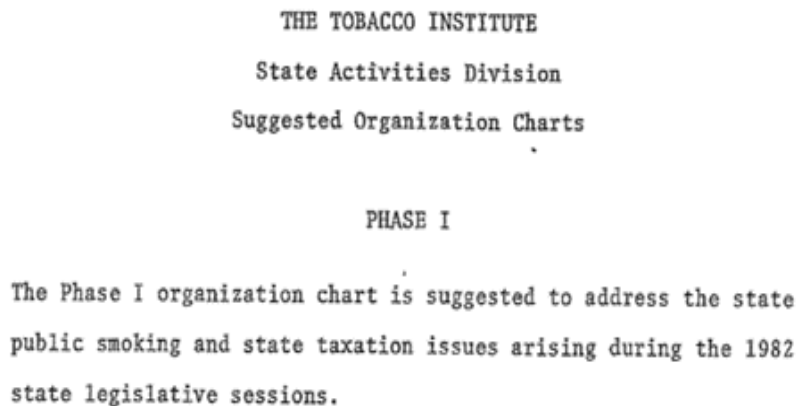


Figure 2.2: Phases I and II of the Plan to Absorb the TTC into TI, December 31, 1981<sup>32</sup>

During Phase I of the merger (Figure 2.2), the Tobacco Institute handled state public smoking issues whereas Tobacco Tax Council employees were in charge of state taxation issues. During Phase II, the Tobacco Tax Council was absorbed into the Tobacco Institute's State Activities Division. Following the merger, the Tobacco Institute State Activities Division reorganized its national leadership to consist of the Tobacco Institute President, along with a national manager for State Taxation Issues and a manager for State Public Smoking Issues. Four regional vice presidents reported to the national managers, with area directors, lobbyists, and legislative consultants for individual states reporting to them.<sup>33</sup>

## *Tobacco Action Network*

In 1977, the Tobacco Institute (TI) realized it needed a grassroots network to compete with the emerging grassroots nonsmokers' rights movement.<sup>34</sup> In 1978, TI and the major cigarette companies developed the Tobacco Action Network (TAN) for use in states with more active tobacco control movements and in states considered to be of "relative importance... in terms of support required at the federal level."<sup>34</sup>

Nationally, TAN consisted of tobacco growers, manufacturers, wholesalers, retailers, and vendors and other allied organizations.<sup>1, 2, 35</sup> TAN advanced tobacco industry political interests by soliciting local volunteers to attend meetings, testify, circulate petitions, and contact the media.<sup>36</sup>

TAN advanced tobacco industry political interests by soliciting local volunteers to attend meetings, testify, circulate petitions, and contact the media.

In a 1978 Tobacco Action Program Manual Philip Morris circulated to its employees to educate them on TAN and encourage their participation in the initiative, the company outlines TAN's political goal as, "...to bring together and coordinate all segments of the tobacco family – growers, manufacturers, wholesalers, retailers, and vendors – as well as our allies."<sup>2</sup> The structure of TAN consisted of a state director who strategically coordinated efforts with the Tobacco Institute, TI's state legislative counsel and the state TAN advisory committee and. TAN informed its members of the emerging political and legislative threats to the industry and requested that members mobilize accordingly.

- 2 -

### 1980 BIG YEAR FOR TAN ENROLLMENT IN TRI-STATE AREA (cont.)

increase of 928 from 1979.

Member company volunteers were not the only ones helping with TAN recruitment this year. Wholesaler volunteers were involved also and TAN wants to thank the following:

Jimmy Washington - Harrison Company, Shreveport  
Ken & Jean Caldwell - Caldwell Wholesale, Shreveport  
John Mazur - Robert Cigar and Tobacco  
Tom Branch - Webster Wholesale, Minden  
E. B. Halley - Ouachita, Monroe  
Dot Almgren - Pelican, Alexandria & Breau Bridge  
Dick Loftin - Pelican, Alexandria & Breau Bridge  
Joe Ragusa - Arrow Tobacco, Baton Rouge  
A. B. Lemoine - Baton Rouge Wholesale  
Joe Quaglino - Quaglino Tobacco  
Gerald Pelias - Imperial Trading, Metairie  
Joe Koen - U. Koen, New Orleans  
Frank Silva - Silva & Sons, New Orleans  
Bill Deeves - Crescent Cigarette & Tobacco, New Orleans

*Figure 2.3: TAN Tri-State Area Newsletter (February 1981)<sup>37</sup>*

By the end of 1980, TAN had spread from 18 to 41 states. In 1980, Louisiana became one of 21 states that TAN strategically targeted. The industry established an office in Austin, Texas and appointed Paul S. Harris as the Southern Texas and Louisiana TAN Director. In Louisiana, TAN announced that the "Pelican State Turns TAN" when its enrollment reached 146 members in February 1980.<sup>38</sup> That year, TAN mobilized against the Louisiana Indoor Clean Air Act (SB



292) at a hearing before the Senate Committee on Commerce, with four of its members and one volunteer appearing to oppose the bill<sup>39</sup> (Chapter 5).

By 1980, TAN created a Louisiana TAN Advisory Committee. TAN formed the committee to organize state TI offices and TAN volunteers, and to help member organizations enroll and mobilize new volunteers.<sup>39</sup> In 1980, TAN Advisory Committee Members consisted mainly of employees from tobacco manufacturers and wholesalers (Table 2.2).<sup>39</sup> The tobacco industry provided financial support to its allied organizations including yearly membership fees. The network of tobacco manufacturers in Louisiana grew in 1981, and TAN recognized the efforts of its volunteer "grassroots" coalition in increasing TAN enrollment in its February 1981 newsletter.<sup>37</sup> By February 1981, TAN's membership in Louisiana had increased from 141 to 1,001 members largely due to the TAN Enrollment Drive, with a majority of the new members coming from the City of New Orleans. According to a TAN newsletter by South Texas and Louisiana State Director Paul Harris and North Texas and Oklahoma State Director Terry Frakes, in 1981 Louisiana was a "TAN paradise" for the Tobacco Institute and its allies.<sup>40</sup>

Table 2.2: Louisiana TAN Advisory Committee Members, 1980 <sup>39, 41</sup>	
<i>Member</i>	<i>Organization</i>
Lance Jones	Philip Morris
Jim Fouts	Brown & Williamson Tobacco
Bill Long	Liggett & Myers
John Fitterer	Mr. J's Tobacco House (Shreveport)
Joe G. Wood	Tobacco Institute
Paul Harris	TAN Director
Dan Alverson/John Hightower (1981)	TI Southwest Area Director
Barbara Easley	Louisiana Wholesale Grocers Association
Jack Pender	TAN Committee Representative
Al Saldinger	Lorillard

On June 25, 1981 the Tobacco Action Network mobilized to defeat Senate Bill 689. SB 689 prohibited smoking in the New Orleans Superdome and other indoor sports arenas with a capacity of 40,000 or greater.<sup>42</sup> TAN sent letters and telegrams opposing the bill<sup>43</sup> (Chapter 6). In 1982, TAN also wrote letters against tobacco tax increase bill HB 526 (Chapter 7) and smoking restrictions bill HB 411 (Chapter 6).<sup>43</sup>

In 1982, Harris left his position as TAN State Director for Louisiana. The Tobacco Institute replaced him with John Hightower, who ran the Tobacco Action Network for Louisiana, Arkansas, and Mississippi. In 1983, TI Area Director Hightower established a TAN state office in Baton Rouge, Louisiana within walking distance of the state capitol. In 1984, TAN activists called legislators and industry allies to oppose smoking restrictions for the New Orleans Superdome (Chapter 6).<sup>44</sup> TAN served as an active industry presence throughout the 1980s, with Louisiana still holding 451 network members in 1988.<sup>45</sup> In 1988, TI Regional Vice President Ronald Morris mobilized Louisiana TAN activists to oppose a 6-cent per cigarette pack tax increase (Chapter 7), requesting members to write and call their state legislators.<sup>46</sup> In 1989, Tobacco Institute State Activities Division Regional Director Jack Shoemaker recruited TAN activists to oppose a local smokefree ordinance passed in the city of Lake Charles.<sup>47</sup>

We did not find evidence of TAN mobilizing in Louisiana after 1989.

## **Tobacco Industry Lobbyists**

### ***Weak State Laws on Lobbying Disclosure***

As of July 2019, Louisiana State laws on lobbying disclosure, the Legislative Branch Lobbyist Disclosure Act (LA. REV. STAT. ANN. § 24:50 et seq.) and the Executive Branch Lobbyist Disclosure Act (LA. REV. STAT. ANN. § 49:71 et seq.), provide general information on the amount the tobacco industry spends on lobbying in Louisiana. Specifically, disclosure laws in Louisiana required that registered lobbyists report expenditures for gifts, payment of money, or anything of monetary value to public officials. Reporting of expenditures for travel, lodging, meals, and entertainment was not required.

Lobbying activity reports do not include exact compensation from an individual client. Compensation paid to lobbyists by clients is required to be reported as a category range (e.g. \$50,000-\$99,999) rather than an actual amount.<sup>48-50</sup> Lobbyists report lobbying on subject matters from “tobacco industry” to “environmental quality, conservation, and wildlife preservation” but are not required to distinguish between lobbying activity paid for by individual clients. Before 2009, Louisiana law required lobbyists to disclose that they received financial compensation from a client but did not make them provide any monetary amount or range, preventing an adequate accounting of tobacco industry payments to its representatives in the state.<sup>51</sup> Beginning in 2009, lobbyists were required to disclose monetary amounts in ranges.<sup>49-51</sup>

### ***Payments to Lobbyists in Louisiana***

Internal documents released as a result of legal settlements and judgements has made many of the industry’s internal records on lobbying expenditures available at the UCSF Truth Tobacco Documents Library (<https://industrydocuments.library.ucsf.edu/tobacco>) (Table 2.3). These documents demonstrate that the tobacco industry’s lobby in Louisiana has consisted of powerful and experienced legislative counsel hired by TI as well as by Philip Morris and RJ Reynolds.

The Louisiana Ethics Administration Program database contains lobbyist reports beginning in 2009 (Louisiana law did not require lobbyists to disclose any compensation amount until 2009<sup>51</sup>). The program discloses payments received by lobbyists from their clients in ranges and not specific amounts (i.e. instead of showing a total \$57,000 received by a lobbyist in one year from a tobacco company, the amount is displayed as \$50,000-\$99,000). A search of tobacco trade associations, companies, and businesses found that only Altria/Philip Morris (Philip Morris changed its name to Altria in 2003<sup>52</sup>) and RJ Reynolds have employed lobbyists in Louisiana since 2009 (Table 2.4).

Table 2.3: Early Tobacco Industry Payments to Louisiana Lobbyists by Organization in Actual Dollars<sup>11, 53-84</sup>

Company	Tobacco Institute				RJ Reynolds				Philip Morris	
Lobbyist	Jack Pender	Joe Wood Guidry	Haras, inc.	Unidentified Local Council	John Koch**		Blache, Perkins and Koch	Cecil J. Blache	Randy Haynie / Haynie and Associates	David Tatman
1980	18,500*+									
1981	18,500*+	16,000*								
1982	21,000	18000*								
1983	21,000*	20000*								
1984	21,000*	23000*								
1985	-	26000*								
1986	-	26000								
1987	-	28,000								
1988	-	30,000		25,000						
1989	-	32,000		25,000		10,555	120,000		72,000*	
1990	-	47,000	25,000*			5,000*	60,000*		77,000*	
1991	-	48,000	25,000				69,315			
1992	-	48,000	25,000				66,000*			
1993		53,000	25,000				68,000*		180,000	
1994		50,000*							180,000	
1995		53,000*							180,000*	
1996					49,000*				200,000*	
1997					70,000*			84,000		
1998					70,000*			72,000	248,000*	60,000
1999								66,667	250,000*	
2000								80,000	223,000*	
2001								84,000	223,000*	60,000
Total										

\*Budgeted, expected, forecasted or requested.

\*\*John Koch worked for the Tobacco Institute and RJ Reynolds at different times.

+Comes from Tobacco Tax Council.

The tobacco industry may have spent as much as \$2,855,969 on lobbyists between 2009 and 2017 (Table 2.4).

Philip Morris/Altria (which we refer to collectively as PM) spent the most money on lobbyists, with much of the money going to the Haynie family (Table 2.4). Philip Morris spent at most \$2,405,987 on lobbyists from 2009-2017, while it spent at most \$449,982 on representation as Altria during that period (Table 2.4). PM Lobbyist Randy Haynie worked to oppose comprehensive clean air laws and tobacco tax increases for Philip Morris since the 1980s (Chapters 5, 6). He also advanced tort reform for the company during that time (Chapter 8). PM paid lobbyists from the Haynie family from \$50,000-\$99,000 annually during 2009-2017. All other industry payments to lobbyists by PM and RJR were under \$25,000 annually from 2009 to 2017 (Table 2.4). Known payments did not seem correlated with specific legislative efforts affecting the industry from 2009-2017.

Tobacco company lobbyists with multiple clients could indirectly pressure candidates in need of campaign contributions to support policies the industry favored. In a 2016 interview for

Table 2.4: Payments to Louisiana Lobbyists by the Tobacco Industry <sup>85</sup> (Based on Upper Bounds of Payment Ranges)												
Company	Lobbyist	1983-2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Philip Morris / Altria	Randy Haynie	Unknown	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	450,000 – 891,000
	Ryan Haynie		50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	50,000-99,000	450,000 – 891,000
	David Tatman		--	25,000-49,999	25,000-49,999	25,000-49,999	25,000-49,999	25,000-49,999	25,000-49,999	25,000-49,999	25,000-49,999	200,000 – 399,992
	Robert Donaldson		--	--	--	--	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	124,995 or lower
	Dayna Haynie		--	--	--	--	--	--	--	--	50,000-99,000	50,000 – 99,000
RJ Reynolds	CJ Blache		--	--	--	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	149,994 or lower
	John Koch		--	--	--	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	149,994 or lower
	Christian Rhodes		--	--	--	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	24,999 or lower	149,994 or lower
Total												\$2,855,969

this report, former Louisiana Public Health Institute policy manager and lobbyist Eric Vicks said:

They [tobacco company lobbyists] had a lot of clients, so there's lots of reasons to talk to them...if you have clients that are giving money, every time we [lawmakers] see CJ Blache [an RJ Reynolds Lobbyist], you know, we have to think about his issues. And tobacco is one of them, so we [as lawmakers] have to be supportive of tobacco, because even though he may have given us [lawmakers] money from another entity ... we have to look at it in terms of 'If we piss him off on this one, we're pissing him off on everything.'<sup>86</sup>

While lobbyists for the tobacco industry have contributed to candidates in Louisiana, it is not possible to determine if the tobacco industry funneled donations through lobbyists, or if lobbyists made individual contributions in support of industry political objectives.

### ***Tobacco Institute Lobbyists***

#### ***John Hightower***

In 1982, TTC and TI hired the former lobbyist for Georgia Pacific in Louisiana, John Hightower, as Area Director. Hightower was responsible for lobbying and advocacy activities in Louisiana, Mississippi, and Arkansas. Prior to working for the Tobacco Institute, Hightower was a member of the Louisiana Business and Industry (LABI), Louisiana Chamber of Commerce, Louisiana Restaurant Association (LRA), and the Louisiana Public Affairs Research Council; the Tobacco Institute realized early on that Hightower's contacts "will be useful to our [TI's] efforts."<sup>87</sup> Hightower oversaw the activities of two primary industry lobbyists in the state, Jack Pender and Joe Wood.

#### ***Joe Wood***

Joe Wood, the first female lobbyist in Louisiana,<sup>88</sup> worked as a lobbyist on tobacco issues from 1978 until 1995. She started as an association director for the Louisiana Wholesale Distributors Association.<sup>89, 90</sup> In 1979 the Tobacco Institute paid Joe Wood \$7000 to lobby on its behalf, which she requested be instead given to the Louisiana Wholesale Tobacco and Candy Distributors Association (LWTCDA).<sup>91</sup> Joe Wood concurrently lobbied for TI and LWTCDA until 1983, when she dropped her LWTCDA affiliation. Wood kept TI informed about state and local activity and lobbied on tobacco taxes, clean indoor air, and tort reform. By the early 1980s Joe Wood took on more responsibilities as a tobacco industry lobbyist and worked as TI's lead Louisiana legislative counsel when TI and TTC merged in 1982. She became the primary lobbyist for the Tobacco Institute in 1985 when Ronald Morris, TI Regional Vice President, did not renew Jack Pender's contract. Wood worked with TI until 1995, the same year state investigators named her as a possible source of illegal gift contributions in subpoenas to legislators.<sup>92, 93</sup> Joe Wood continued to lobby for other industries and business associations, and was recognized by the Louisiana Legislature in 2015 after lobbying state lawmakers for fifty-one years.<sup>94</sup> Joe Wood changed her name to Joe Wood Guidry when she married<sup>95</sup> by May 1983 (the first time we see her referred to as Joe Wood Guidry in the tobacco documents),<sup>96</sup> and changed

her name again to Joe Wood Berry by August 1989<sup>97, 98</sup> when she re-wed. Name changes are reflected in our discussion of her throughout this report.

### *Jack Pender*

Jack Pender worked as a lobbyist on behalf of the Tobacco Tax Council in 1980.<sup>53</sup> Pender subsequently contracted with the Tobacco Institute in 1982 after the TTC merged with it. While working for the tobacco industry during the 1982 legislative session, Pender lobbied against state-level bills to increase tobacco taxes and restrict smoking in public.<sup>99-101</sup> In 1994, Pender unsuccessfully lobbied against a local tobacco tax ordinance adopted in New Orleans<sup>102</sup> (Chapter 6). Pender's contract with the TI was not renewed in 1985.<sup>103, 104</sup> However, TI continued to list him in annual budget reports.<sup>58</sup>

### *David Hooper*

Individual tobacco companies also hired contract lobbyists and lobbying firms in Louisiana starting in the mid-1980s. Previously the Texas Restaurant Association's Legislative Director during the 1980s,<sup>105</sup> in 1991 David Hooper served as Tobacco Institute Regional Vice President of Region IX (Louisiana and Texas) when TI restructured its State Activities Division and field operations,<sup>106</sup> where he guided lobbyists and actively worked with industry allies.<sup>107, 108</sup>

In Louisiana, Hooper was instrumental in securing tobacco industry representation and influence over the Citizens Against Lawsuit Abuse (CALA) coalition created by the Louisiana Association of Business and Industry (LABI), which was started to protect and extend "tort reform" legislation guarding companies from product liability<sup>108</sup> (Chapter 8). Although LABI started the Louisiana chapter, CALA was a tobacco industry front nationally and in most states. The tobacco industry provided CALA Chapters substantial funding and used the public relations firm APCO to establish numerous CALA chapters.<sup>109-111</sup> However, LABI created its own CALA chapter in Louisiana after the business association and TI disagreed on terms of cooperation. The tobacco industry heavily supported the Louisiana CALA after coming to an arrangement with LABI that secured an industry favored chairman for the CALA and four seats out of thirteen for tobacco representatives on its steering committee.<sup>108</sup> Hooper left his position in late 1992 and was replaced by former Texas Restaurant Association Legislative Director Weldon Denman, who served as TI Regional Vice President until late 1993.<sup>112, 113</sup> Denman later became a Regional Coordinator of the Gulf Border area for Philip Morris.<sup>114</sup>

Hooper was instrumental in securing tobacco industry representation and influence over the Citizens Against Lawsuit Abuse (CALA) coalition created by the Louisiana Association of Business and Industry (LABI), which was started to protect and extend "tort reform" legislation guarding companies from product liability.

### *Michael O'Keefe*

In the late 1980s, Michael O'Keefe began working with the Tobacco Institute as a local lobbyist for the New Orleans area. O'Keefe's law firm, O'Keefe, O'Keefe, and Bernstein, was centrally located on Canal Street in New Orleans, close to the New Orleans City Council building. He was a Democratic state senator representing New Orleans from 1960 to 1983 and president of the Louisiana State Senate from 1976 to 1983 until the state convicted O'Keefe on two counts of obstruction of justice, forcing him out of office.<sup>115</sup> In 1990, O'Keefe lobbied the New Orleans City Council to oppose its Sales Consumption Act to enact taxes on cigarettes and tobacco products<sup>116-118</sup> (Chapter 6). In July 1993, Tobacco Institute Regional Vice President Weldon Denman requested that Morris, TI Southern Sector Vice President, seriously consider Michael O'Keefe an "unnecessary expense" because, with help from the Tobacco Institute, the Louisiana Legislature had passed preemption over local smoking restrictions during the regular legislative session (Chapter 5).<sup>119</sup> In addition, the local tobacco tax he was helping the industry fight in New Orleans was waiting for a state Supreme Court decision and thus in a quiet period (Chapter 6).<sup>119</sup> As a result, the Tobacco Institute reduced the amount it paid O'Keefe from \$25,000 in 1993 to \$10,000 in 1994.<sup>64</sup>

### *Philip Morris Lobbyists*

#### *Randy Haynie*

Randy Haynie formed Haynie and Associates in 1980 after serving as an aide for Louisiana state senator and gubernatorial candidate Edgar "Sonny" Mouton. Haynie's relationship to the tobacco industry appears in 1986, when Covington and Burling, the Washington, D.C.-based law firm that worked for the tobacco industry on regulatory and political matters, hired his firm to assist with tort reform.<sup>120</sup> Philip Morris began contracting with Haynie directly during the 1989 Louisiana regular session.<sup>121</sup> Besides lobbying for the tobacco industry, Haynie served in numerous organizations and committees, including LABI's trade and tourism council and steering committees dedicated to liability reform, unemployment compensation, and worker's compensation.<sup>122</sup> He also served on the Louisiana Lobbying Commission, two Louisiana Democratic Party committees, and served as the Chamber of Commerce's vice president of state and national affairs.<sup>122</sup> Randy's son, Ryan Haynie, joined Haynie and Associates in 2003 and became a registered lobbyist for Altria in 2009.<sup>123</sup> As of 2020, Haynie and Associates still represented Philip Morris (Altria).<sup>123, 124</sup>

#### *Jack Dillard*

Jack Dillard was a Texas lobbyist for Philip Morris from 1992 to 1995 and also acted as PM's Texas Government Affairs division Director.<sup>125</sup> He also served as Philip Morris' Regional Director of Government Affairs for Louisiana and Texas from 1992<sup>126</sup> until at least 2002 or 2003.<sup>127, 128</sup> In Louisiana, Dillard helped win passage of clean air preemption laws in 1993<sup>129</sup> (Chapter 5) and unsuccessfully fought against a cigarette tax increase in 2000 (Chapter 11).<sup>130</sup> In 1995, Dillard led efforts to generate letters and comments from business and legislative allies in opposition to national legislation giving the US Food and Drug Administration (FDA) authority to regulate tobacco products.<sup>131</sup> As Philip Morris' Regional Director in Louisiana, Dillard

encouraged businesses to adopt voluntary youth access restrictions to avoid regulation, and oversaw the Philip Morris Accommodation Program meant to prevent clean air regulations in the hospitality and service industries.<sup>131-134</sup> In Texas, Dillard worked to advance the tobacco industry's policy objectives regarding clean air, tort reform, and youth access legislation.<sup>131</sup>

### *David Tatman*

David Tatman was initially the Louisiana State Coordinator for the Field Action Team Campaign launched by Philip Morris in 1997.<sup>135</sup> Before working for Philip Morris, he was Political Director of the Louisiana Trial Lawyers Association,<sup>135</sup> an organization that fought against the tobacco industry's pursuit of tort reform legislation in the late 1980s-early 1990s. The Campaign worked to maintain the original 1996 "global settlement" between the state attorneys general and tobacco companies in which the companies accepted some restrictions on marketing and paid the states money in exchange for *de facto* immunity from lawsuits,<sup>136</sup> and pushed Congress to adopt the deal into law.<sup>137</sup> Campaign staffers were to develop diverse industry coalitions within each state that could mobilize to advocate on behalf of the tobacco industry's objectives. In the end, the effort fell apart, setting the stage for the Master Settlement Agreement in 1998 (Chapter 9). Tatman continued working for the Philip Morris (PM) Field Action Team as its Louisiana State Coordinator, meeting with representatives from medical and business associations in the state to gauge their support for PM's version of FDA regulatory authority over tobacco.<sup>138, 139</sup> He also represented US Tobacco at least once in 2002.<sup>140</sup> In 2017, David Tatman's firm, The Tatman Group, listed Altria (formerly Philip Morris) as a client.<sup>141</sup> The site no longer listed clients as of 2019. Tatman was also serving as executive director of the Louisiana Association of Wholesalers, which lists Altria and RJR as major sponsors and numerous other tobacco companies as members.<sup>142, 143</sup>

### *RJ Reynolds Lobbyists*

#### *Cecil J. Blache*

Cecil J. Blache began working with the tobacco industry in 1986, when Covington & Burling retained his firm Blache, Haynie & Koch to assist industry tort reform efforts in Louisiana.<sup>120</sup> Beginning in 1988, Blache represented Reynolds America in Louisiana.<sup>144, 145</sup> Blache has significant ties to Louisiana's state government, having served as Assistant Secretary of Labor over Employment Security at the Louisiana Department of Labor and acted as chief legal counsel for the Louisiana House Labor Committee. As of 2018 he sat on the board of the Louisiana Association of Business and Industry<sup>146</sup> (LABI), where he had served since at least 1989.<sup>147</sup> Blache's relationship with LABI started by 1986, when he acted as the association's attorney. In 1987, he represented LABI on the Louisiana House Special Committee on Liability Insurance where he pushed for a revision of state product liability laws.<sup>148, 149</sup> Besides his work with LABI, Blache has also sat on the boards of Liberty Bank and Trust, Gulf Coast Bidco, the Black Economic Development Corporation, the River City Jazz Coalition, WWOZ Radio, and the Louisiana Cultural Economy Foundation.<sup>150</sup> CJ Blache's lobbying firm, Roedel Parsons Koch Blache Balhoff & McCollister, continued to represent RJ Reynolds in 2019.<sup>151</sup>



## *John Koch*

John Koch's relationship to the tobacco industry first appears in 1986, when Covington & Burling paid his firm Blache, Haynie & Koch (the same Blache that represents RJR and same Haynie that represents PM), to assist industry tort reform efforts in Louisiana.<sup>120</sup> Koch lobbied directly for RJ Reynolds from at least 1989<sup>152</sup> until 1996, when he stopped working for the company to replace Joe Wood as the Tobacco Institute's lobbyist.<sup>153, 154</sup> Koch served as TI's legislative counsel until the organization was dismantled in 1998<sup>65, 154</sup> as part of the Master Settlement Agreement's terms. After 1998, Koch returned to lobbying for Reynolds America in Louisiana. Prior to 1990, Koch was the lead lobbyist for the Louisiana Association of Business and Industry, a key tobacco industry ally, and served as a staff attorney for the Louisiana Department of Justice.<sup>155</sup> In 1990, Koch helped form Roedel Parsons, the same firm Blache is a partner of, that represents RJ Reynolds and other high profile clients in the Louisiana Legislature.<sup>156</sup>

## **The Tobacco Family**

TI and the tobacco companies focused on recruiting allied organizations in Louisiana beginning in the 1970s with the Tobacco Action Network (TAN) to fight adverse legislation and support industry objectives. As in other states, the tobacco companies garnered support from tobacco distributors and wholesalers but did not pursue tobacco farmers as allies in Louisiana.

The Tobacco Institute and tobacco companies focused on gaining support from tobacco wholesalers, distributors and vendors in Louisiana since at least 1979.

## ***Tobacco Distributors***

The Tobacco Institute and tobacco companies focused on gaining support from tobacco wholesalers, distributors and vendors in Louisiana since at least 1979, when they first formed a relationship with the Louisiana Wholesale Tobacco and Candy Distributors Association.<sup>91</sup> By 1988, TI considered the LWTCD, the Vending Machine Operators of Louisiana, and the Louisiana Wholesalers' Association to be among its strongest and most effective allies.<sup>157</sup> Between 1982 and 1999, the TI contributed at least \$77,000 to the Louisiana Wholesale Tobacco and Candy Distributors Association and \$2,575 to the Louisiana Wholesale Grocers' Association.

## ***Louisiana Wholesale Tobacco and Candy Distributors Association***

TI started working with the Louisiana Wholesale Tobacco and Candy Distributors Association (LWTCD) in 1979, when Joe Wood represented both organizations as a lobbyist.<sup>91</sup> Wood left the LWTCD for TI in 1983, but the two organizations continued collaborating under the guidance of Wood's friend, lobbyist Sarah Whalen.

On December 22, 1983, TI President Samuel D. Chicolte sent Whalen, LWTCA's new executive director, a memorandum detailing a proposed agreement between the Tobacco Institute and LWTCA to assist TI's 1984 efforts in Louisiana for quarterly payments of \$5,000.<sup>159</sup>

Chicolte requested that the LWTCA assist TI Regional Vice President Ron Morris as well as TI legislative Counsel Joe Wood Guidry and Jack Pender, to maximize the effectiveness of Tobacco Institute state programs. In addition, Chilcote requested that Tobacco Institute officials be present for LWTCA board meetings and LWTCA convention. At the time, the tobacco industry was facing legislation to increase tobacco taxes, restrict advertising, and mandate self-extinguishing cigarettes at the federal, state and local level. During the 1983 legislative session, Louisiana lawmakers considered smoking restriction legislation (one bill of which passed; Chapter 5) and one cigarette tax increase bill.<sup>160</sup> The LWTCA received at least \$77,500 from TI between 1982 and 1994 (Table 2.5) for collaboration on "joint legislative goals" such as preventing tobacco tax increases, opposing restrictions on smoking and advertising, and opposing legislation requiring self-extinguishing cigarettes.<sup>161</sup> LWTCA worked with TI in the 1980s and 1990s to defeat several clean indoor air (Chapter 5) and cigarette tax proposals (Chapter 6). While serving as LWTCA's Executive Director, Sarah Whalen appeared alongside Joe Wood Guidry in the media while they lobbied against clean indoor air legislation in 1988<sup>162</sup> and proposed tobacco tax increases in 1989 and 1990.<sup>163, 164</sup> LWTCA also received \$1,000 from Brown and Williamson in 1994 for its Legislative Educational Fund.<sup>165</sup>

Table 2.5: Known Tobacco Institute Contributions to Third Party Distributor Organizations, 1982-1998 <sup>56, 62, 63, 65, 158</sup>				
	Louisiana Wholesale Tobacco and Candy Distributors Association (LWTCA)	Vending Machine Operators of Louisiana (VMOL)	Louisiana Wholesale Grocers' Association (LWGA)	Total
1981	\$16,000*			\$16,000
1982				
1983				
1984	\$5,000			\$5,000
1985				
1986	\$7,000			\$7,000
1987	\$8,000			
1988			\$500	\$500
1989	\$8,000		\$500	\$8,500
1990	\$8,000		\$500	\$8,500
1991	\$10,000		\$1,000	\$11,000
1992	\$5,000			\$5,000
1993	\$5,500			\$5,500
1994	\$5,000			\$5,000
1995		\$100		\$100
1996		\$100		\$100
1997		\$100		\$100
Total	\$77,000	\$300	\$2,575	\$79,800
Note: these numbers reflect the data available in the Truth Tobacco Industry Documents Library and may not reflect all the contributions to these or other ally organizations.				
*\$16,000 consisted of payment to Joe Wood Guidry for lobbying, who was then a representative for LWTCA.				

Additionally, TI supported the LWTCA's annual Legislative Golf Tournament held in Baton Rouge.<sup>166</sup> In a 1991 letter Whalen told TI that the tournament sought to "raise funds for our [LWTCA's] Legislative program and to provide you [tobacco wholesalers and manufacturers] with the opportunity to become better acquainted with your Legislator."<sup>166</sup> The golf tournament was complimentary for legislators, who were awarded "with great prizes" and "goodie bags" filled with advertising specialty items (hats, lighters, shirts) and tobacco product

samples. LWTCDAs sold sponsorships at the golf tournament, charging organizations and companies \$1,000 to sponsor a hole, \$700 to sponsor prizes, and \$500 to participate.<sup>166, 167</sup> TI sponsored the tournament for \$1,000 every year between 1989 and 1992<sup>168, 169</sup> and for \$5,500 in 1993,<sup>170</sup> the year the legislature preempted local smoking restrictions (Chapter 5). In 1997, RJ Reynolds also contributed to the LWTCDAs's tournament, sponsoring a hole for \$1,000 and providing another \$500 to the event to help fund it.<sup>171</sup> The Smokeless Tobacco Council also sponsored a hole at the LWTCDAs's tournament, although we do not know which year.<sup>172</sup>

LWTCDAs worked with the tobacco industry throughout the 1990s under different names as the association rebranded itself. The association participated in the tobacco industry's We Card program,<sup>173</sup> an ineffective "youth smoking prevention" program that the tobacco industry used to displace more effective government programs intended to prevent illegal sales of cigarettes to minors.<sup>174</sup> LWTCDAs Executive Director Sarah Whalen assisted tobacco industry efforts to defeat proposed federal youth access restrictions in 1993 (Chapter 5).<sup>175</sup> Whalen also helped Philip Morris USA's Field Action Team oppose a federal tax increase in 1998.<sup>176</sup> In addition, she pressured Louisiana lawmakers to oppose a possible federal lawsuit against the tobacco companies in 1999.<sup>114, 177</sup> LWTCDAs also lobbied against state-level bills to increase the cigarette tax (Chapter 6) and to repeal preemption over local smokefree laws in 2001 (Chapter 10).<sup>178-180</sup> After 2001, Whalen and LWTCDAs no longer appear to have lobbied against tobacco control regulation on behalf of the industry.

### ***Louisiana Association of Wholesalers***

Another distributor organization affiliated with the tobacco industry is the Louisiana Association of Wholesalers (LAW), which was established in 1941. In 2018, the Louisiana Association of Wholesalers listed RJ Reynolds, Swedish Match, Republic Tobacco (an Illinois-based tobacco and tobacco accessories distributor),<sup>181</sup> and Altria (Philip Morris) as associate members.<sup>143</sup> In 2010, LAW recognized Altria and RJ Reynolds as sponsors who donated over \$5,000 a year.<sup>182</sup> LAW also identified Altria, RJ Reynolds, and Santa Fe Natural Tobacco Company (owned by Reynolds American since 2001<sup>183</sup>) as major sponsors in 2015.<sup>184</sup>

The Louisiana Association of Wholesalers opposed state tobacco tax increases in 2009 and 2011 (Chapter 11) and in 2014 joined the Freedom to Choose Coalition created to oppose a comprehensive smokefree ordinance in New Orleans (Chapter 12).<sup>185-187</sup> LAW's Executive Director as of 2019 was David Tatman, a former State Coordinator for the PM Field Action Team in Louisiana and a lobbyist whose firm The Tatman Group represents Altria.<sup>142, 188, 189</sup> Tatman continued to lead The Tatman Group while serving as LAW Executive Director, and employees from his firm also worked for the trade association.<sup>190, 191</sup>

### ***Tobacco Farmers***

Unlike in other tobacco growing states, the tobacco industry does not appear to have mobilized tobacco farmers in Louisiana. Tobacco farmers in the United States were longtime political allies of the tobacco industry until the Master Settlement Agreement and a tobacco buyout program in the late 1990s fractured their relationship.<sup>192</sup> During the 1980s, tobacco farmers in Louisiana grew perique tobacco (a less common tobacco type not used in mass-

produced, major brand cigarettes<sup>193</sup>), which they sold to Asian and European markets.<sup>194</sup> A 1985 analysis by the Tobacco Institute determined less than 10 tobacco growers operated in Louisiana and that they had little influence on state legislation. Indeed, by 1992 only two perique farmers continued to operate in Louisiana.<sup>195</sup> The industry viewed the wholesale and vending segments to be more engaged in tobacco industry political efforts.<sup>194</sup> Santa Fe Natural Tobacco Company began producing a perique blend cigarette in 2000, saving perique tobacco's last "full-scale" farm, which was based in Louisiana, from potential closure.<sup>193</sup>

### Third Party Business Allies

Due to its low credibility with the public, the tobacco industry works through third parties – legitimate organizations that promote the tobacco industry's policy positions without publicly acknowledging that they are working with and for the tobacco industry – to advance the tobacco industry's policy objectives.<sup>196-199</sup> For decades the hospitality industry<sup>134, 200</sup> (restaurant, bar, hotel and motel associations), unions,<sup>201</sup> and chambers of commerce<sup>202</sup> have been used to promote the tobacco industry's policy objectives while minimizing its visibility in the political process. In Louisiana, primary third party allies of the tobacco industry included the Louisiana Restaurant Association (LRA), Louisiana Hotel-Motel Association, and the Louisiana Association of Business and Industry.

Due to its low credibility with the public, the tobacco industry works through third parties – legitimate organizations that promote the tobacco industry's policy positions without publicly acknowledging that they are working with and for the tobacco industry – to advance the tobacco industry's policy objectives.

The Tobacco Institute started cultivating allies among business associations outside of tobacco in Louisiana beginning in the early 1980s (Table 2.6). In 1984, TI Regional Vice President Ronald Morris identified the Louisiana Farm Bureau Federation (a general agricultural association), LABI, and the Louisiana Retailers' Association as potential industry allies.<sup>203</sup> A February 1985 memorandum from TI Senior Vice President Hurst Marshall to TI Regional vice presidents and regional directors of the State Activities Division listed additional allies: the Baton Rouge Chamber of Commerce, the Louisiana Convenience and Neighborhood Food Store Association,

<i>Organization</i>	<i>Leader</i>
Baton Rouge Chamber of Commerce	Bill Little
Louisiana Association of Business and Industry	Ed Steimel
Louisiana Wholesale Grocers' Association	Barbara Easley
Louisiana Tobacco and Candy Dealers Association	Sarah Whalen
Vending Machine Operators of Louisiana	Alan Kronenberg
Louisiana Municipal Association	Charles Pascua
Public Affairs Research Council of Louisiana	Mark Drennan
Louisiana Retail Association	Nick Perez
Louisiana Farm Bureau Federation	James Graugnard
Louisiana Convenience and Neighborhood Food Store Association	--

the Louisiana Municipal Association, as well as nonprofit policy research and government watchdog the Public Affairs Research Council of Louisiana.<sup>204, 205</sup>

### ***Louisiana Retailers Association***

The tobacco industry relied on multiple retailer organizations to advance its political objectives in Louisiana. The Louisiana Retailers Association, which represents various types of vendors, began opposing tobacco control bills in 1982 and supported the tobacco industry's political efforts as recently as 2014. In 1988, TI considered the Louisiana Retail Association one of its two least effective allies.<sup>157</sup> Nevertheless, TI continued working with the Louisiana Retailers Association and its president Nick Perez throughout the 1980s and 1990s to oppose smokefree laws (Chapter 5) and tobacco tax bills (Chapter 6).<sup>206</sup> In 1991, the Louisiana Retailers Association cosponsored the Tobacco Institute's voluntary "It's the Law" program<sup>207</sup> designed to prevent strong youth sales laws and enforcement, as well as improve the industry's public image.<sup>174, 208</sup> In 1992, the Louisiana Retailers Association supported a lawsuit<sup>209-211</sup> that overturned a local tobacco tax passed by the City of New Orleans (Chapter 6).<sup>206, 212</sup> The lawsuit received financial assistance from the tobacco industry.<sup>213</sup> The Louisiana Retailers Association also contributed to and participated in the Louisiana CALA during the 1990s, which the tobacco industry supported to advance its tort reform efforts (Chapter 8).<sup>214</sup>

Other retail groups the industry considered allies were the Louisiana Wholesale Grocers' Association (LWGA) and the Vending Machine Operators of Louisiana (VMOL). In an undated and uncredited grassroots resources evaluation from the Tobacco Institute's records, the tobacco industry considered LWGA and VMOL as two of its four most effective coalition members alongside LWTCDA and Louisiana Restaurant Association.<sup>157</sup> Louisiana Wholesale Grocers' Association's executive director Barbara Easley, an active TAN volunteer, participated in industry voluntary programs such as "It's the Law," sent her organization's members to a 1989 town hall in Lafayette to defend against local smoking restrictions, and opposed state and federal tobacco taxes in the 1980s and 1990s.<sup>39, 100, 215-217</sup>

### ***Louisiana Restaurant Association***

The Louisiana Restaurant Association (LRA) was an ardent ally of the tobacco industry. The association supported industry positions on local and state smoking restrictions<sup>218</sup> (Chapters 5, 10, 12) and fought a local tobacco tax proposed in New Orleans during 1984 (Chapter 6). The tobacco industry contributed to LRA as early as 1983,<sup>219</sup> and by 1984 recognized the trade group as an ally<sup>220</sup> that was part of the "Tobacco Family."<sup>221</sup> The Tobacco Institute supported the association via membership fees and sponsoring association events.<sup>222</sup> After the Tobacco Institute paid its annual membership fees to LRA in January 1986 LRA Executive Vice President Jim Funk thanked TI Regional Director Ron Morris for the contribution, stating that "the LRA belongs to you, so please do not hesitate to call us if we can ever assist you in any way."<sup>223</sup> That year, TI considered LRA one of the four strongest restaurant associations in the nation.<sup>222</sup>

The Louisiana Restaurant Association participated in industry-created smoking accommodation programs. The tobacco industry recruited state and national restaurant associations worldwide to participate in accommodation programs designed to prevent adoption



# LOUISIANA RESTAURANT ASSOCIATION

2800 Veterans Blvd., Suite 160 • Metairie, Louisiana 70002 • (504) 831-7788

## POSITION OF THE LOUISIANA RESTAURANT ASSOCIATION ON SMOKING IN RESTAURANTS

The Louisiana Restaurant Association opposes the enactment of laws and ordinances that would prohibit smoking in restaurants, or compel the establishment of no smoking areas in restaurants,

Figure 2.4. Louisiana Restaurant Association Statement Opposing Smoking Restrictions (Date Unknown)<sup>228</sup>

and implementation of effective clean air restrictions.<sup>134</sup> In 1985, TI collaborated with the National Restaurant Association to disseminate smoking accommodation program information and materials that the industry had developed.<sup>224</sup> After receiving a letter from the National Restaurant Association, the LRA contacted TI to express interest in its voluntary program and request 8,000 "Smokers are Welcome Here Tent Cards."<sup>225, 226</sup> LRA also distributed brochures and materials from TI's "Fair Policy" accommodation program to its members after editing and changing some with TI assistance.<sup>226</sup> Fair Policy brochures instructed participants on how to establish "equitable" smoking and nonsmoking sections, and program signage stated "Smokers are welcome here."<sup>227</sup> Fair Policy program materials credited state restaurant associations for the program and did not mention TI.<sup>227</sup>

LRA also participated in the Tobacco Institute's "It's the Law" Program in 1991 (Chapter 7),<sup>229</sup> a program created to deter adoption of strong youth access laws and prevent effective enforcement of existing laws via voluntary self-regulation.<sup>174, 208</sup> LRA joined "It's the Law" because many restaurants sold tobacco products.<sup>230</sup>

The decades-long effort by the Louisiana Restaurant Association to support the tobacco industry's policy priorities continued through the 2000s. LRA participated in Philip Morris' Accommodation Program during the 1990s and 2000s.<sup>231, 232</sup> In 2001, the LRA helped defeat SB 427, a bill repealing preemption over local smoking restrictions (Chapter 10). In 2003 the LRA unsuccessfully fought SB 901 to partially repeal local smoking preemption, including over restaurants (Chapter 10).<sup>233, 234</sup> LRA also opposed and failed to prevent passage of SB 742, a statewide clean air bill in 2006 that prohibited smoking in restaurants and most other public places (Chapter 10).<sup>235</sup>

LRA continued to assist the tobacco industry despite changes in its leadership. In 2010, LRA President and CEO Jim Funk retired and was replaced by Stan Harris.<sup>236</sup> However, LRA remained an active ally of the tobacco industry. In 2014 and 2015, LRA joined with the Freedom to Choose Coalition to oppose a comprehensive local smokefree ordinance in New Orleans despite state law already prohibiting restaurants from allowing smoking (Chapter 12).

## *Louisiana Hotel-Motel Association*

The Louisiana Hotel-Motel Association, similar to the LRA, has a long history of collaboration with Big Tobacco. The tobacco industry established its connection with the Louisiana Hotel and Motel Association in 1986, when Tobacco Institute lobbyist Joe Wood Guidry recruited the trade group's executive vice president, Bill Langkopp, to support and implement the Fair Policy smoking accommodation program in motels and hotels<sup>237</sup> (Figure 2.5) On April 7, 1986, the Louisiana Hotel-Motel Association board approved the program. TI provided the Louisiana Hotel-Motel Association with Fair Policy program materials that featured the hospitality association's logo.<sup>238</sup> Fair Policy program materials also stated the initiative was "A voluntary program of the Louisiana Hotel-Motel Association" without mentioning the Tobacco Institute's involvement.<sup>239-242</sup>

# Fair Policy for Smokers and Nonsmokers

**T**his restaurant is committed to providing the most comfortable, congenial, convenient dining atmosphere possible.

**W**e are here to serve our customers—not as a group—but as individuals who have varying preferences and expectations.

**S**ome of our customers choose to smoke. Others do not. Some are annoyed by other people's smoke. Others are not. It is our policy to accommodate them all, regardless of their preferences.

**I**t is our policy to honor reservations and, in the absence of reservations, to seat our customers on a "first come-first served" basis.


**A Voluntary Program  
of the  
Louisiana Hotel-Motel  
Association**

**O**ur goal is to encourage and maintain customer satisfaction and loyalty. We are committed to serving our patrons in the most efficient manner possible; to creating a pleasant dining environment; and to catering to the individual preferences of our clientele.

**T**o assist us in this effort, separate sections for smokers and nonsmokers may be set aside at certain times. At those tables provided for smokers, a card will state, "Smokers are welcome here." These cards will be moved from table to table by our hosts and hostesses depending on the preferences of our customers at the time.

**W**e hope this policy adds to your enjoyment of our establishment.

**T**hank you.



LOUISIANA  
HOTEL-MOTEL  
ASSOCIATION, INC.

Figure 2.5: A Louisiana Hotel-Motel Association brochure for the Fair Policy Program<sup>241</sup>

The Louisiana Hotel-Motel Association also participated in Philip Morris' own initiative, the Accommodation Program, starting in 1995.<sup>243</sup> Accommodation Program directories from 1997 and 1999 continued to list the association.<sup>244, 245</sup>

Like the Louisiana Restaurant Association, the Louisiana Hotel-Motel Association participated in the Tobacco Institute's "It's the Law" initiative. The Association sponsored the program and distributed its materials to members.<sup>246, 247</sup> TI listed the association as a member of its "It's the Law" voluntary youth access program in letters to state legislators touting the tobacco industry's (nominal) opposition to youth smoking and support for a 1991 youth access law setting 18 as the minimum age of purchase for tobacco products in Louisiana (Chapter 7).<sup>248-250</sup> The Louisiana Hotel-Motel Association participated in a 1991 TI press conference to promote the "It's the Law" program in Louisiana<sup>251</sup> and partook in the program until at least 1993.<sup>252</sup>

The tobacco industry considered recruiting the Louisiana Hotel-Motel Association to help it resist federal regulation. A document from Philip Morris' records identified the Association as a potential ally for a national letter writing campaign against proposed OSHA regulations in 1994 (the document also listed the Louisiana Restaurant Association, Louisiana Retailers Association, Louisiana Association of Business and Industry, the LWTCD, and others as allies for the campaign).<sup>253</sup> (OSHA had proposed rules to restrict smoking in workplaces to improve indoor air quality, which the tobacco industry mobilized to oppose.<sup>254</sup>) We found no evidence that the Association wrote OSHA.<sup>253</sup>

Besides participating in voluntary programs, the Louisiana Hotel-Motel Association collaborated with the tobacco industry to oppose smoking restriction legislation (Chapter 5). In 1988, the Tobacco Institute offered the Louisiana Hotel-Motel Association \$12,000 to help retain lobbyist Jerry Mckernan<sup>255</sup> so that he could assist TI's efforts to prevent smoking restrictions in Louisiana.<sup>255</sup> The Louisiana Hotel-Motel Association last opposed smoking restrictions in 2001, campaigning against local preemption repeal bills HB 1073 and SB 427<sup>179, 235, 236</sup> (Chapter 10).

In 2001, the Association successfully lobbied against HB1073 and another preemption repeal bill, SB 427 (Chapter 10).<sup>177, 178, 251-254, 256-258</sup> Joe Wood Berry, TI's lobbyist in Louisiana until 1995, fought HB 1073 as a lobbyist for the Louisiana Hotel-Motel Association.<sup>259</sup> HB 1073 was withdrawn by its sponsor Representative Hunt Downer (R-Houma) after the tobacco industry and its allies secured an amendment on the House Floor prohibiting local governments from restricting smoking in bars and restaurants.<sup>260</sup> SB 427, which was not amended to prohibit local smoking restrictions over bars and restaurants, died in the House Commerce Committee amidst opposition from the Louisiana Hotel-Motel Association and the LRA.<sup>261</sup> Following work to defeat HB 1073 and SB 427, we found no more efforts by the Louisiana Hotel-Motel Association to aid the tobacco industry.

### ***Louisiana Association of Business and Industry***

The Louisiana Association of Business and Industry was initially one of the tobacco industry's weaker allies in Louisiana. The first known contact between the tobacco industry and LABI occurred in 1984, when TI implored LABI to oppose a proposed local tobacco tax in New



Orleans (Chapter 6).<sup>262</sup> The Tobacco Institute became a member of LABI as early as 1985.<sup>194</sup> In 1986, TI asked LABI to help it create a smoking accommodation brochure.<sup>263</sup> LABI did not agree to help the Tobacco Institute develop brochures, but offered to connect TI with Louisiana businesses having trouble with smoking policies. The tobacco industry initially considered LABI as one of its two weakest allies in Louisiana.<sup>157</sup>

Business community efforts to secure tort reform legislation in Louisiana transformed LABI into one of the tobacco industry's strongest and most active allies in the state.

Business community efforts to secure tort reform legislation in Louisiana transformed LABI into one of the tobacco industry's strongest and most active allies in the state (Chapter 8). The tobacco industry began assisting LABI's efforts to advance tort legislation in 1988, helping the association secure SB 684 to limit manufacturers' liability for "inherently dangerous" products.<sup>264</sup> LABI lobbyists involved in tort reform, CJ Blache, Randy Haynie, and John Koch, subsequently became key lobbyists for RJ Reynolds, Philip Morris, and the Tobacco Institute in Louisiana during the late 1980s. LABI later formed a Citizens Against Lawsuit

Abuse coalition with tobacco industry assistance in 1992<sup>111, 265, 266</sup> that advanced the business community's tort reform objectives in the state (Chapter 8).<sup>111, 266</sup> The Louisiana Association of Business and Industry's collaboration with the tobacco industry on tort reform continued until at least 2000 (Chapter 8).<sup>267-269</sup>

### ***The Beer Industry League***

The Beer Industry League of Louisiana (BILL) first collaborated with the tobacco industry in 1983, when its lobbyist George Brown helped TI fight an excise tax increase on cigarettes (Chapter 6).<sup>270</sup> A July 1989 document from TI's records later listed Brown as a reserve lobbyist for the tobacco industry.<sup>271</sup> Brown was regarded as one of the best lobbyists in Louisiana according to a 1998 *New York Times Magazine* article found in the tobacco industry documents library.<sup>272</sup> Brown's organization, BILL, participated in the Louisiana Coalition Against Regressive Taxation,<sup>273</sup> which was part of a nationwide program the industry tried using<sup>274</sup> to prevent federal tobacco taxes.<sup>274, 275</sup> In August 1994, George Brown, then BILL's Executive Director, sent a letter to Attorney General Richard Ieyoub (D) requesting that he not file a lawsuit against the major tobacco companies to recoup state Medicaid costs (Chapter 9).<sup>276</sup> Ieyoub ultimately took legal action against the tobacco industry and helped secure the Master Settlement Agreement (Chapter 9).

In the late 1990s Philip Morris planned to strengthen its relationships with BILL and distributors of Miller Brewing Company products (which was owned by PM at the time),<sup>277</sup> but we did not find evidence of completed work by the tobacco industry to bolster these ties.

### **Conclusion**

The tobacco industry used its employees and lobbyists, as well as the state's business community, to block unfavorable legislation and secure weak tobacco control bills protecting its

interests in Louisiana. Starting in the 1970s, the Tobacco Institute and tobacco companies used the Tobacco Action Network to have their employees follow and oppose harmful legislation in Louisiana. During the late 1970s and the 1980s, the tobacco industry hired influential lobbyists with strong ties to the state's business community to advocate on its behalf. Using existing ties between its representatives, as well as shared policy objectives, the tobacco industry developed relationships with powerful state-based business associations such as the Louisiana Wholesale Tobacco and Candy Distributors Association, the Louisiana Restaurant Association, the Louisiana Hotel-Motel Association and Louisiana Association of Business and Industry. Effective lobbying and coalition-development allowed the tobacco industry to prevent the adoption of clean air laws, secure weak smoking accommodation legislation preempting local smokefree restrictions (Chapter 5), prevent significant tax increases (Chapter 6), and obtain bills limiting the major tobacco companies' liability for harm caused by their products (Chapter 8). The tobacco industry dominated legislative battles in Louisiana until the early 2000s, when tobacco control and health advocates began to improve their capabilities, obtained funding (Chapter 11) in 2002, and unified their initiatives starting in the mid-2000s (Chapter 4).

## Chapter 3: Tobacco Industry Campaign Contributions

- The tobacco industry contributed almost \$2.2 million in 2019 dollars (\$1.6 million current dollars) to state and local candidates through 1983 to 2015 election cycles.
- Philip Morris, RJ Reynolds, and the Tobacco Institute provided the most contributions to candidates and parties.
- Beginning with the 1995 election cycle, state-level campaign contributions from the tobacco industry expanded from key legislators to most lawmakers
- Peak years for campaign contributions coincided with critical tobacco control policy activity.
- From the 1983 to 1999 cycles Democrats received more contributions than Republicans, but Republicans began receiving more contributions as they increased their presence in the legislature and ultimately secured control of the House and Senate in 2011.

The tobacco industry and its allies contributed frequently to legislators, constitutional officers (state executive officials), and political parties in Louisiana. The Tobacco Institute made its first known campaign contributions to Louisiana state lawmakers in 1982 and steadily increased its donations until its dissolution in 1999 as a result of the 1998 Master Settlement Agreement (MSA) that settled lawsuits brought by state attorneys general against the major cigarette companies and their affiliated organizations to recoup Medicaid funds lost treating tobacco related illnesses (Chapter 9).<sup>1-4</sup> Before the Tobacco Institute folded it made the most donations among tobacco industry entities. Philip Morris and RJ Reynolds gave the second and third most contributions from the tobacco industry to Louisiana lawmakers from 1982-1999 (Figure 3.2). Following the dissolution of the Tobacco Institute, among tobacco interests, Philip Morris and RJ Reynolds provided the most campaign contributions to Louisiana lawmakers and elected officials. The tobacco industry also financed and hosted events for legislators to garner support for industry policy goals.

### Data Sources

Louisiana holds elections for Governor, most state offices, and the legislature every four years in off years from the Presidential Election.<sup>5</sup> We present Louisiana contribution data in four-year election cycles. Contributions we report from the tobacco industry come from major tobacco companies, tobacco trade associations, and various other national and state-based tobacco-related associations, distributors, retailers, and wholesalers (Table 3.1).

Donations by lobbyists to political candidates and parties are not included as tobacco industry contributions in our findings, since it is impossible to determine if contributions were personal, made for another client, or on behalf of a tobacco company.

We collected contribution data using previously secret tobacco industry documents available at the UCSF Truth Tobacco Industry Documents Library (TTIDL, <https://www.industrydocumentslibrary.ucsf.edu/>) and *Follow the Money (FTM)*, <https://www.followthemoney.org/>), a contribution database administered by the National Institute on Money in Politics (NIMP). Contribution data found in the industry documents spanned from the 1983 to 1995 election cycles and came from the Tobacco Institute, Philip

Table 3.1: Donors Considered “Tobacco Industry Contributions” <sup>6, 7</sup>	
Tobacco Companies	Philip Morris
	RJ Reynolds
	Lorillard
	Brown and Williamson
	Swedish Match
	Swisher International
Trade Associations	Tobacco Institute
	Cigar Association of America
	International Premium Cigar and Pipe Retailers Association
	Louisiana Wholesale Food and Tobacco Association
Distributors, Retailers, and other Entities	Conwood Co
	Crescent City Cigar Shop
	Dixie Cigarettes
	General Cigar Company
	Lee Dee Wholesale Distributing Company
	New Orleans Cigar Co
	Philips Wholesale Candy and Tobacco
	Roberts Cigar and Tobacco Co
	Shop Rite / Tobacco Plus
	SJN Enterprises
	Smokers Paradise
	Super Tobacco Discounters Inc
	The Tobacco Rack
	The Tobacco Shak
	The Tobacco Stop
	Tobacco Warehouse
	Xcaliber International

Morris/Altria, and RJ Reynolds. Contribution data from internal documents for the 1983 to 1999 election cycles may be incomplete because of gaps in years found or not available in the Truth Tobacco Industry Documents Library. In 1982,<sup>8, 9</sup> 1984-1988,<sup>1</sup> and 1991-1993<sup>1, 10</sup> only campaign contributions from the Tobacco Institute were discovered. Years with contributions found for Philip Morris were 1983,<sup>11</sup> 1990,<sup>12</sup> 1995,<sup>13</sup> and 1996.<sup>14</sup> RJ Reynolds contribution records were found for 1989,<sup>15</sup> 1995,<sup>16</sup> 1997,<sup>17</sup> and 1998.<sup>18</sup> These years are not referenced as election years, but as individual years the industry listed making a contribution. We used the Follow the Money database to collect contribution data for all available election cycles, 1999 through 2015 that NIMP collects from reports filed with The Louisiana Board of Ethics.<sup>19-22</sup>

A comparison of data from internal documents found in the Truth Tobacco Industry Documents Library and Follow the Money revealed substantial differences between contributions made and reported in 1999 (Table 3.2), the one year of overlap. Follow the Money reported more contributions than we identified in the industry documents for Philip Morris/Altria and RJ Reynolds and less for the Tobacco Institute. These results suggest that our tabulation of contributions before 1999, based on donations reported in the industry documents, might understate contributions from Philip Morris and RJ Reynolds. They also may understate contributions from the Tobacco Institute.

Table 3.2: Differences in Campaign Contribution Records between the Follow The Money Database and Tobacco Industry Documents for the 1999 Election Cycle <sup>14, 17, 18, 21, 23, 24</sup>			
	PM / Altria	RJ Reynolds	Tobacco Institute
Follow the Money	\$156,850	\$61,750	\$21,550
Tobacco Industry Documents	\$60,000	\$49,000	\$43,900
*Includes special and nonstandard elections held during the main election cycle.			

In sum, 1983-1995 cycles rely solely on tobacco industry documents while 1999-2015 rely on NIMP data, except for the use of TTIDL records for Tobacco Institute contributions made during the 1999 election cycle.

## Contribution Limits and Restrictions in Louisiana

Louisiana first adopted campaign contribution laws restricting the amount individuals, corporations, labor organizations, and political committees may donate to candidates and their committees for any specific election campaign (i.e., primary or general) in 1980.<sup>25</sup> The limit depends on the office being pursued and applies separately to primary and general election cycles (Table 3.3).<sup>25</sup>

Political committees, defined by Louisiana law as containing over 250 members that each contributed a minimum of \$50 to the political committee the prior year, are permitted to make larger contributions to Louisiana candidates or their committees.<sup>25</sup> There are no limits on contributions from Democratic, Republican, or other political parties to candidates.<sup>25</sup>

## Overall State-Level Contributions from the Tobacco Industry

The Tobacco Institute (TI) made its first known campaign contributions to Louisiana lawmakers in 1982, giving \$6,800 total to members of the Senate Revenue and Fiscal Affairs Committee, the House Ways and Means Committee, and the House Health and Welfare Committee.<sup>8</sup> The Senate Revenue and Fiscal Affairs and House Ways and Means Committees regularly considered tobacco tax legislation (Chapter 6), and the House Health and Welfare Committee handled smokefree legislation (Chapter 5).

From the 1983 to 2015 election cycles, tobacco companies, trade organizations and other tobacco industry entities contributed \$2,191,543 in 2019 dollars (\$1,562,117 current dollars) to candidates and political parties in Louisiana (Figure 3.1).

Contributions peaked in Louisiana during election cycles containing legislative and political activity adverse to tobacco industry interests. After the industry made its first known contributions in the early 1980s, donations climbed each cycle until reaching their highest point, \$438,155 in 2019 dollars (Figure 3.1), during the 1999 cycle. In 1998, the 46 States' Attorney Generals, including Louisiana, executed the Master Settlement Agreement (MSA) with the major tobacco companies (Chapter 9).<sup>4</sup> The MSA resulted from multiple lawsuits filed against the tobacco industry by state attorneys general to recover state Medicaid funds lost treating tobacco-related illnesses and secure limitations on tobacco industry marketing directed at youth (Chapter 9).<sup>29</sup> While the Attorney General negotiated the settlement, the payments were to the State of

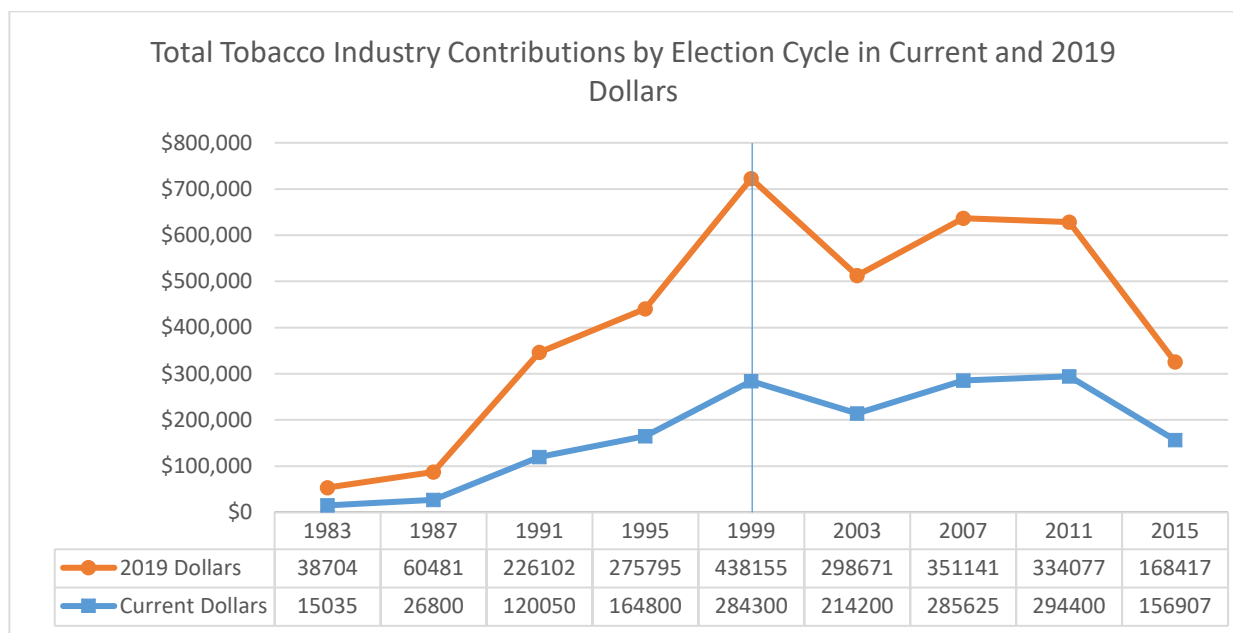
Table 3.3: Campaign Contribution Limits Per Cycle by Office Type as of 2017 <sup>25, 26</sup>			
Category	Candidate Types	Individual/ Organization	Political Committee
Major	Governor	\$5,000	\$10,000
	Lieutenant Governor		
	Secretary of State		
	Attorney General		
	State Treasurer		
	Commissioner of Agriculture		
	Commissioner of Insurance		
	Superintendent of Education		
	Public Service Commissioner		
	State Supreme Court Justice		
	Appeals Court judge		
	District court judge in a parish with a population over 450,000		
	Any office in a district with a population equal to or greater than 250,000		
District	State Legislature	\$2,500	\$5,000
	Parish public offices		
	Public offices elected by multiple parishes		
	Public offices in districts with a population over 35,000		
	Public offices in parish or city with municipal population equal to or greater than 300,000		
	District court judges		
	Governing authority or board positions presiding over a municipality with a population equal to or greater than 225,000		
Other	Elected in district with population equal to or under 35,000	\$1,000	\$2,000
	Non-parishwide office		
	Office types not covered by Major or District Office		
	Descriptions		

Louisiana, so it was up to the Louisiana Legislature to allocate the money (Chapter 9). Public health advocates pushed with minor success for a portion of settlement payments to go towards tobacco control programming (Chapter 9). While the MSA prohibited participating tobacco companies or their lobbyists from influencing settlement fund allocation, it did not prohibit campaign contributions.<sup>30</sup>

Campaign contributions from the tobacco industry reached their second highest level, \$351,141 in 2019 dollars, in the 2007 election cycle. In 2005, during the 2007 election cycle, Governor Kathleen Blanco (D) unsuccessfully pursued a cigarette tax increase to provide higher salaries to public educators (Chapter 11). The following year, tobacco control advocates fully repealed preemption over local smoking restrictions and achieved a statewide clean air law despite strong tobacco industry opposition (Chapter 10).

Contributions reached their third highest point in 2011, when the tobacco industry provided political candidates and parties \$334,077. In that election cycle, Governor Bobby

Jindal's administration and the Louisiana Republican Party resisted efforts in 2009 and 2011 to increase tobacco taxes (Chapter 11).



*Figure 3.1: Total contributions made by the tobacco industry during each election cycle from 1983-2015<sup>1, 6-8, 10-13, 15, 16, 23, 24, 27, 28</sup>*

*\*Tobacco industry contributions were initially small and targeted at influential legislators. As the tobacco industry faced greater regulatory threats and lawsuits it increased donations to state lawmakers and elected officials.*

*\*\*1983-1995 cycles rely solely on tobacco industry documents, while 1999-2015 rely on NIMP data, except for the use of TTIDL records for Tobacco Institute contributions made during the 1999 election cycle.<sup>1, 6-8, 10-13, 15, 16, 23, 24, 27, 28</sup>*

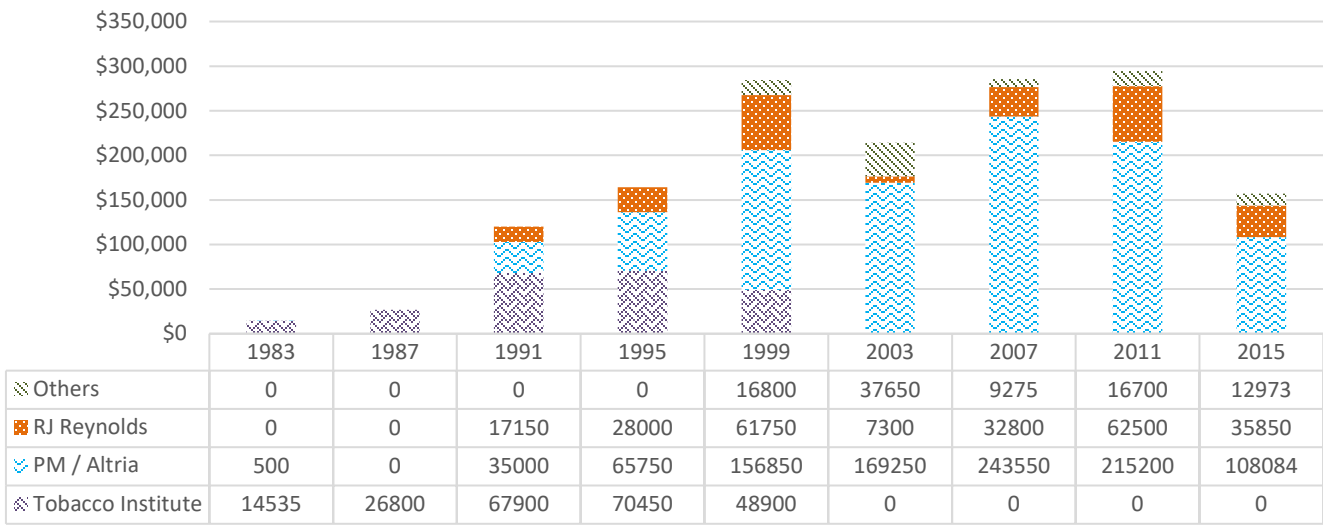
*\*\*\*Local contributions are only included in 1983-1999 from tobacco documents. FTM does not provide contributions to candidates for local office in Louisiana.*

*\*\*\*RJR reported in one source that it made \$5000 in political contributions and \$20,000 in tort [reform] contributions, for a total of \$25,000 in overall contributions. The total \$25,000 is included in our campaign contribution data.<sup>15</sup>*

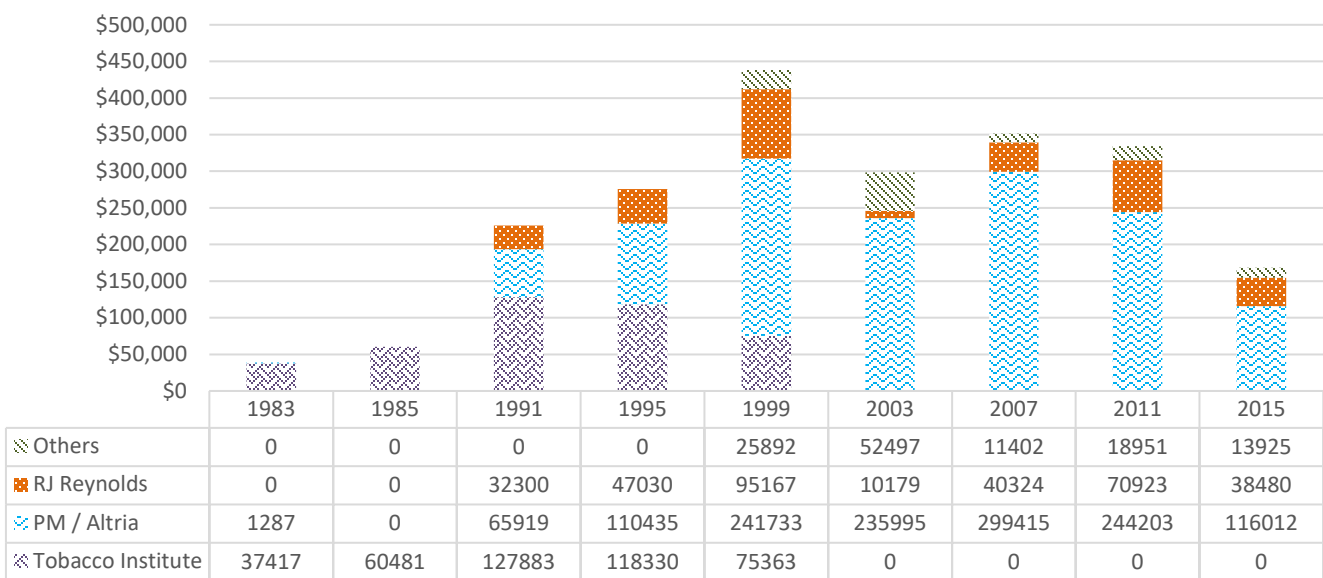
## **Tobacco Industry Spending by Organization**

Among tobacco businesses and trade associations, Philip Morris donated the most money to political candidates and parties in Louisiana from 1983 to 2015 (Figures 3.2A-B).

A) Tobacco Industry Spending by Organization in Current Dollars



B) Tobacco Industry Spending by Organization in 2019 Dollars



Figures 3.2A-B: Proportion of total contributions made during 1983-2015 election cycles by tobacco companies and associations<sup>1, 6-13, 15, 16, 23, 24, 27, 28</sup>

\*1983-1995 figures are from the Truth Tobacco Industry Documents while year's 1999-2018 are NIMP figures, except for the Tobacco Institute figure in 1999 which is TTID.

\*\*Other includes the Cigar Association of America, Brown & Williamson, Conwood Co, Crescent City Cigar Shop, Dixie Cigarettes, General Cigar Company, International Premium Cigar and Pipe Retailers Association, Lee Dee Wholesale Distributing Company, Lorillard, Louisiana Wholesale Food and Tobacco Association, New Orleans Cigar Co, Philips Wholesale Candy and Tobacco, Roberts Cigar and Tobacco Co, Shop Rite/Tobacco Plus, SJN Enterprises, Smokers Paradise and offshoots, Super Tobacco Discounters Inc, Swedish Match, Swisher International, The Tobacco Rack, The Tobacco Shak, Tobacco Stop, Tobacco Warehouse, Xcaliber International.



Philip Morris spent \$ 1,314,999 in 2019 dollars from the 1983 election cycle through 2015, 60% of tobacco industry contributions (Figure 3.2B). The Tobacco Institute, the largest contributor from 1983 to 1995, gave \$419,474 in 2019 dollars, or 19% of industry donations, before its dissolution in 1998 (Figure 3.2B). RJ Reynolds spent \$334,403 in 2019 dollars on candidates, committees, and political parties, 15% of donations and the third most given among the tobacco industry (Figure 3.2B). Brown & Williamson, Lorillard, Swedish Match, Swisher International, along with local tobacco business and trade organizations, contributed approximately \$122,667 in 2019 dollars (Figure 3.2B).

The Tobacco Institute, the largest contributor from 1983 to 1995, gave \$419,474 in 2019 dollars, or 19% of industry donations, before its dissolution in 1998.

### **Contributions to Legislative Candidates**

The Louisiana Legislature, which consists of 105 House members and 39 Senators at a given time,<sup>31</sup> has accepted at least \$1,277,179 in 2019 dollars (\$895,159 current dollars) in tobacco industry campaign contributions from the 1983 election cycle (the first donations being made in 1982) through the 2015 election cycle. The amount of campaign contributions given to Louisiana legislators is likely higher, since RJR and PM internal documents found from 1983 to 1995 mostly reported total donations and not individual recipients. Lawmakers in leadership positions or on committees that considered tobacco legislation received a greater share of tobacco industry contributions than other Louisiana legislators. (Table 3.4).

Senator John Alario (R-Westwego), who joined the legislature in 1972,<sup>35</sup> received the most contributions from the tobacco industry (Table 3.4). Alario was House Speaker from 1984-1988 and from 1992-1996.<sup>36</sup> After becoming a Republican in 2010 (Table 3.4), Alario was elected Senate President in 2012<sup>37</sup>, a position he held until January 2020<sup>38</sup> (Term limits forced him out of office following the Fall 2019 election.<sup>36, 39</sup>). Alario served as Speaker when the tobacco industry successfully pushed weak smoking accommodation legislation that preempted local clean air laws stronger than the state's in 1993 (Chapter 5) and chaired the House Ways and Means Committee, House Appropriations Committee, Senate Commerce Committee, and Senate Finance Committee. (The House Ways and Means Committee considers tobacco tax legislation, Chapters 5 and 6.<sup>36</sup>)

Top campaign contribution recipients generally sat on important committees. Senator John Smith (R-Leesville),<sup>40</sup> who sat on the Senate Finance Committee (2008-2009), Senate Commerce Committee (2011-2015), and Senate Revenue and Fiscal Affairs Committee (2012-2015),<sup>41</sup> received the second highest amount of contributions among legislators (Table 3.4). Other legislators among the top ten recipients of industry contributions served as chairpersons, vice chairpersons, or members on Commerce, Finance, and Health and Welfare Committees (Table 3.4), all committees that dealt with tobacco legislation.

These findings are limited by our inability to determine how Philip Morris and RJ Reynolds allotted contributions to legislators from 1983-1995. Most PM and RJR donations

Table 3.4: All-Time Top 10 Recipients of Tobacco Industry Campaign Contributions in Current Dollars, 1983-2015 Election Cycles <sup>1, 6, 8-13, 15, 16, 23, 24, 32-34</sup>				
Legend: D- Democrat, R- Republican, H- House, S- Senate				
Name	Party	Office	Notable Leadership Position	Total Amount Received
John Alario**	D	H	Ways and Means Vice Chair, 1976-1978; Ways and Means Chair, 1978-1983, 1996-1999; Speaker of the House, 1984-1988, 1992-1996; Appropriations Chair, 2004-2008 Senate President 2012-Present Chairman of Joint Legislative Committee on Budget; Joint Legislative Committee on Capital Outlay	\$16,325
	R (2010)	S		
John R. Smith	R	H	Commerce Chairman, 2010-2011; Commerce Vice Chair, 2015-Present; Agriculture Chair, 2008-Present; Commerce chair, 2010-2013; Revenue and Fiscal Affairs Chair, 2012-Present	10,150
		S		
Daniel R. Martiny	D	H	Environment Vice Chair, 1997-1999; Judiciary Vice Chair, 1999; Administration of Criminal Justice Chair, 2000-2008; Senate Majority Leader, 2012-2020 Commerce Chair, 2012 -Present	\$10,150
		S		
Billy Montgomery**	D	H	--	\$9,550
	R (2006)			
Bryant Hammett	D	H	Chairman of House Ways and Means Committee, 2000-2006	9,300
James Cain				\$9,050
John Travis	D	H	--	\$8,600
Joe McPherson				7,950
Ron Landry	D	S	Transportation Chairman, 2008-2012; Health and Welfare chair, 2008-2012; Judiciary C chair, 2008-2012; Retirement chair, 2008-2012	7,800
Francis Heitmeier	D	H	Senate Finance Chairman, 2008-2012; Senate Joint Legislative Committee Chairman, 2008-2012; Commerce Chair, 2008-2012; Transportation Chair, 2008-2012	\$7,650
		S		
Total				\$96,525
*Election Cycles from 1983-1995 use TTID documents. 1999-2015 election cycles rely on NIMP Database, except for Tobacco Institute contributions during the 1999 election cycle, which used TTID documents.				
**Switched parties.				

found in internal documents reported contributions to Louisiana lawmakers in total amounts and not by individual. As a result, other lawmakers may have received greater contributions from the industry than those listed.

From 1999 to 2016, only 38 legislators had not accepted campaign contributions from the tobacco industry; 308 accepted contributions (Table 3.5).

Table 3.5: Legislators Who Did Not Accept Tobacco Industry Campaign Contributions from 1999-2015 <sup>42-80 6, 81</sup>				
<i>Name</i>	<i>Party</i>	<i>Office</i>	<i>Year First Elected</i>	<i>Years Served by Start of 2015 Cycle</i>
Karen Carter Peterson	Democrat	Senate	1999 (House)	16*
Albert Franklin	Democrat	House	2007	8
Marcus Hunter	Democrat	House	2011	4
Randal Gaines	Democrat	House	2011	4*
Alfred Williams	Democrat	House	2011	3
Edward James	Democrat	House	2011	4
Ebony Woodruff	Democrat	House	2013	2
Joe Bouie	Democrat	House	2013	2*
Jeff Hall	Democratic	House	2015	-
Sam Jenkins	Democrat	House	2015	.*
Lawrence Bagley	Republican	House	2015	.*
Mike Johnson	Republican	House	2015	.*
Dodie Horton	Republican	House	2015	.*
Jack Mcfarland	Republican	House	2015	.*
Stephen Dwight	Republican	House	2015	-
Mark Abraham	Republican	House	2015	.*
Julie Emerson	Republican	House	2015	.*
Dustin Miller	Democrat	House	2015	.*
Phillip DeVillier	Republican	House	2015	.*
Jean-Paul Coussan	Republican	House	2015	.*
Jerome Zeringue	Republican	House	2015	.*
Tanner Magee	Republican	House	2015	.*
Tony Bacala	Republican	House	2015	.*
Chad Brown	Democrat	House	2015	.*
C. Denise Marcelle	Democrat	House	2015	-
Rick Edmonds	Republican	House	2015	.*
Paula Davis	Republican	House	2015	.*
Malinda White	Democrat	House	2015	.*
Rodney Lyons, SR.	Democrat	House	2015	.*
Stephanie Hilferty	Republican	House	2015	.*
Jimmy Harris	Democrat	House	2015	.*
John Bagneris	Democrat	House	2015	-
Gary Carter, Jr.	Democrat	House	2015	.*
Sharon Hewitt	Republican	Senate	2015	-
Beth Mizell	Republican	Senate	2015	.*
Jay Luneau	Democrat	Senate	2015	.*
Ryan Gatti	Republican	Senate	2015	.*
John Milkovich	Democrat	Senate	2015	.*
*Lawmakers that received campaign contributions for the 2019 election cycle. The campaign contribution analysis in this report covers the 1983-2015 election cycles. Campaign contribution data for the 2019 election cycle was released too late to include in our report's analysis. <sup>82</sup>				

The only lawmaker elected before 1999 that we could determine did not receive tobacco industry contributions through the 2015 election cycle was Senator Karen Carter Peterson (D-New Orleans), who became a Representative in 1999 and was continuing to serve in the legislature as of 2020 (She received an industry contribution in the 2019 cycle, Table 3.5). While Speaker Pro Tempore of the State House in 2009,<sup>83</sup> Peterson sponsored two unsuccessful bills to increase cigarette taxes with political support from national health voluntaries and the Coalition for a Tobacco-Free Louisiana (Chapter 11).<sup>84-86</sup> Restricted by a 12-year term limit in each legislative chamber, Peterson moved to the Senate in 2011. Representative Albert Franklin held office the second longest without receiving an industry contribution, taking office in 2008 and continuing to serve as of 2020. Franklin voted to increase tobacco taxes in 2009 and 2011 but did not introduce or cosponsor any tobacco control legislation.<sup>87, 88</sup> After Franklin, five lawmakers elected in 2011 and two lawmakers elected in 2013 reported no contributions from the tobacco industry (Table 3.5). The 28 other legislators that did not receive tobacco industry donations were freshman lawmakers elected to their first terms in 2015. Of the lawmakers that did not receive campaign contributions in 2015, 11 were Democrats and 17 were Republicans.

## Contributions to Statewide Offices

### *Governor*

Before seeking office in 2003, Jindal suggested that healthcare costs from smoking-related diseases justified increased tobacco taxes in a 1997 article he published while he was serving as the secretary of the Louisiana Department of Health and Hospitals ....

The tobacco industry contributed \$94,350 to gubernatorial candidates from 1991 to 2015, \$74,850 of which went to Republicans (Table 3.6). We did not find contributions to gubernatorial candidates for earlier election cycles (Table 3.6)

Governor Bobby Jindal (R) received \$27,500 in contributions from the tobacco industry over three election cycles (2003, 2007, 2011), the most of any gubernatorial candidate. The industry first gave Jindal \$2,500 for an unsuccessful bid for governor in 2003 against Democrat Kathleen Blanco, the acting lieutenant governor. Before seeking office in 2003, Jindal suggested that healthcare costs from smoking-related diseases justified increased tobacco taxes in a 1997

article he published while he was serving as the secretary of the Louisiana Department of Health and Hospitals (DHH) from 1996-1998.<sup>89, 90</sup> He later served as an assistant secretary at the US Department of Health and Human Services from 2001-2003.<sup>91</sup> In his 1997 article, Jindal argued that higher tobacco taxes allowed smokers to contribute to the healthcare system more proportionally to their burden on it and justified giving them equal medical treatment as nonsmokers.<sup>90</sup>

Despite his past support for tobacco tax increases, the tobacco industry provided Jindal \$15,000 for his successful 2007 run for governor and \$10,000 for his 2011 reelection campaign (Table 3.6). As governor, Jindal fought tobacco tax increases in 2009 and 2011 and vetoed a 4-cent cigarette tax renewal in 2011 (Chapter 11). The same year, Jindal proposed reallocating all

Table 3.6: Tobacco Industry Contributions to Gubernatorial Candidates in Current Dollars, 1983-2015 <sup>6, 13</sup>				
<i>Year</i>	<i>Recipient</i>	<i>Party</i>	<i>Result</i>	<i>Contribution in Election Cycle</i>
1983	None Found	--	--	--
1987	None Found	--	--	--
1991	WJ Tauzin	D	Lost	\$2,500
1995	Murphy Foster	R	Won	\$5,000
1999	Murphy Foster	R	Won	\$22,100
2003	Kathleen Blanco	D	Won	\$11,000
	Hunt Downer	R	Lost	\$1,500
	Bobby Jindal	R	Lost	\$2,500
2007	John Georges	I	Lost	\$8,750
	Bobby Jindal	R	Won	\$15,000
	Walter Boasso	D	Lost	\$1000
2011	Bobby Jindal	R	Won	\$10,000
2015	John Bel Edwards	D	Won	\$5,000
	David Vitter	R	Lost	\$10,000
Total				\$94,350

monies from the MSA-funded Millennium trust to cover the Taylor Opportunity Program for Students<sup>92, 93</sup> (a popular college scholarship program) and fix Louisiana's budget deficit without making tax increases (Chapter 9)<sup>94</sup>

Republican Governor Murphy Foster secured the second-most industry contributions to a gubernatorial candidate, receiving \$27,100 during the 1995 and 1999 election cycles (Table 3.6). Foster received \$22,100 of his industry contributions during the 1999 election cycle, when Louisiana lawmakers allocated MSA funds (Chapter 9) (Table 3.6).

The Only Democratic gubernatorial candidate to receive over \$10,000 in campaign contributions from the tobacco industry was Kathleen Blanco. She received the contributions for her successful 2003 campaign against Republican gubernatorial candidates Bobby Jindal and state lawmaker Hunt Downer (who was defeated during the primary election) (Table 3.6).<sup>95</sup> Each candidate received tobacco industry donations that election cycle, but Blanco took the lion's share. Nevertheless, in 2005 Blanco pursued HB 157, a tobacco tax increase, to provide public teachers a salary increase (Chapter 11). Governor Blanco's legislation failed due to tobacco industry and Republican Party opposition. She chose not to seek reelection in 2007.

### ***Lieutenant Governor***

The tobacco industry contributed to campaigns for Lieutenant Governor, with the bulk of contributions going toward Democrats and incumbents. Candidates for Lt. Governor raised a total of \$9,600 from the tobacco industry from 1987 to 2015, with Democrats receiving \$6,600 and Republicans \$3000 (Table 3.7).

In 2003, the tobacco industry contributed \$1000 to Republican candidate Melinda Schwegmann, five times the \$200 it contributed to her Democratic opponent Mitch Landrieu. The industry had reason to limit contributions to Landrieu, who had sponsored and passed tobacco tax increase bill HB 157 in 2002 (Chapter 11). That legislation raised Louisiana's

Table 3.7: Tobacco Industry Campaign Contributions to Lieutenant Governor Candidates in Current Dollars, 1983-2015 <sup>6, 13</sup>				
<i>Year</i>	<i>Recipient</i>	<i>Party</i>	<i>Result</i>	<i>Amount Received</i>
1983	None Found	--	--	--
1987	Robert Freeman	D	Won	\$400
1991	None Found	--	--	--
1995	Kathleen Blanco	D	Won	\$2,500
1999	None Found	--	--	--
2003	Mitch Landrieu	D	Won	\$200
	Melinda Schwegmann	R	Lost	\$1,000
2007	Gary Beard	R	Won	\$1,000
	Mitch Landrieu	D	Lost	\$3,500
2011	Jay Dardenne	R	Won	\$1,000
2015	None Found	--	--	--
Total				\$9,600

cigarette tax 12 cents per pack and dedicated 2 of the 12 cents to forming and funding a nonprofit tobacco control program that became The Louisiana Campaign for Tobacco-Free Living (Chapters 4 and 11). In addition, during 2003 tobacco control advocates partially repealed statewide preemption over local smoking restrictions that prevented the adoption of effective smokefree laws at the municipal level since 1993 (Chapters 5, 10). Later, the industry donated \$3,500 to Landrieu for his unsuccessful reelection campaign in 2007 against Gary Beard (Republican), the greatest amount given to any Lieutenant Governor candidate (Table 3.7).

### ***Attorney General***

The tobacco industry contributed a total of \$21,073 to candidates running for Attorney General from the 1995 to the 2015 election cycles (Table 3.8). The tobacco industry favored Republican candidates, providing \$13,473 in donations to Republicans and only \$7,600 in donations to Democrats (Table 3.8). We found no contributions in the 1983, 1987, and 1991 election cycles (Table 3.8).

The industry contributed \$2,550 to Democrat Richard Ieyoub during the 1995 election cycle, the first contribution found to an attorney general candidate (Table 3.8). In 1994, Ieyoub

Table 3.8: Tobacco Industry Campaign Contributions to Attorneys General Candidates in Current Dollars, 1983-2015 <sup>6, 13</sup>				
<i>Year</i>	<i>Recipient</i>	<i>Party</i>	<i>Result</i>	<i>Amount Received</i>
1983	None Found	--	--	--
1987	None Found	--	--	--
1991	None Found	--	--	--
1995	Richard Ieyoub	D	Won	\$2,500
1999	Richard Ieyoub	D	Won	\$100
2003	Suzanne Terrell	R	Lost	\$2,500
2007	Charles Foti	D	Lost	\$5,000
2011	James (Buddy) Caldwell	R	Won	\$2,500
2015	James (Buddy) Caldwell	R	Lost	\$5,000
	Jeff Landry	R	Won	\$3,473
Total				\$21,073

filed the sixth lawsuit against the tobacco industry to recover Medicaid funds used for treating tobacco-related illnesses (Chapter 9). The lawsuit sustained state litigation against the tobacco companies and ultimately helped secure the MSA. After Ieyoub's litigation against the tobacco companies, the industry gave him only \$100 for his 1999 reelection campaign (Table 3.8).

During the 2003 election cycle, when lawmakers considered legislation to repeal preemption over local smoking restrictions and to increase tobacco taxes, the tobacco industry gave Republican Attorney General Candidate Suzanne Terrell \$2,500 (Table 3.8). Terrell lost to Democrat Charles Foti, who did not receive tobacco industry donations.

During the 2007 election cycle, when health advocates pursued preemption repeal and a statewide clean air law (Chapter 10), the tobacco industry contributed \$5,000 to Foti for his failed reelection campaign. Foti lost his 2007 reelection campaign to fellow Democrat and district attorney James "Buddy" Caldwell, who did not receive tobacco industry contributions for that race. Caldwell subsequently accepted \$2,500 pursuing reelection in 2011, a time when Governor Jindal was attempting to reallocate Millennium Trust funds and lawmakers considered tobacco tax increases (Chapter 11). We could not determine if Caldwell, a state district court judge at the time,<sup>96</sup> played any role in Jindal's attempt to reallocate settlement funds or in tax legislation efforts. Caldwell sought reelection to attorney general as a Republican in 2015 and received another \$5,000 in industry contributions. He lost to fellow Republican Jeff Landry, who received \$3,473 from tobacco interests. Louisiana was enduring a budget crisis in 2015 that prompted health advocates and the Louisiana Campaign for Tobacco-Free Living to form a coalition and successfully pursue tobacco tax increases (Chapter 11).

### ***Other Statewide Offices***

The tobacco industry also contributed to candidates running for Commissioner of Agriculture and Forestry, Elections Commissioner, Insurance Commissioner, Secretary of State, and Treasurer by at least the 1999 election cycle (Table 3.9). We did not find evidence that they contributed to these offices before the 1999 election cycle, although it is possible they did. Out of all elected positions in Louisiana, Public Service Commissioners are the only office not voted upon in Louisiana's standard off-year election cycles. As stated previously, in 1999 before the fall election, Louisiana lawmakers allocated funds from the Master Settlement Agreement (Chapter 9). In 2003 and 2006 health advocates repealed preemption and obtained a statewide clean air law (Chapter 10). In addition, during the 2011 cycle, Governor Jindal attempted to reallocate MSA funds and tobacco control advocates sought legislation to increase tobacco taxes (Chapter 11).

### ***Judicial Candidates***

In 1998, 2009, and 2012, judicial candidates reported receiving tobacco industry contributions (Table 3.10).

Republican Charles Cusimano received \$1000 from RJ Reynolds in 1998 for his campaign against incumbent Democrat Pascal Calogero to become Chief Justice of the Louisiana Supreme Court.<sup>97, 98</sup> Cusimano received an endorsement and funding from industry ally the Louisiana Association of Business and Industry (LABI)<sup>97</sup> which wanted to remove Calogero due

Table 3.9: Tobacco Industry Campaign Contributions to Political Offices (without term-limits) in Current Dollars, 1999-2015 <sup>6</sup>					
<i>Position</i>	<i>Year</i>	<i>Recipient</i>	<i>Party</i>	<i>Result</i>	<i>Amount</i>
Commissioner of Agriculture and Forestry	2003	Bob Odom	D	Won	\$1,000
	2007	Bob Odom	D	Withdrew	\$3,200
	2011	Mike Strain	R	Mid-cycle	\$4,500
Elections Commissioner	1999	Jerry Fowler	D	Lost	\$500
		Suzanne Haik Terrell	R	Won	\$100
Public Service Commission					
	2004	Lambert Boissiere III	D	Won	\$500
	2012	Erich Ponti	R	Lost	\$1,000
Secretary of State	1999	W Fox McKeithen	R	Won	\$500
	2003	W Fox McKeithen	R	Won	\$1,500
	2011	Jim Tucker	R	Lost	\$1,900
Treasurer	1999	Ken Duncan	D	Lost	\$500
		John Kennedy	D	Won	\$1,900
	2003	John Kennedy	D (2003)/R (2007)	Won	\$500
	2007	John Kennedy	D (2003)/R (2007)	Won	\$5,500

to his unfavorable rulings against businesses.<sup>97</sup> RJR lobbyist CJ Blache, who had also worked for LABI, recommended RJR contribute to Cusimano.<sup>24</sup> RJR State Government Relations Senior Director Joe Murray III sent a letter to Cusimano informing him RJR gave the contribution because of his “support of our country’s free-market system [that] will create job opportunities for the citizens of Louisiana.”<sup>24</sup> Calogero was supported by trial lawyers,<sup>97</sup> whose Louisiana Trial Lawyers Association had fought against the tobacco industry and its allies’ preservation and pursuit of tort reform laws in the 1980s and 1990s (Chapter 8). Cusimano lost the primary election, receiving 42% of the vote to Calogero’s 49%. Cusimano qualified for a runoff election but decided to drop out, forfeiting the seat to Calogero.<sup>98, 99</sup>

District Court Judge Marcus Clark received \$2,500 from local tobacco retailers for his successful 2009 campaign to join the Louisiana Supreme Court (Table 3.10).<sup>100</sup> Clark did not receive contributions from any major tobacco companies. Clark accused his opponent Jimmy Faircloth, an attorney who had been counsel for Governor Bobby Jindal, of being a trial lawyer<sup>100, 101</sup> (Faircloth stated he was a member of the Louisiana Trial Lawyers Association on

Table 3.10: Tobacco Industry Campaign Contributions to Judicial Candidates, 1998-2012 <sup>6, 24</sup>					
<i>Year</i>	<i>Recipient</i>	<i>Party</i>	<i>Office</i>	<i>Result</i>	<i>Contribution Amount</i>
1998	Charles Cusimano	R	Louisiana Supreme Court	Withdrew	\$500
2009	Marcus Clark	R	Louisiana Supreme Court	Won	\$2500
2012	John Conery	R	Louisiana Court of Appeal, Third Circuit	Won	\$500



his website at the time.<sup>100</sup>) Trial lawyers had opposed tobacco industry tort reform efforts in the 1980s and 1990s and became a target of industry tort campaigns and the industry-funded tort reform group Citizens Against Lawsuit Abuse (Chapter 8). Local tobacco retailers donated another \$3,000 to Clark's successful reelection campaign in 2016 (Table 3.10).

In 2012, Republican John Conery received tobacco industry contributions for an unopposed run to join the Louisiana Third Circuit Court of Appeal (Table 3.10).<sup>102, 103</sup> Before securing a seat on the appeals court, from 1995 to 2012 Conery served as a judge on the Louisiana 16<sup>th</sup> Judicial District Court,<sup>104, 105</sup> hearing criminal, civil, and juvenile cases.<sup>106</sup> Conery was an active and prominent member of multiple judicial organizations, having been a president of the Louisiana District Judges Association,<sup>105</sup> a chair on the Association Committee on Professionalism at the Louisiana State Bar Association from 2003-2004, a founding member and president of the Teche, Louisiana chapter of the American Inns of Court, a member of the Steering Committee for the Center for Elders and the Courts at the National Center for State Courts<sup>104</sup> from 2005 and active as of 2019<sup>107</sup>, and a member of the American Judicial Association Board of Governors.<sup>104</sup> After his election to the Third Circuit Court of Appeal, Conery served as president of the American Judges Association until 2015.<sup>108</sup> We do not know how these roles relate to the tobacco industry or why it donated to Conery, but his career indicates that he is influential in the judicial community.

In 2018, Republican State Senator Jonathan Perry (R-Kaplan) successfully sought election to an empty seat on the Louisiana Third Circuit Court of Appeal.<sup>109</sup> Altria provided Perry \$500 for the campaign.<sup>22</sup> We did not find evidence he sponsored or played any major roles on legislation favorable to the tobacco industry.

### **Campaign Contributions and Term Limits**

In the early 1990s, 21 states, including Louisiana, enacted term limits that generally restricted lawmakers to 6 to 8 years of legislative service in any office.<sup>110</sup> Proponents of electoral reform envisioned term limits preventing career politicians and reducing political corruption by introducing new participants and ideas to the political process, while also increasing representation for people of color and women.<sup>111</sup> States with term limits saw a reduced proportion of contributions to legislative leadership and legislative committee members, and lower amounts in average donation size, perhaps because donors were spreading contributions to more lawmakers.<sup>110, 112</sup>

... the implementation of term limits in Louisiana in 1995 coincided with an expansion of contributions to more members of the state legislature, with the tobacco industry nearly doubling the percentage of legislators it contributed to compared to the past election cycle.

Louisiana implemented term limits in 1995, constraining state lawmakers to three terms of four years in each legislative chamber. (After reaching their term limit, legislators could seek election to another chamber or elected office.) The long times people may serve, coupled with the ability to switch legislative chambers or seek election to a constitutional office (e.g., Lt.

Governor, Secretary of State, Attorney General), still allowed influential lawmakers to serve for decades.<sup>113</sup> Consistent with the general trend,<sup>110, 112</sup> the implementation of term limits in Louisiana in 1995 coincided with an expansion of contributions to more members of the state legislature, with the tobacco industry nearly doubling the percentage of legislators it contributed to compared to the past election cycle (Figure 3.3).

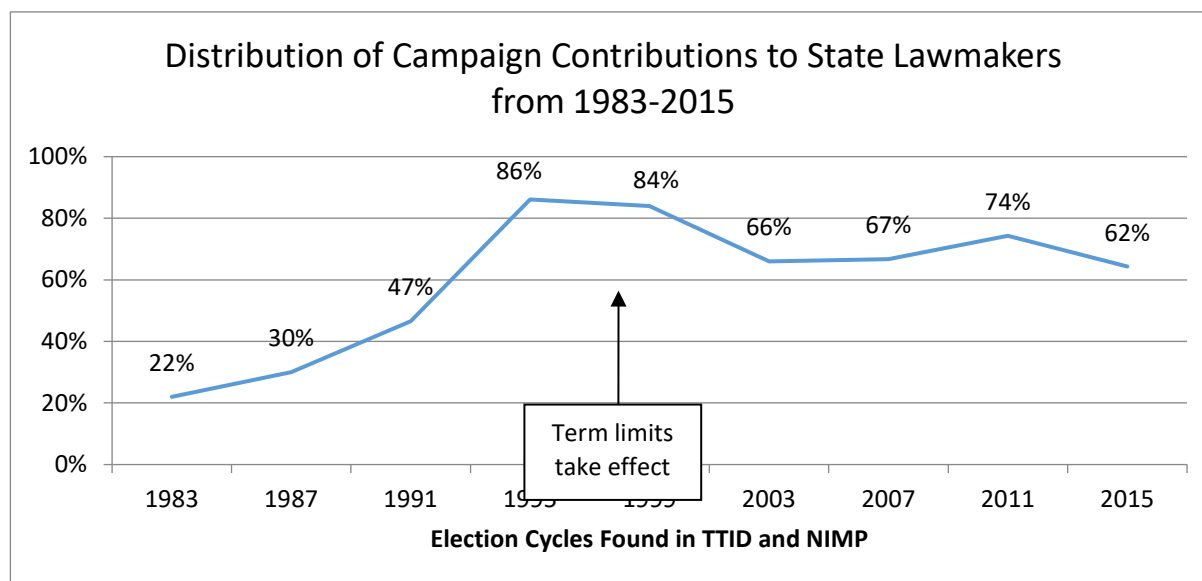


Figure 3.3: Distribution of Campaign Contributions to State Lawmakers from 1983-2015<sup>1, 6, 8, 9, 13, 22, 23</sup>

In addition to the effects of term limits, tobacco industry campaign contributions in Louisiana may also have increased in 1995 and subsequent election cycles because of increased industry-related political activity in response to health advocates' growing efforts to implement tobacco control policies in the state. In particular, the industry may have spread contributions to more lawmakers during the 1995 election period because of efforts to pass preemptive smoking accommodation legislation in 1992 and 1993 (Chapter 5) and advance its tort reform agenda that cycle (Chapter 8). In following cycles, lawmakers allocated MSA funds (1999; Chapter 9), considered preemption repeal and a statewide clean air law (2003 and 2007; Chapter 10), and opposed tobacco tax increases (2009, 2011, 2015; Chapter 11).

One limitation in determining the effect of term limits in Louisiana is a lack of information on tobacco industry contributions from 1983-1991. For the 1983-1991 cycles, we did not find information from Philip Morris and RJ Reynolds listing individual lawmakers that received campaign contributions, meaning a higher percentage of the legislature might have taken contributions than reported here.

### Contributions and Party Affiliation

When Democrats controlled the Legislature (as they had since Reconstruction following the Civil War<sup>114</sup>) the tobacco industry contributed more to Democratic candidates and party committees, but the industry increasingly shifted donations to Republicans as their party gained power and ultimately took control of the legislature in 2011 (Figure 3.4A-B).<sup>31, 115, 116</sup> The

tobacco industry first contributed more to Republicans during the 2003 election cycle, when Democrats started losing seats in the legislature. Industry contributions to Republicans peaked in 2011 when the party seized control of the House and Senate<sup>31</sup> and Republican Governor Bobby Jindal was running for reelection. In 2009, during the 2011 election cycle, lawmakers rejected legislation to increase tobacco taxes (Chapter 11). In 2011, tobacco control advocates sought a tobacco tax increase that the Louisiana Republican Party opposed with an advertising campaign (Chapter 11). We did not find evidence that the tobacco industry funded the media campaign, but that and the multiple tax increase attempts could explain the rise in industry contributions to Republicans.

When Democrats controlled the Legislature the tobacco industry contributed more to Democratic candidates and party committees, but the industry increasingly shifted donations to Republicans as their party gained power and ultimately took control of the legislature in 2011.

Most contributions went to legislative candidates between the 1983 and 1995 election cycles (Figure 3.5A-B). Beginning in 1999 and lasting through 2015, Democratic and Republican political parties and party committees received more contributions from the tobacco industry than their respective legislators. Political parties, which can receive \$100,000 per cycle from individuals, entities and PACs, are able to contribute to candidates without restrictions in Louisiana.<sup>25, 117</sup>

## Industry Sponsorships

The tobacco industry hosts and sponsors events to win support from politicians. In Louisiana, the Tobacco Institute sponsored a dinner for lawmakers to gain access to key political leaders. In May 1984, TI Regional Vice President Ron Morris spent \$2,457 to host a dinner for Senate President Samuel Nunez as part of Legislative Day activities at the World's Fair in Louisiana (Table 3.11).<sup>118-120</sup> During a special legislative session in March 1984, the tobacco industry had failed to block legislation raising the cigarette tax 5 cents per pack.<sup>121</sup> Two of the five cents, or \$12 million annually, was dedicated to funding Louisiana's Cancer and Lung Trust Fund<sup>122</sup> (Chapter 6). The trust was established to fund studies on tobacco-related illnesses,<sup>123</sup> but had no source of revenue until the 1984 special session increase. Since 1980, the tobacco industry had successfully opposed legislation allocating any tax revenue to the trust (Chapter 6). Morris hosted the dinner for Nunez and other politicians while state lawmakers considered various legislation to reduce or eliminate funding to the trust.<sup>118, 119, 124</sup> Following the dinner, Louisiana legislators adopted legislation that lowered dedicated revenue to the trust fund from \$12 million to \$1 million annually (Chapter 6).<sup>125</sup>

During the 1992 legislative session the tobacco industry participated in the "Donkey Romp" Golf Tournament put on by the House Democratic Campaign Committee.<sup>126</sup> The Tobacco Institute contributed \$1,600 to the event.<sup>126</sup> During the 1993 legislative session, the Tobacco Institute successfully lobbied two "accommodation" laws passed by the legislature that permitted smoking sections in workplaces and completely preempted local clean air laws for ten years (Chapter 5).

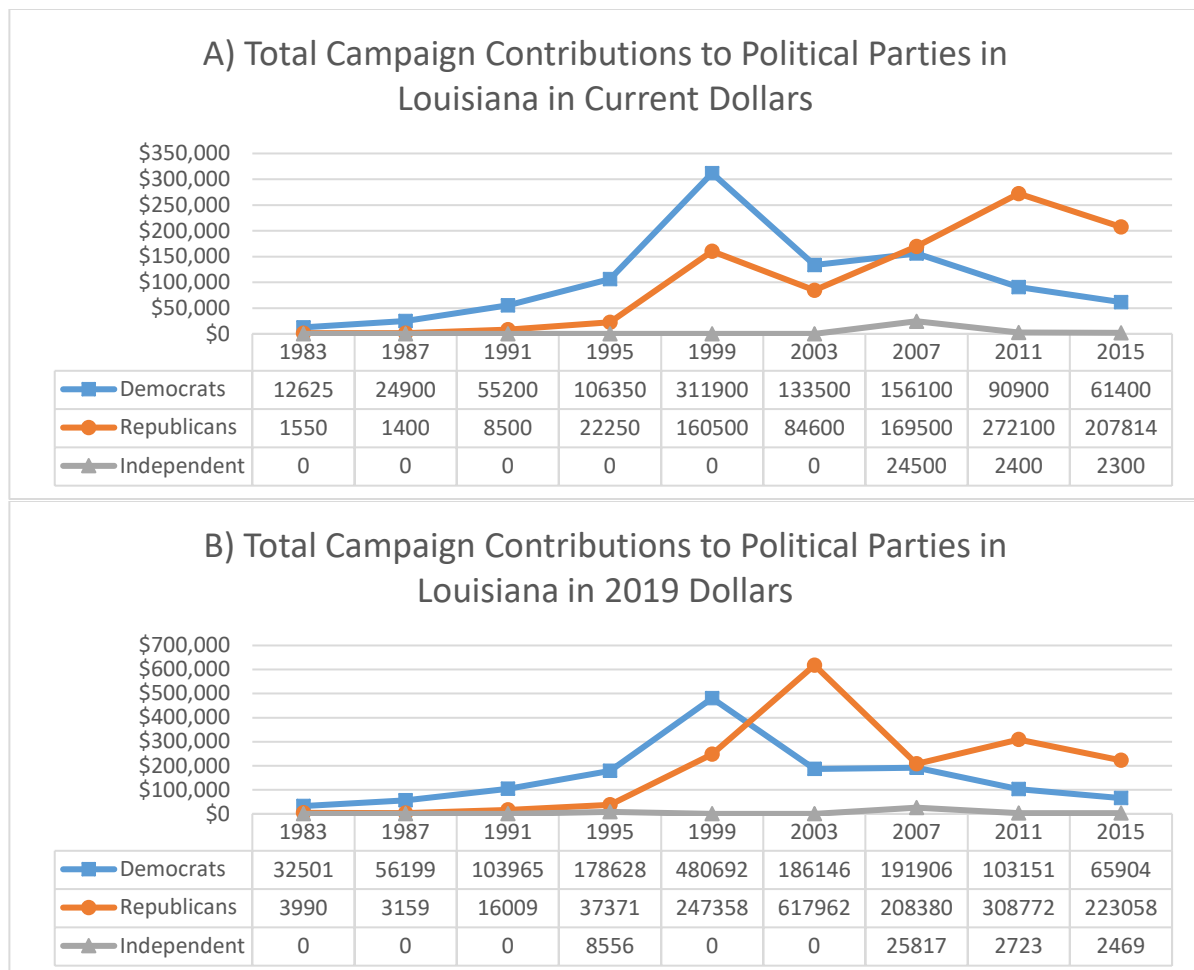


Figure 3.4: Tobacco Industry Contributions from 1983-2015 Based on Party Affiliation of Recipient<sup>1, 6-9, 13, 23, 24</sup>  
 \*Figures consist of contributions to all legislative candidates, constitutional office (executive or judicial) candidates, and party committees.

## Conclusion

The tobacco industry provided Louisiana officials and lawmakers campaign contributions to help protect against adverse legislation and advance its political agenda in Louisiana. Starting in 1982, the tobacco industry gave contributions to Louisiana legislators on key committees for tax and smokefree legislation. As the political landscape and legislation became increasingly adverse, the tobacco industry spread contributions to more legislative candidates, party committees, and constitutional office candidates. Term limits may have also contributed to the dispersion of contributions to more lawmakers over time. Contributions peaked in election cycles featuring legislation to allocate funds from the Master Settlement Agreement, increase tobacco taxes, and increase smokefree protections. The tobacco industry spent its highest amount during the 1999 election cycle, donating \$438,155 in 2019 dollars to politicians and parties while legislators allocated Master Settlement Agreement monies.<sup>127</sup> Industry contributions reached their second highest level at \$351,141 in 2019 dollars during the 2007 election cycle as health advocates repealed preemption over local smoking restrictions and secured a statewide clean air

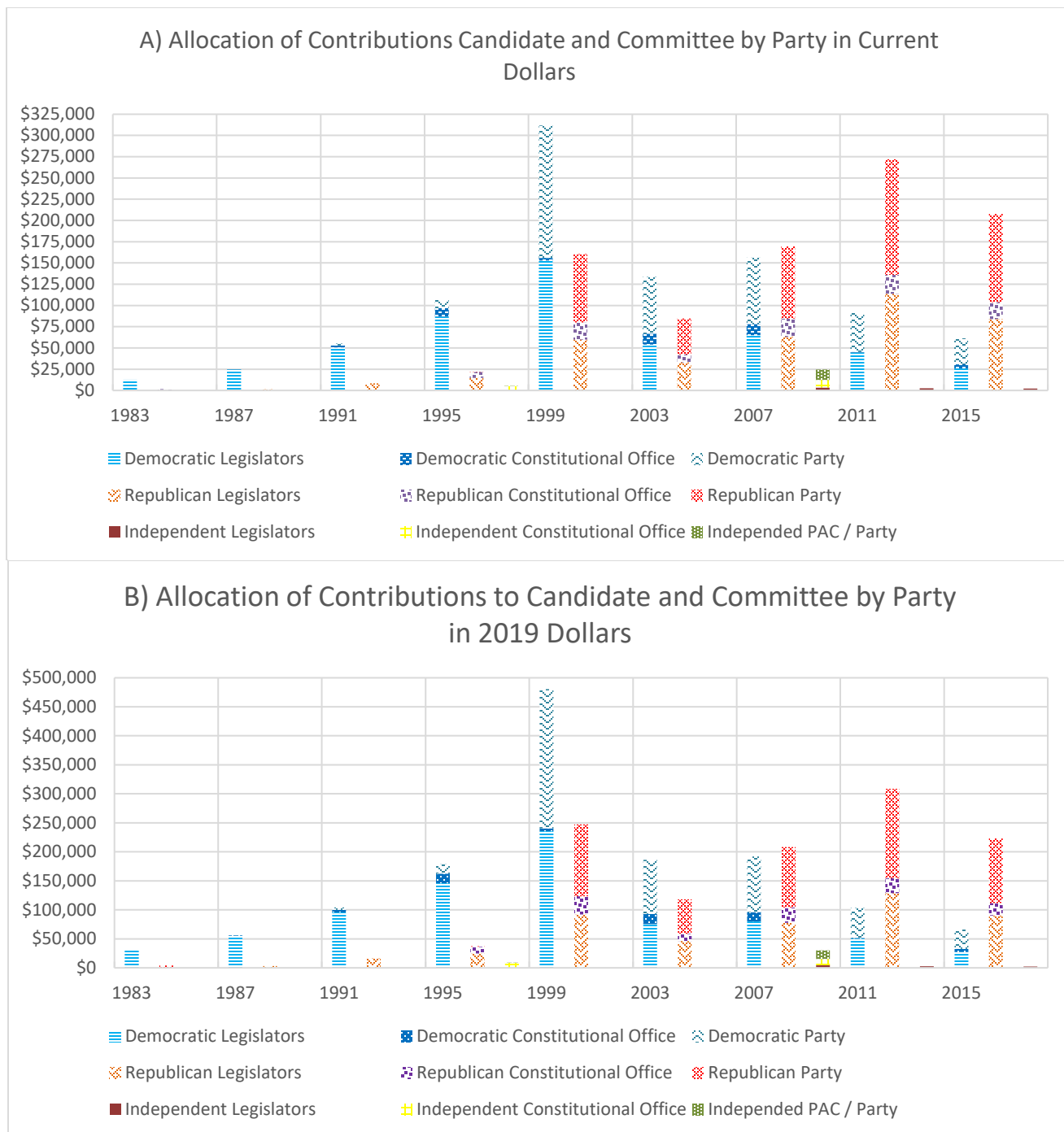


Figure 3.5: Allocation of Tobacco Industry Contributions from 1983-2015 (A) Among Candidates for Constitutional Offices (Executive Branch Offices and Judicial Positions) and (B) Legislative Seats, as well as Party Committees<sup>1, 6-9, 13, 23, 24</sup>

law. Tobacco industry contributions peaked at \$334,077 in 2019 dollars during the 2011 election cycle, as lawmakers considered multiple bills to increase tobacco taxes.

Contributions favored Democrats in early years when they controlled the Louisiana Legislature. As Republicans gained power, the tobacco industry increased the amount of money it contributed to Republicans. Industry contributions to the Republican Party and Republican

candidates peaked and began surpassing donations to Democrats in 2003, as Republicans began taking more seats in the Louisiana Legislature.

Although not always successful in preventing adverse legislative outcomes, the use of campaign contributions by the tobacco industry helped delay progress on tobacco prevention and health program funding, increasing tobacco taxes, and adopting public-health oriented smoking restrictions.

Table 3.11: Attendees at Senate President Dinner and Reception for Senate President Nunez, 1984 <sup>120</sup>	
<i>Name</i>	<i>Affiliation</i>
Allen Bares	State Senate
Charles Barham	State Senate
Thomas Casey	State Senate
Oswald Decuir	State Senate
Hank Lauricella	State Senate
Bill McCloud	State Senate
Elwyn Nicholson	State Senate; Chairman Health & Welfare
Cecil Picard	State Senate
Samuel Nunez	State Senate President
John Saunders	State Senate
Lawson Swearinger	State Senate
Michael Baer	Senate Secretary
William Jefferson	State Senate
Sarah Whalen	Executive Director, Louisiana Wholesale Tobacco and Candy Distributors
Bobby Freeman	Lt. Governor
Kenny Curley	State Trooper
Ron Morris (and wife)	TI Regional Vice President
Unknown	State Trooper
Unknown	State Trooper

## Chapter 4: Tobacco Control Programs in Louisiana

- The Louisiana Department of Health and Hospitals (DHH) created the Louisiana Tobacco Control Program (LTCP) in 1993.
- The DHH initially relied on federal grants to fund tobacco control activities, receiving no money for tobacco control activities from the state until it received a minimal amount from MSA funds (Chapter 9).
- In 2004 at the urging of health advocates, Louisiana formed an independent nonprofit tobacco control program, the Louisiana Campaign for Tobacco-Free Living (TFL), funded by a dedicated tobacco tax passed in 2002.
- Originally operating independently, the LTCP and TFL began aligning and integrating programming in 2006 following budget constraints and the devastation of Hurricane Katrina.

Comprehensive tobacco control programs are effective interventions to limit tobacco use and associated health effects.<sup>1</sup> Minnesota created the first state-run tobacco control program in 1986, which was defunded in 1993.<sup>2</sup> California has had the longest continuously running state tobacco control program, which started in 1989 after voters adopted Proposition 99 in 1988 to increase the state's tobacco tax and dedicate a portion of revenue for tobacco control.<sup>3</sup> Louisiana created its state tobacco control program in 1993.

Health organizations and medical officials initially led advocacy efforts against tobacco in Louisiana beginning in the 1970s (Chapter 5). By 1986, the DHH offered structural and technical assistance to localities looking to implement smoking cessation programming or other health initiatives.<sup>4</sup> In 1987 the DHH instituted smoking restrictions in its facilities, allowing smoking in rooms disconnected from the building's air conditioning system that had adequate ventilation.<sup>5</sup> In 1990 the DHH's Office of Public Health helped create the Louisiana Smoking or Health Coalition in collaboration with national and state voluntary health organizations as well as the Louisiana Cancer and Lung Trust Fund.<sup>6</sup> The DHH Office of Public Health conducted and published a study in 1992 finding cigarettes responsible for \$1 billion in economic loss to the state and the cause of death of 8,300 Louisianans annually.<sup>7</sup> The DHH established a dedicated tobacco control program in 1993, after receiving a grant from the US Centers for Disease Control and Prevention to form one.

### **The Department of Health and Hospitals forms the Louisiana Tobacco Control Program**

The Louisiana Department of Health and Hospitals (DHH) did not use its own funds to establish a tobacco control program but engaged in tobacco control activities using CDC funds before forming a program in 1993. Starting in the late 1980s the DHH entered cooperative agreements with the Centers for Disease Control and Prevention (CDC), primarily to build tobacco control coalitions with the intention of preventing tobacco use and generating awareness about the harmful effects of secondhand smoke.<sup>8</sup> According to former DHH Tobacco Control Program director Diane Hargrove-Jupiter (formerly named Hargrove-Roberson) in a 2019 interview for this report:

The main thing they [the CDC] wanted us to do was build coalitions, get people to really come together to form tobacco control activities...To get people aware of how dangerous tobacco was, and [with] a lot of the focus on youth. And it was

really tobacco control or tobacco use prevention....I can remember us [the DHH] starting out, you know, kind of focusing on restaurants that were tobacco-free, getting people to know that secondhand smoke was very dangerous, you know, those kind of things.<sup>8</sup>

The DHH received at least two cooperative agreements, the first likely providing the department \$11,000 and the second probably \$22,000 according to Hargrove-Jupiter. As part of the agreements the CDC provided training to DHH staff. DHH distributed funds from the cooperative agreement and awarded a portion of them as mini grants to communities for tobacco control. Because initial mini-grants were only \$500, large nonprofits did not seek the funds, and instead, small minority communities generally applied for and used the money. Hargrove-Jupiter credited the mini-grants for the CDC subsequently issuing an Impact Grant to the DHH, which the department used to establish its own program in 1993:

The Department of Health and Hospitals formed the Louisiana Tobacco Control Program in 1993 after it received a grant from the CDC to develop its tobacco control efforts.

We started the little mini-grant thing and the CDC loved it. That's how we got the big Impact grant because they loved the idea, and saw how much we got from...small, little mini-grants.<sup>8</sup>

The Department of Health and Hospitals formed the Louisiana Tobacco Control Program (LTCP) in 1993 after it received a grant from the CDC to develop its tobacco control efforts.<sup>9, 10</sup> The CDC offered the grant as part of its Initiatives to Mobilize for the Prevention and Control of Tobacco Use (IMPACT) program.<sup>9</sup> The IMPACT program awarded small planning grants to 14 states and the District of Columbia that lacked the needed structure to establish a tobacco control program, and larger core awards to 19 states (including Louisiana) that had a basic framework for a tobacco control program.<sup>9</sup> The 32 states that the CDC provided IMPACT grants were those not selected to participate in the National Cancer Institute's 1991 American Stop Smoking Intervention Study (ASSIST) program to evaluate the effectiveness of tobacco control advocacy to form tobacco control programs.<sup>11, 12</sup>

To receive funding from the IMPACT program, DHH entered into a five-year cooperative agreement with the CDC. According to a biennial report to the US Congress on tobacco control activities from 1992-1993 by the CDC Office on Smoking and Health, that required:

- Assisting and supporting local communities to mobilize tobacco prevention and control efforts, ensuring inclusiveness, diversity, and broad participation
- Monitoring changes in tobacco-related behaviors, vital statistics, public opinion, policy, and environmental change, through a state-based surveillance system.
- Assessing program performance, through an evaluation plan developed with CDC
- Conducting tobacco prevention and control campaigns in cooperation with CDC



- Developing resources, including a state-based resource center and an 800 toll-free number, to provide information and training on effective tobacco prevention and control strategies.<sup>9</sup>

The IMPACT program also required participating states to work with the CDC on national tobacco control campaigns.<sup>9</sup>

### **Structure of the Louisiana Tobacco Control Program**

The DHH had engaged in limited tobacco control work before the IMPACT grant but did not have an official tobacco control program. In 1993, the same year it received IMPACT funds, the DHH Office of Public Health (OPH) created the Tobacco Control Project under its Chronic Disease Control Program.<sup>13</sup> By 1994, the DHH employed five full time staff and one part time employee for tobacco control efforts.<sup>14</sup> Prior to receipt of the CDC IMPACT grant in 1993, the DHH had just one employee dedicated to tobacco control.<sup>14</sup> That was Gladys Simmons, who served as Tobacco Control Coordinator at the DHH's OPH.<sup>13</sup> Diane Hargrove-Jupiter, who had been the Administrator of Health Communications at DHH,<sup>15</sup> became Director of the new tobacco control program.<sup>8</sup>

### ***Early Programs and Focus***

In 1993, the Chronic Disease Prevention Program (CDCP), overseen by the Office of Public Health in the Louisiana DHH, implemented the Nicotine Patch Distribution Project to distribute 60,000 donated nicotine replacement therapy patches from an unknown source free of charge for smokers attempting to quit.<sup>16, 17</sup> The initiative used a survey to screen applicants for inclusion and required participants to volunteer at schools, health organizations, and medical facilities to receive their patches throughout a six week course of treatment.<sup>17</sup> We could not find who inspired the program or who donated the nicotine patches it used.

The Chronic Disease Control Program administered the Youth Tobacco Prevention Program (YTTP) at an unknown date “to educate and empower adolescents and communities on the hazards associated with tobacco use, so that they can make informed decisions to adopt smoke-free lifestyles and take action to protect their right to live in a tobacco-free environment.”<sup>18</sup> Officials planned to use the YTTP to host conventions and trainings to assist and inform tobacco control efforts, develop and disseminate information and materials regarding tobacco, perform educational and community interventions, and send surveys to tobacco vendors to increase their awareness of how tobacco advertising influences minors. According to a Youth Tobacco Prevention Program brochure, the CDC also planned to form a state coalition to “address issues of youth tobacco prevention, countering tobacco advertisements, and promoting community education.”<sup>18</sup>

The DHH also requested materials from the Tobacco Institute's We Card program<sup>19, 20</sup> and ultimately joined the program.<sup>20</sup> Formed in 1995, We Card was the tobacco industry's voluntary program nominally dedicated towards halting illegal sales of tobacco products to minors that the industry designed to deter adoption and enforcement of effective sales restrictions on tobacco products.<sup>21</sup> We do not know why the DHH participated in the We Card program.

In 1997, the DHH conducted a months-long media and enforcement campaign designed to improve retailer compliance with minimum age of purchase laws brought about by the Synar Amendment,<sup>22</sup> a federal law that tied state substance abuse grants to improving enforcement of minimum purchase age laws for tobacco products. Prior to the effort, the DHH determined Louisiana retailers had a 73% <sup>22, 23</sup> violation rate of minimum age laws, risking \$8 million in federal funds if the state did not lower infractions by 20% in four years (Chapter 7).<sup>22</sup> The DHH campaign included compliance checks,<sup>24</sup> print, radio, and television advertisements, as well as a letter to retailers by Louisiana's governor,<sup>23</sup> Murphy (Mike) Foster (R). The campaign helped reduced merchant violation rates 50% by February 1998.<sup>23</sup> LTCP hosted a Youth Tobacco Prevention Summit in 2000.<sup>25</sup> The LTCP also began providing free access to a tobacco quit-line starting in 2000 using \$250,000 in funds from the Master Settlement Agreement (MSA). The MSA was a settlement between state attorneys general and the tobacco companies after the former filed lawsuits to recover state Medicaid funding lost treating tobacco related illnesses (Chapter 9). The quitline was administered by the American Lung Association of Louisiana.<sup>26</sup>

The LTCP also awarded grants to communities and groups to generate public support for tobacco prevention and spread awareness of the harm caused by tobacco products, similar to when the DHH engaged in cooperative agreements with the CDC before receiving its Impact Grant. The grants awarded by LTCP expanded from \$500 to approximately \$5000 at their height.<sup>8</sup> Besides small communities, the LTCP awarded grants to the American Cancer Society, American Heart Association, American Lung Association and Girl Scouts among others.<sup>8</sup> The grant program experienced funding issues but proved successful because of the dedication of grant recipients according to Diane Hargrove-Jupiter in a 2019 interview for this report:

There were times when we would award grants and then we had to go back in the middle of the year to say, "well, we don't have this money," or "we can't do it," you know, if money was taken back or something like that. And they [grant recipients] would still do every deliverable plus more in their contract.<sup>8</sup>

The LTCP grants to communities and other groups built a foundation for future tobacco control policy coalitions in 2003, 2006, and beyond (Chapters 10, 11 and 12).

### ***The LTCP Research and Evaluation Center***

The DHH's Office of Public Health created the Louisiana Tobacco Control Program's Research and Evaluation Center (LTCP-REC) in 1998 using CDC funds to evaluate and assist state-run tobacco control efforts in Louisiana.<sup>27</sup> The LTCP-REC served as a resource center for tobacco control officials, medical providers, and the public.<sup>27</sup> It used community outreach as well as telephone contacts to provide prevention information and cessation information and referrals. The LTCP-REC also provided information on pending bills and model policy for tobacco control, educational materials on tobacco, aid to health communication campaigns regarding tobacco, and technical assistance for planning, administering, and implementing community interventions.<sup>27</sup>

The LTCP-REC conducted research as well as tobacco use prevention interventions using money, materials, programming, and partnerships with national government agencies and health volunteers. It created targeted anti-tobacco messaging for African American Adults 18 to 24

years of age by holding focus groups with the Substance Abuse and Mental health Services Administration's Center for Substance Abuse Prevention.<sup>27</sup> The LTCP-REC also used an American Lung Association program "Teens Against Tobacco Use" as a school-based intervention to prevent tobacco use.<sup>27</sup> The American Lung Association later sponsored the "Teens Against Tobacco Use Program, allowing the LTCP-REC to grow the program.<sup>27</sup> We do not know when LTCP-REC stopped operating.

### **Difficulties with the LTCP**

In 2002 tobacco control advocates formed the Louisiana Campaign for Tobacco-Free Living (TFL), a nonprofit tobacco control program outside of the state government, because of technical, racial and political difficulties between them and the DHH's Louisiana Tobacco Control Program. In a 2014 interview for this report, former Coalition for a Tobacco-Free Louisiana Chairman Dr. Charles Brown, whose coalition advocated for tobacco control legislation and funding, stated that health advocates and lawmakers perceived the LTCP as "inept."<sup>28</sup> DHH officials had told former Secretary of Health Bobby Jindal that they did not need additional money for tobacco control although the agency had no dedicated state funds for such programming.<sup>28</sup> At the time, lawmakers were considering how to use funds awarded to Louisiana from the MSA (Chapter 9). Governor Mike Foster (R) had recruited Jindal to provide recommendations for allocating Louisiana's MSA money (Chapter 9). Dr. Brown recalled a conversation with Jindal about the LTCP rejecting tobacco control funding in a 2014 interview for this report:

In 2002 tobacco control advocates formed the Louisiana Campaign for Tobacco-Free Living, a nonprofit tobacco control program outside of the state government, because of technical, racial and political difficulties between them and the DHH's Louisiana Tobacco Control Program.

Believe it or not, there were some people in the state health department that told Jindal they didn't need any more money. I told him what the facts were. He says, "Well, I don't understand. You're telling me that tobacco's such a terrible thing here. I get this stuff from the state health department. They can't do anything with it." I said... they don't know what they're talking about. It's the biggest health problem in the state. It's the biggest health problem in the world.<sup>28</sup>

LTCP and advocates experienced tensions because of leadership and racial issues. According to LPHI CEO and former DHH Deputy Assistant Secretary of the Office of Public Health Joe Kimbrell in a 2014 interview for this report, advocates had a difficult relationship with LTCP Director Diane Hargrove-Jupiter:

Diane used to report to me too, but when I was at the state health department. Diane [the LTCP director] was a bit of a control freak, and didn't make coordination between them [tobacco control advocates] and us [the DHH and LTCP] the easiest thing in those early years.<sup>29</sup>

LTCP Director Hargrove-Jupiter did not recall having tensions with tobacco control advocates and felt she had a good relationship with them.<sup>8</sup> She believed tension might have occurred between higher level staff at DHH and advocates, noting that one DHH secretary had a poor relationship with Kimbrell and did not want to issue grants to LPHI, the nonprofit he started after leaving the state agency. Hargrove-Jupiter reasoned in a 2019 interview for this report that her strong dedication to tobacco control might have upset advocates and created tensions through underlying racial dynamics:

I was very passionate about this. And when people would tell me, “Well you have to do it this way, and you’re not going to get it done,” and I said, “Oh yes, I’m going to get it done,” I don’t think a lot of people had really witnessed or worked with somebody like that before. It was just, I think, people had never worked...with passionate people before. And you tend to work with people who are going to work with you. But you know you have to work with people who are not going to work with you—but when you start gathering those who will it just upsets the other race a lot.<sup>8</sup>

Racial animosity limited the Louisiana Tobacco Control Program’s and tobacco control advocates’ relationship. In a 2014 interview for this report, Dr. Charles Brown claimed that an unspecified LTCP official had used race to maintain her position and that the LTCP had failed to adequately help white Louisianans:

They've got a lady there that has played the race card over and over and over again in order to stay in the position who hasn't got a clue as to how to run a tobacco control program unless you're black. I said most of the people that smoke in the state are white... But I said, you know, you can't do business that way. You've got to do it all over the state and you've got to do it for everybody.<sup>28</sup>

In a 2019 interview for this report, Hargrove-Jupiter pushed back against claims her program was racially biased, reasoning that many communities besides minority communities avoided the small grants her department initially awarded:

When you’re providing \$500 little mini grants to different communities throughout the state, you’re not going to get very large nonprofits applying for that.... We only gave at first little \$500 mini grants to little, small communities to try to do something, those were minority communities. Those other communities wouldn’t even take the time to do that....And maybe they say it because I was black, this is what we did. But I don’t see it that way.<sup>8</sup>

We do not know if Brown’s sentiments regarding race were shared with other tobacco control advocates or DHH/LTCP officials at the time. During a 2014 interview for this report former TFL Director Rosalind Bello noted racial tension between the LTCP and TFL when they later aligned programming, possibly from their staffs’ racial composition:

...I think there was a lot of history that we stepped into not really knowing what was going on. I think that there was even a lot of racial tensions that were there

because it seemed like at face value the state program was run by African Americans and the TFL program was run by white people.<sup>30</sup>

Although not specified as a reason for pursuing a new tobacco control program in 2002, fear of meddling in DHH's tobacco control programming by the government may have provided an incentive for the creation of a program not controlled by the state government. The governor determines leadership at the Louisiana Department of Health and Hospitals.<sup>31</sup> Those appointees in turn place likeminded persons into other agency positions.<sup>31</sup> The presence of governor-appointed leaders in the DHH could influence the focus and priorities of the DHH.<sup>31</sup>

Political influence from the Governor's administration combined with technical difficulties and unstable funding, limited tobacco control efforts by the LTCP.<sup>31</sup> Hargrove-Jupiter stated in a 2019 interview for this report that "depending on who the governor was we weren't allowed to do some things...we weren't allowed to do best practices. That hindered our effort."<sup>8</sup> Hargrove-Jupiter also recalled LTCP contracts being awarded to grantees and then rescinded, and contracts either not being approved at the end of the year or not until the last day of their time period.<sup>8</sup> Contracts would be delayed because of disagreements within DHH and the state on how to proceed with initiatives and more. According to Hargrove-Jupiter in a 2019 interview for this report:

That was one of my major difficulties. I couldn't get our contract grants and contracts people in Baton Rouge to approve my contracts in enough time. I had to go back and forth, back and forth, go through a committee of people and they're asking you why do you want to have this.<sup>8</sup>

She added that:

People don't like you or they perceive that you're not doing something, or somebody at the state level may have just said hold it back. You know, it was a lot of stuff like that. I just had to deal with it a majority of the time.<sup>8</sup>

Former LTCP Program Manager Tiffany Netters (2007-2011)<sup>32</sup> discussed how the Jindal Administration prioritized projects at the DHH and let others languish in a 2014 interview for this report:

Administrative barriers, contract review committees sitting on peoples' desks...the system is set up for failure...the perception is that state workers don't do anything, right? Like, they just sit around and—there's nothing for you to do...they [leadership] set up processes where you can't do anything. But if it's a priority, you can see things—it's very clear what things are priorities [of the Governor's administration] and what aren't because those things will move and there will be a lot of attention on it.<sup>31</sup>

The technical, racial and political problems faced by the LTCP drove advocates and lawmakers to establish a new tobacco control program funded but not controlled by the state.

The LTCP's failure to use the minimal MSA settlement money it received for tobacco control also strained tensions with health advocates. In Louisiana's fiscal year 1999 budget, state lawmakers ultimately allocated \$3 million out of \$199 million in initial MSA payments to the DHH for tobacco control programming (Chapter 9). The DHH had secured the funding and developed a tobacco control plan for its use with assistance from the CTFLA. However, the DHH announced a \$126 million deficit in December 2000 that resulted in a legislative committee forbidding the agency from implementing new initiatives and causing most of the \$3 million for tobacco control programs to be reallocated.<sup>33</sup> The DHH had not started the approval process for the tobacco control program despite CTFLA Chairman Brown's urging, causing him to publicly chastise the agency for its inaction and blame them for the funding loss. Afterwards the DHH's LTCP supposedly received \$500,000 yearly for tobacco control.<sup>34</sup> LTCP Director Diane Hargrove-Jupiter did not recall the state ever providing MSA funds to the LTCP in her 2019 interview for this report.<sup>8</sup>

## **A Second Tobacco Control Program: Formation of the Louisiana Campaign for Tobacco-Free Living**

### ***Advocates and Lawmakers Seek Funds for the LTCP in 2002***

In 2002, inadequate tobacco control funding, programmatic issues at the LTCP, and difficulties between the agency and health advocates led Coalition for a Tobacco-Free Louisiana Chairman Charles Brown, health and tobacco control advocates, and Louisiana lawmakers to seek state funding for tobacco control programming outside of the Louisiana DHH (Figure 4.1). In a 2013 interview for this report, CTFLA Chairman Brown recalled previously being instructed by an unnamed person to not obtain funding for the DHH because the LTCP was ineffective:

"I was told by several legislators that they would not under any circumstances appropriate any money for tobacco control to the state health department because they were inept."

I was told not to sponsor any legislation or get involved in passing any legislation [where] the money went through the Department of Health [and Hospitals] because they couldn't do it. They were inept...I was told not to promote any monies for the state tobacco control program because they did not know how to spend the money.<sup>35</sup>

Dr. Brown also recalled that friendly lawmakers would not support funding going to the LTCP:

I was told by several legislators that they would not under any circumstances appropriate any money for tobacco control to the state health department because they were inept.<sup>28</sup>

Although Dr. Brown, health advocates, and lawmakers did not want to provide money to the LTCP, they wanted to avoid putting new revenue for tobacco control into the state general

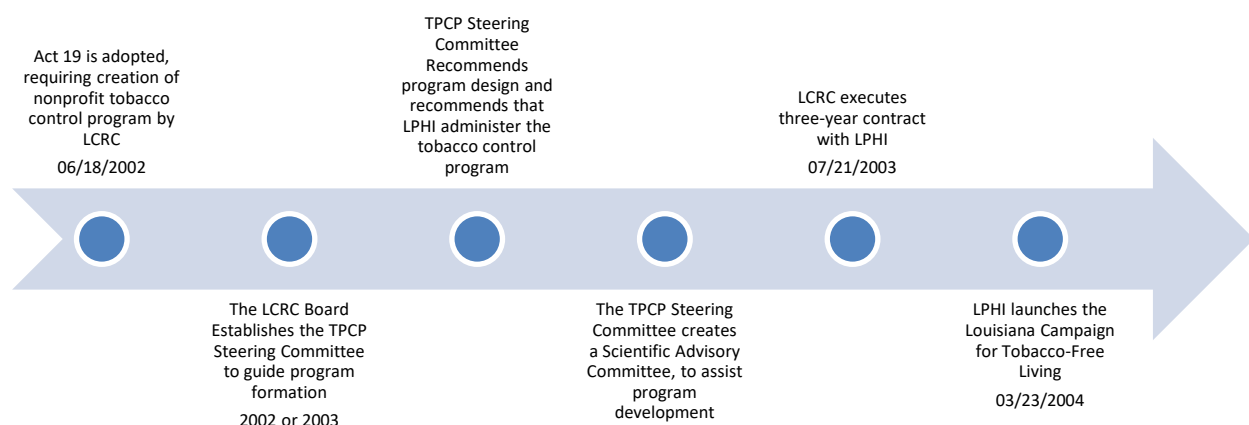


Figure 4.1: Timeline Depicting the Formation of The Louisiana Campaign for Tobacco-Free Living

fund. According to former Louisiana Office of Public Health Deputy Assistant Secretary (1978-2000) and LPHI CEO (2000-2018)<sup>36</sup> Joe Kimbrell in a 2014 interview for this report, health advocates feared lawmakers would not allocate new funds to tobacco control:

There was already a coalition, and it was that coalition and us that had been out there lobbying for it and I think Dr. Brown and others felt strongly that it [cigarette tax increase] wasn't going to go to the state and risk getting chopped, because the state had never put any money into tobacco before.<sup>29</sup>

To secure revenue specifically for new tobacco control programming, tobacco control proponents collaborated with lawmakers, university officials and health advocates to push HB 157 in 2002 (Chapter 11). HB 157 was a 12 cent cigarette tax increase sponsored by Representative Mitch Landrieu (D-New Orleans) mainly to fund a new cancer research center in New Orleans that would be jointly administered by LSU and Tulane University, but also allocated revenue towards tobacco control and other initiatives (Chapter 10). Later titled the Louisiana Cancer Research Consortium, the center was to improve cancer research and cancer-related health care in Louisiana.<sup>28, 37</sup> The center's creation was mandated by SB 73, a bill sponsored by Senator John Hainkel (R-New Orleans) that passed earlier in the year but did not establish funding.

Tobacco control advocates ultimately passed HB 157 despite efforts by the tobacco industry and Louisiana's business community to defeat the bill, securing the first meaningful state funding for tobacco control in Louisiana (Chapter 11). As adopted, HB 157 increased the cigarette tax 12 cents per pack (Chapter 11). Tobacco control advocates secured 2 cents of the tax per pack for the Louisiana Cancer Research Consortium to develop and implement tobacco control programming (Chapter 11). Of the remaining 10 cents, HB 157 allocated 1 cent to the LSU Agricultural Center (and \$1 million of that dedication to the Southern University Agricultural Research and Extension Service), 2 cents towards LSU's Health Sciences Center in Shreveport, 1 cent to the DHH's Office of Addictive Disorders, 1 cent to the DARE drug prevention program, and 2 cents to the state police.<sup>28, 38</sup>

After House Bill 157 passed, Brown received a letter he characterized as "very blistering" from Department of Health and Hospitals Undersecretary Jerry Phillips.<sup>39</sup> As Brown recalled in a 2014 interview for this report:

I get this letter from the state health department telling me that I am a turncoat. Saying I am dishonest. That I have stolen from the state health department. I've done all these things because I took their money away.<sup>39</sup>

The exchange was another instance of animosity between the LTCP and tobacco control advocates, which would manifest between the state's program and the new nonprofit tobacco control program. Animosity persisted between the two programs until they began aligning their programming in late 2006, when a lack of resources and a desire for positive change wrought by Hurricane Katrina drove the two programs to reconcile.

### ***Forming a Nonprofit Tobacco Control Program***

With the Louisiana Cancer Research Consortium assigned responsibility over a new tobacco control program by the Tobacco Tax Healthcare Act, the LCRC Board formed the Tobacco Prevention and Cessation Program Steering Committee (TPCP) in either 2002 or 2003 to guide program formation<sup>40</sup> (Figure 4.1). According to the LCRC's Annual Report from 2003, the LCRC Board formed the TPCP to achieve two objectives:

The first was to create a framework for a tobacco use prevention and cessation program. The second was to supervise the implementation and administration of this program. The goal of TPCP is to develop and implement a high quality tobacco prevention and cessation program consistent with the best practices in tobacco control.<sup>40</sup>

In choosing members of the Steering Committee, the LCRC Board invited public health researchers, public health officials, medical officials, and nonprofit health advocates from across the state to reflect Louisiana's diversity (Table 4.1).

In 2003, the TPCP created a Scientific Advisory Committee (SAC) of experts from outside Louisiana to assist with program design and plans (Table 4.2). The TPCP and the TPCP SAC had their first joint meeting in early 2004.

The Tobacco Prevention and Cessation Program Steering Committee began designing and establishing budgeting for implementation of the new tobacco control program in early 2003 with assistance from the Louisiana Public Health Institute<sup>40</sup> (LPHI had been formed in 1997 by DHH OPH Undersecretary Joe Kimbrell as a 501(c)(3) nonprofit with the mission of improving public health after the Louisiana Legislature passed a resolution supporting its creation.<sup>29, 41</sup>). From January 1, 2003 to June 30, 2003, LPHI also helped the TPCP design and maintain tobacco program modules.<sup>40</sup>



Table 4.1: TPCP Steering Committee Membership and Professional Expertise as of December 31, 2003 <sup>40</sup>	
Charles L. Brown, Jr., MD (Chair)	Professor of Clinical Public Health Louisiana State University Health Sciences Center
Vladimir Appeaning, PhD	Director of Special Projects & Community Rel. Asst. Prof., Grambling State University
Denise Bottcher, BA	Representative for Louisiana University System, The Bottcher Group
Michael K. Butler, MD, MHA, CPE	Chief Medical Officer, Health Care Services Division Louisiana State University Health Sciences Center
Theodore B. Callier	Assistant Vice President, Research and Sponsored Programs Dillard University
Tom Farley, MD, MPH	Professor and Department Chair Tulane University School of Public Health and Tropical Medicine
Elizabeth T. H. Fontham, PhD	Professor and Chairman, School of Public Health Louisiana State University Health Sciences Center
Donna Nola Ganey	Assistant Superintendent State Department of Education
Jimmy Guidry, M. D.	State Health Officer / Medical Director Louisiana Department of Health and Hospitals
Carolyn Johnson, Ph. D., N.C.C., L.P.C.	Clinical Associate Professor Tulane University School of Public Health and Tropical Medicine
Kathleen Kennedy, Pharm D	Associate Dean, College of Pharmacy Xavier University of Louisiana
Jerry W. McLarty, PhD	Professor of Medicine & Director, Cancer Prevention and Control Louisiana State University Health Sciences Center- Shreveport
Robyn Merrick, MPA, BS	Director, Public Affairs, Southern University System President's Office
Tom Houston, MD (Ex Officio)*	TPCP Director & Jim Finks Chair Louisiana Public Health Institute & Louisiana State University Health Sciences Center
Sarah Moody Thomas, Ph. D. (Ex-Officio)*	Professor Stanley S. Scott Cancer Center Louisiana State University Health Sciences Center
Joseph D. Kimbrell, MA, LCSW (Ex- Officio)*	Chief Executive Officer, Louisiana Public Health Institute
Rachel Shada, MHR, BA (Ex-Officio)*	Associate Director of Tobacco Programs, Louisiana Public Health Institute
*Became officials of TFL or worked at LPHI.	

Chairman Dr. Charles Brown, and members Dr. Elizabeth Fontham, LPHI CEO Joseph Kimbrell, and DHH State Health Officer Jimmy Guidry sought to have the Louisiana Public Health Institute (LPHI) administer the program instead of the LCRC. In a 2014 interview for this report, Brown recalled recommending that LPHI administer the new tobacco control program:

Table 4.2: Scientific Advisory Committee in 2003 <sup>40</sup>	
John Pierce, PhD	Sam Walton Professor for Cancer Research University of California, San Diego Cancer Center
K. Michael Cummings, PhD, MPH	Chair, Department of Health Behavior Division of Cancer Prevention and Population Sciences Roswell Park Cancer Institute
Greg Connolly, DMD, MPH	Professor, Harvard University School of Public Health (former Director of the Mass. State Tobacco Control Program)
Colleen Stevens	Director of Media Services, Tobacco Control Branch California Department of Health Services
Sherri Watson-Hyde, MPH	Director, National African American Tobacco Control Network
Karla Sneegas, MPH	Director, Indiana Tobacco Prevention and Cessation Program
Brick Lancaster, MPH	Chief, Program Services Branch, Office on Smoking and Health, Centers for Disease Control and Prevention, Atlanta GA

I made a proposal to the Louisiana Cancer Research Consortium as to how we ought to do this. And I made two recommendations. First recommendation I made to the Louisiana Cancer Research Consortium was this tobacco control program (TFL), which is basically the outline of what we're doing now.

I said the second thing is that because of the fact that it needs to be non-provincial, it needs to be statewide. Neither of the two schools (LSU and Tulane) have an infrastructure that can do this. I recommend that it be done by the Louisiana Public Health Institute. And they approved. So that's how all that got started.<sup>28</sup>

The TPCP Steering Committee recommended to the LCRC Board that the Louisiana Public Health Institute (LPHI) administer the new Louisiana Tobacco Prevention and Cessation Program (LTPCP) through a three-year renewable contract with the LCRC,<sup>40</sup> which was executed on July 21, 2003 .<sup>28</sup>

In Louisiana, state law prohibited the legislature from appropriating money to a non-state organization, preventing LPHI from directly receiving Tobacco Tax Healthcare Fund revenue dedicated to tobacco control programming.<sup>28</sup> To allocate the specified 2 cents from the Tobacco Tax Healthcare Fund (HB 157) to the new tobacco control program, dedicated monies went through Louisiana State University to the nonprofit Louisiana Cancer Research Consortium that LSU jointly administered with Tulane University (Figure 4.2).<sup>28</sup>

In late July 2003, LPHI selected Rachel Shada to act as its Associate Director for Tobacco Programs. Before becoming associate director, Shada had helped develop the formal working arrangement between LCRC and LPHI and designed budgeting for the new tobacco control program.<sup>40</sup>

The LTPCP Steering Committee and LPHI later appointed Dr. Thomas Houston to lead the new tobacco control program on October 1, 2003.<sup>42</sup> Houston had been the national director of Robert Wood Johnson Foundation SmokeLess States National Tobacco Policy Initiative since 1993. Houston had moved to Louisiana after being recruited by the Louisiana State University Health Sciences Center School (LSUHSC) to join the LSU faculty as the Jim Finks Chair in Health Promotion

The Louisiana Public Health Institute branded the LTPCP as the Louisiana Campaign for Tobacco-Free Living and launched the program on March 23, 2004

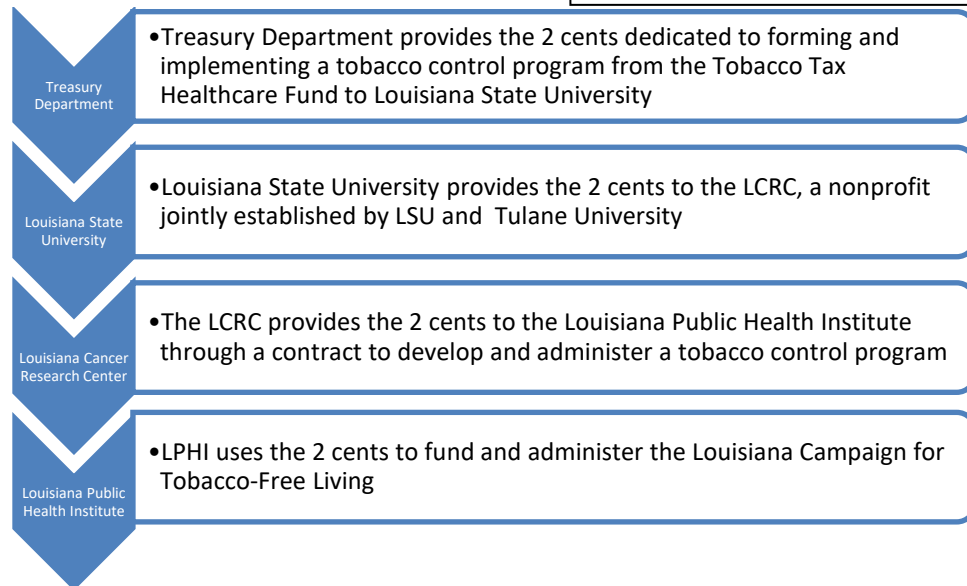


Figure 4.2: Flow of Tobacco Tax Revenue to TFL<sup>28</sup>

at the School of Public Health.

Kimbrell (LPHI), Brown (LSUHSC), and LCRC President/CEO Steve Moye, (LCRC), capitalized on having Houston close to New Orleans by offering him the directorship of the LTPCP. The 2003 LPHI press release announcing that Dr. Houston would head the LTPCP highlighted how the hire strengthened LPHI and LSU's relationship:

LPHI and LSU identified an opportunity for synergy and partnership in bringing someone of Dr. Houston's caliber to Louisiana to serve as a leader in health promotion and tobacco control. This is the first of many similar partnerships between LTPCP and the program partners across the state.<sup>42</sup>

The Louisiana Public Health Institute branded the LTPCP as the Louisiana Campaign for Tobacco-Free Living (TFL) and launched the program on March 23, 2004. LPHI staff ran administered statewide implementation and evaluation of the nonprofit program.<sup>43</sup> As it became more established, TFL facilitated statewide coordination of existing tobacco control initiatives, gave funding for innovative community programming for tobacco control, implemented a statewide media campaign, administered a state hospital system cessation program, and provided

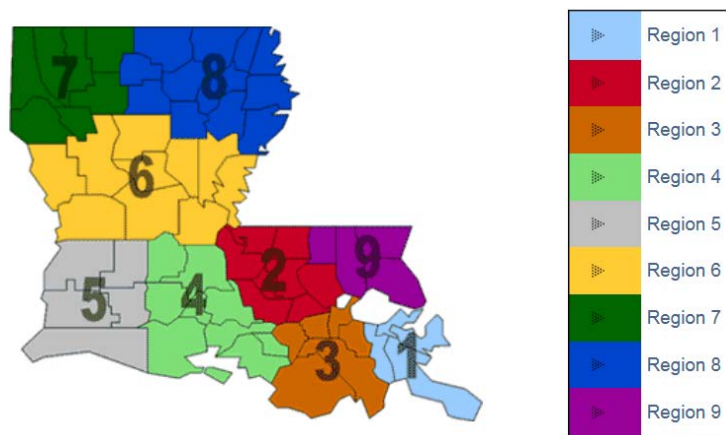
monitoring and evaluation of tobacco program impacts and outcomes.<sup>43</sup> TFL became the largest funded program within LPHI for many years.<sup>29</sup>

### ***Structure of Tobacco-Free Living***

The LTPCP Steering committee and TFL staff designed TFL using the US Centers for Disease Control and Prevention's (CDC) Best Practices for Tobacco Control Programs, August 1999 report.<sup>44, 45</sup> The LTPCP Steering Committee and TFL employees established program coordination, community initiatives and statewide coordination, media campaigns, quit programs in public hospitals, and program monitoring and evaluation as TFL's five components.<sup>44</sup> During his first year as Program Director, Houston expected that an average \$7.5 million annually from the Tobacco Tax Healthcare Fund (the associated tax generated \$45 million in FY 2003, Chapter 11) would be spent on "tobacco cessation programs, education and grants to parishes for community-based programs that address specific needs"<sup>46</sup> across Louisiana.

As part of the LCRC, TFL resided in New Orleans. Dr. Charles Brown and LPHI CEO Joe Kimbrell sought to prevent TFL from becoming a provincially focused program in New Orleans by placing regional coordinators in the DHH's nine Office of Public Health (OPH) offices.<sup>29, 35, 44</sup> The OPH did not oversee the DHH's LTCP, which had a contentious relationship with Brown and other tobacco control advocates. Kimbrell asked Sharon G. Howard, the Deputy Assistant Secretary of the DHH's Office of Public Health, if the OPH would house TFL regional coordinators in their district offices (Figure 4.3 and Table 4.3).<sup>29</sup> Howard had previously worked with him at DHH, and became the Deputy Assistant Secretary of the Office of Public Health in 2003 after Kimbrell vacated that position to develop LPHI. Howard accepted Kimbrell's proposal,<sup>29</sup> conserving funds for community programs and local activities.<sup>29</sup> TFL had recruited and placed nine regional coordinators in DHH Office of Public Health offices by February 2005.<sup>44</sup>

TFL's centralized leadership and regional coordinators designed and implemented tobacco control programming across Louisiana. TFL leadership guided coordinator activities and



*Figure 4.3: Louisiana's Regional Districts<sup>47</sup>*

Table 4.3: Regional District Offices and Parishes Served	
1	Jefferson Parishes, Orleans, Plaquemines and Saint Bernard
2	Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, West Baton Rouge and West Feliciana Parishes
3	Assumption, Lafourche, Saint Charles, Saint James, Saint John and Terrebonne Parishes
4	Acadia, Evangeline, Iberia, Lafayette, Saint Landry, St. Martin, Saint Mary and Vermilion Parishes
5	Allen, Beauregard, Calcasieu, Cameron and Jefferson Davis Parishes
6	Avoyelles, Catahoula, Concordia, Grant, LaSalle, Natchitoches, Rapides, Sabine, Winn and Vernon Parishes
7	Bossier, Bienville, Caddo, Claiborne, DeSoto, Red River and Webster Parishes
8	Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union and West Carroll Parishes
9	Saint Tammany, Saint Helena, Tangipahoa and Washington Parishes,

led state and local tobacco policy campaigns, while Regional Coordinators planned and implemented regional tobacco control activities. TFL promoted regional coordinators to Regional Managers in 2012,<sup>48</sup> providing them greater autonomy over decision-making and policy advocacy within their areas (Table 4.4). TFL delegation of political advocacy to Regional Managers resulted in policy successes, including smokefree ordinances in Monroe, West Monroe, and Ouachita Parish (Chapter 13).

Table 4.4: TFL Staff Leadership Structure Following 2012 Staffing Expansion <sup>48, 49</sup>	
Position	Location
Director	New Orleans
Associate Director	New Orleans
Cessation Coordinator	New Orleans
Communications Manager	New Orleans
Program Coordinators (2), Youth and Young Adults	New Orleans
TFL Regional Manager 1	New Orleans
TFL Regional Manager 2	Baton Rouge
TFL Regional Manager 3	Thibodaux
TFL Regional Manager 4	Lafayette
TFL Regional Manager 5	Lake Charles
TFL Regional Manager 6	Alexandria
TFL Regional Manager 7	Shreveport
TFL Regional Manager 8	Monroe
TFL Regional Manager 9	Mandeville

### **Tobacco Control Programming in Louisiana Following Creation of TFL**

TFL and the DHH's LTCP initially did not coordinate tobacco control efforts. Previous animosity between prominent TFL backers and DHH officials, as well as dedication of Tobacco Tax Healthcare Act funds to TFL instead of the LTCP, resulted in lingering tensions and animosity between the two programs.

### ***LTCP Programming***

The LTCP launched its Breathe Easy Bayou campaign in 2003 to inform

Louisianans about the harmful effects of secondhand smoke and encourage tobacco users to smoke away from others.<sup>50</sup> LTCP created the initiative after focus groups found the public considered secondhand smoke an annoyance but was largely unaware of its negative health impacts.<sup>50</sup> Modeled on CDC Best Practices, the initiative operated on a \$250,000 budget and ran newspaper and radio advertisements imploring tobacco users to segregate themselves from others when smoking.<sup>50</sup> Campaign messaging attacked secondhand smoke but not tobacco users, and did not advocate for secondhand smoke restrictions or policies. We could not determine the end date or success of the Breathe Easy Bayou campaign.

The LTCP continued awarding community grants as it had done since its inception in 2003. LTCP used the program to teach advocacy and education practices to their grantees.<sup>51</sup>

Grants were given to both city-based and rural community groups, creating a tobacco control base in rural areas where health voluntaries, which were generally based in cities, were usually underrepresented.<sup>51</sup>

LPHI and TFL approached LTCP grant recipients and taught them about political outreach to elected officials using the advocacy and educational foundations created by the DHH's program.<sup>51</sup> According to LTCP Director Diane Hargrove-Jupiter in a 2019 interview for this report, her department's community grant program provided a model for TFL's future community grant efforts:

LPHI and TFL seemed to get together when a lot of the groundwork had already been established by us. And it made it so much easier for them to come in, you know, and look at what was done that worked and didn't work for us. And then, you know, they were -- they came...on the ground running because they saw when it happened...all those years prior with us.<sup>8</sup>

In a 2019 interview for this report, LPHI Policy Manager Eric Vicks credited the DHH and Hargrove-Jupiter's efforts on community programs for enabling the formation of a tobacco control coalition that partially repealed smoking preemption in 2003 and secured state-level clean air law that fully lifted preemption and protected public health in 2006 (Chapter 10):

When I came on board, I was told we had a statewide coalition. And what that really was is that we had health voluntary leadership who brought it in, and they had statewide networks, but we didn't have a coalition. So I had to go out and try to find organizations that were supportive and then find out what the buy in would be for working with us on the preemption repeal....and her [Hargrove-Jupiter] having fully-formed organization[s] was extremely influential in allowing us to move forward quickly.<sup>51</sup>

Vicks claimed that repealing preemption of local smoking restrictions would have taken longer if the community groups developed by the LTCP's grant programs had not existed.<sup>51</sup>

### ***TFL Programming***

#### ***Communities of Color Network***

Louisiana has a large African-American population, and by the mid-late 2000s had the second highest rate of African American smokers among states.<sup>52</sup> In 2004 TFL created the Communities of Color Network (CoC) in partnership with the Louisiana Tobacco Control Program and the Southern University Agricultural Research and Extension Center (SUAREC) as a grassroots advocacy initiative to combat tobacco-related health inequalities in minority

“LPHI and TFL seemed to get together when a lot of the groundwork had already been established by us. And it made it so much easier for them to come in, you know, and look at what was done that worked and didn't work for us.”

communities.<sup>44, 53, 54</sup> Participation in tobacco control efforts by Southern University had been required in the Tobacco Tax Healthcare Act, the legislation mandating the creation of tobacco control programming in 2002 (Chapter 11).<sup>54</sup> In 2004, two CoC programs were started at Grambling State University and at Southern University in Baton Rouge.<sup>44</sup> The Communities of Color network responsibilities later included developing and fortifying clean air policies in minority communities.<sup>54</sup> One of TFL's first programs, the CoC network remained active as of 2020 operating in 43 parishes across Louisiana.<sup>54</sup>

### *Health Communications Campaign*

TFL launched its first health communications campaign in 2004 using television and radio advertisements to educate the public on the dangers of tobacco products and secondhand smoke, and to promote cessation.<sup>55</sup> The campaign aired television and radio ads for three months starting on March 29, 2004 in the Baton Rouge, Lafayette, New Orleans, and Shreveport markets. In the second half of 2004, television and radio ads expanded onto programming for collegiate and professional sports.<sup>55</sup> The ads increased quitline use during the campaign's run.<sup>55</sup>

### *Louisiana Public Hospital Cessation Program*

In 2005, before aligning programming with LTCP, TFL implemented the Louisiana Public Hospital Cessation Program (LPHCP) to evaluate and establish cessation services within the state's ten public hospitals.<sup>56</sup> The system handled 70% of uninsured Louisianans, whom TFL expected were suffering more from chronic illnesses and higher rates of tobacco use.<sup>56</sup> TFL conducted a survey in January 2005 of 780 patients to determine their overall prevalence, smoking behavior, and desire to quit to develop effective cessation services.<sup>56</sup> TFL also surveyed public hospitals to determine their cessation service capacity.<sup>56</sup> These data indicated that hospitals in the LPHCP needed cessation services staff, and shaped the quit assistance offered to patients at those medical facilities.<sup>56</sup>

As part of LPHCO, TFL hired eleven tobacco cessation employees across nine of Louisiana's public hospitals to offer quit assistance to patients.<sup>56</sup> Cessation aid provided by LPHCP cessation workers included tobacco use assessment, nicotine replacement therapy, and counseling. LPHCP also tailored interventions to reach patients serving prison sentences or suffering from diabetes, lung cancer, HIV, or cardiac disease. Five participating hospitals offered standardized cessation assistance, while three provided "service delivery procedures" according to a 2004-2005 Annual Report from TFL. It appears that TFL and LSU's Tobacco Control Initiative replaced the LPHCP in Louisiana's public hospital system by 2006.<sup>57</sup>

### *State Quitline*

TFL provided a free quitline for Louisianans from April 2004 to June 2005 via a contract with the American Lung Association (ALA) and promoted its use in the TFL media campaign<sup>56</sup> (The LTCP had previously provided Louisianans access to a tobacco quitline in 2001 via a contract with the American Lung Association.<sup>58</sup>) TFL subsequently issued a request for proposals to find a new quitline provider, and selected the American Cancer Society to replace the ALA beginning in June 2005.<sup>56</sup>

## **Rivals to Allies: Programmatic Alignment of LTCP and TFL**

### ***Leadership Changes at LTCP***

In 2004 or 2005, the DHH transferred LTCP Director Diane Hargrove-Jupiter to its department handling emergency preparedness.<sup>8</sup> The transfer happened after she had spent over a decade working in tobacco control on behalf of the state. In a 2019 interview for this report, Hargrove-Jupiter partially blamed her close ties to the LTCP's community grant recipients for her forced transfer at the DHH:

I just felt like they felt that I had too much community control, that the partners trusted me too much. Anything that I said you know – because even in applying for money from other groups, they would call me and say “Diane, is this a good thing to do? You know, what do you think about this?” And depending on what I said they would move. And I think administration had gotten wind of that...they actually moved me out of my position because of that.<sup>8</sup>

Hargrove-Jupiter also blamed politics for her ouster, saying that her desire to pursue policies and programming not desired by the state administration at the time, as well as politicians' receptiveness to tobacco industry contributions, made her a target for removal.<sup>8</sup> She stated in a 2019 interview for this report:

They were trying all kinds of ways to stop me on preemption [smoking restriction preemption repeal, Chapter 10], you know. It leaves a whole lot of things we [the LTCP] couldn't do. And you know, I kept saying “Well, that's the best practice. We've got to focus on youth.” And so I'm telling you it depends on who the governor was. And they were taking a lot of money from tobacco lobbyists and stuff like that. So when your own group is telling you not to do something the best thing to do was just to quiet me.<sup>8</sup>

Hargrove-Jupiter's transition occurred before LTCP and TFL attempted to merge programming, removing a polarizing figurehead for some tobacco control advocates from the alignment process.

### ***Hurricane Katrina Catalyzes Change***

In 2005, Hurricane Katrina devastated Louisiana.<sup>59</sup> The federal government's slow response coupled with an unreliable and unstable levee system heightened the severity of damage in the hurricane's aftermath.<sup>60</sup> Hurricane Katrina caused over \$100 billion in damage,<sup>60</sup> displaced over 1 million Gulf Coast residents,<sup>61</sup> and killed 1,100-1,800 people across the Gulf Coast region,<sup>62, 63</sup> including 986 Louisianans. Approximately 80% of TFL's home city, New Orleans, flooded.<sup>61</sup>

On August 28, 2005, then- New Orleans Mayor Ray Nagin ordered an emergency evacuation of New Orleans.<sup>60</sup> As a result, members of LPHI's tobacco control program evacuated.<sup>30</sup> According to TFL Community Program Manager Rosalind Bello in a 2014 interview for this report, “almost all the top leadership for the entire organization [LPHI] sort of got dispersed. People evacuated out. Some people evacuated to Ohio, to Atlanta, to other places,



and then just decided to stay.”<sup>30</sup> In particular, TFL Director Tom Houston and LPHI Deputy Director Delmonte Jefferson resigned and left Louisiana to live in Ohio and Georgia.

Displacement of LPHI personnel by Hurricane Katrina left a leadership vacuum that allowed Rosalind Bello and Ashley Ross to assume key leadership positions in TFL. Originally hired as a Program Coordinator for LPHI’s Make Yours a Fresh Start Family program in August 2005, Bello became the Community Program Manager for TFL that oversaw regional coordinators.<sup>30, 64</sup> Ashley Ross, who LPHI hired only months after Hurricane Katrina,<sup>30</sup> became the Director for Tobacco-Free Living in 2006.<sup>64</sup>

During a 2013 interview for this report with LTCP program director Brandi Bourgeois, she revealed how the challenging situation created by Hurricane Katrina benefitted tobacco control efforts in Louisiana:

[Hurricane] Katrina was the vehicle of change that the state needed in order to revamp tobacco [control] efforts in the state. It was the primary reason for the programmatic alignment process with LTCP and TFL. It has made tobacco [control] efforts more comprehensive and collaborative.<sup>65</sup>

In a 2014 interview for this report, TFL Community Program Manager Rosalind Bello reasoned that TFL’s new personnel allowed for a change in the program’s antagonistic relationship with LTCP:

There was just kind of this natural attrition. But at the same time I think that was really good in a way. It was beneficial because... there were some challenges, relationship barriers that had developed prior to the storm [Hurricane Katrina] that existed a little bit after the storm but were able to be worked through with new people in place.<sup>30</sup>

Staffing changes at LPHI and its tobacco control program cleared a path for initial efforts between TFL and LTCP to align programming. After Hurricane Katrina devastated Louisiana and its state government’s resources in 2005, new and remaining TFL and LTCP officials maximized limited and broadly distributed tobacco control resources by programmatically aligning.

### ***LTCP and TFL Align Programming***

In 2006, health officials decided to help TFL and LTCP overcome major programmatic, logistic, and funding challenges created by Hurricane Katrina and bolster tobacco control in Louisiana by aligning the two programs’ efforts.<sup>66</sup> Previously, TFL and LTCP worked separately from one another other and did not effectively communicate.<sup>66</sup> The LTCP and TFL viewed programmatic alignment as a method to reduce weaknesses and increase program reach and effectiveness.<sup>66</sup>

In 2006, health officials decided to help TFL and LTCP overcome major programmatic, logistic, and funding challenges created by Hurricane Katrina and bolster tobacco control in Louisiana by aligning the two programs’ efforts.

Lingering tensions between TFL and LTCP threatened programmatic alignment. In a 2014 interview for this report, Rosalind Bello recalled experiencing the strain between TFL and the LTCP and the process of overcoming it when she started as the Program Manager of regional coordinators (since 2012 known as regional managers) at TFL in 2006.<sup>30</sup> She stated that TFL staff appeared to be predominantly white while LTCP staff seemed to be primarily African American, causing “racial tension.” Bello reasoned the differences in racial composition made grant recipients, who were primarily African American, suspicious of TFL and felt previous TFL leadership had not adequately developed trust with the grantees. She also claimed there had been past issues between the programs that new TFL staff were not aware of.

Tiffany Netters, who was an LTCP Program Manager from 2007-2011<sup>32</sup> also recalled tension between LTCP and TFL in a 2014 interview for this report:

I know when I came in...my second day on the job was a group meeting between DHH and LPHI TFL to work better together. There was lots of tension, there was name-calling; it was a nightmare, and I felt like I was birthed into that.<sup>31</sup>

To overcome animosity and improve tobacco control in Louisiana, at LTCP’s initiative,<sup>67</sup> in 2006 LTCP and TFL hired the Emory University Tobacco Technical Assistance Consortium (TTAC) to mediate discussion and collaboration on strategic planning across programs.<sup>68</sup> TTAC, led by its consultant Deborah Morris, helped the programs develop a joint evaluation plan including “agreed upon long-term, intermediate and short-term outcome objectives that allow for both programs to work towards common [but not equal] targets for all four program goals.”<sup>68</sup>

Programmatic alignment came in a three-phases grounded in CDC 2007 Best Practices guidelines for state tobacco control programs.<sup>66, 69</sup> During the first phase from December 2006 to September 2007, the LTCP and TFL coordinated programming and developed similar anti-tobacco messaging. According to Tiffany Netters in a 2014 interview for this report, the vulnerability of the LTCP to politics influenced decision making during the program alignment process:

Working with TTAC, looking at the programs and projects that were best practices and some of the things that we can implement, we would look at each thing and say, will TFL fund it wholly, will we divide the cost, or will the state do that?

At one point we got to a place where because the governor and our administration was so heavy down upon us of not getting to the advocacy — there were new policies pushed down about what we could and could not say — we [LTCP] said, well, they like cessation, so the tobacco control program will work on the cessation delivery, the health care part.<sup>31</sup>

To assist programmatic alignment, TFL and LTCP participated in Communities of Excellence Plus Model trainings by TTAC.<sup>70</sup> The program consists of three trainings designed to strengthen local-level work by tobacco control programs.<sup>71</sup> The first training in September 2009 taught attendees how to jointly develop a regional tobacco control policy plan, bolster regional policies to change attitudes towards tobacco use, and to discern methods to engage communities

in tobacco control efforts. The second training in March 2010 sought to educate participants on group techniques to influence policy, utilization of power analyses to guide policy campaigns, and determine methods to increase participation in tobacco control efforts by coalition members. We did not find information on the third Communities of Excellence training during programmatic alignment.

The final structure of TFL and LTCP's alignment resulted from a combination of financial and political factors, as well as the recognition by those involved in the planning process of each program's strengths and weaknesses.

The final structure of TFL and LTCP's alignment resulted from a combination of financial and political factors, as well as the recognition by those involved in the planning process of each program's strengths and weaknesses. TFL assumed responsibility for community engagement programs, community policy advocacy programs, tobacco policy advocacy, and statewide tobacco projects, while the LTCP focused on public education.<sup>72</sup> TFL's regional subcommittees oversaw local programming by LTCP and TFL grant recipients.<sup>72</sup> TFL and LTCP collaborated on cessation and health communications, forming the joint cessation services brand Quit With

Us LA and jointly funding the state's quitline. TFL administered separate advocacy campaigns to influence state and local tobacco control policy.

According to Carrie Monica, TFL Policy Manager from 2007 to 2012, in a 2014 interview for this report:

You know, TFL, because it received this substantial amount of resources through the tobacco tax, had the ability to do a little bit more in terms of staffing and programmatic initiatives than the Tobacco Prevention and Control program [LTCP] under the Department of Health and Hospitals.

And so we also realized, though, that there were things that they were doing really, really well, and there were things that we were doing really, really well, and it just naturally made sense for us to play a role in a little bit more than it did for them. Because at the end of the day, they're a department under government. They still take their direction from their head and from, quite frankly, the [political] leadership in the state.

So it made sense for us [TFL] to -- if there was something we felt strongly about as a coalition [tobacco control and health advocates, health volunteers], we could work closely with the coalition in a way that maybe they couldn't half of the time. And so we were able to find this really great balance, and alignment, a natural fit for their resources and for what their capacity was. And based on their own limitations, too.<sup>73</sup>

LTCP and TFL were maintaining the strategy developed with assistance from TTAC and aligning and coordinating their programming as of 2020. Program alignment and coordination strengthened the ability of tobacco control officials and advocates to impact the public despite a poor history of funding for tobacco control programs in Louisiana.

## Funding and Expenditures for Tobacco Control Programs in Louisiana

Despite generating millions in revenue from tobacco products and the MSA annually, Louisiana has dedicated little of that money to tobacco control programming. From 1993 (the start of the LTCP) to 2001, before passage of the Tobacco Tax Healthcare Act, Louisiana received between \$72 million to \$92 million annually in cigarette tax revenue, none of which went to tobacco control programming. Beginning in 1999, Louisiana began receiving over \$100 million annually in MSA payments (Table 4.5). While a portion of money from MSA generated funds went to health programming, minimal amounts went to tobacco control (Chapter 9). Louisiana lawmakers dedicated approximately \$500,000 to the LTCP in 2001 (Chapter 9) and possibly that amount in subsequent years (Chapter 9), although former LTCP Director Diane Hargrove-Jupiter does not recall her program receiving said money.<sup>8</sup> Cigarette tax revenue increased significantly After the Tobacco Tax Healthcare Act passed in 2002 (Chapter 11) and increased the rate per pack by 12¢ (from 24¢ to 36¢; Table 4.5). A 2¢ tobacco control dedication in that tax led to TFL’s formation and its continued financing, providing the first significant and recurring state dedication for tobacco control programming in Louisiana (Chapter 11). Louisiana’s cigarette tax would later increase in 2015 (from 36¢ to 86¢) and 2016 (from 86¢ to \$1.08 a pack) but none of the new revenue went towards tobacco control (Chapter 11).

Despite increasing revenues, Louisiana failed to improve tobacco control spending and fell drastically short of funding targets specified in the CDC’s 1999, 2007 and 2014 Best Practices for Comprehensive Tobacco Control Programs reports (Table 4.6).

We relied on the CDC State Tobacco Activities Tracking and Evaluation System (STATE) database to retrieve funding information for LTCP and TFL since we were unable to obtain financial records from either program. Before passage of the Tobacco Tax Healthcare Act in 2002, funding for tobacco control programs in Louisiana came almost entirely from the federal government (Table 4.7).

From 1993 (the start of the LTCP) to 2001, before passage of the Tobacco Tax Healthcare Act, Louisiana received between \$72 million to \$92 million annually in cigarette tax revenue, none of which went to tobacco control programming.

Initial funds provided for tobacco use prevention and cessation activities were low, with DHH receiving tobacco control funding no greater than \$250,000 from 1994-1998 through cooperative agreements and grants for the LTCP and tobacco control activities (Table 4.7) From 1999-2002 Louisiana received between \$1.2 million and \$1.9 million annually for tobacco control, except for \$5.1 million in 2000. After Louisiana lawmakers adopted the Tobacco Tax Healthcare Act in 2002, tobacco control programs received \$9 to \$12.5 million annually in total federal, state and third-party funding from 2003-2016 (Table 4.7). During that time, all federal funds went to the LTCP while practically all state funds (in particular the recurring 2¢ tax dedication from the Tobacco Tax Healthcare Act) went to TFL

Periodic funding also came from the Robert Wood Johnson Foundation, although we do not know which programs received the funds and in what years (Table 4.7). We are unable to

Table 4.5: Tobacco Generated Revenues in Louisiana and State Dedications to Tobacco Control (Chapter 6)(Chapter 11) <sup>74-81</sup>								
Fiscal Year	Tax Increases		Cigarette Tax Revenue**+	Total Tobacco Taxes**#	Percentage of Cigarette Tax as Part of Total Tax	MSA***	Total Revenue Generated in millions*	Total State Funds Appropriated for Tobacco Control in Millions**
	Tobacco Tax Rates Before 1990	Cigarettes: 16¢ per pack						
		Cigars Invoiced at \$120 or Less Per 1000 by Producer: 8% of Invoice Price						
		Cigars Invoiced at \$120 or More Per 1000 by Producer: 20% of Invoice Price						
		Loose Leaf: 33% of Invoice Price						
		Smokeless: None						
		Nicotine E-fluid: None						
1990	Cigarette tax increase (by 4¢, to 20¢ per pack)		\$72,032,677	--	--	--	\$72.0	0
1991	--		\$87,348,058	--	--	--	\$87.3	0
1992	--		\$91,292,885	--	--	--	\$91.3	0
1993	--		\$89,290,089	--	--	--	\$89.3	0
1994	--		\$89,130,616	--	--	--	\$89.1	0
1995	--		\$90,984,645	--	--	--	\$91.0	0
1996	--		\$93,307,155	--	--	--	\$93.3	0
1997	--		\$91,444,720	--	--	--	\$91.4	0
1998	--		\$89,524,589	\$87,198107	103%	--	\$87.2	0
1999	--		\$87,825,340	\$85,440,744	103%	\$104,189,880	\$189.6	0
2000	Cigarette tax increase (by 4¢, to 24 ¢ per pack). Smokeless Tax adopted (20% of invoice price).		\$92,298,895	\$89,643730	103%	\$129,755,834	\$219.4	\$4.0
2001	-		\$83,853,634	\$96,582,533	87%	\$136,986,551	\$233.6	\$0.5
2002	Cigarette tax increase (by 12¢, to 36¢ per pack)		\$103,986,444	\$128,520,949	80%	\$156,228,530	\$284.7	\$0.5
2003	--		\$117,925,428	\$112,753,725	92%	\$130,737,533	\$243.5	\$8.0
2004	--		\$138,379,626	\$145,582,290	95%	\$141,771,636	\$287.4	\$10.7
2005	--		\$147,663,445	\$149,131,187	99%	\$143,779,092	\$292.9	\$11.3
2006	--		\$125,960,220	\$137,750,588	91%	\$131,547,670	\$269.3	\$8.0
2007	--		\$133,781,330	\$147,729,802	91%	\$136,903,584	\$284.6	\$8.0
2008	--		\$135,854,712	\$146,251,276	93%	\$160,626,242	\$306.9	\$7.7
2009	--		\$131,009,400	\$147,169,358	89%	\$175,503,257	\$322.7	\$7.6
2010	--		\$120,075,428	\$136,515,428	88%	\$146,822,830	\$283.3	\$7.8
2011	--		\$128,614,885	\$142,792,640	90%	\$138,518,654	\$281.3	\$9.0
2012	--		\$118,425,474	\$135,698,482	87%	\$141,240,460	\$276.9	\$9.0
2013	--		\$121,234,140	\$135,632,847	89%	\$211,047,094	\$346.7	\$7.2
2014	--		\$108,343,080	\$143,100,904	76%	\$139,957,190	\$283.1	\$8.0
2015	Cigarette tax increase (by 50 ¢, to 86 ¢ per pack). Nicotine E-fluid tax adopted (5 ¢ per ml)		\$123,468,732	\$153,954,237	80%	\$139,124,016	\$293.1	\$6.8
2016	Cigarette tax increase (by 22¢, to \$1.08 per pack)		\$223,492,940	\$252,743,465	88%	\$137,487,046	\$390.2	\$7.0
2017	--		\$291,204,720	\$314,188,309	93%	\$141,267,295	\$455.5	--
2018	--		\$271,025,460	\$296,153,731	92%	\$155,071,165	\$451.2	--
2019	--		--	--	--	\$150,472,753	--	--

\*FY 1990-1997 use Orzechowski and Walker gross cigarette tax revenue figures from dataset provided by the CDC, and MSA payments for totals since data from the Louisiana Department of Revenue was not available. FY 1998-2018 Use Louisiana Department of Revenue data and MSA payments for totals and exclude Orzechowski and Walker data.

\*\*Reported in fiscal years ending June 30.

\*\*\*Payments as of April 2019.

+Uses Orzechowski and Walker Dataset.

#Uses collections reported by Louisiana Department of Revenue.

Table 4.6: Minimum, Recommended, and Upper Level Spending Levels for Comprehensive Tobacco Control Programs according to CDC <sup>82-84</sup>			
	Minimum Funding	Suggested Funding	Upper Funding
1999 CDC Best Practices Recommendations	\$27.1 million	--	\$71.4 million
2007 CDC Best Practices Recommendations	\$38.2 million	\$53.5 million	\$84.1 million
2014 CDC Best Practices Recommendations	\$41.8 million	\$59.6 million	--

Table 4.7: Tobacco Control Program Funding in Louisiana by Source for Years Available <sup>76</sup>				
Fiscal Year	Federal	State	Robert Wood Johnson Foundation	Total in Millions
1991	0	0	--	0
1992	0	0	--	0
1993	0	0	--	0
1994	\$178,261	0	0	\$0.2
1995	\$175,740	0	0	\$0.2
1996	\$186,740	0	0	\$0.2
1997	\$186,316	0	0	\$0.2
1998	\$250,000	0	0	\$0.3
1999	\$1,205,522	0	0	\$1.2
2000	\$1,140,677	\$4,000,000	0	\$5.1
2001	\$1,140,677	\$460,000	\$23,718	\$1.6
2002	\$1,140,677	\$500,000	\$284,616	\$1.9
2003	\$1,140,677	\$8,000,000	\$284,616	\$9.4
2004	\$1,118,381	\$10,700,000	\$284,616	\$12.1
2005	\$1,126,859	\$11,300,000	\$23,718	\$12.5
2006	\$1,274,928	\$8,000,000	0	\$9.3
2007	\$1,240,978	\$7,966,912	0	\$9.2
2008	\$1,878,031	\$7,700,000	0	\$9.6
2009	\$907,922	\$7,600,000	\$50,000	\$8.6
2010	\$1,164,617	\$7,800,000	\$93,214	\$9.1
2011	\$1,875,950	\$9,000,000	0	\$10.9
2012	\$2,262,690	\$9,040,571	0	\$11.3
2013	\$1,839,767	\$7,170,101	0	\$9.0
2014	\$1,647,702	\$8,000,000	0	\$9.6
2015	\$1,915,975	\$6,800,000	0	\$8.7
2016	\$1,677,188	\$7,000,000	0	\$8.7

Table 4.8: CDC Best Practices for Tobacco Control Programs Core Components <sup>82</sup>	
State and Community Interventions	State and local policy and program initiatives designed to prevent tobacco use.
Health Communications	Statewide earned and paid media efforts to prevent tobacco use and highlight cessation services.
Cessation	Incorporating cessation services and interventions into healthcare services and systems, bolstering state quitlines, and increasing insurance coverage for cessation services.
Surveillance and Evaluation	Surveilling public health impacts, behavior, and perceptions to determine the effectiveness of tobacco control program efforts. Evaluating program implementation and results to improve effectiveness.
Administration and Management	Adequate tobacco control program staffing and infrastructure.

Table 4.9: Combined Tobacco Control Program Expenditures in Millions According to CDC Best Practices for Tobacco Control Program Components Compared to Suggested Spending Amount for Years Available<sup>69, 83, 84, 86</sup>

	Year	State and Community Interventions	Health Communications	Cessation	Surveillance and Evaluation	Administration and Management	Total	Percentage Spent by State Relative to CDC Suggestions
<b>CDC 2007 Best Practices Suggested Amount</b>	--	<b>\$22.8</b>	<b>\$6.8</b>	<b>\$16.9</b>	<b>\$4.7</b>	<b>\$2.3</b>	<b>\$53.5</b>	--
LTCP and TFL Combined Spending	FY 2008	\$3.2	\$2.9	\$1.7	\$0.8	\$0.9	\$9.5	17.8%
	FY 2009	\$2.7	\$2.5	\$1.5	\$0.7	\$0.7	\$8.0	15%
	FY 2010	\$3.1	\$3.1	\$1.2	\$0.7	\$1.2	\$9.3	17.4%
	FY 2011	\$3.8	\$3.4	\$1.9	\$0.7	\$1.4	\$11.2	20.8%
	FY 2012	\$3.3	\$2.6	\$1.5	\$0.6	\$1.1	\$9.1	17%
	FY 2013	\$3.5	\$2.1	\$1.7	\$0.9	\$1.2	\$9.3	17.5%
<b>CDC 2014 Best Practices Suggested Amount</b>	--	<b>\$19.5</b>	<b>\$8.1</b>	<b>\$24.2</b>	<b>\$5.2</b>	<b>\$2.6</b>	<b>\$59.6</b>	--
LTCP and TFL Combined Spending	FY 2014	\$3.2	\$1.9	\$1.5	\$0.9	\$0.9	\$8.5	15.8%
	FY 2015	\$3.3	\$2.0	\$1.6	\$1.1	\$0.8	\$8.7	14.7%
	FY 2016	\$3.4	\$2.1	\$1.6	\$0.9	\$0.9	\$8.8	14.8%

\*2008-2014 are based on CDC Best Practices Recommendations for Tobacco Control Programs from 2007. FY 2015 and 2016 are based on CDC's 2014 Best Practices Recommendations.

distinguish exactly how much LTCP and TFL each received in state money and Robert Wood Johnson grants since the CDC STATE database provides combined totals and does not distinguish between the finances of the tobacco control programs. Average funding for tobacco control programs in Louisiana remained drastically below<sup>85</sup> CDC 2014 Best Practices

During and after programmatic alignment, the LTCP and TFL developed complementary tobacco control initiatives, some they administered jointly.

Recommendations for implementing comprehensive tobacco control programs, which suggests Louisiana dedicate a minimum of \$41.8 million.<sup>82</sup>

Similar to funding information, we used the CDC State System to evaluate the combined expenditures of LTCP and TFL according to core components of the CDC's Best Practices (Table 4.9). The CDC only provides data for 2008-2016 and does not distinguish between spending by LTCP and TFL

(Table 4.9). Except for 2010, the tobacco control programs combined spent the most annually on state and community interventions. The programs spent the second most on health communications, followed by cessation services. Combined, LTCP and TFL spent the second least on administration and management, followed by surveillance and evaluation. Except for FY 2011, the programs failed to breach 20% of their recommended spending target each year according to CDC Best Practices.

### **Tobacco Control Programming During and After Programmatic Alignment**

During and after programmatic alignment, the LTCP and TFL developed complementary tobacco control initiatives, some they administered jointly. Regarding state and community interventions, the LTCP primarily awarded grants for youth prevention initiatives implemented in public schools, but also co-sponsored non-school youth events with TFL. LTCP administered youth prevention programs that included policy advocacy. TFL awarded community advocacy grants to run youth, college aged, and adult prevention and policy advocacy programs. Both programs collaborated on apolitical media campaigns focusing on education and cessation messaging, with TFL separately implementing advocacy and policy promotional efforts. LTCP and TFL also implemented joint and independent cessation initiatives. Regional subcommittees featuring TFL and LTCP grantees are overseen by TFL.<sup>72</sup>

### **LTCP Prevention and Advocacy Programs**

#### ***Louisiana Tobacco-Free Schools Initiative***

The LTCP launched the Louisiana Tobacco-Free Schools program in 2006 to secure tobacco-free policies in schools and reduce youth tobacco use.<sup>87</sup> LTCP created the program after the State Legislature passed the Louisiana Smoke-Free Air Act and prohibited smoking in primary and secondary schools in all school facilities, school property, and school buses.<sup>88</sup> According to the LTCP's 2012-2013 Annual Report, the program relied on a seven part plan consisting of "policy, instruction, curriculum, training, family involvement, cessation and evaluation" modeled on CDC Guidelines for School Health Programs.<sup>87</sup> The LTCP funded statewide grantees that mobilized local schools to adopt tobacco-free campus policies.<sup>89</sup> The LTCP collaborated with hospital grant recipients, Southwest Louisiana AHEC, the Louisiana Department of Education, and other entities to educate target audiences and secure tobacco-free policies for school districts. In addition, the LTCP also prepared a manual for school administrators on the beneficial effects of smokefree policies in schools.<sup>87</sup> In 2013, the Louisiana Tobacco Control Program expected to secure tobacco-free policies in all Louisiana school



districts by March 2015.<sup>87</sup> In 2017, Louisiana lawmakers passed HB 531 by Representative Frank Hoffman (R-West Monroe) to eliminate smoking areas on primary and secondary school campuses and prohibit use of any tobacco product or electronic nicotine devices on school property.<sup>90</sup> To help schools observe stricter tobacco-free requirements, the Louisiana Department of Health (rebranded from DHH) produced a sample memo for school officials to use regarding the policy change as well as a model tobacco-free policy for implementation.<sup>91</sup>

### ***Tobacco-Related Health Disparities Coalition***

LTCP formed the Tobacco-Related Health Disparities Coalition in 2007 to promote and implement a plan to mitigate health inequalities linked to tobacco.<sup>88, 92</sup> The coalition originated from a task force created by the LTCP using a CDC Office of Smoking or Health grant in 2006 that developed a plan to address tobacco health disparities. Coalition membership consisted of task force participants that formulated the health disparities plan.<sup>92</sup> The Health Disparities Coalition intended to partner with LTCP and TFL to inform people on the plan, write grants, collaborate with plan supporters, engage communities, groups, and special populations, help associated media campaigns, and promote tobacco control efforts, spread tobacco control facts as well as implement the task force plan.<sup>92</sup>

The Louisiana Tobacco-Related Health Disparities Coalition sought to address “socioeconomic status, cultural characteristics, acculturation, stress, targeted advertising, and varying capacities of communities to mount effective tobacco control initiatives,” according to the LTCP’s 2010 annual report.<sup>93</sup>

The Coalition approached and worked with state boards and community colleges, daycares, health facilities, schools, Medicaid, and mothers to try and secure tobacco-free zones.<sup>93</sup> In addition, during 2010 the Health Disparities Coalition also developed a 2013-2015 plan to mitigate tobacco-related health disparities in Louisiana.<sup>93</sup>

We did not find evidence that the Tobacco-Related Health Disparities Coalition was active after 2010.

### ***Tobacco-Free Health Care Project***

The Tobacco-Free Health Care Project was a three-year LTCP initiative that started in fiscal year 2011-2012 that provided grants to healthcare facilities for them to advance CDC-OSH’s four core goals<sup>87</sup> of tobacco use prevention, cessation, finding and remedying tobacco-related disparities, and stopping secondhand smoke exposure.<sup>94</sup> In particular, the program has pursued tobacco-free policies in health care facilities and schools.<sup>87</sup> The program awarded competitive grants to Ochsner Health System, the Women and Children’s Hospital, CHRISTUS Health Shreveport-Bossier, and St. Francis Medical Center. The Project improved grant recipients’ collaborations and ties with Louisiana communities, which the LTCP credited for effective tobacco cessation education efforts, attainment of tobacco-free ordinances and workplace policies, and lessons on “tobacco intervention” according to a 2012-2013 LTCP report.<sup>87</sup>

### ***Tobacco-Free Healthcare Facilities***

The Tobacco-Free Healthcare Facilities program is an LTCP initiative to secure tobacco-free policies in all health care buildings and campuses in Louisiana.<sup>87</sup> 60 health care facilities adopted tobacco-free policies by FY 2013.

### ***Schools Putting Prevention to Work***

The Louisiana Tobacco Control Program jointly administered the Schools Putting Prevention to Work (SPPW) program with the Department of Education and Louisiana School Boards Association in 2011. The SPPW program received funding from the American Recovery and Reinvestment Act's Communities Putting Prevention to Work initiative,<sup>95</sup> grants offered by the US Department of Health and Human Services<sup>96</sup> as part of federal government-led recovery efforts following the 2008 economic recession.<sup>95</sup> The LTCP and its SPPW partners developed a multifaceted program targeting tobacco control, nutrition, obesity, and exercise. Tobacco control components of SPPW consisted of a radio campaign informing pregnant smokers of the negative health effects of smoking during pregnancy and educating them about free cessation services.<sup>95</sup> In addition, the SPPW program gave technical support to 27 (of 69) school districts and split a \$17,000 grant between them to develop health policies promoting tobacco-free schools. Because of the SPPW program, over 150 pregnant smokers used the state quitline, more than doubling female use of the service.<sup>95</sup> In addition, 25 school districts implemented tobacco-free policies as part of a larger wellness policy.<sup>95, 97</sup>

### ***Well-Ahead***

Well Ahead was an initiative launched in the DHH by Governor Bobby Jindal and DHH Secretary Kathy Kliebert in April 2014.<sup>98</sup> Well Ahead is overseen by the Department of Health's Bureau of Chronic Disease Prevention and Health Promotion, and houses the state's tobacco program.<sup>99</sup>

The Wellspot initiative intends to inspire organizations to adopt policies beneficial to public health, including instituting smoke or tobacco-free policies.<sup>98</sup> Participating organizations receive a Wellspot designation of 1, 2, or 3, a 1 meaning all Wellspot standards for their workplace type have been reached while a 3 means a low amount. Four benchmarks relate to tobacco: One requires a comprehensive smokefree policy, another a comprehensive tobacco-free policy, the third, "promotion of the Louisiana Tobacco Quitline" or other entities that offer cessation assistance, and the fourth inclusion of tobacco quit assistance in employee insurance coverage<sup>100</sup> (Table 4.10).

The Wellspot initiative intends to inspire organizations to adopt policies beneficial to public health, including instituting smoke or tobacco-free policies.

Table 4.10: Well-Ahead Wellspot Requirements for Smoking and tobacco by Place and Wellspot Level <sup>100</sup>			
	3 (weakest)	2	1 (Strongest)
Child Care Centers	Tobacco-Free	Tobacco-Free	Tobacco-Free
Colleges and Universities	Tobacco-Free	Tobacco-Free	Tobacco-Free
Faith Organizations	None	Smokefree	Tobacco-Free
Healthcare Facilities	Tobacco-Free	Tobacco-Free	Tobacco-Free
Hospitals	Tobacco-Free	Tobacco-Free	Tobacco-Free
Restaurants	None	Smokefree Policy	Tobacco-Free
Schools	Tobacco-Free	Tobacco-Free	Tobacco-Free
Worksites*	Smokefree	Tobacco-Free	Tobacco-Free
*Has an optional benchmark for providing employee insurance coverage for tobacco cessation.			

## TFL Prevention and Advocacy Programs

### *The Louisiana Tobacco-Free College Initiative*

TFL formed The Louisiana Tobacco-Free College Initiative with the Louisiana Office for Addictive Disorders and the Louisiana Higher Education Coalition in 2007 to make higher education institutions smokefree<sup>101</sup> and to develop a college network that promoted student cessation and countered tobacco industry marketing.<sup>102, 103</sup> In the program's first year, fourteen Louisiana colleges joined and received grants for anti-tobacco events and internal policy efforts.<sup>102</sup>

Participating institutions included Loyola University, Southeastern Louisiana University, Tulane University, Our Lady of the Lake College, and the University of Louisiana-Lafayette.<sup>102</sup> The Tobacco-Free College Initiative inspired Our Lady of the Lake College to adopt the first tobacco-free policy among higher education institutions in Louisiana during fiscal year 2007-2008.<sup>102</sup> Three other colleges passed tobacco policies that year. The Louisiana Tobacco-Free College Initiative subsequently helped create the Fresh Campus Campaign with advertising agency Rescue Social Change Group in FY 2008.<sup>102</sup> In 2013, Louisiana Lawmakers adopted legislation requiring all public higher education institutions to enact smokefree policies (Chapter 12).<sup>101</sup> We do not know if or when the Louisiana Tobacco-Free College Initiative ended.

### *Defy Project*

TFL started the Defy Project in 2007 to expose tobacco industry targeting of youth as well as to increase youth participation in tobacco control.<sup>52, 104</sup> Originally called the Defy the Lies initiative, TFL Program Manager Rosalind Bello and TFL Director Ashley Ross developed the program to be a policy-oriented initiative that engaged youth in tobacco control. According to Bello in a 2014 interview for this report:

We needed to have something very pointed, something that the youth could do that would help to be part of the social norm change on a community level. So we had worked with some local people before in trying to do some youth advocacy trainings...but we wanted something with more structure to it.

So we went with Rescue Social Change group to help us with Defy the Lies and we went through several iterations with them about models that did or did not work in Louisiana.<sup>30</sup>

TFL administered the Defy initiative by awarding community grants to organizations that followed TFL-developed program guidelines to train youth to advocate against tobacco point of sale advertisements, and to educate and employ youth to monitor and record data on point of sale advertising.<sup>104, 105</sup> Participating youth visited businesses randomly chosen by TFL to conduct surveys on point of sale advertising that included questions regarding targeting youth.<sup>105</sup> In addition, participants engaged in letter writing to Louisiana newspapers and government officials, lobbied state and local officials to support youth access restrictions,<sup>52</sup> and spoke at town halls.<sup>105</sup> In 2017, Defy participants also held school rallies and events to promote Kick Butts Day.<sup>106</sup>

TFL replaced Project Defy with another program, Next Era, in 2017.<sup>107</sup> Although TFL implied that Project Defy had helped successful efforts to secure smokefree college campuses, pass local smokefree ordinances, and secure a tobacco tax increase, the nonprofit stated that frequent youth tobacco use rates still remained high in Louisiana among junior high and high school students. TFL claimed Next Era brought "...a modernized and strengthened approach to youth engagement in Louisiana."<sup>107</sup> Next Era would cultivate youth tobacco control advocates by collaborating with student organizations and clubs to provide participants advocacy training and opportunities to meet influential persons and attend conferences. The program initially planned to offer students community service hours and scholarships for participation.

### ***Fresh Campus Campaign***

TFL and the Louisiana Tobacco-Free College Initiative created the Fresh Campus Campaign with assistance from the Rescue Social Change Group in fiscal year 2008-2009. TFL had previously sought to promote smoking restrictions and defend against tobacco industry marketing to college students by forming the Louisiana Tobacco-Free College Initiative in 2007, a coalition effort that subsequently helped implement the Fresh Campus Campaign. The Fresh Campus Campaign sought to secure tobacco-free policies and promote cessation services on campuses at technical, two-year, and four-year colleges.<sup>102, 108</sup>

TFL awarded community advocacy grants to universities with existing or newly formed student organizations led by a Fresh Campus coordinator to pursue tobacco-free campus policies, monitor enforcement of existing tobacco-free policies, promote existing cessation services on campus, and obtain cessation services on campuses.<sup>108, 109</sup> Fresh Campus groups were required to host meetings, join Fresh Campus conference calls, attend meetings of the Healthy Community Coalition Tobacco sub-committee (a statewide health coalition), and to hold an event for least two of the four following national action days each year:

- Great American Smokeout
- Through with Chew
- Kick Butts Day
- World No Tobacco Day<sup>103</sup>

The Fresh Campus Campaign followed TFL's responsibilities delineated during programmatic alignment, focusing on community capacity building and mobilization, as well as policy advocacy.

In 2013, the Louisiana Legislature passed Act 211, requiring public institutions of higher education to adopt smokefree policies by August 1, 2014 (Chapter 12).<sup>101</sup> Fresh Campus teams continued to operate, assisting colleges and universities in adopting tobacco-free policies. During 2013-2014 TFL published and disseminated a toolkit to higher education institutions with information and guidelines for adopting and enforcing smokefree and tobacco-free policies for campuses.<sup>110</sup>

The Fresh Campus Campaign followed TFL's responsibilities delineated during programmatic alignment, focusing on community capacity building and mobilization, as well as policy advocacy.

TFL still ran the Fresh Campus Campaign as part of its community advocacy grants program in 2016.<sup>111</sup> Open to trade colleges and traditional higher education institutions, the program sought to promote cessation services for students and employees, highlight the necessity of tobacco-free policies on campuses, and lower secondhand smoke exposure. TFL did not list the Fresh Campus Campaign as an active initiative that year,<sup>112</sup> possibly because the program had achieved most of its objectives and become unnecessary.

### ***Next Era***

Next Era is a high school-based prevention and policy advocacy program created by TFL in 2017.<sup>113, 114</sup> The program trains students to host events, deliver presentations, attend conferences, and meet with state officials, city councilors, and school board members to advance Next Era's tobacco control campaigns.<sup>114</sup> Next Era offers a maximum \$1,700 to clubs that apply and join the program, and rewarded participating students with points redeemable for various prizes.<sup>114</sup> TFL and LPHI contracted with San Diego media firm Rescue Agency to manage the initiative.<sup>114</sup>

## **Jointly Administered Prevention and Advocacy Programs**

### ***Youth Summit***

The Youth Summit started in 2008 as a joint effort between the LTCP, TFL, and Louisiana Youth Prevention Services to educate students on tobacco industry marketing practices and to have attendees generate state-level policy suggestions for tobacco control.<sup>102</sup> The Youth Summit became an annual event, with youth ages 11-17 attending to discuss "ways to change behavior as it relates to tobacco use, learn about the negative effects of tobacco, and gain the knowledge and tools to promote change in their communities."<sup>70</sup> Since 2009, participation increased from 70 youth to 224 by 2011.<sup>70</sup> The fifth Youth Summit, held in 2012 with the goal of educating youth on industry marketing practices, local and school policy engagement, and accessibility of tobacco products to minors, had approximately 400 student attendees and was sponsored by the LTCP, TFL, the American Legacy Foundation, Dillard University, and a local radio station.<sup>87, 115</sup>

We did not find evidence of LTCP and TFL holding statewide youth summits after 2012. However, the Rapides Foundation annually hosted regional Youth Summits in Central Louisiana

through 2019 inspired by the LTCP and TFL summits.<sup>116, 117</sup> The Rapides Summits included tobacco prevention but were generalized to also include other behaviors.<sup>118</sup>

## **LTCP and TFL Health Communications Programs after Alignment**

### ***Quit With Us, LA***

The LTCP and TFL established Quit With Us, LA in 2007 as the collective brand for some cessation services and initiatives.<sup>87, 93</sup> The campaign is administered by the LTCP, in accordance with its focus on cessation established during programmatic alignment with TFL. According to a 2010 LTCP annual report:

The LTCP staff maintains a system of initiative-specific communication plans based on target audiences, effective media vehicles, activity objectives, and specific messages.<sup>93</sup>

Quit With Us, LA initially conducted outreach via partnerships and websites to medical providers, poor and rural Louisianans, minors, African Americans, and community activists.<sup>93</sup> In addition, Quit With Us, LA utilized social media<sup>87, 93</sup> to provide cessation information and education on tobacco use's negative health impacts.<sup>87</sup>

Quit With Us, LA maintained a website that acted as a portal for the state's quitline, various cessation services offered by LTCP and TFL,<sup>93</sup> and information and access to other national and state quit resources.<sup>87</sup> In addition, the website provided information on Louisiana cessation initiatives and collaborations such as Fax-To-Quit, with details and contact info for joining said programs.<sup>87</sup> Quit With Us, LA was still active in 2020.

### ***Let's Be Totally Clear / Healthier Air for All***

The "Let's Be Totally Clear" campaign started as prevention and education-focused ads on secondhand smoke harms but became increasingly policy and advocacy-focused over time. TFL rolled out television, radio, and outdoor advertisements in 2007 for a new media campaign titled "Let's Be Totally Clear." Co-sponsored by LTCP, the campaign sought to educate Louisianans on the harmful effects of secondhand smoke.<sup>52</sup> TFL and LTCP had modeled their program components on CDC Best Practices, which called for using health communications,<sup>69</sup> and established that both tobacco control groups would engage in media outreach during programmatic alignment. The media campaign utilized personal accounts of Louisiana citizens adversely affected by tobacco smoke in advertisements.<sup>52</sup> The ads did not call for smoking restrictions. However, according to TFL's 2007-2008 annual report, campaign billboard ads displayed secondhand smoke facts that "research indicated would affect personal or political action."<sup>52</sup>

### ***TFL Reboots Let's Be Totally Clear into Policy Advocacy Effort***

"Let's Be Totally Clear" morphed into a political advocacy initiative for comprehensive local clean air laws (Chapter 12) in 2010, when TFL rebooted the campaign without LTCP sponsorship. TFL relaunched the "Let's Be Totally Clear" media campaign to highlight employee exposure to secondhand smoke in bars and casinos and advocate for protecting

workers in those workplaces.<sup>119</sup> The 2006 Louisiana Smoke-Free Air Act had made most workplaces in the state smokefree, but exempted bars and casinos (Chapter 9).<sup>119</sup> TFL revived the campaign and reoriented its messaging and focus after receiving suggestions from its Scientific Advisory Committee and comments from musicians, bar employees, and casino employees wanting clean air protections.<sup>119</sup>

TFL relaunched the “Let’s Be Totally Clear” media campaign to highlight employee exposure to secondhand smoke in bars and casinos and advocate for protecting workers in bars and casinos.

TFL placed advertisements featuring bar employees, casino workers, and musicians telling their experiences working in smoke-filled environments.<sup>119</sup> The campaign highlighted that smoking remained legal in Louisiana bars and casinos, that said businesses exposed employees to harmful secondhand smoke, and asserted that workers in those environments should have safe workplaces.<sup>119</sup> The “Let’s Be Totally Clear” ads featured an “Equal Air for All” tagline.<sup>119</sup> The inherent political advocacy message of the ads may be a reason the LTCP did not co-sponsor the campaign.

The “Let’s Be Totally Clear” campaign used social media and its campaign website to promote venues with smoke free policies<sup>119</sup> to provide them free publicity and demonstrate that smokefree policies did not harm businesses. TFL determined the campaign increased public opposition to smoking in bars and casinos, generated backing for smokefree gambling establishments, and curried support for stronger clean air laws.<sup>119</sup>

In 2012, TFL rebranded “Let’s Be Totally Clear” to “Healthier Air For All” to make messaging more relatable to the general public. According to TFL Communications and Policy Manager Lauren Conrad in a 2016 interview for this report, the rebranding was in response to a loss of message effectiveness:

At first we were able to move the needle considerably, pointing out that, yes, Louisiana is smokefree, and it was a big win getting restaurants to go smokefree. But there is still a huge group of people that are being left out. So then we [TFL] ran the campaign for so long pointing this out, that then we were getting negative feedback, well, why don't you care about the patrons that go into these establishments?

Which is why we had to change strategy again and say it's Healthier for All. Smokefree is Healthier for All, not just the bar employees and the casino employees and musicians. It's healthier for the patrons. It's healthier for the people that want to listen to the music. And so it was interesting...what moved the needle so much before, we then had to pull back on that because then everybody else was getting offended that we weren't talking about them.<sup>120</sup>

TFL ran multiple sub-campaigns with different messaging under the “Healthier Air For All” banner. TFL ran a smaller campaign titled “\_\_\_\_\_Stinks” in the early 2010s to link health problems and annoyances such as the odor of secondhand smoke created by tobacco use. The Healthier Air For All website encouraged visitors to enter into a prompt what “stinks” about

tobacco and provided links containing information on issues and problems related to secondhand smoke.<sup>121</sup>

Using its “Healthier Air for All” theme, TFL created customized local advertising campaigns to generate public awareness and support for proposed and recently adopted local clean air laws. Local media campaigns ran in Alexandria (2011), Hamilton (2015), New Orleans (2015), Monroe (2013), West Monroe (2013), Ouachita Parish (2013), and Sulphur.<sup>122</sup> Advertisements for Alexandria utilized Christmas and New Year’s holiday themes before and after a successful clean air policy campaign in 2011 that prohibited smoking in bars and casinos (Chapter 12).<sup>122</sup> Ads run in the city after Alexandria adopted a comprehensive clean air ordinance alerted the public to the legislation’s implementation date, and tied smoking restrictions to winning at gambling or a refreshment accompanying drinks at a bar.<sup>122</sup> TFL aired practically identical advertisements in Monroe, West Monroe, and Ouachita Parish after local lawmakers in those areas adopted comprehensive clean air ordinances covering bars and casinos in 2013 (Chapter 12).<sup>122</sup> Advertisements run for New Orleans, Hammond, and Sulphur during clean air policy campaigns highlighted the lack of secondhand smoke protection for performers, bar employees, and casino employees.<sup>122</sup> A New Orleans ad circulated after the city adopted a comprehensive smokefree ordinance (Chapter 12) maintained focus on protecting performers and workers at bars and casinos.<sup>122</sup> TFL’s use of localized media campaigns helped secure comprehensive clean air legislation, most prominently New Orleans comprehensive clean air ordinance in 2015 (Chapter 12).

In 2015 TFL began sub-branding local policy ads as “Join the Movement” under the “Healthier Air for All” brand. TFL created the theme to generate awareness of the negative health impacts of secondhand smoke, highlight smokefree events and businesses, promote the advancement of clean air ordinances and policies in Louisiana, and encourage public participation in ongoing smokefree efforts.<sup>123</sup> According to Communications and Tobacco Policy Manager Lauren Conrad in a 2016 interview for this report, the theme proved popular:

The Join the Movement campaign was a very successful campaign. And it wound up being right when an ordinance was being launched. Part of our metrics for that campaign was how were people going to respond to this. And one of the council members, Join the Movement, became her tagline. She was one of our champions... We didn't feed that to her, but that's what she started using... So Join the Movement has been able to get some legs far beyond our expectations, and we're [TFL] still using Join the Movement because it caught on as well as it did.<sup>120</sup>

TFL continued to pursue and support policy change at the local level using the “Healthier Air For All” brand and social justice themes, providing information on a campaign website for complying with local clean air laws in cities and parishes that passed ordinances, a program it was continuing to maintain and develop in 2020.

### ***TFL Engages in its First Dedicated Media Campaign Targeting African Americans***

TFL first launched its African American Male Cessation Initiative in 2014<sup>124</sup> to mitigate the disproportionately high tobacco use rate and low quitline utilization among African



American males in Louisiana.<sup>120, 125</sup> According to TFL Communications and Tobacco Policy Manager Lauren Conrad in a 2016 interview for this report:

African American males in Louisiana have been identified as a group that has a high propensity of smoking and a very low call [rate] to the quit line. In fact, this group doesn't even know that the quit line exists. So, the first iteration of this campaign was to hyper target this demographic.<sup>120</sup>

“African American males in Louisiana have been identified as a group that has a high propensity of smoking and a very low call [rate] to the quit line. In fact, this group doesn't even know that the quit line exists.”

In 2011, nearly 35% of African Americans in Louisiana smoked compared to approximately 28% of white Louisianans.<sup>124</sup> African Americans also has a higher quit attempt rate and failure rate compared to whites, and comprised under 15% of calls to the State's tobacco quitline.<sup>124</sup> TFL learned from a Fiscal Year 2012-2013 Louisiana Tobacco Quitline Stakeholder Report that white women, and African American women smokers contacted Louisiana's quit line more than African American males despite smoking prevalence being higher among the latter. The discovery spawned 12 focus groups across the state of current and former African American smokers that determined most came from poor neighborhoods and lacked knowledge of free quit assistance provided by Louisiana. To bolster quit service use by African American men and address tobacco-related disparities, TFL implemented the African American Male Cessation Initiative.

The African American Male Cessation Initiative in late 2014-early 2015 consisted of media and grassroots advocacy components. TFL implemented a media campaign in FY 2015 featuring ads from the CDC's Tips From Former Smokers ad campaign,<sup>126</sup> to educate its target audience of the negative health effects of tobacco use and generate awareness of the state quitline.<sup>120, 125, 126</sup> Advertisements appeared on television, radio, print, billboards,<sup>124</sup> and bus shelters in Alexandria, Baton Rouge, Monroe, New Orleans, and Shreveport from late December 2014 through February 15, 2015.<sup>120, 126</sup> TFL jointly implemented the African American Male Cessation Initiative's grassroots component with the Communities of Color Network<sup>127</sup> and the LSU School of Public Health New Orleans' Tobacco Control Initiative.<sup>126</sup> As a result, African American males had the highest successful quit rates at the 30-day mark (34.3%) compared to all quitline users (28.5%) in Fiscal Year 2013-2014.<sup>124</sup>

Louisiana still had high tobacco use rates among African American residents after the campaign. An unidentified survey in 2015 still found that 28.2% of male African American Louisianans smoke, more than any other gender or race in the state.<sup>127</sup> Male African American smokers in Louisiana also consumed 1.2 times more cigarettes than their white counterparts, had a 27% higher rate of being diagnosed with lung cancer than the national average, and a 32% greater mortality rate than African American males nationally.<sup>127</sup> In a 2016 survey of Louisianans, only 14.2% of male African Americans are aware of quitline services, compared to 24.5% of female African Americans, 20.2% of white males, and 36.1% of white females.<sup>127</sup>

In 2017, TFL administered additional African Male Cessation Initiative campaigns. The campaigns targeting people 35-59 years of age that consisted of radio spots, informational

material, education by medical professional, and billboards.<sup>128</sup> Administered in Baton Rouge and Shreveport during the spring, and New Orleans during the summer of that year, the campaigns found different promotional efforts more effective than others depending on city (Table 4.11).

Table 4.11: Percentage of Respondents That Recalled Cessation Services via Format <sup>128</sup>			
	Baton Rouge	Shreveport	New Orleans
Radio	30%	37%	Survey Data Not Yet Released
Informational Material	N/A	25%	
Education by Medical Professional	28%	N/A	
Billboards	29%	44%	

## LTCP and TFL Cessation Programs after Programmatic Alignment

### *Tobacco Quitline*

During programmatic alignment in fiscal year 2009-2010, LTCP and TFL integrated their quitline efforts. The LTCP and TFL provided the Louisiana Tobacco Quitline to anyone over age 13 free cessation assistance.<sup>129</sup> Jointly funded by the programs, the quitline operates 24 hours a day and is available in 150 languages.<sup>129</sup> Trained counselors assisted smokers willing to quit in 30 days by helping them create a cessation plan and by offering nicotine replacement therapy when funds were available. The quitline also provided participants a cessation assistance kit by mail and informed them of local quit programs. The Louisiana Tobacco Quitline continued to be jointly administered by LTCP and TFL as of 2020.<sup>129</sup>

### *Fax-To-Quit*

The Fax-To-Quit Program encouraged medical professionals to engage their patients regarding their smoking and direct them to the state's quitline for assistance with cessation.<sup>87</sup> Funded by the LTCP and TFL, the program trained medical professionals to use the *Public Health Service Clinical Practice Guidelines in Treating Tobacco Use*.<sup>87</sup> According to LTCP program director Brandi Bourgeois in a 2013 interview for this report:

Our healthcare provider arm of our Quitline. Providers are trained in this program and then implement it into their clinics/hospitals. The concept is easy, providers intervene with patients using the 5 As [Ask, Advise, Assess, Assist, and Arrange]<sup>130</sup>. If the patient is ready to quit (defined as within 30 days<sup>131</sup>) they fill out the fax to quit form and it's sent off to the Quitline vendor. Quitline vendor then proactively calls the patient back to begin their counseling sessions.<sup>65</sup>

Following outreach by the quitline to the smoker, the quitline service sent a Participant Outcome Report to the place of referral to retain in records.<sup>131</sup> The reply fax provided information for medical records about whether the participant was contacted regarding cessation, whether services were accepted, and disclosed if any program or nicotine therapy replacement was chosen.<sup>132</sup> As of 2018, the Fax-To-Quit program continued to be offered through Quit With Us, LA, a joint collaboration on cessation services of the LTCP and the TFL.<sup>131</sup>

### ***Louisiana Tobacco Control Initiative***

The Tobacco Control Initiative (TCI) is an intervention and cessation program administered in Louisiana's healthcare system by LSU Health – New Orleans School of Public Health since 2004.<sup>133</sup> Funded by LPHI/TFL via contract, the Tobacco Control Initiative was designed based on US Public Health Services tobacco use treatment guidelines.<sup>133</sup> Continued throughout and after TFL's programmatic alignment with LTCP, TCI uses a systems based approach to “standardized identification and treatment of tobacco users within the LSU health care system.”<sup>70</sup> In particular, TCI seeks to lower tobacco use rates among patients in the LSU public hospital system.<sup>70</sup>

In particular, TCI seeks to lower tobacco use rates among patients in the LSU public hospital system.

Participating clinics and Hospitals monitored for patients that were current tobacco users (used in past 30 days) and recommended they quit tobacco.<sup>134</sup> In addition, Tobacco Control Initiative employees at each facility offered cessation services to identified patients.<sup>133</sup> Program components include individual and group counseling, state quitline and Smoking Cessation Trust referrals, “self-help materials”, and “cessation medication” according to the Louisiana Tobacco Control Initiative's webpage. The project also includes self-evaluations by the Tobacco Control Initiative to strengthen its efforts, and conduct research to advance public health. The Tobacco Control Initiative initially worked to evaluate and provide cessation services in the Louisiana Public Hospital system.<sup>57</sup> TCI also created a standardized cessation database in 2006.<sup>57</sup> The LTCP collaborated with TCI in 2010 to use the Fax-To-Quit program to reach rural and lower economic status Louisianans.<sup>93</sup> In 2011, the Tobacco Control Initiative utilized a systematic and standardized approach that caused eight LSU-run public hospitals to adopt electronic identification/documentation systems.<sup>70</sup> That same year, TCI reoriented focus to advance hospital policies mandating ongoing medical provider training on cessation assistance and services that half of Louisiana's ten public hospitals adopted.<sup>70</sup> As of 2018, the Tobacco Control Initiative had given tobacco consumption and dependence treatment training to more than 10,000 healthcare providers, has advised more than 9,000 smokers on quitting, and recommended Louisiana's quitline and Smoking Cessation Trust (SCT) to over 10,000 smokers.<sup>133</sup>

### ***Louisiana Tobacco Cessation Consortium***

The Louisiana Tobacco Cessation Consortium initially began as the Quitline Consortium in 2005, a joint project of TFL and the LTCP before programmatic integration that was designed to synchronize cessation programs amongst various medical providers, the tobacco control programs, and other organizations.<sup>56</sup> After Hurricane Katrina devastated Louisiana in 2005, in 2006 LTCP and TFL likely continued the initiative as the Louisiana Tobacco Cessation Consortium.<sup>57</sup> The Louisiana Tobacco Cessation Consortium (LTCC) formed to improve relationships and coordinate tobacco control efforts between the LTCP, TFL, healthcare providers, nonprofits, health care organizations, and researchers on tobacco control efforts. The LTCC also focuses on increasing awareness of tobacco control programs and services, in particular for cessation,<sup>93</sup> and disseminates information on national and state cessation efforts from LTCP.<sup>135</sup> LTCC membership after Hurricane Katrina consisted of LTCP, TFL, the American Cancer Society, American Lung Association, American Heart Association, the North American Quitline Consortium, and the Louisiana Cancer Control Partnership.<sup>57</sup>

## ***H.E.A.L. Initiative***

LTCP started Project Help Empower All of Louisiana (Project HEAL)<sup>93</sup> in 2008 to help hospitals adopt 100% tobacco-free campus policies.<sup>70</sup> As the project continued, LTCP established a manual available online and in print with a 12 month plan to guide Louisiana hospital administrations in implementing tobacco-free campus policies.<sup>136</sup> The guidelines advised hospitals to adopt tobacco-free policies to deter staff, patients, and visitors from smoking on their premises with the end goal of influencing long-term cessation.<sup>137</sup> As of 2020, information and publications from the HEAL Initiative continued to be offered through Quit With Us, LA, the joint cessation services program run by the LTCP and TFL.<sup>138</sup>

## **Evaluation and Data Collection Methods of the LTCP Following Alignment**

The Louisiana Tobacco Control Program collected data for surveillance and evaluation of tobacco use and tobacco control in Louisiana from various surveys. LTCP primarily utilized CDC Behavioral Risk Factor Surveillance System (BRFSS) survey data to monitor and analyze program strategies and determine program efficiency.<sup>87, 139</sup> In addition to BRFSS, LTCP used public data from the CDC National Youth Tobacco Survey (NYTS), National Adult Tobacco Survey (NATS) and the surveillance system of the CDC Smoking-Attributable Mortality, Morbidity, and Economic Costs (SAMMEC) report.<sup>87, 93</sup> To guide tobacco control programming for minors, in Fiscal Year 2007/2008, the LTCP administered the Youth Tobacco Survey and Youth Risk Behavior Survey in Louisiana with the Louisiana Department of Education.<sup>102</sup> The surveys had last been conducted in 2000. The LTCP and DEO received assistance from TFL. The LTCP also used data from the Louisiana DHH's Louisiana Pregnancy Risk Assessment Monitoring System (LaPRAMS)<sup>93</sup> that provides state-specific data for planning and assessing health programs and for describing maternal experiences that may contribute to maternal and infant health.<sup>140</sup> LaPRAMS formed at the DHH in 1987 to understand the slowing rate of infant mortality reductions in Louisiana.<sup>140</sup> As of 2018, DHH was using LaPRAMS data partly to determine and report the percentage of pregnant women that smoke during their third trimester.<sup>140</sup>

The LTCP also relied on data from the Campaign for Tobacco-Free Kids (CTFK)<sup>139</sup> and the North American Quitline Consortium's Minimal Data Set (MDS).<sup>87</sup> We do not know the data sets LTCP used from CTFK. The MDS data set helps determine quitline quality and effectiveness, as well as the usefulness of cessation methods and interventions.<sup>141</sup> MDS launched in 2005, using funding from the CDC, NCI, Health Canada, and health volunteers.<sup>141</sup>

## **Evaluation and Data Collection Methods of TFL**

TFL hires research firms, conducts polls, and uses data from government-run surveys to inform its efforts and guide programming. The program hired Market Dynamics Research Group, Inc. (MDRG) in 2004 to hold focus groups and determine messaging for an advertising campaign held in Spring 2005.<sup>56</sup> MDRG performed pre and post surveys around the Spring 2005 media campaign and found that awareness of TFL increased two-fold, that respondents recalled messaging on the negative effects secondhand smoke, and that they were likelier to accept facts on secondhand smoke and take action to circumvent exposure.<sup>56</sup> TFL hired MDRG again in 2008

and 2010 to evaluate the reach and effectiveness of its “Let’s Be Totally Clear” media campaigns.<sup>52, 70</sup>

To inform prevention and cessation programming, beginning in FY 2008 TFL began biannually administering the Adult Tobacco Survey (ATS), a statewide phone poll of adults in Louisiana, to observe patterns and instruct its work on tobacco prevention and control.<sup>52</sup> TFL also assisted the LTCP and Louisiana Department of Education with conducting the YRBS and YTS in FY 2008.<sup>52</sup> Additionally, TFL relied on data from BRFSS<sup>70</sup> and YTS.<sup>142</sup>

To promote state and local policy initiatives and defend against attacks by policy opponents, TFL conducts and releases its own research.<sup>142</sup> TFL has produced opinion surveys on proposed clean air legislation, as well as research on the economic effects of clean air policies, air quality in establishments after smokefree laws passed compared to air quality beforehand, the health impacts of tobacco use and exposure, as well as the targeting of minors and minorities by point of sale advertising and location.<sup>142</sup>

## **State and Regional Allies of LTCP and TFL**

### ***Area Health Education Centers***

The LSU School of Medicine in New Orleans established Louisiana Area Health Education Centers (AHEC) using a 1988 grant from the federal government’s Area Health Education Center program.<sup>143</sup> Louisiana AHECs worked to mitigate healthcare employee scarcity in rural and underserved places, generate student interest in healthcare careers, and hone the skills of medical practitioners by offering health services in their areas of operation.<sup>144</sup> Four regional AHECs (North, Central, Southeast, Southwest) operated in Louisiana during 2018 using funds from cooperative agreements with the LSU School of Medicine – New Orleans.<sup>143</sup>

Two of Louisiana’s AHECs, the Southwest Louisiana AHEC and Central Louisiana AHEC, conducted school and community-based tobacco control education, prevention, clean air policy formulation, and cessation initiatives.<sup>145-147</sup> The Southwestern Louisiana AHEC and Central AHEC received grants from the Rapides Foundation in 2010 to help businesses develop and implement clean air policies and administer the school tobacco prevention initiative Tar Wars on behalf of the funding organization.<sup>147</sup> In addition, the Southwestern Louisiana AHEC assisted hospitals with developing tobacco-free policies as part of the LTCP’s Project HEAL in 2010.<sup>148</sup> Besides prevention, education, cessation, and workplace policy initiatives, Southwest Louisiana AHEC engaged in a 2005 campaign to secure a local, limited smokefree policy for the city of Lafayette.<sup>146</sup> The Lafayette campaign was part of local legislative efforts by health and tobacco control advocates across Louisiana to generate support for a strong statewide clean air law that fully repealed preemption over local control (Chapter 10). The Lafayette ordinance passed in 2005 and advocates later secured a strong statewide clean air law ending preemption in 2006 (Chapter 10).

The Southeast Louisiana AHEC and North Louisiana AHEC engaged in tobacco control to a lesser degree. The Southeast Louisiana AHEC administered the Tar Wars program.<sup>149</sup> We found evidence of tobacco control expenditures by North Louisiana AHEC in 2012, but could not determine how the center used the money.<sup>150</sup>

Allen  
Avoyelles  
Catahoula  
Grant  
LaSalle  
Natchitoches  
Rapides  
Vernon  
Winn



Figure 4.4: Parishes Served by the Rapides Foundation<sup>152</sup>

### ***Rapides Foundation***

The Rapides Foundation is a health nonprofit that formed in 1994<sup>151</sup> to serve nine parishes in central Louisiana (Figure 4.4).<sup>117</sup> The foundation was created when nonprofit healthcare provider the Rapides Regional Medical Center entered a joint venture with healthcare company Columbia/HCA, sold its brand and operating assets to healthcare provider Central Louisiana Healthcare Systems

Partnership (retaining 26% interest of the Rapides medical system), and became a grant organization.<sup>153</sup> The Center transitioned into the Rapides Foundation to ensure adequate medical and health care in Central Louisiana and insure the area's wellbeing in the face of adverse market forces. The Foundation started with a \$140 million endowment<sup>154</sup> made using funds from the sale of the Rapides Regional Medical Center.<sup>117</sup>

Operating exclusively on the endowment, the Rapides Foundation provides grants and conducts programming for community economic improvement, health, and education initiatives.<sup>117</sup> As part of its health efforts, the Foundation has funded and orchestrated tobacco control work in Central Louisiana.<sup>117</sup>

The Rapides Foundation engaged in tobacco control after its board analyzed BRFSS and YRBS data from 2005 during 2006 and found many deaths were attributable to tobacco related illnesses such as cancer and heart disease.<sup>117</sup> According to Rapides Foundation Programs and Communications Director Annette Beuchler in a 2013 interview for this report:

The Rapides Foundation engaged in tobacco control after its board analyzed BRFSS and YRBS data from 2005 during 2006 and found many deaths were attributable to tobacco related illnesses such as cancer and heart disease.

In '06, when our board looked at the data, of course tobacco statistics were one of the top things, and when you look at the eight causes of death, or whatever, everything relates back to heart disease, cancer. Everything relates back to tobacco use or obesity. So this is why our board chose to work in tobacco prevention.<sup>117</sup>

Foundation officials also determined that residents in the regions it serviced were not knowledgeable on tobacco use's harmful effects.<sup>117</sup> Dr. Thom Farley, an issue expert for Rapides, analyzed the data after the board scrutinized the information and recommended the Foundation focus on prevention and supporting healthy lifestyle behaviors.<sup>117</sup>

As a result, in 2007, the Rapides Foundation reached out to the Tobacco Technical Assistance Consortium at Emory University for assistance forming a tobacco control plan.<sup>117</sup> Rapides sought TTAC for aid since that organization was helping the CDC form a tobacco prevention plan, had appeared at multiple conferences covering tobacco control, and recognized differences in urban and rural communities.<sup>117</sup> The Rapides Foundation and TTAC established encouraging adult cessation and youth tobacco prevention in covered regions as program priorities. Rapides and TTAC developed a five-year plan consisting of initiatives and grants to stimulate community engagement, encouraged medical providers to recommend tobacco-using patients quit, and counter marketing. The Rapides Foundation added smokefree air as another program goal. Rapides contacted LTCP and TFL to ensure they were not copying ongoing initiatives, to guarantee it and TTAC's plan for tobacco prevention programming was complimentary to their ongoing work and would not drive them out of the region.

The Rapides Foundation has maintained contact and collaborated with LTCP and TFL on a variety of tobacco control initiatives. In 2008, the Foundation helped LTCP with events they held in central Louisiana for a statewide, sports-oriented tobacco-free initiative called the Louisiana Tobacco-Free Sports Statewide Program they organized with the New Orleans Saints, a team in the National Football League.<sup>117, 155</sup> The sports program intended to highlight sports and exercise as alternatives to smoking.<sup>155</sup>

The Foundation also participated in a statewide tobacco advocacy focused Youth Summit organized by LTCP and TFL at an unknown point. LTCP, TFL and Louisiana Youth Prevention Services began the annual summits in 2008 to inform student leadership about tobacco industry marketing practices and generate policy suggestions for the state.<sup>102</sup> The Rapides Foundation subsequently organized regional Youth Summits, and broadened them to also focus on non-tobacco issues in 2013<sup>117</sup> and continued to do so in 2018.<sup>156</sup>

The Rapides Foundation implemented a tobacco control and prevention plan crafted with TTAC in 2008.<sup>117</sup> Community engagement grants primarily went to Area Health Education Centers (AHEC) operating in parishes serviced by the Rapides Foundation.<sup>117</sup> Central Louisiana AHEC (eight foundation regions) and Southwestern Louisiana AHEC (one foundation region) both received grants to host Kick Butts Day and Great American Smokeout events.<sup>117</sup> CLAHEC also received funding to organize a regional Youth Summit inspired by LTCP and TFL's statewide Youth Summit<sup>117</sup> (which the Rapides Foundation originally participated in with the programs), and CLAHEC and Southwest Louisiana AHEC were awarded grants to implement a school tobacco prevention education initiative titled Tar Wars.<sup>147</sup> The programs were part of the Rapides Foundation's objective to improve health in its home region.

The Rapides Foundation has run tobacco counter-marketing campaigns from 2008 to at least 2018. Campaigns used Centers for Disease Control and Prevention tobacco ads, National Alliance for Tobacco Cessation ads, Truth Initiative ads, and Rick Bender ads for counter-marketing efforts.<sup>117, 157</sup> Rick Bender is an advocate that discusses his experience with oral cancer caused by using smokeless tobacco. The Foundation complimented Bender's advertisements by arranging for him to talk at junior and senior high schools.<sup>117</sup> In 2010, the Rapides Foundation ran its own "Faces of Tobacco" advertising campaign that featured people

who died from tobacco use, were harmed by tobacco use, and those who lost loved ones to tobacco-related illnesses.<sup>158</sup> Rick Bender also participated in that campaign. Foundation ads aired on radio, television, social media, and billboards.<sup>117</sup> The foundation spent approximately \$1 million per year in 2008 and 2009, and subsequently dropped annual funding to \$800,000, and then \$700,000 per year by 2014.<sup>117</sup> The Rapides Foundation continued to air tobacco counter marketing ads in 2018.<sup>159</sup>

### ***Coalition for a Tobacco-Free Louisiana***

Health and tobacco control advocates established the Coalition for a Tobacco-Free Louisiana by 1999<sup>160</sup> to inform and lobby lawmakers on tobacco control policy.<sup>93, 161</sup> CTFLA reorganized under the Louisiana Public Health Institute in 2001 and operated using a Robert Wood Johnson Foundation grant given to the institute that year. By August 2003 CTFLA received additional funding from The American Cancer Society, American Heart Association, the American Lung Association of Louisiana, and the Office of Public Health at the Louisiana DHH.<sup>162</sup> The coalition grew to 30 partners by June 2004 (Table 4.12).

CTFLA aided passage of the Tobacco Tax Healthcare Act in 2002 that helped create TFL (Chapter 11), secured partial preemption repeal over local clean air restrictions in 2003, and helped obtain a statewide clean air law prohibiting smoking in most public places besides bars and casinos in 2006 that also fully repealed preemption (Chapter 10).

Over time, CTFLA membership consisted of the American Cancer Society, American Lung Association, American Heart Association, LTCP, TFL, The Rapides Foundation, LSU Health Sciences Center Tobacco Control Initiative (TCI), and other state-based partners. The LTCP sent staff members to serve as representatives in the CTFLA beginning in 2003.<sup>139, 161</sup> TFL, who's administrating organization LPHI hosted CTFLA, would later partner and work alongside coalition members after it formed in 2004 (Chapters 10-12).

Opposition to the Coalition and its policy objectives from Governor Jindal and his administration in the late 2000s resulted in LTCP ending participation in the CTFLA sometime between 2011 and 2013.<sup>139, 161</sup> According to LPHI CEO Joseph Kimbrell in a 2016 interview for this report:

The CTFLA aided passage of the Tobacco Tax Healthcare Act in 2002 that helped create TFL, secured preemption repeal over local clean air restrictions in 2003, and helped obtain a statewide clean air law prohibiting smoking in most public places ....

The state health department...there have been times when they couldn't play much of an advocacy role, just particularly during the Jindal administration years. They'll be able probably now [in 2016] to be a lot more assertive or be a lot more vocal about any kind of tobacco issue at this point. But there've been years in there where that was tough.<sup>10</sup>



Table 4.12: Early CTFLA Membership in June 2004 <sup>163</sup>	
Donor Members	American Cancer Society
	American Heart Association
	American Lung Association
	American Medical Association
	Robert Wood Johnson Foundation
	Louisiana Department of Hospitals Office of Public Health*
Standard Members	Aneurysm Outreach, Inc.
	Better Breathers Club of Central Louisiana
	BlueCross Blue Shield of Louisiana
	Cancer Association of Greater New Orleans
	Environmental and Health Council of Central Louisiana
	Gibbsland Youth Community Resource Center
	Girl Scouts of S.E. Louisiana
	Healthy Lifestyle Choices
	Louisiana Academy of Family Physicians Foundation
	Louisiana Cancer Control Partnership
	Louisiana Department of Health and Hospitals Office of Addictive Disorders
	Louisiana Department of Hospitals Office of Public* Health Tobacco Control Program
	Louisiana Department of Justice
	Louisiana Health Care Review, Inc.
	Louisiana State Medical Society
	LSU Health Sciences Center
	Mary Bird Perkins Cancer Center
	No Smoking Environment Coalition of Greater New Orleans
	North Louisiana AHEC
	Peers Against Tobacco
	Southwest Louisiana AHEC
	Tangipahoa Alcohol and Drug Abuse Council
	Tulane University School of Public Health and Tropical Medicine
	United Way of Northeast Louisiana
*Counted as one entity instead of two.	

After LTCP discontinued participation in CTFLA efforts, the state program maintained contact with the coalition to keep informed on policy advocacy efforts.<sup>87</sup> CTFLA was last active in 2018, when it unsuccessfully pushed for comprehensive statewide smokefree bill HB881 (Chapter 12).

### ***Louisiana Tobacco-Related Health Disparities Collaborative***

The Louisiana Primary Care Association and the Louisiana DHH's Chronic Diseases Prevention and Control Program formed the Louisiana Tobacco-Related Health Disparities Collaborative to bolster outcomes for patients with cardiovascular disease and diabetes at health centers.<sup>93</sup> LTCP worked with the Louisiana Tobacco-Related Health Disparities Collaborative from 2009 to 2018.<sup>93</sup> The Louisiana Health Disparities Collaborative consisted of LTCP, the Louisiana Primary Care Association, and the Chronic Disease Prevention and Control Program of the DHH. The collaborative trained medical staff to offer cessation services and track tobacco use by patients.<sup>93</sup> LTCP also incorporated its Fax-to-Quit LA and Project HEAL programs into the Louisiana Health Disparities Collaborative.<sup>93</sup>

### ***Smoking Cessation Trust***

The Smoking Cessation Trust (SCT) is a free quit program available to Louisianans that initiated smoking before September 1, 1988.<sup>164, 165</sup> The Trust formed in 2011 and started providing cessation assistance in 2012<sup>166</sup> after the class action lawsuit *Scott v. American Tobacco Co*, a case filed in 1996 against major tobacco companies, received a final ruling in 2011.<sup>165, 166</sup> The decision mandated the formation of a 10 year quit program funded by the tobacco companies that used fact-based cessation methods.<sup>166</sup> Program architects designed the Smoking Cessation Trust using the US Public Health Service’s guideline, *Treating Tobacco Use and Dependence: 2008 Update*.<sup>166</sup> The program consists of health organization interventions, quit lines, quit programs, and compensation for any medication and nicotine replacement therapy used to aid cessation.<sup>166</sup>

Table 4.13: Membership of Louisiana Healthy Communities Coalition Leadership Council <sup>169</sup>
Louisiana Comprehensive Cancer Control Program
Louisiana Public Health Institute
DHH Health Promotion Team
American Cancer Society

Smokers must apply and be approved to participate in the Smoking Cessation Trust program.<sup>165</sup> Over 200,000 Louisianans qualify for cessation services from SCT,<sup>164</sup> and by late June 2014, 17,109 state residents were program members.<sup>166</sup> Participants receive free assistance for their first two quit attempts each year, and according to the Smoking Cessation Trust website, choose between “phone support/coaching, physician assistance, group cessation counseling, &/or medications.”<sup>165</sup> Over 20 health providers participate and provide services for SCT as of December 2019. The SCT offers qualifying persons quit coaches and other quitline services, and nicotine replacement therapy via LTCP and TFL’s joint quit line.<sup>87, 167</sup> The Smoking Cessation Trust ends in 2022.<sup>165</sup>

### ***The Louisiana Healthy Communities Coalition***

The Louisiana Healthy Communities Coalition is a nine-member network of regional coalitions dedicated to improving overall health in the state, including reducing smoking rates.<sup>168</sup> A leadership council and an advisory board consisting of health voluntary representatives and public health officials guide the coalition’s efforts (Table 4.13).<sup>169</sup>

LHCC initially formed in 2004 as a smaller Regional Comprehensive Cancer Coalition (RCCC) to bolster community cancer screenings, as well as cancer and tobacco prevention education.<sup>169</sup> According to LHCC, RCCC coalitions formed a Tobacco Subcommittee that acted as a “...stand-alone coalition that expanded the RCCC’s tobacco prevention education efforts to include local, regional, and statewide tobacco control policy, systems and environmental changes.”<sup>169</sup> RCCC and TSC coalitions merged in September 2013 into the 9-member network of regional coalitions known as the LHCC<sup>169</sup> as of 2020.

TFL collaborates with four of the nine regional coalitions to reduce smoking rates in some areas or secure smokefree policies in others.<sup>170</sup> Fresh Campus and Defy groups, part of TFL’s Community Advocacy Grant programs, have also participated in Healthy Communities Coalitions.<sup>170</sup> TFL was participating in the Louisiana Healthy Communities Coalition as of 2018. TFL, the Department of Health’s Well-Ahead program (the public-facing brand of the Louisiana Department of Health’s Bureau of Chronic Disease Prevention and Health Promotion, which oversees the state tobacco control program) and the Louisiana Cancer Prevention and Control Programs give the LHCC resources and steer its efforts.<sup>171</sup>

## Conclusion

Louisiana's tobacco control programming and capabilities were limited in scope and effectiveness from the late 1970s until the creation of TFL in 2004. Tobacco control advocates initiated tobacco control efforts in Louisiana in the late 1970s. The DHH implemented and participated in tobacco control initiatives by the mid-1980s but did not have a dedicated program until a CDC STATE Impact grant allowed the agency to form the LTCP in 1993. LTCP received little to no funding and relied on CDC grants to operate. Programmatic issues at the LTCP and strained relations with the program caused tobacco control advocates to seek the creation and funding of a new tobacco control program in 2002. Advocates succeeded in passing a tobacco tax that dedicated 2 cents of revenue towards tobacco control initiatives (Chapter 11) through the LCRC, which led to the launch of TFL in 2004. The tax increased state spending on tobacco control between approximately \$7 million to \$9 million annually, remaining drastically below levels recommended by the CDC's 1999 Best Practices for Tobacco Control report.<sup>45</sup> Poor relations between the advocates behind TFL and the LTCP initially prevented the two programs from significantly cooperating or aligning their work. The devastation caused by Hurricane Katrina in 2005 as well as limited resources caused the tobacco control programs to undergo programmatic alignment guided by TTAC from 2006-2010. Alignment allowed LTCP and TFL to streamline their programming, develop complimentary plans, focuses and initiatives based on their abilities, and allowed them to jointly offer cessation assistance. Although routinely underfunded compared to CDC 2014 Best Practices Recommendations, the LTCP and TFL have developed and implemented effective community intervention programs, health communications and cessation services. The programs have also collaborated with other nonprofits, health organizations, and tobacco cessation groups in Louisiana to advance tobacco control efforts. Louisiana saw significant improvement in tobacco control programming and secured significant tobacco control legislation at the state and local levels by 2020.

## Chapter 5: Early Clean Air Efforts and Preemption (1970-1993)

- The tobacco industry's powerful presence in the Louisiana state legislature helped block 61 clean indoor air bills from passing between 1970 and 1993.
- Most attempts at clean air legislation were not comprehensive policies, instead seeking to eliminate smoking in specific workplaces and facilities.
- Most local control ordinances were weak or limited in scope.
- As the tobacco industry faced a wave of local smoking control ordinances, it changed strategy and pursued accommodation and preemption laws in Louisiana in the State Legislature.
- In 1993, the industry obtained smoking accommodation legislation at the state level, preempting local control for the next ten years.

### Early Efforts at Clean Air Legislation

Efforts to regulate smoking in Louisiana started in 1970, becoming more frequent as years passed. As attempts to secure clean air legislation increased, the Louisiana Legislature remained hostile to any form of smoking restriction, with 61 of 68 attempts to pass statewide restrictions on smoking failing from 1970 to 1993

(excluding resolutions, which did not result in smoking policy changes, Table 5.1).<sup>1</sup> Early bills were generally limited in scope, seeking to prohibit smoking in the Superdome, elevators, public and government buildings, schools, and medical facilities. Despite the weak restrictions of most proposed clean air legislation, only one bill (excluding resolutions) that prohibited smoking in the arena area of the Superdome and did not require enforcement entered law before 1992 (Table 5.1). Most legislation introduced in Louisiana from 1970-1993

Most legislation introduced in Louisiana from 1970-1993 died in their initial committee of referral, either from adjournment or being deferred.

died in their initial committee of referral, either from adjournment or being deferred. In Louisiana, prefiled bills are assigned to a committee by the presiding officer of each chamber.<sup>2</sup> Bills introduced in the House during a session are referred to a committee by the House Speaker, but their decision can be reversed and assignment changed by a majority vote of representatives. The Senate assigns bills introduced during the session via motion. Bills must be relevant to the committee they are assigned. Initial committee assignments are important as legislation can be repeatedly contained and /or killed by unfriendly committees for years, as seen with smoking restriction bills in Louisiana.

Legislative efforts to restrict smoking in Louisiana began in the 1970s at the state level. Lawmakers during that time fruitlessly introduced bills seeking to restrict smoking in public places and public transit. In addition, one legislator unsuccessfully attempted multiple times to restrict smoking at a major New Orleans sports stadium, The Superdome. Smoking restriction bills introduced during the 1970s died without consideration upon adjournment or in their initial

Table 5.1: Timeline of Clean Air Legislation Attempted at the State Level																
Bill / Resolution	Sponsor	Year	Locations Covered													Outcome
			Public Places	Workplaces	Restaurants	Bars	Arenas / Sporting Events	Schools	Gov. Buildings and Property	Healthcare Facilities	Legislature	Elevators	Public Transit	R&D	Preemption	
HB 1293	Graham	1970											+			Defeated
HB 1116	Fowler	1975	+													Withdrawn
HB 647	Waller	1976	+													Died with adjournment
HB 648	Waller	1976										+				Died with adjournment
SB 209	Casey	1977					+									Died with adjournment
SB 583	Casey	1978					+									Died with adjournment in Senate Judiciary Committee
SB 392	Casey	1979					+									Died with adjournment in Senate Judiciary Committee
SRES6	Casey	1979									+					Died with adjournment
SB 292	Casey	1980														Defeated in Senate Commerce Committee
SB 162	Casey	1980					+									Died with Adjournment in Senate Commerce Committee
<b>SCRES 154</b>	<b>Hudson</b>	<b>1980</b>												+		<b>Adopted</b>
SB 689	Casey	1981					+									Withdrawn
HB 1512	Lancaster	1981					+									Withdrawn
SRES3	O'Keefe	1981									+					Unknown
HB 411	Johnson	1982	+													Defeated in House Health and Welfare Committee
HB 1161	Johnson	1983	+						+	+		+	+			Defeated in House Health and Welfare Committee
HB 569	Hudson	1983										+				Died with adjournment in Senate Judiciary Committee
HB 1042	Johnson	1984							+							Defeated in House Health and Welfare Committee
HB 535	Johnson	1985							+							Defeated on House Floor
HB 767	Kenneth	1985			+											Died with adjournment in House Health and Welfare Committee
SB 116	Nicholson	1985								+						Defeated in Senate Health and Welfare Committee
<b>HB 1047</b>	<b>Lancaster</b>	<b>1986</b>					+									<b>Adopted</b>
SB 309	Johnson	1986	+													Died with adjournment in Senate Health and Welfare Committee
SB 683	Hollis	1986										+				Died with adjournment in House Health and Welfare Committee
<b>SR 15</b>	<b>Johnson</b>	<b>1986</b>							+							<b>Adopted</b>
SB 586	Johnson	1987														Defeated in Senate Health and Welfare Committee

Table 5.1: Timeline of Clean Air Legislation Attempted at the State Level																
Bill / Resolution	Sponsor	Year	Locations Covered													Outcome
			Public Places	Workplaces	Restaurants	Bars	Arenas / Sporting Events	Schools	Gov. Buildings and Property	Healthcare Facilities	Legislature	Elevators	Public Transit	R&D	Preemption	
SB 594	Johnson	1987		+												Defeated in Senate Health and Welfare Committee
SCR173	Johnson	1987														Died with adjournment in Senate Labor Relations Committee
HB 1156	Forster	1988								+						Died with adjournment in House Health and Welfare Committee
HB 1814	Lancaster	1988		+												Died with adjournment in House Health and Welfare Committee
SB 545	Johnson	1988							+							Defeated in Senate Health and Welfare Committee
SB 546	Johnson	1988							+							Defeated in Senate Health and Welfare Committee
<b>SR 16</b>	<b>Johnson</b>	<b>1988</b>												+		<b>Adopted</b>
HB 159	Lalonde	1989						+	+	+						Died with adjournment in House Natural Resources Committee
<b>HCSR 17</b>		<b>1989</b>												+		<b>Adopted</b>
SB 154	Johnson	1989							+							Died with adjournment in Senate Health and Welfare Committee
SB 155	Johnson	1989		+												Died with adjournment in Senate Health and Welfare Committee
SB 801	Johnson	1989		+												Died with adjournment in Senate Health and Welfare Committee
SB 802	Johnson	1989							+							Died with adjournment in Senate Health and Welfare Committee
SB 818	McPherson	1989							+							Died with adjournment in Senate Health and Welfare Committee
SB 870	Johnson	1989							+							Died with adjournment in Senate Health and Welfare Committee
<b>SR 8</b>	<b>Johnson</b>	<b>1989</b>												+		<b>Adopted</b>
HB 217	Jackson	1990							+							Died with adjournment on the Senate Floor
HB 397	Lalonde	1990						+	+	+						Defeated in House Health and Welfare Committee

Table 5.1: Timeline of Clean Air Legislation Attempted at the State Level																
Bill / Resolution	Sponsor	Year	Locations Covered													Outcome
			Public Places	Workplaces	Restaurants	Bars	Arenas / Sporting Events	Schools	Gov. Buildings and Property	Healthcare Facilities	Legislature	Elevators	Public Transit	R&D	Preemption	
HB 571	Lancaster	1990						+								Defeated in House Education Committee
HB 924	Carrier	1990						+	+	+						Died with adjournment in House Health and Welfare Committee
HB 1423	Hand	1990		+												Defeated in House Health and Welfare Committee
SB 816	Johnson	1990		+												Defeated in Senate Commerce Committee
SB 826	Johnson	1990							+							Died with adjournment in Senate Commerce Committee
SB 835	Johnson	1990	+	+												Died with adjournment in Senate Commerce Committee
HB 567	Lalonde	1991							+							Defeated on House floor
HB 1292	Jackson	1991							+						+	Passed; Vetoed by Governor
SB 230	Johnson	1991		+												Died with adjournment in Senate Health and Welfare Committee
SB 240	Johnson	1991							+							Died with adjournment in Senate Health and Welfare Committee
SB 243	Johnson	1991		+					+							Defeated on House floor
SB 729	Ullo	1991								+						Defeated on House Floor
HB 286	Hand	1992		+												Defeated on House floor
HB 732	Forster	1992								+						Died with adjournment on Senate Floor
HB 1572	Ellington	1992			+											Withdrawn
HB 1625	Lalonde	1992		+	+					+						Died with adjournment in House Health and Welfare Committee
HB 1626	Lalonde	1992		+					+							Defeated on House floor
HB 1632	Lalonde	1992		+												Died with adjournment in House Health and Welfare Committee
SB 163	Johnson	1992							+	+						Died with adjournment in Senate Health and Welfare Committee
SB 165	Johnson	1992	+	*					+							Died with adjournment in Senate Health and Welfare Committee
<b>HB 1176</b>	<b>Ellington</b>	<b>1992</b>						+								<b>Adopted</b>
<b>SB 147</b>	<b>Fields</b>	<b>1992</b>						+								<b>Adopted</b>

Table 5.1: Timeline of Clean Air Legislation Attempted at the State Level																
Bill / Resolution	Sponsor	Year	Locations Covered													Outcome
			Public Places	Workplaces	Restaurants	Bars	Arenas / Sporting Events	Schools	Gov. Buildings and Property	Healthcare Facilities	Legislature	Elevators	Public Transit	R&D	Preemption	
<b>SB 164</b>	<b>Johnson</b>	<b>1992</b>							+							<b>Adopted</b>
<b>SB 539</b>	<b>Dardenne</b>	<b>1992</b>								+						<b>Adopted</b>
HB 1080	Travis	1993	+		+							+	+		+	Died with adjournment in House Health and Welfare Committee
HB 1086	Travis	1993							+						+	Died with adjournment in House Health and Welfare Committee
HB 1469	Chaisson	1993	+										+			Died with adjournment in House Health and Welfare Committee
SB 147	Johnson	1993							+							Died with adjournment in Senate Health and Welfare Committee
SB 150	Johnson	1993	+						+	+		+	+			Died with adjournment in Senate Health and Welfare Committee
SB 539	Brinkhaus	1993	+													Died with adjournment in Senate Health and Welfare Committee
<b>SB 767</b>	<b>Landry</b>	<b>1993</b>							+						+	<b>Adopted</b>
<b>SB 768</b>	<b>Landry</b>	<b>1993</b>	+		+	+					+	+	+		+	<b>Adopted</b>
*Cultural Venues only.																
**Exempted venues that made over 50% of gross receipts selling alcohol from smoking restrictions.																

committee. 1978 marked the introduction of local smoking restrictions in Louisiana, when the New Orleans City Council also rejected an ordinance to restrict smoking in the Superdome. The tobacco industry opposed few bills during the 1970s according to our research but mobilized its employees to lobby against state legislation and sent representatives to oppose the New Orleans ordinance.

Attempts to pass smoking restriction legislation at the state level increased during the 1980s. The tobacco industry successfully countered smoking restriction bills by mobilizing employee lobbying groups such as the Tobacco Action Network (TAN) and by having its representatives oppose bills alongside figures from third party allies. A growing local regulatory effort by tobacco control advocates across the nation in the 1980s led the tobacco industry to consider altering its legislative strategy in Louisiana. In a 1987 report evaluating potential states for preemption campaigns, the Tobacco Institute noted that tobacco control advocates in Louisiana had supported state-level smokefree bills but not local measures.<sup>3</sup> In contrast to the 23



attempts made in the Louisiana State legislature by June 1987, only 9 local governments had debated local smoking restrictions (Table 5.14), most seeking to prohibit smoking in city council chambers.<sup>3</sup> Still, in 1987 the Tobacco Institute considered pursuing preemption of local legislation in Louisiana as part of a nationwide plan to block the emerging local movement for smoking restrictions.<sup>3</sup> Preemption prohibits local governments from enacting laws stronger than state laws on a given policy issue.

The Tobacco Institute did not plan or mobilize to preempt local control in Louisiana until 1989, when tobacco control advocates became increasingly active at the state level and more cities considered or adopted clean air ordinances across the nation.<sup>4</sup> The Tobacco Institute unsuccessfully tried to pass smoker's rights legislation containing preemption in Louisiana in 1990 with HB 217,<sup>5</sup> and in 1991 with HB 1292.<sup>6</sup> Both bills mandated smoking sections in workplaces, in line with the Tobacco Institute's goal of protecting purported smokers' rights and "prohibiting all discrimination of smokers in ... employment practices."<sup>7</sup> The Tobacco Institute (TI) ultimately pushed lawmakers to pass two smokers' rights bills preempting local control in Louisiana in 1993, the Louisiana Office Clean Indoor Air Act (SB 767) and the Louisiana Clean Indoor Air Act (SB 768). Both laws created a ten-year period of total statewide preemption over local clean air regulations until health advocates secured legislation partially repealing preemption in 2003.

### **Early Attempts at State Clean Air Legislation: 1970-1976**

The first state clean air legislation introduced in the Louisiana Legislature was HB 1293, submitted by Representative Graham in 1970.<sup>8,9</sup> HB 1293 prohibited smoking on buses traveling routes going 10 or more miles past the "corporate limits of any municipality."<sup>8</sup> The bill did not pass.<sup>8</sup>

Tobacco industry documents reveal that Representative Fowler proposed Louisiana's second smoking restriction bill, HB 1116, during the 1975 session. The legislation prohibited smoking in public places, defined as any location that members from two different families might encounter one another except for private residences, hospitality venues, and federal property.<sup>10, 11</sup> Representative Fowler withdrew HB 116 on June 20, 1975 after failing to secure support for the bill.<sup>10, 12</sup>

In 1976 Representative Waller introduced two clean air bills, HB 647 and HB 648. HB 647 outlawed smoking in public restrooms and public entertainment establishments, while HB 648 barred smoking in elevators.<sup>13</sup> Both bills died with adjournment.<sup>13, 14</sup>

### **Major Clean Air Efforts Manifest to Regulate Smoking at the Superdome**

In 1975, a group of nonsmoking Louisianans filed a class action lawsuit against the Louisiana Stadium and Exposition District in the US District Court for Eastern Louisiana in a bid to prohibit smoking at the Superdome.<sup>15</sup> The Superdome, a stadium located in New Orleans, opened in 1975 and became home to professional football team the New Orleans Saints and various events. In the lawsuit, *Gasper v. Louisiana Stadium and Exposition District*, 418 F. Supp. 716 (E.D. La. 1976), plaintiffs claimed that nonsmokers had a basic right to clean air and asserted that stadium officials exposed event attendees unwillingly to harmful secondhand smoke by permitting tobacco use.<sup>16</sup> In September 1976, the federal district court ruled against the

plaintiffs,<sup>17</sup> holding that no constitutionally protected right had been violated and that legislators could resolve the issue.<sup>16</sup>

The Fifth Circuit Court of Appeals upheld the lower court's decision in August 1978. The court noted that state and city lawmakers could restrict smoking in the Superdome.<sup>16</sup> The US Supreme Court subsequently refused an appeal to hear the case.

Senator Casey submitted SB 209 after receiving “many complaints from so many people going to the Superdome that it finally got to the point that I [he] did introduce legislation.”

After the *Gasper* lawsuit was filed and subsequently dismissed in District Court, state and local lawmakers introduced legislation in 1977 to restrict smoking at the Superdome. Senator Thomas A. Casey (D-New Orleans) introduced SB 209 to prohibit smoking in indoor stadiums or sport facilities with seating capacity at or over 40,000.<sup>18</sup> Senator Casey submitted SB 209 after receiving “many complaints from so many people going to the Superdome that it finally got to the point that I [he] did introduce legislation.”<sup>19</sup> Similar to previous clean air bills, SB 209 died upon adjournment.<sup>20</sup>

### ***The New Orleans City Council Considers Restricting Smoking in the Superdome***

Around the same time, the New Orleans City Council proposed an ordinance to prohibit smoking in the Superdome.<sup>21</sup>

The tobacco industry mobilized its staff and employees from allied companies to oppose the ordinance. Philip Morris sales employees lobbied city councilmembers,<sup>21</sup> and volunteers from the Philip Morris Tobacco Action Program (TAP) attended City Council meetings and wrote letters to councilmembers.<sup>21</sup> Philip Morris started TAP to supplement efforts Tobacco Action Network efforts by providing Phillip Morris workers with alerts regarding developing political issues, industry talking points, and instructions on advocating for the tobacco companies.<sup>22</sup> The New Orleans City Council voted against adopting the Superdome smoking restriction ordinance.<sup>21</sup>

### ***Casey Continues to Pursue Stadium Legislation in 1978***

Despite failed efforts to limit smoking at the Superdome in 1977, the arena remained a focal point of state and local clean air legislation the following year. At the state level, Senator Casey introduced SB 583 on May 1, 1978, to outlaw smoking and possession of tobacco products in stadiums and indoor sports facilities with a seating capacity above 40,000 people.<sup>23</sup> The bill died in the Senate Judiciary Committee without a hearing.<sup>23, 24</sup>

### **Local Activity in 1978**

In 1978, the New Orleans City Council considered the first broad clean air ordinance in Louisiana. Submitted on February 21 by Councilman Joseph Giarrusso, Ordinance 7315 prohibited smoking in public elementary and secondary schools (except areas inaccessible to youth), buses, restaurants, retail stores, general businesses, display areas in museums, health care facilities (except in smoking rooms or employee-only areas), auditoriums, meeting rooms, at

public meetings, and seating areas at the Superdome and other indoor arenas.<sup>25</sup> Bars, tobacco retailers, businesses being used for private functions, and contained offices used solely by smokers were excluded from restrictions.<sup>25</sup> The measure assigned enforcement of smoking restrictions to business management and owners<sup>25, 26</sup> and provided the New Orleans Department of Health power to ensure compliance by businesses.<sup>25</sup> Individual violations faced a \$25 fine.<sup>25</sup>

The New Orleans City Council held a meeting to vote on Ordinance 7315 on March 2. At the request of TI, Brown and Williamson tobacco company sent sales representatives to oppose Ordinance 7315 at the hearing.<sup>27</sup> Allied business representatives attending to oppose Ordinance 7315 were Frank Fry of the Louisiana Restaurant Association (LRA), Howard Goodman of the New Orleans Hotel-Motel Association, as well as an unknown number of restaurant owners and hotel managers.<sup>28</sup> The LRA and Louisiana Hotel-Motel Association developed into strong allies of the tobacco industry (Chapter 2). Orleans Parish Schoolboard member Rose Mary Loving also opposed the ordinance.<sup>28</sup> We do not know if the tobacco industry recruited Loving to appear.

Opponents argued against smoking restrictions, claiming businesses faced economic harm and asserting that proprietors should be allowed to serve customers as they desired.<sup>28</sup> LRA representative Fry testified, “We are in the business of service, not enforcement.”<sup>28</sup> New Orleans Hotel-Motel Association’s Goodman also testified that the ordinance would put city businesses at a competitive disadvantage with establishments in nearby towns and parishes not covered by clean air regulations.<sup>28</sup> Schoolboard member Loving stated that Orleans Parish schools had already designated smoking areas for students that had parent approval to smoke, and claimed the ordinance economically harmed the New Orleans education system since the legislation required financially-strapped schools to make costly (but unspecified) changes.<sup>28</sup>

Arguments from Ordinance 7315 supporters focused on protecting public health. The most prominent supporter at the hearing was Dr. Alton Oschner, one of the first US physicians or scientists to highlight the dangers of cigarettes. Oschner published a paper in 1939 that determined smoking had negative health consequences and founded the Oschner Clinic, which participated in later tobacco control coalitions.<sup>29</sup> Oschner told Councilmembers that secondhand smoke could harm bystanders and that exposure was dangerous for people afflicted with cardiovascular or respiratory disease.<sup>28</sup> Attorney Jacob Meyer also testified in support of Ordinance 7315, contesting Councilmember Brod Bagert’s argument that the measure infringed on smokers’ and business owners’ rights by asserting that governments were responsible for ensuring the welfare of their people.<sup>28</sup> In addition to Oschner and Meyer, Councilman Giarrusso had tried to recruit Joseph Califano, then the Secretary of the US Department of Health Education and Welfare who actively opposed the tobacco industry, to attend the meeting.<sup>28</sup> Califano did not accept the invitation.<sup>28</sup>

The City Council voted 6-1 against Ordinance 7315,<sup>26, 28</sup> with only its sponsor Councilman Giarrusso voting in favor. Following the failed vote, Councilmember Frank Friedler Jr. proposed a resolution requesting businesses voluntarily establish no-smoking areas that particularly encouraged restaurant participation.<sup>28</sup> The resolution passed in a 5-2 decision, with Councilmembers Joseph DiRosa and Giarrusso voting against because the legislation had no legal force.<sup>28</sup> A week later, Ben Fontaine of the American Lung Association of Louisiana (and the affiliated Nonsmokers’ Rights Council) criticized Councilmembers that voted against Ordinance 7315 in a public statement.<sup>26, 28</sup> We do not know what role the American Lung

Association of Louisiana or the Nonsmokers' Rights Council played in efforts to pass Giarrusso's ordinance.

Councilmember Giarrusso made another attempt that year to pass clean air restrictions, introducing Ordinance 7498 to prohibit smoking and tobacco possession in seating areas of all arenas with a seating capacity surpassing 20,000 people, affecting most notably the Superdome.<sup>30</sup> Upon the advice of its local counsel, TI requested in a legislative bulletin that tobacco companies recruit three or four additional tobacco company staff to attend the August 17 hearing for the ordinance.<sup>30</sup> TI asked that the employees watch as members of the public and not reveal their employment by the tobacco industry. In one memo, TI official L. Gordon directly asked Lorillard Division Manager of Field Sales in New Orleans, A.C. Saldinger, to send three or four staff "...to show that there are interested citizens at the hearing."<sup>31</sup> The letter asked Saldinger and his employees to avoid revealing they were tobacco company staff.<sup>31</sup>

At the hearing, the New Orleans City Council deferred action on the ordinance due to an opinion provided by Louisiana's Attorney General stating that the measure violated state law.<sup>30</sup> <sup>32</sup> Giarrusso had also asked the New Orleans City Attorney to issue an opinion on his ordinance's legality.<sup>30</sup> Assistant City Attorney Jackson McNeely issued an opinion concurring that Giarrusso's ordinance violated Louisiana state law because local governments were preempted from regulating the state government, and the Superdome operated under the authority of the Louisiana Stadium and Exposition District, a state agency.<sup>32</sup>

As a result of the opinions from the Louisiana Attorney General and the New Orleans Assistant City Attorney, Councilman Giarrusso delayed the second hearing for Ordinance 7498 until September 21, then again until October 5, 1978.<sup>30, 33</sup> When the City Council considered the ordinance, members split 3 to 3, defeating it.<sup>33</sup> Instead, the New Orleans City Council unanimously passed a resolution on October 12 imploring Governor Edwin Edwards (D) to impose smoking restrictions on the Superdome.<sup>33</sup> The Tobacco Institute was not prepared to oppose the resolution since it was not listed on the City Council Meeting agenda.<sup>33</sup> TI considered the resolution ineffectual and benign since it had no legal effect, yet reasoned it gave Councilman Giarrusso a reprieve from constituent pressure for smoking restrictions.<sup>33</sup>

While attempts to impose clean air laws floundered in New Orleans, efforts continued at the state level.

### **1979: Casey tries for the Superdome again with SB 392**

Senator Casey repeatedly pursued Superdome smoking restriction legislation. He proposed SB 392 on April 25, 1979 to prevent smoking in the Superdome.<sup>34</sup> Similar to 1978's SB 583, SB 392 went to the Senate Judiciary Committee and died without a hearing.<sup>34, 35</sup> Casey also proposed Senate Resolution (SR) 6 in April 1979 to bar smoking in Senate Committee rooms.<sup>34</sup> The resolution also died with adjournment.<sup>34</sup>

Casey renewed efforts to restrict smoking in the Superdome in 1980. He submitted SB 162 to prohibit smoking in any indoor stadium or sports facility seating 40,000 or more persons.<sup>36</sup> In an interview regarding SB 162 with the *Times-Picayune*, Senator Casey admitted to not aggressively pursuing his past Superdome legislation because Superdome officials previously assured him they would install proper ventilation systems and would regularly display a courtesy

“no smoking” message on the scoreboard.<sup>19</sup> The bill died in the Senate Commerce Committee without a hearing.<sup>36</sup>

### **1980: SB 292 “Louisiana Indoor Clean Air Act” Defeated by the Tobacco Industry**

While Senator Casey introduced Superdome legislation, he and clean air proponents focused their energy on another bill Casey introduced on April 30, 1980, the Louisiana Clean Indoor Air Act (SB 292). According to TI’s records, SB 292 restricted smoking “in places of work, retail stores, public transportation, schools, healthcare facilities, auditoriums, arenas, public meeting rooms, theaters and concert halls, museums, and art galleries.”<sup>36</sup> SB 292 also allowed restaurants able to seat more than fifty people to restrict smoking. SB 292 was assigned to the Senate Commerce Committee.<sup>36</sup> SB 292 marked the first time a comprehensive clean air law was attempted at the state level since 1975. SB 292 received support from the Louisiana Lung Association.<sup>37, 38</sup> In an interview with the *Times-Picayune* on his clean air legislative efforts in May 1980, Casey stated that he would “make a very concerted effort to get the Lung Association bill passed” that year.<sup>19</sup>

The Tobacco Institute and its allies mobilized to defeat the Louisiana Clean Indoor Air Act. In 1980, TI was already in the southeastern states through its Tobacco Action Network (TAN) and Tobacco Tax Council (TTC) (Chapter 2). Senior Vice President of the TI State Activities Division in Washington DC and National TAN Director, Jack Kelly,<sup>39</sup> circulated an action alert on May 19, 1980, calling for “TAN member company volunteers ... along from other industry segments, to attend the Commerce Committee Hearing on S 292 ... once a date for the hearing was established.”<sup>40</sup> By the end of February 1980, 146 members had enrolled in TAN in Louisiana, creating a pool of allies for the industry to utilize.<sup>41</sup> Kelly requested that TAN corporate coordinators immediately activate TAN members to attend the committee hearing for SB 292 in advance of a set date with him or Roger Mazingo, a TI Vice President and the Southern Region Director of Field Activities,<sup>41</sup> so TAN participants could rally on short notice.<sup>40</sup> Despite preparing for immediate activation, TI failed to mobilize TAN members for SB 292’s first hearing.

The Senate Commerce Committee considered SB 292 on June 12, 1980, the first time smoking restriction legislation received a hearing.<sup>42</sup> We do not know if the tobacco industry appeared publicly at the first hearing. Committee members added multiple amendments, including one removing the prohibition on smoking in shopping centers, then scheduled another hearing, which occurred on June 18.<sup>43</sup>

The Senate Commerce Committee considered SB 292 on June 12, 1980, the first time smoking restriction legislation received a hearing.

TI mobilized its TAN network for the second hearing. TI Southwest Area Manager Dan Alverson and TAN Director Paul Harrison coordinated the effort to bring in sales staff.<sup>42</sup> TAN reported being “well represented” at the hearing, with TI legislative counsel Joe Wood serving as the primary witness against SB 292.<sup>28, 38</sup> Members from the TAN Advisory Committee of Louisiana, which consisted of Section Sales Manager Lance Jones of Philip Morris, New Orleans Division Manager Jim Fouts of Brown and Williamson, Bill Long of Liggett and Meyers, and

John Fitterer, the owner of Mr. J's Tobacco House in Monroe, Louisiana, as well as eight Philip Morris sales representatives attended the hearing.<sup>38, 42, 44-46</sup> Third-party organizations also appeared at the hearing to protest SB 292, including officials from the Louisiana Healthcare Association (a business organization of nursing homes), the Louisiana Hotel-Motel Association, and the Louisiana Wholesale Tobacco Distributors Association.<sup>28</sup> Barbara Easley, Executive Director of the Louisiana Wholesale Grocers Association and a TAN volunteer, and Campanello, a representative of the Louisiana Restaurant Association identified only by his last name in tobacco industry documents, also attended.<sup>38, 42</sup>

At the hearing, opponents argued that increasing regulation on businesses would be economically damaging. TI Legislative Counsel Joe Wood argued businesses should be allowed to meet public desire and demand without regulatory interference.<sup>28</sup> Tobacco wholesalers claimed that SB 292 would cause them economic harm.<sup>28</sup> Restaurant Association representative Campanello also spoke against SB 292 at the Commerce Committee hearing, but we do not know what he said.<sup>42</sup>

In contrast, tobacco control advocates argued that SB 292 deserved passage because of the health dangers of secondhand smoke. Speaking on behalf of the American Lung Association, Ben Fontaine asserted that studies demonstrated nonsmokers faced increased health consequences from secondhand smoke exposure compared to actual smokers, and as a result deserved clean air.<sup>28</sup>

The Committee defeated SB 292 by a vote of 4 to 3 (Table 5.2).<sup>47, 48</sup> After the vote, Committee Chair Theodore Hickey voiced concern that SB 292 would force businesses to criminalize their clientele.<sup>28</sup>

After failing to pass SB 292, Senator Casey continued pursuing clean air regulations. He announced his intention to convince the legislature to establish a legislative committee to investigate smoking restrictions before the 1981 legislative session.<sup>28</sup> Despite voting against Casey's

Table 5.2: Senate Commerce Committee Membership and Vote Regarding SB 292 <sup>28</sup>	
Member	Vote
Theodore Hickey (Chairman) (D-New Orleans)	No
Thomas Hudson (D-Baton Rouge)	No
Allen Bares (D-Lafayette)	Yes
William McLeod (D-Lake Charles)	No
Lawson Swearingen (D-Monroe)	Yes
Thomas Casey (D-New Orleans)	Yes
Joe Sevario (D-Baton Rouge)	No

SB 292, on June 24, 1980, fellow committee member Thomas Hudson submitted Senate Concurrent Resolution (SCRES) 154 to the Senate Commerce Committee<sup>36</sup> for the Senate and House Commerce Committees to form a joint committee to research the potential for barring smoking in public places.<sup>36</sup> SCRES 154 passed the Senate Commerce Committee and received approval by the full Senate on July 2.<sup>36, 43</sup> After receiving favorable reporting from the House Commerce Committee as well as the House and Governmental Affairs Committee, the House adopted SCRES 154 on July 12, 1980.<sup>36, 43</sup> We found no evidence that tobacco industry members in Louisiana attempted to prevent SCRES 154 from being passed by the Legislature, allowing for the committee to deliver any findings it made during the 1981 session.<sup>49</sup>

## **A Tobacco Control Ally is Elected to the House of Representatives**

In 1980, Jon Johnson (D-New Orleans) was elected to the Louisiana House of Representatives. In 1982 he began introducing tobacco control legislation for smoking restrictions, advertising bans, and designating tobacco as a cause of death on Louisiana death certificates. Johnson pursued tobacco control legislation until he lost his reelection bid for the Senate in 2003.<sup>50</sup>

### **Johnson Pursues HB 411**

On April 20, 1982, Representative Johnson introduced House Bill 411 to prohibit smoking in all state buildings and offices, restaurants that seat fifty or more people, public arenas, and public places (retail stores, buses, educational institutions, nursing homes, hospitals, theaters, museums, and galleries). HB 411 was similar to Senator Casey's S392 and S292 which the industry defeated in 1979 and 1980.

The tobacco industry successfully blocked HB 411 in the House Health and Welfare committee using its lobbyists and TAN volunteers. TAN sent out an action alert ten days after Johnson filed the bill describing it and providing instructions on how to oppose it. TI's State Activities Policy Committee worked to get TAN volunteers to write letters opposing HB 411 to representatives as well as senators if the bill passed the House.<sup>51</sup> A May 1982 internal industry document from a file of Louisiana TAN documents showed that TAN Members received standard industry talking points:

1. No reliable [emphasis in original] scientific evidence exists to support the assumption that incidental exposure to ambient tobacco smoke is harmful to the health of nonsmokers.
2. The bill is so vague and confusing that it is difficult to determine just where a person can or cannot smoke.
3. Taxpayers' money should not be wasted by passing unenforceable laws that do more harm than good.
4. The answer to the public smoking issue lies in mutual courtesy on the part of smokers and nonsmokers. Common courtesy, not punitive legislation, is the answer.
5. If restaurant owners and other establishments catering to the public want to generate goodwill and increase business, they will offer what the public demands without a law to tell them what to do.
6. The tolerance and accommodation needed to resolve minor everyday aggravations cannot – and should not – be legislated.

The onslaught of legislation prompted TI to identify Louisiana as a growing regulatory battleground ....

7. It will cost scarce tax dollars for the state to comply with the provisions of the bill by requiring the posting of signs and the use of government employees to implement the law.

8. Laws that attempt to restrict or segregate smokers in public places are of such low priority

that they receive little or no attention by those charged with enforcement.

9. Small businesses have enough to worry about with adding addition, unnecessary state regulations.<sup>52</sup>

The House Health and Welfare Committee considered HB 411 on May 28, 1982, voting 8-3 to defer and virtually kill the bill.<sup>53</sup> While it mobilized TAN volunteers to write state legislators, TI did not ask them to attend the committee hearing.<sup>54</sup>

Johnson continued to introduce similar legislation in every session up until 1992 when the state passed its limited Louisiana Clean Air Indoor Act.

### The Tobacco Industry Prepares for an Increase in Adverse Legislation

The smoking restriction legislation discussed above, combined with legislation to fund a tumor registry and increase tobacco taxes (Chapter 6), caused the tobacco industry to consider stronger defensive efforts in Louisiana. The onslaught of legislation prompted TI to identify Louisiana as a growing regulatory battleground, with TI Vice President and Director of Field Activities Roger Mozingo reporting to industry officials that 1983 was expected to “be a bastard year.”<sup>55</sup>

During the summer of 1982, after that year’s legislative session ended, TI made its first campaign contributions<sup>57</sup> to members of critical policy committees for tobacco. Recipients included five representatives on the House Health and Welfare Committee, which regularly considered smoking restriction legislation (Table 5.3 and Chapter 3).<sup>55, 58</sup> Mozingo reported to industry officials that the contributions “were very well received and should do a great deal to help strengthen our position.”<sup>55</sup>

### Industry Defends Against Smokefree Legislation during the 1983 Session

State lawmakers introduced five tobacco control bills during 1983. Two bills in the regular legislative session created an annual report on lung cancer in Louisiana, another two set smoking restrictions, and one submitted in a special

Table 5.3: 1982 Campaign Contributions to House Health and Welfare Committee Members during Summer 1982 (Chapter 3) <sup>56</sup>	
Member	Contribution Amount
George C. Connor Jr.	--
Louis Wood Jenkins	--
R. Adley	\$400
Alexander	--
Bajoie	--
Bopp	--
Brady	--
Carson	--
Cusimano	--
Dastugue	--
D’Gerolamo	\$500
Alphonse Jackson	\$500
John Johnson	--
Kember	\$400
Lowenthal	\$500
Lynn	--
Watermeier	--
Total	\$2,300



legislative session raised the tax on cigarette packs from 11 to 16 cents (Chapter 6).<sup>59</sup> None of the legislation passed.

Of the two smokefree bills, Representative Jon Johnson sponsored the more comprehensive one. On May 2, 1980, he introduced HB 1161, the Louisiana Smoking Regulation Act, which prohibited smoking in any facilities owned or operated by the government and restricted smoking in museums, auditoriums, theaters, educational institutions, elevators, and public areas of healthcare facilities.<sup>59</sup> On May 20, the House Health and Welfare Committee voted 8-7 to kill the bill.<sup>59</sup>

The other smoking restriction bill, SB 569 by Senator Thomas Hudson, was also introduced on May 2, 1983. The bill merely prohibited smoking in public elevators.<sup>59</sup> It died in the Senate Judiciary Committee without consideration.<sup>59</sup>

### **Johnson tries again in 1984**

In 1984, Representative Jon Johnson made another unsuccessful attempt to pass smoking restriction legislation. He introduced HB 1042 at the end of April 1984 to restrict smoking in public places and in areas of government buildings open to the public.<sup>60</sup> HB 1042 was assigned to the House Health and Welfare Committee, which effectively killed the bill by voting 7-3 to defer consideration on June 22, 1984. We do not know if the tobacco industry actively opposed the legislation, or if health advocates supported it.

### **Tobacco Control Forces Become More Prominent**

As Representative Johnson continued efforts to restrict smoking, the tobacco industry identified him as a prominent tobacco control advocate in Louisiana. Johnson was the only Louisiana lawmaker listed in a 1985 internal Philip Morris document listing “anti-tobacco legislators” in 36 states.<sup>61</sup> (Louisiana and thirteen other states had one legislator identified as anti-tobacco, while 14 states had none at all.) States with more active legislators included California (4) Connecticut (4), Hawaii (6), Massachusetts (15), New Jersey (3), New York (4), Pennsylvania (4), and Rhode Island (4).<sup>61</sup> At the end of 1985, TI’s political analysis of Louisiana still identified Johnson as a prominent tobacco control legislator in the state.<sup>62</sup>

TI recognized that health voluntaries were becoming more active and a stronger threat in Louisiana by the end of 1985. The American Cancer Society (ACS), American Lung Association (ALA), and the American Heart Association (AHA) collaborated that year to run a media campaign towards a million Louisianans on the importance of tobacco warning labels as tobacco packages with warning labels mandated by the US Surgeon General came out.<sup>62</sup> According to a December 1985 political analysis of Louisiana by RJ Reynolds, the company had considered the health voluntaries weak in prior years. However, RJ Reynolds believed that assistance from the state’s medical society, the Louisiana Medical Association, had strengthened the nonprofits.<sup>62</sup> Even so, RJ Reynolds believed that legislative committees were industry friendly and would defeat the health voluntaries’ legislative agenda.<sup>62</sup>

## Johnson's Continued Effort to Pass Smoking Restrictions, 1985

Representative Johnson introduced HB 535 on April 15, 1985, to prohibit smoking in all government owned or operated facilities (federal, state, and local), elevators, public conveyances, healthcare facilities, and museums.<sup>63, 64</sup> HB 535 was referred to the House Health and Welfare Committee, of which Johnson was a member, on April 22.<sup>65</sup>

The House Health and Welfare Committee debated HB 535 on June 7, 1985, where TI lobbyist Joe Wood Guidry (formerly Joe Wood, Chapter 2) worked to kill the bill. While testifying, Guidry identified herself as a representative of her clients, the Louisiana Hotel Association and the Louisiana Wholesale Distributors Association.<sup>65</sup> According to a narrative report by Guidry on Louisiana's 1985 legislative session from TI's records, she avoided identifying herself as a TI lobbyist at Health and Welfare Committee hearings on clean air legislation to make it appear there was local support for the industry's legislative agenda:

I have not testified against the bill in Health and Welfare for the last 3 years as representing the Tobacco Institute, but I testify representing the La. Wholesale Distributors and the La. Hotel Assoc. This primarily being so it looks more like "home folks" are opposed than "big out-of-staters".<sup>65</sup>

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Joe Wood Guidry expected HB 535 to die in committee on a 6-6 split vote, but the meeting lasted over six hours and a pro-industry committee member had to leave before the vote.<sup>65</sup> Fearing the committee might report HB 535 favorably, Guidry attempted to end the session by having committee member attendance drop below a quorum through unspecified means. However, the committee's Vice Chair, Representative Mary Landrieu,<sup>66</sup> called for a vote to approve HB 535 before there was no longer a quorum. Landrieu's move forced Guidry to unsuccessfully try and bring back pro-tobacco committee members to the meeting before the committee cast a decision.<sup>65</sup> With six members absent, the Health and Welfare Committee voted 4-3 to pass HB 535.<sup>64</sup> The bill became the first smoking restriction legislation reported favorably from the House Health and Welfare Committee.<sup>65</sup>

After HB 535 survived the committee hearing, the House of Representatives held a contentious vote on the bill on June 24, 1985. While on the floor, representatives successfully added amendments adding the Superdome and legislative committee rooms and chambers to smoking restrictions.<sup>64</sup> Unsuccessful proposed changes to HB 535 included exemptions for elected officials from smoking restrictions and increases to the bill's fines.<sup>64</sup>

The tobacco industry's legislative allies prevented HB 535 from passing through the House. Joe Wood Guidry reported that the tobacco industry's friends in the house were dogged in their opposition to the bill, with eight lawmakers supporting the industry's interests during floor debate (Table 5.4).<sup>65</sup> Guidry also reported that six members of the Louisiana Legislative Black Caucus "stayed with us" and opposed the bill despite criticism from HB 535's legislative proponents during debate (Table 5.4).<sup>65</sup> The industry defeated HB 535 in a 57-40 vote.<sup>67</sup> Afterwards, Representative Jon Johnson told the press, "Louisiana has the highest lung cancer rate in the nation, and if the Legislature were seriously concerned about public health, it would approve the bill."<sup>68</sup>

### **Johnson Moves to the Senate, Giving the Industry a Win**

In 1985, Representative Jon Johnson was elected to the Senate. According to a December 1985 political analysis of Louisiana from RJ Reynolds' records, Johnson's switch to the Senate strengthened the tobacco industry's political position in the House Health and Welfare Committee:

This year one of the main proponents of anti-smoking legislation, Representative Jon Johnson of New Orleans, won the race for the Senate. This was good for us because the vacant space on the House Health and Welfare Committee has been filled by a friend of ours, Representative Louis Jetson.<sup>62</sup>

On April 21, 1986, shortly after joining the Louisiana Senate, Johnson introduced SB 309 to restrict smoking in government buildings, public transportation vehicles, educational and healthcare facilities, auditoriums, museums, and elevators.<sup>70</sup> SB 309 exempted stadiums from restrictions. The bill originally was set to be heard in the Senate Governmental Affairs Committee, but on April 24 was re-referred to the Senate Health and Welfare Committee.<sup>70</sup>

The Senate Health and Welfare Committee had members friendly to the tobacco companies that accepted industry contributions. TI's December 1985 Louisiana political analysis referred to Joe McPherson, a recent appointment to the Senate Health and Welfare Committee, as "our friend."<sup>62</sup> Five of the seven committee members had also accepted campaign contributions from the tobacco industry (Table 5.5).<sup>71</sup> Committee member Ron Landry later sponsored two industry-backed laws that instituted preemption over local control, detailed later in this chapter.

At the June 2 hearing, the committee deferred action on SB 309 indefinitely, killing the bill.<sup>72, 73</sup>

The health voluntaries did not cause the problems that TI expected. TI found that while the health organizations desired "non-smokers rights legislation ...during 1986 the health

Table 5.4: Legislators Who Spoke on Behalf of Tobacco Position at HB 535 Vote on the House Floor <sup>65 69</sup>
Robert Adley
Diane Bajoie*
Harry Benoit
Bruce Bolin
Joe Delpit*
Jimmy Dimos
Alphonse Jackson*
Raymond Jetson*
Clyde Kimball
Ralph Miller
Arthur Anthony Morrell*
Willie Singleton*
*Member of the Louisiana Legislative Black Caucus.

Table 5.5: Tobacco Institute Campaign Contributions to Senate Health and Welfare Members in 1986 <sup>71</sup>			
Member	Party	District	Contribution Total in 1986
Jon Johnson	D	New Orleans	\$0
Elwyn Nicholson	D	Marrero	\$0
Gerry Hinton	D	Slidell	\$500
Mike Cross	D	Baton Rouge	\$500
Ron Landry	D	La Place	\$500
Joe McPherson	D	Alexandria	\$500
Gregory Tarver	D	Shreveport	\$500

organizations were relatively quiet<sup>74</sup> It does not appear that health voluntaries participated in the effort to pass SB 309.

### Superdome Legislation Passes in 1986

On May 1, 1986, Representative Charles Lancaster Jr. (R-Metairie) introduced HB 1047 to restrict smoking in the Superdome stadium but “allow smoking in all areas of the Louisiana Superdome except the arena.”<sup>75</sup> Lancaster had received \$300 in campaign contributions from the tobacco industry during the 1983 election cycle.<sup>76</sup> Senators and tobacco control supporters Casey and Johnson cosponsored HB 1047.<sup>77</sup> In contrast to earlier Superdome legislation, Lancaster’s bill moved through the House Health and Welfare Committee, the House Floor, and the Senate Health and Welfare Committee without amendments.<sup>78</sup>

"You don't want me to smoke  
-- I don't want you to drink."

On the Senate floor, Senators Armand Brinkhaus (D-Sunset) and Gerry Hinton (D-Slidell) proposed amendments to prohibit alcohol and chewing tobacco in an effort to kill the bill. After Brinkhaus argued, "You don't want me to smoke -- I don't want you to drink," his amendment was defeated 27 to 8.<sup>79, 80</sup> Hinton's amendment to prohibit chewing tobacco or any other tobacco product was defeated 25 to 10.<sup>80</sup> Brinkhaus subsequently motioned to delay a vote on the bill, which was defeated 26 to 9.<sup>80</sup> The Senate passed HB 1047 in a 30 to 5 vote,<sup>80</sup> and Governor Edwards signed it into law on July 2, 1986.<sup>72</sup> We did not find evidence that the tobacco industry mobilized against HB 1047 or that the health groups mobilized to support it.

Superdome officials sought to avoid implementing the law. The Domed Stadium Commission, which holds authority over the Superdome, requested that State Attorney General William Guste Jr. determine the law’s constitutionality.<sup>81</sup> In a newspaper interview, Superdome General Manager Cliff Wallace indicated concerns of conflict occurring from enforcing HB 1047, stating, “Our staff at the Superdome and the police detail assigned to the building have told me they feel there may be mayhem if they try to eject smokers.”<sup>82</sup>

The Commission subsequently withdrew the request, deciding instead to hold a public hearing over enforcement of HB 1047.<sup>81</sup> HB 1047 provided enforcement responsibilities to the Commission but did not mandate any penalties, causing the Commission to seek public opinion on whether to remove offenders from the stadium.<sup>81</sup> It is not clear whether the Domed Stadium Commission actually held a hearing to determine penalties for HB 1047, or if they enforced the new smoking restrictions.

## **New Problems Begin to Surface for the Tobacco Industry**

In 1986, US Surgeon General C. Everett Koop released his report *The Health Consequences of Involuntary Exposure to Tobacco Smoke*<sup>83</sup> that concluded involuntary smoking (secondhand smoke) caused lung cancer in healthy nonsmokers, lung problems for children, and that “the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.” The tobacco industry attacked Koop’s intentions after the report was released, and asserted the document was more a political product than a scientific one.<sup>84</sup> The report substantially accelerated the discussion of smoking restrictions nationwide and shifted the discussion from separate nonsmoking and smoking sections and the right of personal choice to greater protections for nonsmokers.<sup>84</sup>

Legislation also appeared nationwide to secure warning labels on products with components that caused cancer. In November 1986, California voters passed Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, which required manufacturers to include warnings for any chemical known by the State of California to cause cancer or reproductive toxicity.<sup>85</sup> In 1988, the tobacco industry would see an effort to enact similar legislation in Louisiana.

## **Tobacco Industry Kills Two More Statewide Clean Air Bills from Johnson in 1987**

On February 27, 1987, US Surgeon General C. Everett Koop gave the keynote lecture at a symposium sponsored by the Oschner Medical Institutions in New Orleans highlighting recent conclusions in his Surgeon General’s report on the dangers of secondhand smoke.<sup>86</sup> He advocated that over the next several years anti-smoking efforts focus on creating smokefree workplaces.<sup>86</sup> Koop asserted at the symposium that, “As both a physician and a public health official, it is my judgment that the time for delay is past. Measures to protect the public health are required now.”

While evidence mounted that secondhand smoke was dangerous, Senator Jon Johnson introduced two smoking restriction bills on May 4, 1987, SB 586 and SB 594. SB 586 prohibited smoking in elevators, auditoriums, healthcare facilities, educational facilities, and publicly-owned buildings, but exempted prisons, military bases, bars, restaurants, hotels, and stadiums from restrictions with fines ranging from \$25 to \$50 for violations.<sup>87</sup> SB 594 required employers to provide smokefree conditions satisfactory to requesting staff, even if doing so required prohibiting smoking in a workplace entirely.<sup>87</sup> Both bills went to the Senate Health and Welfare Committee for initial consideration.

The tobacco industry worked to block SB 586 and SB 594 in the Senate Health and Welfare Committee. At a hearing for both bills, TI lobbyist Joe Wood Guidry argued that the evidence of harm from secondhand smoke was inconclusive.<sup>87</sup> Sarah Whalen, Executive Director of the Louisiana Wholesale Tobacco and Candy Distributors Association, also testified against the bills.<sup>87</sup> TI Vice President Ron Morris considered her a regular ally who “responds quickly to our request for legislative support.”<sup>88</sup> Whalen testified that the arguments for Johnson’s bills were emotional and lacked scientific support.<sup>87</sup> On June 8, 1987, the Senate Health and Welfare

Committee voted to defer action 4 to 1 for SB 586 and 5 to 1 for SB 594, with Johnson the only dissenter,<sup>87, 89</sup> killing both bills.

### **New Orleans Attempts another Clean Air Ordinance in 1987**

Since the unsuccessful attempt to pass a clean air ordinance in New Orleans in 1978, there had been a minimal amount of activity on local smoking restrictions in Louisiana. Baton Rouge passed a local clean air ordinance in 1982 prohibiting smoking in public spaces of the Centraplex Arena, followed in 1984 by an administrative order in Hammond and an ordinance in Pineville restricting smoking in public meeting rooms.<sup>60, 90, 91</sup> In 1985, the city of Walker failed to pass an ordinance, and Bossier adopted a resolution prohibiting smoking in city council chambers to preserve new carpeting that had been installed.<sup>92, 93</sup>

Unlike the generally weak smoking restrictions pursued locally in Louisiana after 1978, in 1987 New Orleans City Councilmember Joe Giarrusso introduced a moderate clean air ordinance that triggered significant tobacco industry opposition. On April 1, Giarrusso, a former heavy smoker,<sup>94</sup> held a press conference announcing his intention to introduce a clean air ordinance and a tax ordinance raising the local rate on all tobacco products from 10% to 27.5% of sales price (Chapter 6). Giarrusso was supported by New Orleans American Cancer Society President James Quinn and other ACS officials at the press conference.<sup>94</sup>

Introduced on April 7, the New Orleans Clean Indoor Air Ordinance required employers to develop smoking policies that met the preferences of nonsmoking workers, including prohibiting smoking if necessary.<sup>95</sup> The ordinance also prohibited smoking in public schools (except for employee-only areas), public transportation, elevators, seating sections of indoor sports facilities, cinemas and performance arts venues, libraries, public spaces of grocery stores, healthcare facilities (with exceptions for smoking rooms and employee-only areas), public meetings, and unspecified public places.<sup>95</sup> The ordinance exempted private events, bars, tobacco retail stores, offices where all employees smoke, state-owned property, and public establishments granted approval by the Director of Health to allow smoking. Enforcement was assigned to the New Orleans Police Department, with penalties being a \$25 fine.<sup>95</sup>

TI readied to fight Councilmember Giarrusso's two ordinances. Initially, TI considered using its lobbyist, Joe Wood Guidry, but instead hired public relations firm Haras Incorporated on her recommendation.<sup>96</sup> In a memo to Hurst Marshall, TI Regional VP Ron Morris noted that Haras employed Michael O'Keefe, a "former president of the Louisiana Senate...active in New Orleans Politics" who "control(s) some [unspecified] large blocks of votes."<sup>96</sup> TI also developed a coalition to defeat Giarrusso's ordinances, including Sarah Whalen of Louisiana Wholesale Tobacco, Bill Langkopp of the Louisiana Hotel-Motel Association, and Jim Funk of the Louisiana Restaurant Association, among others.<sup>96</sup>

Preparing to fight the smoking and tax ordinances, Haras conducted public opinion research in New Orleans, including assessing the city's economic state, the condition of local tobacco retailers, and the measures' effects on the tourism economy.<sup>97</sup> Haras believed it could defeat Giarrusso's ordinances by highlighting the alleged negative economic impacts it would have on the city.<sup>97</sup>

Haras realized that defeating the ordinances would not be simple because Councilmember Giarrusso had “an intense personal interest” in passing the measures, making other councilmembers less receptive to outright blocking them.<sup>97</sup> Giarrusso’s fervent desire for tobacco control prompted Haras to avoid communicating with or inciting him.<sup>97</sup>

On May 7, Haras reported to TI Regional VP Ron Morris that it would educate New Orleans city councilmembers on “the problems the ordinances would create” by recruiting local citizens to appear at hearings and contact the City Council to oppose the ordinances.<sup>97</sup> By then Haras had contacted each councilmember (other than Giarrusso) multiple times, with other allies also reaching out to oppose the measures. By the hearing for the ordinances, all six councilmembers besides Giarrusso told Haras they opposed the ordinance.

Haras also contacted third-party allies TI had already contacted, the Louisiana Retail Food Dealers Association and the New Orleans Retail Grocers Association, to have them attend the hearing for the measures.<sup>97</sup> At the hearing, Haras would provide a position paper against the regulations to their representatives.

TI recruited members of the Louisiana business community to help it oppose the ordinance at the hearing.<sup>98</sup> Haras representative Norris Fitzmorris and TI’s Jack Shoemaker contacted industry and small business organizations to increase opposition, with the former securing support from the Louisiana Hotel-Motel association and the Louisiana Restaurant Association.<sup>98</sup>

At the May 7, 1987 hearing, around 150 members of the business community appeared to oppose the clean air ordinance, with more than 30 asking to provide comment.<sup>98</sup> Those that testified against the ordinance included Haras’ Fitzmorris,<sup>99</sup> who spoke on behalf of TI and the Louisiana Hotel-Motel Association, Sarah Whalen for tobacco wholesalers, an unidentified representative for K-Pauls Restaurant, and Tex Stevens and Marie Jackson, who represented different African-American business organizations.<sup>98</sup> We do not know which people or health voluntaries spoke in support of the ordinance at the hearing. Both ordinances were defeated. (Table 5.6)

Following the hearing, TI prepared for another smoking restriction ordinance in New Orleans.<sup>98</sup> In a letter to TI VP for State Activities Hurst Marshall regarding the outcome of Giarrusso’s ordinances, TI Regional VP Ron Morris expected Giarrusso try again due to his “rather fervent and malicious attacks on our industry.”<sup>98</sup> Later in 1987 Giarrusso would again

Table 5.6: New Orleans City Council Vote for Giarrusso’s Ordinances <sup>98</sup>		
Councilmember	Clean Air Ordinance	Tax Ordinance
Boissiere	No	No
Early	No	No
Giarrusso	Yes	Yes
Jackson	Yes	No
Singleton	No	No
Taylor	Yes	No
Wilson	No	No

pursue a tobacco tax increase (Chapter 6); he saved his next attempt at smoking restrictions for the following year.<sup>100</sup>

### **Tobacco Industry Evaluates Feasibility of Local Preemption**

By 1985, the Tobacco Institute began an aggressive nationwide campaign to enact state laws (known as “preemption” laws) that prevented cities and counties from passing clean indoor air laws.<sup>101</sup> Even though TI observed that “local legislative problems have generally been confined to New Orleans and are not expected to present difficulties,”<sup>102</sup> it evaluated Louisiana

TI found that Louisiana was not an immediate threat and recommended that the Institute “hold the line this year and survey the potential for change on a pro-active or a defensive effort after the November election.”

for implementation of a statewide preemption law in 1987.<sup>103</sup> TI realized it and wholesaler associations would have to be the primary drivers of preemption because allied organizations, including the Louisiana Restaurant Association, the Louisiana Hotel-Motel Association, Louisiana Association of Business and Industry, Louisiana Wholesale Tobacco and Candy Distributors, and the Louisiana Grocers Association, were seen as strong allies but unlikely to engage in “critical” efforts to pass a preemption law.<sup>102</sup> TI weighed including the Louisiana Municipal League and Association of Parishes in efforts to pass preemptive legislation, but had no strategy for convincing them to

participate.

TI considered Louisiana’s political landscape and reasoned that comprehensive clean indoor air legislation was unlikely to pass at the state level.<sup>103</sup> TI felt that a strong anti-tobacco collective was operating at the state level in Louisiana and in New Orleans.<sup>103</sup> However, the only legislation that had passed by 1987 was an inconsequential 1986 bill with no enforcement requirements that prohibited smoking in part of the Superdome<sup>72</sup> and a bill restricting smoking in elevators.<sup>103</sup> (We could not find this legislation.) In addition, some cities had considered smoking restrictions but mostly limited legislative efforts to prohibiting smoking in council chambers.<sup>103</sup> In the end, TI found that Louisiana was not an immediate threat and recommended that the Institute “hold the line this year and survey the potential for change on a pro-active or a defensive effort after the November election.”<sup>103</sup>

### **Health Voluntaries Promote Clean Air Policies for Schools in late-1987**

During fall 1987, the American Cancer Society, American Heart Association, and American Lung Association participated in a Tobacco Free Environment Workshop organized by the National School Board Association in New Orleans to promote prohibiting tobacco in schools.<sup>104</sup> The event convinced East Baton Rouge Schoolboard member Maudine Ault<sup>105</sup> to pursue a ban on all tobacco products in school vehicles, facilities and campuses in tandem with an anti-tobacco educational campaign targeting students.<sup>104</sup> The East Baton Rouge school district already prohibited tobacco use by students, but did not prevent employee use.<sup>104</sup>

Following the workshop, Ault, with assistance from fellow school board member Robert Meador, pursued a prohibition on all tobacco use in Baton Rouge school vehicles, facilities, and



campuses.<sup>106</sup> The East Baton Rouge School District's Instructional Services Committee (Ault was a member and Meador was chairman)<sup>107</sup> debated whether the panel should request the school board implement a no-tobacco policy at a meeting on November 10, 1987. ACS, AHA, and ALA representatives attended the hearing accompanied by other supporters of the policy. We did not find evidence of industry opposition at the meeting. The committee requested the East Baton Rouge School Board conduct a survey on staff opinions towards prohibiting tobacco use on school property.<sup>107</sup> The board adopted a smoking restriction policy on May 19, 1988, prohibiting smoking in school facilities and school property (including school transportation).<sup>105</sup> The policy also mandated the creation of designated smoking areas in school buildings as long as they did not affect nonsmokers' rights, were not visible to students, and enough space existed in the structure. Smoking policies would be decided by employees and administration vote at schools lacking existing smoking sections.

### **California Proposition 65 and Smoking in Louisiana**

In 1985, California voters passed Proposition 65, a 1986 ballot initiative that forbade contaminating water resources with chemicals that caused reproductive harm, birth defects, or cancer, and required businesses to notify customers about their exposure to those substances.<sup>108</sup> In 1987, Louisiana lawmakers introduced but failed to pass similar legislation.<sup>109</sup>

On April 11, 1988, with funding from the Chemical Manufacturers Association and the Louisiana Chemical Manufacturers Association, the Louisiana Association of Business and Industry (LABI) and Louisiana State University<sup>110</sup> hosted an "Environmental Carcinogens and Health Risks" conference in Baton Rouge to address concerns about toxic chemicals with the media and legislators.<sup>111</sup> LABI opposed environmental regulation modeled on Proposition 65<sup>112</sup> and the event was meant to educate the media and politicians on the effects of Proposition 65 in California as well as potential contaminant problems within Louisiana.<sup>113, 114</sup> LABI expected 100-150 people to attend the conference, including members of the Natural Resource Committees in the Louisiana Legislature, legislative staff, officials from Louisiana trade associations, and media representatives. An unidentified TI lobbyist and others<sup>113, 115</sup> from Covington and Burling, a Washington DC-based law firm that helped the tobacco industry (and other industries) manage a wide range of scientific regulatory issues, attended the conference.

"If you are not doing something drastic about smoking, you are not serious about cancer control."

Presentations at the conference focused more on lifestyle factors that caused cancer. Environmental groups criticized the presentations for attributing the high cancer rates in Louisiana to lifestyle rather than chemical exposure.<sup>116</sup> One presentation, "Causes of Cancer in Louisiana," by Dr. Pelayo Correa from the LSU Medical Center,<sup>114, 117</sup> stated that smoking

seriously contributed to cancer rates in the state, with one slide reading, "If you are not doing something drastic about smoking, you are not serious about cancer control."<sup>117</sup>

A panel featuring government officials and legislators, including Senate Health and Welfare Committee chairman Mike Cross (D-Baker), provided comments following the conference presentations.<sup>114</sup> Cross said that existing laws and regulations were not properly implemented because of limited funding, and argued that securing new laws only duplicated

those ineffective existing ones.<sup>118</sup> Later in that year's legislative session, Senator Cross abstained from voting on two clean air bills by Senator Johnson when they were heard in his Committee, effectively killing the legislation.

### **Johnson Attempts to Pass Smoking Restrictions for the Ninth Time in 1988**

During the 1988 legislative session, Senator Jon Johnson introduced SB 545 to prohibit smoking in public areas of state and local government buildings, educational facilities, public meeting rooms, the display areas of museums and art galleries, public elevators, and auditoriums. Designated smoking areas were permitted in public transit, healthcare facilities, private offices, restaurants and bars, taxis and limousines, outdoor sports complexes, and correctional facilities.<sup>119</sup>

Johnson also introduced SB 546 to compel employers to adopt policies to protect nonsmokers from secondhand smoke. The bill gave priority to nonsmokers' preferences with implementing regulations to be developed by the Louisiana Department of Health and Hospitals.<sup>119</sup>

Members of Louisiana's medical and public health community spoke in support of SB 545 at a Senate Health and Welfare Committee hearing on June 6, 1988. Dr. Elizabeth Fontham of the LSU Medical School, Ben Fontaine of the American Lung Association, and Louis Trachtman and other Louisiana Health Officers<sup>120</sup> testified. Dr. Fontham told committee members about the elevated lung cancer risk for nonsmokers married to smokers and argued that clean air legislation was needed to protect nonsmokers because they were "exposed without choice."<sup>120</sup> Fontaine echoed Fontham's testimony, arguing that SB 545 protected nonsmokers from secondhand smoke. Louisiana Health Officer Louis Trachtman reinforced both Fontham and Fontaine's arguments, telling the Committee that 5,526 people in Louisiana died in 1986 from conditions attributable to smoking.<sup>120</sup>

Experienced lobbyists testified on behalf of the tobacco industry. Tobacco Institute and Louisiana Tobacco Wholesalers Association lobbyist Joe Wood Guidry and Louisiana Tobacco Wholesalers Association official Sarah Whalen<sup>120</sup> testified against SB 545. Guidry asserted that enforcing smoking restrictions and putting up proper signage would be costly for the state.<sup>120</sup> Responding to questions from committee member Cleo Fields, Guidry asserted she was not convinced that smoking was harmful or caused cancer.<sup>120</sup> Whalen warned that SB 545 "set a precedent for government intrusion."<sup>120</sup>

After listening to the testimony, the committee voted to delay debate on SB 545. Consideration of SB 546 was also delayed until a second meeting was held for both bills on June 13, 1988.<sup>121</sup> (However, SB 546 would actually receive a hearing later in session.) At the hearing, proponents of SB 545 continued to make the case for passing clean air legislation. Sponsor Jon Johnson argued that smoking had negative economic and health effects, and Jean Craig of the Louisiana Tumor Registry testified that smoking was the leading cause of cancer.<sup>122</sup> TI lobbyist Joe Wood Guidry argued that SB 545 carried enforcement costs and that the high cancer rate in Louisiana was not attributable to smoking.<sup>122</sup> As in the past, the Senate Health and Welfare Committee deferred action indefinitely on SB 545, killing it (Table 5.7).

Table 5.7: Senate Health and Welfare Committee Member Votes for SB 545 <sup>120, 122, 123</sup>				
Representative	Party and District	Voted to Defer at June 6 Hearing	Voted to Defer at June 13 Hearing	Contributions from Tobacco Industry in Previous Election Cycles (1983 and 1987)
Mike Cross (Chairman)	D-Baker	Abstained	Abstained	\$900
Ben Bagert	D-New Orleans	No	Absent	--
Cleo Fields	D-Baton Rouge	No	No	--
Gerry Hinton	R-Slidell	Yes	Absent	\$1000
Ron Landry	D-LaPlace	Yes	Yes	\$900
Joe McPherson	D-Alexandria	Yes	Yes	\$1000
Richard Neeson	D-Shreveport	Yes	Absent	--

Seeing that SB 545 and SB 546 were going nowhere at the Senate Health and Welfare Committee, on June 13, 1988 Johnson introduced Senate Resolution 13 to bring both bills directly to the Senate floor for immediate consideration by the full Senate.<sup>119, 124</sup> Senators rejected SR13 twice on June 13, 1988, voting 22 to 10 against it.

Subsequently, on June 16, Johnson introduced Senate Resolution 16 to instruct the Senate Health and Welfare Committee to conduct at least three public hearings to study the impact of smoking on health, welfare, safety, comfort, environment, and economics on Louisiana residents, with a final report and additional recommendations to be delivered to the Senate by March 30, 1989.<sup>119</sup> The original resolution required that the public hearings take place in Shreveport, Baton Rouge, and New Orleans but the final version did not include this requirement.<sup>119</sup>

SR 16 was referred to the Senate Health and Welfare Committee, which held a hearing on both SR 16 and SB 546 on June 27, 1988.<sup>119</sup> SB 546 was heard first and failed to make it out of Committee because members of the panel split on separate votes to defer the bill, report the bill favorably, and report the bill negatively.<sup>119</sup> SR16 survived the meeting, making it back to the Senate Floor with limited amendments and was adopted on June 28, 1988.<sup>119</sup> As passed, the resolution required the committee to hold three meetings to study smoking's effects on Louisianans. Before amendments, the meetings were required to be held in Baton Rouge, New Orleans, and Shreveport. The resolution tasked the committee with subsequently producing an interim report by December 20, 1988 and a final report, with any policy suggestions, for the State Senate by March 30, 1989.<sup>119</sup> The resolution required the committee to invite the US Surgeon General to the hearings. SR 16's passage led the Senate Health and Welfare Committee to hold public hearings regarding smoking in November and December.<sup>119</sup>

### ***Hearings Resulting from Senate Resolution 16***

In November and December 1987, the Senate Health and Welfare Committee held the three public meetings on the effects of smoking on Louisianans required by SR 16. Originally, SR 16 mandated that the meetings take place in Shreveport, Baton Rouge, and New Orleans, but because the provision was removed,<sup>119</sup> all three hearings took place in New Orleans,

significantly limiting public exposure to testimony on the health risks of smoking and secondhand smoke.<sup>119</sup>

The first hearing on November 15 only took testimony from state officials.<sup>125</sup> State epidemiologist Joyce Mathison cited mortality statistics related to smoking in Louisiana and Brobson Lutz, Director of the New Orleans Department of Health, testified that it took multiple efforts to pass a clean air ordinance in New Orleans that year due to restaurant industry opposition powered by TI.<sup>126</sup>

The industry used Holcomb and Weeks to argue that better ventilation was the “solution” to secondhand smoke throughout the country.

At the second hearing on December 8, 1988,<sup>119</sup> the tobacco industry had TI advisor Larry Holcomb of Holcomb Environmental Services,<sup>127</sup> private physician and TI consultant<sup>128</sup> Dr. David Weeks, and Air Conditioning and Ventilations Associates Atlantic (ACVA) representative Peter Binnie appear at the hearing to oppose secondhand smoke restrictions.<sup>129, 130</sup> The industry used Holcomb and Weeks to argue that better ventilation was the “solution” to secondhand smoke throughout the country.<sup>131-134</sup> AVCA, which was rebranded Healthy Buildings International in 1989, also produced surveys and studies, attended legislative hearings, and engaged in promotional tours asserting that poor indoor air ventilation harmed health and not secondhand smoke. During the second hearing, Holcomb testified that secondhand smoke did not cause cancer, and that findings on the health effects of secondhand smoke by the Surgeon General lacked a strong basis.<sup>130, 135</sup> Weeks argued that CDC findings showing Louisiana had five times the average rate of lung cancer cases compared to other states was potentially caused by statistical errors. Weeks admitted there was a correlation between smoking and lung cancer but did not state that a connection existed with secondhand smoke.

TI expected and prepared for an increased amount of smoking restriction legislation during the 1989 session.<sup>136</sup> In particular, TI expected clean air legislation from the Senate Health and Welfare Committee, which planned to convene in January 1989 to draft a bill based on the information gathered in the SR 16 hearings.<sup>137</sup>

### **Other attempts to Pass State Clean Air Regulation**

Besides Senator Johnson’s clean air efforts, Representative Charles Lancaster (R-Metairie) introduced HB 1814, the counterpart to Johnson’s SB 546, on May 2, 1988.<sup>119</sup> HB 1814 restricted smoking in office workplaces and required that employers adopt policies to protect nonsmokers, with nonsmokers’ policy desires taking priority in accordance with regulations to be developed and enforced by the Department of Health and Hospitals.<sup>119</sup> HB 1814 was scheduled for a hearing by the House Health and Welfare Committee on June 7, 1988, but died without consideration.<sup>136</sup>

Representative Gary Forster (R-New Orleans), the vice chair of the House Health and Welfare Committee,<sup>138</sup> introduced HB 1156 on May 2, 1988 to restrict smoking in hospitals except in patient rooms with consent of the patient and doctor.<sup>119</sup> The bill went to the House Health and Welfare Committee where it died without a hearing.<sup>119</sup>

## **New Orleans Considers another Clean Air Ordinance in 1988**

In May 1988 the Tobacco Institute learned that, as expected, Councilmember Joe Giarrusso planned to reintroduce his New Orleans Clean Indoor Air Ordinance.<sup>127</sup> Norris Fitzmorris of New Orleans public relations firm Haras, Inc. reported to TI after the City Council voted on the 1988 legislation that October:

As you will recall, after the May 1987 ‘defeat,’ I told you of my several conversations with Giarrusso and of his determination to keep coming back AGAIN and AGAIN until he was successful![emphasis in original]<sup>139</sup>

The measure barred smoking in elevators, public restrooms, libraries and schools, cinema foyers, lines in public areas, and public transit. In addition, the ordinance restricted smoking in office workplaces that had over 15 employees or businesses that had more than 100 customers daily, required smoking and nonsmoking sections for restaurants with over 50 seats, and allowed hospitals to prohibit patients from smoking in semi-private and private rooms.<sup>140</sup> Initial violations faced a \$100 fine, followed by a \$200 fine for second infractions and \$300 fines for any additional offenses.<sup>141</sup>

While pursuing clean air legislation in 1988, Giarrusso also pursued a “Tobacco Consumption Privilege Tax” to levy a 20% sales tax, nominally a consumption tax for the privilege of using a tobacco product, on any tobacco product purchased in New Orleans.<sup>142, 143</sup> The industry fought the tax as it opposed the Councilmember’s clean air bill (Chapter 6).<sup>144</sup>

TI had AVCA’s Simon Turner and Larry Holcomb of Holcomb Environmental Services appear at the city council hearing to speak against smoking restrictions.<sup>127</sup> Both speakers arrived to testify on September 15 only to find Giarrusso’s legislation had been deferred, a tactic TI believed Giarrusso had used to wait until he had secured enough votes for passage. Turner and Holcomb testified at a later hearing held on October 20. TI also contacted businesses and industry association allies to form a coalition to oppose Giarrusso’s ordinance<sup>127</sup> and expected to secure a 4 to 3 vote against passage.<sup>139</sup>

While TI mustered forces against the ordinance, Giarrusso continued efforts to persuade fellow councilmembers to change their votes.<sup>127</sup> Giarrusso, joined by the New Orleans Health Director, the Chief Epidemiologist of Louisiana, and 40 supporters, picketed three popular restaurants over their smoking policies a week before the October 20, 1988 hearing.<sup>139, 145</sup> Councilmember Giarrusso informed the press about the event, securing free publicity on television of the protest that increased awareness of the smokefree effort.<sup>127</sup>

The New Orleans City Council considered Giarrusso’s ordinance on October 20, 1988,<sup>146</sup> with proponents and opponents appearing in full force.<sup>127</sup> Clean air proponents brought fifteen children ranging from 10 to 15 years old to speak at hearing.<sup>127, 139</sup> A mixture of business associations and paid consultants represented the tobacco industry’s position, beginning with industry consultants Larry Holcomb and Simon Turner.<sup>139, 147</sup> Giarrusso questioned Holcomb’s presentation at the hearing by noting that Holcomb was not a medical doctor and “disagreed with

the Surgeon General and so-called reputable doctors all over the world.”<sup>147</sup> According to Fitzmorris’ summary of the hearing for TI officials, Holcomb and Turner’s presentations had been ineffective, and “fell on deaf ears.”<sup>139</sup> State-based business associations spoke next, with Executive Director Jim Funk of the Louisiana Restaurant Association and David Blitch of the New Orleans Restaurant Association opposing the ordinance.<sup>139</sup>

Before the hearing began, Giarrusso told Fitzmorris that he had the votes to pass the ordinance.

<sup>147</sup> Superdome official Bob Johnson also spoke against the ordinance.<sup>139</sup>

Before the hearing began, Giarrusso told Fitzmorris that he had the votes to pass the ordinance.<sup>147</sup> As discussion began to close, Fitzmorris learned from industry-aligned councilmember Mike Early that Councilmember James Singleton, who had voted against smoking restrictions the previous year, was going to vote for Giarrusso’s ordinance.<sup>139</sup> In his report to TI, Fitzmorris claimed he realized who Giarrusso convinced to become a fourth vote for the clean air ordinance:

As the testimony and debate drew near to an end, I got the word from one of our supporters, Councilman Early that it ‘appeared’ Councilman Singleton was going to switch and vote in favor of the ordinance. And, if that happened, the thinking was Lambert Boissiere would also vote ‘yes.’

With that pronouncement we knew who the fourth (or switch) vote was and why Giarrusso had been so confident of victory.<sup>139</sup>

Councilmembers voted 5 to 2 to adopt the ordinance (Table 5.8).<sup>127, 139</sup> The measure took effect on January 1, 1989, becoming the first major local clean air law in Louisiana.

### **Further Attempts to Restrict Smoking Defeated by the Tobacco Industry at the State Level in 1989**

#### ***Lalonde Pursues Smoking Restrictions in the House***

In 1989, members of the House and Senate introduced legislation to restrict indoor smoking. Representative Raymond LaLonde (D-Sunset) introduced HB 159 on April 17, 1989 to restrict smoking and the use of tobacco products in public schools, hospitals, and state government buildings.<sup>149</sup> HB 159 was the sole tobacco-related bill in the House and died in the Natural Resources Committee without consideration.<sup>149</sup> Representative Lalonde submitted House Committee Study Resolution 17 the same day as HB 159 to request the House and Senate Committees on Health and Welfare study the effects of smoking on the health of Louisianans, the impact of smoking in public schools, hospitals, and buildings, and provide regulatory recommendations to the legislature before the 1990 regular session.<sup>149</sup> Lawmakers approved HCSR 17 on July 4, 1989. However, TI did not expect an interim committee to review the issue until January 1990.<sup>149</sup>

Table 5.8: New Orleans City Council Vote for Giarrusso's Clean Air Ordinance Votes <sup>98, 127, 139, 148</sup>		
Councilmember	1987	1988
Lambert Boissiere	No	Yes
Mike Early	No	No
Joseph (Joe) Giarrusso	Yes	Yes
Johnny Jackson	Yes	Yes
James Singleton	No	Yes
Dorothy Mae Taylor	Yes	Yes
Peggy Wilson	No	No

### ***Johnson Continues his Smokefree Crusade in the Senate***

Senator Johnson introduced SB 154 and SB 155 to restrict smoking on April 17, 1989. SB 154 prohibited smoking in public access areas of government buildings and other public areas, but permitted those in charge of health care facilities or private for-hire transportation to designate smoking areas that were of equal size and quality as nonsmoking areas.<sup>149</sup> Penalties for violations by smokers would be \$25 for the first offense and \$50 for additional offenses. SB 155 required businesses to adopt policies that prioritized nonsmoking employees, including entirely prohibiting smoking if necessary.<sup>149</sup> Both bills were sent to the Senate Health and Welfare Committee where they died without action.

On May 1, 1989, Johnson introduced three additional clean air bills. Two of those bills, SB 801 and SB 802 were identical to SB 155 and SB154, which were stalled in the Senate Health and Welfare Committee.<sup>149</sup> Both bills also went to the Senate Health and Welfare Committee where no action was taken.<sup>150</sup>

The third proposal Johnson introduced on May 1 included industry language. SB 870 restricted smoking in government buildings and required smoking and nonsmoking areas, 35% and 65% of the building respectively, with adequate ventilation systems installed and maintained during office hours. SB 870 went to the Senate Health and Welfare Committee and died with adjournment.<sup>149</sup>

### ***Senate Bill 818: An Industry Friend Introduces Smoking Restriction Bill***

Since the Senate Health and Welfare Committee agreed to introduce legislation based on the study of smoking issues from 1988's Senate Resolution 16, committee member<sup>151</sup> Joe McPherson (D-Alexandria) and four additional sponsors introduced SB 818 on April 9, 1989.<sup>149</sup> TI's strategic analysis of Louisiana had previously identified McPherson as a friend.<sup>62</sup> Similar in language to Johnson's SB 870, SB 818 did not mandate nonsmoking areas, but merely permitted department secretaries in the state government to designate smoking and nonsmoking areas in state government offices based on the ratio of smokers and nonsmokers in the building. SB 870 also required that "adequate ventilation systems" be installed and maintained during working hours, and that smoking and nonsmoking areas be equal in accommodation quality with smokers subject to fines of \$25 to \$50 for violations.<sup>149, 152</sup> Despite this pro-industry language, SB 818 died in the Senate Health and Welfare Committee without consideration.<sup>150</sup>

Senator Johnson's five clean air bills died with adjournment on July 5, 1989. He introduced Senate Resolution 8 the same day,<sup>149</sup> for consideration during a special legislative session predominantly focused on tax legislation.<sup>153</sup> SR 8 instructed the Senate Health and Welfare Committee to again study the effects of smoking on the health of residents of Louisiana, with initial findings to be reported to the Senate on December 30, 1989, and a full report complete with recommendations on March 30, 1990.<sup>149</sup> The Senate adopted Resolution 8 on July 10, 1989.<sup>149</sup> Once again, the Louisiana legislature passed a resolution investigating clean air policies but failed to secure any smokefree laws.

In late August, after the close of the 1989 legislative session, Gray Robertson and Simon Turner visited Baton Rouge and New Orleans as part of their ACVA Atlantic Media Tour. The tour received attention from the press; the media conducted eleven interviews and communicated the pro-industry message "very effectively." The tobacco industry wanted to make sure that Louisiana political officials and the public understood the "importance" of ventilation systems to satisfy the needs of both smokers and nonsmokers going into the regular session in 1990.<sup>154</sup>

### **Health Voluntaries Promote a Clean Air Ordinance for the Baton Rouge Area**

In October 1989, Metro City Councilmember Jay Dardenne introduced a local ordinance titled the Clean Indoor Air Act<sup>155</sup> to restrict smoking in the city of Baton Rouge and East Baton Rouge Parish.<sup>156</sup> According to the Baton Rouge newspaper *The Advocate*, the measure "prohibited smoking in 'all enclosed areas of public places including, but not limited to' city-parish government buildings, schools, libraries, museums, galleries, theaters, auditoriums, hospitals, sports arenas, bowling alleys, convention halls, public rest rooms, elevators, public transportation facilities, and all public transportation vehicles."<sup>156</sup> Restaurants with fewer than 50 seats, one half of mall corridors, retail establishments unable to hold 150 customers, businesses staffing under 15 people, clubs, "private meetings rooms," and recreation centers were excluded. Ordinance enforcement relied on complaints to fire inspectors and police officers with violations carrying a \$100 fine.<sup>156</sup>

At the Metro Council's Finance and Executive Committee hearing for the Clean Indoor Air Act on October 18, 1989, the American Lung Association, TI-contracted scientists, and business proprietors sparred over the ordinance.<sup>155</sup> ALA local chapter chairman Madeline Luther testified that individuals with allergies and respiratory illnesses were adversely affected by secondhand smoke and that the public needed safeguarding from exposure.<sup>155</sup> TI sent scientists who promoted the industry's ventilation "solutions", Dr. Larry Holcomb of Holcomb Environmental Consulting and Walt Decker, to dispute the need for smoking restrictions. Holcomb argued that a year of secondhand smoke exposure in buildings amounted to consuming under half a cigarette and that secondhand smoke composed a fraction of indoor air contaminants. Decker asserted that concrete proof that secondhand smoke caused disease was lacking.<sup>155</sup> Both claimed that their employment by TI did not influence their statements. In addition to Holcomb and Decker, proprietors argued the ordinance created excessive government regulation on businesses. The Finance and Executive Committee sent the measure to the Metro Council without a recommendation.



The Metro City Council considered Dardenne's ordinance on October 25, 1989.<sup>157</sup> At the hearing, Dardenne submitted a third, weakened version of his ordinance designed to overcome political opposition by permitting smoking spaces that afforded nonsmokers "reasonably" clean air and by allowing smoking in private offices. Dardenne also removed a provision requiring places to at minimum make 50 percent of enclosed spaces smokefree sections. Dardenne also eliminated a requirement that businesses create smokefree areas for their nonsmoking employees to the greatest extent possible.<sup>157</sup>

At the hearing, health voluntaries and the local medical community testified for the ordinance while one councilmember and restaurant establishments opposed it.<sup>157</sup> ALA of Louisiana Executive Director Ben Fontaine testified that secondhand smoke caused a fifth of lung cancer deaths in nonsmokers, and public health employees and representatives from AHA and the East Baton Rouge Parish Medical Society testified that Dardenne's measure protected "non-smokers from the ill effects of second-hand smoke." Two restaurant owners testified that smoking restrictions were excessive government regulation. Another Councilmember, Buddy Wilson, introduced a weaker ordinance to compete with Dardenne's legislation. After hearing comments and debating smoking restrictions, the City Council postponed action so that members could analyze the latest version of Dardenne's ordinance.

After the hearing, councilmembers received calls from the public opposing the measure.<sup>158</sup> In an article from *The Advocate*, Dardenne claimed the callers contacted him out of concerns seemingly based on misinformation after a tobacco company sent an action alert to smoker's rights' advocates. Prior to the blitz of negative calls, Dardenne told to *The Advocate* that the public supported his ordinance.

The weakened state of the ordinance led Councilmember Dardenne to call it the "Semi-Clean Indoor Air Act."

The Metro City Council unanimously adopted Dardenne's weakened ordinance on November 8, 1989.<sup>159</sup> As passed, the Clean Indoor Air Act prohibited smoking in enclosed facilities that city, parish, or city and parish agencies resided in or owned, enclosed spaces of voting places, galleries, museums, convention halls, libraries, hospitals (besides patient rooms), auditoriums, theaters, schools, arenas, restrooms, and elevators.<sup>159</sup> Smoking areas were permitted that allowed nonsmokers "to conduct normal activity in a reasonably smoke-free environment."<sup>159</sup> Enclosed, private offices were exempt. The ordinance mandated a \$100 fine for smoking violations and required signage for smoking and smokefree spaces. At the same meeting, the Council approved a resolution asking businesses to implement the tobacco industry's recommended policy of voluntarily restricting smoking to assigned spaces with ventilation. The weakened state of the ordinance led Councilmember Dardenne to call it the "Semi-Clean Indoor Air Act."<sup>159</sup>

## **Louisiana Office Workplace Clean Air Act Defeated by Tobacco Industry Efforts**

### ***The Industry Prepares for a Tough Legislative Session***

In February 1990, two months before the 1990 Legislative Session started on April 19, TI Regional Vice President Ron Morris wrote TI Southern Sector Vice President George Minshew regarding campaign contributions to key members of the Louisiana legislature suggested by lobbyist Joe Wood Berry (formerly Joe Wood Guidry (Chapter 2) (Table 5.9)).<sup>160, 161</sup> Berry argued the contributions were needed to prevent a tax increase during the 1990 legislative session.<sup>160</sup> Berry requested TI provide \$19,000 in campaign contributions to Louisiana legislators. TI decided to contribute \$15,600,<sup>160</sup> some to members of the Senate and House Health and Welfare Committees where smokefree bills generally died.<sup>160</sup> Besides TI, RJ Reynolds made campaign contributions and Philip Morris planned to give \$25,000 (Chapter 3).<sup>160</sup>

### ***Smoke Free Legislation during the 1990 Session***

#### ***Johnson Pursues Legislation***

Tobacco control champion Senator Jon Johnson introduced Senate Bills 816, 826, and 835 to restrict smoking on April 30, 1990. SB 816 and SB 826 were narrow in scope, restricting smoking in workplaces and in state and local government offices respectively.<sup>162</sup> Johnson's third bill, SB 835, more broadly prohibited smoking in auditoriums, hospitals, health facilities, educational facilities, museums, display areas of private museums, galleries, libraries, courthouses, government offices, elevators, and public areas of government buildings. Managers of state government buildings and property could request a waiver from the State Health Officer to avoid implementing smoking restrictions and instead establish smoking areas. The bill exempted office areas closed to the public, bars, restaurants, military facilities, hallways and lobbies of hotels and motels, correctional facilities, public transit, limousines, taxis, as well as outdoor stadiums and arenas. SB 835 required places covered by smoking restrictions to post "No Smoking" signs. Offending smokers faced \$25 to \$50 fines.

Instead of being sent to the Senate Health and Welfare Committee, the bills were sent to the Senate Commerce Committee. In late February 1990, before the start of the legislative session, TI had given a \$400 contribution to Senate Commerce Committee Chairman Lawson Swearingen (D-Monroe).<sup>163</sup> Swearingen also served on the Senate's Business, Finance, and Judiciary Committees,<sup>163</sup> and had received a \$500 contribution from TI in 1988.<sup>164</sup> Before the start of the session, Senator Swearingen wrote TI Regional Vice President Ron Morris thanking him for this February contribution:

I am looking forward to the upcoming session and working together to meet the challenges which lie ahead.

I would like to take this means to commend Joe Wood [Berry] for the outstanding job she does in representing your company. I have known Joe for many years, and she is a very knowledgeable and energetic lady, whom it is a pleasure to work with.

Table 5.9: 1990 TI Campaign Contributions to Key Members of the Legislature<sup>160</sup>

Name	Party	Chamber	Committee/s	Contribution	Comments from the Tobacco Institute
John Alario	D	House	Identified by TI as a Floor Leader	\$500	“Floor leader opposing Governors package.”
Glenn Ansardi	D	House	Health and Welfare	\$500	None
Diana Bajoie	D	House	Health and Welfare	\$500	None
Harry Beniot	D	House	Ways and Means	\$500	None
Bruce Bolin	D	House	Chair Natural Resources	\$500	None
Emile Bruneau	R	House	Chair Governmental Affairs	\$500	None
N.J. Damico	D	House	Business	\$500	“Good person on floor”
John Diez	D	House	Vice Chairman Judiciary	\$500	“Good person on floor”
Irma Muse Dixon	D	House	Governmental Affairs; Municipal, Parochial, and Cultural Affairs	\$500	“Black lady Rep. from New Orleans”
Gary Forster	R	House	Ways and Means; Health and Welfare	\$500	None
Carl Gunter	D	House	Municipal, Parochial and Cultural Affairs	\$500	“Floor fighter”
Buster Guzzardo	D	House	N/A	\$500	“Member of 8 man caucus”
Melvin Irvin	D	House	Ways & Means	\$500	None
Alphonse Jackson	D	House	Chair of House Health & Welfare	\$500	None
Clyde Kimball	D	House	Natural Resources	\$500	“Walks the floor with us”
Mike McClearly	D	House	N/A	\$500	“Always stuck with us”
Billy Montgomery	D	House	Ways & Means	\$500	None
Willie Singleton	D	House	Chair Judiciary Committee	\$500	“Always a friend on health & welfare”
Art Sour	R	House	Ways & Means	\$500	None
Joe Toomy	D	House	Municipal, Parochial and Cultural Affairs	\$500	“Was on Ways & Means and was always a friend”
John Travis	D	House		\$500	“Always our fighter on the floor”
Steve Theriot	D	House	Ways & Means; Health & Welfare	\$500	None
Bobby Waddell	D	House	Chairman of Civil Law	\$500	“Our friend”
Thommy Warner	D	House	N/A	\$500	“Our friend”
Mike Cross	D	Senate	Chairman of Health & Welfare	\$500	None
Gerry Hinton	R	Senate	Health & Welfare	\$500	“Smoker”
Ron Landry	D	Senate	Health & Welfare	\$500	None
Joe McPherson	D	Senate	Vice Chairman Health & Welfare	\$500	
Richard Neeson	D	Senate	Health & Welfare	\$1000	None
Cleo Fields	D	Senate	Health & Welfare; Local and Municipal Affairs	\$500	None
Don Kelly	D	Senate	Chairman Judiciary; Finance; Floor Leader	\$1000	“Strongest Sen.”
Sammy Nunez	D	Senate	President Pro Tempore	\$500	“Former Pres. [of Senate] and always friend”
Cecil Pichard	D	Senate	Chairman Governmental Affairs	\$500	None
Benjamin Rayburn	D	Senate	Chairman of Finance	\$500	None
Lawson Swearingen	D	Senate	Chairman of Commerce; Finance	\$500	None

Whenever I can be of assistance, please feel free to call upon me.<sup>165</sup>

Senate Bills 816, 826, and 835 were deferred multiple times and died in committee.<sup>162</sup>  
*Other Bills*

Senator Johnson was not the only legislator pursuing clean air legislation to run into opposition from tobacco industry-funded committee members. Representative Raymond LaLonde (D-Sunset) introduced HB 397 on April 17, 1990 to prohibit smoking and the use of tobacco products in public schools, hospitals and workplaces.<sup>162</sup> The bill made the Department of Health and Hospitals responsible for implementation and enforcement.<sup>162</sup> HB 397 was referred to the House Health and Welfare Committee, where at a hearing on May 24, 1990 it was tabled in a 7 to 4 vote, killing it.<sup>162, 166</sup>

Representative Kernan Hand (R-Kenner) introduced HB 1423 on April 30, 1990 to restrict smoking in office workplaces and require employers to adopt workplace smoking policies.<sup>162</sup> The bill made the Department of Health and Hospitals responsible for adopting implementing regulations necessary for enforcement. HB 1423 was also referred to the House Health and Welfare Committee, where it was heard alongside Representative Lalonde's HB 397 and Jackson's HB 217 on May 24, 1990.<sup>162, 166</sup> At the hearing, TI and the Louisiana Hotel-Motel Association publicly opposed the bill.<sup>167</sup> HB 1423 died without further consideration after a 6 to 3 vote deferring action.<sup>162, 167</sup>

"Anti-tobacco activists have continued to gain strength in the state legislature during the past two years. Major cities have passed, and other cities are considering, local restrictions on public / private smoking."

### ***The Health and Welfare Committee Endorses Industry-Supported Bill in 1990***

The late 1980s and early 1990s saw a nationwide rise in community-level approaches to controlling the tobacco epidemic by enacting smokefree ordinances and age restriction laws.<sup>168</sup> The tobacco industry responded by pushing state legislators to adopt weak statewide laws preempting local governments from regulating tobacco,<sup>168, 169</sup> sometimes even repealing existing ordinances.<sup>168</sup> The tobacco companies supported weak preemptive statewide smoking laws that purported to protect people from secondhand smoke exposure by mandating separate smoking sections and air filtration systems.<sup>168</sup>

Since the beginning of 1988, 8 local governments in Louisiana attempted to pass ordinances or resolutions restricting smoking with at least 7 passing that mostly restricted smoking on local government property (Table 5.14). In 1990, TI lobbyist Joe Wood Berry told TI Regional Vice President Ron Morris that taxes were the main focus of the regular legislative session because Governor Edward Roemer (R) sought a large tax package (Chapter 6). Although tax increases became TI's primary concern in 1990, it identified Louisiana as a target for pursuing smokefree preemption legislation.<sup>170</sup>

The tobacco industry found Louisiana's smokefree advocacy climate increasingly challenging as it prepared for the 1990 legislative session. An October 1989 TI strategy proposal for the 1990 Louisiana legislative session observed:

Anti-tobacco activists have continued to gain strength in the state legislature during the past two years. Major cities have passed, and other cities are considering, local restrictions on public / private smoking.<sup>171</sup>

As late as October 1989, TI worked to find important lawmakers to serve as sponsors of a bill to preempt localities from adopting smoking restrictions and to preserve smokers' rights.<sup>170</sup> In its October 1989 Louisiana strategy proposal, TI stated it needed to create a grassroots movement, arrange a business coalition, and compile professional witnesses to defend and promote smokers' rights:

- Mass mobilization documenting abuse of smokers' rights.
- Expert witnesses on smokers' rights.
- Back-up counsel to strengthen coalition efforts.
- Conduct search to find smokers whose rights have been abused and persuade them to testify before legislative committees.
- Use expert ETS [environmental tobacco smoke, what the tobacco industry called secondhand smoke] and IAQ [indoor air quality] witnesses to brief lawmakers, allies and the media. Develop favorable op-ed pieces from these experts, and from local experts.
- Work to develop a coalition with business and labor groups, using 'Smoking in the Workplace' seminars to build support from the membership of those groups.
- With member company assistance, develop grassroots mail programs to focus on specific legislators' home districts. Schedule these grassroots efforts and seminars to coincide with the movement of the legislation.<sup>170</sup>

TI drafted legislation for the 1990 legislative session to "protect" smokers' rights in public places and preempt local government's authority to impose restrictions,<sup>170</sup> and hoped to secure sponsorship from important legislators.<sup>172</sup> TI ultimately recruited Representative Alphonse Jackson, Chair of the House Health and Welfare Committee, to sponsor its preemption bill.<sup>173</sup>

### **The Industry Pursues Preemption Amidst Tax Battles**

On April 17, 1990 Representative Alphonse Jackson introduced HB 217 to mandate the creation of smoking and nonsmoking areas of equal quality in all areas of state and local government buildings except for at public hospitals, school board facilities, higher education institutions and health clinics.<sup>162</sup> The bill also preempted all local clean air restrictions, including those already adopted.<sup>162</sup> HB 217 was referred to the House Health and Welfare Committee.<sup>162</sup>

The tobacco industry splintered on how to handle HB 217 because of a battle against a cigarette tax increase it was also waging in Louisiana that year (Chapter 6). For the past three years Governor Ed "Buddy" Roemer (R) had unsuccessfully tried increasing cigarette taxes and

was trying again in 1990.<sup>174</sup> As a result, TI and Philip Morris sought to pass HB 217 while it and other tobacco industry members opposed tax bill HB 944, generating tension between partners.<sup>175</sup> At an April 26 meeting of tobacco industry representatives, Philip Morris lobbyist Betsy Giles and RJ Reynolds lobbyist CJ Blache disagreed on pursuing preemptive smokers' rights legislation. According to a May 18, 1990 memo from TI Regional VP Ron Morris to TI Regional Director<sup>176</sup> Pat McWhorter on legislative efforts in Louisiana:

RJR is hesitant to do anything for fear that it might interfere with our activities on tax issues, and of course Philip Morris staff is under a great deal of pressure to move those proactive [preemption] bills in committee.<sup>175</sup>

TI lobbyist Joe Wood Berry believed HB 944 could be defeated and HB 217 could be passed simultaneously.<sup>175</sup>

In mid-May, before the Health and Welfare Committee considered HB 217, Joe Wood Berry met with bill sponsor Alphonse Jackson when they determined that HB 217 faced resistance from cities since it robbed them of authority.<sup>175</sup> To maintain unity amongst tobacco industry staff and determine if HB 217 was politically viable, Berry and Philip Morris lobbyist Randy Haynie decided to meet with city council members and police juries (the equivalent of a county board in Louisiana's parish system) to ascertain their stance on HB 217.<sup>175</sup> We do not know the results of Joe Wood Berry's and Haynie's meetings with local lawmakers, but industry efforts to pass HB 217 continued.

The House Health and Welfare Committee considered HB 217 on May 24, 1990, where Committee Chair and bill sponsor Alphonse Jackson and TI lobbyist Joe Wood Berry made little effort to hide the tobacco industry's involvement with HB 217.<sup>162</sup> Berry testified the tobacco industry did not oppose Jackson's bill, asserting that state agencies had been making smokers indulge outside, and "now they must provide a room for us."<sup>167</sup> Committee members amended HB 217 to prohibit smoking in lobbies, restrooms and other publicly used areas of state and local government buildings,<sup>162</sup> and then reported the bill favorably by a vote of 9 to 2 to the House Floor.<sup>162</sup>

The House considered HB 217 on June 7. Representatives amended the bill to exempt local ordinances that were adopted by July 1, 1990 from preemption.<sup>162</sup> They then passed HB 217 67 to 24, sending the bill to the Senate, where it was referred to the Senate Health and Welfare Committee.

The Senate Health and Welfare Committee heard HB 217 on June 25, 1990.<sup>162</sup> Representatives of the Louisiana Medical Society, the Department of Health and Hospitals, and Action on Smoking or Health, as well as the Louisiana Municipal Association (LMA) testified against the bill.<sup>177</sup> LMA opposed HB 217 because it wanted the exemption for existing local ordinances extended until October 1, 1990, in addition to an exemption from preemption for small city halls.<sup>178</sup> TI had a difficult time "maintaining a quorum to get HB 217 out of committee, but succeeded in getting the bill favorably reported to the full Senate without amendments."<sup>177, 178</sup>

TI feared the Louisiana Municipal Association's opposition to HB 217 could hinder its passage and considered compromising with the organization. Notes from TI records on HB 217 following its Senate committee hearing said, "No way to pass bill w/out [sic] municipal League's OK. Question: do we compromise... or do we kill the bill?"<sup>178</sup>

As the tobacco industry considered how to handle HB 217 amid opposition from the Louisiana Municipal Association, LMA Deputy Director Gordon King and City of Lafayette representative Sterling LeJune approached Philip Morris lobbyist Randy Haynie and TI State Activities Division Regional director Pat McWhorter (Chapter 2) to propose a compromise.<sup>179</sup> King and Lejeune planned to kill the bill in the Senate unless the grandfather date for local ordinances extended to October 1, 1990.<sup>179</sup> In addition,

"Our friends were so confused over our support of smoking restrictions that they allowed Senator Johnson to amend the preemption clause out of the bill."

King and LeJune wanted small city halls to be exempted from HB 217's preemption.<sup>178, 179</sup> TI knew that without approval from the LMA, passing HB 217 would be impossible.<sup>178</sup> As a result, Tobacco Institute Southern Sector Vice President George Minshew approved extending the grandfather date for preemption to September 1, 1990 and exempting city halls smaller than 1,200 square feet from needing designated smoking rooms.<sup>179</sup> Joe Wood Berry continued negotiating a compromise on HB 217 with Gordon and LeJune after Minshew accepted those minor concessions.<sup>179</sup>

HB 217 reached the Senate Floor on July 9, 1990.<sup>162</sup> During consideration, Senator Jon Johnson secured an amendment eliminating the preemption clause from the bill.<sup>180</sup> According to TI lobbyist Pat McWhorter in a July 24, 1990 memo to TI Regional VP Ron Morris, "our friends were so confused over our support of smoking restrictions that they allowed Senator Johnson to amend the preemption clause out of the bill."<sup>180</sup> After Johnson stripped preemption from HB 217, TI had Representative Jackson kill the bill<sup>162, 177</sup> by returning it to calendar.<sup>180</sup>

After HB 217 died, TI Regional Vice President Ron Morris explained to TI Vice President George Minshew that the industry's efforts to pass a preemption bill failed in the final days of the 1990 regular session because its Senate allies did not want to pass a smoking restriction law.<sup>181</sup> Although unsuccessful during the 1990 legislative session, TI continued pursuing proactive preemption legislation the following year.

All other smoking restriction bills introduced during the 1990 legislative session died in their initial committees.

### **The Industry Pursues Preemption Again in 1991**

The Tobacco Institute believed the 1991 regular session was an ideal time to pursue industry bills because it did not have to worry about tax proposals in 1991.<sup>182</sup> At the time, no fiscal bills could be enacted during regular sessions in odd-numbered years under Louisiana law. In addition, the industry had also compromised on a 4-cent per pack cigarette tax increase during the 1990 regular session (Chapter 6), which TI believed would help their effort to secure

preemption in 1991.<sup>182</sup> While their political analysis of Louisiana predicted opposition from tobacco control advocates and the Louisiana Medical Association, it anticipated "no major problems" securing "...anti-discrimination and guaranteed smoking accommodation...." bills in 1991.<sup>182</sup>

TI lobbyists recommended pursuing a bill to require establishments restricting smoking create indoor smoking sections.<sup>182</sup> TI decided to pursue legislation in line with this suggestion, deciding to secure designated indoor spaces for smoking rather than an overt preemption bill as they had attempted with HB 217.<sup>183</sup> An April 30, 1991 letter from TI Regional Director Pat McWhorter to Regional Vice President Ron Morris, stated, "As we previously agreed, rather than again attempting passage of a preemption bill, we are pursuing passage of a bill guaranteeing smoker accommodation."<sup>183</sup> In April, TI again enlisted Representative Alphonse Jackson (D-Shreveport) to sponsor industry-developed accommodation legislation. TI recruited RJR lobbyist C.J. Blache to craft the bill.

Representative Jackson submitted HB 1292 on April 29, 1991 to institute smoking accommodation policies in government buildings. According to TI's 1991 Legislative Report, HB 1292 required state and local government workplaces to prohibit smoking except for in a required smoking section of "adequate space." HB 1292 also preempted local control of smoking in government workplaces, but allowed ordinances enacted by July 1, 1991 to stand.<sup>184</sup>

HB 1292 was referred to the House Health and Welfare Committee, which held a hearing on May 22, 1991. Committee members amended HB 1292 to extend the grandfather date for preemption to October 1, 1991, to adjust punishments for smoking in smokefree sections, and to remove signage requirements.<sup>184</sup> The committee then sent the bill to the House floor.

The House considered HB 1292 on May 30, 1991,<sup>184</sup> with Representative John Travis (D-Jackson)<sup>185</sup> handling the bill for Jackson. The bill was amended to lift the requirement that designated smoking areas in government buildings be "adequate" and to move enforcement responsibility to the Department of Health and Hospitals.<sup>184</sup> In addition, Representative Raymond Lalonde (D-Sunset), who sponsored legislation during the 1991 regular session to ban cigarette and smokeless tobacco sales to minors<sup>186, 187</sup> with industry assistance (Chapter 7),<sup>183</sup> secured an amendment prohibiting primary workspaces from being established as smoking sections.<sup>184, 185</sup> After amendments, House members voted 74 to 16 to approve HB 1292 and send the bill to the Senate.<sup>184, 185</sup>

The Senate Health and Welfare Committee considered HB 1292 on June 12, 1991.<sup>184</sup> During consideration, committee members shifted enforcement authority from the Department of Health and Hospitals to state agency heads and further extended the grandfather date from October 1, 1991 to January 1, 1992.<sup>184</sup> The committee then reported HB 1292 favorably to the Senate floor, which unanimously passed it on June 28, 1991 and sent it to Governor Roemer for his signature.<sup>184</sup>

On July 22, 1991, Governor Roemer vetoed HB 1292. TI reported that the veto was on the grounds that the bill "appears to infringe on the right of the local government in the exercise of freedom of choice on the subject of smoking in public buildings. [Governor Roemer] was



particularly concerned about the availability of space in buildings owned and/or leased by smaller political subdivisions.”<sup>184</sup> When the governor rejected the bill, he also noted that the legislation appeared to guarantee the right to smoke indoors and that this bill would force already smokefree public buildings to set aside smoking areas. Roemer vetoed HB 1292 a year after a bitter fight to pass tobacco taxes during a state budget crisis that saw the tobacco companies allow a 4-cent increase per cigarette pack instead of the Governor’s desired 10-cent increase (Chapter 6). Prior to 1990, the tobacco industry had frustrated Governor Roemer by avoiding tobacco tax increases for three years despite Louisiana facing an ongoing budget crisis (Chapter 6).

TI reported that the veto was on the grounds that the bill “appears to infringe on the right of the local government in the exercise of freedom of choice on the subject of smoking in public buildings.”

### **Johnson and Lalonde Continue to Pursue Clean Indoor Air Bills in 1991**

While the tobacco industry pushed accommodation laws with preemption, pro-health lawmakers submitted smoking restriction legislation that failed to gain traction during the legislative session .

One of the legislators that sought smoking restriction legislation was Representative Raymond Lalonde (D-Sunset). On April 17, 1991, he introduced HB 567 to limit tobacco use in facilities with state agencies to designated areas. According to an April 30, 1991 memo by TI lobbyist Pat McWhorter, Lalonde initially sought to prohibit smoking in facilities with state agencies, but weakened HB 567 after being contacted by the tobacco industry:

Representative Lalonde has introduced two pieces of legislation affecting us. One which we intend to attempt to dovetail our smoker accommodation bill with, prohibits smoking in public buildings housing state agencies only. However, at our request, he has specifically mandated indoor areas be provided in all state facilities for smokers.<sup>183</sup>

HB 567 set a fine of no more than \$100 for tobacco users who violated the law. The bill required Administration Commissioner Dennis Stine to create and enforce rules for smoking sections.<sup>184</sup>  
<sup>188</sup> Unlike HB 1292, HB 567 did not preempt local legislation. Th bill was referred to the House Appropriations Committee.<sup>184</sup>

Besides submitting HB 567 in 1991, Lalonde introduced a bill to establish 18 years as the minimum age of sale or purchase for tobacco products and legislation to make smokers liable for harm caused by their secondhand smoke emissions (Chapter 7).<sup>183, 184</sup> Lalonde had introduced tobacco control legislation since 1988, when he first submitted bills to set a minimum age requirement for tobacco products (Chapter 7) and to restrict smoking in government buildings. At the beginning of the 1991 legislative session, Louisiana had no minimum age requirement for purchasing tobacco products.<sup>189</sup> Lawmakers had passed a minimum age law in 1915, but repealed it in 1942 because the rule was ambiguous and not enforced.<sup>189, 190</sup> Lalonde also considered introducing a bill that mandated skull and cross bones images be placed on state tax

stamps for tobacco products.<sup>183</sup> Even so, he was not opposed to cooperating with the tobacco industry. In 1991, Lalonde welcomed TI's assistance in passing a minimum age law (Chapter 7).<sup>183</sup> During a meeting, TI Regional Director Patrick McWhorter, TI lobbyist Joe Wood Berry and Philip Morris lobbyist Randy Haynie also convinced Lalonde not to pursue his skull and cross bones bill.<sup>183</sup>

Lalonde cooperated with TI on the language of HB 567, his clean air bill.<sup>183</sup> HB 567 initially prohibited smoking in public buildings used by state agencies, but the Tobacco Institute aimed to "dovetail" Lalonde's bill with HB 1292, its preemptive smoker accommodation bill.<sup>183</sup> TI persuaded Lalonde to include designated indoor smoking areas in the bill's language, weakening the legislation before it was introduced in April.<sup>183, 184</sup>

The House Appropriations Committee heard HB 567 on June 11, 1991, where it was amended to require suitable smoking sections and exclude unspecified state-owned buildings, then favorably reported to the floor by a 6-4 vote.<sup>184, 191</sup> On June 21, 1991, representatives voted 49-47 to approve HB 567, falling short of the required 53 votes for passage in that chamber.<sup>184, 192</sup> Although Lalonde received approval to return HB 567 for consideration, the bill died without another hearing.<sup>184</sup>

Besides Representative Lalonde's legislation in the House, Senator Jon Johnson introduced three complimentary bills, SB 230, 240, and 243 on April 22, 1991.<sup>184</sup> SB 230 required private offices to observe smoking and nonsmoking workers' smoking restriction policy desires, with nonsmokers taking priority. SB 240 required smoking and nonsmoking areas, set at 35% and 65% of the workspace respectively, in state and local government offices. SB 240 also preempted restrictions in government owned facilities.<sup>184</sup> SB 243 outlawed "...smoking in public areas of state and local government buildings" according to TI's 1991 Legislative Report.<sup>184</sup> Johnson's three bills were referred to the Senate Health and Welfare Committee.

Johnson's legislation was scheduled for a hearing before the Senate Health and Welfare Committee on June 3, 1991. However, SB 230 and SB 240 died on adjournment without consideration.<sup>184</sup> Legislators amended SB 243 to require state and local government facilities have a minimum of one ventilated smoking room and to prohibit smoking in elevators, healthcare establishments (excluding patient rooms), and private museum and gallery exhibition spaces. In addition, legislators amended SB 243 to preempt stricter local laws passed after January 1, 1992 and sent it to the Senate Floor. On June 10, 1991 the Senate passed SB 243 unanimously and sent it to the House.<sup>184</sup>

The House Health and Welfare Committee heard SB 243 on June 20, 1991.<sup>184</sup> During consideration Representative Eugene Eason (D-Springhill) argued against the bill, claiming smoking restrictions should be handled by local governments.<sup>193</sup> After making unknown amendments, the committee sent SB 243 to the Floor where it died without a vote.<sup>184</sup>

### **Louisiana Passes Four Clean Indoor Air Laws in 1992 with Tobacco Industry Help**

Before the start of the 1992 legislative session, public health advocates organized the Louisiana Coalition on Smoking or Health (LCSH) in late March to aggressively pursue tobacco

control legislation. The coalition consisted of 60 organizations and was led by Cary Kuhlmann,<sup>194</sup> the Executive Director of the Orleans Parish Medical Society.<sup>195</sup> The coalition sought to increase the state cigarette tax, increase funding for tobacco disease research and education, and permit the State of Louisiana to sue the tobacco industry to recoup healthcare costs of treating state hospital patients suffering from tobacco-related illnesses.<sup>194, 196</sup>

The Coalition partnered with Representative Raymond Lalonde and Senator Jon Johnson to push for statewide smokefree restrictions.<sup>194</sup> At the time, LCSH did not know that Representative Lalonde had collaborated with the tobacco industry on minimum age bill HB 19 since they assisted him privately to avoid upsetting some of his proponents (Chapter 7). It is doubtful that tobacco control advocates were aware Lalonde had weakened his 1991 smoking restriction bill HB 567 at the tobacco industry's request.

LCSH did not know that Representative Lalonde had collaborated with the tobacco industry on minimum age bill HB 19 since they assisted him privately to avoid upsetting some of his proponents.

In total, Louisiana legislators offered twelve bills to restrict smoking during the 1992 legislative session (Table 5.10). LSCH-backed lawmakers Representative Lalonde and Senator Johnson each introduced 3 bills to restrict indoor and public smoking. Lalonde submitted House bills 1625, 1626, and 1632, and Johnson proposed Senate Bills 163, 164, and 165 (Table 5.10).<sup>197</sup> (There were also several other bills introduced by other legislators; Table 5.10.) Lalonde's HB 1625 mandated smoking sections in select businesses if owners decided not to ban smoking, and prohibited smoking in other places such as school campuses. Lalonde's HB 1626 barred smoking in public spaces and offices of buildings used or owned by the state, while HB 1632 outlawed smoking in enclosed workplaces staffed by more than one person unless all employees were located in a general work area and were smokers. Senator Johnson's SB 163 barred smoking in select establishments as well as buildings used or owned by state and local governments. SB 164 required business owners to set smoking policies meeting nonsmoking employees' preferences and SB 165 mandated smoking sections in state and local government offices. Although Johnson acted as a legislative champion for the CTFLA, TI identified SB 165 as tobacco industry legislation in its 1993 Strategic Plan for Louisiana.<sup>198</sup> None of Johnson's bills other than SB 164 passed out of committee. Representative Lalonde's and Senator Johnson's bills were referred to the Health and Welfare Committees in their respective chambers.

Only Lalonde's HB 1629 and Johnson's SB 164 received hearings.<sup>197</sup> Lalonde's HB 1625 and HB 1632 were scheduled for a hearing on May 21 but Lalonde delayed them, preventing their consideration that session.<sup>197</sup> Johnson's SB 163 and SB 165 never had hearings and also died with adjournment.<sup>197</sup>

The Senate Health and Welfare Committee significantly altered SB 164 at its May 18, 1992 hearing. The Committee amended Johnson's bill to remove the requirement that workplaces prohibit smoking if that policy was desired by nonsmoking employees, instead mandating the creation of a smoking policy amenable to both smoking and nonsmoking workers.<sup>197</sup> The Committee also amended SB 164 to exclude workplaces with less than 25 full time employees from the policy requirement. Other amendments mandated smoking areas in government buildings except for judicial buildings and the state legislature, and changed the

Table 5.10: Smoking Restriction Legislation as Introduced for the 1992 Legislative Session<sup>197, 199</sup>

Sponsor	Bill	Date	Government Used or Owned Buildings	Businesses	Cultural Venues	Schools	Public Transit	Health Care Facilities	Prohibits Smoking	Mandates Smoking Sections	Pertains to Office Space Only	Permits Creation of Smoking Areas	Permits Smoking Sections in Shared or Public	Requires Smoking Policy to Satisfaction of Nonsmokers	Permits Patient Smoking Rooms	Signage	Exemptions	Preemption	Penalties	Enforcement	Outcome
Hand	HB 286	4/01/92		+	+			+			+			+		+	+			+ ^	Defeated on House floor (56-40)
Forster	HB 732	4/07/92						+	+						+						Died with adjournment on Senate Floor
Ellington	HB 1176	4/12/92				+			+												Adopted*
Ellington	HB 1572	4/16/92		+						+			+								Withdrawn
<b>Lalonde</b>	<b>HB 1625</b>	4/13/92	+	+	+	+	+		+	+			+			+					Died with adjournment in House Health and Welfare Committee
<b>Lalonde</b>	<b>HB 1626</b>	4/13/92	+						+			+ * *									Defeated on House floor (40-60)
<b>Lalonde</b>	<b>HB 1632</b>	4/13/92		+					+			+					+				Died with adjournment in House Health and Welfare Committee
Fields (For Governor)	SB 147	3/30/92				+			+			+							+ #	+ #	Adopted*
<b>Johnson</b>	<b>SB 163</b>	3/30/92	+		+			+	+			+			+		+	+	+		Died with adjournment in Senate Health and Welfare Committee
<b>Johnson</b>	<b>SB 164</b>	3/30/92		+							+			+						+ ^	Adopted*
<b>Johnson</b>	<b>SB 165</b>	3/30/92	+							+	+							+	+		Died with adjournment in Senate Health and Welfare Committee
Dardenne	SB 539	4/16/92						+							+						Adopted*

\*Significantly amended before passage.

\*\*Smoking sections could be created in areas that did not cause nonsmokers to encounter secondhand smoke.  
#Allows local schoolboards to set penalties for violating smoking restrictions.  
~Prohibits smoking in public spaces of gov. owned or operated buildings, exhibitions in galleries and museums.  
^Provides enforcement to Department of Health and Hospitals.

implementation date of SB 164 to January 1, 1993.<sup>197</sup> Following consideration of SB 164, committee members reported the bill favorably to the Senate Floor.

Despite significant weakening of SB 164 in committee, LSCH continued supporting the bill. Interviewed by the Baton Rouge newspaper *The Advocate*, coalition spokesperson Taylor Caffery stated the bill was “a step forward” because it established smoking policies where many people were exposed to secondhand smoke.<sup>200</sup> On May 19, the Senate changed the effective date of the bill to three months after adoption and voted 34 to 3 to send SB 164 to the House.<sup>197</sup> SB 164 was heard by the House Health and Welfare Committee on May 26, 1992, where Representative Melissa Flournoy (D-Shreveport) successfully proposed an amendment eliminating exemptions for judicial buildings and the state legislature.<sup>197, 201</sup> (SB 164 sponsor Johnson feared the amendment would prevent the bill from passing due to opposition from legislators who smoked.) After the committee adopted Flournoy’s amendment it sent SB 164 to the House Floor.

Representatives considered SB 164 on June 4, 1992.<sup>197</sup> LSCH legislative ally Lalonde defended SB 164’s smoking restrictions, arguing that “There’s places for everything...I got a right to have sex, I’m married, but I don’t do it in the House Committee room.”<sup>202</sup> Representative John Travis (D-LaPlace), who accepted the most campaign contributions from TI that year (\$500<sup>203, 204</sup>) opposed SB 164, arguing that private businesses could impose smoking restrictions. Travis also asserted that SB 164 would cause economic harm by reducing workplace productivity, including at the state legislature.<sup>202</sup> Representative Robert Adley (D-Bossier City) proposed another amendment to again excluding legislative facilities from SB 164.<sup>202</sup> Lalonde argued against the change, stating it was unfair for legislators to not be subject to a law they imposed.<sup>202</sup> Representatives voted 49 to 49 on Adley’s amendment, defeating it.<sup>202</sup> The House then voted 66 to 33 to approve the bill, sending it back to the Senate.<sup>202</sup>

The Senate voted 37 to 0 on June 9 to reject the House’s amendments, sending the bill to a conference committee. The committee consisted of four smokers and two nonsmokers, including Representative Travis, who had tried repeatedly to block SB 164. The Conference Committee removed the House Health and Welfare Committee amendment that had added legislative and judicial buildings to the bill.<sup>197, 205</sup> Both houses approved the conference version of SB 164 on June 22, the last day of the regular legislative session, and Governor Edwin Edwards signed it on July 14, 1992.<sup>197</sup>

As adopted, SB 164 mandated the creation of smoking policies fairly accommodating smokers and nonsmokers in offices with more than 25 full-time employees, not including homes or private

As adopted, SB 164 mandated smoking policies fairly accommodating smokers and nonsmokers in offices with more than 25 full-time employees, not including homes or private offices.

offices.<sup>197</sup> The bill did not require workplaces to adopt policies necessitating construction or costs to implement. SB 164 also forbade smoking in state government agency facilities. However, state agencies had to create smoking areas if asked by an employee unless they were judicial, legislative, healthcare, or educational facilities. The bill required the Department of Health and Hospitals to develop “reasonable” enforcement rules.

### ***Outcome of other Legislation during the 1992 Session***

Representative Raymond Lalonde’s HB 1626 received less attention from the tobacco industry and proved easier for it to defeat. As introduced, HB 1626 limited smoking in the offices and public areas of state-owned and operated facilities.<sup>197</sup> On May 21, 1992, the House Health and Welfare Committee amended HB 1626 to change which facilities were affected by smoking restrictions, then sent the bill to the House floor on a 5 to 3 vote.

HB 1626 was debated by the House on May 27, 1991. TI had been tracking HB 1626 and planned to weaken or kill the bill on the floor.<sup>206</sup> During consideration, Representative John Travis proposed amending the bill to prohibit smoking in casinos and at cockfights to implicitly target Lalonde, who was a proponent of legalizing gambling in Louisiana and had fought efforts to outlaw cockfighting because his base enjoyed the activity.<sup>201</sup> House Speaker John Alario found the amendment unrelated and blocked it. Failing to sabotage HB 1626, Travis argued the bill would lead to the state government developing strict rules and to employees being fired for violating smoking restrictions. The House then voted 60 to 40 to kill HB 1626.<sup>197</sup>

The Louisiana Legislature passed three more clean air bills in 1992: SB 147, introduced by Senator Cleo Fields (D-Baton Rouge) on behalf of Governor Edwards, HB 1176 introduced by Representative Noble Ellington (D-Winnsboro), and SB 539 by Representative Jay Dardenne.<sup>207</sup> SB 147 and HB 1176 were nearly identical upon introduction, with both prohibiting smoking in public schools, school campuses, and school vehicles (while carrying students).<sup>197</sup> As introduced, SB 539 prohibited smoking in enclosed hospital spaces except for inpatient rooms if other patients consented and a physician ordered the exception.

TI closely watched SB 147 and HB 1176, preparing to get their labor organization allies “to amend/oppose based on collective bargaining.”<sup>208</sup> SB 147 was introduced on March 30, 1992, and HB 1176 on April 12, 1992. Both were referred to education committees. At their initial hearings, both bills were amended to permit school administrators to establish smoking areas for their workers.<sup>197</sup> The Senate Health and Welfare Committee also amended SB 147 to permit indoor and outdoor smoking areas and allow school boards to create penalties for violating smoking restrictions. Both bills survived their committees and passed to the floor for additional consideration. TI continued to monitor SB 147 and HB 1176 as they progressed.<sup>208</sup> The House Education Committee amended SB 147 on May 28, 1992 to require smoking areas for employees and to permit smoking in outdoor school stadiums.<sup>197</sup> Both chambers ultimately passed weakened versions of SB 147 and HB 1176. Governor Edwards signed SB 147 into law on May 20, 1992 and HB 1176 on July 6, 1992.<sup>197</sup>

As passed, SB 147 prohibited smoking on all elementary and secondary school property and school buses, except for outdoor or indoor areas designated for smoking by school administrators. Indoor smoking areas had to be separated from nonsmoking sections and have ventilation systems that lowered secondhand smoke exposure in smokefree areas. SB 147 also

permitted smoking in “outdoor school stadiums.” Penalties for smoking restriction violations could be developed by school boards. SB 147 entered effect immediately. HB 1176 restricted smoking in public elementary and secondary schools and school vehicles carrying students. The bill also allowed school administrators to establish smoking sections. The law entered effect August 21, 1992. After the bills passed, it appears smoking was prohibited on school buses only when students were present.

SB 539 passed the Louisiana State Legislature and entered law after an amendment the tobacco industry desired was attached to the bill.<sup>209</sup> Initially intended to allow smoking only in patient rooms in limited circumstances,<sup>209</sup> the tobacco industry sought to change the bill to permit designated smoking areas.<sup>210</sup> Although we did not find evidence that the tobacco industry actually mobilized, TI planned to use coalition allies and smokers’ rights groups to pressure for the change.<sup>210</sup> SB 539 ultimately passed through the legislature with near unanimous support after it was amended in the Senate Health and Welfare Committee to permit hospitals to designate smoking areas in spaces with good ventilation.<sup>209</sup>

### **The Tobacco Control Industry Secures Preemption in 1993**

From 1990 through 1992, 16 local governments considered clean air ordinances, with at least 8 adopting them (Table 5.11). Most local ordinances focused on restricting smoking on government owned or leased property. However, ordinances in Lafayette, Shreveport, and Mandeville included partial restrictions on public venues or restaurants (with accommodation and exemptions). Even though local clean air ordinances in Louisiana remained limited in scope, TI included Louisiana in a 22-state plan to secure legislation preempting local ordinances in 1993.<sup>211</sup>

#### ***Tobacco Industry Prepares for 1993 Legislative Sessions***

To secure preemption in 1993, TI considered reviving its 1991 accommodation legislation, HB 1292.<sup>198</sup> The bill had passed both houses in 1991 but was vetoed by then-Governor Roemer.<sup>198</sup> According to TI’s 1993 Strategic Plan for Louisiana, “The LA team is reviewing HB 1292 and SB 165 [identified as an industry bill by TI] to assess their current applicability [to Louisiana] and any revisions we may wish to make.”<sup>198</sup> SB 165, the 1992 bill by Senator Jon Johnson that mandated smoking sections in the offices of state and local governments, never received consideration.<sup>209</sup>

TI developed a multifaceted legislative strategy for convincing allied lawmakers to pass preemptive accommodation legislation. The Institute’s 1993 Strategic Plan remarked that industry-friendly lawmakers in Louisiana personally disliked smoking restrictions and restricting local control, creating a hurdle for the industry:

Two fundamental problems exist re this issue in LA: our floor leaders are extremely resistant to any form of restriction on their smoking, and these same floor leaders are very reluctant to impose preemptions on local government. Our [the Tobacco Institute] task is to convince them that it is in everyone’s best interest to do so.<sup>198</sup>

To help secure preemption legislation, TI sought to obtain support from unspecified “industry floor leaders,” select a legislative sponsor, and choose the committee to first handle the bill.<sup>198</sup> TI

Table 5.11: Local Clean Air Attempts from 1990 until 1992 <sup>184, 197, 212</sup>

	Year	Public Places	Office Workplaces	Restaurants	Bars	Arenas / Sporting Events	Schools	Government Buildings and Property	Healthcare Facilities	Elevators	Public Transit Facilities or Vehicles	Repeal Existing Smoking Restrictions	Outcome
Baker	1990							R					Adopted
Houma Parish	1990							R					Adopted
Jefferson Davis Parish	1990											+	Adopted
Terrebone	1990												Adopted
Lafayette	1991	P	P	R S							R		Defeated
Lafourche	1991							RS					Adopted
Merryville	1991							P					Unknown
Shreveport	1991	P *	R S	R S	E *	RS		RS					Died
Thibodaux	1991							P					Adopted
Berwick	1992							RS					Adopted
Eunice	1992							P **					Adopted
Lafayette	1992							RS					Adopted
Mandeville	1992			R S									Adopted
Merryville	1992							P					Unknown
Ponchatoula	1992							P					Defeated
Vivian	1992							RS					Adopted

P: Prohibited R: Restricted (not complete prohibition) S: Permitted or required designated smoking areas E: Exempt  
 \*Exempted bars, hospitality rooms, and retail stores that held less than 150 people at a time.  
 \*\*Exempted local jail and police department.

felt that Governor Edwin Edwards (D), who replaced Governor Roemer in 1992, was more likely to sign their legislation. <sup>198, 211</sup>

TI recruited Senator Ron Landry (D-LaPlace) to sponsor preemption legislation during the 1993 legislative session. Landry accepted at least \$2,600 tobacco industry contributions from 1983 to 1993, the year he introduced the industry's bill (Chapter 3). Landry had also helped block clean air bills in the Senate Health and Welfare Committee, and in 1991 castigated lawmakers for not passing TI's accommodation and preemption bill HB 1292. <sup>123, 213</sup>

Landry introduced SB 767 and SB 768 on April 12, 1993, <sup>214</sup> the former to institute smoker accommodation policies in government workplaces and the latter to establish smoking accommodation policies in public places. SB 767 mandated that state, parish, and local government offices establish designated smoking rooms for workers if permitted by fire safety and lease requirements, and preempted stronger local ordinances adopted after August 15, 1993. SB 767 excluded health and educational facilities, as well as building spaces used by the state judicial branch from smoking section requirements. SB 768 forbade smoking in public transit, childcare centers, elevators, and places the Louisiana fire marshal deemed dangerous. The bill also required establishment of smoking areas in public places, allowed restaurants to adjust



smoking and nonsmoking section sizes based on consumer preference, and exempted gambling facilities (including horse races) and businesses that generated over half their earnings from alcohol sales. SB 768 permitted creation of smoking areas on each level of public places, allowed taxi and limousine drivers to declare their vehicle as smoking or nonsmoking, and exempted state legislative “meeting areas” from restrictions. Most important, SB 768 preempted local ordinances adopted on or after September 1, 1993.

TI anticipated they may “have to battle the Medical Society and other non-tobacco groups” during the 1991 legislative session.<sup>182</sup> While the tobacco industry prepared to push for SB 767 and SB 768, health groups were attempting to push clean indoor air laws that would protect public health.<sup>198</sup> However, no public health-oriented clean air bill materialized as a significant threat, and TI’s strategic plan for the 1993 legislative session did not include a strategy to address tobacco control advocate opposition.

TI ruminated on whether tobacco control champions Representative Raymond Lalonde and Senator Jon Johnson would pursue smoking restriction bills during the 1993 session and considered how to deter the lawmakers from introducing legislation. According to TI’s 1993 Strategic Plan:

The passage of SB 164 by Sen. Johnson, who has also sponsored many of the other anti-tobacco bills in the past, may be enough to satisfy him. The LA Team is to follow-up with the senator and his staff to see if we can prevent the automatic reintroduction of his [legislative] package. Rep. Lalonde will most likely continue his crusade. The LA Team is to meet with him in advance of the session to determine his concerns and attempt to work a compromise if possible.<sup>198</sup>

Although the industry collaborated with Lalonde numerous times and favored Johnson’s SB 165 in 1992, TI saw the lawmakers as health advocates instead of allies.<sup>198</sup> Johnson ultimately submitted two clean air bills featuring preemption, SB 147 to require smoking sections in “local government offices” and SB 150 to outlaw smoking in galleries, museums, state and local government facilities, and elevators.<sup>214</sup> Meanwhile, Lalonde introduced legislation to give the state a cause of action to sue tobacco companies for harm caused by tobacco products and to make smokers liable for harm caused to others by their tobacco use.<sup>214</sup>

Lawmakers introduced 8 smoking restriction bills during the 1993 legislative session. Only Representative Landry’s SB 767 and SB 768 received hearings. Other bills introduced during the session, including Johnson’s SB 147 and SB 150, died in the House Health and Welfare Committee (Table 5.12).

### ***The Preemptive Louisiana Clean Indoor Air Act of 1993***

Senator Landry’s SB 767 and SB 768 were referred to the Senate Local and Municipal Affairs Committee,<sup>215</sup> which heard both bills on May 2, 1993.<sup>214</sup> Bill sponsor Ron Landry, along with TI lobbyist Joe Wood Berry, attended the meeting.<sup>216</sup> (Landry was not a Senate Local and Municipal Affairs Committee member.) During the hearing tobacco control champion and committee member Jon Johnson called SB 767 an effort to preempt local control, and argued against approving the industry-supported bill:

Table 5.12: Clean Air Legislation Introduced during the 1993 Session <sup>214</sup>													
	Author	Locations Covered											Outcome
		Public Places	Workplaces	Restaurants	Bars	Schools	Government Buildings and Property	Healthcare Facilities	Legislature	Elevators	Public Transit	Preemption	
HB 1080	Travis	+		+						+	+	+	Died in House Health and Welfare Committee
HB 1086	Travis						+					+	Died in House Health and Welfare Committee
HB 1469	Chaisson	+									+		Died in House Health and Welfare Committee
SB 147	Johnson						+						Died in House Health and Welfare Committee
SB 150	Johnson	+					+	+		+	+		Died in House Health and Welfare Committee
SB 539	Brinkhaus	+											Died in Senate Health and Welfare Committee
<b>SB 767</b>	<b>Landry</b>						+					+	<b>Adopted</b>
<b>SB 768</b>	<b>Landry</b>			+	-				+	+	+	+	<b>Adopted</b>
+ Enacts provisions / Restrictions   - Exempts													

States are moving in the direction of trying to address the needs and concerns of non-smokers to a greater extent than trying to accommodate smokers – and this bill does just the opposite.<sup>216</sup>

TI lobbyist Berry responded that SB 767 treated smokers fairly:

You see people out on the street smoking...they have no place inside the building to smoke.<sup>216</sup>

The committee amended SB 767 to extend the grandfather clause for local ordinances exempted from preemption to September 1, 1993,<sup>214, 217</sup> then voted 3 to 2 to report SB 767 to the Senate Floor.<sup>217</sup>

During the same committee hearing, bill sponsor Landry asserted SB 768 intended to treat smokers fairly. He stated “It’s a matter of fairness. I pass by state buildings and I see people standing out in the cold to smoke. We just want to give them a little space inside.”<sup>217</sup> Despite Landry’s assertion, Senator Donald Cravins Jr. (D-Arnaudville) proposed an amendment prohibiting smoking in Senate committees and the Senate chamber, which was defeated 4 to 3.<sup>217</sup> (SB 768, as introduced, exempted meeting areas of the legislature from smoking restrictions.<sup>214, 217</sup>) Senator Johnson also introduced an amendment to remove the exemption for legislative areas that the committee defeated.<sup>216</sup> Following amendments, Cravins, Johnson, and Ewing voted as a majority against the bill.<sup>217</sup> However, Committee Chairman Willie Crain deadlocked the committee by voting in favor of SB 768 (Table 5.13).<sup>217</sup>

The tie vote delayed SB 768 from being reported to the Senate floor. The Senate Local and Municipal Affairs Committee held another meeting on SB 768 three days later on May 6, 1993. Committee members adopted amendments excluding some places affected by existing smoking restrictions, extended the grandfather clause for local ordinances from October 1 to September 1, 1993, and then sent the bill to the Senate Floor.<sup>214</sup>

Reported favorably before SB 768, SB 767 received consideration by the Senate first on May 3, 1993. Senator Donald Cravins Jr. successfully amended the bill to establish smoking and nonsmoking sections in the legislature.<sup>218</sup> The Senate then approved SB 767 in a 28 to 9 vote and sent it to the House.<sup>214, 218</sup>

The House Municipal, Parochial and Cultural Affairs Committee considered SB 767 on May 14, 1993, and sent it to the House floor without changes.<sup>214</sup>

The Senate considered SB 768 five days later on May 19, 1993, amending it to include state legislative buildings and taxis in smoking restrictions. As introduced, SB 768 had exempted state legislative “meeting areas” from smoking restrictions and allowed taxi and limo drivers to designate their vehicles as smoking or nonsmoking.<sup>214</sup> Senators also amended SB 768 to allow smoking in childcare establishments when children were not present. Before the amendment, smoking in childcare establishments was completely prohibited.<sup>214</sup> After making changes to SB 768, Senators voted 32 to 6 to send SB 768 to the House.<sup>214, 219</sup>

The House Health and Welfare Committee further weakened SB 768. At a hearing on May 25, 1993, TI lobbyist Joe Wood Berry and Philip Morris lobbyist Randy Haynie defended the bill.<sup>220</sup> Berry argued SB 768 provided owners freedom to regulate their property as they desired.<sup>221</sup> The Louisiana State Medical Society testified against SB 768, with its lobbyist Sharon Knight arguing it robbed local governments of their right to impose smoking restrictions.<sup>221</sup> The committee ignored Knight’s testimony, adopted amendments eliminating smoking restrictions in public school buildings and allowing smoking rooms on “each floor of a public place,” and then reported SB 768 to the House floor on a 6 to 2 vote.<sup>214, 221</sup>

Representatives debated SB 768 on the House floor on June 2, 1993.<sup>222</sup> During consideration, SB 768’s handler in the House, Representative Mike McCleary (D-Baker), asserted the bill preserved owner choice over property. Representatives Jerry Thomas (D-Bogalusa), Hunt Downer (D-Houma), and Joseph Accardo (D-LaPlace) spoke against SB 768, arguing it harmed local governing rights. Accardo secured an amendment to SB 768 on the House Floor permitting state lawmakers to designate smoking sections in legislative buildings. As introduced, SB 768 excluded meeting areas of the state legislature from smoking restrictions.<sup>214</sup> The new amendment required state lawmakers to establish smoking sections in

Table 5.13: Senate Local and Municipal Affairs Committee Vote on SB 767 <sup>123, 217</sup>			
Representative	Area	SB 767 Vote	SB 768 Vote
Willie Crain (Chairman)	D-Monroe		Yes
Dennis Bagneris	D-New Orleans	Yes	Yes
Craig Romero	D-New Iberia	Yes	Yes
Jon Johnson	D-New Orleans	No	No
Donald Cravins Jr.	D-Arnaudville	Yes	No
Randy Ewing	D-Quitman	No	No

legislative facilities if the bill passed. The House then passed SB 768 by a 63-34 vote.<sup>222</sup> Five days later, the House approved SB 767 by 56 to 44, sending the bill back to the Senate for approval of final amendments.<sup>214</sup>

The Senate reconsidered SB 768 with House amendments on June 4.<sup>214</sup> Senator Cravins, supported by Senators Ewing and Johnson, unsuccessfully attempted to send SB 768 to a conference committee to secure an amendment prohibiting state lawmakers from smoking in most areas of the state legislature.<sup>223</sup> SB 768, which was amended by Representative Accardo on the House Floor to remove exemptions on smoking in legislative meeting areas and allow state lawmakers to designate smoking areas, would further restrict smoking by legislators if sent to Conference and altered as desired by Senator Cravins. After defeating that proposal, senators voted 26 to 11 to adopt SB 768.

On June 9 Senators approved Landry's other industry bill, SB 767.<sup>214</sup> Governor Edwards signed SB 768 on June 10 and SB 767 on June 14, 1993. Together, the two bills prohibited smoking in elevators, public transportation vehicles, and childcare facilities (when children were present), and required designated smoking rooms in government offices, public places, and restaurants.<sup>214</sup> The laws allowed for any establishment deriving more than 50% of its income from alcohol to permit indoor smoking and exempted meeting areas of the legislative branch, gaming and horse racing facilities, and taxis from smoking restrictions. The Louisiana Office Indoor Clean Air Act (SB 767) preempted local smoking restriction legislation covering workplaces, and the Louisiana Clean Indoor Air Act (SB 768) preempted local measures limiting smoking in public places on or after September 1, 1993.<sup>214</sup>

### **Last Chance to Pass Local Smoking Restrictions in 1993**

The Louisiana Office Indoor Clean Air Act (SB 767) preempted local smoking restriction legislation covering workplaces, and the Louisiana Clean Indoor Air Act (SB 768) preempted local measures limiting smoking in public places on or after September 1, 1993.

After the adoption of SB 767 and SB 768 in mid-June, local governments had through August 31, 1993 to adopt smoking restriction ordinances that would not be preempted by state law. Community leaders and health advocates scrambled to secure ordinances before the deadline.<sup>214</sup> In 1993 alone, 43 local governments considered ordinances and 40 passed them (Table 5.14).<sup>214</sup> Louisiana localities considered 78 ordinances total between 1978 and 1993 (excluding a smoking restrictions repeal by Jefferson Davis Parish), adopting at least 61 into law.

The ALA of Louisiana was the most active in local smokefree efforts following the adoption of SB 767 and SB 768, including providing model ordinances to local governments.<sup>228</sup> In the Parishes of Jefferson and St. Charles, the ALA lobbied local officials to enact ordinances before the preemption deadline.<sup>224</sup> According to ALA of Louisiana Executive Director Ben Fontaine in a 1993 article from *The Times-Picayune*, "We've [the ALA of Louisiana] been on a merry-go round for the last 30 days."<sup>224</sup>

Other health voluntaries and smokefree advocates waged smaller efforts to secure local smoking restrictions. American Cancer Society local chapter President Mary Clemence Devereux unsuccessfully testified to the St. Tammany Parish Police Jury (equivalent to a county board) that it should remove smoking restriction exemptions for a bar and some other rooms in parish facilities.<sup>229</sup> An unidentified organization also provided St. Charles Parish representatives information on secondhand smoke's harmful effects, but failed to convince lawmakers to pass an ordinance.<sup>230</sup> We did not find evidence that other health voluntaries or advocates pressured other local governments to adopt smokefree ordinances before the preemption deadline. In Jefferson Parish (and possibly others), the local business community opposed a proposed local ordinance. Regarding the Jefferson Parish ordinance, the Louisiana Restaurant Association argued the government should not interfere in business decisions.<sup>224</sup>

## **Conclusion**

Initial attempts at pursuing clean air regulations in Louisiana failed due to a powerful tobacco industry presence with strong ties to members of the legislature. Weak voluntary health organizations and lack of consistent tobacco control advocacy were no match for the tobacco industry, generally leaving pro-health legislators fighting for smoking restrictions with limited external support. The tobacco industry, along with their legislative and business allies, blocked most of the 61 smoking restriction bills that failed to pass between 1970 and 1993. In 1992 and 1993, the industry secured 5 pro-industry smoking accommodation laws and instituted state preemption of local smoking ordinances.

The tobacco industry's strategy evolved in the late 1980s and early 1990s because of an increasingly adverse political climate across the nation. This is reflected in the 1986 Surgeon Generals' Report,<sup>83</sup> which identified secondhand smoke as a cause of cancer and respiratory problems in infants and children and highlighted the fact that separate smoking and nonsmoking sections did not protect nonsmokers from secondhand smoke, coupled with a growing local control movement nationwide. Following its national strategy,<sup>231</sup> the tobacco industry started pursuing accommodation laws and preemption in Louisiana instead of blocking all smoking restriction legislation.

Although the presence and sophistication of tobacco control supporters increased over time in Louisiana, it was not enough to prevent the tobacco industry from achieving its policy objectives. The tobacco industry almost succeeded in enacting preemption with HB 1292 in 1991, but the Governor vetoed it on the grounds that it removed local governments' authority to regulate indoor air. In the 1992 legislative session, the state legislature passed three industry-backed "clean indoor air" laws that established smoking accommodation policies in workplaces and most state workplaces, and prohibited smoking on elementary and secondary school property except for in designated smoking areas. In the 1993 session, the tobacco industry won passage of SB 767 and SB 768, which contained preemption clauses that stalled all local smokefree efforts for ten years until tobacco control advocates managed to partially overturn preemption in 2003 (Chapter 10).

Table 5.14: Local Ordinances in Louisiana <sup>25, 26, 34, 60, 67, 72, 89, 119, 150, 162, 184, 197, 214, 224-227</sup>																
P: Prohibited R: Restricted (not complete prohibition) S: Permitted or required designated smoking areas E: Exempt L: Applies only to select room / building / buildings. U: Unspecified whether prohibition or restriction. Q: Required adoption of smoking policies.																
City	Year	Locations Covered												Ordinance Allows Adoption of Law Stronger Than State’s	Enforcement	Outcome
		Hotels / Motels	Public Places	Workplaces	Restaurants	Bars	Arenas/ Sporting Events	Schools	Government Buildings and Property	Healthcare Facilities	Child Care Facilities	Elevators	Public Transit Facilities or Vehicles			
New Orleans	1978		P	P *	P	E	R S	R S		R S			P		New Orleans Department of Health	Defeated
Monroe	1979		R													Unknown
Baton Rouge	1981									R S						Adopted
Baton Rouge	1982						R S									Adopted
Baton Rouge	1983											P L				Defeated
Unknown	1984															Unknown
Unknown	1984															Unknown
Bossier City	1985								R L						\$100 max initial fine, \$200 max additional fines	Adopted
Shreveport	1985												R			Unknown
Walker	1985								R L							Adopted
Shreveport	1986												R			Died
New Orleans	1987		R S	R S	R S										New Orleans Police Department enforced smoking violations. \$25 fine	Defeated
Caddo	1988								P							Unknown

New Orleans	1988		P	R S	R S		P	P		P			P		Established \$50-\$300 penalties	Adopted
Plaquemine	1988		P #													Adopted
Shreveport	1988				Q				R							Adopted
Baton Rouge	1989		U		U			U		U			U			Adopted
Caddo	1989								R							Adopted
Lafayette	1989								R S							Adopted
Lake Charles	1989		P	R S	P #		P	P		P		P	P			Adopted
Baker	1990								R							Adopted
Houma	1990								R							Adopted
Jefferson Davis	1990															Repealed existing restrictions
Terrebone	1990								R S							Adopted
Lafayette	1991		P	P	R S								R			Defeated
Lafourche	1991								R S							Adopted
Merryville	1991								P							Unknown
Shreveport	1991	E	P	R S	R S	E	R S		R S							Died
Thibodaux	1991								P							Adopted
Berwick	1992								R S							Adopted
Eunice	1992								P #							Adopted
Lafayette	1992								R S							Adopted
Mandeville	1992				R S											Adopted
Merryville	1992								P							Unknown
Ponchatoula	1992								P							Defeated
Vivian	1992								R S							Adopted
Alexandria	1993								P							Adopted
Bastrop	1993								P							Adopted
Beauregard Parish	1993								R S							Adopted
Bogalusa	1993								P							Adopted
Bossier	1993		P ^	P ^	P ^											Defeated
Calcasieu Parish	1993		P		R S											Adopted
Catahoula Parish	1993	E	P	R S	R S	E	P	P					P			Adopted
Clairborne Parish	1993								R S							Adopted
Covington	1993								P ^							Adopted

Deridder	1993								P								Adopted
Evangeline Parish	1993								P								Adopted
Gonzales	1993								P								Adopted
Grand Coteau	1993								P								Adopted
Iberville	1993								P L								Adopted
Iowa	1993								R S								Adopted
Jefferson Davis Parish\$	1993	E	P	P	E	E	P		L	P	P		P				Adopted
Jonesboro	1993								P								Adopted
Jonesville	1993								P								Adopted
La Salle Parish	1993								P								Adopted
Leesville	1993								P								Adopted
Lincoln Parish	1993								P #								Adopted
Madison Parish	1993								P L								Defeated
Morehouse Parish	1993								P								Adopted
New Orleans	1993								P					Permits adoption of stronger policies at public and private places	Provides enforcement for private policies and public places		Adopted
Oak Grove	1993								P								Adopted
Olla	1993								P								Adopted
Ouachita Parish	1993								R S								Adopted
Port Allen	1993								P								Adopted
Rapides Parish	1993								P #								Adopted
Rayne	1993								P								Adopted
Ruston	1993								P						Provides enforcement for voluntary smoking restrictions		Adopted
Sabine Parish	1993								P								Adopted
Slidell	1993								P #								Adopted
St. Bernard	1993								P #								Adopted
St. Charles Parish	1993		P ^		P ^		P^		P ^								Defeated
St. James	1993								R S								Adopted
St. Landry	1993								R S								Adopted



St. Martinville	1993								L R S								Adopted
St. Tammany	1993								P #								Adopted
Sulphur	1993	E	R S	R S	R S	E		R S		R S		P					Adopted
Union Parish	1993								P #								Adopted
Ville Platte	1993																Adopted
Walker	1993								P L					Yes			Adopted
*Weak resolution. Encourages nonsmoking accommodation. **Contains exemptions. ^Listed as “ban/restrict” in industry documents. #Exempts or simply restricts smoking at certain specific locations. \$Combination of multiple resolutions and bills in one year.																	

## Chapter 6: Early Tobacco Taxes (1980 to 1999)

- Louisiana lawmakers only passed tobacco tax increases in 1984 and 1990 despite recurring budget crises throughout the 1980s and early 1990s.
- The Tobacco Institute and tobacco companies directly collaborated with friendly state and local lawmakers to weaken and defeat tax legislation.
- In 1992, the Tobacco Institute successfully pushed for the repeal of a local cigarette tax adopted by New Orleans in late 1984.

Tobacco taxes are an effective strategy for preventing tobacco product initiation and reducing consumption.<sup>1</sup> In the United States, the most widely employed tobacco tax is the cigarette excise tax that is levied on each pack of cigarettes.<sup>2</sup> As of April 2020, cigarettes were taxed at \$1.01 per pack at the federal level, while states and some localities impose varying excise taxes.<sup>3</sup>

Louisiana proved mostly averse to tobacco tax increases throughout the 20<sup>th</sup> century, particularly during the 1980s and 1990s, despite regular budget crises then. The Legislature passed one of the first tobacco taxes in the country in 1926, but Louisiana lawmakers repealed that law in 1928.<sup>4</sup> Louisiana made few additional tobacco tax increases before 1980, raising its cigarette tax per pack to 8¢ before 1950<sup>5</sup> and increasing it another 3¢ cents in 1974.<sup>6</sup> Starting in 1980, when health advocates sought to raise tobacco taxes to fund the Louisiana Cancer and Lung Trust Fund, the tobacco industry aggressively fought them. The industry successfully resisted tax increases until 1984, when during a state budget crisis (caused by Louisiana's reliance on revenue from a faltering oil industry) the tobacco industry failed to prevent a 5¢ per pack tax on cigarettes, bringing Louisiana's total tax to 16¢. Although budget crises remained a perpetual problem, the tobacco industry staved off additional tax increases until another 4¢ per pack cigarette tax increase passed in 1990. Louisiana tobacco taxes then stagnated until 2000. Louisiana's dearth of increases likely resulted from the tobacco industry's heavy lobbying against tax increases from 1980 to 1999 and the health community's ineffective action on the issue. Louisiana did not adopt another tobacco tax until 2000, when health and tobacco control advocates jointly fought for tax increase legislation (Chapter 11).

The tobacco industry also fought local taxes during the 1980s and 1990s, initially with less success. The City of New Orleans passed a 5% of sales price tobacco tax in 1984 over resistance from the Tobacco Institute (TI), the major cigarette companies' lobbying arm at the time. Despite tobacco industry efforts to have the tax repealed and prevent additional increases in the city, New Orleans raised its tobacco tax to 10% in 1986 and 20% in 1988. The tobacco industry ultimately managed to have the tobacco tax repealed in 1992 via a lawsuit filed by its allies. Its allies would prevent another attempt to revive the tax with a lawsuit in 1993.

### Legislative Rules around Tax Increases in Louisiana

State-level taxes in Louisiana, including those on tobacco products, must originate in the House Ways and Means Committee. The House and Senate can amend the amount of the tax and make other changes. In 1974, the Louisiana public ratified a new state constitution that prohibited consideration of tax legislation in odd-numbered years,<sup>7</sup> limiting consideration of

those bills to regular sessions in even years and special sessions. State lawmakers subsequently adopted Act 1041 in 1993, a constitutional amendment, to only allow proposal of tax increases during regular sessions in odd-numbered years or special sessions.<sup>8</sup> All tax increases in Louisiana need approval by a two-thirds vote of each chamber.<sup>9</sup>

### **Tobacco Tax Efforts Pre-1980s Provide Limited Revenue**

Louisiana considered and passed a limited amount of tobacco tax legislation before the 1980s. The state instituted its first tobacco tax in 1926,<sup>6</sup> the ninth to do so,<sup>10</sup> with Act 197. Act 197 levied a 10% sales tax on cigarettes, cigars, and loose tobacco with revenue going to public schools.<sup>4</sup> However, in 1928 state lawmakers repealed the tax.<sup>4</sup> According to a document found in RJ Reynolds' records, Louisiana's State Education Superintendent supported eliminating the tax because it was "unsatisfactory and it seems impossible of proper enforcement."<sup>4</sup> Louisiana would raise its cigarette excise tax to 8¢ per pack by 1950, among the highest in the United States during that time.<sup>5</sup> A 3¢ increase per pack in 1970, the next and last increase before the 1980s, brought the total tax rate to 11¢ per cigarette pack (Table 6.1).

Table 6.1: Excise Tax Per Cigarette Pack in Louisiana Through 1997 <sup>5, 6</sup>		
Year Adopted	Amount Increase	Total
Pre-1950	8¢	8¢
1970	3¢	11¢
1984	5¢	16¢
1990	4¢	20¢

### **Tobacco Industry Prevents Tax Increases 1980-1984**

#### ***Louisiana Cancer and Lung Trust Fund: 1980***

In 1980, state lawmakers, health advocates and medical researchers, including Alton Oschner of the Oschner Foundation Hospital in New Orleans, pursued the first tobacco tax increase in Louisiana to dedicate funding towards tobacco control. HB 1651, introduced on May 5, 1980 by Representative Leo Watermeier (D-New Orleans) and cosponsor Quentin Dastugue (D-Metairie), raised the cigarette tax 1¢ per pack from 11¢ to 12¢ to create a new Louisiana Cancer and Lung Trust Fund.<sup>11-14</sup> The new Trust's board<sup>14</sup> would allocate the Fund's money towards "research into smoking-related diseases."<sup>13</sup> In addition, HB 1651 dedicated 17% of cigarette tax increase revenue to the state's existing cancer registry.<sup>15</sup> At the time, Louisiana had the highest cancer mortality rate in the country, but received the 38<sup>th</sup> most cancer research funding among states from the federal government and other unspecified sources combined.<sup>14</sup> The tobacco industry expected HB 1651 to raise cigarette tax revenue collected in 1981 by Louisiana from a projected \$65.3 million to \$70.7 million.<sup>16</sup>

In 1980, state lawmakers, health advocates and medical researchers ... pursued the first tobacco tax increase in Louisiana to dedicate funding towards tobacco control.

A similar bill introduced the same day as HB 1651, HB 1763 by Representative Mary Landrieu (D-New Orleans), funded cancer research by rededicating some existing tobacco tax

revenue.<sup>17</sup> HB 1763 never received consideration and died at the end of the 1980 legislative session.

On May 13, 1980, TI Regional Vice President Ron Morris sent Louisiana attorney Jack Pender a list of talking points to oppose HB 1651.<sup>16</sup> Morris' letter asserted the bill did "not take into consideration the needs and rights of the more than one million Louisiana residents who smoke cigarettes [sic]" and included 7 talking points as well as numerous facts and assertions to back them up, including the following:

- More than 31 percent of what Louisiana residents pay for a pack of cigarettes [sic] goes to the federal and state governments in the form of taxes.
- Cigarettes [sic] already generate 2.6 percent of the state's total revenue.
- Average household effective buying income in Louisiana is \$14,489. Under the current tax rate the average household with two smokers is required to pay \$153.30 a year or 1.1% of its income for the pleasure of smoking. If this same family makes only \$5,000 a year, 3.1% of its income goes for cigarette [sic] taxes.
- Over 20 percent of Louisiana's households have incomes of less than \$5,000 annually.<sup>16</sup>

Talking points in Morris' letter also used traditional industry arguments that tobacco tax increases were unfair and regressive<sup>18-20</sup>:

- Louisiana cigarette [sic] taxes are inequitable. They discriminate against the more than one million consumers who prefer to smoke. They are regressive because they tax heavily a product which comprises larger portion of poor consumers' budgets than those of more affluent consumers.
- Since the percentage of income devoted to consuming cigarettes [sic] falls as income rises, Louisiana cigarette taxes are levied at higher effective rates on the poor than on the more affluent.<sup>16</sup>

Morris' letter also provided talking points and assertions to bolster his claim that a cigarette tax increase economically harmed businesses, reduced the competitiveness of Louisiana businesses with nearby Mississippi retailers, and lowered state revenue.<sup>16</sup>

On May 16, 1980, TI Regional Vice President Ron Morris sent TI Vice President Roger Mozingo a copy of HB1651 and informed him that a TI lobbyist was handling the bill.<sup>21</sup>

Health voluntaries and health practitioners supported HB 1651. The American Lung Association<sup>15</sup> backed HB 1651, as did Alton Oschner of the Ochsner Foundation Hospital in New Orleans.<sup>14</sup> We do not know if the American Cancer Society, American Heart Association, or other organizations advocated for HB 1651.

The 1980 regular session ended on July 15, 1980, giving HB 1651 a month to pass the House and Senate.<sup>22</sup> At a June 18, 1980 meeting of Louisiana Tobacco Action Network (TAN) officials, TI Public Affairs Manager<sup>23</sup> Dan Alverson informed attendees that HB 1651 would

likely pass the House Ways and Means Committee but fail to pass the legislature before the session ended.<sup>24</sup>

The House Ways and Means Committee considered HB 1651 on June 23, 1980. Tobacco sellers opposed the bill at the hearing, while Dr. Alton Ochsner supported it for its public health benefits. We do not know arguments used against HB 1651 during consideration. Oschner told the committee HB 1651's revenue was needed because of shrinking research funding from the federal government and other sources.<sup>14</sup> One of the first scientists to highlight the link between smoking and lung cancer, Ochsner testified that smoking caused 96% of lung cancer deaths.<sup>14</sup> He also implied that filters did not protect smokers from harm, asserting they merely "help sell more cigarettes." Ochsner argued to the committee that the tax most assisted those paying it, smokers.<sup>14</sup>

House Ways and Means Committee members resisted raising taxes on cigarettes to fund the Louisiana Cancer and Lung Trust Fund. During the hearing, chairman John Alario (D-Westwego) suggested state funding from the general budget and other revenue sources could be used for the Trust. Committee members voted 9-5 against the bill.<sup>14</sup>

The House Ways and Means Committee held another hearing for HB 1651 on June 25, 1980.<sup>22</sup> During consideration, committee members removed the 1¢ cigarette tax increase from the bill, eliminating dedicated funding to start or sustain the program.<sup>22</sup> According to American Lung Association (ALA) Executive Director W. Findley Raymond in an October 5, 1980 letter to *The Times-Picayune*, tobacco industry representatives influenced committee members to strip the tax increase from HB 1651:

As amended, HB 1651 established the Louisiana Cancer and Lung Trust Fund to provide money for tobacco-related disease research as well as to oversee the work of the Louisiana Tumor Registry but without a revenue source.

The pressures put on the House Ways and Means Committee by the tobacco lobby were effective, and the bill had to be completely rewritten to call for funding through the general appropriations legislation.<sup>15</sup>

As amended, HB 1651 established the Louisiana Cancer and Lung Trust Fund to provide money for tobacco-related disease research as well as to oversee the work of the Louisiana Tumor Registry but did not provide the Fund a revenue source. The Committee then reported HB 1651 to the House Floor.

HB 1651 progressed through the legislature without lawmakers attaching a dedicated funding source. During consideration of HB 1651 by the Senate Finance Committee, Senator Joe Tiemann (D-Metairie) unsuccessfully offered an amendment to establish a funding system and to give the account \$150,000 to establish a grant application process.<sup>15</sup> Governor David Treen (R) signed HB 1651 into law on August 1, 1980, creating an unfunded Louisiana Cancer and Lung Trust Fund to fund tobacco-related disease research.<sup>22</sup>

After the adoption of HB 1651, the American Lung Association pressured state officials to dedicate money to the new fund and called public attention to its absent funding. On September 3, 1980, ALA Executive Director W. Raymond sent a letter to Louisiana Department of Health and Human Resources (DHHR) Secretary George Fischer regarding the secretary's plans to fund the Trust's panel.<sup>15</sup> Raymond subsequently published a letter in New Orleans newspaper *The Times-Picayune* on October 5 calling attention to the Trust's lack of funding.<sup>15</sup> The letter castigated "petty bureaucrats who handle the budget" for not funding the Trust and registry.<sup>15</sup> Raymond's letter also attacked DHHR staff for failing to inform lawmakers of the state's existing tumor registry lacking stable funding in coming years and revealed that DHHR Secretary Fischer failed to respond to the ALA's September 3 letter concerning funding the Trust's Board.

### **1982: Louisiana: One of the "Hot Spots" in the Southeastern Region**

TI faced multiple tax increase threats in Louisiana during the 1982 legislative session. Lawmakers introduced HB526, HB1353, and HB806 to raise the state's cigarette tax and dedicate revenue to the Louisiana Cancer and Lung Trust Fund. HB 1353 and HB 806 temporarily increased the cigarette tax by 4¢ to 15¢ per pack. HB 526, introduced by Representative Joe Delpit (D-Baton Rouge) on April 22, 1982, presented the greatest threat to the industry. Titled the Cigarette Tax Aid Fund, HB 526 raised the cigarette tax from 11¢ to 21¢ per pack and dedicated revenue towards local governments (50%), the Louisiana Cancer and Lung Trust Fund (25%), and the state's Alcoholism and Substance Abuse Prevention, Education, Treatment, and Research Fund (25%).<sup>25</sup> State lawmakers also submitted HB 554 to reallocate revenue from the existing cigarette pack tax.<sup>26</sup> TI Senior Vice President of State Activities Jack Kelly warned the State Activities Policy Committee on April 30, 1982 he expected the Louisiana Municipal League to support HB 526 since local governments received revenue from the bill.<sup>25</sup> HB 526, HB 1353, HB 806, and HB 554 went to the House Ways and Means Committee for initial consideration.

TI mobilized Tobacco Action Network volunteers to oppose HB 526 and other proposed tobacco tax increases during the 1982 session.<sup>25</sup> TI Senior Vice President of State Activities,<sup>27</sup> Jack Kelly, sent an Action Request to the State Activities Policy Committee on April 30, 1982 asking them to have volunteers write letters to Louisiana legislators against the tobacco tax increase legislation, in particular HB 526.<sup>25</sup> TAN State Director Terry Frakes subsequently sent a message to Louisiana TAN members requesting they ask lawmakers to oppose HB 526:

If you agree that this legislation is unwise and detrimental to the entire industry, please write immediately to your state representative expressing your opposition to such tax increases and encouraging a "NO" vote on this bill.<sup>28</sup>

The message provided the names and addresses of state representatives along with talking points for volunteers to use in correspondence against HB 526.<sup>28</sup> A list of talking points, likely from Terry Frakes' message to TAN members, mainly cast the cigarette tax increase as regressive, unfair to smokers, and bad fiscal policy.

The House Ways and Means Committee blocked the tobacco tax increase and reallocation bills introduced in 1982. Committee members considered House Bills 526, 806, and 1353 on June 1, 1982. At the hearing, the committee voted 7-1 and 10-4 respectively to defer HB 526 and HB 806.<sup>29</sup> HB 1353's sponsor, Representative Edward D'Gerolamo (D-Kenner), withdrew his bill before committee members deferred it.<sup>30</sup> HB 526, HB 806, and HB 1353 died upon adjournment without further consideration. HB 554, the cigarette tax reallocation bill also sent to the House Ways and Means Committee, never received a hearing.<sup>29</sup>

### **Tobacco Institute Prepares for 1983 Legislative Session**

In 1982, TI considered strengthening its presence in state legislatures by giving campaign contributions to state lawmakers.<sup>31</sup> According to a May 20, 1982 document probably from TI, "the [tobacco] industry ha[d] a virtually nonexistent record of campaign contributions in most states."<sup>31</sup> The document explained contributions were needed to help TI officials and lobbyists involved in state efforts as well as to foster long-term relationships with government officials and lawmakers. The document reasoned "longer term relationships would accrue to the industry as former state level friends move up to federal elected offices."<sup>31</sup>

TI expected Louisiana to have a difficult legislative climate in 1983 because of adverse bills in 1982 and a slump afflicting the state's energy sector. According to a November 22, 1982 memo from TI Vice President Roger Mozingo to TI Communications Committee member Hugh Foley, RJR State Public Affairs Manager Larry Bewley, Lorillard Senior Associate General Counsel James Cherry, Philip Morris Director of Public Affairs J. Bernard Robinson, and Brown and Williams Corporate Counsel J. Kendrick Wells on Louisiana's political climate, "Louisiana is shaping up to [be] one of the 'hot spots' in the Southeast Region."<sup>32</sup> Mozingo expected "1983 will be a bastard year" featuring clean air, tobacco tax, and sampling restriction bills.<sup>32</sup> He

anticipated lawmakers introducing more cigarette tax increase bills than other types of tobacco control legislation, and estimated the tax legislation had neutral odds of passage. Louisiana lawmakers faced a \$38 million budget shortfall caused by reductions in gas and oil production<sup>33</sup> that Mozingo reasoned made cigarettes a target for tax increases.<sup>32</sup> In addition, he expected an unidentified New Orleans Medical Group

TI lobbyists Joe Wood Guidry and Jack Pender advised Mozingo contributions would "be important and pay extra dividends" in a non-election year and put TI in a good position to combat expected 1983 cigarette tax proposals.

(likely the Oschner Foundation) to support legislation providing money to the Louisiana Cancer and Lung Trust, which still lacked funding. Louisiana Governor Dave Treen (R) planned to hold a special session in January 1983 that lawmakers might use to introduce legislation raising taxes on cigarettes, alcohol, and gasoline. However, Mozingo expected key members of the House Ways and Means Committee would be hostile towards raising taxes during a special session.<sup>32</sup>

As part of defensive preparations for the 1983 legislative session, TI made its first campaign contributions in Louisiana to members of legislative committees that handled tax and smoking restriction legislation. TI lobbyists Joe Wood and Jack Pender advised Mozingo that contributions would "be important and pay extra dividends"<sup>34</sup> in a non-election year and put TI

in a good position to combat expected 1983 cigarette tax proposals.<sup>32</sup> As a result, TI distributed campaign contributions to five members of the Senate Revenue and Fiscal Affairs Committee, the House Ways and Means Committee, and the House Health and Welfare Committee in the summer or fall of 1982 (Table 6.2).<sup>34, 35</sup> TI VP Morris reported the campaign contributions "were very well received and should do a great deal to help strengthen our position."<sup>32</sup>

Table 6.2: First Tobacco Institute Campaign Contributions to Key Legislative Leadership in 1982 <sup>34</sup>				
<i>Name</i>	<i>Party</i>	<i>Chamber</i>	<i>Committee</i>	<i>Amount</i>
O. Decuir	D	S	Revenue & Fiscal Affairs	\$400
C. Barham	D	S	Revenue & Fiscal Affairs	\$400
H.E. Braden	D	S	Revenue & Fiscal Affairs	\$400
T.H. Hudson	D	S	Revenue & Fiscal Affairs	\$500
C. Newman	D	S	Revenue & Fiscal Affairs	\$400
R. Adley	D	H	Health & Welfare	\$400
B.J. D'Gerolamo	D	H	Health & Welfare	\$500
A. Jackson	D	H	Health & Welfare	\$500
H.J. Kember	D	H	Health & Welfare	\$400
M. Lowenthal	D	H	Health & Welfare	\$500
J. Alario Jr.	D	H	Chairman Ways & Means	\$500
B.C. Bruneau, Jr.	D	H	Ways& Means	\$500
C. Gunter, Jr.	D	H	Ways& Means	\$400
M.J. Hebert	D	H	Ways& Means	\$400
C.W. Kimball	D	H	Ways& Means	\$500
<b>Total</b>				\$6800

TI identified grocers and wholesalers as primary allies in preventing tobacco tax increases.<sup>32</sup> Mazingo also reasoned that the TI's new Area Director, John Hightower, might generate support from Louisiana's business community because of his membership and connections to the Louisiana Association of Business and Industry (LABI), Louisiana Restaurant Association (LRA), Louisiana Chamber of Commerce, Public Affairs Research Council of Louisiana, and other organizations.<sup>32</sup> Most of those associations later became tobacco industry allies (Chapter 2).

TI reasoned there may be local government resistance towards a tobacco tax increase. Mazingo believed the Louisiana League of Municipalities might oppose a tobacco tax increase if revenue did not go to local governments.<sup>32</sup>

State legislators pursued only one cigarette tax increase bill during the January 1983 special session convened by Governor Treen that the tobacco industry managed to "head off."<sup>36</sup>

### **Governor Treen Pursues a Cigarette Tax Increase during the 1983 Second Special Session**

Governor Treen called a second special session from December 7 to 17, 1983 to resolve Louisiana's ongoing budget shortfall, which the tobacco industry believed ranged from \$220-\$550 million.<sup>37</sup> The Session was Treen's last attempt to address the budget deficit after losing his reelection campaign to former governor Edwin Edwards (D) that year. Treen asked lawmakers to increase the cigarette tax increase by 5¢ per pack (to 16¢),<sup>38</sup> prompting TI representatives to lobby state lawmakers, in particular members of the House Ways and Means Committee, against the rate hike.<sup>38</sup>



Representative Edward D'Gerolamo (D-Kenner) introduced HB 8 on December 7, 1983 to increase the cigarette tax by 5¢ to 16¢ per pack. D'Gerolamo's bill was part Governor Treen's legislative package for that special session.<sup>39</sup> The House Ways and Means Committee considered HB 8 and other bills from Treen's package on December 8, 1983. Members debated but did not vote on HB 8, effectively killing the legislation.<sup>39</sup>

Instead of increasing cigarette taxes to address Louisiana's budget deficit, the state legislature decreased personal exemptions under the state income tax.<sup>40</sup> Partly as a result, the state continued to face a \$250 to \$500 million state deficit after the 1983 legislative session.<sup>37</sup> The budget crisis continued and lawmakers repeatedly targeted tobacco products for tax increases in subsequent legislative sessions.

### **Ongoing Budget Shortfalls Lead to Tobacco Tax Increase**

The oil market collapsed in 1984, reducing energy sector tax revenues<sup>33</sup> and pressuring lawmakers to find other income sources.<sup>41, 42</sup> Louisiana and two other states (Oklahoma and Texas) had relied on tax revenue generated by oil and natural gas.<sup>33</sup> According to a 1985 State by State Analysis from TI, "As prices for oil and gas increased, Louisiana coffers filled. More and more social programs were begun, but for all the rapid growth and wealth, no secondary or ancillary industrial complex was developed."<sup>43</sup> As a result, Louisiana's revenue was significantly impacted.

To address Louisiana's budget crisis<sup>44</sup> and secure revenue for new initiatives,<sup>45</sup> newly elected Governor Edwin Edwards (D) held a weeklong special session in March 1984 in which he proposed a \$1.1 billion legislative package that increased taxes on gasoline, liquor, sales, income, cigarettes,<sup>46</sup> and other sources.<sup>45</sup>

The cigarette tax bill, HB 18 by Representative Raymond Laborde (D-Marksville), raised the cigarette tax from 11¢ to 16¢ per pack and had an index provision that adjusted the tax rate yearly based on the consumer price index starting July 1, 1985.<sup>46, 47</sup> The bill would become effective July 1, 1984 if adopted.

The House Ways and Means Committee considered HB 18 on March 20, 1984. At the hearing, Committee members amended HB 18 to eliminate the index component. According to a March 21, 1984 memo from TI VP Hurst Marshall to RJR Government Relations Vice President W.E. Ainsworth, Lorillard VP James Cherry, Liggett CEO and President Kinsley Dey, Jr., Brown and Williamson Senior Vice President Ernst Pepples, and Philip Morris Vice President and Director of Corporate Affairs Stanley Scott, TI lobbyists persuaded the committee to remove the provision.<sup>47</sup> TI's 1985 State-By-State Analysis also claimed TI officials had managed "to convince Louisiana's governor not to use 'a percent of value tax.'"<sup>43</sup> Following the amendment, House Ways and Means Committee members voted 15-1 to pass HB 18.<sup>46</sup>

Representatives debated HB 18 on March 21, 1984. They amended the bill to dedicate 2¢ of the tax increase to the unfunded Louisiana Cancer and Lung Trust Fund for cancer research (expected to generate about \$11.6 million for the Fund) in a 67-27 vote.<sup>46, 48</sup> The House

subsequently sent HB 18 to the Senate on an 87-14 vote.<sup>46</sup> We did not find evidence of tobacco industry representatives or health advocates lobbying lawmakers while HB 18 was on the House Floor.

The Senate Revenue and Fiscal Affairs Committee considered HB 18 on March 22, 1984.<sup>48</sup> Before the hearing, TI heard lawmakers might pursue both favorable and adverse amendments to the bill.<sup>48</sup> During the meeting, Committee members adopted an amendment permitting the state Department of Revenue and Taxation secretary to give tobacco wholesalers in neighboring states with Louisiana clients a 6% discount on tax stamps for filing accurate, monthly reports to the agency regarding not yet-taxed tobacco product sales.<sup>49</sup> The tax discount matched and could not exceed the discount provided to Louisiana-based tobacco wholesalers.<sup>49</sup> The committee also considered imposing taxes on other tobacco products in HB 18, but TI lobbyists persuaded members against attaching them to the bill.<sup>48</sup> We did not find evidence of health advocates or other groups advocating for the amendments. The Committee passed the bill 7-1.<sup>48</sup>

HB 18 traveled through the remainder of the legislative process without changes to its cigarette tax increase or revenue dedications. Senators considered and approved HB 18 in a 35-4 vote on March 23, after revising language regarding tax stamps and out-of-state tobacco retailers operating in Louisiana.<sup>46, 50</sup> The House concurred with Senate changes and sent HB 18 to Governor Edwards, who signed it into law on March 27.<sup>46</sup>

Effective on July 1, 1984, HB 18 raised the cigarette tax from 11¢ to 16¢ per pack and allocated 2¢ per pack to the Louisiana Cancer and Lung Trust Fund.<sup>46</sup> The Louisiana Constitution required lawmakers to annually appropriate the 2¢ in revenue because it forbade automatically assigning funds.<sup>51</sup> Including the trust funding astonished TI Area Director John Hightower, who ruminated in a March 27, 1984 memo to TI VP Ron Morris that “there is some questions as to the constitutionality of such a provision.”<sup>48</sup> The 2¢ dedication was the first assigned revenue for the Trust since its inception in 1980.

### **The Tobacco Industry Defunds the Louisiana Cancer and Lung Trust Fund: 1984**

The Legislature met for the 1984 regular session on April 16, during which Representative Raymond Laborde (D-Marksville) and Senator Nat Kiefer (D-New Orleans) proposed bills limiting use of or eliminating funding for the Louisiana Cancer and Lung Trust Fund (LCLTF). Representative Laborde introduced HB 1273 to restrict allocation of cigarette tax revenue to the LCLTF.<sup>46</sup> Its companion, SB 639 by Senator Kiefer, reduced LCLTF funding from the cigarette tax increase from \$11.6 million to \$500,000 annually.<sup>52</sup> Representative Laborde and Senator Kiefer also introduced HB 1274 and SB 838 to completely eliminate HB 18’s allocation to the LCLTF.<sup>46</sup> TI favored HB 1273, HB 1274, and SB 838, perhaps because they limited or removed funding for health research unfavorable to the tobacco industry, but took no position on SB 639 (although it was a companion to HB 1273).<sup>53</sup>

Tobacco tax legislation introduced during the 1984 legislation mostly failed, with only SB 639 passing. HB 1273 and HB 1274 died without consideration in the House Ways and Means Committee.<sup>46</sup> The Senate Revenue and Fiscal Affairs Committee heard SB 838 on June 4,

1984 and amended it to cut the funds dedicated to the LCLTF from \$11 million to \$1 million annually. The Committee never passed SB 838 after amending it, instead killing it.<sup>46</sup>

The legislature adopted SB 639 after amending it to provide more money to the LCLTF than the legislation initially intended. The Senate altered the bill to limit annual allocations to the LCLTF to \$1 million instead of the \$500,000 first proposed in the bill, still drastically lower than the existing \$11.6 million (2¢ per cigarette pack) annual dedication it sought to reduce.<sup>43, 46, 52</sup> After passing through the legislature, Governor Edwards signed SB 639 into law on July 20, 1984 (Public Law 84-876).<sup>54</sup> Adoption of the bill decreased funding to the Louisiana Cancer and Lung Trust Fund from approximately \$11.6 million to a fixed \$1 million yearly,<sup>55</sup> a 91% loss for cancer research. We did not find evidence of health advocates or tobacco industry representatives lobbying lawmakers on SB 639.

Adoption of the bill decreased funding to the Louisiana Cancer and Lung Trust Fund from approximately \$11.6 million to a fixed \$1 million yearly, a 91% loss for cancer research.

## **The Nation Sees a Rise in Cigarette Tax Proposals in 1986**

### ***Louisiana Reckons with a Budget Shortfall and Broken Economy***

Louisiana faced a severe budget deficit and bad economy at the end of 1985. TI determined that Governor Edwards' \$1 billion tax package from 1984 had brought in lower than expected revenue.<sup>43</sup> According to a 1985 analysis of Louisiana from TI records, "The state will face a deficit in 1986. The revenue shortage will cause a decrease in government services, a general increase in taxes, or both. The State and its cities, especially New Orleans, are suffering from high unemployment, a restrictive tax base, and a totally stagnant economy."<sup>43</sup> As a result, TI anticipated demand for taxes to grow.<sup>43</sup> However, TI officials thought that if expected legislation to legalize gambling in New Orleans and create a state lottery passed in 1986, the tobacco industry faced reduced threats of a tax increase.<sup>43</sup> Despite Louisiana's estimated \$800 million budget shortfall<sup>56</sup> TI considered it a "Priority 3" (low priority) state for cigarette tax increase threats in 1986.<sup>57</sup>

TI also learned that Governor Edwin Edward's Economic Development Committee made a suggestion in late 1985 to impose ad valorem taxes on tobacco and other goods instead of excise taxes, a threat it monitored.<sup>43</sup> Ad Valorem taxes are based on an item's worth, one example being a sales tax.<sup>58</sup>

### ***Tobacco Tax Legislation Introduced in 1986***

Lawmakers introduced 75 cigarette tax increase bills in 34 states during 1986.<sup>59</sup> State lawmakers introduced 12 bills in Louisiana in that year's regular session to increase, change, or institute new tobacco taxes, increase the taxation authority of local governments via rolling paper taxes, or decrease tobacco stamp discounts for retailers (Table 6.3). TI identified three particular tax bills of interest in a May 15, 1986 Stateline Special Report to its Policy Committee: HB 574,

HB 2076, and HB 2097.<sup>60</sup> Introduced by Representative William Sumlin (D-Ruston), HB 574 raised the cigarette tax from 16¢ to 28¢ per pack<sup>59</sup> and put the revenue towards wages for state employees and educators (Table 6.3).<sup>61</sup> HB 2076 and 2097 by Representative Hainkel altered the cigarette excise tax to 32% of their invoice price.<sup>59</sup>

HB 574 received support from Louisiana's academic, medical, and scientific population.<sup>62</sup> Louisiana State University doctors and professors Robert Beazley and Pelayo Correa published a letter in the Baton Rouge *Advocate* supporting increasing the state's cigarette tax that was cosigned by approximately 80 medical staff from Louisiana medical facilities and hospitals.<sup>62</sup> The letter listed the negative economic impacts of tobacco from an assessment on tobacco-caused costs conducted for the House Ways and Means Committee by the Louisiana Legislature's Office of Technology Assessment.<sup>62</sup> In addition, Beazley and Correa highlighted the addictiveness of nicotine and health consequences of smoking for both users and non-users. The letter promoted American Medical Association policy positions on tobacco and asserted Louisiana needed tougher tobacco control laws:

The American Medical Association has adopted a strong anti-tobacco national policy which includes a ban on all kinds of advertising and a 32-cent tax per pack of cigarettes. Louisiana's tobacco-related health problems are bigger than in other states, and we need stronger measures. A tax of one dollar per pack in Louisiana seems to us appropriate, non-discriminatory and will benefit the state and each of its citizens.<sup>62</sup>

We did not find any evidence that academic, health, or science advocates advocated on behalf of HB 2076, HB 2097, or other bills besides HB 574 introduced during the 1986 legislative session.

In the first month of the 1986 legislative session, The TI State Activities Division did not consider HB 574, HB 2076 or HB 2097 (Table 6.3) significant threats.<sup>60</sup> Of those bills, only HB 574 received consideration and the tobacco industry lobbied against it.

The House Ways and Means Committee considered HB 574 on May 27, 1986.<sup>59</sup> During the hearing, HB 574 sponsor William. Sumlin asserted to Committee members that tax increase revenue would provide pay raises to state employees, teachers, and other educators, who were leaving Louisiana because of poor earnings and five years of wage stagnation.<sup>56</sup> Sumlin asserted that HB 574 was "a 'logical, socially acceptable tax.'"<sup>56</sup> Identifying herself as a tobacco wholesale lobbyist (Chapter 5), TI lobbyist Joe Wood Guidry (formerly Joe Wood, Chapter 2) complained that the state cigarette tax had risen by 5¢ only two years before and that the federal cigarette tax had also recently increased by 8¢.<sup>56</sup> Guidry asserted that federal and state taxes (combined with state sales taxes) contributed 16¢ each to the average total cost of 91¢ per cigarette pack.<sup>56</sup> Representative Murra Hebert (D-Houma) also spoke against HB 574, expressing concern over providing a salary raise using a cigarette tax increase<sup>56</sup> fearing that the shrinking smoking population would provide less revenue over time.<sup>56</sup> The House Ways and Means Committee voted 14-2 to defer HB 574, killing it.<sup>56, 59</sup>

After 1986, Louisiana lawmakers did not consider tobacco tax legislation until 1988.

Table 6.3: Tobacco Tax Legislation Introduced in Louisiana for the 1986 legislative session <sup>59</sup>													
Bill	Sponsor	Increase Cigarette Excise Tax	Amount of Tax Increase	Change Cigarette Taxation Method to Ad Valorem	Amount of Ad Valorem Rate	Implement / Increase Tax on Other Tobacco Products (OTP)	Amount on OTP	Redistribute Existing Tobacco Tax Revenues	Dedicate Funds to LCLTF	Lower Discount on Tobacco Tax Stamps	Provide Municipalities More Taxation Authority	Other	Outcome
HB 558	Leach										+		Died with adjournment on House Floor
HB 574	Sumlin	+	12¢										Killed by deferral in Committee
HB 980	Hainkel									+			Died with adjournment
HB 1145	Ackal									+			Killed by deferral in Committee
HB 1146	Unknown											+	Killed by deferral in Committee
HB** 1187	Ripoll					+	10% of on rolling papers						Died after conference committee
HB 1782	Ackal							+					Died with adjournment
HB 2076	Hainkel			+	32% of invoice								Died with adjournment
HB 2097	Hainkel			+	32% of invoice								Died with adjournment
HB 2152	Deano							+					Died with adjournment
SB 874	Lauricella									+			Died in Senate Committee after unfavorable report
HB 78*	Bella							+					Died with adjournment
HB 99*	Ripoll, Izon,					+	25% on packages of rolling papers						Died waiting for Senate confirmation of House amendments
HB 169*	Scott										+		Died with adjournment
HB 524	Dastugue							+	+				Died with adjournment
*Introduced during a December special session													
**Heavily amended from original													

## **Tobacco Industry Braces for Tobacco Tax Legislation in March 1988 Special Session to Deal with another Budget Deficit**

TI determined by late 1987 that Louisiana lawmakers would hold multiple sessions in 1988 to address the state's budget problems.<sup>63</sup> Bracing for tobacco tax increase legislation, in early 1988 TI Regional VP Ron Morris asked TI Legislative Issues Manager<sup>64</sup> Paula Duhaime to develop arguments against an expected bill to raise the cigarette tax per pack by 3¢.<sup>65</sup> On January 25, 1988, Duhaime sent Morris a list of counterarguments including information "on the importance of the tobacco industry to Louisiana" and bulletins on a 3¢ cigarette tax increase's effects.<sup>66</sup> Other arguments TI planned to use included that existing Louisiana cigarette and sales taxes were regressive, and that a federal cigarette tax increase in 1982 and Louisiana's cigarette tax increase in 1984 had contributed to a 15% decline in pack sales (likely by early 1988), that a 3¢ increase harmed tax revenue from sales and income taxes and might reduce cigarette pack purchases by 12.9 million, that a tax increase reduced revenue for tobacco retailers and merchants, and increase smuggling.<sup>67</sup> The TI also noted that Louisiana did not have a property tax or a high income tax, which generated approximately 2 percent and 30 percent of tax revenue respectively for other states.<sup>67</sup> TI also asserted that tobacco sales in Louisiana, predominantly cigarettes, generated \$600 million in sales during 1985 and provided 8,600 Louisianans income in 1983,<sup>68</sup> stating:

... Duhaime sent Morris a list of counterarguments including information "on the importance of the tobacco industry to Louisiana" and bulletins on a 3¢ cigarette tax increase's effects.

- More than \$21 million to almost 900 wholesale employees and proprietors who distributed and stored products,
- more than \$40 million to approximately 3,400 managers and clerks who sell tobacco products at retail, and
- \$88 million to over 4,300 employees in the industries that supply the tobacco sector.<sup>68</sup>

On February 25, 1988, TI lobbyist Joe Wood Guidry notified TI that Representative Don Kennard (D-East Baton Rouge) intended to introduce a bill to increase Louisiana's tobacco tax from 16¢ to 24¢ per pack.<sup>69</sup> Believed to be supported by newly elected Governor Ed "Buddy" Roemer (D), the planned legislation divided revenue evenly between the General Fund, an eye health<sup>70</sup> "education [and] prevention program"<sup>69</sup> and local governments.<sup>69</sup> Guidry also informed TI that Governor Roemer's administration was considering introducing legislation during the planned special session to increase the tobacco tax by 5¢.<sup>69</sup> According to TI employee Sarah Davis in a February 25, 1988 memo regarding the potential bills, TI's Guidry began "working on 35-45 votes against taxes" before their introduction.<sup>69</sup>

On February 26, Louisiana Wholesale Tobacco and Candy Distributor's Association Executive Director Sarah Whalen, an industry ally and frequent lobbying partner (Chapter 2), informed TI that neither Representative Kennard nor Governor Roemer supported his anticipated legislation. Whalen told the Institute that "he [Kennard] does not plan to push bill. He indicated he was being forced to introduce bill by eye care committee."<sup>71</sup> Governor Roemer did not

support Kennard's legislation because he wanted its revenue dedicated to the state's general fund instead of the eye health and prevention committee and local governments.<sup>71</sup>

On March 15, 1988 Governor Roemer issued an executive order to address Louisiana's budget shortfall for FY 1987-88 during a special session that month.<sup>72</sup> Despite expectations at TI that Representative Kennard and other Louisiana lawmakers would introduce tobacco tax increase legislation that session, no bills were introduced until the regular session in April or the additional special session in October.<sup>73</sup>

### **Tobacco Industry Defends Against Tobacco Tax Increases during an Additional 1988 Special Session to Raise Revenue**

#### ***Tobacco Taxes Fail During the 1988 Regular Session***

Louisiana lawmakers introduced 4 tobacco tax bills during the 1988 regular legislation session (Table 6.4). Except for HB 1909, all died without consideration or after being deferred in committee (Table 6.4).<sup>73</sup> HB 1909 established a Recreation and Parks District for St. Tammany Parish and granted its Board of Commissioners permission to levy a 25¢ tax on cigarette rolling papers to fund operations.<sup>73</sup> We did not find evidence the tobacco industry actively opposed HB 1909.

#### ***Special Session to Deal with the \$780 Million Budget Deficit in 1988***

In July 1988, Governor Roemer announced plans to hold a special session in August or September dedicated to tax reform<sup>74</sup> to address Louisiana's \$750 million budget shortfall,<sup>75</sup> but in early August delayed the special session to October.<sup>76</sup> Roemer developed a comprehensive tax proposal for the session that the House Ways and Means Committee would informally consider in September.<sup>76</sup>

In late August or early September 1988, Governor Roemer revealed his tax proposal to the public.<sup>77</sup> The plan levied a state property tax for the first time in Louisiana and lowered those that qualified for a homestead tax exemption from people owning houses worth no more than \$75,000 to those with houses worth no more than \$25,000. The proposal also reduced the state sales tax and increased the private passenger auto licensing fee from \$3 to \$10. In addition, the plan would raise Louisiana's cigarette tax from 16 to 22¢ per pack and levy a tax on smokeless tobacco of 20% of invoice price, the first time the state would tax smokeless tobacco.<sup>78</sup> On September 2, 1988, Louisiana Restaurant Association President Nick Perez sent an overview of the tax plan to TI and other large businesses.<sup>77</sup>

Governor Roemer gave his tax proposal to the House Ways and Means committee for review on September 16, 1988, which began hearings on September 20.<sup>79</sup> During and after the hearings, committee members and lawmakers disagreed with various portions of Roemer's plan<sup>80</sup> and announced their intention to offer amendments.<sup>81, 82</sup> However, we did not find evidence that legislators opposed to the initial plan sought to change the tobacco taxes it contained.

Table 6.4: Tax Increase Legislation Introduced during the 1988 Regular Session <sup>73</sup>						
Bill	Sponsor	Cigarette Tax Increase	Tax Increase on Other Tobacco Products	Tax Increase on Cigarette Rolling Papers	Allocation	Outcome
HB 269*	Kennard	9¢			1¢ to Louisiana Cancer and Lung Trust Fund. Eight¢ divided equally between municipalities, a new Comprehensive Health Education and Disease Prevention Fund, and General Fund.	Unsuccessful (method of failure unknown)
HB 1194				25¢ per rolling paper pack		Died with adjournment
HB 1752			20% of invoice tax on all tobacco products besides cigarettes**			Died with adjournment
HB 1909**				25¢ per rolling paper pack	Authorized St. Tammany Parish Recreation and Parks District to levy 25¢ tax on cigarette rolling paper packs.	Adopted
*Implementation dependent upon other bill passing that created Comprehensive Health Education and Disease Prevention Fund. **Created new parks and recreation district, and allowed its board to impose tax to fund operations. *** For cigars, HB1194 increased the tax from 8% to 20% the invoice price, for smoking tobacco decreased the tax from 33% to 20%. First tax on smokeless tobacco.						

As the Committee considered Governor Roemer's plan, he issued an official proclamation on September 26, 1988 announcing an extraordinary legislative session to consider tax bills<sup>83</sup> to address Louisiana's budget shortfall.<sup>84</sup> The session was set to begin October 2 and end October 25, 1988.

### ***Tobacco Industry Braces for Tax Threats***

On September 26, as the House Ways and Means Committee conducted preliminary hearings for Roemer's legislative package, TI's Sarah Davis obtained smoking and tax facts for TI lobbyist Joe Wood Guidry. She reported to Guidry that 1.1 million (of 3.2 million) Louisianans smoked, that the national cigarette excise tax average was 18.3¢ and the southern average was 13.8¢, and that Louisiana "merchants, retailers and wholesalers, will lose about \$7.5 million if the tax increase is passed."<sup>85</sup>

The tobacco industry mobilized grassroots opposition to the impending tobacco tax increases in Roemer's plan. TI Vice President Ron Morris sent a letter to TAN members on September 29, 1988 asking them to notify their state legislators that they opposed the cigarette tax increase.<sup>75</sup> The letter included contact information for recipients' representative and Senator, general phone numbers for the House and Senate, and "a fact sheet on the impact of such a tax



increase.”<sup>75</sup> The next day RJR circulated an action alert focusing on state lawmakers to an unidentified and otherwise undescribed “50,000 partisans” to mobilize them against the cigarette tax increase.<sup>86</sup>

... RJR circulated an action alert focusing on state lawmakers to an unidentified and otherwise undescribed “50,000 partisans” to mobilize them against the cigarette tax increase.

### ***Governor Roemer’s Tax Increase Proposals***

On October 2, 1988 House Ways and Means Committee Chairman Ron Gomez (D-Lafayette) introduced the governor's tax reform proposal as House Bill 2, which included a 6¢ per pack cigarette tax increase.<sup>87</sup> The House Ways and Means Committee heard the bill on October 10, when the tobacco industry convinced members to reduce the cigarette tax increase to 4¢ and lower the tax on other tobacco products from 20% of invoice price to 10%.<sup>88</sup> After making amendments, the Committee then reported HB 2 favorably to the House Floor.

The House considered HB 2 on October 14, when Representative Gomez offered an amendment to return the cigarette tax increase to its original 6¢.<sup>89</sup> The House rejected the amendment 57 to 37, prompting Representative Gomez to subsequently exclaim “my congratulations to the tobacco industry” during the debate. The House then voted 55 to 47 against adopting HB 2.

We could not identify any activities by pro-tax forces to support the bill.

Although Louisiana lawmakers defeated HB 2, the tobacco industry still considered the bill “a serious threat for the remainder of this year.”<sup>90</sup>

Four days after the House defeated it, on October 19, 1988, Representative Gomez reintroduced an altered form of Governor Roemer’s HB 2 as House Bill 21.<sup>91</sup> HB 21 featured the 4¢ per pack cigarette tax increase amended into HB 2 by the House Ways and Means Committee.<sup>91</sup> HB 21 was reported favorably out of the House Ways and Means Committee, and on October 21, passed from the House Floor without amendments by a 71-32 vote. In a statement to the Baton Rouge *Advocate*, Governor Roemer credited HB 21’s passage through the House to “a process of education” on the comprehensive tax plan.<sup>92</sup> We did not locate evidence of bill opponents or proponents lobbying lawmakers in either chamber.

The Senate directed HB 21 to the Senate Revenue and Fiscal Affairs Committee for a hearing on October 22, where its members added \$320 million in sales and personal income taxes partly to address cuts made in the House,<sup>93</sup> then reported HB 21 to the Senate Floor.<sup>91, 94</sup>

On the Senate Floor, Senator Don Kelley (D- Natchitoches) secured an amendment tying HB 21 to the passage of House Bill 1, the state appropriations bill, specifically to an unspecified constitutional amendment included in that legislation.<sup>91</sup> If the constitutional amendment in HB 1 failed to pass, HB 21 would not be enacted into law.<sup>91</sup> After adopting Kelley’s amendment, Senators voted 22-16 to adopt HB 21, four under the required two-thirds majority to pass tax legislation.<sup>95</sup>

Senators reconsidered and passed HB 21 on October 26, sending it back to the House for approval of the Senate's amendments.<sup>91</sup> The House rejected Senate amendments, sending HB 21 to conference committee, which killed both HB 21 and HB 1.<sup>91</sup> The tobacco industry once again avoided a tax increase on its products. Without a solution to Louisiana's budget deficit, the governor planned to call another special session.<sup>95</sup>

## **Roemer Pursues Tobacco Tax Increases: 1989**

### ***The Tobacco Industry Braces for a Special Session to Address Ongoing Budget Issues***

In early February 1989, the tobacco industry learned through its allies that Governor Roemer would likely call a special session for February 20 to pass tax legislation and resolve Louisiana's ongoing budget shortfall.<sup>96</sup> TI VP Ron Morris revealed in a February 6, 1989 memorandum to Philip Morris lobbyist Betsy LaMond<sup>97, 98</sup> and RJR State Government Relations Director Larry Bewley<sup>99</sup> that TI expected a bill to raise the cigarette tax per pack by 4 to 6¢.<sup>96</sup> Although TI's Morris believed the tobacco industry had a strong lobbying team in Louisiana, he argued for taking extra measures to defend against the legislation:

We have a good crew of lobbyists presently working on this issue. However, we need to fortify their efforts by initiating some grass roots effort of our own. Larry [Bewley] has agreed to notify R.J.R. smokers. Betsy, may we count on you to do the same? Please give me a call so that we may coordinate our efforts on this issue.

A second thought we should cover in the near future. We have retained Haras, Inc. in New Orleans, which includes the services of Mike O'Keefe and Norris Fitsmorris [sic]. Both of you have mentioned the possibility of back-up lobbyists.<sup>96</sup>

Morris recommended that they meet in New Orleans to see how RJR and Philip Morris could participate in efforts against tax increase legislation.<sup>96</sup> RJR later reported that they contacted at least 67,278 smokers with action alerts from the tobacco industry (likely RJR) about the impending cigarette tax increase.<sup>100</sup> TI estimated a 4¢ tax increase would lower cigarette pack sales (unspecified but likely annually) by 20,495,380 in Louisiana, reduce retailer and distributor profits by \$4.9 million, and reduce government revenue by \$1,396,964.<sup>101</sup> The Institute determined that a 6¢ tax increase reduced the amount of cigarette packs sold by 30,590,120, cost retailers \$7.2 million in profits, and eliminate \$2,085, 022 in tax revenue. In addition, TI predicted a 4¢ increase would cause a 20.9 million reduction in gross receipts and a 6¢ increase a \$36.7 million loss.

### ***Governor Convenes a Special Session***

On February 10, 1989, Governor Roemer announced a 6¢ per pack cigarette tax increase as part of his developing legislative package for the special session later that month.<sup>102</sup> If adopted, Louisiana's tax rate per pack would rise from 16¢ to 22¢ and provide another \$24

million in annual revenue.<sup>102</sup> The New Orleans *Times-Picayune* reported that Roemer planned to allocate \$16 million in yearly revenue from the tax towards the state's general fund and \$8 million towards the Pennington Biomedical Research Center at Louisiana State University and hospitals in Shreveport and New Orleans for "cancer, medical and nutritional research."<sup>102</sup> *The Times-Picayune* reported that Roemer reasoned dedicating new cigarette tax revenue to health research would make state lawmakers likelier to adopt the increase:

I don't think we can get to the 22[¢] without doing that.

We have three or four parishes in the top 10 in cancer (rates in the nation)...we've got a number of budding medical-type installations. Why don't we fund them? I think the Legislature likes that idea.<sup>102</sup>

The Governor asserted that he did not intend to increase taxes on additional tobacco products in his legislative package.<sup>102</sup>

Governor Roemer convened the special tax reform session on February 22, 1989.<sup>103</sup> His legislative tax package, HB 2, was introduced by Representative Ron Gomez the same day.<sup>104</sup> Among its multiple tax increases, HB 2 raised the cigarette tax from 16¢ to 22¢ and dedicated 2¢ of the increase to the Cancer and Medical Trust Fund.<sup>104</sup> Despite Roemer's earlier claim he would not alter taxes on other tobacco products, HB 2 set a tax on all non-cigarette tobacco goods at 10% of invoice cost, which increased taxes on some tobacco products and reduced them for others<sup>104</sup> (Table 6.5).

Table 6.5: Existing Tobacco Tax Rates in 1989 and Proposed Changes in HB 2 and HB 54 <sup>104, 105</sup>		
Tobacco Product	Existing Tax Rate	Tax Rate Proposed in HB 2 and HB 54
Cigarettes	16¢ per pack	22¢ per pack
Cigars (\$120 per 1000 cigars at most)	8 % of invoice	10% of invoice
Cigars (More than \$120 per 1000 cigars)	20% of invoice	10% of invoice
Loose Leaf Tobacco	33% of invoice	10% of invoice
Smokeless	No tax	10% of invoice

If HB 2 passed, enactment of its tax changes depended on another bill, HB 1, being adopted.<sup>104</sup> HB 1 included a constitutional amendment that would require subsequent voter approval to enter the law if legislators adopted the bill.<sup>104</sup> We were unable to determine the proposed constitutional amendment HB 2 was tied to. If voters rejected HB 1, HB 2's tax provisions would not enter effect. HB 2 went to the House Ways and Means Committee for initial consideration during the special session.<sup>104</sup> The bills featured the same 4¢ per pack cigarette tax increase as HB 21 and the committee-amended version of HB 2 that failed during the October 1988 special session.

### ***Coalition for a Healthier Louisiana Mobilizes to Support Tax Increase***

The Coalition for a Healthier Louisiana, consisting of more than 30 health organizations and agencies,<sup>106, 107</sup> held a press conference on February 23, 1989 to promote the 6¢ tax increase in Governor Roemer's HB 2.<sup>107</sup> Roemer told attendees at the press conference he periodically smoked but had recently stopped before the special session.<sup>106</sup> The governor asserted the

cigarette tax increase brought Louisiana to the average rate among southern states, addressed one of myriad sources causing health problems in Louisiana, and provided money for cancer research.<sup>106</sup> In addition, Roemer revealed he anticipated and planned to support youth access and smoking restrictions legislation later that year. The Coalition's spokesperson, Michael Martin, stated that Louisiana had the nation's highest lung cancer rate at the presser. Martin explained to attendees that resulting health costs and reduced work output from smoking-related diseases cost Louisiana \$1 billion annually. In addition, Martin stated that cigarette use among those aged 18 to 25-years old dropped by 14% with each 10% tax increase.

### ***HB 2 in the House***

The House Ways and Means Committee considered HB 2's cigarette tax increase on February 24, 1989.<sup>108</sup> Members of Governor Roemer's administration and health voluntary representatives attended the hearing to support the cigarette tax while industry lobbyists appeared to oppose it.

Before the hearing, 13 of 19 members of the House Ways and Means Committee had accepted \$18,650 from the Adam and Reese and BHK PACs (Table 6.6), two political action committees the Baton Rouge *Advocate* found were connected to the tobacco industry.<sup>108</sup> New Orleans law firm Adam and Reese's government relations division established the Adams and Reese PAC and Philip Morris lobbyist Randy Haynie and RJR lobbyists CJ Blache and Johnny Koch established the BHK PAC. In an internal document from January 1987, Philip Morris identified BHK as RJ Reynold's firm in Louisiana.<sup>109</sup> TI and tobacco companies had worked with Adams and Reese during the latter half of the 1980s to advance its tort reform agenda in Louisiana (Chapter 8). Brown and Williamson, Philip Morris, RJ Reynolds, and RJ Reynolds Nabisco (RJR's food company) contributed over \$80,000 to the Adam and Reese PAC before the House Ways and Means Committee hearing, while Brown and Williamson and RJ Reynolds Nabisco contributed over \$160,000 to the BHK PAC. In 1987 Philip Morris-owned Miller Brewing contributed \$20,000. According to *The Advocate*, in late 1987 and 1988, Haynie, Blache, and Koch provided state legislators \$21,000 in campaign contributions from the BHK PAC and took almost \$20,000 in 1988 to pay themselves for their work. The last contribution to BHK PAC found by *The Advocate* was a \$21,000 donation from RJR in 1988. The timing of the Adams and Reese PAC contributions is not known. All BHK PAC contributions were in 1988.<sup>108</sup> The tobacco industry also made direct contributions to some lawmakers on the House Ways and Means Committee in 1988 and 1989 (Chapter 3).

Before the hearing, 13 of 19 members of the House Ways and Means Committee accepted \$18,650 from the Adam and Reese and BHK PACs, two political action committees ... connected to the tobacco industry.

During the House Ways and Means Committee hearing for HB 2, government officials and health advocates argued that the health and financial burdens tobacco caused in Louisiana justified the bill's cigarette tax increase. The Governor's Chief of Staff Steve Cochran defended the need for funding the Louisiana Cancer and Lung Trust Fund using a cigarette tax increase, asserting to committee members that moving from Kansas to Louisiana reduced a person's life

expectancy by four years.<sup>108</sup> American Lung Association of Louisiana Executive Director Ben Fontaine also championed dedicating cigarette tax revenue to the LCLTF, telling the committee that the tobacco industry was highly profitable while Louisiana lost \$1 billion (unspecified if overall or annually) addressing the health effects of smoking and resulting economic harms.<sup>108</sup>

Louisiana Wholesale Tobacco and Candy Distributor Executive Director Sarah Whalen argued against the tax at the hearing. She claimed that the state's cigarette tax rate placed "an unfair burden on low income consumers" and that it was already high.<sup>108</sup> The House Ways and Means Committee took a different route than desired by health or tobacco interests.

The Committee considered multiple amendments that ultimately lowered HB 2's tobacco tax increase and eliminated its funding dedication to the LCLTF. Committee members approved an amendment by Representative Alan Ater (D-Ferriday) to reduce the cigarette tax increase from 6¢ to 4¢ per pack and eliminate the funding dedication to the LCLTF on a 10-9 vote (Table 6.6).<sup>108</sup> Representative Melvin Irvin Jr (D-Gonzales) subsequently proposed an amendment to raise the cigarette tax from 4 to 5¢ and allocate resulting revenue to Louisiana's general fund. The Committee voted 11-6 to adopt the amendment (Table 6.6).<sup>108</sup> The Committee then delayed approving HB 2 until a few days after considering its tobacco tax provisions.<sup>104, 110</sup>

The House considered HB 2 on February 28, 1989.<sup>104</sup> During debate, Representative Al Ater secured an amendment<sup>111</sup> to lower the cigarette tax increase from 5¢ to 4¢ per pack and provide funding from 1¢ of the increase to "biomedical research."<sup>104</sup> The oil industry and other special interests reduced or altered other taxes in HB 2, lowering the total revenue the bill generated by \$60-\$70 million (unspecified, but likely annually).<sup>111</sup> Representatives subsequently voted 64-40 to pass the bill, short of the 70 required to pass tax legislation in Louisiana.<sup>111</sup> In coverage by the Baton Rouge *Advocate*, Governor Roemer's Chief of Staff Steve Cochran observed, "We lost it through the tobacco lobby, the oil lobby and the special interests that have always run the Louisiana Legislature."<sup>111</sup> Similarly, Governor Roemer told *The Advocate* that, "We had a clear consensus. What happened in the last few hours is that special interests derailed the train because of a few bags in the caboose."<sup>111</sup> Likewise, Roemer told *The Times-Picayune*:

The lobbyists got to them (House members)...Look, money talks, lunches talk, lobbying talks.

It's time for somebody in this state to call it like it is. The special interests are now running the Legislature to the disadvantage of the people and the state.<sup>112</sup>

Roemer announced that he would ask representatives to reconsider HB 2 and pass the bill, threatening to reduce the state budget by \$700 million and cancel a later special session for tax legislation.<sup>111, 113</sup> He attended a joint legislative session on March 1 to implore lawmakers to reconsider and approve HB 2, arguing that failure to pass the bill would force spending cuts to education and healthcare. He also threatened to tie legislators' names to any spending reductions.<sup>113</sup>

Representatives brought HB 2 back to the House Floor for reconsideration<sup>114</sup> at Governor Roemer's request.<sup>115</sup> HB 2 sponsor Ron Gomez secured an amendment to increase multiple taxes

Table 6.6: PAC Contributions to House Ways and Means Committee Members from Adam and Reese PAC and BHK PAC and Their Votes on HB 2 Amendments <sup>108</sup>						
Committee Member	Party and Place	Contributions from Adam and Reese PAC	Contributions from BHK PAC	Total Tobacco Industry Contributions	Vote to Reduce Cigarette Pack Tax to 4¢	Vote to Increase Pack Tax to 5¢
Ron Gomez (Chairman)	D-Lafayette	0	0	0	No	Yes
Charles Lancaster Jr. (Vice Chairman)	R-Metairie	0	0	0	Yes	Yes
John Alario	D-Westwego	0	\$1,300	\$1,300	Yes	Yes
Rodney Alexander	D-Jonesboro	0	\$500	\$500	Yes	No
Al Ater	D-Ferriday	0	\$500	\$500	Yes	No
Odon Bacque Jr	I-Lafayette	\$1000	\$4,500	\$5,500	No	Yes
Harry Benoit	D-Breaux Bridge	0	\$500	\$500	No	--
Garey Forster	R-New Orleans	\$1000	\$500	\$1,500	Yes	No
Kernan Hand	R-Kenner	0	\$500	\$500	Yes	No
Melvin Irvin	D-Gonzales	\$1,500	\$1,800	\$2,300	No	Yes
Billy Montgomery	D-Haughton	0	\$500	\$500	Yes	No
Sean Reilly	D-Baton Rouge	\$500	\$300	\$800	No	Yes
Jim St. Raymond	R-New Orleans	\$2,000	\$500	\$2,500	Yes	Yes
Art Sour	R-Shreveport	0	\$250	\$250	Yes	No
Steve J Theriot	D-Marrero	0	\$1000	\$1000	Yes	
Wilford Carter	D-Lake Charles	0	0	0	No	Yes
Irma Muse Dixon	D-New Orleans	0	0	0	No	Yes
Melvin Holden	D-Baton Rouge	0	0	0	No	Yes
Virgil Orr	D-Ruston	0	0	0	No	Yes

previously reduced in the House, including raising the cigarette tax from 4¢ back to 5¢, with the money allocated to the state general fund, not biomedical research.<sup>114</sup> The House voted 74-28 to pass HB 2.<sup>114</sup>

### ***HB 2 in the Senate***

The Senate Revenue and Fiscal Affairs Committee considered HB 2 on March 2, 1989. Philip Morris lobbyist Randy Haynie, TI lobbyist Joe Wood Guidry, LWTCDA lobbyist Sarah Whalen, and RJ Reynolds lobbyists CJ Blache and Johnny Koch all appeared to oppose the bill.<sup>112</sup> E.L. Henry, a previous Speaker of the House, also attended to lobby on behalf of TI.<sup>112</sup> Senator Jon Johnson (D-New Orleans) offered an amendment to raise the cigarette tax increase from 5¢ to 6¢ and dedicate the extra penny per pack to the Louisiana Cancer and Lung Trust

Fund Board<sup>112</sup> which was adopted on a 6-1 vote.<sup>116</sup> Johnsons' amendment prompted tobacco industry representatives to aggressively work in the background to reverse the vote.<sup>112</sup>

While the hearing continued, industry lobbyists formed an agreement with a Louisiana State University lobbyist to reduce the cigarette tax increase and eliminate funding for the Louisiana Cancer and Lung Trust Fund (LCLTF) in exchange for 1¢ per pack going to LSU's Pennington Biomedical Research Center via a new Biomedical Research Fund.<sup>112</sup> LSU lobbyists subsequently convinced two committee members to change their votes and oppose the tobacco tax increase. Tobacco industry representatives also located an unnamed senator they considered a friend on the committee that missed the earlier vote on Johnson's amendment, and had him attend to vote against it.<sup>112</sup>

Committee member Ken Osterberger (R-Baton Rouge) subsequently introduced an amendment lowering the cigarette tax increase to 5¢ and eliminating the 1¢ dedication to the Louisiana Cancer and Lung Trust in favor of a 1¢ dedication to the Pennington Biomedical Research Center.<sup>112, 116</sup> The 3 votes secured by LSU and tobacco industry lobbyists created a 4-4 tie amongst committee members on the amendment. The Committee's chairman broke the tie, voting to reduce the tax. Committee members subsequently adopted an amendment eliminating the 1¢ dedication to the Pennington Biomedical Research Center.<sup>112</sup> After the committee stripped funding for LSU, the New Orleans *Times Picayune* quoted Senator Johnson saying that university lobbyists had been fooled by industry representatives:

"(LSU) cut a deal with the tobacco people to dedicate one of those pennies (to the Pennington Center). LSU went for the fake-out and lost the whole deal. That was all the tobacco industry wanted. They (LSU) screwed themselves out of four or five million dollars."

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The *Times-Picayune* also reported that tobacco industry lobbyists had provided committee members campaign contributions through unnamed political action committees.<sup>112</sup> After amendments, the Senate Revenue and Fiscal Affairs Committee approved HB 2 and sent it to the Senate Floor.<sup>117</sup>

The Senate started debating HB 2 on March 3 and considered changes to the bill's cigarette tax increase on March 6.<sup>117</sup> According to TI records<sup>117</sup> and news coverage by *The Advocate*,<sup>118</sup> an unnamed senator proposed amending HB 2 to increase the cigarette tax increase from 5 to 10¢. According to *The Advocate*, tobacco industry representatives vigorously lobbied against the amendment, defeating it.<sup>118</sup> After the amendment failed, Senator Larry Bankston (D-Baton Rouge) proposed an amendment for Governor Roemer's administration to raise the tax increase from 5 to 6¢ and dedicate revenue from the extra penny towards health research.<sup>118</sup> The

amendment did not specify cancer research as a funding target, although its sponsor stated money would go to cancer research efforts.<sup>118</sup> According to *The Advocate*, the tobacco industry strongly opposed use of the term cancer in cigarette tax revenue allocations, possibly why Bankston did not specify cancer research as a funding priority in his proposal.<sup>118</sup> The 39-member Senate adopted the amendment 26-10,<sup>118</sup> then voted 24-12 to approve HB 2, 2 votes below the two-thirds (total) threshold required to pass tax legislation.<sup>119</sup>

The Senate reconsidered HB 2 on March 7. Two legislators absent for the previous vote attended,<sup>120</sup> increasing the odds the bill could meet the two-thirds threshold to pass tax legislation. One of the Senators that missed the first vote, J.E. Jumonville (D-Ventress), secured an amendment raising the money dedicated to health research from 1 to 2¢ per pack.<sup>120</sup> He and other Senators then voted 26-12 to approve HB 2, reaching the two-thirds threshold for passage.<sup>120</sup>

The same day Senators passed HB 2, the House approved the Senate's changes and delivered the bill to Governor Roemer.<sup>121</sup> HB 2 raised the cigarette tax by 6¢ (from 16 to 22¢ per pack) with 2¢ per pack going towards a "Cancer and Medical Trust Fund" and 4¢ to the state general fund.<sup>121</sup> The bill also set a 10% of invoice cost tax on all other tobacco products.<sup>121</sup> Roemer signed HB 2, making it law if Louisianans approved its enabling constitutional amendment, HB 1,<sup>122</sup> in an April 29 election.<sup>120</sup>

### ***The Tobacco Industry Sits out the Election***

The tobacco industry expected strong public and political resistance to HB 1 and HB 2. On March 9 1989, two days after Governor Roemer signed HB 2, TI Regional Vice President Ron Morris sent a memo to TI Senior Southern Sector Vice President George Minshew regarding industry handling of the bill and its enabling measure HB 1, which was on the ballot for voter approval.<sup>123</sup> Morris reported that the tax increases created by HB 1 and HB 2 would face public opposition from groups created to oppose the measure and the State Republican Party. In addition, State Representative David Duke, a controversial white supremacist,<sup>124</sup> planned a tour to denounce HB 2, shadowing the Governor's statewide efforts to promote the bill.<sup>122, 123</sup>

In his March 9, 1989 memo, Morris expressed fear of political reprisals for opposing the tax proposal, either through adverse legislation or public castigation by Governor Roemer if voters defeated the tax. According to Morris, the governor had "already set the stage to blame the gasoline and tobacco industries for killing his tax package."<sup>123</sup> He was also concerned that manipulating a constitutional amendment might prompt legislative attacks against the tobacco industry, stating "We must be aware of open retaliation, i.e. smoking restrictions, Bolin's bill or some other negative effort, if we are discovered meddling with this constitutional amendment."<sup>123</sup> Morris stated that surveys showed 75% to 80% of Louisiana voters opposed the tax package, which needed voter approval since it was a constitutional amendment.

Tobacco industry lobbyists besides Philip Morris' felt they should monitor HB 1 during the election season instead of actively opposing it. To that end, Morris encouraged Philip Morris lobbyist Betsy LaMond to postpone "a smoker's newsletter writing campaign because of the



potential long term negative effect on our industry in Louisiana,” and recommended to him that the tobacco industry evaluate the election while considering actions.<sup>123</sup> In a March 28 memo to RJR State Government Relations Director Larry Bewley and Philip Morris lobbyist Betsy Lamond, TI’s Morris listed the pitfalls of publicly opposing HB 1:

The governor is promising swift retaliation against lobbyists, trade associations and businesses who oppose him. We must consider that and the fact that we have a regular session, plus the probability of another special session if the April 29 vote negates the governor tax reform.<sup>97</sup>

He also noted that Governor Roemer was aggressively recruiting allies to promote the tax and threatening opponents to deter them from actively opposing it:

The governor has his people working on various associations and organizations to support his package. He has been taking swings at some lobbyists, perhaps to the extent of attempting to block renewal of some contracts.<sup>97</sup>

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The Louisiana Association of Business and Industry (LABI), a tobacco industry ally and politically powerful trade group, strongly backed the ballot proposal.<sup>97</sup> Morris revealed that Representative Alario, a key legislative leader and previous House Speaker, sought to discuss Roemer’s legislative package with tobacco industry members.<sup>97</sup> To determine how to proceed on Roemer’s ballot proposal, Morris recommended holding a meeting with Representative John Alario, tobacco industry representatives and other interested groups on either April 4 or April 6, 1989.<sup>97</sup> We did not find evidence that the meeting occurred, or that the tobacco industry worked to defeat Roemer’s tax package at the polls.

Louisianans rejected the tax package on April 29, 1989. 55% of voters opposed HB 1, blocking the 6¢ per pack cigarette tax increase and the 10% of invoice cost tax on other tobacco products.<sup>125, 126</sup> As a result, the tobacco industry expected tax increase legislation during the upcoming regular session.<sup>126</sup>

## **Tobacco Tax Increase Legislation in 1989**

### ***The 1989 Regular Session***

Louisiana lawmakers introduced one bill regarding tobacco tax allocation during the 1989 regular session. On April 24, 1989 Representative Quentin Dastugue (R-Metairie) introduced HB 465 to reallocate 2¢ per pack of the existing cigarette tax rate towards a new Alton Oschner Cancer Research Trust Fund his legislation would also establish.<sup>121</sup> The bill died at adjournment without consideration.<sup>127</sup> The same day HB 465 expired, Governor Roemer

convened a special session to consider a legislative package that included tobacco tax increases.<sup>127</sup>

### ***Roemer Pursues a Cigarette Tax Increase in a One Day Special Session***

On May 17, 1989, the Governor's administration announced that Roemer was developing a new tax package similar to HB 2 for a special session tentatively scheduled to begin June 12, 1989.<sup>128</sup> Lawmakers met with the governor two days later to discuss his legislative package, including a cigarette tax increase to provide cities revenue.<sup>129</sup> On May 22, Governor Roemer officially announced his tax package, which included increasing the cigarette tax by 6¢ per pack.<sup>103, 130</sup>

After Roemer's announcement, RJ Reynolds contacted Louisiana outdoor advertising agencies in late May via phone and mailers to stand against the cigarette tax increase.<sup>131</sup> RJR also used a mailing to recruit retailers to oppose the tax hike.<sup>131</sup> According to an RJR Government Relations Status Report dated July 12, the company "generated over 134,500 letters and 10,700 phone calls" against Roemer's tax package during the regular legislative session and second special session.<sup>132</sup>

On June 5, Governor Buddy Roemer revealed a \$358 million tax package to Louisiana lawmakers that included the 6¢ increase per pack to the cigarette tax. His administration developed the package in anticipation of a special session he planned to convene the next week if the current session adjourned.<sup>133</sup> However, the special session would not occur until early July, giving the tobacco industry time to prepare for the legislative package and its cigarette tax increase.

The tobacco industry continued efforts against the 6¢ cigarette tax proposal up to the special session. Philip Morris lobbyist Betsy Lemond drafted a letter for public circulation (we do not know if it was published) using standard industry arguments that the tax unfairly targeted smokers since they already paid extra taxes by purchasing tobacco products.<sup>134</sup> The letter also claimed that excise taxes were regressive and disproportionately affected the poor, asserting "Louisiana's economically disadvantaged pay nine times more of their total income in cigarette taxes than the wealthy pay."<sup>134</sup> It also argued the tax increase could possibly cost Louisiana 400 jobs, increase smuggling, and harm businesses by driving Louisianan smokers to buy cigarettes in neighboring states.

On July 3, at the end of the regular session and two days before the special session, lawmakers approved a 1-year extension of \$350 million in temporary sales taxes.<sup>135</sup> State lawmakers argued the extension reduced the need for new revenue sources, and informed *The Advocate* that the legislature did not wish to consider additional tax legislation, felt ambivalent towards Roemer's legislative package, and asserted it likely would not pass during the special session.<sup>136</sup> However, some lawmakers were concerned the extension, passed during an odd-year regular session, was vulnerable to legal challenge since it was a fiscal act, which were generally limited to consideration during special sessions or even-year regular sessions. Louisiana's constitution only allowed tax legislation in odd-numbered years or special sessions at the time.

As a result, Representative John Alario (D-Westwego) suggested lawmakers continue with the coming special session and use it to approve the extension.

Although lawmakers approved a tax extension and expressed skepticism over his legislative efforts, Governor Roemer still convened a special session from July 5 to July 10, 1989 to consider tax legislation.<sup>103</sup> On July 9, Louisiana lawmakers used the special session to overwhelmingly approve the temporary tax extension passed during the 1990 regular session.<sup>137</sup>

Lawmakers considered other tax bills, including tobacco taxes, during the session. Representative Randy Roach (D-Lake Charles)<sup>138</sup> introduced HB 54, that, like HB 2, raised the cigarette tax per pack from 16¢ to 22¢ and levied a 10% tax on invoice cost for other tobacco goods<sup>117</sup> (Table 6.5). HB 54 allocated revenue from 4¢ of the increase to the state general fund and 2¢ towards “cancer and cardio-pulmonary disease research, prevention and treatment and to biomedical research,” effective October 1, 1989.<sup>117</sup>

The House Ways and Means Committee considered HB 54 on July 6, 1989. Tobacco industry lobbyists attended the hearing to oppose HB 54.<sup>138</sup> We did not find evidence that health or tobacco control advocates appeared in support of the bill. Although HB 54 was part of Governor Roemer’s legislative package, we did not find evidence he lobbied or pressured the House Ways and Means Committee to pass the bill. Despite announcing the cigarette tax increase before the second special session, Roemer had avoided further promotion of HB 54 because of the exhaustive nature of the special session, its short length, and his desire to push other unspecified initiatives.<sup>139</sup>

During committee discussion of HB 54, Representative Sean Reilly (D-Baton Rouge) secured an amendment to reduce the cigarette tax increase from 6¢ to 2¢ per pack (to 18¢ total) and dedicate all revenue to cardiopulmonary research grants for university programs, a portion of which the Pennington Biomedical Center was likely to receive.<sup>138</sup> Representative Reilly had proposed the change to Governor Roemer at a meeting on July 5 and convinced him to back it, telling *The Advocate* that, “He [Roemer] realizes he made a commitment to the Pennington Center.”<sup>139</sup> After committee members adopted Reilly’s amendment, TI lobbyist Joe Wood Berry (formerly Joe Wood Guidry, Chapter 2) attacked the change during the hearing, asserting that Louisiana State University would provide funding to the Pennington Biomedical Center if it was an effective program. Berry also argued the amendment’s revenue allocation ran contrary to efforts by the Roemer administration to seek “undedicated funds.” Representative Roach, HB 54’s sponsor, defended the 2¢ increase, stating that 26 states had a cigarette tax of 18¢ per pack.<sup>138</sup> The House Ways and Means Committee voted 11-7 to defer the bill (Table 6.7), ending cigarette tax increase efforts for the session.

## **Raising the Cigarette Tax: 1990**

### ***Louisiana’s Budget Woes Continue***

Louisiana remained plagued by a severe budget shortfall following Louisiana’s 1989 legislative session because lawmakers had repeatedly rejected Governor Roemer’s efforts to secure tax increases and address the deficit.<sup>140</sup> According to a State Tax Plan from TI Records,

Table 6.7: House Ways and Means Committee Vote to Defer HB 54 <sup>138</sup>		
Committee member	For Deferral	Against Deferral
John Alario (D-Westwego)	+	
Rodney Alexander (D-Quitman)	+	
Al Ater (D-Ferriday)	+	
Odon Bacque (I-Lafayette)		+
Harry Benoit (D-Breaux Bridge)	+	
Wilford Carter (D-Lake Charles)	+	
Garey Forster (R-New Orleans)	+	
Ron Gomez (D-Lafayette)		+
Kernan “Skip” Hand (R-Kenner)	+	
Melvin “Kip” Holden (D-Baton Rouge)		+
Melvin Irvin (D-Donaldson)	+	
Charles Lancaster (R-Metairie)		+
Billy Montgomery (D-Haughton)		+
Irma Muse-Dixon (D-New Orleans)		+
Virgil Orr (D-Ruston)		+
Jim St. Raymond (R-New Orleans)	+	
Art Sour (R-Shreveport)	+	
Steve Theriot (D-Marrero)	+	

the tobacco industry discovered that Roemer’s advisors had recommended a new legislative strategy to the governor:

He [Roemer] has been ineffective with the legislature thus far, but in recent weeks we have been told that his advisors are suggesting a new plan of attack. It is now possible that the Governor will attempt to pass, as a single shot, additional cigarette taxes in order to fund cancer and nutritional research at the Pennington Center of LSU.<sup>140</sup>

The tobacco industry determined it had to defend against the expected cigarette tax legislation in upcoming legislative sessions despite doubting Roemer’s ability to pass it. In an uncredited and undated document from TI’s records, an employee stated, “we continue to be skeptical of the Governor’s ability to ‘get his act together,’ but feel we must be prepared for this possibility.”<sup>140</sup>

The tobacco industry readied to oppose tax legislation during the 1990 legislative session as early as August 1989. TI Regional Vice President Ron Morris met with TI lobbyist Joe Wood Berry to discuss probable tax bills in the upcoming session.<sup>141</sup> According to an August 17, 1989 memorandum from Morris to Philip Morris lobbyist Betsy LaMond, Berry recommended deterring a tax increase by having tobacco company-owned<sup>140</sup> “food companies” make grants to the Pennington Center.<sup>141</sup> An undated State Tax Plan from TI’s records asserted that grants to the Center “would remove some of the Governor’s advantage in our [the tobacco industry’s] fight.”<sup>140</sup> The State Tax Plan proposed additional tactics to defeat Roemer’s expected cigarette tax legislation:

- Develop a paper for use with legislature on tax issues, written preferably by a local economist, under the supervision of The [Tobacco] Institute's economist.
- Develop favorable op-ed pieces by our local economist where possible.

- Build a coalition effort, working especially to garner the support of retail groups and tobacco wholesalers.
- Develop grassroots mail program through wholesalers and company "smoker lists" to supplement direct personal contacts of coalition lobbyists, focusing on specific legislators' home districts. Grassroots mail program will only be used if we know positively that the Governor intends to introduce such legislation.
- Persuade member companies to direct their food subsidiaries to make standing grants to the Pennington Center at L.S.U.
- Develop resources for testimony, if needed, by local smokers, tobacco distributors and retail merchants.
- Possible back-up counsel to strengthen our relationship with legislative leadership.<sup>140</sup>

Industry fears of tobacco tax increase legislation materialized in the 1990 session.

### ***Governor Roemer Reveals New Plan to Secure Tobacco Tax Increase***

On January 18, 1990, the administrator of the Louisiana's<sup>142</sup> drug and alcohol abuse prevention program I-Care, Bill Noonan, wrote Governor Roemer asking that he pursue a 6¢ tobacco tax increase bill that year to fund drug prevention and health initiatives.<sup>143</sup> Noonan pointed to Illinois seeking a 39¢ per pack tax and Texas increasing its cigarette tax to 26¢ per pack in his letter to Roemer. Roemer responded on January 24 that he backed an increase, finding it appropriate that smokers help pay for expenses incurred by society from their tobacco consumption.<sup>143</sup> Noonan revealed his correspondence with the Governor in a February 13, 1990 article in *The Advocate* in which he asserted the legislation was passable and that the resulting increase would prevent tobacco use and assist cessation.<sup>143</sup>

Roemer announced at a February 14 press conference that he sought a cigarette tax increase of an undetermined amount to fund health care, cancer research, and drug prevention initiatives.<sup>144, 145</sup> The tobacco industry expected Governor Roemer to propose increasing the cigarette tax by 20¢ per pack.<sup>142</sup> In a February 20 memo, TI Regional Vice President Ron Morris informed TI Senior State Activities VP Kurt Malmgren that the industry was "working our committees to block this tax effort" so it could pursue preemptive smoking accommodation legislation<sup>146, 147</sup> (Chapter 5).

### ***Tobacco Industry Evaluates How to Oppose Tax Increase Legislation***

TI, Philip Morris, and RJ Reynolds considered providing campaign contributions to key Louisiana lawmakers to prevent the impending cigarette tax increase (Table 6.8). On February 27, 1990, TI Regional VP Ron Morris forwarded a message from TI lobbyist Joe Wood Berry to TI Vice President George Minshew detailing the necessity of contributions in Louisiana that year:

Ron it is important that we have these contributions prior to April 16, 1990, which is the beginning of the regular legislative session...I need all of these contributions to stop taxes....<sup>148</sup>

Lobbyists from TI, RJ Reynolds, and Philip Morris developed the list;<sup>149</sup> TI lobbyist Joe Wood Berry asked for \$19,000 in contributions, but TI planned to approve between \$12,800–\$15,600 to important legislators (Table 6.8).<sup>148</sup> Morris noted that Philip Morris also budgeted \$25,000 for Louisiana campaign contributions and that RJR had not used any of its 1990 campaign contribution budget and was making donations using its 1989 allotment.<sup>149</sup> We did not find the final amount of campaign contributions the tobacco industry provided to state lawmakers to help defeat anticipated tax legislation during 1990, or when they were sent.

Ron it is important that we have these contributions prior to April 16, 1990, which in the beginning of the regular legislative session...I need all of these contributions to stop taxes ....

### ***The Tobacco Industry Considers Forming a Politically Left-wing Anti-Tax Coalition***

TI considered using a coalition in Louisiana to oppose cigarette tax increase legislation. In a February 28, 1990 memo, TI employees Martin Gleason and Susan Stuntz notified TI Managing Director of State Legislative Activities<sup>150</sup> Walter Woodson<sup>150</sup> that an unnamed department of Louisiana's government that covered public employees was receptive to forming a "tax justice coalition" with help from TI's Labor Management Committee (LMC).<sup>151</sup>

TI created the LMC using five industry labor unions in 1984, as part of a multi-year campaign to oppose cigarette tax increases on the federal and state level using progressive groups.<sup>20</sup> According to a 2009 journal article *Building Alliances in Unlikely Places: Progressive Allies and the Tobacco Institute's Coalition Strategy on Cigarette Excise Taxes*, the Institute sought assistance from progressive organizations despite their having incongruent political agendas and views:

...to provide early warnings of legislative tax initiatives, help tobacco industry lobbyists gain access to legislators who were not industry allies, demonstrate constituent support for protobacco [sic] votes, and testify on the industry's behalf.<sup>20</sup>

Industry officials initially used donations and regressive taxation arguments to gain the backing of progressive organizations with limited success. Creation of the LMC aided recruitment by obscuring the industry's involvement in collaborative anti-tax efforts, shielding progressive organizations from possible negative publicity.<sup>20</sup> The tobacco industry used the LMC to discretely fund allied progressive organizations and provide them an official structure to discuss labor policy efforts. Use of donations, regressive taxation arguments, and the LMC allowed the tobacco industry to form a partnership with Citizens for Tax Justice, a prominent progressive tax organization with national clout, and other groups.

In a March 5, 1990 memorandum, Woodson asked TI Regional VPs Paul Jacobson<sup>152</sup> and Ron Morris if they wanted to use an industry program to determine the possibility of employing

Table 6.8: 1990 Requests by Joe Wood Berry for Tobacco Institute Campaign Contributions to Key Members of the Legislature<sup>148</sup>

<i>Name</i>	<i>Party</i>	<i>Chamber</i>	<i>Committee/s</i>	<i>Contribution</i>	<i>Industry Comments</i>
John Alario	D	House	Floor Leader*	\$500	"Floorleader opposing Governors package"
Glenn Ansardi	D	House	Health and Welfare	\$500	N/A
Diana Bajoie	D	House	Health and Welfare	\$500	N/A
Harry Benoit	D	House	Ways and Means	\$500	N/A
Bruce Bolin	D	House	Chair Natural Resources	\$500	Member of leadership
Emile Bruneau	R	House	Chair Governmental Affairs	\$500	Member of leadership
N.J. Damico	D	House	Business	\$500	"Good person on floor"
John Diez	D	House	Vice Chairman Judiciary	\$500	"Good person on floor"
Irma Muse Dixon	D	House	Governmental Affairs; Municipal, Parochial, and Cultural Affairs	\$500	"Black lady Rep. from [New] Orleans"
Gary Forster	R	House	Ways and Means; Health and Welfare	\$500	N/A
Carl Gunter	D	House	Municipal, Parochial and Cultural Affairs	\$500	"Floor fighter"
Buster Guzzardo	D	House	N/A	\$500	"Member of 8 man caucus"
Melvin Irvin	D	House	Ways & Means	\$500	N/A
Alphonse Jackson	D	House	Chair of House Health & Welfare	\$500	N/A
Clyde Kimball	D	House	Natural Resources	\$500	"Walks the floor for us always"
Mike McClearly	D	House	N/A	\$500	"Always stuck with us"
Billy Montgomery	D	House	Ways & Means	\$500	N/A
Willie Singleton	D	House	Chair Judiciary Committee	\$500	"Always a friend on health & welfare"
Art Sour	R	House	Ways & Means	\$500	
Joe Toomy	D	House	Municipal, Parochial and Cultural Affairs	\$500	"Was on Ways & Means & was always a friend"
John Travis	D	House		\$500	"Always our fighter on the floor"
Steve Theriot	D	House	Ways & Means; Health & Welfare	\$500	N/A
Bobby Waddell	D	House	Chairman of Civil Law	\$500	"Chairman of Civil Law and our friend"
Thommy Warner	D	House	N/A	\$500	"Our friend"
Mike Cross	D	Senate	Chairman of Health & Welfare	\$500	N/A
Gerry Hinton	R	Senate	Health & Welfare	\$500	"Smoker"
Ron Landry	D	Senate	Health & Welfare	\$500	N/A

Joe McPherson	D	Senate	Vice Chairman Health & Welfare	\$500	N/A
Richard Neeson	D	Senate	Health & Welfare	\$1000	N/A
Cleo Fields	D	Senate	Health & Welfare; Local and Municipal Affairs	\$500	N/A
Don Kelly	D	Senate	Chairman Judiciary; Finance; Floor Leader*	\$1000	“Strongest Sen.”
Sammy Nunez	D	Senate	President Pro Tempore	\$500	“Former Pres. & always friend”
Cecil Picard	D	Senate	Chairman Governmental Affairs	\$500	N/A
Benjamin Rayburn	D	Senate	Chairman Finance	\$500	N/A
Lawson Swearingen	D	Senate	Chairman, Commerce and Finance	\$500	N/A
*Considered a floor leader by the tobacco industry					

a progressive group to oppose excise taxes in Louisiana and two other states.<sup>153</sup> According to Woodson:

Basically, David Wilhem [of Citizens for Tax Justice] sends a team into the state to check the feasibility of setting up or bolstering an existing liberal / left tax coalition that would be willing to include our tax goals with its tax reform goals. The coalitions are not anti-tax, but can be worked with to steer them toward progressive tax alternatives.

We are talking about – usually – very liberal coalitions. TI would have to remain in the background, but let me know if you’re interested.<sup>153</sup>

We did not find evidence that a progressive anti-tax coalition developed in Louisiana to oppose tobacco tax proposals during the 1990 regular session.

### ***Governor Roemer Officially Announces Tobacco Tax Legislation***

Similar to past years, Governor Roemer planned to pursue a tax increase package in 1990. Roemer’s 1990 tax proposal, which included a cigarette tax increase<sup>154</sup> like his previous efforts, sought to generate over \$600 million in revenue.<sup>155</sup> Announcing his intention to pursue a tax package on March 7, Roemer revealed he sought to raise the cigarette tax per pack by 6¢ (from 16¢ to 22¢)<sup>154</sup> to generate an additional \$31 million that would be equally divided between the state and local governments.<sup>154</sup>

The same day Roemer announced his legislative package, the Consensus Committee for Louisiana’s Future, a group composed of 13 people from state business and policy associations including LABI, the Louisiana AFL-CIO, and the Louisiana Public Affairs Research Council, produced a tax reform report.<sup>156</sup> Developed over six months, the report suggested increasing



tobacco taxes and allocating more tobacco tax revenue to local governments. Roemer supported many suggestions from the Committee, whose majority of members agreed with his tax reform objectives.<sup>156</sup> Committee members from the Louisiana AFL-CIO and LABI, a strong tobacco industry ally (Chapters 2) did not sign the tax recommendations.

### ***Tobacco Tax Bills in the 1990 Session***

In April 1990, Louisiana lawmakers introduced 8 tobacco tax increase bills, 1 tobacco tax decrease bill, 2 bills reallocating existing tobacco tax revenue, and 1 bill allowing dedication of cigarette tax revenue (Table 6.9).<sup>157</sup> Five<sup>157</sup> were introduced by House Ways and Means Committee Chairman Raymond Laborde, “a Roemer floor leader” according to the *Times-Picayune*,<sup>158</sup> as part of the Governor’s legislative package (Table 6.9). Two other bills, HB 1468 and HB 1939, did not include tobacco taxes upon introduction but were later amended to increase them (Table 6.10).<sup>157</sup>

### ***The Tobacco Industry Defends Against HB 944***

The industry’s initial defensive efforts targeted HB 944, which was part of Governor Roemer’s legislative package.<sup>159</sup> Representative Raymond Laborde (D-Marksville) introduced HB 944 (Table 6.9) on April 25, 1990 to increase the cigarette tax by 10¢ per pack and dedicate half the revenue to city governments.<sup>157</sup>

Joe Wood Berry believed the industry could defend against tobacco tax increases and pursue accommodation legislation (to block local clean indoor air laws) simultaneously, while Philip Morris lobbyists felt accommodation legislation should be prioritized and Blache relayed that RJR thought representatives should focus on defeating tax threats.

On April 26, 1990, TI lobbyist Joe Wood Berry, TI Regional Director<sup>160</sup> Pat McWhorter, TI tax expert Bill Orzechowski, Philip Morris lobbyists Betsy Guiles and Randy Haynie, RJR lobbyist CJ Blache, and Louisiana Wholesale Tobacco and Candy Distributors Association (LWTCDA) Executive Director Sarah Whalen met in Baton Rouge, Louisiana<sup>161</sup> to discuss how to pass proactive smoking accommodation legislation and defend against tax increase bills (Chapter 5). Joe

Wood Berry believed the industry could defend against tobacco tax increases and pursue accommodation legislation (to block local clean indoor air laws) simultaneously (Chapter 5).<sup>162</sup> Philip Morris lobbyists felt accommodation legislation should be prioritized, while Blache relayed that RJR thought representatives should focus on defeating tax threats. Since HB 944 and the smoking accommodation legislation pursued by the industry, HB 217, both affected local governments, Berry and Haynie planned to meet with elected municipal officials and learn their opinion on the accommodation bill to decide whether the industry should push it amidst tax increase threats.

The House Ways and Means Committee considered HB 944 on May 15, 1990.<sup>155</sup> At the

Table 6.9: Tax Increase Legislation as Introduced during the 1990 Regular Session <sup>157</sup>											
Bill	Sponsor	Part of Governor's Tax Package	Cigarette Tax Increase (Per Pack)	OTP Tax Increase	OTP Tax Decrease	Reallocates Existing Tobacco Tax	Original OTP Rate	Amount	Allocation	Other	Outcome
HB 944	Laborde	+	10¢						50% towards parish and municipal governments, 50% to state general fund		Negatively Reported by House Committee. Died upon adjournment
HB 945	Laborde	+		+			Cigars (low price) – 8% of invoice price	Cigars - 28% of invoice cost			Died with adjournment
							Cigars (high price) – 20% of invoice price				
HB 946	Laborde	+					Smokeless - None	Smokeless – 28% of invoice price			Killed in House
HB 947	Laborde et al	+			+		Loose Leaf – 33% of manufacturer's invoice price	28% of manufacturer's invoice price			Died with adjournment
HB 948	Laborde	+		+	+		Cigars (low) - 20% of invoice price	28% of invoice price for all OTP			Died on House Floor
							Cigars (high) – 20% of invoice price				
							Smokeless - none				
							Loose leaf – 33% of manufacturer's invoice price				
HB 1337	Jackson					+			\$1 million in cigarette tax revenue towards new Cancer and Lung Trust Fund Unstated amount towards incorporated local		Died with adjournment

									governments and five parishes with unincorporated cities		
HB 1438	Copelin					+			Unstated amount towards incorporated local governments and five parishes with unincorporated cities		Died with adjournment
HB 1943	Thomas		1¢						Dedicated towards establishing new Louisiana Cancer and Lung Trust Fund		Killed in House Committee
HB 2214	Laborde et al		4¢						General Fund		Killed on House Floor
SB 713	Bagneris									Permits dedication of cigarette tax revenue**	Died with adjournment
SCR 136	Nunez									Implored congress to not raise taxes on tobacco or other select goods	Adopted
**Existing law prohibited tax revenue dedications.											

Table 6.10 Non-Tobacco Tax Bills Converted into Tobacco Tax Legislation <sup>157</sup>				
	Initial Focus	Tobacco Tax Amendment	Where adopted	Outcome
HB 1468	Sales Tax	Levied 5% of retail price tax on all tobacco products*	Senate Floor	Amendment stripped in Conference. Bill subsequently killed.
HB 1939	Rental car taxes	Raised cigarette tax per pack by 4¢ (20¢ total)	Senate Floor	Adopted
*Tobacco Institute 1990 Legislative Report defines retail price "...as price charged retailer by wholesaler plus 20 percent." <sup>157</sup>				

hearing, the Louisiana Municipal Association supported the bill while a TI representative, a TI-contracted tax expert, and legislators opposed it. Louisiana Municipal Association official Charles Pasqua asserted that cities had historically relied on revenue from tobacco taxes and encouraged the committee to approve HB 944. Committee members asserted Roemer's administration had dedicated the cigarette tax increase to municipalities to gain their support passing HB 944, with Representative Melvin Irvin (D-Gonzales) claiming the state would repurpose the tax in later years and deprive cities of funding.<sup>155</sup> HB 944 sponsor Laborde, the Ways and Means Committee chairman,<sup>163</sup> replied that the bill was included in Roemer's legislative package to assist municipalities, not to earn their support for the Governor's total tax proposal.<sup>155</sup> Later during the hearing, Representative Irvin unsuccessfully proposed an amendment to reduce HB 944's cigarette tax increase to 5¢ per pack.<sup>155</sup> Representative Charles Lancaster (R-Metairie) offered an amendment to strip dedicated funding for municipalities from HB 944 that the committee rejected.<sup>155</sup> TI's Orzechowski, as well as a professor and economist from Louisiana's Nicholls State University<sup>162</sup> he recruited,<sup>164</sup> Morris Coats,<sup>164</sup> testified against HB 944.<sup>162</sup> (TI paid Coats \$1,607 for his testimony.<sup>165</sup>) After hearing comments on HB 944 and considering amendments, supporters determined they could not secure a favorable committee recommendation for the bill.<sup>162</sup> Representative Don Bacque (I-Lafayette<sup>166</sup>) motioned to send HB 944 to the Floor without a recommendation to keep it alive but was countered by a motion to assign the bill an unfavorable report from Representative Art Sour (R-Shreveport). The Committee approved Sour's motion 10-7 and assigned HB 944 a negative recommendation, nearly killing it.

To return HB 944 to the legislative calendar after its defeat, Laborde and allied lawmakers called an unsuccessful floor vote on May 16 to reject the House Ways and Means Committee's unfavorable recommendation.<sup>162</sup> According to a May 18 memo from TI Regional Activities Director Pat McWhorter to TI Regional VP Ron Morris, the motion failed to secure the 53 votes necessary to pass because of industry lobbying.

On May 20, Representative Laborde and other lawmakers pursued another motion returning HB 944 to the legislative calendar so they could overturn the House Ways and Means Committee's unfavorable report of the bill.<sup>167</sup> TI expected Representative John Alario, a former House Speaker,<sup>168</sup> to kill the second reconsideration motion.<sup>167</sup> According to TI Regional Activities Director McWhorter in a July 24, 1990 memo to Morris, Alario was the "leader of our

[tobacco industry] coalition in the House.”<sup>169</sup> Governor Roemer had removed Alario from the Speaker role in 1988 and he formed a legislative bloc with other lawmakers to oppose Governor Roemer’s agenda, including tax increases.<sup>170</sup>

McWhorter reported that unidentified legislators distracted Representative Alario, keeping him from appearing to stand against the May 20 reconsideration motion for HB 944.<sup>167</sup> House Speaker Jimmy Dimos (D-Monroe) brought the motion to return HB 944 to calendar while Alario was detained, and it passed with 53 votes.<sup>167</sup>

To reduce pressure on lawmakers from municipalities seeking the revenue HB 944 provided them, Representative Alario developed an amendment for another bill to increase the hazardous waste tax and provide resulting funds to local governments.<sup>167</sup> According to McWhorter in a May 21 memo to Morris:

Most of the political heat legislators are feeling on the cigarette tax is coming from mayors, and it is felt that this move could relieve some of that pressure.<sup>167</sup>

Alario planned to offer the amendment on either May 21 or May 22 to unspecified compromise legislation,<sup>167</sup> and did so on May 21,<sup>171</sup> reducing pressure on lawmakers to pass HB 944.<sup>163, 171</sup> Ultimately, supportive legislators failed to secure enough votes to approve reconsideration of HB 944.<sup>163</sup> TI lobbyists dismissed offers from lawmakers to propose a reduced the cigarette tax increase of 2-4¢ per pack.<sup>163</sup> HB 944 died without additional consideration upon adjournment.<sup>157</sup>

### ***Other 1990 Tobacco Tax Legislation Stalls in the Legislature***

After House Bill 944 failed, TI monitored five bills it considered vulnerable to having cigarette tax increases attached,<sup>162</sup> as well as five tobacco tax bills (HB 945, 946, 947, 948, and 1943) during the 1990 regular session (Table 6.9).

Although the tobacco industry expected HB 946 and HB 948 to receive consideration first, House Ways and Means Committee Chairman Laborde gave HB 1943 an earlier hearing on June 12, 1990.<sup>172</sup> As introduced by Representative Jerry Thomas (D-Bogalusa), HB 1943 raised the cigarette tax per pack by 1¢ and dedicated the approximately \$4.1 million<sup>173</sup> in expected revenue to cancer education and research through a new Louisiana Cancer and Lung Trust Fund established by the bill (Table 6.9).<sup>157, 172</sup> At the hearing, Dr. Jay Brooks, a Baton Rouge Oncologist, testified in support of HB 1943 while LWTCDAs lobbyist Sarah Whalen and TI lobbyist Joe Wood Berry testified against it.<sup>173</sup> Brooks testified that most cancer deaths in Louisiana resulted from lung cancer and that lung cancer would cause more fatalities in 1990 than deaths from the total AIDS epidemic. Brooks asserted that HB 1943’s tax revenue provided money to educate Louisianans about lung cancer and provided Louisiana researchers, who struggled to secure federal research awards, funding to improve lung cancer research. Opposing the bill, LWTCDAs Whalen testified that taxes should not increase on tobacco products since their sales annually decreased. TI’s Berry also spoke, asserting to the committee that HB 1943 unfairly targeted 28% of Louisianans that smoked. She also stated lawmakers should secure cancer research funding through the House Appropriations Committee if money was needed. Besides industry lobbyists, House Ways and Means Committee member Melvin Holden attacked

the bill during the hearing, insinuating that the chemical industry, not just cigarettes, caused cancer. The committee then voted 7-5 to approve a motion from Representative John Alario to defer the bill.<sup>173</sup> According to the Baton Rouge *Advocate*, after the deferral vote HB 1943 sponsor Jerry Thomas explained that committee members killed the bill to prevent lawmakers from attaching tobacco tax increases:

The feedback I got is that some didn't want any tax bill out to possibly be used as a vehicle for other tax measures to be added. We have a cancer problem in this state, and we need money to research it....The tobacco lobbyists have demonstrated quite a bit of influence in the Legislature. The incidence of cancer in this state should also be a powerful lobbyist.<sup>173</sup>

"We have a cancer problem in this state, and we need money to research it .... The tobacco lobbyists have demonstrated quite a bit of influence in the Legislature. The incidence of cancer in this state should also be a powerful lobbyist."

Following the deferment of HB 1943 on June 12, TI worked to defeat HB 1438 before an expected hearing before the House Appropriations Committee on June 19.<sup>163</sup> Introduced by Representative Sherman Copelin to reallocate existing cigarette tax revenue to municipalities, the tobacco industry feared that Governor Roemer's administration would amend a tobacco tax increase into the bill.<sup>163</sup> As a result, the tobacco industry tried postponing the House Appropriation Committee's consideration of HB 1438.<sup>163</sup> HB 1438 ultimately died at the end of the legislative session without consideration.<sup>157</sup>

TI also expected House Ways and Means Committee Chairman Laborde to bring HB 948, his bill that set a 28% of invoice price tax on cigars, smokeless, and loose leaf tobacco (Table 6.9) up for committee consideration on June 19.<sup>163</sup> In a June 18 memo to TI Regional VP Ron Morris, TI Regional Director<sup>160</sup> Pat McWhorter revealed he heard Laborde planned to attach a 10¢ or other tax increase per cigarette pack to HB 948 during the hearing. TI lobbyist Joe Wood Berry determined that five House Ways and Means committee members had not taken a position on HB 948 while 12 others were split for and against, leading her to give the bill a 50% chance of passing. Tobacco industry representatives lobbied unsure committee members to bottle the bill up in committee.

The House Ways and Means Committee considered Laborde's HB 946 and HB 948 on June 19.<sup>174</sup> Governor Roemer appeared at the hearing to privately lobby committee members and urge them to adopt both bills, but did not publicly testify.<sup>175</sup> We did not find evidence that tobacco control proponents or tobacco industry lobbyists spoke at the hearing. Committee members and industry allies John Alario and Al Ater were not present at the hearing's start to oppose tobacco tax increase legislation.<sup>176</sup> The Ways and Means Committee voted 9-2 to reduce HB 946's smokeless tobacco tax from 28% to 10% of invoice price.<sup>175, 177</sup> Committee members also swapped HB 948 with a substitute bill, HB 2114, during the hearing.<sup>178</sup> HB 2114 replaced the tobacco taxes in HB 948 with a cigarette tax increase of 10¢ per pack.<sup>176</sup> The Committee then cut the tax increase to 5¢ per pack on an 8-3 vote<sup>175</sup> and dedicated 20% of the revenue towards the Louisiana Cancer and Lung Trust Fund.<sup>176</sup> According to a June 26 memo from McWhorter to

Morris, HB 946 and HB 948 sponsor Laborde permitted tax reduction amendments to pass the bills through committee and planned to raise the cigarette tax increase again:

Ways and Means Committee Chairman Raymond Laborde personally told me on Tuesday [June 19, 1990] that he had allowed these two bills to be amended, only so he could get them out of committee. At that time he firmly stated that he would attempt to raise the cigarette tax hike back to 10 cents.<sup>176</sup>

After the committee amended both bills, Representative Alario arrived to vote on the legislation. The committee voted 7-5 to pass HB 946 and 10-5 to send HB 2114 to the House Floor.<sup>176, 178</sup> McWhorter later complained in his June 26 memo that Representative Alario was not present to attack the bills during the hearing, and that Representative Al Ater had missed the meeting and votes altogether.<sup>176</sup>

Before HB 946 and HB 2114 were debated on the Floor, TI lobbyist Joe Wood Berry determined by June 20 that the industry had secured 36 votes against the tobacco tax legislation, excluding three from the Louisiana Legislative Black Caucus who were susceptible to pressure by Governor Roemer.<sup>176</sup> The 36 votes prevented HB 946 and HB 2114 from receiving the 70 votes necessary to pass tax legislation in the House.

On June 20, House Speaker Jimmy Dimos moved to calendar HB 946 and HB 2114 for consideration.<sup>176</sup> Representative Peppi Bruneau protested the motion for the tobacco industry but failed to prevent its approval.<sup>176</sup>

The House brought HB 948 and HB 2114 to the Floor for consideration on June 21, 1990,<sup>176</sup> where representative and tobacco industry ally John Travis (D-Jackson) aggressively attacked the bills. According to *The Times-Picayune*, during debate Travis asserted the bills targeted “the little old average income guy out there who pays all the taxes”<sup>179</sup> and attacked the bills for raising taxes on Louisianans as they faced other tax increases from that legislative session: “We passed sales tax and removed sales tax exemptions, passed gasoline taxes. You know who’s going to pay that? The same guy that’s going to pay the tobacco tax.”<sup>180</sup> He also attacked HB 2114’s revenue dedication to the Louisiana Cancer and Lung Trust Fund as unfair to the tobacco companies, stating lawmakers were “picking on one industry.”<sup>180</sup> Travis asserted that other industries caused cancer, pointing to increased incidents near chemical factories, and argued that industry should also compensate the state as a result.

Lawmakers in support of HB 946 and HB 2114 countered Representative Travis’ arguments and attacked legislators opposed to the tax increases. Representative Jerry Thomas (D-Bogalusa) disputed Travis’ argument, asserting that almost all of Louisiana’s urban regions had greater lung cancer rates than the national average and that researchers determined smoking factored into 85-90% of the state’s lung cancer incidents. Other proponents of HB 946 and HB 2114 chastised opposed lawmakers during consideration. Representative Carl Crane (R-Baton Rouge) asked how they could justify increasing food, utility and sales taxes but not tobacco taxes. Representative Laborde argued tobacco

tax increases were needed to fund the \$8.6 billion budget already approved by lawmakers.<sup>180</sup>

According to *The Times-Picayune*, Laborde used the fact that the budget included wage increases for Louisiana government employees to attack opponents of the bills, stating “You tell the state employees they won’t get a raise because you

“They [tobacco industry representatives] are there night and day ... they have a powerful, persistent lobby.”

wouldn’t vote for a tobacco tax.”<sup>179</sup> In addition, Representative Ralph Miller (D-Norco) claimed during consideration of HB 946 and HB 2114 that lawmakers opposed HB 946 and HB 2114 because of the tobacco industry’s influence. According to coverage from Baton Rouge newspaper *The Advocate*, he asserted “There’s no excuse for voting against this tax but the tobacco lobby.”<sup>180</sup> Representative Carl Gunter (D-Pineville) insinuated lawmakers also opposed the bills because they disliked Governor Roemer.<sup>180</sup> Roemer floor leader Representative Robert Adley (D-Bossier City) stated that polling showed 78% of Louisianans backed the tobacco tax increases. Adley also asserted that lawmakers would struggle to justify not passing the bills to their constituents, especially after previously failing legislation to raise alcohol taxes.

Following debate, representatives voted 53-47 to pass HB 946 and 55-45 to pass HB 2114,<sup>179, 180</sup> both short of the two-thirds amount needed to pass tax legislation. Governor Roemer partially blamed the failure of both bills on the tobacco industry, saying “They [tobacco industry representatives] are there night and day...they have a powerful, persistent lobby.”<sup>180</sup>

Because HB 946 and HB 2114 both cleared a 52 vote threshold allowing reconsideration, the tobacco industry prepared to defend against the bills a second time on the House Floor.<sup>176</sup> In a June 26 memo, McWhorter asserted that the industry needed to contain HB 946 and HB 2114 in the House because the Senate might pass the tobacco taxes, possibly in strengthened forms:

It is imperative that we defeat these bills; keeping them out of the Senate. Our friends in the Senate are under a great deal of pressure to produce new revenue, and would most assuredly pass a cigarette tax increase in any range from five cents up as high as 20 cents, according to some lobbyists.<sup>176</sup>

As a result, the tobacco industry worked to prevent HB 946 and HB 2114 from being reconsidered by the House.<sup>181</sup> Industry lobbyists prevented additional debate of HB 946, killing it, but other legislation featuring tobacco tax increases were considered by legislators.<sup>157</sup>

### ***Tobacco Institute Considers Using Tax Sheets in Other States Because of Impact in Louisiana***

TI partially credited successful defensive efforts around tobacco tax bills to Nicholls State University professor Morris Coats, who had testified against the increases. On June 26, 1990, Woodson reported that “McWhorter said the credibility that native-son Coats brought to the scene was instrumental in stopping (so far) the tax hike. He said Coats made the difference.”<sup>164</sup> In addition to testifying against HB 944 at its House Ways and Means Committee hearing, Coats had given a sheet of anti-tobacco tax statistics, developed using data from TI tax researcher Bill Orzechowski, to Louisiana legislators and, likely, the media.<sup>164</sup> The information



sheet claimed that Texas smokers would purchase cigarettes in Louisiana because Louisiana's lower tax provided them \$2.50 savings per carton and generated almost \$10 million in revenue.<sup>164</sup> Coats argued that cigarette taxes were regressive, asking, "Why should Louisiana hurt its low and middle class citizens with a cigarette tax increase of 5 or 10 cents a pack when it can sit back and reap its cross border windfall."<sup>164</sup>

As a result of Coat's value in fighting the tax increase in Louisiana, and the low \$200 cost TI paid him for the fact sheet, Woodson asked Stuntz if TI could pay 60 economists around the country to develop and disseminate similar anti-tax materials in all the states.<sup>164</sup> We do not know if TI adopted Woodson's proposal.

### ***Alario Introduces Alternative Tax Bills to Roemer's Legislative Package***

Towards June's closing, tobacco industry ally Representative John Alario and other lawmakers had successfully prevented most of Governor Roemer's tax package from passing.<sup>182</sup> According to a June 29 article from the New Orleans *Times-Picayune*:

[Alario] joined with Republicans and other anti-Roemer Democrats to bottle up most of Roemer's program. Much of it was revived in the Senate by amending other House-passed bills, but Roemer will need votes from Alario's "contra" faction to get the two-thirds House majority of 70 votes needed to approve the amended bills.<sup>182</sup>

Escalating efforts against Roemer's agenda, Alario introduced a \$406 million legislative package of tax bills on June 28 with fellow House Ways and Means Committee member Steve Theriot (D-Marrero) to offer as an alternative to the Governor's \$580 million package.<sup>182</sup> Their package levied taxes on natural gas and hazardous waste and renewed sales taxes on utilities and groceries, but did not increase or establish taxes on any tobacco products.<sup>182</sup> Later in the session, immediately after lawmakers killed a cigarette tax increase bill, Roemer-allied Representative Robert Adley (D-Bossier City) blamed Alario and Theriot's package for hindering progress on tax legislation.<sup>183</sup>

### ***New Tax Threat to the Tobacco Industry: HB 1468***

While tobacco industry representatives prevented reconsideration of HB 946 and HB 2114, on June 29, 1990 Senators approved amendments from Senator Don Kelly<sup>184</sup> (D-Natchitoches) to sales tax bill HB 1468 that added taxes on gambling activities, tobacco products, alcohol, and other goods.<sup>157, 185</sup> The amendments levied a 5% of retail price sales tax on all tobacco product types,<sup>157</sup> generating an estimated \$20 million in revenue (Table 6.10).<sup>185</sup>

After Senators adopted Kelly's proposal, Senator J.E. Jumonville offered an amendment to dedicate \$4 million of the tobacco tax proceeds towards cancer research because smoking and cancer were correlated.<sup>185</sup> Jumonville claimed that even allocating \$50 million for research was an inadequate amount. Senators ultimately voted 23-13 against Jumonville's amendment.

Adding tobacco taxes to HB 1468 spurred immediate tobacco industry lobbying against the bill.<sup>181</sup> In a July 5 memo to Morris, McWhorter claimed, “Our lobbying corps did a masterful job despite the fact that all means of contacting Senators was cut off.”<sup>181</sup> The Senate voted 24-12 to pass HB 1468,<sup>184</sup> under the two-thirds vote threshold to pass tax legislation.<sup>181, 185</sup> Senator Kelly subsequently convinced two industry allied lawmakers to change positions, allowing HB 1468 to pass in a second, 26-10 vote, returning it to the House for concurrence with Senate changes.<sup>181, 184</sup>

TI did not plan to kill HB 1468 but intended to remove its tobacco tax increases.<sup>181</sup> TI sought to prevent HB 1468’s defeat from increasing pressure to pass HB 946 and HB 2114 through the House to the Senate, where TI felt legislators were more receptive to adopting tax legislation. In a July 5 memo to Morris, McWhorter reported that the alcohol industry intended to kill HB 1468 on the House Floor to eliminate alcohol tax increases also added to the bill by the Senate, and that tobacco industry efforts to contain HB 946 and HB 2114 might be harmed if the alcohol industry convinced representatives to suspend debate on HB 1468.<sup>181</sup>

### ***Lawmakers Pressure Tobacco Industry to Capitulate on Tax Increase***

Louisiana’s legislative leadership pressed the tobacco industry to permit a cigarette tax increase as the 1990 session neared its close on July 9.<sup>169</sup> On July 3, Senate President Sammy Nunez (D-Chalmette<sup>186</sup>) contacted TI Regional VP Ron Morris and requested that the tobacco industry allow compromise tax increase legislation to pass. Morris arranged a meeting with Senator Nunez and key lawmakers to discuss the proposal on July 5 in Baton Rouge.<sup>169</sup> Before meeting with legislative leadership on July 5, Ron Morris, Pat McWhorter, and Joe Wood Berry discussed defensive efforts against tobacco tax increase bills with industry ally Representative John Alario (D-Jefferson Parish), who advised TI that “local media” had generated pressure on lawmakers to adopt “sin taxes,” making it hard to maintain House votes against tobacco tax increases.<sup>169</sup> Alario believed the tobacco companies could limit the tax increase to 4¢ by cooperating with Roemer’s legislative leadership in the House, and asked that he be allowed to give them the industry’s offer.<sup>169</sup>

After talking with Representative Alario, Morris, McWhorter and Berry met Senate President Sam Nunez and Senate Majority Leader Bill Jefferson on July 5 to discuss a tobacco tax increase.<sup>169</sup> Nunez and Jefferson attacked the tobacco industry for resisting tax increases and insinuated it could face a greater rate hike if it failed to cooperate with the Roemer administration; McWhorter reported:

The bottom line of their conversation was that virtually all industries, except for ourselves and alcohol, had agreed to some tax increase, and that if we did not work a compromise, we would be vulnerable to a situation similar to that in Texas during a special session immediately following the regular session.<sup>169</sup>

At the time, Texas legislators were in their fourth special session of 1990 and considering legislation to raise state taxes on tobacco products, including increasing the cigarette tax from 26¢ to 41¢ per pack.<sup>187, 188</sup>

On the same day Senate President Nunez and Jefferson met, Nunez, joined by Senator Don Kelly, took Morris and Berry to discuss a tobacco tax increase compromise with Governor Ed Roemer and his Commissioner of Administration Dennis Stine. Representative Robert Adley, a Roemer floor leader, had pushed Nunez to organize the second meeting. TI State Activities Director McWhorter skipped the meeting to assuage upset tobacco lobbyists.<sup>169</sup> In his July 24, 1990 memorandum to Morris, McWhorter summarized the meeting:

“The Governor expressed his great displeasure at the fact that we [the tobacco industry] have beaten his every effort to pass cigarette tax increases for the last three years. He also stated his determination to force a tax increase on us.”

The Governor expressed his great displeasure at the fact that we [the tobacco industry] have beaten his every effort to pass cigarette tax increases for the last three years. He also stated his determination to force a tax increase on us. You [Ron Morris] and Joe [Wood Berry] told him and Nunez that any deal would have to include a commitment for passage and signing of our two proactive bills, SB 521 [smoker’s rights, workplace discrimination] and HB 217 [guaranteed smoking accommodation and preemption; Chapter 5)], as well as some solution to our problems with the New Orleans [efforts to increase its tobacco] tax [discussed below]. No one had a problem with the proactive bills, but all said they would have to speak with [New Orleans] Mayor Bartholemy before committing to legislation affecting the city. The Mayor was out of the country at that time.

The Governor continued insisting on getting a 10-cent increase in the cigarette tax as he had originally proposed, with no dedications.<sup>169</sup>

Commissioner of Administration Dennis Stine weakened Governor Roemer’s position during the meeting by informing him the state did not need a 10¢ cigarette tax increase, leading Roemer to subsequently argue for an 8¢ increase.<sup>169</sup> The meeting closed without an agreement on taxes between Roemer, Louisiana lawmakers and TI officials.

Following talks with Roemer and his allies, Morris, McWhorter, and Berry met again with Senate President Nunez and Senator William Jefferson (D-New Orleans) on July 5 to discuss a tobacco tax compromise.<sup>169</sup> TI agreed to permit a cigarette tax increase of 4¢ per pack in return for the passage of its smokers’ rights bill SB 521 and accommodation bill HB 217 (Chapter 5). As part of the deal, Senator Jefferson would discuss tobacco industry-developed legislation rendering New Orleans’s cigarette tax illegal with the city’s mayor, Sydney Barthelemy.

Throughout the July 5 negotiations with Roemer and his legislative leadership, TI officials successfully opposed adding a tax on smokeless products as a favor to wholesalers as well as Louisiana Wholesale Tobacco and Candy Distributors Association Executive Director Sarah Whalen.<sup>169</sup> According to McWhorter, “We [TI] did this not only to protect our members in

that area [wholesalers and distributors], but to repay their lobbyist, Sarah Whalen, for her assistance and friendship throughout the process.”<sup>169</sup>

Despite reaching a cigarette tax compromise of 4¢ with Senators Nunez and Jefferson, on July 6, Roemer’s legislative allies and leaders pressed TI officials to accept a 5¢ per pack cigarette tax increase.<sup>169</sup> TI representatives resisted the pressure and convinced lawmakers to strip the tobacco tax hikes in HB 1468.<sup>169</sup>

That day the House reconsidered HB 1468.<sup>189</sup> We did not find evidence of lobbying by health proponents or tobacco industry representatives during debate of the bill. On the Floor, Roemer ally Representative Raymond Laborde asked legislators to reject Senate amendments to the bill, and members voted 99-3 against Senate changes, sending HB 1468 to a conference committee.<sup>189</sup> HB 1468 ultimately died upon adjournment. Following House rejection of Senate changes to HB 1468, legislative leaders gathered on July 7 to determine a course of action on tobacco and other taxes.<sup>169</sup>

### ***HB 2114 Craters in the House***

While Louisiana’s legislative leadership met to decide on tax proposals, Representative Raymond Laborde brought HB 2114, the 5¢ per pack cigarette tax increase that tobacco industry representatives had contained in the House, to the Floor for reconsideration.<sup>169</sup> Laborde told representative he revived HB 2114 to cover part of the state’s shortfall from that year’s appropriations bill.<sup>183</sup> Legislators who supported HB 2114 asserted that the tobacco industry backed the bill and chastised lawmakers for opposing a tobacco tax increase. McWhorter reported to Morris that “Administration floor leaders incensed many House members, telling them that we had agreed to accept a 5-cent increase.”<sup>169</sup> In addition, Representative Raymond Lalonde, who collaborated with the tobacco industry on clean air (Chapter 5) and youth access (Chapter 7) legislation, chided legislators during debate for increasing taxes on milk but not tobacco.<sup>183</sup>

Representative Alario opposed HB 2114 on the House Floor. He unsuccessfully offered an amendment to reallocate revenue from the state general fund to municipalities.<sup>169</sup> At the time, Alario was pushing his alternative tax package in opposition to that offered by Governor Roemer.<sup>168</sup> McWhorter reported to Morris that the failure of Alario’s amendment made the lawmaker “determined to defeat the proposal.”

Representatives voted 69-35 to pass HB 2114,<sup>157</sup> one vote below the two-thirds threshold to pass tax legislation. McWhorter credited the near-passage of HB 2114 to “mixed signals and confusion.”<sup>169</sup> Representative Robert Adley, a Roemer floor leader,<sup>190</sup> blamed the death of HB 2114, as well as the legislature’s inability to address the budget deficit on Alario and backers of his alternative tax package, saying “This is a serious, serious game being played here. They [Alario and his allies] all came here wanting to fund some enhancements, but they have played themselves into a position where they can’t get to them.”<sup>183</sup> Alario ally Representative Elias Ackal (D-New Iberia) blamed HB 2114’s failure on the Roemer Administration trying to raise the cigarette tax before a planned meeting with tobacco industry representatives to develop a

compromise increase.<sup>183</sup> The defeat of HB 2114 eliminated obvious bills to increase cigarette taxes.<sup>169</sup>

### ***A Compromise Cigarette Tax Increase is Passed***

After Representatives killed HB 2114, TI Regional VP Ron Morris and TI State Activities Director Pat McWhorter met Senators Donald Kelly and William Jefferson for dinner and informed them that a tobacco tax increase could be attached to HB 1939.<sup>169</sup> According to McWhorter, TI officials sought to secure the 4¢ cigarette tax increase to prevent higher tax hikes in the future:

While I have no doubt that our lobbying corps could have continued to defeat the Governor's tax proposals, I am also confident that he would have brought the Legislature back into special session almost immediately and made yet another attempt at us. If this had been done, I have no doubt that they would have tied us directly to higher education at 10 or 15 cents. We could not have defeated this type of attack.<sup>169</sup>

As passed by the House, HB 1939 levied a 3% excise tax on automobile rentals (Table 6.10). Kelly and Jefferson agreed to attach a 4¢ per pack cigarette tax increase to HB 1939 the next day, during Senate debate of the bill on July 8.<sup>169</sup> Jefferson's amendment was approved 30-8 on that day, adding a 4¢ increase matching the amount he and Senate President Nunez previously agreed to with TI Officials.<sup>169</sup> Senators then voted 29-8 to adopt HB 1939 and returned the bill to the House for approval of Senate alterations.<sup>190</sup>

Representatives reviewed Senate changes to HB 1939 the same day Senators amended and returned the bill to the House. During consideration of HB 1939, Representative John Travis, an industry ally who voted against other tobacco tax increase legislation in the 1990 session, praised the industry for supporting the bill according to *The Advocate*, exclaiming "They [the tobacco industry] are in wholehearted support of it the 4¢ cigarette tax increase] and want to make a contribution like everybody else."<sup>191</sup> Despite Travis' claims, to avoid a greater cigarette tax increase tobacco industry lobbyists convinced representatives to reject efforts by Roemer's House leadership to send HB 1939 to a conference committee. According to McWhorter, "The Governor's people wanted to make one more attempt at forcing at least a 5-cent increase in the conference committee. It could well have ended up as high as 8¢ or 10¢."<sup>169</sup>

Representatives ignored Roemer's floor leaders and voted 82-21 to adopt Senate amendments to HB 1939, sending the bill to the Governor for approval.<sup>191</sup> Governor Roemer signed HB 1939 into law on July 13, 1990, raising the cigarette tax from 16¢ to 20¢ per pack effective August 1, 1990.<sup>157</sup>

### **Aftermath of the Cigarette Tax Increase Compromise with the Tobacco Institute**

Even though the tobacco industry allowed adoption of HB 1939 at the end of the 1990 session, it failed to pass its accommodation bill HB 217 and its smokers' rights bill SB 521.<sup>169</sup> The tobacco industry had HB 217 pulled from consideration after legislators removed language

preempting local smoking restrictions stronger than state law<sup>169</sup> (Chapter 5). McWhorter blamed “protracted tax battles for SB 521 running out of time and failing to pass.”<sup>169</sup>

Even so, McWhorter argued that TI’s decision to allow a 4¢ cigarette tax increase improved Louisiana’s political landscape for the industry:

[W]e have built up a great amount of goodwill with legislative leadership by agreeing to compromise. With the monumental debacle being created by the Roemer Administration, we both agree that the Louisiana legislature will soon break free of the Governor’s control and begin electing their own leadership. Our friends are the ones who will be wielding that power. By choosing to make our deal with legislative leadership rather than [*sic*] the Administration, we strengthened their position and strengthened our position as well for several years to come.<sup>169</sup>

[W]e have built up a great amount of goodwill with legislative leadership by agreeing to compromise. With the monumental debacle being created by the Roemer Administration, we both agree that the Louisiana legislature will soon break free of the Governor’s control and begin electing their own leadership. Our friends are the ones who will be wielding that power.

Before the 1991 legislative session, an undated and uncredited document in TI’s records determined that Governor Roemer might again target the tobacco industry for a tax increase since it had not permitted a bigger tax hike.<sup>192</sup> However, the author believed that the 1990 compromise would prevent Roemer from securing a tax increase and help the tobacco industry advance its legislative agenda:

Our lobbying corps is in the process of meeting with leadership to make sure their commitment to leave us alone remains firm. We built up a tremendous amount of goodwill by allowing the 4-cent increase to pass, and this should help us both against the Governor on taxes and in passing our proactive proposals.

We expect to pass both anti-discrimination and some form of guaranteed smoker accommodation measures during the regular session. With the absence of tax measures, we should have no major problems with these proposals.<sup>192</sup>

The Louisiana Constitution of 1974 prohibited consideration of tax bills during regular sessions in odd years, although tax legislation could be introduced in a special session.<sup>7</sup> The tobacco industry secured its desired preemptive clean air legislation in 1992 and 1993 (Chapter 5) and avoided additional tax increases. In 1993, the Louisiana State Legislature adopted and had approved by the public a constitutional amendment that limited consideration of tax legislation to odd-year regular sessions and special sessions,<sup>8</sup> switching consideration of tax bills from even-years as originally mandated by the 1974 state constitution.<sup>7</sup>

## **Tobacco Tax Efforts after the Industry's Compromise: 1991-1999**

From 1991 through 1999 Louisiana lawmakers introduced at least 31 tobacco tax bills and one tobacco tax resolution (Table 6.11). Only three bills allowing local governments to levy taxes on cigarette rolling papers, HB 2032 in 1992, HB 1070 in 1993, and HB 111 in 1994, passed. The other bills mainly died with adjournment (Table 6.11).

Louisiana's political environment became friendlier to the tobacco industry's policy agenda, in particular taxes, after 1990. In late 1991, Governor and industry foe Buddy Roemer lost reelection to Governor Edwin Edwards (D),<sup>212</sup> who would not propose tobacco tax increases during his term from 1992-1996. Tobacco industry allies in the legislature also secured critical leadership and committee positions that handled tobacco tax legislation. Representative John Alario, instrumental to 1990 defensive efforts against tax increase legislation, served as House Speaker from 1992-1996.<sup>213</sup> In addition, leadership positions on the House Ways and Means Committee, where most tobacco tax legislation went, moved to lawmakers allied to Alario or friendly to the industry. Representative Steve Theriot, who in 1990 developed an alternative tax package with Alario to compete against Governor Roemer's legislative package, became chairman of the House Ways and Means Committee from 1992-1995.<sup>213</sup> Representative Sean Reilly served from 1992-1995 as Vice Chair of the committee.<sup>213</sup> Reilly had vocally opposed and rejected most tobacco tax increase legislation offered in 1990.<sup>213</sup> After 1990, Louisiana did not increase tobacco taxes until 2000 (Chapter 11).

## **The New Orleans Tobacco Consumption Privilege Tax**

In contrast to most states,<sup>214</sup> Louisiana allows local governments to levy excise taxes,<sup>214</sup> and since 1994 has permitted local governments to establish taxes on cigarette papers (Table 6.11).<sup>196, 214</sup>

The New Orleans City Council adopted Louisiana's first local tobacco tax in 1984 when the city expected a \$45 million budget shortfall the next year.<sup>215</sup> To address the deficit, New Orleans Mayor Ernest Morial<sup>216</sup> announced a legislative package on August 2, 1984 featuring \$245.3–249.3 million in fee increases and taxes.<sup>216</sup> The plan included a 5% sales tax<sup>215</sup> on tobacco products called the Tobacco Consumption Tax.<sup>216</sup> Mayor Morial organized seven public hearings to discuss his proposed tax package.<sup>215</sup>

The New Orleans City Council adopted Louisiana's first local tobacco tax in 1984 when the city expected a \$45 million budget shortfall the next year.

On August 2, 1984, the same day Mayor Ernest Morial announced his tax package, New Orleans City Councilmember Joe Giarrusso introduced an ordinance to the New Orleans City Council to levy a 5% tax on all tobacco products.<sup>217</sup>

## ***Tobacco Institute Opposition to the Consumption Tax***

After Mayor Morial announced his tax package, TI monitored efforts to promote the legislation. TI noted that Morial's first two public tax package hearings in August had low

Table 6.11: Tobacco Tax Rates after 1990 Session and Tax Increase Legislation Defeated or Adopted in Legislative Years 1991-1999\*\*\*\*193-211

Tax Rates After 1990 Session											
Cigarettes		Cigars Invoiced at \$120 Per Thousand or Under				Cigars Invoiced Above \$120 Per Thousand			Smokeless		Loose Leaf
20¢ per pack Cigars invoiced at \$120 per thousand or under – Cigars invoiced above \$120 per thousand Smokeless - None Loose leaf –		8% invoice price				20% invoice price			None		33% invoice price
1991 Legislation											
Bill	Sponsor	Cigarette Tax Increase	OTP Tax Increase	Cigarette Paper Tax Increase	Reallocates Existing Tobacco Tax	Local Tax	Increase Per Cigarette Pack (20¢)	OTP / Papers Increase Amount	Allocation	Other	Outcome
HB 557	Copelin,				+				Reallocates 8¢ of cigarette tax per pack to municipalities and parishes lacking incorporated municipalities.		Died upon adjournment
****1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.											



1992 Legislation											
Bill	Sponsor	Cigarette Tax Increase	OTP Tax Increase	Cigarette Paper Tax Increase	Reallocates Existing Tobacco Tax	Local Tax	Increase Per Cigarette Pack (20¢)	OTP / Papers Increase Amount	Allocation	Other	Outcome
HB 371	Copelin, Johnson, Morial,				+		21¢		Reallocates tobacco tax revenue to parishes without unincorporated municipalities and incorporated municipalities.		Died upon adjournment
HB 713	Lalonde	+	+				21¢	39.7% of invoice price on all tobacco products			Deferred by House Ways and Means Committee
HB 1653	Roach, Holden, Landrieu	+					2¢		2¢ per pack to new Cancer and Medical Trust Fund for use in “research, prevention and treatment programs.”		Died upon adjournment
HB 1662*	Roach, Holden, Landrieu		+					Smokeless tobacco - 2% of invoice price**			Died upon adjournment
HB 1835	Roach, Holden, Landrieu									Eliminate all state taxes on July 1, 1997 unless lawmakers reapproved them.	Died upon adjournment
HB 2032	Travis			+				Up to 25¢ per pack	Law enforcement.	Permitted only St Tammany, Feliciana, West Feliciana, Tangipahoa, Livingston and St. Helena to levy tax.	Adopted
SB 857	Johnson, Morial,								Reallocates tobacco tax revenue to parishes without unincorporated municipalities and incorporated based on population.		Died upon adjournment
Existing Taxes on tobacco products Cigarettes – 20¢ per pack											

Cigars invoiced at \$120 per thousand or under – 8% invoice price Cigars invoiced above \$120 per thousand – 20% invoice price Smokeless - None Loose leaf – 33% invoice price											
*Constitutional amendment requiring voter approval. **Sunsetted on December 31, 1997 if adopted. ****1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.											
1993 Legislation											
Bill	Sponsor	Cigarette Tax Increase	OTP Tax Increase	Cigarette Paper Tax Increase	Reallocates Existing Tobacco Tax	Local Tax	Increase Per Cigarette Pack (20¢)	OTP / Papers Increase Amount	Allocation	Other	Outcome
HB 135	Copelin, Sherman Nunez, Sam etc.	+					4¢				Died awaiting consideration on House Floor
HB 142	Landrieu,	+					4¢		No hard dedication. Planned for spending on higher education.		Died upon adjournment
HB 2011	Thomas,			+		+		Allowed Washington Parish to levy tax up to 25¢.	Unspecified.		Died awaiting consideration on Senate Floor
HB 1070	Rayburn			+		+		Allowed Washington Parish to levy tax up to 25¢.	Law Enforcement.		Adopted
Existing Taxes on tobacco products Cigarettes – 20¢ per pack Cigars invoiced at \$120 per thousand or under – 8% invoice price Cigars invoiced above \$120 per thousand – 20% invoice price Smokeless - None Loose leaf – 33% invoice price											
****1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.											

1994 Legislation											
Bill	Sponsor	Cigarette Tax Increase	OTP Tax Increase	Cigarette Paper Tax Increase	Reallocates Existing Tobacco Tax	Local Tax	Increase Per Cigarette Pack (20¢)	OTP / Papers Increase Amount	Allocation	Other	Outcome
HB 111	Farrar,			+		+		Up to \$1.25 per pack	<ul style="list-style-type: none"><li>○ Any local government up to 25¢ for law enforcement.*</li><li>○ Any parish up to \$1.25 for DARE drug prevention programs.</li><li>○ Orleans parish up to \$1.00 for the New Orleans Rec. Dept.</li></ul>		Adopted
HB 218	Roach		+					Cigars - 20% excise tax  Smokeless – 10% excise tax			Died upon adjournment
SB 16	Barro	+					20¢	Doubled existing rates for other tobacco products			Withdrawn
Existing Taxes on tobacco products Cigarettes – 20¢ per pack Cigars invoiced at \$120 per thousand or under – 8% invoice price Cigars invoiced above \$120 per thousand – 20% invoice price Smokeless - None Loose leaf – 33% invoice price											
*Washington Parish may dedicate 25¢ to city and not law enforcement. ****1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.											

1995 Legislation											
No Tobacco Tax Legislation Introduced											
1996 Legislation											
Bill	Sponsor	Cigarette Tax Increase	OTP Tax Increase	Cigarette Paper Tax Increase	Reallocates Existing Tobacco Tax	Local Tax	Increase Per Cigarette Pack (20¢)	OTP / Papers Increase Amount	Allocation	Other	Outcome
HB 17	Faucheux	+	+				2¢	-Cigars invoiced at \$120 per thousand or under – 24% invoice price -Cigars invoiced above \$120 per thousand – 60% invoice price -Loose leaf – 99% invoice price			Killed in House Ways and Means Committee (officially died upon adjournment)
HB 52	Chaisson	+					10¢				Killed in House Ways and Means Committee (officially died upon adjournment)
HB 55	Faucheux		+					Smokeless – 95% of invoice			Killed in House Ways and Means Committee (officially died upon adjournment)
HB 100	Thomas	+					10¢		All proceeds to State owned or administered acute care hospitals.		Killed in House Ways and Means Committee (officially died upon adjournment)
HB 125	Faucheux									99% of price tax on all tobacco accessories.*	Killed in House Ways and Means Committee (officially died upon adjournment)

HB 133				+		+		Up to \$2.50 per pack	Required parishes to dedicate at least 50% to DARE programs.** Leftover revenue to fund recreation.		Killed in House Ways and Means Committee
Existing Taxes on tobacco products Cigarettes – 20¢ per pack Cigars invoiced at \$120 per thousand or under – 8% invoice price Cigars invoiced above \$120 per thousand – 20% invoice price Smokeless - None Loose leaf – 33% invoice price											
*tobacco accessories defined as lighters, match boxes, or matchbook. **Washington and St. Tammany Parishes excepted. ***1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.											
<b>1997 Legislation</b>											
<b>Bill</b>	<b>Sponsor</b>	<b>Cigarette Tax Increase</b>	<b>OTP Tax Increase</b>	<b>Cigarette Paper ax increase</b>	<b>Reallocates Existing Tobacco Tax</b>	<b>Local Tax</b>	<b>Increase Per Cigarette Pack (20¢)</b>	<b>OTP / Papers Increase Amount</b>	<b>Allocation</b>	<b>Other</b>	<b>Outcome</b>
HCRI38	Unknown									Tasks Louisiana Dept. of Revenue and Taxation with overseeing tobacco sales by Native American tribes.	Unknown***
Existing Taxes on tobacco products Cigarettes – 20¢ per pack Cigars invoiced at \$120 per thousand or under – 8% invoice price Cigars invoiced above \$120 per thousand – 20% invoice price Smokeless - None Loose leaf – 33% invoice price											
***Source only states that the resolution passed the Senate. ****1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.											

1998 Legislation											
Bill	Sponsor	Cigarette Tax Increase	OTP Tax Increase	Cigarette Paper Tax Increase	Reallocates Existing Tobacco Tax	Local Tax	Increase Per Cigarette Pack (20¢)	OTP / Papers Increase Amount	Allocation	Other	Outcome
HB 102	Faucheux	+					40¢		Intended to fund prevention, treatment, research, and educational programming for maternal health, cardiopulmonary disease and cancer at academic health centers and public hospitals.		Died upon adjournment
HB 156	Faucheux	+					70¢		Intended to fund prevention, treatment, research, and educational programming for maternal health, cardiopulmonary disease and cancer at academic health centers and public hospitals.		Died upon adjournment
HB 172	Faucheux	+					70¢		Deposits funds in new Tobacco Tax Fund. Requires dedication of revenue generated by fund: <ul style="list-style-type: none"><li>• First \$50 million<ul style="list-style-type: none"><li>○ 25% to Louisiana Tobacco Control Center for anti-tobacco media campaigns in each parish.</li><li>○ 32% to fund prevention education for doctors at medical schools.</li><li>○ 35% to LSU Medical Center Health Care Services Division hospitals.</li><li>○ 8% to Louisiana Cancer and Lung Trust Fund.</li></ul></li></ul>		Died upon adjournment

									<ul style="list-style-type: none"> <li>• Next \$75 million for educator wage increases.</li> <li>• Next \$20 million for police, deputy sheriff and firefighter wage increases.</li> <li>• Next \$50 million to be spent according to first \$50 million.</li> <li>• Additional Funds deposited in General Fund.</li> </ul>		
HB 194	Glover	+	+					40¢	-Cigars invoiced at \$120 per thousand or under – 24% invoice price -Cigars invoiced above \$120 per thousand – 60% invoice price -Loose leaf – 99% invoice price		Died upon adjournment
HB 237	Pratt		+						Establishes 39.7% smokeless tobacco tax rate.		Killed on the House Floor
HB 242	Pratt		+						Establishes a tax rate for all cigars of 39.7% of invoice price.		Died upon adjournment
SB 94	Hainkel									Extends potential tobacco stamp discount no more than 6% to all wholesalers instead of those in neighboring states.	Died upon adjournment
Existing Taxes on tobacco products Cigarettes – 20¢ per pack Cigars invoiced at \$120 per thousand or under – 8% invoice price Cigars invoiced above \$120 per thousand – 20% invoice price Smokeless - None Loose leaf – 33% invoice price											
*****1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.											

1999 Legislation											
Bill	Sponsor	Cigarette Tax Increase	OTP Tax Increase	Cigarette Paper Tax Increase	Reallocates Existing Tobacco Tax	Local Tax	Increase Per Cigarette Pack (20¢)	OTP / Papers Increase Amount	Allocation	Other	Outcome
HB 86	Salter									Lowers threshold to qualify as tobacco wholesaler from 50% of total tobacco sales going to third party tobacco retailers to 15%.	Died upon adjournment
HB 1455	Bruneau									Adds manufacturers that sell 50% of their total tobacco products to retailers to the definition of wholesaler. Permits sale of cigarette tax stamps to dealers based outside of Louisiana and eliminated reciprocity requirement for neighboring states.	Died upon adjournment
HB 2210	Ansardi									Creates two types of Wholesaler classifications, Class A and Class B. Increases permit fees for both class types from original wholesaler permit fee.	Died upon adjournment
SB 1088	Bean									Creates two types of Wholesaler classifications, Class A and Class B. Makes Tobacconist part of Class B definition. Establishes \$250 permit fees for both classes. Requires cigarettes be sold in packs of at least 20.	Died with adjournment



Existing Taxes on tobacco products
Cigarettes – 20¢ per pack
Cigars invoiced at \$120 per thousand or under – 8% invoice price
Cigars invoiced above \$120 per thousand – 20% invoice price
Smokeless - None
Loose leaf – 33% invoice price
****1991-1997 cover bills reported by the tobacco industry as tax bills. 1998-1999 are bills we determined are applicable from the Louisiana State Legislature legislative database.

attendance.<sup>215</sup> TI representatives reached out directly to key businesspeople, manufacturers, and wholesalers in August about the tobacco tax's likelihood of passage and indirectly communicated with the New Orleans City Attorney and City Councilmembers.<sup>215</sup> According to TI Regional Director John Hightower in an August 27 memo to TI Regional VP Ron Morris, TI also made limited, indirect outreach to "black leaders and groups" through multiple people, including New Orleans Councilmember Sidney Barthelemy, who taught at Xavier University<sup>218</sup> (an HBCU). TI conducted outreach to African American leaders despite its lobbyist Jack Pender intimating to the Institute that African American leadership in the area was unclear.<sup>215</sup>

TI officials did not initially consider the New Orleans tax proposal a threat. Regional Director John Hightower reported to Morris in his August 27, 1984 memo, "Thus far our contacts have led us to believe that this [tax package] is not a serious threat as it relates to the tobacco tax. Through various sources we feel that if things do change we will get good early warnings."<sup>215</sup> Hightower learned through a secondary source that the New Orleans City Attorney did not consider the tobacco tax likely to pass.<sup>215</sup> TI lobbyist Jack Pender also indirectly asked two unnamed city councilmembers, one possibly Councilmember Mike Early, if the tobacco tax was a threat.<sup>215</sup> TI officials believed that Mayor Morial mainly sought to change earnings taxes.<sup>215</sup> TI lobbyist Jack Pender predicted that 3 of the 7 New Orleans City Councilmembers (Sidney Barthelemy, Lambert Boissiere and Bryan Wagner<sup>215, 219</sup>) would likely oppose the tobacco tax increase.<sup>215</sup>

Besides believing Morial's tobacco tax package was unlikely to pass because local elected officials held little support or enthusiasm for the plan, TI also felt the proposal faced constitutional and legislative hurdles that made its adoption less of a possibility.<sup>215</sup> According to TI's Hightower:

Several of these tax proposals may have serious constitutional problems. The tobacco tax falls into this category. If it is to be classed as a sales or use tax then it must go back to the legislature for approval prior to an election by the people. Jack and I each feel that there are big question marks in this regard.<sup>215</sup>

TI lobbyist Joe Wood Guidry received differing advice that the tobacco tax was constitutional.<sup>215</sup>

Although TI considered Mayor Morial's proposal an insignificant threat, by late August it anticipated observing City Councilmembers' positions on the tobacco tax as well as mobilizing allies to oppose any introduced ordinance. In late August, TI Regional Director Hightower suggested:

We should continue to quietly, but quickly probe to find out for certain how these councilmen might vote if indeed they had to consider this tax.

This should be done as discretely as possible utilizing our contacts that know these people the best. If we get bad news on the count then it may be time to see the problem councilmen directly.<sup>215</sup>

If councilmembers introduced an ordinance, Hightower planned to activate allied groups to oppose the legislation<sup>215</sup> He also expected TI to issue an action alert to Tobacco Action Network volunteers if a councilmember submitted an ordinance.

TI notified legislative counsel and officials from the tobacco companies of the potential New Orleans tobacco tax measure by September 6, 1984 but felt the tobacco tax was not a danger to the industry and unlikely to pass.<sup>220</sup>

... to change councilmembers' attitudes towards the tobacco tax increase, the tobacco industry needed "local persons in the tobacco industry [to] present good evidence as to the fact that the tax will hurt the local tobacco businesses, and not just the smokers."

TI lobbyist Joe Wood Guidry determined more support existed for a local tobacco tax than expected by the industry during that September. She contacted an associate at the New Orleans Chamber of Commerce on September 20, 1984 about the Tobacco Consumption Tax.<sup>221</sup> The informant told Guidry that the New Orleans City Council was inclined to pass the Tobacco Consumption Tax ordinance if it and other measures developed from Morial's August tax proposal were debated again.<sup>221</sup> According to Guidry, to change councilmembers' attitudes towards the tobacco tax increase the tobacco industry needed "local persons in the tobacco industry [to] present good evidence as to the fact that the tax will hurt the local tobacco businesses, and not just the smokers."<sup>221</sup> Guidry's associate claimed

that the New Orleans City Council would allow tax increase ordinances to die if local voters approved an earnings tax proposal to levy a 1% tax on yearly income surpassing \$5,200 in the upcoming November election.<sup>222</sup>

During Joe Wood Guidry's September 20, 1984 conversation with a New Orleans Chamber of Commerce insider, she learned the business association had planned a meeting for the tobacco industry to provide arguments against the Tobacco Consumption Tax; she reported to TI Regional VP Ron Morris:

I [Joe Wood Guidry] called my friend with the New Orleans Chamber of Commerce after we [TI Regional VP Ron Morris] hung up talking. She said that the committee with her sub-committee was this afternoon, for the purpose of letting the tobacco industry make their "pitch" as to how the New Orleans tobacco tax would hurt the industry and not just the smoker.<sup>221</sup>

The source informed Guidry that the New Orleans Chamber of Commerce had no members from the area that were tobacco wholesalers. Guidry subsequently asked Tracy Hutchins,<sup>221</sup> a Louisiana Wholesale Tobacco and Candy Distributors' Association official, a New Orleans Chamber of Commerce member, and a principal at tobacco wholesaler U. Koen & Company<sup>223</sup> if she could help the industry oppose the Tobacco Consumption Privilege Tax ordinance at the meetings.<sup>221</sup> Hutchins told Guidry she would notify "New Orleans Wholesalers of the situation" and attend the September 20 or following Chamber of Commerce meeting.<sup>221</sup> In mid-late

September, Guidry recruited New Orleans tobacco wholesalers to join the Chamber of Commerce.<sup>224</sup>

On September 20, 1984, TAN Regional Director John Hightower appeared at a New Orleans Area Chamber of Commerce Government Affairs Committee meeting with Louisiana tobacco wholesaler and chamber member Tracy Hutchins to oppose the Tobacco Consumption Tax.<sup>223</sup> During the meeting, Hightower and Hutchins argued the Tobacco Consumption Tax was unfair since the federal cigarette tax had increased 8¢ per pack in 1983 and the state cigarette tax by 5¢ earlier in 1984. They also claimed the tobacco tax would generate less than expected revenue by prompting illegal cigarette sales and lost purchases to nearby areas with lower tobacco tax rates and that the tobacco tax disproportionately harmed poor Louisianans, was regressive, and possibly unconstitutional. We did not find evidence that health advocates appeared at the meeting to support the tax proposal. The Government Affairs Committee did not take a position on the tax at its September 20 meeting.<sup>223</sup>

Guidry asked that tobacco company staff living in New Orleans send New Orleans Mayor Morial and the City Council letters against the tax increase. She also requested information and campaign contributions she could use to influence New Orleans City Councilmembers.

In late September 1984, TI lobbyist Joe Wood Guidry asked the tobacco industry to mobilize its employees to pressure the New Orleans City Council to oppose the Tobacco Consumption Tax ordinance.<sup>224</sup> Guidry asked that tobacco company staff living in New Orleans send New Orleans Mayor Morial and the City Council letters against the tax increase.<sup>224</sup> She also requested information and campaign contributions she could use to influence New Orleans City Councilmembers. Guidry specifically urged the tobacco industry to make the biggest campaign donation it could to Councilmember Barthelemy, who was running for Mayor of New Orleans in the November election; saying “We need to make good friends with Sidney [Barthelemy] since he will still have his vote on the Council, and Councilman Boissiere will also vote with him.”<sup>224</sup> Guidry also requested materials regarding the problems of implementing a local tax and the impacts said tax had on “local tobacco industries” to share with Councilmembers Barthelemy and Boissiere. She suggested that TI lobbyist Jack Pender needed the same information to provide to his “contacts” and recommended having Pender lobby Councilmember Early and another unspecified councilmember.<sup>224</sup>

In early October 1984, TI Legislative Issues Manager Paula Duhaime developed a policy paper opposing the New Orleans Tobacco Consumption Tax to provide lawmakers. Developed after conversing with Hightower,<sup>225</sup> the sheet asserted that the tobacco tax increases negatively impacted prices and harmed poor smokers.<sup>225</sup> Duhaime sent the policy paper to Hightower on October 11, 1984 for him to provide to an unidentified committee.<sup>225</sup>

Although TI prepared to defend against the Tobacco Consumption Tax, it still considered the measure a minor threat in mid-October, expecting that the New Orleans City Council would not consider a tobacco tax increase unless voters vetoed the earnings tax in the November 6 election.<sup>226</sup>

Hightower sent a letter on October 19, 1984 to New Orleans and the River Region Chamber of Commerce's East New Orleans Council Chairman Mike Brill asking his organization to oppose the Tobacco Consumption Tax ordinance.<sup>223</sup> The letter recounted Hightower and Louisiana wholesaler Tracy Hutchins' appearance at the Chamber's Government Affairs Committee meeting on September 20, and their arguments that the tobacco tax increase was possibly unconstitutional, regressive, would spur crime and possibly drive business out of the city.

On Election Day, November 6, 1984, New Orleans voters rejected the 1% earnings tax placed on the ballot by the city.<sup>222</sup> The defeat increased pressure on the New Orleans City Council to pass the Tobacco Consumption Tax.

### ***Tobacco Industry Explores Defensive Efforts after New Orleans Rejects Earnings Tax***

After voters rejected the earnings tax proposal, TI representatives renewed communication with New Orleans City Councilmembers and tobacco wholesalers to monitor the likelihood of the Tobacco Consumption Tax passing.<sup>222</sup> TI lobbyist Joe Wood Guidry communicated with Councilmember Sidney Barthelemy and multiple tobacco wholesalers, while TI Regional Director John Hightower corresponded with TI lobbyist Jack Pender, two unidentified councilmembers, and wholesalers.<sup>222</sup> Councilmembers informed TI representatives that the City Council would probably not pursue the Tobacco Consumption Tax and instead make budget cuts and renew an expiring 1% sales tax to address New Orleans' \$60 million budget deficit.<sup>222</sup> New Orleans Councilmembers and wholesalers told Guidry, Hightower and Pender that if any activity on the tobacco tax increase happened, it would not be before November 29, 1984.<sup>222</sup>

The New Orleans City Council convened to weigh tax increase ordinances on November 8<sup>227</sup> and 15, 1984<sup>227</sup> without voting on the Tobacco Consumption Tax.<sup>227</sup>

New Orleans City Councilmember Bryan Wagner subsequently contacted Hightower on November 16, 1984 and informed him that the council was considering the tobacco tax.<sup>228</sup> Wagner "urged us [TI] to crank up any contacts program that we had in mind. I immediately contacted you [TI Regional VP Ron Morris] and started making phone calls to people in New Orleans urging contact with their councilmen."<sup>228</sup> Hightower contacted City Councilmembers and government staff, tobacco company officials, business associations, and wholesalers to convince them to oppose the ordinance<sup>229</sup> (Table 6.12).

The New Orleans City Council held a special meeting on November 23 and debated a resolution asking councilmembers to decide upon the Tobacco Consumption Tax.<sup>228</sup> Hightower attended, testifying<sup>228</sup> that the measure financially saddled families with smokers and was regressive.<sup>229</sup> We do not know if health proponents testified in support of the measure at the hearing. Despite Hightower's testimony, Councilmembers voted 4-2 to approve the motion and debate the Tobacco Consumption Tax at a later hearing.

Table 6.12: List of People and Their Affiliations Contacted by Tobacco Institute Regional Director John Hightower to Oppose the Tobacco Consumption Privilege Tax <sup>229, 230</sup>	
Tom Spradley	Tobacco Institute
Sarah Whalen	Louisiana Wholesale Tobacco Distributors Association
Jim Funk	Louisiana Restaurant Association
DeAnn Johnson	New Orleans Chamber of Commerce
Nance Guenther	New Orleans Chamber of Commerce
Joe Traglino	Traglino Tobacco (Wholesaler)
Herb Kramer	President- New Orleans Retail Grocers' Association Grocery store owner
Mark Zuppardo	Louisiana Retail Grocers' Association
Barbara Easley	Louisiana Wholesale Grocers' Association
Roy Amedee	Winn Dixie Company (Grocer)
Tracy Hutchins	U. Koen & Company (Wholesaler)
Alan Kronenberg	TAC Member Vending business
Jimmy House	Wholesaler and Vending Business
Sandy Kutner	The Tobacco House (Retailer)*
Lance Jones	Philip Morris
Kirstie Thompson	Philip Morris
John Spampneto	Philip Morris
Jim Paddock	Philip Morris
Rod Sommer	RJ Reynolds
Cliff Pennell	RJ Reynolds
Karl Knottlowsky	RJ Reynolds
Ben Somerau	Brown and Williamson
Tom Toudeau	Brown and Williamson
Jerry Whorton	Lorillard
Janice Rhodes	Liggett and Myers
George Blue	Southland Corporation lobbyist
Rhaul Guillame	City Councilmember Sidney Barthelemy backer
Sherry McConnell	K&B Drug Stores lobbyist
Clark Cosse	Louisiana Association of Business and Industry lobbyist
Sidney Barthelemy	New Orleans City Councilmember
Lambert Boissiere	New Orleans City Councilmember
Mike Early	New Orleans City Councilmember
Joseph Giarrusso	New Orleans City Councilmember
Wayne Babovitch	New Orleans City Councilmember
Bryan Wagner	New Orleans City Councilmember
James Singleton	New Orleans City Councilmember
Lee Siegel	City Clerk of New Orleans City Council
Jack McNeely	City of New Orleans Lobbyist
Lennie Simmins [sic]	City of New Orleans Lobbyist
Gerard Pelias	Wholesaler and distributor
*Talked to employees as well	

On November 26, Hightower, TI Vice President Marshall Hurst, and Morris decided to employ New Orleans lobbyist Tom Spradley to assist ongoing lobbying efforts with councilmembers against the tax by TI lobbyists Guidry and Pender.<sup>228</sup> Spradley immediately started lobbying against the ordinance on November 27.<sup>228</sup> TI determined by November 28 that

the New Orleans City Council would vote 4-2 or 4-3 to pass the tax on November 29 and started considering lobbying the mayor to veto it.<sup>228</sup>

Before the New Orleans City Council met on November 29, New Orleans City Attorney Salvador Anzelmo issued an opinion that the Tobacco Consumption Tax ordinance was unconstitutional without voter approval.<sup>228, 231</sup> State law required approval from the state legislature or constituents to pass any sales or consumption tax greater than 3%.<sup>232</sup>

The City Council considered Ordinance No. 10,167 MCS<sup>232</sup> (We identify legislation in this section by ordinance number or ordinance calendar number. We specify when using a calendar number), the Tobacco Consumption Tax, on November 29, 1984<sup>217, 229</sup> and weighed amendments to address constitutional problems the City Attorney raised, and then went into executive session with him to discuss changes.<sup>228</sup>

Hightower reported to Morris that councilmembers weighed a proposal from TI lobbyist Joe Wood Guidry to make the tax impermanent during their executive session:

A suggestion by our counsel, Joe Wood [Guidry], that the tax be made temporary in exchange for our efforts at the state level to try to get state money for the city, was apparently mulled over by the members of the council during that meeting also.<sup>228</sup>

After the executive session, the New Orleans City Council proposed amendments altering the language and scope of Ordinance No. 10,167 MCS but did not change the 5% sales tax levied on tobacco products. One amendment changed the tax from a Tobacco Consumption Tax to a Tobacco Consumption Privilege Tax<sup>233</sup> to avoid a conflict with Louisiana law that required local governments to obtain state legislative or constituent approval if they levied a consumption, use, or sales tax over 3%.<sup>232, 234</sup> The change nominally levied the tax on the consumption of tobacco and not its sale, although the tax was a percentage of price and applied at sale on purchases made in Orleans Parish. Another amendment increased the breadth of Ordinance No. 10,167 MCS s coverage partly to justify it as a consumption privilege tax, requiring taxes to be paid on tobacco products used in Orleans Parish that were not purchased there. People that consumed tobacco in New Orleans that purchased it outside the parish would send money owed to the city with (to be determined) appropriate forms.<sup>233</sup> Despite TI's public objections, the City Council adopted the amendments.

After the City Council amended the Tobacco Consumption Tax to become the Tobacco Consumption Privilege Tax, Hightower testified against it at the November 29 hearing,<sup>228</sup> saying:

Naturally we here today, representing all facets of the tobacco industry are extremely distressed that you chose to go to our products again for your needs. The 142,000 smokers of this city will undoubtedly regret that choice too. As I stated the other day, the [addition] of this extra five-percent will mean an annual tax burden on the average family with two average smokers of an additional \$55.00

Taxes of this sort are regressive in nature and do hit low income people the hardest. The product has already absorbed a hefty increase in the last six months due to the state excise tax increase.<sup>229</sup>

Hightower also argued tax revenue would decline as smokers made cigarette purchases in nearby parishes to avoid costs. In contrast to the tobacco industry's opposition, we did not find any evidence that health advocates provided comments supporting the ordinance at the meeting.

The New Orleans City Council ultimately adopted the Tobacco Consumption Privilege Tax but indicated its willingness to repeal the increase if other revenue alternatives were discovered. Councilmembers voted 4-3 to adopt the ordinance and send it to Mayor Morial for approval.<sup>228</sup> Councilmember Barthelemy then proposed Resolution R-84-474 at the November 29 meeting, which stated the City Council's intent to repeal the Tobacco Consumption Privilege Tax when adequate state funding became available for New Orleans' government.<sup>235</sup> He included a request that TI help find funds from the state to replace revenue from the Tobacco Consumption Privilege Tax:

"Be it resolved by the Council of the City of New Orleans that the Council hereby signifies its intent to repeal this tax provided that other revenue measures are made available by the state legislative in its next session. Be It Further Resolved That the Council Hereby Request the assistance of the Tobacco Institute in attaining the aforementioned legislative relief."

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,  
That the Council hereby signifies its intent to repeal this tax provided that other revenue measures are made available by the state legislative in its next session.

Be It Further Resolved That the Council Hereby Request the assistance of the Tobacco Institute in attaining the aforementioned legislative relief.<sup>235</sup>

The Council unanimously approved the resolution.<sup>229</sup>

Following the November 29, 1984 City Council meeting, TI representatives sought the mayor's veto of the tax<sup>229</sup> or another means to repeal the measure.<sup>236</sup> TI lobbyists asked associates to call "the Mayor's office urging veto."<sup>228</sup> Meanwhile, TI lobbyist Joe Wood Guidry sought an alternative state revenue source to satisfy Councilmember Barthelemy's resolution to replace the Tobacco Consumption Privilege Tax.<sup>236</sup>

Despite tobacco industry hopes, Mayor Morial never vetoed the ordinance. According to a December 13 memo from TI Regional Director John Hightower to TI Regional VP Ron Morris:

The feeling [among tobacco industry personnel] was that the Mayor would veto the bill and the Council would be able to sustain the veto by a 4-to-2 vote, but



this never occurred. For some reason, surely based on reasons only the Mayor knows, he did not sign it.<sup>236</sup>

Morial's office returned Ordinance No. 10,167 MCS to the City Council on December 6, 1984 without signature or veto and the tax entered effect without mayoral approval 10 days later on December 9, 1984.<sup>237</sup> Effective January 1, 1985 with collection beginning that March, the Tobacco Consumption Privilege Tax instituted a 5% of price tax on all tobacco products<sup>238</sup> for the privilege to consume them in New Orleans (a sales tax in all but name).

### **The Tobacco Industry Considers Options for Repealing the Tobacco Consumption Privilege Tax in 1985**

As the Tobacco Consumption Privilege Tax entered effect, TI considered ways to retaliate against New Orleans and or repeal the law. In a December 13, 1984 memo, TI Regional Director John Hightower stated that TI lobbyist Joe Wood Guidry discovered the state could likely claim the city's tobacco tax revenue:

Joe Wood [Guidry] was working in Baton Rouge to investigate state money or some means of replacement money for the tobacco tax as per the pledge made in the resolution passed pursuant to the passage of the tobacco tax. She has gotten some rather positive signs that without legislation the Louisiana Department of Revenue can indeed collect the sales tax from New Orleans. While this is a long way from being reality, it will be pursued.<sup>236</sup>

Mayor Ernest "Dutch" Morial blocked this effort. A November 22, 1985 memo from TI Regional VP Ron Moore to TI VP Hurst Marshall reported that:

Our lobbyist, Joe Wood Guidry, made several attempts to work with the State Revenue Department on this proposal. Each time she was thwarted by Mayor Morial's aides. They want to handle the sales tax collection locally.<sup>239</sup>

TI also considered filing a lawsuit against the Tobacco Consumption Privilege Tax.<sup>236</sup> Hightower as well as TI lobbyists Joe Wood Guidry, Tom Spradley and Jack Pender investigated the feasibility of a lawsuit against the measure as did TI's Washington DC-based law firm Covington and Burling.<sup>231</sup> Both Covington and Burling and New Orleans law firm Stone, Pigman believed a lawsuit would fail.<sup>240</sup> As a result, on February 4, 1985 TI Vice President of State Activities Division Roger Mozingo sent a memorandum to Stanley S. Scott, VP and Director of Corporate Affairs for Philip Morris and four other industry inside lawyers (W.E. Ainsworth, James R. Cherry, Donald E. Mott, Guy L. Smith, and J. Kendrick Wells) stating the industry would not file a lawsuit against the Tobacco Consumption Privilege Tax.<sup>241</sup>

### ***Industry Contributes to City Councilmember Barthelemy To Bolster Tax Repeal Efforts***

On November 22, 1985 TI Regional VP Ron Morris sent a memo to TI VP Hurst Marshall asking TI to make a campaign contribution to New Orleans City Councilmember Sidney Barthelemy's mayoral campaign.<sup>239</sup> TI had considered contributing to Barthelemy since

December 1984, the month the New Orleans tax passed. Morris asserted in his November 22, 1985 memo that helping Barthelemy win his election might help the tobacco industry's efforts against the Tobacco Consumption Privilege Tax:

If Barthelemey is elected mayor, we will have a good chance at completion of this effort [to eliminate the Tobacco Consumption Privilege Tax]. We can get the State Revenue Department to collect and rebate New Orleans sales tax.... Second and most important, we will have a chance to repeal the New Orleans tax.<sup>239</sup>

"If Barthelemey is elected mayor, we will have a good chance at completion of this effort. We can get the State Revenue Department to collect and rebate New Orleans sales tax .... Second and most important, we will have a chance to repeal the New Orleans tax."

Morris planned to meet Barthelemy and talk about his mayoral campaign on December 3, 1985.<sup>239</sup> On January 21, 1986, TI provided a \$500 contribution to Barthelemy,<sup>242, 243</sup> who was elected the Mayor of New Orleans on March 1, 1986.<sup>244</sup>

### **New Orleans Increases its Tobacco Tax in 1986**

The City of New Orleans had a \$24 million budget shortfall in June 1986<sup>245</sup> that the City had to address before the standard year's end.<sup>246</sup> In addition, state spending cuts were expected to cost the city \$25 million, \$10 million of which resulted from the State Legislature reallocating state tobacco tax revenue previously dedicated to local governments.<sup>245</sup>

The budget crisis led city government to develop a package of tax legislation to generate new revenue.<sup>247</sup> Possibly as part of the package, New Orleans City Councilmember Peggy Wilson<sup>248</sup> introduced Ordinance No. 11,527 MCS<sup>232</sup> on July 10, 1986, to raise the Tobacco Consumption Privilege Tax from the 5% of price tax on tobacco products set in 1984 to 10%.<sup>249</sup> TI Regional VP Ron Morris blamed New Orleans Chief Administrative Officer Kurt Steiner for the tobacco tax increase.<sup>250</sup>

### ***Tobacco Institute Moves to Block Ordinance No. 11,527***

The New Orleans City Council planned to discuss Ordinance No. 11,527 MCS<sup>232</sup> on August 7, 1986.<sup>248</sup> TI lobbyist Joe Wood Guidry and TI Regional VP Ron Morris, in New Orleans for the National Conference of State Legislatures, learned that Councilmembers would consider the measure that night while dining with state lawmakers, and abruptly left for City Hall to oppose it. Guidry's husband,<sup>251</sup> former state representative and lobbyist Jesse Guidry and Philip Morris lobbyist Carl Johnson treated the legislators to the meal in their stead.<sup>248</sup> Guidry persuaded Mayor Sidney Barthelemy to have the City Council postpone consideration of the ordinance that same day.<sup>248</sup> She reported to the TI that:

I called on Mayor Barthelemy, begging him not to put this tobacco increase on while all of the tobacco manufacturers were in town spending quarter of a million dollars or more on the National Conference of State Legislators [*sic*]. The mayor,

out of friendship for me, got the Council to delay voting on the matter at that time.<sup>248</sup>

Councilmembers delayed consideration of the ordinance until August 21.<sup>247</sup>

On August 8, TI Vice President Roger Mozingo, and TI Regional VP Ron Morris asked Joe Wood Guidry and her lobbyist husband Jesse Guidry who should lobby against Ordinance No. 11,527 MCS.<sup>248</sup> The Guidry's recommended that their lobbying firm Joe Wood & Associates handle the measure.<sup>248</sup> TI agreed to pay Guidry \$10,000 to fight the tax in New Orleans.<sup>248</sup>

On August 13-15, 1986, TI lobbyist Joe Wood Guidry met with New Orleans City Councilmember Dorothy Mae Taylor and Assistant Chief Administrative Officer Lennie Simmons to discuss the revenue impact of the 1984 Tobacco Consumption Privilege Tax and Ordinance No. 11,527 MCS.<sup>248</sup> Simmons told Guidry that the 1984 tax would generate \$1.6 to 1.8 million for New Orleans in 1986 and predicted that Ordinance No. 11,527 MCS would provide another half million that year. Joe Wood Guidry also probed lawmakers on their views about increasing the tax:

On August 13, Joe Wood Guidry met Councilmember Johnny Jackson, who had served as a state representative alongside Jesse Guidry.<sup>248</sup> She also discussed the ordinance with Councilmembers Taylor and Bossier,<sup>248</sup> all of whom viewed the tax increase as unavoidable but "told us they would see what they could do to help. However, the funds were so short for 1987 that everything was needed that they could think of."<sup>248</sup>

TI lobbyist Joe Wood Guidry recruited State Representatives Sherman Copelin and Republican Caucus leader, Peppi Bruneau to lobby against passing Ordinance No. 11,527 MCS.<sup>248</sup> Guidry claimed Representative Bruneau successfully pressured Councilmember Peggy Wilson to delay her bill.<sup>248</sup>

Preparing for the August 21 City Council meeting, the week of August 15 Morris provided TI lobbyist Joe Wood Guidry arguments against the measure.<sup>252</sup> The talking points asserted the Tobacco Consumption Privilege Tax in 1984 did not meet revenue expectations set by supporters and had reduced New Orleans's cigarette sales and tobacco tax returns, that the increase was regressive since it placed another tax burden on New Orleansians who had a "buying income" 21% lower than the state average, that the tax increase would cause city residents to seek decreased prices and buy cigarettes in neighboring areas, and that a 6¢ increase per cigarette pack made New Orleans' overall federal, state, and local tax burden on cigarettes the third highest nationally behind Chicago and New York.<sup>252</sup>

At the August 21, 1986 meeting councilmembers again deferred action on Ordinance No. 11,527 MCS.<sup>248, 253</sup> Joe Wood Guidry reported, "We...met again with the mayor. He said he would try to keep hands off, and on the 21<sup>st</sup> he postponed hearing again until October 16."<sup>248</sup> Guidry continued lobbying councilmembers to oppose the measure during the delay.<sup>253</sup>

Table 6.13: Business Community Members Assisting Tobacco Institute Against Ordinance No. 11,527 MCS <sup>253</sup>	
Name	Affiliation
Carl Johnson	Philip Morris
Sarah Whalen	Louisiana Wholesale Tobacco Distributors
Tracy Hutchins	U. Koen & Company (wholesaler)
Joe Quagliano	Quagliano Distributors

After the City Council delayed action on Ordinance No. 11,527 MCS, TI's Joe Wood Guidry and unidentified local tobacco wholesalers attempted to show city officials that a tobacco tax increase was unnecessary because existing tobacco tax revenue was under-collected. Guidry, Louisiana wholesalers, and possibly other tobacco lobbyists met with New Orleans Chief Administrative Officer Kurt Steiner, Mayor Barthelemy, and city employees on August 26, 1986<sup>248, 254</sup> to educate them on how to better collect existing tobacco taxes.<sup>248</sup> The lobbyists likely advocated for implementation of \$2-3 identification tags on cigarette vending machines to track them and obtain taxes due, which Guidry mentions in a letter she sent to Mayor Barthelemy discussed later in this section.<sup>255</sup>

In early September 1986, Joe Wood Guidry met with tobacco distributor Joe Quagliano, City Councilmembers Boissiere, Jackson and Taylor, and grocery chain owner John Schwegmann to recruit tobacco retailers to oppose Ordinance No. 11,527 MCS. Retailers rejected the request, fearing insurance costs and property taxes might increase as a result.<sup>248</sup>

On September 3, 1986, the Office of Mayor Sidney Barthelemy sent TI VP Roger Mazingo a letter regarding the City of New Orleans' financial crisis and plans to resolve it.<sup>256</sup> Barthelemy stated that state and federal shared funding cuts to New Orleans had given the city a \$30 million budget shortfall. To close the deficit, the City Council passed a \$195 property service charge that required voter approval in a September 27, 1986 election.<sup>256</sup> Barthelemy asked TI to contribute to a newly-formed nonprofit Citizens for New Orleans that was campaigning for the tax ahead of the election.<sup>256</sup> We do not know if TI provided money to Citizens for New Orleans or assisted efforts to pass the property service charge.

TI believed New Orleans City Councilmembers were likelier to pass Ordinance No. 11,527 MCS if voters rejected the property tax at the ballot.<sup>253</sup> Institute representatives had secured multiple votes from New Orleans City Councilmembers against Ordinance No. 11,527 MCS by the week of September 15, but feared the property service charge's defeat would cause councilmembers to break their promises and approve the tobacco tax:

Presently we have votes pledged to kill the cigarette consumption tax increase.  
We are awaiting the outcome of the September 27 referendum on property taxes.  
The outcome of the referendum may alter our pledges position.<sup>253</sup>

Voters rejected the Property Service Charge in the September 27 election.<sup>253</sup>

In early October 1986, TI worked with Philip Morris representative Carl Johnson and local distributors to lobby against Ordinance No. 11,527 MCS (Table 6.13).<sup>253</sup>

Joe Wood Guidry, her husband Jesse Guidry, Quagliano, and Whalen met Mayor Sidney Barthelemy the week of October 8 to gauge his stance on the ordinance.<sup>253</sup> Barthelemy informed

them he had no position on Ordinance No. 11,527 MCS and intended to let Councilmembers decide its fate.<sup>253</sup> The lobbyists subsequently met with New Orleans City Councilmembers Boissiere, Jackson, Singleton and Taylor on October 8 to persuade them to oppose the measure.<sup>253</sup> By October 8, tobacco industry representatives and allies had already received assurances from Councilmembers Mike Early and Joe Giarrusso that they would vote against the ordinance.<sup>253</sup> Guidry and Morris reported that Quagliano also planned to raise money and give in-kind contributions to councilmembers to earn their support:

Joe is planning a fund raiser and has set aside a hotel suite for Councilman Taylor for the Southern-Rambling game. Quagliano has agreed to furnish a case of cigarettes for a Jackson fund raiser. We continue in our efforts to dissuade the Council members from passing the cigarette tax increase.<sup>253</sup>

Tobacco representatives and distributors also received lobbying assistance from current and former state lawmakers, who urged councilmembers to oppose the ordinance.<sup>248, 253</sup> On October 8, Morris reported that “Council member Peggy Wilson has been talked to by Representatives [Peppi] Bruneau and John Hainkel. In addition, former State Senator Mike O’Keefe has offered to assist Joe in her efforts to convince council members to the failing of the tax.”<sup>253</sup>

“Presently we have votes pledged to kill the cigarette consumption tax increase. We are awaiting the outcome of the September 27 referendum on property taxes. The outcome of the referendum may alter our pledges position.”

Philip Morris initiated a contact drive to pressure the City Council against adopting Ordinance No. 11,527 MCS.<sup>253</sup> The company expected to instigate 75 calls and 200 letters to each councilmember. Philip Morris’ drive led TI’s Morris to recommend that TI activate its New Orleans “tobacco folks” to pressure councilmembers against the ordinance.

In October, to bolster business community opposition to Ordinance No. 11,527 MCS, the tobacco industry and its allies continued recruiting other businesses to oppose it.<sup>248, 253</sup> Philip Morris representative Carl Johnson pursued the local Miller Beer Distributorship.<sup>253</sup> (At the time Philip Morris owned Miller Beer.<sup>257</sup>) In addition, Joe Quagliano<sup>248</sup> of Quagliano Distributors tried to recruit grocery store company Schwegmann to oppose the ordinance.<sup>253</sup> We do not know if they convinced Schwegmann to help. Surprisingly, the local Chamber of Commerce rejected requests from the industry and its allies to help oppose the measure.<sup>253</sup> We do not know why.

### ***Budget Realities Begin to Dominate the Discussion***

The budget shortfall severely impacted City of New Orleans officials and staff as the City Council considered revenue sources to alleviate its remaining \$10 million shortfall in October<sup>246</sup> and the tobacco industry worked to avoid further taxes. By October 6, Councilmembers had required city offices to close 3 days a week instead of 2, lay off 205 employees, reduce the pay of remaining staff 20% and constrain them to 4-day work weeks.<sup>246</sup> Councilmembers and Mayor Barthelemy also lowered their own salaries 20%.<sup>246 246</sup>

Despite these extreme measures, on October 19 the City Council voted to delay consideration of Ordinance No. 11,527 MCS and other non-tobacco measures until November 5.<sup>248, 258</sup> According to Joe Wood Guidry, the “City Council deferred action on tobacco tax until next regular council meeting to see if they could find anything else.”<sup>248</sup> The postponed legislation included a new measure<sup>258</sup> by Councilmember Singleton<sup>255</sup> to levy a \$10 licensing fee on all types of vending machines,<sup>258</sup> which also concerned the tobacco industry since it sold products through cigarette vending machines.

TI lobbyist Joe Wood Guidry wrote Mayor Barthelemy on October 20 urging him not to let the city’s Chief Administrative Officer Kurt Steiner incorporate revenue from the 1984 Tobacco Consumption Privilege Tax, Ordinance No. 11,527 MCS, or a proposed \$10 tax on all types of vending machines by Councilmember Singleton, in the 1987 budget.<sup>255</sup> Guidry attached a fact sheet regarding New Orleans’ 1985 tobacco consumption and smoking rates and asserted in her letter that 1985 sales data showed New Orleans should collect \$3.2 million in 1986 instead of the \$1.6 million forecasted by Assistant Chief Administrative Officer Lenny Simmons. She insinuated that the city had not collected Tobacco Consumption Privilege Tax revenue from cigarette vending machines and should pursue the earnings before levying additional taxes. Identifying herself as a Louisiana wholesaler (Guidry previously lobbied for LWTCDA, Chapter 2), Guidry stated she and other local merchants determined and recommended to New Orleans Director of Finance Paul Mitchell and city tax collector<sup>259</sup> Joan Buttigig in August 1986 that New Orleans should require cigarette vending machine owners to buy \$2-3 ID tags for their machines to strengthen the city’s collection of Tobacco Consumption Privilege Taxes.<sup>255</sup> According to Guidry in her October 20 letter, imposition of new tobacco and vending taxes while the city under-collected the 1984 Tobacco Consumption Privilege Tax punished undeserving tax-paying businesses:

[T]o add another 5% when you are only collecting 50% of the existing 5% [consumption privilege tax on tobacco products] is really totally unfair on those retailers presently paying the tax – instead of improving on your collection methods you only double up on the people who are being honest and fair to the city and not even attempting to catch those who are not paying their share of the tax.<sup>255</sup>

Since tobacco products had a consumption privilege tax, Guidry suggested to Mayor Barthelemy that the ordinance levying a \$10 tax on all vending machines be changed to impose a lower \$3 tax on cigarette vending machines.<sup>255</sup> She asserted that improved Tobacco Consumption Privilege Tax collection would provide New Orleans an additional \$1.8 million in revenue. Despite Guidry’s letter Steiner included revenue from Ordinance No. 11,527 MCS in the City of New Orleans’ 1987 budget plans.<sup>250</sup>

On October 31, 1986, as the expected November 5 City Council meeting to discuss Ordinance No. 11,527 MCS and other tax legislation neared, Morris sent a letter to TI VP Hurst Marshall describing councilmembers’ positions on the tobacco tax.<sup>250</sup> Morris expected Councilmembers Giarrusso, Early, Taylor, Jackson and Singleton to oppose Ordinance No. 11,527 MCS, and Councilmember Wilson to support it, with Councilmember Boissiere’s

position unknown. Morris reasoned that securing Barthelemy's support or maintaining his neutrality was critical to retaining councilmember votes against the measure:

The real key to the success or defeat of our efforts lies with Mayor Sidney Barthelemy. Sidney claims he will not push this tax. However, as I just stated, it has reappeared. If the Mayor changes his position from neutral, our pledges [to oppose the tax] will have the potential to melt away.<sup>250</sup>

Guidry planned to keep lobbying Councilmembers to reject the ordinance and to meet Mayor Barthelemy to persuade him to oppose it before the November 5 City Council meeting.<sup>250</sup>

"The real key to the success or defeat of our efforts lies with Mayor Sidney Barthelemy. Sidney claims he will not push this tax. However, as I just stated, it has reappeared. If the Mayor changes his position from neutral, our pledges [to oppose the tax] will have the potential to melt away."

TI also entertained an offer of assistance lobbying the city council from a New Orleans Fire Fighters Association member identified as Mr. Sanchez.<sup>250</sup> In early October, New Orleans firefighters had unsuccessfully fought funding cuts by city councilmembers.<sup>246</sup> According to Morris' letter, Sanchez intimated he could help lobbying efforts with the City Council.<sup>250</sup> We do not know the details of the assistance offered by Sanchez, or if the Institute accepted it.

At the November 5, 1986 meeting, councilmembers again delayed consideration of Ordinance No. 11,527 MCS<sup>260</sup> and all other tax increase legislation until November 19.<sup>261</sup>

Before bringing Ordinance No. 11,527 MCS for consideration at the November 19 hearing, the City Council held multiple meetings not open to the public that were attended by TI lobbyist Joe Wood Guidry and unidentified tobacco representatives on November 10 through 13, and two budget committee hearings attended by LWTCDA lobbyist Sarah Whalen on November 17 and 18.<sup>248</sup> According to Joe Wood Guidry in a December 12, 1986 memo, councilmembers and Mayor Barthelemy struggled to find a revenue source besides a tobacco tax increase to fund emergency services:

Everything was tied into the budget and the council members were trying to figure how not to vote for the tobacco tax and not lose the fire stations that had been closed as well as the 32 policemen that were to be laid off. Mayor Barthelemy came and told us that he didn't want to, but he couldn't find anything else that would raise \$2 million.<sup>248</sup>

Although unable to find a revenue source to replace Ordinance No. 11,527 MCS, the New Orleans City Council again deferred consideration of the measure and other tax increase legislation at the November 19 meeting.<sup>248</sup> Councilmembers postponed action until December 1, 1986, the last day they could legally reconcile New Orleans' budget deficit.<sup>262</sup>

On November 19, Mayor Barthelemy reiterated to TI's Joe Wood Guidry that he needed the \$2 million generated by Ordinance No. 11,527 MCS to address New Orleans' budget deficit, but asked how the city government could assist the industry.<sup>248</sup> He, Joe Wood Guidry, and City Councilmembers conversed repeatedly before the December 1 hearing to discuss the measure.<sup>248</sup> Unable to avoid the tobacco tax hike, they decided to insert a provision into Ordinance No. 11,527 MCS that repealed the increase if an already passed earnings tax survived a court challenge.<sup>248, 263</sup> The mayor also promised his support in repealing the ordinance's tax increase if the tobacco industry secured funds for New Orleans during "special legislative sessions" according to Joe Wood Guidry.<sup>248</sup>

On December 1, the City Council considered Ordinance No. 11,527 MCS and amended it to add an automatic repeal if a separately-adopted earnings tax survived court challenges, then passed the ordinance.<sup>263</sup> Mayor Barthelemy signed the measure into law, raising the Tobacco Consumption Privilege Tax from 5% to 10% of sales price on all tobacco products effective January 1, 1987.<sup>263</sup>

### **Giarrusso Attempts to Increase the Consumption Privilege Tax in 1987**

After the New Orleans City Council doubled the Tobacco Consumption Privilege Tax in 1986 from 5% to 10%, Councilman John Giarrusso introduced Ordinance Calendar No. 13,957 on April 2, 1987 to raise the Tobacco Consumption Privilege Tax from 10% to 27.5%, which would raise \$5-6 million annually that could provide city workers a 5% wage increase.<sup>264, 265</sup> A former smoker, Giarrusso introduced the measure the day after announcing a clean air ordinance he was submitting with support from the American Cancer Society<sup>265</sup> (Chapter 5).

The tobacco industry mounted a heavy campaign against the tax. Shortly after Giarrusso revealed his tobacco legislation, TI hired the New Orleans public relations firm Haras, Inc. to oppose the tax and smokefree measures.<sup>266</sup> A member of the firm, Michael O'Keefe, previously served as Senate President in the Louisiana Legislature.<sup>266</sup> Haras, Inc. lobbyist Norris Fitzmorris proved instrumental in efforts against Ordinance Calendar No. 13,957. Philip Morris worked with Louisiana-based Imperial Trading Company Inc to oppose the ordinance.<sup>267</sup>

The week of April 27, 1987, TI Legislative Issues Manager Paula Duhaime developed talking points for Fitzmorris to use against Ordinance Calendar No. 13,957 and sent it to him after TI Regional VP Ron Morris approved the sheet.<sup>268</sup> On May 1, 1987, Fitzmorris sent a letter to New Orleans City Council President Dorothy Mae Taylor asking to provide comments against Giarrusso's tax and smokefree ordinances to councilmembers since he accidentally missed an April 23 public meeting on the measures.<sup>269</sup> We do not know if Councilmember Taylor granted Fitzmorris' request.

The tobacco industry and its allies rallied the New Orleans business community in early May to oppose both ordinances at a May 7 hearing.<sup>270</sup> From May 4 until the day of the City Council meeting, Fitzmorris lobbied business groups to oppose at least the clean air measure.<sup>270</sup> In addition, TI Regional Director Jack Shoemaker visited New Orleans to recruit supporters on May 5 and May 6.<sup>270, 271</sup>



The New Orleans City Council considered Ordinance Calendar No. 13,957 and Giarrusso's smokefree legislation on May 7.<sup>270</sup> Around 150 members of the business community appeared to oppose the measures, with over 30 planning to provide testimony to the Council.<sup>270</sup> In a May 11 memo to TI VP Hurst Marshall, TI Regional VP Ron Morris observed, "Jack's [Shoemaker] last minute follow-up brought company representatives in to help swell the audience. He was also helpful in alerting the small grocers."<sup>270</sup> Fitzmorris provided information at the hearing to people who signed up to speak against either ordinance.<sup>270</sup> Health advocates also appeared to support the measures.<sup>270</sup>

The City Council considered other issues for seven hours during the hearing, causing opponents and proponents of the tobacco tax and smokefree ordinances to leave before they were considered. Far fewer people testified than planned, with six people speaking against the tobacco measures (Table 6.14). After testimony, the New Orleans City Council rejected Ordinance Calendar No. 13,957 in a 6-1 vote, with only Councilmember Giarrusso, the ordinance's sponsor, voting for it.<sup>270</sup> Councilmembers also rejected Giarrusso's smokefree ordinance (Chapter 5).

The day after the City Council hearing, Fitzmorris wrote Councilmembers Lambert Boissiere<sup>272</sup> and Dorothy Mae Taylor<sup>273</sup> thanking them for their votes against Giarrusso's ordinances. The letters asserted that the tax and smoking restrictions would have harmed small businesses in New Orleans.

Haras lobbyist Norris Fitzmorris attempted to keep allies active after the hearing. On May 11, Fitzmorris sent a memorandum to unspecified recipients thanking those that opposed Ordinance Calendar No. 13,957 and the smokefree bill saying, "many people put forth a concerted effort we were able to make our case/ gain the Council's respect and convince the individual members that our position, at this time/ was the right one."<sup>274</sup> He recommended that memorandum recipients continue observing legislative efforts by the City Council. In addition, Fitzmorris suggested letter recipients send Councilmembers letters of appreciation for their votes on Giarrusso's ordinances and urged them to develop rapports with them.<sup>274</sup>

TI paid Haras, Inc. \$25,000 for its April and May 1987 efforts to defeat Ordinance Calendar No. 13,957 and Giarrusso's clean air ordinance (Chapter 5).<sup>275</sup> Although TI initially agreed to pay Haras only \$10,000, it paid an additional \$10,000 for counsel that Philip Morris originally promised to pay and another \$5,000 for other expenses.<sup>275</sup>

Despite TI's success in preventing Ordinance Calendar No. 13,957, it received criticism over its efforts against the bill from Executive VP John D. Georges of Imperial Trading

Table 6.14: Speakers Against Giarrusso Tobacco Measures at the May 7 Hearing and their affiliation according to TI <sup>270</sup>	
Person	Organization
Norris Fitzmorris	TI / unspecified hotel and motel Association
K-Pauls Restaurant	"Small restaurateur"
Tex Stevens	"Black business people"
Marie Jackson	"Small black grocer organization"
Sarah Whalen	"Tobacco distributors"
Francis Faler*	New Orleans Retail Grocers' Association
Arthur Richard*	"Small grocer"
*Testified on Tobacco Tax only	

Company Inc., a Louisiana distributor.<sup>276</sup> In a May 11, 1987 letter to Philip Morris Government Affairs VP Guy Smith, Georges claimed that Philip Morris was the cause of

the measure's defeat, partly because the company listened to his advice. In addition, Georges stated:

May I suggest that in the future, we take an intelligent approach to dealings with the very things that challenge our livelihoods.

The Tobacco Institute is very affective [sic] in dealing with national and state legislative matters. The solution to dealing with municipalities still needs to be produced.<sup>276</sup>

### ***Giarrusso Attempts to Pass Tax Increase in Summer 1987***

Councilmember John Giarrusso introduced a weaker version of his April 1987 tobacco tax proposal at a June 18, 1987 City Council meeting. The legislation increased the Tobacco Consumption Privilege Tax from 10 percent to 14 percent.<sup>277, 278</sup> The City Council promptly rejected it in a 4-1 vote that day.<sup>278</sup>

TI credited Haras, Inc.'s efforts earlier in the year for ordinance's defeat. According to a June 29 memo from TI Regional VP Ron Morris to TI VP Hurst Marshall:

Haras, Inc. established an effective network to tell our story to the city council members. An ongoing program of communications is required to keep this network alive. They have agreed to provide such a service to us.<sup>277</sup>

Morris asked Hurst to pay Haras, Inc. \$10,000 to represent TI for the rest of 1987.<sup>277</sup> He also asked that TI retain the firm for \$20,000 in 1988, believing it was smarter to keep their services ongoing instead of expending unnecessary funds to mobilize for a crisis.<sup>277</sup> We did not find evidence that Hurst agreed to Morris' specific request, but TI contracted Haras, Inc's services in 1988.

### **New Orleans Consumption Privilege Tax Increased by Ten Percent in 1988**

On January 21, 1988 New Orleans Councilman Giarrusso submitted Ordinance Calendar No. 14,595 to increase the Tobacco Consumption Privilege Tax on all tobacco products in Orleans Parish from 10% to 20% (New Orleans is a city-parish).<sup>279</sup> The measure required people that bought tobacco products outside of Orleans Parish that consumed them in the city to pay the consumption privilege tax<sup>279, 280</sup>, likely to give it greater legal muster as a consumption privilege tax.

Political and legislative efforts around Ordinance Calendar No. 14,595 began in the fall of 1988. The New Orleans City Council had delayed consideration of Ordinance No 14,595 and other bills until later that year because of a hurricane that impacted the city.<sup>281</sup> As a result, the ordinance and another smokefree air bill (Chapter 5) by Giarrusso were not scheduled for consideration until October 6, 1988.<sup>281</sup>

***Tobacco Institute Makes Campaign Contributions to the New Orleans City Council before Discovering Giarrusso's Ordinance***

In early September 1988, TI provided campaign contributions to four New Orleans City Councilmembers. Morris reported to TI Southern Sector Senior VP George Minshew that the Councilmembers requested the funds and asked they be discreetly given:

"Four New Orleans City Council members ... have indicated they would like to have our contributions and have requested we run them through this PAC. This keeps our name out of the press as contributors and maintains propriety and compliance with Louisiana law."

Four New Orleans City Council members (Peggy Wilson, James Singleton, Mike Early and Lambert Boissiere) have indicated they would like to have our contributions and have requested we run them through this PAC [Council for Effective Government]. This keeps our name out of the press as contributors and maintains propriety and compliance with Louisiana law.<sup>282</sup>

TI Regional VP Morris made a \$500 contribution request for each councilmember (Table 6.15) almost one month prior to them voting on Giarrusso's ordinance.<sup>282</sup>

***The New Orleans City Council Rejects Ordinance Calendar No. 14,595 in October 1988***

New Orleans faced a \$19 million budget deficit by late September. In an undated TI Flash, lobbyist Norris Fitzmorris informed unknown recipients that Councilmember Giarrusso would likely promote Ordinance Calendar No. 14,595 as a method to generate \$3.8 million for the city.<sup>280</sup> Fitzmorris worried that the deficit might induce some City Councilmembers to support Giarrusso's measure, and urged recipients to inform Councilmembers of their opposition to the tax increase.

TI Regional Director Jack Shoemaker and TI tax expert Bill Orzechowski traveled to New Orleans to fight Ordinance Calendar No. 14,595.<sup>288</sup> They engaged Dr. Dwight Lee, a Georgetown University economist who assisted the tobacco industry with economic impact reports,<sup>289</sup> to help argue against Giarrusso's measure.<sup>288</sup> Before the hearing, Lee refined prepared

Table 6.15: Tobacco Institute Campaign Contributions to Local Level Legislators in New Orleans from 1986-1992) <sup>283-287</sup>						
Recipient	Position	Party	1986	1988	1990	1992
Sidney Barthelemy	Mayor	D	\$500			
Peggy Wilson	City Council	R		\$500	\$500	
James Singleton	City Council	D		\$500	\$500	\$500
Mike Early	City Council	D		\$500	\$500	
Lambert Boissiere	City Council	D		\$500	\$500	\$500
Dorothy Mae Taylor	City Councilmember at Large	D			\$500	
Johnny Jackson	City Council	D			\$500	\$500
Jacquelyn Clarkson	City Council	D			\$750	\$500

comments he developed for the hearing using information from New Orleans wholesalers about the effects of a local tax increase on cigarette sales in the city and neighboring regions.<sup>288</sup>

The New Orleans City Council considered Ordinance Calendar No. 14,595 on October 6, 1988.<sup>288</sup> Mayor Sidney Barthelemy, despite showing past sympathy for the tobacco industry on taxes, endorsed the tax as a way to address New Orleans \$20 million deficit that year and wanted the tax to remain in place for several years so the city could secure a loan to address the deficit. Shoemaker reported:

His plan was that this cigarette tax would bring in about \$3.75 million a year for 10 years. He hopes that once the tax is passed, the city would be able to borrow some \$20 million and pay that loan back over the next 10 years with the proceeds from this tax.<sup>288</sup>

After Mayor Barthelemy opened debate, Giarrusso argued that 10 states had a lower tax rate than Louisiana, 34 states higher ones and 6 the same (he did not specify if he meant cigarettes or all tobacco products).<sup>288</sup> The conversation following Giarrusso's statement revolved around New Orleans' need for funding from the proposed tobacco tax increase, with Councilmembers complaining that the state had not worked with the city to address its funding issues.<sup>288</sup>

After the Mayor and Councilmembers finished discussing Ordinance Calendar No. 14,595, Dr. Dwight Lee and TI's local counsel Norris Fitzmorris testified against the legislation.<sup>288</sup> In an October 11, 1988 memorandum from Jack Shoemaker to Ron Morris, Shoemaker described Lee's testimony:

In a low-keyed approach to the problem, Dr. Dwight Lee indicated that a raise in taxes would not necessarily bring in more revenue. He stated that with the rising price of cigarettes in New Orleans, smokers would travel to other parishes to make their cigarette, as well as other purchases. He also indicated the regressivity of the tax and its affect [*sic*] on the lower income and poor.<sup>290</sup>

Shoemaker thought Dr. Lee's testimony resonated with councilmembers, stating "It was apparent that several of them had taken Dwight Lee's remarks to heart, for they repeatedly quoted him."<sup>288</sup> Following Lee, Haras Inc. lobbyist Norris Fitzmorris argued that the tax increase harmed local businesses.<sup>288</sup> We did not find evidence that other opponents or proponents of Ordinance Calendar No. 14,595 testified at the hearing.

After further discussion, the New Orleans City Council voted 5-2 to reject Ordinance Calendar No. 14,595.<sup>288</sup> TI anticipated future attempts to pass the ordinance that year, and asked lobbyist Norris Fitzmorris to inform it of any developments.<sup>288</sup>

### ***Councilmembers Pass Tobacco Consumption Privilege Tax Increase in December 1988***

Shortly after the New Orleans City Council defeated Ordinance Calendar No 14,595, Giarrusso introduced it as Ordinance No. 12,906 MCS<sup>232</sup> on October 20, 1988 that again increased the Tobacco Consumption Privilege Tax from 10% to 20% of price and taxed products

consumed in Orleans Parish that were purchased in outside jurisdictions, but added a sunset clause so the tax would take effect January 1, 1989 and expire on January 1, 1992.<sup>291, 292</sup>

TI expected another tobacco tax ordinance to be introduced in New Orleans by December 9, 1988 since the City's deficit remained and had worsened to \$25 million.<sup>293</sup> Indeed, New Orleans City Councilmember and Budget Committee Chairman James Singleton previously recommended a tobacco tax increase to help address the City's deficit after a two month analysis. On December 14, the New Orleans City Council scheduled Ordinance No. 12,906 MCS for consideration on December 15.<sup>292</sup>

The City Councilmembers unanimously passed Ordinance No. 12,906 MCS at on December 15.<sup>232, 294</sup> In a December 23, 1988 memo recapping the hearing, TI local counsel and lobbyist Norris Fitzmorris claimed that only the measure's sponsor, Joe Giarrusso, and councilmembers Singleton and Jackson initially favored Ordinance No. 12,906 MCS, but that the Council grudgingly adopted the measure believing it the most politically palatable method to help address New Orleans' deficit.<sup>294</sup> In addition, Councilmembers approved the tax to maintain essential city services.<sup>294</sup> According to Fitzmorris in a December 23, 1988 memo to TI Regional VP Ron Morris:

"... the vote came after several of the Council members decided it was the least objectionable tax to the largest group (smokers). While reluctant to vote "yes" the city administration's plea for funds (for necessities ... Courts. Police, etc) was so compelling they went with it."

This tax increase has been a long time in coming and would never have passed if the city were not in such dire/financial circumstances. In this instance the vote came after several of the Council members decided it was the least objectionable tax to the largest group (smokers). While reluctant to vote "yes" the city administration's plea for funds (for necessities ... Courts. Police, etc) was so compelling they went with it.<sup>294</sup>

Councilmember Taylor backed Ordinance No. 12,906 MCS upon its consideration at the hearing.<sup>294</sup> Boissiere, a strong supporter of Barthelemy, supported it after pressure from the Mayor to pass it.<sup>294</sup> Although against the tobacco tax, Councilmembers Early and Wilson voted for the ordinance so they could reject a proposed service tax without repercussions to their image. According to Fitzmorris' December 23 memo, "It was one of those 'no way out' situations."<sup>294</sup>

Mayor Barthelemy signed Ordinance No. 12,906 MCS on December 20, 1988 to increase New Orleans Tobacco Consumption Privilege Tax from 10% to 20% from January 1, 1989 until January 1, 1992.<sup>291</sup> Tobacco products not purchased in New Orleans that were consumed in its jurisdiction were also subject to the tax. The increase made New Orleans' tobacco tax the highest local cigarette tax in the United States according to a TI document from February 1989.<sup>295</sup>

## **Tobacco Industry Overturns the New Orleans Tobacco Consumption Privilege Tax**

### ***Consideration of Legal Challenge to Tax Begins in 1989***

In 1989, TI and tobacco companies investigated methods to eliminate New Orleans' Tobacco Consumption Privilege Tax. In late April, TI contracted O'Keefe, O'Keefe and Bernstein (the law firm employing Haras, Inc.'s Michael O'Keefe and Norris Fitzmorris) to study the tax's legality.<sup>296</sup> In early June the lawyers determined a court challenge may be successful.<sup>296, 297</sup> According to a June 20, 1989 memorandum from TI Regional VP Ron Morris to RJR State Government Relations Director Larry Bewley, PM's Betsy LeMond, TI Vice President George Minshew, and U.S. Tobacco Company's (Swisher) Joe Augustus:

As per our discussions, the study on the consumption tax has been completed. The results are favorable. Michael O'Keefe [of TI's New Orleans lobbying firm Haras, Inc.] feels we have valid reason to pursue a legal overturn of this tax law. If we are successful in court, we will eliminate the tax rather than show them [New Orleans City Council] a legal way to pursue it.<sup>297</sup>

TI, Philip Morris, RJ Reynolds, and the US Tobacco Company planned to provide \$700 each for a court challenge.<sup>297</sup> O'Keefe, O'Keefe and Bernstein would challenge the Tobacco Consumption Privilege Tax for the industry in court.<sup>297</sup> Morris stated that "O'Keefe, O'Keefe & Bernstein have counsel and plaintiff standing ready when we are able to pursue this matter in the courts."<sup>297</sup> However, the tobacco industry did not submit a claim in 1989.

### ***Tobacco Industry Takes Multi-Pronged Approach to Eliminate New Orleans' Tax in 1990***

The tobacco industry prepared an attack against the New Orleans' Tobacco Consumption Privilege Tax entering into 1990. On January 22, 1990, TI's Regional Vice President sent a letter to Haras, Inc. lobbyist Michael O'Keefe affirming the industry's interest in pursuing the repeal of the retail sales consumption tax in New Orleans.<sup>298</sup> In the correspondence, Morris referenced claims made in a December 1989 letter to him by Imperial Trading Company Executive Vice President John Georges that he could help the tobacco industry eliminate the Tobacco Consumption Privilege Tax.<sup>298, 299</sup> John Georges December 1989 letter asserted legal action against New Orleans was unwise and faulted Haras, Inc. lobbyist Norris Fitzmorris for the City Council passing Giarrusso's ordinance:

I write to you with great concern over the direction in which our industry is approaching the current excessive 29% sales tax on tobacco products in the City of New Orleans....

It has come to my attention, from different sources, that a potential court challenge is being prepared as your next move. If this is true, may I go on record as warning that this effort is the most costly of all approaches. It will cost over 200,000 in legal fees and ultimately cannot be successful in the long run unless the proper lobbying game plan is put in place. If the same lobbyist is hired, takes the same unassisted approach, we will fail again....

I have personally spoken to some of the city officials and the biggest problem with the vote was that they were poorly handled.... Many of the votes we lost, would have voted differently if they were more informed.<sup>299</sup>

In his January 22 letter, TI Regional VP Ron Morris asked Haras, Inc.'s Michael O'Keefe for advice on eliminating the Tobacco Consumption Privilege Tax.<sup>300</sup> Morris noted that if John Georges succeeded in removing the tax, it would reflect negatively on them:

As we discussed, John Georges claims to be able to remove the other tobacco products tax from the package. If he were able to do this before you are able to accomplish a full repeal it would be most embarrassing for us as professionals.<sup>300</sup>

In late February 1990, the tobacco industry continued preparing for legal action against the Tobacco Consumption Privilege Tax.<sup>283</sup> As the industry readied to file a lawsuit, New Orleans lobbying firm Haras, Inc. sought to convince the City Council to repeal it.<sup>283</sup>

To maintain relations with the City Council, the tobacco industry made contributions to Councilmembers Jackie Clarkson, Dorothy Mae Taylor, Johnny Jackson, Peggy Wilson, Lambert Boissiere, and Jim Singleton.<sup>283</sup> In a February 21, 1990 memo, Morris told RJR State Government Relations Director Larry Bewley, "Several Council members had advised us they need some assistance with their campaign debt. We have contributed to assist with their reelection bids."<sup>283</sup>

"Several Council members had advised us they need some assistance with their campaign debt. We have contributed to assist with their reelection bids."

TI provided \$500 contributions to the Councilmembers<sup>285</sup> (Table 6.15) and tried to coordinate donations to them from Philip Morris and RJ Reynolds.<sup>283</sup> Philip Morris donated an unknown amount; we do not know if RJR gave the \$400 Morris requested that RJR contribute to each Councilmember.<sup>283</sup> Later in 1990, TI likely provided another \$750 contribution<sup>286</sup> to newly-elected New Orleans City Councilmember Jacquelyn Clarkson.<sup>301, 302</sup> During an election that year, Clarkson secured Councilman Mike Early's chair after he decided not to run again for the City Council.<sup>302</sup> In a May 16, 1990 memo to TI Southern Sector Senior VP George Minshew, TI Regional Director Pat McWhorter stated the Institute's New Orleans "Counsel feels that it is imperative that we contribute to this new councilperson and recommends that we send a check for \$750 as soon as possible."<sup>286</sup> We were unable to confirm if the contribution was ultimately made. Before the request, Minshew and another TI official had guaranteed TI Regional VP Ron Morris as much as \$1000 for the candidate.<sup>286</sup>

### ***The Tobacco Industry Files Suit against the Tobacco Consumption Privilege Tax***

TI and tobacco companies did not directly sue to overturn the New Orleans Tobacco Consumption Privilege Tax. Instead, a gas station and two patrons, Army Reed and Jerry Boyce filed a civil case, likely in 1990, to overturn the law.<sup>234</sup> However LWTCDA Executive Director Sarah Whalen credited TI for the lawsuit, stating in a April 2, 1991 newsletter that the Institute

“instigated” the case.<sup>303</sup> The lawsuit alleged that the Tobacco Consumption Privilege Tax was a local sales tax and therefore illegal under state law, since municipal sales, use, and consumption taxes combined could not surpass 3% of price without constituent or state legislature approval.<sup>232, 234</sup>

Industry-allied law firm Chaffe, McCall, Phillips, Toler and Sarpy represented the plaintiffs for TI.<sup>304</sup> According to a TI document regarding unplanned expenses in 1991, “Chaffee, McCall, Phillips, Toler was retained at the direction of the Committee of Counsel to assist in legal challenge to New Orleans local ad valorem tobacco tax.”<sup>304</sup> TI expected to pay \$46,500 for its work on the case in 1991.<sup>304, 305</sup>

The Tobacco Consumption Privilege Tax fared poorly in initial court proceedings.<sup>306</sup> In February 28, 1991, the Division B Orleans Parish Civil District Court ruled against the City of New Orleans, finding it had failed to seek required approval for the Tobacco Consumption Privilege Tax as it was a sales tax over 3% despite its labeling.<sup>232</sup> The City appealed the decision to the State’s Supreme Court.<sup>232</sup> The Louisiana Supreme Court did not hear oral arguments on the Tobacco Consumption Privilege Tax until October 23, 1991.

While the State Supreme Court weighed the tax in Fall 1991, Councilmember Joe Giarrusso proposed Ordinance No. 17,424 to extend the 20% of price Tobacco Consumption Privilege Tax.<sup>232</sup> He likely introduced the ordinance to help address New Orleans’ ongoing budget issues.<sup>232</sup> If not adopted, the 20% of price tax reverted to 10% on January 1, 1992 as required by increase to the Tobacco Consumption Privilege tax passed in 1988 (Ordinance No. 12,906 MCS).

Chaffe, McCall, Phillips, Toler and Sarpy Attorney William Grace sent a letter to Giarrusso opposing Ordinance 17,424.<sup>232</sup> The letter asserted the measure was careless, since the Tobacco Consumption Privilege Tax lawsuit remained under appeal and the previous court ruling determined the tax was unconstitutional.<sup>232</sup> Grace asked Giarrusso to postpone the debate of Ordinance No. 17,424 scheduled for November 7, 1991 until the State Supreme Court issued a verdict.<sup>232</sup>

Ignoring Grace’s letter, the City Council Budget Committee considered Ordinance No. 17,424 at a hearing on November 14, 1991.<sup>307</sup> The Committee, consisting of Councilmembers Singleton, Giarrusso, and Boissiere, voted unanimously to recommend adoption of the measure.<sup>307</sup> The New Orleans City Council voted on November 26, 1991 to pass Ordinance No. 17,424, indefinitely setting the Tobacco Consumption Privilege tax rate at 20%<sup>308</sup> despite its ongoing appeal before the State Supreme Court and the District Court’s earlier finding that the tax was illegal.

On January 17, 1992<sup>309</sup> the Louisiana State Supreme Court overturned the Tobacco Consumption

The Supreme Court affirmed the Division B Orleans Parish Civil District Court’s decision, finding that the Tobacco Consumption Privilege Tax was actually a sales tax over 3% instituted without approval from the state legislature or voters.



Privilege tax from 1984, invalidating it and subsequent increases (Reed v. City of New Orleans, 593 So. 2d 368 (La. 1992)).<sup>310</sup> The Supreme Court affirmed the Division B Orleans Parish Civil District Court's decision, finding that the Tobacco Consumption Privilege Tax was actually a sales tax over 3% instituted without approval from the state legislature or voters. The Court ordered the City of New Orleans to repay taxes to any businesses that formally protested but paid their Tobacco Consumption Privilege Tax collections. One business had protested the tax for a month, causing the City of New Orleans to reimburse it \$225. Loss of the Tobacco Consumption Privilege Tax cost New Orleans \$5.8 million in revenue included in the 1992 budget.<sup>311</sup>

### ***Tobacco Industry Allies Challenge a 1992 New Orleans Tobacco Tax in Court***

Seeking replacement tax revenue, the New Orleans City Council considered an ordinance on April 2, 1992 to levy multiple temporary tobacco taxes. The legislation established a 20¢ tax per cigarette pack, a 30¢ tax on loose leaf tobacco packages below 2 ounces and a 50¢ tax on packages over 2 ounces, and a 1¢ tax per cigar, all expiring December 31, 1992.<sup>311, 312</sup> The ordinance imposed the tax on tobacco sellers, rather than consumers, to prevent it from being considered a sales tax. The measure maintained the same rate on cigarettes as the combined Tobacco Consumption Privilege Taxes the Louisiana Supreme Court previously struck down.<sup>313</sup> Councilmembers voted 5-2 to adopt the tax ordinance<sup>311</sup> with Councilmembers Joe Giarrusso, Jacquelyn Clarkson, Dorothy Mae Taylor, Lambert Boissiere, and Johnny Jackson, supporting the measure and Councilmembers Peggy Wilson and Jim Singleton voting against.<sup>311</sup> Both Wilson and Singleton argued the tax encouraged customers to purchase lower priced cigarettes in nearby parishes.<sup>311</sup> Unknown tobacco industry representatives vowed to overturn the tax in court.<sup>311</sup> The City Council simultaneously repealed the Tobacco Consumption Privilege Tax invalidated by the Louisiana Supreme Court as it adopted the new, temporary tobacco taxes.<sup>312</sup>

Tobacco industry ally the Louisiana Retailers Association (Chapter 2) opposed the New Orleans tax law, filing a class action lawsuit against the city to eliminate the increase.<sup>314</sup> Circle Food Stores, Inc. served as the primary plaintiff in the case; its Vice President Dwayne Boudreaux was a board member of the Louisiana Retailers Association.<sup>314</sup> TI-affiliated law firm Chaffe, McCall, Phillips, Toler and Sarpy represented the plaintiffs in the class action suit.<sup>315</sup>

On December 1, 1992,<sup>316</sup> the New Orleans City Council passed an ordinance extending its multiple, temporary tobacco taxes set to expire on December 31, 1992<sup>317</sup> another year,<sup>317</sup> necessitating continued legal action by tobacco industry allies.

In July 1993 the Louisiana Supreme Court ruled the New Orleans tobacco tax enacted in April 1992 was unconstitutional (Circle Food Stores, Inc. v. City of New Orleans, 620 So. 2d 281 (La. 1993)).<sup>314</sup> Similar to its previous ruling on the New Orleans tax established in 1984, the Court decided the tax was a sales tax violating the 3% increase limit for local governments without constituent and legislative permission.<sup>314</sup> The City had unsuccessfully argued the tax was “an ownership tax imposed on the privilege of owning tobacco products.”<sup>318</sup> The Court ruled that the City of New Orleans reimburse businesses that protested the tax.<sup>314</sup> The

In July 1993 the Louisiana Supreme Court ruled the New Orleans tobacco tax enacted in April 1992 was unconstitutional.

Louisiana Retailers Association pushed members to lodge formal protests unlike before the previous lawsuit, an effort that cost the New Orleans government an estimated \$2 million in revenue it had to return to complaining businesses.<sup>314</sup> Following the lawsuit, efforts to levy tobacco taxes in New Orleans ceased.

## **Conclusion**

Prior to the 2000s, the tobacco industry successfully prevented adoption of significant taxes on their products at the state and local levels in Louisiana. Initially, Louisiana was one of 9 states to enact a tobacco tax, having adopted Act 197 in 1926. Before the industry became heavily active in the state during the 1980s, Louisiana saw incremental tax increases on tobacco in 1948 and 1971. However, starting in 1980 with efforts by state lawmakers to fund the Louisiana Cancer and Lung Trust Fund, TI and tobacco companies began aggressively fighting attempts to raise taxes on tobacco products. Although the state began experiencing a budget crisis in 1984 resulting from its economic dependence on a collapsing oil industry, the tobacco industry managed to convince lawmakers to adopt a mere 4¢ per pack increase in cigarette taxes. Despite the continued presence of budget crises, the tobacco industry avoided further tax increases until another 4¢ increase in 1990. After the increase in 1990, taxes at the state level remained stagnant until 2000 (Chapter 11).

At the local level, the tobacco industry was initially less able to prevent taxes. Facing a budget crisis in 1984, the City of New Orleans adopted a 5% of price tobacco tax despite resistance from TI. Believing it could remove the tobacco tax after Councilman Sidney Barthelemy introduced and passed a resolution stating the increase would be repealed when an alternative source of revenue was found, TI unsuccessfully worked to find another funding source for the city. Believing Barthelemy could be an ally in their efforts to lift the tax, TI contributed to Barthelemy's successful 1986 mayoral campaign. However, under the Barthelemy administration in New Orleans, the tax rate increased.

Continuing to face a budget crisis in New Orleans, Mayor Barthelemy and the City Council doubled cigarette taxes in 1986 to 10% and again in 1988 to 20%. As New Orleans desperately sought to maintain and increase revenue, TI changed strategies on the advice of its New Orleans contract lobbyist Michael O'Keefe and helped organize a lawsuit against the city over the constitutionality of its tobacco tax in 1990 that ultimately invalidated the law. TI's allies then defeated an attempt to salvage the tobacco tax in 1993 with another lawsuit, preventing future efforts to impose a local tobacco tax in New Orleans.

## Chapter 7: Youth Access Laws

- Louisiana was slow to adopt a minimum age law, remaining one of five states with no restriction on tobacco product sales to minors until 1991, when the Legislature set 18 as the minimum age to purchase tobacco.
- Louisiana preempted local governments from adopting stricter youth access laws than the state in 1994.
- Adoption of the federal Synar Amendment in 1992 gradually pressured lawmakers to pass more youth access laws and adopt a licensing and enforcement system for tobacco sellers with industry-friendly provisions.
- Adoption of a licensing and enforcement system for tobacco sellers brought Louisiana from one of the highest violation rates of sales to minors to one of the best nationally between 1997 and 1999.
- Louisiana included e-cigarettes in youth access laws for tobacco products in 2014.

### Introduction

Preventing youth consumption of tobacco products is an important component of tobacco control because most tobacco users start as youth.<sup>1</sup> Youth smokers have a higher probability of developing nicotine addiction, becoming long-term smokers, and suffering from tobacco-induced illnesses.<sup>1-4</sup> Policymakers and public health advocates have viewed youth access laws as effective tools for reducing youth tobacco initiation and use.<sup>5</sup>

Youth smokers have a higher probability of developing nicotine addiction, becoming long-term smokers, and suffering from tobacco-induced illnesses.

Minimum age laws for purchasing tobacco products have existed in the United States since the late 19<sup>th</sup> century.<sup>5</sup> New Jersey passed the first minimum age law (prohibiting youth under 16 from procuring cigarettes) in 1883. In the 19<sup>th</sup> or early 20<sup>th</sup> century Louisiana adopted a law setting a minimum age (age unknown) for purchase of tobacco products, but repealed it in 1942.<sup>6</sup> By 1921, 14 states had set 21 as the minimum purchasing age for tobacco products, but a concerted lobbying campaign by the tobacco industry over several years had rolled back the age to 18 by 1960.<sup>5</sup>

Higher minimum ages are associated with reduced youth tobacco initiation and use.<sup>5, 7</sup> Places that have set a minimum purchase age of 21 have seen reductions in youth tobacco product use,<sup>8</sup> purchases<sup>9, 10</sup> and consumption frequency.<sup>8, 9</sup> Although efforts to raise the minimum age increased and achieved some success in the 2010s, earlier attempts by health voluntaries to secure higher minimum purchasing ages failed.

Efforts by the American Cancer Society around the country to boost state minimum age laws for acquiring tobacco products to 21 in the mid-1980s floundered in the face of opposition from the tobacco industry, which determined such restrictions significantly threatened its business.<sup>5</sup> The industry recognized that 80% of smokers initiated before turning 21.<sup>5</sup> To protect its interests, tobacco industry representatives opposed and weakened minimum age and youth

access legislation.<sup>5</sup> Louisiana was among the last states to adopt a minimum age law when it established 18 as the purchasing age for tobacco products in 1991.

While opposing laws establishing purchasing ages higher than 18,<sup>5</sup> the tobacco industry coopted youth access concerns to promote its policy agenda. The tobacco industry has attempted to improve its image and avoid effective regulation using youth educational initiatives and voluntary enforcement programs.<sup>11-14</sup> The industry has also secured youth access legislation preempting local governments from adopting and enforcing stricter regulations.<sup>15</sup> The tobacco industry has also actively supported laws penalizing youth for purchasing tobacco, which shift responsibility to minors instead of the tobacco industry and retailers selling them products.<sup>16</sup>

### **Louisiana and Early Youth Access Laws**

Youth access and warning label legislation were among the first tobacco control bills introduced in Louisiana in the second half of the 20<sup>th</sup> century. After the state repealed its initial minimum age law in 1942,<sup>6</sup> Representative Shelby Alford<sup>17</sup> (D-St. Helena<sup>17</sup>) sponsored HB 1190 in 1960 to reestablish a minimum age law at 18, the second statewide tobacco control bill introduced in Louisiana between 1950 and 1970.<sup>18</sup> The first bill, HB 1124 in 1958, required tobacco companies to pay a \$1 million bond (well below the possible damages) to address and insulate the industry from legal claims. In 1964, three bills, HB 132 by Parey Branton<sup>17</sup> (D-Webster<sup>17</sup>) to make 17 the minimum age of purchase, as well as HB 966 by TJ Strother<sup>17</sup> (D-Allen<sup>17</sup>) and SB 310 by W. Spencer Myrick<sup>19</sup> (D-Morehouse<sup>19</sup>) to require warning labels on cigarettes, were considered.<sup>18</sup> None passed.

In the late 1980s Louisiana began slowly enacting weak, ineffective youth access restrictions on tobacco product sales. State lawmakers first restricted youth access to tobacco in 1988 by prohibiting sampling to minors (usually considered those under 18 years of age), even though Louisiana did not have a minimum age of sale or purchase.

### **Louisiana Struggles to Establish Basic Youth Access Laws: 1986-1991**

Regular introduction of youth access legislation in Louisiana started in 1986, with two bills to regulate tobacco product samples and restrict their provision to minors. From 1986 to 1991, 19 bills were proposed (excluding substituted bills) to restrict youth access to tobacco (Table 7.1). Twelve bills sought to establish a minimum age to buy tobacco products and six prohibited giving samples to minors (Table 7.1). The first youth access law adopted in Louisiana, HB 1966, restricted the distribution of tobacco product samples to minors but did not address purchases. HB 1966 passed in 1988.

### **Legislative Efforts to Restrict Distribution of Free Samples of Cigarettes**

Representative Jewel J. Newman<sup>17</sup> (D-East Baton Rouge<sup>17</sup>) introduced the first legislation we found restricting sampling in Louisiana, HB 1525, on May 6, 1986.<sup>20</sup> The bill prohibited sampling of free or underpriced tobacco products to minors less than 17 years of age.<sup>20</sup> Tobacco producers, merchants and retailers faced penalties up to a \$100 fine or 30 days in prison for violations.<sup>25</sup> HB 1525 died in the House Health and Welfare Committee upon adjournment after being deferred.<sup>20</sup>

Table 7.1: Sales Restrictions and Warning Label Bills from 1982-1991 Legislative Sessions <sup>20-24</sup>												
Bill	Year	Author	Sampling to Minors	Sampling to Any	Set Purchase Age to 17	Set Purchase Age to 18	Set Purchase Age to 21	Signage	Vending Machine Signage	Warning Label Requirements	Penalties	Outcome
HB 1525	1986	Newman	+									Died with adjournment
HB 2012	1986	Newman								+		
HB 164 (substituted for HB 1965)	1988	Lalonde					+				+	Substituted by HB 1965
HB 1965	1988	House Administration of Criminal Justice Committee				+			+		+	Defeated in House
HB 914	1988	Thomas	+									Substituted by HB 1966
<b>HB 1966</b>	<b>1988</b>	<b>House Administration of Criminal Justice Committee</b>	+									<b>Adopted</b>
SB 488	1988	Johnson		+							+	Amended, and later tabled in House. Died with adjournment
HB 22	1989	Lalonde				+			+		+	Died with adjournment
HB 23	1989	Lalonde				+			+		+	Died with adjournment
HB 24	1989	Lalonde				+			+		+	Died with adjournment
HB 25	1989	Lalonde				+			+		+	Died with adjournment
HB 26	1989	Lalonde				+			+		+	Died with adjournment
HB 27	1989	Lalonde				+			+		+	Died with adjournment
HB 28	1989	Lalonde				+			+		+	Died with adjournment
HB 29	1989	Lalonde				+			+		+	Killed in Senate
SB 150	1989	Johnson									****	Died with adjournment
HB 1375	1990	Lalonde				+			+		+	Died with adjournment
SB 831	1990	Johnson		+								Died with adjournment
<b>HB 19</b>	<b>1991</b>	<b>Lalonde</b>				+		+				<b>Adopted</b>
SB 86	1991	Nelson			+							Defeated in House
<b>SB 87</b>	<b>1991</b>	<b>Nelson</b>							+			<b>Adopted</b>
SB 242	1991	Johnson		+								Died with adjournment
*Smoking tobacco only. **Smokeless tobacco only. ***Establishes penalties for illegal distribution of samples. -Requires smokeless tobacco samplers to give written notice of intent to sample to AG, ten days in advance regarding time, place, amount and method of distribution.												

Another bill submitted by Rep. Newman on May 6, HB 2012 required warning labels on packaging and advertisements for smokeless tobacco products stating:

Warning: Use of this product is addictive and dangerous to your health. It may cause oral cancer and other diseases of the mouth.<sup>20</sup>

HB 2012 tasked the Louisiana Department of Health and Human Resources (DHHR) with developing provisions for health harm descriptors on future smokeless tobacco product warning labels. In addition, the bill mandated that smokeless tobacco samplers inform the State Attorney General of their promotional events ten days in advance via writing.<sup>20</sup>

Newman had introduced HB 2012 after federal lawmakers passed the Comprehensive Smokeless Tobacco Health Education Act of 1986 towards the end of February that year,<sup>26</sup> which required health warnings on those products for the first time.<sup>27</sup> The Act, which provided multiple rotating labels, preempted federal, state and local legislation.<sup>26</sup> HB 2012 passed the House but was defeated during a hearing before an unidentified legislative committee.<sup>20</sup> We do not know why Newman introduced HB 2012 with provisions on smokeless tobacco warning labels despite the Smokeless Tobacco Health Education Act preempting the language.

A July 24, 1986, Smokeless Tobacco Council State Relations Planning Report claimed that a model minimum age bill it offered as a replacement to lawmakers for harsher legislation introduced in Louisiana and two other states bolstered the industry's standing with them.

It is possible that the Smokeless Tobacco Council (the analogous organization to the Tobacco Institute for companies that made smokeless tobacco products) influenced legislative efforts around HB 2012 in 1986.<sup>28</sup> A July 24, 1986, Smokeless Tobacco Council State Relations Planning Report claimed that a model minimum age bill it offered as a replacement to lawmakers for harsher legislation introduced in Louisiana and two other states bolstered the industry's standing with them.<sup>28</sup>

### **1987 Efforts Revolve Around Tobacco Product Sales in the State Capitol**

In 1987, DHHR proposed a rule forbidding the sale of tobacco products in facilities the agency operated.<sup>29</sup> The rule required approval from the Legislative Oversight Committee and could not be enacted if the Governor or legislature opposed the proposal. The Legislative Oversight Committee blocked the rule on June 23, 1987, shortly after DHHR held a required hearing for the rule on June 16.

### **1988 Efforts to Restrict Tobacco Product Sampling to Minors**

In December 1987<sup>30, 31</sup> and early January 1988 the Louisiana Lung Association searched for a sponsor to introduce legislation it had drafted to prohibit tobacco product sampling.<sup>32</sup> The Lung Association wrote State Representative Kevin Reilly and provided a speech for a representative of the "Tobacco-Free Young America/Coalition" to give at a press conference and a news release to issue if he decided to introduce the bill.<sup>30</sup> We do not know if Louisiana

lawmakers that introduced sampling restriction legislation in 1988 used the Louisiana Lung Association's draft.

Legislation to restrict tobacco sampling reappeared in Louisiana during the 1988 legislative session. Senator Jon Johnson (D-New Orleans) introduced SB 488 on March 2, 1988 to prohibit all tobacco product sampling regardless of location, venue, or age.<sup>33</sup> Violations carried minimum \$500 fines and or a six-month maximum prison sentence. Representative Jerry Thomas (D-Bogalusa) submitted HB 914 on March 2, 1988 to prohibit giving samples to minors younger than 18 but did not set penalties for violations.<sup>33</sup> SB 488 was referred to the Senate Judiciary C Committee for initial consideration while HB 914 went to the House Committee on Administration of Criminal Justice.<sup>33</sup>

In late May, the Louisiana State Medical Society announced support for a variety of tobacco control legislation, including prohibiting sales to minors and giving away free product samples on public property.<sup>34</sup> We do not know if the organization publicly promoted or lobbied on behalf of Senator Johnson or Representative Thomas' legislation.

The Senate Judiciary Committee considered SB 488 on June 7, 1988 and amended it to allow tobacco product sampling to adults only, then sent it to the Floor.<sup>33</sup> Senators considered SB 488 the next day (June 8, 1988) where they defeated multiple amendments to the bill and instead approved substitute legislation developed by the Senate Judiciary C Committee.<sup>33</sup> We do not know the differences between SB 488 and its replacement. SB 488's substitute went to the House and was referred to the House Criminal Justice Committee.<sup>33</sup> The House Administration of Criminal Justice Committee began considering HB 914 on June 8, 1988. The next day, committee members replaced HB 914 with substitute HB 1966.<sup>33</sup> Similar to HB 914, HB 1966 prohibited sampling to minors younger than 18.<sup>33</sup> However, HB 1966 also established penalties for noncompliance lacking from HB 914, permitting \$3000 to \$5000 fines for violations.<sup>33</sup> Committee members approved the substitute bill and reported it to the House Floor. We do not know why the Committee replaced HB 914 with a stronger substitute, or what the tobacco industry did to oppose the sampling restrictions.

The House considered HB 1966 on June 21, 1988 and amended it to reduce penalty fines for first violations from \$3000-\$5000 to \$100-\$500 (additional penalties remained \$3,000 to \$5,000 per infraction).<sup>33, 35</sup> Representatives voted 66 to 11 to pass HB 1966 to the Senate, where it was referred to the Judiciary C Committee.<sup>33</sup>

Both HB 1966 and SB 488 progressed through their next committee hearings without additional changes. The House Criminal Justice Committee debated and approved SB 488 on June 27, 1988, sending the bill to the House Floor.<sup>33</sup> On June 28, 1988, the Senate Judiciary C Committee approved HB 1966 and delivered it to the full Senate.

Senators brought HB 1966 to the Senate Floor on July 5, 1988, and without making amendments, voted 38-1 to adopt HB 1966. (Representatives voted 61-27 the next day to table SB 488, which died without further action.<sup>33</sup>)

Governor Ed Roemer (D) signed HB 1966 into law as Act 709 on July 15, 1988. As adopted, HB 1966 prohibited providing samples of cigarettes, smokeless tobacco, loose leaf tobacco, and cigars to minors.<sup>35</sup> Samplers caught providing tobacco products to minors faced a

\$100-\$500 fine for first violations and a \$3000-\$5000 penalty for subsequent violations.<sup>33, 35</sup> HB 1966 entered effect on September 9, 1988.<sup>33</sup> Although minors were not to be given samples, they could still lawfully possess and purchase tobacco products.

### **Lawmakers Consider Bill to Prohibit Youth Purchase and Possession of Tobacco in 1988**

Attempts to prohibit Louisiana minors from obtaining or possessing tobacco products started in 1988. On April 18, 1988, Representative Raymond Lalonde (D-Sunset) introduced HB 164 to prohibit people under 21 from procuring any form of smoked tobacco.<sup>33</sup> The bill also required stickers stating the minimum purchasing age on all tobacco vending machines. HB 164 levied a \$50 fine against offending minors.<sup>33</sup> Although we did not find evidence that HB 164 was a product of or influenced by the tobacco industry, bills that prohibit youth from purchasing tobacco are characteristic of bills the industry supports.<sup>16</sup> Legislation outlawing youth purchases (as opposed to sales to youth) help the industry and retailers avoid responsibility or penalties for selling to minors and instead punish underage victims of tobacco use.

The House Criminal Justice Committee considered HB 164 on June 8, 1988, when it replaced HB 164 with substitute HB 1965, which set the minimum purchasing age to 18, and sent the bill to the House Floor.<sup>33</sup> Representatives subsequently voted 48-33 against passing the bill on June 21, 1988. Responding to HB 1965's defeat, American Lung Association of Louisiana Community Program Director Ben Fontaine published an editorial in the Baton Rouge *Advocate* castigating lawmakers for not protecting the state's youth.<sup>36</sup> Fontaine's editorial also praised the Orleans Parish City Council for adopting a law earlier that year setting the local purchasing age for tobacco products at 18, described below.<sup>36</sup>

### **Local Governments Pursue Youth Access Laws: 1988-1990**

Lack of progress on youth access laws at the state level led local governments to pursue their own legislation. Beginning in 1988, local lawmakers considered legislation to set a minimum purchasing age, prohibit sampling to minors, and restrict tobacco product sales through vending machines (Table 7.2).

New Orleans City Councilwoman Dorothy Mae Taylor introduced Ordinance 12578 (Table 7.2, Ordinance LA88-539) on June 2, 1988 to prohibit the sale or gifting of tobacco products to youth under 18 years old.<sup>37</sup> Violations were punishable by a maximum \$300 fine and five-month prison sentence.<sup>38</sup> The City Council approved the ordinance unanimously on June 16, 1988<sup>21, 36</sup> and Mayor Sidney Barthelemy signed it on June 20, causing the law to take effect June 26, 1988.<sup>37</sup> In a letter to the editor published by Baton Rouge newspaper *The Advocate*, ALA Louisiana Community Programs Director Ben Fontaine praised the New Orleans City Council:

The Orleans Parish City Council sees the merits of prohibiting the sale of tobacco products of minors and unanimously enacted its ordinance to that effect. That

"The Orleans Parish City Council sees the merits of prohibiting the sale of tobacco products of minors and unanimously enacted its ordinance to that effect. That action is a ray of light penetrating the smoky atmosphere embraced at the State Capitol."



action is a ray of light penetrating the smoky atmosphere embraced at the State Capitol.<sup>36</sup>

The Associated Press reported that the New Orleans minimum age law was “believed the first of its kind in Louisiana.”<sup>38</sup> We did not find evidence that the tobacco industry or health advocates lobbied councilmembers over Ordinance 12578.

St. Charles Parish considered a minimum age law in 1989. City Council Chairman Steve Talbot<sup>39</sup> introduced Ordinance LA89-858 to forbid tobacco sales to minors younger than 18.<sup>40</sup> The legislation featured penalties for selling tobacco to minors and carried signage requirements. Talbot pulled the ordinance on December 31, 1990 “in favor of state action,”<sup>41</sup> amidst expectations that state lawmakers would pursue a bill in 1991 to make Louisiana no longer one of five states without a minimum age of purchase for tobacco products.<sup>42</sup> We did not find evidence that the tobacco industry fought Ordinance LA89-858 or that health advocates promoted it.

On October 29, 1990 the Sulphur City Council unanimously decided to consider an ordinance from Councilmember Estes forbidding selling tobacco products to youth under 18 and prohibiting their sale through vending machines entirely.<sup>24</sup> The City Council held a hearing for the legislation on November 20, 1990 after its introduction on November 13. Participants of an unidentified local smoker’s rights group opposed eliminating vending machine sales at the meeting.<sup>43</sup> A councilmember proposed eliminating the vending machine ban but could not secure support from other councilmembers to approve the motion.<sup>44</sup> The Council postponed debate on the ordinance, which a memo found in RJ Reynolds’ records regarding “External Relations” partially credited to attendees from the smokers’ rights group.<sup>43</sup>

Table 7.2: Local Youth Access Laws Introduced, 1988-1991<sup>23, 24</sup>

City	Ordinance	Year	Author	Sampling to Minors	Sampling to Adults	Prohibited Sales to Minors	Set Purchase Age to 18	Set Purchase Age to 21	Vending Machines	Signage	Vending Machine Signage	Penalties	Outcome
New Orleans	LA88-539	1988	Taylor	+			+					+	Adopted
St. Charles Parish	LA89-858	1989-1990	Talbot				+			+			Withdrawn in favor of anticipated legislative action at state level
Welsh	LA90-143	1990	Unknown			***							Adopted
Deridder	LA91-146	1991	Citizen legislation			+	+		+			+	Died / Preempted by state law
Sulphur	LA90-137	1990-1991	Estes			+	+		+	+	+	+	Adopted
Westlake	LA91-170	1991	Unknown			+	+		+				Adopted

\*Restricted to adult only establishments.

\*\*Purchasing age unknown.

The Sulphur City Council adopted the ordinance over a year later on December 3, 1991 after amending it to allow tobacco product sales through vending machines to adults over 18.<sup>44</sup> We did not locate evidence that the tobacco industry or health advocates tried to influence the measure's outcome.

The town of Welsh also considered a youth access bill introduced on November 20, 1990 to prohibit tobacco sales to minors and to forbid vending machine sales of tobacco products in areas accessible to minors. Local legislators adopted the ordinance into law on December 4, 1990.<sup>23</sup>

Local governments continued pursuing minimum age laws and prohibitions on tobacco vending machines into 1991, when Westlake and Deridder both considered youth access ordinances. Westlake adopted an ordinance on July 8, 1991 forbidding retailers from selling tobacco products to minors under 18 and prohibiting all vending machine sales.<sup>44</sup> Deridder's measure, based on US Department of Health and Human Services model legislation and submitted by local residents and not a councilmember, sought to prohibit retailers from selling tobacco products to youth under 18 and to outlaw vending machine sales of tobacco products. The proposal carried fines ranging from \$250 to \$500. The state ultimately adopted a minimum age law in 1991 before action was taken on the Deridder legislation, leading to it not being adopted.<sup>44</sup>

We did not find evidence that other Louisiana localities pursued youth access ordinances before state lawmakers passed legislation preempting local tobacco product sales restrictions in 1994.

### **Attempts to Secure State Minimum Age laws 1989-1991**

After failing to pass HB 164 in 1988, in 1989 Representative Raymond Lalonde (D-Sunset) introduced HB 25 to establish a minimum purchasing age. The bill set Louisiana's purchasing age for tobacco products at 18 (instead of 21) and mandated that retailers display stickers stating the minimum age of purchase on vending machines.<sup>22</sup> HB 164 levied fines of up to \$50 on retailers for violations. Lalonde also submitted companion bill HB 29, which forbade minors under 18 years of age from purchasing or possessing tobacco products.<sup>22, 45</sup> Both bills were prefiled on April 6, 1989 and referred to the House Criminal Justice Committee for initial consideration.

The House Criminal Justice Committee considered both bills on May 17, 1989.<sup>22</sup> During deliberation, Representative Lalonde stated he offered the bills to deter youth tobacco use and reduce smoking rates, because of tobacco's harmfulness and since most smokers started before age 18.<sup>45</sup> No tobacco industry representatives or health advocates spoke against or for either bill at the hearing.<sup>45</sup> The Committee passed HB 25 to the House Floor without changes and HB 29 after amending it to allow minors to possess (but not buy) tobacco products.<sup>22</sup>

The House considered HB 25 and HB 29 on May 22, 1989. During consideration, lawmakers approved amendments proposed by Representative John Travis (D-Jackson) to both bills exempting emancipated and legally-wed minors from sales and purchasing restrictions. The House then voted 82-17 to send Lalonde's bills to the Senate.<sup>22, 46</sup>

In the Senate, HB 25 and HB 29 received initial consideration from the Senate Judiciary C Committee. The Committee approved HB 29, which prohibited most minors from purchasing tobacco products, and sent it to the Floor on June 6, 1989. The next day, the Committee considered HB 25, which prohibited retailers from selling tobacco products to minors, and killed it.<sup>22</sup> Lalonde blamed HB 25's demise on the "retail merchants lobby" because it opposed the \$50 fine retailers faced for noncompliance.<sup>47</sup>

The Senate considered HB 29 on June 15, 1989 and voted 18-12 to kill the bill,<sup>22, 48</sup> marking the end of attempts to secure a minimum age law during the 1989 legislative session.

In September, after efforts to establish a minimum age in Louisiana failed, the tobacco industry expressed concern that youth smoking made it increasingly vulnerable to attacks from opponents across the nation and could lead to an expansion in federal regulation.<sup>49</sup> According to a draft document titled *Smoking and Youth* by RJ Reynolds:

Smoking among youth is the core focus of the emotional strategy being employed by anti-smoking activists to rationalize broad restrictions on the tobacco industry. Their claim – that the tobacco industry is specifically targeting youth and other “vulnerable” groups at home and abroad – is designed to generate public outrage so intense that it can be leveraged to offset First Amendment protection of the industry’s commercial speech.<sup>49</sup>

“Smoking among youth is the core focus of the emotional strategy being employed by anti-smoking activists to rationalize broad restrictions on the tobacco industry.”

The tobacco industry had considered youth access legislation a major threat since 1985, when the American Medical Association released youth policy recommendations to eliminate tobacco vending machines and raise the minimum sales age to 21.<sup>5</sup>

In late September 1989, the tobacco industry considered a multifaceted public relations plan to fend off accusations from tobacco control advocates that it pushed products to youth.<sup>49</sup> Part of the strategy consisted of securing state-level legislation to make 18 the minimum purchasing age for tobacco products across the country.<sup>49</sup> The industry desired state laws to avoid federal regulation on minimum age laws.

### **The Tobacco Industry Attempts to influence 1990 Youth Access Legislation**

TI analyzed existing state youth access laws across the country and the impact of youth tobacco use on the industry’s political and legislative environment in spring 1990.<sup>50</sup> In an April 13, 1990 document titled “An overview of State Laws Relating to Minors and Tobacco Products” from TI’s records, an unknown author observed that, “The so-called ‘issue of tobacco sales to minors’ will continue to pose a threat to the industry in the areas of advertising, sampling, promotion, and sales.”<sup>50</sup> The document determined that tobacco control proponents primarily cited underage tobacco use as a reason to adopt marketing, sales, and sampling restrictions on tobacco products. Recognizing the threat that youth access restrictions posed, TI attempted to assist weak minimum age of purchase legislation introduced in Louisiana.

Only one lawmaker introduced youth access legislation in Louisiana during 1990. Representative Raymond Lalonde (D-Sunset) proposed HB 1375 to prohibit minors younger than 18 from purchasing tobacco products and to mandate minimum purchasing age signage on vending machines.<sup>51</sup> TI approached Lalonde that year to inquire if he would pursue youth access legislation with industry assistance, an offer he expressed interest in but did not accept.<sup>52</sup> HB 1375 died with adjournment on the House Floor after initially passing the House Administration of Criminal Justice Committee.<sup>23</sup> An uncredited industry document from RJ Reynolds' records blamed the bill's defeat on it becoming linked to other bills supported by its sponsor Lalonde.<sup>53</sup> We did not find evidence that health advocates opposed or promoted HB 1375, or that tobacco industry interests tried to assist the bill indirectly.

### **The Tobacco Industry Develops “It’s the Law” to Promote its Youth Access Agenda**

TI developed a youth access public relations campaign by September 1990 that sought to secure laws prohibiting sales to minors under 18 in states with lower or no minimum purchasing age and to obtain state laws requiring monitoring of (but not prohibitions of) tobacco vending machine sales in spaces open to the public.<sup>54</sup> The plan included weak voluntary advertising and sampling restrictions, new industry standards towards youth access and tobacco use, as well as the creation and provision of a booklet about youth tobacco use for parents.<sup>54</sup> The campaign included “It’s the Law,” a voluntary, nationwide industry program to educate tobacco retailers about their state’s minimum age law<sup>55</sup> and to inform them to sell tobacco to those only 18 or older.<sup>54</sup> “It’s the Law” also provided retailers signage alerting customers to the age of sale.<sup>55</sup> By November 1990 Philip Morris, Lorillard, RJ Reynolds, and the American Tobacco Company provided input on implementing “It’s the Law”.<sup>56, 57</sup>

### ***“We Card” follows “It’s the Law” in 1995***

TI replaced “It’s the Law” (which Philip Morris took over in 1994<sup>14</sup>) with “We Card” in 1995, another voluntary retailer compliance program that, similar to the original initiative, educated vendors on minimum age restrictions and provided youth access signage.<sup>14</sup> The program called upon retailers to ask for picture identification whenever a person buying tobacco looked to be younger than 25. The major tobacco companies were the primary sponsors and funders of “We Card.”<sup>58</sup> The Louisiana coalition for “We Card” consisted of the Louisiana Food and Tobacco Distributors Association (formerly Louisiana Wholesale Tobacco and Candy Distributors Association), Louisiana Oil Marketers Association, Convenience Store Council, Grambling State University Police Department, and the Office of Public Health.<sup>59</sup> The Louisiana Retail Association, a longtime industry ally (Chapter 2), considered being a member of the coalition at the end of June 1997 but needed more information on the “We Card saturation” in the state.<sup>60</sup> “We Card” became the most utilized industry youth access program<sup>14</sup> and remained active in 2020.

### ***Effectiveness of Tobacco Industry Youth Access Programs***

Tobacco industry youth access programs are ineffective at reducing youth smoking and are meant to hinder legal restrictions. The programs were originally created to prevent meaningful and enforceable sales and sampling regulations, not to discourage youth from tobacco initiation.<sup>14, 58</sup> Program messaging indicates to minors that smoking is an acceptable

choice as a legal adult and foists responsibility for youth tobacco use on parents.<sup>58</sup> These industry youth access initiatives have not lowered illegal sales to minors<sup>58</sup> and retailers participating in them have violated age-restriction laws as frequently as nonparticipants.<sup>61</sup> A 1992 study determined that 14% of retailers participating in “It’s the Law” opposed providing minors cigarettes, only 2% more than stores not utilizing the program.<sup>62</sup> The programs also reduce retailer compliance with existing youth access regulations, providing tobacco sellers’ program signage to post instead of signage required by law.<sup>58</sup> The tobacco industry used youth access prevention programs to rehabilitate its public reputation.<sup>58</sup> The initiatives have also resulted in adoption of weak minimum age laws featuring local preemption.<sup>58</sup>

### **Tobacco Industry Plans to Secure a Minimum Age Law in Louisiana in Late-1990**

After Representative Lalonde’s HB 1375 failed during the 1990 regular session, the tobacco industry considered supporting a 1991 iteration of the bill in September 1990. According to an uncredited September 7, 1990 document found in RJ Reynolds’ records, industry representatives believed assisting a minimum age bill during 1991 would help the industry’s image:

It is the opinion of our lobbying corps that open support of this bill would give a favorable impression of our industry. Our support would also tie in with the “It’s the Law” campaign and other efforts directed at minors by the Institute.<sup>53</sup>

The tobacco industry planned to generate opinions and editorials supporting the bill. The industry also considered forming a coalition of business groups as well as tobacco sellers, vendors and wholesalers to back the legislation.<sup>53</sup> In addition, the industry debated using phone banks to contact state legislators and influence them to support the bill. The tobacco industry determined it needed to develop a message tied to the Tobacco Institute’s new and not yet launched<sup>63</sup> “It’s the Law” public relations campaign.<sup>53</sup> The Tobacco Institute also planned to employ resources from “It’s the Law” to help advance the legislation.<sup>53</sup> On December 11, 1990 the Tobacco Institute issued a press release announcing its youth access campaign for 1991, including the “It’s the Law” voluntary retailer program.<sup>64</sup>

### ***Tobacco Industry Ties HB 19 into its Youth Access PR Campaign***

Representative Raymond Lalonde prefiled another youth access bill, HB 19, on April 15, 1991.<sup>65</sup> As introduced, HB 19 forbid selling or giving tobacco products to minors under 18 that were not emancipated.<sup>24, 66</sup> It also required tobacco sellers and tobacco vending machine distributors to post signage on vending machines<sup>24</sup> stating “Louisiana Law Prohibits the Sale of Tobacco Products to Persons Under Age 18.”<sup>67</sup> HB 19 set fines up to \$50 for violations by minors or retailers.<sup>67</sup>

TI supported and sought passage of HB 19. The Institute informed Representative Lalonde it backed HB 19 and planned to help pass the bill.<sup>68</sup> According to an

“[Lalonde] agrees that the public support of The Institute for HB 19 could create problems with other supporters and indicated his preference that we assist behind the scenes.”

April 30, 1991 memo from Pat McWhorter to TI Regional VP Ron Morris, Representative Lalonde asked TI to help privately:

[Lalonde] agrees that the public support of The Institute for HB 19 could create problems with other supporters and indicated his preference that we assist behind the scenes.<sup>68</sup>

Representative Lalonde's openness to the tobacco industry limited his overall legislative efforts on tobacco control that session. Lalonde had considered introducing a bill mandating that images of a "skull and cross bones" be stamped on tobacco product samples and added to state tax stamps for tobacco products.<sup>69</sup> However, during a meeting with TI Regional Director Patrick McWhorter, TI lobbyist Joe Wood Berry and Philip Morris lobbyist Randy Haynie, Lalonde was persuaded not to pursue his "skull and cross bones" bill.<sup>69</sup>

### ***HB 19, SB 86 and SB 87 during the 1991 Legislative Session***

HB 19 was one of two bills submitted in the 1991 legislative session to set a minimum age for tobacco product sales. The other, SB 86 by Senator Sydney Nelson (D-Shreveport<sup>70</sup>), prohibited minors under 17 from purchasing tobacco products.<sup>24</sup> The bill did not include provisions for enforcement, signage requirements, or penalties for violation.<sup>24</sup> Senator Nelson filed a companion bill for SB 86, SB 87, which required signage on vending machines that stated minors younger than 17 were prohibited from purchasing tobacco products.<sup>24</sup> TI still planned to establish 18 as the minimum purchasing age in Louisiana after learning of SB 86 and SB 87.<sup>68</sup> According to an April 30 memo from TI's State Activities Division Regional Pat McWhorter to TI Regional Vice President Ronald Morris, TI representatives intended to talk about the bills with their sponsor Senator Sydney Nelson.<sup>68</sup> However we found no attempts by Nelson during the 1991 session to raise the minimum age in his legislation from 17 to 18.

The House Administration of Criminal Justice Committee provided initial consideration to HB 19 on May 22, 1991.<sup>24</sup> At the hearing, committee members amended the bill to set a type size for signage and to require that minimum purchasing age signage be posted at the point of sale. As introduced, HB 19 had only required signage on vending machines. After amending HB 19, the committee sent it to the House with a favorable report.<sup>24</sup>

Representatives brought HB 19 to the Floor on May 30, 1991, where they questioned the bill's necessity and ultimately weakened it.<sup>24</sup> During debate, Representative Eugene Eason (R-Springhill) opposed HB 19, arguing use by minors "should be left up to the parents and the kids."<sup>71</sup> Lalonde countered Eason, stating that approximately 40 states restricted tobacco product sales to youth.<sup>71</sup> Representative Vic Stelly (R-Lake Charles) then proposed amending HB 19 to only penalize tobacco retailers for selling to minors if they knew the customer was underage.<sup>18</sup> Stelly ostensibly offered the amendment to protect retailers who sold tobacco to minors using fake identification from punishment.<sup>71</sup> Tobacco interests have obtained similar provisions in other states to make minimum age laws less enforceable.<sup>72</sup> HB 19 sponsor Lalonde argued against the amendment asserting it made enforcement impossible, but the House sided with Stelly and approved the change.<sup>71</sup> Representatives then voted 60-27 to send HB 19 to the Senate.<sup>24, 71</sup>

Senator Nelson's SB 86 and SB 87 initially faced less opposition and changes from lawmakers than HB 19. The bills passed the Senate in May and their House Committee hearings in early June without amendments.<sup>73</sup> SB 86 ultimately failed to overcome resistance on the House Floor.

Representatives considered and rejected SB 86 on June 18, 1991.<sup>73</sup> During debate, HB 19 sponsor Lalonde attacked SB 86 for not penalizing tobacco retailers caught selling products to minors.<sup>70</sup> He subsequently offered an amendment to forbid noncompliant retailers from selling lottery tickets, which representatives failed on a 60-28 vote.<sup>70</sup> Representative Raymond Jetson (D-Baton Rouge) also opposed SB 86, complaining it was government overregulation.<sup>70</sup> In addition, Representative John Travis (D-Jackson) argued that it should not be illegal for minors to purchase tobacco since the legislation allowed them to be tried as adult and potentially face capital punishment for certain crimes.<sup>70</sup> Jackson was an industry ally who later successfully sponsored smoking accommodation legislation in 1993 that preempted local clean air laws in Louisiana (Chapters 5). Concerned the bill failed to penalize retailers for selling tobacco to minors and would impact the juvenile courts, representatives voted 47-41 to reject SB 86.<sup>70, 73</sup>

By mid-June, TI planned to amend industry-desired language into active minimum age legislation in Louisiana. On June 18, 1991, the day representatives killed SB 86, an uncredited document from TI's records titled "1991 Proactive Legislative Plans" stated "attempts may be made to amend bills with industry language."<sup>74</sup> Representatives brought SB 87 to the House Floor for debate on June 25, 1991 and made unknown amendments to the bill.<sup>24</sup> The bill continued to require signage on vending machines stating that tobacco product sales to minors under 17 were illegal.<sup>75</sup> After amending SB 87 the House sent it to the Senate, which accepted changes the same day and sent it to Governor Ed Roemer (R).<sup>24, 76</sup> He later signed SB 87 into law on July 6, to take effect September 6, 1991. Passage of SB 87 resulted in minimum age stickers on vending machines inaccurately informing viewers that people 17 years and older could purchase cigarettes, despite HB 19 later passing that year and setting the legal purchase age to 18. The vending machine stickers remained inaccurate until youth access legislation to include electronic nicotine delivery systems (ENDS) into tobacco product sales restrictions passed in 2014 with an amendment correcting the age shown from 17 to 18 (discussed later in this chapter).<sup>77</sup>

... Lauria and Representative Lalonde briefly appeared in a report on WBRZ-TV in Baton Rouge to generate public support for HB 19. The piece promoted the Institute's "It's the Law" initiative and indicated that Louisiana's lack of a minimum age law would limit the campaign's impact in the state.

While the House amended and passed SB 87 on June 25, 1991, the Senate Judiciary C Committee considered HB 19, which raised the minimum age of purchase to 18, and reported it to the Floor without changes.<sup>24</sup>

That same day, TI used local news media in Baton Rouge to promote its youth access efforts and generate public support for its version of a minimum age law in Louisiana. In an interview with Baton Rouge news station WBRZ-TV, TI Assistant to the (TI) President Thomas Lauria<sup>78</sup> claimed the Institute helped secured minimum age laws in three states during 1991.<sup>79</sup> He touted the Institute's efforts to inform retailers to comply with state laws and not sell tobacco

to minors under 18 (It's the Law), voluntarily restrict industry sampling and advertising practices, and provide parents assistance in how to talk to their kids about tobacco.<sup>79</sup> Lauria and Representative Lalonde briefly appeared in a report on WBRZ-TV in Baton Rouge to generate public support for HB 19. The piece promoted the Institute's "It's the Law" initiative and indicated that Louisiana's lack of a minimum age law would limit the campaign's impact in the state. The segment highlighted Lalonde's HB 19 as a way to establish a minimum sales age for tobacco products in Louisiana. Lauria subsequently participated in a radio interview on youth tobacco use at Baton Rouge radio station WYNK-FM on June 30 where he again promoted the Tobacco Institute's "It's the Law" campaign and the Institute's intention to help Louisiana pass a minimum age law.<sup>80</sup>

As TI touted "It's the Law", HB 19 passed through the rest of the legislative process without changes. The Senate unanimously approved the bill on July 5, 1991.<sup>24, 81</sup> In an interview with *The Times-Picayune*, the bill's Senate handler, Senator Jon Johnson, remarked that HB 19 had not faced opposition from the tobacco industry like past legislation had.<sup>81</sup> Governor Roemer signed HB 19 into law on July 24, 1991. Beginning September 6, 1991, tobacco products could not be sold to or purchased by minors under 18 that were neither married nor emancipated. Violations incurred a \$50 fine.<sup>24, 67</sup> As passed, HB 19 included language stating retailers could only be penalized if they "knowingly" provided tobacco products to a minor,<sup>24, 82, 83</sup> severely limiting the state's ability to enforce the new minimum age law.

### **The Tobacco Industry Promotes Voluntary Regulation after HB 19**

After HB 19's adoption, the Tobacco Institute organized promotional efforts for "It's the Law" in Louisiana.<sup>84</sup> By late August 1991, the Institute planned for Representative Lalonde and officials from the Louisiana Hotel-Motel Association, Louisiana Grocers Association, Louisiana Retailer Association, Louisiana Restaurant Association, and the Louisiana Wholesale Tobacco and Candy Distributors Association to attend an event launching the initiative.<sup>84</sup> Tobacco Institute lobbyist Joe Wood Berry also asked Governor Roemer in July or August to participate and on August 27, TI Regional VP Ron Morris wrote the Governor's office repeating the Institute's request for Roemer to join the event and provided sample "It's the Law" materials.<sup>84</sup>

The Tobacco Institute held an "It's the Law" press conference in New Orleans with industry-allied business associations that frequently opposed tobacco control legislation on October 4, 1991 (Table 7.3). Lalonde appeared at the press conference, while Roemer sent his general counsel Thomas Casey in his place.<sup>85</sup> At the event, Tobacco Institute Assistant to the President Thomas Lauria declared, "We are setting into motion additional measures to help curb youth access to cigarettes through aggressive work with the retail community and by supporting new state laws."<sup>85</sup> According to the press release for the conference, the launch of "It's the Law" in Louisiana sent another message: "By supporting the enactment of this law and widely distributing the 'It's the Law' materials, the tobacco industry is reaffirming its long-standing policy that smoking is an adult choice."<sup>85</sup> The industry's "adult choice" frame is regularly used in tobacco

Casey also revealed a decree from Governor Roemer proclaiming October "It's the Law Month" and praising the Tobacco Institute for voluntarily supporting youth sales restrictions.



industry marketing to give tobacco products a “forbidden fruit” image that appeals to youth,<sup>14, 86</sup> and, in particular to youth prevention campaigns, has been found to promote positive attitudes towards tobacco use.<sup>86</sup>

During the press conference, Louisiana Food and Tobacco Distributors Association Executive Director Sarah Whalen praised the tobacco industry for limiting access to minors and for helping member businesses “send an important message to their customers and the community at large.”<sup>85</sup> Sarah Whalen had collaborated with the tobacco industry since 1983 and helped it oppose clean air and tobacco tax increase legislation (Chapters 2, 5 and 6). Representative Lalonde and Governor Roemer’s general counsel, Thomas Casey, publicly endorsed the tobacco industry and business community’s nominal efforts to comply with the state’s new minimum age law at the press conference.<sup>85</sup> Casey also revealed a decree from Governor Roemer proclaiming October “It’s the Law Month”<sup>87</sup> that also praised the Tobacco Institute for voluntarily supporting youth sales restrictions.<sup>85, 87, 88</sup> TI also gave Representative Lalonde and Casey plaques at the press conference.<sup>88</sup>

### **1992 Effort to Establish Stronger Youth Access Restrictions and a Licensing System for Sales**

Senator Jon Johnson (D-New Orleans) introduced two youth access bills during 1992 to restrict marketing, bolster sales restrictions, and establish a licensing system for tobacco retailers in Louisiana that would have made it easier to enforce youth access restrictions. SB 159 forbade tobacco sampling in state or local government property<sup>89</sup> and set fines for violations.<sup>90</sup> SB 842 required retailers to place signage regarding the minimum age of sale on vending machines and product displays, prohibited self-service displays, required tobacco items be sold in their unopened, original packages, and mandated that cigarettes be sold in packs of at least 20.<sup>89</sup> SB 842 established a licensing system for any business providing tobacco products to consumers that was to be run and enforced by the Louisiana Alcoholic Beverage Control Commission, with violations resulting in license suspension.<sup>89</sup> We did not find evidence that the tobacco industry fought SB 159, but it did plan to activate allies against SB 842.<sup>91</sup> Both bills were sent to the Senate Judiciary C Committee, which killed them.<sup>89</sup>

### **The Federal Synar Amendment and Enforcement**

While Louisiana had established a minimum age of 18 for purchasing tobacco products in 1991, by 1992 three states still had no minimum age laws and three had laws allowing minors as young as 16 and 17 to buy tobacco products.<sup>92, 93</sup> None of the states aggressively enforced minimum age purchase laws.<sup>94</sup> To encourage states to implement and adequately enforce 18 and up minimum age laws, in 1992 Congress added the Synar Amendment to the Alcohol, Drug

Table 7.3: Tobacco Industry Allies Attending It’s the Law Louisiana Launch <sup>85</sup>	
Sarah Whalen	Louisiana Food and Tobacco Distributors (formerly the Louisiana Wholesale Tobacco and Candy Distributors Association)
Bill Langkopp	Louisiana Hotel-Motel Association
Nick Perez	Louisiana Retail Merchants Association
Barbara Easley	Louisiana Grocers Association
Jim Funk	Louisiana Restaurant Association

Abuse, and Mental Health Administration Reorganization Act (ADAMHA).<sup>95, 96</sup> The Synar Amendment, offered by Congressman Mike Synar (D-Oklahoma), obligated states to have a minimum purchasing age law of 18 (or older) for tobacco products<sup>95</sup> to be eligible for certain substance abuse block grant funding.<sup>95, 96</sup> Specifically, the amendment required states to establish a regulatory system by 1994 and to demonstrate that they had lowered youth access rates.<sup>94</sup> by performing unannounced compliance checks yearly to gather youth access data and determine youth access to tobacco via retailers.<sup>95</sup> The amendment also required that states produce annual reports on enforcement activity.<sup>95</sup> If states failed to steadily reduce violation rates for sales to minors, the US Department of Health and Human Services (USDHHS) would increasingly lessen block grant funding to them from the Substance Abuse and Mental Health Services Administration (SAMSHA, which is part of USDHHS).<sup>94, 96</sup> Looking at 1991 (\$18,822,000) and 1992 (\$19,913,782) ADAMHA block grants and funding from an HR 5625 grant (\$20,537,933), Louisiana received the 20<sup>th</sup> most funding from ADAMHA among Washington DC and all states those years.<sup>97</sup>

The tobacco industry used the Synar Amendment to push youth access legislation that preempted local governments (where the tobacco industry has less influence) from passing and enforcing stronger youth access sales restrictions.<sup>98</sup> According to an uncredited 1993 document from Philip Morris' records regarding defensive efforts against ADAMHA and Synar legislation:

Legislative Options [unspecified in source] to ADAMHA have been developed by Tobacco Industry counsel. The Options include minimum actions necessary to meet the minimum requirements of the proposed regulations even if they are not amended by HHS. In addition, the Options incorporate all of the Industry's positions relative to responsible sales and marketing practices as well as state preemption of local restrictions.<sup>99</sup>

Although a defensive gesture in reality, the tobacco industry framed efforts to secure preemptive Synar legislation as beneficial to effective regulation and youth prevention. According to a November 1994 Tobacco Institute issue brief:

In further efforts to protect children, the industry is making a concerted effort to ensure the adoption of statewide preemption on these issues is adopted, creating one law which is easier to comply with than numerous local ordinances. Statewide uniformity enables efforts to prevent access to tobacco products by minors.<sup>100</sup>

Despite industry plans to secure preemptive youth access legislation in states nationwide, we did not find evidence they worked to obtain such a bill in Louisiana during 1993.

### **1993 and 1994 Efforts to Establish Enforcement for Youth Access Restrictions**

Louisiana lawmakers introduced five bills in the 1993 and 1994 legislative sessions to comply with the Synar Amendment and establish enforcement over youth restrictions for tobacco product sales (Table 7.4).

Table 7.4: Sales Restrictions Bills during the 1993 and 1994 Legislative Sessions <sup>101, 102</sup>													
Bill	Author	Year	Licensing Authority to ABC	Licensing Authority to Dept. of Rev. and Taxation	Vending Machine Licenses / Permits	Sampling	Vending Machines	Licensing Fees	Penalties	Penalties for Minors	Enforcement	Preemption	Outcome
SB 653*	Ewing	1993		+	+	^	^				+		Deferred indefinitely
HB 110	Flournoy	1994							+				Died with adjournment
HB 114	Flournoy	1994								+			Died with adjournment
HB 313	Smith	1994											Died with adjournment
<b>SB 130</b>	<b>Brinkhaus</b>	<b>1994</b>							+		+	+	<b>Adopted</b>
^Partial													
*Originally contained preemption.													

The first attempt to establish an enforcement regime for sales and youth access restrictions occurred in 1993 with introduction of SB 653 by Senator Randy Ewing (D-Quitman<sup>103</sup>). As introduced, SB 653 prohibited free tobacco product samples except for at tobacco retailers. The bill also forbade coupons for free or discount tobacco products and prohibited their redemption. In addition, SB 653 permitted vending machines in bars and other venues that served alcohol, and outlawed their placement in venues accessible to minors under 18. SB 653 assigned enforcement to local governments and allowed them to adopt laws stronger than the state's. The bill permitted local governments to assign inspection capabilities to a health department staffer for enforcement.

Before SB 653 received consideration it was drastically amended (Table 7.4). Following public health best practices, SB 653 required the Louisiana Department of Revenue and Taxation to establish a permit (licensing) system for tobacco product retailers, distributors, and vending machines that would record youth access violations by permit holders.<sup>101, 104</sup> Permit fees were \$50 for wholesalers, \$100 for bonded agents, and \$150 for distributors to fund enforcement. Besides establishing a permit system, SB 653 forbade tobacco product sampling outside of tobacconists, outlawed all coupon promotions, and prohibited tobacco vending machines except for at establishments that mainly sold alcohol for drinking on-site (i.e., bars).<sup>101</sup> The bill also tasked local governments with enforcement of youth access restrictions and provided them the power to designate a local health department official to perform surprise, random checks to ensure compliance with Louisiana's minimum age law.<sup>101</sup> Violations resulted in a fine ranging from a minimum \$100 to a maximum \$1000, which escalated to a minimum \$500 and maximum \$2000 if the offender was found guilty.<sup>104</sup> Violators could also lose their permit.

SB 653 was referred to the Senate Judiciary C Committee. Committee members removed vending machine restrictions, weakened sampling and coupon restrictions, then tabled the bill on

May 25, 1993, killing it<sup>101</sup> and leaving Louisiana without a licensing or enforcement framework. We could not find evidence that the tobacco industry or health advocates influenced the outcome of SB 653.

### **Tobacco Industry Weighs Securing Weak Synar Legislation with Louisiana's Attorney General**

Following the 1993 regular session, the tobacco industry planned to secure favorable legislation regarding sales violations reporting for Synar Amendment compliance that also preempted local youth access laws.<sup>105</sup> According to a July 9, 1993 list of planned proactive legislative efforts for 1994 in Louisiana, the Tobacco Institute intended to develop legislation with Louisiana Attorney General Richard Ieyoub:

If this [ADAMHA Reporting] means reporting of illegal sales to youth – we must meet with Louisiana Attorney General to design and draft proposal for 1994.<sup>105</sup>

The same document stated that it planned to include local preemption of sampling and sales restrictions in the legislation developed with the Louisiana AG:

Try to put [local preemption] in Attorney General's proposed legislation relating to reporting illegal sales.<sup>105</sup>

We did not find evidence that the attorney general worked with the tobacco industry on Synar / ADAMHA legislation in 1994. As the chairman of Louisiana's Drug Policy Board that formed in 1990,<sup>106</sup> Ieyoub offered a 24-part legislative plan to prevent youth tobacco and alcohol use and address crime in March of that year<sup>107</sup> that included a prohibition on tobacco advertisements within 1,000 feet of schools and forbade tobacco vending machines in establishments open to minors.<sup>108</sup> Claiming issues with timing, Ieyoub dropped the advertising and vending machine restrictions from his package in mid-April.<sup>108</sup>

Although the Attorney General did not appear to collaborate with the tobacco industry in 1994, he opposed federal legislation it was campaigning against. Ieyoub sent a letter in October 1993 to the Director of the US Center for Substance Abuse Prevention's (CSAP) State Prevention System's Program opposing proposed ADAMHA implementation rules, asserting that they "seem to attempt to micro-manage state law enforcement efforts."<sup>109</sup> Ieyoub felt the rules forced Louisiana to comply with vague and undefined youth access requirements that unfairly exposed the state to possible funding loss. He also argued the rules were expensive to implement and took away funds from the state when there were programs already devoid of money. The industry recorded that Ieyoub submitted a comment to CSAP against proposed ADAMHA rules but did not state how the comment came to exist or if it influenced the State Attorney General to send it.<sup>110</sup>

Ieyoub ultimately became a strong adversary of the tobacco industry. He would later serve a major role in state lawsuits against the tobacco industry to recoup Medicaid funds, resulting in the Master Settlement Agreement (Chapter 9).

## 1994 Special Legislative Session

In late February 1994, the tobacco industry considered Louisiana one of 14 key states in which to secure weak, preemptive Synar compliance legislation that year.<sup>111</sup> In March 1994, an uncredited document from the Tobacco Institute's records reveals the industry was developing "minimum compliance with ADAMHA preemption" legislation with assistance from Louisiana Retailers Association President<sup>112</sup> Nick Perez.<sup>113</sup>

Louisiana lawmakers did not introduce

Synar/ADAMHA compliance legislation until a special session that began in June 1994. Around that time, Philip Morris had determined state legislation would be introduced in Louisiana to address ADAMHA

compliance. The company felt any legislation posed a minor threat to its interests since Governor Edwin Edwards (D), elected in 1991, favored the industry's

stance on regulation. Philip Morris reported in a February 25, 1994 ADAMHA Legislation Update that Louisiana health advocates were fighting to stop local preemption of youth access restrictions in the anticipated bill.<sup>114</sup>

Around that time Philip Morris determined state legislation would be introduced in Louisiana to address ADAMHA compliance. The company felt any legislation posed a minor threat to its interests since Governor Edwin Edwards (D), elected in 1991, favored the industry's stance on regulation.

To bring Louisiana into Synar compliance, Senator Armand Brinkhaus (D-Sunset) introduced SB 130 on June 9, 1994 for the upcoming Special Legislative Session.<sup>115</sup> SB 130 provided the Louisiana Alcoholic Beverage Control Commissioner the authority to enforce minimum age of sale laws at tobacco retailers by conducting random compliance checks using law enforcement officials and minors that received parental permission. SB 130 also established penalties for failing to comply with minimum age sales and signage violations, setting fines of no more than \$50 for initial offences, \$100 for second violations, \$250 for third violations, and a maximum of \$400 for all additional violations. Consistent with industry desires, the bill preempted existing and future local sales restrictions on tobacco.<sup>115</sup>

HB 110, HB 114, and HB 313 were also introduced to change enforcement of minimum age laws for tobacco. Representative Melissa Flournoy (D-Shreveport) introduced HB 110 to increase fines from at most \$50 to \$500 for selling tobacco to minors or failing to post minimum age signage on vending machines.<sup>102</sup> HB 114, also sponsored by Flournoy, increased the fine for buying tobacco as a minor from \$50 to \$150 maximum.<sup>102</sup> HB 313 was an identical companion bill to SB 130 introduced by Representative John Smith (D-Leesville<sup>116, 117</sup>).<sup>102</sup> HB 110, 114, and 313 died without consideration<sup>102</sup> while SB 130 easily passed into law.

SB 130 passed through committee without changes and was sent to the Senate Floor, where lawmakers amended it on June 20, 1994.<sup>115</sup> Senators imposed stronger penalties for failing to comply with signage requirements, increasing fines for fourth and additional signage violations by retailers from \$400 to \$500. The committee then voted 33 to 1 to send SB 130 to the house for further consideration. The House Administration of Criminal Justice Committee considered SB 130 and passed it to the House Floor, where it passed with a 98 to 1 vote on June 27, 1994.<sup>115</sup>

Governor Edwin Edwards entered SB 130 into law on July 7, 1994.<sup>115</sup> Although SB 130 established a system that could bring Louisiana into compliance with inspection requirements of the Synar Amendment, it also preempted local sales restrictions on tobacco products and eliminated preexisting local ordinances already restricting their sale.<sup>115</sup>

In October or November 1994, after SB 130 passed, Philip Morris provided its sponsor Senator Brinkhaus a \$500 contribution.<sup>118</sup>

### **HB 1921 Passage in 1995 Requires Development of a Regulatory Regime for Tobacco Sales**

The tobacco industry expected to guard against ADAMHA legislation.<sup>119</sup> State lawmakers introduced six bills in 1995 affecting the new regulatory regime for tobacco sales as well as penalties for violating youth access laws (Table 7.5).

Some legislation attempted to move the Office of Alcoholic Beverage and Tobacco Control (ABC), which oversaw tobacco product sales restrictions, to a different agency. We do not know the logic provided by bill sponsors for the proposed transfer. HB 1921, HB 2215, and SB 1124 moved the ABC from the Department of Public Safety to the Department of Revenue and Taxation.<sup>120</sup> HB 2156 and SB 1010 did not relocate the ABC, instead mandating licenses for tobacco shops as well as tobacco vending machines and their owners, while HB 948 strengthened fines for selling tobacco products to minors.<sup>120</sup> Publicly, TI took a neutral stance or no position on the bills.<sup>121</sup> The bills were introduced after the ABC's commissioner was removed because of his ties to the alcohol industry.

Table 7.5: Sales Restrictions Bills during the 1995 Legislative Session <sup>120</sup>								
Bill	Author	Licensing Authority to ABC	Relocates ABC to Department of Rev. and Taxation	Vending Machine Licenses/Permits	Licensing Fees	Penalties	Enforcement	Outcome
HB 948	Flournoy					+		Died in House Administration of Criminal Justice Committee
<b>HB 1921</b>	<b>Toomy</b>	+	+				+	<b>Adopted (Act 1188)</b>
HB 2156	Flournoy	+		+	+			Died in House Ways and Means Committee
HB 2215	Bowler		+					Died in Judiciary Committee
SB 1010	Brinkhaus	+		+	+			Died in Revenue and Fiscal Affairs Committee
SB 1124	Brinkhaus		+					Died in Governmental Affairs Committee

In 1994, Governor Edwin Edwards fired ABC Commissioner Ray Holloway over his ties to the Beer Industry League of Louisiana and its lobbyist George Brown.<sup>122, 123</sup> Edwards fired Holloway based on input from Louisiana State Police Colonel Paul Fontenot, leader of the State Police.<sup>123</sup> His department had asserted Holloway had close ties to the alcohol industry and acted inappropriately. Brown, an ally of the tobacco industry and one of the most powerful lobbyists in Louisiana (Chapter 2), advocated for relocating the ABC after Holloway's firing.<sup>123</sup> Brown publicly claimed transferring the ABC to the Department of Revenue made sense since it handled many sales regulations and taxes regarding alcohol products.<sup>124</sup> He also claimed that most states' revenue departments and the US Treasury oversaw alcohol control laws.<sup>124</sup> However, evidence indicates Brown was retaliating for Holloway's firing. According to an April 25, 1995 article in the Baton Rouge *Advocate* referencing efforts to pass HB 1921, "George Brown...is pushing the legislation. The bill appears to be the outgrowth of a feud between Brown and Louisiana State Police Superintendent Paul Fontenot."<sup>125</sup>

"George Brown ... is pushing the legislation. The bill appears to be the outgrowth of a feud between Brown and Louisiana State Police Superintendent Paul Fontenot."

Relocating the ABC from the Department of Public Safety and Corrections removed it from the authority of Fontenot, who had persuaded Edwards to terminate industry-friendly Holloway.<sup>122, 123</sup>

Only HB 1921 received consideration during the 1995 legislative session, with the other bills dying upon adjournment without being heard.<sup>120</sup> HB 1921 ultimately benefitted the tobacco industry, passing with amendments that removed its proposed licensing system and weakened sales enforcement.<sup>120, 126</sup>

Representative Joseph Toomy (D-Gretna) introduced HB 1921 on March 27, 1995.<sup>122</sup> Initially, HB 1921 renamed the ABC to the Office of Alcoholic Beverage and Tobacco Control and relocated it to the Department of Revenue and Taxation.<sup>127</sup> HB 1921 tasked the Office with tobacco licensing, mandated the creation of a wholesaler permit, and required tobacco retailers to display their permits. The bill authorized compliance inspections by the Department of Revenue and Taxation as well as law enforcement.

The tobacco industry did not take a position on HB 1921,<sup>128</sup> allowing other forces to vie over the bill's fate. We did not find evidence that health advocates attempted to influence HB 1921's outcome. Brown, the Beer Industry League representative and tobacco industry ally (Chapter 2), actively lobbied to pass HB 1921.<sup>123</sup>

The Legislature approved HB 1921 and Governor Edwin Edwards signed it into law on June 29, 1995.<sup>127</sup> Before HB 1921 passed, lawmakers amended the bill in a way that did not rename the ABC to include tobacco in its title and did not establish a licensing system for tobacco sales.<sup>120, 129</sup> HB 1921 allowed the ABC to enforce youth access laws via compliance checks, but only using local law enforcement,<sup>120, 126</sup> a change that resulted in minimal actual enforcement.

We do not know who proposed the changes or if the tobacco industry was involved.

## **Louisiana Increases Sales Restrictions and Establishes a Licensing System in 1997**

### ***Louisiana Struggles to Comply with the Synar Amendment***

Following the adoption of HB 1921 in 1995, the Office of Alcoholic Beverage Control had limited authority to enforce tobacco sales restrictions.<sup>126, 130</sup> ABC could conduct tobacco compliance inspections only using local law enforcement.<sup>126, 130, 131</sup> The requirement made enforcement of tobacco sales restrictions practically nonexistent in Louisiana.<sup>130</sup> Weak enforcement of minimum age laws fail to reduce illegal sales to minors.<sup>132-135</sup> Lack of enforcement in Louisiana likely contributed to the 73% retailer violation rate of the minimum age law found by a December 1996 study commissioned by the Department of Health and Hospitals.<sup>131, 136</sup> Using the survey as a starting position, the US Center for Substance Abuse Prevention (CSAP) (housed at SAMSHA in the US Department of Health & Human Services<sup>137, 138</sup>) set a 60% violation rate of the minimum sales age law by retailers as Louisiana's compliance threshold by 1998.<sup>136</sup> Louisiana risked losing \$8 million<sup>131</sup> in SAMSHA grant funding if it failed to adequately reduce minimum age sales violations.<sup>136</sup>

Lack of enforcement in Louisiana likely contributed to the 73% retailer violation rate of the minimum age law found by a December 1996 study ....

### ***Voluntary Efforts to Prevent Youth Use in Louisiana During 1997***

Health and tobacco control organizations promoted youth prevention and sales restrictions in early 1997 to encourage compliance with impending federal FDA regulations regarding youth access and marketing.<sup>139</sup> By late February, the new Louisiana Youth Tobacco Prevention Coalition and the American Cancer Society, American Heart Association, and American Lung Association engaged in youth prevention education with families and children without state assistance.<sup>139</sup> Another health voluntary, the Louisiana Campaign for Tobacco-Free Kids, organized a survey in February demonstrating that 86% of Louisianans backed reducing minor access to tobacco.<sup>140</sup> On April 10, Louisiana youth testified to the Senate Judiciary A Committee chaired by Senator Chris Ullo, together with Office of Alcohol Beverage Control Commissioner Murphy Painter, and Attorney General Richard Ieyoub about preventing underage tobacco use as part of National Kick Butts Day, a program of the Campaign for Tobacco-Free Kids.<sup>141</sup> Ullo introduced the primary youth access and sales restriction bill in 1997, SB 1547, to improve Louisiana's compliance with the Synar Amendment by establishing a licensing system for tobacco sales (Table 7.6). Testimony included discussion of predatory industry marketing practices towards minors, and one 10-year old's ability to buy cigarettes from a vending machine because of the establishment's employees' indifference.<sup>142</sup>

### ***Public Health Agencies Work to Improve Synar Compliance Via Education Campaigns and Health Community Partnerships***

To reduce minimum age sales violations 15% by September 30 and avoid losing federal funds, in late March and April the Louisiana Department of Health and Hospitals (DHH) and Louisiana Office of Alcohol and Drug Abuse took steps to increase awareness of sales restrictions through an education campaign and collaborative efforts with health and tobacco



control organizations, and coalitions across the state.<sup>143</sup> The state intended to provide posters to stores about the minimum age but did not require that they be displayed.<sup>131</sup> The Louisiana Office of Alcohol and Drug Abuse also sought to partner with agencies across Louisiana to build local coalitions that would work to improve knowledge of and compliance with youth access laws.<sup>143</sup> By April, the Office contracted 10 mostly unidentified agencies around Louisiana (we found the New Orleans and Gretna-based Council on Alcohol and Drug Abuse was one agency) to create local tobacco control coalitions consisting of “youth groups, churches, law enforcement, and retail vendors” according to an article in the Baton Rouge *Advocate*. Those agencies received \$5,000 grants to develop and assist the coalitions, which would each perform 15 informal compliance inspections and inform 100 tobacco retailers about the harmful effects of tobacco.<sup>143</sup> DHH hosted a “Working Together Tobacco Conference” on April 2 to facilitate cooperation between education organizations and health and tobacco control agencies participating in the Office of Alcohol and Drug Abuse’s coalition plan to improve Louisiana’s compliance with youth access restrictions.<sup>143</sup>

### ***Youth Access Legislation in 1997***

State lawmakers sought to establish a licensing and enforcement regime for tobacco product sales and improve Synar Amendment compliance.<sup>131</sup> Tobacco control advocates, engaged in inspection and informational efforts to reduce illegal tobacco sales to minors, also participated in efforts to secure legislation. We could not determine if they acted in unison.

Lawmakers proposed twelve bills in 1997 to revise youth access laws, enhance retail enforcement, and improve Synar Amendment compliance (Table 7.6). Of those introduced, HB 1077, SB 1547, and HB 76 were adopted into law (Table 7.6). HB 1077 assigned the DHH responsibility for Louisiana’s compliance with ADAMHA, SB 1547 established a licensing and enforcement system for the state tobacco market, while HB 76 outlawed minor possession of tobacco products (Table 7.6). The rest, which predominantly sought to restrict vending machine sales of tobacco products or establish regulatory licensing schemes for tobacco products, either died in committee or were withdrawn (Table 7.6).

### ***SB 729 and Its Substitute SB 1547***

SB 729 and its substitute SB 1547 were two of three bills offered by Senator Chris Ullo (D-Marrero) for the 1997 regular legislative session to establish a regulatory regime for tobacco sales. SB 729 and SB 1547 featured comprehensive licensing and sales restriction provisions (Table 7.7)

SB 729 changed the Office of Alcoholic Beverage Control to the Office of Alcohol and Tobacco Control (ATC).<sup>145</sup> Under the bill, permits were awarded by the ATC Commissioner, who had a 35-day probationary period to review applications. Violating Louisiana’s Prevention of Youth Access to Tobacco Law, Louisiana’s Unfair Sales Law rules, regulations for alcohol sales, or providing samples to minors were causes for permit denial or suspension. Failure to display a permit could result in denial, loss, or suspension of the permit. Possessing or selling tobacco products without a permit was a separate violation of law for each day of operation. Permits could also be suspended or not awarded if an applicant was not considered by the Department of Revenue and Taxation Secretary (the department the ATC resided in) to have

Table 7.6: Sales Restrictions Bills during the 1997 Legislative Session<sup>144</sup>

Bill	Author	21+ Minimum Age	Possession by Minors Prohibited	Provides DHH Responsibility for ADAMHA Efforts	Licensing Authority to ABC	Sales/ Distribution Licenses	Vending Machine Licenses	Licensing Fees	Vending Machine Restrictions (Not Bans)	Penalties	Enforcement	Outcome
HB 30	Faucheux	+										Died in committee
HB 47	Faucheux								+	+		Died in committee
HB 107	Riddle			+								Died in Senate Committee
<b>HB 1077</b>	<b>Riddle</b>			+								<b>Adopted</b>
HB 1973	Dewitt				+	+	+	+		+		Died in Committee
SB 228	Ullo								+		-	Died in Committee
SB 269	Ullo								+	+		Died in committee
SB 373	Schedler								+	+		Withdrawn from Senate
SB 729	<b>Ullo</b>				+	+	+	+	+	+	+	Replaced by SB 1547
<b>SB 1547</b>	<b>Ullo</b>				+	+	+	+	+	+	+	<b>Adopted</b>
SB 1081	Johnson				+	+	+	+		+	+	Died in committee
<b>HB 76</b>	<b>Fontenot</b>		+							+		<b>Adopted</b>
HB 924	Donelon	+										Died in committee

\*Redesignates ABC to ATC (Office of Alcohol and Tobacco Control).

\*\*\*Exception for work performance.

-Eliminated local law enforcement requirement for overseeing inspections.

good morals or be an actual wholesaler. Retailers were responsible for employee infractions unless they had not encouraged the violation and had the offending employee participate in an ATC commissioner-endorsed sales class. SB 729 assigned the ATC with development of regulations and rules for the bill. The ATC Commissioner, Department of Revenue and Tax Secretary, as well as local government officials, law enforcement, and citizens could submit a petition to suspend or take an offending business' permit or issue a written warning. SB 729 also required the sale of cigarettes in packs of at least 20. The bill prohibited vending machine sales unless in a store inaccessible to minors or if the device was placed in sight of employees.

Before SB 729 was considered, Senator Ullo introduced a very similar, untitled substitute bill for consideration that became SB 1547.<sup>145-147</sup> Senator Ullo claimed he developed the substitute licensing legislation with assistance from unspecified tobacco control advocates, tobacco sellers, and tobacco industry representatives.<sup>147</sup> In a 2014 interview for this report, former LSU Health Sciences Center representative and Coalition for a Tobacco-Free Louisiana President Dr. Charles Brown indicated the bill was the first passed by tobacco control advocates in Louisiana:

He [LSU Health Sciences Center Chancellor Merv Trail] introduced me to a senator from the Westbank named Chris Ullo who had a bill having to do with

Table 7.7: License Classes, Fees, and Penalties in SB 729 as Introduced<sup>145</sup> and Substitute SB 1547 (After Senate Committee Changes and Adoption)<sup>144, 146</sup>

SB 729	Permits and License Types	Renewal	License Fee	Penalties***
	Retail Dealer Class A (tobacco product gross sales surpass \$75,000 annually)+	Annual**	\$50	-Suspension -Loss of license -Fines (in order of offence) <ol style="list-style-type: none"> <li>1. \$50-\$500</li> <li>2. \$250-\$1000</li> <li>3. \$500-\$2,500</li> </ol>
	Retail Dealer Class B (tobacco product gross sales lower than \$75,000 annually)+		\$25	
	Vending Machine		\$5	
	Vending Machine Operator		\$75	
	Wholesaler*+		\$75	
SB 1547	Retail Dealer Registration Certificate^+	Annual	\$25	-Suspension -Loss of license -Fines (in order of offence within two years) <ol style="list-style-type: none"> <li>1. \$50-\$500</li> <li>2. \$250-\$1000</li> <li>3. \$500-\$2,500</li> </ol>
	Retail Dealer Permit+		\$75	
	Vending Machine***		\$5	
	Vending Machine Operator-		\$75	
	Wholesaler*+		\$75	

\*Wholesalers did not need a vending machine operator permit.

+Permit required for each retail outlet or place of operation.

-Wholesalers operating vending machines not required to get Vending Machine Operator permit.

\*\*\*Permit required for each machine.

^Can be issued to last 6-18 months.

\*\*Failure to renew license on time levied a delinquency penalty of 25% if application submitted before 30 days after renewal date, multiplied another 25% for every thirty days late thereafter. Right to retail or hold tobacco products may be suspended by ABC commissioner.

regulating the mom and pop shops and doing checks on tobacco. Our first piece of legislation that we got passed was one in 1997.<sup>148</sup>

“He introduced me to a senator from the Westbank ... who had a bill having to do with regulating the mom and pop shops and doing checks on tobacco. Our first piece of legislation that we got passed was one in 1997.”

SB 1547 established a similar licensing and penalty system to SB 729 for tobacco retailers, vending machines, and wholesalers (Table 7.7).<sup>144, 146</sup> However, SB 1547 created one Retailer Dealer permit instead of two separate classes. In addition, SB 1547 created retailer dealer registration certificates as part of its licensing scheme that SB 729 lacked.<sup>146</sup> The registration certificate was required by wholesalers, vending machine operators, and others for each sale location receiving untaxed tobacco products, but was not required by retail dealer permit holders. Certificate holders fined two times within a period of three years were required to obtain a Retail Dealer permit instead of

a Certificate when they were up for renewal (After five years without an offense they could appeal to apply for certificates instead of permits again).

SB 1547 renamed the Office of Alcoholic Beverage Control to the Office of Alcohol and Tobacco Control, and provided the agency licensing and rulemaking authority over tobacco wholesalers, vending machine operators, and retailers (Table 7.7).<sup>144, 146</sup> SB 1547 required a unique license for the state's 37,000 retailers and wholesalers at each place of operation where tobacco was distributed or sold,<sup>147</sup> administered by the Office of Alcohol and Tobacco Control Commissioner.<sup>146</sup> The commissioner could deny or rescind permits for selling to minors under 18, violating tobacco sales restrictions, providing samples to minors, violating the Unfair Sales Law, violating the state's "Youth Access to Tobacco Law," or violating vending machine sales restrictions.<sup>146</sup> The Secretary of the Department of Revenue and Taxation could also stop an applicant from receiving a wholesale permit if they believed they lacked good morals or were not a true wholesaler.

In addition to establishing a licensing system, SB 1547 prohibited the sale of individual cigarettes, requiring they be purchased in 10-piece packs and forbade tobacco vending machines in areas accessible to minors or that were out of sight of an employee.<sup>146</sup>

SB 1547 provided enforcement authority to multiple entities. The bill tasked the ATC Commissioner with conducting yearly inspections of tobacco registration certificate holders. The Secretary of the Department of Revenue and Taxation, law enforcement, and local government officials could also arrange inspections and request punishment by the Commissioner of any discovered violations.<sup>146</sup> The Commissioner could conduct compliance checks as well. Citizens could also submit requests to the Commissioner for a business to have its license suspended or cancelled for violations by providing affidavits.<sup>146</sup> SB 1547 allowed employers to avoid penalties if the worker that violated the bill attended a training program recognized by the Commissioner and had not been urged in any way to commit the violation by the employer.<sup>146</sup> Penalties in SB 1547 were less onerous than in SB 729 (Table 7.7). SB 1547 included a loophole that protected retailers who sold tobacco products to minors providing inaccurate or false legal identification (that was not suspicious in appearance) from penalties.<sup>150</sup>

### ***SB 1547 in the Legislature***

The Senate Judiciary C Committee considered SB 1547, then still untitled, on April 22, 1997, where Senator Ullo and advocates from Louisiana's health and medical community testified that a licensing regime for tobacco sales was needed to protect public health.<sup>147</sup> Senator Ullo told the Committee that he wanted to see a "tobacco-free generation by the year 2000." LSU Medical Center CEO Dr. Merv Trail testified that a licensing system for tobacco product sales was warranted in Louisiana because the state had the highest lung cancer rate in the nation and likely the highest among blacks internationally. Louisiana Cancer and Lung Task Force Board member Dr. John Rainey told the Committee that smoking caused "one jumbo jet, more than 300 people a year, [to] die" in Louisiana according to *The Times-Picayune*. LSU Stanley S. Scott Cancer Associate Director Sarah Moody Thomas echoed Rainey's argument, stating that most smokers started before becoming 19 years old and that around 5 million youth would die in the future from tobacco related illnesses.<sup>149</sup> In addition, Department of Health and Hospitals spokesperson Jake Hadley testified that Louisiana risked losing \$8.8 million in federal funding (SAMHSA block grants) if it failed to meet the youth access enforcement targets set by the Synar Amendment. Hadley testified that the State's tobacco retailer violation rate for sales to minors was 73% and needed to drop to 20%.

The tobacco industry did not publicly oppose SB 1547 at the Senate Judiciary C Committee hearing, but its longtime ally the Louisiana Retailers Association (LRA) (Chapter 2) testified against the bill. LRA spokesperson Dale Matthews argued the law would fail to stop sales violations but would burden businesses and increase government bureaucracy.<sup>147</sup> According to a *Times-Picayune* article covering the hearing, Matthews stated, “This [The Retail Dealer Registration Certificate] is a \$25 increase in fees and bureaucratic good government. And it is not going to solve the problem. I am permitted out.”<sup>147</sup> After listening to testimony Committee Chairman Max Jordan (R-Lafayette) postponed voting on SB 1547, stating that the bill needed further development.<sup>147</sup> It is possible the version of SB 1547 presented at the April 22 hearing was an unfinished draft featuring more onerous licensing requirements and harsher penalties similar to SB 729. We did not find an earlier version of SB 1547 and use the Original version of the bill in our description above.

SB 1547 received a second hearing before the Senate Judiciary C Committee on April 29, 1997<sup>150</sup> after being further refined. Tobacco control advocate Dr. Charles Brown, identifying as a cancer expert, and Louisiana Campaign for Tobacco-Free Kids Director Leslie Gerwin, testified for the bill’s sales licensing and restrictions. Despite SB 1547 being weaker than SB 729 in the version presented to the Committee on April 29, Dr. Charles Brown supported the bill at the hearing, stating it was a “first step” to shield minors from tobacco’s harmful health effects according to *The Times-Picayune*.<sup>150</sup> *The Times-Picayune* also reported that Louisiana Campaign for Tobacco-Free Kids Director Leslie Gerwin told the committee that SB 1547 had become “a shadow of its original self,” but did not oppose the bill’s passage.<sup>150</sup> The Louisiana Retailers Association dropped its opposition to SB 1547, its lobbyist Nick Perez claiming the legislation now kept retailers from having their licenses revoked too fast.<sup>150</sup> After hearing comments on SB 1547, the Senate Judiciary C Committee unanimously approved the bill.

SB 1547 passed an additional hearing before the Senate Committee on Revenue and Fiscal Affairs without changes and went to the Senate Floor, where it passed unanimously on May 7, 1997 after lawmakers made minor technical revisions that did not change the bill’s effects.<sup>146</sup>

The House Judiciary Committee considered SB 1547 on May 16, 1997. At the hearing, Senator Ullo testified that SB 1547 prevented an \$8 million funding loss in federal SAMHSA grants resulting from failure to reduce illegal sales to minors.<sup>151, 152</sup> During the hearing, committee members amended SB 1547 to remove authority over levying penalties from the Commissioner of the Office of Alcohol and Tobacco Control to an administrative law judge.<sup>152</sup> The Committee added the amendment at the request of Louisiana Division of Law Executive Director Ann Weiss, who felt SB 1547 provided the Commissioner too much power.<sup>153</sup> Prior to the amendment, the Commissioner had the authority to prosecute and issue rulings against retailers it caught violating sales restrictions.<sup>152</sup> The change left the Office of Alcohol and Tobacco Control Commissioner with the authority to investigate and prosecute retailers, but without the authority to directly issue fines and other sanctions. The House Judiciary Committee then sent SB 1547 to the House Floor.<sup>152</sup>

Representatives approved the House Committee amendment to SB 1547 on the Floor on May 20, 1997 and then brought it back for debate on June 4 1997.<sup>146</sup> During discussion of SB 1547 Representative Shirley Bowler (R-Harahan) argued against the bill, claiming it was expensive and expanded government bureaucracy.<sup>153</sup> According to the *Baton Rouge Advocate*,

Representative Bowler also complained that SB 1547's supporters were more focused on restricting tobacco retail than "catching all the hoodlums out there."<sup>153</sup> Unknown proponents of SB 1547 argued the bill protected minors, who were pursued by the tobacco industry because they would likely become addicted and turn into lifelong smokers.<sup>153</sup>

Two amendments to SB 1547 were proposed during deliberations on the House Floor. Representative Joseph Toomy (R-Gretna) successfully proposed eliminating the House Committee amendment granting judicial authority over tobacco sales violations to administrative law judges,<sup>146</sup> returning judicial authority over tobacco retail violations to the Commissioner of the Office of Alcohol and Tobacco Control.<sup>146</sup> Representative Glenn Ansardi (D-Kenner) unsuccessfully introduced an amendment to prohibit the Office of Alcohol and Tobacco Control from regulating product prices set by tobacco manufacturers, wholesalers, and retailers.<sup>153</sup> Representatives then voted 82-16 to approve SB 1547.<sup>146</sup>

The Senate voted 37-0 to adopt amendments made to SB 1547 in the House on June 19, 1997,<sup>154</sup> sending the bill to Governor Mike Foster (R) for signature.<sup>144</sup>

Governor Foster signed SB 1547 into law on July 15, 1997.<sup>144</sup> The bill entered effect on October 1, 1997 and had an implementation date of July 1, 1998.<sup>144</sup> As passed, the law established a licensing system for tobacco businesses with fees dedicated towards administration and enforcement of the program, renamed the Office of Alcoholic Beverage Control to the Office of Alcohol and Tobacco Control and made it the enforcement agency for tobacco product sales restrictions, and established escalating penalties for violations (Table 7.7).<sup>144, 146</sup> SB 1547 included a loophole protecting retailers from penalties if they sold tobacco products to a minor that presented authentic or authentic-appearing legal identification that falsely showed their age as 18 or higher.<sup>150</sup> The Office of Alcohol and Tobacco Control Commissioner could instigate compliance inspections of license holders, and levy fines and or suspend or revoke a license for violations.<sup>146</sup> The Secretary of the Department of Revenue and Taxation, law enforcement, and local government officials could also inspect license holders and request punishment of any discovered violations by the Commissioner.<sup>146</sup> Minors could be used to conduct compliance checks.<sup>155</sup> SB 1547 also authorized the Office to recruit 20 additional agents to the 20 it already had.<sup>154</sup>

Although weaker than its original version, SB 1547 drastically reduced illegal tobacco product sales to minors. Synar Amendment compliance surveys organized by the State of Louisiana from 1996 to 2000 found the state reduced its violation rate from 73% in 1996, to 7% by 1999.<sup>94</sup> The reduction in illegal sales to minors following the tobacco licensing and enforcement system brought Louisiana from the fourth-highest violation rate among states to the second lowest.<sup>94</sup>

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### **Youth Possession is Criminalized in 1997**

Until 1997, Louisiana prohibited minors from purchasing, but not possessing, tobacco products.<sup>156</sup> In 1997, Representative Heulette "Clo" Fontenot (D-Livingston) introduced HB 76 to forbid minors from possessing tobacco outside of workplace requirements.<sup>144</sup> Violations were

punishable by an initial fine of no more than \$50 followed by a \$100 fine for second violations, \$250 fine for third violations, and \$400 fine for any additional offenses. We did not find evidence that Fontenot directly collaborated with the tobacco industry before or during 1997. However, in December 1997 RJ Reynolds approved a \$200 contribution to Fontenot.<sup>157</sup> HB 76 was directed to the House Criminal Justice Committee for initial deliberation.

The Louisiana Association of Chiefs of Police (LACP) and the Louisiana Retailers Association, a regular industry ally (Chapter 2), supported the bill.<sup>158</sup> We did not find evidence that the LACP previously collaborated with the tobacco industry on any statewide policy efforts or HB 76. However, in 1993 LACP member Jim Herford sat on Louisiana's Coalition Against Regressive Taxation (CART) Advisory Committee,<sup>159</sup> a nationwide group composed of business and political associations the tobacco industry helped build to oppose federal excise taxes.<sup>160</sup>

The House Criminal Justice Committee considered HB 76 on April 10, 1997. To ensure HB 76 passed through the committee, Representative Fontenot proposed amending HB 76 to limit fines for first and additional violations to no more than \$50 each, and to allow minors to possess tobacco when at home or with a parent.<sup>161</sup> Fontenot also amended HB 76 to remove language permitting arrests after committee members Arthur Morrel (D-New Orleans) and Robert Marionneaux (D-Livonia) complained arrest was excessive. Fontenot also amended HB 76 to provide police authority to summon offenders for court hearings.<sup>161</sup> The Committee approved Fontenot's amendments and voted 5-2 to send HB 76 to the House Floor.<sup>161</sup>

HB 76 progressed through the remainder of the legislature with strong support and minimal changes. On April 16, 1997, representatives voted 97-3 to send HB 76 to the Senate without further amendment.<sup>144, 162</sup> The Senate Judiciary C Committee considered HB 76 on June 9, 1997 and amended the bill to clarify that minors could handle tobacco as part of their workplace duties,<sup>156</sup> then reported HB 76 to the Senate Floor. HB 76 passed without amendment on June 16, 1997 and returned to the House for final approval.<sup>144</sup>

Representatives weighed Senate changes to HB 76 on June 20, 1997. During deliberation Representative John Travis (D-Jackson), an industry ally, asked colleagues to adopt the bill to prevent youth from becoming addicted to tobacco products.<sup>163</sup> Representative Louis Jenkins (R-Baton Rouge) also spoke in favor of HB 76 according to *The Advocate*, asserting the bill was necessary "because it [tobacco use] is a serious problem among our young people."<sup>164</sup> Representative Shirley Bowler (R-River Ridge) unsuccessfully proposed eliminating fines from HB 76 on the grounds that it was wrong to punish people for possession of a legal product.<sup>163</sup> The House then voted 90 to 13 to approve HB 76 and send it to Governor Mike Foster.<sup>156</sup>

Governor Mike Foster signed HB 76 into law as Act 1010 on July 11, 1997.<sup>144</sup> After HB 76 was adopted, youth access laws remained unchanged until 2009, when legislation passed to restrict self-service displays.

We did not find evidence that the tobacco industry or health proponents publicly or privately worked to influence HB 76's outcome.

## Louisiana Considers a Tobacco 21 Bill

On March 17, 2008, Representative Walker Hines prefiled HB 240 to increase the minimum age for purchasing or possessing tobacco products from 18 to 21.<sup>165</sup> The bill required minimum age signage to be displayed in at least 30-point font at points of sale and in 22-point font on vending machines. HB 240 did not establish penalties for any violations. Hines introduced the amendment to limit youth and young adult exposure to smoking in social situations. He told the media that most people who did not initiate tobacco use by 21 did not become tobacco users. The legislature avoided considering HB 240, allowing it to die upon adjournment without consideration. We did not find evidence that tobacco control advocates advocated or pressured for the legislation.

## Behind the Counter Restrictions Adopted in 2009

Self-service displays of tobacco products in stores increase youth accessibility to those items, partially by creating opportunities for youth to steal said products.<sup>166, 167</sup> Stores featuring self-service displays are also more likely to sell tobacco products to minors.<sup>166, 168</sup> Requiring placement of tobacco products behind the counter at retailers reduces illegal sales to minors.<sup>168</sup>

Self-service displays of tobacco products in stores increase youth accessibility to tobacco products, including by creating opportunities for youth to steal the products.

In 2009, Representative Roy Burrell (D-Shreveport) prefiled HB 368 on April 14 to restrict the use of self-service displays for cigarettes in Louisiana.<sup>169</sup> HB 368 required cigarettes to be kept behind the counter or in locked display cases requiring employee assistance to access at tobacco retailers.<sup>169</sup> HB 368 defined tobacco retailers as stores where 50% or more of all sales were comprised of tobacco products in the 12 months before (not counting fuel sales). HB 368 exempted tobacconists from self-service display restrictions. To qualify as a tobacconist, at least 50% of total sales had to consist of tobacco products other than cigarettes. Tobacco retailers and tobacconists were not legally required to prohibit minors from their stores. HB 368 proved popular among lawmakers but divided members of the tobacco industry.

The House Committee on Judiciary gave HB 368 its first hearing on May 13, 2009.<sup>169</sup> The Committee amended the bill to expand self-service display restrictions in the bill to cover all “smoking tobacco and tobacco” Then sent HB 368 to the House Floor.<sup>169</sup>

During floor debate on May 20, Representatives Burrell and Neil C. Abramson (D-New Orleans) introduced amendments specifying the tobacco products included in self-service display restrictions. Representative Burrell’s amendment clarified that HB 368 restricted self-service displays of smokeless tobacco in addition to smoking tobacco and tobacco products in general. Burrell ultimately withdrew the amendment. Representative Abramson’s amendment simplified HB 368’s language to restrict self-service displays of any tobacco product. The House approved Abramson’s amendment and then sent HB 368 to the Senate in a 93 to 6 vote.<sup>169</sup>



The Senate Health and Welfare Committee heard HB 368 on June 1, 2009. Tobacco control advocates did not attend the hearing to testify on behalf of HB 368. Tobacco company representatives, usually united on tobacco policy issues, attended the hearing and provided comments for and against the bill.<sup>170</sup> Altria lobbyist Randy Haynie spoke in support of HB 368 according to coverage from *The Advocate*, arguing the bill was “simply good public policy.” He asserted that major retailers and 22 states had adopted comparable policies or laws.<sup>170</sup> Representatives from smokeless tobacco company Swedish Match and RJ Reynolds testified against the bill. Swedish Match lobbyist Larry Murray claimed the bill did not prevent youth tobacco use because most minors received products from adult buyers and insinuated that HB 368 unfairly favored larger tobacco companies by driving stores with limited space to prioritize stocking and displaying major brands over lesser ones.<sup>170</sup> RJ Reynolds lobbyist CJ Blache used the absence of tobacco control advocates at the hearing to argue against HB 368:

If this is such a big issue...where are the anti-tobacco, anti-smoking groups on this bill today? There are just industry people talking about this issue. I think that speaks volumes.<sup>170</sup>

Despite opposition from Swedish Match and RJ Reynolds, the Senate Health and Welfare Committee reported HB 368 to the Senate Floor.<sup>170</sup>

Senators debated HB 368 on June 10, 2009. Four amendments were unsuccessfully proposed, three of which were offered by convenience store owner and Senator Nick Gautreaux (D-Meaux) (Table 7.8).<sup>171</sup> Gautreaux sought to prevent tobacco retailers and tobacconists from having self-service displays and to prevent major tobacco companies from purchasing desirable shelf space for product placement on the grounds that the bill unfairly favored larger tobacco companies.<sup>171</sup> Senate President Joel Chaisson II (D-Destrehan), who was handling HB 368 in the chamber,<sup>171</sup> dismissed Senator Gautreaux’s complaints, stating “I don’t really care who benefits, who loses, as long as we restrict access.”<sup>171</sup> After rejecting the amendments, the Senate passed the bill in a unanimous 35-0 vote<sup>171</sup> and sent it to Bobby Jindal (R), who was elected Governor in 2007.

Table 7.8: Amendments Proposed to SB 368 on the Senate Floor <sup>169</sup>		
Sponsor	Description	Outcome
Gautreaux	Defined retail tobacco businesses and tobacconists as businesses that prohibit minors.	Rejected
Gautreaux	Redefined retail tobacco businesses and tobacconists to be stores that had 90% of total sales consist of tobacco products. Also defined retail tobacco businesses and tobacconists as stores that prohibited minors.	Rejected
Gautreaux	Prohibits selling or acquiring display and shelf space for favorable tobacco product placement.	Rejected
Mount	Eliminates vending machine exemption from self-service display restrictions.	Withdrawn

Governor Jindal signed HB 368 into law as Act 162 on June 26, 2009.<sup>169</sup> Effective August 15, 2009,<sup>169</sup> self-service displays for tobacco products became illegal except for vending machines in stores where minors under 18 were prohibited. Locked floor displays with tobacco products were not considered self-service displays. Act 162 exempted tobacco retail stores and newly defined tobacconists, which were not required to prohibit minors from their premises,

from vending machine restrictions. Those businesses were also able to have self-service displays other than vending machines.

### **Internet Sales of Tobacco Products Outlawed in 2013**

On March 29, 2013, Representative Jeff Thompson (R-Bossier)<sup>17</sup> introduced HB 641 to improve Master Settlement Agreement (MSA, Chapter 9) enforcement, change Louisiana's handling of tobacco manufacturers that did not participate in the MSA, alter tobacco tax stamp regulations in the state, and relevant to this chapter, restrict internet, telephone and mail order sales and purchases of tobacco products (referred to by HB 641 as "delivery sales").<sup>172</sup> HB 641 prohibited businesses from "delivery sales" of tobacco products to "consumers" for personal use in Louisiana regardless of whether an entity was located within or outside the state. Wholesalers and cigarette retailers were not considered "consumers" and cigarette transactions between them did not count as "delivery sales." First violations resulted in a \$1,000 fine or a fine 5 times the price of cigarettes sold, whichever was greater. Second and additional violations faced a \$5,000 fine, or if greater, a fine 5 times greater than the cigarettes sold. Purposeful offenses of "delivery sales" restrictions resulted in a \$10,000 fine or a penalty 5 times that of the cigarettes sold. HB 641 assigned enforcement to the Louisiana Office of Alcohol and Tobacco Control Commissioner and their designees. Individuals that placed a "delivery sale" were required to pay all taxes associated with the order and any expenses or fees incurred by the state in collecting the taxes.

Although HB 641 was amended by state lawmakers before its adoption on June 11, 2013, provisions governing the "delivery sales" prohibition remained in the bill and were unchanged. Entering effect on August 1, 2013, the legislation ended all "delivery sales" to "consumers" and set penalties for violations. We did not find evidence that tobacco or health interests vied over the "delivery sales" restrictions in HB 641.

### **Electronic Cigarettes and Other "Alternative Nicotine Products" Added to Louisiana Youth Access Laws**

#### ***Electronic Cigarettes and their Support Base***

Entering the United States market in 2007,<sup>173</sup> electronic cigarettes (e-cigarettes) have become increasingly popular and widespread over time, especially with youth.<sup>174</sup> E-cigarettes deliver nicotine to users by heating a liquid solution into an aerosol, unlike traditional cigarettes which deliver nicotine through smoke produced by combusting tobacco. E-cigarette proponents assert they are a harm reduction tool and a cessation aid, but increasing evidence shows that for most smokers they depress quitting.<sup>175</sup> Since 2014, youth were using e-cigarettes at higher rates than cigarettes, including some who likely would not have

E-cigarette proponents assert they are a harm reduction tool and a cessation aid, but increasing evidence shows that for most smokers they depress quitting. In addition, since 2014 youth were using e-cigarettes at higher rates than cigarettes ....

started nicotine use via cigarettes.<sup>175</sup> Youth that initiate with e-cigarettes are subsequently likelier to use cigarettes.<sup>175-179</sup>

As e-cigarettes increased their market share, state legislators and local health departments began pursuing sales and youth access restriction legislation on them.<sup>173</sup> The growing use of e-cigarette devices was accompanied by the rise of e-cigarette advocacy and business organizations that opposed sales and use restrictions beginning in 2008. E-cigarette manufacturers and tobacco manufacturers with e-cigarette products joined anti-regulatory efforts in 2009 and 2010. Tobacco company involvement increased the political power behind e-cigarettes, including by having longstanding third parties and front groups that worked with the cigarette companies enter the e-cigarette debate.

### ***Louisiana Weighs Legislation to Restrict E-Cigarette and other Alternative Tobacco Products***

In 2014, Representative Frank Hoffmann (R-West Monroe) introduced HB 1264 (a substitute for HB 208) and Senator Rick Gallot (D-Ruston) introduced SB Bill 12 to incorporate e-cigarettes and other tobacco products into existing sampling, sales, and youth access restrictions on traditional tobacco products. Both bills received support from state lawmakers, and of the two SB 12 was ultimately the one adopted. Health and faith groups submitted comments of support for SB 12 to the state legislature as lawmakers considered the bill.<sup>180, 181</sup>

Senator Gallot filed SB 12 on January 22, 2014 after Chris Nevils, an 8<sup>th</sup> Judicial District Attorney from Winn Parish,<sup>182</sup> notified him that existing youth access laws for traditional tobacco products did not cover new products like e-cigarettes.<sup>183</sup> SB 12 prohibited the sale and sampling of “alternative nicotine products” to youth under the age of 18. The bill also incorporated alternative nicotine products under existing vending machine restrictions for tobacco products. SB 12 defined alternative nicotine products as that which “consists of or contains nicotine that can be ingested into the body by chewing, absorbing, dissolving, or inhaling, or by any other means.”<sup>77</sup>

E-cigarettes, referred to as “vapor products” in SB 12, were initially considered a type of alternative nicotine product in the bill. By 2014, four states used the term “alternative nicotine product(s)” to define e-cigarettes and make them distinct from already regulated tobacco products.<sup>184</sup> Separately classifying e-cigarettes from tobacco product definitions is characteristic of industry-supported legislation and generally requires additional legislation placing existing tobacco control restrictions on those devices, since specific electronic cigarette definitions leave them uncovered by existing smokefree laws addressing only tobacco products.<sup>184</sup> However, we did not find evidence the industry tried to help pass SB 12.

SB 12 primarily worked to include alternative nicotine products, including their subset vapor products, under Louisiana laws for tobacco product sales restrictions.<sup>77</sup> As introduced, the bill incorporated alternative nicotine products into the state’s existing penalty scheme for tobacco product sales, levying a \$50 fine on individuals caught illegally selling alternative nicotine products to minors, followed by \$100 for second violations, \$200 for third violations, and \$400 for subsequent offenses.<sup>77, 185</sup> Minors found possessing but not purchasing tobacco or alternative nicotine products outside of legally approved situations faced \$50 penalties.<sup>77, 185, 186</sup> If at home or with their legal guardians or spouse, SB 12 permitted minors to legally consume tobacco, alternative nicotine or vapor products.<sup>77, 184</sup> SB 12 also incorporated alternative nicotine products

into existing sampling, vending machine and self-service display restrictions for tobacco products.<sup>77</sup> The bill preempted standing or future local laws for tobacco products, alternative nicotine products, and vapor products.<sup>77, 184</sup>

### ***SB 12 in the Legislature***

The Senate Judiciary C Committee considered SB 12 at a hearing on March 18, 2014.<sup>77</sup> SB 12 was not opposed at the hearing, and received support from its sponsor Senator Gallot as well as health and tobacco control advocates.<sup>180, 181</sup> Speaking before the committee, Senator Gallot asserted the need to expand restrictions over alternative nicotine products:

This is an increasing problem with our children who have been able to get a hold of these products.... We're trying to make sure that the law catches up with the technology out there.<sup>180</sup>

Louisiana Campaign for Tobacco-Free Living (TFL) Associate Director Tonia Moore testified that a lack of regulations was contributing to the growing use of e-cigarettes by minors.<sup>181</sup> In addition, the Louisiana State Medical Society, the Louisiana Baptist Convention, Oschner Health, the Louisiana Academy of Physicians, and the Louisiana Society for Respiratory Care submitted cards to the committee announcing their support for SB 12.<sup>181</sup>

The Senate Judiciary C Committee considered multiple amendments to SB 12 at the hearing. Committee members jointly proposed and adopted an amendment to include the term “vaporizer” under the definition of alternative nicotine products. Committee members also amended SB 12 to allow minors to use vaporizers to ingest medicine.<sup>181</sup> The Senate Judiciary C Committee then passed SB 12 to the Senate Floor in a unanimous vote.<sup>180</sup>

Senators brought SB 12 to the Floor on March 24, 2014. While Senators considered the bill, Gallot offered multiple amendments, mainly to define any electronic nicotine delivery system (ENDS) as a “vapor product” instead of e-cigarettes and vaporizers, and to define “vapor product” to include “any non-combustible product containing nicotine or other substances that employs a heating element, power source, electronic circuit, or other electronic, chemical or

Gallot told *The Advocate* the definitions more accurately described products in SB 12. He also revealed the amendment was made using input from the tobacco industry and the Office of Alcohol Tobacco Control.

mechanical means, regardless of shape or size that can be used to produce vapor from nicotine in a solution or other form.”<sup>77</sup> The amendment removed vapor products and e-cigarettes from the definition of alternative nicotine products in SB 12, making them into the distinct “vapor product” category. The change would expand the definition of vapor products to ensure the incorporation of practically all ENDS into Louisiana’s existing sales restrictions for tobacco products. Gallot told *The Advocate* the definitions more accurately described products in SB 12.<sup>187</sup> He also revealed the amendment was made using input from the tobacco industry and the Office of Alcohol and Tobacco

Control.<sup>187</sup> Gallot’s amendment also fixed vending machine signage established by the passage of SB 87 in 1991 that incorrectly stated the minimum age of purchase for tobacco products was

17, correcting the number to 18.<sup>77</sup> Senators approved his amendments and then voted 37 to 0 to send SB 12 to the House.<sup>187</sup>

SB 12 progressed through the rest of the legislative process without resistance. The House Committee on Judiciary and the House Floor passed SB 12 without amendments in unanimous votes. The bill returned to the Senate for approval of minor technical changes made by the House Legislative Bureau (which are technical alterations and did not affect the bill's intent). Senators voted 35-0 to adopt SB 12, delivering the bill to Governor Bobby Jindal for signature.<sup>188</sup> Governor Jindal signed SB 12 into law as Act No. 278 on May 28, 2014. Entering effect immediately, Act 278 incorporated e-cigarettes, vaporizers, and other nicotine products into existing youth access restrictions for traditional tobacco products, prohibiting their sale and sampling to minors, as well as their possession by them (except when accompanied by parents or at home).<sup>77, 189</sup> SB 12 included alternative nicotine products and vapor products into penalties set for tobacco product sales violations, levying escalating fines of \$50 for first offenses, \$100 for second offenses, \$200 for third offences, and \$400 for subsequent offenses on employees caught illegally selling tobacco to minors. The bill established the same penalties for minors caught purchasing tobacco, alternative nicotine, and vapor products illegally. Certificate or permit holders whose establishment purposefully or unknowingly (by failing to check legal identification) violated sales restrictions faced an initial \$50-500 penalty, a \$250-1,000 fine for second offenses within 2 years, and a \$500-\$2,500 penalty for additional violations within 2 years of last infraction. SB 12 did not eliminate the loophole created by SB 1547 in 1997, which protected retailers that sold products to a minor who provided them real-seeming or authentic legal identification misrepresenting their age, from penalties.<sup>146, 190</sup> The bill also left the youth access loophole established by HB 19 in 1991 intact, which prevented retailers from being penalized unless they purposefully provided products to minors.<sup>44, 82, 83</sup> Minors caught possessing tobacco, alternative nicotine or vapor products faced a \$50 fine per infraction.<sup>189</sup> Owners could also have their certificates and licenses suspended or taken for infractions. However, the bill permitted the use of tobacco and alternative nicotine products by minors when at home or while with their legal guardian,<sup>77, 184</sup> and preempted current and future local youth access restrictions on those products.<sup>77</sup> Lastly, SB 12 corrected minimum age signage on tobacco, alternative nicotine and vapor product vending machines to state the legal age of purchase was 18 and not 17.<sup>77</sup>

In 2018, Louisiana Lawmakers passed HB 239 by Representative Vincent J. Pierre to expand the definition of vapor products established by SB 12.<sup>191, 192</sup> The bill established that items not containing nicotine that are or are used in ENDS are also considered vapor products and fall into related youth access restrictions.<sup>191, 192</sup> HB 239 passed with nearly no resistance and only minor revisions that did not weaken its intent.<sup>192</sup>

## **Tobacco 21 Legislation in 2019**

### ***Building Momentum in 2017 and 2018***

Discussion of increasing Louisiana's minimum age to use tobacco, alternative nicotine and vapor products began in 2017. During a radio interview in late June that year, Representative Frank Hoffmann (R-West Monroe) expressed interest in raising the minimum age to smoke from 18 to 21.<sup>193</sup> Hoffmann claimed he planned to task the Louisiana Department of Health (DOH)

with conducting a study on “what’s going on around the country, what are the benefits, and what we can do about it [increasing the smoking age to 21].”<sup>193</sup> He also stated that information on raising the minimum smoking age’s impacts on tobacco use, healthcare, and costs to society already existed. Hoffmann in that his planned DOH study intended to see the results increasing the smoking age had throughout the United States. Hoffmann said two states (California and Hawaii) and at minimum 225 localities with home rule charters had increased the legal smoking age from 18 to 21. Hoffmann claimed he and unidentified others were investigating separately from the proposed DOH study whether Louisiana municipalities with home rule charters could pass similar legislation.

During the 2018 legislative session, Representative Hoffmann introduced HR 107 to formally ask the state department of health to evaluate raising the minimum age of purchase for tobacco products from 18 to 21.<sup>194</sup> The resolution easily passed the legislature,<sup>194</sup> leading to a report by the Louisiana Department of Health’s Tobacco Cessation and Prevention Program on the subject in April 2019 that is discussed later in this chapter.<sup>195</sup>

In September 2018, Orleans Parish Medical Society President George S. Ellis, Jr, Smoking Cessation Trust CEO Mike Rodgers, and Jefferson Parish Medical Society President John H. Wales called on lawmakers to raise the minimum age to purchase tobacco products in Louisiana from 18 to 21.<sup>196, 197</sup> We did not find evidence that they offered a proposal, suggested potential enforcement or penalty provisions, or called for additional youth access restrictions besides raising the minimum purchasing age. Rodgers, Ellis Jr. and Wales released a letter that month stating their intention to “support and endorse legislation in Louisiana” hiking the legal age.<sup>196, 198</sup> The letter referenced a Louisiana Department of Health finding that smoking caused 7,200 deaths annually in Louisiana, and stated 95% of adults began smoking before turning 18.<sup>198</sup> In addition, the letter highlighted Louisiana’s F grade for tobacco control given by the American Lung Association’s 2018 State of Tobacco Control report.<sup>198</sup> The authors called on other health organizations to support efforts to increase the legal purchasing age for tobacco products to 21. Despite the letter’s request for help, most health groups avoided supporting minimum age legislation introduced in 2019 because they considered the legislation weak or favorable to the industry.

### ***Tobacco 21 Legislation Introduced in 2019***

On February 28, 2019, Representative Frank Hoffmann (R-Monroe) introduced HB 38 to raise the minimum age of purchase and possession in Louisiana for tobacco, alternative nicotine and vapor products from 18 to 21 years of age.<sup>199</sup> The bill also prohibited giving tobacco, alternative nicotine and vapor product samples to people under 21. HB 38 left existing penalties for providing tobacco, alternative nicotine or vapor products to underage persons unchanged and the loophole requiring that retailers knowingly provide products to a minor to face punishment in place. HB 38 updated minimum age signage to reflect the higher minimum age.<sup>199</sup> Hoffmann stated the bill would reduce smoking initiation and lower state healthcare expenses.<sup>200</sup> He also claimed the bill intended to pressure the tobacco industry.

Most tobacco control advocates and health organizations did not support HB 38 because of its poor enforcement provisions.<sup>201, 202</sup> American Heart Association statements indicated it opposed the legislation.<sup>201 203</sup> The Louisiana Campaign for Tobacco-Free Living (TFL) publicly refused to endorse the bill, claiming the legislation held people under age 21 more accountable

than the businesses selling them tobacco, alternative nicotine and vapor products.<sup>200</sup> Representative Hoffmann responded to TFL's position by claiming that related legislation was strengthened and bolstered with provisions desired by the health community. He called attention to a separate bill intended to increase penalties for sales restriction violations. TFL remained unsupportive. In an April 25, 2019 article covering HB 38's consideration by the House Health and Welfare Committee, American Heart Association Government Relations Director<sup>204</sup> Ashley Hebert asserted "As it's [HB 38] written, it's largely a tobacco industry-favoring bill."<sup>201</sup> Indeed, the tobacco industry backed HB 38.<sup>205</sup> However, tobacco control nonprofit Tobacco21 and Louisiana's Smoking Cessation Trust (Chapter 4) supported HB 38 as a means to prevent nicotine addiction, and had representatives testify in support of the legislation.<sup>205, 206</sup>

Non-health advocate opponents focused on the government's definition of legal adulthood, the responsibilities that legal adulthood provided, and harm reduction claims to attack HB 38. State lawmakers argued that legal adults should be able to smoke.<sup>203-205, 207</sup> Vape store owners claimed the bill's adoption would force them to fire employees younger than 21.<sup>205</sup> The retailers also argued that age 18 was considered a legal adult in the US.<sup>207</sup> In addition, vape retailers argued that raising the minimum age of purchase would cause people that were 18-20 to procure tobacco and alternative nicotine products through others.<sup>207</sup> At least one vape retailer claimed that e-cigarettes helped him quit smoking during the first hearing for HB 38.<sup>205</sup>

### ***The Department of Health Releases Report on Raising the Minimum Age in April 2019***

In April 2019, before the Legislature considered HB 38, the Louisiana Department of Health released its report on raising the minimum age of purchase for tobacco products as mandated by Representative Hoffmann's HR 107 enacted during the 2018 Regular Session.<sup>195</sup> The report stated that Louisiana high school and middle school students used tobacco products at higher rates than the national average, and that an e-cigarette epidemic increased by 80% across the country between 2017 and 2018.<sup>195</sup> The authors found research from the Institute of Medicine showing that increasing the minimum age to 21 "would result in a 12% decrease in tobacco use, approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019."<sup>195</sup> The report also found that two-thirds of the state's tobacco coalition, referred to by the agency as the Louisiana Tobacco Coalition, backed pursuing a future law to raise the minimum age law to 21 but was ambivalent towards pursuing legislation in 2019. In addition, the report stated that local laws raising the minimum age to 21 could help determine if a state law was worthwhile, but that removing state preemption over tobacco product and alternative nicotine product sales restrictions would have to occur to enable local legislation.

### ***HB 38 Fails in the House***

HB 38 passed through its first committee hearing but was ultimately defeated on the House Floor. During HB 38's initial hearing on April 24, 2019, the House Health and Welfare Committee approved the bill 10-2<sup>206</sup> after adopting amendments exempting 18-20 year old military service members and veterans, as well as first responders, from the proposed minimum age restriction of 21 years.<sup>199, 204</sup> However, the House proved more opposed to curbing the rights of legal adults and voted 55-24 against passing HB 38.<sup>203</sup> Most health advocates and

organizations remained uninvolved on the legislation, with AHA Government Relations Director Ashley Hebert asserting in a radio interview on the day of the bill's defeat:

Passing something is not always better than passing nothing. We would rather have a comprehensive policy to start with. This is a tobacco industry bill.<sup>203</sup>

“Passing something is not always better than passing nothing. We would rather have a comprehensive policy to start with. This is a tobacco industry bill.”

## **Youth Access Restrictions and Enforcement as of 2019**

### ***Minimum Age Restrictions***

The minimum age to purchase or possess all tobacco, alternative nicotine, and ENDS products is 18 in Louisiana as of 2019.<sup>190</sup> Minors may possess these tobacco products as part of their work functions, if they are in a private residence, or in the presence of a spouse or legal guardian. The sale and sampling of tobacco, alternative nicotine and vapor products to minors by businesses and their employees is illegal if the provider knowingly sold to someone underage or unknowingly sold to a minor by failing to check their legal identification. Retailers and their employees did not face penalties if they sold to a minor that provided authentic or real-seeming identification misrepresenting their age, or if they did not “knowingly” sell to a minor. Inclusion of the term “knowingly” in the law makes enforcement of the law more difficult.

In 2019, tobacco, alternative nicotine and vapor product vending machines remained legal in Louisiana.<sup>190</sup> They had to be in direct sight of an employee, and were limited to establishments inaccessible to minors.<sup>190</sup> Besides vending machines, tobacco, alternative nicotine and vapor products are to be kept behind counter or in a locked display case requiring employee assistance to access.<sup>190</sup> Tobacco retailers and tobacconists are exempt from requirements that vending machines and self-service displays be placed in areas inaccessible to minors, and are allowed to have non-vending machine self-service displays.<sup>190</sup>

All internet sales of tobacco products have been prohibited in Louisiana since 2013.<sup>190</sup> Initial fines resulted in \$1,000, or if greater, 5 times the price of cigarettes sold. Second violations faced \$5,000, or if greater, 5 times the price of cigarettes sold. Purposeful infractions faced a \$10,000 fine or 5 times the price of cigarettes sold if more than the standard fine, and a prison sentence no greater than 5 years.

Local governments in Louisiana are prohibited from passing youth access laws stronger than those set by the state.<sup>190</sup>

Minors caught purchasing or possessing tobacco, alternative nicotine or vapor products faced penalties.<sup>190</sup> First fines incurred \$50, followed by \$100, \$250, and \$400 for second, third, and additional infractions. Each possession violation resulted in a \$50 fine. Penalties for employees and retailers are higher (Table 7.9).



Table 7.9: Current Tobacco License Classes, Fees, and Penalties in Louisiana as of 2019 <sup>190</sup>				
Type	Renewal	License Fee	Penalties for License Holder	Penalties for Offending Employee
Retail Dealer Permit	Annual	\$25	-Suspension	-Fines (in order of offence)
Tobacconist		\$100	-Loss of license	1. \$50 or lower
Vending Machine		\$5	-Fines (in order of offence)	2. \$100 or lower
Vending Machine Operator		\$75	1. \$50-\$500	3. \$250 or lower
Wholesaler		\$75	2. \$250-\$1000	4. 400 or lower
			3. \$500-\$2,500	
*Penalties assessed unless employee was not encouraged to violate law in any way and participates in an ATC Commissioner approved training program (2014).				

### ***Free Samples***

Provision of tobacco, alternative nicotine, or vapor product samples to minors is prohibited in Louisiana as of 2019.<sup>190</sup> Violations incur a fine of \$100-\$500 in addition to penalties provided for tobacco license or permit holders.<sup>190</sup> Offending tobacco license holders (wholesalers, retailers, etc.) faced an initial \$50-\$500 fine, followed by \$250-\$1000 for second violations and \$500-\$2,500 for subsequent infractions.<sup>190</sup> Louisiana preempts local sampling laws stronger than the state.<sup>190</sup>

### ***Licensing and Enforcement***

Since the adoption of SB 1547 in 1997 (detailed earlier in this chapter), the Office of Alcohol and Tobacco Control (ATC) has monitored, regulated, and licensed tobacco and alcohol manufacturers, retailers, and wholesalers. The ATC also collects taxes on the sales of stamped cigarettes and on monthly reports of the sales of cigars and other tobacco products. The Secretary of Revenue sells tobacco stamps to wholesale tobacco dealers who in turn must attach stamps to the tobacco products prior to their leaving the wholesaler's premises.<sup>208, 209</sup> Since adoption of SB 12 in 2014 to place sales restrictions on ENDS, the ATC has regulated them similarly to tobacco products.

The ATC is part of the Department of Revenue, which is organized into seven different management groups. The ATC has two divisions: enforcement and certification. Enforcement agents inspect retailers for violations using compliance checks with minors.<sup>210</sup> The certification division is in charge of licensing wholesale dealers of tobacco products and notifying license holders of renewal dates. It also collects permit and administrative fees (Table 7.9).<sup>209</sup> As of 2018, the ATC awarded five types of annual licenses and fees (Table 7.9). In Fiscal Year 2018 the Office conducted 938 compliance checks at eligible retailers and found a 9.1% violation rate,<sup>210</sup> a drastic reduction from the 73% offense rate found in Louisiana's first Synar compliance survey in 1996,<sup>136</sup> when enforcement was basically nonexistent.<sup>130</sup>

### ***Conclusion***

Youth access bills were among the first tobacco control legislation considered in Louisiana. The state adopted a minimum age bill in the late 19<sup>th</sup> or early 20<sup>th</sup> century, only to repeal it in 1942. Louisiana subsequently lagged behind nearly all states in adopting youth access provisions. After repealing its minimum age law, the state first adopted a youth access bill in

1988 to prohibit sampling to minors (HB 1966), despite youth being able to legally purchase or possess tobacco products and retailers the right to sell said items to them. Louisiana remained one of five states at the end of 1990 lacking restrictions on tobacco product sales to minors.

Although Louisiana lagged in setting youth access restrictions, the tobacco industry's desire to improve its image and preempt stricter sales restrictions, combined with federal efforts to reduce youth tobacco use, caused state lawmakers to steadily implement laws that effectively prevented minors' access to tobacco. In 1991 state lawmakers adopted HB 19 to set 18 as the legal age of sale for tobacco products with assistance from the Tobacco Institute, which used the law to promote its youth prevention campaign, "It's the Law." Subsequent passage of ADAMHA and the Synar amendment in 1992, federal legislation that required states reduce tobacco sales to minors under 18, prompted lawmakers in Louisiana to pass legislation curbing illegal sales to youth. Louisiana adopted HB 1921 in 1994 to provide enforcement of youth sales restrictions to the Office of Alcohol and Beverage Control and establish penalties on vendors for violations. The bill also instituted preemption over existing and future local youth access restrictions.

A political fight between the beer industry and State Police Commissioner in 1995, whose agency oversaw the ABC, caused the transfer of the Office to the Department of Revenue and Taxation and made enforcement of youth access restrictions nonexistent. Legislation mandating the ABC's department change failed to assign the agency the power to conduct compliance checks without the participation of local law enforcement. As a result, Louisiana had a 73% retailer violation rate of minimum age restrictions by 1997, one of the highest among states. To reduce illegal sales and stay in compliance with the Synar amendment, state lawmakers passed SB 1547 to establish a licensing and enforcement scheme for tobacco products in 1997. Despite industry-preferred provisions that weakened penalties for retailers, the bill established a regulatory system that improved Louisiana retailers' compliance rates with youth sales restrictions to one of best nationally by 1999. In 2014 Louisiana lawmakers passed SB 12 to incorporate ENDS into youth access restrictions. The bill received support from Louisiana's health and faith community despite containing language and provisions favorable to the tobacco industry. The bill included industry-preferred language distinguishing ENDS from tobacco products and instituted preemption of stronger local ordinances over all tobacco, alternative nicotine, and vapor products.

In the 1997 and 2014 efforts to pass youth access laws, health advocates supported industry-friendly legislation to achieve some protections for minors. The decision by health advocates to compromise and support industry-favorable legislation secured more protections for Louisiana youth but allowed for weaker enforcement and preemption over local laws further restricting youth access. Health advocates avoided the same mistake in 2019, choosing not to support weak legislation to raise Louisiana's minimum purchasing age from 18 to 21 that ultimately failed.

## Chapter 8: Tort Reform 1986-1999

- The Louisiana Supreme Court's 1986 ruling in *Halphen v. Johns-Manville Sales Corp.* determined companies were liable for inherently dangerous products, stimulating tort reform efforts by the state business community and increased tobacco industry involvement in legislative activities.
- The tobacco industry secured legislation in 1988 removing liability for harm caused by inherently dangerous products.
- The tobacco industry further developed the Citizens Against Lawsuit Abuse Coalition formed by the Louisiana Association of Business and Industry to advance the tobacco industry's tort reform objectives.
- The tobacco industry unsuccessfully pursued legislation throughout the 1990s to expand the 1988 law limiting liability for inherently dangerous products and invalidate pending lawsuits.
- Tort reform efforts remained an active issue as of 2019.

### Introduction

Beginning in the 1950s, people sued tobacco companies to recover damages from the harm caused to their health by tobacco products.<sup>2</sup> For decades, the tobacco industry defeated all product liability lawsuits filed against it. However, in 1983 the tobacco companies suffered their first loss in court in the New Jersey case *Cipollone v. Liggett*.<sup>3</sup> Though reversed on appeal, the plaintiff used the discovery process to release previously secret industry documents exposing the tobacco companies' knowledge of the harm caused by their products.<sup>3</sup> The *Cipollone* case, while still in trial, spurred systematic efforts by the cigarette companies to protect themselves from future liability by changing tort laws. In 1985, the Tobacco Institute (TI) started monitoring legislation affecting liability laws in multiple states. Brown and Williamson, Philip Morris, and RJ Reynolds feared that documents released as a result of the *Cipollone* case might expose them to more lawsuits.<sup>3</sup> TI and law firm Covington & Burling subsequently formed the Tort Reform Project in 1986, a nationwide effort to secure legislation limiting their liability.<sup>4</sup> The Tort Reform Project also sought to reduce public access to the courts, lower the amount of damages plaintiffs could receive in lawsuits and oppose increasing the industry's liability or exposure to damage awards. Tobacco companies themselves would also later participate in the Tort Reform Project.

The tobacco industry focused on "tort reform" to insulate itself from liability.<sup>5</sup> Product liability laws are a subset of tort law.<sup>6</sup> Product liability laws intend to hold entities responsible for harm caused by their products and to provide consumers a means to safeguard themselves from hazardous products.<sup>6</sup> Generally, harm caused by design flaws, items produced with defects, or items lacking proper warnings or instructions are causes of liability under product liability laws.<sup>6</sup> Product liability claims can be made by asserting the defendant breached a product's warranty, was negligent, or simply created a provably defective product that caused injury (i.e. strict liability, Table 8.1).<sup>6</sup> "Tort reform" is

The tobacco industry sought to change tort laws, generally pertaining to product liability, to make it difficult if not impossible to prevail in a lawsuit against it.

an industry term for efforts to limit tort litigation risks and damages obtainable by plaintiffs.<sup>5</sup> The tobacco industry sought to change tort laws, generally pertaining to product liability, to make it difficult if not impossible to prevail in a lawsuit against it.

The tobacco industry became heavily involved with tort reform efforts in Louisiana because of a 1986 State Supreme Court ruling there in *Halphen v. Johns-Manville Sales Corp.*,<sup>484 So.2d 110 (1986)</sup>, an asbestos exposure lawsuit. The decision made a manufacturer of an “unreasonably dangerous” product liable for injuries caused by that product, even if the manufacturer did not know of the danger it posed.<sup>7</sup> (This chapter only discusses pro or anti-tort reform bills in a session if the tobacco industry specifically followed or was involved with the legislation.) As early as 1987, the tobacco industry pursued tort reform legislation at the state level to reduce its liability and fought bills to increase its liability. Working with major corporations, the Louisiana Association of Business and Industry, and state-based companies, the tobacco industry secured legislation limiting liability for “inherently dangerous” products in 1988.

Tort reform efforts expanded in 1992 as the tobacco industry helped build a Citizens Against Lawsuit Abuse coalition in Louisiana to advance tort reform legislation and defeat efforts to repeal the 1988 product liability law. Tobacco companies fought to increase product liability protections and shield itself from damages in the state as the industry faced coordinated Medicaid recovery lawsuits by state attorneys general, which were assisted by the exposure of the industry’s lies to the public about the dangers of its products (Chapter 9).

Table 8.1: Tort Reform Terms and Definitions <sup>22</sup>	
Comparative Fault / Comparative Negligence	Plaintiff’s negligence correspondingly reduces damages obtainable from defendant.
Contributory Negligence	Harm incurred by plaintiff is partially self-caused and to a high-enough amount to prevent them from obtaining damages. Principle used in a small amount of areas.
Joint Liability	Multiple parties share liability.
Joint and Several Liability	Liability dividable between two or more parties or amongst some of a group’s members. Involved parties are each accountable for the total obligation, but can seek financial compensation or protection from parties that did not pay towards the obligation.
Product Liability	Liability held by retailers and manufacturers for harm caused by a defective product.
Protective Order	A court order limiting or forbidding a party to a case from acting in a matter “that unduly annoys or burdens the opposing party or a third-party witness”
Punitive Damages	“Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit”; damages penalizing a tortfeasor to prevent future tortious actions by the defendant or others.
Several Liability	“Liability that is separate and distinct from another’s liability, so that the plaintiff may bring a separate action against one defendant without joining the other liable parties.”
Strict Liability	A defendant is liable for harm regardless of behavior, motive, or previous efforts to ensure safety or prevent injury. Defendant is held responsible based on notion they failed their “absolute duty to make something safe.”
Tort	“A civil wrong” or a violation of lawful duty that may be addressed via damages. Excludes contract breaches.
Tortfeasor	An entity that engages in a tort or is responsible for one.

### *American Law Institute's Second Restatement of Torts and Comment i*

The American Law Institute's (ALI) Restatement (Second) of Torts (1965) is a definitive summary of common law principles and existing case law related to torts (civil wrongs that result in legal liability for harm or damages).<sup>8</sup> While ALI restatements are not law they are very influential for judges and often form the basis for state legislation. Section 402A of the 1965 Second Restatement of Torts discusses manufacturers' liability for injury caused by unreasonably dangerous products they create.<sup>9</sup> Comment i in the Restatement defines "unreasonably dangerous" products as those that are "dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics."<sup>10</sup> However, the Restatement also notes that many products cannot be made completely harmless. Comment i provides examples of liability for alcohol and tobacco:

Good whiskey is not unreasonably dangerous merely because it will make some people drunk, and is especially dangerous to alcoholics; but bad whiskey, containing a dangerous amount of fusel oil [a byproduct of alcohol fermentation comprised of various liquids and alcohol types that is found in alcoholic beverages at low amounts<sup>11</sup>], is unreasonably dangerous. Good tobacco is not unreasonably dangerous merely because the effects of smoking may be harmful; but tobacco containing something like marijuana may be unreasonably dangerous.<sup>10</sup>

Because Comment i limited product liability to products sold that were more dangerous than would be contemplated by ordinary consumers, it effectively absolved tobacco manufacturers of liability for harm ....

The examples discussed in Comment i suggest that before a seller can be found liable for selling an unreasonably dangerous product, that product must be adulterated by uncharacteristic or unexpected components. Based on this theory, standard tobacco products would not subject a seller to liability for any harms they caused, but tobacco products that contained irregularly high nicotine levels or additional hazardous substances could.<sup>12</sup> Since Comment i limited product liability to products sold that were more dangerous than

would be contemplated by ordinary consumers, it effectively absolved tobacco manufacturers of liability for harm caused by their products because "ordinary consumers" with "ordinary knowledge" knew that tobacco was harmful.

The tobacco industry had worked hard to obtain changes protecting it from liability in the Second Restatement, in particular Section 402A.<sup>13</sup> After TI's Committee on Legal Affairs found that an early version of Section 402A made the tobacco industry more likely to be liable for harm caused by its products, it established a subcommittee in fall 1961 to develop and insert industry-favorable language in the Second Restatement.<sup>13</sup> The final version of Comment i was issued on March 1, 1962 after the subcommittee met with ALI reporter William Prosser sometime during December 7 and December 14, 1961.<sup>13</sup> The meeting with Prosser intentionally avoided the ALI's

official channels for requesting changes during the restatement drafting process.<sup>13</sup> After the meeting, Comment i specifically referred to “good tobacco” as an unreasonably dangerous product with commonly known risks that did not carry liability for inflicting injury if produced in a standard manner and used as expected.<sup>13</sup> The tobacco industry explicitly discussed pursuing legislation to codify Comment i in Louisiana between 1993 and 1998, and they often sought even broader protections under bills they introduced to do so, including exemptions from liability for unintentional defects.

### **The *Castano Suit* and Tobacco Industry Tort Reform Efforts**

In March 1994, four plaintiffs (Diane Castano, whose husband died from cancer caused by smoking,<sup>14</sup> and three current smokers<sup>15</sup>) filed a class action federal lawsuit against the major tobacco companies in the New Orleans-based Eastern District Court of Louisiana.<sup>16</sup> The case, *Castano v. American Tobacco Co.*, sought damages for plaintiffs’ inability to quit smoking because of their nicotine addiction, and alleged their dependency resulted from the industry purposefully increasing nicotine in its tobacco products to create and sustain addiction (*Castano v. American Tobacco Co.*, 870 F. Supp. 1425 (E.D. La. 1994)). Other companies named in the suit besides American Tobacco Co. were its owner Brown and Williamson,<sup>15</sup> TI, Philip Morris, RJ Reynolds, Lorillard, and Liggett and Myers.<sup>15, 16</sup> The suit argued the tobacco companies were strictly liable for harm caused by their products, accusing them of violating consumer protection laws and their warranty with customers, and asserted the companies knowingly deceived their customers.<sup>16</sup> Anyone in the United States addicted to nicotine or who had lost someone dependent on the substance was included in the class.

Plaintiffs’ lawyers in *Castano*, comprised of 58 law firms across the nation led by Louisiana attorneys Wendell Gauthier and Peter Butler as well as Alabama attorney Francis Hare, sought to have the case classified as a class action lawsuit in late 1994.<sup>14</sup> A class action classification potentially exposed the tobacco industry to a well-funded, coordinated network of opponents it had not faced before in a private liability lawsuit. Tobacco industry lawyers argued that the lawsuit was not qualified for class action status<sup>14</sup> but failed to convince Eastern District Judge Benjamin Jones, who approved the class action certification request in part on February 17, 1995 (*Castano v. American Tobacco Co.*, 160 F.R.D. 544 (E.D. La. 1995)).<sup>17</sup> The tobacco industry appealed the decision to the US 5<sup>th</sup> Circuit Court of Appeals which unanimously rejected the class certification on May 23, 1996, finding it too unmanageable for the federal court system (*Castano v. American Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996)).<sup>15</sup>

While parties to the *Castano* case argued over its federal class action certification from 1994-1996,<sup>18</sup> tobacco industry representatives pursued bills to curb and end class action lawsuits in Louisiana (discussed in detail in this chapter) and other states. After the federal class action request was rejected, lawyers and firms working on behalf of plaintiffs in *Castano* submitted state-level copycat class action lawsuits referred to as “sons of *Castano*.”<sup>19</sup>

### **State Medicaid Litigation in Louisiana**

In June 1994, Mississippi Attorney General Michael Moore filed the first state lawsuit that year seeking to recover Medicaid expenses incurred treating tobacco-related illnesses from the tobacco companies.<sup>20, 21</sup> The legal actions, which Louisiana joined in March 1996 to help secure an initial settlement from Liggett and Myers (Chapter 9), resulted in the November 1998

Master Settlement Agreement between the tobacco companies and 46 states and multiple US territories.<sup>2</sup> The deal resulted in the tobacco companies paying hundreds of billions dollars to participating states, funding for tobacco control, the dismantling of TI and other lobbying arms of the major tobacco companies, and restricted tobacco industry marketing practices.<sup>2</sup> As Medicaid recovery litigation brought by state attorneys general increased, the tobacco industry sought state legislation to prevent, weaken or neutralize such cases, including in Louisiana from 1996-1998, as discussed later in this chapter.

### **A State Supreme Court Decision Foments Concerted Tort Reform Efforts in Louisiana**

In February 1986, the Louisiana Supreme Court issued a ruling in *Halphen v. Johns-Manville Sales Corporation*, a strict product liability lawsuit regarding asbestos (*Halphen v. Johns-Manville Sales Corp.*, 484 So.2d 110 (1986)),<sup>23</sup> in a manner that could drastically increase the tobacco industry's potential liability for harm caused by its products. The court ordered the Johns-Manville Sales Corporation to pay damages to a widow whose husband died from asbestos exposure, finding the corporation

"As undoubtedly as you are aware, the Louisiana Supreme Court recently handed down a strict products liability decision ... which is simply disastrous for manufacturers and strict products liability defendants in general."

liable irrespective of its knowledge of the harmful effects of asbestos exposure. According to the *Baton Rouge Advocate*, Justices reasoned that companies should be liable for goods that were "unreasonably dangerous per se," to motivate them to eliminate dangers from their products before making them publicly available.<sup>23</sup> The decision made businesses operating in Louisiana liable for products that were by their design and nature unsafe to use, such as cigarettes.

The Louisiana Supreme Court's ruling spurred state industry groups to pursue tort reform legislation to nullify the decision. An April 16, 1986, letter from Harry McCall Jr. of the Louisiana law firm Chaffe, McCall, Phillips, Toler and Sarpy to RJ Reynolds Vice President and General Counsel George Newton, reported that the ruling frightened Louisiana's business community:

As undoubtedly as you are aware, the Louisiana Supreme Court recently handed down a strict products liability decision...which is simply disastrous for manufacturers and strict products liability defendants in general. The case is indicative of the direction in which the Louisiana Supreme Court has been moving for some time, and understandably has generated considerable alarm among our state's defense bar and business community.<sup>24</sup>

The firm later helped the tobacco industry oppose a local tobacco tax in New Orleans during the early 1990s (Chapter 6).

The Louisiana Association of Business and Industry (LABI) collaborated with Louisiana Citizens for Legal Common Sense, a committee of businesses including TI and defense lawyers, to overturn the *Halphen* ruling.<sup>24</sup> (We did not find evidence the tobacco industry created the organization.) The group later included municipal governments and universities.<sup>25</sup> In 1986 LABI asked Chaffe, McCall, Phillips, Toler and Sarpy if their clients, which included RJ Reynolds,

would provide money or lobbying assistance to help its coalition pass tort reform legislation.<sup>24</sup> According to the letter, McCall contacted RJR Vice President Newton about assisting the tort reform coalition because the Halphen ruling put the tobacco industry at a legal disadvantage in Louisiana:

It occurred to me that Reynolds might be interested in contributing in some way, particularly in the effort to reverse Halphen, because this decision alone is going to cause great difficulty in defending tobacco litigation here in Louisiana.<sup>24</sup>

We could not find evidence that RJR acted on LABI's request for assistance during the 1986 legislative session. However, RJR monitored tort reform efforts and considered assisting LABI and its allies to secure favorable legislation.

### **The Tobacco Industry Observes Louisiana Business Community Tort Efforts**

RJR had a tort reform program in 1986 focused on Louisiana, California, Florida, New Jersey, and Ohio.<sup>26</sup> In May 1986, an RJ Reynolds lobbyist identified a tort reform bill from the Louisiana Law Institute (LLI) that RJR could attempt expanding to include language eliminating the unreasonably dangerous per se claim established by the *Halphen* case.<sup>27</sup> LLI was formed at Louisiana State University in 1938 to provide legal research to the State of Louisiana, serve as a law reform agency, and act as an advisory commission on law revision.<sup>28</sup> We do not know if RJR influenced LLI's proposed legislation.

TI, tobacco companies, and Covington and Burling monitored Louisiana tort reform efforts during 1986 as part of a joint surveillance program led by the industry's Ad hoc Committee on Tort Reform, an offshoot of TI's Committee of Counsel created in either 1985 or 1986 to monitor and guide tobacco industry tort efforts.<sup>29</sup> According to TI Senior Vice President Roger Mozingo at a TI Executive Committee Meeting on June 5, 1986:

Tort Reform, one of the sexiest issues to come along in some time, is not lost on our troops. Our staff, legislative counsel and Covington and Burling have been working closely to monitor and report on significant tort reform measures in the states.

In conjunction with the Ad Hoc Committee on Tort Reform, we are focusing our efforts in twelve priority states....<sup>30</sup>

Besides Louisiana, some of the 12 states the Ad Hoc Committee initially monitored were Florida, Hawaii, Illinois, Massachusetts, Michigan, New York, Ohio and Pennsylvania.<sup>31</sup> Mozingo and staff circulated memos requesting information on tort and liability reform legislation as well as tort coalition activity.<sup>32, 33</sup> TI staff and lobbyists identified legislation for Covington and Burling to review, which the law firm ranked on relevance and importance to the tobacco industry.<sup>30</sup> The Ad Hoc Committee then decided on whether TI and tobacco companies should take any action on specific legislation.

The Louisiana State Legislature considered 18 tort and liability bills during the 1986 legislative session.<sup>34</sup> At the time, the insurance industry asserted nationally it was taking harmful profit losses.<sup>35</sup> LABI and other Louisiana advocates of tort and liability reform argued that changes, in particular reductions to damages awarded in cases, were needed because of liability



insurance's increasing costs, growing lack of availability, and decreasing coverage.<sup>35</sup> LABI worked with the Coalition on Professional Liability, which consisted of eight unknown groups, to advance tort and liability legislation in Louisiana.<sup>35</sup> TI lobbyist Joe Wood Guidry collected tort reform legislation for TI, but did not engage in or follow policy efforts by LABI and its allies.<sup>36</sup>

LABI and its allies failed to secure meaningful tort or liability reform during the 1986 legislative session, with most bills supported by the business association and its coalition dying in the House Civil Law Committee or on the House Floor.<sup>34</sup> RJ Reynolds considered legislative efforts on tort reform dead by mid-June that session.<sup>37</sup> Joint Committee Advisor William G. Campbell,<sup>38</sup> considered a key contact on tort reform in Florida by Covington and Burling,<sup>39</sup> cited several factors for LABI's failed campaign in a June 16, 1986 memo to General Counsel Samuel B. Witt about state-level industry efforts on tort, liability and insurance reform legislation:

- Short time frame available
- Too complex package (couldn't simplify into a right or wrong issue)
- Never got insurer profiteering issue under control
- Never got to merits<sup>37</sup>

LABI-led tort reform efforts had also encountered opposition from the Louisiana AFL-CIO and the Louisiana Trial Lawyers Association (LTLA), both of whom TI considered well-financed.<sup>34</sup>

Tobacco company representatives and officials considered joining LABI efforts to secure tort legislation during the 1987 legislative session. In his June 16 memo to RJR General Counsel Witt, Campbell stated "[I] Hear business group (LABI) is serious about going for it again next year (1987) with analogy being drawn to right to work or comp. reform which took 2-3 years and required some serious changes such as defeat of some targeted opponents."<sup>37</sup> Campbell suggested that RJ Reynolds send him and RJR State Public Affairs Manager Larry Bewley to Louisiana in July 1986 to evaluate conditions if the company was considering helping state tort reform efforts.<sup>37</sup>

TI also considered joining future tort efforts in Louisiana during the 1987 session. TI Vice President Ron Morris reasoned in a June 27, 1986 memo to TI Senior Vice President Roger Mozingo:

We could become a part of this effort. However, with the attitude towards cancer and the high incidence thereof in Louisiana we should maintain a low profile. Any direct efforts to change this law could be construed as 'tobacco industry favors.'<sup>36</sup>

Morris recommended that TI reach out to LABI or the Public Affairs Research Council, an independent Louisiana policy

"We could become a part of this effort. However, with the attitude towards cancer and the high incidence thereof in Louisiana we should maintain a low profile. Any direct efforts to change this law could be construed as 'tobacco industry favors.'"

think tank,<sup>40</sup> regarding tobacco industry participation in efforts.<sup>36</sup> Meanwhile, the Ad Hoc Committee on Tort Reform continued discussing Louisiana tort reform efforts at a meeting held in September 1986.<sup>41</sup> TI stated in a November 5, 1986 document regarding state tort and liability efforts that an interim committee would develop tort reform legislation for 1987 in November 1986.<sup>34</sup>

In fall 1986, tobacco industry representatives conducted meetings in Louisiana to ascertain how to influence state tort efforts.<sup>42</sup> In a September 3, 1986 memo describing industry meetings, TI Regional Vice President Ron Morris reasoned that TI could guide LABI's tort reform plans towards tobacco industry priorities:

The Louisiana Association of Business and Industry will pursue tort reform next year. As members of LABI, we should have an opportunity to input for suggested tort reform through this organization.<sup>42</sup>

Besides TI, RJR State Public Affairs Manager Larry Bewley attended meetings on Louisiana tort reform in mid<sup>43</sup> and late September.<sup>44</sup> In late October, two RJR representatives, Larry Bewley and a person referred to as Murray, likely RJR State Government Relations Regional Director Joe Murray,<sup>45</sup> joined a planning session for tort reform efforts in Louisiana.<sup>46</sup>

At a meeting in November 1986, TI Southern Sector Senior VP M. Hurst Marshall tasked TI lobbyist Joe Wood Guidry with providing copies of introduced tort and liability legislation.<sup>47</sup> Marshall instructed Guidry to follow legislation selected by TI for observation, but told her not to act on tort reform unless requested to do so.<sup>47</sup>

By early January, Covington and Burling charged its attorney John Seymour with overseeing industry tort reform efforts in Louisiana.<sup>48</sup>

### **The Tobacco Industry Monitors and Provides Legislative Assistance for State Tort Reform Efforts in 1987**

Louisiana became one of few states in 1987 where TI actively engaged in tort reform efforts.<sup>29</sup> TI allocated \$535,091 to support LABI and tort reform efforts in Louisiana from April 1, 1986 to December 31, 1987<sup>49</sup> (Table 8.2). Firm principal Randy Haynie later became a key lobbyist for Philip Morris in 1989, while firm principals CJ Blache and Johnny Koch became important lobbyists for RJ Reynolds by 1988 and 1989 respectively (Chapter 2).<sup>49</sup>

TI and RJ Reynolds helped LABI develop its four-bill legislative tort reform package for 1987. A February 13, 1987 memo to Covington and Burling's tort reform team reported that, "Product liability legislative language and a supporting memorandum ha[d] been drafted as part of the efforts of the Louisiana Association of Business and Industry."<sup>50</sup> (We do not know what the legislation affected, or what the supporting memorandum asserted.) In addition, RJ Reynolds helped LABI craft an unspecified tort reform bill in Louisiana it was pursuing in other states.<sup>51</sup> After receiving assistance from the tobacco industry, LABI's Louisiana Liability Task Force produced four tort bills for the 1987 legislative session seeking to make it more difficult to establish strict, joint, several and products liability, prejudgment interest, and comparative fault.<sup>52</sup>

Table 8.2: TI Expenditures from April 1, 1986 to December 31, 1987 <sup>49</sup>

Organization	Known Reasons	Expenditures (April 1, 1986 – July 31, 1987)	Expenditures (August 1, 1987-December 31, 1987)	Total
Adams and Reese		\$90,446	\$20,616	\$111,062
Chaffe, McCall, Phillips, Toler and Sarpy		\$110,248	\$102,949*+	\$213,917
Blache, Haynie and Koch	Legislative Consulting	\$97,580	\$52,112	\$149,692
Faucheaux-Farwell Associates, Inc*	Media Consulting	\$116,066	Unknown*	\$116,066
Tarrance, Hill, Newport and Ryan	Polling	\$10,300		\$10,300
Louisiana Association of Business and Industry	Contribution	\$7,500		\$7,500
Total				\$608,537
*Payments to Faucheaux-Farwell Associates, Inc from August 1, 1987-December 31, 1987 are included in figure for payment to Chaffe, McCall, Phillips, Toler & Sarpy. Document author combined figures from the two firms. +\$22,949.77 from amount spent during July 1987.				

### Tort Reform Bills During the 1987 Legislative Session

Lawmakers introduced 13 tort reform bills and one resolution during Louisiana's 1987 legislative session<sup>53</sup> (Table 8.3); eight died without consideration.<sup>53</sup> Of the bills, only HB 841 was considered.<sup>53</sup>

TI and RJ Reynolds let LABI lead public advocacy efforts for tort reform during the 1987 legislative session. LABI publicly argued that Louisiana's tort laws increased liability for companies, resulting in unaffordable insurance rates for businesses and fewer jobs.<sup>57</sup> LABI also claimed increased liability discouraged companies from locating in Louisiana. The association argued that tort reform would lower business liability and reduce prohibitive insurance costs for Louisiana companies.

LABI promoted its legislative package by attacking trial lawyers as the culprit for increased liability insurance costs that initially spurred the need for tort reform. LABI sponsored a poll of its manufacturing industry members and shared the results by late April that found 85% of respondents blamed lawyers and unwarranted lawsuits for insurance cost increases.<sup>57</sup>

The Louisiana Trial Lawyers Association (LTLA), whose members represented plaintiffs in liability cases, opposed LABI's legislative agenda.<sup>58</sup> The LTLA asserted that LABI's tort reform package would harm consumers while increasing LABI's insurance company members' profits. An LTLA representative argued that expensive liability insurance prices arose not from Louisiana law nor were they unique to the state, but instead resulted from insurance companies increasing premiums after interest rates decreased following a six-year period of high interest rates and low premiums. LTLA pursued a package during the 1987 legislative session to increase restrictions on insurance companies.<sup>58</sup>

One tort reform bill, HB 841 by Representative Ron Gomez (D-Lafayette), passed in 1987 despite aggressive opposition.<sup>59</sup> As introduced to the legislature on April 29, 1987, the bill prevented plaintiffs from recovering damages if they were found to be over 50% at fault and

Table 8.3: Tort Reform Bills Introduced during the 1987 Legislative Session <sup>53-56</sup>											
Bill	Sponsor	Contributory Negligence	Comparative Fault	Joint and Several Liability	Requires Plaintiffs to Prove Certain Defendants Were Aware of Hazard or Should Have Known, and Could Have Eliminated Danger	Made Manufacturers Liable for Harm Caused by Unreasonably Hazardous Facet of Product	Expand Statute of Limitations for Tort Cases	Limits or Eliminates Liability for Defendants	Places Burden of Proof that Product is Overly Hazardous on Plaintiff	Other	Outcome
HB 506	John Hainkel (D-Orleans)	+	+								Died upon adjournment without consideration
HB 841*	Ron Gomez (D-Lafayette)	+	+	+							Adopted
HB 843	NJ D'amico (D-Jefferson)	+	+		+						Defeated in House
HB 844	Unknown	+	+			+			+		Tabled on Senate Floor
HB 932	Jimmy Dimos (D-Ouachita)						+				Died with adjournment on House Floor
HB 1552	Hunt Downer (D-Lafourche)		+							+	Died upon adjournment without consideration
HB 1603	Edward Deano (D-St. Tammany)							+			Died upon adjournment without consideration
HB 1644	Charles Melancon (D-West Baton Rouge)		+								Died upon adjournment without consideration
HB 1646	Charles Melancon (D-West Baton Rouge)									+	Died upon adjournment without consideration
HB 1647	Charles Melancon (D-West Baton Rouge)							+			Died upon adjournment without consideration
SB 350	Allen Bares (D-Lafayette, Ron Gomez (D-Lafayette)	+	+		+						Died on Senate floor / Unfavorably Reported from Committee
SB 351	Allen Bares (D-Lafayette, Ron Gomez (D-Lafayette)					+			+		Died upon adjournment without consideration
SB 353	Allen Bares (D-Lafayette, Ron Gomez (D-Lafayette)	+	+							+	Died upon adjournment without consideration
SCR 175	--									+	Adopted

\*Known LABI Louisiana Liability Task Force Bill.

lowered damages a defendant must pay if the plaintiff was partially responsible.<sup>53</sup> HB 841 also removed joint and several liability from Louisiana law, which allows liability to be apportioned between defendants and makes them individually responsible for the entire amount of damages.<sup>53</sup> HB 841 reduced the amount of damages the tobacco industry faced in product liability lawsuits and prevented its inclusion in lawsuits relying on joint and several liability as well as its' subsequent responsibility for total damages in such cases.

HB 841 passed after limited amendments by state lawmakers. Representatives amended the bill on the House Floor to “apply joint and several liability for no more than half of a claimant’s damages,”<sup>53</sup> or in other words, make defendants in such lawsuits individually responsible for only half of the damages awarded in a case instead of the entire amount. In addition, the House removed provisions limiting or eliminating damages to plaintiffs based on their degree of fault.<sup>53</sup> HB 841 passed the legislature on June 23, 2017 without additional changes despite being unfavorably reported by the Senate Judiciary Committee and failing to pass its initial vote on the Senate Floor.<sup>53</sup> Governor Edwin Edwards (D) threatened to veto HB 841 but signed it on July 2, 1987.<sup>52, 53</sup> As passed, the bill provided minimum protection to the tobacco industry by making it liable for only 50% of total damages in cases where joint and several liability was applied.<sup>53</sup> LABI and its coalition anticipated that the Louisiana Trial Lawyers Association would attempt to dismantle HB 841 the following year.<sup>54</sup>

Besides HB 841, Louisiana lawmakers adopted Senate Committee Resolution 175, which was introduced by Senator Donald Kelly (D-Natchitoches)<sup>56</sup> on June 22, 1987.<sup>60</sup> SCR 175 asked the governor to establish a committee to analyze “the liability crisis” and produce a report by July 1, 1989. TI directed lobbyists to monitor SCR 175 as it traveled through the legislature.<sup>61</sup> Louisiana lawmakers approved the resolution on July 3, 1987.<sup>60</sup> Louisiana was one of four states to establish committees to study tort reform in 1987.<sup>53</sup> Tort reform would remain an active political and legislative issue in coming sessions.

### **Louisiana Lobbyists and the Tobacco Industry Advance Tort Reform Using Campaign Contributions**

The Louisiana business community and tobacco industry made campaign contributions for fall 1987 statewide elections through two state political action committees (PAC), the BHK PAC and the Adams and Reese PAC, to bolster tort reform efforts.<sup>62</sup> The BHK PAC provided state government officials and lawmakers \$89,558 during 1987 while Adams and Reese donated \$110,308 that year.<sup>62</sup> Leadership for both PACs emphasized to Baton Rouge newspaper *The Advocate* that their primary focus in making contributions was tort reform. The principles of the BHK PAC – Randy Haynie, CJ Blache, and Johnny Koch – were LABI Louisiana Liability Task Force members<sup>62</sup> and subsequently became lobbyists for Philip Morris and RJ Reynolds (Chapter 2). Philip Morris stated BHK was RJ Reynold’s firm in an early January 1987 document.<sup>63</sup> BHK and the Adams and Reese PACs received multiple donations from the tobacco industry or affiliated companies during the 1987 election season (Table 8.4). We do not know what

Leadership for both PACs emphasized to Baton Rouge newspaper *The Advocate* that their primary focus in making contributions was tort reform.

Table 8.4: Known Tobacco Industry Contributions to PACS for the 1987 Election <sup>62</sup>			
	BHK PAC	Adams and Reese	Total
Philip Morris	--	\$50,000	\$50,000
RJ Reynolds	--	\$7,000	\$7,000
RJR / Nabisco	\$125,000	--	\$125,000
RJR / Nabisco of Atlanta	--	\$7,000	\$7,000
Brown and Williamson	\$17,500	\$17,500	\$35,000
Miller Brewing (owned by PM <sup>64</sup> )	\$20,000	--	\$20,000
Total	\$162,500	\$81,500	\$244,000

percent of total contributions to each PAC consisted of tobacco industry donations.

## **Tobacco Industry Increases Involvement in Louisiana Tort Reform Efforts in 1988**

### ***The Tobacco Institute Weighs Tort Reform Prospects in 1988***

Louisiana remained one of nine states in which TI had the Ad Hoc Committee on Tort Reform or its affiliates gathering intelligence on tort reform efforts by the end of 1987.<sup>65</sup>

In early November 1987, TI Regional Vice President Ron Morris met TI lobbyist Joe Wood Guidry and RJR legal counsel Sam Witt in New Orleans to discuss plans for tort reform during the 1988 legislative session.<sup>66</sup> At the meeting, Guidry told Morris she was involved with incoming governor Buddy Roemer's (D) administration, providing the industry more influence. Running for office while he was serving as a United States congressman,<sup>67</sup> Roemer won election in a 1987 state primary after Governor Edwin Edwards (D) decided not to participate in a runoff election.<sup>68</sup> According to TI Regional VP Ron Morris, Roemer's election put tobacco industry allies into politically influential jobs:

Spoke with Joe Guidry, she has been working closely with the governor's transition team. It appears many of our friends will be placed in important positions when the new leadership takes over in the house and senate.<sup>69</sup>

Roemer took office on March 14, 1988,<sup>67</sup> before that year's legislative session started.

In November and December 1987, TI lobbyist Joe Wood Guidry gaged lawmakers' amenability to altering product liability laws and case law codification.<sup>70</sup> Guidry found "the governor's people" were interested in codifying tort reform and might submit legislation.<sup>70</sup>

To reinforce Joe Wood Guidry's efforts on tort reform, TI's Morris wrote Brown and Williamson Senior Vice President and General Counsel Ernest Pepples on December 4, 1987 to suggest actions the industry could take to bolster her lobbying effectiveness. He asked Pepples to educate Guidry about Comment i and case law.<sup>70</sup> According to Morris:

Joe has expressed a desire for further interpretation for our proposed codification. In addition, she would appreciate a better understanding of Comment i. While she is a good lobbyist and has worked to draft legislation, she does not have a good understanding of case law. You might want to chat with [RJ Reynolds Government Relations employee] Sam Witt about this issue and set up a private meeting with Joe for the purpose of further education and instruction on the issue.<sup>70</sup>

In his letter, Morris also suggested that the tobacco industry's tort reform group provide Joe Wood Guidry more money for her Green House program, a daily lunch service she hosted for state lawmakers.<sup>70</sup> As Morris told Pepples:

I believe it might be a wise investment, in order to enhance the tort reform effort, for the tort reform group to participate in the support of the Green House. If they could place \$3-5000 in that area, and perhaps see their way clear to help Joe [Wood Guidry] with some additional pre-approved expenses, it would definitely be beneficial to the cause of tort reform.<sup>70</sup>

TI had already donated to Guidry's Green House program prior to Morris asking Pepples' to contribute.<sup>70</sup> We do not know if Brown and Williams provided the program additional funds.

By February 1988, the tobacco industry considered tort reform in Louisiana a major objective for that year. In a "Southern Region Top 10 List" published on February 2, 1988, TI identified Louisiana as "the highest priority tort reform state due to very negative current law and possible favorable 1988 action."<sup>71</sup> TI believed it had a 50% chance of achieving industry tort objectives<sup>52, 71, 72</sup> in Louisiana that year because it had developed stronger relationships with lawmakers and hired powerful legislative consultants in 1987.<sup>71</sup> In addition, incoming governor Roemer's economic development agenda included tort reform.<sup>71</sup>

Tobacco industry officials continued debating the state of tort reform and the potential for legislative action in the winter and spring of 1988.<sup>73</sup> RJR Regional Director Joe Murray attended a meeting to discuss tort reform in New Orleans on February 12, 1988.<sup>73</sup>

In early February 1988, while the tobacco industry evaluated tort reform prospects and planned for the 1988 session, LABI announced it would host conferences throughout Louisiana dedicated to tort reform, campaign finance, worker's and unemployment compensation, and economic reform in March.<sup>74</sup> In a statement to the *Baton Rouge Advocate*, LABI president Ed Steimel claimed "that's a tall order to fill, but these are the issues on business' agenda that we will discuss with the business community and lawmakers at conferences across the state."<sup>74</sup> LABI organized tort reform conferences in Lafayette, Hammond, and Baton Rouge in conjunction with the chambers of commerce in each city.<sup>74</sup>

### ***LABI Hosts a Conference on California Proposition 65, Inadvertently Tarnishing the Tobacco Industry***

Besides hosting tort reform conferences, LABI organized a conference with the Louisiana State University Institute on Environmental Studies<sup>75</sup> on the implications of California's Proposition 65 for Louisiana. A ballot initiative adopted by California voters in 1986, Proposition 65 forced businesses to disclose to the public their exposure to chemicals that caused cancer, were harmful to reproductive health or led to birth defects.<sup>76</sup> The proposition also prohibited substances subject to its provisions from being dumped into drinking water sources. By late March 1987, the environmental nonprofit Sierra Club claimed that Louisiana and Arkansas, Colorado, Missouri, New York, and Wisconsin expressed interest in adopting Proposition 65-like legislation.<sup>77</sup> LABI organized the conference to deter adoption of similar legislation in Louisiana.<sup>78</sup> LABI, the Chemical Manufacturers Association, and Louisiana

Chemical Producers provided funds for the event.<sup>79</sup> TI officials monitored the development and execution of LABI's Proposition 65 conference.<sup>80, 81</sup>

LABI and LSU held their Proposition 65 conference on April 11, 1988.<sup>82</sup> Around 150 people attended the event, including some House and Senate Natural Resource Committee members. Experts at the conference asserted that higher cancer rates in Louisiana resulted partly from lifestyle decisions such as smoking.<sup>82</sup> Cornell University toxicologist Chris Wilkinson presented on Louisiana cancer statistics and LSU pathology professor Dr. Pelayo Correa presented on cancer causes. Both presentations reported that higher cancer rates in Louisiana resulted from smoking and other personal behaviors.<sup>83</sup> TI Issues Analyst Margaret Rita described the event for a TI conference to discuss regulation of dangerous and toxic materials on September 27, 1988:

"... It turned out to be a tobacco industry-bashing seminar ... with the "experts" concluding...if you want to do something about the levels of cancer in the state ... do something about smoking."

The seminar was held by the major business organizations in the state [Louisiana] for legislators and other public officials to show the downsides of Proposition 65 in order to discourage its introduction in the 1988 legislative session...It turned out to be a tobacco industry-bashing seminar...with the "experts" concluding...if you want to do something about the levels of cancer in the state...do something about smoking.<sup>78</sup>

After attending the meeting, House Natural Resources Committee Chairman Bruce Bolin (D-Minden<sup>84</sup>) filed HB 1068 to provide the State of Louisiana a "cause of action" to sue tobacco companies for costs incurred treating patients that developed lung cancer from smoking.<sup>82</sup> The bill would allow the state to sue tobacco companies to recover its costs from treating tobacco-related illnesses.

### ***Tort Reform Proponents Prepare for the 1988 Legislative Session While the Industry Observes***

The 1988 legislative session in Louisiana started on April 18, before LABI and the tobacco industry finalized their tort reform plans and legislation.<sup>85</sup> Once done, LABI's legislative package included a strict liability bill requiring plaintiffs harmed by a defective product in someone else's possession to demonstrate the defendant owning the product was aware of the flaw and failed to fix the design problem. Another LABI bill eliminated the Louisiana Supreme Court's 1986 ruling finding manufacturers liable for harm caused by inherently dangerous products even if they were unaware of the hazard.

LABI served as the public face for tort reform efforts in the 1988 session. Articles in Louisiana newspapers highlighted the organization's leadership work to change liability laws. News coverage leading to the 1988 legislative session did not report tobacco industry participation, except for exposing in May 1988 that tobacco companies made contributions to the BHK PAC and Adams and Reese PACs, which had made donations to state legislators to influence product liability and tort reform outcomes.<sup>62</sup> LABI expected to overcome opposition to its tort reform legislative agenda from the Louisiana Trial Lawyers Association and other



opponents during the 1988 session because Governor Ed Roemer supported reforms.<sup>85</sup> According to LABI President Ed Steimel in comments published by the Baton Rouge *Advocate* on April 14, 1988:

We're hoping that the whole tort issue can be substantially resolved...I think they [tort reform opponents] recognize that instead of having a governor in their camp that they have a governor who's in the other camp, and that makes a big difference.<sup>85</sup>

Governor Roemer had backed tort reform during his 1987 election campaign,<sup>85</sup> and before assuming office in March 1988, told *The Advocate* that he would reduce business costs in Louisiana partly by pursuing reforms to Louisiana tort and insurance laws.<sup>86</sup> Roemer established an advisory panel to investigate tort reform<sup>85</sup> and produce a report. Responding to a question in mid-April from *The Advocate* asking if Governor Roemer backed LABI tort reform objectives, Roemer's special counsel John Kennedy sidestepped the question and asserted:

The goal is to try to improve our tort system so it is fair to the people of Louisiana in terms of preserving their rights, No. 1, and No. 2, also fair to the citizens of Louisiana who are businessmen as well as those who might like to come into the state to be businessmen.<sup>85</sup>

LABI later supported SB 684, a bill drafted by Roemer's administration to reduce liability for companies and remove liability for selling "unreasonably dangerous per se" products.<sup>87</sup> TI and the tobacco industry helped push the legislation.

### ***The 1988 Legislative Session Starts***

State lawmakers introduced eighteen tort and liability bills for the 1988 session<sup>52, 88</sup> (Table 8.5). In a May 3, 1988 memo to Covington & Burling, TI Issues Analyst Margaret Rita identified three favorable tort reform bills, LABI-backed HB 701 and 702 by House Ways and Means Committee Chairman Ron Gomez, and an unspecified product liability bill submitted for Governor Roemer.<sup>89</sup> Governor Roemer's bill was likely SB 684, introduced by Senator John Hainkel.

HB 701 determined defenses against liability if manufacturers had met government requirements for product standards and warning labels and removed liability for harm caused by an inherent characteristic of a product that a standard person could identify as hazardous or that the public considered "ordinary knowledge."<sup>82, 88</sup> The bill reflected reasoning that liability did not pertain to products that were by nature dangerous or viewed by the public as hazardous, similar to the Second Restatement of Torts (RESTATEMENT (SECOND) OF TORTS (1965). Passage of HB 701 would overturn the 1986 Louisiana Supreme Court Ruling that LABI opposed.

HB 702, also supported by LABI,<sup>82</sup> required plaintiffs to prove defendants knew or should have known about the hazard that caused the injury leading to the plaintiff's claim. To be liable, the bill stipulated that defendants also had to be able to eliminate the hazard that harmed the plaintiff through "the exercise of reasonable care."<sup>88</sup>

Table 8.5: Tort Reform and Product Liability Legislation Introduced in the 1988 Session<sup>52, 88 55, 56, 89</sup>

Bill	Sponsor	Establishes Product Liability Standards	Establishes Joint and Several Liability for "Toxic Torts"*	Reduces or eliminates compensation for plaintiff	Increases Burden of Proof on Defendant	Makes Manufacturer Liable for Harm Caused by Defective Products	Removes Liability for Inherently Dangerous Products	Provides State Cause of Action Against Tobacco Companies for Harm Caused by Their Product	Other	Outcome
HB 701	Ron Gomez (D-Lafayette), NJ D'amico (D-Jefferson)	+								Died with adjournment
HB 702	Ron Gomez (D-Lafayette), NJ D'amico (D-Jefferson)	+								Died with adjournment
HB 1068	Bruce Bolin (D-Webster)							+		Defeated
HB 1535	Bruce Bolin (D-Webster)		+							Died with adjournment
HB 1600	Robert Garrity (R-Jefferson)			+						Died with adjournment
HB 1636	Robert Waddell (D-Caddo)	+				+				Died with adjournment
SB 337	Mike Foster (D-Assumption)			+						Withdrawn
SB 400	Randy Ewing (D-Jackson)	+								Died with adjournment
SB 450	John Hainkel (D-Jefferson)	+								Died with adjournment
SB 681	John Hainkel (D-Jefferson)	+		+					+	Died with adjournment
SB 684	John Hainkel (D-Jefferson)	+			+		+			Adopted
SB 686	John Hainkel (D-Jefferson)	+		+						Died with adjournment
SB 690	John Hainkel (D-Jefferson)								+	Died with adjournment
SB 692	John Hainkel (D-Jefferson)								+	Withdrawn
SB 758	Ben Bagert (D-Orleans)								+	Died with adjournment
SB 803	Donald Kelly (D-Rapides)								+	Died with adjournment
SB 806	Donald Kelly (D-Rapides)	+				+				Died with adjournment
SB 811	Ben Bagert (D-Orleans)		+						+	Died with adjournment
SB 885	Donald Kelly (D-Rapides)	+				+	+			Died with adjournment

\*Toxic torts are defined as harm resulting from exposure to hazardous substances.

HB 701 and HB 702 were referred to the Committee on Civil Law and Procedure for initial consideration.<sup>82</sup>

Governor Roemer's administration filed tort reform bills on May 2, 1988 as part of its legislative package,<sup>82</sup> including Senator John Hainkel's SB 684.<sup>90</sup> The bill limited causes of action against companies for injuries caused by manufacturing, design, and warning defects in a product as well as harm caused by violating a product's express warranty.<sup>52, 91</sup> Of relevance to tobacco, SB 684 mandated that claimants in liability lawsuits over harm caused by a design defect prove that an alternative design existed during manufacturing that would have stopped injury,<sup>91</sup> and "that the benefits of that alternative design outweighed its risks."<sup>52</sup> To win a liability case against tobacco companies if SB 684 passed, plaintiffs would have to demonstrate manufacturers possessed a safer design with overall more positive than negative effects compared to the design used for the product at the time. SB 684 also removed the ability to sue over harm caused by "inherently dangerous products." Lastly, SB 684 established that warnings were unnecessary for dangerous product characteristics if they were "not more dangerous than would be expected" by a normal individual with "ordinary knowledge common to the community." The bill made a product liability claim against the tobacco industry significantly harder than existing tort law in Louisiana, which had been interpreted to hold companies liable for all harm caused by their products regardless of their characteristics or the entity's knowledge of the hazard that caused harm after the State Supreme Court's ruling in the 1986 *Halphen* Case. Tobacco companies would be able to avoid liability in lawsuits claiming their products featured inadequate warnings by asserting that the general public was aware of the dangers of tobacco consumption if SB 684 passed.

LABI's tort reform coalition favored SB 684, which eliminated the Louisiana Supreme Court's 1986 ruling making manufacturers liable for inherently unsafe products.

Language in SB 684 regarding liability for unreasonably dangerous products and liability over warnings for such products reflected tobacco industry suggestions to ALI's Second Restatement of Torts.<sup>13</sup> Design liability language in SB 684 was similar to industry-desired language included in the Third Restatement of Torts that was released in the 1990s.<sup>13</sup> LABI's tort reform coalition favored SB 684,<sup>91</sup> which eliminated the Louisiana Supreme Court's 1986 ruling making manufacturers liable for inherently unsafe products.

In contrast to HB 701, HB 702 and SB 684, Representative Bruce Bolin's (D-Minden) legislation, HB 1068, increased the tobacco industry's exposure to lawsuits. Introduced on May 2, 1988, HB 1068 provided the State of Louisiana a cause of action against tobacco companies permitting it to seek compensation for treating patients that developed lung cancer from using tobacco products.<sup>89</sup> Bolin was inspired to draft HB 1068<sup>92</sup> from presentations he heard at LABI's Proposition 65 conference asserting Louisiana's high cancer rates were partly because of smoking habits and other lifestyle choices.<sup>89, 92</sup> (We do not know if health advocates encouraged or assisted Bolin's introduction of HB 1068.) HB 1068 also prevented tobacco company defendants from using "assumption of risk, victim fault, and comparative or contributory negligence" to defeat the state's claims. The bill was referred to the House Civil Law and Procedure Committee upon introduction.<sup>89</sup>

RJR State Government Relations Regional Director Joe Murray<sup>93</sup> considered these provisions “[t]he Real Concern” of the bill for the tobacco industry in a June 8, 1988 memo<sup>94</sup> to RJR’s Senior Vice President of Government Relations (who was W.E.(Gene) Ainsworth at the time).<sup>95, 96</sup> According to an uncredited analysis of HB 1068 from TI’s records:

HB 1068 allows the State to recover from a tobacco manufacturer all medical costs and expenses of treating a smoker, even where a court has held that the manufacturer was not legally responsible for a smoker’s lung cancer. The bill applies only to medical costs for lung cancer.

This is true even where a Court has found that the smoker was himself totally and exclusively at fault for his injuries or disability.

The bill thus provides a standard of absolute liability against a party who is not negligent and not at fault [emphasis original].<sup>97</sup>

The Louisiana Trial Lawyers Association and the Louisiana Consumers League filed and backed anti-tort reform legislation during the 1988 legislative session while advocating against industry tort reform measures, although we do not know the specific bills.<sup>85</sup> We did not find evidence that tobacco control advocates opposed tort efforts in the 1988 session.

### **Tobacco Industry Efforts During 1988**

The tobacco industry monitored Louisiana for legislative developments on tort reform<sup>89</sup> and tracked tort and liability legislation.<sup>89, 98-103</sup> TI Regional VP Ron Morris<sup>104</sup> and TI representative Joe Wood Guidry<sup>105</sup> lobbied on Louisiana tort reform. TI sent Covington and Burling attorney Dick Kingham to assist Guidry,<sup>106</sup> and an unnamed Philip Morris lobbyist also participated in tort efforts during the 1988 session.<sup>103</sup> TI Legislative Information Director<sup>107</sup> Cathy Yoe sent Morris and Guidry testimony for product liability bills in Rhode Island and Wisconsin to help them ready for a hearing on an unspecified bill in Louisiana.<sup>106</sup>

In June 1988, near the legislative session’s end, TI learned that LABI and its coalition had prevented the reelection of tobacco industry ally Senator Cliff Newman (D-Lake Charles) because the organization considered him “anti-business.”<sup>108</sup> According to a June 3, 1988 memo from TI Regional VP Ron Morris to TI Vice President of Administration Bill Cannell,<sup>109</sup> Newman “had been a supported [sic] of ours throughout his term and had been a floor speaker in our behalf on more than one occasion.”<sup>108</sup> (We did not find records elaborating on the legislative efforts he assisted the industry with.) While TI lobbyist Joe Wood Guidry and the Louisiana Wholesale Tobacco and Candy Distributors Association (LWTCDA) raised \$12,000 in contributions for Newman’s 1987 campaign, LABI and its coalition gave over \$20,000 to his opponent.<sup>108</sup> Morris felt the tobacco industry could have converted Newman to support tort reform if the coalition notified it beforehand<sup>108</sup> and bemoaned the waste of a senior senator with influence as well as the industry’s lost campaign funds.<sup>108</sup> In his memo to Cannell, Morris stated he desired to avoid future disconnects with allies in other states.<sup>108</sup>

## ***Outcome of 1988 Tort Reform Legislation***

State lawmakers passed Senator John Hainkel's SB 684, which overturned the Louisiana Supreme Court's 1986 ruling that companies were liable for harms caused by unreasonably dangerous products.<sup>52</sup> HB 701 and 702 both died without consideration,<sup>88</sup> and HB 1068, which would have made cigarette manufacturers liable for harms caused by their products, died on June 16 in a 68 – 27 vote on the House Floor after surviving the House Civil Law Committee.<sup>88</sup>

Around a week<sup>87, 110</sup> after SB 684 passed, the American Tort Reform Association (ATRA) praised Louisiana's progress on tort reform. ATRA was formed by the American Council of Engineering Companies and the American Medical Association in 1986 to advocate for tort and liability reform.<sup>111</sup> ATRA received millions of dollars directly from Philip Morris and other tobacco companies.<sup>3, 111</sup> The tobacco industry also made indirect contributions to ATRA through allied law firm Covington and Burling.<sup>111</sup> In a June 30, 1988 press release ATRA Executive Director Blair Childs said, "Louisiana is a good example of what is happening in states that continue to build on laws enacted in previous years."<sup>110</sup> In February 1989, the American Tort Reform Association recognized the LABI Louisiana Liability Task Force with an Achievement Award for helping pass SB 684.<sup>112</sup>

TI's State Activities Division considered Louisiana's 1988 legislative session a successful model for tort reform efforts across the United States. The division incorporated presentations and panel discussions by TI Regional VP Ron Morris on how TI staff helped secure SB 684 into law and defeated HB 1068 into a tort reform and product liability law meeting for TI lobbyists held in Tucson, Arizona on September 27, 1988.<sup>104</sup> TI lobbyist Joe Wood Guidry was supposed to participate in the meeting but did not attend because of a Louisiana special session convened at the time to consider tax legislation (Chapter 6).<sup>104</sup>

TI's State Activities Division considered Louisiana's 1988 legislative session a successful model for tort reform efforts across the country ....

In an October 1988 Special Session<sup>113</sup> (Chapter 6), the Louisiana Legislature passed a bill supported by the Louisiana Trial Lawyers Association that delayed implementation of SB 684 to Governor Roemer for approval.<sup>52</sup> Roemer vetoed the legislation.<sup>52</sup>

## **Tort Reform Efforts in 1989 and 1990**

After helping pass SB 684 during the 1988 legislative session, TI and RJ Reynolds evaluated 1989 tort reform prospects in Louisiana. In a November 18, 1988 State and Local Legislative Forecast, TI's State Activities Division predicted a 50% chance of Louisiana lawmakers introducing any tort reform legislation during the 1989 legislative session.<sup>114</sup> The Institute believed adopting tort reform legislation was unlikely and categorized Louisiana as a secondary priority for nationwide tort reform efforts that year. In contrast, an RJR document listed Louisiana as one of eight major states for tort reform during 1989.<sup>115</sup>

As the 1989 legislative session neared, TI and Covington and Burling anticipated defending against legislation making the tobacco industry liable for harm caused by their products. In April 1989, Covington and Burling expressed concern to TI Issue Analyst Margaret

Rita that TI lobbyist Joe Wood Berry (Joe Wood Guidry remarried and became Joe Wood Berry by May 1989;<sup>116, 117</sup> Chapter 2) would be overloaded managing “the cigarette manufacturer liability issue” alongside fending off other tobacco control policies, particularly tax increases.<sup>118</sup> Rita informed TI Regional VP Ron Morris of Covington and Burling’s concerns, who replied that Joe Wood Berry did not have to handle tobacco tax legislation during the upcoming session.<sup>118</sup> Rita notified Covington and Burling that Berry would not have to monitor and advocate on tax legislation alongside tort reform during the 1989 session.

Louisiana legislators introduced 8 tort reform and product liability bills during the 1989 session, with only HB 487 by Hunt Downer (D-Houma) and HB 631 by Allen Bradley (D-Beauregard)<sup>55</sup> passing into law.<sup>119</sup> HB 487 banned applying money amounts to damages affected in initial (original) and amended (demands altered to change monetary demand or respondent from initial demand) demand that did not pertain to evidence.<sup>119</sup> The bill also prohibited applying money amounts to incidental demands unrelated to evidence, demands where an outside party “asserts a claim that is related to the plaintiff’s suit.”<sup>22, 119</sup>

HB 631 reduced damages given to subrogees (parties that substitute for the original claimant) in proportion to the reduced awards received by their clients based on comparative fault.<sup>119</sup> For example, insurance companies oftentimes become subrogees and seek damages after paying their clients’ policies. HB 631 limited damages a subrogee could obtain from the tobacco industry based on damages their client held in their case according to their degree of fault. HB 631 limited the amount of money insurance companies could seek from tobacco companies and others based on their client’s degree of fault.

Louisiana lawmakers remained active on tort reform in 1990 and introduced at least four tort and liability bills during that session.<sup>52</sup> TI spent \$209,740 on lawyers, lobbyists, and LABI’s coalition to assist state tort reform efforts<sup>120</sup> (Table 8.6), but we could not find reports of other specific engagement.

Costs	1990	1991 (Budgeted)	1992 (Budgeted)
Breazeale, Sachse	59,436	77,000	
Chaffe, McCall	54,359	46,000	
Haynie & Associates	72,945	0	
Louisiana Governmental Studies, Inc.	15,000	0	
LABI Coalition	8000	10,000	10,000
Total	209,740	133,000	10,000

## Tort Reform Efforts in 1991

Preparing for 1991, Philip Morris anticipated attacks on tort reform laws that the tobacco industry had secured in Louisiana and four other states.<sup>52, 121</sup> In Philip Morris’ Corporate Affairs January 1991 draft five-year business plan, company officials intended to protect legislative gains on tort reform in Louisiana, California, New Jersey, Ohio, and other states.<sup>121</sup> The company also planned to secure favorable liability legislation in states, particularly Pennsylvania and Texas. Philip Morris planned to advance its tort agenda nationwide by having legal and issues teams develop plans for each state using input from its state government affairs

representatives, PMUSA, and regional Miller Beer (a Philip Morris subsidiary) entities. It also intended to collaborate with non-tobacco manufacturers and state and national tort coalitions to obtain favorable liability legislation. In addition, Philip Morris intended to fund and work with national and local organizations supportive of tort reform and engage with municipal and local business organizations. The company also sought to generate favorable research on tort reform through unspecified think tanks and by contracting studies, mentioning the impact of tort laws on state economies as an example in its business plan.

RJ Reynolds planned to prevent “attempts to repeal or weaken” tort reform laws in Louisiana, California and New Jersey in its 1991 business plan.<sup>122</sup> The company expected the Louisiana State Law Institute at LSU, which provided the state with legal research and reform recommendations,<sup>28</sup> to introduce legislation to allow punitive damages in liability lawsuits if the state the plaintiff resided in or was harmed in permitted them.<sup>52</sup> The Louisiana Law Institute failed to secure similar legislation in 1990. Louisiana did not award punitive damages in liability lawsuits except for some explicitly permitted situations.<sup>123</sup> RJR also expected the plaintiff’s bar to push legislation limiting or repealing SB 684, the 1988 legislation that had limited liability for inherently dangerous products. The company felt LABI’s tort reform coalition could defend the law.<sup>52</sup>

RJR also expected the plaintiff’s bar to push legislation limiting or repealing SB 684, the 1988 bill limiting liability for inherently dangerous products.

Outside tobacco company plans, LABI announced in a 1991 report that it would seek legislation limiting liability for businesses and individuals and fight bills to soften or relax tort reform laws.<sup>124</sup> LABI also wanted to encourage “judicial excellence,” undefined, via unspecified programs and legislation. LABI planned to contribute over \$1 million to legislative candidates in 1991.<sup>125, 126</sup> On March 21, 1999, LABI President Dan Juneau expressed concern to the Baton Rouge *Advocate* that state election results could reverse progress on tort reform policy stating, “Everything can disappear in three weeks if the wrong people come back.”<sup>126</sup> Juneau feared the election could bring in new lawmakers that would eliminate business friendly legislation secured over the past 4 years. LABI wanted a majority of incumbents reelected in 1991, and urged voters to not purge incumbents.<sup>125</sup> According to a June 1992 tort reform report from TI’s records, after Louisiana’s election in November 1991 LABI’s tort reform rival, “the Louisiana Trial Lawyer Association[,] gained an overwhelming political advantage in the legislature.”<sup>127</sup>

### ***The 1991 Legislative Session***

Lawmakers introduced 14 tort and product liability bills during the 1991 legislative session. According to TI and Covington & Burling’s Tort Reform Project in a July 23, 1991 memo circulated after the legislative session, none of the bills introduced negatively affected product liability laws the industry hoped to preserve.<sup>128</sup>

However, lawmakers passed one bill, HB 251 by Representative Randy Roach (D-Calcasieu)<sup>55</sup>, which exposed the tobacco industry to damages in product liability lawsuits. HB 251 allowed punitive damages in cases where plaintiffs were injured in or defendants resided in a state that permitted punitive damages.<sup>129</sup> As adopted, plaintiffs could seek punitive damages from the tobacco industry in Louisiana if they suffered harm in or the company was based in a

state that awarded them. Provision of punitive damages is prohibited under Louisiana law except under limited, specified circumstances.<sup>123</sup> We could not find information on tobacco industry efforts around HB 251. The legislation was similar to what RJ Reynolds expected from the Louisiana Law Institute.<sup>52, 128</sup>

## Lead up to 1992

Following the 1991 legislative session, TI and Covington and Burling's Tort Reform Project evaluated efforts in Louisiana and other states. In a memo circulated on July 23, 1991, the Tort Reform Project suggested that an unnamed policy committee investigate ways to bolster tort reform efforts in Louisiana.<sup>128</sup> In September 1991, Covington and Burling and the Task Force on Product Liability held a meeting where they tasked TI with performing an analysis, preparing a budget, developing tactics, and establishing a plan to defend existing product liability laws and prevent passage of laws that would erode the industry's position in Louisiana, New Jersey and Ohio by October 7, 1991.<sup>130</sup> Prior to primary elections in October and general elections in November 1991,<sup>131</sup> the Tort Reform Project considered the Louisiana Trial Lawyers Association a strong foe with a powerful lobbying presence and access to multiple key lawmakers (Table 8.7). The Tort Reform Project expected the LTLA to give \$1.5 million in campaign contributions during the 1991 election cycle, an amount it recognized the tobacco industry and Louisiana businesses could not match.<sup>131</sup>

Lawmaker	Chamber	Special Legislative Roles	Labeled an Ally Outside of Tort Reform
Jimmy Dimos (D-Monroe)	House	Speaker	N/A
Charles D. Jones (D-Monroe)	House	Chairman, Legislative Black Caucus	N/A
Allen Bradley (D-Deridder)	House	Chairman, Civil Law and Procedure Committee	N/A
Robert Garrity (R-River Ridge)	House		N/A
Mitch Landrieu (D-New Orleans)	House		N/A
Don Kelly (D-Natchitoches)	Senate		Yes
Sid Nelson (D-Shreveport)	Senate		N/A
Armand Brinkhaus (D-Sunset)	Senate		Yes
Dennis Bagneris (D-New Orleans)	Senate		N/A

The Tort Reform Project proposed forming a coalition to defeat unfavorable tort and product liability efforts by the LTLA in 1992.<sup>131</sup> The plan suggested creating the coalition with LABI, an unspecified medical society, and entities from the tobacco, petroleum, auto, pharmaceutical, insurance, agribusiness products, dairy, business products, waste management, paper, utility, hospital, and chemical industries.<sup>127, 131</sup> The coalition would gather lawmakers' stances on tort reform, determine their information needs, and share such information to calibrate group efforts.<sup>131</sup> The Tort Reform Project recommended that RJ Reynolds lobbyist CJ Blache serve as principal counsel for the coalition and guide group efforts and that TI lobbyist Joe Wood Berry serve as additional counsel for the coalition.<sup>131</sup>

The coalition plan established a comprehensive legislative advocacy strategy to advance the industry's tort reform agenda. Coalition lobbyists would analyze lawmakers' stances on



unspecified committees pertaining to tort reform and liability legislation. Using legislative committee members' positions on tort reform, the coalition would develop comments on tort and liability legislation and ascertain if witnesses needed to appear at committee hearings.<sup>131</sup> The plan also called for creation of a panel of coalition lobbyists to contact gubernatorial candidates and find their positions on tort reform and product liability issues. The coalition would also develop amendments for unfavorable bills before hearings and brief and recruit lawmakers to propose them, as well as identify procedural tactics to slow bills in the legislature.

The Tort Reform Project's coalition plan also included a multifaceted public outreach campaign to pressure lawmakers into supporting tort reform using phone, print, mail and other methods financed by member dues.<sup>131</sup> The plan tasked the coalition with recruiting important constituents to pressure lawmakers into taking positions on tort and liability legislation favorable to the tobacco industry. The Project planned for Covington and Burling to provide \$2,500 to the coalition and for group members to provide \$50,000 donations to fund efforts.<sup>131</sup> In addition, the plan called for coalition members to each give another \$10,000 to the coalition's PAC. We do not know if contributions were made as listed, but the Tort Reform Project stated at least \$100,000 was spent on the coalition and \$79,381 on services from firm Chaffee, McCall for product liability efforts, and another \$40,000 used for contingency purposes.<sup>132</sup> We do not know if the budget figures include contributions from other parties involved in Louisiana or just the Tort Reform Project.<sup>132</sup>

As the tobacco industry planned for the next legislative session, in fall 1991 LABI's Louisiana Liability Task Force established policy and procedure objectives for 1992.<sup>133</sup> The objectives included securing legislation to reduce liability exposure for businesses and individuals, establish "fair allocation" of rewards from suits, bar insurance policies and coverages from inclusion in a claim, remove appellate review of factual conclusions from civil suits, and make trials by jury in civil suits a right under the state constitution.<sup>133</sup> The task force also sought to reduce the number of legislators who were trial lawyers that sat on state judiciary committees "to assure balanced membership" according to an RJR document circulated in November 1991.<sup>133</sup>

### **Election Galvanizes Industry Efforts to Defend Tort Reform Laws**

The results of Louisiana's 1991 statewide elections in November strongly favored tort reform opponents, necessitating a strong defense by the tobacco industry to protect favored tort and liability laws.<sup>127</sup> According to a June 1992 Louisiana Legislative Report on Tort Reform found in TI's records:

"The Louisiana Trial Lawyers Association gained an overwhelming political advantage in the legislature ... the business community will have to focus its efforts on defending past reforms."

The Louisiana Trial Lawyers Association (LTLA) gained an overwhelming political advantage in the legislature as a result of the November 1991 statewide elections. The legislature is dominated by the Democrats in both chambers. The Senate is extremely sympathetic to the plaintiff's trial bar as are key committees in the House. Since there will not be another statewide election until 1995, the business community will have to focus its efforts on defending past reforms.<sup>127</sup>

LTLA had donated \$1.2 million to candidates during the election, helping the organization increase lawyer membership in the state legislature and secure allies on legislative committees.<sup>134</sup>

LABI contributed an unknown amount to legislators to protect its and the business community's tort agenda while the tobacco industry provided \$121,900 for the 1991 election cycle (Chapter 3). TI determined 12 of the 35 representatives newly-elected to the House were lawyers, bringing the total amount of attorneys in the chamber to 31.<sup>134</sup> TI figured LTLA had over 40 reliable representatives in the 105 member House, and that the legal organization needed only 23 additional votes to pass legislation. According to TI in a February 1992 political analysis of Louisiana Tort Reform efforts, the 1991 election also eliminated all of the business community's Senate allies and brought the number of lawyers serving in the 39-member chamber from 11 to 15. LTLA-friendly Representatives and Senators were appointed as chairpersons or made members of committees that considered tort legislation. TI recognized the state legislature's composition would remain adverse until the next election in four years.

Governor Ed "Buddy" Roemer (R), who had switched from the Democratic Party to the Republican Party in March 1991<sup>135</sup> and was a strong backer of tort reform, lost reelection in 1991 to former governor Edwin Edwards (D), whom the tobacco industry saw as inclined to LTLA's positions on tort and product liability laws.<sup>127</sup> Governor Edwards stated he would approve any tort legislation he received.<sup>134</sup>

TI Regional Vice President Ron Morris and unidentified legislative counsel from TI alerted TI to the outcome of Louisiana's election and its prospects on tort reform efforts in December 1991.<sup>136</sup> TI's counsel warned that the Louisiana Trial Lawyers Association would push unfavorable punitive damage and protective order bills in the sympathetic political climate.<sup>136</sup> Protective orders prohibit a party from revealing information learned about an opposing party in a case, to preclude them from unfairly encumbering or inflicting harm on them using the information.<sup>137</sup> LTLA sought to legislatively prevent tobacco companies and other businesses from using protective orders to keep unfavorable information in product liability lawsuits secret.<sup>138</sup>

In a February 19, 1991 memo regarding Louisiana's tort landscape after the election, TI Regional VP David Hooper told Covington and Burling's tobacco industry counsel Keith A. Teel:

It is the assessment of the Louisiana team that LTLA will seize this opportunity to launch a simultaneous, multi-issue front to overwhelm opposition and to ensure a strong bargaining position for LTLA priorities.<sup>134</sup>

TI's legislative counsel also expected LTLA to weaken SB 846, the 1988 bill LABI and the tobacco industry succeeded in passing that removed liability for harm caused by inherently dangerous products.<sup>136</sup> By February 19, 1992, TI officials expected LTLA to seek industry-adverse joint and several liability provisions.<sup>134</sup>

### *Initial Consideration of a Comprehensive Tort Reform Coalition in Louisiana*

To prevent the LTLA from weakening or eliminating tort reform laws, a group identified in documents from TI's records as the Louisiana Tort Team proposed another plan to form a strong statewide tort reform coalition backed by the tobacco industry in 1992. The Louisiana Tort Team sent a memo to the Lawyers for Civil Justice<sup>139</sup> (LCJ) Ad Hoc Committee for Louisiana on January 30, 1992 detailing Louisiana's tort reform landscape and a plan to advance industry objectives in that area.<sup>140</sup> LCJ is a national nonprofit composed of defense and corporate lawyers seeking to reduce legal costs for business and industry through litigation reforms<sup>141</sup> that advocated for tort reform in the early 1990s.<sup>142</sup> In its January 30 memo to the LCJ Committee, the Louisiana Tort Team reasoned that state elections in 1991 made the Louisiana Trial Lawyers Association likely to attack the business community's progress on tort reform:

As a result of the successes of the LA Trial Lawyers during the recent LA legislative elections and governor's election, Business enters the 1992-1996 legislative term in a trial lawyer pro-active climate. The Trial Lawyers almost certainly will initiate a major effort on protective orders, as they did last year. Punitive damages, joint and several liability, third-party tort and the 1988 products statute could also be included in the Trial Lawyers Legislative Package for the upcoming session.<sup>140</sup>

In this newly adverse legislative climate, the Tort Team felt that the Louisiana Legislature's House of Representatives remained the friendliest to business interests and suggested implementing a media campaign to kill legislation there to develop a favorable public opinion and political climate.<sup>140</sup> With assistance from LABI's Liability Task Force, the Louisiana Tort Team planned to conduct public outreach using phone calls, mailers, surveys, newspapers, radio, and television to convince Louisianans that shifting liability laws towards plaintiffs and their lawyers was unfair to businesses and a threat to the economy.<sup>140</sup>

The Louisiana Tort Team proposed forming a coalition of companies called Louisiana Business for Civic Justice to defend against the Louisiana Trial Lawyer Association's legislative agenda.<sup>140</sup> The Team saw a coalition as a method to defend against anti-tort attacks while allowing LABI, a business association, to also pursue its broader legislative agenda.<sup>140</sup> According to the January 30, 1992 memo sent by the Louisiana Tort Team to the LCJ Ad Hoc Committee on Louisiana:

"... a single-purpose coalition is necessary to counter the Trial Lawyers' strength on tort issues."

The formation of a new coalition recognizes that (1) LABI is concerned with other legislative programs in addition to tort matters and (2) a single-purpose coalition is necessary to counter the Trial Lawyers' strength on tort issues.<sup>140</sup>

The Louisiana Team proposed implementing the public outreach and coalition-building plan beginning on February 1, 1992 until the legislative session's end on June 22, 1992, and estimated it would cost \$300,000.<sup>140</sup> The Team suggested that the National LCJ Ad-Hoc Committee make one of its members a liaison to the Louisiana Tort Team to help steer its and the campaign's efforts. The Team recommended that the coalition arrange meetings on public

liability issues in critical legislative districts, conduct public outreach via surveys, mailers, and phone calls in critical districts, and form a mailing list of businesses and important figures in the districts of approximately 80 legislators. As part of the Team's plan, its members would meet with state lawmakers on behalf of the coalition to determine their stance on tort reform.<sup>140</sup> In particular, the Team planned to meet with the entire House of Representatives, the House Insurance and Civil Law Committees, and members of the Senate Judiciary A and B Committees to ascertain their stance on the coalition's tort objectives and share policy papers with them. The Team recommended acquiring a local person to act as the coalition's chairperson. Team members expected the coalition chairperson to regularly "represent, coordinate, and work" alongside the Louisiana Tobacco Team, LABI, the National LCJ Ad-Hoc Committee, and public relations firms

The tobacco industry and the Louisiana business community ultimately did not follow the Louisiana Tort Team's plan but did utilize LCJ to help steer tort reform efforts. Instead of forming a coalition aligned with LCJ, LABI established a Citizens Against Lawsuit Abuse coalition.<sup>143</sup> The tobacco industry, manufacturers and Louisiana businesses instead used LCJ as an informational and coordinating clearinghouse for 1992 tort efforts.<sup>143</sup>

## **The Tobacco Industry Helps Form Citizens Against Lawsuit Abuse in Louisiana**

### ***Initial Coalition Planning by the Louisiana Business Community***

On February 11, 1992, a team of unidentified Louisiana lobbyists (relationship to the tobacco industry unknown) released a three component plan to defend tort and liability laws against LTLA attacks.<sup>144</sup> One part tasked LABI with performing early outreach to Louisianans by sending mailers to its members regarding LTLA tort and liability efforts between February 11 and March 30. It also called for LABI to arrange a state survey "on key legislative issues to identify economic development, privacy issues and plaintiff lawyer influence as key public concerns" that February, and possibly indicate other organizations to the planners that could disseminate information about trial lawyers' legislative activities to their members.<sup>144</sup>

Another component consisted of a nationally-oriented media program designed to negatively characterize the Louisiana Trial Lawyer Association's tort agenda and tort legislation while bolstering the image of tort reform efforts.<sup>144</sup> Titled "The Louisiana Civil Justice Watch," the campaign sought to draw national business and media attention to Louisiana using the country's interest in the state government and Governor Edwin Edwards.<sup>144</sup> To disseminate information, the campaign would notify employees at companies and associations about Louisiana tort efforts via internal mailers, routinely alert the press regarding the "threat to existing civil justice laws," circulate action alerts to national business organizations, and hold press briefings and conferences.<sup>144</sup>

The plan also called for formation of a Citizens Against Lawsuit Abuse (CALA) coalition by business interests to conduct legislative and public outreach as well as administration of a nationwide media and business outreach campaign to create pressure against weakening Louisiana's existing tort and liability laws.<sup>144</sup> The plan's authors predicted the program would cost \$160,000 to engage in general education and outreach efforts but \$410,000 total to administer if LTLA launched a strong policy campaign in 1992.<sup>144</sup> The standard plan allotted \$70,000 to public outreach by LABI, \$60,000 for creating and running CALA, and \$30,000 for a

media campaign. If LTLA waged a strong policy effort, the plan called for spending \$100,000 on policy outreach and \$310,000 total on CALA. Media spending remained the same regardless of LTLA launching a strong campaign. Ultimately the standard, less expensive plan was implemented in the 1992 session.<sup>143</sup>

### ***Origins of Citizens Against Lawsuit Abuse***

Citizens Against Lawsuit Abuse (CALA) started as a local tort reform group that grew into numerous regional astroturf coalitions. The Rio Grande Valley Texas Chamber of Commerce formed the first CALA organization in 1991 in Weslaco, Texas without assistance from tobacco companies or any other major corporations. The Rio Grande Valley Chamber of Commerce created CALA to offset “a judicial climate it felt was too pro-consumer” following a local company settling a wrongful termination lawsuit by paying \$2.5 million in damages.<sup>145</sup> CALA publicly claimed its mission was to stop “lawsuit abuse.”

Unpopular and untrusted by the public, the tobacco industry used existing CALAs and formed new CALA chapters to generate the appearance of popular support for its tort reform objectives.<sup>3</sup> As early as 1992, the tobacco industry began funding CALA groups directly and indirectly through APCO and the American Tort Reform Association (ATRA).<sup>3</sup> APCO is a public relations organization formed by law firm Arnold & Porter, which represented Philip Morris and other major corporations.<sup>146</sup> APCO advised industry tort efforts in multiple states, and helped form CALAs and the American Tort Reform Association (ATRA).<sup>146</sup> CALA branches across the nation relied predominantly on messaging and advertising produced by APCO to generate public support for tort reform.<sup>3</sup> ATRA is a tort reform advocacy nonprofit composed of industry and medical organizations.<sup>111</sup> It was formed in 1986 by the American Council of Engineering Companies and the American Medical Association.<sup>111</sup>

Unpopular and untrusted by the public, the tobacco industry used existing CALAs and formed new CALA chapters to generate the appearance of popular support for its tort reform objectives.

### ***LABI Moves to Form a CALA Chapter in Louisiana***

After Louisiana business lobbyists released their plan to defeat LTLA’s legislative agenda, LABI moved to form a Citizens Against Lawsuit Abuse coalition instead of helping create the Lawyers for Civil Justice coalition. LABI created the CALA coalition because of unspecified “IRS concerns” held by some of its members.<sup>143</sup>

The Louisiana CALA formed by LABI was one of the first CALA organizations with active engagement from the tobacco industry.<sup>3</sup> At a meeting on February 24, 1992, TI Regional Vice President David Hooper told TI’s Policy Committee that the tobacco industry should assist the Louisiana CALA:

We view the CALA/LABI setup as useful as an opening broad-brush to meet our early public relations and polling needs such as benchmark research...yet we realize the limitations of the group due to its wider range of issues and somewhat broader scale of legislative priorities.<sup>143</sup>

Hooper said the tobacco industry should fund the coalition because it provided LABI and the industry with “outreach, credibility, and political cover.”<sup>143</sup> Hooper proposed to TI’s Policy Committee that TI funnel \$20,000 in funds through LABI to CALA.<sup>143</sup> In a line-edited version of Hooper’s remarks to the Policy Committee, the proposed \$20,000 was raised to up to \$50,000. The increase matched a \$50,000 contribution the pharmaceutical company Pfizer promised to assist the coalition’s launch, fund research and public outreach, and fuel subsequent grassroots efforts to pressure representatives into supporting the industry’s tort reform objectives.

Besides backing CALA, Hooper recommended forming a second coalition titled Concerned Citizens for Civil Justice (CCCJ) to coordinate grassroots efforts on individual bills.<sup>143</sup> Hooper planned for the tobacco industry dedicate \$80,000 and Pfizer to donate an additional \$50,000 to the CCCJ coalition for phone calls (\$55,000) and mailers (\$75,000) to chosen associates.<sup>143</sup>

### ***The Tobacco Institute Seeks Lobbying Assistance from the Agriculture Industry***

TI tried to recruit the Louisiana Farm Bureau to defend against LTLA efforts to weaken or eliminate tort laws during the 1992 legislative session.<sup>147</sup> In 1992, TI State Activities Vice President Walter Woodson discussed LTLA’s advantage in the legislature with Farm Bureau officials Bud Mapes and Jim Monroe in a bid to gain their organization’s assistance to bolster the industry’s tort efforts in Louisiana.<sup>147</sup> Woodson failed to inspire Mapes and Monroe to action, prompting him to send a letter to American Farm Bureau official Steve Newton for advice on how to convince the Louisiana Farm Bureau to assist industry tort reform efforts.<sup>147</sup> In the letter, Woodson warned that trial lawyers might be using Louisiana as a “trial for pursuing anti-tort legislation in other states.”<sup>147</sup> We did not find any evidence that the Louisiana Farm Bureau cooperated with efforts to preserve tort reform legislation in Louisiana.

### ***The Tobacco Industry Remains in CALA After Initial Disagreements***

Disagreements with LABI prompted the tobacco industry to reconsider assisting CALA by March 1992. According to a memo from Covington and Burling lawyers Keith Teel and David Harfst to the Policy Committee on March 11, 1992:

With respect to the structure of an industry effort to defeat the Trial Lawyer’s proposals, the Louisiana team has thus far been unable to work out satisfactory arrangements with the Louisiana Association of Business and Industry that would assure substantial contributors the necessary degree of control. If such arrangements are not resolved promptly, LABI will set up an organization called the Coalition Against Lawsuit Abuse...However, our own advisers will start a new organization called Louisianans for Lawsuit Reform.<sup>148</sup>

The tobacco industry, Pfizer, and other pharmaceutical companies planned to form a new coalition titled Louisianans for Lawsuit Reform (LLR) to pursue tort and liability reform without participating in CALA, with the tobacco and drug industries each providing \$100,000 to fund their alternative coalition.<sup>148</sup> This \$200,000 dwarfed the \$130,000 TI Regional VP Hooper had proposed for funding a CCCJ coalition in addition to CALA.<sup>143</sup> Instead of contributing \$20,000-

\$50,000 that Hooper proposed paying CALA in February<sup>143</sup> the tobacco industry and Pfizer planned to each give \$5000 to LABI to preserve ties to LABI's coalition.<sup>148</sup>

... TI Regional VP David Hooper met with LABI representatives ... and struck a deal providing the tobacco industry influence over CALA by securing it four seats on CALA's 13-person steering committee and another four seats for industry allies.

Shortly after talks of creating a separate coalition, TI Regional VP David Hooper met with LABI representatives on March 13, 1992 and struck a deal providing the tobacco industry influence over CALA by securing it four seats on CALA's 13-person steering committee and another four seats for industry allies<sup>149</sup> (Table 8.8). In addition, former state legislator Al Ater, whom Hooper suggested lead CALA's steering committee, was made chairman. Following the deal between Hooper

and LABI, the tobacco industry recognized CALA as the public face of efforts to protect favorable tort and liability laws.

Table 8.8: CALA Officials and Steering Committee Membership<sup>149, 150</sup>

	Identified by Industry as Ally	Organization	Organization Position	Steering Committee Position
Officers				
Al Ater	Yes			Chairman
Nelson "Chip" Wagar	--	Hailey, McNamara, Hall, Larmann & Papale / LABI	Unknown/Liability Reform Committee Chair	Vice Chairman
Errol Savoir	--	International Paper Company / LABI	Unknown/ Public Awareness Committee Chair	Secretary
Arwyn Nichols	--	Breazeale, Sachse & Wilson		Treasurer Ex Officio
Steering Committee				
David Hooper	--	Tobacco Institute	Regional Vice President	
Randy Haynie*	--	Philip Morris	Lobbyist	
CJ Blache*	--	RJ Reynolds	Lobbyist	
Jimmy Babst	--	Chaffee, McCall	Counsel for RJR	
Ken Ardoin	Yes	Pfizer	Government Affairs Liaison <sup>151</sup>	
Carmack Blackmun	Yes	Unknown (Railroad industry)	Lobbyist	
Wayne Fontana	Yes	LABI Liability Task Force / Courtenay, Forstall, Guilbault, Hunter & Fontana	Unknown/Consultant	
Dan Borne	Yes	Louisiana Chemical Association		
Dan Juneau	--	LABI	Executive Director	
Don Hale	--	LP&L		
Jonica Coates	--			
*Partners of local lobbying firms.				

The tobacco industry primarily used LLR to funnel money to the Louisiana CALA afterwards. The tobacco companies had formed Louisianans for Lawsuit Reform before Hooper reached an agreement with LABI to join CALA.<sup>149</sup> No longer needing LLR to influence Louisiana tort reform efforts, the tobacco industry planned to funnel most of its promised \$200,000 in funding to CALA when it needed money.<sup>149</sup> On March 23, 1992, Hooper requested initial payments to LLR of \$16,250 from Philip Morris and RJ Reynolds, \$12,500 from Lorillard, and \$5,000 from American Tobacco, \$50,000 total, that would go to CALA when needed.<sup>152</sup> CALA received a majority of its overall revenue in 1992 and 1993 from donations through LLR.<sup>3</sup> LLR ultimately contributed \$234,000 to CALA in 1992.<sup>3</sup>

After the tobacco industry joined CALA the coalition began public outreach efforts. On March 15, 1992 CALA circulated a letter from its chairman Al Ater asking recipients to participate in coalition efforts and provide donations to help defend against trial lawyer tort and liability efforts.<sup>153</sup>

## 1992 Legislative Session

State lawmakers introduced 36 tort and liability bills for the 1992 legislative session that started on March 30 (Table 8.9). Of tort and liability legislation introduced by April 10, 1992, TI Regional VP Hooper identified 8 bills as favorable and 12 as anti-industry (Table 8.9).<sup>154</sup> Hooper determined House members submitted a mix of harmful and beneficial tort and liability legislation, while Senators primarily introduced unfavorable measures. Bills identified as friendly by the tobacco industry prevented consideration of insurance during civil cases, forbade legal action against insurance providers, limited damages to claimants, and criminalized filing frivolous lawsuits to harass defendants.

Lawmakers submitted six bills on behalf of LTLA.<sup>162</sup> In an April 14, 1992 memo TI Regional VP David Hooper reported LTLA sought to change protective order, punitive damage, third-party obligations, and workers' compensation laws, as well as overturn the 1988 law limiting liability for selling inherently dangerous products.<sup>154</sup>

As the 1992 legislative session began, CALA and LABI's Louisiana Liability Task Force conducted public outreach. LABI sent 700 letters to businesses the week of April 6, 1992 to generate support for CALA and its tort reform objectives.<sup>154</sup> A letter by CALA chairman Al Ater was also circulated to 306 newspaper editors by April 23.<sup>163</sup> <sup>164</sup> CALA Chairman Al Ater conducted a press tour to gain awareness and support for CALA's agenda and published opinion pieces in Louisiana newspapers and the *Wall Street Journal* to build public support.<sup>165</sup>

"Our goal, quite simply, was to make the trial lawyers 'radioactive' so that legislators would be less likely to want to align with them on votes."

CALA attacked trial lawyers in early public outreach efforts instead of targeting specific legislation.<sup>166</sup> According to APCO official Neil M. Cohen in a June 12, 1992 letter to RJR Senior Vice President W.E. Ainsworth:



Table 8.9: Tort Reform and Product Liability Legislation Introduced for the 1992 Session<sup>55, 56, 154-161</sup>

Legend:																		
+ Bill has effect listed																		
– Bill has inverse effect																		
Identified as Pro or Anti Industry by Tobacco Industry	Bill	Sponsor		Identified for CALA Mobilization	Limits Exposure of Insurance Information During Trial	Eliminates Taking Direct Action Against Insurers	Makes Parties in Joint and Severable Liability Cases Jointly Liable for Payment of Total Damages	Eliminates Joint and Severable Liability	Reduces or Eliminates Plaintiff Compensation	Limits Contingency Fees	Prevents use of Protective Orders to Hide Hazards or Information About Hazards	Allows Public Bodies and Public Records Custodians to Get Protective Orders	Expands Possible Damages for Plaintiffs	Makes Criteria for Products to be Found “Unreasonably Dangerous Per Se” More Difficult	Repeals 1988 Liability Law (“Unreasonably Dangerous Per Se”)	Establishes Cause of Action Against Tobacco	Other	Outcome
Pro	HB 18	Stephen Gunn (I-Grant)								+								Died upon adjournment without action
	HB 233	Chuck McMains (R-Livingston)							+									Died upon adjournment without action
	HB 234	Chuck McMains (R-Livingston)															+	Died upon adjournment without action
	HB 235	Chuck McMains (R-Livingston)							+									Died upon adjournment without action
	HB 236	Chuck McMains (R-Livingston)			+													Died upon adjournment without action
	HB 237	Chuck McMains (R-Livingston)		+														Died upon adjournment without action
	HB 801	Joe Salter (D-Sabine)															+	Died in Senate Committee upon adjournment
Anti	HB 224	Carter **															+	Adopted

	HB 257	James Donelon (R-Jefferson)														+	Died upon adjournment without action
	HB 489	Ted Haik (D-St. Mary)			+												Unknown
	HB 825	Melvin "Kip" Holden (R-East Baton Rouge)				+											Defeated on House Floor
	HB 873	Buster Guzzardo (D-St. Helena)											+				Died upon adjournment without action
	HB 874	Joel Chaisson (D-St. Charles)	Yes								+						Died on Senate Floor with adjournment
	HB 916	Edward Deano (D-St. Tammany)	Yes						+								Defeated on House Floor
	SB 118	James Cox (D-Calcasieu)	No													+	Died upon adjournment without action
	SB 121	James Cox (D-Calcasieu)		-													Died upon adjournment without action
	SB 239	James Cox (D-Calcasieu)														+	Died upon adjournment without action
	SB 293	John Hainkel (D-Jefferson)														+	Died upon adjournment without action
Unknown	HB 268	Stephen Windhorst (R-Orleans)														+	Died upon adjournment without action
	HB 801	Joe Salter (D-Sabine)														+	Died in Senate Committee with adjournment
	SB 367	Donald Kelly (D-Rapides)														+	Died upon adjournment without action
	SB 572	Dennis Bagneris (D-Orleans)				+											Died upon adjournment without action
	SB 575	Dennis Bagneris (D-Orleans), Sherman Copelin (D-Orleans), Carter**, Mitch Landrieu (D-Orleans), Edwin Murray (D-Orleans)								+							Died on Senate Floor with adjournment

	SB 610	Larry Bankston (D-East Baton Rouge)															Died upon adjournment without action
	HB 1158	Sherman Copelin (D-Orleans), Carter**, Mitch Landrieu (D-Orleans)								+							Withdrawn
	HB 1463	Quentin Dastugue (R-Orleans)													+		Died upon adjournment without action
	HB 1547 *	Carter**	Yes									+					Died on House Floor with adjournment
	HB 1623 *	Raymond Lalonde (D-Sunset)													+		Defeated in committee
	HB 1911	Joseph Accardo (D-St. James)														+	Unknown
	SB 720* *	Donald Kelly (D-Rapides)									+						Died upon adjournment without action
	SB 887	John Hainkel (D-Jefferson)						+									Died upon adjournment without action
	SB 904	John Hainkel (D-Jefferson)	No					+									Died upon adjournment without action
	SB 924	John Hainkel (D-Jefferson)														+	Died upon adjournment without action
	SB 936	Dennis Bagneris (D-Orleans)	Yes							+							Died upon adjournment without action
	SB 1197	Donald Kelly (D-Rapides)	Yes									+					Died upon adjournment without action
*Companion bill to HB 874.																	
**We are unsure if the sponsor is Wilford Dan Carter (D-Calcasieu) or Troy Carter (D-Orleans).																	

Initially, we did not focus on specific legislation that the trial bar wanted, but chose to make the lawyers themselves an issue. Our goal, quite simply, was to make the trial lawyers ‘radioactive’ so that legislators would be less likely to want to align with them on votes.<sup>166</sup>

CALA avoided promoting its legislative agenda to sidestep alienating potential supporters and maximize coalition recruitment.<sup>166</sup> Instead, they planned to contact people later in the legislative session via phone and mailers about select bills.<sup>154</sup>

During the 1992 session, LABI, CALA, and tobacco industry representatives and affiliates monitored legislative efforts and lobbied state representatives in support of industry tort goals.<sup>154</sup> Members of LABI’s 22-person Liability Task Force, RJ Reynolds representative CJ Blache, Philip Morris representative Randy Haynie, and TI representative Joe Wood Berry also lobbied state lawmakers to support CALA’s agenda. Covington and Burling analyzed bills for the coalition.<sup>154</sup>

To assist advocacy efforts, APCO Associates Senior Vice President Neal Cohen<sup>166</sup> sent CALA’s steering committee a package on April 23, 1992 containing a donor list for 42 representatives targeted by the coalition.<sup>164</sup> Cohen advised CALA to have donors contact representatives via phone or letter in support of the coalition.<sup>164</sup> The package included issue “cheat sheets” and 8 policy white papers on tort and liability subjects, including protective orders, punitive damages, and product liability issues.

The tobacco industry and LABI used CALA to oppose at least five specific tort and liability bills later in the 1992 legislative session: HB 874, HB 916, HB 1547, SB 936, and SB 1197<sup>157, 159, 160</sup> (Table 8.9).

CALA conducted extensive outreach efforts to advance tort reform that session. CALA sent 32,000 introductory letters to in-state recipients and 450 letters to people and organizations outside Louisiana.<sup>165</sup> CALA also convinced usually apolitical food producers in Louisiana to send coalition recruitment letters to restaurants and other food processors in the state, helping secure their membership. According to Cohen, recruitment of well-known eateries provided CALA “credibility with legislators, the media and the general public.”<sup>166</sup> In total, CALA recruited 326 companies and 28 associations as supporters by June 9, 1992.<sup>165</sup> They also directed and conducted phone calls to pressure lawmakers to support its agenda. CALA hosted a 1-800 number that 542 individuals used to contact House Representatives (Figure 8.1).<sup>165</sup> Key Senators also received 8,783 calls opposing HB 874, which permitted the awarding of punitive damages in instances of serious carelessness by a plaintiff,<sup>167</sup> by June 5, 1992.<sup>165</sup> Of the 12 bills identified by TI as anti-tort reform, only HB 224, which allowed for a separate trial regarding insurance coverage related to a tort case if all parties agreed before the related tort trial started, passed the legislature (Table 8.9). We did not find evidence LTLA actively pushed HB 224.

The tobacco industry credited CALA’s public and legislative advocacy efforts with preventing the Louisiana Trial Lawyers Association from securing any of its legislative agenda during the 1992 session.<sup>156</sup> According to an uncredited “Louisiana Legislative Report on Tort Reform” from June 1992 found in TI Records, “CALA...was successful in defeating all of LTLA’s legislative attacks.”<sup>156</sup> A July 28 letter from Louisiana CALA Chairman Al Ater to TI Regional Director David Hooper credited the total defeat of LTLA-desired legislation during the

1992 session to contacts opposing the bills the group generated to lawmakers.<sup>168</sup> A December 14, 1992 "Defensive Efforts In Priority States" document from TI's Records declared:

The business coalition's [CALA and its supporters] victory was particularly notable in the light of LTLA's widespread success in the 1991 legislative and gubernatorial elections and the domination by its supporters of key Senate and House legislative committees.<sup>169</sup>

**CITIZENS AGAINST LAWSUIT ABUSE**  
**CUMULATIVE REPORT TO DATE 6/5/92**  
**BY TARGET FOR SENATE**

TARGETS - DISTRICT #	PATCH THROUGH	WILL CALLS	TOTAL COMMITTS
MURPHY - 1	28	12	40
JOHNSON - 2	97	95	192
MORIAL - 4	130	125	255
HEITMEIER - 7	135	183	318
ULLO - 8	77	125	202
HINTON - 11	82	47	129
RAYBURN - 12	46	57	103
CROSS - 13	144	167	311
BANKSTON - 15	135	151	286
SEVARIO - 18	161	129	290
LANDRY - 19	57	62	119
CHABERT - 20	116	185	301
DECUIR - 22	89	86	175
JORDAN - 23	146	129	275
GRAVINS - 24	116	105	221
PICARD - 25	118	176	294
BRINKHOUSE - 26	72	71	142
CAIN - 30	57	69	126
CRAIN - 33	107	80	187
CAMPBELL - 36	136	119	255
BEAN - 38	95	83	178
TARVER - 39	139	99	238
TOTALS	2,283	2,355	4,638

FOR PHONING MON 6/8/92 - 9 TARGETS for SENATE

BANKSTON 15	ULLO 8
MORIAL 4	GRAVINS 24
RAYBURN 12	CAMPBELL 36
SEVARIO 18	BEAN 38
	CAIN 30

Figure 8.1: Number of Pro-CALA Phone Calls to Senate Targets by June 5, 1992<sup>165</sup>

The tobacco industry reasoned LTLA's aggressive objectives prevented it from securing legislation.<sup>169</sup> A Covington and Burling memo to the Tort Reform Policy Committee stated its political advisors felt LTLA was disorganized and misjudged its opponents' strength.<sup>170</sup> A document from TI's records expected LTLA to pursue a limited agenda during the 1993 legislative session that would be harder to defeat.<sup>169</sup>

The tobacco industry reasoned LTLA's aggressive objectives prevented it from securing legislation.

The tobacco industry viewed its defense against the LTLA agenda in Louisiana as a model of success for industry lobbyists defending tort reform. In notes for a lobbyist meeting in August 1992, TI State Activities Division Senior VP Kurt Malmgren wrote, "If you run up against a tough tort issue in 1993, I suggest you call David Hooper and the rest of the Louisiana Team. Those folks beat back extremely serious threats in the face of overwhelming odds."<sup>171</sup>

## Tort Reform Efforts in 1993

### *Preparations for the 1993 Legislative Session Begin*

TI's Region IX staff held a strategy meeting for Texas and Louisiana's 1993 legislative sessions on July 21, 1992 to plan defensive efforts against LTLA as well as form a strategy on alliances and coalition development, political donations, and other industry issues.<sup>172</sup> Officials and lobbyists from TI, Philip Morris, RJ Reynolds, US Tobacco, and possibly the Smokeless Tobacco Council attended the meeting (Table 8.10). By March 1993, Philip Morris, RJ Reynolds, Lorillard, Brown and Williamson, and American Tobacco had developed a financial and grassroots support arrangement to aid industry tort efforts in Louisiana<sup>173</sup> (Table 8.11).

Table 8.10: Attendees of Tobacco Institute Strategy Meeting for 1993 Legislative Session Involved in Louisiana Tort Reform Efforts <sup>172</sup>	
Organization	Attendee
Tobacco Institute	David Hooper
	Pat Donoho*
	Joe Wood Berry
	Leslie Dawson
	Lisa Ross
	Gaylord Armstrong
Philip Morris	Jack Dillard
	Randy Haynie
	Stan Schleuter
	Byron Tunnel
	Dick Brown
RJ Reynolds	Joe Murray
	CJ Blache*
US Tobacco	James Clark
Smokeless Tobacco Council	JR Watson*
	Dale Evans*
*Marked with "?" on RSVP sheet for July 21 meeting.	

Table 8.11: Cost Sharing Agreements and Involvement Level for Tobacco Companies During 1993 Tort Efforts in Louisiana <sup>173, 174</sup>				
	Company Market Shares as of Feb 1993	Amount Contributed Towards Coalition	Amount Contributed Towards Counsel	Participation in Grassroots Efforts
Philip Morris	42%	35%	20%	Yes
RJ Reynolds	32%	35%	20%	Yes
Lorillard	6%	10%	20%	Yes
Brown and Williamson	10%	10%	20%	No
American Tobacco	6%	10%	20%	No

### ***Forming a Political Action Committee to Influence Upcoming Elections***

By February 1993, a political action committee named the Louisiana Civil Justice League (LCJL) was formed to help elect judges, state lawmakers and officials supportive of tort reform.<sup>175</sup> LCJL would donate to candidates that supported tort reform and oppose LTLA-led efforts to weaken industry protections. The tobacco industry did not have direct representation in LCJL, but CALA chairman Al Ater served on the PAC's advisory committee.<sup>175</sup> During the 1993 legislative session, LCJL disseminated a recruitment letter by Louisiana businessperson and LCJL PAC chairman George Crain Jr. that asked recipients to have their state representatives oppose SB 956, an industry-adverse bill affecting third party tort<sup>176</sup> in a manner unknown to us. We did not find HB 956 listed in TI's 1993 Legislative Report. Philip Morris considered Crain a critical opinion leader in Louisiana.<sup>177</sup> Although tobacco companies received recruitment letters, we do not know if the industry contributed to or participated in the LCJL PAC.<sup>175, 176</sup>

### ***Tobacco Industry and Coalition Efforts for the 1993 Legislative Session***

Lawmakers submitted 44 tort and liability bills for the 1993 legislative session (Table 8.12).<sup>178</sup> The tobacco industry faced 10 lawsuits in Louisiana before the session's start on March 29.<sup>179</sup> A CALA mailer by Chairman Al Ater asserted trial lawyers sought legislation affecting punitive damages, product liability, third party tort, as well as joint and several liability.<sup>180</sup> We were unable to determine which bills formed the Louisiana Trial Lawyers Association's legislative package. CALA focused on defeating adverse legislation instead of pushing favorable tort and liability bills since LTLA controlled important legislative committees.<sup>181</sup>

CALA performed a variety of public and legislative outreach to push its tort and liability agenda during the 1993 session. CALA disseminated a recruitment letter from its chairman Al Ater in March 1993 that attacked trial lawyers for pursuing a "greed package" of legislation.<sup>180</sup> Ater's letter called for recipients to join CALA and make donations to the coalition. Another letter by Ater in mid-April requested donations to fund CALA's legislative defensive efforts.<sup>180</sup>

CALA conducted a statewide survey in 1993 of 600 Louisianans regarding public attitudes towards lawsuits and trial lawyers and released the results on April 7.<sup>184</sup> The poll found that almost 60% of respondents disliked the state government's management of "liability lawsuits" according to the New Orleans *Times-Picayune*. The paper also reported that approximately 70% of the poll's respondents believed trial lawyers pursued legislation for monetary gain and 76% felt "the liability lawsuit problem in Louisiana [was] mainly due to greedy trial lawyers who will take any case to make money." A majority of survey respondents blamed lawsuits for diminished job availability as well as higher medical and government expenses.

CALA targeted key tort and liability legislation in its later outreach efforts during the legislative session. On May 6, 1993, CALA distributed a recruitment letter by Chairman Al Ater asking recipients to pressure state representatives to oppose SB 956, attacking it as the "trial lawyers' full employment measure."<sup>185</sup> Ater insinuated that consumers, companies, and taxpayers inherited the costs of more lawsuits from companies and an expanded legal system if SB 956 passed.<sup>185</sup> He urged recipients to have lawmakers oppose LTLA-supported legislation.<sup>185</sup>

Table 8.12: Tort Reform and Product Liability Legislation Introduced for the 1993 Session <sup>55, 56, 182, 183</sup>											
	Sponsor	Consideration of Insurance During Trial	Reduces or Eliminates Plaintiff Compensation	Affects Contingency Fees	Affects Protective Orders	Expands Possible Damages for Plaintiffs	Affects Liability for Businesses	Affects 1988 Liability Law (Dangerous Per Se)	Establishes Cause of Action Against Tobacco	Other	Outcome
HB 27	Stephen Gunn (I-Grant)			+							Died without consideration upon adjournment
HB 28	Stephen Gunn (I-Catahoula)			+							Died without consideration upon adjournment
HB 29	Stephen Gunn (I-Catahoula)									+	Died without consideration upon adjournment
HB 47	Vic Stelly (R-Calcasieu)			+							Died without consideration upon adjournment
HB 48	Vic Stelly (R-Calcasieu)			+							Died without consideration upon adjournment
HB 232	Shirley Bowler (R-Jefferson)									+	Died without consideration upon adjournment
HB 310	Stephen Windhorst (R-Orleans)			+							Died without consideration upon adjournment
HB 376	Stephen Windhorst (R-Orleans)			+							Died without consideration upon adjournment
HB 422	Vic Stelly (R-Calcasieu)					+					Died without consideration upon adjournment
HB 688	James Donelon (R-Jefferson)						+				Died in Senate Committee upon adjournment
HB 706	Edward Deano (D-St. Tammany)					+					Died without consideration upon adjournment
HB 909	Charles Riddle (D-Avoyelles)									+	Died without consideration upon adjournment
HB 930	James Singleton (D-Caddo)									+	Died without consideration upon adjournment
HB 945	Edward Deano (D-St. Tammany)				+						Died without consideration upon adjournment
HB 946	Edward Deano (D-St. Tammany)									+	Died without consideration upon adjournment
HB 964	Dirk Deville (D-St. Landry)									+	Died without consideration upon adjournment
HB 1199	Dale Sittig (R-St. Landry)									+	Died without consideration upon adjournment
HB 1300	J. Luke Leblanc (D-Lafayette)									+	Died without consideration upon adjournment
HB 1340	Chuck McMains (R-Livingston)		+								Died without consideration upon adjournment



HB 1341	Chuck McMains (R-Livingston)		+								Died without consideration upon adjournment
HB 1366	Larry Bankston (D-East Baton Rouge)									+	Died without consideration upon adjournment
HB 1395	Sean Reilly (D-East Baton Rouge)		+								Died without consideration upon adjournment
HB 1615	Chuck McMains (R-Livingston)									+	Died without consideration upon adjournment
HB 1625	James Singleton (D-Caddo)									+	Died without consideration upon adjournment
HB 1756	James Donelon (R-Jefferson)									+	Died without consideration upon adjournment
HB 1796	David Vitter (R-Jefferson)									+	Died without consideration upon adjournment
HB 1789	Raymond Lalonde (D-Sunset)								+		Died without consideration upon adjournment
HB 1790	Raymond Lalonde (D-Sunset)									+	Died without consideration upon adjournment
SB 13	James Cox (D-Calcasieu)	+									Withdrawn
SB 389	Jay Dardenne (R-East Baton Rouge)									+	Killed on Senate Floor
SB 584	John Hainkel (D-Jefferson)									+	Died without consideration upon adjournment
SB 589	John Hainkel (D-Jefferson)									+	Died on House Floor with adjournment
SB 600	John Hainkel (D-Jefferson)						+				Died without consideration upon adjournment
SB 602	John Hainkel (D-Jefferson)									+	Died in House Committee with adjournment
SB 603	John Hainkel (D-Jefferson)		+								Died without consideration upon adjournment
SB 604	John Hainkel (D-Jefferson)		+								Died without consideration upon adjournment
SB 702	Mike Foster (D-Assumption)						+	+		+	Substitute died on House Floor with adjournment
SB 706	Craig Romero (R-Vermilion)									+	Adopted
SB 728	James Cain (D-Vernon)		+							+	Died without consideration upon adjournment
SB 791	John Hainkel (D-Jefferson)		+								Died without consideration upon adjournment
SB 807	Larry Bankston (D-East Baton Rouge)									+	Withdrawn
SB 924	Marc Morial (D-Orleans)				+						Died without consideration upon adjournment
SB 972	Sam Nunez (D-St. Bernard)									+	Died without consideration upon adjournment

SB 1053	Donald Kelly (D-Rapides)									+	Withdrawn
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If SB 702 was adopted, defendants could argue they were not liable for harm caused by their product because it was commonly perceived as, and was, inherently dangerous. The provision made it impossible to sue for harm caused by cigarettes and other items with innate hazards. If passed, SB 702 would also block ongoing product liability lawsuits against the tobacco industry that the 1988 product liability law failed to prevent.<sup>1, 187</sup> In a June 14, 1993 memorandum to the Tort Reform Policy Committee, Covington and Burling tobacco industry counsel Keith Teel blamed the ongoing lawsuits against the industry on 1998 bill SB 684's exclusion of a Comment i provision.<sup>1</sup>

After SB 702's introduction on April 12, 1993, the bill languished in the Senate Judiciary C Committee through May without a hearing.<sup>183</sup>

"We had no chance of enacting comment i legislation without trial try to reach a compromise with the trial lawyers, an effort bitterly opposed to by the business community ...."

The tobacco industry realized it needed the Louisiana Trial Lawyers Association's assistance to secure SB 702.<sup>1</sup> According to a June 14, 1993 memo from Covington and Burling's Keith Teel to the tobacco industry's Tort Reform Policy Committee, "We had no chance of enacting comment i legislation without trial lawyer help, because they controlled the key House committee. We were forced to try to reach a compromise with the

trial lawyers, an effort bitterly opposed to by the business community...."<sup>1</sup> Philip Morris lobbyist Randy Haynie and other industry lobbyists<sup>189</sup> briefly corresponded and collaborated with LTLA to pass Comment i legislation.<sup>1</sup> Other tobacco industry representatives and allied lobbyists did not help secure Comment i legislation because they had other clients in the Louisiana business community opposed to working with LTLA, creating a business conflict.<sup>1</sup>

LABI and its allies strongly opposed collaborating with LTLA, souring relationships with the tobacco industry and its lobbyists.<sup>1</sup> In a June 14, 1993 memo to the Tort Reform Policy Committee, Covington and Burling's Keith Teel reported, "This effort [to pass comment i legislation] strained relations with the business community [i.e., LABI] and among our own lobbyist team, and it could affect the manner in which we participate in legislative activities next year."<sup>1</sup> Teel feared LABI might retaliate against PM lobbyist Randy Haynie, a member of CALA's three-person management committee,<sup>189</sup> for helping the tobacco industry work with LTLA.<sup>1</sup>

Despite collaborating with LTLA, the tobacco industry failed to pass SB 702's substitute. The legislation passed the House Civil Law Committee only to die without further action<sup>183</sup> on June 11, 1993 when the legislative session ended.<sup>178</sup>

In a mid-July document from Philip Morris' records, PM's tort reform coordinator in Massachusetts Bernie Robinson<sup>190</sup> expressed that SB 702's passage could be jeopardized if a private liability lawsuit in Louisiana, *Gilboy v. RJR*, proceeded as planned on July 26, 1993.<sup>191</sup>

The plaintiff sought damages for lung cancer he developed from smoking.<sup>192</sup> The Gilboy case was delayed,<sup>192</sup> but SB 702 did not receive additional action that year.

The brief alliance between the tobacco industry and LTLA exposed the trial lawyer association's weakness and disorganization to the tobacco industry.<sup>1</sup> Tobacco industry officials determined LTLA had bad leadership and less political influence in Louisiana than previously thought. Knowledge of LTLA's weaknesses and lack of political influence prompted the tobacco industry to consider reducing resources to future tort and liability efforts in Louisiana.

CALA leadership convened before mid-July to discuss future efforts by the coalition. RJR lobbyist CJ Blache and lawyer Jim Babst from tobacco industry-allied law firm Chaffee McCall joined the gathering.<sup>189</sup> At the meeting, coalition leadership agreed to maintain and grow CALA. Meeting participants also punished Philip Morris lobbyist Randy Haynie for compromising with LTLA to pass Comment i legislation for the tobacco industry by removing him from CALA's 3-member management committee.<sup>189</sup>

After the meeting, Louisianans for Lawsuit Reform member companies from the consumer goods and pharmaceutical industries, including Philip Morris, agreed to withhold guarantees of future participation or support to CALA.<sup>189</sup> Many of the companies had assisted CALA through LLR, the astroturf organization the tobacco industry used to funnel money to the LABI-led coalition.<sup>189</sup> The companies decided not to make any promises of assistance to CALA since the coalition's policy objectives for the next legislative session were unknown.<sup>189</sup> In addition, there was no cause for immediate action since that year's legislative session recently ended.

State lawmakers grew resistant to LABI and its aggressive tactics, prompting the tobacco industry to consider assisting legislators with creating an alternative state business association. According to a July 14, 1993 memo by PM's Bernie Robinson, after negotiations on SB 702 and similar bills between key lawmakers and the governor near the 1993 legislative session's end, Louisiana House Appropriations Chairman Elias Bo Akal (D-New Iberia<sup>193</sup>) informed Covington and Burling lawyer Keith Teel that LABI's behavior and composition had frustrated lawmakers:

Bo Akal's concern—which is shared by other political leaders in Baton Rouge—is that when they vote against a position advocated by Dan Juneau and the Louisiana Association of Business and Industry (LABI), LABI papers their constituents with “misinformation” and the Legislators and the Governor have to spend an inordinate amount of time sorting out the situation. A related political concern is that LABI doesn't in fact represent all business interests (as LABI says). The political leadership believes that LABI is dominated & controlled by Big Oil, Big Chemical, Big Contractors and Utility companies.<sup>189</sup>

Governor Edwin Edwards, Senate President Sam Nunez, and House Speaker John Alario asked business lobbyists (including PM's Randy Haynie) to form an organization representing and factually truthful to Louisiana's small businesses. Representative Ackal had developed a plan to form an organization called the Small Business Advocacy Institute (SBAI) of Louisiana. Robinson found Ackal's plan the most realistic answer to lawmakers' request to create a new statewide business association in his July 14, 1993 memo. The tobacco industry weighed the proposal, and Keith Teel, Philip Morris Regional Director of Government Affairs for Louisiana

and Texas Jack Dillard (Chapter 2), and APCO official Neal Cohen received the budget and plans for the program.<sup>189</sup> However, we did not find evidence that Philip Morris or other industry members implemented the SBAI proposal.

### **The Industry Considers Plans for the 1994 Session**

The Tort Reform Policy Committee discussed defensive efforts in Louisiana and other states during 1993 and possible actions for 1994 at a meeting on June 15, 1993. Members also considered the failure of the Comment i bill, based on the product liability interpretation the tobacco industry helped secure in the ALI Restatement (Second) of Torts in 1962,<sup>13</sup> and considered pursuing similar legislation during the 1994 legislative session.<sup>194</sup> As early as July 1993, Philip Morris determined that passing Comment i legislation and preserving the 1988 product liability law were its highest tort reform priorities in Louisiana.<sup>189, 195</sup> Passing Comment i legislation further increased the tobacco industry's defenses in lawsuits for harm caused by their tobacco products.<sup>187</sup> Since the industry's products were widely viewed as harmful and were innately so, standard tobacco products could not be considered unreasonably dangerous. Philip Morris sought to push Comment i legislation during an anticipated October 1993 special session.<sup>195</sup>

PM lobbyist Randy Haynie attempted to recruit assistance from lobbyists outside the tobacco industry. He asked Bud Mapes, a lobbyist who represented the Louisiana Farm Bureau, banks, and Miller Brewing<sup>195</sup>, Tommy Hudson, who participated in the tobacco industry's national Federal Excise Tax Campaign<sup>196, 197</sup> opposing federal tax increases,<sup>198, 199</sup> and Gus Weill and Paul Gallagher (positions and clients unknown, but Gallagher was at least on the tobacco industry's Louisiana tort team<sup>200</sup>) how Philip Morris and its allies could help CALA pass Comment i bill SB 702 during the 1994 session.<sup>189</sup> Mapes agreed to show SB 702 to his clients and try to secure their support for similar legislation the next year.<sup>189</sup>

APCO Associates, which worked with the tobacco companies nationwide to advance tort reform,<sup>146</sup> mirrored PM's stance and regarded Comment i legislation as a critical objective in Louisiana. In a July 26, 1993 Tort Project memo regarding nationwide efforts prepared for PM Vice President of Government Affairs Buffy Linehan, APCO official Neal Cohen regarded passage of such legislation in Louisiana as his organization's most important tort reform objective.<sup>201</sup> APCO planned to pursue Comment i legislation during a special session that might occur as soon as October, and found several legislators open to introducing a Comment i bill then or during 1994.<sup>201</sup> Cohen believed there was a decent chance of passing Comment i legislation, but realized success partly depended on convincing state lawmakers that voting for Comment i legislation was not politically damaging.<sup>201</sup>

... success partly depended on convincing state lawmakers that voting for Comment i legislation was not politically damaging.

By September 1993, the tobacco industry expected Philip Morris lobbyist Randy Haynie to lead efforts to secure Comment i legislation if a special session occurred. The tobacco industry set aside \$285,000 for efforts during a special session or subsequent 1994 regular session<sup>170</sup> (Table 8.13).

Table 8.13: Planned Allocation of Funds for Industry Efforts to Pass Comment i Legislation during a 1993 Special Session <sup>170</sup>	
Item	Amount
Unidentified Coalition	\$100,000
Political Action Committee	\$75,000
Legislative consultants	\$50,000
Extra consultants (if required)	\$60,000
Total	\$285,000

### ***Constitutional Amendment Limits 1994 Tort Reform Efforts***

Louisianans adopted a constitutional amendment in October 1993 preventing the legislature from considering non-fiscal legislation during even-numbered years.<sup>202</sup> As a result, consideration of tort and liability legislation in 1994 could only happen during a special legislative session. Louisiana tobacco industry advisors felt Governor Edwin Edwards was amenable to including tort reform in a special session he might organize for non-fiscal legislation that year.<sup>203</sup> If Governor Edwards did not hold a special legislative session, Louisiana legislators were unlikely to consider tort and liability legislation until the 1995 legislative session.<sup>202</sup>

According to a document found in Philip Morris' records, in November 1993 a program titled the Tort Reform Project listed four tort and liability legislative objectives for Louisiana as the year neared its end:

- “Preserve 1988 product liability statute
- Preserve existing law which prohibits punitive damages unless expressly authorized by statute
- Preserve availability of protective orders
- Change from pure to modified comparative fault”<sup>204</sup>

The tobacco industry, similar to Philip Morris' objectives, ultimately had a limited proactive tort reform legislative agenda in Louisiana during 1994. Likely since a constitutional amendment passed in 1993 only allowed consideration of fiscal legislation in even number years (unless during a special session).<sup>203, 205207</sup>

That year, Philip Morris lobbyist Randy Haynie pursued a deal with trial lawyers to pass tort reform legislation. He sought to amend a bill intended to greater enable employees to sue employers for work injuries to include an unrelated provision classifying cigarettes as “‘inherently unsafe’ products.”<sup>206</sup> In exchange, Haynie offered to help secure the bill. Trial lawyers turned down Haynie's proposal. We did not find evidence that other tort reform legislation was pursued by the tobacco industry in 1994.<sup>203</sup>

### ***1994 State Supreme Court Elections***

Although legislative work on tort reform was mostly inactive in 1994, the tobacco industry recognized a State Supreme Court election in November 1994 as an opportunity to strengthen tort reform efforts in Louisiana. Justices on the Louisiana Supreme Court are elected and serve 10 year terms.<sup>207</sup> The tobacco industry viewed Louisiana Supreme Court justices as judicial activists that secured office because of Louisiana Trial Lawyer Association assistance.<sup>208</sup> Industry members blamed State Supreme Court rulings for “causing a loss of ground for business

interests” despite legislative success against LTLA policy efforts.<sup>208</sup> In a February 3, 1994 memo, Covington and Burling’s Keith Teel reported that “Louisiana litigators” recommended supporting State Supreme Court incumbent Pike Hall over his likely challenger, State Circuit Court justice Henry Brown. Hall retired that year, pitting Brown against Louisiana Circuit Court Judge Jeff Victory instead,<sup>209</sup> who the American Tort Reform Association (ATRA) determined supported tort reform.<sup>210</sup> Teel reasoned the tobacco industry could also influence a possible special election in 1995 for Louisiana’s Supreme Court if State Supreme Court judge Jim Dennis was selected to serve on the US Fifth Circuit Court of Appeals.<sup>203</sup> “Louisiana litigators” recommended backing Democrat Joe Bleich instead of Republican district judge Bob Kostelka if a special election to replace Dennis occurred.<sup>203</sup>

We did not find evidence that the tobacco industry directly influenced or contributed to races for Louisiana’s Supreme Court in 1994. Candidate Jeff Victory defeated Henry Brown and replaced Justice Hall on the State Supreme Court.<sup>209</sup> Louisianans also elected Bernette J. Johnson to the court that year.<sup>211</sup> After the judicial races, ATRA stated in a collection of 1994 election results that the State Supreme Court’s membership remained against tort reform.<sup>210</sup>

### **The 1995 Legislative Session**

The tobacco industry determined in a late-January 1995 analysis of Louisiana tort reform efforts that it and the state’s business community were deadlocked legislatively with the Louisiana Trial Lawyers Association. Neither side secured meaningful legislation during the 1993 and 1994 sessions.<sup>208</sup>

The tobacco industry worried LTLA was using the judicial system to undermine favorable tort reform laws obtained by the tobacco companies and Louisiana business community. An undated analysis from Philip Morris for the 1995 legislative session concluded that, “the trial lawyers have taken the battle of tort reform to the courts. Many of the reforms in place are now at risk of being reversed judicially in this climate. Judicial reform will be crucial for the future of tort reform in [Louisiana].”<sup>212</sup> The industry believed the State Supreme Court consisted of LTLA-backed judicial activists whose rulings in 1993 and 1994 negatively affected the tort reform community’s goals.<sup>208</sup> As a result, they expanded their political efforts beyond the legislature. According to a tobacco industry analysis of tort reform efforts in Louisiana:

The bottom line is – if tort reform is to be realized in Louisiana business interest must develop an aggressive, focused, well-designed plan to take back the legislature in the 1995 legislative elections. In addition, attention must be given to the two 1996 Supreme Court races or our best efforts at the legislature could be futile.<sup>208</sup>

Louisiana’s primary election occurred on October 21 and its general election on November 18, 1995.<sup>212</sup> Although LABI and its allies contributed heavily to legislative candidates, an uncredited document from RJ Reynolds’ records determined LTLA had an advantage with legislators on tort issues because it only gave contributions to advance its tort goals.<sup>208</sup> The document also noted that LABI and its allies had not substantially engaged in state judicial elections.<sup>208</sup>

Philip Morris observed that Louisianans rejected two LTLA-backed candidates in special elections during 1994. The company stated in an internal document on tort reform that the races

“showed an early trend.”<sup>212</sup> All legislative seats and constitutional offices were included in Louisiana’s election, affording an opportunity to shift the state government’s composition to be more favorable to tort reform.<sup>212</sup>

### *A Plan to Counter the LTLA’s Strong Influence on Louisiana Elections*

Despite the tobacco industry’s fallout with LABI in 1993, a comprehensive plan in RJ Reynolds’ records described working with the state business association, Louisiana companies, and CALA and utilizing campaign contributions, strategic lobbying, and grassroots mobilization to influence state election outcomes in favor of tort reform

“In a nutshell businesses’ electoral assistance is diffused while the plaintiff bar’s is pinpointed. The proponents of tort reform must come together in a targeted effort ....”

objectives. The plan was a response to LTLA’s perceived advantage on tort reform during elections, since the trial lawyers had one focus and Louisiana businesses had multiple issues they tried to influence outcomes over. It said:

[T]he business point of view includes a broad range of issues such as taxes, environment, employee relations, health care, education and state fiscal policy. Whereas the plaintiff bar has a single, narrow area of concern, tort de-form. In a nutshell businesses’ electoral assistance is diffused while the plaintiff bar’s is pinpointed. The proponents of tort reform must come together in a targeted effort to go heads-up against the resources of the LTLA with a separate tort reform focused electoral strategy to overcome this obvious disadvantage.<sup>208</sup>

The document marked a transition from the primarily defensive strategy employed by the tobacco industry in 1994 to a more aggressive plan to change the membership of the state legislature and make it friendlier to tort reform.

The document from RJ Reynolds’ files proposed forming a new six-member committee of business lobbyists to coordinate Louisiana’s tort coalition’s electoral efforts against LTLA.<sup>208</sup> Six unnamed lobbyists, four of whom actively served on CALA’s advisory panel, would sit on the committee and guide the tort reform coalition’s efforts. The committee would assign coalition resources, gather information for the coalition’s electoral and policy campaigns, steer campaign efforts, as well as assist and report information to coalition donors. The committee would also lobby state lawmakers to advance the business community’s tort reform objectives. The plan found in RJ Reynolds’ records suggested naming the panel Louisianans Against Lawsuit Abuse or the Committee for the Future of Louisiana. The plan anticipated committee efforts to need a \$200,000 budget in 1995.

Part of the plan required the tobacco industry and Louisiana’s business community to develop a second campaign contribution scheme specifically for tort reform and separate from non-tort campaign contributions made by LABI and other business interests, to counter LTLA donations.<sup>208</sup> The plan suggested forming a political action committee with a name relevant to tort reform. According to the 1995 tort analysis and plan for Louisiana from RJ Reynolds’ records, the tobacco industry desired to minimize its role in the PAC:

Efforts should be made to have broad participation in contributors to the PAC with an emphasis on companies with major capital and labor investments in Louisiana. Contributions by others are welcomed but the maximum PR impact would be derived from major and/or multiple Louisiana contributors.<sup>208</sup>

The plan reasoned that tobacco industry members should together provide 20% of the PAC's total funding, which it expected to have a \$300,000 budget in 1995.<sup>208</sup> The tobacco industry planned to use most PAC funds to assist pro-tort reform candidates and defeat anti-tort reform candidates in select districts. In instances where an anti-tort reform politician lacked a pro-tort reform opponent in their race, the industry considered recruiting a candidate to oppose them.<sup>208</sup> According to the Louisiana analysis and plan from late-January, its authors hoped to utilize other resources to influence state elections instead of the PAC when possible in order to keep as low a profile as possible:

The lobbyists on the oversight committee will try to accomplish as much as possible by non-PAC, and as such non-reportable means and through existing business groups and associations as not to bring unnecessary attention to this endeavor.<sup>208</sup>

The plan had six implementation phases spread across three years.<sup>208</sup> The first plan phase (January-March 1995) focused on coalition development, locating possible candidates, developing a strategy to protect incumbents, studying Louisiana's electorate characteristics, and establishing target districts.<sup>208</sup> The second phase (March-June 1995) occurred during the legislative session and consisted of maintaining phase 1 projects, passing favorable tort and liability bills, as well as stopping adverse legislation. The third phase (July-November 1995) focused on influencing Louisiana's statewide election via public outreach by CALA and visiting select electoral districts. The last phase in 1995 focused on observing and influencing legislative committee selections as well as observing legislative elections for House Speaker and Senate President. Tobacco industry officials sought to convince the victor of the gubernatorial election to hold a special session on tort reform in 1996, since lawmakers could not consider non-fiscal bills in that year's legislative session. The plan intended to use CALA to generate grassroots pressure and conduct public outreach for tort reform,<sup>208, 212</sup> similar to previous years, and estimated that \$500,000 was needed to fund CALA's efforts for the electoral campaign in 1995.

The tobacco industry intended to pursue tort reform legislation and defend against LTLA efforts to remove existing tort reform laws during the 1995 legislative session. The industry sought to eliminate strict liability statutes, establish modified comparative fault into law, and obtain better laws regarding joint and several liability.<sup>208</sup> In addition, the tobacco industry and tort reform proponents sought to pass legislation overturning the Louisiana Supreme Court's ruling in *Billiot v. BP Oil Co.* in 1994,<sup>208, 213</sup> which opened businesses to punitive damages.<sup>212, 214</sup> In that case, the Court found that the state's Workers' Compensation Act, which prevented workers in Louisiana from seeking compensatory damages in exchange for expected workers compensation benefits, did not pertain to punitive damages and did not prevent employees from receiving punitive damages when an employer's wanton or reckless disregard for public safety caused their harm.<sup>213</sup> Industry officials planned to fight bills establishing third party tort, protective order restrictions, and the creation of a two-year prescriptive period.<sup>208</sup>



While tobacco companies planned a broad legislative agenda for tort reform with the Louisiana business community, industry members also maintained focus on securing a Comment i bill.<sup>215</sup> According to an uncredited January 4, 1995 industry document from TI's records regarding tort and liability efforts in Louisiana:

We have more cases in Louisiana than in any other state. This is so despite the good law enacted in 1988. We continue to believe that a retroactive comment i provision is highly desirable, though our efforts in 1993 to enact such a measure were unsuccessful and had long-term negative effects against the industry in Louisiana and perhaps elsewhere.<sup>215</sup>

"We have more cases in Louisiana than in any other state. This is so despite the good law enacted in 1988. We continue to believe that a retroactive comment i provision is highly desirable ...."

The tobacco industry faced multiple state level product liability lawsuits in Louisiana and elsewhere. The tobacco industry was also fighting federal class action lawsuit *Castano v. American Tobacco Co et al.*, brought by private parties in New Orleans in 1994. As a result, tobacco companies saw passage of Comment i legislation, which prevented damages from being awarded to plaintiffs for harm caused by an inherently dangerous product being faulty or too dangerous,<sup>183</sup> as critical to ending ongoing lawsuits and insulating itself from legal claims in Louisiana.<sup>215</sup>

The tobacco industry and its allies dedicated significant resources to 1995 tort reform efforts in Louisiana but did not expect to secure favorable legislation. The tobacco industry recognized that important committees had anti-tort chairmen unlikely to allow consideration of tort reform bills, making passage difficult.<sup>212</sup> In a multi-state analysis for 1995, the American Legislative Exchange Council (ALEC) determined passing tort reform legislation in Louisiana was unlikely.<sup>216</sup> ALEC, which receives nearly 100% of its funding from corporations, is an organization that places company representatives and lawmakers on task forces together and has them jointly develop and certify business-friendly model legislation for later introduction by member legislators.<sup>217</sup> Besides ALEC, after the 1995 legislative session started, RJ Reynolds officials expressed in a memo circulated on April 28 that they did not expect desired legislation to pass.<sup>218</sup>

### ***1995 Legislation***

Lawmakers introduced 47<sup>219</sup> tort and liability bills during the 1995 legislative session (Table 8.14).<sup>212</sup> Lawmakers adopted 14 tort and liability bills but did not approve comment i legislation sought by the tobacco industry. Lawmakers introduced a balanced mix of tort legislation that the tobacco industry generally took no position on (Table 8.14).

The tobacco industry's Tort Reform Project initially allocated \$350,000 to fund 1995 Louisiana tort reform efforts.<sup>220</sup> Tort Reform Project officials later lowered Louisiana's budget to \$310,000 and divided the money among the Louisiana Association of Business and Industry

(\$100,000), Citizens Against Lawsuit Abuse (\$130,000), and Louisianans for Legal Reform (\$100,000).<sup>220</sup>

Philip Morris contributed \$20,000 of \$40,000 it budgeted for campaign donations to support 1995 tort reform efforts in Louisiana by April 27, 1995 and planned to give the remaining \$20,000 to the Louisiana State Democratic Party to influence statewide elections in fall 1995.<sup>222</sup> The project also planned to donate \$5,000 each to the House and Senate Legislative caucuses, the Republican Legislative Caucus, and the Democratic State Party in 1996.

Despite tobacco company documents showing preparation, planning, and spending to advance the industry's tort agenda in Louisiana, we found limited evidence of legislative advocacy and media campaign efforts during the 1995 legislative session. The American Tort Reform Association, which represented industry tort reform interests, released a survey that showed Louisianans supported tort reform during the 1995 legislative session. The survey was part of a nationwide campaign to pressure the US Senate into adopting "civil justice reform" according to an APCO memorandum circulated on May 16, 1995.<sup>223</sup> The survey received coverage from two radio stations, the Associated Press, and six publications.

Of the legislation introduced during the 1995 session, the tobacco industry and its allies identified HB 1846 as unfavorable to their policy objectives and sought to weaken or defeat the bill. Introduced by Rep. Glenn Ansardi (D-Jefferson),<sup>55</sup> HB 1846 restricted the use of protective orders to hide lawsuit details concerning hazards to the public.<sup>224, 225</sup> LABI issued an action alert on May 2, 1995 encouraging recipients to pressure lawmakers into opposing HB 1846. The action alert argued HB 1846 encouraged copycat lawsuits, instigated "lawsuit abuse," and made Louisiana unappealing to businesses.<sup>225</sup> Tobacco lobbyists tried to amend HB 1846 to benefit the industry but failed to secure changes.<sup>226</sup> HB 1846 ultimately passed into law (Table 8.14).

### **The 1996 Special Session**

Tort reform remained a policy priority for the tobacco industry in Louisiana during 1996. In a memo circulated on August 15, 1995, Philip Morris Regional Director of Government Affairs for Texas and Louisiana, Jack Dillard (Chapter 2), listed passage of a tort reform legislative package as one of two policy objectives for Louisiana if a special session occurred in 1996.<sup>227</sup> The Tort Reform Project established a \$310,000 total budget for Louisiana tort reform efforts in 1995 by October of that year and planned to budget \$500,000 towards "product liability and judicial elections" in 1996.<sup>228</sup> Statewide elections in late 1995 improved odds of tort reform legislation becoming law during 1996. LABI President Dan Juneau reasoned that statewide elections in November 1995<sup>229</sup> had changed the Louisiana Legislature's composition and made it supportive of the organization's (and the tobacco industry's) tort objectives.<sup>230</sup> Louisianans also elected business-friendly Mike Foster (R) as governor.<sup>231, 232</sup> Governor Mike Foster's approval and active participation in legislative tort reform efforts also appeared beneficial to LABI.<sup>230</sup>

Statewide elections in late 1995 improved odds of tort reform legislation becoming law during 1996.
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Table 8.14: Tort Reform and Product Liability Bills during the 1995 Session<sup>55, 56, 219, 221</sup>

Industry Stance	Bill	Author	Alternative Dispute Resolution	Government Liability	Restricts Access to Attorneys	Allows for Legal Fees to be Paid for by Case Loser	Reduce or Eliminate Damages to Plaintiff	Affects Lawsuit and / or Claimant Jurisdiction	Increases Burden of Proof Upon Claimant	Places Interest on Judgment	Restrict Protective Orders	Restrict Exemplary Damages	Affects Ability to Join Lawsuits	Third Party	Other	Result
Neutral	HB 4	Mitch Landrieu (D-Orleans)	+													Withdrawn
	HB 161	Chuck McMains (R-Livingston)					+									Died upon adjournment without consideration
	HB 308	Glenn Ansardi (D-Jefferson)						+					+			Adopted
	SB 15	James Cox (D-Calcasieu)													+	Died upon adjournment without consideration
	SB 68	Donald Kelly (D-Rapides)													+	Defeated on Senate Floor
No Position	HB 306	Glenn Ansardi (D-Jefferson)						+								Adopted
	HB 307	Glenn Ansardi (D-Jefferson)													+	Defeated in House
	HB 309	Glenn Ansardi (D-Jefferson)													+	Died upon adjournment without consideration
	HB 310	Glenn Ansardi (D-Jefferson)													+	Died upon adjournment without consideration
	HB 312	Glenn Ansardi (D-Jefferson)													+	Adopted
	HB 313	Glenn Ansardi (D-Jefferson)													+	Adopted

HB 336	Sean Reilly (D-East Baton Rouge)														+	Died upon adjournment without consideration
HB 358	Jimmy Dimos (D-Ouachita)														+	Adopted
HB 360	Jimmy Dimos (D-Ouachita)												+			Adopted
HB 361	Jimmy Dimos (D-Ouachita)						+									Adopted
HB 539	Stephen Windhorst (R-Orleans)														+	Adopted
HB 545	James Singleton (D-Caddo)														+	Adopted
HB 546	James Singleton (D-Caddo)														+	Died upon adjournment without consideration
HB 547	James Singleton (D-Caddo)														+	Adopted
HB 548	James Singleton (D-Caddo)														+	Adopted
HB 639	Alexander				+											Withdrawn
HB 1011	Joel Chaisson (D-St. Charles)		+			+									+	Died upon adjournment without consideration
HB 1019	Chuck McMains (R-Livingston)					+									+	Died upon adjournment without consideration
HB 1065	Robert Adley (D-Bossier)			+												Died upon adjournment without consideration
HB 1162	Vic Stelly (R-Calcasieu)							+								Died upon adjournment without consideration
HB 1329	Dale Sittig (R-St. Landry)				+											Died upon adjournment without consideration
HB 1800	Daniel Martiny (R-Jefferson)														+	Died upon adjournment without consideration
HB 1824	Daniel Martiny (R-Jefferson)														+	Died with adjournment on House Floor
HB 1828	Ted Haik (D-St. Mary)														+	Died upon adjournment without consideration

	HB 1846	Glenn Ansardi (D-Jefferson)									+					Adopted
	HB 1859	Ted Haik (D-St. Mary)													+	Died upon adjournment without consideration
	HB 2058	Garey Forster (D-Orleans)												+	+	Adopted
	SB 580	Donald Kelly (D-Rapides)					+					+				Died upon adjournment without consideration
	SB 1163	Ron Landry (D-St. Charles)													+	Adopted
	SB 1188	Thomas Greene (D-West Baton Rouge)								+						Died upon adjournment without consideration
	SB 1195	Craig Romero (R-Vermilion)													+	Died upon adjournment without consideration
	SB 1196	Craig Romero (R-Vermilion)													+	Died upon adjournment without consideration
	SB 1197	Craig Romero (R-Vermilion)													+	Died upon adjournment without consideration
Unknown	HB 108	Randy Roach (D-Calcasieu)		+												Died upon adjournment without consideration
	HB 229	Stephen Gunn (I-Grant)		+												Died in Committee
	HB 842	Robert Adley (D-Bossier)													+	Died with adjournment on House Floor
	HB 2014	Windhorst													+	Adopted
	SB 255	Mike Foster (D-Assumption)		+			+									Died upon adjournment without consideration
	SB 562	John Hainkel (D-Jefferson)					+									Died upon adjournment without consideration
	SB 563	John Hainkel (D-Jefferson)													+	Died upon adjournment without consideration
	SB 564	John Hainkel (D-Jefferson)					+									Died upon adjournment without consideration
	SB 1141	Craig Romero (R-Vermilion)													+	Died upon adjournment without consideration

Louisiana legislators introduced 11 tort and liability bills for the 1996 special session (Table 8.15).<sup>233</sup> Four bills, HB 18, HB 20, and HB 21 by Rep. Chuck McMains (R-Baton Rouge),<sup>234</sup> and HB 164<sup>235</sup> by tobacco industry ally Representative Elias “Bo” Ackal (D - New Iberia), likely composed the state tort reform community’s legislative package. The Baton Rouge *Advocate* stated in a March 22, 1996 article that McMains would “handle many of the lawsuit bills pushed by the business community.”<sup>236</sup> The *Advocate* described proposals offered by Governor Foster that appear to match HB 18 and HB 21.<sup>230</sup> HB 18 eliminated strict liability and required claimants to demonstrate that harm caused by an animal, “thing” or property resulted from the owner’s negligence.<sup>234, 237</sup> HB 18 did not particularly apply to the tobacco industry, as it pertained to harm caused by the negligence of an owner, rather than manufacturers or producers. HB 20 eliminated punitive damages for lawsuits over harm caused by dangerous or toxic substances.<sup>234</sup> The bill does not appear to apply to the tobacco industry, and is not included in TI’s 1996 Legislative Report<sup>238</sup> that covers legislation of concern to the tobacco industry. HB 21 made defendants responsible for damages only to their degree of fault in cases featuring joint and several liability.<sup>234, 239</sup> Existing Louisiana law made defendants liable for up to 50% of damages in a lawsuit if other defendants could not afford payments.<sup>230</sup> Another tort reform bill in the legislative package, HB 164, removed liability for the tobacco industry and other manufacturers for harm caused by inherently dangerous products.<sup>233, 240</sup> The Louisiana Trial Lawyers Association would attack HB 164 as a tobacco industry bill during the 1996 session.<sup>240</sup>

One piece of legislation specifically targeted the tobacco industry during that session. Senator Chris Ullo (D-Jefferson)<sup>56</sup> introduced SR 20 on April 18 to officially call for research into the tobacco industry’s efforts to influence tort reform in order to protect itself.<sup>233</sup>

According to a May 23, 1996 memo by tobacco industry law firm Covington and Burling, “In 1996, the most significant effort to pass favorable legislation was in Louisiana.”<sup>235</sup> CALA ran television, radio, and billboard advertisements that provided a phone number for people to contact state lawmakers. CALA instigated approximately 4000 calls, letters, and faxes from the public to pressure to lawmakers into supporting CALA’s legislative package.<sup>3</sup>

“The trial bar charged that the tobacco industry was behind much of the proposed package of bills, a fact that was not true, and they very effectively attacked the industry ... The attacks on the industry neutralized supporters and left our team of lobbyists largely on its own.”

Trial lawyers countered industry efforts by labeling tort reform bills it supported as creations of the tobacco companies, politically alienating tobacco industry representatives in Louisiana and harming their legislative efforts.<sup>235</sup> According to the Covington and Burling memo circulated on May 23 by tobacco industry counsel Keith Teel, trial lawyers attacked HB 164 as tobacco industry-supported legislation during an April 1, 1996 hearing before the House Civil Law and Procedure Committee.<sup>240</sup>

The trial bar charged that the tobacco industry was behind much of the proposed package of bills, a fact that was not true, and they very effectively attacked the industry....The attacks on the industry neutralized supporters and left our team of lobbyists largely on its own.<sup>235</sup>

Table 8.15: Tort Reform and Product Liability Legislation Introduced for the 1996 Special Session <sup>55, 56, 233, 237, 239, 241</sup>									
Bill	Sponsor	Made Defendants Responsible for Damages Only to Degree of Fault in Joint and Several Liability Cases	Reduces or Eliminates Plaintiff Compensation	Limits or Eliminates Liability for Inherently Dangerous Products	Eliminates Joint and Several Liability in Certain Instances	Distributes Fault Among Defendants Responsible for Damage	Directly Made Tobacco Companies Liable for Harm Caused by Their Products	Other	Outcome
HB 18	Chuck McMains (R-Livingston), et al							+	Adopted
HB 20	Chuck McMains (R-Livingston), et al		+						Adopted
HB 21	Chuck McMains (R-Livingston), et al	+	+						Adopted
HB 142	Chuck McMains (R-Livingston)		+						Withdrawn
HB 164	Elias “Bo” Ackal (D-St. Martin), Shirley Bowler (R-Jefferson), Et all			+					Died with adjournment in Senate Judiciary A Committee
HB 193	John “Juba” Diez (D-Ascension)		+						Died with adjournment
SB 22	Jay Dardenne (R-East Baton Rouge), Randy Ewing (D-Jackson), Et al							+	Defeated in Senate Judiciary A Committee
SB 24	Jay Dardenne (R-East Baton Rouge), Randy Ewing (D-Jackson), Et al				+	+			Died with adjournment
SB 150	J. Lomax Jordan (R-Lafayette)					+			Died with adjournment in Senate Judiciary A Committee
SB 161	J. Lomax Jordan (R-Lafayette)						+		Died with adjournment in Senate Judiciary Committee
SB 198	John Hainkel (D-Jefferson)			+					Died with adjournment in Senate Judiciary A Committee
SR 20	J. Chris Ullo (D-Jefferson)							+	Adopted

The attacks coincided with multiple lawsuits targeting the tobacco industry for deceiving the public about the dangers of its tobacco products and the harm they caused. During the 1996 special session, multiple state attorneys general were suing the tobacco companies to recoup Medicaid costs from treating tobacco-related illnesses, efforts that later culminated in the 1998 Master Settlement Agreement (Chapter 9). The tobacco companies were also appealing the

federal class action certification of *Castano vs. American Tobacco Co. et al.*, an attempt by over 50 law firms to sue the industry for nicotine addiction caused by its products.

The House Civil Law Procedure Committee considered HB 164 on April 1, 1996 where it was attacked by the Louisiana Trial Lawyers Association and other high profile figures as a tobacco industry machination.<sup>240</sup> According to an April 2, 1996 article in the *Baton Rouge Advocate*, incoming LTLA President Drew Ranier asserted at the hearing that HB 164 “opens the floodgate to continued abuses by the tobacco industry.”<sup>240</sup> LTLA also claimed that tobacco industry representatives helped craft HB 164. Other hearing attendees attacked HB 164’s shielding of tobacco products and tobacco companies from legal liability. During deliberations, attorney Maury Herman, a lawyer involved in the *Castano* case<sup>19</sup> (serving on multiple committees organized by participating firms<sup>242</sup>) and on the team of lawyers organized by Attorney General Richard Ieyoub<sup>242</sup> to recoup Louisiana’s tobacco-related Medicaid expenditures (Chapter 9), told committee members that tobacco products were lethal and that adopting HB 164 prevented addicted children from seeking legal redress.<sup>240</sup> Former tobacco industry scientist Victor Denoble also testified to the committee that the tobacco companies targeted children. In addition, committee member Glenn Ansardi (D-Kenner) quoted a statement by Louisiana Attorney General Richard Ieyoub during the hearing accusing HB 164 of being an effort to protect the tobacco companies.

During the House Civil Law Procedure Committee hearing for HB 164, the bill’s sponsor Rep. Elias Ackal defended its provisions protecting the tobacco industry from liability for harm caused by its products. He justified them by claiming that morphine and alcohol also killed users as a comparison.<sup>240</sup>

The House Civil Law and Procedure Committee was receptive to attacks on the tobacco companies and moved to eliminate liability protections for the industry in HB 164.<sup>240</sup> Covington and Burling tobacco industry counsel Keith Teel reported in a May 23, 1996 memorandum that Comment i legislation failed because, “ultimately, it became apparent that there was not a viable political strategy for passing the bill, and we were forced to withdraw it.”<sup>235</sup> As debate on HB 164 concluded at the hearing, committee members voted 8-5 to adopt an amendment by member Rep. Randy Wiggins (R-Pineville) that excluded the tobacco industry from HB 164’s provisions and then passed the bill.<sup>240</sup> As a result, the tobacco industry again failed to secure Comment i legislation. HB 164 ultimately died with adjournment in the Senate Committee on Judiciary A after passing the House.<sup>238</sup> Although the tobacco industry, LABI and CALA failed to pass HB 164 and its initial provisions featuring Comment i protections for the industry, LABI and CALA secured HB 18, HB 20, and HB 21 into law.<sup>233, 238, 241, 243, 244</sup>

HB 18 did not pertain to the tobacco industry and did not increase its protection from liability.<sup>237</sup> HB 20, which eliminated punitive damages in lawsuits regarding harm caused by dangerous and toxic substances, also passed<sup>245</sup> but did not affect the tobacco industry. HB 21 limited liability based on defendants’ and plaintiffs’ respective degree of fault, but held tortfeasors fully accountable in cases of intentional torts, where defendants engaged in behavior they knew could cause harm.<sup>239, 246</sup> HB 21 limited liability for the tobacco industry, allowing it to shift fault and degree of liability to people injured by its products.<sup>238</sup>

The successful business community effort to pass tort and liability laws prompted the New Orleans *Times-Picayune* to credit LABI as the biggest winner of the special legislative



session in an April 21, 1996 article.<sup>243</sup> In a 1997 performance review, RJR Senior Vice President of Government Relations W.E. Ainsworth stated that passage of the legislative package was damaging to state trial lawyers.<sup>247</sup> Ainsworth oversaw the tobacco industry's Medicaid liability program and led Louisiana tort reform efforts in 1996.

Although tort reform proponents in Louisiana secured most of their tort reform agenda in 1996, state lawmakers also passed SR 20 to draw scrutiny towards the tobacco industry's attempts to influence tort reform for its own gain.<sup>238</sup> SR 20 tasked the Senate Committee on Judiciary A to study whether the tobacco industry utilized tort reform to protect itself from lawsuits over injuries, particularly cancer, cardiovascular disease, and emphysema, caused by its products.<sup>248</sup>

### ***Castano Case is Defeated***

In May 1996, shortly after Louisiana's special session, tobacco industry lawyers convinced the US 5th Circuit Court of Appeals in New Orleans to unanimously reject the class action certification request sought by plaintiffs in *Castano vs. American Tobacco Co.* The judges decided against approving the class action, believing it would be too unwieldy for the federal court system.<sup>15</sup> The decision killed efforts to bring a national class action lawsuit for nicotine addiction, but caused participating lawyers and law firms to file state-level class actions, termed "sons of Castano," mimicking the design of the original case.<sup>19</sup>

### **The Tobacco Industry Plans for 1997**

TI outlined offensive and defensive policy priorities for 1997 Louisiana tort reform efforts in June 1996.<sup>249</sup> TI tort reform goals included prohibiting state agencies from bringing lawsuits using contingency fees, securing Comment i legislation, protecting against Medicaid lawsuit liability (Chapter 9), and defending favorable product liability laws.<sup>249</sup>

Philip Morris developed similar legislative objectives for tort reform during the 1997 session.<sup>250</sup> In an undated draft plan for 1997 statewide political efforts, Philip Morris intended to secure Comment i legislation, and defend the 1988 law limiting liability for inherently dangerous products.<sup>250</sup> Philip Morris also planned to defeat legislation permitting Medicaid reimbursement lawsuits without proving "causation and actual damages for individual claims," as well as any bills introduced by trial lawyers.<sup>250</sup> To advance tort reform goals, PM officials sought to bolster its statewide tort reform coalition and revise tort discussion points and claims used to lobby its legislative agenda.<sup>250</sup>

State lawmakers submitted 13 tort and liability bills that the tobacco industry monitored during the 1997 legislative session (Table 8.16). Lawmakers adopted into law one bill affecting class action lawsuits, HB 1984 by Chuck McMains (Table 8.16). HB 1984 created more requirements and more prohibitive thresholds for filing class action lawsuits, benefitting the tobacco industry by limiting the ability of plaintiffs to take such actions.<sup>251</sup> The tobacco companies had defeated an attempt by plaintiffs in *Castano vs. American Tobacco Co. et al.* the prior year to file a federal class action lawsuit, and sought to invalidate subsequent state-level class action cases filed by lawyers and law firms party to the failed federal suit.

We did not find bills to enact Comment i legislation despite earlier industry plans. In addition, we did not discover documentation of tobacco industry efforts to advance tort reform during the 1997 legislative session.

Bill	Sponsor	Establishes Requirements for Class Action Lawsuits	Restricts Access to Litigation Documents	Allows for Awarding of Punitive Damages	Allows for Reapportionment of Fault from an Incapable or Immune Person	Raises Monetary Threshold for Civil Trial by Jury	Holds Tobacco Manufacturers Liable for Harm Caused by Product	Other	Outcome
HB 27	Vic Stelly (R-Calcasieu)							+	Died upon adjournment without consideration
HB 193	Robert Marionneaux (D-West Baton Rouge)							+	Died upon adjournment without consideration
HB 321	Tom Thornhill (R-St. Tammany)					+			Died upon adjournment without consideration
HB 1289	Charles Hudson (D-St. Landry)							+	Died upon adjournment without consideration
HB 1299	Chuck McMains (R-Livingston)	+							Died upon adjournment without consideration
HB 1869	John “Juba” Diez (D-Ascension), Charles DeWitt (D-Rapides)		+						Died upon adjournment without consideration
HB 1984	Chuck McMains (R-Livingston)	+							Adopted
SB 209	John Hainkel (D-Jefferson)							+	Died upon adjournment without consideration
SB 245	J. Lomax Jordan (R-Lafayette)				+			+	Died upon adjournment without consideration
SB 520	Mike Smith (D-Grant)	+							Died upon adjournment without consideration
SB 759	Phil Short (R-St. Helena)	+							Died upon adjournment without consideration
SB 888	J. Lomax Jordan (R-Lafayette)			+					Died upon adjournment without consideration
SB 897	J. Lomax Jordan (R-Lafayette)						+		Died upon adjournment without consideration
SB 1085	John Hainkel (D-Jefferson)	+							Died upon adjournment without consideration

### Legislative Efforts Stall in 1998

Louisiana law restricted the 1998 regular session to financial legislation, limiting consideration of tort reform to any special session convened by the governor. Philip Morris planned by late August 1997 to pursue Comment i legislation and preserve 1988 product liability

laws if one happened.<sup>229</sup> PM officials also intended to defeat any legislative efforts by trial lawyers.<sup>229</sup> To achieve its 1998 tort objectives, Philip Morris planned to bolster its Louisiana business alliance as well as revise arguments and resources related to tort reform and Medicaid liability.<sup>229</sup> However, no special session convened to consider tort reform in 1998, stalling tobacco industry legislative efforts until 1999.

The tobacco industry and LABI remained judicially active on tort reform in 1998, contributing to candidate Charles Cusimano's unsuccessful fall election run for the Louisiana Supreme Court against Chief Justice Pascal Calogero, whom LABI blamed for unfavorable rulings (Chapter 3).

### 1999 Tort Reform Efforts

Philip Morris formulated a draft strategy for 1999 political efforts in Louisiana by late August 1998 that included tort reform objectives.<sup>254</sup> PM officials planned to defend against legislation allowing the state to receive damages in Medicaid recovery lawsuits without demonstrating fault or harm in each claim.<sup>254</sup> In addition, Philip Morris intended to protect the 1988 law limiting liability for inherently dangerous products and to prevent trial lawyers from securing any legislation.<sup>254</sup> Philip Morris viewed success on tort reform during the 1999 legislative session as defeating any bills making lawsuits more viable against the tobacco companies.<sup>254</sup>

To achieve its tort reform goals in Louisiana, Philip Morris developed a multifaceted strategy that included improving its lobbying effectiveness on the subject, alliance building, a publicity campaign, and donations.

To achieve its tort reform goals in Louisiana, Philip Morris developed a multifaceted strategy that included improving its lobbying effectiveness on the subject, alliance building, a publicity campaign, and donations.<sup>254</sup> Philip Morris planned to engage industry legal consultants to inform their tort activities and improve industry representatives' abilities to observe and impede unfavorable legislative efforts. In an uncredited strategy document, Philip Morris also intended to "strengthen [its] business coalition on liability issues." The company planned to enhance liability discussion themes used by its media affairs and legal teams and monitor liability resources and assertions used by its issue management officials. Externally, Philip Morris sought to improve ties with its Miller Beer subsidiary's distributors as well as the Beer Industry League of Louisiana. It also planned to keep an official referred to in its 1999 Louisiana draft plan as "RD" on LABI's Product Liability Taskforce.

Philip Morris planned a publicity campaign to bolster its tort reform efforts. The company sought to publish letters and editorials in newspapers. In addition, Philip Morris would contribute to charities and organizations to demonstrate the company's positive impact in Louisiana and form bonds with critical populations.<sup>254</sup> In essence, it planned to employ a corporate social responsibility campaign to improve its public image and support in Louisiana. Philip Morris also intended to donate to state candidates supportive of business interests.

The tobacco industry tracked ten tort and liability bills introduced by Louisiana lawmakers for the 1999 legislative session<sup>255</sup> (Table 8.17). Three tort and liability bills, HB 858, HB 1094, and HB 1784, passed into law. The tobacco industry had desired passage of two bills adopted, HB 858 and HB 1784.<sup>255</sup> HB 858 allowed defendants to pursue termination of a lawsuit if more suitable court venues existed at the federal or state levels. HB 1784 prohibited using damages to cover health screenings unless an injury existed at the beginning of a lawsuit. HB 1094, which addressed gun manufacturer liability, did not pertain to tobacco products or tobacco manufacturer liability.<sup>255</sup> Other bills desired or opposed by the tobacco industry died with adjournment (Table 7.16). We found no evidence besides Philip Morris' draft plan for 1999 that the tobacco industry lobbied or conducted a campaign to pass tort reform during the 1999 legislative session.

Table 8.17: Tort Reform and Product Liability Legislation Introduced for the 1999 Session <sup>55, 56, 255-257</sup>										
Bill	Sponsor	Supported or Opposed by Industry	Establishes Requirements for Class Action Lawsuits	Limits Access to or Use of Damages for Medical Diagnoses to Injuries Suffered at Time of Lawsuit	Establishes Affidavit Requirements for Credentialed Experts	Allows Defense to Pursue Dismissal of Case	Penalizes Plaintiff	Expands Time Window from Initial Harm a Lawsuit can be Filed In	Other	Outcome
HB 204	Steve Scalise (R-Orleans)	Neutral							+	Died with adjournment
<b>HB 858</b>	<b>Ronnie Johns (D-Sulphur)</b>	<b>Supported</b>				+				<b>Adopted</b>
HB 1059	Chuck McMains (R-Livingston)	Supported	+							Died with adjournment on House Floor
<b>HB 1094</b>	Chuck McMains (R-Livingston)	<b>Neutral</b>							+	<b>Adopted</b>
HB 1095	Mike Michot (R-Lafayette)	Supported					+			Died with adjournment
HB 1508	Chuck McMains (R-Livingston)	Opposed			+					Died with adjournment
<b>HB 1784</b>	Chuck McMains (R-Livingston)	<b>Supported</b>		+						<b>Adopted</b>
SB 66	James Cox (D-Calcasieu)	Opposed						+		Died with adjournment
SB 203	John Hainkel (D-Orleans)	Neutral								Died with adjournment after being designated duplicate of HB 1094
SB 1001	John Siracusa (D-St. Mary)	Supported				+				Died with adjournment

## Tort Reform After 1999

We did not find evidence of tobacco industry participation in Louisiana tort reform efforts after 1999 in the Truth Tobacco Industry Documents Library. However, tort reform organizations and the business community remained active in the state. During 2016 state elections, Republican gubernatorial candidates received significant funding from unidentified tort reform interests, some of whom were seeking to secure a business-friendly legislative package the following session.<sup>258</sup> Gubernatorial candidate John Bel Edwards (D), who received \$685,000 in funding from trial lawyers during the 2016 election cycle and was not a tort reform proponent, won office.<sup>258</sup> Before being elected governor, Edwards opposed tort reform and supported trial lawyer positions while he served in the state legislature.<sup>258</sup>

In 2018, the American Tort Reform Foundation listed Louisiana as a “Judicial Hellhole,” claiming its court system was unfair to businesses and biased towards plaintiffs, partly because of trial lawyers’ influence on the state government.<sup>259</sup> CALA no longer appeared to be active, but Louisianans for Lawsuit Reform, a tort reform organization similar to CALA that was created in 2007, continued to attack trial lawyers and promote tort reform in Louisiana as of September 2018.<sup>260</sup> As of 2019, LABI continued to endorse product liability reforms.<sup>261</sup>

## Conclusion

The tobacco industry implemented a comprehensive strategy consisting of monitoring and lobbying legislation, providing campaign contributions to lawmakers, and developing a state business coalition to advance its tort reform agenda and protect itself from product liability lawsuits in Louisiana. By 1986, the tobacco industry began observing tort and liability legislation in Louisiana. That year, the State Supreme Court’s ruling in *Halphen v. Johns-Manville Sales Corporation* (a product liability lawsuit over harm caused by asbestos exposure) finding companies liable for inherently dangerous products regardless of their knowledge or ability to protect consumers, subsequently increased the tobacco industry’s activity on tort reform. The tobacco industry shortly began contributing to lawmakers and lobbying for tort reform legislation in tandem with the Louisiana Association of Business and Industry and businesses in the state. The industry particularly sought bills to limit or eliminate liability for inherently dangerous products. The tobacco industry and Louisiana’s business community subsequently secured SB 684 in 1988, eliminating liability for harm caused by inherently dangerous products and effectively overturning the 1986 State Supreme Court ruling.

Afterwards the tobacco industry continued monitoring and lobbying for tort reform legislation in coordination with Louisiana businesses and associations, allowing it to gradually increase its protections from liability in the late 1980s and early 1990s. Statewide elections in 1991 radically changed the membership of the legislature and aligned it with the anti-tort reform Louisiana Trial Lawyers Association, jeopardizing the tobacco industry and Louisiana business community’s legislative gains in tort reform and liability laws. To counter the threat posed by the new legislature and LTLA, the tobacco industry funded and participated in Citizens Against Lawsuit Abuse, a coalition created by LABI in 1992 to coordinate tort reform efforts by pro-tort reform businesses and organizations and defend favorable tort reform laws. CALA served as the face of tort reform efforts in Louisiana and ran a publicity campaign that demonized LTLA and promoted tort reform as a societal benefit. Efforts by the tobacco industry and Louisiana business

community, partially through CALA, prevented LTLA from securing its anti-tort reform legislative agenda despite a friendly legislature. Instead, the cooperative legislative and media campaigns backed by the tobacco industry and Louisiana business community secured additional bills during the 1990s limiting their liability, reducing their exposure to damages, and hindering people's ability to sue them. Although the tobacco industry was not visibly participating in Louisiana tort reform work after the 1990s, tort reform proponents remained active in the state as of 2018.

## Chapter 9: Louisiana and the Master Settlement Agreement

- In 1996 Louisiana became the sixth state to sue the tobacco industry.
- Louisiana's participation caused Liggett and Myers to settle, giving state attorneys general access to internal documents and information critical to their lawsuits against the tobacco companies.
- Louisiana used initial payments from the 1998 Master Settlement Agreement to address a budget shortfall in 1999.
- Lawmakers placed approximately 70% of the state's settlement reward into a protected trust for health and education initiatives.
- Louisiana securitized \$2.4 billion of its first 25 years of MSA payments in 2001 for an immediate \$1.2 billion payment.

### Introduction

In 1994, attorneys general from Mississippi, Minnesota and West Virginia, and in 1995 those from Florida and Massachusetts, filed lawsuits against the major tobacco companies.<sup>1</sup> The suits claimed the tobacco industry hid the harmful effects of cigarettes and the addictiveness of nicotine, and sought compensation for Medicaid funding used by the states to treat tobacco-related illnesses, as well as injunctive relief to reign in tobacco industry marketing directed at youth. The lawsuits named the American Tobacco Company, RJ Reynolds, British American Tobacco, Brown and Williamson, Philip Morris, Liggett and Myers, Lorillard, the United States Tobacco Sales and Marketing Company, the Council for Tobacco Research, and the Tobacco Institute as defendants.

States started individually settling their cases against the tobacco industry on increasingly favorable terms in 1997. That year, Mississippi<sup>2</sup> and Florida<sup>3</sup> settled their cases, followed by Texas<sup>4</sup> and Minnesota<sup>5</sup> in 1998. By 1998 the remaining 46 states, the District of Columbia, and 5 US territories had filed lawsuits against the industry. The participating attorneys general and tobacco companies negotiated the Master Settlement Agreement (MSA) to settle all these remaining cases.<sup>6</sup> The MSA required the tobacco companies to acknowledge the addictiveness of nicotine and the harms of tobacco consumption. The MSA also prohibited participating companies from marketing to minors and restricted where and how they could advertise.<sup>6</sup> The MSA required the settling tobacco companies to pay billions of dollars in damages in perpetuity to state plaintiffs based on a formula related to the costs smoking imposed on each state's Medicaid program and other factors.<sup>6</sup>

Louisiana was the sixth state to file suit against the major tobacco companies when it sued in March 1996<sup>7</sup> and played a critical role in the success of the Master Settlement Agreement. The state's Attorney General, Richard Ieyoub, had considered filing suit against major tobacco companies in 1994 to recoup Louisiana's Medicaid costs from treating tobacco-related illness,<sup>8</sup> but did not join the other states' legal action against the industry

Louisiana was the sixth state to file suit against the major tobacco companies when it sued in March 1996 and played a critical role in the success of the Master Settlement Agreement.

until 1996. Louisiana's participation secured the settlement of tobacco company Liggett and Myers, which provided the attorneys general an insider witness as well as internal documents proving the industry knew their products were harmful and addictive. Louisiana provided further pressure on the tobacco companies to settle using its unique ability among participating states to name as defendants the insurance companies that were providing coverage for the tobacco industry.<sup>9, 10</sup>

### ***Louisiana Joins Litigation against the Tobacco Companies: The Liggett and Myers Settlement***

After initiating legal action against the tobacco industry in 1994 and 1995, in 1996 the attorneys general from Mississippi, Massachusetts, Minnesota, Florida, and West Virginia considered settling with Liggett and Myers to turn the business into a witness for the participating states against the other major tobacco companies. Two major considerations precipitated the deal sought by Liggett and Myers in court. First, Liggett only had a 2% share of the US tobacco market after it unsuccessfully fought a price war against Philip Morris in 1993 and generated a mere \$11 million in profit annually before tax. Settling early allowed Liggett and Myers to avoid bankruptcy if the state attorneys general reached a larger settlement with the bigger tobacco companies or defeated them in court. Second, Liggett's CEO Bennett LeBow did not rise to power from within the tobacco industry and did not hold allegiance to its practices. Known for buying poorly performing companies and selling them for a profit, he became CEO after purchasing Liggett in 1986.<sup>11</sup> Being an industry outsider, he was not inclined to maintain ranks with the other companies as tobacco industry leadership had always done. As a result, LeBow and Liggett sought a deal with the state attorneys general without informing the rest of the tobacco industry.

Settling with Liggett would provide the attorneys general access to internal documents on advertising to minors and nicotine modification in cigarettes. The attorneys general believed the documents would prove companies and trade associations named in the lawsuits knew nicotine was addictive and had worked to make cigarettes more addictive. Liggett CEO Bennett LeBow welcomed a settlement if all five states suing at the time agreed to the deal.<sup>12</sup>

The attorneys general for Mississippi, Massachusetts, Florida and West Virginia negotiated a settlement with Liggett, but Minnesota refused to agree to the deal.<sup>12, 13</sup> Minnesota AG Hubert Humphrey, Jr. felt the terms were not strong enough. He wanted Liggett to further curb marketing to minors and offer more money for Minnesota to settle.<sup>13</sup> As a result, the participating attorneys general were one short of the five states LeBow required to settle.

Looking for a fifth state to settle with Liggett, Mississippi Attorney General Michael Moore recruited Louisiana Attorney General Richard Ieyoub to participate in the lawsuit and settlement. Moore, along with Drew Ranier, a Louisiana lawyer that was friends with Ieyoub and knew attorneys general participating in the lawsuits, called the Louisiana AG imploring him to join the settlement. Fearful of tobacco industry retaliation since he planned to run for a US Senate seat the coming year, Ieyoub requested time to consider Moore and Ranier's request. According to Richard Ieyoub in a 2014 interview for this report:

That particular time was not the best time for me to consider filing a lawsuit politically against the tobacco companies who obviously were very powerful, very politically involved with a very strong lobby -- because I was getting ready to announce to run for United States Senate from Louisiana. And when Mike



Moore called me, I explained that to Mike, you know, there's no question...I was concerned because politically it would be very damaging, you know, for me to file a lawsuit at the time.<sup>14</sup>

After Ieyoub spoke with Moore and Ranier, the tobacco companies attempted to intimidate the Louisiana attorney general into not entering the Liggett settlement. A Baton Rouge attorney contacted Ieyoub requesting an appointment for lawyers interested in the tobacco lawsuits to meet with him. At the appointment, approximately 13 lawyers that previously or currently represented the tobacco industry attended to persuade Ieyoub that the state lawsuits were frivolous and unmerited. The lawyers insinuated that if Ieyoub joined the settlement, he would jeopardize his political career. Ieyoub recalled the encounter in a 2014 interview for this report:

“Why would you want to file when you have a frivolous lawsuit and when you're getting ready to run for political office?”

They [tobacco industry lawyers] got into the fact that they were aware that I was interested in running for the U.S. Senate and that politically it was crazy for me at this point to file a lawsuit. Why would you want to file when you have a frivolous lawsuit and when you're getting ready to run for political office?<sup>14</sup>

Despite threats from the tobacco industry, Ieyoub contacted Mississippi Attorney General Mike Moore and informed him he would join the Liggett settlement.<sup>14</sup>

Mississippi, Massachusetts, Florida, West Virginia and Louisiana settled with Liggett and Meyers on March 12, 1996.<sup>15</sup> The settlement forced Liggett to pay a total of \$10 million and 7.5% of profits before tax over 25 years.<sup>16</sup> Five percent of pre-tax profits, capped at \$50 million per year, would go to smoking cessation programs.<sup>16</sup> If RJR Nabisco merged with Liggett in 1996, which it was considering, the settlement required a \$135 million payment and an annual allocation of either 2.5% of pretax profits or \$30 million to the participating states.<sup>17</sup>

The settlement forced Liggett to limitedly follow proposed FDA rules prohibiting advertising and marketing to minors.<sup>18, 19</sup> Settlement rules based on the proposed FDA rules were narrower in scope and focused on limiting advertising to minors (Table 9.1). As with most settlements, Liggett did not admit fault.<sup>18</sup> The settlement allowed other state attorneys general to join as parties up to six months after its finalization and permitted later entries if Liggett approved an extension.<sup>15</sup>

### ***Louisiana Joins the State Lawsuits against the Major Cigarette Companies***

While Louisiana joined efforts to settle with Liggett, Attorney General Richard Ieyoub moved to start a larger lawsuit under state law on behalf of Louisiana against the other major tobacco companies. Ieyoub approached Lake Charles lawyer Drew Ranier, who had urged him to join the settlement with Liggett, to form a team of lawyers to handle the lawsuit.<sup>14</sup> Ranier formed a team of approximately 17 lawyers to draft a lawsuit for Louisiana and represent the state in court.<sup>14</sup> The suit accused tobacco companies, distributors, and their trade organizations and think tanks of hiding the harmful effects of tobacco and the addictiveness of nicotine while trying to promote tobacco products.<sup>7</sup> Ieyoub's team brought the suit under the Louisiana Constitution of

Table 9.1: Comparison of FDA Proposed Rules and Liggett Settlement Provisions Based on FDA Proposed Rules <sup>18, 19</sup>		
Rule Number	FDA Proposal	Liggett Settlement
§ 897.16(a)	Prohibits use of all non-tobacco product branding and trade names on tobacco products. Grandfathers in tobacco products using non-tobacco branding or trade names by January 1, 1995.	Prohibits use of non-tobacco product branding and trade names that are appealing to minors.
§ 897.16(b)	Established minimum cigarette pack size at 20 cigarettes.	Same as FDA proposal.
§ 897.16(d)	Prohibited distribution of free tobacco product samples.	Prohibited distribution of free tobacco product samples except for at places unlikely to have or devoid of minors.
§ 897.30(a)	Defined acceptable mediums for advertising. Permitted advertising via print, billboards, placards, non-point of sale advertising materials, placards, video and audio advertising at point of sale, event teams and submissions.	Defined acceptable mediums for advertising. Permitted advertising via print, billboards, placards, non-point of sale advertising materials, placards, video and audio advertising at point of sale, event teams and submissions.
§ 897.30(b)	Forbade outdoor advertising within 1,000 feet of playgrounds and park and elementary and secondary school playgrounds.	Only prohibited billboards within 1,000 feet of playgrounds controlled by the government and licensed elementary and secondary schools.
§ 897.32(a)	Restricted visual tobacco product advertising to use black font with white backgrounds. Prohibited additional visual elements.	Limited visual tobacco product advertising in print publications to black font with white backgrounds if their readership consisted of 15% or greater of minors. Prohibited additional visual elements. Gave a five-year period to transition advertising in said print outlets that the tobacco company was already advertising in.
§ 897.34(a)	Forbade sale or provision of non-tobacco products with tobacco product identifiers or branding.	Forbade sale or provision of non-tobacco products with tobacco product identifiers or branding not made available, advertised, or transmitted before agreement. Permits sale and distribution of branded products at certain events.
§ 897.34(b)	Forbade contests and gambling games that required the purchase of tobacco products.	Forbade contests and gambling games that required the purchase of tobacco products if they provided rewards that appealed to minors more than adults.
§ 897.34(c)	Forbade sponsorship of events that used tobacco product logos, branding, marketing lingo, or other identifying product imagery.	Forbade sponsorship of events that used tobacco product logos, branding, marketing lingo, or other identifying product imagery. Only applied to events with an average minor attendance of 15% or greater over prior 18 years. Excepted events the defendants ran, sponsored or participated in during previous 10 years.

Table 9.2: Defendants Named in Louisiana Lawsuit <sup>7</sup>	
Tobacco Companies	American Tobacco Company
	RJ Reynolds
	Brown and Williamson
	Philip Morris
	Liggett and Myers
	Lorillard
	United States Tobacco Company
Trade Organizations and Think Tanks	The Tobacco Institute
	The Council for Tobacco Research
Consultants	Hill and Knowlton
Distributors	Generic Products Corporation
	Pelican Cigar Company
	Schlesinger Wholesalers and Automotive Cigarette Service
	Baton Rouge Tobacco Company
	Malone and Hyde
	Imperial Trading Company
	Lee-Dee Wholesale Distributing Company

1974, which tasked the state with ensuring the health and wellbeing of Louisianans. The Attorney General and his legal team filed the lawsuit at the State District Court in Lake Charles since it was Ieyoub's home region, he had served as a district attorney there, and his lead lawyer's firm was based in the city.<sup>12</sup>

On March 13, 1996, the same day of the Liggett settlement, Louisiana filed a lawsuit against the major tobacco companies and their associates (Table 9.2) to recoup Medicaid costs from treating tobacco-related illnesses as well as injunctive relieve to curb industry marketing to children.<sup>7</sup>

Louisiana Governor Mike Foster (R) denounced the legal action and moved to curb the attorney general's constitutional authority to bring such a suit. In a mid-March 1996 interview with the Baton Rouge *Advocate*, Foster attacked the lawsuit for targeting a legally operating business.<sup>20</sup> The lawsuit against the tobacco companies strained a tense relationship between the Attorney General and Governor Foster, who was already upset with Ieyoub for defending a redistricting plan in federal court that increased minority representation in the state's legislature.<sup>20-22</sup>

On March 18, 1996 Governor Foster added legislation to the agenda of a special legislative session, convened the day before, to remove the attorney general's power to file lawsuits on behalf of Louisiana without approval from the governor.<sup>20, 22</sup> Ieyoub denounced the legislation in a March 1996 interview with the New Orleans *Times-Picayune*, stating the conflict between him and Foster created a "constitutional crisis....this [Foster's bill] eliminates the attorney general as an independent elected official as far as protecting legally the interests of the state."<sup>23</sup> The Louisiana Democratic Party opposed the Governor's Legislation, asserting that the bill practically made Foster the attorney general.<sup>23</sup> Foster pulled the legislation in April 1996, after Ieyoub agreed to secure his permission for future legal actions that required filing under the name of the governor or a governor's appointee-led agency.<sup>24, 25</sup>

Tobacco industry lawyers filed a motion to dismiss Ieyoub's lawsuit in late November 1996. The motion argued the legal complaint was invalid because Ieyoub had not received permission from Governor Foster or Department of Health and Hospitals Secretary Bobby Jindal to pursue the case.<sup>16</sup> Industry lawyers acquired signed affidavits from Foster and Jindal that stated Ieyoub lacked permission to file a lawsuit against the tobacco companies.<sup>16</sup> Foster's executive counsel indicated to the Baton Rouge *Advocate* that the Governor submitted the affidavit because he disagreed with lawsuits targeting companies for providing legal goods.<sup>16</sup>

Judge Wilford Carter of the state district court in Lake Charles considered the motion to dismiss Ieyoub's case, as well as a request from tobacco industry lawyers to relocate the case to Baton Rouge, on January 10, 1997.<sup>26</sup> At the hearing, Drew Ranier of Ieyoub's legal team argued that Louisiana's constitution allowed the attorney general to file lawsuits on behalf of the state without prior approval from the governor or other state officials.<sup>26</sup> Tobacco industry lawyer Jimmy Nieset argued Governor Foster's opposition to the lawsuit overrode Ieyoub's ability to pursue his claim. Judge Carter found that Foster's affidavit proved the governor did not give Ieyoub permission to file a claim but failed to show the Governor was actively against the suit.

Industry lawyers acquired signed affidavits from Foster and Jindal that stated Ieyoub lacked permission to file a lawsuit against the tobacco companies.

Besides arguments over Ieyoub's authority to file the tobacco lawsuit, Philip Morris' lawyer, New Orleans attorney Patrick Juneau, asked to move consideration of the lawsuit to East Baton Rouge Parish.<sup>26</sup> Juneau argued the Baton Rouge court should handle the lawsuit because it had more judges to assist with the case, and because numerous witnesses were located in the region.

Judge Carter ruled that Louisiana law allowed the Attorney General to submit the tobacco lawsuit without approval from other state officials.<sup>26</sup> He also denied the industry lawyers' request to relocate the lawsuit. The rulings allowed the lawsuit to proceed, kept hearings near Ieyoub's legal team<sup>12</sup> and away from the documents and witnesses in East Baton Rouge that the tobacco industry's lawyers argued to the court warranted relocating the case there.<sup>27</sup> Tobacco industry lawyers stated they would request a review of Carter's decisions by the Louisiana Third Circuit Court of Appeal,<sup>26</sup> which they ultimately submitted in early February with a request to stay the case.<sup>28</sup>

Tobacco industry lawyers attempted to hinder Ieyoub's lawsuit in mid-late January 1997 by attacking the Attorney General for forming a legal team containing friends and political supporters.<sup>29</sup> Industry lawyers argued Ieyoub selected Drew Ranier's law firm, Badon and Ranier, to serve as lead counsel on the lawsuit in return for past political assistance. Badon and Ranier, as well as other law firms contracted by Ieyoub for the tobacco lawsuit, had given campaign contributions to the Attorney General in past years. In a 2014 interview for this report, Ieyoub said he built his team based on their abilities:

AGs had to stave off all kinds of insinuations that they were just rewarding their friends making these lawyers rich, you know? They [attorneys general] were making their lawyer friends rich so they could get political contributions. Your enemies always seized on that. The fact of the matter is, I chose my lawyers based

on who would do the best job. A lot of them were my supporters, but you know, it was people that I knew. They did an excellent job. They did a fantastic job.<sup>14</sup>

Industry lawyers also asserted that Badon and Ranier's contract for the lawsuit was invalid because state agencies had not authorized the agreement.<sup>29</sup> Ieyoub acknowledged his ties to Badon and Ranier but asserted the legal team was effective and winning important exchanges in the tobacco lawsuit, such as preventing the case from relocating to Baton Rouge.

The American Lung Association of Louisiana's Executive Director, Ben Fontaine, defended Ieyoub from allegations of corruption and favoritism made by the tobacco industry. In a letter published by *The Times-Picayune* on February 1, 1997, Fontaine asserted tobacco industry lawyers were attacking Ieyoub's legal team because it had a "good case" that might earn millions for Medicaid in Louisiana.<sup>30</sup>

Tobacco industry lawyers also attacked Ieyoub over a federal investigation into his conduct, claiming it might affect the tobacco lawsuit.<sup>29</sup> In November 1996, the Department of Justice began investigating Ieyoub<sup>31</sup> for legal opinions he gave on a 1994 contract to install fiber optic cable in New Orleans awarded by the Orleans Levee Board.<sup>32</sup> In the opinion, Ieyoub found that the Orleans Levee Board made the contract illegally, but stated the deal remained valid.<sup>32</sup> The opinion drew scrutiny because 18 shareholders of the company that received the fiber optic contract were from Ieyoub's home region, six had contributed to Ieyoub's unsuccessful Senate campaign, and one had purchased Ieyoub's house. The Department of Justice subpoenaed Ieyoub, placing an additional burden on the Attorney General's office in the midst of the tobacco litigation.<sup>29</sup> Ieyoub dismissed claims that the federal investigation affected the tobacco lawsuit, stating in a January 1997 interview with *The Times-Picayune* that "[The investigation] hasn't had any effect whatsoever; I'm not going to let this inquiry in any way impede my duties."<sup>29</sup> The Attorney General's office continued to pursue the tobacco lawsuit as it handled the Department of Justice Investigation.

In March 1997, Attorney General Ieyoub amended Louisiana's lawsuit to add 140<sup>9</sup> insurance companies giving tobacco companies liability coverage as defendants in the case.<sup>10</sup> Among the states taking legal action against the tobacco companies, only Louisiana had a law permitting plaintiffs to sue insurance companies because of their clients' actions.<sup>9</sup>

The Attorney General and his legal team sought documents the tobacco industry gave insurance companies to use as evidence. According to statement released by Ieyoub's office covered in a March 20, 1997 article in *The Advocate*, "It...provides a vehicle in which the state may obtain documents provided by the tobacco industry to its insurers. Having these documents will significantly strengthen our case."<sup>10</sup> Ieyoub also believed naming insurance companies as defendants might drive them to cooperate with his lawsuit against the tobacco industry in order to avoid paying damages.<sup>10</sup>

### **Initial Efforts to Settle the Litigation**

By the time that the Attorney General filed Louisiana's claim against the major tobacco companies on March 20, 1997, 22 states (including Louisiana) secured an expanded settlement with Liggett and Myers that exacted further concessions from the company.<sup>33, 34</sup> The settlement was an extension of the initial March 1996 agreement between Louisiana, four other states, and Liggett, in which Liggett agreed to publish warnings that smoking is addictive on cigarette packs

and to state publicly that the tobacco industry targeted teens.<sup>33, 34</sup> In addition, Liggett agreed to give 25% of annual pre-tax earnings to settling states for 25 years. As part of the settlement, Liggett also gave plaintiffs internal documents about the industry's marketing practices and discussions on smoking. In a statement to the press covered by *The Times-Picayune*, Ieyoub's spokesperson, Denise Bottcher, claimed the documents "show[ed] how tobacco companies have attempted to addict youth so they would always have smokers."<sup>33</sup> In an interview with *The Times-Picayune*, Louisiana tobacco litigation team member Wendell Gauthier (also involved in the Castano case (Chapter 8)) said the information threatened the tobacco industry's survival:

We've [states attorneys general and their legal teams] broken the iron wall; we're seeing how they [the tobacco industry] do business. The revelations now are things that we were learning anyway, but they put the nail in the coffin of the cigarette industry.<sup>33</sup>

The internal documents revealed the tobacco industry's knowledge of nicotine addiction and smoking related harms, strengthening the lawsuits filed by states' attorneys general.

Richard Ieyoub as well as the Attorneys General from Arizona, Connecticut, Florida, Mississippi, New York, and Washington, led initial settlement talks with the tobacco industry, which started in the latter half of April 1997.<sup>35, 36</sup> By the time settlement negotiations started, 24 states had filed lawsuits against the tobacco companies.

"We've broken the iron wall; we're seeing how they [the tobacco industry] do business. The revelations now are things that we were learning anyway, but they put the nail in the coffin of the cigarette industry."

During negotiations, health advocates and lawsuit proponents feared attorneys general planned to give tobacco companies immunity from future lawsuits in exchange for money and restrictions on youth advertising. The American Lung Association (ALA) sent a letter to Attorney General Ieyoub imploring him not to grant immunity as part of a settlement.<sup>35</sup> National ALA Managing Director John Garrison issued a statement to the news media asserting that providing tobacco companies immunity was not an option in any settlement, arguing that future legal action should be allowed against an industry that knew for over 30 years their products caused harm.

At a press conference on April 23, 1997, Ieyoub denied that attorneys general were considering offering tobacco companies immunity from future lawsuits.<sup>35</sup> Ieyoub stated that attorneys general sought reimbursement for medical costs incurred for treating tobacco-related illnesses, disclosure by companies of tobacco use's impact on health, and a prohibition on tobacco advertisements to minors.<sup>35</sup>

As Ieyoub and seven other attorneys general worked to negotiate a settlement with the tobacco industry in late April, a federal judge ruled that the United States Food and Drug Administration (FDA) could regulate tobacco products as a drug delivery medical device.<sup>36</sup> (The ruling was later overturned by the United States Supreme Court in 2000<sup>37</sup>). At a conference regarding tobacco lawsuits, Ieyoub told attendees the ruling improved states' position in negotiations with the industry. Despite impending agency oversight, Ieyoub stated legislation was still needed to rein in the industry's behavior.<sup>36</sup>

Ieyoub reinforced the unity among attorneys general participating in negotiations and their commitment to penalizing the tobacco industry at the press conference in late April. Ieyoub addressed concerns among attendees that attorneys general were in disagreement over settlement requirements, stating that they had “presented a unified front” in discussions.<sup>36</sup> He reasserted that any settlement the states agreed to would require tobacco companies to stop targeting minors, to reimburse states for treating tobacco-related illnesses, and to admit the negative health effects of tobacco use. Ieyoub added that no settlement would grant the tobacco industry immunity from future legal actions.

While attorneys general worked to negotiate a settlement, Ieyoub announced a petition drive in support of reducing youth tobacco use at a press conference in Baton Rouge on May 14, 1997.<sup>38</sup> According to the *Baton Rouge Advocate*, Ieyoub told attendees “Our goals are to generate grassroots support and involvement in our communities, and to bring the untapped resources and power of our youth to the forefront on this issue.”<sup>38</sup> Ieyoub also asserted that the “petitions will be the representative voice of the people. These petitions will speak for the thousands of citizens who want our children to be protected from tobacco, but cannot always be where change is made.”<sup>38</sup> He detailed the adverse effects of tobacco on minors to generate support for the petition, claiming 3,000 youth nationwide became addicted to cigarettes daily, that tobacco served as a gateway drug, and that 75% of Louisiana minors had tried cigarettes. The Attorney General announced the formation of an approximately 30-person group dedicated to preventing tobacco use by Louisiana minors called the Youth Anti-Tobacco Network. At the press conference, Ieyoub and 30 others, including two youth active with the Campaign for Tobacco-Free Kids, signed the petition. Ieyoub also appeared in Alexandria, Lake Charles, Lafayette, and New Orleans to announce the petition.<sup>38</sup>

The attorneys general from Mississippi, Florida, Arizona, New York, Washington and Louisiana convened in New York City on May 20, 1997 to continue settlement negotiations with the tobacco companies.<sup>9</sup> The attorneys general planned to bring insurance companies into talks, believing they would pressure tobacco companies to settle in order to avoid paying damages on the industry’s behalf.<sup>9, 39</sup> Attorney General Ieyoub served as chair of the Attorneys General’s insurance committee during litigation.<sup>9</sup> Ieyoub told the *Richmond Times-Dispatch* why they were incorporating insurers into the tobacco lawsuit:

“This petition leaves the tobacco company’s insurers little choice. They either pay up, or join us.”

We’re exploring the extent of coverage available. If the coverage is significant then it becomes an important asset which would play a significant role in the negotiations...This petition leaves the tobacco company’s insurers little choice. They either pay up, or join us.<sup>39</sup>

The insurance industry resisted inclusion in the tobacco litigation and denied any responsibility for potential damages owed by tobacco companies. The American Insurance Association argued insurers were exempt from paying damages because policies with the tobacco companies had not covered tobacco product liabilities for over 30 years.<sup>9, 39</sup> The Attorneys General believed that insurance companies might be required to pay damages because of past policies with the tobacco companies that covered liabilities arising from tobacco

products. Insurers paid damages in previous legal actions against companies involved in asbestos and pollution.

As the attorneys general brought insurance providers into their lawsuits against the tobacco industry, Louisiana's legal team resisted another effort by tobacco company lawyers to dismiss the state's lawsuit. In late May 1997, tobacco industry lawyers argued in state district court that Ieyoub's lawsuit was illegitimate because only the Louisiana Department of Health and Hospitals (DHH) could sue to recover Medicaid funds.<sup>40</sup> Judge Wilford Carter, who rejected an earlier motion to dismiss Louisiana's lawsuit, found the Attorney General had legal standing to file suit since it was the state suffering harm and not the DHH.<sup>40</sup> Tobacco industry lawyer James Nieset planned to appeal the ruling to the Third Circuit Court of Appeal following the loss. However, it appears the decision was ultimately not appealed by the tobacco industry.

### ***The Global Settlement***

After 40 states had sued the tobacco companies, state Attorneys General held a press conference on June 20, 1997 to announce they reached a settlement with the tobacco industry.<sup>41</sup> The agreement, which became known as the "Global Settlement,"<sup>42</sup> required tobacco industry members to admit that tobacco products were harmful and addictive.<sup>41</sup> Tobacco companies had to submit to federal marketing restrictions,<sup>42</sup> could not brand events, secure product placements in media, give away or distribute branded merchandise, advertise in magazines with readership bases consisting of 15% or more of minors, create product packaging or advertisements featuring cartoons or humans, conduct internet advertising to or from within the US, or advertise on public transit or outdoors except at establishments accessible only to adults.<sup>42, 43</sup> In addition, tobacco products could not use non-tobacco brands, and non-tobacco items could not be awarded in exchange for purchasing tobacco products.<sup>42</sup> The settlement also made the minimum pack size 20 cigarettes.<sup>42</sup> In the settlement agreement the tobacco companies also agreed to support giving the Food and Drug Administration (FDA) regulatory authority over tobacco products.<sup>42</sup> The settlement required tobacco companies to award participating states \$368 billion in damages across 25 years, and to pay \$15 billion annually in following years for perpetuity.<sup>41, 44, 45</sup> Of the initial \$360 billion, \$310 billion was to go to states for tobacco prevention, cessation, education, and regulatory enforcement.<sup>45</sup> The remaining \$50 billion would go to national programs, with \$25 billion going to fund a national health care trust fund and \$25 billion to provide health care to children without insurance.<sup>45</sup>

Despite promises by Ieyoub and other attorneys general that legal actions against the tobacco companies would not be restricted, all class action lawsuits, as well as lawsuits against the industry for prior offenses, were prohibited in the future.<sup>41</sup> The agreement also limited the amount in annual payments the industry had to make as a result of litigation, and restricted the amount of punitive damages payments the companies had to make in any active or future lawsuits.<sup>42</sup> This "immunity" provision in the Global Settlement caused dissension among tobacco control and health advocates, with some opposing the deal because of its restrictions on litigation, and others supporting it because of the regulatory and political advances the deal brought.<sup>42</sup>

Unlike a conventional legal settlement, which only requires the parties and the supervising court to agree, the Global Settlement deal required approval from Congress and



President Bill Clinton before going into effect because it required legislation to grant FDA authority over tobacco as well as enact its provisions limiting future lawsuits.<sup>46</sup>

Following the announcement, Ieyoub started working to secure a higher portion of the settlement payments for Louisiana.<sup>46</sup> He told the New Orleans *Times-Picayune*, “I will fight to make sure Louisiana gets its fair share of this settlement. I think (the state’s relative poverty) is a big factor and I will be pushing that factor.”<sup>46</sup> Ieyoub also felt Louisiana had a stronger bargaining position for reward money because it was the sixth state to take action against the industry. He planned to push for Louisiana to receive more money at a meeting of the National Association of Attorneys General in late June.<sup>46</sup>

Before the United States Congress took action on the Global Settlement, Mississippi settled with the tobacco companies on July 3, 1997.<sup>47</sup> Asked by the Baton Rouge *Advocate* if Louisiana planned to settle its legal action with the tobacco companies, Attorney General Ieyoub said that the state would not act until federal action occurred on the collective settlement, expected that Fall.<sup>47</sup> Ieyoub planned to have his office pressure Congress to accept the settlement and pass the related necessary legislation. If Congress failed to approve the settlement, the State would pursue an independent settlement.<sup>47</sup> Congress did not consider the proposed tobacco settlement in 1997, waiting to debate the settlement during the 1998 legislative session.<sup>48</sup>

Tobacco industry lawyers moved to prevent an individual settlement based on the inclusion of insurers in Louisiana’s lawsuit. In 1997, lawyers for the tobacco industry managed to move Louisiana’s lawsuit from the state district court in Lake Charles to a US District Court.<sup>49,50</sup> In federal court, tobacco industry lawyers asserted the lawsuit must move to London, England for arbitration because an insurance company defendant, ACE Insurance Co, required mediation of lawsuits to occur there in three of its policies.<sup>49,50</sup> On September 14, 1997, US District Judge James Trimble Jr. ruled that Louisiana’s lawsuit go to London for arbitration, putting the state’s case at risk. According to Louisiana tobacco legal team member Thomas Gayle in an interview with *The Times-Picayune*, the court ruling “seriously jeopardizes our ability to do what Florida and Mississippi did: Force them to a courtroom and have an opportunity to settle.”<sup>49</sup>

Moving the case to London required the Louisiana legal team to negotiate a settlement in an unfamiliar arbitration system and increased their costs to pursue the case.<sup>49</sup> Since Congress had not approved the Global Settlement, Louisiana might receive little to no damages previously expected from the tobacco industry. In an interview with *The Times-Picayune*, Attorney General Richard Ieyoub acknowledged arbitration in London was less favorable towards Louisiana’s case than any US federal or state court.<sup>50</sup> Ieyoub planned to appeal the Federal District Court ruling to the US Court of Appeals for the 5<sup>th</sup> Circuit to keep Louisiana’s individual lawsuit in the country.

### ***The Master Settlement Agreement***

Attorneys general announced another settlement with the tobacco companies on November 14, 1998.<sup>51, 52</sup> Congress had struggled to approve the Global Settlement during the 1998 legislative session, prompting the states’ attorneys general to work on an alternative agreement with the industry titled the Master Settlement Agreement (MSA). The new agreement restricted the tobacco industry’s advertising and marketing and forced the companies

Louisiana would receive a \$4.4 billion share of the payments (over the first 25 years) ....
--

to dissolve their trade and political groups, including the Tobacco Institute. As part of the agreement, the tobacco industry would pay the settling states based on their smoking-induced Medicaid costs in perpetuity, totaling \$206 billion over the first 25 years,<sup>52</sup> \$162 billion less than the Global Settlement. Louisiana would receive a \$4.4 billion share of the payments (over the first 25 years), more than the \$400 million originally proposed for Louisiana in the Global Settlement, and the \$3.6-\$3.9 billion expected in March 1998 when Congress was debating the Global Settlement.<sup>53</sup> Because the MSA was only a settlement between the parties and did not include FDA authority over tobacco or industry immunity from some lawsuits, it did not require legislation to implement it.

Attorney General Ieyoub announced at a press conference held in November 1998 at the Louisiana State University Medical Center that he would probably agree to the new settlement.<sup>51</sup> Ieyoub told attendees that money should fund initiatives for tobacco prevention education, tobacco regulatory enforcement, research, and health. He also revealed he had been recruiting medical societies to advocate for allocating settlement funds towards health programs.<sup>52</sup>

Ieyoub and other attorneys general approved the revised settlement on November 20, 1998, establishing the Master Settlement Agreement.<sup>54</sup> Forty-six states, four US territories as well as Washington DC were initially party to the revised agreement.<sup>54</sup> The deal ensured that an estimated \$4.4 billion would come to Louisiana's general fund for allocation by state lawmakers over its first 25 years. Future securitization of anticipated MSA funds would reduce the amount Louisiana received to \$2.7 billion (Table 9.3).

After announcement of the MSA, Attorney General Ieyoub stated he was collaborating with medical groups to advocate for lawmakers to dedicate settlement money towards health initiatives.<sup>57</sup> In particular, Ieyoub worked with Chancellor Merv Trail of the LSU Medical Center, Coalition for a Tobacco-Free Louisiana Executive Director Charles Brown, and

Table 9.3: Actual MSA Payments Made to Louisiana 1999-2016 (millions of dollars)	
Year	Amount in Millions
1999	\$56
2000	\$130
2001	\$137
2002	\$156
2003	\$129
2004	\$140
2005	\$144
2006	\$132
2007	\$137
2008	\$161
2009	\$176
2010	\$147
2011	\$139
2012	\$141
2013	\$211
2014	\$140
2015	\$131
2016	\$138
2017	\$141
<b>Total</b>	<b>\$2,744</b>
Source: Campaign for Tobacco-Free Kids <sup>54-56</sup>	

unspecified local tobacco control groups.<sup>12</sup> Although opposed to the Attorney General's lawsuit, Louisiana Governor Mike Foster informed the press he welcomed the money, and would push for its use to fund youth tobacco prevention and other health initiatives.<sup>57</sup>

Despite state officials pledging to use MSA funds for health programs, the American Lung Association (ALA) of Louisiana viewed the agreement negatively. Annual settlement payments were based on the number of cigarettes sold, prompting ALA of Louisiana spokesperson Ben Fontaine to tell *The Times-Picayune* in a late November 1998 interview, "It's a little distasteful to us. Basically the state of Louisiana is in a partnership with tobacco companies to make sure their payments don't decline."<sup>58</sup> Although some health organizations viewed the MSA negatively, they would pressure Louisiana lawmakers to dedicate settlement money to health and tobacco control programming.

By November 1998, before Louisiana received its first MSA payment, the state's receipt of expected funds from the deal was called into question because of possible federal intervention.<sup>59</sup> State Attorneys General feared the federal agency that oversaw the United States Medicaid and Medicare programs, the Health Care Financing Administration (HCFA),<sup>60</sup> would claim a significant portion of damages from the Master Settlement Agreement as reimbursement for federal Medicaid funds used to treat tobacco-related illnesses in the states.<sup>59</sup> Because of the federal and state shares of Medicaid expenditures in Louisiana, HCFA could possibly take 70% (\$3.1 billion) of Louisiana's total \$4.4 billion award from the MSA.<sup>59</sup> Ultimately, Congress passed legislation in May 1999 that prevented the federal government from considering MSA proceeds as "federal overpayments for purposes of Medicaid," causing HCFA not to take any settlement awards.<sup>61</sup>

## **Allocation of Master Settlement Agreement Funds**

### ***Securitization of Master Settlement Payments***

In December 1998 Governor Mike Foster proposed selling Louisiana's \$4.4 billion in MSA payments anticipated over 25 years for an immediate lump sum, a process known as *securitization*.<sup>62</sup> Louisiana's Commissioner of Administration, Mark Drennen, projected the state could sell its settlement share for approximately \$2.2 billion.<sup>63, 64</sup> Foster believed selling the settlement payment stream for a large upfront payment would allow Louisiana to pay a portion of the state's approximately \$3.3 billion debt. According to Foster in statements covered by *The Advocate*, "there is no better way to use it [the lump sum from selling Louisiana's settlement payment stream] than to pay off as much of the state debt as possible, maybe all of it."<sup>62</sup> Foster added that money originally dedicated towards paying Louisiana's debt, approximately \$257 million for the next fiscal year, could fund other initiatives, in particular raising public educators' salaries. Foster did not list health or tobacco control programs as possible recipients of funding despite previous statements he made. If an upfront sale of Louisiana's settlement payments was not possible, Foster suggested Louisiana sell bonds to address the state's debt and reimburse bondholders using MSA money.<sup>62</sup>

Governor Foster's proposal received mixed reactions from state lawmakers. They feared the windfall might grow state spending, or, over time, provide less financial assistance or benefits than the actual settlement funding stream would.<sup>63</sup> According to Representative John

Alario (D-Westwego), a prominent legislator and chairman of a state debt oversight committee, in a December 1998 interview with *The Advocate*:

Sounds like a terrible way to spend that money...Remember, whoever buys it, they are in the business of making a profit, and the premium for that would be a heck of a lot of money to cover that...I would be awfully cautious and would have to look hard at the numbers.<sup>63</sup>

Lawmakers also feared dumping settlement money into the budget, where it could be appropriated for various uses such as paying recurring government expenses.<sup>63-65</sup> Senate President Randy Ewing (D-Quitman) supported funding health and education initiatives, or placing settlement money into a trust dedicated to such initiatives.<sup>64</sup> Ken Duncan, Louisiana's Treasurer, also expressed interest in establishing a trust using settlement money.

Lawmakers also feared dumping settlement money into the budget, where it could be appropriated for various uses such as paying recurring government expenses.

As Louisiana lawmakers debated Governor Foster's proposal to sell the state's MSA funds in January, Department of Health and Hospitals Secretary David Hood advocated for the money to go to health programming because the tobacco lawsuit sought to compensate the state for Medicaid funds used treating tobacco-related illnesses.<sup>65</sup> The Secretary and DHH developed a list of funding priorities, advocating for settlement money to go to tobacco prevention, children's health insurance, improving healthcare access, creating drug courts, and increasing services for mental health care and developmentally disabled persons. Secretary Hooper and the DHH also recommended allocating settlement money for cancer and gene therapy research at the Louisiana State University Medical School. The list did not appear to gain traction.

Governor Foster dropped his proposal to securitize Louisiana's Master Settlement Agreement payments towards the end of January 1999 because it was not politically feasible.<sup>66</sup> Foster also announced he did not plan to include the \$56 million expected from the tobacco industry's first payment into his budget proposal for the upcoming 1999 legislative cycle. Foster feared that settlement payments to Louisiana might shrink or be delayed because the federal government was considering filing a lawsuit against the tobacco industry and debating taking a portion of MSA monies to fund Medicare and Medicaid.<sup>66, 67</sup> Foster returned to publicly supporting funding for health care initiatives, telling employees at Baton Rouge General Medical Center he backed using a share of the settlement money for health programming.<sup>66</sup>

### ***Putting the Money in Trust Accounts***

On January 27, 1999, Senators Foster Campbell (D-Elm Grove), Jim Cox (D-Lake Charles), Donald Cravins (D-Lafayette), Max Jordan (R-Lafayette), Ron Landry (D-LaPlace) and Max Malone (R-Shreveport) proposed a constitutional amendment to commit half of Louisiana's anticipated \$4.4 billion MSA payments to form trusts for public school systems called Louisiana Educational Excellence Funds.<sup>68</sup> The proposal dedicated around \$88 million yearly to individual funds for each public school district, allocating one-half equally across districts and the other half by enrollment.

The proposal received support from education officials and proponents but faced pushback from Governor Foster and Attorney General Ieyoub. Louisiana Board of Elementary and Secondary Education member Paul Pastorek and Louisiana Superintendent of Education Cecil Picard praised the proposal in interviews with the Baton Rouge *Advocate*.<sup>68</sup> Louisiana Association of Educators President Fred Skelton and lobbyist Lawrence Narcisse also championed the constitutional amendment in statements to *The Advocate*, asserting the plan provided state school districts with lasting “savings accounts.”<sup>68</sup> Governor Foster and Attorney General Ieyoub countered optimism from education advocates, cautioning against developing plans for Louisiana’s MSA money since the timing and amount of settlement payments remained uncertain.

Support for placing settlement funds into trusts continued to grow in Louisiana as the state waited for its first payment from the tobacco companies. On February 8, 1999, Louisiana State Treasurer Ken Duncan published a letter in *The Times-Picayune* calling for MSA money to go into trusts “instead of spending it ‘as soon as we (the state) get our hands on it’ and having it go down ‘the black hole.’”<sup>69</sup> Duncan suggested trusts provided continual funding for chosen programs without burdening taxpayers.

Backing for establishing trusts using MSA money continued to grow, with the public policy organization Council for A Better Louisiana<sup>70</sup> (CABL) announcing on February 10, 1999 that a majority of the settlement should go into a trust fund.<sup>71</sup> CABL representative Barry Erwin told *The Times-Picayune* that during Council discussions, members leaned towards a plan placing 75% of settlement money into a trust with established funding directives. The Council revealed it had not formulated recommendations for the 25% of settlement money not dedicated to a trust but expressed that funds should go towards healthcare or education initiatives. The Council planned to ask legislators to propose a constitutional amendment to create a trust for MSA money during the 1999 legislative session. Stating he needed to assess the Council’s recommendation, Governor Foster declared he desired funds upfront to remedy problems linked to tobacco.<sup>70</sup>

The same day CABL announced support for creating a trust fund, Louisiana Commissioner of Insurance Jim Brown stated in a speech to the Denham Springs Chamber of Commerce that settlement money should go to a healthcare fund.<sup>72</sup> Commissioner Brown stated that 50% of Louisiana’s budget went to healthcare costs, straining the state’s coffers. Brown reasoned that the number of Louisianans with health insurance, the lowest percentage of insured among the United States, contributed to Louisiana’s high spending on healthcare. To reduce the state’s financial burden, Brown argued for placing settlement money into a fund dedicated to subsidizing private insurance plans to increase the percentage of insured in Louisiana and reduce state costs on healthcare. Later that February, Attorney General Ieyoub announced support for placing settlement funds into a healthcare trust but did not mention subsidizing insurance plans.<sup>73</sup>

As discussions of placing MSA payments into a trust increased, Commissioner of Administration Mark Drennen announced on February 11, 1999 he would lead a panel to develop recommendations for allocating settlement money.<sup>74</sup> The panel would consist of state employees and officials from finance, upper education, and public health agencies, as well as legislators and elected officials. Drennen told *The Advocate* that using a panel to decide settlement money allocation prevented possible chaos in the legislature:

[W]e're going to get into the session and there will be all these ideas being thrown around. Rather than fighting it out on the floor, let's see if we can iron it out before we get there. If there's no consensus before the session, I'm afraid it's going to be a mess.<sup>74</sup>

Drennen indicated the panel might evaluate dedicating half of the tobacco settlement money to a trust and the other half to paying repeating costs. The Commissioner wanted the panel to develop a proposal for settlement fund allocation before late March, when the legislative session started.

As lawmakers and elected officials debated how to allocate settlement funding, the Louisiana Nursing Home Association (LNHA) announced it supported using settlement money to fund healthcare initiatives. In a letter published by the Baton Rouge *Advocate*, LNHA Executive Director Joseph A. Donchess argued that settlement money should go to funding healthcare since treating tobacco-related illnesses had cost federal and state governments billions.<sup>75</sup>

The Louisiana Legislative Black Caucus, the held five open hearings to get the public's opinion on settlement fund allocation.<sup>76, 77</sup> At a hearing held in Baton Rouge on February 27, 1999, Attorney General Ieyoub and DHH Secretary Hood told the Caucus that they supported establishing healthcare trusts using settlement money.<sup>76</sup> Hood also told the Caucus he was debating forming an Office of Minority Health inside the DHH since the African-American and Asian communities in Louisiana had a high smoking prevalence.<sup>76</sup> Based on public comments at the hearings, the Legislative Black Caucus found people supported using settlement money to fund "smoking prevention" and healthcare initiatives.<sup>76</sup>

Fear that the federal government would take Master Settlement Agreement Funds from Louisiana waned in early March 1999. During a meeting with the Louisiana Legislature's House Speaker Hunt Downer (D-Houma) and Senate President Randy Ewing (D-Quitman) on March 5, 1999, lawyer Chris Kirkpatrick perceived that political attitudes in Congress supported the states receiving their MSA funds.<sup>78</sup> Kirkpatrick also observed that Senator Kay Bailey Hutchinson (R-Texas) added an amendment to an appropriations bill awaiting consideration in the US Congress that gave states full authority over their settlement money. Downer and Ewing convened a meeting in early March to inform state lawmakers that Louisiana would probably receive all \$4.4 billion of its settlement reward.

On March 9, 1999 Attorney General Ieyoub announced Louisiana would receive an additional \$168 million from a strategic fund created by states participating in the MSA.<sup>79</sup> The strategic fund held \$8.6 billion for distribution among settling states based on unique contributions they made to the tobacco litigation. The Strategic Fund allotted Louisiana \$168 million for enabling the Liggett and Myers settlement, which provided the attorneys general industry documents and evidence that the tobacco companies knew about the harm and addictiveness of tobacco products. Payments from the fund would start in April 2008. Louisiana ultimately received an even greater sum of \$223.8 million.

### **Debates over MSA Fund Allocation before the Start of the Legislative Session**

In mid-March, as the 1999 legislative session neared, state legislators debated using tobacco settlement money to help fund Louisiana's Medicaid program in the general budget.<sup>80</sup> Governor Foster had cut \$60 million from the state Medicaid budget for the 2000 fiscal year, and

the program faced a \$380 million deficit.<sup>81</sup> Louisiana's Medicaid funding in Governor Foster's budget proposal was \$50 million below the funding threshold to receive matched federal money, risking \$150 million in federal matched funding for the State's program. State lawmakers sought money for Medicaid but also faced a significant funding shortfall for Louisiana's Minimum Foundation education program meant to help local schools, further complicating efforts to adequately fund both programs.<sup>82</sup> On March 15, 1999, Senate President Randy Ewing (D-Quitman) told the Press Club of Baton Rouge that the state's first payment from the tobacco settlement was a source of revenue state lawmakers could consider to increase funding for Medicaid.<sup>80, 82</sup> Lawmakers planned to designate \$110 million of \$199 million in expected settlement funds for that fiscal year as recurring revenue, which would permit its use in the operating budget.<sup>83</sup>

The budget Governor Mike Foster proposed for the 1999 legislative session dedicated \$27.1 million in tobacco settlement money<sup>83</sup> to shore up Medicaid funding.<sup>81</sup> Combined with other sources, including over \$70 million in gambling revenue also dedicated to Medicaid, the state expected to generate \$170 million in matching funds from the federal government.<sup>81</sup>

Lawmakers planned to designate \$110 million of \$199 million in expected settlement funds for that fiscal year as recurring revenue, permitting its use in the operating budget.

While state lawmakers considered using tobacco settlement money to increase Medicaid funding, an African American smokers' group called the United Black Smokers of America Incorporated (UBSAI) advocated for using the funds to treat tobacco-related illnesses and for the money to be designated in a manner not prejudiced towards African Americans.<sup>84</sup> We do not know the origin or history of UBSAI. The organization held a rally on March 19, 1999 near a state office building, where attendees claimed the tobacco industry targeted African Americans with advertisements. At the rally, spokesperson JT Hill stated African Americans composed 40% of Louisiana's smokers, and called for all settlement money to go towards treatment for smoking-related illnesses.<sup>84</sup> The organization announced it planned to fight for legislation allocating settlement funds to healthcare initiatives during the legislative session. That same day, UBSAI filed a lawsuit<sup>85</sup> in Baton Rouge calling on the courts to guarantee that the governor and state legislature allocated a warranted amount of funds to African Americans when dedicating settlement proceeds.

As the legislative session started on March 29, 1999,<sup>86</sup> legislators were uncertain of how much settlement money could be used for spending during the 2000 fiscal year. To include MSA funds in the 1999 (FY 2000) budget plan, the state constitution required the Louisiana Revenue Estimating Conference, a four-person committee composed of a state official, lawmakers and an economics professor, to certify the settlement money was a reliable revenue source for no less than three years (Table 9.4).

At a meeting on April 1, 1999, the Louisiana Revenue Estimating Conference decided legislators could include \$110 million of the \$199 million in MSA funds expected by June 30, 2000<sup>88</sup> in the budget proposed for the 2000 fiscal year.<sup>83</sup> The ruling allowed the Foster Administration to include \$27.1 million of tobacco settlement money in the budget for Medicaid funding as previously planned. In addition, the ruling permitted using more MSA funds to address the state's budget deficit, which Governor Foster had desired. Following the meeting,

Table 9.4: Membership of the Louisiana Revenue Estimating Conference <sup>87</sup>	
Member	Position
Hunt Downer	Speaker of the House
Randy Ewing	Senate President
Mark Drennen	Commissioner of Administration
Jim Richardson	Economist, Louisiana State University

Commissioner of Administration Mark Drennen cast doubt that MSA funds would go to the general budget in statements to the Baton Rouge *Advocate*:

What we put in the budget [tobacco settlement and land casino funds] was just a recognition that there were other revenue sources out there that could be used as a last resort. But as of today, we don't plan on using that money for those purposes.<sup>83</sup>

At the same time, Senate President Randy Ewing, a member of the Revenue Estimating Conference, reiterated in statements to *The Advocate* that lawmakers desired to use tobacco settlement money for issues such as healthcare rather than general operations or addressing the budget deficit:

There are a lot of people in the Legislature and throughout the state who would like to see us take these funds and do extraordinary things.<sup>83</sup>

After the Revenue Estimating Conference announced lawmakers could incorporate MSA money in the budget in early April, the news media urged Governor Foster and state lawmakers to place settlement funds into trusts. The New Orleans *Times-Picayune* and Baton Rouge *Advocate* published editorials on April 4, 1999 opposing using settlement money to address the state's deficit or fund immediate initiatives.<sup>89, 90</sup> The editorials called for all MSA money to be put into a trust,<sup>82, 83</sup> with *The Advocate* highlighting Mississippi's move to place all of its settlement proceeds into a fund.<sup>83</sup> *The Advocate's* editorial also cited the success of an education fund created by Louisiana lawmakers in the late 1980s using money from a lawsuit against the fossil fuel industry. *The Times-Picayune* published an additional editorial on April 4, 1999 supporting the Council for A Better Louisiana's call to place settlement funds in a trust.<sup>91</sup> The second editorial in *The Times-Picayune* argued Governor Foster and lawmakers should not "squander" settlement funds on fixing the state's budget deficit.

As part of an effort to pass legislation supporting mental health services, in early April 1999 the Louisiana Mental Health Reform Coalition urged lawmakers to dedicate some tobacco settlement money to a healthcare trust.<sup>92</sup> The coalition consisted of The Extra Advocacy Mile, Families Helping Families, Family Voices, Louisiana AFL-CIO, Louisiana Council on Developmental Disabilities, Louisiana Psychological Association, Mental Health Association in Louisiana, National Association of Social Workers, Louisiana Federation of Families, Louisiana Health Care Campaign, and the National Alliance for the Mentally Ill.

According to a survey commissioned by Louisiana television stations released on April 12, 1999 by Baton Rouge-based polling firm Southern Media & Opinion Research, approximately 60% of residents supported putting tobacco settlement money into a trust.<sup>93</sup> Lawmakers, nongovernmental organizations, and the public expressed continued support for placing MSA funds into trusts over the general budget.



Governor Mike Foster publicly resisted placing all of the MSA reward into a fund. At a press conference convened on April 20, 1999 by the University of New Orleans Business / Higher Education Council in support of the governor's program for post-secondary education, Foster told attendees, "A trust fund makes sense if you get a big slug of money all at once. It doesn't make sense if you get it over a period of years."<sup>94</sup> Foster did not oppose placing a portion of the settlement into a trust but wanted money to address immediate issues, including unspecified healthcare challenges. Foster's Administration asked former DHH Secretary Bobby Jindal for help determining tobacco settlement allocation prior to the press conference.

### ***Jindal Joins Settlement Fund Allocation Debate***

The Foster administration and prominent legislators asked former DHH Secretary Bobby Jindal to examine how Louisiana should use its \$4.4 billion share of the tobacco settlement by developing a report on how other states were using their tobacco settlement funds.<sup>94</sup> Jindal reported that other states planned to place MSA money into trusts or dedicate the funds to tobacco control, education, and healthcare initiatives.<sup>94</sup> After preparing the report, Jindal circulated questions to people throughout the state, including to DHH employees and Coalition for a Tobacco-Free Louisiana (CTFLA) leader Dr. Charles Brown, to collect opinions on how to allocate tobacco settlement funds.<sup>95</sup>

Governor Foster relayed a message through Attorney General Richard Ieyoub to CTFLA leader Dr. Charles Brown asking him to visit Jindal at the state law library in Baton Rouge to make recommendations on settlement money allocation.<sup>95</sup> When Brown met with Jindal he discovered that DHH personnel had not asked for settlement money to conduct tobacco control programming.<sup>95</sup> In a 2014 interview for this report, Brown stated DHH told Jindal they did not need additional funds for tobacco control (Chapter 4). According to Brown, Jindal claimed responses from DHH put him in a difficult situation because he had to heed their recommendations.<sup>95</sup> Although the DHH denied needing funds for tobacco control, the Coalition for a Tobacco-Free Living and LSU Medical Center mobilized and worked with Attorney General Ieyoub to secure improved funding for anti-tobacco programming.

### **Debates over MSA Fund Allocation during the Legislative Session**

#### ***American Lung Association of Louisiana Calls for MSA Money to go Towards Tobacco Control Programming***

As the legislative session started, American Lung Association of Louisiana Executive Director Ben Fontaine published a letter in late April 1999 in the New Orleans *Times-Picayune* asserting that MSA money should be used to fund tobacco control programming.<sup>96</sup> According to his letter:

"Currently, less than a half-million dollars is spent by the state on tobacco control. The Legislature should allocate it where the people want it to go: anti-tobacco programs."

There should be little debate on where the tobacco settlement is spent. The tobacco industry spends about \$84 million in Louisiana on tobacco advertising and promotion. The first payment from the settlement is \$54 million with

additional deposits in the years to follow. Currently, less than [sic] a half-million dollars is spent by the state on tobacco control. The Legislature should allocate it where the people want it to go: anti-tobacco programs.<sup>96</sup>

Fontaine claimed that Louisiana Governor Mike Foster as well as the Senate Health and Welfare Committee had been educated on model tobacco control programs by tobacco control advocates. He claimed that industry lobbyists and allied legislators sought to divert funding from initiatives to reduce tobacco use. Fontaine argued that settlement funds should be placed in a trust to prevent lawmakers from appropriating the money for other purposes.

### ***MSA Allocation Bills Introduced in 1999 Session***

Lawmakers introduced 29 bills during the 1999 legislative session to allocate Master Settlement Agreement funds (Table 9.5), including some bills that established trusts and or dedicated money to healthcare and education initiatives. Of the 29 bills introduced, 24 died with adjournment, three died traveling through the legislature, and two, HB 640 and HB 1547, were adopted. HB 640 and HB 1547 together established three trusts that primarily dedicated MSA funds to education and healthcare.

The first legislation allocating settlement funds considered during the 1999 legislative session, SB 224 and SB 711 by Senator Foster Campbell (D-Bossier City),<sup>100</sup> received a hearing before the Senate Committee on Education on April 22.<sup>101, 102</sup> SB 224 dedicated 50% of MSA money, approximately \$88 million, towards creating and funding trusts for each parish and city school district in Louisiana.<sup>103</sup> SB 224 also established a collective trust called the Louisiana Educational Excellence Fund (LEEF) financed by each school trust's earnings not reinvested into their account.<sup>103</sup> SB 711 was a companion piece to SB 224 that required school districts to form committees to create yearly plans for money received from the LEEF trust.<sup>102, 104</sup> School districts received yearly disbursements from the LEEF trust for improving classes and teaching. SB 711 did not allow LEEF disbursements for other purposes.<sup>102, 105</sup>

Senate President Randy Ewing argued against ushering SB 224 and SB 711 through committee because lawmakers lacked consensus on how to use settlement money and had introduced multiple bills with different effects.<sup>105</sup> Senator Campbell disagreed with Ewing according to coverage from *The Advocate*, telling the Senate Committee on Education, "This is bigger than any politics or personalities. This is our opportunity as senators to do something about educating our kids."<sup>105</sup> During the hearing, the Senate Committee on Education amended SB 224 to establish a shared trust for private schools using 10% of tobacco settlement money given to all school trust funds. In addition, the Committee amended SB 224 to create five individual trusts for specialty schools and dedicate \$250,000 to each yearly in tobacco settlement money, which changed allocation of total settlement funds in SB 224 (Table 9.6).<sup>101</sup> Committee members also made private and specialty schools contributors to and recipients of the LEEF Trust. After amendments, the Senate Committee on Education unanimously approved SB 224 and SB 711.<sup>105</sup> The bills went to the Senate Finance Committee for further consideration.

Table 9.5: 1999 Bills to Allocate Tobacco Settlement Money as Introduced <sup>97-99</sup>														
Bill	Sponsor	Party and District	Established a Generalized Settlement	Establishes Health Trust Fund or Dedicates to Existing	Establishes Education Trust Fund or Dedicates to Existing	Creates or Dedicates to Other Trust Fund	Dedicates All MSA Money or Places into Trust Fund	Sunsets / Caps Amount Placed into Trust	Healthcare Funding	Health Research	Tobacco Prevention, education and	Tobacco Enforcement	Education Funding	Outcome
HB 74	Robert Faucheux	D - St. James		+			No		+	+	+			Died with adjournment
HB 362	Charles Riddle	D - Avoyelles	+	+			Yes		+	+	+			Died with adjournment
HB 387	William Daniel	D- East Baton Rouge			+		Yes		+	+	+	+	+	Died with adjournment
HB 388	John Alario	D-Jefferson	+		+		Yes		+		+	+	+	Died with adjournment
HB 638	Sherman Copelin	D-Orleans		+			No		+	+				Died with Adjournment
<b>HB 640</b>	<b>Hunt Downer</b>	<b>D-Terrebonne</b>	+				<b>Yes</b>							<b>Adopted</b>
HB 646	Naomi Farve	D-Orleans			+		Yes						+	Died with adjournment
HB 898	Elcie Guillory	D-Calcasieu		+			No		+					Died with adjournment
HB 1097	Tony Perkins	R-East Baton Rouge	+				Yes							Died with adjournment
HB 1123	Charles Riddle	D - Avoyelles		+			No		+					Died with adjournment
HB 1331	John Alario	D-Jefferson	+		+		Yes		+		+	+	+	Died with adjournment
HB 1479	Sherman Copelin	D-Orleans		+			No		+	+				Died with adjournment
<b>HB 1547</b>	<b>Hunt Downer</b>	<b>D-Terrebonne</b>			+		<b>Yes</b>						+	<b>Adopted</b>
HB 1741	Charles Riddle	D - Avoyelles	+	+			Yes		+	+	+	+		Died with adjournment
HB 1745	Naomi Farve	D-Orleans			+		Yes		+				+	Died with adjournment

HB 1765	Francis Thompson	D-East Carroll		+			No							Died with adjournment
HB 1819	Naomi Farve	D-Orleans			+		Yes						+	Died with adjournment
HB 1862	William Daniel	D- East Baton Rouge	+		+		Yes		+	+	+	+	+	Died with adjournment
HB 2107	Roy Hopkins	D-Bossier				+	No							Died with adjournment
HB 2139	Bob Barton	R-Bossier				+	Yes							Died with adjournment
HB 2170	Jacquelyn Clarkson	D-Orleans		+			Yes	+		+				Died with adjournment
SB 192	Foster Campbell	D-Bossier			+		Yes						+	Died with adjournment
SB 224	Foster Campbell	D-Bossier			+		No						+	Died in committee
SB 240	Chris Ullo	D-Jefferson	+				No		+	+	+			Died with adjournment
SB 285	Wilson Fields	D-East Baton Rouge			+		Yes						+	Died with adjournment
SB 293	Randy Ewing	D-Jackson	+				Yes							Died in committee
SB 374	CD Jones	D-Madison					No		+					Died in committee
SB 821	Randy Ewing	D-Jackson	+				Yes							Died with adjournment
SB 907	John Hainkel	D-Orleans				+	No							Died in committee

Table 9.6: Allocation of Settlement Funds in SB 224 after Senate Education Committee Amendments <sup>101</sup>		
Division of Funds in Trust	Target	Allocation of Revenue
10%	Private Schools	Proportional to student population per school
45%	Public school systems	Equal across school systems
45%	Special Schools	\$250,000 per school (\$1,250,000 total)
	Public school systems	Remainder distributed among school systems

### ***Debate around Settlement Fund Allocation Continues***

Following the hearing for SB 224 and SB 711, American Lung Association of Louisiana Executive Director Ben Fontaine published a letter in *The Times-Picayune* on April 25, 1999 calling for lawmakers to dedicate the MSA reward to tobacco control programming.<sup>96</sup> Fontaine asserted settlement money should go to tobacco prevention, education, and cessation initiatives since 37.5% of high school students in Louisiana smoked and the state spent less than \$500,000 on tobacco control yearly.<sup>96</sup> Fontaine also argued that the public preferred for settlement funds to go to tobacco control initiatives. He criticized tobacco-friendly legislators and politicians for wanting to use settlement money in ways that would not lower youth smoking after they had opposed Ieyoub's lawsuit.

Around the same time as hearings for SB 224 and SB 711 and Fontaine's letter, the Council for A Better Louisiana released a 10-point plan for allocating MSA funds.<sup>106</sup> The plan reflected earlier statements by the Council supporting placing MSA funds into a trust, urging lawmakers to put 75% of settlement money into a trust dedicated towards healthcare initiatives. The plan put \$2 billion of the settlement payments into a protected fund. The Council wanted lawmakers to establish a panel of Louisianans not employed by the state government to control the trust.

As the legislative session entered May, bills to allocate tobacco settlement funds stagnated in committees. Only Senator Foster Campbell's SB 224 and SB 711 had received a hearing by May 2, 1999.<sup>107</sup> To work toward a consensus on settlement money distribution and clear a path forward for legislation, the Joint Legislative Committee on the Budget held a meeting on May 2, 1999 for lawmakers to consider plans for fund allocation.<sup>107, 108</sup> In an interview with *The Advocate* regarding the meeting, Commissioner of Administration Mark Drennen stated:

We are trying really hard to determine which of these concepts can be put together that will produce a substantial result over time... We are trying to choose a package that will have the greatest impact over a long term... and that you can pass.<sup>108</sup>

Government agencies, government officials, and special interest groups including the Coalition for a Tobacco-Free Louisiana, attended the hearing to offer proposals.<sup>100, 109</sup>

Before the Joint Legislative Committee on the Budget meeting, Attorney General Ieyoub and the Coalition for a Tobacco-Free Louisiana developed a joint proposal for allocating MSA funds to present at the hearing. CTFLA had asked Ieyoub for assistance with promoting the use

of MSA funds for tobacco control programming. According to Ieyoub in a November 2017 interview for this report:

They approached me, and of course, wanted my support, in trying to do what we could to guide some...of those [MSA] funds into smoking cessation and public health generally. And I was happy to work with them.

And quite frankly, I was happy to get their input because they were extremely knowledgeable and had the resources to do whatever research was required to develop information that would help us before legislative committees...Once they got in touch with me, we formed a very strong bond in the way of trying to lobby for better programs and more consideration of funding cessation programs and preventing smoking.<sup>12</sup>

At the meeting held by the Joint Legislative Committee on the Budget to discuss settlement fund allocation, lawmakers, government officials, and special interest groups proposed various plans that mostly centered on creating trusts or funding healthcare and education initiatives (Table 9.7).

During the meeting, Drs. Mervin Trail and Charles Brown of the Coalition for a Tobacco-Free Louisiana, along with Attorney General Ieyoub, presented their plan to use settlement money for tobacco control, healthcare, and education.<sup>95</sup> According to Brown in a 2014 interview for this report, due to the large amount of people vying over settlement money:

“Once they got in touch with me, we formed a very strong bond in the way of trying to lobby for better programs and more consideration of funding cessation programs and preventing smoking.”

It was like a zoo up there. They had everybody including...the money launderers...and everybody testifying trying to get money out of this big hunk of money. And as a result of that, nobody got anything.<sup>95</sup>

In statements to *The Times-Picayune* after the meeting, Senator Jay Dardenne (R-Baton Rouge) commented on the difficulty of choosing any of the plans offered:

I’m still dizzy from yesterday. It’s like judging a beauty contest. When you see the first one, that’s the one. Then another comes along that’s equally impressive.<sup>110</sup>

Following the committee meeting, Senator Dardenne proposed placing a portion of tobacco settlement money into the state’s rainy day account.<sup>111</sup> Lawmakers and government officials failed to develop consensus on settlement fund use at the meeting. Attorney General Ieyoub and CTFLA continued presenting their plan to other unidentified legislative committees.<sup>12</sup>

### ***Funding Concerns Attach Initial Settlement Payments to FY 2000 Budget Bill HB 1***

In early May 1999, the Louisiana Legislative Fiscal Office predicted lower than previously projected state revenues, leaving less funds available than expected to address a \$100

Table 9.7: Proposals Made at May 2 <sup>nd</sup> Meeting Convened by Joint Legislative Committee on the Budget <sup>100, 109</sup>		
Proponent	Position	Plan
Ken Duncan*	Louisiana Treasurer	<ul style="list-style-type: none"> <li>Place all tobacco settlement funds into a trust.</li> <li>Allowed the state to borrow \$100 million annually from trust for first four years.</li> <li>Supposedly allowed state to earn more money than lost making payments.</li> </ul>
Nicole Baute	Louisiana Genetics Research Consortium	<ul style="list-style-type: none"> <li>Dedicate \$44.5 million in settlement funds across five years to form a genetic research program statewide.</li> </ul>
Foster Campbell	Louisiana State Senator	<ul style="list-style-type: none"> <li>Dedicate half of settlement funds to an education trust.</li> <li>Distribute earnings from trust to school districts.</li> </ul>
Louisiana Board of Regents for Higher Education	State Committee	<ul style="list-style-type: none"> <li>Use funds to boost research at postsecondary education institutions.</li> <li>Fund public service and education programs.</li> <li>Improve agriculture, academic, and research programs.</li> </ul>
Millie Naquin	Professor, Southeastern Louisiana University	<ul style="list-style-type: none"> <li>Provide Southeastern Louisiana University \$4 million across three years to create the Institute for Action on Addiction.</li> <li>Program would be dedicated to studying youth addiction to alcohol, drugs and tobacco and constructing methods to prevent addiction.</li> </ul>
Richard Ieyoub / Dr. Mervin Trail and Dr. Charles Brown	Attorney General / Coalition for A Tobacco-Free Louisiana	<ul style="list-style-type: none"> <li>Place 50% of settlement reward to trust dedicated to education and health care.</li> <li>Use 50% of settlement for preventing youth tobacco use.</li> </ul>
JT Hill	Injured United Black Smokers of America	<ul style="list-style-type: none"> <li>Use portion of settlement money to fund treatment for African Americans suffering from tobacco related illnesses.</li> </ul>
Catholic Hospital Care Association	--	<ul style="list-style-type: none"> <li>Place settlement reward into trust dedicated to funding cancer research.</li> </ul>
Cecil Picard	Louisiana Superintendent of Education	<ul style="list-style-type: none"> <li>Dedicate \$30 million of annual settlement money to fund an early education program for vulnerable kids.</li> </ul>
David Hood	Louisiana Department of Health and Hospitals Secretary	<ul style="list-style-type: none"> <li>Place unspecified portion of settlement funds into trust dedicated to tobacco control.</li> <li>Use settlement funds Improve access to health care in rural and poorly served regions.</li> <li>Increase amount of state drug courts.</li> <li>Fund local services for developmentally disabled.</li> <li>Fund mental health programming for vulnerable youth.</li> <li>Use settlement money to fund Louisiana Children's Health Insurance Program.</li> <li>Fund health research.</li> </ul>
*Referred to as his Bond and Trust Plan by this report.		

million deficit in Governor Mike Foster's proposed \$13 billion budget plan.<sup>112</sup> After the Legislative Fiscal Office finding, on May 6, 1999 the Louisiana Revenue Estimating Conference classified another \$46 million of settlement money as recurring funds available for use in the operating budget. The Conference previously approved \$110 million of the \$199 million in settlement money the state expected to receive by June 30, 2000<sup>88</sup> as recurring funds.<sup>112</sup> For a revenue source to qualify as recurring by the Conference, it must be available to the state for at least five years. Remaining settlement money not approved as a recurring revenue source was available for funding one-off initiatives but not for use in the operating budget.<sup>113</sup>

To help lawmakers address the budget shortfall, committee member Representative Hunt Downer called for the Revenue Estimating Conference to classify all \$199 million of the tobacco settlement money expected during the 2000 fiscal year as recurring funds that could be used for repeating costs.<sup>112</sup> Committee member and LSU economist James Richardson opposed Downer's proposal, arguing that not all \$199 million qualified as recurring since the state expected \$43 million less in settlement money the next fiscal year. Louisiana Commissioner of Administration and Conference member Mark Drennen opposed using tobacco settlement money for the shortfall and stated during the meeting he would look for alternative revenue to address the problem. Commissioner Drennen suggested using settlement money to reduce the state's debt or to fund non-recurring costs.

The Conference voted 3-1 against classifying all \$199 million in FY 2000 settlement payments as recurring funds, with only Downer in support.<sup>112</sup> After the meeting, Downer told *The Times-Picayune* that lawmakers might have to address the \$100 million budget shortfall using settlement money, stating, "I don't want to, but we may have to."<sup>112</sup>

On May 10, 1999, while state officials and lawmakers publicly debated using tobacco settlement funds to address the budget deficit, Senator Foster Campbell's SB 224 received a hearing before the Senate Finance Committee.<sup>114</sup> Committee members expressed support for SB 224, but postponed voting on the legislation to allow the committee to hear other settlement allocation bills.

That same day, the House Appropriations Committee discussed HB 1,<sup>115</sup> the governor's budget proposal. As introduced, HB 1 used \$32.7 million in tobacco settlement money to fund portions of the budget.<sup>116</sup> At the hearing, Louisiana Legislative Fiscal Officer John Rombach asserted to the Committee that using tobacco settlement money to address the budget deficit left legislators empty handed. Rombach claimed the Governor's budget had a deficit because it did not fund certain healthcare and education initiatives adequately enough to generate matched federal funds.<sup>115</sup> Rombach pushed the committee to fix the shortfall using surplus funds, carryover funds, or spending cuts. Committee Chairman Jerry Luke LeBlanc (D-Lafayette) doubted it would be possible to avoid using tobacco settlement funds to address the budget deficit.

The House Appropriations Committee unanimously approved HB 1 at a hearing on May 13, 1999 after Committee members added \$134 million of the \$199 million in incoming settlement money to expenses in the budget (Table 9.8).<sup>117</sup> The Committee allocated tobacco settlement money predominantly to health and medical initiatives in the budget, claiming it was to respect to the intentions of the Master Settlement Agreement.<sup>88</sup> The House Appropriations Committee had received approval from Governor Foster's administration to use settlement funds to address the budget deficit.<sup>118</sup> Besides allocating \$134 million to healthcare and education



Table 9.8: Allocation of Tobacco Settlement Funds in HB 1 <sup>117, 119, 120</sup>	
\$87 million	Medicaid
\$13 million	Children's health insurance
\$6.5 million	Facility improvements to the Louisiana Genetics Research Institute clinic.
\$5 million	Cancer research conducted by the LSU Medical Center in New Orleans
\$5 million	Healthcare grants given by the Board of Regents
\$4.2 million	Health clinics at schools
\$3.7 million	Mental health clinics
\$3.2 million	Parish health unit construction
\$1.9 million	Fund procurements by the Biomedical Research Foundation of Northwest Louisiana
\$1.5 million	Quit programs for smoking
\$1.5 million	Preschool for underprivileged kids
\$375,000	Louisiana Genetics Research Institute operating costs
\$330,000	Master Settlement Agreement Enforcement by the Attorney General
<b>\$128.2 million</b>	<b>Total</b>

initiatives in the budget, the Committee dedicated an additional \$53.7 million of settlement money to a new Louisiana Fund for future use but did not establish requirements for appropriations from the account.<sup>119</sup>

Committee Chairman Jerry Luke LeBlanc (D-Lafayette) faulted Louisiana's slow growth for generating less money than expected for the budget.<sup>88</sup> Representative LeBlanc stated that Governor Foster's administration and lawmakers were forming a plan to dedicate one-third of Louisiana's \$4.4 billion settlement reward to a trust, likely for the state's scholarship program the Taylor Opportunity Program for Students (TOPS).<sup>117</sup> Following the passage of HB 1 through the Appropriations Committee, Representative LeBlanc and Commissioner of Administration Mark Drennen asserted that lawmakers would not use tobacco settlement money to fund general budget items in future legislative sessions.<sup>116</sup>

At a hearing on May 17, 1999,<sup>121</sup> the House Appropriations Committee appropriated an additional \$14.9 million of tobacco settlement money expected in FY 2000 to cover expenses in HB 2, the budget for the state's capital outlay projects (Table 9.9).<sup>121-123</sup> After amending HB 2, the House Appropriations Committee unanimously reported the bill to the House Floor.<sup>121, 122</sup> The House Appropriations Committee dedicated approximately \$149 million of \$199 million in incoming tobacco settlement money to general budget initiatives and capital outlay projects instead of trust funds.

Table 9.9: Tobacco Settlement Funds Dedicated to Capital Outlay Projects in HB 2 <sup>123</sup>	
\$6,500,000	Louisiana Genetics Research Institute facility construction and renovation
\$2,500,000	Equipment purchases for Higher Education Institutions
\$650,000	Building a Parish Health Unit in Iberville Parish
\$2,000,000	Creation of Health Unit and Primary Care Center in Ouachita Parish
\$545,000	Building a Parish Health Unit in Tensas
\$843,000	Building a Parish Health Unit in Richland
\$1,900,000	Purchase of a scanner for the Biomedical Research Foundation of Northwest Louisiana
<b>\$14,938,000</b>	<b>Total</b>

***HB 640 and 1547, Bills to Determine Post FY 2000 MSA Money Allocation, Receive Their First Hearing***

The House Appropriations Committee considered eight bills seeking to dedicate tobacco settlement funds on May 17, 1998. The Committee deferred multiple bills before considering HB 640 and its implementing legislation HB 1547 (Table 9.10) from Representative Hunt Downer (D-Houma). As introduced, HB 640 and HB 1547 allocated 25% of Louisiana's MSA money to a new Tobacco Settlement Trust Fund and 75% to a new Louisiana Fund. After the Tobacco Settlement Trust received \$1 billion in MSA funds, all payments from the tobacco companies as well as interest generated by the Settlement Trust would go to the Louisiana Fund. HB 640 forbade lawmakers from appropriating funds from the Tobacco Settlement Trust for any use. HB 640 and HB 1547 allowed lawmakers to appropriate money from the Louisiana Fund for any reason, including for maintenance of the Tobacco Settlement Trust. HB 640 was a constitutional act requiring a two-thirds majority of the Louisiana Legislature and subsequent voter approval.<sup>124</sup>

Table 9.10: HB 640 and HB 1547 as Introduced <sup>125, 126</sup>		
HB 640 (Constitutional Amendment)		
Trusts Created	Amount of MSA Payments Dedicated to Trust*	Permitted Use of Money
Tobacco Settlement Trust Fund	25% **	None
Louisiana Fund	75%	Any purpose
HB 1547 (Implementing Legislation)		
Trusts Created	Amount of MSA Payments Dedicated to Trust*	Permitted Use of Money
Tobacco Settlement Trust Fund	25% **	None
Louisiana Fund	75%	Any purpose
*Total percentage after legally required dedications to Bond Security and Redemption Fund and a \$10 million dedication to the State's Children's Health Insurance Program Support Fund.		
**Once the trust reaches \$1 billion, all further MSA payments and earnings generated by trust are deposited in Louisiana Fund.		

During the hearing, the House Appropriations Committee amended HB 640 and HB 1547 to turn the Tobacco Settlement Trust into the TOPS Trust (Table 9.11). Committee amendments permitted use of TOPS Trust investment returns (no greater than yearly earnings projections) to provide scholarships to students attending higher education institutions. Money from the Louisiana Fund was restricted to maintenance of the TOPS Trust, to youth education and healthcare initiatives, general healthcare research and treatment, chronic disease management, treatment of tobacco-related diseases, and to projects for healthcare facilities. In addition, lawmakers could dedicate money from the Louisiana Fund to tobacco prevention, cessation, and enforcement. Committee members altered the distribution of MSA money between both accounts, allocating 33% of settlement funds to the TOPS Trust and 67% to the Louisiana Fund. Both accounts received MSA funds in perpetuity, and interest from the TOPS Trust would not go to the Louisiana Fund. To provide more settlement funds to the TOPS Trust and less to the Louisiana Fund than set in HB 640, Committee changes required the Louisiana Legislature to

Table 9.11: HB 640 and HB 1547 after House Appropriations Committee Amendments <sup>125, 126</sup>		
HB 640 (Constitutional Amendment)		
Trusts created	Amount of MSA payments dedicated to trust*	Permitted use of money***
TOPS Settlement	33%**	Revenue generated by fund may go to TOPS Scholarship Program
Louisiana Fund	67%	-Programs supporting youth via healthcare or education -Healthcare research, upgrades for state health care facilities, treatment of tobacco-related sicknesses, and treatment of chronic diseases -Education, advertising, cessation, and enforcement initiatives to prevent and eliminate tobacco use.
HB 1547 (Implementing Legislation)		
Trusts created	Amount of MSA payments dedicated to trust*	Permitted use of money***
TOPS	33%**	Revenue generated by fund may go to TOPS Scholarship Program, specifies methods and amounts. Specifies how money in fund may be invested.
Louisiana Fund	67%	Specifies approved methods, initiatives and programs, and quality assurance measures, for funding in following categories established by HB 640:  -Programs supporting youth via healthcare or education -Healthcare research, upgrades for state health care facilities, treatment of tobacco-related sicknesses, and treatment of chronic diseases -Education, advertising, cessation, and enforcement initiatives to prevent and eliminate tobacco use.
<p>*Total percentage after legally required dedications to Bond Security and Redemption Fund and a \$10 million dedication to the State's Children's Health Insurance Program Support Fund.</p> <p>**Once the trust reaches \$1 billion, all MSA payments and earnings generated by trust are deposited in Louisiana Fund.</p> <p>***No spending area can receive more than 50% of annual total dedication from Louisiana Fund.</p>		

secure a two-thirds vote in both chambers. Amendments by the House Appropriations Committee established July 1, 2000 as the date of effect,<sup>125</sup> leaving tobacco settlement money in Governor Foster's budget proposal in place.

After the House Appropriations Committee amended HB 640 and HB 1547, it voted unanimously to report the bills to the House Floor.<sup>124</sup> Following the hearing, only Representative Downer's HB 640 and HB 1547, as well as Senator Campbell's SB 224 had successfully passed through a committee hearing.<sup>127</sup>

### ***Fiscal Year 2000 Budget Bills HB 1 and HB 2 Pass the House***

Representatives brought HB 1 to the House Floor on May 18, 1999<sup>128</sup> and passed the budget in a 92-2 vote without adding to or removing from the \$132 million in tobacco settlement money attached to the bill.<sup>129</sup>

CABL criticized lawmakers for using tobacco settlement funds to address the deficit.<sup>130</sup> According to a statement by CABL covered by *The Times-Picayune*:

Using the very first tobacco payment to balance the budget and fund recurring expenses sets a dangerous precedent. If it is going to be done this year, what about next?<sup>130</sup>

After Representatives sent HB 1 to the Senate, the Public Affairs Research Council (PAR), another Louisiana think tank, panned lawmakers for including settlement money in the budget. According to *The Times-Picayune*, PAR President Jim Brandt called out legislators on May 19, 1999 for justifying the use of initial settlement payments in the budget because the money primarily funded health and education initiatives:

“Using the very first tobacco payment to balance the budget and fund recurring expenses sets a dangerous precedent. If it is going to be done this year, what about next?”

Considering that the majority of the state’s general fund expenditures are for health and education, restricting tobacco funds to these purposes is not much different from putting the money into the general fund.<sup>130</sup>

Brandt asserted that state lawmakers had not thoroughly studied methods to distribute and use settlement money and called for legislators to put all settlement payments into a trust for the time being.

Despite complaints over using settlement money in HB 1, on May 19, 1999 representatives approved the capital outlay plan HB 2 in a 99-0 vote.<sup>121</sup> Amendments made to HB 2 on the House Floor did not affect the \$14,938,000 of settlement funds the legislation dedicated to projects. Passing to the Senate, HB 1 and HB 2 still allocated \$149 million of tobacco settlement funds to general spending and one-time expenses.

### ***House Floor Debate on HB 640 and HB 1547 Begins***

While HB 1 and HB 2 went to the Senate with initial settlement payments, legislation to allocate portions of Louisiana’s total settlement payments, House Speaker Hunt Downer’s HB 640 and HB 1547, remained in the House. After passing the House Appropriations Committee, HB 640 received hearings from the House Civil Law and Procedure Committee on May 18 and 19,<sup>125</sup> which amended the bill to specify that education, healthcare, and tobacco-related healthcare initiatives faced a 50% limit on use of total monies in the Louisiana Fund per permitted purpose.<sup>131</sup> For example, the legislature could use half of the Louisiana fund for smoking cessation, and half for another purpose allowed by the trust and not fund other things specified in bill. However, they could not dedicate 51% (or more) of the money from the Louisiana Fund to any one item. Committee members also changed HB 640 to permit 50% of money in the TOPS Trust to be invested in stocks instead of equities, as previously established. The Committee then voted unanimously to report HB 640 favorably to the House Floor.<sup>125</sup>

Representatives brought HB 640 to the House Floor for consideration on May 19, 20, and 25, 1999 and HB 1547 on May 18, 20 and 25. Debate centered on HB 640 because HB 1547 was a companion bill. While discussing HB 640, legislators offered amendments to establish trusts, alter trust structures, and establish permitted dedications of trust money towards certain healthcare and education initiatives (Table 9.12). The two amendments that passed, B638 and B722 from the bill’s sponsor Downer, permitted funding certain healthcare and education

through new MSA-supported trusts (9.12) B722 also set the percent of annual MSA payments that would go to each of the trusts created by HB 640 (9.12).

Lawmakers proposed two amendments to HB 1547 on the House Floor.<sup>132</sup> Representative Farve failed to secure an amendment to HB 1547 changing the TOPS Trust to the Education Trust that would also allow grants to be issued from said trust to public schools. The other amendment, from Hunt Downer, was a companion to his amendments for HB 640 and mirrored their changes.<sup>132</sup>

Lawmakers attempted to amend HB 640 multiple times on the House Floor while considering the bill on May 20, 1999. Representative Naomi Farve (D-New Orleans) introduced an amendment to fund grants for public primary and secondary schools using the TOPS Trust. Farve claimed the amendment benefitted children who were poor or from rural areas that who were unlikely to get a postsecondary education and benefit from the tuition assistance provided by TOPS.<sup>133</sup> According to *The Advocate*, Farve asserted to colleagues that, “TOPS, by its nature, is a program for the white middle class.” Representatives rejected the amendment in a 72-23 vote. Representative Farve also unsuccessfully attempted to attach an amendment to HB 640’s companion HB1547.<sup>134</sup> Representatives Mitch Landrieu, Kip Holden, Raymond Jetson, and Charles Riddle introduced Amendment B633-B to reapportion settlement money between the TOPS and Louisiana Fund Trusts and restrict their usage (Table 9.12). Lawmakers rejected the proposal. Representative Hunt Downer offered and secured Amendment B638 to qualify additional programming to receive money from the Louisiana Fund and to restrict expenditures from the Trust for treatment of tobacco-related diseases (Table 9.2). After Representatives finished considering HB 640 and amendments to the bill, they held the legislation for further debate.<sup>133</sup>

### ***House Passes Constitutional Amendment HB 640 and its Implementing Legislation HB 1547***

Representatives resumed debate on HB 640 and ultimately passed the bill on May 25, 1999. Representative Carl Crane asked lawmakers to advance HB 640 to place the tobacco settlement money into a trust and protect it from other appropriations.<sup>135</sup> Representative Louis “Woody” Jenkins (R-Baton Rouge) opposed HB 640, arguing that tobacco settlement money should go to relieving the state’s debt or to shoring up the state’s retirement programs.<sup>135, 136</sup> Representatives Kip Holden (D-Baton Rouge) and Hunt Downer proposed further amendments. Holden’s amendment dedicated the first \$10 million of tobacco settlement money received annually to a new Louisiana Children’s Health Insurance Program Fund to supplement the state’s insurance program for underprivileged youth (Table 9.13). Representative Downer opposed the amendment, asserting that \$10 million already was destined for the insurance program because of another statutory dedication.<sup>135</sup> The House rejected Holden’s proposal. Downer proposed and secured Amendment B772 to HB 640, establishing a Health Trust Fund alongside the TOPS Fund and Louisiana Fund. The amendment reapportioned the percentage each trust received of annual settlement payments, with most Health Trust Funds coming from money originally dedicated to the TOPS Trust (Table 9.13). Downer similarly amended HB 640’s companion, HB 1547.

Representatives passed HB 640 by a 90-8 vote<sup>125</sup> and its implementing legislation HB 1547 in a 91-8 vote.<sup>132</sup> Representative Downer championed the passage of HB 640 and HB 1547 according to *The Times-Picayune*, stating “What we have before us is a

Table 9.12: Amendments to HB 640 Proposed on the House Floor <sup>98, 125</sup>				
Number	Sponsor	Party and District	Changes	Adopted
B632	Naomi Farve	D-Orleans	<ul style="list-style-type: none"> <li>Renamed Tops Trust to Education Trust.</li> <li>Allowed for provision of grants to primary and secondary public schools from Education Trust.</li> <li>Retained TOPS program as a beneficiary of the Education Trust.</li> </ul>	No
B638	Hunt Downer	D-Terrebonne	<ul style="list-style-type: none"> <li>Permitted dedication of money from Louisiana Fund to programs for lowering child abuse and infant mortality.</li> <li>Limited use of Louisiana Fund monies to pay for treatment of tobacco-related diseases. <ul style="list-style-type: none"> <li>No more than 35% of total money taken from Fund in FY 2002.</li> <li>No more than 20% of total money taken from Fund in FY 2003 and beyond.</li> </ul> </li> </ul>	Yes
B633-B	Mitch Landrieu	D-Orleans	<ul style="list-style-type: none"> <li>Provided TOPS Trust 25% of annual settlement payments and the Louisiana Fund 75%.</li> <li>Made allocation of settlement money to Louisiana Fund increasable, and allocation of settlement money to the TOPS Trust decreasable via legislative vote (reversed from previous).</li> <li>Once the Louisiana Fund reaches \$2 billion, all revenue generated by the account, and all portions of tobacco settlement payments slated for the account, would go to the state's general fund.</li> <li>Allowed Louisiana Fund to surpass \$2 billion to match inflation, using account investment earnings.</li> <li>Limited yearly appropriations from Louisiana Fund to annual estimates of all investment earnings.</li> <li>No initiative may receive more than 50% of money available for use each year from Louisiana Fund.</li> <li>Prohibited use of money from Louisiana Fund to cover or replace general fund expenses.</li> </ul>	No
	Kip Holden	D-East Baton Rouge		
	Raymond Jetson	D-East Baton Rouge		
	Charles Riddle	D-Avoyelles		
B722	Hunt Downer	D-Terrebonne	<ul style="list-style-type: none"> <li>Established the Health Trust Fund.</li> <li>Changed allocation of tobacco settlement payments to TOPS Trust. <ul style="list-style-type: none"> <li>15% of MSA funds in FY 2001.</li> <li>20% of MSA funds in FY 2002.</li> <li>25% of MSA funds in FY 2003 and onward.</li> </ul> </li> <li>Dedicated tobacco settlement payments to new Health Trust Fund. <ul style="list-style-type: none"> <li>15% of MSA funds in FY 2001.</li> <li>20% of MSA funds in FY 2002.</li> <li>25% of MSA funds in FY 2003 and onward.</li> </ul> </li> <li>Louisiana Fund receives leftover tobacco settlement money after distributions to TOPS Trust and Health Trust Fund.</li> <li>Restricted use of money from Health Trust Fund. <ul style="list-style-type: none"> <li>Providing healthcare to children.</li> <li>Initiatives for chronic disease management.</li> <li>Funding improvements to state healthcare facilities.</li> <li>Funding "pursuit of innovation in advanced health care sciences."</li> <li>Treatment of tobacco-related diseases.</li> </ul> </li> <li>Limited use of Louisiana Fund monies to pay for treatment of tobacco-related diseases. <ul style="list-style-type: none"> <li>No more than 30% of total money taken from Fund in FY 2001 (previously amended to 35%).</li> </ul> </li> </ul>	Yes

			<ul style="list-style-type: none"> <li>• Restricted appropriations from Health and TOPS Trust to amount of annual investment earnings for each account.</li> <li>• Eliminated language from Downer's past amendment allowing for dedication of Louisiana Fund money towards treatment for tobacco-related disease and initiatives to lower child abuse and infant mortality.</li> </ul>	
B648-A	Kip Holden	D-East Baton Rouge	<ul style="list-style-type: none"> <li>• Established the Louisiana Children's Health Insurance Program Fund. <ul style="list-style-type: none"> <li>○ Dedicated first \$10 million of tobacco settlement payments each year to Trust from FY 2001 to FY 2010.</li> <li>○ Limited use of money from the trust to assisting the state's health insurance program for kids. Required a two-thirds vote to appropriate money from the Trust.</li> </ul> </li> </ul>	No
	Raymond Jetson	D-East Baton Rouge		
	Mitch Landrieu			

Table 9.13: Distribution of Tobacco Settlement Money to Trust Funds After House Amendments to HB 640 and HB 1547				
Stage	Time Range	TOPS Trust	Health Trust Fund	Louisiana Fund
Pre-House Floor Amendments	None	33%	--	67%
After house Amendments	FY 2001	15%	15%	70%
	FY 2002	20%	20%	60%
	FY 2003-	25%	25%	50%

consensus. What we have is a focus on healthcare... We still must face the challenge of ending those smoke-related illnesses.”<sup>136</sup>

Approved House amendments to HB 640 and HB 1547 created the Health Trust alongside the TOPS Settlement Trust and Louisiana Fund, changed the allocation of annual MSA settlement payments between the trusts, and altered and expanded acceptable appropriations from the accounts (Table 9.14). Both bills went to the Senate Committee on Finance for further consideration.

### ***Senate Finance Committee Approves Legislation Dedicating Tobacco Settlement Funds to Education***

While Representatives debated HB 640 and HB 1547 on the House Floor, on May 24, 1999, the Senate Finance Committee heard settlement allocation bills SB 224 by Senator Foster Campbell and SB 293 by Senate President Randy Ewing (D-Quitman). SB 224 had stalled in the Senate Finance Committee while its members waited for legislators to build consensus on settlement fund allocation.

Lawmakers had not considered SB 293 prior to the May 24 Senate Finance Committee meeting. A constitutional amendment, the bill dedicated 25% of tobacco settlement money to a new Tobacco Settlement Trust Fund and 75% to a new Louisiana Fund<sup>137</sup> (Both HB 640 and SB 293 created a Louisiana Fund.<sup>125, 138</sup>). After the Tobacco Settlement Trust totaled \$1 billion, all earnings generated by the account went to the Louisiana Fund.<sup>137</sup> SB 293 forbade appropriations from the Tobacco Settlement Trust but allowed legislators to take an unrestricted amount from the Louisiana Fund each year.<sup>137</sup>

During the Senate Finance Committee hearing for SB 224 and SB 293, Senators Campbell and Ewing offered a plan to alter and combine their legislation to dedicate 30% of total settlement money to healthcare initiatives and 70% to education initiatives.<sup>133, 139</sup> The Louisiana AFL-CIO, school bus drivers, the Louisiana Association of School Superintendents, the Louisiana School Boards Association and others endorsed Campbell and Foster’s new plan the day of the hearing.<sup>139</sup>

Ultimately, the Committee amended SB 224 to reduce the total amount of tobacco settlement funds appropriated annually from 50% to 30%<sup>140</sup> and changed the allocation of settlement funds for programming in SB 224 to allocate more money to private schools (Table 9.15).

The Committee amended SB 293 to dedicate the 70% of total tobacco settlement money not allocated by SB 224 to health and education trusts. Committee members removed the Tobacco Settlement Trust Fund and Louisiana Fund originally in SB 293, and instead dedicated 30% of settlement money towards forming and funding a new Health and Science Support Fund, 10% towards a Louisiana Educational Excellence (LEEF) Direct Support trust, and 40% towards a Higher Education Support Fund. Appropriations from the health care trust were restricted to children’s health and education initiatives, chronic illness management, treatment for tobacco-related diseases, tobacco education and cessation programs, tobacco regulatory enforcement, healthcare research, and state healthcare facility renovations. Funds in the LEEF Direct Support Trust went to school systems for use in local education programming. The Higher Education



Table 9.14: HB 640 and HB 1547 After House Floor Amendments<sup>125, 126</sup>

HB 640 (Constitutional Amendment)		
Trusts created	Amount of MSA Payments Dedicated to Trust*	Permitted Use of Money***
TOPS Settlement	<ul style="list-style-type: none"> <li>15% of MSA funds in FY 2001</li> <li>20% of MSA funds in FY 2002</li> <li>25% of MSA funds in FY 2003 and onward</li> </ul> **	Revenue generated by fund may go to TOPS Scholarship Program.
Health Trust	<ul style="list-style-type: none"> <li>15% of MSA funds in FY 2001</li> <li>20% of MSA funds in FY 2002</li> <li>25% of MSA funds in FY 2003 and onward</li> </ul>	<ul style="list-style-type: none"> <li>Providing healthcare to children.</li> <li>Initiatives for chronic disease management.</li> <li>Funding improvements to state healthcare facilities.</li> <li>Funding “pursuit of innovation in advanced health care sciences.</li> <li>Treatment of tobacco-related diseases.</li> </ul>
Louisiana Fund	<p>Louisiana Fund receives leftover tobacco settlement money after distributions to TOPS Trust and Health Trust Fund.</p> <ul style="list-style-type: none"> <li>70% of MSA funds in FY 2001</li> <li>60% of MSA funds in FY 2002</li> <li>50% of MSA funds in FY 2003 and onward</li> </ul>	<ul style="list-style-type: none"> <li>Programs supporting youth via healthcare or education.</li> <li>Healthcare research, upgrades for state health care facilities, treatment of tobacco-related sicknesses, and treatment of chronic diseases.</li> <li>Education, advertising, cessation, and enforcement initiatives to prevent and eliminate tobacco use.</li> <li>Investment expenses from TOPS and Health Trusts.</li> </ul>
HB 1547 (Implementing Legislation)		
Trusts created	Amount of MSA Payments Dedicated to Trust*	Permitted Use of Money***
TOPS	<ul style="list-style-type: none"> <li>Same as HB 640</li> </ul>	Revenue generated by fund may go to TOPS Scholarship Program, specifies methods and amounts. Specifies how money in fund may be invested.
Health Trust	<ul style="list-style-type: none"> <li>Same as HB 640</li> </ul>	Specifies approved money sources and permissible uses of trust funds.
Louisiana Fund	<ul style="list-style-type: none"> <li>Same as HB 640</li> </ul>	<p>Specifies approved methods, initiatives and programs, and quality assurance measures, for funding in following categories established by HB 640:</p> <ul style="list-style-type: none"> <li>Programs supporting youth via healthcare or education.</li> <li>Healthcare research, upgrades for state health care facilities, treatment of tobacco-related sicknesses, and treatment of chronic diseases.</li> <li>Education, advertising, cessation, and enforcement initiatives to prevent and eliminate tobacco use.</li> <li>Expanded definition of permissible health care expenditures for youth to include school, primary care, and rural clinics. Funding allowed for “schools in need of corrective action.” Also permits funding intervention programs for youth up to age four.</li> <li>Limits expenditures for direct health care to 30% of total trust expenditures for FY 2002 and 20% for subsequent years.</li> </ul>

\*Total percentage after legally required dedications to Bond Security and Redemption Fund and a \$10 million dedication to the State's Children's Health Insurance Program Support Fund.

\*\*Once the trust reaches \$1 billion, all MSA payments and earnings generated by trust are deposited in Louisiana Fund.

\*\*\*No spending area can receive more than 50% of annual total dedication from Louisiana Fund.

Table 9.15: Allocation of Settlement Funds in SB 224 After Senate Education Committee Amendments <sup>140, 141</sup>				
Funding Recipients	Before Finance Committee Amendments		After Finance Committee Amendments	
Private Schools	10%		15%	
Specialty Schools	\$1,250,000 *+		\$1,250,000*++	
Public School Systems	90%	50% equal across school systems	85%	30% equal across school systems
		50% based on existing state education spending plan and formula (enrollment)		70% based on existing state education spending plan and formula (enrollment)
*Represents funding total for five specialty schools. Four schools existed during the 1999 legislative session, and a fifth was being formed. Lawmakers set the fifth school as a recipient.				
+\$1,250,000 dedicated after equal distribution of funds to public school systems and before distribution of funds to public school systems based on existing state education spending plan and formula.				
++\$1,250,000 dedicated to specialty schools before distribution of any settlement money to public schools.				

Support Fund served as a rainy day account for Louisiana's postsecondary education spending during economic slumps. Lawmakers could also appropriate money from the Higher Education Support Fund to fund non-recurring education programming and maintain state tuition initiatives during economic slumps (e.g., TOPS). Appropriations from the Higher Education Support Fund needed approval from two-thirds of the legislature.

After the Senate Finance Committee amended SB 224 and SB 293, they advanced the bills to the Senate Floor.

### ***SB 224 Passes the Senate with a New School Funding Plan Attached***

Lawmakers called SB 224 and its companion SB 711 to the Senate Floor for debate on June 7, 1999. During consideration of SB 224, bill sponsor Foster Campbell circulated projections to Senators showing that in the next 25 years trust funds established by SB 224 would generate over \$1 billion in trust earnings for public school systems to use.<sup>142</sup>

Senators offered twelve amendments to SB 224 and adopted three proposed changes (Table 9.16). Multiple senators introduced amendments to morph SB 224 into Louisiana Treasurer Ken Duncan's "bond and trust" proposal to establish a trust that the state could issue bonds with to relieve immediate spending needs and debt. Except for Amendment 732 by Romero, all of the proposals to implement Treasurer Duncan's plan were withdrawn before consideration. Senator Campbell asserted that Treasurer Duncan's proposal needed further examination before lawmakers adopted it<sup>142</sup> Senators rejected Romero's amendment in an 11-27 vote.<sup>142, 143</sup>

After debating SB 224, Senators voted 37-0 to send the bill to the House.<sup>142</sup> The same day, Senators amended the legislation's companion bill, SB 711, to reflect changes to SB 224 and sent that bill to the House in a unanimous vote.<sup>142</sup> As passed by the Senate, SB 224 dedicated 30% of annual MSA payments and 20% of subsequent earnings from said money to individual trust funds for each Louisiana public, private, and specialty school.<sup>101</sup> Of that money, \$250,000 went to each specialty school's trust, and 15% went to private school trusts. Leftover money would be apportioned to public schools, 30% equally and 70% distributed based on Louisiana's "minimum foundation formula." Earnings generated by individual school accounts that were not required to remain in them were deposited in a joint LEEF fund. Interest from the LEEF fund would be distributed to private, specialty, and public schools in proportion to their contribution. The Senate added the New Orleans Center for Creative Arts as another specialty school intended to have a trust funded by MSA payments. The amendments also required that fund money not be used for pay raises, and stipulated that 5% of annual income from fund investments go towards a drug abuse and smoking program.

Following debate over SB 224, Senator Tom Schedler, who introduced but withdrew an amendment to SB 224 implementing Treasurer Duncan's trust and bond proposal, announced he intended to offer a similar amendment to Senate President Randy Ewing's SB 293 at a later hearing.<sup>144</sup> Senator Schedler believed Senate-President Ewing was more amenable to Duncan's plan than Senator Campbell, making the amendment likelier to pass.

### ***More Tobacco Settlement Money is added to the Budget for FY 2000***

At a hearing on June 8, 1999, the Senate Finance Committee dedicated another \$24.5 million in tobacco settlement money to HB 1 to address the budget's remaining shortfall and fund newly added initiatives (Table 9.17).<sup>145</sup> State lawmakers incorporated \$147.5 million total in settlement funds to the budget plan in HB 1. The House also tied \$15 million in settlement funds to the State's construction projects in HB 2. The Senate Finance Committee was considering attaching an additional \$17.3 million of tobacco money to that bill. House and Senate Finance Committee dedications tied approximately \$190 million of \$199 million in tobacco settlement money for FY 2000 to programs and projects in HB 1 and HB 2.

House and Senate finance Committee dedications tied approximately \$190 million of \$199 million in tobacco settlement money for FY 2000 to programs and projects in HB 1 and HB 2.

### ***SB 224 is Killed in House Committee, Causing Supporters to Try Including the Bill in Other Legislation***

SB 224 received a hostile hearing before the House Appropriations Committee on June 9, 1999, which killed the bill in a 5-8 vote.<sup>147</sup> Representatives appeared to desire less funding for schools than the Senate, and wanted provisions giving the legislature more control over how schools used the money.<sup>148</sup> As the regular session neared its June 21 end date, State Representatives became increasingly disposed towards allocating MSA money during a special legislative session.<sup>147</sup> After the Appropriations Committee killed SB 224, its sponsor, Senator Foster Campbell, planned to salvage the LEEF education plan by attaching it as an amendment to House Speaker Hunt Downer's HB 640,<sup>147</sup> which gave settlement funds to healthcare, the TOPS scholarship program, as well as a health and education trust.

### ***Senators Incorporate Treasurer Duncan's Plan into SB 293 Only for the Bill to Stall in the House***

On June 10, 1999, the day after Representatives killed SB 224, Senators brought the bill's counterpart SB 293 to the Floor. Senators proposed five amendments to SB 293, predominantly to implement Louisiana Treasurer Ken Duncan's proposal placing all settlement money into a trust the state could use to issue bonds. Some lawmakers also sought to attach a variant of Senator Foster Campbell's school trust and LEEF trust education plan to SB 293 from SB 224.

After failing to attach Treasurer Duncan's trust and bond plan to SB 224, Senators Tom Schedler, Ron Landry, and Tom Romero successfully attached the scheme to SB 293, creating the Louisiana Investment for Tomorrow (LIFT) Fund to deposit all MSA payments into and issue bonds from.<sup>101</sup> In addition, the amendment established a Louisiana Fund which would be funded using bond earnings from the LIFT Fund. The State Legislature could appropriate from the Louisiana Fund for any purpose. Schedler's amendment eliminated the LEEF Support Fund added to SB 293 by the Senate Finance Committee as well as language stating that revenue from it could be used for tobacco cessation, education, and MSA enforcement. Following adoption of Amendment 839, Senator Foster Campbell proposed Amendment 841 to implement a smaller

Table 9.16: Amendments to SB 224 Proposed on the Senate Floor <sup>99, 101</sup>				
Number	Sponsor	Party / District	Change	Outcome
716	Tommy Casanova	R-Acadia	<ul style="list-style-type: none"> <li>Eliminated city school system trusts, made city school systems as beneficiaries of parish trusts.</li> <li>City School systems received money from parish school system trust based on proportion of student population.</li> </ul>	Withdrawn
<b>717</b>	<b>Foster Campbell</b>	<b>D-Bossier</b>	<ul style="list-style-type: none"> <li>Prohibited school systems from using LEEF Fund payments to raise employee wages.</li> <li>Prohibited private schools from using Trust payments to raise employee wages.</li> </ul>	<b>Adopted</b>
719	Foster Campbell	D-Bossier	<ul style="list-style-type: none"> <li>Required public school systems, private schools, and specialty schools to put at least 5% of yearly investment earnings received from LEEF Fund on program to prevent smoking.</li> </ul>	Withdrawn
721	Lynn Dean	R-Jefferson	<ul style="list-style-type: none"> <li>Eliminated Campbell's amendment prohibiting use of trust moneys to provide employees pay increases.</li> <li>Required public school systems, private schools and specialty schools to use 90% of investment earnings annually payed out from trusts to increase classroom teacher salaries. <ul style="list-style-type: none"> <li>Pay increases awarded based on student test scores in each classroom.</li> </ul> </li> </ul>	Rejected
<b>722</b>	<b>Foster Campbell</b>	<b>D-Bossier</b>	<ul style="list-style-type: none"> <li>Required public school systems, private schools, and specialty schools to dedicate at least 5% of yearly investment earnings to a prevention program for smoking and drug abuse.</li> </ul>	<b>Adopted</b>
723	Tom Schedler	R-St. Tammany	<ul style="list-style-type: none"> <li>Eliminated LEEF Fund and School Trusts.</li> <li>Dedicated all tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>Allowed for state bonds to be backed by the LIFT trust.</li> <li>Prohibited appropriations from LIFT trust.</li> <li>Assigned all income earnings from the LIFT Fund to the Louisiana Fund.</li> <li>Dedicated bond proceeds to Louisiana Fund.</li> <li>Appropriations from Louisiana Fund allowed for any purpose.</li> <li>Entered effect July 1, 2000.</li> </ul>	Withdrawn
725	Tom Schedler	R-St. Tammany	<ul style="list-style-type: none"> <li>Eliminated Campbell's amendment prohibiting use of trust moneys to provide employees pay increases.</li> <li>Eliminated Campbell's amendment requiring public school systems, private schools, and specialty schools to dedicate at least 5% of investment earnings from trust funds to a prevention program for smoking and drug abuse.</li> <li>Eliminated LEEF Fund and School Trusts.</li> <li>Dedicated all tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>Allowed for state bonds to be backed by the LIFT trust.</li> <li>Prohibited appropriations from LIFT trust.</li> </ul>	Withdrawn

			<ul style="list-style-type: none"> <li>Assigned all income earnings from the LIFT Fund to the Louisiana Fund.</li> <li>Dedicated bond proceeds to Louisiana Fund.</li> <li>Appropriations from Louisiana Fund allowed for any purpose.</li> <li>Entered effect July 1, 2000.</li> </ul>	
729	Craig Romero	R-Iberia	<ul style="list-style-type: none"> <li>Eliminated Campbell's amendment prohibiting use of trust moneys to provide employees pay increases.</li> <li>Eliminated Campbell's amendment requiring public school systems, private schools, and specialty schools to dedicate at least 5% of investment earnings from trust funds to a prevention program for smoking and drug abuse.</li> <li>Eliminated LEEF Fund and School Trusts.</li> <li>Dedicated all tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>Allowed for state bonds to be backed by the LIFT trust.</li> <li>Prohibited appropriations from LIFT trust.</li> <li>Assigned all income earnings from the LIFT Fund to the Louisiana Fund.</li> <li>Dedicated bond proceeds to Louisiana Fund.</li> <li>Appropriations from Louisiana Fund allowed for any constitutionally legal purpose.</li> <li>Entered effect July 1, 2000.</li> </ul>	Withdrawn
<b>731</b>	<b>Lambert Boissiere</b>	<b>D-Orleans</b>	<ul style="list-style-type: none"> <li>Added the New Orleans Center for Creative Arts to specialty schools covered by SB 224.</li> </ul>	<b>Adopted</b>
732	Craig Romero	R-Iberia	<ul style="list-style-type: none"> <li>Eliminated LEEF Fund and School Trusts.</li> <li>Dedicated 70% of tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>Allowed for state bonds to be backed by the LIFT trust.</li> <li>Prohibited appropriations from LIFT trust.</li> <li>Assigned all income earnings from the LIFT Fund to the Louisiana Fund.</li> <li>Dedicated bond proceeds to Louisiana Fund.</li> <li>Dedicated 30% of Louisiana Fund earnings to education spending outlined in SB 224.</li> <li>Allowed appropriation of remaining Louisiana Fund money for any purpose.</li> <li>Entered effect July 1, 2000.</li> </ul>	Rejected
194	Foster Campbell	D-Bossier	<ul style="list-style-type: none"> <li>Technical revision.</li> </ul>	Proposed
N/A	Senate Floor Bureau		<ul style="list-style-type: none"> <li>Technical revision.</li> </ul>	Proposed

Table 9.17: Allocation of Tobacco Settlement Funds in HB 1 Before and After Senate Committee Amendments<sup>117, 119, 120, 145, 146</sup>

Programming	Tobacco Settlement Allocations as Passed by House	Senate Finance Committee Funding Additions	Proposed Fund Dedications After Passing Through House and Senate Committee
Medicaid	\$87 million	--	\$87 million
Children's health insurance	\$13 million	--	\$13 million
Endowed chairs and professorships	--	\$10 million	\$10 million
Medical research grants	--	\$10 million	\$10 million
Facility improvements to the Louisiana Genetics Research Institute clinic.	\$6.5 million	--	\$6.5 million
Cancer research conducted by the LSU Medical Center in New Orleans	\$5 million	--	\$5 million
Healthcare grants given by the Board of Regents	\$5 million	--	\$5 million
Health clinics at schools	\$4.2 million	--	\$4.2 million
Mental health clinics	\$3.7 million	--	\$3.7 million
Parish health unit construction	\$3.2 million	--	\$3.2 million
Bridge renovation	--	\$3 million	\$3 million
Fund procurements by the Biomedical Research Foundation of Northwest Louisiana	\$1.9 million	--	\$1.9 million
Quit programs for smoking	\$1.5 million	--	\$1.5 million
Preschool for underprivileged kids	\$1.5 million	--	\$1.5 million
Comprehensive Care Clinic and Diabetic Foot Clinic	--	\$969,878	\$969,878
Maternal and Child Health Home Nurse Visitation Program	--	\$513,021	\$513,021
Louisiana Genetics Research Institute operating costs	\$375,000	--	\$375,000
Master Settlement Agreement Enforcement by the Attorney General	\$330,000	--	\$330,000
Total	\$147.7 millions		

version of his education plan from SB 224 into SB 293 (Table 9.18) that left portions of Schedler and Romero's amendment intact. Campbell's amendment reduced the amount of annual MSA money that could be used to back bonds. His amendment also dedicated a portion of bond earnings backed by MSA payments and a portion of interest generated by invested MSA money towards school and school systems trusts. He also included the LEEF education funding plan into the bill, which would be funded by investment income from school trusts that was not required to be reinvested into those accounts. The amendment also deposited some earnings from bonds issued using MSA settlement payments and investment earnings from MSA money to the Louisiana Fund, appropriable for any purpose. Senators then sent SB 293 to the House.<sup>138</sup>

As passed by the Senate, SB 293 allocated all MSA payments into the LIFT Fund for the state to issue bonds against. The entirety of the LIFT account would be invested (35% stocks, 65% government bonds). SB 293 dedicated 60% of earnings from MSA-backed bond sales and 60% of interest from MSA investments to the Louisiana Fund for any use. 40% of proceeds from bond sales and investments would go to school and school system trusts. Of the 40% dedicated to education spending, 5% would go to prevention programming for smoking and drug abuse.

SB 293 subsequently died in the House Appropriations Committee without a hearing.<sup>138</sup> Tobacco control funding using Louisiana's settlement payments remained uncertain.

Table 9.18: Amendments to SB 293 Proposed on the Senate Floor<sup>101</sup>

Number	Sponsor	Change	Status
830	-Schedler, Tom -Romero	<ul style="list-style-type: none"> <li>• Dedicated all tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>• Allowed for state bonds to be backed by the LIFT trust.</li> <li>• Prohibited appropriations from LIFT trust.</li> <li>• Assigned all income earnings from the LIFT Fund to the Louisiana Fund.</li> <li>• Dedicated bond proceeds to Louisiana Fund.</li> <li>• Appropriations from Louisiana Fund allowed for any purpose.</li> <li>• <b>Eliminated specific funding permissions for tobacco education, cessation, and MSA enforcement created by Senate Finance Committee Amendment.</b></li> </ul>	Withdrawn
839	<b>Schedler, Tom</b>	<ul style="list-style-type: none"> <li>• Dedicated all tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>• Allowed for state bonds to be backed by 95% of the LIFT trust.</li> <li>• Prohibited appropriations from LIFT trust.</li> <li>• Assigned all income earnings from the LIFT Fund to the Louisiana Fund.</li> <li>• Dedicated bond proceeds to Louisiana Fund.</li> <li>• Appropriations from Louisiana Fund allowed for any purpose.</li> <li>• <b>Eliminated specific funding permissions for tobacco education, cessation, and MSA enforcement created by Senate Finance Committee Amendment.</b></li> </ul>	<b>Adopted</b>
840	Campbell, Foster	<ul style="list-style-type: none"> <li>• Deleted part of Amendment 839.</li> <li>• Established LIFT fund and Louisiana Fund.</li> <li>• Dedicated all tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>• Allowed for state bonds to be backed by 35% of the LIFT trust: <ul style="list-style-type: none"> <li>○ Prohibited appropriations from LIFT trust.</li> <li>○ Dedicated 60% of LIFT income earnings to Louisiana Fund.</li> <li>○ Dedicated 40% of income earnings to Louisiana Education Excellence Fund and school funds.</li> </ul> </li> <li>• Appropriations from Louisiana Fund allowed for any purpose.</li> <li>• Appropriations to LEEF: <ul style="list-style-type: none"> <li>○ 20% of realized capital gains on collective investment of monies to school funds: <ul style="list-style-type: none"> <li>▪ 15% Private Education Excellence Fund.</li> <li>▪ \$1.5 million to specialty schools (\$250,000 to six schools).</li> <li>▪ Remainder to Louisiana Educational Excellence Fund.</li> </ul> </li> </ul> </li> </ul>	Failed



		<ul style="list-style-type: none"> <li>○ Prohibited schools and school systems from using income earnings for renovation or construction projects; prevented using income earnings to pay expenses normally covered by the state's general budget; forbid using earnings to pay for religious classes and related material; prohibited using earnings to provide wage increases for employees.</li> <li>○ <b>Required school systems and schools to spend at least 5% of investment earnings on drug abuse and smoking prevention programming.</b></li> </ul>	
841	Campbell, Foster	<ul style="list-style-type: none"> <li>• Deleted part of Amendment 839.</li> <li>• Established LIFT fund and Louisiana Fund.</li> <li>• Dedicated all tobacco settlement funds except those appropriated during the 1999 legislative session to the Louisiana Investment for Tomorrow Fund.</li> <li>• Allowed for state bonds to be backed by 35% of the LIFT trust.</li> <li>• 40% of LIFT income earnings to LIFT fund annually.</li> <li>• 60% of LIFT income earnings to Louisiana Fund. <ul style="list-style-type: none"> <li>○ Appropriations from Louisiana Fund allowed for any purpose.</li> </ul> </li> <li>• Established Louisiana Education Excellence Fund and school funds. <ul style="list-style-type: none"> <li>○ 20% of LIFT realized capital gains to school funds. <ul style="list-style-type: none"> <li>▪ Forbid appropriations for any reason.</li> <li>▪ 15% to Private Education Excellence Fund.</li> <li>▪ \$1.5 million to specialty schools (\$250,000 to six schools).</li> <li>▪ Dedicated remaining funds to: <ul style="list-style-type: none"> <li>• 30% equally to public school systems.</li> <li>• 70% on state education spending formula (proportional) school funds credited in amount relative to balance of all combined school funds.</li> </ul> </li> </ul> </li> <li>○ Income earnings from school funds not dedicated back into school funds deposited in LEEF. <ul style="list-style-type: none"> <li>▪ Annual payments to schools from LEEF income earnings provided based upon school or school system fund balances compared to LEEF fund balance.</li> <li>▪ Annual payments to private schools from LEEF income earnings based upon Private Education Excellence Fund balance to school funds balance.</li> </ul> </li> <li>○ Prohibited schools and school systems from using income earnings for renovation or construction projects; prevented using income earnings to pay expenses normally covered by the state's general budget; Forbid using earnings to pay for religious classes and related material; prohibited using earnings to provide wage increases for employees.</li> <li>○ <b>Required school systems and schools to spend at least 5% of investment earnings on drug abuse and smoking prevention programming.</b></li> </ul> </li> </ul>	Adopted

Table 9.19: Allocation of Settlement Funds in HB 640 as Amended by the House <sup>125</sup>				
Stage	Fiscal Year	TOPS Trust	Health Trust Fund	Louisiana Fund
	FY 2001	15%	15%	70%
	FY 2002	20%	20%	60%
	FY 2003-	25%	25%	50%

The Senate and House were divided internally and with each other over what plan to use for future MSA payments. Both chambers desired funding for health and education, but had different views over method and allocation.<sup>149</sup> According to a June 17 article regarding a different version of Senator Campbell's school trust proposal, the House was opposed to the Senate-supported education trust plan believing it lacked accountability and would take too long to provide needed funding via interest generated by accounts.<sup>149</sup> The House wanted a fund that could be fully depleted annually to fund education from pre-kindergarten to 12<sup>th</sup> grade and a health fund from which only interest could be used. Representatives desired a health trust that limited spending to interest because they felt the healthcare industry would exploit the additional funds available from the state. In contrast, the Senate desired a trust dedicated to health spending that could be depleted annually.

"While it is important for us to continue working to raise teacher pay, the use of tobacco money to do that is a totally inappropriate use of these funds. Surely we can do something more with this special windfall."

#### ***Governor Foster Calls for Financing a Teacher Raise Using Settlement Money***

Less than two weeks before the end of the legislative session, on June 10, 1999, Governor Mike Foster called for using 20-25% of the tobacco settlement money to provide public teachers a salary increase.<sup>150</sup> Governor Foster had been silent on the allocation of settlement money after his earlier unsuccessful calls in March 1999 to securitize the MSA funding stream to balance Louisiana's budget. The Council for A Better Louisiana, House Speaker Hunt Downer, and Senate President Randy Ewing criticized Governor Foster's proposal and timing.<sup>150</sup> CABL President Harold Suire told *The Times-Picayune*:

While it is important for us to continue working to raise teacher pay, the use of tobacco money to do that is a totally inappropriate use of these funds. Surely we can do something more with this special windfall.<sup>150</sup>

Lawmakers ignored the governor's request.

#### ***HB 640 Becomes Main Focus of Legislative Efforts to Determine Use of MSA Funds***

On June 10, 1999, the Senate Committee on Finance held a hearing for House Speaker Downer's HB 640.<sup>148</sup> As passed by the House, HB 640 created a trust for the TOPS higher education scholarship program, the Health Trust Fund, and the Louisiana Fund, another trust dedicated to providing children insurance, funding health research as well as treating tobacco-related illness (Table 9.19).

At the hearing, Senate President Randy Ewing pushed Committee members to turn HB 640 into his and Senator Foster Campbell's earlier joint spending proposal in SB 224 and SB

293, which used MSA money to create education and healthcare trusts.<sup>148</sup> Committee members agreed and approved a package of amendments that transformed HB 640 from Speaker Downer's TOPs plan into Ewing and Campbell's earlier proposal (Table 9.20). Similar to SB 224, schools and school systems received funding from earnings generated by a newly created collective LEEF account, as well as income earned from their individual trusts, to improve instruction and student performance. Schools and school systems would be required to dedicate at least 5% of income earned on a drug abuse and smoking prevention program.<sup>151</sup>

After the Committee adopted the amendments, Senate President Randy Ewing told the Baton Rouge *Advocate* that the bill now reflected the Senate's priorities for using MSA money:

This reaffirms some things we want to put up on the table. We want some money for health-science research. We want some money to supplement our health-care effort, particularly in high risk people. We want some money in high risk areas of pre-K(indergarten) through [grade] 12. And we want some support for higher education in one way or another.<sup>148</sup>

The Committee sent HB 640 to the Senate floor after amending it. The bill's implementing legislation (needed since HB 640 was a constitutional amendment), HB 1547, passed the Senate Finance Committee three days later on June 14.<sup>132</sup> HB 640 only required schools to spend 5% of income they received annually from the LEEF Trust on tobacco control programming (Table 9.20).

### ***Status of MSA Payment Allocation Bills***

When Senate Finance Committee members approved HB 640, few bills remained active to allocate MSA reward money for FY 2000 and future years. State lawmakers planned to appropriate most MSA settlement money received in FY 2000 (\$190 of \$199 million) in HB 1 and HB 2, to fund general operating costs, fund recurring programs such as Medicaid, and help pay for construction projects that year. HB 1 only included \$3.3 million in funding for tobacco prevention, cessation and enforcement of the MSA in 1999 (Table 9.17).<sup>129, 121</sup> Bills besides HB 640 and HB 1547 specifically designed to allocate MSA funds after FY 2000 failed to gain traction. Senator Foster Campbell and Senate President Randy Ewing's bill to establish a collective LEEF Fund for schools, SB 224, was killed by Representatives.<sup>101</sup> SB 293, which was amended to advance Campbell and Ewing's LEEF education trust plan after SB 224 failed, stalled in the House Appropriations Committee.<sup>138</sup>

### ***Senators Try to Eliminate MSA Funds from FY 2000 Budget Bill HB 1***

The Senate debated HB 1, Louisiana's general budget bill that included \$147 million of FY 2000's tobacco settlement payments, on June 11, 1999. Senators Tom Schedler (R-Slidell) and Art Lentini (R-Kenner) proposed amending HB 1 to prohibit using MSA money in legislation entering effect during the 1999 regular legislative session, to prevent its use in that year's budget.<sup>152</sup> Schedler argued that voters disliked the incorporation of MSA settlement money into the budget and asserted that lawmakers should not use the funds until they made a unified decision on their allocation.<sup>152-154</sup> The amendment would remove \$147 million in MSA payments from HB 1 and any other settlement funds in legislation meant to be implemented that session. Senators Schedler and Lentini proposed another amendment that imposed spending cuts to address the budget shortfall resulting from removing settlement funds from HB 1.<sup>154, 155</sup>

Table 9.20: Annual Allocation of Tobacco Settlement Money in HB 640 Before and After Senate Committee on Finance Amendments <sup>125, 151</sup>				
	Trusts Established	Total Amount of Settlement Money Distributed Between Trusts	Allocation of Settlement Fund Money in Trusts	
HB 640 as Passed by the House	TOPS Settlement	<ul style="list-style-type: none"><li>15% of MSA funds in FY 2001</li><li>20% of MSA funds in FY 2002</li><li>25% of MSA funds in FY 2003 and onward</li></ul>	TOPS Scholarship Program	
	Health Trust	<ul style="list-style-type: none"><li>15% of MSA funds in FY 2001</li><li>20% of MSA funds in FY 2002</li><li>25% of MSA funds in FY 2003 and onward</li></ul>	<ul style="list-style-type: none"><li>Providing healthcare to children.</li><li>Initiatives for chronic disease management.</li><li>Funding improvements to state healthcare facilities.</li><li>Funding “pursuit of innovation in advanced health care sciences.”</li><li>Treatment of tobacco-related diseases.</li></ul>	
	Louisiana Fund	<ul style="list-style-type: none"><li>70% of MSA funds in FY 2001</li><li>60% of MSA funds in FY 2002</li><li>50% of MSA funds in FY 2003 and onward</li></ul>	<ul style="list-style-type: none"><li>Programs supporting youth via healthcare or education:<ul style="list-style-type: none"><li>Healthcare research, upgrades for state health care facilities, treatment of tobacco-related sicknesses, and treatment of chronic diseases.</li><li>Education, advertising, cessation, and enforcement initiatives to prevent and eliminate tobacco use.</li><li>Investment expenses from TOPS and Health Trusts.</li></ul></li></ul>	
HB 640 After Senate Finance Committee Amendments	Louisiana Educational Excellence Fund	30%	Private Schools	15% to Private Education Excellence Fund.
			Specialty Schools	\$1.5 million*
			Public School System Funds	30% of remaining funds distributed equally.
				70% of remaining funds distributed based on State’s formula for education spending.
	Louisiana Educational Excellence Direct Support Fund	10%	Appropriations allowed only to school system funds, based on the State’s formula for education spending.	
	Higher Education Support Fund	30%	<ul style="list-style-type: none"><li>Appropriations require two-thirds approval from legislature.</li><li>Appropriations allowed for:<ul style="list-style-type: none"><li>To support postsecondary education spending during economic slumps.</li><li>Improve non-recurring higher education programs.</li></ul></li></ul>	
	Health and Sciences Support Fund	30%	<ul style="list-style-type: none"><li>Improvement of education and healthcare initiatives for children.</li><li>Advanced healthcare sciences innovation programming.</li><li><b>Treatment of tobacco-related diseases.</b></li><li>Provision of chronic illness management.</li><li>State healthcare facility renovations.</li><li><b>Tobacco prevention, education and cessation initiatives.</b></li><li><b>Tobacco regulatory enforcement.</b></li></ul>	
*Six specialty schools to receive \$250,000 each annually.				

Neither amendment passed, leaving the \$147 million of tobacco settlement money in the budget.<sup>154</sup> Rejection of the amendments also preserved \$1.5 million in settlement funds dedicated towards tobacco cessation in HB 1 (Table 9.17).

Other Senators offered amendments limiting use of tobacco settlement funds in the budget or rededicating the money to a trust but failed to secure their adoption. After Senators rejected amendments to HB 1 they voted 32-6 to pass it, retaining \$147 million of initial settlement payments in the FY 2000 budget. They dedicated \$1.5 million of included MSA money towards tobacco cessation.

Since the Senate version of HB 1 differed from the House version, the House had the option of either accepting Senate changes or forming a six-person conference committee consisting of three representatives and three senators to draft a compromise version of HB 1. A conference committee represented the last opportunity that lawmakers had to add or remove tobacco settlement money in the budget, including for tobacco control programming. A conference committee would ultimately keep FY 2000 MSA payments in HB 1.

### ***The ALA of Louisiana Urges State Lawmakers to Fund Tobacco Control Programming Using MSA Payments***

The American Lung Association of Louisiana pressured state lawmakers to fund tobacco control programming using MSA money as the legislative session neared its end. *The Times-Picayune* published a letter from ALA of Louisiana Executive Director Ben Fontaine on June 14, 1999 calling on

... *The Times-Picayune* published a letter from American Lung Association of Louisiana Executive Director Ben Fontaine calling on lawmakers to use MSA money to fund tobacco control programming.

lawmakers to use MSA for tobacco control.<sup>156</sup> Fontaine stated that 37% of high school students in Louisiana smoked. He asserted that state lawmakers should respect the MSA's goal of reducing youth smoking by implementing a tobacco control program. Fontaine stated that the program should feature community interventions, school-based programs focused on deterrence and health, counter-marketing, programming grants for nonprofits and local health agencies, administration, as well as surveillance and evaluation. He stated that first year funding should at least be \$27 million according to the Centers for Disease Control and Prevention.<sup>156, 157</sup> We did not find evidence that other health voluntaries pressured for MSA money to go towards comprehensive tobacco control programming at that time.

### ***More of Initial MSA Payments are incorporated into HB 2 for Use in FY 2000***

On June 14, 1999 the Senate Finance Committee attached approximately \$17 million in tobacco settlement money to HB 2, the state's construction budget.<sup>158</sup> HB 1 and HB 2 included almost all \$199 million of MSA funds Louisiana expected for FY 2000. Tobacco control programming in FY 2000 remained minimally funded by the initial MSA payments despite its major incorporation into budget expenses, with only \$1.5 million going towards cessation programming in HB 1 (Table 9.17).

### ***Louisiana Senators Finalize Changes to HB 640 and HB 1547 to Allocate Post FY 2000 MSA Payments***

The same day the Senate Finance Committee revised HB 2, the Senate brought HB 640, which allocated future MSA money not incorporated in FY 2000 spending, to the floor for consideration.<sup>159</sup> Senators proposed multiple amendments to establish new trusts, reallocate tobacco settlement money, and allow MSA money to back state-issued bonds (Table 9.21). In particular, Senate President Randy Ewing proposed Amendment 1023 to assuage backers of Senator Campbell's LEEF education trust plan<sup>100, 109</sup> and an earlier bill providing settlement money to the TOPS scholarship program.<sup>159</sup> Ewing's amendment also included features appealing to supporters of Treasurer Ken Duncan's plan to place settlement money in a trust the state could take from to relieve immediate debt and financial needs.<sup>100, 109</sup>

Ewing's amendment kept the LEEF Trust he added to HB 640 during the bill's Senate Finance Committee hearing as well as the requirement that 5% of money from the fund go to smoking prevention and drug abuse programming (Table 9.21). It also permitted an unspecified amount of funding from another trust it added, the Education Support Trust, to go towards general drug abuse prevention and treatment initiatives. Senators approved Ewing's proposal, and adopted four additional amendments to approve healthcare initiatives for funding from the Healthcare and Research Fund established by Amendment 1023.

After reworking HB 640 to appease supporters of Campbell's LEEF plan, Treasurer Duncan's bond and trust plan, and the TOPS scholarship program,<sup>159</sup> Senators voted 32-2 to pass the bill and send it back to the House for consideration of Senate amendments (Table 9.22). HB 1547, HB 640's enabling legislation, was amended to reflect changes to its companion and passed the Senate on June 15, 1999.<sup>132</sup> HB1547 also went to the House for approval of Senate changes.

As passed by the Senate, HB 640 dedicated interest from 50% of annual MSA payments towards education funding, 10% of MSA payments towards education, and 40% of MSA payments towards health research and programming (Table 9.22). The Senate version of HB 640 dedicated more funds towards education scholarships and programming than the House version, which allocated more MSA settlement money towards health care and drug prevention initiatives. After passing the Senate, HB 640 also had a provision allowing a supermajority of state lawmakers to replace its education and health trusts with a fund dedicated to issuing state bonds.

### ***Lawmakers Pass FY 2000 Budget Bills HB 1 and HB 2 with Nearly All First Year Settlement Payments included***

After FY 2000 budget bills HB 1 and HB 2 returned to the House, Representatives rejected Senate changes, forcing conference committees to convene for both bills to resolve the differences. The final version of HB 1 passed by the legislature used approximately \$149 million in settlement money, mainly for health and education initiatives, while HB 2 contained \$39 million for construction, renovation, and equipment purchases.<sup>160</sup> Besides allocations in HB 1 and HB 2, lawmakers allocated the remaining \$11 million of tobacco settlement money for FY 2000 to the State's rainy day fund since it was classified as nonrecurring and not allowed for

Table 9.21: Amendments to HB 640 Proposed on the Senate Floor<sup>125</sup>

Number	Sponsor	Party and District	Change	Status
<b>1023</b>	<b>Randy Ewing</b>	<b>(D-Ouachita)</b>	<ul style="list-style-type: none"> <li>• Removes Senate Finance Committee Amendments.</li> <li>• Established five trusts with settlement money not dedicated by other legislation during the 1999 session.               <ul style="list-style-type: none"> <li>○ Education Trust Fund:                   <ul style="list-style-type: none"> <li>▪ 50% of total MSA money received annually.</li> <li>▪ All annual account earnings deposited in LEEF.</li> </ul> </li> <li>○ Louisiana Educational Excellence Fund (LEEF):                   <ul style="list-style-type: none"> <li>▪ All annual account earnings kept in LEEF.</li> <li>▪ 50% of LEEF Fund distributed to school systems, specialty schools and private schools each year:                       <ul style="list-style-type: none"> <li>• 15% to private schools.</li> <li>• \$250,000 to each specialty school (six schools).</li> <li>• Of money remaining after dedications to private and specialty schools:                           <ul style="list-style-type: none"> <li>○ 30% spread equally among public school systems.</li> <li>○ 70% spread using states formula for spending education (proportional).</li> </ul> </li> <li>• Spending restricted to improving student performance or classes</li> <li>• Prohibited use for construction or renovation projects. Prohibited pay increases for employees using LEEF money.</li> <li>• Required 5% of money to go towards drug abuse and smoking prevention programming.</li> <li>• Required schools and school systems to submit a spending plan to the Louisiana Department of Education. Required plan approval from Department of Education to receive payout.</li> <li>• Prohibited use of LEEF money for existing costs in the state's general fund.                           <ul style="list-style-type: none"> <li>▪ 50% of LEEF Fund dedicated to TOPS annually.</li> </ul> </li> </ul> </li> </ul> </li> <li>○ Education Support Fund:                   <ul style="list-style-type: none"> <li>▪ 10% of MSA money annually.</li> <li>▪ All account earnings placed back in fund.</li> <li>▪ Entire account given to public school systems annually, based on state's education spending formula (proportional).                       <ul style="list-style-type: none"> <li>• Appropriations restricted to early childhood education initiatives to help struggling or at-risk students, or for any other education program approved by lawmakers.</li> </ul> </li> </ul> </li> <li>○ Health Care and Research Fund:                   <ul style="list-style-type: none"> <li>▪ 40% of MSA money annually (remaining).</li> <li>▪ All account earnings returned to account.</li> <li>▪ 25% of account money dedicated to Board of Regents for "health science research project grants."</li> </ul> </li> </ul> </li> </ul>	<b>Adopted</b>

			<ul style="list-style-type: none"> <li>▪ 75% of account money to be allocated by two-thirds vote of legislature: <ul style="list-style-type: none"> <li>• Early intervention initiatives for health and health related issues.</li> <li>• Health clinics at schools.</li> <li>• Preventing infant mortality.</li> <li>• Drug abuse prevention and treatment initiatives.</li> <li>• Health insurance for poor children.</li> <li>• Preventing teen pregnancy.</li> </ul> </li> <li>○ Louisiana Investment for Tomorrow Fund (alternative to Education Support Fund and Health Care and Research Fund if chosen by legislature). <ul style="list-style-type: none"> <li>▪ Replaces Education Support Fund and Health Care and Research Fund. <ul style="list-style-type: none"> <li>• Two-thirds vote by lawmakers required to create as replacement for two trusts.</li> </ul> </li> <li>▪ Received 50% of MSA money. <ul style="list-style-type: none"> <li>• If approved by two-thirds vote of legislature, LIFT fund would back state-issue bonds.</li> <li>• Could back bonds using up to 50% of account balance.</li> </ul> </li> </ul> </li> </ul>	
<b>1037</b>	<b>Jim Cox</b>	<b>D-Calcasieu</b>	<ul style="list-style-type: none"> <li>• Allowed use of money from the Health Care and Research Fund created by Amendment 1028 to provide elderly Louisianans prescription drugs.</li> </ul>	<b>Adopted</b>
<b>1039</b>	<b>Don Hines</b>	<b>D-Calcasieu</b>	<ul style="list-style-type: none"> <li>• Allowed use of money from the Health Care and Research Fund created by Amendment 1023 for healthcare initiatives approved of by the Legislature.</li> </ul>	<b>Adopted</b>
<b>1040</b>	<b>Don Hines</b>	<b>D-Calcasieu</b>	<ul style="list-style-type: none"> <li>• Changed funding under Health Care and Research Fund created by Amendment 1023. <ul style="list-style-type: none"> <li>○ Changed grant program to fund medical research grants instead of health science grants.</li> <li>○ Made the Louisiana Public Academic Health Centers a recipient of the grant program.</li> </ul> </li> </ul>	<b>Adopted</b>
<b>1041</b>	<b>Noble Ellington</b>	<b>D-Ouachita</b>	<ul style="list-style-type: none"> <li>• Allowed use of money from the Health Care and Research Fund created by Amendment 1023 to assist medically underserved regions.</li> </ul>	<b>Adopted</b>
<b>1043</b>	<b>Tom Schedler</b>	<b>D-St. Tammany</b>	<ul style="list-style-type: none"> <li>• Allowed use of money from the Health Care and Research Fund created by Amendment 1023 for hospice Medicaid initiatives.</li> </ul>	<b>Adopted</b>
986	Randy Ewing	D-Ouachita	<ul style="list-style-type: none"> <li>• Removes Senate Finance Committee Amendments.</li> <li>• Established Education and Health Trusts using MSA money.</li> <li>• Similar to Amendment 1028.</li> </ul>	Died without action
991	Noble Ellington	D-Ouachita	<ul style="list-style-type: none"> <li>• Allowed use of money from the Health Care and Research Fund created by Amendment 1028 for health care in rural areas.</li> </ul>	Died without action
998	Foster Campbell	D-Bossier	<ul style="list-style-type: none"> <li>• Removes Senate Finance Committee Amendments.</li> <li>• Removes Amendment 1028.</li> <li>• Implemented a modified version of Senate education funding plan from SB 224 (LEEF, private, public, and specialty schools).</li> <li>• Established Education Support Fund and Health Care and Research Fund from Amendment 1028 and restricted spending based on Amendment 1028 provisions.</li> </ul>	Died without action



1000	Noble Ellington	D-Ouachita	<ul style="list-style-type: none"> <li>Allowed use of money from the Health Care and Research Fund created by Amendment 1028 for healthcare in regions that were medically underserved.</li> </ul>	Died without action
1006	Lynn Dean	R-Jefferson	<ul style="list-style-type: none"> <li>Changed annual allocation of MSA money in Amendment 1023 to Education Trust from 50% to 60%.</li> </ul>	Died without action
1007	Don Hines	D-Calcasieu	<ul style="list-style-type: none"> <li>Removes Senate Finance Committee Amendments.</li> <li>Early version of Amendment 1023.</li> </ul>	Died without action
1008	Tom Greene	R-West Baton Rouge	<ul style="list-style-type: none"> <li>Removes Senate Finance Committee Amendments.</li> <li>Deletes Amendment 1023 from Senator Randy Ewing.</li> <li>Establishes Louisiana Tobacco Trust Fund and Louisiana Tobacco Expenditure Fund with settlement money not dedicated by other legislation during the 1999 session. <ul style="list-style-type: none"> <li>Louisiana Tobacco Trust Fund: <ul style="list-style-type: none"> <li>Dedicated 100% of annual settlement payments to Louisiana Tobacco Trust Fund.</li> <li>Prohibited appropriations from Trust.</li> <li>90% account earnings dedicated to Louisiana Tobacco Expenditure Fund.</li> <li>10% of account earnings returned to Louisiana Tobacco Trust Fund.</li> </ul> </li> <li>Louisiana Tobacco Expenditure Fund: <ul style="list-style-type: none"> <li>50% of annual appropriations to education initiatives.</li> <li>50% of annual appropriations to healthcare initiatives.</li> </ul> </li> </ul> </li> </ul>	Rejected
1010	Randy Ewing	D-Ouachita	<ul style="list-style-type: none"> <li>Allowed use of money from the Health Care and Research Fund created by Amendment 1028 to programming for “drug prevention and treatment.”</li> </ul>	Died without action
1018	Lynn Dean	R-Jefferson	<ul style="list-style-type: none"> <li>Changed annual allocation of MSA money in Amendment 1023 to Education Trust from 50% to 60%.</li> <li>Changed annual allocation of MSA money to LIFT fund established by Amendment 1023 from 50% to 40%.</li> </ul>	Withdrawn
1019	Noble Ellington	D-Ouachita	<ul style="list-style-type: none"> <li>Allowed use of money from the Health Care and Research Fund created by Amendment 1028 for healthcare in regions that were medically underserved.</li> </ul>	Withdrawn
1028	Lynn Dean	R-Jefferson	<ul style="list-style-type: none"> <li>Changed annual allocation of MSA money in Amendment 1023 to Education Trust from 50% to 60%.</li> <li>Changed annual allocation of MSA money to LIFT fund established by Amendment 1023 from 50% to 40%.</li> </ul>	Rejected
1029	Don Hines	D-Calcasieu	<ul style="list-style-type: none"> <li>Same as Amendment 1040.</li> </ul>	Withdrawn
1035	Don Hines	D-Calcasieu	<ul style="list-style-type: none"> <li>Same as Amendment 1040.</li> </ul>	Withdrawn
1038	Tom Schedler	R-St. Tammany	<ul style="list-style-type: none"> <li>Allowed use of money from the Health Care and Research Fund created by Amendment 1023 for pilot hospice Medicaid initiatives.</li> </ul>	Withdrawn

appropriation in general budget spending.<sup>160</sup> The \$199 million in first year MSA payments went to the budget (\$149 million), construction initiatives (\$39 million), or Louisiana's rainy day fund (\$11 million).<sup>160, 161</sup>

Only \$4 million in HB 1 was designated for tobacco control programming.<sup>162</sup> The allocation of settlement funds to tobacco control programming reflected previous statements in *The Advocate* from House Speaker and HB 1 Conference Committee member Hunt Downer (D-Houma) that the budget shortfall prevented funding for tobacco control initiatives:

"What we have is such a demand on this money that there's not enough to go around. The tobacco money was built into the budget before it came to the Legislature. To back it out we would have had to cut the budget."

What we have is such a demand on this money that there's not enough to go around. The tobacco money was built into the budget before it came to the Legislature. To back it out we would have had to cut the budget. What about in future years?<sup>163</sup>

The conference committee version of HB 1 provided \$1 million to Louisiana Universities and research centers for smoking prevention and cessation programs.<sup>162</sup> The conference committee also designated \$3 million of settlement funds towards a tobacco prevention and cessation program in the Louisiana DHH's Office of Health.<sup>162</sup> The \$3 million dedication resulted from a tobacco prevention and education initiative developed and proposed to lawmakers by the Coalition for a Tobacco-Free Louisiana (CTFLA) with assistance from DHH.<sup>164</sup>

The coalition consisted of approximately 60 officials from health care organizations, hospitals, and higher education institutions.<sup>164</sup> CTFLA was pivotal in Louisiana's later tax (Chapter 11) and smokefree policy victories (Chapter 10). We do not know the details of DHH and CTFLA's tobacco control proposal.

The Legislature adopted the Conference Committee versions of HB 1 and HB 2 on June 21, 1999, the last day of the legislative session. In an interview with *The Advocate*, Commissioner of Administration Mark Drennen justified use of tobacco settlement money in the FY 2000 general budget because it secured federal funding for state programming:

We [Governor Foster's administration and lawmakers] used the tobacco money to match \$300 million in federal funds... We were able to turn \$200 million into \$500 million, so we feel like that's a great investment.<sup>160</sup>

Commissioner Drennen also defending the incorporation of settlement money into the budget, stating the funds prevented cuts to education, art, and parks programming. The debate over the future of MSA funds in future years remained unresolved, particularly whether the money would be set aside in dedicated trusts that were insulated from the year-to-year appropriations process.

Table 9.22: Annual Allocation of Tobacco Settlement Money in HB 640 as Passed by the House and Senate <sup>125</sup>					
	Trusts Established	Total amount of Settlement money distributed between trusts	Allocation of settlement fund money and earnings in trusts		
HB 640 as Passed by the House	TOPS Settlement	<ul style="list-style-type: none"> <li>• 15% of MSA funds in FY 2001</li> <li>• 20% of MSA funds in FY 2002</li> <li>• 25% of MSA funds in FY 2003 and onward</li> </ul>	TOPS Scholarship Program.		
	Health Trust	<ul style="list-style-type: none"> <li>• 15% of MSA funds in FY 2001</li> <li>• 20% of MSA funds in FY 2002</li> <li>• 25% of MSA funds in FY 2003 and onward</li> </ul>	<ul style="list-style-type: none"> <li>• Providing healthcare to children.</li> <li>• Initiatives for chronic disease management.</li> <li>• Funding improvements to state healthcare facilities.</li> <li>• Funding “pursuit of innovation in advanced health care sciences.”</li> <li>• Treatment of tobacco-related diseases.</li> </ul>		
	Louisiana Fund	<ul style="list-style-type: none"> <li>• 70% of MSA funds in FY 2001</li> <li>• 60% of MSA funds in FY 2002</li> <li>• 50% of MSA funds in FY 2003 and onward</li> </ul>	<ul style="list-style-type: none"> <li>• Programs supporting youth via healthcare or education: <ul style="list-style-type: none"> <li>○ Healthcare research, upgrades for state health care facilities, treatment of tobacco-related sicknesses, and treatment of chronic diseases.</li> <li>○ Education, advertising, cessation, and enforcement initiatives to prevent and eliminate tobacco use.</li> <li>○ Investment expenses from TOPS and Health Trusts.</li> </ul> </li> </ul>		
	Trusts Established	Total amount of Settlement money distributed between trusts	Allocation of settlement fund money and earnings in trusts		
HB 640 as Passed by the Senate	Education Trust Fund	50%	Account Earnings deposited in LEEF Fund		
	Louisiana Educational Excellence Fund**	None – Operated on investment earnings deposited from Education Trust Fund	50%	Private Schools	15% to Private Education Excellence Fund.
				Specialty Schools	\$1.5 million.*
				Public School System Funds	30% of remaining funds distributed equally
					70% of remaining funds distributed based on State’s formula for education spending (proportional).
			50%	TOPS Scholarship Program	

	Education Support Fund**	10%	<ul style="list-style-type: none"><li>• Entire account given to public school systems annually, based on state’s education spending formula (proportional).<ul style="list-style-type: none"><li>○ Appropriations restricted to early childhood education initiatives to help struggling or at-risk students, or for any other education program approved by lawmakers.</li></ul></li></ul>	
	Health and Research Fund**	40%	25%	“Health science research project grants” selected by Board of Regents.
			75% (requires 2/3 legislature approval)	<ul style="list-style-type: none"><li>• Early intervention initiatives for health and health related issues.</li><li>• Health clinics at schools.</li><li>• Preventing infant mortality.</li><li>• Drug abuse prevention and treatment initiatives.</li><li>• Health insurance for poor children.</li><li>• Preventing teen pregnancy.</li></ul>
	Louisiana Investment for Tomorrow Fund***	50% (If LIFT Fund replaced Education Support Fund and Health and Research Fund)	Could back state-issued bonds using up to 50% of account balance.	

\*Six specialty schools to receive \$250,000 each annually.

\*\*All account earnings (via investing in stocks, bonds, etc) deposited in same fund.

\*\*\*Replaced Education Support Fund and Health Care and Research Fund if Legislature Passed 2/3 vote.

### *Conference Committees Propose Compromise Versions of HB 640 and HB 1547*

HB 640 and its implementing legislation HB 1547, the bills dedicating future MSA payments and not the \$199 million in initial settlement money included in FY 2000 budget bills HB 1 and HB 2, returned to the House for approval of Senate changes. Representatives rejected the amendments, forcing the House and Senate to form conference committees to resolve the chambers' differences. The Conference Committees for HB 640 and HB 1547 formed on June 16, 1999,<sup>125, 132</sup> five days before the regular legislative session ended on June 21, 1999.<sup>165</sup> The HB 640 conference committee consisted of HB 640 sponsor and Speaker Hunt Downer, Representative Jerry Luke LeBlanc, and Representative Charles Dewitt, as well as Senate President Randy Ewing, Senator John Hainkel, and SB 224 sponsor Senator Foster Campbell. The HB 1547 conference committee had the same membership as the HB 640 panel, except Senator Jay Dardenne (R-Baton Rouge) took the place of Senator Campbell.

On June 20, 1999 the HB 640 conference committee announced the creation and near approval of compromise legislation<sup>166, 167</sup> that removed amendments made in the Senate and dedicated future tobacco settlement money (not initial payments, which were used in HB 1 and HB 2) to two new accounts, the Millennium Fund and the Louisiana Fund (Table 9.23-D).<sup>167</sup> Settlement money dedicated to the Millennium Fund went to three distinct trusts for education and healthcare programming (Table 9.23-D). The Education Excellence Fund in the Millennium Fund was a smaller version of Senator Foster Campbell's education spending plan from SB 224, and the TOPS Fund was similar to Speaker Hunt Downer's original plan dedicating settlement money to a trust supporting the TOPS scholarship program. Total annual appropriations from the specialty funds in the Millennium Trust could not surpass yearly estimates of income earned by the Millennium Trust. Tobacco prevention, cessation, and regulatory enforcement programming qualified for money from the Louisiana Fund, but they did not have a required minimum funding level and lawmakers could choose not to provide settlement dollars towards those initiatives (Table 9.23-D).

The conference committee version of HB 640 allowed lawmakers to establish and dedicate any amount of tobacco settlement money to an additional account called the Millennium Leverage Fund via a two-thirds vote of the legislature. Revenue from investment earnings and bond proceeds of the Millennium Leverage Fund went to the Education Excellence, Health Excellence, TOPS, and Louisiana Funds also created by the bill. The compromise version also allowed lawmakers to issue state bonds using the Millennium Leverage Fund with a two-thirds vote in both legislative chambers. The plan came from Treasurer Ken Duncan's bond and trust proposal<sup>168</sup> to place settlement funds in a trust that lawmakers could use to back bonds with.<sup>100, 109</sup> If adopted the bill entered effect on July 1, 2000.

The Conference Committees approved their versions of HB 640 and its implementing legislation HB 1547 on July 21, 1999, sending them to the Senate for a vote. HB 640 was a constitutional amendment, needing approval from two-thirds of each chamber instead of a simple majority to pass. After passing the legislature, Louisiana voters had to vote to enact HB 640 in the October 1999 election. Despite conflicting desires over settlement money allocation, Senators and Representatives voted overwhelmingly to approve the compromise versions HB 640 and HB 1547. Adoption of HB 640 placed it on the October 23, 1999 ballot for voters to pass or reject.

Passage of HB 640 and HB 1547 ensured 45% of settlement money in FY 2001, 60% in FY 2002, and 75% received starting in FY 2003 and beyond went into protected trusts that state lawmakers could not appropriate for general budget expenses (as happened in FY 2000 with HB 1 and HB 2) (Table 9.23-D).<sup>169</sup> All tobacco settlement money received in future fiscal years, as well as income earned by Funds established in HB 640 and HB 1547, would go into trusts or to healthcare and education initiatives if voters approved the constitutional amendment. HB 640 and its implementing legislation permitted spending for tobacco prevention, cessation, and related healthcare treatment, but did not guarantee funding as it did not set a minimum funding requirement.<sup>169</sup> Appropriations from the Louisiana Fund for tobacco control and other allowable purposes would be made annually, and could vary.

Placement of MSA payments into trusts satisfied state lawmakers' and political figures' desires to preserve the money for specific purposes and prevent it from being used to remedy budget gaps. Senate President Randy Ewing told *The Advocate* that placing most settlement money into a trust protected it from waste in future budgets stating, "By putting in (sic) a trust and not letting it [tobacco settlement money] just be used to plug the budget, we have demanded that future legislators make the tough decisions."<sup>160</sup> Although not entirely satisfied with the outcome of HB 640 and HB 1547, Attorney General Richard Ieyoub told *The Advocate* that putting most of the MSA money into trust was preferable to leaving the payments in the state's general fund:

I would have probably given more priority to health care and been more specific about what kinds of health care projects the money could be spent on...after all, that was the basis of the lawsuit in the first place.

"The worst thing that could happen, and I hope it never happens, is that some of the trust fund would end up in the general fund."

He added:

The worst thing that could happen, and I hope it never happens, is that some of the trust fund would end up in the general fund.<sup>160</sup>

Leadership from CABL and the Louisiana Association of Educators (LAE) also expressed support for HB 640 and HB 1547.<sup>170</sup> CABL President Harold Suire, whose organization called on lawmakers to place settlement money into a trust, expressed pride in CABL's influence over the allocation debate.<sup>170</sup> LAE President Mary Washington stated that use of settlement money to fund education initiatives was a positive outcome in an overall negative legislative session for teachers.<sup>170</sup> We found no statements from health or tobacco control advocates regarding the settlement allocation plan adopted by the Louisiana Legislature.

After passing the legislature, HB 640 went to the ballot for voter approval and HB 1547 went to Governor Foster for signature into law. Governor Foster signed HB 1547 into law on July 12, 1999. Louisianans subsequently approved HB 640's constitutional amendment on election day.<sup>171</sup>

Passage of HB 640 divided MSA payments not used in the FY 2000 budget bills HB 1 and HB 2 between the three trusts in the newly created Millennium Fund as well as the Louisiana Fund, predominantly for health and education programming (Table 9.23-D). Tobacco use

Table 9.23-A: HB 640 as Introduced <sup>125</sup>		
Accounts Established	Total Amount of Settlement Money Distributed Between Trusts *	Allocation and Use of Settlement Fund Money and Earnings in Trusts
Tobacco Settlement Trust Fund	25% **	None.
Louisiana Fund	75%	Any purpose.
*Total percentage after legally required dedications to Bond Security and Redemption Fund and a \$10 million dedication to the State's Children's Health Insurance Program Support Fund.		
**Once the trust reaches \$1 billion, all MSA payments and earnings generated by trust are deposited in Louisiana Fund.		

Table 9.23-B: Annual Allocation of Tobacco Settlement Money in HB 640 as Passed by the House <sup>125</sup>		
Accounts Established	Total Amount of Settlement Money Distributed Between Trusts	Allocation and Use of Settlement Fund Money and Earnings in Trusts.
TOPS Settlement	<ul style="list-style-type: none"> <li>• 15% of MSA funds in FY 2001</li> <li>• 20% of MSA funds in FY 2002</li> <li>• 25% of MSA funds in FY 2003 and onward</li> </ul>	TOPS Scholarship Program.
Health Trust	<ul style="list-style-type: none"> <li>• 15% of MSA funds in FY 2001</li> <li>• 20% of MSA funds in FY 2002</li> <li>• 25% of MSA funds in FY 2003 and onward</li> </ul>	<ul style="list-style-type: none"> <li>• Providing healthcare to children.</li> <li>• Initiatives for chronic disease management.</li> <li>• Funding improvements to state healthcare facilities.</li> <li>• Funding "pursuit of innovation in advanced health care sciences."</li> <li>• Treatment of tobacco-related diseases.</li> </ul>
Louisiana Fund	<ul style="list-style-type: none"> <li>• 70% of MSA funds in FY 2001</li> <li>• 60% of MSA funds in FY 2002</li> <li>• 50% of MSA funds in FY 2003 and onward</li> </ul>	<ul style="list-style-type: none"> <li>• Programs supporting youth via healthcare or education: <ul style="list-style-type: none"> <li>○ Healthcare research, upgrades for state health care facilities, treatment of tobacco-related sicknesses, and treatment of chronic diseases.</li> <li>○ Education, advertising, cessation, and enforcement initiatives to prevent and eliminate tobacco use.</li> <li>○ Investment expenses from TOPS and Health Trusts.</li> </ul> </li> </ul>
*Six specialty schools to receive \$250,000 each annually.		

Table 9.23-C: HB 640 as Passed by the Senate<sup>125</sup>

Accounts Established	Total Amount of Settlement Money Distributed Between Trusts	Allocation of Settlement Fund Money and Earnings in Trusts		
Education Trust Fund	50%	Account earnings deposited in LEEF Fund		
Louisiana Educational Excellence Fund**	None – Uses LEEF Fund earnings	50%	Private Schools	15% to Private Education Excellence Fund.
			Specialty Schools	\$1.5 million.*
			Public School System Funds	30% of remaining funds distributed equally.
		70% of remaining funds distributed based on State’s formula for education spending (proportional).		
		50%	TOPS Scholarship Program	
Education Support Fund**	10%	<ul style="list-style-type: none"><li>Entire account given to public school systems annually, based on state’s education spending formula (proportional).<ul style="list-style-type: none"><li>Appropriations restricted to early childhood education initiatives to help struggling or at-risk students, or for any other education program approved by lawmakers.</li></ul></li></ul>		
Health and Research Fund**	40% (remaining)	25%	“Health science research project grants” selected by Board of Regents.	
		75% (requires 2/3 legislature approval)	<ul style="list-style-type: none"><li>Early intervention initiatives for health and health related issues.</li><li>Health clinics at schools.</li><li>Preventing infant mortality.</li><li>Drug abuse prevention and treatment initiatives.</li><li>Health insurance for poor children.</li><li>Preventing teen pregnancy.</li></ul>	
Louisiana Investment for Tomorrow Fund***	50% (If LIFT Fund replaced Education Support Fund and Health and Research Fund)	Could back state-issued bonds using up to 50% of account balance.		

\*Six specialty schools to receive \$250,000 each annually.

\*\*All account earnings (via investing in stocks, bonds, etc) deposited in same fund.

\*\*\*Replaced Education Support Fund and Health Care and Research Fund if Legislature Passed 2/3 vote.



Table 9.23-D: HB 640 as Adopted <sup>125, 168, 169</sup>			
Accounts Established	Total Amount of Settlement Money Distributed Between Trusts	Allocation of Settlement Fund Money and Earnings in Trusts	
<b>Millennium Fund</b>	<ul style="list-style-type: none"> <li>• 45% of settlement funds for FY 2001</li> <li>• 60% of settlement funds for FY 2002</li> <li>• 75% of settlement funds for FY 2003 and onward</li> </ul>	<b>Education Excellence Fund-</b> 33% of money and interest from Millennium Trust	<ul style="list-style-type: none"> <li>• 15% annually to private schools.</li> <li>• \$75,000 annually to six specialty schools. Also received money based on average amount spent on students in public school systems.</li> <li>• Public school systems: <ul style="list-style-type: none"> <li>○ FY 2001 through FY 2007. <ul style="list-style-type: none"> <li>▪ 30% equally distributed among school systems.</li> <li>▪ 70% distributed based upon state education spending formula (proportional).</li> </ul> </li> <li>○ FY 2008 and onward. <ul style="list-style-type: none"> <li>▪ 100% distributed based upon state education spending formula (proportional).</li> </ul> </li> </ul> </li> <li>• Appropriations for construction and renovation projects, employee salary increases prohibited.</li> <li>• Appropriations allowed only for initiatives to improve student performance and classes.</li> <li>• Appropriations may not replace or enhance appropriations from state general fund.</li> </ul>
		<b>Health Excellence Fund-</b> 33% of money and interest from Millennium Trust	<ul style="list-style-type: none"> <li>• School health clinics.</li> <li>• Rural health clinics.</li> <li>• Primary care clinics.</li> <li>• Initiatives to reduce infant mortality.</li> <li>• Providing health insurance to children.</li> <li>• Initiatives to generate innovation in healthcare sciences</li> <li>• Comprehensive chronic disease management services.</li> </ul>
		<b>TOPS Fund-</b> 33% of money and interest from Millennium Trust	state scholarship programs for higher education (Tuition Opportunity Scholarship Program).

<b>Louisiana Fund+</b>	<ul style="list-style-type: none"> <li>• 55% of settlement funds for FY 2001</li> <li>• 40% of settlement funds for FY 2002</li> <li>• 25% of settlement funds for FY 2003 and onward</li> </ul>	<ul style="list-style-type: none"> <li>• Initiatives to reduce infant mortality.</li> <li>• Assisting state initiatives to provide children health insurance.</li> <li>• Primary care, rural, and school health clinics.</li> <li>• Initiatives to generate innovation in healthcare sciences.</li> <li>• To provide comprehensive services for management of chronic disease.</li> <li>• To improve state healthcare facilities.</li> <li>• Treatment of tobacco-related illnesses.**</li> <li>• Tobacco prevention and cessation programming.</li> <li>• Tobacco regulatory enforcement.</li> </ul>
<p>+Not a trust.</p> <p>*Receives MSA money remaining after allocation to Millennium Fund.</p> <p>**Dedication may not surpass 30% of total appropriations from Louisiana Fund in FY 2002. Dedication may not surpass 20% of total appropriations from Louisiana Fund for FY 2003 and beyond.</p>		

prevention, smoking cessation programming, and treatment of tobacco related illnesses qualified for money from the Louisiana Fund but were not guaranteed a minimum amount, meaning lawmakers could choose not to fund them or vary how much it provided each year for those purposes (Table 9.23-D). Ultimately, the State's Department of Health and Hospitals received \$500,000 annually from the Louisiana Fund for tobacco control programming.<sup>172</sup>

### **Louisiana Debates Securitizing its Share of the Master Settlement Agreement**

In late 1999 and the 2000s, lawmakers in many states debated securitizing their states' share of Master Settlement Agreement monies.<sup>173</sup> Securitization is the process of states selling future payments through bonds in exchange for receiving a much smaller amount of cash immediately.<sup>174, 175</sup> Investment firms and banks persuaded 18 states and the District of Columbia to sell all or part of their future tobacco settlement payments in the early 2000s, including Louisiana.<sup>176</sup> Securitizing states claimed that they sold their MSA payment stream at a discounted rate because they feared tobacco companies might default on future MSA payments and decided to obtain a portion of their funds immediately. Bankers warned state legislators that the tobacco industry may default on future payments as a result of large court case settlements, stricter FDA regulations, and declining sales. Bankers and investment firms used this uncertainty to their advantage by buying bonds at a significant discount to cover the risk of default on future payments.<sup>173</sup> As a result, states that securitized part or all of their MSA payments collected far less money according to a 2002 report by the Campaign for Tobacco-Free Kids:

[A]bout \$1.9 billion of the \$9.9 billion payment to Ohio [through 2025] would be paid to investors and bond firms. Similarly, the New York State counties that have securitized are reportedly receiving, on average, only about 40 cents on the dollar through 2025 (with one getting only 32 cents). In Washington State, projections used by the proponents of the securitization proposal that passed there showed that the state will, at best, get less than 38 cents on the dollar – with returns of only 25 to 30 cents per dollar more likely according to the state's director of financial management.<sup>177</sup>

Debate over securitizing Louisiana's MSA payments started during fall 1999. In mid-September, State Treasurer candidate John Kennedy, who previously served as State Revenue Secretary, attacked incumbent Treasurer Ken Duncan's goal of issuing state bonds backed by settlement money.<sup>178</sup> Duncan's plan had materialized as the Millennium Leverage Trust created in HB 640, which allowed the legislature to dedicate all settlement money to the fund by a two-thirds vote of each chamber, invest it and provide bonds using the trust. In contrast, Kennedy advocated for selling all settlement payments up front for an immediate lump sum. He claimed that Duncan's trust plan was risky because tobacco companies might not make payments.

### ***Louisianans Vote HB 640 and a New Treasurer into Law***

On October 23, 1999, Louisianans approved HB 640's ballot measure, entering into law the multi-trust framework for MSA payments dedicated to education and healthcare funding.<sup>179</sup> Voters also elected John Kennedy Treasurer over incumbent John Duncan.<sup>179</sup> In early November, Standard and Poor's, Fitch's Investment, Moody's Investment Service, and other financial advisors recommended Louisiana sell its MSA settlement for an immediate payment instead of risking money on future payments, believing the survivability of the tobacco companies was

questionable.<sup>179</sup> Louisiana lawmakers did not securitize their state's expected MSA funds following the announcement. However, Louisiana would move to securitize a portion of its expected MSA funds in 2001.

### ***MSA Funds Intended for Tobacco Control Programming are Diverted Because of 2000 Budget Crisis***

As Louisiana officials and lawmakers weighed securitization, in December 2000 the Department of Health and Hospitals announced a \$126 million budget deficit, prompting an unidentified legislative budget committee to direct the agency to not adopt new programming.<sup>164</sup> The order caused DHH not to use the \$3 million secured in 1999 (FY 2000) budget bill HB 1 for a tobacco control initiative that the agency and CTFLA had proposed as initially planned. A portion of tobacco control money was reallocated to Louisiana's Medicaid Program instead. CTFLA Chairman Charles Brown blamed DHH for the lost funds, claiming the agency moved too slowly to arrange a legislative committee hearing to discuss the program despite his prodding. DHH contested this claim, stating that it would have been irresponsible to launch a tobacco control initiative without a stable revenue source.

The fallout over lost funding was an indicator of growing tensions between health advocates and DHH that prevented maximal cooperation on tobacco control initiatives for years and resulted in the formation of the tobacco control nonprofit the Louisiana Campaign for Tobacco-Free Living (Chapter 4). Louisiana Coalition for Maternal and Child Health Executive Director Sandra Adams, whose organization participated in efforts to secure funding for the tobacco control initiative, also decried the lost money.<sup>180</sup> After losing the \$3 million allotted for the tobacco control initiative, DHH Secretary Hood David Hood expected lawmakers to provide only \$500,000 for tobacco control programming in FY 2001. Afterwards, tobacco control programming at the DHH received only \$500,000 annually from the Louisiana Fund,<sup>172</sup> one of the two trusts receiving MSA money. However, in a 2019 interview for this report, former LTCP Director Diane Hargrove-Jupiter did not recall DHH's LTCP receiving recurring state funding from the MSA settlement.<sup>181</sup>

### ***Louisiana Securitizes 60% of Its Settlement in 2001***

Debate over selling Louisiana's MSA settlement continued into January 2000. Treasurer John Kennedy maintained securitizing tobacco payments as a priority entering office.<sup>182</sup> Louisiana officially investigated selling its MSA settlement starting later that month, with Governor Foster announcing the formation of a task force to consider and provide recommendations on securitizing MSA payments by the 2000 Legislative Session. The panel was expected to consist of important lawmakers, State Treasurer John Kennedy, Attorney General Richard Ieyoub, and experts from policy nonprofits the Public Affairs Research Council and Council for A Better Louisiana. Both state officials and legislators debated securitization from early 2000 through most of 2001.

As debate over selling Louisiana's settlement continued towards late January 2001, ALA of Louisiana's Ben Fontaine published a letter in the *Baton Rouge Advocate* attacking Governor Mike Foster and state lawmakers. for considering securitization to use MSA money to address budget problems instead of to fund tobacco control programming. He chastised the state for not already implementing tobacco control programming using MSA payments, asserting:

[T]he question we should be asking the governor and legislators is – “Why are you not willing to use a portion of the tobacco settlement to help resolve one of Louisiana’s most costly drains on the annual budget – health care for tobacco – related illnesses?”<sup>183</sup>

“[T]he question we should be asking the governor and legislators is – “Why are you not willing to use a portion of the tobacco settlement to help resolve one of Louisiana’s most costly drains on the annual budget – health care for tobacco – related illnesses?”

Fontaine posited that tobacco prevention, education and quit initiatives worked. He referenced programs in Florida, Massachusetts and California as successful examples.

CARE, a coalition consisting of Louisiana healthcare businesses and organizations, also published a letter in early February pressuring lawmakers and Governor Foster’s administration to use MSA money in accordance with HB 640.<sup>184</sup> In the letter, CARE Chairman Kyle Ardoin urged the administration and legislators not to repurpose settlement money to address Louisiana’s budget deficit, finance new projects, or reduce existing debt. According to Ardoin in a February 8, 2001 letter published by *The Advocate*, using settlement money for the budget harmed Louisiana’s financial credibility and endangered its residents:

Using the tobacco settlement money in any way, other than how it was approved by the Louisiana Legislature and by an overwhelming 70 percent of voters of our state in a constitutional amendment, would jeopardize the state’s improved bond rating. More importantly, it could further endanger health care to those already at risk in Louisiana.<sup>184</sup>

We did not find evidence that other health organizations pushed state officials and lawmakers to use funds received from securitization for tobacco control programming.

After health proponents called for increased tobacco control funding and braced for diversion of MSA payments, state lawmakers passed SB 632 by Senator Jay Dardenne (R-Baton Rouge<sup>185</sup>) during the 2001 legislative session to permit Louisiana to securitize at most 60% of its MSA settlement.<sup>186</sup> SB 632 did not allow funds generated by securitization to be used for general spending, requiring they go into the Millennium Fund established for settlement payments by HB 640 in 1999.<sup>187</sup> Lawmakers subsequently created the Tobacco Settlement Financing Corporation to validate the state legislature’s sale and provide bonds on behalf of Louisiana.<sup>188, 189</sup> The corporation was created to insulate the State from legal liability if tobacco companies failed to make MSA payments.<sup>189</sup>

In November 2001, the state sold \$2.4 billion, over half its total MSA payments expected over 25 years and the entire amount permitted by SB 632, yielding \$1.2 billion in immediate money.<sup>190</sup> According to the New Orleans *Times-Picayune*, “[O]f the bond sale total, \$917.6 million will go into the Millennium Trust Fund, and \$50 million will go toward health care and education expenses. Another \$102 million was put aside for grants to schools.”<sup>191</sup> The state sold over half its MSA income stream expected over 25 years for about 50 cents per dollar. Despite calls from health advocates and coalitions in early 2001 for increased tobacco control spending

using MSA money, funding remained lower than the amount proposed in the FY 2000 budget. Governor Mike Foster and his administration planned to focus the money on education initiatives.

### ***Attempt to Securitize the Final 40% of the Master Settlement Agreement in 2007***

In early 2007, Governor Kathleen Blanco (D) and her administration considered selling the remaining 40% of MSA money expected from the first 25 years of the settlement that the state had not securitized. Blanco's administration hoped to sell the payments for \$1 billion in immediate funds.<sup>192</sup> The Blanco administration planned to dedicate approximately \$350 million (20%<sup>192</sup>) of the lump sum to coastal restoration and the remaining amount to the Millennium Fund.<sup>193</sup> The environmental dedication was required by a 2006 constitutional amendment backed by Blanco's administration<sup>194</sup> which stipulated that 20% of money received from securitization of remaining MSA payments go towards coastal rehabilitation.<sup>195</sup> Voters passed the amendment fearing that lawmakers would raid settlement money.<sup>195</sup> Louisianans also voted for the amendment to provide funds to help address Louisiana's shrinking coastline, which would safeguard against floods<sup>194, 196</sup> Louisiana had been devastated by flooding caused two years earlier by Hurricane Katrina in 2005. The Administration argued securitizing MSA payments ensured money upfront that the tobacco industry might not pay in the future.<sup>197, 198</sup> Blanco and her administration also planned to refinance Louisiana's 2001 sale of 60% of its settlement payments, which would provide the state another \$600 million.<sup>192</sup> The sale and refinancing required approval from the Tobacco Settlement Financing Corporation created to assist the 2001 securitization.<sup>188, 189</sup>

At a meeting in mid-February 2007, 6 members of the 7-person Tobacco Settlement Financing Corporation voted to securitize the final 40% of the first 25 years of MSA payments, or \$2.1 billion,<sup>197</sup> for \$1 billion in immediate money.<sup>192</sup> The Corporation also voted to refinance the initial 60% sale of MSA payments, which would provide \$600 million to the State. State Treasurer John Kennedy, who supported securitization in 2001 and sat on the Corporation, voted against selling future MSA monies. Kennedy was skeptical of banking interests' claims that tobacco companies would not make future payments and questioned the constitutionality of the securitization since the corporation made short-notice changes to its meeting agenda and did not provide adequate public notice.

After the Tobacco Settlement Financing Corporation approved securitizing remaining settlement funds from the MSA's first 25 years, the American Heart Association, American Cancer Society, and American Lung Association mobilized to prevent securitization. The organizations sent state officials a letter regarding the burden tobacco use inflicted on Louisiana and the

negative impact that selling the state's remaining 40% of settlement funds would have on tobacco control funding. Only \$500,000 annually of MSA money<sup>172</sup> went to the DHH's Louisiana Tobacco Control Program. If the sale occurred, even the \$500,000 in annual money for tobacco control, which came from the Louisiana Fund, would stop.<sup>172</sup> Executive Director of the

"While a buyout may yield \$1.6 billion today, it pales in comparison to the \$4.6 billion over a 25-year, span of the (1998) settlement agreement. The health issues that come with tobacco use will loom over us for many years to come ...."

American Lung Association's Louisiana chapter, Tommy Lotz, argued securitization guaranteed that "the opportunity to expand funding [for tobacco control initiatives] would be reduced."<sup>198</sup> Governor Blanco, her chief financial adviser Jerry Luke LeBlanc, State Treasurer John Kennedy, and members of the Joint Legislative Committee on the Budget and the State Bond Commission received letters from the voluntaries. According to the letter signed by Tommy Lotz of ALA, Terri Broussard of AHA, and Tara O'Neal Rodriguez of ACS:

While a buyout may yield \$1.6 billion today, it pales in comparison to the \$4.6 billion over a 25-year, span of the (1998) settlement agreement. The health issues that come with tobacco use will loom over us for many years to come.... A short-term financial gain always looks attractive until you examine what may be sacrificed in the long term.<sup>192</sup>

Debate over securitizing remaining MSA payments lasted until late June 2007, when Governor Blanco's administration ended efforts to have the legislature approve the sale.<sup>172</sup> The securitization plan had struggled in the legislature according to *The Times-Picayune* because of "opposition from state Treasurer John Kennedy, public health groups and Republican legislators."<sup>172</sup> To avoid pushing the resolution on the last day of that year's legislative session, Blanco and her administration dropped the effort. The failed securitization attempt left the \$500,000 annually allocated from MSA money to tobacco control programming untouched.

### ***Governor Jindal Diverts MSA Money to TOPS Scholarship Program in 2011***

In January 2011, Governor Bobby Jindal (R) announced he would seek a constitutional amendment during that year's legislative session to reallocate \$43 million in annual MSA payments from the Millennium Trust to the state's TOPS scholarship program.<sup>199</sup> TOPS provided tuition to Louisianans that had at least average ACT test scores, graduated high school with at least a 2.5 GPA, and were attending in-state higher education institutions. Jindal planned to divert cash from the Millennium Trust by limiting the amount of settlement money it could receive. By 2018, MSA money given to TOPS would increase to \$70 million annually.<sup>199, 200</sup> The money did not cover all funding required by TOPS, which cost the state \$134 million each year.<sup>201</sup> Jindal sought to divert MSA money to TOPS as Louisiana faced a budget deficit resulting primarily from budget cuts enacted in 2007 and 2008.<sup>202</sup>

We did not find evidence that health proponents and voluntaries opposed Jindal's plan. Louisiana is a conservative state, causing health advocates to pursue policy and political campaigns strategically and in a more discriminate, stealthy manner, possibly a reason why they did not mobilize against the securitization threat. CABL, a public interest and policy nonprofit<sup>203</sup> that advocated for placing settlement payments in a trust during initial debates over MSA fund allocation in 1999, supported the Governor's proposal believing it reduced pressure on the general budget, lowered tuition, and provided secure funding for TOPS.<sup>204</sup>

During the 2011 legislative session, the Jindal administration successfully passed SB 53 to redirect all MSA settlement payments to the TOPS scholarship program after the Millennium Fund reached a \$1.38 billion cap.<sup>200</sup> The bill was amended by Representative Harold Ritchie before its adoption to feature a 4-cent per pack cigarette tax renewal that Jindal had vetoed earlier in the session (Chapter 11). Lawmakers subsequently passed SB 53 in late June and placed it on the ballot. Louisiana voters then approved the constitutional amendment in an election that October, shifting MSA money to TOPS.<sup>205</sup> The amendment applied to the

distribution of MSA payments received after April 1, 2011.<sup>205</sup> Reallocation of MSA money to TOPS did not affect the annual \$500,000 of settlement payments given to DHH for tobacco control programming.

### ***Louisiana Again Considers Securitizing the Remainder of Settlement Funds in 2015***

Facing a \$1.6 billion structural budget shortfall in 2015, Louisiana reconsidered securitizing its remaining tobacco settlement proceeds to get an influx of immediate cash.<sup>206</sup> Governor Jindal proposed borrowing against the remainder of the state's MSA payments expected from the first 25 years to receive a lump sum of approximately \$750 million.<sup>206</sup> The administration wanted securitization to provide 8 years of sustained funding for Louisiana's TOPS program.<sup>206</sup> After being notified of the 2006 constitutional amendment requiring that 20% of proceeds from MSA payment securitization go towards coastal rehabilitation, Jindal's administration expressed support for funding those programs as well.<sup>207</sup>

The proposal faced opposition from Senate President John Alario, State Treasurer John Kennedy, and the Louisiana-based policy nonprofit the Public Affairs Research Council (PAR). Senator Alario expressed disdain for the plan to the Baton Rouge *Advocate*, stating it was a "worst-case scenario" for managing the budget crisis.<sup>208</sup> Having supported securitization in 2001<sup>206</sup> and opposed securitization in 2007, Treasurer Kennedy argued that selling the remaining bonds was a temporary solution costly to taxpayers.<sup>208</sup> Kennedy also stated the funds would not be legally required to go towards TOPS, that lawmakers would seek the funds for other purposes, and as a result the lump sum payment would likely contribute to Louisiana's structural deficit.<sup>206</sup> According to the Baton Rouge *Advocate*, PAR asserted Jindal's proposal was "a method of borrowing from the future to pay for today's expenses."<sup>209</sup> In general, state lawmakers in both chambers were uninterested in securitizing remaining MSA payments and avoided considering legislation to allow the deal.<sup>210, 211</sup>

We did not find evidence that health advocates or voluntaries opposed Jindal's securitization plan.

Jindal's securitization proposal failed to gain support, causing it to stall and die. The failed securitization of remaining tobacco settlement funds protected the \$500,000 in tobacco control funding Louisiana annually provided the DHH using MSA payments.

As of 2019, Louisiana's remaining 40% of MSA payments had avoided securitization.

### **Conclusion**

Louisiana became the sixth state to file a lawsuit against the tobacco industry to recoup Medicaid funds lost treating tobacco-related illnesses, a move that helped enable the 1998 Master Settlement Agreement. After Minnesota's Attorney General opposed settling with tobacco company Liggett and Myers, Louisiana joined Mississippi, Florida, West Virginia, and Texas to secure a deal and gain access to documents exposing industry knowledge of nicotine's addictiveness and the harmful effects of tobacco. Louisiana's legal team included tobacco companies' insurers as defendants in their lawsuit, adding additional pressure on tobacco companies to settle. Louisiana's actions amid multi-state efforts to sue the tobacco industry helped secure the 1998 Master Settlement Agreement with the major tobacco companies, curbing their marketing practices and providing states billions in additional revenue.



Fears of tobacco companies defaulting on payments, and Louisiana's perpetual budget crises, threatened the loss of MSA payment funds to general spending, prevented their use for tobacco control, and exposed them to repeated attempts at securitization. As the state prepared to allocate funds for FY 2000 amidst a significant budget crisis, the Governor's administration and legislators appropriated all \$199 million in initial payments for general expenses or spending requirements. Only around \$3 million, pushed for by health and tobacco control advocates, was dedicated to tobacco control programming in that year's budget. The \$3 million would not be spent after Louisiana's DHH suffered financial problems, and only \$500,000 annually was ultimately allocated to tobacco control. Forward thinking state lawmakers passed HB 640 in 1999 to dedicate 70% of MSA payments not incorporated into that year's general spending into the Millennium Trust and Louisiana Fund for health and education initiatives. However, fear of tobacco companies defaulting on settlement payments prompted Louisiana lawmakers to sell 60% of the state's first 25 years of MSA funds (\$2.4 billion) for \$1.2 billion in immediate money. The sale received limited opposition from health proponents.

Multiple attempts were made to divert MSA moneys after Hurricane Katrina in 2005. In 2007 Governor Kathleen Blanco's administration unsuccessfully pursued a sale of remaining settlement payments to generate money for coastal restoration efforts. The attempt failed because of opposition from health groups, Republican legislators, and the state treasurer. In 2011, Governor Bobby Jindal successfully sought reallocation of \$43 million (\$70 million starting in 2018) in annual settlement payments from the Millennium Trust to the state's college scholarship program, TOPS. We did not find evidence that advocates opposed the change. During a budget crisis in 2015, Governor Jindal sought to sell the remaining 40% of MSA settlement funds Louisiana expected the first 25 years after the MSA to fund the TOPS program. Despite the lack of opposition we found from health proponents, the proposal failed to win support. By defending MSA payments from future raids, health advocates can ensure money is not diverted from health programming and can advocate for more of the funds to go towards tobacco control programming.

## **Chapter 10: Clean Indoor Air Part. 2: Partial Repeal of Local Preemption and the State Clean Air Law during the 2000s**

- Comprehensive local smokefree ordinances were stalled by state preemption for 10 years between 1993 and 2003.
- Louisiana tobacco control advocates developed increased capacity and coordination, allowing them to partially reverse state preemption of smokefree air laws covering workplaces and restaurants without alcohol licenses in 2003.
- Tobacco control advocates passed 14 local ordinances between 2004 and late June 2006.
- Passage of local ordinances built momentum for a state law passed in 2006 that prohibited smoking in most public places and workplaces and completely repealed preemption.

### **After the Industry Accommodation Laws (1993-2003)**

#### ***1999 and 2001 Efforts to Repeal Preemption of State Agency and Local Smoking Restrictions Stronger than State Law***

Concerted campaigns by tobacco control advocates to reinstate local control over smoking restrictions started in 1999.<sup>2</sup> That year, the Louisiana Municipal League and the Coalition for a Tobacco-Free Louisiana (CTFLA), which consisted of state and national health voluntaries, backed HB 1452 by Representative William Daniel (D-Baton Rouge) and SB 839 by Senator Jon Johnson (D-New Orleans). The bills sought to eliminate preemption of smokefree laws by local governments as well as smokefree regulations by state agencies and political subdivisions that were stronger than state law.<sup>2-5</sup>

HB 1452 allowed state agencies, local governments, and “other political subdivisions” to enact stronger smoking restrictions than state law except for on school property and hospitals.<sup>4</sup> State lawmakers had previously passed legislation in 1992 to prohibit smoking on school property and school buses (only when students were present), except for in designated smoking areas on campuses (Chapter 5). That same year, lawmakers passed legislation to prohibit smoking in enclosed hospital spaces except for in ventilated smoking areas and in patient rooms with approval from patient occupants and a doctor’s order (Chapter 5).<sup>6</sup>

SB 839 permitted state agencies, local governments, and political subdivisions to enact general smoking restrictions stronger than state law.<sup>5</sup>

Senator Daniel’s bill was referred to the House Health and Welfare Committee and Senator Johnson’s bill to the Senate Commerce Committee where both died upon adjournment after being deferred.<sup>2, 4, 5, 7</sup> Lobbyists representing the tobacco, liquor, bar, and restaurant industries argued that Daniel’s bill made private places vulnerable to stronger smoking restrictions.<sup>7</sup> Although unsuccessful, tobacco control advocates maintained CTFLA to pursue tobacco control policies.

Tobacco control advocates subsequently supported preemption repeal bills HB 1073 and SB 427 in 2001. HB 1073, introduced by Representative Hunt Downer (R-Houma) and Sydnie May Durand (D-St. Martinville<sup>8</sup>), permitted localities, state agencies and political subdivisions to adopt smokefree ordinances stronger than state law.<sup>9, 10</sup> SB 427, introduced by Senator Jon Johnson (D-New Orleans), also allowed local governments, state agencies and political subdivisions to adopt smoking restrictions tougher than state law.<sup>11</sup> The Louisiana Restaurant Association and Louisiana Hotel-Motel Association, both historic allies of the tobacco industry (Chapter 2), lobbied against the bills in the state legislature.<sup>9, 12</sup> The Louisiana Wholesale Food and Tobacco Distributors Association (LWTCDA), another industry ally (Chapter 2), fought SB 427 claiming that Senator Johnson's legislative record on tobacco control indicated he would seek further restrictions if the bill passed.<sup>12</sup> We do not know if LWTCDA actively fought HB 1073. The American Cancer Society (ACS) and American Lung Association (ALA) supported HB 1073.<sup>13</sup> We do not know if health voluntaries backed SB 427.

Neither HB 1073 nor SB 427 passed. Representative Downer returned HB 1073 to calendar on April 23 where it died without additional consideration. He returned the bill after Representative Melinda Schwegmann (D-New Orleans) secured an amendment on the House Floor to exempt bars and restaurants from local smoking restrictions.<sup>13</sup> In an April 24 article in the Baton Rouge *Advocate*, Downer told the press, "I'm a realist. When a bill's been gutted, there's no sense in going forward with it."<sup>13</sup> The House Health and Welfare Committee subsequently rejected SB 427 at a hearing on June 5, 2001 despite previously approving HB 1073.<sup>12</sup>

### ***CTFLA Reorganizes in 2001 and Prepares to Pursue Preemption Repeal***

Utilizing a grant from the Robert Wood Johnson Foundation and matching funds from the American Cancer Society (ACS), American Heart Association (AHA), and ALA, the Louisiana Public Health Institute (LPHI) revived the CTFLA coalition in 2001 to advocate for and pursue tobacco control policy objectives in Louisiana.<sup>1</sup> Advocates initially used

... the Louisiana Public Health Institute (LPHI) revived the CTFLA to advocate for and pursue tobacco control policy objectives.

CTFLA to help secure a 12 cent tax increase on cigarette packs in 2002,<sup>1</sup> which created recurring funding for the state's future nonprofit tobacco control program the Louisiana Campaign for Tobacco-Free Living (TFL) (Chapter 11). CTFLA then focused on repealing preemption over local smoking restrictions.

Between 2002 and 2003, CTFLA established a framework for its operations. The coalition sought to conduct "strategic planning, membership outreach and recruitment, outreach to local and state officials, passage of local resolutions, public relations and media campaigns, and training and technical assistance" of local governments and health advocates to repeal preemption.<sup>1</sup> According to a 2003 presentation by CTFLA members, in 2002 the coalition formed a process to develop a strategic plan on preemption repeal:

- Convene steering committee for a strategic planning session
- Identify key competency areas for plan development and related tasks
- Assign timelines to identified tasks

- Assign staff member and steering committee representatives with responsibility for each task
- Present Strategic Plan to full Coalition for review and endorsement.<sup>1</sup>

CTFLA organized quarterly meetings to train and disseminate information to partners. The coalition onboarded both an advocacy and policy coordinator to steer its tobacco control policy efforts<sup>1</sup> and two additional people to conduct statewide outreach.

During 2002 and 2003, CTFLA developed and trained a community and advocacy base to support preemption repeal. The coalition worked with Louisiana Tobacco Control Program (LCTP) grant recipients to find potential supporters across the state.<sup>1</sup> CTFLA also developed a postcard program to guide advocates and supporters. Training and technical assistance activities for advocates included hosting a Midwest Academy training, developing a “Local Action Kit” for restoring local control, training supporters at the state capitol to effectively communicate with lawmakers, and educating partners receiving state and federal funding on what constitutes lobbying.<sup>1</sup> As a result, the Coalition developed a network of grassroots followers effective at increasing public awareness and pressure for preemption repeal.

In 2002 and 2003, CTFLA contacted politicians, local lawmakers and political organizations to recruit their support and generate political pressure for restoring local control over smoking restrictions. The coalition worked with the Louisiana Municipal Association to gauge local legislators’ sentiments towards preemption repeal. CTFLA also used its letter initiative to generate over 1000 letters to lawmakers supporting local smoking restrictions.<sup>1</sup> In addition, CTFLA attended the Louisiana Municipal Association and Black Mayors Association’s annual conferences to get signatures for its preemption repeal petition. Collaborating with local groups and ACS, CTFLA obtained over 30 resolutions from local governments calling for preemption repeal.<sup>1</sup>

CTFLA planned and implemented a multifaceted media campaign to generate support for preemption repeal. The coalition ran a paid print and television media campaign complimented by earned media during the 2003 legislative session while it pursued preemption repeal bill SB 901.<sup>1</sup> CTFLA specifically aired print and television ads to coincide with key dates during the legislative process.<sup>1</sup> CTFLA hired a media consultant to assist publicity efforts and a national firm to produce media for them through a partnership with the Department of Health and Hospital’s (DHH) LTCP. The coalition also sponsored the Gubernatorial Candidate Forum at an annual conference held by the Louisiana Medical Society.<sup>1</sup>

Besides calling for local control in campaign messaging, CTFLA asserted the tobacco industry lobbied lawmakers in 1993 to establish preemption and prevent local governments from protecting people against secondhand smoke exposure. In a 2003 opinion editorial in the *Baton Rouge Advocate*, CTFLA Director Al Hannah argued:

The law [1993 preemption of smoking restrictions (Chapter 5)] not only guarantees that children are exposed to dangerous tobacco smoke, but promotes children's perception that smoking is part of normal adult behavior. When a community enacts a smokefree ordinance, it reduces the toxins children breathe

and sends a consistent signal to our children that tobacco is deadly. That's why the tobacco industry doesn't want your community to have power to develop local ordinances on smoking.<sup>14</sup>

## **Local Control Partially Restored in 2003: SB 901**

### ***SB 901 As Introduced in 2003 Legislative Session***

On CTFLA's behalf, Senator Jon Johnson (D-New Orleans) introduced SB 901 to eliminate preemption over local smoking restrictions on March 28, 2003.<sup>15,16</sup> The bill permitted local governments, state agencies and other political subdivisions to set smoking restriction laws and regulations as strict or stronger than state law.<sup>15</sup> SB 901 did not specify penalties for violating local smoking restrictions and did not require local governments to establish punishments, but allowed them to do so.

### ***Proponent Strategy for Passage of SB 901***

Anticipating opposition from the tobacco industry and its allies, CTFLA increased its visibility at the state capitol and held educational and lobbying events targeting lawmakers to pass SB 901. The coalition hired a contract lobbyist to lead lobbying efforts. CTFLA established a policy that at least one lobbyist from ACS and AHA, or the CTFLA's Policy and Advocacy Manager be present at the Capitol in an effort to counter the influence of lobbyists from the tobacco companies and its third-party allies in the restaurant and gaming industries. CTFLA hosted legislative breakfasts and dinners with key caucuses and committees to educate lawmakers on the importance of restoring local control.<sup>1</sup> In mid-April, early in the legislative session, CTFLA Director Al Hannah promoted restoring local control over smoking restrictions at a Baton Rouge Press Club Luncheon.<sup>17</sup> CTFLA maintained contact with key lawmakers to ensure their commitment to and understanding of preemption repeal and clean air regulation. Before SB 901 received consideration, Americans for Nonsmokers' Rights (ANR) issued an action alert on April 17, 2003 urging state lawmakers to adopt the bill and repeal preemption.<sup>18</sup> The action alert criticized state legislators for previously protecting tobacco industry interests instead of Louisianan's health by passing preemption over local smoking restrictions in 1993 (Chapter 5):

In 1993 the Louisiana Legislature took a big step backwards by uniting with Big Tobacco. That was the year that the state legislature passed a law that stripped away the ability of local communities to protect nonsmokers from secondhand smoke. A decade has passed in which Louisianans were needlessly subjected to the death and disease caused by secondhand smoke. That is ten years too long.<sup>18</sup>

ANR asserted local smokefree laws reduced the social acceptability of tobacco use, improved public health, and increased tobacco education. ANR also argued the tobacco industry disliked local smoke free laws because they "spread from community to community" and received public support.<sup>18</sup> The action alert provided recipients contact information for Louisiana lawmakers and the Governor to request their support for repealing preemption over local smoking restrictions.

The alert also asked recipients to write letters favoring preemption repeal to Baton Rouge *Advocate*.<sup>18</sup>

### ***Opposition to SB 901***

The tobacco industry primarily partnered with the Louisiana Restaurant Association (LRA) and the gaming industry to fight SB 901. To combat CTFLA's "restore local control" message, opponents argued smoking restrictions harmed businesses and that local level governments lacked authority to interfere with private business. In an opinion editorial published by *The Advocate* early in the legislative session on April 23, LRA's Eric Sunstrom:

The state's pre-emption law of 1993 is a business issue. After all, who knows better how to accommodate the dining preferences than the owner of an establishment? Louisiana has the best restaurants in the country, and we should be able to offer a choice to all patrons, those who wish to smoke and those who do not. Owners are typically small-business people who have their life savings invested in restaurants. The loss of revenue from one smoke-free municipality to a smoking municipality would be felt by the business and employees making a living in the restaurant. Louisiana doesn't need 360 different smoking laws, one for every incorporated municipality in the state.<sup>19</sup>

Claims used by opponents reflected traditional tobacco industry economic harm<sup>20</sup> and freedom of choice<sup>21</sup> arguments.

Lawmakers also argued against SB 901 using tobacco industry talking points created to deter smokefree restrictions in restaurants and other businesses. Representative Mickey Frith (D-Abbeville), a restaurant owner, argued for the installation of expensive ventilation systems to accommodate smoking in restaurants in mid-April at the same Press Club of Baton Rouge luncheon attended by CTFLA Director Al Hannah.<sup>17, 22</sup> The tobacco industry has promoted ventilation systems as solutions to allow indoor smoking, despite their ineffectiveness at protecting public health.<sup>23</sup> Senator Butch Gautreaux (D-Morgan City) also publicly opposed smoking restrictions, stating they were a choice for businesses and not the government during legislative debate of SB 901.<sup>24</sup>

### ***SB 901 in the Legislature***

The Senate Health and Welfare Committee heard SB 901 on April 23, 2003.<sup>15</sup> Tobacco control advocates heavily attended the hearing, with ACS activists in blue shirts marked "Help Us Restore Local Control" and hundreds of others appearing to show their support for preemption repeal.<sup>16</sup> CTFLA Director Al Hannah testified in favor of SB 901, asserting that 1,600 local governments nationwide had pursued smoking restrictions and that attempts would continue.<sup>22</sup>

Tobacco-industry allied trade groups and a lawmaker opposed preemption repeal at the hearing. Louisiana Restaurant Association Executive Vice President Jim Funk, Representative and restaurant owner Michael Frith (D-Abbeville), and lobbyists from the Louisiana Hotel-Motel

Association and the tobacco industry attended.<sup>22, 25</sup> Funk asserted to the committee that SB 901 robbed restaurateurs of choice and unfairly singled out the restaurant industry for regulation. Providing the same claim, Representative Frith testified that smoking restrictions are a choice for businesses to adopt and not for the government to impose.<sup>22</sup> The Senate Health and Welfare Committee voted unanimously to report SB 901 to the Senate without changes despite the arguments made by opponents.<sup>22, 25</sup>

Senators considered SB 901 during Senate on April 30, 2003. Senator Butch Gautreaux (D-Morgan City) spoke against SB 901, arguing that businesses should decide to impose smoking restrictions and not the government.<sup>24</sup> During debate Senators rejected amendments circumscribing the ability of local governments to penalize violations of local smoking restrictions. As introduced, SB 901 did not establish penalties for violating local smoking restrictions and did not require local governments to impose penalties, but allowed them to set penalties for infractions without restriction.<sup>15</sup> Senator Fred Hoyt (D-Abbeville) unsuccessfully proposed two amendments requiring local governments to punish infractions that limited the potential fines they could levy.<sup>15</sup> His first amendment permitted fines ranging from \$250-\$500 and the second \$25-\$1000. Senator Art Lentini (R-Metairie) offered and withdrew a similar amendment that required local governments to impose fines for smoking restriction violations but limited them to a \$25-\$50 range.

After debating and considering amendments to SB 901, Senators voted 31 to 5 to send the bill to the House unchanged.<sup>15, 24</sup>

The House Health and Welfare Committee considered SB 901 at a hearing on May 28, 2003.<sup>15</sup> At the meeting, committee members amended the bill to retain state preemption over smoking in bars, gaming facilities, restaurants serving liquor, guest rooms at hotels, and tobacco retailers.<sup>15, 26</sup> SB 901's sponsor, Senator Jon Johnson, accepted the amendment claiming it honored an agreement with unknown parties to pass SB 901 through the Senate.<sup>29</sup> He stated the amendment was also designed to assuage the Louisiana Restaurant Association.<sup>26</sup> At the hearing, Representative B.L. Shaw (R-Shreveport) opposed exempting restaurants serving liquor, believing "restaurants should be free of cigarette smoke."<sup>26</sup> Shaw tried to remove the restaurant exemption but failed to convince committee members. The Committee then voted 13 to 0 to send SB 901 to the House Floor.<sup>15</sup> Despite the House Health and Welfare Committee adding preemption exemptions, CTFLA Director Al Hannah lauded the panel for passing SB 901.<sup>26</sup>

The House debated SB 901 on June 1 and June 5, 2003 (Table 10.1). Representative Gil Pinac unsuccessfully proposed amending SB 901 to require that local governments penalize offenses of local smoking restrictions.<sup>15</sup> Like previous amendments offered by Senators Hoyt and Lentini in the Senate, Pinac's offer limited penalties local governments could levy, permitting fines ranging from \$25 to \$1000 (to be chosen by local governments) for violations.<sup>15</sup> Representatives rejected Pinac's proposal, leaving SB 901 without a local enforcement requirement and without restrictions on penalties that local governments could establish for infractions. As a result, local governments did not have to enforce their own smoking restrictions, but could set any penalties for infractions that they desired. Representative Daniel Martiny, who received the third-highest amount of tobacco industry campaign contributions between 1983-2015 (Chapter 3),<sup>27</sup> proposed amending SB 901 on the House Floor to make its contents "null, void, and of no effect on August 15, 2004" but withdrew the amendment.<sup>15</sup>

Table 10.1: SB 901 as it Passed through the Louisiana State Legislature <sup>15</sup>							
		Original	Senate Committee	Senate Floor	House Committee	House Floor	Final
Date		3/28/2003	4/23/2003	4/30/2003	5/28/2003	6/01/2003	6/20/2003
Scope of Preemption	Public Places	Full	--	--	Full	--	Full
	Restaurants	Full	--	--	Partial*	--	Partial
	Bars	Full	--	--	No	--	No
	Hotel Rooms	Full	--	--	No	--	No
	Gaming Establishments	Full	--	--	No	----	No
	Tobacco Retailers	Full	--	--	No		No
Enforcement Requirements		None	--	--	--	--	None
*Restaurants with liquor licenses exempted from local control.							

Other unsuccessful attempts to amend SB 901 on the House Floor revolved around entirely preempting local control over all restaurants or allowing local smoking restrictions over them (including those serving alcohol). SB 901 was previously amended by the House Health and Welfare Committee to preempt local smoking restrictions over restaurants with liquor licenses. Representative Jeff Arnold (D-Algiers) introduced an amendment excluding all restaurants from the preemption repeal instead of just those serving alcohol.<sup>15, 26</sup> In contrast, Representative B.L. Shaw (R-Shreveport) proposed allowing local governments to impose smoking restrictions on all restaurants.<sup>26</sup> Representative Sydnie Mae Durand (D-Parks) convinced representatives to reject both amendments, preserving the concessions made on SB 901 in the House Health and Welfare Committee, which she chaired.<sup>26</sup>

The House approved two amendments to SB 901 during Floor debate.<sup>15</sup> Representative William Daniel (D-Baton Rouge) secured language declaring that private offices staffed completely by smokers and offices in private residences, which were exempt from smoking restrictions set by the 1993 Louisiana Office Clean Indoor Air Law (Chapter 5), remained preempted from local smoking restrictions. Representative Joseph Toomy (R-Gretna) obtained an amendment stating that SB 901 did not affect the status of local smoking ordinances passed before the implementation of Louisiana's 1993 smoking accommodation bill (Chapter 5).

Representatives voted 83 to 14 to pass SB 901 and returned the bill to the Senate for final approval.<sup>15</sup> As passed by the House, SB 901 lifted state preemption of local smoking restrictions except over bars, casinos, restaurants with liquor licenses, hotel guest rooms, and tobacco retailers (Table 10.1). SB 901 completely repealed preemption until the House Health and Welfare Committee added exemptions (Table 10.1). Following the vote, health advocates at the capitol thanked lawmakers for supporting smoking restrictions. Advocates that were not at the capitol instead called and emailed lawmakers to express their gratitude.



CTFLA continued supporting SB 901 after it passed the House because they viewed it as progress although it failed to fully repeal preemption.<sup>16</sup> According to a June 6, 2003 *Times-Picayune* article, Denise Bottcher, a principal reporter to CTFLA's Steering Committee, stated that "It [SB 901] was definitely a compromise bill, but one we feel we could work with."<sup>16</sup> Disappointed that "special interests had the power to block certain environments," Bottcher asserted that CTFLA planned to repeal remaining exemptions for restaurants that served alcohol and bars the following year if SB 901 passed.<sup>16</sup>

... the CTFLA planned to repeal remaining exemptions for restaurants that served alcohol and bars the following year if SB 901 passed.

The Senate unanimously approved House amendments to SB 901 on June 10, 2003 and sent the bill to Governor Mike Foster (R), who signed it into law on June 20, 2003.<sup>15</sup> Although SB 901 failed to fully repeal preemption, it enabled tobacco control advocates and CTFLA to pursue local clean air ordinances covering most public places as well as restaurants without liquor licenses, which helped increase awareness and support for a future statewide smokefree air law.

### ***The Louisiana Legislature Bans Smoking in New Orleans' Professional Arenas (SB 869)***

Besides filing SB 901, Senator Jon Johnson introduced SB 869 in late March to prohibit smoking in all areas of the Superdome and to allow the commission in charge of the stadium to establish rules for ejecting patrons that continued offending the law after being warned.<sup>28</sup> Smoking was prohibited in the Superdome's arena area but allowed in other sections of the stadium by a 1986 state law (Chapter 5). We did not find evidence that health advocates or the tobacco industry lobbied lawmakers on SB 869 or ran campaigns to promote their agenda around it. The Superdome's general manager<sup>29</sup> and its managing organization<sup>30</sup> both supported the bill. SB 869 passed without amendment and without resistance,<sup>28</sup> and was signed into law on June 27, 2003 by Governor Mike Foster. SB 869 entered effect August 15, 2003.

## **2004 Efforts to Pass SmokeFree Legislation at the State Level**

### ***2004 Statewide SmokeFree Restaurants Legislation Fails***

In March 2004, Representative Austin Badon (D-New Orleans) prefiled HB 249 to prohibit smoking in all Louisiana restaurants.<sup>31</sup> He filed the legislation because his constituents desired smokefree restaurants.<sup>32</sup> The Louisiana Department of Health and Hospitals supported HB 249 since it considered secondhand smoke dangerous for employees.<sup>33</sup> The Louisiana Restaurant Association opposed the bill, with its Director Jim Funk stating that the law was unnecessary since most eateries were already smokefree.<sup>32</sup> Funk claimed that the existing law regarding smoking in restaurants, which allowed establishments to create smoking sections or allow smoking in all areas if alcohol sales comprised more than 50% of their sales (Chapter 5), was adequate.<sup>32</sup> We did not find evidence that TFL or CTFLA supported or actively promoted HB 249.

HB 249 died with adjournment after the House Health and Welfare Committee deferred the bill at a hearing on May 27, 2004.<sup>34</sup> As discussion of HB 249 started, Badon told the committee his bill did not cause economic harm to tourism or restaurants and was important for protecting public health. Committee Chair Sydnie Mae Durand (D-Parks) called for and secured a unanimous dismissal of HB 249 by arguing that the 2003 partial preemption repeal should receive additional time to have effect.

### ***Bill to Prohibit Smoking in Schools and Childcare Centers Fails***

On April 20, 2004, Senator Lydia Jackson (D-Shreveport) introduced SB 863 to prohibit smoking in smokefree zones, defined as on or within 1000 feet of all public and private school property, including trade schools, colleges and universities.<sup>35</sup> SB 863 also prohibited smoking on school buses, in and around community centers owned by quasi-public agencies, and in and around licensed day care centers. Smoking where prohibited carried a \$100 maximum fine, while trying to cover or damage smokefree zone signage faced up to a \$1000 fine and at most a 6 month jail sentence. Jackson modeled SB 863 after legislation to keep drugs off of campuses.<sup>36</sup>

We did not find evidence that health or tobacco control advocates helped develop or promote SB 863. However, unrelated to efforts to pass the bill, TFL met with the Louisiana Department of Education to discuss the benefits of making school campuses tobacco-free. We did not find evidence that the tobacco industry opposed the bill.

The Senate Health and Welfare Committee considered SB 863 on May 5, 2004.<sup>35</sup> During the hearing, committee members approved amendments that eliminated the 1000 foot buffer around smokefree zones and removed trade schools as well as higher education institutions from the bill's smoking restrictions. The committee also changed smokefree zones to forbid consumption of any form of tobacco. As amended, SB 863 only made the property of public and private primary and secondary schools, school buses, community centers, and licensed day care centers tobacco-free zones but did not establish tobacco-free areas around them. The committee subsequently sent SB 863 to the Senate Floor.

SB 863 died after finding some success in the Senate. Senators passed SB 863 unanimously after it left committee. However, the bill died with adjournment after the House failed to consider it.

### ***State Lawmakers Prohibit Smoking at the University of New Orleans' Arena***

On April 20, 2004 Representative Charmaine Marchand (D-New Orleans) introduced HB 1603 to prohibit use of any combustible form of tobacco at the Senator Nat G. Kiefer University of New Orleans Lakefront Arena.<sup>37</sup> HB 1603 required university staff to notify offenders they were violating smoking restrictions. The bill permitted the Louisiana State University and Agricultural and Mechanical College Board of Supervisors to create rules to remove individuals violating the smoking prohibition despite receiving an initial warning. We did not find evidence that health advocates or the tobacco industry worked to advance or defeat HB 1603. The Louisiana State Legislature passed HB 1603 without amendments and Governor Kathleen Blanco signed it into law on June 25. The bill entered effect August 15, 2004.

### ***The State Capitol Goes Smokefree (SCR 132)***

On May 27, 2004, Senator Joel Chaisson II introduced Senate Concurrent Resolution 132 to direct the leaders of Louisiana's House and Senate, as well as the governor, to make the state capitol a smokefree area.<sup>36, 38</sup> As a resolution, SCR 132 did not make smoking illegal at the capitol, but tasked the legislature and governor with instituting a smokefree policy there.<sup>36</sup> ACS and other voluntary health organizations endorsed SCR 132.<sup>36</sup> We do not know if they lobbied or promoted SCR 132. We did not find evidence that the tobacco industry worked to affect SCR 132's outcome. The resolution faced minimal opposition and passed on June 21, 2004.<sup>38</sup> The resolution effectively required that the Capitol be made smokefree.<sup>36</sup>

### **The Louisiana Campaign for Tobacco-Free Living Attempts to Educate the Restaurant Industry about Smoking Restrictions**

The Louisiana Campaign for Tobacco-Free Living (TFL), a state-funded tobacco control nonprofit formed in 2004 (Chapter 4), began assisting efforts by health advocates and CTFLA in 2004 and 2005 to fully repeal preemption and obtain a comprehensive smokefree law.. In 2004 and 2005, TFL ran a booth at the LRA's trade convention to educate attendees about smoking restrictions.<sup>39</sup> TFL Director Tom Houston (Chapter 4) also met with LRA Executive Director Jim Fink to counter tobacco industry claims that smoking restrictions cause economic harm and to inform him of the harmful health impacts of secondhand smoke.<sup>39</sup> Despite their meeting, LRA continued opposing smoking restrictions. Houston and other TFL employees also met with prominent New Orleans Chef Paul Prudhomme, who ran smokefree restaurants, to have him privately persuade restaurateurs to adopt smokefree policies.<sup>39</sup> According to Houston in a 2019 email to us for this report, TFL "did not ask him to become a public face for clean indoor air initiatives, but rather to help us behind the scenes."<sup>39</sup> We do not know if Prudhomme urged other restaurateurs to institute smoking restrictions.

### **Tobacco Control Coalition Meets at Annual Summit to Organize Statewide Strategy for a New Smokefree Law**

TFL hosted a Tobacco-Free Living Summit on March 23, 2005 at the Southern University School of Nursing where public health advocates gathered to discuss the political landscape, consider policies passed in other states, and apply lessons learned to Louisiana. The TFL Summit prioritized statewide and local goals, including:

- Reduction of exposure to secondhand smoke
- Reduction of tobacco use initiation among youth
- Promotion of cessation among adult and youth
- Coordination of efforts statewide<sup>40</sup>

At the summit, health advocates discovered they needed to challenge common tobacco industry arguments on adverse economic effects of smokefree laws in the media. Dr. Stanton Glantz, director of the Center for Tobacco Control Research and Education at the University of California, San Francisco (and a coauthor of this report), participated in the summit, informing attendees they must combat industry arguments regarding the effects of clean indoor air on business. After passage of smokefree policies in restaurants, evidence indicated no effect or a

positive effect on sales.<sup>41</sup> In a 2005 article published in *Baton Rouge Advocate*, Glantz asserted to attendees:

As for the claims of smoking ban opponents that tourism will suffer once restaurants and bars go smokefree...a lie repeated enough times becomes the truth.<sup>41</sup>

“As for the claims of smoking ban opponents that tourism will suffer once restaurants and bars go smokefree ... a lie repeated enough times becomes the truth.”

To create a favorable policy environment for smokefree legislation, TFL began a four-part plan in 2005 to increase public attention and support for smoking restrictions. TFL regional coordinators and TFL's grantees educated the public about secondhand smoke exposure, encouraged adoption of voluntary smokefree policies in workplaces, homes, and cars, urged restaurants to adopt voluntary smokefree policies, and called on nonsmokers to avoid establishments allowing smoking to foster norm change and generate momentum for smoking restriction legislation.<sup>40</sup>

### **Gaining Momentum: 14 Cities Enact Smokefree Laws (2005-2006)**

After preemption was partially repealed in 2003, health advocates and TFL worked to pass local smokefree ordinances. Before adoption of the Louisiana Smoke-Free Air Act in 2006, fourteen cities passed local smokefree laws restricting smoking in public places, government buildings, workplaces, and restaurants without liquor licenses.<sup>42-44</sup> The first local laws passed in Shreveport, Mandeville, Sulphur and Lafayette.

#### ***Shreveport Adopts the First Local Ordinance after SB 901 in 2005***

Shreveport adopted the first local clean indoor air ordinance in Louisiana after the 2003 partial preemption repeal in April 2005.<sup>45</sup> Shreveport Councilmember Jeff Hogan introduced the smoking restriction measure, Ordinance 37, on March 21, 2005.<sup>46, 47</sup> Hogan developed the legislation with assistance from ACS<sup>48</sup> and AHA.<sup>49</sup> Ordinance 37 prohibited smoking in banks, malls, retailers, waiting rooms, government facilities, arenas, restaurants, banks and other public places.<sup>47, 50</sup> The legislation did not affect places still preempted by state law (bars, casinos, hotel guest rooms and restaurants serving alcohol).<sup>50</sup> Ordinance 37 also covered parks and playgrounds.<sup>51</sup> After giving Logan's legislation consideration on March 22, the Council voted 6-0 (with one absent) to debate the measure on April 12, 2005.<sup>49</sup>

TFL and health advocates supported Ordinance 37. TFL ran a secondhand smoke media campaign during Spring 2005 consisting of television, outdoor, radio, print, movie, and online advertisements that generated approximately 67 million impressions in Shreveport alone regarding the dangers of secondhand smoke.<sup>51</sup> The Shreveport ad blitz was part of a statewide campaign ran in numerous Louisiana cities and generated almost 410 million overall impressions that spring. TFL Director Tom Houston and TFL staff also traveled to vital cities to discuss the importance of smokefree air with newspaper editorial boards and employees at television stations. According to comments by Ordinance 37 sponsor Jeff Hogan at an April 12 hearing, he did not expect the advertising run to occur while pursuing his legislation.<sup>49</sup> Health organization

officials, medical professionals, as well as TFL and health voluntary staff also attended hearings to persuade the Shreveport City Council to adopt Ordinance 37 (Table 10.2).

The Shreveport City Council considered Ordinance 37 on April 12, 2005.<sup>49</sup> Eight proponents testified in favor of the measure at the hearing, including medical professionals, health organization officials, health voluntary representatives, and a TFL steering committee chair (Table 10.2). Supporters informed the Council of tobacco's harmful and deadly toll, the economic impacts of smoking and smokefree laws, and asserted people had a right to breathe smokefree air (Table 10.2). Three Louisianans argued against the ordinance using a mix of freedom of choice arguments and personal or property rights assertions commonly used by the tobacco industry (Table 10.2).

After hearing comments on Ordinance 37, Councilmember Mike Gibson introduced an amendment to replace the measure with substitute legislation.<sup>49</sup> We do not know the content of Gibson's replacement ordinance. Another Councilmember subsequently called for consideration of the ordinance and Gibson's proposal to be delayed until April 26, 2005, which the Shreveport City Council approved unanimously with one absence.

Following the April 12 hearing, skeptics of Ordinance 37 voiced concern about acting on or approving the measure. Shreveport City Council Chairman Mike Gibson suggested tabling the measure to form a committee and have it analyze the legislation.<sup>47</sup> Hogan publicly resisted the motion, arguing the last legislation tabled subsequently had its consideration delayed for months. The Shreveport City Council ultimately did not form a committee to review Councilmember Hogan's ordinance. Shreveport's restaurant community publicly complained about the measure, with two restaurant owners telling the Baton Rouge *Advocate* that smoking restrictions put them at a competitive disadvantage with eateries serving alcohol.<sup>47</sup>

The Shreveport City Council considered Ordinance 37 on April 26, 2005.<sup>49</sup> Physician and health organization official Philip Roseman, TFL Region VII Manager Feamula Bradley, and five members of the public provided comments supporting the measure during the meeting (Table 10.3). Two people spoke against Ordinance 37 (Table 10.3).

The Shreveport City Council considered 8 amendments after hearing public testimony (Table 10.4). The only one that passed required smoking signs to state that smoking was prohibited in Shreveport and identify the specific ordinance creating the law (Ordinance 37).

Councilmembers first considered Amendment 8 from Ordinance 37 sponsor Jeff Hogan (Table 10.4). The Councilmember offered the change to assuage Councilmember Gibson and another unspecified individual's concern over Festival Plaza being incorporated into smoking restrictions. He also proposed the change to address concerns regarding smoking restrictions on golf courses. After Hogan introduced Amendment 8, Councilmembers Jackson and Lester voiced opposition to excluding Festival Plaza and golf courses from smoking restrictions. Gibson stated that Festival Plaza was a significant investment for Shreveport that provided the city money, implying he wanted it exempted because of negative economic impacts he anticipated from smoking restrictions. Hogan defended the amendment as a concession designed to secure

Table 10.2: Comments at First Hearing (Second Reading) for Ordinance 37 <sup>49</sup>													
Pro or Anti Ordinance	Commenter	Affiliation	Tobacco is Deadly / Harmful	Tobacco Illnesses Cost Louisiana / Public Money	Familial Loss from Tobacco-Related Illness	Nonsmokers' Rights	Exert Local Authority	Behind Other Localities	Personal Freedom / Property Rights	Economically Beneficial	Economic Harm	Business Choice	Other
Pro	Dr. Philip Roseman	Region VII Healthcare Consortium Chairman	+	+		+							
		Cardiologist											
		Past President of Alliance for Education											
		Willis Knighton Health Systems board member											
	Jerry Jones	Unaffiliated					+	+					
	Dr. Jerry McLarty	Feist Weiller Cancer Center Director of Cancer Prevention and Control	+			+							
		TFL Steering Committee member											
	Allison May	Unaffiliated	+		+	+							
	Dr. Peter Boggs	Physician and Allergist	+			+							
	Norma Candler	Unaffiliated	+							+			
Anti	Alison Trotter	American Heart Association Youth Market Director	+			+				+			
	Jim Healthman	Unaffiliated											+
	Paige Ham	Unaffiliated							+		+		
	Martha Belchic	Unaffiliated	+		+							+	
	Ronald Toney	Unaffiliated							+				

Table 10.3: Comments at Second Hearing (Third and Final Reading) for Ordinance 37 <sup>49</sup>															
Pro or Anti Ordinance	Commenter	Affiliation	Tobacco Smoke is Deadly / Harmful	Tobacco Illnesses Cost Louisiana / Public Money	Familial Loss from Tobacco-Related Illness	Nonsmokers' Rights	Exert Local Authority	Behind Other Localities	Personal Freedom / Property Rights	Economically Beneficial	Economic Harm	Business Choice	Other	Government Responsibility	Government Overreach
Pro	Dr. Philip Roseman	Region VII Healthcare Consortium Chairman	+											+	
		Past President of Alliance for Education													
		Willis Knighton Health Systems board member													
	Jim Heathman	Unaffiliated	+		+							+			
	Norma Candler	Unaffiliated											+		
	Feamula Bradley	TFL Region VII Manager <sup>52</sup>	+												
	Yolanda Mitchell Duckworth	Unaffiliated	+												
	Robert Graham	Unaffiliated	+	+											
	Amanda Roark	Unaffiliated	+	+											
Anti	Paige Ham	Unaffiliated													+
	Ronnie Toney	Unaffiliated											+		+

Table 10.4: Proposed Amendments Considered at Second Hearing (Third Reading to Ordinance 37 <sup>49</sup> )			
Amendment	Sponsor	Provisions	Result
1	Gibson	Deletes Ordinance 37 text and replaces it with weaker legislation limiting smoking restrictions to city buildings and public facilities	Rejected
2	Unknown	Permitted smoking in designated smoking areas. Defined designated smoking areas as separate and contained areas with independent ventilation systems. Limited designated smoking areas to 25% of contained area accessible by the public. Prohibited smoking in waiting or line areas during times open to the public, regardless of it being an enclosed area.	Motion to consider failed
		Established Ordinance date of effect as January 2, 2006.	
3	Hogan	Prohibited smoking in places specified by Ordinance 37. Required owner, manager, or operator of establishments to notify any persons violating smoking restrictions. Made failure to post no-smoking signage required by Ordinance 37 illegal. States it is illegal for owner, manager or operator to permit smoking outside of specified smoking areas. Levied a \$500 penalty for any violation, and counted each day of violations as a separate offense.	Withdrawn
4	Gibson	Prohibited smoking in places specified by Ordinance 37. Required owner, manager, or operator of establishments to notify any persons violating smoking restrictions. Made failure to post no-smoking signage required by Ordinance 37 illegal. Made failure by owner, manager or operator of an establishment where smoking was prohibited to comply with ventilation or smoking section size requirements illegal. Levied a \$500 penalty for any violation, and counted each day of violations as a separate offense.	Withdrawn
5*	Green	Allowed smoking in Government Plaza parking garage and in non-governmental offices leased by the city in government owned or administered facilities.	Withdrawn
		Prohibited smoking in city owned or leased vehicles if a passenger opposed consumption	Withdrawn
		Made ordinance enter effect 6 months after adoption	Withdrawn
6	Hogan	<b>Required smoking signs (already required by the ordinance) to state that smoking was prohibited in Shreveport and state the specific ordinance creating the law (Ordinance 37).</b>	<b>Approved</b>
7*	Walford	Incorporates common area of malls into smoking restrictions. Removes restaurants and nonpublic buildings from Ordinance 37 smoking restrictions.	Rejected
		Prohibits smoking in all areas of city administered, used, owned or leased by the City of Shreveport. Permits smoking in Government Plaza parking garage except within 15 feet of adjoining city building entrance.	Rejected
		Prohibits smoking in city owned or leased vehicles.	Rejected
		Prohibited smoking at the Stoner Marina barge	Rejected
		Removed stadiums from Ordinance 37's smoking restrictions for sports arenas. Permits stadium administrators or owners to establish smoking sections under stadiums that are 50 feet away from restrooms, food vendors, and ramps.	Rejected
		Prohibited smoking at Shreveport Convention Center (already prohibited by Ordinance 37). Also prohibited smoking at balconies, loading docks, and entrances. Permitted smoking on one balcony, one loading dock, and one corner are of the facility.	Rejected
		Allows smoking in designated smoking areas	Withdrawn
8	Hogan	States that Ordinance 37's prohibition on smoking in city parks and playgrounds does not apply to Festival Plaza or golf courses.	Rejected
*Contained multiple amendments within proposal.			



passage of Ordinance 37. The Shreveport City Council voted 2-5 to reject the change. Subsequent amendments were either rejected or withdrawn by councilmembers except for Hogan's amendment 6, which the Council passed to define signage requirements (Table 10.4). The City Council last considered, and initially adopted in a 4-3 vote, amendment 1 to drastically weaken Ordinance 37 (Table 10.4). Gibson introduced Amendment 1 believing that smoking restrictions economically disadvantaged some businesses and the city of Shreveport, and were a choice for businesses to impose. After one councilmember recognized they mistakenly voted for Amendment 1, the City council reconsidered the change and rejected it in a 4-3 vote. Afterwards, councilmembers voted 5-2 to pass Ordinance 37.<sup>49, 50</sup>

As adopted on April 26, 2005, Ordinance 37 forbade smoking in public places except for in bars, casinos and restaurants providing alcohol, which were still preempted from local smoking restrictions under state law.<sup>50</sup> The ordinance also prohibited smoking in parks and playgrounds.<sup>51</sup> Establishments were required to post signage stating if they were a smoking or smokefree places that also cited the ordinance.<sup>49, 50</sup> A Shreveport smoking restriction ordinance that had passed before statewide preemption in 1993 (Chapter 5) previously set a \$500 fine and up to 60 days of imprisonment for violations, which was maintained for infractions of Ordinance 37.<sup>50</sup> The measure entered effect on May 10, 2005.<sup>48</sup>

The ordinance was the first local tobacco control legislation adopted after

The ordinance was the first local tobacco control legislation adopted after partial preemption repeal.<sup>48</sup> ACS later provided the Shreveport ordinance to other Louisiana localities interested in passing smoking restrictions.<sup>48</sup>

### ***Mandeville***

Mandeville considered a smoking restriction ordinance approximately a month after Shreveport adopted its clean air measure. The measure prohibited smoking in public establishments, parks (and parklets<sup>53</sup>), as well as golf courses and tennis courts.<sup>48, 54</sup> The ordinance also forbade smoking in event lines and within 25 feet of entrances to public places and facilities controlled or used by city government.<sup>51</sup> Residences, tobacco stores, bars, restaurants with alcohol licenses, rooms at hospitality establishments and casinos were exempted from smoking restrictions.<sup>48, 55</sup> The ordinance tasked Mandeville's police department with enforcement. Owners faced \$200 fines per infraction while smokers faced \$50 fines per offense.<sup>54</sup> City Council President Denis Bechac<sup>54</sup> introduced Ordinance 05-16 after ACS identified his interest in smoking restriction legislation. He drafted the ordinance, similar in design to Shreveport's measure, with assistance from ACS and TFL.<sup>48, 54</sup>

The Mandeville City Council considered Ordinance 05-16 at a hearing on June 9, 2005.<sup>54</sup> Representatives from TFL and the North Shore Chapter ACS attended to support the measure. During debate, Councilmembers Adelaide Boettner and Zella Walker offered amendments to eliminate parks and playgrounds from smoking restrictions and to remove the smoking distance requirement in the ordinance (or alternatively reduce it from 25 feet to 10 feet).<sup>54</sup> Councilmembers rejected their amendments. Afterwards the City Council voted 3-2 to pass

Table 10.5: June 9, 2005 Mandeville City Council Vote on Ordinance 05-16 <sup>54</sup>		
Councilmember	Yes	No
Denis Bechac	+	
Adelaide Boettner		+
Jerry Coogan	+	
Trilby Lenfant	+	
Zella Walker		+

Bechac's ordinance (Table 10.5). We did not find evidence that the tobacco industry or its allies opposed the smokefree measure at the hearing.

After the Mandeville City Council passed Bechac's ordinance, Mayor Eddie Price indicated on June 20 he would veto the measure unless Councilmembers weakened its outdoor smoking restrictions, in particular footage requirements and outdoor smoking area prohibitions.<sup>56</sup> According to a June 22 article in *The Times-Picayune*, the Mayor opposed the ordinance for having stricter outdoor smoking restrictions than existed in some indoor places, saying, "I just find it ridiculous to have an ordinance that allows people to smoke in bars and restaurants...and tell those patrons they can't step outside and smoke."<sup>56</sup> He also opposed preventing people from smoking outside in certain areas when others could easily move away from them. Price had not vetoed any legislation since becoming mayor in 1996. He suggested creating smoking areas at parks as a partial remedy. Mayor Price ultimately signed the smokefree ordinance after councilmembers agreed to weaken the law in the future.<sup>53</sup>

To uphold its agreement with Mayor Price, the Mandeville City Council introduced legislation at a meeting on July 14, 2005 to weaken Bechac's smokefree ordinance.<sup>53</sup> The new measure reduced the distance requirement for smoking around entrances from 25 feet to 5 feet and forbade smoking at specific parks, recreational facilities and 5 playgrounds instead of all parks. The ordinance also removed smoking restrictions established by Bechac's smokefree measure at Mandeville's lakefront (considered a park by the city<sup>57</sup>).<sup>53</sup> City Council President Bechac announced his intention to amend the footage requirement in the ordinance from 5 feet to 15 feet, arguing the distance thwarted indoor smokefree areas.<sup>53</sup> ACS and TFL representatives attending the hearing also planned to press for a 15- foot distance requirement in the new ordinance, but because of rules preventing testimony upon a measure's introduction did not provide comments at the hearing.<sup>53</sup> The city councilmembers scheduled debate of the ordinance for July 28.

The Mandeville City Council considered the measure weakening the town's new smoking restrictions as planned on July 28, 2005.<sup>58</sup> Residents testified for and against expanding the footage requirement. We did not find comments from health voluntary representatives or tobacco industry affiliates. During debate, City Council President Denis Bechac unsuccessfully motioned for the Council to consider expanding the 5-foot distance requirement to 15 feet. Ultimately the council adopted the ordinance without amendments, reducing the footage requirement for smoking near building entrances from 25 feet to 5 feet. The ordinance also reduced smoking restrictions over all Mandeville parks and playgrounds to only some parks, recreational facilities and playgrounds. Other provisions of the original clean air ordinance that passed in June remained unaltered. Smoking remained prohibited in public establishments not preempted by state law, including restaurants without alcohol licenses.

## *Lafayette Ordinance Passes in 2005*

### *Consideration of Smoking Restrictions in Lafayette Begins in 2003*

Debate over smoking restrictions in Lafayette began at the Coalition for a Healthy Acadiana Regional Grassroots Effort's forum for City-Parish candidates in October 2003.<sup>59</sup> At the forum, Lafayette City-Parish President candidate Glenn Weber, who was Lafayette City-Parish's Chief Administrative Officer, and his opponent Joey Durel, a local business owner, expressed support for smoking restrictions.<sup>59</sup> Weber claimed he wanted to work with health and business groups to develop smoking restrictions that balanced freedom of choice and protected public health. Durel, who previously owned an Arby's restaurant he forbade smoking at and currently owned a pet shop he prohibited smoking in, condoned clean air policies and stated they did not harm businesses. However, he expressed support for legislation that would not pertain to bars or restaurants.

### *2004 Efforts to Pass a Smokefree Ordinance*

On December 7, 2004, Lafayette City-Parish Councilmembers Marc Mouton and Chris Williams cosponsored<sup>60</sup> and submitted Ordinance No. 0-278-2004<sup>61, 62</sup> to restrict smoking in the Parish of Lafayette. Councilmember Mouton served on TFL's Steering Committee.<sup>63, 64</sup> The ordinance prohibited smoking in most public places not preempted by state law.<sup>61, 65</sup> The ordinance also exempted smoking in private and semi-private rooms at long term care facilities and at outdoor places of employment although they were not preempted by state law.<sup>61</sup> Ordinance No. 0-278-2004 resulted from advocacy efforts by the Coalition for a Healthy Acadiana Regional Grassroots Effort.<sup>65</sup> It required covered establishments to remove ash trays and post no smoking signs. The measure also urged places not covered by smoking restrictions to implement smokefree policies. In addition, the ordinance forbade smoking within 25 feet of establishments required to be smokefree by the law. Establishments faced at most a \$100 fine for initial violations, \$200 for second offenses, and a \$500 maximum penalty for additional infractions. Offending establishments could also have their permits or licensing stripped or suspended. Smokers did not face penalties for violations.<sup>61</sup> The ordinance prohibited establishments or individuals from retaliating against individuals acting against smoking restriction violations or utilizing their rights in accordance with the law.

... the Coalition for a Healthy Acadiana Regional Grassroots Effort provided the Lafayette City-Parish Council a gift basket of products that contained chemicals found in tobacco smoke to promote the ordinance.

The day that Councilmembers Mouton and Williams introduced their smokefree ordinance, the Coalition for a Healthy Acadiana Regional Grassroots Effort provided the Lafayette City-Parish Council a gift basket of products that contained chemicals found in tobacco smoke to promote the smoking restriction legislation.<sup>66</sup>

The Lafayette City-Parish Council considered the smokefree ordinance on December 21, 2004, with health advocates from New Orleans and Shreveport attending to support the measure.<sup>67</sup> After 9 amendments were revealed shortly before councilmembers convened that day, the Council voted 6-3 to delay consideration claiming they needed additional time to review the possible changes. We do not know the content of each amendment, but one from ordinance sponsor Chris Williams expanded the bill to extend coverage to Lafayette Parish's unincorporated regions. AHA's Advocacy Director for Louisiana, Terri Broussard, expressed support for the council's delay stating it allowed the bill to be further tailored for the public. The decision postponed consideration of smoking restrictions in Lafayette until the next year.

### *Lafayette Reconsiders Modified Smokefree Ordinance in 2005*

Before the Lafayette City-Parish Council reconsidered smoking restrictions in 2005, TFL conducted a media campaign to generate public awareness about secondhand smoke. TFL ran advertisements that spring on the disrespectfulness and harmfulness of secondhand smoke in the parish as part of a statewide media campaign. Aired on television, radio, the internet, movie theaters, and outdoors, TFL's secondhand smoke campaign generated 33 million impressions in Lafayette.<sup>51</sup> TFL also generated over 15 articles in earned media via unspecified media advocacy and the successful passage of Shreveport's smokefree ordinance.

On June 7, 2005, Lafayette City Councilmember Bobby Badeaux introduced Ordinance No. 0-179-2005, a near copy of the 2004 smokefree measure sponsored by Councilmembers Mouton and Williams.<sup>68, 69</sup> The ordinance established identical smoking restrictions to the 2004 ordinance,<sup>61</sup> prohibiting smoking in workplaces, restaurants without liquor licenses, indoor places of employment, and most other public places in the city and parish of Lafayette.<sup>69</sup> The ordinance also prohibited smoking within 25 feet of doors, windows, entrances, and ventilation systems of establishments where smoking was prohibited. Ordinance No. 0-179-2005 exempted gaming facilities, hotel rooms, bars, and tobacco retail shops, which were preempted by state law, as well as private and semi-private rooms at long-term care facilities and outdoor places of employment, which were not preempted. Places covered by smoking restrictions were required to post no smoking signs. The measure reaffirmed the right of establishments and employers not covered by smoking restrictions to adopt smokefree policies. The ordinance made smoking illegal in voluntary smokefree establishments that posted no-smoking signage in compliance with the ordinance's signage requirements.

Ordinance No. 0-179-2005 expanded penalties compared to the 2004 ordinance. Smokers violating smoking restrictions faced a \$100 initial fine, followed by \$200 for second offenses and \$500 for additional infractions. Establishments that violated the ordinance faced suspension or loss of any licenses, unless they developed and secured approval of a written plan to address their offences after a third infraction. The penalties in Ordinance No. 0-179-2005 differed from the measure submitted in 2004, which fined businesses and did not fine smokers.<sup>61, 68</sup> The ordinance assigned enforcement to the Lafayette Fire Department Chief, his appointee, or any other law enforcement officers.<sup>69</sup> The law forbade employers and individuals from retaliating against anyone taking action against smoking restriction violations or using their rights in accordance with the ordinance. The Lafayette City-Parish Council scheduled consideration of Ordinance No. 0-179-2005 for June 21, 2005.

### ***Sulphur Quietly Passes a Smokefree Ordinance during Lafayette Ordinance Fight***

On June 13, shortly before passage of the Lafayette ordinance, the City of Sulphur passed an ordinance based on that measure.<sup>51</sup> However, unlike the Lafayette ordinance, Sulphur's smokefree law only restricted smoking in indoor areas.

### ***TFL Director Publicly Praises Initial Smokefree Ordinances Passed in 2005***

*The Times-Picayune* published a letter from TFL Director Tom Houston on Jun 20, 2005 promoting smoking restrictions in parks, playgrounds, and public places that he wrote in response to an earlier letter published by the newspaper that opposed smoking restrictions.<sup>70</sup> In his letter, Houston justified smoking restrictions as a means to denormalize tobacco use for youth:

Removing the visible evidence of smoking in playgrounds, parks and public places used by families reduces the allure and profile of tobacco use for children.

It places cigars or cigarettes outside the realm of normal, which discourages children from trying them. This is the only proven method of keeping our children from becoming lifelong smokers. Numerous studies have shown that people who do not begin smoking by age 18 will never start.<sup>70</sup>

Houston highlighted that Louisiana had a higher prevalence of high school smokers than the national average.<sup>70</sup> He asserted that smokefree ordinances passed by Shreveport, Mandeville and Sulphur prevented youth from starting to smoke.

### ***The Lafayette City Council Passes Smoking Restrictions in 2005***

The Lafayette City-Parish Council considered Ordinance No. 0-179-2005 on June 21, 2005. At the hearing, health professionals and voluntary officials testified in support of smoking restrictions (Table 10.6).<sup>71</sup> Members of the public also provided comments for and against the bill (Table 10.6). In addition, 12 people, including AHA Louisiana Government Relations Director Terri Broussard,<sup>72</sup> signed that they attended the hearing and indicated their support for the ordinance. Only one person signed in at the meeting and noted opposition. We did not find evidence that the tobacco industry or its allies appeared at the hearing.

After hearing public comments, Councilmember Lenwood Broussard desired confirmation that smokers and not business owners faced fines for violating indoor smoking restrictions.<sup>71</sup> He also expressed that smoking should be allowed in designated smoking sections 15 feet away from entrances instead of 25 feet as set by the measure, and that existing ventilated indoor smoking sections should be grandfathered into the ordinance as legal smoking areas. In contrast, Councilmember Rob Stevenson argued that smoking should be prohibited in all restaurants and argued that Ordinance No. 0-179-2005 failed to protect the public from cancer since some eateries were excluded.

Table 10.6: Comments Provided at June 21, 2005 Lafayette Smokefree Ordinance <sup>68, 71</sup>										
Pro or Anti Ordinance	Commenter	Affiliation	Tobacco Smoke is Deadly / Harmful	Public Health Concern	Familial Health	Nonsmokers' Rights	Smokefree Ordinances Commonplace Elsewhere	Personal Freedom / Property Rights	Enforcement Agency overburdened	Government Responsibility
Pro	Michelle Devall	Resident			+	+				
	Dr. Luis Meza	Oncologist	+							
	Rose Hoffman Cormier	Resident	+		+					
	Dr. Mitchell Lirtzman	Cardiovascular Surgeon		+			+			+
Anti	Louis Kellogg							+		
	Jimmy Theaux							+		
	Patrick Brasseaux								+	

Following comments, the Lafayette City-Parish Council closed debate and voted 7-2 to pass Ordinance No. 0-179-2005 without amendments (Table 10.7).<sup>71</sup>

Table 10.7: Lafayette City-Parish Council Vote to Adopt Ordinance No. 0-179-2005 <sup>71</sup>		
Councilmember	Yes	No
Badeaux	+	
Benjamin	+	
Bourgeois	+	
Broussard		+
Conque	+	
Menard		+
Mouton	+	
Stevenson	+	
Williams	+	

As adopted, the Ordinance prohibited smoking in all indoor public places in the City and unincorporated areas of Lafayette except for bars, restaurants with liquor licenses, semi-private and private rooms at long term care facilities, tobacco retailers, and gaming facilities.<sup>69</sup> Outdoor public places of employment were also exempted from smoking restrictions. The ordinance prohibited smoking within 25 feet of entrances, ventilation systems, windows, and access points. Establishments were required to post no-smoking signage. Places exempted from smoking

restrictions could create voluntary smokefree policies and also post no-smoking signs. Smokers caught violating restrictions faced a maximum fine of \$100 for first offenses, \$200 for second infractions, and \$500 for additional violations. Owners and establishments faced license suspension and revocation unless they submitted a written plan to address noncompliance that was approved by the enforcing officer after their third violation. The ordinance assigned enforcement to the Lafayette Fire Department Chief, his appointee, or other law enforcement personnel. Retaliation against people using their rights in accordance with the measure, or attempting to ensure compliance with the ordinance, was prohibited. The ordinance entered effect immediately. TFL subsequently used the 2005 Lafayette Ordinance as model legislation for local smokefree policy initiatives across Louisiana.<sup>51</sup>

TFL subsequently used the 2005 Lafayette Ordinance as model legislation for local smokefree policy initiatives across Louisiana.

Table 10.8: Coverage of Smoking Restrictions in Cities that Passed Local Ordinances from 2003-2006 (Before Statewide Law Was Passed) <sup>42, 43, 44, 51</sup>			
Locality	Date*	TFL Description of Ordinance	Other Restrictions
Shreveport	3/11/2005+	"Adheres to Smoke-Free Parks and Footage Ordinance."	Prohibits smoking in indoor public places.
Mandeville	3/11/2005+	"Adheres to smoke-free parks and children's parks and footage law."	Prohibits smoking in indoor public places.
Sulphur	6/14/2005**	--	Prohibits smoking in indoor public places.
Lafayette	6/23/2005**	"Adheres to smoke-free parks and footage ordinance."	Prohibits smoking in indoor public places.
Lafayette Parish	6/23/2005**		Prohibits smoking in indoor public places
Cullen	6/27/2005+	"Adheres to Louisiana smoking law."	
Gibbsland	6/27/2005+	"Adheres to Louisiana state smoking law."	
Grambling	6/27/2005+	"Adheres to Louisiana smoking law."	Prohibits smoking in indoor public places
East Baton Rouge Parish	8/10/2005+	"Adheres to smoke-free park and footage"	--
Terrebonne Parish	1/11/2006+	"Adheres to smoke-free parks"	--
Alexandria	3/11/2006+	"Adheres to smoke-free parks and footage ordinance."	--
Rayville	3/11/2006+	"Adheres to Louisiana state smoking law."	--
Crowley	3/11/2006+	"Adheres to Louisiana state smoking law."	--
Monroe	6/27/2006+	"Adheres to smoke-free park and footage law."	--
<p>*TFL and ANR provide different dates for legislation, and have different localities listed as having adopted smoking restrictions. Sulphur was not listed by TFL, so we used ANR's date. We used ANR date for Lafayette and Lafayette Parish since Lafayette Parish was not listed by ANR. Otherwise we rely on TFL dates.</p> <p>+ Date provided by TFL.</p> <p>**Date provided by ANR.</p>			

### *Cumulative Smokefree Ordinance Efforts preceding the 2006 Louisiana Smoke-Free Air Act*

Before securing the statewide Louisiana Smoke-Free Air Act in 2006, a total of 13 local smokefree ordinances were passed between late April 2005 and late June 2006 (Table 10.8). TFL gave local governments supplies, expert witnesses, a framework and money to pursue smokefree ordinances.<sup>51, 73</sup> ANR also provided training and technical assistance to local lawmakers in Louisiana that pursued smoking restriction ordinances.<sup>74</sup> TFL continued its statewide media campaign about the harmfulness of secondhand smoke and conducted unspecified advocacy activities that generated additional press coverage regarding secondhand smoke. TFL also provided technical and monetary support for cities and parishes to increase support and pressure for a new statewide smokefree air law.<sup>51</sup> Unfortunately Hurricane Katrina's impact in 2005 displaced early TFL staff (Chapter 4) and destroyed records the program held regarding ordinance efforts before passage of the Louisiana Smoke-Free Air Act, limiting information on those smoking restrictions.

## 2005 Comprehensive Statewide Smokefree Bill SB 354 Defeated

In mid-April 2005, Senator Rob Marionneaux (D-Baton Rouge) introduced SB 314 to fully lift state preemption over local smoking restrictions.<sup>75</sup> Marionneaux substituted SB 314 for SB 354, a comprehensive smokefree bill, on May 19, 2005.<sup>76</sup>

SB 354 prohibited smoking in public places and workplaces, including bars, casinos and restaurants. The legislation exempted private residences and vehicles, limousines, a maximum 25% of guest rooms designated as smoking rooms at hospitality establishments, retail tobacco businesses and bars, airport smoking businesses, outdoor areas at businesses, and separated patient rooms at hospice facilities. Exempted businesses were required to provide smokefree areas for employees opposed to working in secondhand smoke. Smokers caught violating clean air restrictions after receiving multiple warnings from an establishment could be summoned to court and face a \$50 fine. Second offenses in a calendar year earned violators a \$150 fine and additional violations a \$250 fine. Businesses and business operators faced a maximum \$500 fine and/or 6-month prison sentence for initial smoking restriction violations. Subsequent offences faced \$1000 fines. SB 354 entered effect upon adoption. In a 2019 interview for this report, Senator Marionneaux indicated he drafted SB 354 and shared the bill with TFL, ALA, AHA, and ACS for review and feedback.<sup>77</sup> We did not find evidence that health advocates actively supported SB 354 during the legislative session.

The bar, restaurant and gaming industry opposed SB 354.<sup>77, 78</sup> Primary opponents of SB 354 included the Louisiana Restaurant Association and the Louisiana Casino Association. We did not find evidence that the tobacco industry publicly opposed SB 354. In a 2019 interview for this report, Senator Marionneaux reflected on alcohol and tobacco industry participation in efforts to defeat the bill:

I can't say that specifically [the alcohol and tobacco industries actively lobbied against [SB 354], but I'm sure behind the scenes they were. I don't remember them being at the table against me as much as the local bars, restaurants, casinos, etcetera.<sup>77</sup>

"I can't say that specifically [the alcohol and tobacco industries actively lobbied against [SB 354], but I'm sure behind the scenes they were. I don't remember them being at the table against me as much as the local bars, restaurants, casinos, etcetera."

Opponents relied on traditional tobacco industry arguments against clean air policies,<sup>20, 21</sup> and asserted that smoking restrictions caused economic harm and infringed on personal choice.<sup>77</sup>

SB 354 died on the Senate Floor on June 6, 2005<sup>76</sup> amid opposition from the restaurant and casino industries.<sup>78</sup> We did not find evidence that tobacco control or health advocates supported the bill at the hearing. During debate, LRA CEO Jim Funk testified that businesses should be allowed to set their smoking policies. Louisiana Casino Association Executive Director Wade Duty asserted prohibiting smoking in the state's casinos put them at a disadvantage with Native American and Mississippi-based gaming establishments. To increase



SB 354's odds of passage, Marionneaux proposed an amendment to exempt casinos from smoking restrictions. Senators defeated the amendment, arguing it gave casinos a competitive advantage over restaurants by encouraging smokers to dine or drink at gaming establishments.<sup>78</sup> After debate, Senators voted 19-14 against passing SB 354.

### **Achieving Full Preemption Repeal and a Statewide Clean Air Law**

After advocates partially repealed preemption over local smoking restrictions in 2003, CTFLA and TFL sought a robust statewide clean air law to prohibit smoking in public places. The American Cancer Society (ACS), American Heart Association (AHA) and American Lung Association (ALA) sat on CTFLA's Steering Committee after the public health nonprofit Louisiana Public Health Institute (LPHI) (Chapter 4) housed and funded the coalition through a Robert Wood Johnson Foundation grant and assisted statewide and local smokefree initiatives that built support for smoking restrictions and a comprehensive smokefree air law.<sup>79</sup> ACS provided the most money, grassroots mobilization, and lobbying support among the coalition's voluntaries in smokefree efforts before 2006.<sup>79</sup> AHA provided additional money, lobbying support, and volunteers, while ALA provided limited lobbying assistance because of its smaller capacity.<sup>79</sup>

CTFLA members during the 2006 legislative campaign consisted of the American Cancer Society, American Heart Association, American Lung Association of Louisiana, the Louisiana Department of Health and Hospitals (DHH) Center for Community Health and Louisiana Tobacco Control Program (LTCP), the Louisiana Cancer Control Partnership (LCCP), and TFL.<sup>73</sup> ACS and AHA were the primary backers of the 2006 smokefree bill pursued by CTFLA.<sup>80</sup> In a 2016 interview for this report, AHA Louisiana Government Relations Director Terri Broussard Williams stated that "pretty much it was Cancer [ACS] and Heart [AHA] that did all the heavy lifting."<sup>80</sup> Americans for Nonsmokers' Rights<sup>74</sup> and the Campaign for Tobacco-Free Kids<sup>81</sup> provided the coalition technical assistance with developing its 2006 smokefree legislative efforts.<sup>82</sup>

Key CTFLA representatives during the 2006 smokefree legislative campaign were AHA Louisiana Government Relations Director Terri Broussard Williams, Cindy Bishop, who was a Checkmate Strategies lobbyist contracted by ACS, TFL representative Carrie Griffin Monica, Maternal Child Health lobbyist Sandra Adams, ACS representative Zoey Devall and ACS lobbyist Berry Burnside.<sup>80, 83</sup> ALA representative Tommy Lotts provided assistance when requested by CTFLA, participating in a lobby day and providing testimony during consideration of SB 742 in the legislature.<sup>82</sup> Management at ACS and AHA also participated in 2006 efforts to secure a smokefree law.<sup>82</sup> LPHI lobbyist Eric Vicks was integral to earlier CTFLA smokefree legislative efforts but left before the 2006 campaign.

### ***CTFLA and TFL Build Support for Smoking Restrictions before the 2006 Legislative Session***

CTFLA and TFL promoted smokefree policies in restaurants between 2005 and 2006 to generate support for a smokefree law. CTFLA listed restaurants with 100% indoor smokefree policies on its website,<sup>84, 85</sup> providing publicity to establishments, normalizing smokefree policies, and countering claims of economic harm by promoting smokefree businesses. TFL organized a smokefree concert at the House of Blues in New Orleans in February 2006<sup>84</sup> and

held a smokefree music tour where the organization encouraged restaurants to implement smokefree policies to comply with clean air restrictions expected to pass in the Louisiana Smoke-Free Air Act.<sup>73</sup> TFL also urged restaurants to implement smokefree policies in anticipation of statewide smoking restrictions at health walks the nonprofit conducted and at events for World No Tobacco Day, the Great American Smokeout, and Kick Butts Day.<sup>73</sup>

TFL also generated public awareness and support for smoking restriction via media campaigns. Beginning in January 2006, TFL ran its “Let’s Clear the Air” television campaign to promote smoking restrictions and to highlight Louisiana cities that had adopted smokefree legislation. TFL also placed “Secondhand Smoke Genie” ads on television, radio, and billboards during February 2006 that highlighted the dangers of secondhand smoke in restaurants, cars and homes.<sup>73</sup>

### ***Turning Weak Legislation into a Strong Smokefree Bill***

State Senator Rob Marionneaux (D-Baton Rouge) initially filed weak smoking restriction bill SB 105 for the 2006 session. Introduced on March 15,<sup>86</sup> SB 105 prohibited smoking at indoor areas of workplaces, state and local government buildings, public transportation, and health care facilities. SB 105 excluded designated smoking rooms at hotels and motels, tobacco bars, bars, retail tobacco businesses, airport concessions, designated rooms in hospices, outdoor areas, and gaming facilities (including race tracks, video poker, bingo halls, riverboat casinos, and land-based casinos).<sup>86</sup> SB 105 also preempted local control.

Marionneaux’s bill caught CTFLA off-guard.<sup>80</sup> According to former AHA Association lobbyist and Coalition spokesperson Terri Broussard Williams in a 2016 interview for this report, CTFLA was initially unsure of Marionneaux’s reason for introducing SB 105:

Senator Marionneaux filed a bill, and it was just based on what he thought was right. And what he knew to be tobacco control, in the research that his staff have done. So, originally, at the coalition, we didn’t know what it was, we didn’t know if he was friend or foe.<sup>80</sup>

Coalition members approached Marionneaux and convinced the Senator to withdraw SB 105 and replace it with a public health-oriented smokefree bill.

After partnering with CTFLA, Senator Marionneaux introduced comprehensive smokefree bill SB 742 as a substitute for SB 105 on April 27, 2006.<sup>87</sup> Developed and drafted by the coalition,<sup>80</sup> SB 742 prohibited smoking in public buildings, in schools and school buses except outdoor teacher smoking areas separated from buildings, and enclosed areas of employment. The bill exempted bars, gaming facilities, twenty percent of hotel and motel rooms, tobacco retail businesses, private and semi-private rooms of nursing homes and assisted living homes (if all occupants were smokers and requested a designated smoking room).<sup>87</sup> The substitute featured a clause allowing local governments to establish smoking restrictions stronger than state law, and would repeal preemption over local smoking restrictions.<sup>87</sup>

CTFLA developed SB 742 from model smokefree legislation provided by tobacco control nonprofit ANR.<sup>82</sup> Coalition partners used feedback from a third of the state legislature to

shape the bill's smoking restrictions.<sup>82</sup> ANR and tobacco control nonprofit the Campaign for Tobacco-Free Kids also provided technical assistance during drafting. In a 2019 interview for this report, AHA's Terri Broussard Williams stated CTFLA partners used ANR's smokefree model as a starting point but greatly shaped the bill on their own since ANR and CTFK were not on the ground in Louisiana and were not around for immediate assistance:

We were, you know, a highly sophisticated staff, so we didn't really need to lean on them (ANR and CTFK)... We would share information with them, you know, for their blessing and approval.<sup>82</sup>

### ***The CTFLA's Decision to Exclude Bars and Restaurants from Smoking Restrictions***

CTFLA partners excluded bars and casinos from SB 742's smoking restrictions for strategic reasons. ACS initially wanted SB 742 to eliminate smoking in bars and casinos. However, ACS' contract lobbyist<sup>81</sup> Cindy Bishop asserted to the voluntary that CTFLA should limit itself to securing smoking restrictions in restaurants. According to Bishop in a 2016 interview for this report:

When we were working on the bill...our client the American Cancer Society wanted us to ban smoking in casino[s] –and bars... I said, “You all, change is incremental. And what we need to do is ban in restaurants. And then we can go back later and try to get casinos and bars.”<sup>81</sup>

Bishop said that CTFLA recognized that the bar and casino industry were powerful opponents, causing the coalition to avoid including those venues in smoking restrictions:

[W]e knew we were going against big, big guns, if you will. We knew that the issue in front of us was huge ...they took my counsel and said, “Let's focus on getting it banned in restaurants. Then we'll come back at a later date ... and look at banning [smoking in] ... bars and casinos.”<sup>81</sup>

“[W]e knew we were going against big, big guns, if you will.”

Besides avoiding casino and bar industry opposition, AHA Louisiana Government Relations Director Terri Broussard Williams asserted in a 2016 interview for this report that Hurricane Katrina made including bars and casinos in the bill unfeasible:

New Orleans had just been destroyed [because of Hurricane Katrina in 2005], and, having to overcome the high emotions to really educate people that it was not an economic factor, it was, it would be an economic driver. It was just something we didn't feel could be done, and also, we didn't feel that it was very sensitive of us at the time.<sup>80</sup>

Williams added in a 2019 interview for this report that CTFLA chose not to include bars because of opposition from state lawmakers, claiming, “We developed it [SB 742] after doing some meetings with about a third of the legislature and got the sense that they were not interested in including bars. And so we did not include bars.”<sup>82</sup> Despite not being included in smoking

restrictions, the bar and casino industries still lobbied against SB 742 alongside the tobacco industry.

## ***Opponents of SB 742***

### *Tobacco Industry*

Tobacco companies Philip Morris, RJ Reynolds, and US Tobacco opposed SB 742.<sup>80, 81</sup> PM lobbyist Randy Haynie and RJR lobbyist CJ Blache were the lead industry lobbyists fighting the bill.<sup>82</sup> Haynie and Blache had lobbied for the tobacco industry since the 1980s (Chapter 2) and helped secure the 1993 legislation that preempted local smoking restrictions. Health advocates sought to overturn the smoking accommodation and preemption law it established with SB 742 (Chapter 5). PM lobbyist Randy Haynie represented 50 additional clients during the 2006 legislative session,<sup>88</sup> including Harrah's Entertainment and Miller Brewing Company,<sup>88</sup> a subsidiary of Philip Morris until it was sold in 2002.<sup>89</sup> LPHI Policy Manager and lobbyist Eric Vicks,<sup>90</sup> who participated in pre-2006 smokefree efforts, considered Haynie more influential than Blache.<sup>79</sup> Blache reported 12 additional clients besides RJ Reynolds in 2006.<sup>91</sup> According to Vicks, Blache focused his lobbying on members of the Louisiana Legislative Black Caucus in pre-2006 efforts.<sup>79</sup> In a 2019 interview for this report, AHA Louisiana Government Relations Director Terri Broussard Williams asserted that Haynie and Blache employed "traditional lobbying" to convince lawmakers to oppose SB 742 during the 2006 legislative session, in particular "lots of dinners and, you know, bar conversations."<sup>82</sup> Senator Marionneaux could not recall tobacco industry lobbyists directly testifying against SB 742 during a 2019 interview for this report.<sup>77</sup>

### *Third Party Allies of the Tobacco Industry*

LRA served as a major third party of the tobacco industry in the fight over SB 742. LRA argued SB 742 would have an adverse economic impact on smaller restaurants, particularly since SB 742 excluded bars and gaming facilities. Commenting to the Associated Press for an April 2006 article on SB 742, LRA CEO Jim Funk argued restaurant owners should decide to adopt smoking restrictions based on consumer preference.<sup>92-94</sup> LRA CEO Jim Funk,<sup>77</sup> contract lobbyist Gina Goings and LRA lobbyist Eric Sunstrom fought SB 742 for the restaurant association.<sup>82</sup>

The bar and gaming industries opposed the bill despite not being covered by its smoking restrictions.<sup>77, 80</sup> According to AHA's Williams, the third party industries lobbied against the bill fearing future regulation. She said "They didn't want anything to pass. I do think they thought it really would create the stage, you know, for everything to go smoke free."<sup>80</sup> Senator Rob Marionneaux shared similar sentiments about the gaming industry during a 2019 interview for this report:

They [the gaming industry] didn't want...any bill to pass. They didn't want to start this effort in knowing that, you know, sooner or later they would be in the crosshairs. And sure enough, here we are, what, 13 years later, and finally it's gotten to them here in Louisiana.<sup>77</sup>

Gaming industry opponents came from the Louisiana Casino Association and its lobbyist Wade Duty, as well as interests from the land-based casino, riverboat casino, and truck stop gaming sectors.<sup>77</sup> Lobbyist Alton Ashy represented truck stop gaming and restaurant / bar machine gambling interests.<sup>77</sup> The main lobbyist of the alcohol industry in Louisiana,<sup>82</sup> Chris Young, also opposed the bill. Other opponents included lobbyists for the Ernest M. Morial Convention Center in New Orleans and the Louisiana Hotel-Motel Association, who sought to weaken SB 742 and create exemptions for their clients.

### *Legislative Groups*

SB 742 faced resistance from some of the state legislature's New Orleans delegation. AHA Louisiana Government Relations Director Williams explained lawmakers' economic reasons and desire to maintain the status quo in a 2019 interview for this report:

One was that they [New Orleans lawmakers] just had Hurricane Katrina that year and they didn't want to jeopardize their economy any further. The second thing is just the tradition of...smoking bars. A lot of people just did not want to give that up.<sup>82</sup>

"One was that they just had Hurricane Katrina that year and they didn't want to jeopardize their economy any further. The second thing is just the tradition of ... smoking bars. A lot of people just did not want to give that up."

## **Efforts to Pass the Louisiana Smoke-Free Air Act**

### *Generating Pressure in Support of SB 742*

CTFLA publicly messaged that SB 742's smoking restrictions were essential for making workplaces safe.<sup>81</sup> The coalition directly targeted the message to state lawmakers, having an employee at the capitol who contracted cancer from secondhand smoke exposure tell them her experience. In a 2016 interview for this report, ACS contract lobbyist Cindy Bishop recalled when the employee spoke to lawmakers for CTFLA:

She got secondhand smoke from being around a lot of smokers at the Capitol. And she came and sat at the table. And she pulled her wig off, and she was bald. And she said, "I'm going to die. I never smoked a cigarette a day in my life. But I am going to die... And I didn't smoke a single cigarette." So, you know, it was somebody that a lot of people loved at the Capitol.<sup>81</sup>

To support lobbying efforts for SB 742, the Coalition also hosted events to exhibit public support for smoking restrictions and to mobilize grassroots supporters. Shortly after the 2006 legislative session convened on March 27<sup>95</sup> and before SB 742 substituted SB 105, TFL organized a youth rally and press conference for Kick Butts Day on April 5, 2006 at the state capitol in Baton Rouge.<sup>96</sup> Other CTFLA representatives attended the event.<sup>81</sup> (Kick Butts Day is a national event created by the Campaign for Tobacco-Free Kids to engage youth and educators in tobacco control, prevent tobacco use, generate public awareness of tobacco's negative impacts and the industry's bad behavior, and generate pressure on lawmakers to pass tobacco control

legislation.<sup>97</sup>) TFL held additional Kick Butts Day events in all nine of its districts during early April.<sup>95</sup>

CTFLA partners organized four separate lobbying days during the 2006 legislative session to meet with lawmakers about backing SB 742.<sup>82</sup> ACS, ALA, and AHA each held a lobby day to support the bill.

The Coalition relied on paid and earned media to generate and maintain public support for SB 742. CTFLA aired advertisements asking their audience to contact lawmakers or dial a provided number if they desired smokefree restaurants.<sup>81</sup> The coalition ran paid advertisements on television, radio, and billboards.<sup>77</sup> The CTFLA also generated letters to newspapers and calls to the governor in support of SB 742, and carried favorable news coverage.<sup>80</sup>

CTFLA used polling to highlight public support for increasing smokefree restrictions in Louisiana<sup>81</sup> before Senator Marionneaux's SB 105 was substituted with SB 742. At a press conference in mid-April, CTFLA released a telephone survey of 500 Louisiana voters it contracted from polling firm Opinion Research Associates finding that 95% of respondents believed people should not work in secondhand smoke.<sup>98</sup> The poll, performed from March 13 to March 16, 2006, also found that 86% of participants considered secondhand smoke a moderate or significant health risk.<sup>98</sup> During the press conference, ACS representative Zoe Devall asserted that smoking restrictions in workplaces reduced cancer rates and AHA Louisiana Government Relations Director Terri Broussard Williams claimed clean air policies safeguarded families and employees. CTFLA hosted the conference at a smokefree restaurant, whose manager claimed smoking restrictions had not financially harmed the business. The Baton Rouge *Advocate* reported the CTFLA press conference and survey in an April 14 article, disseminating the poll's findings, giving the smokefree restaurant free publicity, and providing the coalition's budding legislative campaign free media coverage.

CTFLA reminded lawmakers of public support for the bill by placing the polling results on a billboard at the freeway exit for the State Capitol.<sup>81</sup>

During efforts to pass SB 742, Louisiana's tobacco control programs generated grassroots pressure for CTFLA lobbying efforts. According to the AHA's Terri Broussard Williams in a 2019 interview for this report, "they [the DHH Louisiana Tobacco Control Program and TFL] provided a lot of grassroots support...their supporters and their staff were extremely engaged."<sup>82</sup> TFL orchestrated letter writing campaigns that resulted in 24 letters to the editor and 16 opinion pieces supporting smoking restriction legislation being published by newspapers in May and June 2006.<sup>73</sup> TFL also circulated petitions.<sup>82</sup>

Health advocates and medical professionals attended legislative debates for SB 742 during the 2006 session to testify in support of the bill.<sup>77</sup> In a 2019 interview for this report, Senator Marionneaux remembered and credited Dr. Mitchell Lirtzman, (who testified in support of Lafayette's smokefree ordinance in 2005) with giving influential testimony that ultimately helped pass SB 742:

That doctor [Mitchell Lirtzman] in particular, because he was such a powerful individual voice, and because he brought personal experience to the table, I think is probably the biggest difference-maker...You know, he wasn't a paid lobbyist.

He wasn't on anybody's payroll. He was on his own time telling his own story. And so that's why I think it carried the day, really.<sup>77</sup>

According to Marionneaux, health advocates and medical professionals generally provided information on cigarette smoke's harmful effects.

### ***The Legislative Battle***

The Committee on Senate and Governmental Affairs first considered SB 742 at a hearing on April 26, 2006 (Table 10.9).<sup>99</sup> Representatives from the Louisiana Restaurant Association and the Ernest N. Morial Convention Center in New Orleans testified against the bill. LRA representative Jim Funk requested that bars in restaurants be exempted from SB 742 since some restaurants had installed expensive ventilation systems to allow smoking in their bar sections.<sup>99</sup> The tobacco industry had promoted ventilation systems as an alternative to smokefree laws, particularly in bars and restaurants, all over the world in the 1980s.<sup>23</sup> New Orleans Convention Center lobbyist Lynn Berry requested that lawmakers exempt events at the facility to draw more customers to New Orleans.<sup>99</sup> Beer industry lobbyist Chris Young also attended, but we do not know if he testified. AHA Louisiana Government Relations Director Terri Williams recalled Young's behavior at the hearing: "I'll never forget Chris because on [sic] the Senate...committee hearing, he actually took gum out of his mouth and put it in my purse. I don't know if he was retaliating or if he was intimidating me."<sup>82</sup> We did not find evidence that tobacco industry representatives testified publicly at the hearing.

Tobacco control advocates testified that clean air policies protect public health. At the hearing, Lafayette-based cardiovascular surgeon Dr. Mitchell Lirtzman stated that public smoking prohibitions were a major advancement in health policy that numerous states and countries had adopted into law.<sup>99</sup> According to *The Advocate*, Lirtzman also testified that "secondhand smoke is a preventable form of death."<sup>100</sup> CTFLA representative and ACS lobbyist Zoey Devall also provided comments, telling the committee that Louisiana loses approximately 1,200 lives a year to secondhand smoke and that SB 742 could save lives.<sup>99, 100</sup> AHA's Terri Broussard Williams informed committee members that 1 million Louisianans were already covered by local smoking restrictions.<sup>100</sup>



*Figure 10.1: Senator Rob Marionneaux with a cigar on the Senate Floor*

Following public comments, the Committee passed an amendment by Senator Cleo Fields (D-Baton Rouge) to prohibit smoking on all school property, eliminating smoking restriction exemptions in SB 742 for school buses and teacher smoking areas.<sup>87, 99</sup> Committee members then unanimously approved SB 742, sending it to the Senate Floor.<sup>99</sup>

The Senate considered SB 742 on May 2, 2006. During consideration, Senator Marionneaux lit a cigar to call attention to the hypocrisy of prohibiting smoking in the Senate while allowing it in restaurants (Figure 10.1). According to Marionneaux in a 2019 interview for this report:

Table 10.9: Development of SB 742 Through the Louisiana State Legislature<sup>87</sup>

Version	Date	Smoking Restrictions: ● Full ○ Partial - None												Enforcement	
		Public Places	Government Buildings	Restaurant Eating Areas	Restaurant Bars	Bars	Gaming Establishments	Hotel Rooms	Public Schools	Convention Centers	Nursing Homes	Correctional Facilities	Preemption Repeal	Agency	Penalties
Original	N/A	●	●	●	●	-	-	○	○	●	○	-	●	Department of Health and Hospitals (DHH)	Offender: (i) \$100, (ii) \$200, (iii) \$300  Employer: (i) \$300, (ii) \$600, (iii)\$1000
Senate Committee	4/26/2006	●	●	●	●	-	-	○	●	●	○	-	●		Offender: (i) \$100, (ii) \$200, (iii) \$300  Employer: (i) \$300, (ii) \$600, (iii)\$1000
Senate Floor	5/02/2006	●	●	●	-	-	-	○	●	○	○	-	●		\$25-\$50 state penalty, with local penalties allowed
House Committee	6/07/2006	●	●	●	-	-	-	-*	●	○	○**	-	●		\$25-\$50 state penalty, with local penalties allowed
House Floor	6/12/2006	●	●	●	●	-	-	○	●	○	○	●	●		Offender: (i) \$25, (ii) \$50, (iii) \$100  Employer: (i) \$100, (ii) \$250, (iii) \$500
Adopted (signed into law 6/30/2006)	6/18/2006	●	●	●	●	-	-	○	●	○	○	●	●		Offender: (i) \$25, (ii) \$50, (iii) \$100  Employer: (i) \$100, (ii) \$250, (iii) \$500

\*Established a minimum amount of required hotel rooms.

\*\*Allows for designated, ventilated smoking rooms in establishments permitting smoking.



I broke out a cigar, you know, to light it on the senate floor. And at the moment I did that, two sergeant-at-arms came behind me. And they were going to physically remove me from the floor, which was exactly the point. I mean, I can't smoke in the chamber, but yet I can take my kid out to the local restaurant, and you all can light up and smoke as many cigarettes in front of 'em as you want. So yeah, they had a -- they had a good picture of that in the paper.<sup>77</sup>

Senators proposed six amendments to weaken SB 742 during consideration (Table 10.10).<sup>87</sup> Throughout the legislative process, opponents proposed changes to SB 742 to weaken its provisions and reduce health advocates' support for the legislation. According to the AHA's Williams, "the strategy from the opponent was just to put a whole bunch of amendments on it [SB 742], because they thought if they did that, we'd walk away, because that was what had been done before."<sup>80</sup> During Senate Floor debate, Senators only introduced amendments to weaken the legislation. Marionneaux also introduced amendments to weaken SB 742 on the Floor, but not on behalf of opponents.

Senator Ken Hollis (R-Metairie) secured an amendment that weakened smoking restrictions and fractured the CTFLA coalition. The amendment permitted smoking inside restaurant bars "clearly designated and enclosed" with no additional ventilation or air quality requirements.<sup>101</sup> Hollis offered the proposal as a favor to the LRA because he had a longstanding friendship with a major unidentified official in the association.<sup>102</sup> In a 2019 interview for this report, AHA Louisiana Government Relations Director Williams asserted LRA lobbyist Gina Goings assisted Hollis with the amendment.<sup>82</sup>

"I broke out a cigar, you know, to light it on the senate floor. And at the moment I did that, two sergeant-at-arms came behind me ... I mean, I can't smoke in the senate chamber, but yet I can take my kid out to the local restaurant, and you all can light up and smoke .... "

Senators Chris Ullo (D-Marrero) and Marionneaux fought Hollis' change. They argued the amendment failed to prevent secondhand smoke exposure since most establishments had integrated ventilation systems.<sup>102-104</sup> According to the Baton Rouge *Advocate*, Marionneaux asserted to Hollis that his amendment "is a direct attempt to go back to where we were last year to defeat the bill."<sup>104</sup> Hollis replied that he supported SB 742 but also backed the free market.<sup>104</sup> Senators sided with Hollis, voting 23 to 15 to adopt his amendment.<sup>103</sup> Jim Funk and the LRA continued opposing SB 742 although the change excluded restaurant bars from SB 742's smoking restrictions.<sup>99, 102, 105</sup>

Senator Diana Bajoie (D-New Orleans) offered an amendment to exempt convention center facilities from smoking restrictions when they hosted private events where tobacco products were being shown for convenience store associations or the tobacco industry. The amendment also permitted smoking at Mardi Gras Balls hosted in convention facilities.<sup>106</sup> The proposal came after Ernest N. Morial convention center lobbyist Lynn Berry sought exceptions at the Committee of Senate and Governmental Affairs hearing for SB 742.<sup>99</sup> Senators approved Bajoie's amendment, weakening smoking restrictions at convention centers under the bill.

Senator Nick Gautreaux (who is not related to Senator D.A. “Butch” Gautreaux<sup>107</sup>) introduced an amendment to eliminate smoking areas in casinos and to permit smoking at casino restaurants. He ultimately withdrew his proposal (Table 10.10).

Senator Marionneaux offered two changes to SB 742. One amendment exempted tobacco-related facilities from smoking restrictions and the other reduced penalties for violating smoking restrictions (Table 10.10). The Senate adopted both amendments.

Table 10.10: Amendments Offered to SB 742 on the Senate Floor <sup>87</sup>			
Amendment	Sponsor	Changes	Result
2110	Ken Hollis	Exempt smoking in enclosed bars within restaurants.	Adopted
2215	Diane Bajoie	Exempt smoking at convention center facilities during tobacco industry and convenience store events involving tobacco products.	Adopted
2116	Nick Gautreaux	Eliminates required smokefree areas in casinos. Allows smoking in casino restaurants.	Withdrawn
2125	Rob Marionneaux	Exempt tobacco product manufacturer, importer, wholesale, distributor, leaf dealer, processor, and storage facilities from smoking restrictions.	Adopted
2133	Rob Marionneaux	Eliminates SB 742 penalty schedule: Smoker: (i) \$100, (ii) \$200, (iii) \$300 / Employer: (i) \$300, (ii) \$600, (iii) \$1000.	Adopted
		Changes penalty schedule to existing fines under state law: \$25-\$50 state penalty, permits local penalties.	

After debating and considering amendments to SB 742, Senators voted 36-2 to pass the bill to the House.<sup>103</sup> As approved in the Senate, the bill prohibited smoking in most workplaces and public places except in bars, casinos, enclosed restaurant bars, tobacco industry businesses, and convention centers when they were hosting Mardi Gras celebrations or trade events featuring tobacco products. Senators also weakened proposed penalties for violations, choosing to maintain Louisiana’s existing fines for noncompliance with smoking restrictions (Table 10.10).

### CTFLA Coalition Fractures Because of Unfavorable Amendment to SB 742

Adoption of Senator Ken Hollis’ amendment allowing smoking in enclosed restaurant bars caused CTFLA to withdraw its endorsement of SB 742 after it passed the Senate.<sup>80</sup> AHA and ACS, the leaders and predominantly active members of CTFLA, also withdrew their endorsement. They stated that they would re-endorse SB 742 after the exception permitting smoking in restaurant bars was removed.<sup>102</sup> The amendment caused the Coalition lobbying team to become nearly inactive on SB 742. According to AHA lobbyist Terri Broussard Williams, “the coalition just split up. So I remained the only lobbyist from the coalition that kept moving.”<sup>80</sup>

“I got to the place where I knew I could do it. I didn’t know how, but I knew I could do it.”

### Working to Fix SB 742

After Senator Hollis sabotaged SB 742, AHA Louisiana Government Relations Director Terri Broussard Williams convinced AHA to let her continue

lobbying the bill. Williams reflected on her drive to fix SB 742 in a 2019 interview for this report:

I got to the place where I knew I could do it. I didn't know how, but I knew I could do it. And to be frank, the votes weren't there. They had to be worked. But I knew we [CTFLA] hadn't worked the votes yet, and so I just wanted a shot.<sup>82</sup>

Terri Broussard Williams lobbied behind the scenes to salvage the bill with assistance from CTFLA partner and ACS contract lobbyist Cindy Bishop, elected state officials, state employees, unaffiliated lobbyists, and SB 742 sponsor Rob Marionneaux.<sup>82</sup> TFL representative Carrie Griffin Monica also assisted efforts to revive SB 742. According to Marionneaux in a 2019 interview for this report, Williams, Bishop and Monica worked in the background to salvage the bill:

They [Williams and Monica] certainly supported it. But they couldn't go against their clients' wishes, so they really had to publicly kind of step back. I want to mention one more person, a lady named Cindy Bishop and her client at the time...She worked, and those three.<sup>77</sup>

Marionneaux expressed disappointment at how health voluntaries rescinded public support for SB 742 in the same interview:

[Williams, Bishop and Monica] took a step back and that was what kind of disappointed me and in the fashion that it[they] did. I had already lost the bill [SB 354] the year before. So they kind of took a step back after their clients took the position they did. And then from there, I kept marching forward and trying to encourage them to join the ranks again. And ultimately, I think probably — hope — I like to think behind the scenes they did that.<sup>77</sup>

Williams and Bishop maintained varying degrees of activity on SB 742.<sup>82</sup> According to Williams, she remained completely active on SB 742 while Bishop provided assistance.

Lobbyists and politicians provided various assistance to Williams while she sought to revive SB 742. Lobbyists not linked to CTFLA gauged sentiment on SB 742 for Williams when meeting with lawmakers about other issues and reported their findings to her. Representatives Donald Cravins Jr., Michael Jackson, and Karen Carter Peterson whipped votes for SB 742 in the House. (Peterson also pursued tobacco tax increase legislation during the 2000s [Chapter 11].) The office of Lieutenant Governor Mitch Landrieu, who as a state representative in 2002 secured tobacco tax increase legislation that helped create and fund TFL (Chapter 6), also whipped the bill. Senator Jay Dardenne regularly monitored the legislature's sentiments towards SB 742 and reported his findings to advocates.

### ***Selection of SB 742's House Handler***

Lawmakers continued efforts to weaken and sabotage SB 742 as the bill moved to the House Floor. Representative Taylor Townsend (D-Natchitoches) identified by ACS contract lobbyist Cindy Bishop as a tobacco industry ally during a 2016 interview for this report,<sup>81</sup> attempted to become SB 742's manager on the House Floor. Townsend was a close friend of the bill's sponsor Senator Marionneaux.<sup>77</sup> However, before 2006 Townsend received money from

Altria (\$1000) and the Cigar Association of America (\$750).<sup>108</sup> He also took contributions from various restaurants, the Louisiana Restaurant Association (\$1000), the Beer Industry League of Louisiana (\$6,269), the Louisiana Wholesale Food and Tobacco Association (\$100) (LWTCDA, Chapter 2), and gambling organizations.<sup>108</sup> In a 2016 interview for this report, ACS contract lobbyist Cindy Bishop said Townsend's effort caused panic among CTFLA representatives, recalling "they came to me freaking out about, 'he's not for us. He wants to amend the bills to let bars—and exempt all these groups.' And I said, 'It's your football. Go get it back.'"<sup>81</sup>

SB 742 backers had Representative William Daniels (D-Baton Rouge) manage the bill instead of Townsend.<sup>82</sup> Marionneaux did not believe Representative Townsend tried to sabotage the bill, saying in a 2019 interview for this report "I...know that he's [Townsend] close to the casino industry. So maybe all of a sudden, he became reluctant, and I became concerned. And so therefore, we looked for someone else to handle it."<sup>77</sup> Initially, Williams and SB 742 proponents considered having Bill "Coach" Montgomery (D-Haughton) handle the legislation in the House.<sup>82</sup> However, they decided to have Montgomery generate support for SB 742 in the legislature as a storyteller. He would ultimately share a personal tale of loss caused by tobacco-related illness to generate support for SB 742.<sup>82</sup> Both Montgomery and Daniels had casinos in their districts, which proponents considered beneficial. However, according to Terri Broussard Williams in a 2019 interview for this report, SB 742 backers chose William Daniels (D-Baton Rouge) because they believed LSU's presence in his district provided additional pull. She also cited that his ties to the "capital-area delegation" (Baton Rouge is the capital of Louisiana) and his good debate skills provided additional strength.<sup>82</sup>

## **Efforts to derail SB 742 Continue in the House**

### ***House Health and Welfare Committee Considers SB 742***

The House Health and Welfare Committee considered SB 742 on June 7, 2003.<sup>87</sup> Senator Rob Marionneaux (D-Grosse Tete) defended the bill at the hearing, who asserted it still prohibited smoking in 80% of restaurants despite the Senate amendment exempting enclosed restaurant bars from clean air restrictions.<sup>109</sup> Marionneaux told the committee he disliked Senator Hollis' change, and blamed its adoption as the reason ACS and AHA rescinded their support for SB 742.<sup>109</sup> He told the committee that restaurant ventilation systems would circulate secondhand smoke from restaurant bars and expose patrons in non-smoking areas of establishments.<sup>105</sup> LRA CEO Jim Funk spoke against SB 742 at the hearing, asserting to committee members that the bill discriminated against the restaurant industry and should be defeated.<sup>105, 109</sup>

The House Health and Welfare Committee considered 5 amendments to weaken or strengthen SB 742's smoking restrictions (Table 10.11).<sup>105</sup>

Representative Charles MacDonald (D-Bastrop) proposed amending SB 742 to exempt only completely enclosed restaurant bar areas from smoking restrictions.<sup>102, 105</sup> The Senate previously amended the bill to permit smoking in enclosed restaurant bars but did not specify requirements for enclosures or mandate floor to ceiling containment. Representative MacDonald offered the change as a compromise on the restaurant bar exemption.<sup>102</sup> He expressed support for SB 742, stating to the committee that Louisiana spent millions of dollars annually treating tobacco related illnesses, sicknesses he revealed his parents passed away from.<sup>109</sup> MacDonald's amendment required restaurant bars allowing smoking to become fully enclosed by July 1,

Table 10.11: Significant Amendment Attempts to SB 742 in the House Committee on Health and Welfare <sup>87</sup>			
Amendment Sponsor	Strengthen or Weaken SB 742	Provisions	Result
Charles MacDonald	Strengthen	Required enclosed restaurant bars to be fully closed from floor to ceiling to permit smoking. Gave restaurant bars until July 1, 2008 to develop full enclosures.	Adopted
LaBruzzo	Strengthen	Made gambling establishments and bars smokefree.	Defeated
LaBruzzo	Weaken	Allowed restaurants serving liquor to permit smoking (existing law permitted smoking in all restaurants. Limited prohibition to restaurants not serving alcohol).*	Defeated
Nita Hutter (R-Chalmette)	Weaken	Raised maximum smoking rooms allowed in hospitality establishments from 20% to 50%.	Adopted
Unknown	Weaken	Exempts any and all hotel and motel rooms operated by a gambling establishment from smoking restrictions.	Adopted
Unknown	Strengthen	Prohibited smoking in restaurants and food service areas of gaming establishments.	Adopted
*As introduced, SB 742 prohibited smoking in all restaurants. After Senator Hollis' amendment on the Senate Floor, SB 742 prohibited smoking in restaurants but exempted enclosed bars in restaurants.			

2008.<sup>102, 110</sup> In a 2019 interview for this report, Terri Broussard Williams indicated she believed MacDonald introduced the amendment to hinder SB 742:

It was just a distraction tool. He was trying to get us to go along with it. But he was also trying to get the lawmakers to see there was a better way. But it was so cost-prohibitive. He thought it would pass, and then that would essentially kill the bill.

“... they just kept trying to add things to the bill to get us to pull out.”

Everyone knew if our deal-breaker didn't happen, we were going to pull out. So they just kept trying to add things to the bill to get us to pull out.<sup>82</sup>

The House Health and Welfare Committee unanimously approved MacDonald's proposal.<sup>105</sup>

Representative John LaBruzzo (D-Metairie) proposed amending SB 742 to prohibit smoking in bars and casinos. He asserted that SB 742 was “pitting businesses against one another” and that bars and casinos should not be exempt from smoking restrictions “if that's what's right.”<sup>105, 109</sup> LaBruzzo's proposal threatened to generate opposition to SB 742 from the bar and casino industries. Senator Marionneaux, who earlier told committee members he excluded casinos from smoking restrictions to avoid industry attacks that killed his 2005 clean air bill, argued LaBruzzo's amendment made passing SB 742 unfeasible.<sup>109</sup> The committee rejected LaBruzzo's proposal in a 9-3 vote.<sup>105</sup>

After failing to incorporate bars and casinos into smoking restrictions, Representative LaBruzzo offered an amendment to weaken SB 742 and permit smoking in restaurants serving liquor. The Committee rejected the amendment 12 to 2.<sup>105</sup> Labruzzo received \$10,956 in campaign contributions from the alcohol, restaurant, gaming, and tobacco industries through 2006 (Table 10.12) The gaming and restaurant industries contributed the most to Labruzzo, and

Table 10.12: 2003-2006 Contributions to Representative Labruzzo from Industries Opposing SB 742 <sup>111</sup>		
Industry	Donor	Contribution Amount
Tobacco	Altria	\$500
	Super Tobacco Discounters Inc.	\$150
Gaming	Louisiana Horsemen's Benevolent & Protective Association	\$1,800
	Master Video Poker	\$1,800
Alcohol	Beer Industry League of Louisiana	\$850
	Anheuser-Busch	\$120
	Miller Brewing Company	\$250
Restaurant	Louisiana Restaurant Association	\$5,000
	Miscellaneous restaurants	\$486
Total		\$10,956

the Louisiana Restaurant Association gave more to him than any other donor from industries fighting SB 742 (Table 10.12)

Representative Nita Hutter (R-Chalmette) offered an amendment expanding the number of guest rooms that hospitality establishment could designate as smoking. As originally introduced, SB 742 allowed hotels and motels to allow smoking in 20% of guest rooms. Hutter's amendment required hotels and motels to dedicate at least 20%, and up to 50% of rooms as smoking.<sup>105, 110</sup> In a 2019 interview, AHA's Terri Broussard Williams credited the amendment to hospitality industry lobbyists likely from the Louisiana Hotel-Motel Association or an equivalent organization.<sup>82</sup> Williams stated that "somebody asked her [Hutter] for that, you can always tell." We did not find evidence that hospitality industry representatives testified during committee hearings or floor debate for the changes Hutter proposed. The Committee adopted the amendment, forcing hotels and motels to permit smoking in at least 20% of their rooms and allowing them to designate 50% of rooms for smoking.<sup>105</sup>

Another committee member introduced an amendment to exempt casino-operated hospitality guest rooms, outdoor patios, and designated, ventilated smoking rooms in nursing homes from SB 742's smoking restrictions.<sup>110</sup> The amendment also removed an original provision of SB 742 that allowed smoking in private and semi-private rooms at nursing homes<sup>87, 110</sup> The House Health and Welfare Committee adopted the amendment.

The House Health and Welfare Committee or one of its members proposed an amendment to prohibit smoking at restaurants and food service areas within gaming establishments.<sup>110</sup> The change established no requirements for keeping secondhand smoke from drifting into eating areas. The Committee adopted the amendment, prohibiting smoking in food service areas of gaming establishments but failing to protect patrons from secondhand smoke exposure.

After finalizing amendments, the House Health and Welfare Committee voted 13-1 to send SB 742 to the House Floor.<sup>109</sup> As passed by the Committee, SB 742 prohibited smoking in public places and workplaces except for in fully enclosed restaurant bars, bars, casinos, tobacco industry businesses, and convention centers holding tobacco trade and Mardi Gras events. The committee also amended SB 742 to allow hotels and motels to designate 50% of guest rooms as smoking rooms and to prohibit smoking in restaurant and food service areas of casinos.

### ***SB 742 Proponents Salvage Bill on House Floor***

The House considered SB 742 on June 12 and 15, 2006.<sup>87</sup> Representatives introduced multiple amendments seeking to weaken or strengthen SB 742, ultimately adopting changes to further protect public health and completely prohibit smoking in all restaurants (Table 10.13).

Rep. Jeff Arnold (D-Algiers) unsuccessfully introduced an amendment permitting restaurants to allow smoking if they held an alcoholic beverage license.<sup>112</sup> Arnold next proposed an amendment granting restaurant owners the choice to prohibit smoking and argued that businesses be given the right to decide their policy.<sup>113</sup> His second amendment failed 44 to 48.<sup>113</sup> Prior to becoming a representative in 2002, Arnold worked for multiple years on economic development for the City of New Orleans,<sup>114</sup> a tourism destination with a prominent bar and restaurant scene that was decimated by Hurricane Katrina in 2005.

Representative LaBruzzo proposed expanding smoking restrictions in SB 742 to cover “any indoor establishment that serves food” as well as bars and casinos.<sup>113</sup> Representative Daniel, who was handling SB 742, argued against adoption of LaBruzzo’s amendment, asserting it was “clearly designed to do one thing: kill the bill.”<sup>113</sup> The House rejected Labruzzo’s change 54-27.<sup>113</sup>

In contrast to most attempted changes on the House Floor, which sought to weaken SB 742, Representative and bill handler William Daniel proposed strengthening it. He offered an amendment redefining restaurants to include any bar located within a restaurant, which eliminated the exemption from smoking restrictions for enclosed bars in restaurants adopted by the Senate.<sup>113, 115</sup> Daniel proposed the amendment for SB 742 proponents, who drafted it.<sup>80, 82</sup> LRA officer and lobbyist Jim Funk protested the amendment, claiming restaurants faced a “competitive disadvantage” to bars and casinos if it passed.<sup>113</sup> After considering the amendment, representatives voted 53 to 41 to adopt the change and make the House version of SB 742 prohibit smoking in all restaurants.<sup>113</sup> In a 2016 interview for this report, AHA Louisiana Government Relations Director Williams recalled the impact of Daniel’s amendment, stating “Once I was able to show the coalition where the votes were, and that things were back on track, then they came back.”<sup>80</sup> Adoption of Daniel’s amendment reactivated the CTFLA Coalition and its efforts to pass SB 742.

“Once I was able to show the coalition where the votes were, and that things were back on track, then they came back.”

After Daniel’s amendment passed, lawmakers continued attempts to weaken SB 742 on the House Floor. Representative Gordon Dove (D-Houma) proposed exempting enclosed restaurant bars featuring separate air conditioning units, a “smoke inhibitor” device (likely referring to air filters, which are ineffective at eliminating harmful secondhand smoke exposure<sup>116, 117</sup>), and a divider wall “at least seventy-five percent the height of the full wall” from smoking restrictions.<sup>118</sup> Dove subsequently withdrew his amendment and replaced it with one allowing smoking in designated dining rooms. The second proposal required restaurant smoking sections to be fully enclosed, have a “smoke inhibitor” device, and feature a separate air conditioner from the rest of the restaurant.<sup>118</sup> Dove argued that the amendment gave consideration to smokers, stating to representatives that “We can’t line smokers up and shoot them.”<sup>119</sup> He also asserted the

Table 10.13: Proposed Amendments to SB 742 on the House Floor <sup>87</sup>					
Amendment sponsor	Strengthen or Weaken SB 742	Provisions			Status
LaBruzzo	Weakens	Exempts establishments serving food from smoking restrictions.			Rejected
Dove	Weakens	Mandate separate ventilation system and smoke inhibitor for restaurant bars permitting smoking. Requires walls for enclosed restaurant bars to be at least 75% the height of standard walls in establishments.			Withdrawn
Dove	Strengthens	Require fully enclosed restaurant bars to have separate ventilation system and smoke inhibitor to allow smoking.			Rejected
Daniel	Strengthens	Increase fines for violating SB 742	Penalties in SB 742 as introduced to the House Floor	\$25-\$50 state fine. Allows local penalties.	Adopted
			Proposed Penalties	Smoker: \$25 (1st offence); \$50 (2nd offence); \$100 (all others).	
				Knowing employer: \$100 (1st offence); \$250 (2nd offence); \$500 (all others ).	
Daniel	Strengthens	Redefine term “restaurant” to include any bar located within. Removes exception allowing smoking in restaurant bars.			Adopted
Martiny	Strengthens	Prohibit correctional facilities, whether private, local, or state, from allowing smoking after August 15, 2009.			Adopted
Smith	Weakens	Preempt local clean air restrictions.			Rejected
Arnold	Weakens	Allow smoking in restaurants holding an alcohol license. Eliminates language allowing smoking in bar areas in restaurants.*			Denied
Dartez	Strengthens	Prohibit smoking in private limousines. Removes smoking restriction exemptions for bars, casinos, and convention facilities hosting tobacco related events or Mardi Gras events.			Withdrawn
Walsworth	Strengthens	Remove 20% minimum smoking rooms requirement for hotels and motels			Adopted
Crowe	Weakens	Remove House Health and Welfare Committee amendments prohibiting smoking in gaming establishment food service areas.			Rejected
LaBruzzo	Strengthens	Removes amendment exempting bars without food service from smoking restrictions.			Submitted, no action taken
Richmond	Weakens	Exempt Orleans Parish from SB 742.			Submitted, no action taken
Arnold	Weakens	Eliminate House Health and Welfare Committee amendment requiring restaurant bars allowing smoking to be fully enclosed.			Submitted, no action taken
Arnold	Strengthens / Weakens	Remove bar and restaurant bar smoking restriction exemption. Removes smoking prohibition over food service areas in gaming establishments.			Submitted, no action taken
*Smoking would be allowed throughout restaurant if amendment passed.					

amendment prevented restaurants from losing customers.<sup>119</sup> Dove’s claims, that clean air laws discriminate against smokers and have negative economic effect on restaurants utilized traditional tobacco industry talking points against smoking restrictions.<sup>120, 121</sup> The House rejected Dove’s amendment, maintaining total prohibition over smoking in restaurants.



Representative Jack Smith (D-Stephensville) proposed changing SB 742 to prohibit local governments from enacting smoking restrictions stronger than state law.<sup>122</sup> As introduced, SB 742 featured an anti-preemption clause to eliminate statewide smoking restriction preemption over local control. The industry had secured smoker accommodation legislation instituting preemption in 1993 (Chapter 5) that health advocates partially repealed in 2003. Smith's amendment prevented comprehensive local control and maintained preemption, antithetical to health advocates' goals in passing SB 742. During debate, Smith argued that people would not "know what the rules are because there will be separate ordinances throughout the state."<sup>119</sup> Representatives rejected the amendment, protecting SB 742's anti-preemption clause.

Representative Daniel Martiny (R-Kenner) secured an amendment to prohibit smoking within public and private correctional facilities effective August 15, 2009.<sup>123</sup> Previously, there had been no legal restrictions on smoking in correctional facilities in Louisiana. In a 2019 interview for this report, AHA Louisiana Government Relations Director Terri Broussard Williams asserted Martiny offered the amendment on behalf of SB 742's opponents.<sup>82</sup> She reasoned in an earlier 2016 interview for this report that the amendment was possibly introduced as a distraction.<sup>80</sup> Representative Martiny received the third highest amount of tobacco industry campaign contributions among Louisiana Legislators in years covered by this report (Chapter 3), and ultimately voted against SB 742.<sup>113</sup> Health advocates backed Martiny's measure during consideration.<sup>80</sup> According to Williams in her 2019 interview for this report, smoking restriction opponents argued against the amendment claiming that prohibiting prisoners from smoking made them more dangerous, hoping it would kill the bill:

Research shows that people in jail have a high rate of smoking. And so they [unspecified] kept telling us that they already had trouble really keeping prisoners—you know, their behavior, they had trouble getting them to act right and if they took away their cigarettes, that they would become violent in jail.<sup>82</sup>

The House adopted Martiny's amendment, causing SB 742 to prohibit smoking in public and private correctional facilities if adopted.<sup>87</sup> Although intended to reduce SB 742's viability, the amendment strengthened the bill's smoking restrictions and ultimately did not hinder the legislation's passage.

The House also removed the minimum hotel and motel smoking room requirement attached by Representative Nitta Hutter in the House Health and Welfare Committee that would force hospitality establishments to allow smoking. Representative Mike Walsworth (R-Ouachita) obtained an amendment eliminating the requirement that hotels and motels designate at least 20% of guest rooms for smoking. Walsworth's change permitted hospitality establishments to institute 100% smokefree policies. However, SB 742 still permitted hotels and motels to designate up to half of guest rooms as smoking.

After finalizing amendments, Representatives voted 58-33 to pass SB 742 and return it to the Senate for approval of House-made changes.<sup>113</sup> In a 2016 interview for this report, -ACS contract lobbyist Cindy Bishop recalled Philip Morris, RJ Reynolds, and US Tobacco lobbyists prematurely celebrating SB 742's defeat the day that the bill passed:

I'll never forget them [tobacco industry representatives] patting each other on the back the day the bill came up to be heard, saying, 'We got it. We got it.' And you

know, we fought that two-hour long debate on the House Floor. And they [tobacco industry representatives] didn't have it, obviously, because we prevailed and by a wide margin.<sup>81</sup>

SB 742 continued prohibiting smoking in most public places and workplaces except for at bars, casinos, convention center events for tobacco products or Mardi Gras, and tobacco industry businesses. Representatives strengthened SB 742 on the Floor, adding an amendment to prohibit smoking in correctional facilities and allow hotels and motels to prohibit smoking. The House also passed an amendment to prohibit smoking in all restaurants, reversing a Senate Floor change allowing smoking in enclosed restaurant bars.

Senators approved House amendments to SB 742 on June 16, 2006, sending the bill to the Governor for approval. A spokesperson for Governor Kathleen Blanco, who earlier signaled she would sign SB 742, stated there was no indication her support for the bill had changed.<sup>124</sup>

After the legislature passed SB 742, LRA officials and Representative Cedric Richmond (D-New Orleans) tried persuading Governor Kathleen Blanco to veto the bill despite her previously expressed intention to sign it.<sup>124</sup> Representative Richmond was a member of the New Orleans delegation, and considered RJR lobbyist CJ Blache as one of his mentors.<sup>82</sup> Richmond published an editorial opposing SB 742.<sup>82</sup> He and LRA organized a joint call with Governor Blanco to persuade her to oppose the bill.<sup>124, 125</sup> They also attacked SB 742 in the press using traditional tobacco industry claims, arguing the bill negatively “discriminated” against restaurants by putting them at a competitive disadvantage with bars and gaming establishments.<sup>124, 126</sup> Richmond and LRA claimed resulting damage to the restaurant industry could hinder Hurricane Katrina recovery efforts.<sup>124, 126</sup> Meanwhile, LRA CEO Jim Funk indicated his organization might pursue a lawsuit to overturn SB 742 if Blanco signed the bill.<sup>124</sup>

CTFLA actively countered efforts by opponents to prevent SB 742's enactment into law. After Richmond and LRA set up a call with Blanco, AHA Louisiana Government Relations Director Terri Broussard Williams and ACS Government Relations Director Zoey Devall wrote Acting Legislative Director Hunt Downer to arrange a conference with the Governor to convince her to sign the bill.<sup>124</sup> The letter claimed that smokefree policies were the only effective method of protecting against secondhand smoke. They also referenced Surgeon General Richard Carmona's report reiterating secondhand smoke's damaging effects in the letter. According to Williams in a 2019 interview for this report, CTFLA also “leaned a lot on personal relationships and key stakeholders. That was when we really leaned on our grasstops.”<sup>82</sup> Williams alerted reporters to Richmond's efforts to generate awareness of the attack on SB 742.<sup>82</sup> CTFLA worked to generate press for the bill to pressure Governor Blanco to sign it.<sup>80</sup> In addition, the Coalition generated calls to Blanco's office and letters to newspapers to increase public awareness and support for SB 742.<sup>80</sup>

ANR assisted CTFLA efforts to protect SB 742 from being vetoed. ANR issued an action alert on June 20, 2006 encouraging recipients to contact Governor Blanco and urge her to protect employees and tourists in Louisiana restaurants and businesses from secondhand smoke by signing SB 742.<sup>127</sup> The action alert asserted that the bill was “a major victory and step forward for public health in Louisiana” that prevented tobacco-related illnesses and deaths.<sup>127</sup>

CTFLA representatives were uncertain about SB 742's fate. In a 2016 interview for this report, ACS contract lobbyist Cindy Bishop said she believed CTFLA expected the bill to be enacted, stating "I don't think we had any doubt that Kathleen Babineaux Blanco was going to sign our bill into law...she understood the health impact of smoking."<sup>81</sup> However, in a 2019 interview for this report AHA lobbyist Terri Broussard Williams, recalled fearing a veto, saying "I was by myself for a while. So I was definitely in a state where I did not feel like it was going to happen."<sup>82</sup>

Governor Blanco signed SB 742, the Louisiana Smoke-Free Air Act, into law on June 30, 2006. ACS contract lobbyist Cindy Bishop reflected on CTFLA's victory in her 2016 interview for this report:

Do you know about the story in the Bible about David and Goliath? When I think about this effort, it was a Herculean effort. And it reminds me of the David and Goliath story.<sup>81</sup>

"Do you know about the story in the Bible about David and Goliath? When I think about this effort, it was a Herculean effort. And it reminds me of the David and Goliath story."

Remembering the Coalition's success, TFL's Rosalind Bello stated, "I think everybody was really shocked when that [the Louisiana Smoke-Free Air Act passing] happened in 2006."<sup>128</sup>

As adopted, SB 742 prohibited smoking in indoor public places, school property, restaurants, food service areas of gaming establishments, and correctional facilities (Table 10.14).<sup>129</sup> Smokers faced a \$25 fine for initial smoking restriction violations, followed by \$50 for second violations and \$100 penalties for additional infractions. Employers knowingly offending SB 742 received a \$100 penalty for first offences, a \$250 fine for second infractions, and a \$500 penalty for subsequent violations. SB 742 assigned enforcement to the DHH and law enforcement. Exempted from smokefree requirements were bars, private limousines, businesses in the tobacco sector, tobacco stores, gaming establishments, gaming establishment guest rooms, up to 50% of hospitality guest rooms, convenience store or tobacco industry events at convention centers that featured tobacco products, convention center Mardi Gras events, outdoor patios,

Table 10.14: SB 742 As Adopted by the Louisiana State Legislature <sup>129</sup>												
Smoking Restrictions: ● Full ○ Partial - None											Enforcement	
Public Places	Government Buildings	Restaurants	Bars	Gaming Establishments*	Hotel Rooms	Public Schools	Convention Centers	Nursing Homes	Correctional Facilities	Preemption Repeal	Agency	Penalties
●	●	●	-	-	○	●	○	○	●	●	Department of Health and Hospitals	Offender: (i) \$25, (ii) \$50, (iii) \$100  Employer: (i) \$100, (ii) \$250, (iii) \$500
*Smoking prohibited in food service areas												

private and semi-private rooms occupied by consenting smokers at long term care facilities, and ventilated smoking rooms in nursing homes.

SB 742 fully repealed preemption, allowing local governments to adopt comprehensive smokefree ordinances that covered places exempted by the statewide bill. SB 742 entered effect January 1, 2007. After SB 742's adoption, Louisiana became one of 38 states that did not preempt local smokefree ordinances and one of 22 states with an explicit anti-preemption clause in their law to protect local smoking restrictions.<sup>130, 131</sup>

## **Implementation of the Louisiana Smoke-Free Air Act**

After SB 742 passed, Louisiana's tobacco control programs assisted implementation. TFL Associate Director Rosalind Bello and Director Ashley Ross sought implementation advice from ANR and the Campaign for Tobacco-Free Kids, who connected TFL to people knowledgeable with implementing smokefree legislation.<sup>128</sup> In a 2014 interview for this report, Bello stated that contacts told TFL to tackle implementation proactively:

Get out front early. Be prepared. You don't want to be reactionary, you want to be proactive in getting messaging out and making sure that all your bases are covered. So we had little forums for law enforcement and information [around] law enforcement. We had stuff for schools. What did it mean for schools? What did it mean for restaurants? So we tried to cover the bases that way.<sup>128</sup>

TFL and CTFLA developed a joint plan to implement the Louisiana Smoke-Free Air Act.<sup>73</sup> CTFLA partners ACS and AHA also supported implementation by providing speaker training to Louisiana tobacco control programs and performing air quality studies.<sup>82</sup>

TFL and CTFLA assisted implementation in various ways. The tobacco control programs arranged thank you events in nine regions for grassroots tobacco control advocates and state and local lawmakers.<sup>73</sup> TFL also ran a television media campaign entitled "Thanks from the Bottom of Our Hearts and Lungs," which aired from October to December 2006 to maintain awareness and support for the new law.<sup>73</sup> In addition, TFL conducted an air quality test demonstrating the air quality improvement in smokefree venues following the state law's passage. TFL also developed implementation kits.<sup>80</sup>

## **Attempts to Repeal the Smoke-Free Air Act**

In 2007, Representatives Robert Faucheux Jr. (D-Gramercy) and Alex Heaton (R-New Orleans) attempted to weaken smoking restrictions established by the Louisiana Smoke-Free Air Act.<sup>132</sup> Faucheux introduced HB 537 to permit smoking at bars in private clubs.<sup>133</sup> Heaton submitted HB 824 to exclude enclosed areas in restaurants with separate ventilation systems from the definition of restaurant under the Louisiana Smoke-Free Air Act and permit smoking in those areas.<sup>134</sup>

Representatives Faucheux and Heaton had ties to the tobacco industry and its allies. Faucheux previously received \$250 from Altria / Philip Morris, \$500 from the Louisiana Restaurant Association, and \$250 from industry-tied law firm Adam and Reese,<sup>135</sup> which the tobacco industry used to assist its tort reform efforts in the late 1980s (Chapter 8). He also

received a \$250 donation from the Tobacco Institute in 1998.<sup>136</sup> Heaton received campaign contributions from Altria / Phillip Morris (\$3,000), the Tobacco Institute (\$700), RJ Reynolds (\$250), and the Smokeless Tobacco Council (\$250).<sup>137</sup> He also obtained campaign donations from tobacco industry allies the Louisiana Association of Business and Industry (\$7,500), LABI's East PAC (\$4,952), law firm Chaffee McCall Phillips Toler and Sarpy, The Louisiana Wholesale Food and Tobacco Association, PM lobbyist Randy Haynie's firm Haynie and Associates (\$1,500), the Beer Industry League of Louisiana (\$6,612), and the Louisiana Restaurant Association (\$3,500)(Table 10.15).<sup>137</sup>

Table 10.15: Contributions from the Tobacco Industry and its Allies to Representative Alex Heaton from 1997-2007 <sup>136-138</sup>			
Contributor	Contribution Year	Contribution Amount	Total
Philip Morris	1995	\$500	\$3,000
	1997	\$500	
	1998	\$500	
	1999	\$500	
	1999	\$500	
	2000	\$500	
RJ Reynolds	1998	\$250	\$250
Tobacco Institute	1996	\$200	\$700
	1997	\$250	
	1998	\$250	
Smokeless Tobacco Council	1999	\$250	\$250
LABI	1999	\$2,955	\$7,500
	2000	\$2,500	
	2000	\$2,045	
LABI EastPAC	1999	\$2,452	\$4,952
	2000	\$2,500	
Beer Industry League of Louisiana	1997	\$500	\$6,612
	1998	\$612	
	1998	\$500	
	1999	\$1000	
	1999	\$500	
	2000	\$1000	
	2000	\$500	
	2003	\$2000	
Haynie and Associates	1999	\$1000	\$1,500
	2000	\$500	
Louisiana Restaurant Association	1998	\$1,000	\$3,500
	1999	\$1,500	
	2000	\$500	
	2003	\$500	
Chaffee McCall Phillips Toler and Sarpy	2000	\$500	\$500
Louisiana Wholesale Food and Tobacco Association	1998	\$100	\$300
	1999	\$100	
	2000	\$100	

TFL, with assistance from CTFLA and ACS, defended the Louisiana Smoke-Free Air Act from legislative attacks in 2008.<sup>132</sup> TFL and ACS circulated fact sheets and met with lawmakers to inform them about how the smokefree act benefitted Louisiana. In addition, TFL and ACS visited editorial boards in prominent Louisiana media markets to alert the public that CTFLA intended to preserve the integrity of the 2006 smokefree law. TFL Baton Rouge Area Regional Coordinator Pam Malveaux also wrote a letter published by the Baton Rouge *Advocate* attacking HB 537 and HB 824 for seeking smoking exemptions that exposed the public to secondhand smoke.<sup>139</sup> She cited polls conducted by TFL that year that found 81% of Louisiana voters supported restaurant smoking restrictions and 78% smoking restrictions for workplaces, to highlight that the bills went against the public's desires.<sup>139</sup>

Tobacco control advocates sparred over HB 537 and HB 824 with lawmakers sympathetic to business interests during a House Health and Welfare Committee hearing on June 5, 2007.<sup>140</sup> Dr. Mitchell Lirtzman, who previously testified in support of the Lafayette smokefree ordinance in 2005 and SB 742 in 2006, told committee members about various tobacco-related illnesses, asserted that tobacco use inflicted significant harm and death, and claimed weakening smoking restrictions would result in "a public health disaster."<sup>140</sup> CTFLA representatives attended the hearing and cautioned the Committee against weakening a public health law.<sup>140</sup> LRA CEO Jim Funk complained that smoking restrictions put restaurants at a competitive disadvantage to bars, and correctly asserted to committee members that "if smoking is bad for you in a restaurant, it's bad for you in the bar next-door."<sup>140</sup> HB 824 sponsor Alex Heaton argued smoking restrictions discriminated against restaurants that had bars. Representative Diane Winston (R-Covington), who owned a business that sold tobacco products, expressed sympathy for weakening smoking restrictions out of fairness.<sup>140</sup> Representative Robbie Carter (D-Greensburg) expressed support for existing smoking restrictions, arguing that restaurants should find alternative methods to increase revenue.<sup>140</sup>

After 2007 no additional attempts were made to weaken the Louisiana Smoke-Free Air Act.

Following debate, the House Health and Welfare Committee voted 9-3 to defer HB 537<sup>140</sup> after committee members failed to introduce an amendment Faucheux requested to prohibit smoking in bars, convention centers, and gaming establishments. HB 824 was also deferred at the hearing.<sup>134</sup>

After 2007 no additional attempts were made to weaken the Louisiana Smoke-Free Air Act.

### **Attempts to Strengthen the State Law: 2008-2010**

From 2008 to 2010, lawmakers proposed 8 bills and one resolution to restrict smoking in places exempted or not covered by the 2006 Louisiana Smoke-Free Air Act (Table 10.15). All but two, HB 466 and resolution HR 69, failed in the legislature (Table 10.15). As introduced in 2008, HB 466 eliminated a smoking restriction exemption for designated, ventilated smoking rooms in nursing homes. HB 466 passed with a House Health and Welfare Committee amendment that permitted designated smoking areas in nursing homes but prohibited their placement in waiting or lobby areas, dining rooms, and other public areas of establishments,<sup>141</sup> practically negating the bill's intention and public health impact. The only other legislation to

pass, 2008 resolution HR 69, prohibited tobacco products in all House-controlled areas of the State Legislature (Table 10.16). The legislation had limited effects on clean air restrictions since smoking was already prohibited in the state capitol.<sup>142</sup> Without making amendments, representatives voted 62-19 to approve HR 69, prohibiting tobacco products in all House-controlled areas of the legislature.<sup>143</sup>

### **Attempts to Include Bars and Casinos in State Smoking Restrictions 2008-2010**

Smoking restriction bills introduced and rejected by state lawmakers from 2008-2010 primarily sought to prohibit smoking in bars and casinos, and as a result faced opposition from those industries. Three of the bills died in the House Health and Welfare Committee (Table 10.16). According to the Baton Rouge *Advocate* in a 2010 article, “in recent years, the [House Health and Welfare] committee has been a graveyard for bills that sought to expand Louisiana’s Smoke-Free Air Act.”<sup>150</sup>

#### ***2008 Legislation***

In 2008, SB 742 sponsor Rob Marionneaux introduced SB 185 to prohibit smoking in bars serving food (Table 10.16). Senator Marionneaux proposed the bill to establish parity between food-serving bars and restaurants.<sup>151</sup> TFL Advocacy and Policy Manager Carrie Broussard expressed support for SB 185 to the press stating, “We would support a smoke-free environment, period.” She claimed TFL desired to discuss SB 185 with Marionneaux and wanted to ensure current smoking restrictions were not weakened. Philip Morris notified the media it did not plan action against any smoking restriction legislation.<sup>151</sup> SB 185 died in the Senate Health and Welfare Committee without consideration.<sup>152</sup> Marionneaux later introduced bills in 2009 and 2010 to prohibit smoking at food-serving bars.

Representative Walker Hines (D-New Orleans) introduced HB 1021 in 2008 to prohibit smoking in cars occupied by a minor under 18 years of age.<sup>153</sup> At the time, Louisiana law only prohibited tobacco use in cars when minors under 13 were present.<sup>153</sup> Hines also introduced HB 240 that year to raise the minimum age of purchase for tobacco products in Louisiana from 18 to 21 (Chapter 7).<sup>154</sup> We did not find evidence that tobacco control advocates or the business community worked for or against HB 1021 during the legislative session.

The House Transportation, Highways and Public Works Committee deferred HB 1021 at a hearing on April 28, 2008.<sup>153</sup> Committee members indicated that the bill overreached, with one lawmaker asserting that children needed additional protection from smoking compared to teens because they lacked autonomy.<sup>153</sup> The House Transportation, Highways and Public Works Committee reconsidered and passed HB 1021 on May 12, 2008 after Hines secured an amendment reducing the age of an accompanying minor prohibiting smoking in a car from 18 to 16.<sup>155</sup>

Representatives twice failed to approve HB 1021 by one vote, voting to pass the bill 52-26 on May 21 and 52-34 on May 28.<sup>144</sup> We do not know if health advocates or the business community lobbied HB 1021. The House reconsidered HB 1021 a third time on June 4 and passed the bill without changes.

Table 10.16: Smokefree Legislation as Introduced Between 2008-2010 <sup>141, 143-149</sup>								
Bill	Author	Year	Smoking Restrictions Full: + Partial: ^					Outcome
			Bars	Casinos	Legislative Areas Controlled by the House of Representatives	Cars with Minor Under 18 Present	Nursing Home Smoking Rooms	
HB 466	Jerome “Dee” Richard (I - Thibodeaux)	2008					+	Adopted***
HB 1021	Walker Hines	2008				+		Died in Senate Committee on Transportation, Highways and Public Works.
HR 69	Karen Carter Peterson	2008			+			Adopted
SB 185	Rob Marionneaux	2008	^*					Died with adjournment in Senate Health and Welfare Committee
HB 844	Gary Smith (D-Norco)	2009	+					Rejected by House (amended to ban smoking in gaming establishments)
SB 186	Rob Marionneaux (D-Livonia)	2009	^*					Died in House Health and Welfare Committee
SB 334	Rob Marionneaux	2010	^*					Killed on Senate Floor
SB 348	Rob Marionneaux	2010	+	+				Killed in House Health and Welfare Committee
HB 1323	Rick Nowlin	2010		^**				Killed in House Health and Welfare Committee
<p>*Prohibited smoking in any bar serving food.</p> <p>**Prohibits smoking in riverboat and land casinos with a permitted occupancy amount over 500 people. Also permits smoking in riverboat and land casinos featuring a separate smokefree gaming facility.</p> <p>*** Amended in HWC to allow smoking rooms except in areas considered public places by 2006 smokefree law.</p>								



The Senate Transportation, Highways and Public Works Committee considered HB 1021 on June 12, 2008.<sup>156</sup> At the hearing, Hines claimed the bill nearly acted as a component of Louisiana's law against child abuse.<sup>156</sup> He also argued HB 1021 lowered healthcare costs by reducing the amount of children needing treatment for asthma and allergies.<sup>156</sup> Committee member Senator Butch Gautreaux (D-Morgan City) opposed HB 1021, complaining that the bill was another attempt to make legal acts criminal. The Committee voted 3-2 to reject HB 1021, killing the legislation.<sup>156</sup> HB 1021 sponsor Hines later tried and failed to attach HB 1021 as an amendment to legislation prohibiting texting in cars.<sup>157</sup>

### ***2009 Legislation Fails***

Representative Gary Smith introduced HB 844 in 2009 to prohibit smoking in bars. The bill died on the House Floor after he amended it in the House Health and Welfare Committee to prohibit smoking in gaming establishments in an effort at parity.<sup>145, 158</sup>

HB 844 opponents argued customers and establishments should be able to make their own decisions on smoking. Opponents also claimed smoking restrictions harmed businesses.

Initially, the bar industry opposed HB 844 without assistance from the gaming industry.<sup>158</sup> After casinos were included in HB 844, the casino industry fought the bill. In general, HB 844 opponents argued customers and establishments should be able to make their own decisions on smoking.<sup>158</sup> Opponents also claimed smoking restrictions harmed businesses.<sup>158</sup> The gaming industry promoted a study showing that gaming revenue dropped 20% in Illinois after the state passed smokefree legislation covering gaming establishments.<sup>158</sup> Tobacco control proponents defended HB 844 by referencing studies showing gaming revenue did not suffer from existing smoking restrictions covering casinos in California, Kentucky and Montreal. Supporters highlighted studies showing smokefree policies reduced business costs by lowering cleaning requirements, health care expenses, and absences.<sup>158</sup> Representatives sided with the bar and gaming industry, voting 71-29 to kill SB 844.<sup>158</sup>

Senator Marionneaux introduced SB 186 in 2009 to prohibit smoking in bars serving food. The Louisiana Restaurant Association, usually against smoking restrictions, backed SB 186 because it eliminated a competitive advantage the organization perceived smoking bars with food service had over smokefree restaurants.<sup>159</sup> The bar and gaming industries opposed SB 186 upon the bill's introduction.<sup>159</sup> According to coverage from *The Advocate*, opponents argued SB 186 robbed people of choice. Video poker lobbyist Alton Ashy also asserted the bill harmed small businesses. Despite industry opposition, the Senate Health and Welfare Committee adopted an amendment from Senator Yvonne Dorsey (D-Baton Rouge) at SB 186's first hearing to prohibit smoking in all gaming establishments and bars.<sup>159</sup>

SB 186 subsequently passed the Senate with increased smoking restrictions but was weakened and then defeated at a House Health and Welfare Committee meeting on June 9, 2009.<sup>160</sup> Believing the casino industry killed HB 844 a week before, Senator Marionneaux convinced committee members to amend SB 186 to only prohibit smoking in bars serving food instead of all bars and casinos. Despite the amendment, bar and casino representatives remained opposed to SB 186 and secured the bill's defeat. At the House Committee hearing, Louisiana Association of Beverage Alcohol Licenses lobbyist Mike Young argued SB 186 placed bars at a

competitive disadvantage and incentivized them against offering food. Video poker lobbyist Alton Ashy intoned to committee members that prohibiting smoking in food-serving bars harmed them by pushing customers to alternative establishments.<sup>160</sup> Opponents also claimed that small businesses with gaming would lose business to bigger gambling venues, and that bars should have the ability to set their own smoking policy.<sup>161</sup> After hearing comments, the House Health and Welfare Committee voted 11-6 to reject SB 186.

### ***Failed 2010 Legislation***

Senator Rob Marionneaux introduced SB 348 in 2010 to forbid smoking in bars and gaming establishments. Bar and casino representatives opposed SB 348, arguing its smoking restrictions were economically harmful. At a Senate Health and Welfare Committee hearing for SB 348, Casino Association of Louisiana Executive Director Wade Duty argued the bill economically harmed Louisiana casinos by driving customers to establishments allowing smoking.<sup>162</sup> At SB 348's later House Health and Welfare Committee hearing, alcohol and gaming industry representatives told legislators that prohibiting smoking in bars and gaming establishments reduced customers, economically harmed them, caused layoffs, and reduced state and local tax revenues.<sup>150</sup> Smokefree proponents also attended the House Committee hearing to support SB 348. LSU School of Public Health Assistant Professor Daniel Harrington informed lawmakers that bar and casino patrons experienced 14 times more secondhand smoke exposure according to one of his surveys, and that air quality testing in bars and casinos found significantly unhealthy conditions.<sup>150</sup> Marionneaux urged the committee to adopt SB 348, arguing that tobacco-reliant North Carolina had already prohibited smoking in bars. The House Health and Welfare Committee sided with industry interests and killed the bill.<sup>150</sup>

Besides SB 348, Senator Marionneaux introduced SB 334 to prohibit smoking in bars serving food, similar to legislation he proposed in 2008 and 2009 (Table 10.16). Marionneaux filed SB 334 as a backup bill in case SB 348 struggled during the legislative process.<sup>163</sup> Although SB 334 was weaker than SB 348, alcohol industry lobbyist Chris Young asserted that he and the gaming industry still intended to defeat it.<sup>164</sup> We do not know what actions the bar and gaming industries took against the bill. The Senate Health and Welfare Committee weakened SB 334 to permit smoking at bars where food sales comprised less than 10% of sales then passed the bill.<sup>148</sup> Senators subsequently voted 21-15 to reject SB 334 on May 19, 2010.<sup>165</sup> During Floor debate, Senators complained that SB 334 negatively impacted small businesses and that an exemption from smoking restrictions for bars with food sales less than 10% of total sales was too easy to accidentally offend.<sup>165</sup>

Representative Rick Nowlin (R-Natchitoches) introduced HB 1323 in 2010 to add riverboats and casinos into existing smoking restrictions if they had an occupancy rating of over 500 people unless they maintained a separate smokefree facility. HB 1323 defined separate facilities as having separate ventilation systems or ventilation systems that featured technology to remove smoke from air circulated to smokefree areas.<sup>166</sup> Smoking and smokefree facilities also needed walls and doors separating them.<sup>166</sup>

The House Health and Welfare Committee deferred HB 1323 at a House Health and Welfare Committee hearing on May 9, 2010.<sup>166</sup> At the hearing, Louisiana Casino Association Executive Director Wade Duty asserted to committee members that a June 2009 study of Illinois casinos after a smokefree air law passed in that state reduced gaming industry employment, tax

revenue and profits.<sup>166</sup> He also stated that the research found Indiana, which permitted smoking in casinos, received 6% of Illinois' business after smoking restrictions entered effect.<sup>166</sup> Duty claimed that 65% of casino customers and 24% of Louisianans smoked, and argued that prohibiting smoking in some gaming establishments threatened 3,300 jobs and \$80 million of tax revenue in Louisiana.<sup>166</sup> He also asserted that creating separate smoking and smokefree areas at riverboat gaming establishments was unfeasible because of their structural design and need for physical changes to be approved by the Coast Guard.<sup>166</sup> We did not find evidence that tobacco control advocates defended HB 1323 at the hearing. HB 1323 sponsor Rick Nowlin attacked the design of the Illinois casino study used by Duty but failed to convince committee members to support his bill.<sup>166</sup> The House Health and Welfare Committee voted 8-6 to defer HB 1323,<sup>166</sup> killing it.

## **Conclusion**

Public health advocates seek clean indoor air policies because they reduce secondhand smoke exposure, denormalize smoking behavior, and have neutral or positive economic impacts on the hospitality industry despite claims from the tobacco industry that smokefree policies hurt business.<sup>167</sup> Comprehensive statewide clean indoor air policies have been associated with reductions in secondhand smoke exposure and lower consumption levels in adults and youth. Workplace policies affect smoking behavior and exposure, and workplace smoking bans are associated with decreased secondhand smoke exposure, reduced consumption, and reduced smoking prevalence.<sup>168</sup> Louisiana adopted the Louisiana Smoke-free Air Act in 2006 to protect public health and reduce tobacco-related health problems.

In 1993, the tobacco industry secured passage of the Louisiana Clean Indoor Air Act and the Louisiana Office Clean Indoor Air Act, enacting accommodation policies into law and prohibiting local restrictions stronger than the State's for a period of ten years (Chapter 5). As a result, Louisiana experienced a ten-year period of weak smoking restrictions and total preemption over local control. In 1997 state medical groups, the Louisiana Tobacco Control Program, and health voluntaries came together to form the Coalition for a Tobacco-Free Louisiana. Health interests operating in Louisiana repeatedly participated in CTFLA to pursue tobacco control legislation, sustaining partnerships between members and maintaining a public brand for tobacco control.

Tobacco control advocates in Louisiana developed comprehensive, sustained collaborative efforts and campaigns beginning in 2001 that resulted in the reinstitution of local authority over smoking restrictions and adoption of a statewide clean air law that prohibited smoking in most public places. After CTFLA revitalized under the Louisiana Public Health Institute, its members developed goals in consensus and employed a multilevel campaign utilizing grassroots networks, paid and earned media, as well as outreach to local and state lawmakers to increase support and pressure for repealing preemption over local clean air regulations.

In 2001, CTFLA mobilized local governments to pressure state legislators to restore local control but failed to secure preemption repeal legislation. CTFLA subsequently formed an advocacy coalition of local legislators favoring tobacco control policies and legislators desiring local level decision-making as well as limited state government to pressure state lawmakers.

Sixteen cities also passed resolutions urging the state government to restore local control over smoking restrictions.

Dedicated efforts by CTFLA and its members secured policy victories in 2003 and 2006 that eliminate preemption and obtain an effective statewide smokefree law. In 2003, the coalition partially repealed preemption over smoking restrictions in public places except bars, gaming establishments, and restaurant bars. CTFLA and TFL capitalized on partial preemption repeal to bring tobacco control to the local level where the industry is less powerful.<sup>169, 170</sup> CTFLA members and TFL enabled sixteen localities including Shreveport, Mandeville, Sulphur and Lafayette to pass clean indoor air laws.<sup>171, 172</sup> Partial repeal allowed health advocates to generate public awareness and support for stronger smoking restrictions and a full repeal of preemption by passing local ordinances. In 2006, CTFLA campaigned to pass SB 742, a statewide clean air law that fully repealed preemption. The Coalition employed paid and earned media, smokefree events, and promoted restaurants adopting smokefree policies to generate public support for smoking restrictions. Despite business community opposition, continual advocacy by key lobbyists and lawmakers allowed tobacco control advocates to overcome sabotage attempts and pass SB 742 as effective public health legislation. Coalition members and tobacco control programs then engaged in a media campaign and policy outreach to ensure ready adoption and compliance with the new Louisiana Smoke-Free Air Act.

## Chapter 11: Tax Increase Efforts Following the MSA

- State lawmakers adopted a 4¢ per pack cigarette tax increase in 2000, the first increase since 1990.
- Health and tobacco control advocates secured a 12¢ increase to the cigarette tax in 2002 with dedicated funding for tobacco control.
- Louisiana has remained a low tobacco tax state, with the 49<sup>th</sup> highest cigarette tax rate nationwide in 2015 until moving to 36<sup>th</sup> that year; in 2016 it improved to 33<sup>rd</sup>.

Louisiana legislators made minimal progress on increasing tobacco taxes from the 1970s through the 1990s, causing Louisiana's cigarette tax rate to become among the lowest in the United States. Health advocates secured a 12¢ cigarette pack increase in 2002 but failed to sustain momentum and win additional increases, causing Louisiana to have the second lowest tobacco tax in the nation by 2014. However, the Invest in a Healthy Louisiana Coalition, composed of the Louisiana Campaign for Tobacco-Free Living (TFL), the Louisiana Cancer Prevention and Control Programs, the American Heart Association (AHA), the American Lung Association (ALA), the American Cancer Society Cancer Action Network (ACS-CAN), and the Campaign for Tobacco-Free Kids (CTFK),<sup>1</sup> ran legislative campaigns that helped raised the cigarette tax per pack 50¢ in 2015 and another 22¢ in 2016.<sup>2, 3</sup> Louisiana tobacco taxes remained low after the increases, even compared to other southern states (Figure 11.1). The 2015 and 2016 increases brought the total cigarette tax per pack to \$1.08,<sup>3</sup> ranking it 33rd nationally.<sup>4</sup> In late 2019, Louisiana's cigarette tax remained unchanged, ranking the state 37<sup>th</sup> nationwide.<sup>5-7</sup>

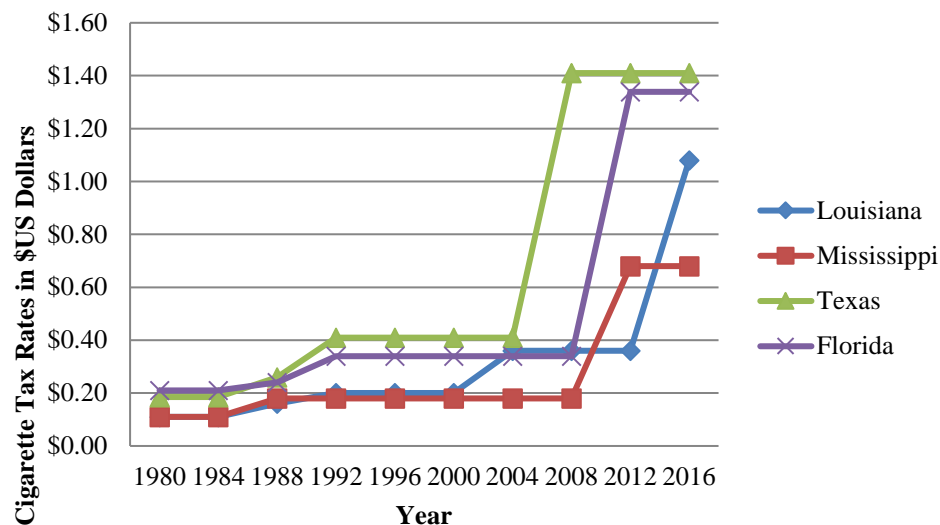


Figure 11.1: Cigarette Pack Tax Rates Over Time in Louisiana and Select Southern States<sup>6, 8</sup>

\*No cigarette tax increases occurred among featured southern states after 2016.

## A Tobacco Tax Increase is adopted in 2000

### *The Budget Deficit Leads to Consideration of a Cigarette Tax Increase*

Louisiana faced a \$540 million budget deficit for the 2000-2001 fiscal year.<sup>9</sup> In order to avoid raising corporate or individual income taxes, state legislators were inclined to consider tax increases on cigarettes, alcohol, food, utilities, and river boat casinos during the 2000 session.

Louisiana faced a \$540 million budget deficit for the 2000-2001 fiscal year.

Table 11.1: Tobacco Tax Legislation as Introduced in the 2000 Legislative Session <sup>10-13</sup>					
		HB 51	HB 52	HB 56	HB 117
	Existing Tax Rates	Proposed Tax Rates			
Cigarette Packs	20¢ Per Pack	60¢ Per Pack (40¢ Increase)	--	60¢ Per Pack (40¢ Increase)	34¢ Per Pack (14¢ Increase)
Cigars (Priced at \$120 or Less Per 1000)	8% of invoice price	16% of invoice price	--	--	--
Cigars (Priced at \$120 or More Per 1000)	20% of invoice price	40% of invoice price	--	--	--
Loose Leaf Tobacco	33%	66% of invoice price	--	--	--
Matches and Lighters	--*	--	99% sales tax		--
*No tax specific to matches and lighters.					

To address the budget crisis, State Representative Robert Faucheux (D-LaPlace) and House Speaker Charles W. Dewitt (D- LeCompte) introduced tobacco tax increase bills (Table 11.1). Representative Faucheux prefiled HB 51, 52 and 56 on April 11, 2000 to implement tax increases on tobacco products and accessories.<sup>10-12</sup> HB 51 increased cigarette taxes 40¢ per pack, set a 16% tax on cigars priced at \$120 or less per 1000, a 40% tax on cigars priced at \$120 or greater per 1000, and a 66% tax on loose leaf tobacco.<sup>11</sup> HB 51 did not allocate revenue generated by these taxes.<sup>11</sup> HB 52 established a 99% sales tax on matches and cigarette lighters with revenue dedicated to teaching and research hospitals.<sup>12</sup> HB 56 raised the cigarette tax 40¢ and dedicated the revenue to prevention, research, education, and treatment programs for public hospitals and associated academic health centers specializing “in maternal health, cancer, and cardiopulmonary disease.”<sup>10</sup> Speaker Dewitt prefiled HB 117 on April 19, 2000.<sup>13</sup> Cosponsored by Representatives Bryant Hammett (D-Ferriday) and Jerry Luke LeBlanc (D-Lafayette), as well as State Senators Robert Barham (D-Oak Ridge), Jay Dardenne (R-Baton Rouge), and John Hainkel (R-New Orleans), HB 117 increased the cigarette tax by 14¢ per pack without dedications.<sup>13</sup> All four bills were referred to the House Committee on Ways and Means for consideration.

In mid-April 2000, before consideration of tobacco tax bills, the Louisiana Legislative Fiscal Office released potential revenue estimates for tobacco tax increases.<sup>14</sup> The agency predicted that \$78.7 million in revenue could be generated by raising the cigarette tax 20¢ per pack and increasing cigar and pipe tobacco taxes between 8% and 33% of invoice price.

Public interest groups supported HB 51, HB 52 and HB 56 while business interests opposed them. Health advocates, health voluntaries, and a teacher's union supported Fauchaux's bills (HB 51, HB 52, and HB 56) as a means to improve Louisiana's health and protect minors. The tobacco industry and its wholesale and retail community allies opposed the bills claiming they were unnecessary and ineffective at preventing underage tobacco use, economically harmful, regressive, unfair to smokers, and likely to cause crime and reduce state revenue. All three bills ultimately stalled in the House Ways and Means Committee.

The House Ways and Means Committee considered findings and arguments against tobacco taxes on March 22, 2000. At the hearing, State fiscal office employee Greg Albert testified that cigarettes provided 90% or more of total revenue to the state from Louisiana's combined tobacco product taxes.<sup>15</sup> He stated that cigarettes should be the primary focus for taxation if lawmakers sought to generate revenue since the public consumed them at much higher rates than other products. Albert told the Committee that Louisiana would need to increase its rate from 75%-100% to generate \$50 million or more in new revenue. Albert also found that increasing the tax each 1% resulted in a 0.4-0.5% decline in consumption. In addition, he claimed that levying a tax on smokeless tobacco (untaxed in Louisiana) similar to neighboring states could provide another \$4 to \$5 million in revenue. Albert added a tax hike would drive down actual use but would reduce legal consumption at even higher rates. Upon questioning from the committee, he reasoned black market sales would not be an issue if rates were kept similar to neighboring states (Texas and Arkansas had higher tax rates, while Mississippi had a lower one) and overall pack price was similar. He explained that cigarettes could be taxed at a higher amount than a neighboring state but still retail at a comparable rate based on other factors). Albert added that raising cigarette taxes did not provide an equal return in new revenue, but a lesser amount. After Albert provided findings to the committee, opponents spoke against the tax increase bills.

Opponents of the tobacco tax increases primarily used economic and crime-based arguments in the House Ways and Means Committee to fight tobacco tax increases (Table 11.2). Louisiana Wholesale Food and Tobacco Distributors Association (LWFTDA) Executive Director Sarah Whalen, LWFTDA President Keith Landing, RJ Reynolds lobbyist CJ Blache, and Philip Morris lobbyist Randy Haynie opposed tobacco tax increases at the hearing. Whalen, Blache, and Haynie had helped the tobacco industry oppose tobacco control legislation since the 1980s (Chapters 2, 5, 6, 8, 10). The tobacco industry and its allies asserted the taxes were regressive, threatened tax revenue, harmed cross border sales, and led to increases in smuggling and gray market sales (i.e., off-brand discount cigarette sales). Blache also complained that increased cigarette prices did not deter youth use and that education did. Blache's assertion was incorrect, as studies have found youth are particularly price sensitive and tobacco tax increases prevent youth tobacco use.<sup>16, 17</sup>

Table 11.2: Arguments Used Against Tobacco Taxes at March 22 Hearing <sup>15</sup>														
Speaker	Affiliation	Tax is Regressive /Affects the Poor	Taxes Already Substantial	Tax Increase Reduces Revenue	Raising Taxes Ineffective at Deterring Youth Use	Participation in Voluntary Regulation (We Card)	Louisiana Effectively Prevents Youth Access	Education Reduces Youth Use	Taxes Inflict Economic Harm	Taxes Will Reduce Favorable Cross Border Sales/ Increase Unfavorable Cross Border Sales	Taxes Increase Sales of Gray Market Cigarettes	Taxes Unfairly Target Smokers	Tax Increases Will Cause Smuggling	Tobacco Companies Already Making MSA Payments/ State Already Receiving MSA Money
Sarah Whalen	LWFTDA-Executive Director	+				+	+			+			+	
Keith Landing	LWFTDA	+	+	+	+				+	+	+			
CJ Blache	RJ Reynolds				+			+						
Randy Haynie	Philip Morris	+										+		+

Health and tobacco control advocates did not testify at the hearing. After hearing arguments from tobacco interests, House Ways and Means committee members postponed action on tax increase legislation.

The House Ways and Means Committee considered Representative Fauchaux's tobacco tax legislation at a May 2, 2000 hearing.<sup>18</sup> At the meeting, CTFLA representative Dr. Charles Brown provide comments in support of HB 51.<sup>19</sup> He testified that 36-38% of Louisiana youth smoked each month, and that the industry targets minors to ensure future business.<sup>19</sup> Brown highlighted the gap between industry and tobacco prevention and cessation spending, claiming that tobacco companies spent \$85 million annually on advertising in Louisiana while the state only dedicated \$500,000 in Master Settlement Agreement (MSA,

Chapter 9) funds towards anti-tobacco programming. Brown stated that tobacco-related illnesses cost Louisiana \$1.4 billion each year. He argued that increasing the tobacco tax would help address Louisiana's tobacco burden and urged the committee to adequately fund tobacco control programming. Brown pointed to the 80,000-person reduction in youth smoking over two years in Florida, where a tobacco control program had been implemented. When committee member Bryant Hammett retorted that the bill was contradictory since it sought to prevent smoking and increase revenue, which would not be raised if people quit smoking, Brown asserted the state had to remember the costs incurred by the state from tobacco use. Responding to questioning later in

... tobacco companies spent \$85 million annually on advertising in Louisiana while the state only dedicated \$500,000 in Master Settlement Agreement funds towards anti-tobacco programming.



the hearing, Brown stated that 3,400 people in Louisiana contract lung cancer annually and that smoking caused 90%-95% of lung cancer instances. He stated that 40% of people that contracted coronary heart disease were smokers. Brown also claimed that Louisiana had the fourth highest rate of lung cancer in the US, with the Acadiana region in the state having the highest prevalence in the country. He added that the African American population in Jefferson, Orleans, and St. Bernard parishes had the greatest lung cancer prevalence in the world. The harms of tobacco and its costs to healthcare and society were a primary focus of the bill's proponents.

Other health and education advocates spoke in support of HB 51 at the hearing.<sup>19</sup> Nurse, and AHA volunteer Collette Barrett testified that research indicated 10% price increases on tobacco products resulted in a 7% decrease in smoking among minors.<sup>19</sup> She asserted that youth were sensitive to price increases and stated that lawmakers could address youth smoking then or pay for it later in healthcare costs. Upon questioning, Barrett told the committee a 55¢ tax increase would reduce adult tobacco use by 9%. Following Barrett, Joyous Van Buskirk, a representative of the Louisiana Federation of Teachers union urged the committee to pass tobacco tax increases. She stated that youth were starting alcohol and tobacco use by elementary school, and suggested enactment of educational programming. Buskirk also advocated for tobacco tax increases to disincentivize people from becoming addicted to tobacco and provide extra revenue for the budget, which faced funding shortfalls for fire and police services, healthcare, and education. After Buskirk testified, the House Ways and Means Committee postponed voting on HB 51 allow Faucheux's other bills to be introduced.

The Committee moved to consider HB 52, Faucheux's legislation to place a 99% sales tax on tobacco accessories, in particular matches and lighters (Table 11.1). Asked to introduce HB 52, Representative Faucheux stated that the bill would cost Louisiana money to implement and run according to a fiscal note, and requested that the committee permanently defer it. The committee approved the request, deferring HB 52 and taking it out of consideration.

The House Ways and Means Committee subsequently moved to have HB 56 introduced. HB 56 featured the same cigarette tax increase of 40¢ per pack contained in HB 51, but did not raise taxes on other tobacco products (Table 11.1). After HB 56's introduction, the committee heard comments from opponents.

Wholesalers, tobacco industry ally Sarah Whalen and the LWFTDA, retailers, and tobacco industry lobbyists testified against the taxes proposed in HB 51 and HB 56 (Table 11.3). Opponents argued that the tobacco tax increases were regressive, were ineffective at preventing youth use, were economically harmful, would cause Louisiana to lose business to cross border sales, and would reduce tax revenue. RJ Reynold representative CJ Blache also indicated that the state attorney general's office had a small tobacco prevention program. The Louisiana Deputy Attorney General subsequently rebutted Blache's claim, informing the committee that his department's tobacco control programs did not focus on preventing tobacco use but MSA enforcement.

After opponents testified, Representative Faucheux announced he would withdraw HB 51, which hiked taxes on cigarettes, cigars and loose leaf tobacco, in favor of the committee passing HB 56, which contained the same 40¢ hike per cigarette pack without raising taxes on

Table 11.3: Opponent Testimony at May 2, 2000 House Ways and Means Committee Hearing on Tobacco Taxes <sup>15</sup>																	
Speaker	Affiliation	Tax is Regressive /Affects the Poor	Taxes Already Substantial	Tax Increase Reduces Revenue	Raising Taxes Ineffective at Deterring Youth Use	Tobacco Use is a Choice	Louisiana Effectively Prevents Youth Access	Education Reduces Youth Use	Taxes Inflict Economic Harm	Taxes Will Reduce Favorable Cross Border Sales/ Increase Unfavorable Cross Border Sales and Internet Sales	Taxes Increase May Lead to Illegal Sales	Taxes Unfairly Target Smokers	Tax Increases Will Cause Smuggling	Tobacco Companies Already Making MSA Payments	Businesses on State Border will Relocate to Neighboring Lower Tax States	MSA Prohibits Youth Targeting	Other
Sarah Whalen	LWFTDA-Executive Director						+			+			+		+		
Keith Landing	LWFTDA-President			+			+		+	+							
Steve Shehane	Baton Rouge Tobacco Company		+						+			+					
Holly Khumenal	Louisiana Oil Marketers and Convenience Store Association- Executive Director																+

LJ Gielan	Louisiana Oil Marketers and Convenience Store Association- President  Co-owner Shop Rite Stores		+														+
Morris Coates	Nichols State University- Economist	+		+					+	+			+				
CJ Blache	RJ Reynolds	+			+	+								***		+	+
Randy Haynie	Philip Morris	+	+	+		+					+			+			
*Stated in response to Committee Questioning.																	
**Funds tobacco control programming.																	

cigars and loose leaf tobacco (Table 11.1).<sup>19, 20</sup> Faucheux made the request because the non-cigarette tax increases in HB 51 generated only 5% of new revenue in the bill.<sup>19, 20</sup> The Louisiana Legislative Fiscal Office predicted that HB 56 would generate \$124 million annually for the state<sup>18</sup> compared to \$129 million from HB 51.<sup>20</sup>

The House Ways and Means Committee did not vote on any of the bills<sup>18</sup> and HB 51, 52 and 56 all died upon adjournment.

### ***Opposition from the NCPPR Following the House Committee Hearing***

On May 12, 2000 the National Center for Public Policy Research (NCPPR) issued a press release opposing tax increases on tobacco products and other goods and services being considered by the Louisiana Legislature.<sup>21</sup> A longtime tobacco industry ally,<sup>22</sup> the NCPPR press release claimed the tax increases being considered to alleviate Louisiana's budget deficit were regressive and harmed low income Louisianans. The press release also asserted that tobacco taxes were a poor source of revenue because of potential federal tax increases, the ability for lawsuits against the tobacco industry to inflate product costs, and the decline of cigarette and sales tax revenues it claimed had been ongoing since the mid-1960s. In addition, the NCPPR incorrectly stated that Louisiana lawmakers increased the cigarette tax in 1990 by 20¢; the actual increase was 4¢ (from 16¢ to 20¢) in a compromise between lawmakers and the tobacco industry to alleviate budget shortfalls (Chapter 6).

A longtime tobacco industry ally, the NCPPR press release claimed the tax increases being considered to alleviate Louisiana's budget deficit were regressive and harmed low income Louisianans ....

### ***House Bill 117 in the Legislature***

House Speaker Charles Dewitt Jr. (D-Lecompte) submitted and tried to push HB 117 and other tax bills to the House Floor during the 2000 session to provide lawmakers multiple avenues to remedy the state's \$374 million budget shortfall that session.<sup>23</sup> The bill initially increased the cigarette tax by 14¢ per pack (from 20¢ to 34¢) and did not dedicate revenue to health or tobacco control, instead allowing money to flow into Louisiana's general fund. After being weakened, HB 117 became the only tobacco tax increase to pass during the 2000 session.

The House Ways and Means Committee first considered HB 117 on May 23, 2000.<sup>13</sup> At the hearing, its sponsor Dewitt secured an amendment to lower the bill's cigarette tax increase from 14¢ per pack to 4¢ per pack.<sup>24, 25</sup> He offered the amendment as part of an agreement with tobacco industry representatives.<sup>26, 27</sup> Dewitt told tobacco industry lobbyists he planned to hold HB 117 if lawmakers amended the bill to further increase the cigarette pack tax above that amount.<sup>26</sup> Dewitt later justified the agreement in a May 26, 2000 *Baton Rouge Advocate* article on the grounds that "sometimes you make deals to make things happen."<sup>28</sup> The Committee also approved an amendment making the 4¢ cigarette tax temporary instead of permanent, scheduling the tax increase to expire on June 30, 2002. After approving the amendment, the committee voted 14-0 to send HB 117 to the House Floor.<sup>13</sup>

The House debated HB 117 and weighed multiple amendments to increase the legislation's public health benefits on May 25, 2000. Representative Mitch Landrieu (D-New Orleans) introduced House Amendment B-89 to create and dedicate revenue generated from the cigarette tax increase to a Tobacco Tax Health Care Fund to support:

- The Louisiana Tumor Registry
- The Louisiana Cancer and Lung Trust Fund for lung cancer research and “a statewide cancer control program”
- The Louisiana Tobacco Resource Center to develop smoking cessation programming
- Public hospital smoking cessation programs for patients that were pregnant or had lung or heart disease<sup>29</sup>

Representatives voted 25 to 67 against Landrieu's amendment.<sup>30</sup>

Representative Robert Faucheux (D-Gramercy) introduced House Amendment B-90 to raise HB 117's cigarette tax increase from 4¢ per pack to 40¢ per pack, which would bring the total tax rate from 24¢ to 60¢ per pack.<sup>31</sup> After portions of the cigarette tax revenue were paid into the Bond Security and Redemption Fund (a constitutional fund in Louisiana used to back state bonds and obligations that received nearly all money provided to the treasury and released the remainder to Louisiana's general fund<sup>32</sup>) and used to pay the state's loans, remaining money would be split between two funds established by the amendment, the Tobacco Tax Health Care Fund and the Tobacco Tax School Support Personnel Fund.<sup>31</sup> The Tobacco Tax Health Care Fund provided money to public hospital and affiliated academic health centers' prevention, research, treatment, and education efforts for cardiopulmonary disease, cancer, and maternal health.<sup>31</sup> Tobacco Tax School Support Personnel Fund monies increased pay for public school “support personnel.”<sup>31</sup> Faucheux's amendment was rejected in an 8 to 90 vote.<sup>33</sup>

Following Faucheux's failed attempt to raise the cigarette tax in HB 117, Representative Cedric Richmond (D-New Orleans) introduced an amendment to increase tax rates on cigars and loose leaf tobacco.<sup>34</sup> The bill raised taxes on cigars invoiced at \$120,000 or less of price per thousand by producers from 8% of invoice to 10%, and cigars invoiced over \$120,000 of price per 1000 from 20% of invoice price to 24%. Loose leaf tobacco faced a tax hike from 33% of invoice price to 40%.<sup>13</sup> Representative Richmond proposed the increases believing HB 117 raised taxes on a product predominately used by the poor, while other tobacco products used by the rich did not have their taxes raised.<sup>27</sup> The House voted 40 to 59 against the amendment.<sup>35</sup>

Representatives Jackie Clarkson (D-New Orleans) and Elbert Guillory (D-Opelousas) proposed dedicating revenue generated by the cigarette tax increase to the Louisiana Charity Hospital System in a manner that could be matched by federal money.<sup>36</sup> Representatives voted 28-65 against the change.<sup>13</sup>

After weighing amendments, state representatives voted 64 to 38 in favor of HB 117,<sup>13</sup> keeping the bill in the House since approval fell below the two-thirds threshold needed to pass tax legislation in Louisiana.<sup>26</sup> In an interview with the Baton Rouge *Advocate*, HB 117 sponsor Dewitt claimed some representatives voted against his bill because tobacco industry lobbyists

insinuated to lawmakers that Senators sought to raise the bill's cigarette tax increase from 4¢ to 8¢,<sup>26</sup> higher than the rate that the tobacco industry representatives had agreed upon. Dewitt reaffirmed to representatives his intention to defeat HB 117 if the Senate raised its cigarette tax increase above 4¢ and pushed lawmakers to pass the legislation.

Representatives reconsidered HB 117 that same day. During reconsideration, Representative Richmond introduced an amendment to establish a 39.7% of invoice price tax on smokeless tobacco.<sup>26</sup> Representatives approved the change 51-50. The House subsequently voted 79-25 to pass HB 117. Following the vote, Representative John Travis (D-Jackson) told the New Orleans *Times-Picayune* that the budget shortfall pressured lawmakers to approve HB 117:

People realized they are going to have to pass some sin taxes.... If we can't vote for a sin tax, we may as well adjourn sine die. We can't go home and face people, and tell them we closed down hospitals.<sup>27</sup>

"People realized they are going to have to pass some sin taxes .... If we can't vote for a sin tax, we may as well adjourn sine die. We can't go home and face people, and tell them we closed down hospitals."

Dewitt, the sponsor of HB 117, publicly announced he intended to have Richmond's amendment removed in the Senate to honor his promise to industry representatives to limit a tobacco tax increase to 4¢ per cigarette pack.<sup>27</sup>

### ***Senate Revenue and Fiscal Affairs Committee Votes to Increase the Cigarette Tax by 10 Cents***

The Senate Revenue and Fiscal Affairs Committee considered HB 117 on May 30, 2000, where members attached amendments to increase cigarette and cigar taxes as well as reduce the smokeless tobacco tax rate (Table 11.4). The committee also eliminated an amendment added during HB 117's House Ways and Means Committee hearing that sunsetted the tobacco tax increase in 2002, after committee member Bill Jones (D-Ruston) advocated the taxes be permanent.<sup>37</sup> As passed by the House, HB 117

Table 11.4: Existing Tax Rate Compared to House and Senate Versions of HB 117 <sup>13, 39</sup>					
Tobacco Product	Existing tax rate	Tax Rates in HB 117 Set by House	Tax Rates in HB 117 Set by Senate Committee	Tax Rates in HB 117 as Passed by Senate	Tax Rates in HB 117 Conference Committee Version (adopted)*
Cigarettes	20¢	24 ¢	30¢ <sup>37</sup>	No change	24¢
Cigars Invoiced at \$120 Per Thousand or Less by Producer	8% of invoice price	No change	18% of invoice price	No change	None
Cigars Invoiced More Than \$120 Per Thousand by Producer	20% of invoice price	No change	28% of invoice price	No change	None
Smokeless Tobacco	None	39.7% of invoice price	20% of invoice price	No change	No change
*Taxes had a 2-year sunset.					

generated \$19 million in annual revenue. Proposed Senate Committee amendments increased expected revenue to \$48 million.<sup>37, 38</sup>

Tobacco industry representatives testified that the tax increases were regressive and economically harmful to businesses.<sup>37</sup> Swedish Match lobbyist Larry Murray,<sup>40</sup> who had also represented Lorillard<sup>41</sup> and Brown and Williamson<sup>42</sup> in the past, claimed raising taxes on smokers was an inadequate remedy for Louisiana's revenue shortage.<sup>37</sup> The New Orleans *Times-Picayune* reported Murray asserting, "This is not Louisiana's long-range solution... This takes us another step in the wrong direction. ... This will approach \$900 a year in what a smoker will pay ... and most smokers make about \$22,000 a year."<sup>37</sup> Industry representatives also complained the tax increase elevated Louisiana above the average rate for southern states.<sup>37</sup>

Murray was not the only tobacco industry representative to testify that the amendments increased tobacco taxes in Louisiana above the average in the South.<sup>37</sup> New Orleans tobacco shop owner Bob Winston testified against the tax increase for cigars, arguing it was "Kevorkian" (referring to euthanasia activist Dr. Jack Kevorkian) and may kill his business.<sup>38</sup> Representative Diane Winston (R-Covington), Winston's spouse who had received \$3,050 in tobacco industry contributions between the 1995 and 2003 election cycles,<sup>43-45</sup> also attended the hearing but did not testify.<sup>38</sup> Americans for Tax Reform (ATR), an industry ally on taxes since the early 1990s,<sup>46</sup> listed Representative Winston in a press release opposing Louisiana tax increase bills that year as a Taxpayer Protection Pledge signer.<sup>47</sup> The Taxpayer Protection Pledge is an ATR initiative that politicians sign to signal and declare their total opposition to tax increases.<sup>48</sup>

Despite tobacco industry opposition, the Senate Revenue and Fiscal Affairs Committee approved amendments increasing the cigarette tax, cigar taxes, and reducing the loose leaf tobacco tax (Table 11.4) and then advanced HB 117 to the Senate in a 7-1 vote. Momentum to pass tobacco taxes regardless of the industry's stance possibly came from Louisiana's budget shortfall. We did not find evidence that health advocates were fighting to advance HB 117 at this point.

### ***House Bill 117 on the Senate Floor***

When HB 117 was debated on the Senate Floor on May 31, 2000, Senator Frank Hoyt (R-Abbeville) offered an amendment to reduce the cigarette tax increase from 10¢ to 4¢ per pack and lower the 10% of invoice price cigar tax increase added in Senate Committee to 4%.<sup>49, 50</sup> Senators rejected Hoyt's amendment to preserve revenue gains.<sup>50</sup> Senators subsequently voted 30-9 to pass HB 117, sending it back to the House for approval of Senate-made changes.

The House considered Senate amendments to HB 117 on June 1, 2000. During debate, HB 117 sponsor and House Speaker Charles Dewitt asked representatives to reject the bill, arguing he had promised tobacco industry representatives to limit his cigarette tax increase to 4¢ per pack.<sup>51</sup> Respecting Dewitt's request, representatives voted 101-0 against HB 117,<sup>51</sup> resulting in a conference committee to create compromise legislation.

### *Conference Committee Forges a Compromise Version of HB 117*

The Legislature formed a six-person conference committee of three House and three Senate members to produce a compromise version of HB 117. House members of the committee consisted of Speaker Charles Dewitt (D-LeCompte), Ways and Means Committee Chairman Bryant Hammett (D-Ferriday), and Commerce Committee Chairman John Travis (D-Jackson). Senate members of the committee were President John Hainkel (R-New Orleans), Revenue and Fiscal Affairs Chairman Robert Barham (D-Morehouse), and Finance Committee Chairman and floor leader Jay Dardenne (R-Baton Rouge).

At a meeting in early June, Conference Committee members sparred over increasing the cigarette pack tax. Speaker Dewitt argued against raising the cigarette tax more than 4¢, insisting that he promised the House Ways and Means Committee to limit the cigarette tax increase to that amount.<sup>52</sup> According to *The Times-Picayune*, Senate President Jay Dardenne argued the legislature's failure to pass taxes to address the deficit necessitated a higher increase, stating "We have not gotten our things done... We had a \$374 million shortfall, we have cut it to \$250 million, and we haven't

"We have not gotten our things done .... We had a \$374 million shortfall, we have cut it to \$250 million, and we haven't raised the \$250 million .... We can't do it with four cents."

raised the \$250 million... We can't do it with four cents."<sup>52</sup> Dardenne added that the tobacco tax, along with alcohol and gambling taxes being considered that legislative session, should be prioritized because of these uses' and behaviors' negative effects.<sup>52</sup> Committee member Representative John Travis, who acted as an ally of the industry in the past (Chapters 5 and 6), also supported a higher cigarette tax increase. He argued it prevented a reduction in nursing home care assistance and the shuttering of charity hospitals and small universities.<sup>52</sup>

At the conference committee hearing for HB 117, RJ Reynolds lobbyist CJ Blache (Chapter 2) argued that prioritizing products and services for taxation because of their health effects was unfair, asserting other harmful goods were not being considered for tax increases.<sup>52</sup>

Although some conference committee members publicly supported a higher cigarette tax, they ultimately capitulated to Speaker Dewitt's demands to support the lower tax increase. The conference committee proposed a compromise version of HB 117 that:

- Established a 4¢ tax increase per cigarette pack.
- Established a 20% tax on the invoice price of smokeless tobacco.
- Removed the tax increases for cigars adopted in the Senate
- Set a two year sunset for tax increases in HB 117.<sup>39</sup>

The Conference Committee bill managed to win approval. The Senate accepted the conference committee bill (33-5) as did the House (82-17). Governor Mike Foster (R) signed HB 117 into law on June 20, 2000. In statements to the Louisiana Republican State Central Committee published by *The Times-Picayune*, Foster stated "I wished we could have put a dollar-a-pack tax on cigarettes and g[o]t rid of them."<sup>53</sup> From July 1, 2000 through June 30,



2002, the cigarette tax increased from 20¢ to 24¢ per pack to address Louisiana's budget deficit (Table 11.4). No money was designated revenue for tobacco control.<sup>13</sup>

### **House Bill 157 and the Tobacco Tax Healthcare Fund**

In 2002, Louisiana lawmakers passed HB 157 to raise the cigarette tax 12¢ per pack (from 24¢ to 36¢) and allocate revenue from 2¢ to tobacco control prevention and cessation. Health advocates secured tobacco control funding by participating in Tulane University and Louisiana State University's (LSU) legislative campaign to obtain money for a new joint cancer research center approved by state lawmakers without funding.

### ***Senate Bill 73 Creates a Cancer Center in Need of Funding***

During the 2002 First Extraordinary Legislative Session, Senate President John Hainkel (R-New Orleans) and cosponsors Louis Lambert (D-Prairieville<sup>54</sup>), Diane Bajoie (D-New Orleans), and Tom Schedler (R-Slidell<sup>55</sup>) introduced SB 73 to create the Tulane/LSU Cancer Research Center.<sup>56</sup> The proposed center would perform research and educate on the diagnosis, detection, and treatment of cancer.<sup>56</sup> The extraordinary session<sup>57</sup> was convened by Governor Mike Foster primarily to focus on economic development legislation.<sup>58</sup> SB 73 was developed with help from Roy Weiner, director of the Tulane Cancer Center,<sup>59, 60</sup> and Oliver Sartor, director of the Stanley S. Scott Cancer Center at the LSU Health Sciences Center (New Orleans).<sup>61</sup> Tulane University and LSU would jointly administer the new center to help their health science centers in New Orleans earn a National Cancer Institute cancer center designation.<sup>56</sup> SB 73 passed the Louisiana Legislature with little opposition and was signed into law by Governor Mike Foster (R) on April 18, 2002.<sup>56</sup>

The bill did not appropriate funding to create the Tulane/LSU Cancer Research Center (LCRC, later named the Louisiana Cancer Research Consortium) or fund its operating costs,<sup>62</sup> prompting Hainkel, Sartor, and Weiner to seek a revenue source for the new institution. Sartor, Weiner, and Hainkel approached CTFLA Chairman Dr. Charles Brown to learn how much revenue an increase to the state cigarette tax would create. Brown informed them a 1¢ increase generated \$4 million annually since Louisianans smoked 30 to 35 million cigarettes a month at the time.<sup>62</sup> The meeting brought Brown<sup>62</sup> and tobacco control advocates into efforts to pass a tobacco tax increase in 2002.

Only the Louisiana House of Representatives could propose tax increases, prompting Hainkel, Sartor and Weiner to search for a House member to introduce a bill. Sartor and Weiner asked Representative Mitch Landrieu (D-New Orleans) to file tobacco tax legislation with dedicated funding to Tulane and LSU's cancer center (Landrieu was later elected mayor of New Orleans in 2010<sup>63</sup> and signed a comprehensive smokefree ordinance into law there in 2015; Chapter 12.). Earlier in 2002, before the legislative session started, Brown and Louisiana Public Health Institute (Chapter 4) CEO Joseph Kimbrell had approached Landrieu and asked him to introduce a cigarette tax increase.<sup>64</sup> According to Kimbrell in a 2014 interview for this report, Landrieu denied the request, stating, "No, ya'll don't really have a prayer."<sup>64</sup> According to Louisiana Public Health Institute (LPHI) Policy Manager Erick Vicks in a 2019 interview for this report, advocates sought Landrieu because of his local political aspirations:

He [Landrieu] was local for me and all of us...if we weren't in New Orleans, stationed, we were there just about all the time. He was somebody who was liked. He was a known commodity. Everybody knew he wanted to do something bigger. And so this game him the opportunity to do that.<sup>65</sup>

According to Dr. Charles Brown in a 2014 interview for this report, Senator Hainkel, Sartor, and Weiner ultimately convinced Landrieu to submit HB 157 in a bid to fund the impending joint cancer center.<sup>62</sup>

### ***House Bill 157 Proposes a Cigarette Tax Increase to Fund the Cancer Center***

As introduced, HB 157 raised the cigarette tax 4¢ per pack (from 24¢ to 28¢) and deposited revenue to the Tobacco Tax Healthcare Fund to fund the joint New Orleans cancer center. HB 157 also permitted using new cigarette tax revenue to fund public hospital smoking cessation and prevention programs targeting patients with heart and lung disease as well as expecting mothers.<sup>66</sup>

Prior to HB 157's introduction, the Coalition for a Tobacco-Free Louisiana (CTFLA) contacted Mississippi Attorney General Mike Moore to hear his opinions on forming a tobacco control program. In the 1990s, Moore initiated and led litigation against the tobacco industry by state attorneys general to recoup Medicaid funds used to treat tobacco-related illnesses (Chapter 9).<sup>67</sup> Moore had remained active in Mississippi's nonprofit, youth-oriented tobacco control program The Partnership for a Healthy Mississippi that was created as part of a Mississippi's settlement with the tobacco industry.<sup>67</sup> On February 15, 2002, Louisiana Coalition for Maternal and Child Health Executive Director and CTFLA member Sandra Adams sought Moore's advice before the upcoming special and regular legislative sessions.<sup>68</sup> According to LeBlanc in a 2002 article in the *Shreveport Times*, "If we had a proven program and information that it yielded results, we could phase it in over two years in pilot programs."<sup>68</sup>

### ***Tobacco Control Support for HB 157***

The Coalition for a Tobacco-Free Louisiana (CTFLA), a tobacco control policy coalition consisting of health advocates and voluntaries whose primary members were the American Cancer Society and American Heart Association (Chapters 4, 10), supported HB 157. In 2001, LPHI secured a SmokeLess States grant from the Robert Wood Johnson Foundation to fund CTFLA, enabling it to develop a statewide presence and advocacy base to support policy campaigns (Chapter 4).<sup>64, 69</sup> During the legislative session, CTFLA held a lobbying day and tried to generate earned media to create support and pressure for HB 157.<sup>65</sup> ACS and AHA also held lobbying days where their representatives advocated for the tobacco tax bill. CTFLA also urged advocates throughout the state to contact lawmakers and make known their support for HB 157. The Coalition provided advocates information on how a tax increase reduced youth tobacco use and provided additional revenue for the state. The campaign to pass HB 157 was CTFLA's second legislative effort<sup>65</sup> at the state level (the first was clean air preemption repeal in 2001) and its first success.

Advocates and health organizations supported HB 157 to improve public health outcomes, discourage smoking, and obtain tobacco control funding. According to LPHI Policy Manager<sup>70</sup> Erick Vicks in a 2019 interview for this report:

We [the CTFLA] only advocated for tobacco taxes to be utilized in an effort to decrease tobacco utilization in the state. We wanted the money and we did suggest the money could be used for tobacco control. But we never demanded or said that it had to go to one particular entity or area. We just wanted the tobacco tax to be levied, and they could use it for health purposes.<sup>65</sup>

“We only advocated for tobacco taxes to be utilized in an effort to decrease tobacco utilization in the state. We wanted the money and we did suggest the money could be used for tobacco control. But we never demanded or said that it had to go to one particular entity or area. We just wanted the tobacco tax to be levied, and they could use it for health purposes.”

Vicks reported during the interview that “it was initially believed we were just trying to fund that program [the joint cancer center] and not create something new.”<sup>65</sup> CTFLA

Steering Committee Chair Dr. Charles Brown ultimately secured funding for tobacco control programming in HB 157 on behalf of advocates.<sup>62, 64</sup> Advocates avoided pursuing funds for the Department of Health and Hospitals’ tobacco control program because they and lawmakers perceived it as ineffective (Chapter 4). In addition, advocates had strained relations with the state’s tobacco control program (Chapter 4). Instead, tobacco control advocates sought to secure funding for tobacco control programming outside the DHH.

In early May, two weeks before its members considered HB 157, the House Ways and Means Committee heard testimony from Mississippi Attorney General Michael Moore about his state’s smoking cessation and prevention program. Moore stated that Mississippi had successfully used Master Settlement Agreement funds to operate its tobacco control program.<sup>71</sup> In 2000, Mississippi spent \$22 million of the \$62 million it received from its settlement with the tobacco industry for FY 1999 and FY 2000 on its tobacco control program.<sup>67</sup> In contrast, Louisiana appropriated just \$500,000 of the millions it received annually from MSA payments to fund tobacco control in 2000. In 2001, Louisiana was one of twenty states (out of 46 states) appropriating less than \$600,000 of MSA funds to develop and operate a tobacco control program.<sup>72</sup> Only six states fell below Louisiana in allocating MSA funds to tobacco control (Ohio, Pennsylvania, Tennessee, Alabama, Connecticut, and North Carolina).<sup>73</sup>

### ***HB 157 in the Legislature***

The House Ways and Means Committee first considered HB 157 on May 22, 2002.<sup>74</sup> At the hearing, Representative Landrieu told committee members that his bill funded the Tulane and LSU joint cancer center and tobacco control:

This bill is designed to help fund the mechanism that we actually created during the last legislative session. The Master Settlement Agreement through the tobacco litigation is going to provide us with the capital funds needed to build the building in New Orleans and this bill is designed right now to do two things. One to fund the operations of that center, and also to fund the operations of the center in Shreveport. But secondly, to create a smoking prevention and cessation program which is much needed. As you know we really haven't provided for that under state law....<sup>74</sup>

He highlighted HB 157's importance by citing Louisiana's high cancer mortality rates despite sharing similar contraction rates to other states.<sup>74</sup>

After Landrieu introduced HB 157, Senator Diane Bajoie (D-New Orleans) spoke in support of funding a cancer center. She recounted the experiences of people she witnessed receiving treatment for cancer, particularly minors, while she received treatment for her own cancer. Bajoie felt the center could conduct research to prevent and cure such illnesses:

I think [there is] no better instrument to tax than cigarettes. And you know I was a smoker. But I bet none of those children smoked. I know they weren't smokers. So I think we have a great opportunity to take and tax an industry that has been proven to be somewhat at fault. They're not the only industry at fault. But I think with this money going to research, to this research center, we can find other reasons why people are getting cancer.<sup>74</sup>

She told committee members that HB 157 was a bill they could proudly acknowledge their vote on later.<sup>74</sup>

CTFLA and LSU's Dr. Charles Brown, LSU's Oliver Sartor, and Tulane University's Roy Weiner promoted HB 157 as a vehicle to improve Louisiana's cancer research, cancer treatment, and public health in comments at the hearing. During their testimony, Weiner stated that cancer mortality rates in Louisiana were high, and that NCI-level cancer centers provided excellent cancer prevention and research in areas they resided. Sartor asserted that HB 157 provided state lawmakers a rare moment to save lives. Brown discussed tobacco taxation in the south, and health advocates' desires for using new cigarette tax revenue in Louisiana:

An increase in the excise tax is a very good weapon to discourage individuals from first starting. The average tax on a pack of cigarettes in non-tobacco [growing] states is 47¢. The average tax in Arkansas is 34¢, the tax in Texas is 41¢, the tax in Mississippi is 18¢ and there are two bills in the Mississippi legislature as we speak to raise that either to add an additional 25¢ or 50¢ to that....We envision three things to be started under these monies. The first is to create an administrative structure including a statewide multidisciplinary board to oversee comprehensive tobacco control in the state. This will include

"An increase in the excise tax is a very good weapon to discourage individuals from first starting."

organizations that are currently working in this field, including the Office of Public Health. The second is to fund a statewide mass media program utilizing the information that has already been created by our sister states [Mississippi] and that have been offered to us free of charge. And finally to institute a smoking cessation/prevention program in the public hospital system.<sup>74</sup>

Brown stated they were interested in targeting expecting mothers and cancer patients with the hospital program.<sup>74</sup> Other public health proponents that endorsed HB 157 at the hearing but did not speak included representatives from the Louisiana State Medical Society, American Cancer Society, and the Governor's Office.<sup>74</sup>

As the hearing progressed, Representative Robert Faucheux (D-LaPlace) suggested to Representative Landrieu that the legislature should increase the tax by at least \$1.00 to as much as \$1.50 per pack of cigarettes if the bill sought to reduce smoking prevalence and initiation. Faucheux argued that minimally raising the tax failed to solve the tobacco problem. He went on to question Landrieu on what the state did with the monies from the Master Settlement Agreement, asking, "Didn't we put some of that money into cessation programs?" Landrieu responded, "This legislature chose not to do that."<sup>74</sup> Replying to Faucheux, Landrieu stated he was trying to have a passable tax increase and would go as high as votes needed to pass it allowed.<sup>74</sup>

### ***House Ways and Means Committee Amendments to HB 157***

After HB 157 proponents testified, the House Ways and Means Committee considered an amendment from Landrieu to increase the cigarette tax hike in HB 157 from 4¢ to 7¢ per pack. Landrieu explained that the original calculation found a 4¢ increase would raise \$24 million annually when it actually generated \$16 million.<sup>74</sup> The amendment dedicated 72% (5¢) of new revenue to funding Tulane and LSU's future cancer center in New Orleans as well as development and implementation of smoking cessation and prevention media and hospital programs.<sup>66</sup> The remaining portion of revenue (28%, 2¢) went towards the LSU Health Sciences Cancer Center in Shreveport.<sup>66</sup> The House Ways and Means Committee approved Landrieu's amendment.

Next, committee member Karen Carter Peterson (D-New Orleans) offered an amendment to increase the cigarette pack tax another penny per pack and dedicate resulting revenue to the Department of Health and Hospitals Office of Addictive Disorders for addiction treatment.<sup>74</sup> The amendment was similar HB 177, a bill Peterson introduced that session that increased tobacco taxes and also dedicated revenue to the DHH's Office of Addictive Disorders. Unlike HB 157, Peterson's legislation also increased taxes on cigars and smokeless tobacco. She did not propose the change to HB 157 to replace her bill. The Committee adopted Peterson's amendment, raising the cigarette tax from 7¢ to 8¢ per pack.

After the House Ways and Means Committee considered amendments, Representative Taylor Townsend (D-Natchitoches) expressed caution on the tobacco tax increase. He questioned if Tulane and LSU were willing to work together, prompting

Sartor and Weiner to confirm they would.<sup>74</sup> Townsend also suggested that the cigarette tax acted like a flat tax that could possibly shrink over time if the tobacco program proposed by Brown was effective, and thus limit funds for the joint cancer center. LSU cancer center director Sartor replied that they hoped Brown's proposed tobacco control programming was successful and that revenue decreased over time because of reduced tobacco use and the product's harmful health impacts. Sartor also claimed the National Cancer Institute designation that cancer center proponents sought allowed Louisiana to leverage funds and better compete with other states. Tulane cancer center director Weiner added that the NCI designation provided further leverage by making the state competitive for partnerships with private interests. Brown claimed the bill allowed Louisiana to establish a centralized tobacco control program similar to Mississippi's.

During consideration, Committee member Willie Hunter (D-Monroe) asked Landrieu, Brown, Sartor and Weiner if they were open to an amendment expanding tobacco control programming to schools. Hunter felt the amendment would educate youth, who were targeted by the tobacco industry. Brown expressed awareness of tobacco industry targeting of youth but explained that tobacco control did not receive enough revenue from HB 157's dedication to conduct programming in schools. He claimed that tobacco control proponents would revisit programming in schools after other revenue streams were located and a committee to steer the new tobacco control initiative formed. Regardless, Hunter offered an amendment to include public schools in HB 157's tobacco control programming alongside public hospitals that the House Ways and Means Committee adopted.

Next, Representative Billy "Coach" Montgomery (D-Bossier City) inquired about Landrieu's receptiveness to him amending HB 157 to increase the cigarette tax to provide Louisiana State Police a salary increase.<sup>74</sup> Landrieu resisted the amendment's inclusion, because another bill featured the tax increase and that bill's sponsor disliked its possible inclusion in HB 157 (Likely HB 221 by Representative Charlie Dewitt Jr., which raised gaming taxes to provide the state police a salary increase.<sup>75</sup>) Montgomery did not offer the amendment.

Committee member Rick Farrar (D-Pineville) subsequently asked Landrieu, Brown, Sartor and Weiner how much Master Settlement Agreement money was currently allocated to tobacco control programming.<sup>74</sup> Landrieu replied that to his knowledge the MSA provided no funding to tobacco control programming in Louisiana. Farrar doubted that HB 157 adequately funded cancer and tobacco control programming at rates proposed in the bill. He also cautioned against starting a new program that would be immediately susceptible to spending cuts or that would rob funding from existing programs. Landrieu added that a model tobacco control program needed over \$20 million in annual revenue but needed any possible funding to start. He also argued the program saved Louisiana healthcare costs incurred from treating tobacco-related illnesses. Landrieu expressed doubt that more tobacco control program funding could be secured in HB 157. In addition, he asserted HB 157 provided the tobacco control program dedicated money, protecting it from funding issues. Landrieu also argued that creation of a cancer

center would create a new industry in Louisiana that would bring the state additional funds. Farrar doubted Landrieu's claims.

After talking with Landrieu, Farrar offered an amendment to increase the cigarette tax another 2¢. The proposal dedicated revenue from one penny towards the DARE youth drug prevention program and the other towards the Agricultural Center at LSU.<sup>74</sup> The House Ways and Means Committee adopted Farrar's amendment, raising the cigarette tax increase from 8¢ to 10¢ per pack (from 24¢ to 34¢ total per pack).

Following Farrar, Committee member Carla Blanchard Dartez (D-Morgan City) expressed displeasure that only cigarettes faced tax increases and not cigars.<sup>74</sup> She then offered an unrelated amendment to add another 2¢ to HB 157's cigarette tax increase that dedicated resulting revenue to the Louisiana State Police for a salary increase. Landrieu said he was open to the amendment if the committee felt the bill was feasible but expressed concern about overloading the legislation. During consideration of Dartez' amendment, Landrieu told committee members, "I'm about trying to get enough votes to pass something, so I'll go as high as you can get the votes for. I think I can carry a bill with about 10 wheels on it. I get a little nervous when I get to 15 or 20."<sup>74</sup> The House Ways and Means Committee approved the amendment. Dartez' amendment generated \$8 million annually, half the amount needed to provide troopers a salary increase.<sup>76</sup>

"I'm about trying to get enough votes to pass something, so I'll go as high as you can get the votes for. I think I can carry a bill with about 10 wheels on it. I get a little nervous when I get to 15 or 20."

### ***Opponents Argue Against HB 157 at House Ways and Means Hearing***

After the House Ways and Means Committee considered amendments, tobacco industry representatives and allied lobbyists argued against increasing tobacco taxes. Louisiana Wholesaler Tobacco Association lobbyist Sarah Whalen, Philip Morris lobbyist Randy Haynie and RJ Reynolds lobbyist CJ Blache opposed HB 157 at the hearing alongside other Louisiana wholesalers and retailers (Table 11.5).

Arguments against HB 157 included claims that people will purchase tobacco from businesses in neighboring states or from the internet instead of Louisiana businesses to avoid higher taxes, that existing tax rules were not adequately enforced, that customers will use lower quality products to reduce costs, that the state would lose tax revenue from reduced sales, and that tobacco is an adult product people choose to use.<sup>74</sup> Opponents also argued that HB 157 singled out around a fifth of Louisiana's population, smokers, to pay for programs benefitting all residents. They added that tobacco was already taxed at high rates and smokers paid hundreds of millions in taxes.

Tobacco industry lobbyists mainly claimed HB 157 unfairly targeted smokers and the tobacco industry. RJ Reynolds lobbyist CJ Blache argued that the cigarette tax was regressive because it levied an increase on smokers, a majority of whom were poor.<sup>74, 79</sup> Blache also

asserted the tax in HB 157 treated the tobacco industry discriminatively and unfairly by insinuating tobacco products were the only cause of cancer.<sup>74</sup> He complained that other industries harmful to human health were not taxed, and that revenue from HB 157's tax increase would go towards unrelated programs (Table 11.5). Altria lobbyist Randy Haynie also argued HB 157's tax increase unfairly targeted the tobacco industry.<sup>74</sup> He complained that existing cigarette taxes were already high, that the proposal unfairly targeted a minority of Louisiana's population, and that high tax rates spurred tax evasion.

After the tobacco company lobbyists testified, HB 157 sponsor Mitch Landrieu questioned them over their assertions the tobacco tax was unfair.<sup>74</sup> Landrieu asked Haynie and Blache why the chemical and gaming industries should not be targeted for tax increases. Haynie represented Caesars Entertainment Operating Company, Inc, New Orleans Saints Limited Partnership, Greater New Orleans Sports Foundation, and Louisiana Oilfield Contractors Association. Two of CJ Blache's clients, Chevron and BP America, were in the petro-chemical industry. Both were reluctant to agree to Landrieu's suggestion. Blache retorted that he and Haynie would not target other industries on the stand but could share a list with Landrieu in private. Landrieu subsequently debunked Blache and Haynie's assertions the tobacco tax increase unfairly targeted smokers to pay for services used by all Louisianans, arguing that Louisianan's paid \$2 billion annually in taxes to treat tobacco-related illnesses. Haynie replied that they did not want other industries taxed. He claimed that the tobacco industry and smokers already paid \$224 million in taxes and Master Settlement Agreement payments, and questioned Landrieu about how much of that revenue went towards healthcare. Landrieu replied:

Let me answer that question because you know as well as I do because you helped draft the bill. The Millennium Trust two years ago, 55% of it went into the state general fund, and you know in the state general fund the majority of that goes into healthcare, or primary and secondary education, but I can understand that tobacco doesn't think that's important too. Alright, and then it goes--and then some money the next year gets 65% and then 75%, and the corpus of that trust fund is held in perpetuity so that we can have lots of money in the future so that we don't have to come back to you. And 30% as you know is spent on healthcare related issues.<sup>74</sup>

Haynie again asserted that smokers paid Louisiana \$224 million annually. Landrieu attacked Haynie's claim, telling him and attendees at the House Ways and Means hearing that the \$224 million received each year came from MSA payments based on participating tobacco companies' global sales. Representative Landrieu asked Haynie if cigarette prices had raised over the past three years. Haynie replied they had because of tax increases and the MSA.

After limited questions from committee member Robert Faucheux to Blache and Haynie, as well as testimony from tobacco retailers Thomas Gross and John Dan Gielen, Landrieu provided closing comments on HB 157. He told the committee he respected tobacco interests and their concerns, as well as those of PM Representative Randy Haynie and RJR representative CJ Blache. Landrieu noted Haynie and Blache's ability to protect their chemical and gaming industry clients from exposure to tax increases while fighting HB 157. Landrieu also argued the tobacco industry underpaid society relevant to the costs it inflicted upon it, and asserted HB 157 provided funding for an appropriate tobacco control program.



Table 11.5: Opponent Arguments Against HB 157 at House Ways and Means Hearing<sup>74, 77, 78</sup>

Lobbyist	Affiliation	Arguments Against Proposed Tax Increase														
		Harms Tax Revenue	Push People to Buy Cheaper, Low End Products	Tax Increases Economically Harmful	Tax Increases Create Competitive Disadvantage with Neighboring States	Not Collecting Current Tax Revenue	High Rates Drive Tax Evasion	Existing Taxes Already High / Smokers Pay Significant Taxes	Tax Funds Items Unrelated to Tobacco	Smoking is a Personal Choice	Other Products Cause Harm and are Not Taxed	Tobacco Tax Increases are Regressive	Tax Unfairly Profiles / Prejudiced Against Smokers	Tax Increase Does Not Deter or Reduce Use	Targets Minority Group of Louisiana Population	Other
Sarah Whalen	Louisiana Wholesale Tobacco			+											+	<ul style="list-style-type: none"><li>Only industry hit by tax two years before.</li><li>Harms state businesses while the state lures outside companies.</li></ul>
Robert Hale	Lee Dee Wholesale Distributing	+	+	+	+		+									<ul style="list-style-type: none"><li>Companies based in Texas and Mississippi (settled outside MSA) undercutting prices.</li><li>Louisiana has higher tax rate for smokeless tobacco compared to southern region</li></ul>
Thomas Gross	National Association of Tobacco Outlets Vice President Tommy Gross	+	+								+				+	<ul style="list-style-type: none"><li>Should tax soda, since all Louisianans drink it.</li><li>Not collecting taxes on internet sales, which have cost brick and mortar Louisiana businesses</li></ul>

John Dan Gielen	Shop-Rite stores							+								
Keith Landing	Louisiana Wholesale Association	+		+		+	+	+								
Randy Haynie	Philip Morris						+	*	+						+	<ul style="list-style-type: none"> <li>Tobacco industry stood up in past and accepted tax increase to help state during budget crisis in 1990 (Chapter 6).</li> <li>Industry not opposing 4¢ tax renewal being considered that session. Unfair to tobacco industry.</li> </ul>
CJ Blache	RJ Reynolds								+	+	+	+	+		+	
*Implied by stacking up the amount smokers are already paying combined with sales tax.																

Following Landrieu's comments, committee members voted 15-0 to send HB 157 to the House Floor. HB 157 rose from a 4¢ per pack increase to a 12¢ hike, which took the total tobacco tax from 24¢ to 36¢ per pack.

Representatives brought HB 157 to the House Floor for consideration on May 23, 2002,<sup>66</sup> proposed no amendments to the bill, and voted 85-12 to send it to the Senate.

### ***HB 157 Backers Divide Future Tax Revenue between the Cancer Center and Tobacco Control***

Before Senators considered HB 157, supporters met in Senate President John Hainkel's office to allocate tax increase revenue. Hainkel had sponsored SB 73, the bill mandating creation of LSU and Tulane's joint cancer center in New Orleans. Representative Landrieu, House Speaker Charles Dewitt, Senator Hainkel, CTLFA Chairman Brown, LSU and Tulane Presidents and Chancellors, Senator Greg Tarver (D-Shreveport) and possibly others attended the gathering.<sup>62</sup> According to Brown in a 2014 interview for this report, cancer center advocates convinced backers to allocate more tax revenue to the cancer center than tobacco control programming:

...so they decided that of those 12 pennies, 5 ought to come to New Orleans [for the cancer center and tobacco control programming]. Originally they were going to give three to tobacco control and two to cancer. But the cancer people spoke up. I didn't know what I was doing. I was just sitting there. I was just a kid.<sup>62</sup>

"... so they decided that of those 12 pennies, 5 ought to come to New Orleans. Originally they were going to give three to tobacco control and two to cancer. But the cancer people spoke up. I didn't know what I was doing. I was just sitting there. I was just a kid."

Meeting attendees also agreed to provide funding to the Southern University Agricultural Research and Extension Service. Brown indicated in a 2014 interview for this report that the inclusion of Southern University into HB 157 resulted from the influence of Senator Greg Tarver (D-Shreveport):

We were talking and there was a very prominent African American senator from northern part of the state named Greg Tarver. And he says, "Doc, how much is in it for Southern?" [A historically African American college]. I said I don't know how much is in it. He says, "Take this telephone number down. This is my brother [Dr. Leon R. Tarver II, acting president of the historically black college Southern University in Baton Rouge]. You call him tomorrow and tell him what you're going to give him."<sup>62</sup>

Leon Tarver also served as a state senator from 1984-2004 and sat on the Joint Legislative Committee on Budget, the Senate Finance Committee, and acted as Vice Chairman of the Local and Municipal Affairs Committee, and the Chairman of the Senate Insurance Committee from 1992 until 2004. The Southern University Agricultural Research and Extension Service

subsequently received a \$1 million annual dedication in cigarette tax revenue from an amendment made to HB 157 during its Senate Revenue and Fiscal Affairs Committee hearing.

The meeting determined the ultimate allocation of revenue generated by the 12¢ per pack increase in HB 157. Stakeholders decided to assign 5¢ of revenue per pack to the LSU / Tulane joint cancer center in New Orleans, with 2 of those 5¢ dedicated specifically to tobacco control programming. Participants also allocated 2¢ to the LSU Shreveport Cancer Center, 1¢ to the Louisiana Department of Health and Hospitals Office of Addictive Disorders, 1¢ to the LSU Agricultural Center (of which \$1 million would go to the Southern University Agricultural Research and Extension Service), 1¢ to the DARE drug prevention program, and 1¢ towards state police raises. The division of revenue benefitted interrelated public health efforts and provided stable annual funding for tobacco control. The agreed allocation was incorporated into HB 157 during its Senate Committee hearing.

### ***The Senate Revenue and Fiscal Affairs Committee Considers HB 157***

The Senate assigned HB 157 to the Revenue and Fiscal Affairs Committee for consideration. Senate President and SB 73 sponsor John Hainkel was an *ex officio* member of the Senate Revenue and Fiscal Affairs Committee, providing HB 157 an ally during its hearing. Most committee members had received \$1000 or more in campaign contributions from the tobacco industry in the 1980s and 1990s through the 2003 election cycle (Chapter 3).<sup>45</sup>

The Senate Fiscal and Revenue Affairs Committee considered HB 157 on May 29, 2002, where Philip Morris lobbyist Randy Haynie and RJ Reynolds lobbyist CJ Blache testified against the bill.<sup>80</sup> Haynie argued that HB 157's 12¢ tax increase, combined with a 4¢ increase passed in 2000, raised the tax 70% in two years. He added that smokers already paid an additional 30¢ per cigarette pack in sales tax and complained that for multiple years the alcohol industry had avoided tax increases on its products. According to an article from *The Advocate*, at the hearing RJR lobbyist CJ Blache asserted to committee members: "I'm talking about fairness in taxation. There are other products that have not been taxed, taxes we haven't looked at. It's just easy to pound on cigarettes."<sup>80</sup> Blache stated that HB 157 overtaxed smokers. He complained that the bill's various revenue dedications made it difficult to fight.

Senators expressed support for HB 157 at the Senate Fiscal and Revenue Affairs Committee hearing. Senator Greg Tarver (D-Shreveport), who had convinced HB 157 backers to allocate revenue to Southern University, told the committee he supported the bill because of smoking's cancer-causing effects.<sup>80</sup> Senator Diane Bajoie also commented in support of HB 157, stating it provided funding for cancer research. She noted her own experience with cancer and her desire to prevent others from contracting it. Bajoie stated HB 157 was the first tobacco tax she backed as a state lawmaker. We did not find evidence that health advocates spoke in support of HB 157 at the hearing.

During debate, the committee adopted a package of amendments from Mitch Landrieu that apportioned the 5¢ revenue dedication to the LSU/Tulane joint cancer center in New Orleans and tobacco control programming. The change allocated 3¢ towards the cancer center and 2¢ to tobacco control programming (Table 11.6). Landrieu's amendment also expanded tobacco

Table 11.6: Allocation of HB 157 Cigarette Tax Revenue Throughout Legislative Process <sup>66</sup>						
	Original	House Committee	House	Senate Committee	Senate	Adopted
LSU / Tulane New Orleans Cancer Center	4¢	5¢	5¢	3¢	3¢	3¢
Tobacco Control Programming				2¢	2¢	2¢
LSU Shreveport Cancer Center	--	2¢	2¢	2¢	2¢	2¢
DHH OAD	--	1¢	1¢	1¢	1¢	1¢
LSU Agricultural Center	--	1¢	1¢	1¢ - \$1 million in revenue to SU Ag Research and Extension Service	1¢ - \$1 million in revenue to SU Ag Research and Extension Service	1¢ - \$1 million in revenue to SU Ag Research and Extension Service
Southern University	--	--	--			
DARE	--	1¢	1¢	1¢	1¢	1¢
State Police	--	2¢	2¢	2¢	2¢	2¢
Total	4¢	12¢	12¢	12¢	12¢	12¢

control programming to include “community development programs” alongside public hospital and school programs, and provided \$1 million in annual funding from the 1¢ revenue dedication to the Louisiana Agricultural Center to Southern University for tobacco control programming.<sup>66</sup> Revenue dedications to state trooper pay raises (2¢), the DHH Office of Addictive Disorders (1¢), and D.A.R.E (1¢) remained unaltered. The changes reflected decisions made by HB 157 stakeholders at the meeting in Senator Hainkel’s office to allocate revenue. The Committee then advanced HB 157.

Instead of going to the Senate Floor, HB 157 went to the Committee on Finance and received another hearing on May 31, 2002.<sup>66</sup> During consideration, the Committee proposed two amendments to HB 157 requiring the Tulane/ LSU joint cancer center and LSU Shreveport cancer center to share any income generated by their property, intellectual or otherwise, with the state.<sup>81</sup> The amendments did not affect HB 157’s cigarette tax increase or allocation of its revenue. After approving the amendments, the Committee passed HB 157 to the Senate Floor.

### ***HB 157 on the Senate Floor***

The Senate debated HB 157 on May 31, 2002, where it faced a receptive audience. To generate support for the legislation, the bill’s co-sponsor Diane Bajoie told the chamber of her experience battling cancer and emphasized that the cigarette tax dedicated revenue to cancer research.<sup>76</sup> Other senators also stated their support for HB 157 while the bill was up for consideration. Senator Lynn Dean (R-Caernarvon) supported HB 157 despite generally opposing tax increases. She reasoned that tax payers have to cover the costs of indigent smokers unable to afford healthcare bills because of the “money they wasted on cigarettes.”<sup>76</sup> Senator Butch Gautreaux (D-Morgan City) also advocated for HB 157 on the Senate Floor, asserting “I don’t think this tax is enough. We should make these cigarettes impossible to afford.”<sup>76</sup> Supporters of HB 157 outnumbered opponents of the cigarette tax increase in the Senate. Senator Fred Hoyt (D- Abbeville), who owned several convenience stores, opposed HB 157 during debate.<sup>76</sup> Hoyt argued that Louisiana generated significant revenue from existing cigarette taxes, reporting that

the state had earned \$137 million total from sales taxes (\$39 million) and excise taxes (\$98 million) on cigarettes in 2001.<sup>76</sup>

Lawmakers considered two amendments to HB 157 on the Senate Floor.<sup>66</sup> Senator John Hainkel proposed reallocating revenue from the 5¢ tax increase in HB 157 that was split between the joint cancer center and tobacco control programming to give tobacco control programming 48.2% of funds instead of 29.2% and the Tulane/LSU joint cancer center 29.2% instead of 48.2%. Senator Don Cravins (D-Lafayette) introduced an amendment to make HB 157's tax source alcoholic beverages instead of tobacco. During the 2002 legislative session, efforts to increase alcoholic beverage taxes had been unsuccessful.<sup>82-84</sup> Hainkel and Cravins both withdrew their amendments.

After discussing HB 157, Senators voted 36-2 to adopt the bill<sup>85</sup> and sent the bill back to the House for approval of changes made in the Senate.

### ***Back to the House for Final Vote***

The House weighed Senate amendments to HB 157 on June 4, 2002. Amidst debate, Representative Troy Hebert's (D-Jeanerette) motioned to postpone voting on the bill.<sup>86</sup> The chamber rejected Hebert's request 50-49, causing Landrieu to question whether HB 157 had enough support to pass. Landrieu postponed a vote on HB 157 by returning it to calendar after representatives debated HB 157 for 30 minutes.<sup>86</sup> Before the House brought HB 157 back for debate, representatives considered HB 177 by R Karen Carter Peterson (D-New Orleans), which also sought to increase taxes on cigarettes as well as other tobacco products.

### **Another Tobacco Tax Bill: HB 177**

Representative Karen Carter Peterson prefiled HB 177, another bill to increase tobacco taxes, on April 26, 2002. After being reported to the House Committee on Ways and Means on April 29, the bill languished without consideration until June. HB 177 increased taxes on cigarettes by 4¢ per pack and raised the percentage taxed on invoice prices to 10% for cigars priced at \$120 or less per 1,000, 22% for cigars invoiced over \$120 per 1,000, 35% for loose leaf tobacco, and 22% for smokeless tobacco.<sup>87</sup> HB 177 did not allocate revenue from its proposed increases.

The House Ways and Means Committee considered HB 177 on June 6, 2002 and raised the bill's tobacco tax increases despite industry opposition. At the hearing, RJR lobbyist CJ Blache argued that HB 177 unfairly targeted smokers since they were already taxed.<sup>88</sup> PM lobbyist Randy Haynie claimed HB 177 was "absolutely punitive to almost 25 percent of our citizens (who smoke)." Tobacco industry arguments failed to move the House Ways and Means Committee, which offered an amendment to raise HB 177's cigarette pack tax increase another 4¢ to levy an 8¢ hike (Table 11.7).

PM lobbyist Randy Haynie claimed HB 177 was "absolutely punitive to almost 25 percent of our citizens (who smoke)."

Table 11.7: Original Tax Rates and Tax Rates Proposed by HB 177 for Tobacco Products <sup>87</sup>			
Tobacco Product	Existing Tax Rates	HB 177 Proposed Tax Rates as Introduced	HB 177 with Ways and Means Amendments
Cigarettes Per Pack	20¢	24¢	28¢
Cigars Invoiced at \$120 or Less Per 1000 by Producer	8 % of invoice price	10% of invoice price	10% of invoice price
Cigars Invoiced at \$120 or More Per 1000 by Producer	20% of invoice price	22% of invoice price	22% of invoice price
Loose Leaf Tobacco	33% of invoice price	35% of invoice price	
Smokeless Tobacco	20% of invoice price	22% of invoice price	22% of invoice price

The Committee also passed an amendment extending the sunset date for HB 117's temporary 4¢ cigarette tax increase passed in 2000<sup>89</sup> from 2002 to 2004.<sup>89</sup> The committee changed HB 177's funding targets, allocating 4¢ per cigarette pack to the Department of Health and Hospitals for payments to medical retailers, 3.5¢ per pack to the Department of Culture, Recreation and Tourism in the office of state parks, and half a cent per pack to be split between the Louisiana Games and Louisiana High School Athletic Association.<sup>87</sup> The Committee then voted 7-5 to report HB 177 favorably to the House Floor.<sup>88</sup> HB 177 stalled after leaving committee, dying upon adjournment without additional consideration.

### HB 157 is Adopted into Law

HB 157 returned to the House Floor for reconsideration on June 10, 2002. State police officers, who would receive a salary increase if the bill passed, watched legislators debate the bill from the visitors' gallery.<sup>86</sup> HB 157 proponents, in particular State Police, had intensified lobbying efforts on HB 157 the week of the vote.<sup>86</sup> After less than a minute of debate, representatives voted 84 to 18 to adopt HB 157.<sup>86, 90</sup> HB 157 sponsor Mitch Landrieu credited passage to the various interests behind the bill, telling *The Times-Picayune* that, "The only way you can pass legislation of this magnitude against such a fierce opposition is to create a coalition of people who have a common purpose."<sup>86</sup>

"The only way you can pass legislation of this magnitude against such a fierce opposition is to create a coalition of people who have a common purpose."

Governor Murphy Foster subsequently signed HB 157 on June 18, 2002, which became effective July 1, 2002.<sup>66</sup>

As adopted, HB 157 increased the state cigarette tax from 24¢ per pack to 36¢, a 12¢ hike (Table 11.8).<sup>66</sup> The legislature dedicated the revenue to funding cancer centers and cancer research, substance abuse treatment and prevention, and salary increases for state police. In addition, HB 157 provided money for tobacco control programming outside of DHH's LTCP, which was considered ineffective by health advocates and had a strained relationship with them (Chapter 4) (Table 11.9).

HB 157's tax increase generated \$27 million in revenue from July to December 2002 and \$45 million for FY2 2003,<sup>76</sup> providing approximately \$7 million to funding tobacco control programming (Table 11.10). The tobacco tax increase secured by the Coalition for a Tobacco-

Table 11.8: HB 157 Evolution Through the Legislature<sup>66</sup>

	Total Cigarette Tax Rate Per Pack	Increase Amount Per Pack	Allocation of New Revenue Per Pack		
			Funding Target	Amount	
Existing Tax Rate Per Pack	24¢	--	--	--	
HB 157 Original	28¢	4¢	LSU / Tulane Joint Cancer Center and smoking cessation	100%	
HB 157 House Ways and Means Committee	36¢	7¢	LSU/Tulane Cancer Center and tobacco programming	72%	
			LSU Health Sciences Center Shreveport	28%	
		5¢	DHH Office of Addictive Disorders	20%	
			LSU Agricultural Center	20%	
			DARE drug prevention programs	20%	
			State Police	40%	
HB 157 House Floor	36¢	7¢	--	--	
		5¢	--	--	
HB 157 Senate Committee Revenue and Fiscal Affairs	36¢	7¢	LSU / Tulane Joint Cancer Center and smoking cessation program creation by Southern University Board of Supervisors	42.8	
			Tobacco control programming	29.2%	
			LSU Health Sciences Center Shreveport	28%	
		5¢	DHH Office of Addictive Disorders	20%	\$1 million to SU
			LSU Agricultural Center and Southern University	20%	
			DARE drug prevention programs	20%	All remaining LSU Ag
			State Police	40%	
HB 157 Senate Committee on Finance	36¢	7¢	--	--	
		5¢	--	--	
HB 157 Senate	36¢	7¢	--	--	
		5¢	--	--	
HB 157 as Adopted	36¢	7¢	LSU / Tulane Joint Cancer Center and smoking cessation program creation by Southern University Board of Supervisors	42.8	
			Tobacco control programming	29.2%	
			LSU Health Sciences Center Shreveport	28%	
		5¢	DHH Office of Addictive Disorders	20%	\$1 million to SU
			LSU Agricultural Center and Southern University	20%	
			DARE drug prevention programs	20%	All remaining LSU Ag
			State Police	20%	
--No changes occurred (revenue allocation remained same).					



Table 11.9: Breakdown of the 12¢ Cigarette Tax Revenue Allocation <sup>66, 76</sup>		
Program	Portion of Tax	Annual Appropriation
LCRC	\$.03	\$12 million
Tobacco Control Programming	\$.02	\$7.5 million
LSU Agricultural Center and the Southern University Agricultural Research and Extension Center	\$.01	\$3.5 million
D.A.R.E	\$.01	\$3.5 million
LSU Health Sciences Cancer Center (Shreveport)	\$.02	\$7.5 million
Department of Public Safety and Corrections	\$.02	\$7.5 million
DHH, Office of Addictive Disorders	\$.01	\$3.5 million
Total	\$.12	\$45 million

Table 11.10: Comparison of Existing Taxes and Tax Rates Proposed by HB 75 <sup>124</sup>		
Tobacco Product	Existing Tax	HB 75 Tax
Cigarettes	36¢ per pack	\$1.36 per pack
Cigars Invoiced at \$120,000 or Less Per 1,000	8% of invoice price	12% of invoice price
Cigars Invoiced at More Than \$120,000 Per 1,000	20% of invoice price	30% of invoice price
Loose Leaf Tobacco	33% of invoice price	49.5% of invoice price
Smokeless Tobacco	20% of invoice price	30% of invoice price

Free Louisiana led to the creation and sustained funding of the tobacco control program the Louisiana Campaign for Tobacco-Free Living, which was instrumental in securing smoking restrictions at the state and local level (Chapters 4, 10 and 12).

## **Governor Kathleen Blanco Pursues a Tax Increase in 2005 to Increase Teacher Pay**

### ***The Governor Develops Legislation to Fulfill a Campaign Promise***

In 2005, Governor Kathleen Blanco (D) pursued a cigarette tax increase to fulfill campaign promise she made to fund a pay raise for Louisiana’s teachers in her successful 2003 election bid.<sup>91</sup> Louisiana teachers received on average \$38,700 in annual pay in 2005, \$4000 below the average \$42,600 educator salary in the south and \$10,000 below the national average.<sup>92</sup> Blanco decided to pursue sin tax increases to provide educators a pay raise in the midst of a budget crisis.<sup>93</sup>

Tobacco control advocates gave Governor Blanco her idea to increase tobacco taxes to fund an educator pay raise, but remained mostly uninvolved during the ensuing legislative battle.<sup>65</sup> According to LPHI Policy Manager Eric Vicks in a 2019 interview for this report, CTFLA brought up the idea of a cigarette tax to Blanco’s Administration. Advocates floated dedicating tax revenue to tobacco control programming, but the Administration ultimately introduced cigarette tax increase legislation that dedicated revenue to raising educators’ salaries.

Blanco revealed her administration was investigating raising excise taxes on tobacco, alcohol, and gaming to finance a teacher salary increase during a speech to the Baton Rouge

Rotary Club on February 23, 2005. The administration considered raising teacher salaries \$1000, possibly followed by wage hikes in subsequent years to bring Louisiana around the southern state average.<sup>92</sup> She did not intend to secure pay raises for school staff, which the Louisiana Association of Educators sought. Blanco's proposal paled in comparison to the \$6000 raise applied over 3 years desired by the Louisiana's two biggest teacher unions.<sup>94</sup> At the press event Blanco did not reject providing educators a \$2000 raise, the baseline salary increase advocated for by the Louisiana Federation of Teachers union.<sup>92</sup> The tax increases provided for a salary hike despite the state having a \$200-400 million budget deficit that year.<sup>93</sup>

As Blanco mulled boosting excise taxes, the Baton Rouge *Advocate* published an article on March 9, 2005 regarding tobacco taxes and tobacco control funding that supported a cigarette tax increase. It used information from the Centers for Disease Control and Prevention (CDC), the Campaign for Tobacco-Free Kids (CTFK), TFL, and TFL Director Dr. Thomas Houston<sup>95</sup> to report that smoking in Louisiana (excluding second hand smoke's contribution) cost Louisiana \$1.35 billion in direct healthcare costs, including \$611 million from Medicaid, to treat tobacco-caused illnesses. *The Advocate* also included a CTFK finding that smoking cost the state \$1.79 billion in lost economic productivity. The article reported TFL statistics that 36.4% of Louisiana teenagers smoked compared to the 22.9% national average and that smoking would kill approximately 107,900 minors in the state prematurely. *The Advocate* provided information from TFL that 26.5% of Louisiana adults smoked, above the 22.5% average nationwide and resulting in 6,400 deaths annually. The article included information from TFL Director Houston that a 10% increase in cigarette pack prices lowered smoking rates among youth 7% and adults 4%. Houston also told *The Advocate* that tobacco control programming received \$11.3 million in Louisiana that fiscal year, well below the CDC's \$27 million annual recommendation for the state.

Blanco's tobacco tax proposal initially received a tepid reception from Louisiana's education community and lawmakers. By early March the Blanco Administration considered increasing the cigarette tax to generate approximately \$70 million for teacher pay raises,<sup>96</sup> the amount of revenue it determined necessary to provide \$1000 salary increases.<sup>93</sup> Blanco's Administration openly considered pursuing alcohol and gaming taxes to secure a total of \$120 million for teacher pay raises.<sup>96</sup> Education representatives found the proposal lackluster, feeling the wage hike was inadequate and tobacco an unreliable revenue source.<sup>96</sup> Democratic state lawmakers were bewildered by Blanco's proposal since they already planned to use a cigarette tax increase to help address Louisiana's \$300 million Medicaid deficit. Republican legislators viewed the tax increases as an opportunity to fight Blanco.

Health voluntaries and tobacco control programs advocated for a cigarette tax increase while Blanco's administration developed its sin tax plan. The American Lung Association, American Cancer Society, and various organizations actively supported a tobacco tax increase.<sup>97</sup> In a March 25, 2005 *Times-Picayune* article, ALA of Louisiana Executive Director Thomas Lotz explained, "We are always interested in reducing consumption. You will see a decrease in consumption in the long run."<sup>97</sup> While voluntaries advocated for a cigarette tax hike, TFL provided data supporting a tax increase to the Blanco Administration and state lawmakers interested in pursuing tobacco tax increases during 2005.<sup>98</sup>

In late March, Governor Blanco announced her administration was contemplating doubling the state cigarette tax from 36¢ to 72¢ per pack,<sup>97</sup> which would generate between \$70 and \$80 million annually to provide primary and secondary school teachers a \$1,300-\$1,400 raise.<sup>97</sup> ALA of Louisiana Director Lotz praised Blanco's plan claiming it reduced smoking.<sup>97</sup> Lotz asserted the cigarette tax hike especially deterred cash-strapped youth from purchasing tobacco.

As details of the Governor's cigarette tax hike came out, support increased from education proponents. Louisiana Federation of Teachers CEO Steve Monaghan signaled support for increasing the tobacco tax to fund educator and school staff pay increases after Blanco hinted at doubling the tax. LFT subsequently revealed it sought at least a \$2,000 salary increase for educators during the 2005 legislative session.<sup>99</sup> The union also asserted that school staff should receive a minimum \$1,500 pay hike. As introduced, the Blanco administration's cigarette tax increase legislation failed to dedicate revenue.

### ***The Blanco Administration Files Cigarette Tax Bill HB 437***

On behalf of Governor Blanco, Representative Bryant Hammett (D-Ferriday) prefiled HB 437 on April 14, 2005 to raise the cigarette tax 50¢ per pack (to 86¢ total).<sup>100</sup> The bill, projected to generate \$87.8 million annually,<sup>101</sup> did not dedicate revenue despite being advertised as a pay raise vehicle for teachers.<sup>100, 101</sup> HB 437 was coordinated with two other bills to increase taxes on alcohol and gaming<sup>101</sup> that would generate a combined \$120 million.<sup>101</sup> The Blanco Administration planned to dedicate \$70 million from the tax package to provide educators a \$1000 pay increase. The remaining \$50 million went towards raises for support staff at schools and college educators. HB 437 awaited its first hearing without fanfare while Governor Blanco continued to advocate for raising teachers' salaries using taxes on cigarettes, alcohol, and gambling. Education advocates rallied behind the legislation with limited support from health and tobacco control proponents.

The bill, projected to generate \$87.8 million annually, did not dedicate revenue despite being advertised as a pay raise vehicle for teachers.

HB 437 received limited support from health and tobacco control organizations operating in Louisiana, many who were members of CTFLA. The American Cancer Society,<sup>102</sup> American Lung Association of Louisiana<sup>97</sup>, Campaign for Tobacco-Free Kids,<sup>103</sup> American Heart Association, the Louisiana State Medical Society, Louisiana Academy of Physicians and others backed the bill.<sup>102</sup> ACS released a survey of 600 people on April 26, 2005 showing Louisianans supported a higher cigarette tax.<sup>103</sup> The survey, paid for by ACS and conducted by Ed Renwick at the Loyola University Institute of Politics, found that 69% of participants supported raising the cigarette tax and that 65% supported a 75¢ increase per pack.<sup>103</sup> Of those surveyed, 90% supported using cigarette tax increase revenue for cancer treatment and prevention, 81% supported salary increases for teachers, and 78% backed using funds for Medicaid. The poll also found that 69% of participants supported increasing the alcohol tax and 70% backed increasing taxes on gaming. CTFK also shared its finding in late April that a 50¢ cigarette tax increase lowered youth smoking rates 9.5%. However, according to LPHI's Eric Vicks in a 2019

interview, the CTFLA did not campaign assertively for HB 437 because it did not fund the group's priorities:

I don't think that the coalition was very strong on that honestly... We were doing what we could. But I don't think that everybody bought into it just because it was going someplace that wasn't tobacco-related or health-related.<sup>65</sup>

CTFLA members also avoided intensive efforts on HB 437 believing Governor Blanco lacked the political strength to pass the legislation. LPHI's Eric Vicks stated in his 2019 interview for our report:

The governor...was weakened early on. And they [CTFLA] felt that she just didn't have the ability to force something through. Generally speaking, Louisiana is a top-down state, so whatever the governor wants usually happens. And people don't like it. But they saw her [Governor Blanco] with too many chinks in the armor so to speak, and I don't think that we believed she had the ability to just force something through.<sup>65</sup>

Teachers, instead of tobacco control and health proponents, served as the primary supporters of HB 437. Educators and their unions actively campaigned for the legislation during the 2005 legislative session. Members of teacher unions contacted lawmakers to pressure them into supporting the bill.<sup>104</sup>

Republican state legislators fought HB 437 because of their opposition to taxes. The Louisiana Republican Party had issued a resolution in 1999 asking candidates to oppose all tax increases and sign a no-tax pledge.<sup>105</sup> The Republican State Central Committee approved the resolution for distribution. By April 21, 2005 House Republican Caucus Chairman Jim Tucker (R-Algiers) and Senate Republican Caucus Chairman Tom Schedler (R-Mandeville) sent a letter to Governor Blanco stating a salary increase for teachers could be accomplished by using newly expected revenue instead of raising taxes.<sup>106</sup> Despite Republican opposition to tax increases, Governor Blanco pursued her taxation plan.

### ***House Bill 437 in the Legislature***

The House Committee on Ways and Means considered HB 437 on May 9, 2005. Representative Bryant Hammett, HB 437's sponsor, chaired the Committee.<sup>101</sup> At the hearing, tobacco wholesalers and retailers attacked HB 437 as regressive and economically harmful.<sup>107</sup> Church Point Wholesalers General Manager Jack Casanova argued a black market would develop as people smuggled in lower cost cigarettes from neighboring states.<sup>107</sup> Fred Hoyt, a former state senator and convenience store chain owner, testified that increasing the cigarette tax discriminated against smokers and threatened to cause a revenue decline for the state as people stopped smoking.<sup>107</sup> Another distributor, Franklin Supply Inc. President Keith Landen, asserted that increased taxes resulted in people turning to "other sources."<sup>108</sup> Committee member Arthur Morrell (D-New Orleans) asserted that the tax increase was excessive and argued that funds for the salary increase should come from the Taylor Opportunity Program for Students (TOPS) (Chapter 9).<sup>107</sup> TOPS, established by law in 1989, is a state program that provides Louisianans

scholarships for attending university, college, or trade schools.<sup>109, 110</sup> The program is popular in Louisiana, and a perennial funding concern during state budget crises.

Governor Blanco testified at the hearing, urging the Committee to approve HB 437 to provide a pay increase for teachers, prevent youth smoking, and help adults quit smoking.<sup>107</sup> She asked committee members to amend the bill to increase the cigarette pack tax by \$1.00 instead of 50¢ as an alternative to introducing alcohol and gambling tax increase legislation, believing that passing a single tax increase was more feasible.<sup>107</sup> The Committee obliged Blanco and raised the tax increase in HB 437 to \$1 per pack,<sup>107, 111</sup> increasing the existing cigarette tax from 36¢ to \$1.36 if the bill passed.

During the hearing Representative Rick Farrar (D-Pineville) proposed an amendment to dedicate all of HB 437's revenue to raising teachers' salaries. The committee rejected the amendment 12-5, causing HB 437's revenue to remain unallocated.<sup>107</sup>

After considering comments and amendments to HB 437, the House Ways and Means Committee unanimously reported the bill favorably to the House Floor.

### ***An Unexpected Windfall Influences Legislative Debate Around HB 437***

In mid-May 2005, state officials determined that Louisiana expected more revenue than initially projected during the current 2004-2005 fiscal year and the following 2005-2006 fiscal year, lessening lawmakers' incentives to increase taxes during the session. The Revenue Estimating Conference, a 4-person committee that determined the amount of money the state could appropriate, determined Louisiana had \$360 million in additional funds available for use.<sup>112</sup> The conference anticipated Louisiana receiving another \$192 million for FY 2004-05 and \$169 million during FY 2005-06. The additional revenue, primarily coming from energy sector earnings,<sup>113</sup> affected lawmaker and third-party attitudes around HB 437.

The state windfall reduced the legislature's willpower to pass tax increases, placing HB 437 in limbo. Tax legislation required a two-thirds vote to pass,<sup>112, 114</sup> a difficult threshold to cross in the face of staunch anti-tax opposition from Republicans. As a result, Speaker of the House Joe Salter (D-Florien) withheld HB 437 from consideration on the House Floor while bill proponents pushed lawmakers to pass the cigarette tax.<sup>114</sup>

The \$360 million windfall influenced HB 437's proponents and opponents' messaging and legislative objectives. Lawmakers supportive of HB 437 asked Blanco to dedicate cigarette tax revenue specifically to educators instead of allowing it to enter the general budget.<sup>112</sup> The Blanco Administration maintained support for HB 437, arguing it provided educator pay raises while allowing use of the \$360 million windfall to address shortfalls for Louisiana's charity hospital system and other underfunded initiatives and programs. Republican legislators advocated against passing the cigarette tax, calling for using the windfall to fund the educator salary increase and other state programming.<sup>113</sup>

The tobacco industry and tobacco retailers ignored the windfall and indirectly attacked HB 437 by campaigning against tax increases in general.<sup>115</sup> RJ Reynolds Spokesperson David

Howard asserted to the press that HB 437's cigarette tax increase was regressive. According to *The Times-Picayune*, he also claimed the tax unfairly targeted smokers, stating "No one's going to argue the importance of adequate pay for teachers, (but) why should a minority of residents be responsible for something that is really the responsibility of every state."<sup>113</sup> The tobacco industry<sup>116</sup> launched radio ads<sup>117</sup> urging constituents to contact their lawmakers and ask them to reject all tax increases instead of singling out HB 437's cigarette tax hike.<sup>104, 116</sup> *The Advocate* published an excerpt from one radio ad in a May 24, 2005 article:

Manage the budget, stop the waste, end the slush funds, stop buying fancy cars, new helicopters and going on big trips with our money. That's how we pay our teachers.<sup>118</sup>

"Manage the budget, stop the waste, end the slush funds, stop buying fancy cars, new helicopters and going on big trips with our money. That's how we pay our teachers."

The ads did not specifically reference HB 437<sup>116</sup> and ran uncredited.<sup>118</sup> Opponents also conducted phone calls and distributed mailers against tax increases.<sup>119</sup> According to *The Advocate*, Philip Morris circulated handouts claiming that HB 437 placed the "third largest total tax burden on a pack-a-day smoker in the nation" behind Montana and Rhode Island.<sup>118</sup> Rhode Island had the highest tax in the United States at \$2.46 per cigarette pack.<sup>120</sup> Montana had a \$1.70 per cigarette pack tax, the 4<sup>th</sup> highest in the country.<sup>120</sup> It is possible Philip Morris used average income or other statistics into account when making the tax burden claims in its handouts.

Governor Blanco countered attacks against HB 437 by promoting the bill, making the legislation more passable, and attacking the tobacco industry. The Governor held a speech on May 23, 2005 to promote HB 437<sup>118</sup> that prominent members of the education community and 25 lawmakers attended in support. There, Blanco announced that all revenue from HB 437's \$1 cigarette tax increase (which remained unallocated in the bill) would go to funding pay raises for teachers and school staff instead of a portion going to healthcare funding as originally planned. According to *The Advocate*, Blanco attacked the tobacco industry in her speech for preying on minors:

They don't care about you or about your children's future. They don't care about health, and they certainly don't care about the children in the public schools – except to turn them into smokers.

Big Tobacco will spend – and do – whatever it takes to protect their bottom line, no matter what it costs our children.

They're going to attack me personally because this plan hits their vast profits. After all, they depend on our children to replace their dying customers.<sup>116</sup>

Blanco displayed a mock billboard at the hearing designed to attract Texas educators to work in Louisiana if her state's teachers received their desired salary increase. She subsequently published a letter in *The Advocate* on June 1 advocating for HB 437's cigarette tax increase. She asserted that Louisiana's student outcomes were improving and that the state needed to increase

teacher pay to retain educators and continue progress.<sup>121</sup> Blanco claimed to have made \$300 million in budget cuts before requesting the \$1 per pack cigarette tax increase. She also dismissed calls to use the state's windfall to provide educator pay raises, since that money was needed to address current and future healthcare costs (partially caused by reduced federal funding<sup>116</sup>). She argued the tax raised teacher salaries to an average of \$41,600 (approximately \$3,300 over two years to teachers), \$200 below the average among southern states. Blanco asserted the tax increase also deterred youth smoking. In her letter, Blanco attacked tobacco industry opposition to the tax increase:

The big tobacco companies are going to use all their money and all their power to intimidate legislators and try to defeat this tax. They don't care about our children's future – except to turn them into smokers.<sup>121</sup>

She called on parents to push for HB 437's adoption since it benefitted their children and those educating them.<sup>121</sup> Besides targeting the tobacco industry in public messaging, Blanco privately met with and pushed state legislators to vote for HB 437.<sup>122</sup>

The Louisiana education community provided moderate support for HB 437 while it awaited consideration on the House Floor. Teachers pressured lawmakers via direct lobbying<sup>115</sup> and email contacts to pass the bill.<sup>119</sup> Teachers appeared at the state capitol on June 8, 2005 to advocate for the cigarette tax increase. In contrast, “several dozen red-clad Republican women milled about the Capitol sporting large buttons that advertised their opposition to taxes” according to an article in *The Times-Picayune*.<sup>115</sup> The education community's lobbying efforts disappointed the Blanco administration, which felt that educators had not adequately pressured legislators to pass the cigarette tax increase.<sup>115</sup>

### ***The Blanco Administration Fails to Pass HB 437***

To increase support for HB 437 the Blanco Administration and HB 437 sponsor Bryant Hammett (D-Ferriday) suggested amendments to make the bill likelier to pass. In May, after the reveal of Louisiana's windfall, Hammett announced he would amend the legislation to dedicate revenue to teachers and school workers instead of leaving the money open to the general budget.<sup>104, 117</sup> The amendments dedicated all \$186 million generated in HB 437's first year<sup>119</sup> to provide educators a \$3,300 raise and lesser wage hikes to other school staff.<sup>115, 119</sup> Hammett offered the amendment to make HB 437 more passable after discovery of the windfall.<sup>117</sup> Later in June, Governor Blanco proposed reducing the cigarette tax increase to 50¢ and dedicating some of the revenue to sheriffs and healthcare instead of only teacher pay raises.<sup>115, 123</sup> Under Blanco's plan teachers still received a salary increase with funding coming from money previously dedicated to the General Fund or healthcare expenditures.<sup>123</sup> Blanco met with lawmakers on June 9, 2005 to explore their openness to the changes<sup>123</sup> but failed to secure enough votes to pass HB 437.<sup>115</sup>

Governor Blanco's efforts on HB 437 ultimately proved fruitless. While she pursued votes, The New Orleans *Times-Picayune* quoted House Republican Caucus Chairman Jim Tucker dismissing efforts to salvage HB 437:

Flipping it [switching HB 437's revenue dedication from educator pay raises to healthcare] won't get any more votes that way. Why would anybody want to dedicate it to health care until we know the teachers are taken care of? This is a tax looking for a purpose.<sup>123</sup>

After failing to garner support for HB 437, Governor Blanco suspended efforts to pass the bill on June 14, 2005, and the bill died.<sup>104, 119</sup>

### **Attempt to Increase the Cigarette Tax by a Dollar in 2009**

On March 20, 2009, House Speaker Pro-Tem (temporary House Speaker) Karen Carter Peterson (D-New Orleans) filed HB 75, the Louisiana Healthier Families Act (LHFA), to increase taxes on all tobacco products.<sup>124</sup> The bill initially did not allocate revenue and sought to address Louisiana's budget deficit by producing an additional \$209 million annually.<sup>125 126</sup>

HB 75 faced an adverse political climate in the 2009 legislative session. Governor Bobby Jindal (R), elected in 2007,<sup>127</sup> opposed tax increases.<sup>125</sup> The US was also in an economic recession.<sup>125, 128</sup> According to *The Advocate*, Jindal denounced HB 75 as a "regressive tax that hits people that can least afford it" and announced he would veto the bill if it survived the legislature.<sup>125</sup>

To generate support for HB 75, CTFLA, ACS, AHA, ALA, hospitals, and others released statements to the media and ran advertisements supporting the tobacco tax increase. In March, Our Lady of the Lake Regional Medical Center Vice President Coletta Barrett told Louisiana news media that tobacco killed thousands of Louisianans yearly and that a tobacco tax reduced smoking.<sup>125</sup> CTFLA, ACS, AHA, ALA and other groups issued a press release by late April 2009 supporting the bill because it would prevent youth smoking.<sup>129</sup> TFL also ran print and online advertisements promoting the "health and economic advantages of increasing the tobacco tax during the 2009 legislative session,"<sup>130</sup> which ran from April 27 to June 25.<sup>131</sup> At HB 75's first hearing, the Baton Rouge Area Chamber of Commerce, the American Association of Retired Persons (AARP), and the Louisiana Federation of Teachers also endorsed the bill.<sup>132, 133</sup>

The Louisiana Legislative Black Caucus, which had historically opposed tobacco taxes believing they were regressive, also supported HB 75.<sup>134</sup> TFL Policy Manager Carrie Griffin Monica credited the Louisiana Legislative Black Caucus' support to TFL and other CTFLA members' outreach efforts to the group. According to Monica in a 2014 interview for this report:

So we [TFL] worked really closely with the CTFL[A] life partners, and spent some time sharing with them [the Black Caucus] how their communities without a tax increase are disproportionately affected by smoking and how the long term benefits of having a hard tax would actually benefit their communities more. And I think what really resonated for them is the fact that they're targeted much, much more than wealthier communities.

I think that they started to say, "You know, this is actually not really fair. And we don't want our communities targeted. We don't want our folks to die more."<sup>134</sup>



HB 75 was the first tobacco tax increase backed the Caucus.<sup>134</sup>

### ***HB 75 in the Legislature***

The House Ways and Means Committee considered HB 75 on April 28, 2009. Before the hearing, the Jindal Administration told Committee Chairman Hunter Greene (R-East Baton Rouge) that the Governor opposed the bill.<sup>132, 133, 135</sup>

“You know, this is actually not really fair. And we don’t want our communities targeted. We don’t want our folks to die more.”

by

As discussion over HB 75 began at the hearing, Representative Peterson amended the bill to dedicate tax revenue towards various health programs and agencies. In particular, the amendments designated revenue to paying healthcare providers (which would get matched federal funds), the LSU Pennington Biomedical Research Center,<sup>133</sup> tobacco quit programs, school health clinics, and programming at the Office of Mental Health and the Office of Addictive Disorders.<sup>135</sup> Representative Peterson argued lawmakers should adopt the tax to alleviate healthcare spending cuts in Governor Jindal’s budget and to reduce healthcare costs by curbing smoking.<sup>133</sup> Peterson cited a survey conducted by LSU that found 75% of participants backed the tax increases in HB 75, to show Committee members the public supported the bill.<sup>133</sup>

During the hearing, trade representatives and business owners testified against HB 75. Louisiana Association of Wholesalers Executive Director David Tatman argued legislators wanted to pay for recurring expenses using revenue from a tobacco tax increase, which would decrease over time.<sup>136</sup> David Tatman previously worked as a coordinator for the Philip Morris Field Action Team, and had worked as a lobbyist for Philip Morris/Altria since the 1990s (Chapter 2). Other wholesalers and convenience store owners attending the hearing argued the tobacco tax increases in HB 75 would economically harm businesses that had recently experienced a federal tobacco tax increase, and that the increases targeted a limited portion of the population.<sup>133</sup>

After considering HB 75, The House Ways and Means Committee voted 11-7 to kill the bill.<sup>133</sup>

### ***Effort to Revive 2009 Tax increase***

Following HB 75’s defeat, Representative Karen Carter Peterson filed HB 889 (Table 11.11) on May 9 to increase the cigarette tax 50¢ per pack. HB 889 also raised tax rates on other tobacco products, proposing the same increases on cigars, loose leaf and smokeless tobacco as

Table 11.11: Tobacco Tax Increases Proposed in HB 889 <sup>138</sup>		
Tobacco Product	Existing Tax	HB 889
Cigarettes	36¢ per pack	86¢ per pack
Cigars Invoiced at \$120,000 or Less Per 1,000	8% of invoice price	12% of invoice price
Cigars Invoiced at More Than \$120,000 Per 1,000	20% of invoice price	30% of invoice price
Loose Leaf Tobacco	33% of invoice price	49.5% of invoice price
Smokeless Tobacco	20% of invoice price	30% of invoice price

Table 11.12: Allocation of Funds in HB 889 <sup>138</sup>			
Funding Target	Percent of New Tobacco Tax Revenue Dedicated as Introduced	Required Money Be Used for Tobacco Control Programming	
		HB 889 Original	HB 889 House Committee Version
DHH Medicaid Payments	50	-	-
Office of Addictive Disorders	10	-	+
Office of Mental Health	5	-	+
Office of Public Health-School Health Clinics	2	-	+
Office of Public Health-Nurse Family Partnerships	2	-	+
DHH Office of Secretary-Health Center Funding	4	-	+
LSU Pennington Biomedical Research Center	5	-	-
LSU Health Sciences Center Shreveport	5	-	+
LSU Health Sciences Center New Orleans	2	-	+
LCRC	10	-	-
New Orleans Biosciences Economic Development District	3	-	+
Southern University-Tobacco Prevention Programs	2	+	+
*Permitted use of funds for cancer research or tobacco control programming.			

Peterson's HB 75 with revenue dedicated to healthcare (Table 11.12).<sup>137</sup> Peterson introduced the legislation to prevent impending cuts to healthcare funding.<sup>126</sup>

### ***The Louisiana Budget Project Releases Policy Note Supporting HB 889***

In May 2009, the Louisiana Budget Project (LBP) issued a policy note supporting adoption of HB 889 to generate revenue for health initiatives and curb negative health impacts caused by smoking.<sup>139</sup> LBP is a nonpartisan policy nonprofit created by the Louisiana Association of Nonprofit Organizations in 2006 to inform the public on Louisiana's budget development. In addition, LBP reports on state spending decisions, particularly regarding their impacts on moderate to low income families in Louisiana. In its policy note, LBP stated that HB 889 intended to generate \$92 million annually for the state while reducing smoking and improving health in Louisiana.<sup>139</sup> LBP referenced findings from CTFLA that 65,000 Louisianans died yearly from tobacco-related illnesses. The nonprofit highlighted another CTFLA finding that 25% of high school students in the state smoked at a combined rate of 13 million cigarette packs yearly. LBP referenced a Campaign for Tobacco-Free Kids statistic that raising cigarette taxes 10% reduced smoking across the population by 4% and approximately 7% for minors. LBP reiterated CTFLA claims that a \$1 increase to Louisiana's cigarette tax would reduce smoking by 48,800 minors and 26,600 adults. In addition, LBP referenced a CTFLA finding that a \$1 hike would lower the minor smoking rate 16.3% and thus prevent 22,600 tobacco-related deaths.

While acknowledging that tobacco taxes aim to reduce smoking and as a result were not a long-term source of funding, LBP recommended that the yet-undedicated revenue in HB 889 go

towards health initiatives. LBP suggested using \$27.2 million of the \$92 million expected annually from HB 889 to expand health coverage for pregnant women whose yearly family income did not exceed twice the poverty rate, which was \$36,620 for a three-person family.<sup>139</sup> LBP also recommended using part of the \$27.2 million to increase access to “the Nurse-Family Partnership Program from 15% to 20% of eligible women with annual family income no more than twice the rate of poverty.”<sup>139</sup> LBP stated that expanded health coverage for pregnant women would prevent premature births and reduce infant mortality. LBP asserted the nurse partnership program “improved pregnancy outcomes, increased family self-sufficiency, and enhanced child health and development for low-income families.”<sup>139</sup> LBP recommended using the \$64.8 million of remaining funds from HB 889’s tobacco tax increases towards ongoing tobacco cessation programming, which would create health care savings for Louisiana. LBP stated that Louisiana had the worst health among states according to the United Health Foundation’s 2008 state health rankings. In particular, Louisiana ranked 45<sup>th</sup> in cardiovascular mortality and 49<sup>th</sup> in cancer mortality, two tobacco-related illnesses. LBP highlighted that Louisiana had the sixth lowest cigarette tax in the United States.

LBP countered claims of tobacco tax increases causing economic harm and provided potential solutions to reduce the regressive nature of an excise tax increase in its policy note on HB 889.<sup>139</sup> The nonprofit referenced studies finding that tobacco tax increases did not hurt retailer profits, that higher cigarette sales were correlated with reduced retail jobs, and that a \$1 cigarette tax increase increased employment at retailers. To address the regressive nature of an excise tax increase, LBP suggested providing low-income Louisianans tax credits. The nonprofit also suggested that low income Louisianans would have their health improved by the tax increase. LBP stated that government spending related to smoking cost Louisiana households \$628 annually, and claimed a tobacco tax increase “would at least transfer this responsibility from non-smokers to those that choose to smoke.”<sup>139</sup> LBP closed by stating HB 889 helped Louisiana and that tobacco-related harm could be prevented.

### ***HB 889 in the Legislature***

The House Ways and Means Committee scheduled HB 889 for consideration on May 12, 2009, but postponed it when members Steven Carter (R-Baton Rouge) and Frank Hoffmann (R-West Monroe) prevented quorum by failing to appear.<sup>140</sup>

The House Education Committee paused its hearing to allow Carter and Hoffmann, who were also members on that committee, to attend the Ways and Means hearing for HB 889.<sup>140</sup> However, Carter and Hoffmann went to Governor Jindal’s office to avoid the meeting, resulting in the hearing’s cancellation after an hour of waiting.<sup>140, 141</sup> According to the New Orleans *Times-Picayune*, Jindal’s office had Carter and Hoffmann visit to prevent the House Ways and Means Committee from voting on HB 889.<sup>126</sup> Questioned by the press about his absence, Carter stated the House Ways and Means Committee hearing “did not meet my principles”<sup>140</sup> and “we [Carter and Hoffmann] had personal reasons for why we did not go.”<sup>141</sup> Carter added he needed to look over HB 889, telling the Baton Rouge *Advocate* “I am anti-tax and anti-smoking...I am caught between a rock and a hard place.”<sup>141</sup>

“I am anti-tax and anti-smoking  
... I am caught between a rock  
and a hard place.”

The House Ways and Means Committee ultimately considered HB 889 on June 8, 2009.<sup>142</sup> At the hearing representatives and officials from nonprofits, research and healthcare organizations testified in support of the bill (Table 11.13). HB 889 sponsor Peterson and other lawmakers also backed the legislation at the committee hearing. HB 889 proponents asserted the tax increases were popular, saved the state and its residents' money, improved public health, reduced tobacco use, and addressed ongoing budget issues.

Opponents testifying against HB 889's tax increase included tobacco retailers and wholesalers, the Secretary of the Louisiana Department of Revenue, conservative think tank and activist organizations, and tobacco industry representatives (Table 11.14). They asserted the tax increases would cause crime, reduce state revenue, unfairly target smokers and the poor, fail to limit youth tobacco use and asserted that the government needed to have fiscal restraint.

During the hearing, the Committee adopted a package of amendments specifying that HB 889's revenue be used to fund tobacco control programming or cancer research (Table 11.12).<sup>138</sup> The Committee then voted 8-7 to advance HB 889 to the House Floor (Table 11.15).<sup>142</sup>

Representatives brought HB 889 to the House Floor for debate on June 9, 2009<sup>126</sup> where opponents attempted to stall the bill. During discussion of HB 889, Representative Joseph Lopinto (R-Metairie) unsuccessfully requested the bill to be sent to the House Health and Welfare Committee for additional consideration.<sup>126</sup> Speaker Jim Tucker (R-Terrytown) subsequently moved the bill to the House Appropriations Committee, arguing that house rules required consideration by that committee since the bill established a new fund and allocated revenue.<sup>126</sup> HB 889 sponsor Peterson asked the House to allow HB 889 to stay on the Floor, which Representatives rejected in a 52-44 vote.<sup>144</sup> To save HB 889 from being trapped in committee, Peterson motioned for the House to skip the hearing and discharge HB 889 from the Appropriations Committee.<sup>144</sup> Representatives voted 58 to 41 to bring HB 889 back to the House Floor without consideration by the Appropriations Committee.<sup>144</sup> Afterwards Representative Lopinto tried tabling HB 889 to practically kill the bill. Representatives rejected Lopinto's motion 61-37, keeping the legislation in the House for additional consideration.<sup>144</sup>

HB 889 returned to the House Floor for consideration on June 15, 2009.<sup>138</sup> Numerous lawmakers provided comments in favor of the tobacco tax increase bill during debate.<sup>145</sup> According to *The Advocate*, Representative Walt Leger III attacked anti-tax increase arguments against HB 889. He claimed lawmakers opposing the bill supported the tobacco industry stating, "This anti-tax rhetoric is simply a pretext to support big tobacco...You can go with Joe Camel and the Marlboro man or you can go with the people of Louisiana."<sup>146</sup> Representative Hollis Downs spoke in support of the bill, recalling losing his father to a tobacco related illness.<sup>146</sup> Downs also announced his desire to eliminate tobacco products using taxation.<sup>146</sup> Representative Harold Ritchie, a smoker, supported HB 889 believing it might help people quit.<sup>146</sup> HB 889's sponsor, Representative Peterson, stated that Louisianans would save \$627 annually in taxes by lowering smoking rates and reducing tobacco-related healthcare costs. She also stated that tobacco was the leading cause of preventable death in Louisiana.<sup>146</sup> Only Representative Lopinto stood against HB 889 during Floor debate on June 15. He claimed the state should attempt austerity measures before increasing taxes.<sup>146</sup>

Table 11.13: Testimony from HB 889 Supporters at the June 8 House and Ways Committee Hearing<sup>143</sup>

Speaker	Affiliation	Tobacco Tax Increase Popular	Prevents Youth Tobacco Use	Improve Public Health	Discourage / Reduce Tobacco Use	Provides Healthcare Funding	Reduces State / Taxpayers Costs	Tax is Not Economically Harmful	Louisiana Has / Needs to Address Cancer Issues	Bill Improves Cancer Detection / Treatment / Research	Reduce Insurance Costs	Other States Increasing Tobacco Taxes	Generate Economic Growth	Nonsmokers Paying for Smoker Behavior	Provide Additional Federal Funds	Failure to Pass Bill Will Cut Healthcare Funding / Services	Address / Reduce Pregnant Smoking	Tobacco Use is Harmful	Provide Assistance to Mentally Ill	Tobacco Disproportionately Harms Mentally Ill	Address Budget Issues	Family Suffering Caused by Tobacco-Related Illness
Karen Carter Peterson	Representative – HB 889 sponsor	+	+	+			+					+	+									
Carmodie	Representative			+	+		+															
Joe Harrison	Representative										+			+								
Lejay	Representative		+				+								+							
Gray	Senator					+														+		
Rita Matthews	Louisiana Budget Project – Analyst			+	+	+																
Kim Williams	Nurse Family Partnership National Service Office					+										+	+	+				
Henry Williamson	Unknown																		+			
Jennifer Hayden	Louisiana Cancer Comprehensive Control Program								+	+												+
Hollis Downs	Representative					+														+	+	

Jim Macnamara	President and CEO Greater New Orleans Biosciences Economic District																						+
Carrie Everett	AARP Louisiana		+	+	+	+	+				+				+								
Jennifer Jantz	Executive Director – National Alliance on Mental Illness															+			+	+	+		
Braxton	Mary Perkins Cancer Center and Louisiana Primary Care Association								+	+													
Claude Buchard	Executive Director Pennington Biomedical Research Center		+		+					+						+	+	+					
Gary Smith	Representative					+	+																

Table 11.14: Testimony from HB 889 Supporters at the June 8 House and Ways Committee Hearing<sup>143</sup>

Speaker	Affiliation	Governor Opposes Tax Increase	Government Needs to Spend Within Its Means	Government Needs to Run Like Business	Will Result in Additional Tax Increases	Tax is Regressive / Affects the Poor	Federal Tax Raised Recently	State Should Pursue / Use Funds from Federal Tax Increase	Tax Increase Reduces Revenue	Raising Taxes Ineffective at Deterring Youth Use	Participation in Voluntary Regulation (We Card)	Louisiana Effectively Prevents Youth Access	Education Reduces Youth Use	Taxes Inflict Economic Harm	Taxes Will Reduce Favorable Cross Border Sales/ Increase Unfavorable Cross Border Sales	Tax Will Increase Internet / Counterfeit Sales	Taxes Unfairly Target Smokers	Smokers Should Not be Targeted to Fund Programs Used by Society as a Whole	Tax Increases Will Increase Crime	Exclude OTP from Tax Increases	Tax Revenue Decline Over Time	Concerns for Employer Safety	Job Loss	Tobacco Industry and Customers Already Provide Significant Revenue	Health Organizations Already Receive State Revenue	Public Actually Opposes Tax Increases
Cynthia Bridges	Louisiana Department of Revenue - Secretary	+	+																							
Jack Casanova	Church Point Wholesalers																					+	+			
John Dan Gielen	Shop Rite Stores (Retailer)		+	+			+	+	+		+	+	+				+	+			+					

Renee Girard	Pipers Heaven (Retailer)						+	+	+						+	+												
Bob Winston	Tinderbox (Retailer)						+													+	+		+					
Jeb Bruneau	Pelican Institute for Public Policy*																		+									
Mark Zelden	Louisiana Conservative Action Network																											
David Tatman	Louisiana Association of Wholesalers**								+	+	+	+	+		+	+					+							
Randy Haynie	Altria						+	+																	+	+	+	



Table 11.15: House Ways and Means Committee Votes on Tobacco Taxes in 2009 <sup>133 142</sup>				
Name	Party	District	HB 75 Vote	HB 889 Vote
Hunter Greene (Chair)			--	Abstained
Damon Baldone	D	Houma	Yes	Yes
Roy Burrell	D	Shreveport	Yes	Yes
Steve Carter	R	Baton Rouge	Yes	Yes
Avon Honey	D	Baton Rouge	Yes	Yes
Girod Jackson	D	Harvey	Yes	Yes
Cedric Richmond	D	New Orleans	Yes	--
Harold Ritchie	D	Bogalusa	Yes	Yes
Taylor Barras	D	New Iberia	No	--
Michael Danahay	D	Sulphur	No	Yes
Mickey Guillory	D	Eunice	No	--
Cameron Henry	R	New Orleans	No	No
Frank Hoffmann	R	West Monroe	No	Yes
Rick Nowlin	R	Natchitoches	No	No
Jonathan Perry	R	Abbeville	No	No
Jane Smith	R	Bossier City	No	No
Dee Richard	I	Thibodaux	No	No
Joel Robideaux	I	Lafayette	No	No
Ricky Templet	R	Gretna	No	No
*Louisiana has four-year election cycles.				
--Not included in vote count.				

Lawmakers did not consider substantive changes to HB 889 on the House Floor. Representative Mike Danahay (D-Sulphur) submitted an amendment that eliminated tax increases for cigars, loose leaf tobacco and smokeless<sup>138</sup> that lawmakers did not consider. Despite seeking to weaken HB 889, Danahay later voted to adopt the bill.<sup>146</sup>

After consideration, the House voted 55-45 against HB 889.<sup>146</sup> In a 2009 interview with the New Orleans *Times-Picayune*, Representative Peterson attributed the defeat of HB 889 to a press conference held by House Leadership the same day her bill was considered, where House Leaders stated their opposition to any tax increases that session.<sup>147</sup> Peterson also blamed Governor Jindal, asserting he prioritized maintaining a tax-free legislative record for his presidential ambitions over the state's needs.<sup>147</sup>

The death of HB 889 ended efforts to increase tobacco taxes in 2009.

### Lawmakers and Advocates Pursue Tobacco Tax Increases in 2011

In 2011, Louisiana's political climate remained averse to pursuing tobacco tax legislation despite public support for an increase. A survey of 600 likely Louisiana voters conducted in 2010 by Southern Media and Opinion Research Inc. had found that 65% of total respondents supported raising tobacco taxes regardless of how lawmakers allocated resulting revenue (the results were publicly released by at least mid-March 2011).<sup>148</sup> Another survey, released by late March 2011 and conducted by Louisiana State University, found that 74% of Louisianan's favored increasing the state cigarette tax.<sup>148</sup> However, Governor Bobby Jindal (R), who sought reelection that year, publicly opposed taxation of any form<sup>149</sup> despite Louisiana's \$1.6 billion budget deficit.<sup>148</sup> He aired campaign ads opposing tax increases and pledged to veto any tax

renewals or hike.<sup>149</sup> The state legislature was also controlled by Republicans, who generally opposed taxes.<sup>148</sup>

### ***Health, Civic and Religious Organizations Call for a Tobacco Tax Increase***

Despite known and expected political opposition to taxes, health, faith and policy groups announced support for increasing Louisiana's cigarette tax during the 2011 legislative session. On February 28, 2011 the Louisiana chapter of the American Academy of Pediatrics (AAP) announced to the Press Club of Baton Rouge its support for increasing the state's cigarette tax to offset expected budget cuts in healthcare funding and deter smoking.<sup>150</sup> In mid-March, religious leaders Reverend John Yeats of the Louisiana Baptist Convention, Reverend Dan Krutz of the Louisiana Interchurch Conference, Bishop Thomas Brown of the Louisiana Christian Methodist Episcopal Church, Church Women United of Louisiana President Mary Collins, and Bishop William Wayne Hutchinson of the Louisiana United Methodist Churches<sup>151</sup> signed a letter calling to increase the state cigarette tax by \$1.25.<sup>151</sup>

During March 2011, the Louisiana Budget Project (LBP), a nonpartisan policy think-tank, released a research note urging the state to increase tobacco taxes to help address its \$1.6 billion budget deficit.<sup>152</sup> LBP cited Campaign for Tobacco-Free Kids' findings that states had raised tobacco taxes over 100 times since 2002, the last year Louisiana had passed an increase, to convey the state's tax stagnation. The note highlighted that a temporary 4¢ cigarette tax passed in 2002 would expire without action in 2012, lowering the \$137 million in annual tobacco taxes Louisiana received by \$12 million amid ongoing budget issues. LBP claimed a 50¢ increase per cigarette pack (to 86¢ total) would provide Louisiana \$158 million in yearly revenue and that a \$1 increase per pack (to \$1.36 total) would generate \$301 million annually. LBP also provided various health and economic reasons for increasing tobacco taxes. The organization stated that a tax increase lowered smoking prevalence, particularly among minors. LBP highlighted that the United Health Foundation ranked Louisiana second worse in healthcare among the United States, partially because of high incidences of smoking-related illnesses. LBP's note reported that Louisiana had the 48<sup>th</sup> highest cigarette cost in the country and had the 9<sup>th</sup> highest smoking rate in the country. In addition, LBP stated that 20% of Louisiana high school students had tried a cigarette, exposing them to potential addiction and health problems that would harm the state's future economic health. LBP reasoned that a tobacco tax increase could be leveraged to prevent teenage smoking because they are sensitive to price, and as a result, protect the state's ongoing economic wellbeing. The think-tank stated that a tobacco tax raised taxes on all socioeconomic groups, but acknowledged such an increase was regressive and negatively impacted low income Louisianans more since they "face[d] a larger increase as a share of income."<sup>152</sup> LBP reasoned stated that tax credits could address regressivity and that low-income groups (who smoke at higher rates than high-income groups) would experience health improvements from reduced smoking. LBP recommended that tobacco tax increase revenue not be dedicated towards long-term programs since funds would decline with reductions in tobacco use. Tobacco tax increase legislation appeared shortly after health and religious groups, and LBP expressed support for a cigarette tax hike.

Representative Harold Ritchie (D-Bogalusa) pre-filed HB 63, tobacco tax increase legislation, on March 30, 2011. The bill increased taxes on cigarettes, cigars, loose leaf and smokeless tobacco (Table 11.16). It also made HB 117's temporary 4¢ cigarette tax increase, adopted in 2000 and then set to expire on June 30, 2012, permanent.<sup>89, 153</sup> HB 63 did not allocate revenue upon introduction. Ritchie indicated he would introduce an amendment to direct resulting funds "to health care."<sup>154</sup> Supporters estimated that HB 63 would provide Louisiana approximately \$176 million in revenue.<sup>155</sup> The American Cancer Society, various health groups, and Louisiana Faith Leaders United Against Tobacco backed the bill.<sup>156 157</sup>

Support for HB 63 quickly fragmented after the bill's introduction. In early April, the Louisiana Baptist Convention and Reverend John Yeats withdrew their support for increasing tobacco taxes after meeting with Governor Jindal's Chief of Staff Timmy Teepall. In an interview with the Baton Rouge *Advocate*, Teepall claimed to merely state the administration's position on tax increases at the meeting.<sup>155</sup> Reverend Yeats and the Louisiana Baptist Convention claimed to stop advocating for a cigarette tax increase to work on other issues such as child care and abortion policy.<sup>155</sup> After Reverend Yeats and the Louisiana Baptist Convention stopped backing a cigarette tax increase, Reverend Dan Krutz wrote a letter to *The Advocate* stating that the Louisiana Interchurch Conference supported Ritchie's tobacco tax increase.<sup>158</sup>

Louisiana's political climate and aversion to taxes caused Representative Ritchie to fear his bill would be killed in committee.<sup>159</sup> Prior to the House Ways and Means Committee hearing for HB 63, Governor Jindal expressed opposition to all tax increases, including renewal of the 4¢ cigarette tax increase.<sup>160</sup> On April 25, four days after Jindal announced his stance against the tax renewal,<sup>160</sup> Ritchie submitted another tobacco tax bill, HB 591. The bill made the temporary 4¢ tax increase scheduled to sunset on June 30, 2012 permanent. HB 591 did not include other tobacco tax increases.<sup>161</sup>

Other groups signified support for tobacco tax increases before Ritchie's legislation received consideration during the 2011 Regular Session. By mid-April, the Better Choices for a Better Louisiana Coalition, formed to advocate for middle and lower classes, called for lawmakers to raise \$940 million in additional taxes to address Louisiana's budget issues.<sup>162</sup> As part of the tax increases, the coalition proposed raising the cigarette tax per pack from 36¢ to \$1.36 to generate \$301 million in new revenue annually. The group consisted of the Louisiana Association of Nonprofit Organizations, the Louisiana AARP, Louisiana NAACP, the Louisiana Federation of Teachers, the Louisiana Budget Project, and Greater Baton Rouge AFL-CIO<sup>162</sup> as well as other civic, education, health, mental health and labor organizations.<sup>163</sup> The Louisiana Academy of Family Physicians' also expressed support for tobacco tax legislation in early to mid-May during an event at the State Capitol.<sup>157</sup> The event celebrated a child's poster entry for a

contest held for the American Academy of Family Physician's tobacco prevention

Table 11.16: Tax Increases Proposed in HB 63 <sup>153</sup>		
Tobacco Product	Existing Tax Rate	Tax Rate Proposed in HB 63
Cigarettes	36¢ per pack	\$1.06 per pack
Cigars Invoiced at \$120,000 or Less Per 1,000	8% of invoice price	12% of invoice price
Cigars Invoiced at More Than \$120,000 Per 1,000	20% of invoice price	30% of invoice price
Loose Leaf Tobacco	33% of invoice price	49.5% of invoice price
Smokeless Tobacco	20% of invoice price	30% of invoice price

program Tar Wars.<sup>157</sup> We were unable to find efforts by the Academy in support of Ritchie's tobacco tax increases.

### ***Opposition Preceding Hearings for HB 63 and HB 591***

Before consideration of HB 63 and HB 591 occurred, tobacco industry ally the Louisiana Association of Wholesalers (LAW) (Chapter 2), The Louisiana Republican Party and Louisiana Tea Party Federation publicly opposed increasing or extending cigarette taxes. According to *The Advocate*, LAW released a statement arguing that raising the cigarette tax would “weaken the state’s economy, put jobs at risk and encourage out-of-state and black market sales.”<sup>149</sup> The Louisiana Republican Party began airing a radio ad on May 13, 2011 opposing HB 63.<sup>164</sup> The ad was narrated by Bob Livingston,<sup>164</sup> a former US Congressman for Louisiana who was then serving as the Louisiana Republican Party’s Finance Chairman.<sup>165</sup> He had also lobbied on behalf of the tobacco industry.<sup>166</sup> According to coverage by *The Times-Picayune*, Livingston claimed in the ad:

“Liberal lawmakers in Baton Rouge are dead set on a massive \$120 million tax hike. Conservatives must stand united against tax increases – especially fiscally irresponsible tobacco taxes that threaten Louisiana’s small businesses.”

Liberal lawmakers in Baton Rouge are dead set on a massive \$120 million tax hike. Conservatives must stand united against tax increases – especially fiscally irresponsible tobacco taxes that threaten Louisiana’s small businesses.<sup>165</sup>

In the ad, Livingston called for listeners to contact their state lawmakers to oppose the tax increases.<sup>167</sup> The Louisiana Republican Party paid for the advertisements.<sup>165</sup> Besides the ad, the party urged legislators to oppose extending the 4¢ tax set to expire, arguing that it “was not intended to be levied in perpetuity.”<sup>168</sup>

The Louisiana Tea Party Federation argued the tobacco tax increases and cigarette tax extension burdened Louisianans.<sup>168</sup> Federation Coordinator Robin Edwards and State Representative and small business owner Fred Hoyt sent letters into the Baton Rouge *Advocate* opposing the tobacco tax increases. Hoyt’s letter, published on May 5, 2011, argued that the cigarette tax was economically harmful and made Louisiana retailers less competitive with businesses in neighboring states.<sup>169</sup> Edwards’ letter, published by *The Advocate* on May 4, argued that HB 63 sought to restrict personal choice and impose behavior change.<sup>170</sup> Edwards added that HB 63 placed Louisiana tobacco retailers at a competitive disadvantage and drove consumers to purchase products on the internet or out of state.<sup>170</sup>

### ***House Ways and Means Committee Considers HB 63 and HB 591***

Tobacco tax proponents and opponents sparred over HB 63 and HB 591 at a House Ways and Means Committee hearing on May 16, 2011.<sup>168</sup> Health and tobacco control advocates asserted tobacco tax increases reduced use among youth and current smokers. Patients and

medical providers testified on the problems and expense of lung cancer treatment.<sup>168</sup> The Jindal Administration, Louisiana Association of Wholesalers, and tobacco retailers attacked HB 63 and HB 591. Jindal staffer Rina Thomas reiterated the Governor's plan to veto both bills if they survived the legislature.<sup>168</sup> LAW President Jack Casanova referenced a study from the Bureau of Alcohol, Tobacco and Firearms to assert that raising the tobacco tax increased crime.<sup>168</sup> LAW is an ally of the tobacco industry, whose director David Tatman had lobbied on behalf of Philip Morris since the 1990s (Chapter 2). Individual retailers argued tax increases would cause them to lose customers to the black market and out of state businesses.<sup>168</sup> Lawmakers also stated their opposition to HB 63, with Committee member Ricky Templet (R-Terrytown) stating, "Seventy cents doesn't stop anybody from anything, in my mind."<sup>168</sup>

As a result of the adverse political climate and opposition displayed at the hearing, HB 63's sponsor Ritchie asked the House Ways and Means Committee to defer the bill. Committee members approved the request, voting 8-7 to postpone consideration.<sup>168</sup> The bill died with adjournment.

HB 591 garnered support at the hearing, with committee members voting 10-5 to report the cigarette tax extension favorably to the House Floor.<sup>168, 171</sup> At a rally held after the House Ways and Means Committee hearing, Ritchie thanked health advocates for backing HB 591 and asked them to continue mobilizing support for his bill.<sup>171</sup>

### ***House Bill 591 Continues Through the Legislature***

Governor Jindal continued opposing HB 591 as part of his policy against adopting any form of tax increase. Before representatives considered HB 591 on the House Floor, Governor Jindal's office delivered notes to lawmakers asking them to vote against the bill.<sup>172</sup> Governor Jindal claimed that HB 591 was a tax increase despite it being a renewal of an existing tax; his opposition to the bill was a significant focus during legislative debate.

Representatives considered HB 591 on May 24, 2011 and debated whether the bill was simply a tax renewal or a tax increase as claimed by Governor Bobby Jindal.<sup>173</sup> Representative MJ Smiley (R-St. Amant) and another representative echoed Jindal's assertion and argued to the House that HB 591 was a tax increase. In contrast, several lawmakers usually aligned with Jindal did not view HB 591 as a tax increase and planned to vote for the bill.<sup>173, 174</sup> Supportive lawmakers argued the bill was a tax renewal, that cigarette taxes deterred youth smoking, and that the tax provided a stable funding source for healthcare.<sup>172, 173</sup> Proponents also argued that dedicating revenue to Medicaid might provide matching funds from the federal government.<sup>173</sup>

Lawmakers proposed three changes to HB 591 on the House Floor.<sup>161</sup> Since HB 591 did not dedicate the funds to any specific projects, its sponsor Ritchie secured an amendment dedicating revenue from the 4¢ cigarette tax extension to the state general fund for healthcare expenses that could be matched by federal funding.<sup>161</sup> Representative Kay Kellog Katz (R-Monroe) introduced an amendment to establish a June 30, 2017 sunset date for the 4¢ tax extension and Representative Damon Baldone (D-Houma) proposed indexing the cigarette tax annually to the Consumer Price Index. The House rejected Rep. Katz' amendment 58-35 and Representative Baldone pulled his change from consideration.<sup>161</sup>

Following debate and amendments, representatives voted 70-30 to approve HB 591, meeting the minimum two-thirds majority necessary to pass tax legislation in the House.<sup>173</sup> The bill then went to the State Senate for consideration.

The Senate Revenue and Fiscal Affairs Committee debated HB 591 on May 31, 2017.<sup>175</sup> Before the hearing, tax proponents inundated committee members with cards declaring their support for the tax renewal.<sup>176</sup> The only testimony we discovered against HB 591 came from Jindal administration official Rina Thomas, who stated the bill increased taxes on Louisianans and could potentially have other increases attached as riders.<sup>175, 176</sup> HB 591 sponsor Ritchie promised to fight the addition of other tax hikes to the legislation.<sup>177</sup> Despite antipathy towards taxes from the Jindal administration, committee members reported HB 591 favorably to the Senate in a 7-2 vote (Table 11.17).<sup>175</sup>

The Senate considered HB 591 on June 2, 2011,<sup>178</sup> where Senate President Joel Chaisson II (D-Destrehan) served as floor manager. He argued that HB 591 generated revenue to fund critical health care programs facing elimination because of budget cuts.<sup>178</sup> After just 10 minutes of consideration, Senators voted 29 to 8 to make the 4¢ temporary cigarette tax increase permanent.<sup>178</sup> Following Senate passage of HB 591, the Governor’s Spokesperson Kyle Plotkin stated that Jindal intended to veto the bill.<sup>178</sup> Representatives and Senators would have to override Governor Jindal’s veto with a two-thirds vote in their respective chambers for HB 591 to become law.<sup>178</sup>

After HB 591 passed both chambers, Governor Jindal worked to shore up support for a veto. Jindal wanted to avoid lawmakers overriding him to avoid political embarrassment. Louisiana legislators rarely overruled the Governor, last rejecting a veto in 1993.<sup>179</sup> Jindal met with Republican House members on June 8, 2011 to convince them not to overturn his impending veto.<sup>180, 181</sup> At the meeting Jindal asserted HB 591 was a personal matter for him<sup>180</sup> and that he would “stick to [his] guns” and strike the bill down according to Representative Jane Smith (R-Bossier City) in coverage by the Associated Press.<sup>182</sup>

... proponents distributed an article from the *Journal of the Louisiana Medical Society* that Jindal wrote in 1997 arguing that a cigarette tax increase would decrease cigarette use and lower healthcare costs, claims made by HB 591 supporters.

Table 11.17: Senate Committee on Revenue and Fiscal Affairs Vote on HB 591 <sup>176</sup>	
Committee Member	Vote
Dan Claitor (R-Baton Rouge)	Yes
Yvonne Dorsey (D-Baton Rouge)	Yes
Dale Erdey (R-Livingston)	Yes
David Heitmeier (D-Algiers)	Yes
Bob Kostelka (R-Monroe)	Yes
Cynthia Willard-Lewis (D-New Orleans)	Yes
JP Morrell (D-New Orleans)	Yes
Buddy Shaw (R-Shreveport)	No
Neil Riser (R-Columbia)	No

To pressure the Governor to adopt HB 591, on June 14, 2011 proponents distributed an article from the *Journal of the Louisiana Medical Society* that Jindal wrote in 1997 arguing that a cigarette tax increase would decrease cigarette use and lower healthcare costs, claims made by HB 591 supporters.<sup>183, 184</sup> Nevertheless, Jindal remained committed to vetoing the tax extension.

Jindal vetoed HB 591 on June 13, 2011.<sup>185</sup> In a letter to the legislature explaining his veto, Jindal stated, “I have made a commitment to the taxpayers of Louisiana to oppose all attempts to raise taxes.”<sup>186</sup> The veto prompted lawmakers to hold a vote on whether to override the veto, and Jindal continued to lobby them to prevent himself from being overruled.<sup>187</sup>

Health advocates attempted to shame Governor Jindal and build public support for HB 591 in response to the veto. American Cancer Society lobbyist Andrew Muhl publicly criticized Jindal in a statement to *The Times-Picayune* for dropping cigarette prices in the midst of state budget cuts to healthcare.<sup>188</sup> The American Cancer Society and other coalition members also organized a rally at the Governor’s residence in support of HB 591 on June 14, 2011.<sup>188</sup> Before Representatives voted on Jindal’s veto of HB 596, health organizations urged legislators to remain faithful to their initial votes for the bill.<sup>187</sup>

The House debated overriding Governor Jindal’s HB 591 veto on June 16, 2011. Supportive lawmakers pressed for HB 591’s passage during deliberation while opponents avoided commenting.<sup>179</sup> Backers, consisting of Republicans and Democrats, urged fellow representatives to pass the bill to curb the negative health and familial impacts of smoking. They asserted the legislature’s independence from the executive branch and cited polling showing public support for extending the cigarette tax.<sup>179</sup> Even House Speaker Jim Tucker, a legislative ally of Jindal’s, urged lawmakers to override Jindal’s veto.<sup>179</sup>

Despite impassioned pleas from legislators and external efforts by health advocates, lawmakers failed to override the Governor’s veto of HB 591. Eleven lawmakers sided with Governor Jindal’s veto after previously voting to pass HB 591. The vote to override Jindal was 58-44, 12 votes below the 70 needed.<sup>179</sup> In comments to the Associated Press following the floor battle, Representative Tom McVea (R-Jackson) explained his decision to vote against HB 591 after previously voting for the bill, stating “I don’t agree with him on this issue, but I don’t want to embarrass the governor.”<sup>179</sup>

After the override vote, the Better Choices for a Better Louisiana Coalition publicly chastised state lawmakers for failing to rebuff Governor Jindal’s veto of HB 591.<sup>163</sup> In a June 16 interview with independent Louisiana news blog BayouBuzz, coalition founder and Louisiana Federation of Teachers President Steve Monaghan stated:

Did they change their minds about the addictive nature of cigarettes, the cost to all taxpayers associated with the usage of the product, or the danger that cancer poses because of this product? Why is it all right to surrender over \$40 million in federal matching funds just to give the governor a victory on this issue? This is a strange, dubious victory for the governor, and a sad defeat for Louisiana.<sup>163</sup>

Although HB 591 was defeated, its sponsor Representative Harold Ritchie would continue efforts during the 2009 legislative session to extend the expiring 4¢ cigarette tax.

### ***Resurrecting HB 591***

Following HB 591's defeat, Representative Ritchie and House Speaker Tucker searched for active bills that they could attach the cigarette tax extension to.<sup>189</sup> In particular, they sought to place HB 591 as a rider on a constitutional amendment, since that legislation was immune to veto by the governor in Louisiana.

Representative Ritchie attached the 4¢ cigarette tax renewal to SB 53, a constitutional amendment<sup>190</sup> that appropriated Master Settlement Agreement money from health and education funds to Louisiana's higher education scholarship program, the Taylor Opportunity Program for Students (Chapter 11).<sup>176, 189-192</sup> Introduced by Senator John Alario (R-Westwego) on behalf of the Jindal Administration, SB 53 required voter approval after passage.<sup>190</sup> As a result, Jindal did not have the power to veto SB 53.

Lawmakers revived HB 591's cigarette tax extension during House Consideration of SB 53 on June 20, 2011. On the Floor, Representative Ritchie proposed and secured a 4¢ cigarette tax extension to the constitutional amendment.<sup>190</sup> SB 53's handler, Representative Jane Smith, asked legislators to oppose the amendment by claiming it was unrelated to the bill<sup>193</sup> and harmed its "integrity."<sup>190</sup> Nevertheless, lawmakers voted 58-41 to include the extension<sup>190, 191</sup> and then voted 90-12 to adopt SB 53.<sup>191</sup> The bill returned to the Senate for consideration of House Changes.

After SB 53 survived the House Floor, its sponsor Senator John Alario and the Jindal Administration expressed opposition to Ritchie's amendment. Alario weighed pushing the bill into a conference committee to remove the cigarette tax extension.<sup>190</sup> Jindal Administration Press Secretary Kyle Plotkin issued a statement on the extension reported by the New Orleans *Times-Picayune*:

While we are disappointed that the House amended the TOPS bill to include the cigarette tax, we can't let the perfect be the enemy of the good... TOPS is too important to our children and to the future of our state.<sup>190</sup>

Although Alario and the Jindal Administration opposed the cigarette tax extension, they resisted killing SB 53 to prevent the rider's adoption.

The Senate considered House changes to SB 53 on June 22, 2011. Senators voted 36-0 to reject House amendments, sending the bill to conference committee. The conference committee retained the cigarette tax extension in the compromise version of SB 53, which cleared the House in a 99-4 vote and the Senate in a 38-0 vote.<sup>194</sup> Jindal did not lobby conference committee members to eliminate the cigarette tax extension from SB 53, fearing its removal could kill the bill.<sup>195</sup> SB 53 required voter approval that coming fall to enter effect.<sup>194</sup>



In an October 22, 2011 election, 70% of voting Louisianans approved SB 53, allowing the constitutional amendment and cigarette tax extension to enter law.<sup>196</sup> The permanently extended 4¢ cigarette tax was expected to provide Louisiana's Health Excellence Fund \$12 million annually for healthcare programs, possibly generating an additional \$48 million in federal matching healthcare funds for Louisiana.<sup>196</sup>

While Representative Harold Ritchie's doggedness in securing the extension kept the cigarette tax per pack at 36¢, Louisiana's tax rate remained the third lowest nationally.<sup>197</sup>

### 2013 Tax Increase Efforts

Although generally opposed to tax increases, Governor Bobby Jindal signaled support for increasing the cigarette tax before the 2013 legislative session<sup>198, 199</sup> and mulled introducing legislation to enact the tax hike. Jindal considered increasing cigarette taxes to provide a revenue replacement for personal income and corporate taxes he wanted to eliminate in his legislative plan.<sup>198, 199</sup> The plan would also increase sales taxes to make up for the revenue declines from income tax.<sup>199</sup> Tim Barfield, Jindal's head tax person on recrafting the tax code in 2013, listed a tobacco tax increase as part of a potential legislative package by early February 2013. The possible tax hike on cigarettes received public support from American Cancer Society spokesperson Andrew Muhl, who stated in a February 4, 2013 Associated Press article that "we [tobacco-control groups] are definitely encouraged by the governor's proposal to increase the tobacco tax...."<sup>199</sup> Muhl added that a \$1 increase would prevent the early deaths of 21,900 Louisianans and stop 35,800 minors from nicotine addiction.<sup>199</sup> Jindal had not revealed the amount his administration was seeking to raise the cigarette tax at the time of Muhl's statement.<sup>200</sup> In another February 4, 2013 article from the *Baton Rouge Advocate* regarding Jindal's evaluation of a tobacco tax hike, Muhl claimed "tobacco tax increases are one of the most effective ways to reduce smoking and other tobacco use, especially among kids."<sup>201</sup>

Shortly thereafter, the Jindal Administration announced it would pursue more than a \$1 increase to Louisiana's cigarette tax as part of its tax reform plan. In an outline of plans to eliminate corporate and income taxes circulated to state lawmakers by February 9, 2013, the administration proposed increasing Louisiana's cigarette tax \$1.05 per pack, raising it from 36¢ per pack to the same rate as Texas' cigarette tax, which was \$1.41 per pack.<sup>202</sup> ACS's Muhl subsequently praised Jindal's proposed tax increase in news coverage, claiming again that tax increases were effective at lowering tobacco use rates, particularly among minors.<sup>202</sup> Jindal's official plan to eliminate corporate and income taxes, revealed on March 14, 2013, contained the \$1.05 per pack increase to the cigarette tax<sup>203</sup> proposed in February. However, the governor ultimately abandoned his tax restructuring plan around mid-April,<sup>204</sup> eliminating his support for tobacco tax increases.

After Jindal withdrew his plan, he opposed all tobacco tax increase bills because they were not used to replace revenue from tax cuts.<sup>204, 205</sup> According to a statement released by Governor Jindal that was reported

"Our tax plan contained a revenue neutral cigarette tax increase. No cigarette tax increases being considered by the Legislature at this time are revenue neutral, and we will not support any net increase in taxes."

Table 11.18: Tobacco Tax Legislation as Introduced in the 2013 Legislative Session<sup>206-210</sup> 198, 205

	Sponsor	Cigarettes (Per Pack)	Cigars Invoiced at \$120,000 or Less Per 1,000	Cigars Invoiced at More Than \$120,000 Per 1,000	Loose Leaf Tobacco	Smokeless Tobacco	Legislative Outcome
Existing	--	\$0.36	8%	20%	33%	20%	--
HB 235	Austin Badon	\$1.41	--	--	--	--	Died upon adjournment without consideration
HB 304	Kirk Talbot (R-River Ridge)	\$0.60	--	--	--	--	Died upon adjournment without consideration**
HB 417	Harold Ritchie	\$1.41	68%	68%	68%	68%	Withdrawn
HB 537*	Katrina Jackson	\$0.68	15%	15%	15%	15%	Defeated in House Ways and Means Committee**
HB 623	Katrina Jackson	\$0.68	15%	--	--	--	Died upon adjournment without consideration**

\*Proposed Constitutional Amendment.

\*\*First hearing postponed by sponsor after seeing fate of HB 417 in its committee hearing.

on in the *Baton Rouge Advocate*, “Our tax plan contained a revenue neutral cigarette tax increase. No cigarette tax increases being considered by the Legislature at this time are revenue neutral, and we will not support any net increase in taxes.”<sup>204</sup> Jindal’s opposition proved a harbinger of defeat for the tobacco tax increases proposed in 2013, with every bill failing to leave committee.<sup>206-210</sup>

Lawmakers introduced five tobacco tax increase bills in 2013 (Table 11.18). Two of the bills, HB 235 and HB 417, featured the cigarette tax increase proposed in Jindal’s tax restructuring package before he abandoned it. Four of the five tax increase bills, Representative Ritchie’s HB 417, Jackson’s HB 537 and HB 623, as well as Talbot’s HB 304 were scheduled for a committee hearing before the House Ways and Means Committee on April 22, 2013. Representative Badon postponed consideration of HB 235 to see how other tobacco tax increases fared in their hearings.<sup>204</sup> Ritchie’s HB 417 received consideration first at the April 22 Committee hearing.<sup>198</sup>

At the committee hearing for HB 417, health advocates and members of the religious community testified in support of the tobacco tax increase. Executive Director Ashley Politz of the Louisiana chapter of the American Academy of Pediatrics testified on the health impacts children suffered from secondhand smoke and asserted a cigarette tax increase could prevent consumption. Louisiana Interchurch Conference Executive Director Dan Krutz argued lawmakers should prioritize the public over special interests.<sup>198</sup> American Cancer Society of Louisiana Government Relations Director Andrew Muhl also testified for the bill.

Opposition to HB 417 came from Louisiana’s wholesale and retail community. Church Point Wholesale representative Jack Casanova and Louisiana Oil Marketers and Convenience Store Association representative Darrell Amar Jr. testified against the bill.<sup>198</sup> Casanova argued a tax increase would cause retailers to lose customers to stores in neighboring states and create a black market, while Amar Jr. asserted businesses would close because higher cigarette prices would reduce spending by smokers on other products.

Table 11.19: House Ways and Means Committee Vote on HB 537 <sup>205</sup>	
Taylor Barras (R-New Iberia)	No
Regina Barrow (D-Baton Rouge)	Yes
Wesley Bishop (D-New Orleans)	Yes
Chris Broadwater (R-Hammond)	Yes
Richie Burford (R-Stonewall)	No
Mike Danahay (D-Sulphur)	No
Mickey Guillory (D-Eunice)	No
Chris Hazel (R-Pineville)	No
Frank Hoffman (R-West Monroe)	Yes
Robert Johnson (D-Marksville)	No
Eddie Lambert (R-Prairieville)	Yes
Harold Ritchie	Yes
Julie Stokes (R-Kenner)	No
Major Thibaut (D-New Roads)	No
Jeff Thompson (R-Bossier City)	No
Patrick Williams (D-Shreveport)	Yes
Lenar Whitney (R-Houma)	No

Realizing that the House Ways and Means Committee intended to vote against HB 417, Representative Ritchie withdrew his bill from consideration.<sup>198</sup> After he pulled HB 417 Representatives Talbot and Jackson deferred their bills.

After being deferred the day before, HB 537 received a hearing before the House Ways and Means Committee on April 23, 2013. The bill's sponsor, Katrina Jackson, was the chair of the Louisiana Legislative Black Caucus,<sup>211</sup> which had historically opposed tobacco tax increases (Chapter 6) until 2011. HB 537 increased the cigarette tax from 36¢ to 68¢ per pack (Table 11.18).<sup>212</sup> The bill also changed tax rates on all cigars, loose leaf and smokeless tobacco to 15% of invoice price (Table 11.18).

At the Committee meeting, HB 537 faced opposition from tobacco retailers, tobacco companies, and the American Cancer Society.<sup>205</sup> While the Committee heard comments, ACS Government Relations Director Andrew Muhl testified that his organization could not support HB 537 because the tax increase was too small to deter tobacco use.<sup>205, 213</sup> He asserted that the tobacco industry and retailers could subsidize such a small increase for its customers.<sup>213</sup> Countering criticism from opponents, Representative Jackson argued that HB 537 produced \$64 million in annual revenue for healthcare as well as institutions that trained medical professionals and conducted cancer research. Representative Jackson failed to convince the House Ways and Means Committee to support HB 537, which voted 11-7 against the bill (Table 11.19). After HB 537 died in the House Ways and Means Committee, lawmakers considered no other tobacco tax increases during the remainder of the 2013 legislative session.

## **Tobacco Tax Increases in the Mid-2010s**

### ***A Budget Crisis in 2015 Leads to a Cigarette Tax Increase***

After the last legislative effort to raise cigarette taxes in 2013, Louisiana dropped from having the third lowest cigarette tax in the nation to the second lowest by 2015.<sup>214</sup>

Regularly plagued by financial deficits, Louisiana faced a \$1.6 billion budget deficit in 2015<sup>215</sup> that health advocates used to pursue a tobacco tax increase. The shortfall resulted from a combination of declining oil prices, financial tricks and maneuvering by Jindal's administration and the state government to balance the budget in prior years, and a structural deficit.<sup>215, 216</sup> The year before, the Jindal administration had transferred \$985 million from various non-recurring funds to run the state, setting up Louisiana for budget problems in 2015.<sup>217</sup> Before Jindal entered office in 2008, Louisiana had a budget surplus because of federal financial assistance for recovery efforts after Hurricane Katrina.<sup>218</sup> Despite his past anti-tax positions, Jindal announced he would support raising cigarette taxes during the 2015 legislative session if spending cuts were made in exchange.<sup>214</sup>

Taking advantage of the budget crisis, health and tobacco control organizations created a coalition and formed the *Invest in a Healthy Louisiana* campaign to pursue tobacco tax increases during the 2015 legislative session. Coalition partners were the American Heart Association, the American Lung Association, the American Cancer Society Cancer Action Network, the Campaign for Tobacco-Free Kids, the Louisiana Campaign for Tobacco-Free Living, and the Louisiana Cancer Prevention and Control Programs.<sup>1</sup> The coalition hired T. Bradley Keith of Gulf South Strategies and Solutions, a firm specialized in public affairs, to serve as campaign director.<sup>219, 220</sup> The Rapides Foundation, a state-based nonprofit dedicated to improving Central Louisiana's health,<sup>221</sup> as well as multiple partners from CTFLA, funded the coalition and its campaign.<sup>222, 223</sup>

Louisiana lawmakers introduced 11 bills during the 2015 legislative session to increase tobacco taxes as part of efforts to address the state's budget shortfall (Table 11.20).<sup>224</sup> For the first time in Louisiana, four tobacco tax bills sought to establish taxes on the nicotine liquid ("e-juice") used in electronic smoking devices. The 11 tobacco tax bills were directed to the House

Bill	Sponsor	Cigarettes Per Pack	Cigars Invoiced at \$120,000 or Less Per 1,000	Cigars Invoiced at More Than \$120,000 Per 1,000	Loose Leaf Tobacco	Smokeless Tobacco	Electronic Smoking Devices
Existing	--	<b>36¢</b>	<b>8%</b>	<b>20%</b>	<b>33%</b>	<b>20%</b>	<b>None</b>
HB 77	Harold Ritchie	\$1.54	--	--	--	--	--
HB 119	Harold Ritchie	\$1.54	--	--	--	--	--
HB 148	Austin Badon	\$1.41	16%	--	66%	40%	--
HB 224	Frank Hoffmann	\$1.08	--	--	--	--	--
HB 252	Jack Montoucet	68¢	12%	30%	50%	30%	5¢ per ml e-juice
HB 407	Major Thibaut	--	--	--	34%	--	--
HB 427	Katrina Jackson	\$1.08	16%	40%	66%	40%	5¢ per ml e-juice
HB 487	Walt Leger III	\$1.08	--	--	--	--	--
HB 515	Harold Ritchie	--	16%	--	66%	40%	5¢ per ml e-juice
HB 544	Randal Gaines	\$1.86	--	--	--	--	--
HB 792	Stokes	\$1.08	16%	40%	66%	40%	5¢ per ml e-juice

Committee on Ways and Means for consideration, where only HB 119 received a hearing. The Invest in a Healthy Louisiana Coalition endorsed HB 119, which had the highest cigarette tax increase of the bills offered that session.<sup>214</sup>

Representative Ritchie prefiled HB 119 on March 19, 2015 to increase the state cigarette tax from 36¢ a pack to the national average of \$1.54<sup>226</sup> and generate \$250 million annually.<sup>224</sup>

The Invest in a Healthy Louisiana Coalition organized public events, disseminated data, and conducted a media campaign to generate public awareness and support for HB 119. The Coalition held a press conference on April 7, 2015 to release data showing the public health benefits of adopting a higher tobacco tax.<sup>214</sup> At the press conference, Representative Ritchie promoted the bill as a way to deter youth from smoking.<sup>214</sup> The Campaign for Tobacco Free Kids and the American Cancer

The Invest in a Healthy Louisiana Coalition organized public events, disseminated data, and conducted a media campaign to generate public awareness and support for HB 119.

Society Cancer Action Network predicted that the \$1.18 increase in HB 119 would deter 17.9% more youth from smoking and cause 43,400 adult users to quit.<sup>214</sup> The Invest in a Healthy Louisiana campaign used Facebook,<sup>236</sup> Twitter,<sup>237</sup> and YouTube<sup>238</sup> to conduct public outreach and develop a grassroots support network for HB 119. The campaign distributed calls to action on Facebook asking people to call their state representatives. The Coalition also encouraged people to text their reasons for supporting a tax increase to the Invest in a Healthy Louisiana Campaign to engage followers and generate statements for advocacy efforts. To facilitate constituent outreach to legislators, the coalition provided an online tool people could use to send emails to their state representatives. and complemented the online email platform with a toll-free telephone line (888-NOW-ICAN) that directly connected constituents to their legislators.<sup>236</sup> In addition, they released radio spots promoting the \$1.18 cigarette tax increase.<sup>239</sup>

The Louisiana Oil Marketers and Convenience Store Association opposed the tax even before the bill received committee consideration.<sup>224</sup> LOMCSA Executive Director Natalie Babi Isaaks argued the cigarette tax increase put small businesses at a competitive disadvantage with retailers from neighboring states.<sup>224</sup>

### ***House Bill 119 in the Legislature***

The House Ways and Means Committee considered HB 119 on April 27, 2015.<sup>226</sup> Before considering testimony, the Committee proposed and adopted a package of amendments to lower the cigarette tax increase from \$1.18 to 32¢ per pack, limiting the total tax rate per pack to 68¢.<sup>226</sup> The reduced rate was the same as Mississippi's.<sup>240</sup> Another amendment sought to establish a Tax Medicaid Match Fund that used tobacco tax revenue generated by HB 119 to fund Louisiana's Medicaid program.<sup>226</sup> Ritchie accepted the lowered tax rate to get HB 119 through the Committee.<sup>241</sup>

Tobacco retailers, who regularly testified alongside the tobacco industry against tax increases, testified against HB 119 while health advocates and medical professionals testified in

support.<sup>241</sup> Convenience store chain owner and past state senator Fred Hoyt testified against HB 119, claiming the bill would cause job loss as well as harm consumers and businesses.<sup>241</sup> As a former state senator, Hoyt had opposed HB 157 during the 2002 legislative session. Arguing in support of HB 119, Louisiana State University Director of the Pulmonary/Critical Care Program Stephen Kantrow asserted that the harm caused to people and the economy by tobacco use warranted a tax increase on tobacco products.<sup>241</sup> Other HB 119 backers at the hearing justified the tax by asserting the state lost \$700 million yearly treating disadvantaged Louisianans suffering tobacco related illnesses.<sup>241</sup>

After hearing testimony, the House Committee on Ways and Means approved HB 119 by an 11 to 5 vote.<sup>241</sup>

After its Ways and Means hearing, HB 119 went the House Appropriations Committee, which approved it unanimously without amendments and sent it to the House Floor.<sup>226</sup> The House considered thirteen tax bills, including HB 119, on May 7, 2015.<sup>240</sup> Representatives voted 78 -27 that day to send HB 119 to the Senate.<sup>242</sup>

After the House approved HB 119, Invest in a Healthy Louisiana pushed for the bill's passage and restoration of its tax increase from 32¢ to \$1.18 in the Senate. The Coalition held a "Rally for a Healthy Louisiana" in Baton Rouge on May 27, 2015 to call for a higher cigarette tax increase that was attended by 100 people.<sup>243</sup> In conjunction with the physical gathering, the coalition held a "virtual rally" that encouraged participants to text messages of support for a \$1.18 cigarette tax increase to the coalition for it to share with legislators. The coalition also used social media outreach to ask followers to contact their representatives via email or phone through the *Invest in a Healthy Louisiana* campaign website.<sup>236, 244</sup> To maintain public visibility and support, the coalition also ran a radio ad detailing the savings in healthcare costs and lives that raising the cigarette tax by \$1.18 per pack would cause.<sup>245</sup>

The Senate referred HB 119 to the Committee on Revenue and Fiscal Affairs where it was heard on May 18, 2015.<sup>226</sup> The Committee reported HB 119 favorably without amendments. The bill then moved for a second hearing before the Senate Committee on Finance.

The Senate Finance Committee considered HB 119 on June 3, 2015. At the hearing cardiovascular surgeon Dr. Mitchell Lirtzman, who testified in support of tobacco control legislation in the past (Chapter 10), told committee members that a large tobacco tax deterred youth use.<sup>246</sup> He also claimed a large tax increase was warranted for a product that inflicted \$1.8 billion in healthcare costs annually on the state.<sup>246</sup> We do not know if other proponents or any opponents testified at the hearing.

During the hearing, committee members amended HB 119 to increase taxes on all tobacco products. They raised the cigarette tax increase to 64¢ per pack, which would bring Louisiana's total cigarette tax to \$1.00 and make it the 32<sup>nd</sup> highest in the country (Table 11.21).<sup>246</sup> The Committee also amended HB 119 to increase taxes on cigars, little cigars, smoking tobacco, smokeless tobacco, moist snuff, and nicotine liquid for use in electronic smoking devices.<sup>247</sup> Following amendments, the Senate Committee on Finance sent HB 119 to the Senate Floor.<sup>226</sup>

The Senate considered HB 119 on June 5, 2015<sup>226</sup> and adopted two amendments to raise cigarette and moist snuff tax increases while rejecting efforts to weaken proposed tax hikes for other tobacco products (Table 11.22). Senator Ben Nevers secured an amendment to increase taxation on moist snuff products. Senator Jean-Paul Morrell (D- New Orleans) obtained an amendment to raise the cigarette tax increase from 64¢ to 72¢ , bringing the potential tax rate per pack of cigarettes to \$1.08 total.<sup>248, 249</sup> Senator Jody Amedee introduced three amendments to either remove taxes on tobacco products besides cigarettes or lower tax increases on moist snuff; all of which failed. Senators raised tax hikes in HB 119 and avoided reducing other proposed tobacco tax increases to address that year’s budget shortfall and avoid severe cuts to education and healthcare funding.<sup>249</sup> The Senate approved the amended bill in a 31-8 vote and returned it to the House for final confirmation.<sup>226</sup>

Following Senate consideration of HB 119, the Invest in a Healthy Louisiana Coalition praised Senator Morrell for raising the tax increase in HB 119 and continued to push for the restoration of the initial \$1.18 increase in the House.<sup>236</sup> It started a campaign over social media that depicted a higher cigarette tax as a choice between children and Big Tobacco.<sup>236</sup> The coalition also held a second virtual rally on June 8, 2015 to have supporters call and email their legislators, as well as provide text messages in support of, “a responsible cigarette tax increase.”<sup>236</sup>

The Senate’s amendments to HB 119 set up a confrontation with the House. Upset by Morrell’s amendment, House Speaker Chuck Kleckley (R-Lake Charles), owner of three convenience stores, publicly opposed the tax. He told the Baton Rouge *Advocate*, “It’s way too high. The best thing to do is completely remove the cigarette tax from the table. Let’s work to find revenue sources from other bills coming from the Senate.”<sup>249</sup> The House considered HB 119 with Senate amendments on June 9, 2015 and voted 81-15 against the changes.<sup>226, 250</sup> Lawmakers subsequently formed a conference committee to develop a compromise version of the legislation.<sup>250</sup>

“It’s way too high. The best thing to do is completely remove the cigarette tax from the table. Let’s work to find revenue sources from other bills coming from the Senate.”

In response, the Invest in a Healthy Louisiana Coalition used paid media and mobilized grassroots supporters to pressure state legislators. The Coalition released a radio spot castigating the Louisiana State House for having “sided with Big Tobacco instead of public health.”<sup>251</sup> The ad singled out Representative Lance Harris (R-Alexandria) for his efforts to prevent a tax increase favorable to public health.<sup>251</sup> In addition, the Campaign encouraged people to send letters to representatives through its website to express their unhappiness regarding the House’s rejection of Senate amendments that expanded tobacco tax increases.<sup>252</sup>

The HB 119 conference committee convened on June 11, 2015.<sup>253</sup> Committee members included Representatives Harold Ritchie, Joel Robideaux (R-Lafayette), and Lance Harris and Senators Ben Nevers (D-Bogalusa), Robert Adley (R-Benton), and Jack Donahue (R-Mandeville).<sup>226</sup> The committee agreed to raise the cigarette tax by 50¢, establishing a total

Table 11.21: Tobacco Tax Rates in Existing Law and HB119 <sup>226</sup>						
Tobacco Product	Existing Law	HB 119 Original	HB 119 with House Ways and Means Committee Amendments	HB 119 with Senate Finance Committee Amendments	HB 119 with Senate Floor Amendments	HB 119 Final
Cigarettes Per Pack	36¢	\$1.54 (\$1.18 increase)	68¢ (32¢ increase)	\$1.00 (68¢ increase)	\$1.08 (72¢ increase)	86¢ (50¢ increase)
Cigars Invoiced at \$120,000 or Less Per 1,000	8% of invoice	--	--	10% of invoice		--
Cigars Invoiced at More Than \$120,000 Per 1,000	20% of invoice	--	--	25% of invoice		--
Little Cigars	--	--	--	3.2¢ per little cigar (\$1.00 per pack of 20)*	3.2¢ per little cigar (\$1.00 per pack of 20)**	--
Loose Leaf Tobacco	33% of invoice	--	--	50% of invoice		--
Smokeless Tobacco	20% of invoice	--	--	25% of invoice		--
Moist Snuff	20% of invoice	--	--	20% of invoice or 60¢ per 1.2 ounce can (whichever higher)	25% of invoice or 74¢ per 1.2 ounce can (whichever higher)	--
Electronic Smoking Devices	--	--	--	5¢ per ml nicotine fluid		5¢ per ml nicotine fluid
*Rate anchored to current tax rate for cigarettes.						
**Rate anchored to tax rate established by HB 119.						

cigarette tax of 86¢ per pack.<sup>226</sup> Committee members also placed a low 5¢ per milliliter tax on any nicotine-containing liquid used in electronic smoking devices and dropped tax increases for other tobacco products.<sup>226</sup>

The Louisiana State Legislature adopted HB 119 and Governor Jindal signed it into law as Act 94 on June 19, 2015.<sup>226</sup> The 50¢ tax increase per cigarette pack entered effect July 1, 2015 and the 5¢ tax per milliliter on nicotine-containing fluid August 1, 2015. Cigarette taxes were deposited in the Tobacco Tax Medicaid Match Fund created by HB 119 to fund Louisiana's Medicaid program.

Table 11.22: Amendments Proposed to HB 119 on Senate Floor <sup>226</sup>		
Sponsor	Amendment	Adopted
Ben Nevers	Changed moist snuff tax rates set in Senate Finance Committee from 20% of invoice or 60¢ per 1.2-ounce can to 25% of invoice or 74¢ per 1.2 ounce can.	Yes
Jean-Paul Morrell	Increase cigarette tax per pack by 72¢ (\$1.08 total).	Yes
Jody Amedee	Eliminate Senate Finance Committee amendments increasing or setting taxes on tobacco products other than cigarettes.	Withdrawn
Jody Amedee	Remove Nevers amendment to change tax rates on moist snuff.	Withdrawn
Jody Amedee	Remove Nevers amendment to change tax rates on moist snuff. Set moist snuff tax rate at 25% of invoice. Remove tax on snuff cans.	Rejected



Although the Invest Coalition's campaign did not achieve the \$1.18 tax increase it desired on cigarettes, it facilitated the first tobacco tax increase since 2002. The cigarette tax increase raised Louisiana from having the 49<sup>th</sup> highest (or 2<sup>nd</sup> lowest) cigarette tax rate in the nation to 36<sup>th</sup>.<sup>4</sup>

### **Invest in a Healthy Louisiana Backs another Tax Increase in 2016**

After Governor Jindal left office, Louisiana faced a \$943 million budget deficit. Elected governor in 2015, John Bel Edwards (D) convened an extraordinary legislative session in 2016 to pass bills to resolve the budget crisis.<sup>254, 255</sup> The legislature mainly considers tax legislation in odd number years because of constitutional restrictions.<sup>256</sup> The special session allowed state lawmakers to bypass this requirement.<sup>256</sup>

To help address Louisiana's budget deficit, Representative Walt Leger III (D- New Orleans) pre-filed HB 14 on February 12, 2016 to raise the cigarette tax from 86¢ to \$1.08 per pack, a 22¢ increase. Revenue from the increase would go to the state's general fund.<sup>257</sup> Representative Leger sponsored HB 14 on behalf of Governor Edwards as part of his tax legislation package, which also included tax hikes on car rentals, alcohol, and internet sales. If passed, Louisiana would go from having the 36<sup>th</sup> highest cigarette tax in the nation to 33<sup>rd</sup>.<sup>4</sup>

To seize on the opportunity afforded by the 2016 First Extraordinary Session, The Invest in a Healthy Louisiana Coalition mobilized to secure a greater cigarette tax increase than proposed in HB 14. Instead of seeking to raise the cigarette tax to \$1.18 per pack (as it had in 2015), Invest called for a \$1.25 increase per pack (for a total tax of \$2.11 per pack).<sup>1</sup> The coalition also sought to equalize other tobacco products to the new cigarette tax rate and dedicate revenue from the cigarette and tobacco tax increases to tobacco prevention and cessation efforts.<sup>1</sup>

The Invest in a Healthy Louisiana Coalition employed a social media-based information campaign to support increasing the cigarette tax. To mobilize grassroots support to pressure state legislators, the Coalition used Facebook and Twitter to disseminate information on how the \$1.25 cigarette tax increase helped address Louisiana's budget shortfall, save lives, reduce healthcare costs, and prevent youth use.<sup>236, 237</sup> The Coalition also commissioned a poll that showed strong support for a \$1.25 cigarette tax hike among Louisianans compared to other revenue generating measures.

HB 14 received consideration from the House Ways and Means Committee alongside thirty other tax bills on February 23, 2016.<sup>258</sup> Committee members favorably reported the bill to the Floor without debate.<sup>258</sup>

After HB 14 passed committee, Representative Leger twice delayed consideration fearing his bill lacked enough votes to survive the House.<sup>259</sup> Perhaps recognizing that the tobacco industry could not block all tax increases, on February 29, the second day HB 14 was scheduled for debate, Altria lobbyist Randy Haynie, together with 9 or 10 lobbyists from tobacco manufacturers, wholesalers, and retailers met with Representative Leger and Governor Edward's staff to discuss a smaller cigarette tax increase.<sup>260</sup> In an interview with the New Orleans *Times-*

Table 11.23: Amendments Proposed to HB 14 on the House Floor <sup>262</sup>		
Sponsor	Amendment	Adopted
Hunter	Adds bidis and kreteks to legal definition of “cigarette”. Adds “tobacco and nicotine solution used in hookahs” to legal definition of “vapor products”	Withdrawn
Harris	Prohibits HB 14 tax increase from applying to cigarettes purchased by retailers before April 1, 2016 implementation date.	Adopted
Johnson	Dedicated revenue from the HB 14 tax increase to a newly created “Common Sense in Government Fund”. 33% of fund money was dedicated to classes and academic programs at colleges and universities 33% to the DHH for Medicaid payments to teaching hospitals, and 34% to the DHH for the New Opportunities Waiver Program, which provides services to the developmentally disabled. <sup>265</sup>	Withdrawn

*Picayune*, Haynie stated that the tobacco industry sought to lower the tax increase but did not oppose a hike altogether.<sup>260</sup> Discussions between Representative Leger, Governor Edwards’ staff, and tobacco interests did not lead to a weakening of HB 14’s cigarette tax increase. Instead, the tobacco industry and its allies agreed to shelve opposition to HB 14 after Governor Edwards’ administration promised not to pursue future cigarette tax increases.<sup>261</sup>

The House considered HB 14 on March 3, 2016<sup>262</sup> after Leger, the bill’s sponsor, had delayed floor debate five times.<sup>261</sup> Lawmakers proposed three amendments, approving only one from Representative Lance Harris (R-Alexandria) to exempt cigarettes acquired by retailers before HB 14’s implementation date from its tax increase (Table 11.23). (Harris was the leader of the House Republicans and an owner of multiple convenience stores.<sup>263, 264</sup>) Representatives then voted 74-26 to approve the bill and send it to the Senate. Harris, who voted to approve HB 14, told the *Baton Rouge Advocate*, “I voted for it [HB 14] because there wasn’t industry opposition.”<sup>263</sup>

HB 14 passed through the rest of the legislature with minimal debate and no amendments. The bill passed the Senate Committee on Revenue and Fiscal Affairs and on March 4, 2016 and the Senate in a 33-2 vote on March 5, 2016.<sup>262</sup> Despite public pressure from Invest in a Healthy Louisiana for a \$1.25 increase per pack to the cigarette tax, the legislature stuck with a 22¢ increase. Governor Edwards signed HB 14 into law on March 8, 2016, increasing the cigarette tax to \$1.08 per pack.

Following the passage of HB 14, Invest in a Healthy Louisiana followed its strategy from the 2015 tax battle and urged Louisianans to “send a message of disappointment to the governor” through its campaign website.<sup>266</sup> The Invest in a Healthy Louisiana Coalition publicly stated that the 22¢ cigarette tax increase was not enough to protect public health. In an interview with *The Advocate*, Coalition spokesman T. Bradley Keith stated, “You would have to see a 50-cent per pack increase to get any appreciable change.”<sup>263</sup> Although the Coalition failed to convince lawmakers to raise the cigarette excise tax by \$1.25 per pack, pressure from its campaign helped pass a 22¢ increase that improved Louisiana’s cigarette tax rate from 36<sup>th</sup> highest in the country to 33<sup>rd</sup> the year it passed.<sup>4</sup> However, Louisiana’s cigarette tax per pack would drop to the 37<sup>th</sup> highest in the United States by 2020.<sup>267</sup>

## Conclusion

Despite recurring budget crises and high cancer mortality rates, Louisiana avoided tobacco tax increases from 1990 until 2000. That year, with assistance from health advocates, state lawmakers passed a 4¢ per pack increase to the cigarette tax to help address a state budget crisis. Health advocates subsequently used their re-formed Coalition for a Tobacco-Free Louisiana and collaborated with LSU, Tulane and other interests in 2002 to secure a cigarette tax increase of 12¢ per pack. The tax increase dedicated 2¢ towards tobacco control programming, its first recurring dedication. The revenue created and continues to fund the Louisiana Campaign for Tobacco-Free Living (Chapter 4), a nonprofit tobacco control program administered by the Louisiana Institute of Public Health that has improved tobacco control advocate capacity in Louisiana and helped secure state and local tobacco control legislation (Chapters 10, 11, 12).

After securing a 12¢ cigarette tax increase in 2002, health and tobacco control advocates struggled to raise tobacco taxes because of conservative fiscal attitudes and opposition from the State Republican Party. In 2005, health and education advocates failed to sell tobacco tax increase legislation as a vehicle to provide teachers a salary increase after an unexpected financial windfall alleviated state budget pressures and strengthened republican lawmakers' calls to use existing funds to provide a pay raise instead. In 2009, Governor Bobby Jindal and the State Republican Party's public opposition to tax increases, complemented by an anti-tax media campaign, prevented advocates from securing tobacco tax increases on multiple tobacco products.

Despite a budget crisis, Jindal's opposition to tax increases in 2011 prevented tobacco tax hikes and nearly led to the expiration of a temporary 4¢ cigarette tax that would have lowered Louisiana's cigarette tax from 36¢ to 32¢ per pack. Representative Harold Ritchie, whose 4¢ cigarette tax renewal bill was vetoed by the governor, collaborated with other lawmakers to attach his legislation to a Jindal-sought constitutional amendment to fund the state's popular scholarship program, TOPS. Louisiana's ultimately approved the constitutional amendment, making the temporary cigarette tax permanent.

Tobacco control proponents obtained later tax increases by utilizing a coalition strategy similar to their efforts to pass clean air legislation. In 2015, health and tobacco control organizations, mainly from the CTFLA, formed the Invest in a Healthy Louisiana Coalition to run a multifaceted campaign. Using lobbying, grassroots pressure, and paid and earned media, the coalition secured a 50¢ per pack cigarette tax increase that raised the state's tax rate from the 49<sup>th</sup> highest in the country to 36<sup>th</sup> in 2015. During an extraordinary session called by new Democratic Governor John Bel Edwards in 2016 to address a severe budget crisis in Louisiana, the Coalition generated public awareness and knowledge of a proposed tobacco tax increase to help secure a 22¢ hike and elevate Louisiana's tax rate to \$1.08 per cigarette pack. The increase brought Louisiana from having the 36<sup>th</sup> highest cigarette tax rate in the United States to the 33<sup>rd</sup> highest in 2016. Louisiana's cigarette tax rate declined to the 37<sup>th</sup> highest by January 2020.<sup>267</sup>

Efforts to secure tax increases in Louisiana indicate that health and tobacco control advocates need to form diverse and broad partnerships to pass legislation. In addition, tax increase proponents need to develop strong counter-messaging to anti-tax arguments used by opponents in order to generate enough public and political pressure to adopt tax hikes in hostile legislative environments.



## **Chapter 12: Clean Indoor Air Part 3: Protecting the Public from Gaps in the Louisiana Smoke-Free Air Act 2011-2019**

- 28 cities and parishes adopted comprehensive, 100% smokefree laws between 2012 and January 2020 to cover exemptions in the Louisiana Smoke-Free Air Act (2006).
- Other than adopting a law in 2013 to prohibit smoking at post-secondary education campuses and facilities and a 2014 distance requirement law for state government buildings, progress on smokefree legislation stagnated at the state level.
- Smokefree campaigns for local ordinances promoted comprehensive clean air policies as necessary to protect musicians, bar, and casino workers.
- The gaming and bar industries opposed local legislation by asserting it represented overregulation that would harm businesses economically.
- Local, state, and national organizations used multilevel campaigns to secure major smokefree legislation in New Orleans in 2015 and Baton Rouge in 2017.

### **After the Louisiana Smoke-Free Air Act**

In 2006, the Coalition for a Tobacco-Free Louisiana (CTFLA) and Louisiana Campaign for Tobacco-Free Living (TFL) helped pass the Louisiana Smoke-Free Air Act. The law made most public places and restaurants smokefree but exempted some facilities, most notably bars and gaming establishments, from clean air restrictions (Chapter 10). The Louisiana Smoke-Free Air Act also lifted preemption over local clean air laws. Subsequent efforts by state legislators failed to pass additional state-level smoking restrictions, particularly for bars and casinos (Chapter 10).

When efforts to secure comprehensive, 100% smokefree policies stalled at the state level, tobacco control advocacy groups and health organizations focused on securing strong local clean air laws to increase protections for Louisianans from secondhand smoke. Following preemption repeal, cities and parishes enacted additional smoking restrictions into law ranging from smokefree parks to 100% smokefree ordinances.<sup>1, 2</sup> The more comprehensive ordinances closed exemptions in the state law for bars, gaming facilities, hotel/motel guest rooms, retail tobacco stores, common areas in multi-unit housing, nursing homes, public parks, and outdoor places of employment. Ordinances passed after 2013 began including electronic cigarettes (e-cigarettes), battery-operated nicotine delivery devices that had started gaining popularity.<sup>3-5</sup> By January 2020, at least 28 localities including New Orleans and Baton Rouge prohibited smoking in restaurants, workplaces, bars, and gaming establishments<sup>2</sup> and 26 prohibited e-cigarette use in those places (Table 12.32).<sup>6</sup>

### **Advocates Unsuccessfully Pursue State Legislation to Prohibit Smoking in Bars in 2011**

In 2011, State Senator Rob Marionneaux introduced SB 133 (D-Livonia) to prohibit smoking in bars serving food.<sup>7</sup> Marionneaux, who previously sponsored and helped CTFLA pass the Louisiana Smoke-Free Air Act in 2006, had tried unsuccessfully to pass bills prohibiting smoking in bars in 2008, 2009, and 2010 (Chapter 10). The Senate Health and Welfare Committee subsequently amended SB 133 to prohibit smoking in all bars.<sup>8</sup>

SB 133 received minimal assistance from health and tobacco control advocates because they were focusing on making an expiring 4 cent per pack cigarette tax permanent (Chapter 11).<sup>9</sup> However, hospital organizations and medical practitioners testified in favor of SB 133,<sup>10</sup> arguing that smoking restrictions in bars were necessary to protect employees and the public from secondhand smoke. They cited findings that hundreds of Louisianans died annually from secondhand smoke exposure.<sup>9</sup>

SB 133 faced heavy opposition from the bar industry as well as the gaming industry despite gambling establishments not being included in the bill's restrictions.<sup>9</sup> Louisiana Association of Beverage Licensees representative Chris Young, who had fought against clean air (Chapter 10) and tobacco tax legislation (Chapter 11), argued against SB 133 during the Senate Health and Welfare Committee hearing, testifying that smoking was a choice for businesses.<sup>10</sup> Louisiana Casino Association Executive Director Wade Duty, another consistent opponent of smokefree laws (Chapter 10), testified that SB 133 was economically harmful. During committee and Senate Floor debate, opponents generally argued SB 133 would reduce state tax revenue and economically harm businesses.<sup>9</sup>

While efforts to secure smoking restriction legislation struggled within the state legislature, policy battles at the local level secured comprehensive clean air laws within certain municipalities.

SB 133 passed out of the Senate Health and Welfare Committee<sup>11</sup> but was then killed by a 22-15 vote on the Senate floor.<sup>9</sup> After SB 133's defeat, American Cancer Society representative Andrew Muhl published a letter calling for the protection of employees and musicians from secondhand smoke and for lawmakers to reconsider smoking restrictions in the future. While efforts to secure smoking restriction legislation struggled within the state legislature, policy battles at the local level secured comprehensive clean air laws for Louisianans.

### **First comprehensive local clean air ordinance: Alexandria**

In 2011, Alexandria became the first city in Louisiana to pass a comprehensive clean air ordinance, prohibiting smoking in all bars, nursing homes, and gaming establishments.<sup>12</sup> The ordinance also set a 25-foot distance requirement for smoking near sports facilities and city property. Shortly after preemption was repealed in 2006, TFL determined in a community assessment that Alexandria was a potential target for a smokefree ordinance. TFL launched a legislative campaign in 2011 after receiving positive reaction from its "Equal Air for All" media campaign (Chapter 4) and grassroots education efforts in the city.<sup>13</sup> TFL's efforts to pass Alexandria's clean indoor air law received support from the Rapides Foundation, a regional 501 (c)(3) health foundation active in tobacco control (Chapter 4).<sup>14</sup> Alexandria City Council President and bill sponsor Roosevelt Johnson and Councilmember Harry Silver collaborated with TFL to secure the ordinance.<sup>12</sup> Louisiana's first comprehensive clean air ordinance passed despite resistance from the local bar owner community.

### ***Generating Public Support for a Future Ordinance***

To build support for a comprehensive clean air ordinance in Alexandria, TFL organized smokefree events throughout the city. Although the local bar community mostly opposed

smoking restrictions, TFL identified a few owners who supported a 100% smokefree ordinance in September 2010 and partnered with them to host "Let's be Totally Clear" events. The events were smokefree nights at participating bars that took place two to three times a month.<sup>13</sup> Notably, TFL partnered with prominent musician, former smoker, and owner of G.G.'s Club (the largest nightclub in Alexandria at the time) G.G. Shinn to host multiple smokefree nights at his venue.<sup>13</sup> Smokefree nights were designed to increase public awareness that the Louisiana Smoke-Free Air Act did not protect service industry workers.<sup>13</sup> In addition to on-site events, TFL plastered itsr "Equal Air for All" messaging on billboards across Alexandria and on social media. These messages often featured smoking restriction supporters, including the city's Office of Public Health director, United Way's leader, two local cardiologists, and Alexandria City Council President Roosevelt Johnson and Councilmember Harry Silver.<sup>13</sup>

TFL conducted air quality studies in Alexandria bars to pave the way for a comprehensive clean air ordinance. The results, evaluated by the Louisiana State University (LSU) Health Sciences Center in New Orleans, demonstrated that the air quality of bars in Alexandria were at hazardous levels for health.<sup>13</sup> TFL hosted a joint press conference with Council President Roosevelt Johnson and Councilmember Harry Silver in February 2011 to release the study's results.<sup>13</sup> TFL prepared packets with the bar study data and met individually with other council members to educate them and gain their support for a local smokefree law.

### ***The Alexandria Ordinance is Drafted***

While TFL cultivated public awareness and support for smokefree policies in Alexandria during 2010 and 2011, it found a willing legislative champion in City Council President Roosevelt Johnson. When he was serving as an Alexandria City Councilmember before adoption of the Louisiana Smoke-Free Air Act in 2006, Johnson had voted to pass a smoking restriction ordinance (limited in its strength and scope by state preemption at the time).<sup>13</sup> TFL developed a rapport with Johnson after the statewide law passed and invited him to attend discussions it held in 2008 on the results of its Community Assessment and efforts to mobilize grassroots support.<sup>13</sup> Johnson signaled to TFL at the time that he supported securing greater smoking restrictions for Alexandria.<sup>13</sup>

In 2011, Roosevelt Johnson tailored a comprehensive clean air measure for Alexandria with assistance from TFL. The legislation was based on Americans for Nonsmokers' Rights' model ordinance to prohibit smoking in bars, gaming establishments, nursing homes, hotels and motels, and within 50 feet of public facilities.<sup>15</sup>

### ***Opposition from the City Attorney and Bar Owners***

Initially, City Council President Roosevelt Johnson's ordinance faced opposition from Charles "Chuck" Johnson, the City Attorney and a local business owner.<sup>13</sup> When TFL, Roosevelt Johnson, and Silver held their press conference announcing the findings of the Alexandria air quality study and disseminated informational packets to officials about the results, they also provided one to city attorney Johnson. Council President Roosevelt Johnson met the city attorney, who opposed pursuing the ordinance before discussing potential smoking restrictions with local bar owners.<sup>13</sup> According to TFL Regional Manager Gilchrist in a 2014 interview for this report:

Chuck [City Attorney Johnson] was the only one [to oppose smoking restrictions]. He said, "I know, I agree, I see it, but I can't support this because I'm a small businessman." So, he was the only one that told us out the gate when we shared air quality monitoring results with him that he was not going to -- he can't see that he would say yes to any kind of policy that would address that issue.<sup>13</sup>

Chuck was the only one [to oppose smoking restrictions]. He said, "I know, I agree, I see it, but I can't support this because I'm a small businessman."

After speaking with City Council President Roosevelt Johnson, the city attorney sent a letter to "all the bar owners personally" inviting them to attend a public meeting on the anticipated smoking restrictions.<sup>13</sup>

The town hall to discuss Council President Roosevelt's pending smokefree ordinance occurred on July 15, 2011 in the Alexandria City Council chambers.<sup>15, 16</sup> TFL officials were not initially invited to speak at the meeting, preventing them from sharing the results of their air quality surveys or information on secondhand smoke dangers to attendees. However, City Councilmember Harry Silver arranged for TFL to make a presentation on the consequences of tobacco smoke exposure with the caveat that TFL could not provide additional testimony.<sup>13</sup> According to TFL Regional Manager Jennifer Gilchrist in a 2014 interview for this report:

So, I believe, and I'm saying this from not quite sure my memory, because I wasn't the one having direct conversations with him. I think Harry Silver negotiated for us to be on the agenda, to be able to present, and to speak to the issue of second-hand smoke and the dangers of tobacco smoke exposure.

We were told, however, that that's all we're to say, and that we don't need to bring any kind of testimony or any kind of supportive discussions about that. In other words, present and be quiet, sit down and be quiet. And that [city attorney] Chuck [Johnson] was going to monitor me.<sup>13</sup>

TFL subsequently alerted coalition members in Region 6 and encouraged them to participate in support of smoking restrictions. TFL brought information packets regarding secondhand smoke as well as its air quality monitoring results for bar owners to review.<sup>13</sup>

At the meeting, Louisiana Office of Public Health Regional and Medical Director Dr. David Holcomb spoke about the harms of secondhand smoke exposure. His testimony drew negative reactions from those against smoking restrictions.

Around 25 bar owners and employees attended to oppose prohibiting smoking in bars.<sup>15</sup> According to Gilchrist in her 2014 interview for this report, opponents at the meeting displayed a strong resistance to smoking restrictions at the hearing:

Dr. Holcomb, bless his heart, decided to stand up and speak from a public health issue stance, and he actually was yelled off the stage. It was not respectful dialogue at all. I was disappointed in how that turned out.<sup>13</sup>



Those commenting against the smokefree ordinance argued it would adversely affect revenue, cause job loss, restrict personal freedom, and increased government intrusion into private affairs.<sup>13</sup>

Outside the meeting, TFL met resistance on social media. In a 2014 interview for this report, TFL's Gilchrist mused that the tobacco industry might have been operating an opposition account on social media:

There was one [social media] poster named "Harley Rider" something or other. And it would go on and on. We knew whoever this person was, they were scripted. And they'd monitor anything that came up about the issue. And it actually became a turnoff to people...that was the only real presence that I think we can say was the tobacco industry.<sup>13</sup>

Despite opposition from City Attorney Chuck Johnson, bar owners and posters on social media platforms, plans to introduce the 100% smokefree ordinance in Alexandria remained.

### ***The Alexandria Clean Air Ordinance is Introduced***

After a year of efforts to promote smoking restrictions in Alexandria, on September 20, 2011 City Council President Johnson introduced an ordinance prohibiting smoking in enclosed public places, workplaces, bars, gaming facilities, hotels and motels, retail tobacco businesses, common and outdoor areas of multi-unit housing, public transportation vehicles, city-owned public transportation stations, platforms, and shelters, and outdoor playgrounds. The legislation also restricted smoking within 50 feet from any entrance, window, or door.<sup>17</sup>

Despite efforts since September 2010 by TFL, health advocates and local lawmakers to generate support for comprehensive smoking restrictions, Johnson's ordinance received a tepid reception from Mayor Jacques Roy and his administration. The Mayor and his administration avoided endorsing the legislation, stating that they had not been consulted before its drafting.<sup>18</sup> However, according to TFL's Gilchrist, advocates had attempted to brief the mayor multiple times but were thwarted by political dynamics and racial tensions:

The dynamics of this ordinance, our city, is that at the time, politically, there was division between black and white council members. It's racially divided. Not that it's sort of like that today, maybe still a little bit, but at that time there was a lot of racial division.

And so, what happened was some of the waters parted, not necessarily based on the issue, but based on the politics that was going on within the city council and the mayor's office at the time. There was some conflict. So, we never received full backing by the mayor. We attempted several times to meet with him personally or go into his office. And we weren't able to do that.<sup>13</sup>

The administration urged bar and hospitality owners as well as the public to provide comments at the initial City Council hearing for Johnson's ordinance on October 4, 2010.<sup>18</sup>

## *The Economic Development and City Council Hearings for the Alexandria Ordinance*

The clean air ordinance was first heard before the City of Alexandria's Economic Development Committee on October 4, 2011. If approved, the full city council would consider the legislation that same day. During consideration, TFL Regional Coordinator and Policy and Advocacy Manager Carrie Broussard presented on the dangers of secondhand smoke exposure and Alexandria Air Quality Monitoring results in local bars.<sup>13</sup> Committee members subsequently passed an amendment making the ordinance follow the state's smoking restrictions for hotels and motels, which permitted hospitality establishments to designate up to 50% of their rooms as smoking.<sup>13</sup> Tobacco control advocates working to pass the ordinance sought to make the legislation more viable by supporting an amendment reducing the distance from building entrances from 50 feet to 25 feet. The Economic Development Committee approved the amended ordinance and sent it to the full City Council for a vote that evening.

"We had great grassroots support. The chambers were overflowing. They had to have security not let anyone come in. The testimony going on inside was put on the TV monitors outside, and the crowd overflowed to the outside of the building."

The City Council meeting that night had a maximum capacity audience as people came to support the smokefree ordinance.<sup>13</sup> According to a 2014 interview for this report:

We [TFL] had great grassroots support. The chambers were overflowing. They had to have security not let anyone come in. The testimony going on inside was put on the TV monitors outside, and the crowd overflowed to the outside of the building.<sup>13</sup>

TFL had recruited local medical doctors, health advocates, an owner of a local bingo hall, and bar patrons to speak in support of the ordinance.<sup>13</sup> Cardiologist Gary Jones, hematologist Ulla Ule, oncologist Larry Menache, bar patrons and cancer survivors testified.<sup>13, 19</sup> In addition, Central Louisiana Area Health Education Center (CLAHEC) Healthy Communities Coordinator Christi Mabou read a letter to the council penned by<sup>13, 19</sup> prominent musician and Alexandria nightclub owner G.G. Shin that supported the ordinance. According to Gilchrist in a 2014 interview for this report, the "letter coming from him [G.G.] was very compelling testimony and it helped a whole lot in our efforts."<sup>13</sup> Gilchrist credited testimony from cancer survivors in particular for the outcome of the clean air ordinance.

Prior to the October 4 hearings, tobacco control advocates did not expect a unanimous vote because of opposition from Councilmember Charles Fowler stated as a business owner that businesses should be allowed to decide whether to adopt smokefree restrictions.<sup>13</sup> However, on the day of the hearings Fowler lost a friend to cancer, earning the clean air ordinance an unexpected vote. In a 2014 interview for this report Gilchrist observed:

Unfortunately, on the day of the vote, they had a friend that was suffering from cancer, and he died... And because of that and the testimony that he was hearing from cancer survivors and all of that emotional stuff that was happening in the

Table 12.1: Alexandria City Council Vote to Adopt Smokefree Ordinance <sup>20</sup>	
Councilmember	Vote
Roosevelt Johnson	Yes
Harry Silver	Yes
Ed Larvadain	Yes
Charles Fowler	Yes
Mitzi Gibson	Yes
Jim Villard	Yes
Jonathan Goins	Yes

room at the moment, his vote was first, and he cast it as a yes in the name of his friend he just lost.<sup>13</sup>

After Fowler, the six other councilmembers voted for the clean air ordinance (Table 12.1),<sup>20</sup> each dedicating their vote to friends and family lost to cancer.<sup>13</sup>

Although Mayor Jacques did not endorse the legislation before the Council's vote, he praised Council President Roosevelt Johnson and Councilmember Silver after the ordinance passed.<sup>12</sup>

TFL remained involved in Alexandria as the city's ordinance neared effect on January 2, 2012. To maintain public awareness of the newly adopted smoking restrictions and facilitate implementation, TFL continued to host smokefree events, including one at G.G.'s nightclub, and disseminated informational materials on the new local law.<sup>13</sup> TFL provided free packages to bars and bingo halls, describing Alexandria's ordinance together with promotional materials including bingo cards and bar napkins featuring clean air messaging. The persistent advocacy efforts by TFL before and after adoption of Alexandria's ordinance marked the start of effective local smokefree policy campaigns across Louisiana.

In the end, the Alexandria ordinance prohibited smoking in enclosed public places, workplaces including bars, gaming facilities, retail tobacco businesses, common and outdoor areas of multiunit housing, public transportation vehicles, city-owned public transportation stations, platforms, and shelters, and outdoor playgrounds. The ordinance also established a 25-foot distance requirement from entrances. It allowed Alexandria hotels and motels to follow state smoking restrictions.<sup>17</sup> Infractions faced \$100 fines for first violation, \$250 for second violation, and \$500 for any subsequent violations within a year. Alexandria's ordinance became the strongest smokefree law in Louisiana, and Advocates would use it as a model legislation for future local level campaigns across the state.

### **Woodworth Secures Louisiana's Second Comprehensive Clean Air Ordinance**

Only 3 months after TFL's successful Alexandria smokefree campaign, Woodworth, a town of 204 people, became the second Louisiana community to adopt a comprehensive smokefree ordinance. Mayor David Butler and Woodworth's city council approved an ordinance on April 15, 2012 making all enclosed workplaces 100% smokefree.<sup>21</sup> The ordinance included bars and gaming facilities (despite there being none in the town) as well as public transit and outdoor workplaces in its smoking restrictions.<sup>21</sup> The law established a 25-foot distance requirement from building windows and entrances, seating and serving areas at restaurants and bars, playgrounds, and public transit structures, and mandated that no-smoking signs be posted

where smoking was outlawed.<sup>21</sup> Any noncompliance was a misdemeanor that incurred up to 60 days in jail and or a fine ranging between \$100 to \$500.<sup>21</sup>

Although we did not find evidence that TFL was directly involved in efforts to pass Woodworth's ordinance, it's "Equal Air for All" media campaign (Chapter 4) had run across Louisiana in 2011<sup>22</sup> and 2012. It is possible the advertisements, intended to inform public opinion on smoking in bars and gaming facilities, contributed to support for smoking restrictions in Woodworth.

### **Tri-Area Effort: The City of Monroe, West Monroe, and Ouachita Parish Ordinances**

After Alexandria and Woodworth adopted comprehensive smoking restrictions, Monroe, West Monroe, and their parish Ouachita simultaneously secured robust smokefree laws in 2013. Monroe passed a comprehensive ordinance on September 24, 2013 to prohibit smoking and vaping in indoor workplaces, restaurants, bars, gaming facilities, common areas in multiunit housing, and private clubs. Similar smokefree laws that excluded distance requirements passed for Ouachita Parish on October 7, 2013 and West Monroe on October 8, 2013. All three ordinances took effect January 2, 2014.

#### ***Origins of the Tri-Area Ordinance Campaigns***

The adoption of smoking restrictions in Monroe, West Monroe, and Ouachita Parish resulted from TFL Region VIII manager Jennifer Haneline's assessment of the community's readiness and desire for 100% smokefree workplaces and indoor spaces. After Haneline joined TFL as the Monroe area Regional Coordinator in June 2011, she initially assisted schools with adopting tobacco-free policies. After a year, Haneline determined that school policies in the region were already effective and wanted to move on to smokefree workplaces.<sup>23</sup> Her interest in pursuing clean air legislation developed as she conversed with members of the public. According to Haneline in a 2014 interview for this report:

"When are you going to make the bars smokefree?"

I had already been having conversations with people about what I do and talking about smokefree bars and stuff and people had already said to me, "You know, that's great. I hope you do that." And the bar owners, a couple that I knew, said, "Oh, we know it's coming, it'll be here one day soon." So there was kind of this sense that people were open to it here.<sup>23</sup>

Haneline stated that she ultimately decided to pursue smoking restrictions after a local reporter indicated the media supported such policies:

I was talking to a reporter and I was telling her about what I do. And she goes "When are you going to make the bars smokefree?" That was the starting point. I said, "Okay. I've got media who wants it, I'm going to do it. Let's go."<sup>23</sup>

Organizational developments at TFL in 2012 subsequently enabled Haneline to orchestrate a smokefree legislative campaign within the Ouachita area.

Staff restructuring and position changes at TFL in 2012 promoted regional coordinators, giving them greater control and decision-making over their areas (Chapter 4). As positions were combined at TFL headquarters in New Orleans, newly appointed TFL Associate Director Tonia Moore proposed that regional coordinators be promoted and awarded greater autonomy over tobacco control efforts within their areas. TFL leadership accepted the proposal, appointing Haneline and other coordinators regional managers and giving them greater authority. Following the promotions, TFL Regional Managers were required to develop three-year action plans for their regions.<sup>23</sup> In her plan, Haneline proposed promoting smokefree workplaces in the city of Monroe.<sup>23</sup>

Haneline believed she had connections with local decision-makers and influencers as well as the name recognition necessary to secure a clean air ordinance in Monroe, a small city where community ties and visibility held significant influence.<sup>23</sup> She participated in the Garden District Neighborhood Alliance, a politically active neighborhood group that enabled relationships between her, the Monroe Mayor and some City Council members. In addition, Haneline's married name came from a family of local business owners, increasing her visibility and presence in Monroe.

### ***Surveilling Political and Business Community Attitudes towards Smoking Restrictions***

#### ***Gauging Local Lawmakers' Interest in Smokefree Legislation***

Haneline started by probing local lawmakers in West Monroe on their receptiveness towards passing various tobacco control legislation. She discussed point of sale restrictions, tobacco taxes and smoking restrictions with West Monroe Mayor Dave Norris.<sup>23</sup> According to Haneline in a 2014 interview for this report, her conversation with the mayor led to the pursuit of smokefree ordinances for Monroe, West Monroe, and Ouachita Parish in tandem:

That came out of a conversation with the West Monroe mayor who's really the first one I had a conversation with about this. He said, "You've really got to do all three," and he said, "We've done things like that [pass policies jointly] before. Like if there's a tax for a major employer -- we're trying to do some tax incentive and we're taxing the community to get somebody to come in who's going to bring a lot of jobs -- we do all three because all three are going to benefit. So we pass things saying it only passes if it passes here and here so that way it's an even playing field."<sup>23</sup>

During their meeting, West Monroe Mayor Norris supported the tobacco control policies and told Haneline to discuss point of sale restrictions, tax increases, and smoking restrictions with West Monroe Alderperson Stacy Albritton.

#### ***Surveying Lawmakers Provides an Early Smokefree Legislative Win***

As directed, Haneline met with Alderperson Albritton to discuss point of sale restrictions for tobacco products, tobacco tax increases, and clean air laws for workplaces and parks. The

meeting inspired Albritton to introduce a smokefree ordinance in 2012 for West Monroe Parks.<sup>23</sup> Haneline recalled in a 2014 interview for this report:

I went and sat down with Stacy and I went through....this one-pager that said this is how you make a healthy community and listed these four different things. And she said, “Parks, I want to do parks.” She ran with it, she proposed it, it got a little fuss about it but passed. It was like boom, boom, boom, done.<sup>23</sup>

Alderman Albritton’s ordinance, approved on October 9, 2012 by the West Monroe board of Alderman,<sup>24</sup> prohibited any combustible tobacco use in parks and recreation areas. First offenses faced \$50 fines, followed by \$100 fines and a potential year-long ban from using parks and recreation areas for additional violations.<sup>25</sup>

### *Determining Bar Owner Views on Smoking Restrictions*

While she was conducting air quality studies in September and October 2012, Haneline talked privately with Ouachita Parish’s bar community to determine their attitudes towards smoking restrictions. She found that bar owners in Ouachita Parish secretly supported smoking restrictions but avoided taking a public position. Upon learning their stance, Haneline connected local politicians to bar owners to quell politicians’ concerns and possibly earn their backing for smoking restrictions. According to Haneline, her conversations led to only newer bar owners in the area (two in Monroe, one of three in west Monroe) opposing the clean air ordinances.<sup>23</sup> The majority of bar owners did not oppose the smoking restriction legislation, lowering resistance from that community at town halls and hearings.

### *Changing Public Awareness and Opinion for Ordinances in Monroe, West Monroe, and Ouachita Parish*

Promotional efforts to generate awareness of and support for smoking restrictions began in 2012 and lasted through the passage of Monroe, West Monroe, and Ouachita Parish’ ordinances in 2013. TFL sponsored a boat race team in the Bayou Desiard Dragon Boat Festival, an annual fundraiser for the Children’s Coalition for Northeast Louisiana,<sup>26</sup> in May 2012.<sup>23</sup> Haneline organized two smokefree nights to promote clean air policies, one at a bar and another at a restaurant promoting itself as a bar. In addition, health and tobacco control advocates participated in Kick Butts Day and the Great American Smokeout in 2013, generating media coverage. Haneline also met with people and attended nonprofit events to garner supporters and spread knowledge of impending clean air legislation.<sup>23</sup>

TFL used paid and earned media to build momentum for a smokefree ordinance. Smokefree proponents generated earned media by participating in interviews with local news media. Smokefree proponents frequently spoke on behalf of the smokefree campaign instead of TFL officials, to make the effort community based. Haneline leveraged her local media contacts to keep the press engaged. She also joined the Monroe *News-Star* editorial board, hoping it would help maintain coverage of the smokefree effort. The newspaper had recruited Haneline to serve on the board because of her

outspoken 2013 service on a local school committee to find a new superintendent. According to Haneline, the Monroe *News-Star* provided ample coverage of the smokefree campaign in its normal reporting but unrelated state politics distracted the editorial board from taking a position on the smokefree campaign

TFL also used social media to promote smoking restrictions and counter arguments from opponents in the Ouachita area. Around mid-2013, members of the public opposed to smoking restrictions wrote comments on news articles and made comments on social media complaining about civil liberties being infringed.<sup>23</sup> TFL countered these negative social media claims by developing and using canned posts to respond.

### ***Operating Without Major Support from Health Volunteers***

TFL initially pursued comprehensive smokefree laws in West Monroe, Monroe, and Ouachita Parish with local assistance. As Haneline readied for the policy campaigns, she did not reach out to national health organizations fearing she lacked the authority to do so.<sup>23</sup> Instead, she only contacted local representatives of ACS, AHA and other voluntaries. Realizing Haneline was preparing to launch a policy campaign, TFL Associate Director Tonia Moore contacted regional officials of national health and tobacco control organizations to assist the Monroe, West Monroe, and Ouachita Parish effort.<sup>23</sup> Moore engaged Americans for Nonsmokers' Rights, the American Cancer Society, Campaign for Tobacco-Free Kids, and the American Heart Association towards the end of Spring 2013.<sup>23</sup>

The health voluntaries held a phone conference with Haneline to discuss the impending campaigns and help guide "direct-action organizing."<sup>23</sup> Haneline had already started organizing in the summer of 2012. In a 2014 interview for this report, she said incorporating national health voluntaries into an active campaign proved difficult:

So part of that ended up being difficult because them coming in so late, I was spending a lot of time trying to catch them up and help them understand what we were doing. That kind of ended up being more of a burden. And I know it was frustrating for them because they could really only help so much and I could only articulate so much because a lot had happened in that time when you're talking on the phone. It was really complicated.<sup>23</sup>

Instead, health voluntaries provided significant technical assistance to the campaign. Haneline also recalled in her interview:

I had no local or state-level support from those organizations. American Cancer Society, anybody in that organization that would have been doing help locally, we didn't have them. As far as I can tell the folks who work here do fundraising, they don't do any policy work. They were not involved. I tried, I reached out, I spoke to them face to face and just could not get them to show up to any meetings, do anything. They said they sent out some action alerts and maybe we got some responses from that and that's great. But in terms of physical bodies, we didn't get that.<sup>23</sup>

As a result, TFL continued to pursue clean air ordinances in Monroe, West Monroe and Ouachita Parish with limited assistance from national health and tobacco control organizations. National volunteers became critical to later local campaigns for comprehensive smokefree policies.

### *Determining Political Support for Smoking Restrictions*

“So [I] had all the revenue studies, took them with me to every single meeting I had, told them I had it, not one person asked to see it, they just kind of trusted, okay, you've got it.”

Haneline began probing local officials in Monroe and Ouachita Parish to determine their attitudes towards smoking restrictions in 2012. She brought signed petitions to meetings to prove public support for smokefree workplaces existed in Ouachita Parish. In addition, she brought revenue studies showing smokefree policies did not have a negative economic impact. In a 2014 interview for this report, Haneline observed that most councilmembers and jurors were concerned about smokefree policies lowering tax revenue or harming their chances at reelection:

So [I] had all the revenue studies, took them with me to every single meeting I had, told them I had it. Not one person asked to see it, they just kind of trusted...I've got it. [I] took the petitions that I had been gathering over the last year...said I had them [and] not one person looked at them, not one person cared. And that goes through the whole campaign to this day. Nobody's wanted that information, looked at it, cared about it. Nobody cared about our smokefree night, how many people showed up and how much revenue was done.

They cared about is our city going to lose tax money. That was really bottom line for them. And is this going to hurt our reelection was secondary.<sup>23</sup>

Haneline discussed smokefree park policies with Monroe Mayor James Mayo and the Ouachita Parish Police Jury (the Louisiana equivalent of a county board) Attorney Jay Mitchell<sup>27</sup> in 2012.<sup>23</sup> She also discussed pursuing comprehensive smoking restrictions for Ouachita Parish with Police Jury member Pat Moore, after Mitchell recommended Moore because of her previous health policy work. During a local election in Monroe City, Haneline discussed smokefree workplaces with Monroe City Council candidates in 2012.

After elections for Monroe City Council in late 2012, Haneline individually discussed smokefree workplaces with all five Councilmembers to determine their support (Table 12.2). She started with Councilmembers Ray Armstrong and Gretchen Ezernack, who had constituents living in the Garden District. Haneline already knew both through her work with the Garden District Neighborhood Alliance. Both Armstrong and Ezernack told Haneline they supported smokefree workplaces for Monroe. Haneline also discussed smokefree workplaces with Councilmembers Kenny Wilson and Betty Blakes, who both expressed interest in a comprehensive smokefree ordinance. Haneline, accompanied by former Richwood (a neighboring community) Police Chief and nonprofit Empowering Communities employee



Reverend Cliff Thomas, discussed smokefree workplaces for Monroe with Councilmember Eddie Clark. Clark claimed to support smokefree workplaces restrictions but asked Haneline to host a town hall meeting to determine his constituents' sentiments towards smoking restrictions.

Table 12.2: Monroe City Councilmembers
Ray Armstrong
Gretchen Ezernack
Kenny Wilson
Betty Blakes
Eddie Clark

To address Clark's concerns, TFL held a town hall on clean air policies for Councilmember Clark's constituents in September 2013. Councilman Clark did not attend the meeting, but Councilmembers Armstrong and Ezernack, as well as Ouachita Police Jury member Pat Moore did and publicly supported smokefree workplaces.

### ***Choosing Legislative Sponsors***

After discussing smoking restrictions with Councilmembers and Parish Police Jurors in Monroe, West Monroe, and Ouachita Parish, Haneline began approaching individual lawmakers to find sponsors for smokefree legislation.

For Monroe, Haneline first approached City Councilmember Ray Armstrong because of his adamant support for smokefree workplaces at town hall meetings. However, Haneline feared that Armstrong's contentious relationship with Monroe Mayor James Mayo could kill an ordinance sponsored by him.<sup>23</sup> Instead, Haneline secured Councilmember Gretchen Ezernack to sponsor the smokefree ordinance for Monroe City, believing her length of service on the Monroe City Council and her good relationship with Mayor Mayo increased the chances of winning a comprehensive ordinance.<sup>23</sup>

In Ouachita Parish, Haneline first recruited Ouachita Parish Police Jury Member Pat Moore to introduce a comprehensive ordinance. However, Moore had promoted multiple health issues over the prior two years, creating concern that public support for her efforts had weakened. In a 2014 interview for this report, Haneline believed that Moore's past health policy work had negatively typecast the Councilmember:

Pat Moore had been working on some other health-related stuff and was just really getting targeted. Someone had commented in one of the *News-Star* articles that they printed about this [smoking restrictions], that "Jennifer Haneline and Pat Moore are just busybodies, always telling people what to do with their lives," or something to that effect. And I went, "Uh-oh, we've got an issue here."<sup>23</sup>

To reduce opposition to Ouachita's impending ordinance, Haneline recruited Councilmember Scotty Robinson to sponsor legislation after learning he supported smoking restrictions.<sup>23</sup>

In West Monroe, Alderperson Staci Albritton, who previously worked with Haneline to pass an ordinance prohibiting smoking in West Monroe parks during 2012 and assisted with air quality monitoring in October and September of that year, sponsored the ordinance. Support from West Monroe Alderperson Albritton and Mayor Norris led Haneline to focus her advocacy efforts in Monroe and Ouachita Parish over West Monroe. She was confident the comprehensive

ordinance would pass in West Monroe because of Norris' powerful influence,<sup>23</sup> who was serving his ninth term.<sup>28</sup>

### ***Drafting Legislation for Monroe, Ouachita Parish, and West Monroe***

After Haneline recruited legislative champions, she met with Monroe City Councilmember Gretchen Ezernak, Ouachita Parish Police Juror Pat Moore, and West Monroe City Attorney Doug Caldwell to develop smokefree legislation for their constituents.<sup>23</sup> She provided an Americans for Nonsmokers' Rights (ANR) model ordinance that included e-cigarettes to guide the drafting process.<sup>23</sup>

Distance requirements inspired the most disagreement, with some lawmakers arguing that smokers and e-cigarette users would be forced into unsafe areas or pushed away from neighborhood bars.<sup>23</sup>

As adopted, the Monroe, Ouachita Parish, and West Monroe ordinances prohibited smoking and vaping in bars and bingo halls (Table 12.3). Monroe's ordinance also prohibited smoking in workplaces, public places, and private clubs. The West Monroe and Ouachita Parish ordinances did not include distance requirements (they originally had 5 foot distance requirements).<sup>29, 30</sup> However, they prohibited smoking and e-cigarette use on outdoor patios where food and drink were served.<sup>23, 29, 30</sup> The Monroe ordinance originally established a 15-foot distance requirement from entrances (reduced to 5 feet during the legislative process), windows, and vents, but allowed smoking on outdoor patios with food and beverage service unless the area had stationary employees.<sup>31</sup>

Monroe City, Ouachita Parish, and West Monroe introduced ordinances in quick succession in September 2013. Prior to voting on the legislation, lawmakers in Monroe, Ouachita Parish, and West Monroe agreed not to implement smokefree workplaces unless all three localities adopted similar legislation simultaneously, because of concerns about creating competitive disadvantages between businesses in the region.<sup>32</sup>

### ***Monroe Passes***

Councilmember Gretchen Ezernack introduced Monroe's ordinance to its City Council on September 10, 2013. As submitted, the ordinance prohibited smoking and vaping in bars, gambling establishments, public transit vehicles and facilities, playgrounds, health care facilities, and public areas and outdoor spaces of residential facilities.<sup>33</sup> At the hearing, TFL staff called for Monroe, neighboring West Monroe and Ouachita Parish lawmakers to hear smoking restriction legislation.<sup>34</sup>

The Monroe ordinance received mixed reactions from community bar owners. The legislation's distance requirement generated opposition from at least one bar owner at the hearing. The legislation established a distance requirement of 15 feet from entrances, windows, and ventilation outlets. Unlike Monroe's ordinance, the West Monroe and Ouachita Parish ordinances would have no distance requirements at their introduction. At the hearing, local bar owner Doyle Jeter expressed support for smoking restrictions, but claimed the distance

Table 12.3: Monroe, West Monroe and Ouachita Parish Final Smoking Restrictions in 2014<sup>23, 29-31</sup>

	Workplaces	Public Places	Bars	Gaming Establishments	Tobacco Retailers	Outdoor Patio with Food or Drink	Private Club	Distance Requirements	E-Cigarettes Included	Penalties			Enforcement
Monroe	+	+	+	+	+	- *	+	5 ft from building entrances and airways.*  5 ft from outdoor serving areas. 15 ft from bleachers, playgrounds, public transit facilities, and lines.	+	Smoker	Any offence	\$50 fine	Law Enforcement
										Establishment	1 <sup>st</sup> offence (within 1 year)	\$25 fine	Health Department and Fire Department
											2 <sup>nd</sup> offence (within 1 year)	\$50 fine	
											Additional (within 1 year)	\$100 fine	
West Monroe			+	+		+		None	+	Smoker or Establishment	1 <sup>st</sup> offence	\$25	West Monroe Police Department
											2 <sup>nd</sup> offence (within 5 years)	\$50	
											Additional (within 5 years)	\$100	
Ouachita Parish			+	+		+		None	+	Smoker or Establishment	1 <sup>st</sup> offence	\$25 fine	Administrative Adjudication
											2 <sup>nd</sup> offence (within 5 years)	\$50 fine	
											Additional (within 5 years)	\$100 fine	

\*Smoking allowed unless there are stationed employees in that area

\*\* Ordinance passed with 15-foot distance requirement. Amended to 5 feet by subsequent legislation.

requirement harmed businesses and endangered people by pushing them into unsafe areas such as parking areas and streets.<sup>34</sup> Councilwoman Ezernack subsequently asked the City Council to amend the ordinance if it passed to match any smoking restrictions adopted by West Monroe and Ouachita parish.<sup>34</sup> The Council did not vote on the ordinance at the hearing.

The Monroe City Council considered Ezernack's comprehensive ordinance again on September 24, 2013.<sup>35</sup> TFL Associate Director Tonia Moore, TFL Regional Manager Jennifer Haneline, other TFL officials, and Reverend Cliff Thomas attended to support the legislation. At least one person attended to complain that the footage requirement would harm bars because it would not allow outdoor smoking on patios.<sup>23</sup>

At least one person attended to complain that the footage requirement would harm bars because it would not allow outdoor smoking on patios.

Although Councilmember Ezernack previously called for the Monroe City Council to adapt her legislation to the ordinances being considered for West Monroe and Ouachita Parish, its 15 foot distance requirement was left unaltered at the hearing because of difficulties preparing an amendment in time. Immediately before the meeting, Haneline, sick and recently discharged from the hospital, asked Councilmember Ezernack to propose an amendment reducing the distance requirement to match Ouachita Parish and West Monroe. Haneline and Ezernack crafted an amendment to change the distance requirement to 5 feet, but the Council rejected the change.<sup>23</sup>

Although the 15-foot distance requirement remained, the Monroe City Council voted 3-2 to adopt the legislation at the September 24 hearing (Table 12.4) (It was subsequently reduced to 5 feet by different legislation.). Haneline reasoned in a 2014 interview for this report that Councilmember Eddie Clark voted against the ordinance because of his friendship with one of his district's bar owners.<sup>23</sup> Haneline also ruminated during that interview that Betty Blake objected to the legislation because of the strong distance requirement, and testimony from a bar at the hearing claiming the distance requirement would harm it.

Table 12.4: Monroe City Council Vote on Smokefree Ordinance		
Councilmember	No	Yes
Ray Armstrong		X
Gretchen Ezernak		X
Betty Blake	X	
Kenneth Wilson		X
Eddie Clark	X	

After the Monroe City Council adopted the smokefree ordinance on September 24, Haneline indicated she wanted the Monroe City Council to reconsider the smokefree ordinance to lower its distance requirement to 5 feet,<sup>36</sup> to honor an earlier agreement to lower the distance. According to Haneline in a 2013 interview with the Associated Press:

It [Monroe's smoking distance requirement] was supposed to be five feet just from the main entrance of a bar, and revisions were made, but on Tuesday that was not what they (City Council) had in front of them. So the plan is to go back and amend it to what was the agreed upon footage. The intent is to keep smoke out of the workplace. That's the bottom line.<sup>36</sup>

At a Monroe City Council meeting on December 26, 2013, Councilmember Ezernak introduced legislation to lower the smoking distance requirement to 5 feet, which the Council approved unanimously. As a result, Monroe's restrictions prohibited smoking in all workplaces and public places, including bars and gaming establishments (Table 12.3). The law permitted smoking on outdoor patios with food and drink service unless two stationary employees were present. The ordinance set a 5-foot distance requirement from building entrances, airways, and outdoor patios, and a 15-foot distance requirement from parks, stadiums and transit facilities. The Monroe ordinance entered effect January 2, 2014.<sup>23, 37</sup>

### ***The Ouachita Parish Ordinance***

Police Juror Scotty Robinson introduced his comprehensive smokefree ordinance for Ouachita Parish at a meeting of the Ouachita Police Jury on September 16, 2013.<sup>30</sup> Haneline testified for the ordinance; no other provided comments at the initial hearing.<sup>30</sup> As introduced, the ordinance prohibited smoking and e-cigarette use in bars, gambling establishments, and on outdoor patios featuring beverage and food service.<sup>38</sup> There was no distance requirement. Violations carried an initial \$25 fine, followed by a \$50 fine for second offenses within 5 years, and a \$100 fine for any additional offenses within 5 years. Enforcement of smoking restrictions would be conducted through the Ouachita Parish's Administrative Adjudication function. The ordinance did not have a distance requirement. The Police Jury debated the ordinance again the month after.

The Ouachita Parish Police Jury considered the ordinance again on October 7, 2013.<sup>35, 39, 40</sup> Before Jurors voted, seven supporters consisting of Haneline, community advocates, health advocates and officials, politicians, medical professionals, and citizens testified for the ordinance (Table 12.5).<sup>39</sup> Proponents argued smoking incurs higher medical costs, that exposure to secondhand smoke is harmful and lethal, and that breathing clean air is a right.<sup>39</sup> Besides speaking at the hearing, Haneline provided Jurors the results of a study on secondhand smoke and air quality in Ouachita Parish.<sup>39</sup> Five people testified against the ordinance, arguing that smoking restrictions were government overreach and infringed on personal and business freedoms (Table 12.5).<sup>39</sup>

Police Juror Caldwell, who would be the lone vote against the ordinance, spoke against it using civil liberty claims. Prior to the hearing, he published an article in local newspaper the *Ouachita Citizen* highlighting these arguments.<sup>23</sup> We do not know the exact assertions Caldwell made.

After hearing public comment, the Ouachita Parish Police Jury voted 5-1 to adopt the ordinance (Table 12.6).<sup>35, 39, 40</sup> The final ordinance prohibited smoking in bars, gaming establishments, and on outdoor patios with foodservice.<sup>30</sup> The ordinance took effect on January 2, 2014, the same day as the Monroe ordinance.<sup>30, 41, 42</sup>

The ordinance carried a provision that allowed the law to enter effect only if Monroe and West Monroe passed similar legislation.<sup>39</sup> Any provisions that weren't mutual between the municipalities would also become null in the Ouachita Parish.<sup>39</sup>

Table 12.5: Public Comments in Favor of Ouachita Smokefree Ordinance <sup>39</sup>			
Speaker	Affiliation	Position	Statements
Jennifer Haneline	Tobacco-Free Living	Regional Manager	<ul style="list-style-type: none"> <li>• Provided information on secondhand smoke and the impact to air quality in Ouachita Parish.</li> </ul>
Michael DeVault			<ul style="list-style-type: none"> <li>• Secondhand smoke killed 690 Louisianans in 2012.</li> </ul>
Roosevelt Johnson	City of Alexandria	Former Councilmember	<ul style="list-style-type: none"> <li>• Alexandria ordinance did not economically harm businesses.</li> <li>• Ordinance will improve public health.</li> </ul>
Dr. Shelley Jones	Ouachita Parish Health Unit	Region 8 Director for Public Health	<ul style="list-style-type: none"> <li>• Smoking-induced medical costs.</li> </ul>
Jennifer Wick		Former smoker and bar employee	<ul style="list-style-type: none"> <li>• Suffers from COPD after smoking and exposure to secondhand smoke.</li> </ul>
Dr. Mark Napoli			<ul style="list-style-type: none"> <li>• Businesses can adjust to smoking restrictions.</li> <li>• Smokefree areas lower heart attacks.</li> </ul>
Reverend Clifford Thomas	Empowering Communities		<ul style="list-style-type: none"> <li>• Clean air is a right.</li> </ul>
Public Comments against the Ouachita Smokefree Ordinance			
Nell Bradley			<ul style="list-style-type: none"> <li>• Ordinance is government overreach.</li> <li>• Tobacco tax provides only funding for the Louisiana Children's Health Insurance Program.</li> <li>• Ordinance should be decided by public vote.</li> </ul>
Ron Murphy			<ul style="list-style-type: none"> <li>• Ordinance infringes on personal rights.</li> <li>• Ordinance should be decided by public vote.</li> </ul>
Keith Norris			<ul style="list-style-type: none"> <li>• Business and property owners have right to set smoking policies.</li> </ul>
Wayne Hackney			<ul style="list-style-type: none"> <li>• People should have right to choose.</li> <li>• Ordinance will not cause cessation.</li> </ul>
Walt Caldwell	Ouachita Parish	Police Juror	<ul style="list-style-type: none"> <li>• Referenced past statements in local media against ordinance, reiterated position.</li> </ul>

### *The West Monroe Ordinance*

West Monroe Alderperson Staci Albritton Mitchell introduced her ordinance at an Alderman board meeting on September 10, 2013, the same date the Monroe Ordinance was introduced, with a public hearing set for September 26, 2013.<sup>43</sup> At the introductory hearing, approximately 20 proponents,<sup>23</sup> (including TFL Associate Director Tonia Moore<sup>44</sup> and Haneline,<sup>23</sup>) and opponents attended the hearing.<sup>23</sup>

Table 12.6: Ouachita Parish Police Jury Vote on Smokefree Ordinance <sup>41</sup>	
Juror	Vote
Scotty Robinson	Yes
Mack Calhoun	Yes
Ollibeth Reddix	Yes
Shane Smiley	Yes
Pat Moore	Yes
Walt Caldwell	No

TFL representatives testified about the harms of tobacco, citing that tobacco smoke contained 7000 chemicals and that 30 minutes of exposure to secondhand smoke equated to smoking a cigarette.<sup>44</sup> They also testified that 75% of Louisianans opposed smoking indoors and that 74% of state residents were non-smokers. TFL also provided air monitoring data that found 81% of establishments evaluated in the state had harmful air quality.<sup>44</sup> Opponents consisted of smokers and one of West Monroe's bar owners (there were only 3 bars in West Monroe at the

time or the hearing), who argued that smoking restrictions infringed on civil liberties<sup>23</sup> and would hurt the bar businesses.<sup>44</sup> At the hearing, West Monroe City Councilmembers indicated they felt the smoking restrictions would protect residents, musicians, and bar employees' health.<sup>44</sup> The West Monroe City Council considered Alderman Albritton's ordinance on October 8, 2013.<sup>45</sup> Nearly identical to the Ouachita ordinance, the law prohibited smoking and e-cigarette use in bars, gambling establishments, and on outdoor patios with food and drink service.<sup>29</sup> The legislation did not establish a distance requirement for smoking. Penalties for violating smoking restrictions were an initial \$25 fine, followed by a \$50 fine for second offenses within 5 years and a \$100 fine for any additional offenses within 5 years. The ordinance assigned enforcement to the West Monroe Police Department.<sup>29</sup>

TFL representatives testified about the harms of tobacco, citing that tobacco smoke contained 7000 chemicals and that 30 minutes of exposure to secondhand smoke equated to smoking a cigarette. They also testified that 75% of Louisianans opposed smoking indoors and 74% of residents were non-smokers.

Albritton's ordinance passed without amendments. Before the Board voted, Councilmember Fred Ragland proposed an amendment to exempt e-cigarettes that died for lack of a second.<sup>45</sup> The Board of Aldermen then unanimously adopted the ordinance (Table 12.7).<sup>29, 35</sup> Mayor Dave Norris signed it into law the same day, with it taking effect on January 2, 2014. The law entered effect the same day as the Monroe and Ouachita ordinances.<sup>29, 35</sup>

Table 12.7: West Monroe Board of Alders Vote on Smokefree Ordinance <sup>29</sup>	
Alderman	Vote
Staci Albritton Mitchell	Yes
James W. "Sonny" Bennett	Yes
Alice Pearson	Yes
James Brian	Yes
Fred Ragland	Yes

## Cheneyville Adopts a Comprehensive Smokefree Ordinance

Cheneyville was the sixth Louisiana town to adopt a comprehensive smokefree ordinance<sup>46</sup> as part of statewide efforts by TFL. The law was passed with support from the Louisiana Healthy Communities Coalition (LHCC) Central region chapter.<sup>47</sup> LHCC is a statewide group focused on improving human health that consists of regional chapters guided and supported by TFL, the Louisiana Cancer Prevention and Control Programs, and the Louisiana Department of Health to promote healthy lifestyles and combat obesity and tobacco use in Louisiana via local legislation and infrastructure (Chapter 4).<sup>48</sup> The coalition effort in Cheneyville was led by TFL Regional Manager Jennifer Gilchrist.<sup>47</sup>

The Cheneyville ordinance prohibited smoking and vaping in all workplaces and public places, including bars, gambling establishments, tobacco retailers as well as outdoor stadiums, arenas, and amphitheaters.<sup>46</sup> A distance requirement of 20 feet was established from building entrances and airways, event stands, playgrounds, public transit structures, and from drive-thru point of sales.<sup>46</sup> Penalties for violating the smokefree ordinance by users or business owners were a maximum \$100 fine for first offenses, \$250 for second offenses within a year, and \$500

for any additional offenses within a year of last violation. Business owners also faced permit/license loss or suspension for violating smoking restrictions.<sup>46</sup> The ordinance became effective June 8, 2014.<sup>46</sup>

## **The Louisiana State Legislature Considers Two Smoking Restriction Bills**

### ***Lawmakers Consider Smoking Distance Requirements Legislation in 2012***

In 2012, State Representative Frank Hoffmann (R-West Monroe) introduced HB 378 to prohibit smoking within 25 feet of building entrances, handicap accessibility ramps, and airways at places where smoking was already prohibited by state law.<sup>49, 50</sup> The bill exempted places where smoking was legally allowed such as bars and gaming establishments.<sup>49</sup>

HB 378 passed the House but failed to pass the Senate.<sup>49</sup> We did not find evidence that health or tobacco control advocates supported the bill. Nor did we find evidence of the tobacco industry or its allies opposing the legislation.

### ***The Legislature Prohibits Smoking in Health Department Psychiatric Hospitals***

On February 7, 2012, Representative Tim Burns (R-Mandeville) introduced HB 80 to prohibit smoking in psychiatric hospitals run by the Louisiana Department of Health and Hospitals (DHH).<sup>51</sup> The bill worked by eliminating DHH psychiatric hospitals from an existing legal requirement (and exemption from a law making Louisiana hospitals smokefree) that required the agency and private psychiatric hospitals accommodate smokers.<sup>51</sup> The bill did not pertain to private institutions and affected only two hospitals.<sup>52</sup>

Representatives strengthened HB 80 in its committee of origin and then passed it into law without resistance.<sup>51</sup> The House Health and Welfare Committee proposed and adopted amendments requiring the DHH to screen, offer and provide smoking and smokeless tobacco cessation services such as counseling and nicotine replacement therapy to patients at its psychiatric hospitals and forensic facilities. The Committee then passed HB 80 in a 17-1 vote. The House and Senate subsequently approved HB 80 in unanimous votes, and Governor Bobby Jindal signed it into law on May 31, 2012. The bill took effect immediately.

### ***A Bill Passes Prohibiting Smoking on College Campuses in 2013***

On March 19, 2013, State Senator David Heitmeier (D-Algiers) prefiled SB 36 to prohibit smoking at public university, college, and technical school facilities and campuses.<sup>53</sup> The bill sought to lower smoking rates and health costs, and to improve public health in Louisiana.<sup>54</sup>

TFL helped six colleges and universities implement tobacco-free policies in 2013. In total, 14 of Louisiana's 40 universities had tobacco-free policies by that year's end.

Although TFL pursued tobacco-free policies on school campuses in 2013 and prior years, we did not find evidence that the tobacco control program assisted efforts to pass SB 36. TFL had run its Fresh Campus Campaign program since 2008 to create grassroots student groups at higher education institutions that push for smokefree campus policies and promote campus



cessation services to students (Chapter 4). TFL helped six colleges and universities implement tobacco-free policies in 2013.<sup>55</sup> In total, 14 of Louisiana's 40 universities had tobacco-free policies by that year's end.<sup>55</sup>

SB 36 was directed to the Senate Health and Welfare Committee for initial consideration on April 17, 2013.<sup>53</sup> SB 36's sponsor, David Heitmeier, served as Committee Chairman. The Committee voted to report SB 36 to the Senate Floor without amendments. We could not locate any active support or opposition.

Senators debated SB 36 on April 30, 2013 and made minor changes to the bill. Heitmeier proposed two amendments to the bill during consideration. The first amendment, which he withdrew, permitted smoking on campuses of the University of Louisiana System on football game days.<sup>53</sup> His second amendment eliminated SB 36's smoking prohibition over all college campuses and facilities and instead required universities, colleges, and trade schools to develop and implement smokefree policies by August 1, 2014.<sup>53</sup> Senators adopted the amendment, allowing higher education institutions to establish weaker smoking restrictions than SB 36 originally set.<sup>53</sup> After amending SB 36, senators voted 31 to 3 to send the bill to the House, where it was routed to the Committee on Education.

SB 36 passed through the House without changes. After leaving the House Committee on Education, representatives unanimously approved the bill on May 30, 2013. Governor Bobby Jindal signed SB 36 into law on June 10, 2013 as Act 211.<sup>53</sup>

TFL celebrated SB 36's passage and assisted implementation efforts across the state. After the law passed, Louisiana Public Health Institute (which administers TFL, Chapter 4) Community Health Director Torrie Harris published a letter in the New Orleans *Times-Picayune* praising Senator Heitmeier for passing the bill.<sup>56</sup> She promised TFL and its partners that SB 36 would help Louisiana colleges and universities implement 100% tobacco-free policies.<sup>56</sup>

TFL developed and provided "Make Your Campus Tobacco-Free" toolkits to higher education institutions to assist them with compliance.<sup>55</sup> TFL also organized trainings for colleges and universities with the same branding.<sup>55</sup>

#### ***Bills to Establish Distance Requirements for Smoking around State Government Owned and Funded Buildings in 2013 and 2014***

Louisiana State Representative Frank Hoffmann (R-West Monroe) prefiled HB 111 during the 2013 legislative session to restrict tobacco smoking near government buildings and buildings constructed or altered using state funding.<sup>57</sup> The bill intended to protect the public from secondhand smoke.<sup>58</sup> HB 111 was a weaker version of his bill HB 378, which would have prohibited smoking within 25 feet of any building entrance or handicap ramp at an establishment where smoking was forbidden, that failed to pass in 2012.<sup>50, 59</sup>

We do not know if health or tobacco control advocates helped create HB 111 or act to support it. We also did not find opposition to the legislation. After HB 111 passed the House and Senate, Representatives rejected the bill because of a Senate amendment that incorporated marijuana use<sup>57</sup> into distance requirements.<sup>60</sup> HB 111 subsequently died upon adjournment.

Representative Hoffmann ultimately got HB 168, weaker distance requirement legislation, passed in 2014 with minimal resistance from the legislature.<sup>61</sup> As adopted, the bill prohibited smoking within 25 feet of public entrances of state office buildings.<sup>61</sup> HB 168 was weaker than Hoffmann's 2013 bill HB 111, which would have prohibited smoking within 25 feet of entrances and airways to all government buildings. HB 168 also established a 25-foot distance requirement from handicap accessibility platforms at state office buildings. The law levied a \$25 fine for first infractions, a \$50 fine for second violations, and a \$100 for each additional offense.<sup>61</sup> The bill entered effect January 1, 2015. We do not know if health or tobacco control advocates helped pass HB 168.

## **TFL Continues Pursuing Comprehensive Local Ordinances**

### ***New Orleans Passes a Comprehensive Ordinance in 2015***

In January 2015, the City of New Orleans passed a new smokefree ordinance to prohibit smoking in all public places, workplaces, restaurants, bars, gaming establishments, hotels, and private clubs, including e-cigarettes and marijuana.<sup>62, 63</sup> The legislation established the strongest smokefree law in Louisiana. Work by tobacco control advocates to secure a clean air ordinance in New Orleans began in the mid-2000s, following the partial repeal of preemption over local control in Louisiana in 2003 (Preemption was fully repealed to allow local smoking restrictions over bars and gaming establishments in 2006 (Chapter 10). TFL and national advocacy group Americans for Nonsmokers' Rights (ANR) collaborated to build support for smoking restrictions in the city, but plans stalled when Hurricane Katrina hit in 2005 and caused extreme damage, loss of life, and displacement of Louisiana Campaign for Tobacco-Free Living staff from New Orleans to other areas.<sup>64</sup> The campaign restarted in 2010, leading to the 2015 ordinance.

### ***Initial Consideration of a Comprehensive Smokefree Ordinance***

Efforts to secure a comprehensive, 100% smokefree ordinance for New Orleans started in 2010, when TFL was working to secure comprehensive local laws throughout Louisiana. TFL Associate Director Tonia Moore and other advocates approached City Councilwoman Susan Guidry about sponsoring an ordinance, who agreed to do so.<sup>65</sup>

At a meeting in 2010 with ANR President Cynthia Hallett and Policy Analyst Onjewel Smith, Louisiana Public Health Institute (LPHI) officials reported that they had secured Councilwoman Guidry's commitment to introduce legislation similar to that TFL was supporting in Alexandria (described above). Hallett questioned whether the planned legislation for New Orleans included casinos; LPHI officials reported that Councilwoman Guidry did not intend to prohibit smoking in casinos, fearing opposition from the gaming industry.<sup>64</sup> According to Hallett, the lack of smoking restrictions for casinos posed a problem for a collaborative smokefree campaign and long term tobacco control efforts in Louisiana if it passed:

The sort of typical approach [building on incremental policy gains] isn't necessarily the right thing to do anymore because once you adopt a law it can take a very long time to... replace it. So that's why partial laws, whether it's 50 percent of the restaurant, or it's restaurants only and not bars, or we keep it bars

and casinos, it's just the bars and not the casinos. It's not acceptable for us [ANR]. It's now a deal breaker. Even in 2010 it was a deal breaker.<sup>64</sup>

Objections from ANR's Hallett and Smith that excluding gaming employees from secondhand smoke protections was "unfair" contributed to TFL and LPHI's decision not to pursue a law only covering bars.<sup>64</sup> Opposition from City Councilmembers also contributed to this decision.<sup>65</sup> As a result, tobacco control advocates shifted their energies away from directly promoting legislation to building public support for smoking restrictions in New Orleans.

### ***Generating Public Awareness and Support for a Smokefree Law in New Orleans***

To increase support for a comprehensive smokefree ordinance in New Orleans, TFL began releasing research showing the effects of smoking restrictions on air quality, the economy, and health.<sup>65, 66</sup> In 2011, TFL commissioned and published the New Orleans Air Quality Monitoring Survey, which showed the dangerous air quality in the city's bars and casinos.<sup>66, 67</sup> TFL released two studies in December 2012 to dispel fears that smoking restrictions would inflict economic harm.<sup>68</sup> One study was a survey of people attending Jazz Fest from outside Louisiana that determined tourism in New Orleans would not be harmed by a smokefree law covering bars and casinos.<sup>68</sup> The other survey found that the Louisiana Smoke-Free Air Act had a negligible impact on the economy in both Orleans Parish and the state of Louisiana.<sup>66, 67, 69</sup> To continue building support for smoking restrictions, TFL released a third study in 2013 showing that air quality in Alexandria bars was 36 times cleaner after the city implemented its comprehensive smokefree ordinance.<sup>68</sup> In 2014, TFL released a fourth study showing New Orleans bar patrons were exposed to secondhand smoke, which caused harmful effects and impacted short-term lung function.<sup>70</sup>

Besides disseminating research, TFL used its statewide "Let's Be Totally Clear" media campaign (Chapter 4) to build support for comprehensive local smoking restrictions in New Orleans. Started in 2007 with a focus on the general public, TFL reoriented the campaign's messaging in 2010 to emphasize the lack of smokefree protections for musicians and employees in the gaming and bar industries.<sup>71</sup> Rebranded as the "Healthier Air for All" initiative in 2014, TFL's media campaign generated public support for smoking restrictions in New Orleans, which has a large service sector and historic music culture.<sup>65</sup> The SmokeFree NOLA Coalition adopted the "Healthier Air for All" messaging for its campaign to enact the ordinance.

Efforts to enact a comprehensive smokefree ordinance in New Orleans restarted in late 2013 or early 2014 after TFL Associate Director Tonia Moore discussed pursuing legislation with City Councilmember Latoya Cantrell.<sup>72</sup> The Councilmember was interested in pursuing a comprehensive ordinance to complement a Louisiana State University (LSU) Health Science Center medical complex under construction in New Orleans.<sup>72</sup> According to LPHI's Cessation Manager at the time,<sup>73</sup> Alex Hurst, in a 2017 interview for this report:

Latoya Cantrell did rise up as the champion at that time because she felt very strongly, mainly due to the fact that there was a large medical complex, the Louisiana State University Health Science Center, being built down the corridor. She felt as if it wasn't right to have a complex of this magnitude located in New Orleans and not be a smokefree city. She felt that two had to go together.<sup>72</sup>

At a Coalition for a Tobacco-Free Louisiana (CTFLA) meeting in late 2013 or early 2014 to discuss tobacco control objectives and policy in Louisiana, Moore alerted members that New Orleans may consider a smokefree ordinance in 2014. According to American Lung Association (ALA) Southeast Vice President of Public Policy and Health Promotions<sup>74</sup> Jennifer Cofer in a 2017 interview for this report, the planning to pass a strong ordinance in New Orleans, a city of sin akin to Las Vegas, caught coalition partners off guard:

“... the Associate Director for TFL mentioned the cities that were going to look at going smokefree in 2014. And New Orleans was on that list that she ran through.”

So late 2013, early 2014, the coalition was just doing the normal routine check-in and going through a list of priorities and policy. At the point, we were discussing the possibility of a tobacco tax. And the Associate Director for TFL [Tonia Moore] mentioned the cities that were going to look at going smokefree in 2014. And New Orleans was on that list that she ran through.

And that's when the partners alerted their eyes and looked at her and asked her to repeat her list, comically, and asked her to again repeat that she said New Orleans was on that list.<sup>72</sup>

Moore told representatives from the American Cancer Society Cancer Action Network (ACS-CAN), American Heart Association (AHA), American Lung Association (ALA), and other organizations attending the meeting of Councilwoman Cantrell's interest in pursuing an ordinance.<sup>72</sup> This information did not prompt immediate action by national or regional members.<sup>72</sup>

Councilmember Cantrell and TFL subsequently began work to gauge and generate support for comprehensive smoking restrictions from the business community and the public. Councilwoman Cantrell contacted bar owners to determine their receptiveness to comprehensive smoking restrictions and found support for a local ordinance.<sup>75</sup> In addition, TFL and Councilmember Cantrell's Office organized a Smokefree Week in New Orleans from July 21 to July 25, 2014 that included a kickoff and closing celebration as well as a town hall meeting to discuss clean air laws.<sup>75, 76</sup> Bars were encouraged to participate in Smokefree Week by hosting smokefree performances and nights, or by prohibiting smoking for the duration of the week.<sup>76</sup> At a press conference on July 15, 2014 to announce the smokefree week starting on July 21, Councilmember Cantrell publicly declared her intention to introduce a clean air ordinance for New Orleans in Fall 2014.<sup>75</sup>

### ***Formation, Membership and Responsibilities of the SmokeFree NOLA Coalition***

In August 2014 Councilmember Cantrell told CTFLA that she planned to introduce a comprehensive smokefree law prohibiting smoking in bars and casinos.<sup>64</sup> CTFLA members discussed mobilizing to help her. According to Louisiana Cultural Economy Foundation (LCEF) Healthcare Initiative Director Kathy Richard in a 2017 interview for this report, CTFLA members were concerned that Councilmember Cantrell would introduce legislation too early:

Cantrell wanted to move on New Orleans, like, already in July. She wanted to move in August, and I remember them all [CTFLA members] getting together and saying, no, no, no, we need to slow her down. And, in fact, they did.<sup>77</sup>

Despite this concern, CTFLA members decided to form a coalition with state and local groups to run a campaign in support of Councilmember Cantrell’s clean air ordinance (Table 12.8). Named the SmokeFree NOLA Coalition, the group relied on the same multi-level design employed by CTFLA for past state-level policy campaigns. The SmokeFree NOLA Coalition operated on money provided from national, state, and local partners.<sup>78</sup> The funding from these partners was partially used for lobbying efforts by the coalition. The ANR Foundation also provided a \$143,000 Rapid Response Project grant to ALA to assist public education and outreach, as well as community partnerships, in support of the SmokeFree NOLA campaign.<sup>64, 78</sup>

Representatives from SmokeFree NOLA’s major partners assumed different roles and responsibilities within the coalition. Jennifer Cofer, ALA Southeast Vice President of Public Policy and Health Promotions, was coordinator of the SmokeFree NOLA campaign, including grassroots outreach.<sup>72</sup> ANR Southern States Regional Consultant Onjewel Smith and CTFK Southern Region Director Claudia Rodas helped Cofer lead coalition efforts and assisted with securing resources and funding for the campaign from national and local groups.<sup>72</sup> ANR’s Smith led diversity and neighborhood outreach while Rodas collected polling and studies.<sup>72</sup> AHA State Advocacy and Government Relations Director Stasha Rhodes performed lobbying and legislative outreach to the New Orleans City Council for the coalition.<sup>72</sup> In a 2017 interview for this report, then-TFL Cessation Manager Alex Hurst identified Cofer, Smith, and Rodas as integral to the success of the SmokeFree NOLA Coalition and campaign, stating “The Three Musketeers, I like to think of them at play. They just all brought different assets to fill in the different gaps that were needed.”<sup>72</sup>

As part of the SmokeFree NOLA Coalition, TFL and its Associate Director Tonia Moore recruited state and local

organizations to support campaign efforts in New Orleans with assistance from the Louisiana Smoking Cessation Trust. Moore coordinated with the Communities of Color Network and Fresh Campus Campaign local chapters to hold events promoting smoking restrictions in New Orleans. Administered statewide by the Southern University Agricultural Research and Extension Center, the Communities of Color Network (CoC) had regularly coordinated with TFL to increase awareness of tobacco industry predation on minority communities and to educate the public against tobacco

Table 12.8: Composition of the SmokeFree NOLA Coalition <sup>64, 67, 72</sup>	
National Health Voluntaries	American Cancer Society Cancer Action Network
	American Heart Association
	American Lung Association
	Americans for Nonsmokers’ Rights
	Campaign for Tobacco-Free Kids
	March of Dimes
Louisiana Organizations	Tobacco-Free Living / Louisiana Public Health Institute
	Louisiana Comprehensive Cancer Control Partnership
	Louisiana Campaign for Tobacco-Free Living
	Oschner Health Systems
	Louisiana Cultural Economy Foundation
	LSU Tobacco Control Initiative
	Smoking Cessation Trust
Local Organizations	Communities of Color Network
	Fresh Campus Campaign

use (Chapter 4). The Fresh Campus Campaign was a statewide effort created and funded by TFL to form campus-based organizations at universities and technical schools dedicated to securing tobacco-free policies and promoting school cessation services (Chapter 4). Moore also engaged universities and colleges in the New Orleans area, providing information about the SmokeFree NOLA Campaign and securing campus efforts to promote the campaign. In addition to TFL's recruitment and coordination of state and local organizations, the Smoking Cessation Trust, alerted and informed New Orleans area medical facilities to the SmokeFree NOLA Campaign.<sup>72</sup>

Communications, marketing and social media messaging by TFL, ACS CAN, AHA, ALA, and other coalition members for the SmokeFree NOLA campaign were primarily led by TFL Communications/Tobacco Policy Manager Lauren Conrad and TFL Communications/Public Relations Manager Mary Fein, with TFL Cessation Program Manager Alex Hurst assisting with cessation messaging for the SmokeFree NOLA Campaign.<sup>72</sup> Action alerts were handled by the major national and regional health organizations.<sup>72</sup>

Managed by Jennifer Cofer, paid contractors conducted grassroots activities and promotions to bar patrons, the faith community, the LTBTQ community, and the music community.<sup>72</sup>

As the SmokeFree NOLA coalition formed to support Cantrell's ordinance, partners worked to establish unity and build trust between members. According to ANR Associate Director Bronson Frick in a 2016 interview for this report:

It took some time to find ways for ...the locals and the state and national partners to be [a] cohesive team together. But once we finally got to that point, it was good.<sup>64</sup>

To reduce the likelihood of future conflict between SmokeFree NOLA partners and maintain bonds, coalition members also determined deal breakers (policy positions taken by members that if not met, will cause them to no longer support passing legislation) before the start of the policy campaign.

To strengthen bonds between SmokeFree NOLA coalition partners, ANR invited members to its Clearing the Air Conference held from September 28 to October 1, 2014 at South Lake Tahoe, California.<sup>64, 79</sup> SmokeFree NOLA Coalition members Kathy Richard from the LCEF, Jennifer Cofer of ALA, Claudia Rodas of CTFK, Stasha Rhodes of AHA, Onjewel Smith of ANR, and LPHI officials attended.<sup>64</sup> At the conference, ANR provided training for the Louisianan advocates as well as other southern states on how to mobilize public support for local ordinances, what to expect from the tobacco industry and its allies, and how to respond to those challenges. The training at the conference united coalition members behind securing a New Orleans ordinance making bars and gaming establishments smokefree.<sup>64</sup>

"... the challenge was how to distinguish between what is special about a place like New Orleans versus let's say smoking and secondhand smoke and how that's not necessarily part of what's special. That's not part of the heritage people want to pass along to their kids."

## *Campaign Branding and Message*

Developing a campaign theme and message for New Orleans, tobacco control advocates faced a challenge in separating the city's "everything goes" culture from the ability to smoke cigarettes indoors. According to ANR Associate Director Bronson Frick in a 2016 interview for this report:

Culturally, it's [New Orleans] kind of unique to nearby parishes in Louisiana. With that special culture, sometimes in unique places, Austin comes to mind, other places where sometimes the most important thing is never to change anything at all. You know, that's how you keep a place special, you keep the tradition to keep from turning into something else.

And so the challenge was how to distinguish between what is special about a place like New Orleans versus let's say smoking and secondhand smoke and how that's not necessarily part of what's special. That's not part of the heritage people want to pass along to their kids.<sup>64</sup>

National and regional health voluntaries sought a unique brand and theme for the SmokeFree NOLA Coalition that celebrated the culture of New Orleans and called for its protection from secondhand smoke.<sup>64</sup> The coalition employed graphic designer Jason Thompson of Fahrenheit Creative to design the look and feel of the campaign,<sup>64</sup> a minority-owned advertising agency that worked with small businesses, non-profits, and government agencies.<sup>80</sup> Fahrenheit Creative developed a campaign theme and messaging that highlighted the voices of musicians, casino employees, and bartenders.<sup>81</sup> The coalition incorporated the fleur-de-lis, a symbol of New Orleans' French origins, and a trumpet, representative of the city's musical culture, in its logo and promotional material (Figure 12.1).

The SmokeFree NOLA Coalition cobranded itself with the Healthier Air for All media campaign being run by TFL, a key partner. TFL's Healthier Air for All Campaign (and the "Let's Be Totally Clear" Campaign it descended from) had messaged about the lack of secondhand smoke protections for bar employees, casino workers, and musicians in Louisiana since 2010 (Chapter 4). According to ANR's Hallett in a 2016 interview for this report, using TFL's existing campaign branding benefitted the Coalition because it "was important for the visibility, the branding, it was a nice hook."<sup>64</sup> Cobranding tied the New Orleans campaign's media, advertising, and promotional events into the statewide Healthier Air for All campaign. As a result, the Healthier Air for All logo and associated "Join the Movement" slogan appeared in SmokeFree NOLA messaging and promotional materials.



*Figure 12.1: SmokeFree NOLA Campaign Logo<sup>82</sup>*

## *Developing the Ordinance*

Councilmember Cantrell and her office sought to have a “people-driven process” for developing her comprehensive smokefree ordinance.<sup>83</sup> They held multiple meetings with proponents, opponents, and the public before introducing specific legislation.<sup>83</sup> Cantrell and her office drafted the measure based on ANR’s model ordinance and language developed by the New Orleans Department of Health to ensure that New Orleans was complying with the Louisiana Smoke-Free Air Act.<sup>83</sup> In a 2017 interview for this report, Cantrell’s Chief of Staff John Pourciau reported that the Councilmember and her office drafted comprehensive legislation from the start to increase bargaining power over provisions of the ordinance:

There was an important perspective from the councilmember to not negotiate against herself in regards to the legislation. So she put a lot in that front-end ordinance as far as distances and as far as where things would be banned or not banned, with the understanding there would be some specific pushback about certain specific aspects of the ordinance, uh, so that when you had conversations with folks in regards to what they wanted or they didn't want in there, or what they had issues with, there was a willingness to work with folks to give something people were comfortable with.<sup>83</sup>

While Cantrell and her office developed the ordinance, they also discussed deal breakers with ACS CAN, AHA, ALA, ANR, and CFL.<sup>64, 72, 83, 84</sup> To maintain unity and consensus on deal breakers, national, state, and local members of the SmokeFree NOLA Coalition participated in weekly conference calls.<sup>64</sup> According to Jennifer Cofer in a 2017 interview for this report, legislation passed in New Orleans would influence future smokefree ordinance campaigns throughout the South, making deal breaker choices critical to advocates preparing for the effort:

...we knew that the impact of what New Orleans did would impact Louisiana, it would impact the Mississippi Gulf Coast. Due to the fact that it had a casino that was land-based, now located in New Orleans, it was also heavy in bars. There were 517 bars in New Orleans at the time. It was also a huge tourist attraction in the southeast.

So we knew that this was not just an ordinary conversation for smokefree [policies], but it was a smokefree conversation that had set high standards.<sup>72</sup>

SmokeFree NOLA members agreed that e-cigarettes must be included in the ordinance.<sup>72</sup> Cantrell and her staff incorporated e-cigarettes into her legislation although they were less dedicated to retaining them if it jeopardized passing the law.<sup>83</sup>

Whether to include casinos as a deal breaker proved a source of contention among health advocates.<sup>64</sup> Exempting casinos would leave approximately 3,000 employees at the Harrah’s casino in New Orleans without protection from secondhand smoke.<sup>72</sup> Research later conducted by TFL for the SmokeFree NOLA campaign found that casino workers composed 52% of those in New Orleans not protected by Louisiana’s statewide smokefree law. The number of workers exposed to smoke in Harrah’s convinced Councilmember Cantrell and the SmokeFree NOLA Coalition to include casinos in the law. The adoption of a smokefree casinos policy position by



the national ALA, a major participant in the SmokeFree NOLA Coalition, also helped secure member consensus to include casinos as a deal breaker.<sup>64, 72</sup>

### ***Launching the Ordinance during Smoke-Free Week 2.0***

Councilmember Cantrell introduced a comprehensive smokefree ordinance to the New Orleans City Council on the last day of “Smoke-Free Week 2.0.”<sup>85</sup> The weeklong action featured smokefree events and smokefree nights designed to generate public support for smoking restrictions and encourage businesses to go smokefree from November 12 to November 20, 2014.<sup>85</sup> Smoke-Free Week 2.0 coincided with a national meeting of the American Public Health Association (APHA) in New Orleans from November 15 to November 19, 2014.<sup>86</sup> The week started on November 12, 2014 with a press conference by Councilmember Cantrell where she announced the start of the smokefree week and declared that she would introduce a smokefree ordinance to the New Orleans City Council later that month.<sup>85, 87</sup>

On November 17, 2014, SmokeFree NOLA held a second line parade as part of Smoke-Free Week 2.0 that marched to the APHA annual meeting for a rally calling for a smokefree law.<sup>88, 89</sup> Second line parades are marches featuring live jazz music that are culturally and historically significant to New Orleans and originate from the city’s funeral processions and social organizations.<sup>90</sup>

Tobacco control advocates leveraged the APHA Annual Meeting to demonstrate the economic opportunity costs the city faced if the City Council failed to adopt Councilmember Cantrell’s ordinance.<sup>64, 67</sup> APHA had planned to hold its 2005 conference in New Orleans, but changed locations following Hurricane Katrina.<sup>91</sup> APHA held its 2014 conference in New Orleans to honor a promise it made after the disaster to return, despite the fact that New Orleans did not comply with APHA’s 2004 policy of only holding its annual conference in smokefree cities.<sup>64, 92</sup>

The APHA Conference brought 12,740 attendees to New Orleans.<sup>93, 94</sup> ANR’s Hallett and ALA’s Cofer asked APHA to issue a statement that the conference would not return to New Orleans unless the city was smokefree.<sup>64, 72</sup> According to Hallett in a 2016 interview for this report, the Coalition used the APHA to show the economic costs of not becoming a smokefree city:

New Orleans relies so heavily on tourism, with business... I raised the issue with the Executive Director of APHA...saying, "Hey, I love New Orleans, but [that city isn't smokefree], would you be willing to, as an entity, make a statement saying you're coming back because [you were supposed to be here] before Katrina hit, you promised you would come back, you're now back, but we won't do that [host another conference in New Orleans] unless it goes smokefree."<sup>64</sup>

APHA Executive Director Georges Benjamin accepted Cofer and Hallett’s request and announced at the opening session of the APHA meeting on November 15, 2014 that APHA would not return to New Orleans unless the city adopted a comprehensive smokefree ordinance.<sup>64, 91, 95, 96</sup>

According to Councilmember Cantrell in a 2017 interview for this report, the statement from APHA significantly influenced the debate surrounding the smokefree ordinance among local lawmakers and hospitality industry members:

It [the APHA statement] had a huge impact on, not only council members, but just the industry, in and of itself. Them saying, “Hey, I’m not coming back to New Orleans,” that was a big deal. We’re a hospitality city in terms of our industry. We’re a destination city and it made a huge impact.<sup>84</sup>

In addition to APHA, AHA threatened to stop holding meetings in New Orleans until a comprehensive smokefree law was in place.<sup>65, 89</sup> AHA had adopted a nationwide policy in 2014 to only hold meetings in cities with comprehensive smoking restrictions.<sup>97</sup> The voluntary informed New Orleans City

“It had a huge impact on, not only council members, but just the industry, in and of itself. Them saying, ‘Hey, I’m not coming back to New Orleans,’ that was a big deal. We’re a hospitality city in terms of our industry. We’re a destination city and it made a huge impact.”

Councilmembers and the New Orleans Chamber of Commerce that it would not host meetings in New Orleans until the city became smokefree.<sup>97</sup> The specter of APHA and AHA not holding major national meetings in New Orleans meant a loss of over 20,000 visitors to the city, establishing economic and tourism costs if the City Council failed to adopt Cantrell’s ordinance.<sup>65</sup> To further emphasize the economic consequences of not adopting a comprehensive smokefree ordinance, SmokeFree NOLA Coalition circulated a list from ANR of business and organizations that had smokefree meeting policies.

On November 20, 2014, SmokeFree NOLA concluded Smoke-Free Week 2.0 by celebrating the American Cancer Society’s Great American Smokeout day. That same day Councilmember Latoya Cantrell officially introduced her ordinance.<sup>98</sup>

As introduced, the New Orleans clean air ordinance prohibited smoking and vaping in all public and private workplaces, including bars and casinos.<sup>98</sup> It exempted tobacco retailers, tobacco manufacturers, wholesaler, storage, importer, and processor facilities, semiprivate and private rooms in assisted living facilities, and up to 50% of guest rooms in hotels and motels (matching state law for hospitality establishments). The ordinance prohibited smoking and vaping in outdoor parks, public transit facilities, outdoor areas next to buildings operated or owned by the City of New Orleans, parking structures, outdoor malls, outdoor recreation areas, sports and performing arts facilities, and outdoor workplaces with two or more staff. Smoking in common areas of apartment and multi-unit housing was allowed in designated smoking areas that consisted of no more than 25% of outdoor common area space and were located 25 feet away from facility entrances, windows, and ventilation outlets. Distance requirements prohibited smoking and vaping within 25 feet of parks, public transit facilities, building entrances and windows, the point of sale of any outdoor line, outdoor public events, bleachers and grandstands. A 200-foot distance requirement prohibited smoking near schools.

## ***SmokeFree NOLA Campaign Incorporates Musicians and Casino Employees***

The SmokeFree NOLA Coalition incorporated musicians into campaign events and activities to bolster its messaging that smoking restrictions were needed to protect New Orleans' musical culture and heritage. Musicians were recruited for the campaign by LCEF Healthcare Initiative Director Kathy Richard. LCEF was a nonprofit formed in 2005 (that ceased operations in 2019) to help performance artists obtain economic assistance and access to healthcare services.<sup>99</sup> Richard had worked with TFL since 2011 to hold smokefree music events across the state.<sup>77</sup>

“They became a core partner, and that changed everything because they were able to bring forward not just one or two musicians, but dozens of musicians, hundreds of musicians. They became the face of the effort in many ways because of the culture of New Orleans being so closely tied to music.”

In August 2014, TFL Director Tonia Moore directed Richard to focus her New Orleans work on recruiting musicians for smokefree efforts.<sup>77</sup> According to Bronson Frick of ANR in a 2016 interview for this report, LCEF was critical to the success of the New Orleans ordinance campaign:

They [the LCEF] became a core partner, and that changed everything because they were able to bring forward not just one or two musicians, but dozens of musicians, hundreds of musicians. They became the face of the effort in many ways because of the culture of New Orleans being so closely tied to music.<sup>64</sup>

Musicians recruited by LCEF served as powerful spokespersons for the SmokeFree NOLA Coalition. Prominent Louisiana jazz musicians included Deacon John Moore, Paul Sanchez, Craig Klein, and Irvin Mayfield.<sup>65, 100-102</sup> They and other musicians Richard recruited participated in letter writing campaigns, campaign announcements, city council meetings, smokefree concerts and performances, as well as smokefree nights and events.<sup>65</sup> The strong support from musicians provided a powerful voice that could testify on behalf of workers unable to speak in favor of smoking restrictions for fear of losing employment, mainly casino workers.

Casino employees lacked union protection, muting their public support for the ordinance because they feared employer retaliation.<sup>65</sup> As a result, tobacco control advocates collected anonymous testimony from casino employees via website form or email.<sup>72</sup> The SmokeFree NOLA Coalition shared the statements.

### ***Campaign Activities after Smoke-Free Week 2.0 and Ordinance Introduction***

After Smoke-Free Week 2.0 and the introduction of Cantrell's ordinance, SmokeFree NOLA hosted additional smokefree happy hours, nights and performances at bars to generate public support for smoking restrictions. To generate media coverage supporting the ordinance before its first hearing TFL and SmokeFree NOLA promoted smokefree events on the Healthier Air for All website, drawing customers and media attention to participating establishments.<sup>65, 67</sup>

Besides hosting events to generate support from the public, the SmokeFree NOLA Coalition worked to secure support from the bar and service industry employees that Cantrell's ordinance sought to protect. The Coalition hosted smokefree service industry nights after operating hours for bar and nightlife employees to attend.<sup>72</sup> According to former TFL Cessation Programming Manager Alex Hurst in a 2017 interview for this report, the "events were something that generated engagement and support from some of those service industry workers."<sup>72</sup>

The SmokeFree NOLA Coalition also conducted outreach to disparate populations adversely affected by tobacco use by holding smokefree nights at bars catering to the LGBT community and African Americans.<sup>72</sup>

Tobacco control advocates also conducted outreach to the New Orleans religious community. SmokeFree NOLA employed a "faith-based outreach coordinator" to work with the New Orleans religious community, which secured announcements and bulletins about the smokefree campaign in churches with significant congregation sizes.<sup>72</sup> Smokefree NOLA also held faith-based events at churches.<sup>72</sup>

By February 2015, the coalition managed to secure approximately \$2.8 million in earned media,<sup>103</sup> generating approximately 1000 mentions in news programming regarding smoking restrictions and Cantrell's ordinance.<sup>104</sup> In addition, newspapers printed 75 letters to the editor supporting the ordinance.<sup>104</sup> SmokeFree NOLA also ran traditional advertising via television, radio, print, and outdoor methods, as well as social media advertising to supplement promotional events and subsequent earned media it generated.<sup>67</sup>

Prior to the initial committee hearing for Cantrell's ordinance, Coalition member CTFK launched an online petition calling for smoking to be prohibited in bars, casinos, and all public places.<sup>105</sup> CTFK planned to deliver the petition to New Orleans Mayor Mitch Landrieu and New Orleans City Councilmembers.<sup>105</sup> CTFK periodically posted action alerts to the petition asking followers to contact City Councilmembers in support of smokefree policies and to attend events and city council meetings for the ordinance.<sup>105</sup> The petition collected 1,905 signatures and was delivered by CTFK to the New Orleans Mayor and Councilmembers at an unspecified point.<sup>105</sup>

### ***Opposition to the Ordinance***

Opposition to the New Orleans ordinance arose from the bar, gambling, and restaurant industries as well as the vaping community (both users and industry members). Bar, gambling, restaurant and wholesale industries opposed the adoption of a comprehensive smokefree law that prohibited smoking in bars and casinos, while the vaping community sought to exempt e-cigarettes, leading the two groups to operate as separate factions (Table 12.9).

#### ***Bar, Gambling, Restaurant, and Wholesale Industries and the Freedom to Choose Coalition***

Bar, gambling, and restaurant industry members against smoking restrictions organized as the Freedom to Choose Coalition to oppose the ordinance (Table 12.9). The Freedom to Choose Coalition was partially created by Harrah's, which operated Louisiana's only land-based casino, in New Orleans.<sup>106</sup> Other casinos must be on water in the state. It was a subsidiary of Caesars Entertainment Corporation, a multinational gambling and entertainment company.<sup>107</sup>

Table 12.9: Key Opponents of the New Orleans Clean Air Ordinance <sup>100-102, 109, 111-113</sup>			
	Group	Organization	Position within Organization
Logan Gaskill	Freedom to Choose Coalition	Harrah’s	Vice President of Human Resources and Community Relations
Wade Duty		Louisiana Casino Association	Executive Director
Mona LaCombe		Louisiana Amusement and Music Operators Association	Executive Director
Matt Wellman		Louisiana Amusement and Music Operators Association	Vice President
Alex Fine*		French Quarter Business League	President
Chris Young		French Quarter Business League	
Danielle Lejer		Louisiana Restaurant Association	Director of Local Advocacy
Chris Flowers	Vaping Community	Louisiana Association of Electronic Cigarette Retailers	President
Anthony Kolesa		Louisiana Association of Electronic Cigarette Retailers	
Brian Verarty		Louisiana Association of Electronic Cigarette Retailers	
*Spokesperson for the Freedom to Choose Coalition.			

Founding gambling industry members of the Freedom to Choose Coalition included the Louisiana Amusement and Music Operators Association (LAMO), the Louisiana Video Gaming Association (which represents video gambling industry and device owners) and the Louisiana Casino Association.<sup>108</sup> (Churchill Downs, a gaming company with an establishment in New Orleans, did not participate.) LAMO had historical ties to the tobacco industry, and its former executive director Sarah Whalen<sup>109</sup> was a key ally and lobbyist for the tobacco industry before joining the casino association (Chapters 2, 5, 6, 7, 11). Although we did not find evidence that Sarah Whalen served as executive director of LAMO to influence gaming operations on behalf of the tobacco industry, tobacco companies have a history of using members of gaming and air quality organizations to convince casinos to avoid and resist smoking restrictions.<sup>110</sup>

Founding members of the Freedom to Choose Coalition from the bar and restaurant industries were The French Quarter Business League, the Louisiana Restaurant Association and a number of independent businesses. The French Quarter Business League (FQBL), a New Orleans-based business association composed primarily of restaurants and bars took a prominent role in the coalition. FQBL President and restaurant owner Alex Fine acted as Coalition spokesperson during efforts to defeat the ordinance. Although already prohibited from allowing indoor smoking by the Louisiana Smoke-Free Air Act, the Louisiana Restaurant Association (LRA) and individual restaurants joined the Freedom to Choose Coalition to oppose the ordinance.<sup>108</sup> Individual businesses also joined the coalition. LRA was a historic tobacco industry

... tobacco companies have a history of using members of gaming and air quality organizations to convince casinos to avoid and resist smoking restrictions.

ally that repeatedly fought smoking restriction legislation (Chapters 4, 5, 10). Tobacco industry ally the Louisiana Association of Wholesalers (LAW) was also a founding member of the Freedom to Choose Coalition.<sup>108</sup> LAW had strong ties to the tobacco industry, having opposed state tobacco tax increases in 2009 and 2011<sup>114, 115</sup> and received multiple annual contributions greater than \$5000 from Altria

(Chapter 2).<sup>116</sup> LAW Executive Director David Tatman served as a State Coordinator for the Philip Morris Field Action Team<sup>117</sup> and as a lobbyist for Philip Morris. As of 2017, David Tatman and his lobbying firm The Tatman Group retained Altria as a client (Chapter 2). We do not know if Altria remains a client. However, Altria, RJ Reynolds and Swedish Match were listed as LAW's only annual sponsors in 2018, and Altria and RJR were its largest donors.<sup>118</sup>

### *The Vaping Community*

The vaping community opposed including e-cigarettes in the ordinance and worked to exempt them. Louisianan e-cigarette users and retailers first testified and pressed for the exclusion of electronic smoking devices from Cantrell's ordinance to New Orleans lawmakers at a Community Development Committee hearing on January 7, 2017. New Orleans e-cigarette retailers then formed the Louisiana Association of Electronic Cigarette Retailers (LAECR) after the hearing in January 2014 to lobby against including e-cigarettes in the ordinance.<sup>72</sup> The national e-cigarette advocacy organization Consumer Advocates for Smoke-Free Alternatives Association (CASAA) and out-of-state e-cigarette retailers such as Mountain Vapor issued action alerts.<sup>119, 120</sup> CASAA was formed in 2009 to oppose legislation that placed restrictions on electronic smoking devices.<sup>121</sup> Initially formed as a grassroots group, CASAA had a board member performing research on e-cigarettes and harm reduction with funding from Altria, Swedish Match, the US Smokeless Tobacco Company, British American Tobacco, and RJ Reynolds.<sup>121</sup> The organization has shared staff and partnered with conservative think tanks allied with the tobacco industry. CASAA has opposed numerous local ordinances restricting e-cigarette use.

### *The Battle Begins: The Community Development Committee Hearing*

The New Orleans Community Development Committee first considered Cantrell's ordinance on January 7, 2015 (Table 12.10). Cantrell chaired the committee, which also included Councilmembers James Gray, Susan Guidry, Stacy Head, and Jason Williams.<sup>122</sup> Councilmembers Nadine Ramsey and Jared Brossett also attended.<sup>102, 122</sup> Tobacco control advocates and supporters of the SmokeFree NOLA campaign, the Freedom to Choose Coalition and its supporters, and the vaping community filled the Committee meeting to capacity.<sup>102</sup>

"Some of the organizations on the ground had not necessarily taken the position on whether or not electronic cigarettes should be prohibited from these smokefree environments. And some of our very good partners weren't on the record yet ..."

The vaping community bussed in supporters,<sup>64</sup> yielding larger than expected numbers at the hearing. According to ANR's Cynthia Hallett in a 2016 interview for this report, the strong attendance by the vaping community caught Cantrell off guard:

They [Guidry and Cantrell] were really worried about who was made to put testimony...Some of the organizations on the ground had not necessarily taken the position on whether or not electronic cigarettes should be prohibited from these smokefree environments. And some of our very good partners weren't on

Table 12.10: New Orleans Smokefree Ordinance as it Developed <sup>98, 102, 123, 124</sup>						
	Bars	Casinos	Hotel and Motel Rooms	Cigar/Hookah Bars	Footage Requirements	ENDS
Introduced (November 20, 2014)	Yes	Yes	No	Yes	Yes	Yes
Community Development Committee Hearing (January 7, 2015)	Yes	Yes	Yes	Partial*	Yes	Yes
City Council Hearing (January 22, 2015)	Yes	Yes	Yes	Partial*	No	Yes
Adopted	Yes	Yes	Yes	Partial*	No	Yes
* Grandfathers cigar and hookah bars in operation before December 31, 2014. <sup>72, 124</sup>						

the record yet so they didn't feel confident in what they could say and they didn't know exactly what to say.<sup>64</sup>

Before the committee started the hearing, Cantrell called Hallett, who was on her way to attend the meeting, to alert her to the e-cigarette advocates' stronger than expected presence.<sup>64</sup> In a 2016 interview for this report, Hallett indicated that Cantrell was willing to sacrifice e-cigarette restrictions to pass the legislation.<sup>64, 83</sup>

The hearing started with a panel of public health experts invited by Councilwoman Cantrell to testify on the health and economic impacts of smokefree policies (Table 12.11). The panel consisted predominantly of SmokeFree NOLA representatives and reflected the diversity of the tobacco control coalition. They testified on the dangers of secondhand smoke and the damage caused to the general public through regular exposure.<sup>102</sup> In addition, panel members provided research and polling results contradicting the claims that businesses, casinos, tourism and the state suffered economic harm because of smoking restrictions. To reinforce testimony from the panel, the Campaign for Tobacco-Free Living distributed data briefs composed of studies on air quality, secondhand smoke exposure, secondhand smoke health effects, and the economic impact of smokefree policies to councilmembers.<sup>102, 125</sup>

Table 12.11: Public Health Expert Panel at the Community Development Committee <sup>102</sup>		
	Organization	Position
Jennifer Cofer	American Lung Association of the Southeast	Vice President of Public Policy and Health Promotions
Cynthia Hallett	Americans for Nonsmokers' Rights	Chief Executive Officer
Dr. Kyle Happel <sup>126</sup>	Louisiana State University	Associate Professor of Medicine
Bill Oliver	Oschner Health System	
Joe Kimbrell	Louisiana Public Health Institute / Tobacco-Free Living	Chief Executive Officer
Tonia Moore	Louisiana Public Health Institute / Tobacco-Free Living	TFL Associate Director
Dr. Tom Carton	Louisiana Public Health Institute / Tobacco-Free Living	
Paul Sanchez		Musician
Robert McMillen	Mississippi State University Tobacco Data Center	
Greg Jones	Oz Bar	Club Owner

Nearing the end of the expert panel, New Orleans club manager Greg Jones described his experience with the implementation of a comprehensive smokefree law at a night club he was operating in New York City. Panel member Jones testified that his New York nightclub was not affected by the smokefree law despite initial fears his establishment would lose 25% of its business.<sup>102</sup> The testimony countered traditional tobacco industry claims<sup>127</sup> by opponents that smoking restrictions economically harmed bars and clubs.

Musician Paul Sanchez was the last panelist to speak during open testimony. Sanchez implored the Council to follow the lead of other major cities known for their smoking culture that had gone smokefree such as New York, Chicago, Los Angeles, London, and Paris.<sup>102</sup> He testified on behalf of performance artists as well as service industry (bar and casino) employees, stating that they lacked the choice not to work in establishments with secondhand smoke.<sup>102</sup> In addition, he commented on how young entrepreneurs moving to New Orleans found the lack of smoking restrictions in the city displeasing.<sup>102</sup>

### ***Amendments***

After the panel presentation at the hearing, Cantrell introduced a package of amendments to the ordinance to eliminate smoking restrictions in outdoor courtyards, malls, recreation centers, and outdoor patios at bars, restaurants, and casinos while exempting cigar and hookah bars that were in operation before January 8, 2015.<sup>102, 128</sup> Cantrell was apprehensive about exempting cigar and hookah bars from smoking restrictions, but proposed the amendment to appease New Orleans' State Senator Edwin Murray, who regularly patronized a cigar bar in the city.<sup>72</sup> SmokeFree NOLA legislative point person, and AHA State Director of Advocacy and Government Relations Stasha Rhodes provided Cantrell's office example language for exempting cigar bars in comprehensive smokefree ordinances to help write the amendment.<sup>83</sup> In addition to changes weakening her ordinance, she proposed an amendment to prohibit smoking in all hotel and motel rooms.<sup>102, 128</sup>

After informing the Community Development Committee of her proposed amendments, Cantrell initiated a public comment period before calling for a vote.

### ***Public Comment***

During public comment 38 individuals spoke, equally divided between proponents and opponents.<sup>102</sup> Commenters speaking in favor of the ordinance came from health voluntaries, state-based organizations, religious institutions, were bar owners, or were musicians recruited by SmokeFree NOLA (Table 12.12). Opponents came from the gaming and service industries, both traditional tobacco industry allies, as well as the vaping community (Table 12.13).

Testimony from tobacco control advocates sought to refute gaming and service industry claims of economic harm and demonstrate public support for adopting comprehensive smoking restrictions.<sup>102</sup> Before the hearing, SmokeFree NOLA had held a war room to prepare supporters for their testimony with pointers and parameters for discussion topics.<sup>72</sup> Advocates for the ordinance argued that comprehensive smoking laws are necessary for protecting vital service and gaming industry workers as well as performers and their cultural contributions.<sup>102</sup> Addressing concerns regarding overregulation of e-cigarettes, Hallett testified about e-cigarettes on behalf of the SmokeFree NOLA Coalition after the vaping industry appeared in stronger than expected



numbers to oppose the ordinance. She argued for their continued inclusion in the ordinance because of a lack of existing regulation, in addition to research indicating the presence of harmful components in e-cigarette aerosol.<sup>102</sup>

Opponents' arguments differed between the Freedom to Choose Coalition and vaping advocates. Following well-

established tobacco industry arguments against clean air regulation,<sup>127</sup> gaming and service industry representatives in the Freedom to Choose Coalition asserted that the ordinance would inflict economic harm and rob people of freedom of choice.<sup>102</sup> In addition to standard economic arguments, FQBL President and Freedom to Choose Coalition spokesperson Alex Fein argued that lost revenue from smoking restrictions would harm French Quarter businesses already suffering business loss from a crime wave New Orleans was experiencing.<sup>102, 129</sup> Logan Gaskill, Harrah's Vice President of Human Resources and Community Relations,<sup>111</sup> asserted that smoking restrictions would harm state revenue and economically harm the New Orleans' casino.

Table 12.12: Proponents Testifying for the NOLA Ordinance at the January 7, 2015 Hearing of the Community Development Committee <sup>102</sup>		
Affiliation	Commenter	Organization
Health Voluntarys	Robert Morris	American Cancer Society Cancer Action Network
	Jennifer Cofer	American Lung Association
	Cynthia Hallet	Americans for Nonsmokers' Rights
State and local organizations	Dr. Corey Abair	NOLA Jazz Orchestra
	-- Missing one	--
	Bethany Boltman	New Orleans Musician Clinic
	Kathy Richaud	Louisiana Cultural Economy Foundation
	Ronald Markham	NOLA Jazz Orchestra
Musicians	Deacon John Moore	Performer/ President of New Orleans Musicians Union
	Irvin Mayfield	Performer
	Craig Klein	Performer
Service Industry	Kim Perez	Business Owner
	Leora Madden	Business Owner
Religion	Reverend Willie Gable	Interdenominational Ministerial Alliance
Miscellaneous	Lacy Sanchez	Miss Louisiana
	Carolyn Gill-Jefferson	Former Judge

Table 12.13: Opponents Testifying Against NOLA Ordinance <sup>102</sup>		
Affiliation	Commenter	Organization
Freedom to Choose Coalition	Mona LaCombe	Louisiana Amusement and Music Operators Association
	Matt Wellman	Louisiana Amusement and Music Operators Association
	Wade Duty	Louisiana Casino Association
	Logan Gaskill	Harrah's
	Alex Fine	French Quarter Business League
	Danielle Lejay	Louisiana Restaurant Association
	Chris Young	French Quarter Business League
Vaping Industry	Chris Flowers	Louisiana Association of Electronic Cigarette Retailers
	Benjamin Verarty	Louisiana Association of Electronic Cigarette Retailers
Labor Union	Marlene Patrick Cooper	
Miscellaneous	Elizabeth Stella	None

He also claimed that employees faced lower tips from reduced business and potential reduction in work hours because of lost business from smoking restrictions.<sup>102</sup>

Councilmember Cantrell countered Gaskill's arguments by revealing that Harrah's desired to reduce its employment numbers, which had a minimum amount set by law. According to ANR's Hallett in a 2016 interview for this report:

It's by law how many employees they [Harrah's] have. Harrah's came in and said, "Well, if only we could reduce the number of employees and this and that because we're going to lose business, and Councilwoman Cantrell was just masterful because she knew...they were trying to reduce the number of employees well before this law came to get proposed. And she was just, "so is this what you proposed 18 month now ago?" Yeah. She was just able to neutralize all those arguments and counter them so that we could get back to the real issue at hand which was, you know, secondhand smoke, employee exposure, and so on.<sup>64</sup>

Since 2001, Harrah's contract with the State of Louisiana required it to employ over 2400 people at all times,<sup>130, 131</sup> a number the casino had been seeking to lower since 2007.<sup>130, 131</sup> Cantrell's rebuke of Gaskill revealed that Harrah's saw the smokefree ordinance as an opportunity to reduce employment, weakening the casino's arguments and pressure on the City Council.

"Harrah's came in and said, "Well, if only we could reduce the number of employees and this and that because we're going to lose business, and Councilwoman Cantrell was just masterful because she knew ... they were trying to reduce the number of employees well before this law came to get proposed. And she was just, 'so is this what you proposed 18 month now ago?'"

Arguments from vaping advocates were narrowly focused on keeping e-cigarettes out of the ordinance. Commenters argued that vapor products are better for health than conventional cigarettes and helped smokers quit cigarettes.<sup>102</sup> They also questioned the research tobacco control advocates cited to justify including e-cigarettes in Cantrell's ordinance.<sup>102</sup> Studies by tobacco industry-funded third party think tanks and scientists had led to research that vaping community advocates use to contest findings by independent and public health researchers.<sup>121</sup> Members of the vaping community also cited statements from public health officials that supported legal access to e-cigarettes or their potential value as harm reduction devices. During his testimony, LAECR President Chris Flowers referenced a letter by World Health Organization officials recommending the organization not pursue prohibition of electronic smoking devices.<sup>102</sup> (We could not locate any such letter from WHO.) Vaping community advocates also referenced statements supporting e-cigarettes as harm reduction devices from FDA Center for Tobacco Products Director Mitch Zeller and Royal College of Physicians Tobacco Advisory Group Chair John Britton.<sup>102</sup>

### ***Motion to Recommend Amendments***

After public comment concluded, the Community Development Committee voted on Councilmember Cantrell's amendments. Councilmembers Gray and Williams wanted to defer

voting, with Gray believing there should be more time to review the changes and Williams feeling more research was needed on the potential economic impacts and the possible health benefits of electronic cigarettes. The Committee Chair, Cantrell refused to defer committee vote to a later date, arguing that accepting the amendments and approving the legislation in committee would allow the ordinance to be presented the New Orleans City Council as a whole package for the public to review.<sup>102</sup> Cantrell noted that additional amendments to the ordinance could be made in the future. The committee voted 3-2 (Cantrell, Guidry, and Head voting in support and Gray and Williams voting against) to recommend Cantrell's amendments and advanced the ordinance to the full City Council.<sup>102</sup>

### ***SmokeFree NOLA and Legislative Champions Prepare for the City Council Hearing***

Following the first committee hearing, Councilmembers Cantrell and Susan Guidry held a town hall meeting with SmokeFree NOLA to generate political and public support for the smokefree ordinance.<sup>72, 132</sup> The high attendance at the Community Development Committee hearing had caused concern among members of the New Orleans City Council that public opinion was not being fully heard, causing Cantrell to hold the town hall to assuage them and further engage the public.<sup>72</sup> According to Councilmember Cantrell in a 2017 interview for this report, her plan to hold a town hall initially met resistance from the SmokeFree NOLA Coalition:

I mean, the [coalition] partners at the time didn't want me to have another meeting, but I said, hey, I'm going to have another meeting, because it's [the ordinance] not ready yet. People still want to be engaged, and I'm going to allow them to be engaged, and that's what we did.<sup>84</sup>

Councilmembers Cantrell and Guidry held the town hall with assistance from the SmokeFree NOLA Coalition on January 14, 2015 in the New Orleans City Council chambers.<sup>84, 132</sup> There, members of the public spoke for and against the ordinance.<sup>84</sup> The SmokeFree NOLA Coalition brought experts to the town hall to inform attendees how smokefree laws benefitted public health without economically harming casinos.<sup>84</sup>

Between the Community Development Committee and City Council hearings for Cantrell's ordinance, SmokeFree NOLA members organized campaign events, administered a survey on public opinion towards smoking restrictions and conducted further public outreach in New Orleans to generate and maintain support for the smokefree ordinance. In addition, ACS-CAN conducted a poll in New Orleans that it released in December 2014 reporting that 56% of participants "strongly favor" prohibiting indoor smoking.<sup>133</sup> The poll received coverage in *Gambit*, a New Orleans periodical and website.<sup>133</sup>

As part of their outreach efforts to the religious community, on January 21, 2015<sup>132</sup> SmokeFree NOLA hosted a Churches for NOLA Prayer Breakfast for approximately 50 faith leaders.<sup>65, 72, 132</sup> Attended by Councilmember Cantrell and other representatives from SmokeFree NOLA, the event informed the religious community about the need for securing smoking restrictions to protect people. They also reminded attendees of the impending vote on the smokefree ordinance by the City Council scheduled for the next day, January 22, 2015.<sup>72</sup> The Coalition used the prayer breakfast to encourage faith leaders to contact councilmembers and announce their support for the ordinance.<sup>72</sup>

On January 21, 2014, the same day as the prayer breakfast, SmokeFree NOLA held a rally to maintain public awareness and engagement towards the smokefree ordinance battle.<sup>132</sup> The rally was held at a local bar and provided food as well as a free music performance to attendees.

### ***Opponents Prepare for the City Council Hearing***

We did not locate any public activity conducted by the Freedom to Choose Coalition between the Community Development Committee hearing and the full Council meeting.

Immediately after the Community Development Committee hearing, New Orleans e-cigarette retailers formed the Louisiana Association of Electronic Cigarette Retailers (LAERC) to oppose including e-cigarettes in Cantrell's ordinance.<sup>72</sup> Between the Committee and City Council hearings, LAERC issued action alerts on Facebook to the Louisiana Vaping Community<sup>134</sup> and lobbied City Councilmembers to remove e-cigarettes from the ordinance.<sup>135</sup> LAERC and e-cigarette retailers met with Councilmember Cantrell's office on January 12, 2015<sup>135</sup> to discuss removing e-cigarettes from the legislation. Although LAERC did not secure removal of e-cigarettes from the ordinance, Cantrell would propose an amendment to exempt vaping inside of e-cigarette retailers.

As the New Orleans vaping community organized, the national e-cigarette advocacy group Consumer Advocates for Smoke-Free Alternatives Association (CASAA) published action alerts encouraging people to oppose Cantrell's ordinance by attending town halls and contacting their New Orleans lawmakers. CASAA provided pre-made talking points alongside action alerts and published contact information for New Orleans City Councilmembers and Mayor Mitch Landrieu.<sup>119</sup>

The press release also attempted to delegitimize the tobacco control advocates ... stating that three of four speakers supporting including e-cigarettes into restrictions at the town hall were not New Orleans residents but "paid activists from the American Heart and American Lung Association."

The Louisiana Association of Electronic Cigarette Retailers issued a press release on January 20, 2015 opposing including e-cigarettes in the ordinance.<sup>136</sup> The press release accused smokefree proponents of not considering information on e-cigarettes' economic and health effects, and instead trying to regulate them unfairly since they had a similar appearance to cigarettes.<sup>136</sup> The press release attempted to delegitimize the tobacco control advocates supporting Cantrell's ordinance, stating that three of four speakers supporting including e-cigarettes into restrictions at the town hall were not New Orleans residents but "paid activists from the American Heart and American Lung Association."<sup>136</sup>

### ***The City Council Hearing***

The New Orleans City Council considered Councilmember Cantrell's ordinance on January 22, 2015, with supporters and opponents of the ordinance filling the chamber.<sup>101</sup> At the hearing, Councilmembers started by considering changes to the smokefree ordinance. Councilmember Cantrell introduced her package of amendments, previously introduced before

the Community Development Committee and recommended by them for addition to the New Orleans Ordinance, with minor changes and additions. Cantrell proposed a package of 72 amendments that overall weakened the legislation and increased exemptions from smoking restrictions (Table 12.14).

Table 12.14: Amendments in Councilmember Cantrell’s Ordinance Package <sup>124</sup>	
1.	Eliminates paragraph from legislation stating that nonsmokers spending six hours in outdoor smoking sections of bars and restaurants experience increased cotinine levels.
2.	Eliminates paragraph from legislation stating justifications for including e-cigarettes.
3.	Deletes language stating that employers have a “common law duty” to provide employees a “workplace that is not unreasonably dangerous.”
4.	Adds municipal corporations and non-profits to definition of “business establishment” in ordinance
5.	Adds Cigar Bar definition to ordinance. Cigar bars are defined as generating 10% or greater of annual gross income from cigar sales and humidor rentals conducted on the premises not through a vending machine. Must have been in operation by December 31, 2014.
6.	Amends definition of Electronic Smoking Devices to not include devices that are doctor-prescribed
7.	Adds definition for Electronic Smoking Device Business. ESD Businesses are defined as mainly selling, producing, or promoting ESD and ESD accessories at retail or wholesale level.
8.	Simplifies definition of Employer to be a person or business that employs one or more workers.
9.	Changes technical language for Health care facility definition. Changes language to define facilities as including waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities unless stated differently elsewhere in the ordinance.
10.	Adds Hookah Bar definition to ordinance. Hookah bars are defined as generating 10% or greater of annual gross income from sales of shisha and related accessories for on-premises consumption before December 31, 2014. May only allow patrons 21 years or older in age and cannot allow cigarette smoking.
11.	Refines ordinance language. Does not make technical changes.
12.	Amends public property definition to exclude outdoor property adjacent to municipal and state buildings. Limits buildings, vehicles, locations, sites, and buildings “within the city of New Orleans.”
13.	Eliminates definition for Recreational Area from ordinance.
14.	Eliminates definition for Retail Tobacco Business from ordinance.
15.	Eliminates definition for Shopping Mall from ordinance.
16.	Eliminates electronic smoking device use from definition of smoking.
17.	Alters definition of sports arenas to not include facilities that host cultural or similar events. Redefines sports arenas to include when facilities are being used for exercise, athletic competition, or for viewing sports.
18.	Eliminates first portion of original Tobacco Business definition from ordinance.
19.	Eliminates second portion of original Tobacco Business definition from ordinance. Reinserts new Tobacco Business definition defining said businesses as those that engage in the sale, production and promotion of tobacco, tobacco products, and tobacco accessories as their main activity.
20.	Eliminates rolling papers and pipes from definition of Tobacco Product in ordinance.
21.	Adds definition for Vaping into ordinance. Vaping is the use of an ESD that creates any type of aerosol or vapor.
22.	Changes requirement that employees, managers, owners, and operators notify those smoking or vaping in violation of the ordinance to stop and provides responsibility to employers.
23.	Adds term “vaping” to language covering smoking.
24-25.	Requires that owners, managers, and employers refuse service to violators on their premises that fail to comply with requests to stop smoking or vaping. Removes responsibility from standard employees.
26.	Requires employer to contact New Orleans Police Department if violator refuses to leave premises after being asked. Removes requirement that standard employees contact the New Orleans Police Department.
27.	Includes vaping into language covering smoking.
28.	Includes vaping into language covering smoking.
29.	Changes language stating that “This article shall be liberally construed so as to further its purposes” to meet the purposes of the article and its provisions.
30.	Includes vaping into language covering smoking.

31. Deletes language stating smoking is unlawful in prohibited places. Adds language making smoking and vaping unlawful in places prohibited by law.
32. Adds seven-hour community service requirement for every \$50 an offender is unable to pay for ordinance violations.
33. Includes vaping into language covering smoking.
34. Includes vaping into language covering smoking.
35. Includes vaping into language covering smoking.
36. Includes vaping into language covering smoking.
37. Includes vaping into language covering smoking.
38. Includes vaping into language covering smoking.
39. Removes “private and semi-private rooms in nursing homes” from list of places where smoking is prohibited.
40. Technical revision (renumbering).
41. Technical revision (renumbering).
42. Technical revision (renumbering).
43. Technical revision (renumbering).
44. Includes vaping into language covering smoking.
45. Includes vaping into language covering smoking.
46. Eliminates parks from list of open-air places where smoking is prohibited.
47. Eliminates 25-foot distance requirement for parks.
48. Technical revision (renumbering).
49. Technical revision (renumbering).
50. Changes distance requirement for outdoor public transit structures and facilities from 25 feet to 5 feet.
51. Eliminates 25-foot distance requirement for smoking from building entrances and windows and replaces it with five-foot distance requirement for smoking and vaping. Adds exemption from distance requirement for “outdoor seating or serving areas of bars, restaurants, and casinos.”
52. Technical revision (renumbering).
53. Removes language covering outdoor property adjacent to publicly owned and operated buildings. - Establishes 25-foot distance requirement for smoking and vaping from entrances on public property - Prohibits smoking inside of Richard and Annette Bloch Cancer Survivors Plaza. Establishes 5-foot distance requirement for smoking from the plaza. - Prohibits smoking inside of Lafayette Square. Establishes 5-foot distance requirement for smoking from the square.
54. Eliminates language prohibiting smoking in arenas, stadiums, and amphitheaters. Prohibits smoking inside and within 25 feet of stands at events. Replaces with language prohibiting smoking and vaping in sports arenas, stadiums, recreational areas, playgrounds, and amphitheaters except during fairs, farmer’s markets, parades, festivals, and concerts. Establishes 5-foot distance requirement for smoking from stands at events.
55. Removes language prohibiting smoking at outdoor recreational areas. Removes language prohibiting smoking inside and within 25 feet of public events occurring outside.
56. Technical revision (renumbering).
57. Includes vaping into language covering smoking.
58. Changes distance requirement for smoking in lines from 25 feet from point of sale to 5 feet from point of sale.
59. Technical revision.
60. Eliminates language prohibiting smoking in outdoor common areas of condominiums, trailer parks, apartment buildings, multi-unit residential facilities, and nursing homes. Removes language that allows outdoor smoking sections in said areas and establishes distance requirements.
61. Amends language to prohibit smoking in all places of employment instead of places of employment with two or more workers employed.
62. Includes vaping into language covering smoking.
63. Includes vaping into language covering smoking.
64. Removes language allowing for up to 50% of rooms at hospitality establishments to be designated smoking rooms. Prohibits smoking in 100% of rooms at hospitality establishments.

65. Technical language change (removes term “tobacco retail business” and replaces with “any tobacco business.”)
66. Removes language allowing smoking in private and semi-private rooms at assisted living facilities in rooms where inhabitants requested a smoking room and are all smokers. Replaces with language allowing smoking and vaping in semi-private and private rooms at assisted living facilities in rooms where inhabitants requested a smoking room.
67. Technical revision (renumbering).
68. Amendment allows smoking and vaping at cigar bars, hookah bars. Permits smoking or vaping in private and semi-private rooms at nursing homes and long-term care facilities when all inhabitants requested a smoking room. -Allows smoking and vaping in appointed smoking and vaping areas of outdoor seating and service areas, balconies, and courtyards, of bars, restaurants, and casinos. -Allows smoking and vaping on Bourbon Street from Canal Street to Esplanade Ave. -Allows smoking and vaping in Electronic Smoking Device businesses. -Allows smoking and vaping in convention facilities during private meetings and trade shows for tobacco businesses, ESD businesses, and convenience store associations. -Allows for smoking at Mardi Gras Balls held in convention facilities. - Allows smoking and vaping in hospitality establishments for events tied to private meetings and trade shows for tobacco businesses, ESD businesses, and convenience store associations (Does not allow smoking or vaping in guest rooms).
69. Includes vaping into language covering smoking.
70. Includes vaping into language covering smoking.
71. Includes vaping into language covering smoking.
72. Changes implementation date from 30 days to 90 days after ordinance adoption.

The amendments were designed to appease city councilmembers, politicians and advocates concerned about different provisions. One amendment reduced the distance requirement for smoking and vaping from 25 feet from building entrances and windows to 5 feet,<sup>137</sup> to assuage fellow councilmembers’ fears that people would be forced to smoke in unreasonable locations (middle of the road) or not at all in the narrow streets of New Orleans.<sup>64</sup> <sup>72</sup> Cantrell also offered the amendment to appease the concerns of Councilmember James Gray,<sup>83</sup> who feared the distance requirement enabled the New Orleans Police Department to engage in discriminatory policing.<sup>64</sup>

The package also included amendments to grandfather in cigar and hookah bars in operation before December 31, 2014.<sup>72</sup> As promised to e-cigarette retailers, Cantrell added an exemption for vaping at e-cigarette device retailers.<sup>136, 138</sup> In addition, exemptions from smoking and vaping restrictions for private and public events, outdoor areas at bars, restaurants, and casinos, as well as for private and semi-private rooms in long term care facilities and nursing homes were proposed.<sup>124</sup> One amendment strengthened the ordinance by prohibiting smoking in all guest rooms at hospitality establishments in New Orleans.<sup>124</sup> After discussing the changes proposed by Councilmember Cantrell, the City Council voted 5 (Brossett, Cantrell, Guidry, Head, Williams) to 2 (Gray, Ramsey) to adopt the entire package of amendments.

After the City Council voted to adopt Cantrell’s amendments, Councilmembers Jason Williams and James Gray secured amendments weakening the ordinance’s enforcement and penalties. Council Vice President Jason Williams introduced an amendment to remove the New Orleans Police Department (NOPD) as an enforcement agency.<sup>139</sup> The New Orleans Health Department would field complaints and create enforcement regulations with public input if the legislation passed.<sup>138</sup> Cantrell had shared the ordinance with Williams before the hearing, and

during discussions welcomed the change and asked to be included as a cosponsor.<sup>101</sup> At a press conference the day before on January 21, 2014, Williams had revealed the amendment and stated its purpose was to avoid increasing the responsibilities of the NOPD while it had a reduced workforce and faced high crime rates in the city. He also wanted to prevent law enforcement officers from using smoking restrictions to engage in discriminatory policing.<sup>140</sup> The City Council voted unanimously to adopt this amendment.<sup>101</sup>

Councilmembers James Gray and Nadine Ramsay then proposed an amendment to allow smoking and vaping at outdoor public transit facilities, outdoor shopping malls, and associated parking structures.<sup>123</sup> Despite Cantrell reducing distance requirements in the ordinance, this amendment eliminated distance requirements from the legislation entirely.<sup>101, 137</sup> Gray initially wanted to eliminate distance requirements from the ordinance out of fear they enabled the NOPD to racially profile and target African American smokers.<sup>64, 83</sup> After Williams' amendment passed to remove the NOPD as an enforcement agency, Gray still wanted the amendment believing that distance requirements unfairly made people smoking or vaping outside targets for confrontation.<sup>101</sup> Ramsey, who later introduced additional amendments to weaken Cantrell's legislation, did not state the motivation behind her support for eliminating the distance requirement.<sup>101</sup> The Council voted 4 (Brossett, Gray, Ramsey, Williams) to 3 (Cantrell, Guidry, Head) to adopt the amendment.

Although NOLA members wanted distance requirements for smoking and vaping, they continued to support ordinance after their removal. According to ALA's Cofer in a 2017 interview for this report:

Neighborhood bars are big in New Orleans. So 7 feet from a bar's entrance could be across the street or it could be in the middle of the road. There were lots of scenarios played out. The lobby team ultimately had to choose to have a zero-distance rule to get the support we needed. And our [the SmokeFree NOLA Coalition] focus was again on public health and employees and tourists and patrons indoors, and so therefore [it was] one of the hard things we had to negotiate.<sup>72</sup>

"The lobby team ultimately had to choose to have a zero-distance rule to get the support we needed. And our focus was again on public health and employees and tourists and patrons indoors, and so therefore [it was] one of the hard things we had to negotiate."

Councilwoman Nadine Ramsey proposed another amendment to eliminate the ordinance's grandfather clause allowing smoking in existing cigar bars and instead completely exempt those businesses from smoking restrictions.<sup>141</sup> She argued that New Orleans should not prohibit the legal operation of cigar bars, which were legal businesses before the ordinance.<sup>101</sup> She represented the French Quarter, a heavy tourism area with a high concentration of bars and nightlife venues. Councilmembers voted 4-3 against the amendment, with Councilmembers LaToya Cantrell, Susan Guidry, Stacy Head, and Jason Williams voting against, and James Gray, Nadine Ramsey, and Jared Brossett voting in favor.<sup>101</sup> Ramsey offered another amendment to exempt outdoor historic areas from ordinance signage requirements but withdrew it after her first proposal failed.<sup>101</sup>



Following Ramsey, Vice Council President Williams requested that fellow Councilmembers reconsider an earlier change from Cantrell's amendment package mandating community service for ordinance violators unable to pay penalty fines.<sup>101</sup> Cantrell's previously adopted amendment package established a penalty of seven hours of community service in place of every fifty dollars of a fine a violator could not pay.<sup>101</sup> Fearing that the community service requirement would negatively impact disadvantaged people, Williams offered an amendment, cosponsored by himself and James Gray, eliminating the community service requirement.<sup>142</sup> If adopted, the amendment would assign judges greater freedom to decide penalties.<sup>101</sup> Gray voiced the same concern about the community service requirement, in that it removed judicial discretion and could negatively affect disadvantaged populations.<sup>101</sup> The Council adopted the amendment<sup>142</sup> 4 to 3, with Councilmembers Brossett, Gray, Ramsey, and Williams voting in favor and Councilmembers Cantrell, Guidry, and Head voting against.<sup>101</sup> This amendment allowed judges greater control over penalties on a case-by-case basis. After finalizing amendments, Cantrell moved the hearing to the public comment phase.

### ***Public Comment at NOLA Smokefree Ordinance Hearing***

#### ***Opponent Testimony***

During public comment, opponents received the first fifteen minutes to testify, followed by fifteen minutes for supporters.<sup>101</sup> Nine opponents, predominantly from the Freedom to Choose Coalition and the vaping community, testified against the ordinance (Table 12.15). Five proponents consisting of medical and public health officials, a concerned citizen, a musician, as well as a former casino employee testified for Cantrell's ordinance (Table 12.15).

The Freedom to Choose Coalition's first witnesses were from the gambling industry who argued that casinos and the City of New Orleans would lose money if the City Council adopted the ordinance, a traditional tobacco industry argument.<sup>110, 127, 143</sup>

Harrah's Vice President of Human Resources and Community Relations Logan Gaskill<sup>111</sup> asserted that the ordinance put Harrah's at a competitive disadvantage with gaming establishments outside New Orleans and would negatively impact revenue and harm casino employees.<sup>101</sup> Gaskill also argued that smoking restrictions would reduce tourism and further contribute to a loss in revenue for Harrah's and the city and that less revenue for the city meant less revenue to fund law enforcement in New Orleans, which was experiencing a crime wave. Based on expected economic harm, Gaskill requested that Harrah's be allowed to discuss the ordinance's effects on its lease with the city, which required the casino to have a certain amount of staff (Harrah's wanted to reduce its staffing levels).

After Gaskill spoke, Louisiana Casino Association Executive Director Wade Duty testified that the gaming industry expected negative economic impacts if Councilors adopted the ordinance,<sup>101</sup> referencing studies claiming smoking bans economically harmed gambling establishments. He emphasized a government study that showed a smoking ban in Illinois Casinos caused a decline in gaming industry revenues there while its neighboring state Indiana, which allowed smoking in casinos, experienced increased revenue during the preceding two years.<sup>144</sup> Duty requested that the City Council delay adopting the ordinance to look at it "in

Table 12.15: Speakers at NOLA City Council Meeting <sup>101</sup>		
Opponents		
Affiliation	Commenter	Organization
Freedom to Choose Coalition	Logan Gaskill	Harrah's
	Wade Duty	Louisiana Casino Association
	Matt Wellman	Louisiana Amusement and Music Operators Association
	Danielle Leger	Louisiana Restaurant Association
	Alex Fein	French Quarter Business League
Vaping Community	Chris Flowers	Louisiana Association of Electronic Cigarette Retailers / Business Owner
	Anthony Kolesa	Louisiana Association of Electronic Cigarette Retailers / Business Owner
	Benjamin Varadi	Louisiana Association of Electronic Cigarette Retailers representative
None	Elizabeth Stella	Independent
Proponents		
	Dr. Patrick Quinlan	Ochsner Health System
	Dr. Brian King	CDC Office on Smoking and Health
	Paul Sanchez	Musician
	Albin Guillot	French Quarter resident
	Mervin Lewis	Former Harrah's employee

globo” (as a whole), and not in its current state (with numerous amendments shown separately) because of the potential economic impacts.

Next, Louisiana Amusement and Music Operators Association Vice President Matt Wellman testified that the Video Poker Industry expected a 20% drop in revenue because of smoking restrictions, translating to at least a \$0.5 million loss in tax earnings to the city.<sup>101</sup> Wellman said councilmembers needed to explain how New Orleans would replace lost revenue and establish an alternative funding source to cover the loss.<sup>101</sup>

Spokespersons from the vaping community were representatives from the newly formed Louisiana Association of Electronic Cigarette Retailers. LAECR representatives provided emotional pleas or accusations against SmokeFree NOLA members. Similar to the Community Development Committee Meeting, vaping representatives also accused tobacco control advocates of acting deceptively to pass the ordinance.

LAECR President Chris Flowers asked the Council to explain its reasoning for including e-cigarettes in the ordinance.<sup>101</sup> He asserted that no response indicated Councilmembers lacked a good reason to include them.<sup>101</sup> Following Flowers, LAECR Vice President and Media Relations head Anthony Kolesa testified that the vaping community had presented scientific arguments justifying excluding e-cigarettes from the ordinance. Kolesa complained that tobacco control advocates provided information on electronic smoking devices that exaggerated their threat to health.<sup>101</sup> Kolesa accused the Council of reverting to “politics of New Orleans old” by succumbing to ALA’s

Kolesa accused the Council of reverting to “politics of New Orleans old” by succumbing to the ALA’s threats not to hold future conferences in New Orleans.

threats not to hold future conferences in New Orleans. APHA and AHA had already publicly announced their intention to no longer hold conferences in New Orleans until the city enacted a comprehensive smokefree ordinance. LAECR representative Benjamin Varadi testified last in opposition to the ordinance for the vaping community. He claimed that little relationship existed between e-cigarettes and traditional cigarettes. Varadi asserted that including electronic smoking devices in smoking restrictions without the vapor emitted having a substantive relationship to traditional tobacco smoke was erroneous.<sup>101</sup> Varadi requested postponing consideration of the ordinance because of the large number of amendments that were made immediately before the final vote.<sup>101</sup> He concluded his testimony by lambasting tobacco control advocates for privately providing reports and data to the Council instead of publicly releasing them, claiming it prevented the vaping industry from publishing rebuttals

Following testimony from members of the gambling industry and vaping community, concerned citizen and smoker Elizabeth Stella provided a variety of personal complaints and traditional tobacco industry arguments against the ordinance. She complained that outdoor distancing requirements were being debated instead of measures to fix the crime wave impacting New Orleans.<sup>101</sup> Stella suggested the City Council permit smoking in bars and casinos with air and ventilation systems, similar to accommodation measures pushed by the tobacco industry in the past to avoid stricter smoking restrictions.<sup>144, 145</sup> She argued that both New Orleans and Louisiana faced a revenue loss of approximately \$17-18 million in an “era” because of smoking restrictions. Stella also asserted that New Orleans was a party town, and while it was reasonable for New York and Seattle to have bans, it was against the nature of the city and in reality nothing more than a law meant to control people. While not tied to the tobacco companies, Stella relied heavily on their traditional arguments to oppose the smokefree ordinance.

Alex Fein, Freedom to Choose Coalition spokesperson and French Quarter Business League President, closed comments against the ordinance. He argued that the ordinance was unfair since the city requested the French Quarter Business League pay for private security at a total cost of \$50,000 a month. He also asserted it was unfair to force French Quarter establishments to take another revenue loss because of smoking restrictions. Fein implored Councilmembers to continue evaluating whether New Orleans would benefit from adopting a smokefree ordinance.

### *Proponent Testimony*

Five individuals, two from the health community, a French Quarter resident, a musician, and a former casino employee, testified in support of the ordinance. Prior to the New Orleans City Council hearing, SmokeFree NOLA held another “war room” to help speakers prepare and deliver testimony in support of the ordinance.<sup>72</sup>

Dr. Patrick Quinlan, CEO of the Ochsner Clinic Foundation and International Services, as well as the Executive Director for the Ochsner Center for Community Wellness and Health Policy,<sup>145</sup> began testimony in support of the ordinance. He highlighted RJ Reynolds adopting a smokefree workplace policy because the company felt it was standard in workplaces and expected by employees.<sup>101</sup> (RJR had decided to begin implementing a weak smokefree policy in 2015 that prohibited smoking at work spaces, elevators, and conference rooms.<sup>146</sup>) Quinlan likened secondhand smoke to other avoidable workplace hazards subject to government

regulation, and cited loss of life as reason to act and restrict indoor smoking. He reminded the Council that cigarettes had been found to be harmful products in the class action lawsuit *Scott v. American Tobacco Company*. That lawsuit, filed in Louisiana during 1996<sup>147</sup> and settled in 2010 by the Fourth Circuit Court of Appeal in the state, found the major tobacco companies liable for defrauding smokers because they obscured the harmful and addictive nature of tobacco products.<sup>148</sup> The judge penalized defendants in the case by requiring them to fund a \$241 million, 10 year smoking cessation program<sup>148</sup> for Louisiana smokers who had started use by September 1, 1988<sup>149</sup> that became the Smoking Cessation Trust (Chapter 4).<sup>149</sup>

After referencing the Scott case, Quinlan rebuked claims that smoking restrictions come at a cost of freedom, stating they were needed to control an addictive and life-shortening product marketed to children. Quinlan closed by informing the audience that 15 minutes of exposure to secondhand smoke was equivalent to a cigarette, which takes several minutes off one's life.

Dr. Brian King, the US Centers for Disease Control and Prevention Office on Smoking and Health's Deputy Director for Research Translation, next addressed the dangers of secondhand smoke. King refuted arguments that air filtration systems were a viable alternative to smoking restrictions, stating that comprehensive smokefree laws best protect public health.<sup>101</sup> King argued for inclusion of e-cigarettes in the ordinance, informing Councilmembers that the market lacked regulation and that vapor aerosol is not as safe as clean air. King recommended including e-cigarettes to prevent tobacco use normalization and potential negative health impacts to the public. Responding to a councilmember's question as to why designated smoking areas and air filtration measures are inadequate for protecting the public, King stated that particles that cigarettes and e-cigarettes expel into the air are not completely removed from indoor air by ventilation systems and easily seep into adjoining areas. Besides public comments, Dr. King

provided formal written testimony to the City Council supporting the ordinance.

... Mervin Lewis testified last, sharing his experience battling lung cancer. Never having smoked, Lewis was diagnosed with lung cancer in 2014 after constant exposure to secondhand smoke while working at Harrah's ... Harrah's New Orleans fired him for performance issues while in the hospital and denied him workman's compensation to pay for cancer treatments after working at the casino for 15 years.

Musician Paul Sanchez next spoke in support of the ordinance. A powerful spokesperson for SmokeFree NOLA throughout the ordinance campaign, Sanchez discussed watching other global cities adopt smokefree laws and asserted that New Orleans must now embrace its own law.<sup>101</sup> Sanchez requested the Council adopt the ordinance, in particular to protect children and provide a safe work environment for musicians and service workers.

Following Sanchez, French Quarter resident Albin Guillot testified that claims of revenue loss by opponents were

unfounded and insignificant compared to protecting service employees and musicians. He asserted that service employees and musicians were essential to New Orleans and acted as a significant money generator for the economy and city. Guillot expressed that anti-ordinance arguments stating that employees had a choice to work in smoke-filled establishments were false.

Former Harrah's card dealer Mervin Lewis testified last and shared his experience battling lung cancer.<sup>101</sup> Never having smoked, Lewis was diagnosed with lung cancer in 2014 after constant exposure to secondhand smoke while working at Harrah's. Lewis revealed that Harrah's New Orleans fired him for performance issues while in the hospital and denied him workman's compensation to pay for cancer treatments after working at the casino for 15 years. After Lewis ended his testimony, Councilwoman Cantrell ended public comment and called for a vote on the ordinance.

### ***The Ordinance Passes Unanimously***

Before voting, each Councilmember provided a statement on their feelings towards the smokefree ordinance. Some councilmembers complained they lacked proper information to make a decision, and voiced concerns that the ordinance might result in overregulation and economic harm to New Orleans. However, they also asserted public health or protecting the public was the primary consideration in casting a vote on the ordinance.<sup>101</sup> Councilwoman Ramsey, who had offered multiple amendments to weaken the law, suggested she would pursue amendments to the ordinance if it passed, in particular to address the fiscal effect of the law on the city.<sup>101</sup>

"... today we're making history; we're doing it together, not as one, but as a council and as a community. We can no longer talk about initiatives in our city without walking it as well. So when we talk about NOLA for life, this is NOLA for life, public health is the most important thing."

After councilmembers finished commenting, Councilwoman Cantrell thanked her colleagues, the SmokeFree NOLA Coalition and its member organizations, and city staff and officials for assisting her efforts to attain the smokefree ordinance.<sup>101</sup> Realizing the ordinance was going to pass, Cantrell relayed the significance of the moment to the audience:

For generations New Orleans was known as the city that care forgot, and it was known for that for good reason, meaning that we had a history, not only in the city but at the state level of not taking care of the most vulnerable citizens in the city of New Orleans. And soon it changed to the Big Easy, to somehow overshadow the pain of the most vulnerable. But today we're making history; we're doing it together, not as one, but as a council and as a community. We can no longer talk about initiatives in our city without walking it as well. So when we talk about NOLA for life, this is NOLA for life, public health is the most important thing.<sup>101</sup>

The Council then voted 7 to 0 to adopt Cantrell's comprehensive smokefree ordinance.<sup>101</sup>

Proponents were unsure whether Mayor Mitch Landrieu would sign the ordinance into law according to ANR Associate Director Bronson Frick in a 2016 interview for this report:

He [[Mayor Landrieu] was a little bit of an unknown factor. There was some concern about whether or not he would veto the law, sign the law, just let the law go into effect without signature. To his credit the law passed unanimously, the

mayor signed it. There was some concern he would try to lead an effort to roll back the law on the casino part, and he never did.<sup>64</sup>

Despite these worries, Landrieu signed the ordinance into law on January 30, 2015, which would take effect on April 22, 2015.<sup>137</sup>

After the ordinance was signed, SmokeFree NOLA Coalition members focused on defending the law against attacks and preparing New Orleans for its implementation.

### ***Business Community Opposition to the New Smokefree Law***

After the ordinance passed, Harrah's and bar owners sought to weaken or be exempted from it. In March 2015, a month after the ordinance was adopted, Harrah's announced it wanted the City Council to exempt it from the ordinance because of an expected 20% revenue loss caused by smoking restrictions, and asked the Council to allow smoking sections in gaming areas.<sup>150, 151</sup> Harrah's officials offered to provide tobacco cessation services as well as education programs for customers and employees on the hazards of smoking in exchange for smoking sections.<sup>151</sup> The casino claimed that the city suffered a \$500,000 decrease in annual sales tax revenue because of the ordinance<sup>151</sup> and announced that failure to compromise allowed for renegotiation of its lease with the city.<sup>150</sup> In an interview with *The New Orleans Advocate*, Harrah's official Jade Russell announced Harrah's planned to try and reduce leasing fees anywhere from \$3.5-\$13.5 million annually.<sup>150</sup>

The New Orleans city administration contested Harrah's claims it could renegotiate its lease terms, stating that the new ordinance created no such permission.<sup>150</sup> The threat of a forced lease renegotiation from Harrah's never materialized. At a April 9, 2015 City Council meeting, where local lawmakers considered changes to the smoking restrictions they adopted in January, a Harrah's lawyer and a few employees asked that the April 22, 2015 implementation date be pushed back to allow the casino and its customers more time to prepare for smoking restrictions.<sup>152</sup> The Council rejected the request, with Councilmember Cantrell castigating the casino for providing employees an unsafe workspace.

### ***Amendments to Weaken the Smokefree Ordinance***

Despite their earlier unanimous vote, New Orleans City Councilmembers proposed six amendments to New Orleans' new smoking restrictions (Table 12.16) before their implementation on April 22, 2015. Two were withdrawn and Councilmembers adopted the remaining four on April 9, 2015. These changes weakened and eliminated distance requirements, permitted outdoor smoking areas at bars and gaming establishments, and extended the grandfather clause for cigar bars. One amendment eliminated fines for smokers caught violating smoking restrictions and instead levied penalties on offending businesses, which in effect strengthens enforcement by placing the onus on businesses to ensure their establishment remains smoke free.

After concluding amendments at the City Council meeting on April 9, 2015, no further changes were made to New Orleans' new smoking restrictions. Altogether, the amendments eliminated most distance requirements for smoking from buildings, property and facilities, extended the grandfather clause for cigar bars, permitted outdoor smoking areas at bars and

gaming establishments, and narrowed smoking restriction exemptions for cigar and hookah bars (Table 12.16).

### ***Harrah's Response: A Lawsuit and Efforts to Cut Employment***

On April 17, 2015, Harrah's filed a class action lawsuit with numerous additional plaintiffs composed mainly of bars and restaurants that named the Mayor, City Councilmembers and the city itself as defendants.<sup>160, 161</sup> The class argued that the "vague and overbroad" wording in the ordinance was illegal.<sup>160</sup> In addition, the lawsuit claimed that the City Council failed to release a fiscal note on potential economic damage the ordinance could cause in adequate time before its adoption.<sup>160</sup> (The fiscal note was delivered to councilmembers the day they passed Cantrell's ordinance, January 22, 2015.<sup>162</sup>) The plaintiffs also requested but failed to secure a restraining order to block implementation of the ordinance on April 22, 2015.<sup>160, 163</sup> Harrah's ultimately requested to be dropped from the lawsuit at an unknown date, with a casino official stating it needed to focus on implementation of the ordinance.<sup>162, 164</sup> On June 3, 2015 Judge Robin Giarruso of the New Orleans Civil District dismissed the lawsuit.<sup>165</sup>

...Harrah's filed a class action lawsuit with numerous additional plaintiffs composed mainly of bars and restaurants that named the Mayor, City Council members and the city itself as defendants. The class argued that the "vague and overbroad" wording in the ordinance were illegal.

As the implementation date for the ordinance drew near, Harrah's continued to argue that the mandated employment requirement set in their contract with the Louisiana State Legislature should be reduced. Harrah's argued that economic harm resulting from the ordinance justified reducing employment and announced its desire to cut approximately 400 positions.<sup>130, 131</sup> Harrah's partnered with State Senator Ed Murray (D-New Orleans) to introduce SB 236, which would have allowed Harrah's to reduce the number of employees it must retain under its contract with the state by 400 people.<sup>130</sup> In election years between 1999-2015, Murray had received \$13,300 in contributions from the gaming industry (although none from Harrah's).<sup>166</sup> He had also received \$3,525 from the tobacco industry total for election years between 1999 and 2003.<sup>167</sup> Murray frequented cigar bars, partially resulting in the grandfathering of cigar bars into Cantrell's ordinance.<sup>72</sup>

Senator Murray prefiled SB 236 on April 3, 2015 to require participants in the state lease with Harrah's to renegotiate the contract's terms.<sup>168</sup> At a Senate Committee on Judiciary hearing on May 5, 2015, Murray added an amendment dropping the mandated employment level in the state contract with Harrah's from 2,436 people to 2000 through attrition, catching New Orleans Mayor Mitch Landrieu and the City Council by surprise.<sup>130, 131, 169, 170</sup> Discovering at the hearing

that New Orleans city officials were unaware of SB 236, Senator Karen Carter Peterson (D-New Orleans), who had sponsored tobacco tax increase legislation in the past (Chapter 11), convinced the Committee to postpone consideration for a week so city officials could meet with Harrah's representatives.<sup>175</sup> Peterson also called out Harrah's for portraying New Orleans's smokefree ordinance as the reason for desired employment cuts when a representative at the hearing could not confirm that employees at the hearing would get the hours they wanted if an employment

Table 12.16: Amendments Proposed in Spring 2015 to the Comprehensive Smokefree Ordinance <sup>153-159</sup>				
Ordinance	Introduced	Sponsor	Changes	Outcome
Ord. 30520	January 8, 2015	Ramsey, Brossett	Establishes tobacco retail business classification. Businesses must make 70% of gross revenue from sale of tobacco products and accessories for on-site consumption. Prohibits live entertainment and gambling but allows sale of food and beverage (including alcohol).	Withdrawn (March 12, 2015)
Ord. 30552	January 22, 2015	Williams, Brossett, Gray, Ramsey	Eliminates penalties for smoke and vape free violations by those consuming tobacco, e-cigarette, and other combustible products. Establishes penalties for establishments that violate smoking restrictions: 1 <sup>st</sup> Violations - \$100 maximum, 2 <sup>nd</sup> violations within a year- \$200 maximum, 3 <sup>rd</sup> and additional violations within a year - \$500 maximum. Businesses also faced license suspension and revocation.	Withdrawn (March 12, 2015)
Ord. 30578	February 5, 2015	Cantrell, Gray	Corrective amendment. Eliminates 5 ft distance requirement from enclosed places, 5 ft distance requirement from sports stands, and 25 ft distance requirement for enclosed public property. Prohibits smoking and vaping within 5 ft of Richard and Annette Bloch Cancer Survivors Plaza and Lafayette Square. Prohibits smoking and vaping within amphitheaters, outdoor sports facilities, sports stands, “recreational areas with playground equipment.” Allows smoking in prohibited areas during events. Also prohibits smoking in outdoor workplaces, including vehicles.	Adopted (April 9, 2015)
Ord. 30611	February 26, 2015	Ramsey	Redefines cigar bar classification. Bars must make 10% of total gross income annually from cigar sales and humidor rentals in-store. Excludes vending machine sales. Grandfathers in establishments with an application to be a cigar bar by March 6, 2015.	Adopted (April 9, 2015)
Ord. 30619	February 26, 2015	Guidry	Allows for outdoor smoking sections at gambling, bar, and restaurant establishments. Includes off-track betting parlors, slot machine halls, and pari-mutuel wagering venues originally excluded from the definition of casinos in the smokefree ordinance.	Adopted (April 9, 2015)
Ord. 30679	March 26, 2015	Cantrell	Allows use of cigars in cigar bars and hookah in hookah bars only. Prohibits smoking of cigarettes and vaping within cigar bars and hookah bars.	Adopted (April 9, 2015)



reduction was allowed.<sup>169, 170</sup> While the Committee waited to consider SB 236, Mayor Landrieu and the City Council wrote Committee members to voice their opposition to the bill.<sup>130</sup> The Committee voted 4-3 against SB 236 at a hearing on May 12, 2015.<sup>130</sup>

Harrah's immediately complied with smoking restrictions, promoting itself as Louisiana's best smokefree casino and removing ash trays from its facilities at midnight on April 22, 2015.<sup>171</sup> Despite embracing the New Orleans' smokefree law in their marketing, Harrah's would blame the smoking restrictions for its subsequent poor economic performance and continue efforts to weaken the ordinance.

To increase public opposition to the ordinance, Harrah's publicly blamed smoking restrictions for financial losses it suffered in monthly revenues for May, June, and August after implementation.<sup>172-175</sup> A year after implementation of the smokefree ordinance, Harrah's would again blame smoking restrictions for decreased revenue.<sup>176</sup>

As a result of Harrah's efforts to blame the smokefree ordinance for its declines in profit in May and June, in July 2015 TFL released a study and factsheet on the company's overall performance and reasons for its decline in revenue.<sup>177</sup> The fact sheet used data from the Louisiana Gaming Control Board to show that Harrah's had experienced an overall decline in revenue totals for the last ten years, indicating multiple factors that had nothing to do with the smokefree ordinance as the cause of declining business.<sup>177, 178</sup> As Harrah's continued to accuse the smokefree ordinance for its financial woes throughout the year, tobacco control advocates took to news and media outlets to publicly contest Harrah's assertions that the ordinance had negatively impacted their profits.<sup>176, 178</sup>

To circumvent the ordinance, Harrah's sought city approval to build outdoor gambling courtyards where smoking would be permitted. Casino officials submitted a land use request and design concept to the New Orleans Planning Commission and City Council on September 1, 2015<sup>175, 179</sup> to create an additional 2,650 square feet of semi-enclosed space containing approximately 87 slot machines. The City Council took no action on the request by Harrah's; the Planning Commission meeting to discuss the courtyards in October 2015 was postponed<sup>175</sup> and the formal request to build the courtyards expired.<sup>180</sup>

To counter general claims of economic harm after the ordinance was implemented, tobacco control advocates released a study showing the positive impacts to air quality and health outcomes the law had created. Tobacco control advocates' vocal presence and assertiveness proved effective in thwarting efforts by opponents to curry public support against the new smoking restrictions.

### ***State Legislature Attempts to Weaken the New Orleans Smokefree Law***

Lawmakers in the state legislature attempted to punish New Orleans politicians for passing the smokefree ordinance by delaying guaranteed funds for the city from Harrah's contract with the state. Before the ordinance became effective, the Louisiana Legislature's Joint Legislative Committee on the Budget twice refused to renew the Louisiana Gaming Control Board's contract with New Orleans,<sup>181, 182</sup> delaying \$3.6 million in guaranteed funds meant to mitigate costs the city incurred for housing the casino (such as additional policing).<sup>181</sup> Before April 23, Altria and Harrah's lobbyist Randy Haynie had contacted Committee members about

the New Orleans smokefree ordinance, telling the *New Orleans Advocate*, that he “educated the committee members on the impact of the smoking ban.”<sup>181</sup> Despite financial and political pressure from state lawmakers, local lawmakers in New Orleans resisted amending the smokefree ordinance and the contract was eventually renewed.

### ***Implementation of the New Orleans Ordinance***

As opponents tried to weaken and prevent implementation of the ordinance, SmokeFree NOLA worked to ensure proper implementation. Bronson Frick of ANR planned an inter-agency meeting to assist the New Orleans Health Department in preparing to carry out ordinance requirements.<sup>64</sup> Officials from public health agencies in Austin Texas, Savannah Georgia, and North Carolina participated in the meeting, providing insight on their implementation experience and strategies to New Orleans’ public health officials.<sup>64</sup>

ANR also provided funding for the New Orleans Health Department to develop a website on ordinance implementation and to develop implementation toolkits.<sup>64</sup> SmokeFree NOLA worked with the New Orleans Department of Health to provide implementation kits for the ordinance to all businesses in the city.<sup>65, 72</sup> According to then-ALA lobbyist Jennifer Cofer in a 2015 presentation:

We printed toolkits for every business in the city of New Orleans. Hotels, restaurants, bars, the casino as well as just law offices, other businesses, everyone got a toolkit. Whether they actually read it we don’t know. But they did get a toolkit so everyone was educated tangibly.<sup>65</sup>

“We printed toolkits for every business in the city of New Orleans. Hotels, restaurants, bars, the casino as well as just law offices, other businesses, everyone got a toolkit.”

A dedicated SmokeFree NOLA outreach team distributed the implementation toolkits to businesses throughout New Orleans to prepare them for the start of smoking restrictions.<sup>72</sup> SmokeFree NOLA also distributed promotional material to bars and casinos to increase awareness and understanding of the law before its implementation.<sup>65</sup>

To maintain public awareness and support for the newly-adopted law, SmokeFree NOLA continued its media campaign, running billboard and other physical advertisements, including a major display next to the New Orleans Superdome.<sup>65</sup> It also hired college students to go out in “street teams” at events and festivals such as Jazzfest, Mardi Gras, and the French Quarter Festival to distribute information on the impending implementation of smoking restrictions.<sup>64, 65</sup> A year after ordinance passage, SmokeFree NOLA sponsored the Jackson Square stage at the 2016 French Quarter Festival, making that area of the festival smokefree and promoting clean air policies.<sup>183</sup>

The New Orleans Department of Health primarily enforces the ordinance.<sup>184</sup> Code enforcement, the New Orleans Department of Safety and Permits, the city Fire department, and the New Orleans Recreation Development Commission may also enforce it.<sup>184</sup>

These efforts to generate continued public awareness and support for the new smokefree law in New Orleans by tobacco control advocates ensured its implementation and effectiveness at protecting public health.

## Pursuing a Comprehensive Ordinance in Baton Rouge

On January 27, 2015, shortly after the SmokeFree NOLA campaign, Baton Rouge’s medical community and Mayor-President Kip Holden launched the Breathe Free Baton Rouge initiative to promote smoking restrictions in the city<sup>185, 186</sup> As part of the campaign, six Baton Rouge hospitals, the Baton Rouge General Medical Center, Woman’s Hospital, St. Elizabeth hospital, Lane Regional Medical Center, and Ochsner Medical Center – Baton Rouge, pledged to implement tobacco-free campuses.<sup>186, 187</sup> Although we did not find TFL participation in the Breathe Free Baton Rouge initiative, TFL’s executive director Tonia Moore told the Baton Rouge *Advocate* that TFL wanted Baton Rouge to become the next city to adopt a comprehensive smokefree ordinance.<sup>188</sup>

National voluntaries as well as state and local organizations formed the Smoke-Free East Baton Rouge Coalition (Smoke-Free EBR)<sup>189</sup> in 2016 to pursue smoking restrictions in East Baton Rouge (Table 12.17). East Baton Rouge is the parish housing Louisiana’s capitol, Baton Rouge.<sup>190</sup> The parish and city have a consolidated, city-parish government that dictates laws for both areas.<sup>190</sup> Former AHA lobbyist and SmokeFree NOLA legislative liaison, Stasha Rhodes, acted as campaign manager for Smoke-Free EBR.<sup>191</sup> Following the Smoke-Free NOLA Campaign, Rhodes left AHA to establish her own advocacy and lobbying organization called The Red Team (where she was when she began working for the Baton Rouge campaign).<sup>192</sup>

On January 26, 2016, the Smoke-Free EBR coalition held a community meeting to discuss smokefree workplaces at the Shiloh Missionary Baptist Church.<sup>193</sup> At the meeting, tobacco control advocates publicly announced the Smoke-Free EBR campaign and its goal to obtain a comprehensive local smokefree law covering bars and casinos. Speaking in support of smokefree policies for the Coalition at the gathering were public health officials, medical professionals, musicians, as well as bar owners (Table 12.18). Councilmembers Tara Wicker and Chauna Banks-Daniel from the East Baton Rouge Parish Metropolitan Council announced their intention to introduce the ordinance at the meeting.

Table 12.17: Member Organizations of Smoke-Free East Baton Rouge Coalition <sup>189</sup>	
National Health Organizations	American Nonsmokers’ Rights Foundation
	American Lung Association
	American Cancer Society Cancer Action Network
	Red Team
	March of Dimes
	Campaign for Tobacco-Free Kids
State Organizations	Healthier Air for All
	Musicians for a Smoke-Free LA
	Louisiana Budget Project
	National Association of Social Workers Louisiana Chapter
Local	SEIU Local 21 LA

During the gathering, the Coalition released results of a survey commissioned by TFL and ACS-CAN<sup>194</sup> and conducted from December 10-13, 2015. The survey found 70% of Baton Rouge residents supported an ordinance to prohibit smoking in bars, casinos, and all other workplaces.<sup>193, 195</sup> TFL later published a press release on its website announcing the findings on January 27, 2016.<sup>196</sup> The Smoke-Free EBR Community Meeting generated significant local media attention, with at least 5 Louisiana-based news outlets publishing stories on the event and launch of the ordinance campaign.<sup>193, 197-200</sup>

After the launch of the Smoke-Free EBR Campaign, councilmembers from the Parish Metropolitan Council took differing stances towards smoking restrictions (Table 12.19). Some expressed skepticism about the need for smoking restrictions and highlighted their potential negative impacts on casinos. Councilmember John Delgado, a bar owner,<sup>201</sup> supported prohibiting smoking in bars but was against legislation eliminating smoking in casinos out of fear that Baton Rouge gambling establishments would lose customers.<sup>191</sup> Councilmember Delgado cited the struggles of Harrah's New Orleans, which had publicly blamed the 2015 New Orleans smokefree ordinance for declining revenue.<sup>191</sup> Mayor-President Kip Holden, who hosted a small smokefree awareness campaign in 2015, avoided taking a position on the anticipated smoking restrictions.<sup>191</sup> However, he asserted (without evidence) that casinos in Baton Rouge had less smoke compared to the Harrah's in New Orleans (before the city adopted a smokefree law).<sup>191</sup> During his 2015 Breathe Easy Baton Rouge initiative, Mayor-President Holden avoided taking a position on prohibiting smoking in bars and casinos.<sup>186</sup>

Following the launch of the Smoke-Free East Baton Rouge campaign, The Belle of Baton Rouge, Hollywood Casino and L'Auberge did not publicly argue against adopting smoking restrictions and instead waited to attack the ordinance after it was officially introduced.

Table: 12.18: Smoke-Free East Baton Rouge Speakers at the Shiloh Baptist Church Community Meeting, January 26, 2016 <sup>193</sup>			
Supporter	Organization	Position	Message
Jule Assercq		Physician	People need to be more upset about exposure.
Lydia Kuykendal	American Cancer Society Cancer Action Network	Louisiana Government Relations Director	Smokefree policies reduce health care costs for employers, improve worker health.
Stasha Rhodes	The Red Team	Founder	Employees should not be exposed to secondhand smoke.
Joe Hall	Phil Brady's Bar and Grill	Owner	Over time made business more smokefree. Baton Rouge is behind other cities in adopting Smokefree policies.
Betsy Braud Hodnett	Woman's Hospital	Nurse/ musician	Smoking causes pre-term births.
Rick Andrus	St. Paul the Apostle Church	Reverend	Smoking is also a moral and religious problem. Associates smoking to being pro-life. Accuses supporters of smoking in bars and casinos of lacking morals.
Tara Wicker	East Baton Rouge Parish Metropolitan Council	Councilmember	Need to protect casino employees.

Table 12.19: EBR Parish Metro Councilmember Positions Towards Smokefree Legislation Following the Smoke-Free East Baton Rouge Campaign Launch <sup>191, 201</sup>	
Councilmember	Position
Chauna Banks-Daniel	For
Tara Wicker	For
Buddy Amoroso	Undecided
Erika Green	Undecided
LaMont Cole	Undecided
Donna Collins-Lewis	For
Joel Boe	For
Trae Welch	Against
Scott Wilson	Against
John Delgado	Against (for prohibition in bars, not casinos)
Ryan Heck	Against
Chandler Loupe	Unknown

Local gaming establishments The Belle of Baton Rouge Casino and Hotel, Hollywood Casino, and L’Auberge Casino and Hotel had contracts with the Baton Rouge City-Parish to provide the local government a percentage of their revenue from gambling, totaling approximately \$9.8 million in 2015.<sup>202, 203</sup> Following the launch of the Smoke-Free East Baton Rouge campaign, The Belle of Baton Rouge, Hollywood Casino and L’Auberge did not publicly argue against adopting smoking restrictions and instead waited to attack the ordinance after it was officially introduced.<sup>203</sup>

Other East Baton Rouge Parish Metropolitan councilmembers initially opposed a smokefree ordinance because they considered it government overregulation. Councilmember Trae Welch opposed the idea, feeling it was general governmental overreach and Councilmembers Scott Wilson and Ryan Heck opposed it believing businesses should be allowed to make their own decisions.<sup>191, 201</sup>

Councilmembers Tara Wicker, Chauna Banks-Daniel, Donna Collin-Lewis and Joel Boe announced their support of a comprehensive ordinance.<sup>191</sup> By the time the ordinance was introduced on March 23, 2015, six of 12 Parish Metro councilmembers co-sponsored it (Table 12.20).<sup>204</sup>

### ***Campaign Efforts to Generate Public Awareness and Support for the Smokefree Law***

The Smoke-Free East Baton Rouge Coalition held discussions and press conferences to increase public awareness and support for smoking restrictions. On February 9, 2016<sup>201</sup> Smoke-Free EBR representative Lydia Kuykendal gave a talk to the Baton Rouge Rotary Club about the need for passing an ordinance to protect bar and casino employees from secondhand smoke. The Coalition also held a press conference on April 9, 2015 where endorsements were announced from the American Association of Retired Persons (AARP) Louisiana Chapter<sup>206</sup> as well as Baton Rouge-area musicians Kenny Neal and Michael Foster.<sup>201, 207-209</sup> 2015 Miss Louisiana April Nelson also endorsed the campaign, possibly at the same press conference.<sup>209</sup> The Smoke-Free EBR Coalition subsequently received endorsements from the Baton Rouge medical community in mid-February, with Ochsner Medical Center-Baton Rouge, Baton Rouge General, Our Lady of the Lake hospital, Woman’s, Lane Regional Medical Center, and the Mary Bird Perkins Cancer Center releasing a joint letter of support for the campaign.<sup>209, 210</sup>

Table 12.20: East Baton Rouge Parish Metropolitan Councilmember Sponsorship of 2015 Smokefree Ordinance <sup>204, 205</sup>	
Buddy Amoroso	--
Joel Boe	Cosponsor
Chauna Banks-Daniel	Cosponsor
LaMont Cole	Cosponsor
Donna Collins-Lewis	Cosponsor
John Delgado	--
Erika Green	Cosponsor
Ryan Heck	--
Chandler Loupe	--
Trae Welch	
Tara Wicker	Cosponsor
Scott Wilson	--

The coalition hosted three smokefree events to generate public attention and support for smoking restrictions before and immediately around the introduction of the ordinance (introduced in late March 2016).<sup>211</sup> They recruited local bar and club owners to speak in support of smokefree laws and provide statements against claims that smoking restrictions harmed business. On February 19, 2016 Smoke-Free EBR held a smokefree night at Allure Night Club and Ultra Lounge featuring live musical performances.<sup>211</sup> The Coalition also organized a comedy show and karaoke night at Ruffins Downtown Daiquiri Lounge on March 23, 2016 as well as a smokefree social for young professionals on March 24, 2016 at City Bar.<sup>211</sup> Smoke-Free East Baton Rouge circulated digital flyers and posted announcements on Facebook and Twitter to spread awareness of the events.<sup>211, 212</sup>

Smoke-Free EBR conducted public outreach via posts on social media platforms Facebook and Twitter. They used the sites to distribute articles that supported adopting smokefree laws and defended prohibiting smoking in casinos.<sup>211, 212</sup> The Coalition also posted action alerts to Facebook and Twitter encouraging supporters to contact lawmakers, attend smokefree events, attend council hearings, and participate in informal polls being posted by local news outlets. Videos featuring testimonials from casino employees about how secondhand smoke negatively impacted their health or lives were disseminated through social media. Smoke-Free EBR also circulated photos on Facebook and Twitter of medical doctors, public health representatives, policy wonks, and faith leaders holding figures and statistics related to secondhand smoke.

Besides social media, Smoke-Free EBR member organizations and coalition supporters spent approximately \$300,000 on an advertising campaign in its first six months,<sup>206</sup> placing radio, billboards, social media and television ads.<sup>203, 206</sup>

### ***Introducing the Ordinance***

On March 23, 2016, Smoke-Free East Baton Rouge held a rally at the Baton Rouge City Hall before a council meeting began that day.<sup>213-215</sup> Four unspecified councilmembers attended and supported smoking restrictions they would introduce during the meeting.<sup>215</sup> To counter claims that smoking restrictions harmed businesses, the coalition had The Bulldog bar's general manager Remi DeMatteo and Phil Brady's bar owner Joe Hall speak at the rally in support of smoking restrictions.<sup>214, 215</sup> Together Baton Rouge (a coalition of local community and religious

organizations dedicated to bettering the Baton Rouge area)<sup>216</sup> official Edgar Cage, Together Baton Rouge Executive Committee member and faith leader Father Rick Andrus,<sup>217</sup> musicians Henry Turner, Kenny Neal, and Michael Foster, and medical doctor Jay Brooks also spoke at the event.<sup>215</sup>

At the East Baton Rouge Parish Metropolitan Council meeting on March 23, 2016, Councilmembers Chauna Banks-Daniel, Tara Wicker, Joel Boe, Donna Collins-Lewis, Erika Green, and LaMont Cole introduced a comprehensive smokefree ordinance.<sup>218, 219</sup> Their co-sponsorship guaranteed the legislation six of the 7 votes it needed to pass (the Council has 12 members).<sup>203, 220</sup>

As introduced, the ordinance eliminated smoking and vaping in places not covered by state law or a 2005 local law establishing smokefree parks and distance requirements (Chapter 10). The existing local law explicitly exempted gaming establishments, bars, tobacco retailers, and hospitality guest rooms from smoking restrictions.<sup>204, 214, 221</sup> The ordinance prohibited the use of tobacco, marijuana, “plant product intended for inhalation,” and electronic smoking devices<sup>222</sup> in all bars, casinos, and workplaces within East Baton Rouge and the City of Baton Rouge.

### ***Opposition***

Opposition to smoking restrictions began to manifest from the casino industry in late March, around the ordinance’s introduction to the East Baton Rouge Parish Metro Council. Pinnacle Entertainment, the company that owned L’Auberge Casino and Hotel, took the first public stance against the ordinance.<sup>218</sup> In late March 2016, Pinnacle Entertainment’s Executive Vice President of Governmental Relations and Public Affairs Troy Stremming told the magazine *Greater Baton Rouge Business Report* that the ordinance would cause L’Auberge to lose customers and income.<sup>218</sup> He also claimed that Baton Rouge would receive less tax revenue from the casino as a result.<sup>218</sup> By March 30, 2016, Stremming publicly claimed L’Auberge was expected to suffer a 20% decline in casino winnings (and tax revenue for Baton Rouge) if the ordinance was adopted.<sup>223</sup> Stremming cited fallen revenue at casinos affected by smoking bans in other states and cities, most notably New Orleans, to support his claim that the ordinance would harm Baton Rouge gambling establishments.<sup>223</sup> It appears The Belle of Baton Rouge and the Hollywood Casino avoided taking public positions on the ordinance until April 12, 2016, the day before the East Baton Rouge Parish Metropolitan Council considered the ordinance legislation.<sup>224</sup>

Although only Pinnacle Entertainment took a public stance against the smokefree ordinance by late march, all three Baton Rouge Casinos and their parent companies had been lobbying Councilmembers to oppose clean air legislation.

In April, immediately before the council hearing on the ordinance, owners and representatives from the three Baton Rouge casinos publicly opposed smoking restrictions with claims of expected economic harm.<sup>220, 224</sup> Pinnacle Entertainment representatives claimed smoking restrictions might harm local businesses by reducing the goods and services the L’Auberge purchased in Baton Rouge. Pinnacle representatives also stated that employees at L’Auberge did not list secondhand smoke as an issue in internal surveys.<sup>224</sup> L’Auberge’s parent company framed the smokefree ordinance as harmful to casino employees, asserting that

smoking restrictions could reduce business and lower tips received by workers.<sup>224</sup> Hollywood Casino spokesman Joel Loots argued against the ordinance before it was considered, claiming that adopting smoking restrictions would place Baton Rouge gaming establishments at a competitive disadvantage with casinos in neighboring areas.<sup>224</sup> Tony Rodio, the President and CEO of Tropicana Entertainment, the Belle of Baton Rouge's parent company, issued a statement on April 12, 2016 that the ordinance would harm the casino and its workers while lowering tax revenue.<sup>224</sup> The Baton Rouge casinos also relied on economic harm arguments during the East Baton Rouge Parish Metropolitan Council hearing on the ordinance.

L'Auberge's parent company framed the smoke-free ordinance as harmful to casino employees, asserting that smoking restrictions could reduce business and lower tips received by workers.

### ***The EBR Parish Metropolitan Council Considers the Smokefree Ordinance***

The East Baton Rouge Parish Metropolitan Council considered the ordinance at a meeting on April 14, 2016.<sup>225</sup> Before taking action, the Council noted public opinion towards the smoking restrictions. 21 people provided cards to the Council endorsing the smokefree ordinance, while 37 filed cards or stated their name to register opposition.<sup>222</sup> Those filing cards in support of the ordinance from Smoke-Free East Baton Rouge member organizations were TFL Communications and Tobacco Policy Manager Lauren Conrad, LCEF Healthcare Initiative Director Kathy Richard, CTFK Southern Region Director Claudia Rodas, and TFL Regional Manager Jennifer Gilchrist.<sup>222</sup> After the Council acknowledged each card filed, the Council heard public comments.<sup>222</sup> 25 testified for the ordinance and 14 spoke against it.<sup>222</sup>

Supporters, consisting of representatives from national and state health and tobacco control organizations, doctors and nurses, entertainers, faith leaders, and casino employees affiliated with, recruited by, or supportive of Smoke-Free East Baton Rouge, testified first.<sup>222</sup> They argued the ordinance protected personal rights, the public's health, and employee health. Proponents also argued that smokefree laws did not economically harm businesses, in particular gambling establishments<sup>222</sup>(Table 12.21). Of the proponents testifying, ANR Associate Director Bronson Frick received additional time to speak on how smokefree laws did not cause revenue declines at gambling establishments.<sup>222</sup> Faith leader and Smoke-Free East Baton Rouge advocate Father Richard Andrus also received extra time to discuss the moral necessity of adopting the ordinance.<sup>222</sup>

Opponents consisted predominantly of gambling industry representatives, officials, and employees (Table 12.22).<sup>222</sup> Tobacconists, bar owners, and political conservatives also testified against the ordinance.

Gaming industry representatives argued smoking restrictions economically harmed casinos, resulting in lower tax revenue and reduced purchases from local vendors by companies.<sup>222</sup> They repeatedly referred to the revenue decline Harrah's New Orleans experienced following implementation of that city's smokefree ordinance in April 2015.<sup>222</sup> Casino representatives and employees also argued that workers and customers decided to frequent places with smoking and could choose to work or take their business elsewhere.<sup>222</sup>



Repeating a well-worn tobacco industry argument,<sup>110, 226</sup> members of the gambling industry claimed ventilation systems used at Baton Rouge casinos filtered secondhand smoke, partially negating any need for smoking restrictions.<sup>222</sup>

Tobacconists, bar owners, and political conservatives argued that smoking restrictions harmed businesses, lowered tax revenue, were a form of overregulation, and a decision for private businesses to make.<sup>222</sup> Non-casino opponents also argued that employee and public exposure to smoking was a personal choice.<sup>222</sup>

After public comments concluded, Councilmember Joel Boe offered two amendments that weakened distance requirements for sales and lowered requirements for classification as a cigar or hookah bar.<sup>222</sup> The first amendment eliminated a 300-foot distance requirement for tobacco and electronic smoking device sales near churches and other unspecified locations. The second amendment lowered requirements to become classified as a cigar or hookah bar in the ordinance, redefining cigar and hookah bars as businesses making 10% of sales from tobacco products instead of 60 percent as the legislation proposed.<sup>222</sup> Boe's proposed changes also permitted cigarette and e-cigarette use in cigar and hookah bars, which was prohibited in the original legislation.<sup>222</sup> Councilmember Boe requested the East Baton Rouge Parish Metropolitan Council consider the ordinance with the proposed amendments instead of in its original form. Seconded by Councilmember Banks-Daniel, Boe's request was approved.<sup>222</sup>

Before voting on the amended ordinance, supportive councilmembers challenged casino industry talking points and cited the importance of smoking restrictions to protect public health. Councilmember Lamont Cole asked casino industry representatives if Harrah's New Orleans was experiencing a revenue decline before implementation of the New Orleans ordinance.<sup>222</sup> According to Cole, a report provided to him and other Councilmembers by Smoke-Free EBR found the New Orleans smokefree ordinance had no effect on the revenue decline being experienced by Harrah's.<sup>222</sup> Louisiana Casino Association Executive Director Wade Duty stated that Louisiana Gaming Control Board data showed revenue decline worsened in 2015 compared to 2014 for Harrah's New Orleans.<sup>222</sup> Duty questioned the validity of the report provided by Smoke-Free EBR, which also relied on data from the Louisiana Gaming Control Board.

According to Cole, a report provided to him and other Councilmembers by Smoke-Free EBR found the New Orleans smokefree ordinance had no effect on the revenue decline being experienced by Harrah's.

Councilmember Cole next asked gambling industry officials about how Baton Rouge casinos handle employees complaining about working in environments with secondhand smoke.<sup>222</sup> Troy Stremming, Pinnacles Entertainment Vice President of Government Relations and Public Affairs, stated L'Auberge would accommodate employees and place them in nonsmoking positions.<sup>222</sup> After questioned by Cole if pregnant employees would be accommodated as well, Stremming affirmed they would also be relocated to a nonsmoking area, with no adverse effect on wages besides potential loss of tips.<sup>222</sup>

Table 12.21: Testimony in Support of Adopting the East Baton Rouge Smokefree Ordinance <sup>222</sup>			
Person	Organization	Position	Testimony
Advocacy Organizations			
Lydia Kuykendal	American Cancer Society Cancer Action Network	Director of Government Relations for Louisiana	<ul style="list-style-type: none"> <li>• Secondhand smoke is health hazard.</li> <li>• Clean air is a right.</li> <li>• Bar and casino employees have right to smokefree workplace.</li> <li>• Freedom to choose ends at harming others.</li> </ul>
Bronson Frick (extra time)	Americans for Nonsmokers' Rights	Associate Director	<ul style="list-style-type: none"> <li>• Secondhand smoke is a health hazard.</li> <li>• Not a smoking ban.</li> <li>• Smokefree casinos exist and perform well.</li> <li>• Industry has invested billions in smokefree casinos in the US.</li> <li>• Casino revenue declines not related to smokefree laws.</li> <li>• Ventilation systems do not prevent secondhand smoke exposure.</li> <li>• Worker health.</li> </ul>
Tonia Moore*	TFL/LPHI	Associate Director	<ul style="list-style-type: none"> <li>• Smokefree policies do not affect tourism or business.</li> <li>• Louisiana has high lung cancer rates, partly attributable to smoking.</li> <li>• Smokefree policies improve air quality.</li> <li>• Secondhand smoke has immediate, negative short-term health effects.</li> </ul>
Onjewel Smith	Americans for Nonsmokers' Rights	Southern States Regional Consultant	<ul style="list-style-type: none"> <li>• Harrah's New Orleans claims of revenue loss from smokefree policy are incorrect.</li> <li>• New Orleans smokefree policy had revenue neutral effect on casinos.</li> <li>• Casinos continue to generate millions regardless of smokefree policies.</li> <li>• Public health over choice or profits.</li> <li>• People are not able to find alternative employment.</li> </ul>
Edgar Cage	Together Baton Rouge	Member / Leader	<ul style="list-style-type: none"> <li>• Together Baton Rouge endorses legislation.</li> <li>• Other professions protect against health hazards.</li> <li>• Secondhand smoke is a health hazard.</li> <li>• Business may improve.</li> <li>• Regulations protect people.</li> </ul>
Father Richard Andrus (extra time)	St. Paul the Apostle Catholic Church/ Together Baton Rouge	Pastor	<ul style="list-style-type: none"> <li>• Allowing secondhand smoke exposure is immoral.</li> <li>• Smokefree policies are pro-life.</li> <li>• Right to smokefree workplaces.</li> <li>• Clean air is a right.</li> <li>• Moral responsibility to adopt ordinance.</li> <li>• Public health is more important than business interests.</li> </ul>
Father Dan Krutz		Priest/ Executive Director of Louisiana	<ul style="list-style-type: none"> <li>• Secondhand smoke is harmful to employees.</li> <li>• Other workplaces require protection from toxic hazards.</li> </ul>

		Interchurch Conference	
Jan Moller	Louisiana Budget Project	Director	<ul style="list-style-type: none"> <li>Smoking costs taxpayers.</li> <li>Secondhand smoke generates significant medical costs.</li> <li>People are not able to find alternative employment.</li> <li>Louisiana's poor health ranking partly attributed to smoking.</li> <li>Smokefree policies enable quitting.</li> </ul>
Medical Community			
Dr. Jay Brooks	Oschner Health System	Oncologist	<ul style="list-style-type: none"> <li>Baton Rouge health care CEOs endorse legislation</li> <li>Secondhand smoke kills.</li> <li>Smokefree policies reduce area health problems.</li> <li>Right to clean air.</li> <li>Council lost member to tobacco related illness.</li> </ul>
Dr. Jane Peek	Baton Rouge General Hospital	OB/GYN	<ul style="list-style-type: none"> <li>Cigarette smoke is a health hazard.</li> <li>Cigarette smoke is harmful to unborn infants.</li> <li>Reduces medical costs.</li> </ul>
	American Cancer Society (Local Chapter)	Volunteer board member	
Dr. Cory Abair	Dillard University	Chief Medical Officer	<ul style="list-style-type: none"> <li>People will smoke outside and continue to attend establishments.</li> <li>Regulations protect people.</li> <li>Freedom of choice is not always an option.</li> <li>City council needs to protect workers, city and state.</li> </ul>
	Louisiana Recovery School District	Chief Medical Officer	
	Orleans Parish Schoolboard	Chief Medical Officer	
Betsy Broe		Registered Nurse / musician	<ul style="list-style-type: none"> <li>Secondhand smoke is harmful.</li> <li>Affects unborn infants.</li> <li>Protect children who will become musicians.</li> <li>Lost relatives to secondhand smoke related illness.</li> </ul>
Dr. Jule Assercq	Louisiana State University	Family practice physician	<ul style="list-style-type: none"> <li>Secondhand smoke is hazardous to health.</li> <li>Secondhand smoke is particularly hazardous to asthmatics and those with COPD or lung failure.</li> <li>Secondhand smoke results in harm or fatality to unborn infants.</li> <li>No safe amount of exposure to secondhand smoke.</li> <li>Prioritize public health over finances.</li> </ul>
Bar Industry			
Remy Demattio	The Bulldog bar	General Manager	<ul style="list-style-type: none"> <li>Business increased after adopting smokefree policy.</li> <li>People will smoke outside and continue to attend establishments.</li> </ul>
Joe Hall	Phil Brady's bar	Owner	<ul style="list-style-type: none"> <li>Smokefree events increase business.</li> <li>Partial smokefree policy has not harmed business.</li> </ul>

Performance Industry			
Tiffany Dickerson		Comedian and entertainer	<ul style="list-style-type: none"> <li>• Secondhand smoke kills.</li> <li>• Right to clean air.</li> <li>• City is behind on protecting public health.</li> </ul>
April Nelson		Miss Louisiana	<ul style="list-style-type: none"> <li>• Performers should have smokefree environments.</li> <li>• Promote clean air for all Louisianans.</li> <li>• Lost relative to smoking-related illness.</li> </ul>
Henry Turner		Entertainer	<ul style="list-style-type: none"> <li>• Lost fellow performers to smoking related illnesses.</li> <li>• Businesses adapt to smokefree policies, potentially see growth.</li> </ul>
Michael Foster		Professional musician, art counselor	<ul style="list-style-type: none"> <li>• Smokefree laws don't harm business.</li> <li>• People should not have to work in smoke to take care of family.</li> <li>• Protect children who will become musicians.</li> </ul>
Kenny Neal		Musician	<ul style="list-style-type: none"> <li>• Secondhand smoke is harmful.</li> </ul>
Johnny Palizotto		Music publisher/producer	<ul style="list-style-type: none"> <li>• Secondhand smoke is hazardous to health.</li> <li>• Baton Rouge is behind in protecting public health.</li> </ul>
Politicians			
Roosevelt Johnson	Alexandria City Council	Former president	<ul style="list-style-type: none"> <li>• Advance health of city.</li> </ul>
Antoine Pierce		Parish Metro Council Candidate	<ul style="list-style-type: none"> <li>• Prioritize public health over ideology, finances, special interests.</li> </ul>
Gambling Industry			
Jade Alexander	Unknown	Former Casino employee	<ul style="list-style-type: none"> <li>• Employees lack options to work elsewhere.</li> <li>• Employees sacrifice to provide for family.</li> <li>• Secondhand smoke is harmful.</li> </ul>
Taiwan Tompkins**	Unknown	Former casino employee	<ul style="list-style-type: none"> <li>• Freedom to choose ends at harming others.</li> </ul>
*Provided data briefs to councilmembers at hearing. **Name possibly spelled incorrectly.			

Table 12.22: Testimony Against Adopting the East Baton Rouge Smokefree Ordinance <sup>222</sup>			
Person	Organization	Position	Testimony
Gambling Industry			
Mickey Parenton	L'Auberge Casino and Hotel	General Manager	<ul style="list-style-type: none"> <li>• Majority of establishment is non-smoking.</li> <li>• Employees accept working in secondhand smoke.</li> </ul>
Troy Stremming (extra time)	Pinnacle Entertainment (parent company of L'Auberge)	Executive Vice President of Government Relations and Public Affairs	<ul style="list-style-type: none"> <li>• Smokefree ordinance destabilizes business environment.</li> <li>• Smokefree ordinance creates competitive disadvantage with casinos in neighboring areas.</li> <li>• Owner should decide smokefree policies.</li> <li>• Customers can choose to attend smokefree establishments.</li> <li>• Ventilation system cleans air.</li> <li>• Limited smoking area accessible only to adults (21+).</li> <li>• Smokefree policy economically harms casino, state and local government, as well as local vendors.</li> <li>• Economically harms employees (lowers tips received by employees).</li> <li>• Smokefree laws economically harm gaming establishments (New Orleans one example used).</li> </ul>
Wade Duty	Louisiana Casino Association	Executive Director	<ul style="list-style-type: none"> <li>• Smokefree laws economically harm gaming establishments.</li> <li>• Claims of casinos seeing increased business after smokefree policies are invalid assertions by advocates.</li> <li>• New Orleans Harrah's saw revenue decline after going smokefree, neighboring smokefree casinos saw increased business.</li> <li>• Casino revenue affects job levels, tax revenues, and procurement amount from local vendors.</li> </ul>
Anthony Verbeil	Hollywood Casino and Leisure Gaming Properties inc. (parent company)	Vice President and General Manager of Hollywood casino	<ul style="list-style-type: none"> <li>• Smokefree laws economically harm casinos.</li> <li>• Smokefree law will reduce tax revenues.</li> <li>• Smokefree law will impact jobs.</li> <li>• Other states have successfully implemented partial smokefree laws for casinos.</li> <li>• Creates competitive disadvantage with casinos in neighboring areas.</li> </ul>

Patrick Brown	Belle of Baton Rouge Casino and Hotel	General Manager	<ul style="list-style-type: none"> <li>• Smokefree laws economically harm casinos.</li> <li>• Smokefree laws reduce tax revenue.</li> <li>• Smokefree law will reduce procurement from local vendors.</li> <li>• Smokefree law might cause job loss.</li> <li>• Smokefree law will affect investments made by company into Baton Rouge casino.</li> <li>• Property is smokefree except for gaming area.</li> <li>• Puts casinos at competitive disadvantage with casinos in neighboring areas.</li> <li>• Difference between state and local smokefree laws on competition.</li> </ul>
Richard Meadows	Casino (unknown)	Employee	<ul style="list-style-type: none"> <li>• Casino industry creates jobs in Louisiana and allows people to stay, come to the state.</li> <li>• Employees have choice to work elsewhere.</li> <li>• Employees are adults (21+) able to make choices.</li> <li>• Secondhand smoke studies are not good quality and are questionable.</li> <li>• Could reduce employee hours or lead to job loss if casinos are economically harmed.</li> </ul>
Anna Caffrey	L'Auberge Casino and Hotel	Employee	<ul style="list-style-type: none"> <li>• Customers can choose to attend smokefree environments.</li> <li>• The casino accommodates employees.</li> <li>• Protect company that helps community and gives employees good benefits.</li> <li>• Employees have choice to work elsewhere.</li> </ul>
Trivia Weatherspoon	L'Auberge Casino and Hotel	Employee	<ul style="list-style-type: none"> <li>• Allow employees to make choice.</li> <li>• Great company.</li> </ul>
Daniel	L'Auberge Casino and Hotel	Employee	<ul style="list-style-type: none"> <li>• Regulations hurt economy.</li> <li>• Employees make choice to work in smoke-filled environment.</li> <li>• Ventilation system cleans air.</li> </ul>

			<ul style="list-style-type: none"> <li>• Company provides benefits.</li> <li>• If casino loses revenue, tax revenue lowers and job loss occurs.</li> </ul>
Bar and Tobacconist Industries			
Alice Estel	Unknown bar	Attorney	<ul style="list-style-type: none"> <li>• Smokefree law creates economic burden on business by forcing accommodation of smoking workers and customers.</li> </ul>
Anthony Gallo	Cadillac Cafe	Owner	<ul style="list-style-type: none"> <li>• Employees have choice to work elsewhere.</li> <li>• Customers can choose to attend smokefree establishments.</li> <li>• Musicians receive limited exposure to secondhand smoke, work few hours.</li> <li>• Businesses will be economically harmed, in particular small business.</li> </ul>
Sarah McCauley	Louisiana Independent Tobacconist Association	President	<ul style="list-style-type: none"> <li>• Tobacconists will be economically harmed by smokefree law.</li> <li>• Smokefree law will reduce tax revenue.</li> </ul>
	Bayou Tobacco	Owner	
Luis Molina	Habana Port Cigar Merchants	General Manager	<ul style="list-style-type: none"> <li>• Smokefree law economically harms businesses.</li> <li>• Smokefree law will reduce tax revenue.</li> <li>• People choose to engage in business activity.</li> <li>• Customers can choose to attend smokefree environments.</li> <li>• Other air pollutants are created by businesses and are not prohibited (references Dow Chemical plant).</li> <li>• Smokefree law is unnecessary as most people attend smokefree establishments.</li> <li>• Smokefree law is regulatory overreach.</li> <li>• Smokefree law economically harms casinos.</li> <li>• Smokefree law reduces tax revenue.</li> <li>• Allow business owners to decide smoking policy.</li> <li>• Smokefree law prohibits delivery of tobacco products in certain areas.</li> </ul>

Miscellaneous			
Matthew Allen	East Baton Rouge Libertarian Party Parish Executive Committee	Member	<ul style="list-style-type: none"> <li>• Criminalizes smoking on private property.</li> <li>• Business owners should be allowed to set smoking policies.</li> <li>• Secondhand smoke is only proven to harm people residing with smokers. Exposure at private establishments has negligible or unproven effect.</li> <li>• Nonsmokers can choose not to attend businesses allowing smoking.</li> <li>• Employees have choice to work elsewhere.</li> </ul>



Following Cole's questions to the gaming industry, Councilmember Collins-Lewis asked for a medical worker to explain air ventilation systems and their effect on secondhand smoke residue and carcinogens in the air.<sup>222</sup> Lake Hospital Pediatrician Hitesh Shirama told the Council that multiple studies determined that ventilation systems failed to remove small particles from the air and that numerous particles in cigarettes were carcinogenic. After Pediatrician Hitesh Shirama concluded his answer, Councilmember Collins-Lewis reaffirmed her support for the ordinance.<sup>222</sup>

Councilmember Banks-Daniel then asked L'Auberge representatives if employee surveys included questions on secondhand smoke.<sup>222</sup> Pinnacle's Troy Stremming stated their surveys did not include questions on secondhand smoke, but added that employees had never complained about secondhand smoke in the generalized questions in the survey.<sup>222</sup> Asked by Banks-Daniel if all employees received the survey, Stremming claimed more than 90% of workers participated and that the surveys were anonymous.<sup>222</sup> Banks-Daniel asked if questions regarding secondhand smoke could be added to the survey, and Stremming replied L'Auberge might be receptive to doing so.<sup>222</sup> Banks-Daniel also asked Stremming if casino employees were educated on the dangers of secondhand smoke and the inability of ventilation systems to protect people from harmful health consequences, and if he felt personally responsible that they be informed; Stremming did not answer.<sup>222</sup> He responded to another question from Banks-Daniel stating that L'Auberge was willing to address secondhand smoke exposure and improve employee protections.<sup>222</sup>

Councilmember Tara Wicker spoke last, asking for a casino industry representative to explain why a majority of a casino and hotel could be smokefree without suffering adverse economic effects, but expect a total prohibition on smoking to be harmful.<sup>222</sup> Pinnacle's Stremming asserted a total smoking prohibition would reduce revenue and harm employees dependent upon tips, and that a competitive disadvantage caused by a local smoking ban in Baton Rouge could increasingly harm L'Auberge and its employees.<sup>222</sup> After Stremming answered her question, Councilmember Wicker stated L'Auberge recognized secondhand smoke was "an issue" by having smokefree areas.<sup>222</sup> She stated her concern for the health of employees at the casino.<sup>222</sup> Wicker concluded that employees lacked the ability to find alternative work in Baton Rouge that allowed them to provide for their families, causing them to continue working in secondhand smoke despite the negative health effects.<sup>222</sup>

After Wicker finished speaking, the East Baton Rouge Parish Metropolitan Council voted 6 to 6 on the ordinance, failing to pass it (Table 12.23).<sup>222</sup> Only the councilmembers that had sponsored the legislation voted for it.

In interviews with the *Greater Baton Rouge Business Report* and *The Advocate* following the vote, Councilmembers John Delgado, Ryan Heck, Trae Welch, and Buddy Amoroso credited fears of overregulation and negative economic impacts on businesses as reasons they voted against the smoking restrictions.<sup>227</sup> Councilman John Delgado opposed the ordinance believing business and tax revenue would decline because of smoking restrictions, partially because of claims that Harrah's New Orleans had suffered a 20% drop in revenue after smoking restrictions were implemented.<sup>227</sup> Councilmembers Trae Welch and Ryan Heck claimed the ordinance was poorly constructed and a regulatory overreach.<sup>225, 227</sup> Councilmember Buddy Amoroso voted against the ordinance believing it infringed on freedom of choice for people and businesses.<sup>227</sup>

After the defeat, Smoke-Free East Baton Rouge continued advocating for smoking restrictions. Immediately following the EBR Parish Metropolitan Council’s vote, Smoke-Free East Baton Rouge Campaign Manager Stasha Rhodes asserted that the coalition would continue to advocate for smoking restrictions in the city and parish.<sup>205</sup> The coalition continued to disseminate information on Facebook and Twitter until the end of June 2016.<sup>211, 212</sup>

Table 12.23: April 14 Parish Metro Council Vote on East Baton Rouge Ordinance <sup>222, 225</sup>	
Chandler Loupe	No
Ryan Heck	No
Scott Wilson	No
Trae Welch	No
Buddy Amoroso	No
John Delgado	No
Tara Wicker	Yes
Donna Collins-Lewis	Yes
Erika Green	Yes
Chauna Banks-Daniel	Yes
LaMont Cole	Yes
Joel Boe	Yes

Health and tobacco control advocates would pursue another comprehensive smokefree ordinance in Baton Rouge as the Smoke-Free East Baton Rouge coalition in 2017.

### **Town of Hammond Adopts a Comprehensive Ordinance**

A small town of approximately 20,000 people,<sup>228</sup> Hammond considered adopting a comprehensive smokefree ordinance in 2015. Sponsored by Hammond City Councilmember Lemar Marshall, the ordinance, modeled after the New Orleans ordinance,<sup>229</sup> prohibited smoking and e-cigarette use in all indoor workplaces with no exemptions for bars, hospitality establishments, nursing homes, or gaming facilities.<sup>230</sup> Smoking and vaping at outdoor recreation areas and outdoor shopping malls was also prohibited. The ordinance established a 5-foot distance requirement from public owned, leased, or operated buildings and a 5-foot distance requirement from all building entrances, air filtration systems, and windows. The ordinance also established a 5-foot distance requirement around playgrounds, event stands, public transit structures, and from a point of sales area for a line. Smoking or vaping where tobacco or electronic smoking device use was prohibited incurred \$50 fines.<sup>230</sup> Business fines were no greater than \$100 for first offenses, \$200 for second offenses within a year, and \$500 for any additional offenses within a year.<sup>230</sup> Businesses offending smoking restrictions faced potential permit or license loss.<sup>230</sup> The ordinance designated the Hammond Police Department or an official appointed by the Mayor with enforcement.<sup>230</sup>

TFL’s state and local allies, including the Louisiana Healthy Communities Coalition, supported the smokefree ordinance effort in Hammond.

TFL employees supported the ordinance as part of statewide efforts to secure comprehensive local smoking laws.<sup>231</sup> TFL’s state and local allies, including the Louisiana Healthy Communities Coalition, supported the smokefree ordinance effort in Hammond.<sup>231</sup>

Councilmember Marshall introduced Hammond’s ordinance on April 7, 2015<sup>232</sup> and the Council considered it on April 21, 2015.<sup>228, 233</sup> Business owners and a gambling industry representative opposing the ordinance argued smoking restrictions created competitive disadvantages, inflicted economic harm, and were a decision that businesses could choose to

implement.<sup>233, 234</sup> In contrast, a bar owner and musician supporting the ordinance argued smoking restrictions protected people from secondhand smoke and saved lives.<sup>233, 234</sup>

At the April 21, 2015 meeting the Council voted 4 to 1 to adopt the smokefree ordinance (Table 12.24), with only Councilmember Jason Hood voting against it because he thought smoking should remain a business decision.<sup>234</sup>

Table 12.24: Hammond City Council Vote on Smokefree Ordinance <sup>234, 235</sup>	
Councilmember	Vote
Johnny Blount	Yes
Jason Hood	No
Janice Carter-Beard	Yes
Lemar Marshall	Yes
Michael Williams	Yes

## **Bogalusa Adopts a Comprehensive Ordinance**

In 2016, Bogalusa City Councilmember Gloria Kates introduced a comprehensive smokefree ordinance<sup>236</sup> for her town. The legislation prohibited smoking in indoor workplaces, bars, and gambling establishments, but exempted guest rooms dedicated for smoking at hospitality establishments and tobacco retailers from smoking restrictions.<sup>237</sup>

Some community and business outreach occurred for the Bogalusa ordinance. A week before the Bogalusa City Council considered the ordinance, a public meeting was held to discuss the legislation.<sup>236</sup> In addition, Kates and tobacco control advocates administered surveys on smoking restrictions to bar owners.<sup>236</sup> We do not know the findings from the surveys.

The City Council considered Councilmember Kate's ordinance on December 20, 2016. Health advocates including TFL Executive Director Tonia Moore, the Washington Parish Youth Council, and former Bogalusa Councilmember Marvin Austin attended to support the ordinance.<sup>238</sup> Before the meeting started, the Washington Parish Youth Council asked the Council to adopt the ordinance to improve public health in Washington Parish (where Bogalusa is located).<sup>238</sup>

Prompted to give testimony by Councilmember Kates during the meeting, TFL Associate Director Tonia Moore discussed the poor health status of Louisiana.<sup>236</sup> She informed the Council that smoking restrictions reduced exposure to harmful secondhand smoke particles and improved air quality, and that smokefree policies protected public health.<sup>236</sup>

After Moore testified, Councilmember Kates moved to table the ordinance because Councilmember Doug Ritchie was absent, and Kates wanted the full vote of the Council. Before Kates' motion to table the ordinance was approved, however, Adapt: Washington Parish Coalition against Drugs representative<sup>238</sup> Charlotte Fornea, and former Bogalusa Councilmember Marvin Austin, interrupted with testimony supporting the legislation. Fornea asked the Council to protect younger generations from harm and adopt smoking restrictions. Austin shared his experience with nicotine addiction, the health consequences he suffered from smoking tobacco, and his loss of friends and acquaintances to tobacco use. Having voted against a past smokefree ordinance during his service on the Bogalusa City Council,<sup>238</sup> Austin implored Kates to call a vote on the smokefree ordinance instead of tabling it. After Austin testified, no other supporters or opponents of the ordinance spoke.

Encouraged by testimony, Councilmember Kates called for a vote on the ordinance<sup>238</sup> which the Bogalusa City Council then passed unanimously.<sup>236</sup>

## **Calcasieu Parish Adopts a Weak Ordinance**

The Calcasieu Parish Police Jury adopted a clean air ordinance introduced by Assistant Parish Administrator Dane Bolin on November 17, 2016.<sup>239</sup> The legislation prohibited all tobacco use and electronic smoking device use in public parks, publicly-owned facilities, and at the parish government's Health Unit Complex.<sup>240, 241</sup> The ordinance permitted the establishment of designated smoking areas at Police Jury facilities and exempted tobacco use or vaping at park campsites and RV sites.<sup>239-241</sup> It also did not prohibit smoking in bars or gambling establishments.<sup>239-241</sup> The ordinance entered effect March 1, 2017.<sup>240</sup>

## **Glenmora Adopts a Comprehensive Smokefree Ordinance**

Glenmora, a town of less than 1,500 people, adopted a comprehensive smokefree ordinance on March 2017.<sup>242</sup> The legislation prohibited smoking and vaping in all indoor workplaces and public places, including bars, gambling establishments, and tobacco retailers, as well as outdoors at workplaces with two or more workers, stadiums, amphitheaters, and arenas. A 20-foot distance requirement was set from building entrances and airways, event stands, playgrounds, public transit structures, and the point of sale in drive-thru lines. Users and businesses violating smoking restrictions faced an initial fine no greater than \$100, followed by \$250 for second offenses within a year and \$500 for additional failures to comply. Business establishments in violation of smoking restrictions also faced permit/license suspension or loss.

## **Lafayette and the Long Journey to a Comprehensive Ordinance**

The city and parish of Lafayette, the fourth most populous metropolitan area of Louisiana,<sup>243</sup> adopted a comprehensive ordinance prohibiting smoking and vaping in bars, gaming establishments, and most workplaces in 2017. TFL had been working to generate public and political support for a local clean air law since 2012. Passage of the comprehensive ordinance resulted from repeated attempts by TFL and Lafayette City-Parish Councilmember Kenneth Boudreaux to increase public demand for smoking restrictions and pass legislation.

### ***Early Discussions on Smoking Restrictions***

Passage of Alexandria's comprehensive smokefree ordinance in October 2011 stimulated a debate about smoking restrictions in Lafayette.<sup>244</sup> In a November 2011 Associated Press story following passage of the Alexandria ordinance, Tobacco-Free Living officials and allies publicly called for Lafayette to pursue a comprehensive smokefree ordinance. Alexandria City Council President and TFL legislative champion Roosevelt Johnson also encouraged Lafayette's city government to adopt a comprehensive smokefree ordinance.

In the same 2011 Associated Press story, Lafayette City-Parish Councilmembers were queried regarding their positions on smokefree laws. Councilmembers mainly argued against the need for a law or took no position.<sup>244</sup> Councilmember and future legislative champion Kenneth Boudreaux also doubted the need for a clean air law, but voiced willingness to debate its merits. Although noncommittal about pursuing a comprehensive ordinance, in 2008 Boudreaux was one of two councilmembers to vote for failed legislation to prohibit smoking at Lafayette-area healthcare facilities.<sup>244, 245</sup>

Councilmember Boudreaux increasingly became involved in Lafayette's smoking restriction debate. During a Lafayette City-Parish Council meeting on February 22, 2012, Boudreaux shared a press release asking the bar community to help develop an award for businesses that implemented smoking restrictions<sup>246</sup> and proposed a city-wide program for the awards.<sup>245</sup> The proposed program, which would be run by the city-parish, did not generate any interest or lead any bars to adopt voluntary smokefree policies.<sup>247, 245</sup>

Clean air policies remained an active political topic in Lafayette, prompting Councilmember Boudreaux to arrange a town hall to discuss smoking restrictions on June 12, 2012.<sup>247</sup> He held the forum to gauge public sentiment on smoking restrictions after the Lafayette bar community's disinterest and inaction on his voluntary smokefree award program, but did not plan to propose an ordinance because he feared residents would view the legislation as a violation of business owners' rights.<sup>245, 247, 248</sup> Although Boudreaux insisted there was not an impending ordinance, tobacco control advocates, musicians, and bar industry representatives attended the meeting to make statements for and against smoking restrictions.

At the town hall, TFL-affiliated public health advocates and local musicians argued smoking restrictions were needed to protect bar employees and musicians.<sup>249</sup> Let's Be Totally Clear Initiative Region IV Coordinator Kelley Anderson stated that secondhand smoke made bars hazardous workplaces, that smokefree laws did not economically harm businesses, and described TFL studies finding air quality in Alexandria improved following adoption of their comprehensive ordinance.<sup>249</sup> Musician Bernard Pearce argued people had a right to not breathe secondhand smoke and musician David Egan stated bar employees and performers were unable to find work only at smokefree establishments.<sup>249</sup> The performers were recruited to speak at the town hall by LCEF's Kathy Richard.<sup>77</sup>

Representing several Lafayette bars during the public forum, lawyer Steven Durio argued smokefree laws infringed on freedom of choice.<sup>249</sup> In particular, he asserted that bar workers and musicians had the choice to work in smokefree establishments.<sup>249</sup>

"We pulled back in Lafayette because we just weren't getting much headway."

Councilmember Boudreaux did not pursue a smokefree ordinance in 2012 after the town halls.<sup>248</sup> He decided against introducing an ordinance because some Lafayette residents believed it violated business owners' rights. In a 2015 interview with local periodical the *Acadiana Advocate*, LCEF Healthcare Initiative Director Kathy Richard stated that, "We pulled back in Lafayette [in 2012] because we just weren't getting much headway."<sup>248</sup> Continued public input to Councilmember Boudreaux in support of smoking restrictions ultimately caused him to propose a clean air ordinance for Lafayette in 2015.

### ***2015 Campaign Fails***

The smoking restriction debate in Lafayette rekindled in 2014 when famed Louisiana jazz musician and Grammy Winner Chubby Carrier<sup>250</sup> called Lafayette City-Parish Councilmember Kenneth Boudreaux and asked him to take action on smoking restrictions.<sup>251</sup> Carrier had started advocating to prohibit smoking in bars several years before the Lafayette ordinance campaign.<sup>252</sup> The musician had partnered with TFL's "Let's Be Totally Clear" campaign (Chapter 4) in because his father had died from lung cancer.<sup>250</sup>

Councilmember Boudreaux and his office began writing the ordinance at an unknown time with assistance from Tobacco-Free Living and Chubby Carrier.<sup>253, 254</sup> Boudreaux announced he would propose a comprehensive ordinance to the Lafayette City-Parish Council at a press conference on January 28, 2015.<sup>255</sup>

After Boudreaux announced his intention to pursue an ordinance, three of the nine Lafayette City-Parish Councilmembers publicly opposed it. Councilmembers Jared Bellard, Andy Naquin and William Theriot<sup>248</sup> expressed that businesses should have the choice to set their own smoking policy and that employees and customers could choose where to frequent or work.<sup>255</sup> Five other councilmembers, Don Bertrand, Jay Castille, Kevin Naquin, Keith Patin, and Brandon Shelvin, did not take a stance on the ordinance although Bertrand and Castille supported smoking restrictions in principle.<sup>255</sup>

Health and tobacco control advocates began publicly lobbying the Lafayette City Council in Spring. TFL Regional Coordinator Rene Stansbury, healthcare worker Africa Dauphiny, Musician Marty Christian, Southern University Agricultural Center Regional Coordinator<sup>256</sup> Troy Kennedy, Rose Hoffman Cormier and Jan Swift appeared at a Council meeting on April 24, 2015 to discuss the health hazards as well as disparate impact of tobacco use on minorities and call for legislation.<sup>257</sup>

At a Council meeting on May 5, 2015, Councilmember Boudreaux introduced his comprehensive ordinance for the city of Lafayette and unincorporated areas of Lafayette Parish.<sup>254, 258</sup> The legislation prohibited smoking and vaping in most public places and businesses, including bars and gambling establishments.<sup>258</sup> Guest rooms at hospitality establishments, tobacco businesses, private residences not in use as a healthcare facility, child care or adult day care, semiprivate and private rooms at care facilities or nursing homes, outdoor areas at businesses, and e-cigarette businesses were exempted from restrictions. The ordinance established a 25-foot distance requirement for smoking and vaping from building entrances, windows, and ventilation systems, with exemptions for bars, alcoholic beverage establishments and expanded service restaurants.

The ordinance retained existing penalties for smoking restriction violations from Lafayette's 2005 law (passed after partial preemption repeal in 2003 (Chapter 10) and established new penalties for offending businesses.<sup>258</sup> Any smoking restriction violation resulted in a maximum \$100 fine, a second violation within a year a \$200 fine, and any additional violations a \$500 fine.<sup>258</sup> Three violations by a business resulted in permit or license loss unless an establishment wrote, adopted and implemented a corrective smokefree policy approved by an enforcement officer.<sup>258</sup> Enforcement remained unchanged from the 2005 ordinance, with the Lafayette Fire Department Chief, their designee, and other law enforcement personnel given the authority to enforce smoking restrictions (Chapter 10).<sup>259, 260</sup>

The Downtown Lafayette Restaurant and Bar Association did not take a position on the bill at the time.<sup>261</sup>

On May 17, 2015, two days prior to the city-parish council vote on smoking restrictions, e-cigarette advocacy group CASAA issued an action alert to the vaping community to oppose the Lafayette ordinance.<sup>262</sup> CASAA asked vaping enthusiasts to appear at the hearing to oppose the legislation, provided them contact information for Lafayette City-Parish Councilmembers, and

gave talking points. Most opposition at the Lafayette City-Parish Council Meeting came from the vape community.<sup>262</sup>

The Council considered the ordinance on May 19, 2015. Four of the nine councilmembers, Kenneth Boudreaux, Kevin Naquin, Jay Castille, and Brandon Shelvin, announced their support for the ordinance before the meeting, one less than needed for passage.<sup>263</sup> Councilmembers Theriot, Naquin, and Bellard publicly opposed the ordinance and Councilmembers Keith Patin and Don Bertrand remained undecided.<sup>263</sup> However, TFL and other tobacco control advocates believed they had secured an additional vote to pass the legislation.<sup>77</sup>

Tobacco-Free Living, local musicians, bar owners, and the Downtown Lafayette Restaurant and Bar Association supported the ordinance at the Council meeting.<sup>264</sup> The association backed the smoking restrictions believing they were unavoidable and also benefitted their members' customers.<sup>264</sup> The association's support of smoking restrictions in Lafayette was the first instance we found of a restaurant and bar organization endorsing a smokefree law in Louisiana.

Opponents at the hearing consisted mostly of the Louisiana Association of Electronic Cigarette Retailers and individual electronic smoking device businesses.<sup>264</sup> LAECR Secretary Heather Hutton argued to the committee that including vaping in smoking restrictions unfairly stigmatized electronic smoking devices, which she claimed saved lives as they were safer than cigarettes and worked as cessation aids.<sup>264</sup>

After hearing public comment, the Lafayette City-Parish Council voted 4 to 5 against adopting the ordinance (Table 12.25).

Table 12.25: 2015 Lafayette City-Parish Council Vote on Smokefree Ordinance <sup>263</sup>	
Kenneth Boudreaux	Yes
Kevin Naquin	Yes
Jay Castille	Yes
Brandon Shelvin	Yes
Andy Naquin	No
Keith Patin	No
Don Bertrand	No
Jared Bellard	No
William Theriot	No

According to LCEF Healthcare Initiative Director Kathy Richard in a 2017 interview for this report, the fifth vote expected by health and tobacco control advocates changed sides, defeating the ordinance:

We were betrayed by one of the council members that night. And he swung another vote. He was supposed to vote yes, and he swung, he said no, and another guy he swung. And so we...were unsuccessful.<sup>77</sup>

"We were betrayed by one of the council members that night. And he swung another vote. He was supposed to vote yes, and he swung, he said no, and another guy he swung. And so we ... were unsuccessful."

Lafayette City-Parish Councilmembers voted against the ordinance on the grounds that it infringed on the freedom of individuals and private establishments. Following the vote, formerly undecided councilmember Keith Patin said in an interview with Lafayette newspaper *Acadiana Advocate* that loss of choice outweighed public health concerns in his decision to vote against the ordinance:

If you go to smoky bars, secondhand smoke is going to hurt you in the long run, but everybody has a choice. You don't have to smoke. You don't have to go to those locations. Cigarettes are horrible. We would be better without them. But cigarettes are legal, and we have a choice.<sup>263</sup>

On August 18, 2015 Councilmembers Don Bertrand and Kevin Naquin introduced a weaker version of Boudreaux's ordinance that prohibited smoking at bars featuring live entertainment.<sup>265, 266</sup> Under the revised ordinance, alcoholic beverage establishments, bars, and expanded service restaurants operating before the ordinance's adoption could allow smoking by not hosting live entertainment and registering with the City of Lafayette as a smoking establishment.<sup>265, 266</sup> The proposed ordinance also added new distance requirements that prohibited smoking or vaping within 25 feet of event stands or recreational facilities and fields.<sup>265, 266</sup> Before the Council considered the revised ordinance, sponsors Naquin and Bertrand pulled the bill because of opposition from TFL and unspecified smokefree proponents.<sup>267</sup> TFL Regional Manager Rene Stansbury publicly opposed the revised ordinance because it failed to protect all workers from secondhand smoke.<sup>267</sup> After efforts to pass legislation faltered in 2015, the Lafayette City-Parish Council waited to reconsider smoking restrictions until 2017.

### **State Legislation to Further Restrict Smoking in Louisiana Schools Fails in 2016**

In 2016, State Representative Frank Hoffmann (R-West Monroe) introduced HB 218 to expand smoking restrictions in schools to include all tobacco products.<sup>268</sup> HB 218 expanded the definition of schools to cover all school property and vehicles, as well as specialty schools the Louisiana School for the Visually Impaired, the Louisiana Special Education Center, the Louisiana School for the Deaf, and others in the Special School District. (The Special School District consists of the Louisiana School for the Deaf, the Louisiana School for the Visually Impaired, and educational programs at alternative, behavioral, and correctional institutions<sup>269</sup>). HB 218 required school authorities to fine offenders a maximum \$200, penalize them, or both. Hoffmann introduced HB 218 on behalf of the Louisiana Department of Health.<sup>270, 271</sup> We did not find evidence that TFL endorsed or advocated for HB 218.

Lawmakers primarily attached amendments to expand and further strengthen smoking restrictions in HB 218 before approving it in each chamber. Hoffmann, the bill's sponsor, attached changes to HB 218 on the House Floor that incorporated electronic cigarettes and any buildings operated or owned by local school boards into restrictions. He also exempted FDA approved tobacco cessation items. The Senate amended HB 218 to expand the tobacco product prohibition on school property to vapor and alternative nicotine products (noncombustible tobacco products). Senators also created a fine scale of \$25 for initial offenses, \$100 for second violations, and \$250 for additional infractions. However, the Senate also weakened HB 218 by exempting school property being rented or used for non-teaching purposes and by permitting "nonpublic school CEO" to define their school property."



Although HB 218 initially passed both chambers, it failed to become law. The House rejected Senate amendments and forced the bill into conference committee.<sup>270</sup>

Despite earlier support from both chambers for HB 218, representatives subsequently voted 81-17 to reject the committee's compromise version of the bill.<sup>270</sup> Jointly developed by State Senators and Representatives, HB 218's conference version only differed from the original's House and Senate amended version by limiting the complete prohibition on tobacco, vaping, and alternative nicotine product use on buses to when students were on vehicles. Representatives supposedly defeated HB 218's conference version because they required school authorities to ensure compliance via discipline,<sup>272</sup> or through mechanisms apparently unknown to lawmakers, levy fines on violators.<sup>270, 272</sup>

### **Hoffmann Passes Legislation in 2017 to Prohibit Electronic Nicotine Products in Schools and Eliminate Designated Smoking Areas**

After failing to secure school smoking restriction legislation in 2016, Representative Frank Hoffmann introduced HB 531 on March 31, 2017 to prohibit possession of electronic cigarette and vaping devices on Louisiana public elementary and primary school property, at the Louisiana Special Education Center, and Special School District property.<sup>273</sup> The bill also prohibited smoking on school vehicles transporting primary and secondary students. However, HB 531 allowed smoking on school property being rented, leased or utilized for reasons unrelated to education.

Lawmakers passed HB 531 after weakening its smoking restrictions. Following technical revisions to HB 531 in the House, the Senate Committee on Education attached an amendment to revise the legal definition of smoking to include electronic cigarette devices.<sup>273</sup> Committee members also amended the bill to allow individuals that were not school staff or students to smoke on school property, but still prohibited them from smoking in school buildings. Following amendments, the Louisiana State Legislature easily passed HB 531, and Governor John Bel Edwards signed it into law on June 22, 2017. The law took effect that day.

### **Efforts to Secure an Ordinance in Lafayette Begin Anew in 2017**

On April 4, 2017, Councilmember Kenneth Boudreaux introduced a comprehensive smokefree ordinance to the Lafayette City-Parish Council.<sup>274</sup> The legislation was cosponsored by Councilmembers Bruce Conque, Nanette Cook, Pat Lewis, and Kevin Naquin, which guaranteed enough votes for passage.<sup>274</sup>

Nearly identical to Councilmember Boudreaux's 2015 legislation, the ordinance eliminated exemptions allowing smoking in bars, alcoholic beverage facilities, restaurants, and gambling establishments.<sup>275</sup> It exempted electronic smoking device businesses and hookah businesses, defined as establishments in which sales of electronic smoking devices or tobacco products comprised 50% or more of their annual revenue.<sup>274, 275</sup> The ordinance left exemptions in place from the 2005 law for guest rooms at hospitality establishments, tobacco retailers, private residences not used for child care, adult day care or as healthcare facilities, outdoor areas at businesses, as well as private and semi-private nursing home and care facilities. The ordinance established a 25-foot distance requirement for smoking and vaping from entrances to enclosed areas where smoking and vaping were prohibited, playgrounds, event stands, as well as

recreational fields and facilities.<sup>275</sup> Smaller 5-foot distance requirements for smoking and vaping from building entrances were established for expanded service restaurants and bars.<sup>275, 276</sup> The ordinance retained existing penalties for smoking restriction violations and once again established penalties for non-compliant businesses. First violations by businesses resulted in a maximum \$100 fine, second offenses within a year a \$200 fine, and three or more offenses a \$500 fine. Businesses committing three violations lost their permit or license unless they wrote, adopted, and implemented a corrective smokefree policy approved by an enforcement officer.<sup>275</sup>

“Lafayette is definitely prime. They are ready to go smokefree.”

Table 12.26: Lafayette City-Parish Council Vote on 2017 Smokefree Ordinance <sup>282, 283</sup>	
Kenneth Boudreaux	Yes
Kevin Naquin	Yes
Liz Webb Hebert	Yes
Pat Lewis	Yes
Nanette Cook	Yes
Jay Castile	Yes
Bruce Conque	Yes
Jared Bellard	No
William Theriot	No

Lafayette’s Fire Department Chief, their designee, and other law enforcement officials enforced smoking restrictions.<sup>260</sup>

To generate public awareness and support for the ordinance, TFL released results from a survey of 500 registered voters on April 4 showing that 68% of Lafayette Parish wanted smoking prohibited in bars and bingo halls while 29% opposed prohibiting smoking in bars and casinos.<sup>277, 278</sup> The survey caused TFL Executive Director Tonia Moore to tell the press “Lafayette is definitely prime. They are ready to go smokefree.”<sup>278</sup>

The Lafayette City-Parish Council considered the ordinance at its April 18, 2017 meeting.<sup>279</sup> To apply pressure on the council to pass the law, TFL organized a rally at city hall with Musicians for a Smoke-Free Louisiana (formed in 2014 during the SmokeFree NOLA campaign<sup>280</sup>), LCEF, as well as individual musicians and backers in support of the smokefree ordinance.<sup>279</sup>

The Council voted 7 to 2 to adopt the ordinance (Table 12.26).<sup>281, 282</sup> Councilmembers Bellard and Theriot, who had opposed smoking restrictions in Lafayette since discussions began around 2012, voted against the ordinance.

Mayor-President Joel Robideaux signed the ordinance into law, which became effective in Lafayette and unincorporated portions of Lafayette Parish immediately.<sup>284, 285</sup> Enforcement of smoking restrictions started on August 1, 2017.<sup>284</sup> Lafayette’s Fire Department Chief, their designee, and other law enforcement officials ensured compliance.<sup>260</sup>

### **Tobacco Control Advocates Pursue a Local Ordinance in Baton Rouge in 2017**

On May 31, 2017, World No-Tobacco Day,<sup>211</sup> the Smoke-Free EBR coalition revealed that it would again pursue a comprehensive smokefree ordinance in East Baton Rouge Parish that prohibited smoking in both bars and casinos.<sup>286</sup> National members of the coalition in 2017

included AHA, ACS-CAN, ANR, and CTFK.<sup>286, 287</sup> State partners (including state chapters of national organizations) consisted of LPHI, its tobacco control program TFL, ALA of Louisiana, National Association of Social Workers Louisiana Chapter, Musicians for a Smoke-Free LA, the Local 21 LA SEIU union, and the Louisiana Budget Project.<sup>286, 287</sup> The 2017 effort was endorsed by Baton Rouge Mayor-President Sharon Weston Broome, who had won an election<sup>286</sup> in Fall 2016 to replace the term-limited Kip Holden.<sup>288</sup> Broome had supported the Smoke-Free East Baton Rouge's 2015 ordinance drive while campaigning to become mayor-president.

On June 7, 2017, Baton Rouge's new smokefree ordinance was publicly revealed.<sup>290</sup> As proposed, the ordinance prohibited smoking in bars and casinos.<sup>290</sup> The legislation exempted cigar and hookah bars, courtyards and patios at bars and casinos, outdoor seating, and private clubs from restrictions.<sup>290</sup> Smokers faced a \$50 penalty per offense. Establishments faced a \$500 penalty for initial offenses, a \$700 penalty for their second violation in a year, and a \$900 penalty for additional infractions within a year. Businesses that offended smoking restrictions five times in one year faced possible occupancy permit revocation. The ordinance tasked the Baton Rouge Fire Department with enforcement.

Seven of the East Baton Rouge Parish Metropolitan Council's 12 members sponsored the ordinance by the time of its reveal, likely ensuring its passage (Table 12.27). Former Councilmembers John Delgado and Ryan Heck, who had voted against the previous ordinance, were replaced by Barbara Freiberg and Matt Watson, who were elected to office in 2016.<sup>290</sup>

The ordinance faced opposition from some Parish Metro Council members as well as the gaming community. Councilmember Buddy Amoroso, who voted against the 2016 ordinance, expressed concern that gaming profits could decline similarly to Harrah's in New Orleans.<sup>290</sup> (Harrah's claimed to suffer a 20% decline in profits after the 2015 smokefree ordinance passed there, which TFL contested.<sup>290</sup>) He also feared Baton Rouge would lose tax revenue from declining business at casinos. After the ordinance was announced in late May but before its provisions were revealed on June 7, Councilmember Trae Welch, who also rejected the 2015 ordinance, indicated he would vote against smoking restrictions believing it was wrong to prohibit the use of legal substances.<sup>286</sup> In late May 2017, the Louisiana Casino Association claimed that smoking restrictions caused business to decline at casinos and asserted the public can choose what areas to frequent. The L'Auberge casino reiterated its opposition to smoking restrictions, which it fought the previous year.<sup>286, 290</sup>

### ***Smoke-Free East Baton Rouge Builds Support for 2017 Ordinance***

To generate support for the smokefree ordinance before the East Baton Rouge Parish Metropolitan Council considered the legislation on June 28, 2017, Smoke-Free EBR released a poll in mid-June showing that Baton Rouge's public favored prohibiting smoking in bars and casinos.<sup>292</sup> The survey found that most people, in particular women, supported restricting

Table 12.27: East Baton Rouge Parish Metropolitan Council Membership and Sponsorship of 2017 Smokefree Ordinance <sup>290, 291</sup>	
Councilmember	Ordinance Sponsor
Buddy Amoroso	No
Chauna Banks	Yes
LaMont Cole	Yes
Donna Collins-Lewis	Yes
Barbara Freiberg	Yes
Erika Green	Yes
Dwight Hudson	No
Chandler Loupe	No
Matt Watson	Yes
Trae Welch	No
Tara Wicker	Yes
Scott Wilson	No

smoking in those venues. 50% of smokers that responded to the survey also supported smoking restrictions.

Smoke-Free East Baton Rouge partnered with Miss Black Louisiana US Ambassador LeighAnna Kingvalsky to promote smoking restrictions. She participated in a question and answer session with the Smoke-Free EBR Coalition on Facebook live.<sup>211</sup> Having previously worked in Baton Rouge casinos, she shared her experience working in secondhand smoke. Kingvalsky had a letter published on June 23, 2017 by the Baton Rouge *Advocate* recalling her experience working in secondhand smoke at a casino and her ultimately leaving to find a smokefree workplace, a luxury she claimed many of her coworkers did not have.<sup>293</sup> She highlighted that 7,300 nonsmokers die in the United States every year from secondhand smoke, and pushed the people of Baton Rouge to pressure their councilmembers to back the ordinance.

Kingvalsky had a letter published ... by the Baton Rouge *Advocate* recalling her experience working in secondhand smoke at a casino and her ultimately leaving to find a smokefree workplace, a luxury she claimed many of her coworkers did not have. She highlighted that 7,300 nonsmokers die in the United States every year from secondhand smoke ....

Smoke-Free EBR organized events and used Facebook and Twitter to conduct outreach before the East Baton Rouge Parish Metropolitan Council considered the smokefree ordinance.<sup>211, 212</sup> The Coalition organized two smokefree nights at bars to promote clean air policies before the hearing. In addition, Smoke-Free EBR disseminate digital flyers, informational videos, tobacco health statistics, news and blog posts, and local radio interviews with bill sponsors Matt Watson and Barbara Freiberg where they discussed the smokefree ordinance.<sup>211, 294, 295</sup> The Coalition also promoted its smokefree events using Facebook and Twitter, and used the social media platforms to share action alerts and an event invite<sup>296</sup> for the June 28, 2017 East Baton Rouge Parish Metropolitan Council hearing. Smoke-Free East Baton Rouge also asked its Facebook followers to pressure Councilmembers to support the smokefree ordinance and provided contact information to reach them.<sup>211</sup>

### ***The First Baton Rouge Hearing: A Seemingly Sure Bet Narrowly Avoids Disaster***

The East Baton Rouge Parish Metropolitan Council considered the ordinance on June 28, 2017. Health voluntaries, tobacco control advocates, and members of the bar, gaming, and music communities testified in support of smoking restrictions (Table 12.28). Opposition to the smokefree ordinance primarily came from the gaming industry.

After testimony, Councilmember Buddy Amoroso motioned for the East Baton Rouge Parish Metropolitan Council to defer consideration of the ordinance for 30 days, primarily because of its enforcement provisions. Following the motion, Councilmember Trae Welch questioned if the Baton Rouge City Fire Department had jurisdiction to enforce smoking restrictions in unincorporated areas of the parish, and if fire departments in those areas had to carry out the law. Welch also took issue with the bill stating that smoking restriction violations would be reported through the Parish's 311 line. He believed another agency could provide better enforcement.

Welch's concerns sparked debate and confusion over who should enforce smoking restrictions. The issue led two of the ordinance's sponsors, Barbara Freiberg and Matt Watson, to support a deferral. While debate over the ordinance's fate continued, Councilmembers Lamont Cole, Tara Wicker, and Donna Collins-Lewis advocated for the bill's passage to protect public health.

Cole argued that the council should protect public health and save lives, and that the city-parish government would assist any job training for casino employees that lost employment. He had TFL Executive Director Tonia Moore explain that casino revenue had declined in Baton Rouge at two casinos over five years because of the arrival of a new casino in 2012. Next, Cole highlighted that casino management did not work in smoking environments while casino employees needed to take breaks to avoid smoke exposure.

Cole argued that the council should protect public health and save lives, and that the city-parish government would assist any job training for casino employees that lost employment.

Councilmember Wicker asked L'Auberge staff about the effectiveness of their air ventilation systems, which they claimed effectively scrubbed the air of odor and toxins. Their assertion was later rebuked by Councilmember Donna Collins-Lewis. Wicker indicated that casinos could easily enforce smoking restrictions on their own, countered assertions by opposing councilmembers that the ordinance was government overregulation, and reminded attendees that research proved secondhand smoke was harmful.

Councilmember Donna Collins-Lewis asked LeighAnna Kingvalsky, Miss Black Louisiana, a former casino employee, and spokesperson for Smoke-Free EBR how close smokers sat next to gaming staff. She asked the question to highlight that ventilation systems did not prevent secondhand smoke exposure. Collins-Lewis asserted that smokers could step outside to smoke if they felt inclined and rebuffed a request from a Pinnacle Entertainment representative to allow for a 1 year implementation period to mitigate revenue declines at the L'Auberge if the ordinance passed (the legislation had a six month implementation timeline).<sup>299</sup>

Opposition from councilmembers came from Trae Welch, Buddy Amoroso, and Scott Wilson. Welch, generally opposed to adopting smoking restrictions, took issue with the ordinance's enforcement provisions. Amoroso worried that riverboat casinos might relocate to avoid smoking restrictions. In response to questions from Amoroso, Louisiana Casino Association President Wade Duty said no instance of relocation had happened in Louisiana but claimed companies might react to lost revenue. He added that only New Orleans, and Baton Rouge if the ordinance passed, would have active smoking restrictions on casinos in the state. Councilmember Wilson voiced concern that smoking restrictions were government overreach that could lead to restrictions on other products like fast food.

The East Baton Rouge Parish Metropolitan Council ultimately deferred consideration of the smokefree ordinance to August 9, 2017, primarily to determine how to enforce the legislation. The Council initially failed to approve the motion in a split vote. Councilmembers subsequently failed to pass the ordinance in another split vote. Councilmember Trae Welch, who voted against the ordinance, motioned to reconsider the bill and allow another deferral vote for

Table 12.28: Testimony at June 28, 2017 Hearing on East Baton Rouge Smokefree Ordinance* <sup>297, 298</sup>			
Person	Organization	Position	Testimony
Proponents			
Raegan Carter <sup>211</sup>	Louisiana Public Health Institute	Senior Manager	Unknown*
Onjewel Smith	Americans For Nonsmokers' Rights	Southern States Strategist	<ul style="list-style-type: none"> <li>• According to gaming industry, Regional competition has major impact on gaming revenue, economy has impact, market saturation has impact. Not smoking policies.</li> <li>• Need for new players has industry looking at millennials, of which 78% of millennial gamers want smokefree environments.</li> <li>• Lost mom a few years before to secondhand smoke-caused lung cancer.</li> </ul>
Renee Chatelain	Arts Council of Greater Baton Rouge	President and CEO	<ul style="list-style-type: none"> <li>• Represents arts and entertainers effected by bill.</li> <li>• Artists and entertainers are special to city and help make it unique.</li> <li>• Protect artists and entertainers.</li> </ul>
Tonia Moore	Tobacco-Free Living	Executive Director	<ul style="list-style-type: none"> <li>• Air quality in Baton Rouge is awful according to study.</li> <li>• Secondhand smoke has negative health effects.</li> <li>• Baton Rouge customers are exposed to unhealthy air quality in smoking bars. Patrons of smokefree bars exposed to healthy air similar to outdoors.</li> <li>• Comprehensive smokefree policy only proven way to limit harmful exposure to secondhand smoke.</li> <li>• 97% decrease in air quality unhealthiness and other Louisiana locations after smokefree laws.</li> <li>• According to Louisiana gaming commission, since 2007, gross gaming revenue for Harrah's and boomtown casinos have tremendously declined over ten years. Not from smokefree air policies.</li> <li>• Other casinos in other parishes remain stable.</li> <li>• Harrah's reported 10% decline, not the 20-30% the industry claims will happen. Misleading to claim smoking part of decline.</li> <li>• Baton Rouge casinos also have general declines.</li> </ul>
Suzy Sonnier	Baton Rouge Health District	Executive Director	<ul style="list-style-type: none"> <li>• Smoking is leading cause of preventable death.</li> <li>• Secondhand smoke is harmful.</li> <li>• Health community supports ordinance.</li> <li>• Consider costs in lives and healthcare expenses to community from smoke exposure.</li> </ul>
Remi DeMatteo	Bulldog Baton Rouge (beer garden)	Manager	<ul style="list-style-type: none"> <li>• Bar went voluntarily smokefree in 2015.</li> <li>• Partly done out of solidarity with sister stores in New Orleans.</li> <li>• Mostly done because it was right thing to do.</li> <li>• Fears of lost guests and revenues were unfounded.</li> <li>• Maternal secondhand smoke exposure increased miscarriage risk by 11% according to 2014 study (Speaker's wife was pregnant when bars went smokefree).</li> </ul>

			<ul style="list-style-type: none"> <li>• 2006 Surgeon General Report found causal relationship between secondhand smoke and SIDS.</li> <li>• Government tells businesses what to do all the time.</li> <li>• Cannot serve military members under 21, so he does not.</li> <li>• Year over year revenue increased 17 percent year after bar went smokefree.</li> </ul>
Henry Turner		Musician	<ul style="list-style-type: none"> <li>• Smoking restrictions are a small thing, should be done for health.</li> <li>• Why are we protecting tobacco companies and preserving money despite health?</li> <li>• What is more important, health or economics?</li> </ul>
Ashley Bridges	American Heart Association	State Government Relations Director	<ul style="list-style-type: none"> <li>• Secondhand smoke exposure immediately and negatively impacts the cardiovascular system.</li> <li>• Can cause coronary heart disease and stroke.</li> <li>• Can cause heart attacks.</li> <li>• Can cause lung cancer in adults that have not smoked.</li> <li>• Secondhand smoke exposure at work or at home can increase lung cancer risk 20-30%.</li> <li>• Increases risk of stroke and heart disease 2-4 times.</li> <li>• Tobacco use leading preventable cause of death in US.</li> <li>• In 2014 Louisiana had 7<sup>th</sup> highest death rate from cardiovascular disease in US.</li> <li>• Cardiovascular disease leading cause of death in Louisiana by 30%.</li> <li>• Protecting all workers in this parish is role of government.</li> <li>• Why should rights of one person infringe on another's?</li> <li>• Government regulates all aspect of life, why not air quality.</li> </ul>
Peter Simon		Musician	<ul style="list-style-type: none"> <li>• Musicians need money and cannot always choose the air they breathe.</li> </ul>
LeighAnna Kingvalsky		Former casino worker / Miss Black Louisiana	<ul style="list-style-type: none"> <li>• Air filtration systems fail to prevent secondhand smoke exposure.</li> <li>• Knew that secondhand smoke exposure put her at risk of tobacco-related illnesses but needed to earn a living, work other jobs, and get into physical therapy school.</li> <li>• Employees exposed to secondhand smoke for hours.</li> <li>• Smoking restrictions will save lives.</li> <li>• Make Louisiana a healthier state.</li> </ul>
Lydia Kuykendal	American Cancer Society	Louisiana Director of Government Relations	<ul style="list-style-type: none"> <li>• If I was a restaurant owner and told you that I could increase profits by selling rotten meats, how would you react?</li> <li>• These people will come to you and say I can make 20% more profits you just need to let me have toxic air.</li> <li>• Secondhand smoke harms and kills people.</li> <li>• Right to smoke ends when it infringes my rights.</li> <li>• Ordinance regards public safety, not government intrusion.</li> <li>• Government's function is primarily to protect public safety.</li> </ul>

			<ul style="list-style-type: none"> <li>• Closest smoking casinos will be three-hour roundtrip from Baton Rouge if ordinance passes.</li> <li>• People willing to drive three hours for another casino instead of step outside for five minutes probably did not like their casino.</li> <li>• Workers do not have choice to work in secondhand smoke. They need an income.</li> </ul>
Claudia Rodas	Campaign for Tobacco-Free Kids	Southern Region Director	<ul style="list-style-type: none"> <li>• Organization seeks to create a future free of tobacco illness and death. Works at all levels of government.</li> <li>• Smokefree ordinance will save lives.</li> <li>• Tobacco advocates have debunked casino industry claims around smoking restrictions.</li> <li>• Wants to create safe environment for her kids.</li> <li>• Council has opportunity to protect children of these families that work in secondhand smoke.</li> <li>• Not a lot of smokers in casinos, but many employees in secondhand smoke every day.</li> <li>• Protect citizens.</li> </ul>
Greg Gormanis		Psychologist	<ul style="list-style-type: none"> <li>• Participated in smokefree efforts at state level and in Alexandria.</li> <li>• Smokers want to quit, and ordinance may assist them.</li> <li>• Citations are not really issue, since the laws are usually self-enforcing.</li> <li>• Prominent musicians oppose secondhand smoke exposure.</li> <li>• Catch up to Alexandria and other places.</li> </ul>
Taylor Caffrey			<ul style="list-style-type: none"> <li>• Served in Vietnam between 1968 and 1969. Americans suffered about 7000 deaths.</li> <li>• Get that amount from secondhand smoke- induced lung cancer deaths.</li> <li>• Healthcare issue is America's Vietnam.</li> <li>• Government can protect public from known health risks.</li> <li>• Great step to protect public health, not complicated like fixing insurance.</li> </ul>
Roosevelt Johnson	Alexandria City Council	President	<ul style="list-style-type: none"> <li>• Important for economic growth and development.</li> <li>• Alexandria became healthier community and city after passing smokefree ordinance.</li> <li>• No businesses closed because of smokefree ordinance in Alexandria.</li> <li>• Follow other Louisiana cities and demonstrate that you care about workplaces, people, economic development.</li> <li>• Means a lot for people when city council chooses to be smokefree.</li> </ul>
Opponents			
Matthew Allen	East Baton Rouge Libertarian Party	Treasurer	<ul style="list-style-type: none"> <li>• Laws carry inherent violence with necessity of enforcement and compliance.</li> <li>• Entering bar with smoking allowed is entirely consensual.</li> <li>• Law threatens violence to consenting adults.</li> <li>• Casinos are not at fault for paying better or being source of work.</li> </ul>



			<ul style="list-style-type: none"> <li>• Cannot induce others to change.</li> <li>• Issue should be handled by boycott, not government.</li> </ul>
Trivia Witherspoon	L'Auberge Casino / Pinnacle Entertainment	Supervisor	<ul style="list-style-type: none"> <li>• Understood the job she was taking and the environmental conditions when she applied.</li> <li>• Working in smoke is a choice for employees.</li> <li>• Workplace is not a necessity to public like Walmart or other stores.</li> <li>• Smoking existed in workplace before employees started.</li> <li>• Company has excellent ventilation system.</li> <li>• Workplace accommodates employees.</li> <li>• Has had no health problems with smoke in five years. Will have to pay for medical issues on her own.</li> <li>• Working in smoke affects her body and is her choice.</li> </ul>
Ryan Hernandez	L'Auberge Casino / Pinnacle Entertainment	Casino Host	<ul style="list-style-type: none"> <li>• Workplace cares about employees.</li> <li>• If revenue decreases there could be loss of jobs.</li> <li>• Workplace provides tuition reimbursement.</li> <li>• Employees could face lost pay because 70% work off tips. Could also see decrease in wages with reduced revenue.</li> <li>• Revenue allows casino to invest in community.</li> <li>• Company contributed to community after natural disaster.</li> <li>• Company uses local vendors.</li> </ul>
Anna Caffrey	L'Auberge Casino / Pinnacle Entertainment	Employee	<ul style="list-style-type: none"> <li>• Company cares about and is involved in community.</li> <li>• Company provided over 2000 volunteer hours to community since opening 5 years ago.</li> <li>• Company provided over \$400k to employees after natural disaster.</li> <li>• Company has state of the art ventilation.</li> <li>• Company cares about employees and provides great benefits.</li> <li>• Customers make choice to go to casino.</li> <li>• Other people cannot afford to go to casinos, but they pay taxes, etc.</li> </ul>
Mickey Parington	L'Auberge Casino / Pinnacle Entertainment	General Manager	<ul style="list-style-type: none"> <li>• Provide opportunities to employees and customers.</li> <li>• Casino has state of art ventilation system.</li> <li>• People have choice to work or visit casino.</li> <li>• Employ over 1,044 workers, 30% in the casino. In the casino, only a small portion are smoking areas.</li> <li>• 160,000 sq. ft in casino area, only 30k sq. feet are smoking areas.</li> <li>• 70% of team members rely on tips. Less business harms income of 70%.</li> <li>• Casino will lose revenue because of ordinance.</li> <li>• Please afford time to mitigate business drop if the ordinance is passed.</li> </ul>
Wade Duty	Louisiana Casino Association	Executive Director	Testimony not captured*
*Portion of recorded testimony partially or totally missing.			

August 9. Councilmembers subsequently approved his motion in a 7-6 vote, then approved deferring consideration of the ordinance until August 9.

### ***Smoke-Free East Baton Rouge Continues to Push the Bill***

After the East Baton Rouge Parish Metropolitan Council delayed consideration of the ordinance, Smoke-Free EBR continued promoting the legislation using social media. The coalition circulated articles, facts, videos, and action alerts on Facebook and Twitter to maintain awareness and pressure for smoking restrictions.<sup>211</sup> On July 1, the coalition also shared a link on its Facebook profile to an online poll hosted by the Greater Baton Rouge Business Report asking if prohibiting smoking in casinos would increase, decrease, or have no effect on people's desire to visit casinos. Smoke-Free East Baton Rouge also shared the Facebook profiles of Councilman Buddy Amoroso, Barbara Freiberg, Trae Welch, and Matt Watson and asked its supporters to contact their Council representatives in support of the smokefree ordinance.<sup>211</sup> The Coalition also directed its Facebook followers to Parish Metro Councilmember contact information on its campaign website.

Smokefree ordinance sponsor Donna Collins-Lewis generated earned media for the smokefree ordinance by participating in a local radio interview on July 6, 2017.<sup>300</sup> In the interview, she reaffirmed her support for the legislation and expressed that secondhand smoke was harmful. She argued that gamblers would go to Baton Rouge casinos regardless of smoking restrictions.

The Smoke-Free East Baton Rouge coalition generated earned media by publishing letters in Baton Rouge's newspaper of record, *The Advocate*. In early July, tobacco control advocates wrote letters to *The Advocate* promoting clean air restrictions.<sup>301</sup> Peter Simon, a Baton Rouge musician that testified in support of smoking restrictions at the June 26 hearing, published a letter on July 2 highlighting his early years performing when he had to take gigs regardless of a place's smoking policy.<sup>301</sup> Simon recalled the harmful effects he and his colleagues felt from secondhand smoke exposure. Simon stated he became able to turn down smoking venues, depriving fans of performances. He said that 21 states had smokefree laws and that 48 of the 60 major American music performance markets were smokefree, and that Baton Rouge needed to enact a clean air policy to stop harming performers and "become one of America's great cities."<sup>301</sup> Shortly after Simon, Matthew Wallace, a board member of Smoke-Free East Baton Rouge coalition partner March of Dimes, published a letter on July 4 in *The Advocate* calling for the East Baton Rouge Parish Metro Council to adopt smoking restrictions.<sup>302</sup> He asserted secondhand smoke is harmful to pregnant women, women of child bearing age, infants and youth. Wallace also stated the harmful side effects of secondhand smoke on fetuses and infants, including birth defects, allergies and asthma, sudden infant death syndrome, and preterm birth among others. He revealed that East Baton Rouge Parish had the highest infant mortality rate in Louisiana and the second most preterm births, which he claimed could be alleviated by reducing exposure to secondhand smoke via a comprehensive clean air law. He asserted that workers should not have to decide between providing for their families or the health of themselves and their offspring.

The Smoke-Free East Baton Rouge Coalition released an air quality survey of Baton Rouge Bars and Casinos on August 4, 2017<sup>303</sup> to inform the public about their exposure to harmful secondhand smoke and maintain awareness of the Baton Rouge ordinance. The study,

conducted by the Roswell Park Cancer Institute, evaluated the number of cigarettes consumed at 20 bars and casinos in East Baton Rouge Parish. According to an August 4 article in the Greater Baton Rouge Business Report, Smoke-Free East Baton Rouge spokesperson and LPHI Regional Manager Raegan Carter declared “‘We’ve known the air quality was unhealthy in bars and casinos that allow smoking but haven’t have the hard data to prove the case in Baton Rouge. This study shows, without a doubt, that employees in these workplaces are at a significantly greater risk of cancer, heart disease and other tobacco-related illnesses.’”<sup>303</sup> The air quality survey found that Baton Rouge bars and casinos had harmful air quality due to secondhand smoke.

<p>... East Baton Rouge Parish had the highest infant mortality rate in Louisiana and the second most preterm births, which he claimed could be alleviated by reducing exposure to secondhand smoke via a comprehensive clean air law.</p>	<p>The Smoke-Free East Baton Rouge organized smokefree events to build support for the ordinance before the East Baton Rouge Parish Metropolitan Council vote on August 9.<sup>211</sup> The coalition sponsored at least two smokefree nights at bars during July and three in August to promote clean air policies and maintain public awareness and support of the area’s pending smokefree legislation.</p>
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***The East Baton Rouge Parish Metropolitan Council Passes the Smokefree Ordinance***

The East Baton Rouge Parish Metropolitan Council considered the smokefree ordinance at a hearing on August 9, 2017. Smoke-Free East Baton Rouge coalition members, tobacco control and health voluntary representatives, city government employees, performers, a bar owner, and Baton Rouge residents testified in support of the ordinance (Table 12.29). Only Louisiana Casino Association Executive Director Wade Duty and Baton Rouge Libertarian Party member Matthew Allen testified against the ordinance (Table 12.29).

After testimony concluded, Councilmember Watson offered amendments to the ordinance that assuaged concerns from the previous hearing and moved to adopt the legislation with his changes.<sup>304</sup> The amendments redefined the definition of enclosed spaces to be areas with a floor and ceiling with over two walls (including movable dividers), reassigned enforcement responsibility from the Baton Rouge Fire Department to the police, stipulated the citation and judicial process for violations, required businesses to ask smoking restriction offenders to stop smoking and remove them from their premises if they continued violating the law, permitted smoking in courtyards without roofs, and extend the implementation date to June 1, 2018.<sup>304</sup>

Following Watson’s motion, Councilmember Trae Welch introduced a substitute motion to amend Watson’s amendments to define enclosed areas as more than three walls.<sup>304</sup> He also moved for implementation to start one year from date of adoption instead of June 1, to allow small businesses to adjust to smoking restrictions and become compliant with them.<sup>304</sup>

Before voting on Councilmember Welch’s substitute motion, Councilmember Scott Wilson declared his opposition to the ordinance.<sup>304</sup> He said it should be the right of businesses to set their own smoking policies. He added that people do not have to frequent places with smoke, and countered claims that people working in smoking workplaces needed protection by reasoning that some employees are smokers. He argued the free market should be allowed to

Table 12.29: Testimony at August 9, 2017 Hearing on East Baton Rouge Smokefree Ordinance<sup>304, 305</sup>

Person	Organization	Position	Testimony
Raegan Carter*	TFL / Smoke-Free East Baton Rouge	Regional Manager /Spokesperson	<ul style="list-style-type: none"> <li>• Ordinance is reasonable legislation to protect bar and gaming employees, as well as the public.</li> <li>• Government’s primary responsibility is to protect public health and safety.</li> <li>• Provide equal treatment to bar and gaming employees.</li> <li>• Air quality in Baton Rouge bars and casinos are hazardous and can lead to numerous tobacco-related illnesses.</li> <li>• Smoking restrictions would immediately improve public health.</li> <li>• Any exposure to secondhand smoke unsafe.</li> <li>• Secondhand smoke exposure is linked to multiple diseases.</li> <li>• Ventilation systems do not prevent secondhand smoke exposure or make it safe.</li> <li>• Smoking restrictions in New Orleans did not cause revenue declines in New Orleans casinos.</li> <li>• Casinos operate in an unstable industry influenced by regional competition and the economy.</li> <li>• Baton Rouge’s Belle and Hollywood Casinos saw significant declines because of the L’Auberge opening.</li> <li>• People attend casinos to enjoy gaming and services, not to smoke.</li> <li>• 70% of East Baton Rouge residents support proposed smoking restrictions.</li> <li>• 49% of voters plan to visit smokefree bars and casinos.</li> </ul>
Cynthia Hallett	Americans for Nonsmokers’ Rights	President and CEO	<ul style="list-style-type: none"> <li>• More than 800 smokefree gambling facilities in the United States.</li> <li>• 20 states prohibit smoking in gaming establishments.</li> <li>• Localities are prohibiting smoking in gaming establishments.</li> <li>• Smoking restrictions better the economy and public health.</li> <li>• Casinos claim smoking restrictions harm profits.</li> <li>• Industry profits mainly impacted by market saturation, regional competition, and the economy.</li> <li>• Gaming industry seeking customers. More than 85% of United States population does not smoke.</li> <li>• 68% of millennial gaming customers prefer smokefree venues according to gaming industry research.</li> </ul>
Michael Foster	Michael Foster Project (band)	Musician	<ul style="list-style-type: none"> <li>• Honored to represent Baton Rouge at performances around the country and world.</li> <li>• Performing in places that prioritize health and then performing in Baton Rouge, where smoking is allowed, is disappointing.</li> <li>• Sad that Louisiana youth that will grow up and become performers will work in smoke-filled environments.</li> <li>• Hopes his children will be able to perform in smokefree environments.</li> <li>• Students graduate from public school system each year and enter jobs that expose them to secondhand smoke.</li> </ul>
Tony King		Comedian	<ul style="list-style-type: none"> <li>• Work requires him to be in smoke-filled environments.</li> <li>• Never smoked in his life.</li> </ul>

			<ul style="list-style-type: none"> <li>• He should not be impacted by secondhand smoke when he does not smoke.</li> <li>• He should be able to entertain the public and provide for his family without secondhand smoke exposure.</li> <li>• Think about families impacted by harmful effects of secondhand smoke.</li> </ul>
Taylor Caffrey			<ul style="list-style-type: none"> <li>• Council is meant to protect the public.</li> <li>• Prohibited smoking in bars and pubs in England ten years ago. America has not followed suit.</li> <li>• England experienced 20% reduction in heart attack deaths and 15% less strokes after prohibiting smoking in bars and pubs.</li> <li>• Employees exposed to secondhand smoke create economic costs for gaming establishments.</li> <li>• Gaming establishments want more, not less patrons.</li> <li>• Council should protect public health.</li> </ul>
Suzy Sonnier	Baton Rouge Health District		<ul style="list-style-type: none"> <li>• Peoples' environment impacts their health.</li> <li>• Ordinance can impact health wellbeing of Baton Rouge.</li> <li>• Cancer is far too wide reaching and impactful.</li> <li>• Although Baton Rouge has great healthcare, prevention is the best strategy for protecting public health.</li> </ul>
Randy Hayden <sup>306</sup>		Lobbyist	<ul style="list-style-type: none"> <li>• Read end portion of March of Dimes letter urging Metro Council to protect women and children by passing comprehensive smokefree ordinance.**</li> <li>• Lost family friend to lung cancer the night before.</li> </ul>
George Newman			<ul style="list-style-type: none"> <li>• Not affiliated with Smoke-Free East Baton Rouge.</li> <li>• Suffered operations for lung and throat cancer.</li> <li>• Strongly enforce smoking restrictions.</li> <li>• Has to carry device around to evacuate phlegm from lungs.</li> <li>• Went to casinos regularly when he settled in Baton Rouge after over 27 years in military. He no longer can game because his lungs are compromised by smoke.</li> <li>• People can be harmed by smoke exposure at any age.</li> <li>• Louisville Kentucky implemented smoking restrictions and found from a study that revenue increased instead of decreased.</li> <li>• Adopt and enforce smoking restrictions.</li> </ul>
Matthew Allen	East Baton Rouge Libertarian Party Parish Executive Committee	Treasurer	<ul style="list-style-type: none"> <li>• Creates opposition between consenting adults on private property with law enforcement and Metro Council.</li> <li>• Fines unfair to levy on consenting and peaceful citizens.</li> <li>• Law enforcement carries implicit threat of violence if people refuse to pay fines.</li> <li>• Communication is right way to change behavior, not compulsion.</li> </ul>
Wade Duty	Louisiana Casino Association	Executive Director	<ul style="list-style-type: none"> <li>• People that are not in the casino industry claim smoking restrictions do not negatively impact industry.</li> <li>• Would gaming establishments oppose smoking restrictions if they were not economically harmful.</li> </ul>

			<ul style="list-style-type: none"> <li>• Gaming establishments do not acquire new customers after smoking restrictions, like smoking restriction opponents claim.</li> <li>• Jobs and taxes impacted by revenue.</li> <li>• Smoking restrictions will reduce riverboat fees and revenue 10-15%.</li> <li>• Waiting for the state government to pass a law clarifying outdoor smoking areas for casinos would make smokefree policy implementation easier and less damaging.</li> </ul>
Jared Hymowitz	Mayor's Healthy City Initiative (Healthy BR)	Director	<ul style="list-style-type: none"> <li>• Program aims to improve health and wellbeing of East Baton Rouge Parish and the City of Baton Rouge.</li> <li>• 88% of voters consider it somewhat or very dangerous for employees to work in secondhand smoke.</li> <li>• CDC causes over 7,300 nonsmokers in the US to die from lung cancer.</li> <li>• Smoke is primary cause of Louisiana lung cancer deaths.</li> <li>• Nonsmokers that encounter secondhand smoke at their workplaces or in their residences face 25-30% increased risk of heart disease.</li> <li>• Heart Disease is greatest cause of death in Louisiana.</li> <li>• Stroke risk increased 20-30% by secondhand smoke exposure, which causes 8000 deaths a year.</li> <li>• 70% of East Baton Rouge Parish residents support proposed smoking restrictions.</li> </ul>
Jennifer Carwile	Self-employed	Artist	<ul style="list-style-type: none"> <li>• Lafayette approved smokefree ordinance before Baton Rouge, and Baton Rouge should have adopted law before that city.</li> </ul>
Joe Hall	Phil Brady's Bar and Grill	Owner	<ul style="list-style-type: none"> <li>• Bar has been nonsmoking for most weekend events for ten years.</li> <li>• Revenue improves during smokefree times.</li> <li>• More people are nonsmokers than smokers.</li> <li>• Employees do not need to be exposed to secondhand smoke.</li> <li>• Secondhand smoke causes cancer.</li> <li>• Understands time is needed to build outside smoking areas.</li> <li>• Double the amount of people go to smokefree performances.</li> <li>• People come to bars to drink, not to smoke.</li> <li>• People go to casinos to gamble, not smoke.</li> <li>• People will smoke outside.</li> </ul>
<p>*Provided hundreds of supporter cards to council.</p> <p>**Provided March of Dimes letter copies to councilmembers.</p>			

operate and asserted smokefree legislation should be pursued at the state level to provide businesses a “level playing field.”<sup>304</sup>

The East Baton Rouge Parish Metropolitan Council first voted on Welch’s substitute motion and then Watson’s. The Council rejected Welch’s proposal 3-9. The Council subsequently passed the ordinance with Councilmember Watson’s amendments in a 7-5 vote (Table 12.30). All seven original sponsors voted for the legislation.

After the East Baton Rouge Parish Metropolitan Council approved the ordinance on August 9, Mayor-President Sharon Weston Broome signed it into law on November 16, 2017,<sup>307</sup> the American Cancer Society’s Great American Smokeout Day.<sup>308</sup> As she signed the ordinance, Broome remarked that “Before this ordinance, Baton Rouge was one of the largest cities in the country that still allowed smoking in bars and casinos.”<sup>307</sup> Smoke-Free East Baton Rouge representatives as well as East Baton Rouge Parish Metro Councilmembers and smokefree ordinance sponsors Banks, Cole, Collins-Lewis, Freiberg, Green, Watson, and Wicker attended the signing. The Smoke-Free EBR Coalition commemorated the signing by holding a “Great American Smokeout Celebration” at the Cadillac Café.<sup>309</sup>

“Before this ordinance, Baton Rouge was one of the largest cities in the country that still allowed smoking in bars and casinos.”

As adopted, the ordinance prohibited smoking and vaping in enclosed workplaces including bars and casinos, child care establishments, parks, playgrounds and healthcare facilities.<sup>310</sup> The ordinance also set a 25-foot distance requirement for smoking or vaping from any entryway or exit at a facility or building hosting or operated by the city-parish.<sup>310</sup> Tobacco product sales were prohibited within 300 feet of schools, churches, parks, childcare establishments, and public libraries unless tobacco retailers had been operating in that location before December 31, 2017.<sup>310</sup> The sales distance did not apply to electronic smoking device retailers and those devices. The legislation exempted tobacco sector businesses and tobacco retailers, electronic smoking device retailers, and cigar and hookah bars (to qualify to be a cigar or hookah bar, businesses had to have 20% or more of annual gross income come from in-store purchases of those products or related rental or sale of accessories in calendar year 2016, or by 6 months of opening if they were not active December 31, 2016<sup>310</sup>) from smoking and vaping

Table 12.30: East Baton Rouge Parish Metropolitan Council Votes on 2017 Smokefree Ordinance <sup>304</sup>		
Councilmember	Substitute Motion Vote	Ordinance Vote (Combined with Matt Watson’s amendments)
Buddy Amoroso	No	No
Chauna Banks	No	Yes
LaMont Cole	No	Yes
Donna Collins-Lewis	No	Yes
Barbara Freiberg	No	Yes
Erika Green	No	Yes
Dwight Hudson	No	No
Chandler Loupe	Yes	No
Matt Watson	Yes	Yes
Trae Welch	Yes	No
Tara Wicker	No	Yes
Scott Wilson	No	No

restrictions.<sup>310</sup> The ordinance also allowed smoking and vaping in outdoor, unroofed spaces at bars, casinos and restaurants, as well as convention centers when hosting events related to convenience store associations, tobacco, or electronic cigarettes.<sup>310</sup> Vehicles were also exempted from smoking and vaping restrictions unless they were used for healthcare, childcare, daycare, or group home transportation.<sup>310</sup> Smokefree and vaping restriction infractions by businesses resulted in a maximum \$500 fine for first offenses, a maximum \$700 fine for second offenses within 12 months, and maximum \$900 fines for subsequent offenses within 12 months.<sup>310</sup> Businesses faced possible occupancy permit revocation if five infractions occurred within 12 months.<sup>310</sup> Smokers and electronic smoking device users faced \$50 fines for every infraction of smoking restrictions.<sup>310</sup> Places where smoking and vaping were allowed, restricted or prohibited were required to post relevant signage at entrances and at “appropriate locations within” their establishment.<sup>310</sup>

### ***Maintaining Momentum for Implementation of Baton Rouge Ordinance***

The Smoke-Free East Baton Rouge Coalition maintained public outreach after the Baton Rouge ordinance passed to sustain awareness and support for the new smoking restrictions until their implementation on June 1, 2018. The Coalition posted about Baton Rouge’s impending smoking restrictions, smokefree policies, the negative impacts of secondhand smoke, tobacco cessation services and the benefits of quitting smoking, general health information, and disseminated pro-clean air messages and smokefree event information on their Facebook and Twitter pages. As the ordinance’s date of effect neared, the Coalition made posts counting down to implementation.

The Smoke-Free East Baton Rouge Coalition hosted multiple events to promote smoking restrictions and maintain public attention on Baton Rouge’s smokefree ordinance. The Coalition served as the major sponsor of Baton Rouge’s 24<sup>th</sup> annual Baton Rouge Blues Festival held on April 14-15, 2018.<sup>311</sup> The Coalition operated an informational booth at the event where it provided promotional materials bearing smokefree messaging.<sup>211</sup> In addition, the Coalition sponsored the Changing and Advancing Nutrition Now – CANN 5K race on May 3, 2018, The Futures Fund Spring Student Showcase and Healthy BR Family Fit Day on May 19, 2018, and a music event at the bar Spanish Moon on May 26, 2018.<sup>211</sup>

To assist implementation of Baton Rouge’s ordinance, Smoke-Free East Baton Rouge produced a toolkit explaining smoking restrictions, how businesses and the public could comply with the new law, and penalties for violations.<sup>312</sup>

The Baton Rouge ordinance was implemented on June 1, 2018, as scheduled. Smoke-Free EBR hosted an event to announce implementation of the Baton Rouge smokefree ordinance at a bar named The Bulldog.<sup>312</sup> The event featured speeches by East Baton Rouge Parish Metropolitan Councilmember Donna Collins-Lewis, s Director of the Mayor’s Healthy City Initiative Jared Hymowitz, ACS Government Relations Director Ashley Hebert, bar owner Remi DeMatteo, and musician Henry Turner supporting smokefree policies and the clean air law entering effect that day. The law’s implementation provided Baton Rouge with comprehensive smoking restrictions that prohibited smoking in most workplaces, including bars and casinos.



## TFL Launches Campaign to Secure a Comprehensive Statewide Smokefree Law in 2018

On April 3, 2018, Representative Dustin Miller (D-Opelousas) introduced HB 881<sup>313</sup> to expand state smoking restrictions beyond those established by the 2006 Louisiana Smoke-Free Air Act (Chapter 10).<sup>314</sup> Cosponsored by Representative Julie Stokes (R-Kenner),<sup>315</sup> HB 881 prohibited smoking in most public places and workplaces including bars, convention centers, gaming establishments, places licensed to have video poker or slot machines, common areas (i.e. hallways and bathrooms), hotels and motels, theaters, museums, day cares for adults and youth, public and private educational facilities, elevators, parking structures, healthcare facilities, service lines, public transit, taxis, voting places, schools, private clubs, sports facilities, retailers, restaurants, correctional facilities, as well as semi-private and private rooms occupied by one or more individuals at long term care and assisted living facilities.<sup>313</sup> The bill exempted private cars and residences, outdoor areas at workplaces (although owners could make outdoor areas smokefree with the effect of law by posting no smoking signage in said place), and designated outdoor smoking areas at bars, gaming establishments (casinos and establishments dedicated to off-track betting, pari-mutuel wagers, or slot machines). HB 881 maintained enforcement and penalties for smoking restriction violations established by the 2006 smokefree law (Chapter 10).

“We are losing too many loved ones to diseases that are largely preventable. Now is the time for changes that can save lives and create better places to work, live and play.”

The Coalition for a Tobacco-Free Louisiana (CTFLA) held a press conference with HB 881 sponsor Dustin Miller that same day to announce the launch of its Smoke-Free Louisiana Campaign<sup>315</sup> to pressure state lawmakers to pass comprehensive smokefree legislation covering bars, gaming establishments, and all other workplaces.<sup>316</sup> Primary CTFLA members for the 2018 campaign were TFL, ACS-CAN, AHA, ALA of Louisiana, LCEF, ANR, and CTFK. According to an LPHI article about the event, Representative Miller declared:

Today’s campaign announcement is the first step in moving Louisiana to be a healthier state. We are losing too many loved ones to diseases that are largely preventable. Now is the time for changes that can save lives and create better places to work, live and play.<sup>316</sup>

TFL Regional Manager and CTFLA spokesperson Raegan Carter also spoke at the event, praising local governments for passing comprehensive smokefree ordinances while asserting more action was needed to protect workers in Louisiana.

Despite support from CTFLA, HB 881 failed to pass out of its initial committee. The House Health and Welfare Committee first considered HB 881 on April 12, 2018.<sup>317</sup> During the hearing, opponents testified that profits, particularly those of gaming establishments, would be harmed by the bill’s smoking restrictions. A cigar bar owner also testified that HB 881 would cause his business to close. Lawmakers ultimately deferred consideration, fearing the bill might lead to store closures. After the postponement, HB 881 sponsor Dustin Miller developed amendments with committee assistance to exempt cigar bars and outdoor meetings from smoking restrictions, to make the bill more viable.<sup>318</sup>

CTFLA members expressed disappointment at the Committee's decision to defer HB 881. AHA Government Relations Director Ashley Hebert issued a statement after the hearing asserting that the committee's decision left people exposed to secondhand smoke and avoided a chance to make Louisiana a smoking restriction leader in the South.<sup>317</sup> TFL Regional Manager and Smoke-Free Louisiana Campaign spokesperson Raegan Carter told the media that HB 881 sought to protect employee health and did not seek to harm businesses.<sup>317</sup>

Ultimately, Representative Miller withdrew HB 881 from consideration and instead proposed House Concurrent Resolution 76 to form a committee to study secondhand smoke's impacts.<sup>319</sup> He explained his decision to withdraw HB 881 and submit HCR 76 according to Baton Rouge newspaper *The Advocate*, stating "Not that there's not a ton of information out there [regarding secondhand smoke's effects], I felt as if Louisiana businesses and legislators needed to go to the table and talk some more."<sup>319</sup> The panel would evaluate the economic effects of smoking restrictions in other states and parishes. If passed, the committee would also collect data on illnesses and medical expenses caused as a result of nonsmokers' exposure to secondhand smoke. As introduced on April 27, 2018, HCR 76 designated 17 members from the state government, municipalities, the health community, as well as business and gaming sectors to the panel (Table 12.31). The House Health and Welfare Committee amended the resolution to add five more members, bringing the total on the panel to 22 members.

HCR 76 passed the legislature with minimal resistance. The Resolution's adoption required a study committee's formation by August 1, 2018, and the production of its findings to Louisiana's state legislature by March 8, 2019.<sup>319</sup>

The Secondhand Smoke Study Committee met throughout the remainder of 2018 and early 2019. The Louisiana Department of Health's Office of Public Health (OPH), the State Department of Insurance, and tobacco control advocates presented to the committee. During a December 18, 2018 hearing OPH presented information that smoking restrictions protect and improve public health and would save the state millions in healthcare costs.<sup>324</sup> OPH claimed it could not research health outcomes between parishes because of limited research resources and other factors. OPH conducted a review that found comprehensive smoking restrictions improve public health and reduce smoking prevalence, consumption, secondhand smoke exposure, asthma deaths as well as cardiovascular problems and various heart diseases. The review also found that comprehensive restrictions reduced hospital admissions, emergency medical calls from casinos, and lowered healthcare expenses. OPH stated it could not conduct a 30-year comparative analysis. However, OPH reported that smoking-related illnesses annually cost the United States \$300 billion, and Louisiana over \$4 billion, in productivity and healthcare expenses. At the same hearing, Department of Insurance official and Smoke Study Committee Member Patrick Bell presented minimal information on the impact of secondhand smoke on insurance costs.<sup>324</sup> At a February 27, 2019 meeting, CTFK Southern Region Director Claudia Rodas and Raegan Carter, consulting for ANR, presented on the negative health and economic impacts of secondhand smoke exposure in Louisiana to committee members.<sup>325</sup> We did not find evidence that gaming, bar, or tobacco industry representatives presented to the committee.

The committee approved its final report and sent it to the Louisiana Legislature on April 1, 2019.<sup>323, 326</sup> The report determined that 23% of Louisianans smoked, above the national average of 14%, and that tobacco use was the main cause of preventable death in the state.<sup>323</sup> The report highlighted that secondhand smoke disproportionately impacted minorities, in particular

Table 12.31: HCR 76 Secondhand Smoke Study Committee Membership <sup>320-322 323</sup>				
	Original	Final (House Health and Welfare Committee Amendment)	Representative Selected	Actual position within organization
Louisiana Department of Health - Office of Public Health	+	+	Robin Rhodes	Health Community Manager
Louisiana Department of Revenue Secretary*	+	+	Shanda McClain+	Policy Services Division
Commissioner of Insurance*	+	+	Patrick Bell+	Assistant Commissioner
Department of Culture, Recreation and Tourism official	+	+	Dee Scallan	Education Coordinator
Louisiana Public Health Institute CEO*	+	+	Tonia Moore (Chair)+	Director (TFL)
Louisiana Campaign for Tobacco-Free Living	+	+	Shawna Shields	Associate Director
Louisiana Association of Business and Industry	+	+	Randy Hayden	Designee
American Heart Association of Louisiana	+	+	Ashley Hebert	Government Relations Director
American Cancer Society-Cancer Action Network	+	+	Lance Barbour	Government Relations Director
Cardiovascular Institute of the South CEO*	+	+	Amanda Lapeyrouse+	Tobacco Treatment Team Leader
Louisiana State University School of Public Health	+	+	Donna Williams^^^	Director, Associate Dean for Public Health Practice and Community Engagement
Tulane University School of Public Health and Tropical Medicine	+	+	Carolyn C Johnson	Tulane Prevention Research Center Director
Southern University Agricultural Center	+	+	Linda Brown	Communities of Color Network Director
Louisiana Cultural Economy Foundation	+	+	Kathy Richard	Healthcare Initiative Director
Louisiana Cancer Research Center	+	+	Sven Davisson	CEO
Louisiana Budget Project Director*	+	+	Stacey Roussel+	Policy Director
Louisiana Municipal Association Director*		+	John Gallagher	Executive Director
Police Jury Association of Louisiana President		+	Guy Cormier+	Assistant Director
Office of Alcohol and Tobacco Control Commissioner		+	Ernest Legier+	Senior Attorney
License holder to operate a maximum of three video poker devices at places with alcohol sales		+	Donovan Fremin^^	Video gaming operator
License holder to operate 50 video poker machines at truck stops**		+	Stan Guidroz^	Southern Operations VP, Jacobs Entertainment, inc.
*Or their designee.				
**Required approval from Louisiana Video Gaming Association.				

+Designee.

^President of Louisiana Gaming Association.

^^Past president of Louisiana and national Amusement and Music Operators Associations. Owns and operates video gaming machines, as well as bars and restaurants.

^^^Represented by proxy at least at first meeting.

African Americans. The report also referenced a study finding that the second-most negative issue for problem gamblers was smoking, behind depression.

The report reaffirmed the harmful effects of secondhand smoke exposure, that the only way to eliminate harmful exposure to secondhand smoke is through smokefree policies, and that millions of the US public remained exposed to secondhand smoke. The report also cited findings that local smokefree policies do not harm bar, bingo hall or restaurant revenue and that the 2006 Louisiana Smoke-Free Air Act had not affected tourism in the state.

The report reaffirmed the harmful effects of secondhand smoke exposure, that the only way to eliminate harmful exposure to secondhand smoke is through smokefree policies, and that millions of the US public remain exposed to secondhand smoke.

To protect the public, the report advised lawmakers to eliminate statewide smokefree exceptions permitting indoor smoking at tobacco industry conventions, Mardis Gras balls, nursing homes, bars and gaming establishments, as well as hotel and motel rooms. The report also called for incorporating “e-cigarettes and vaping in[to] a comprehensive statewide policy.”<sup>323</sup> Additionally, the committee recommended increasing tobacco taxes and tobacco control spending in the report, asserting that combining those policies with their suggested smoking restrictions could save Louisiana \$1.89 billion in annual tobacco-related healthcare expenses and reduce overall smoking rates in the state. The report suggested state lawmakers continue to support municipalities’ rights to pass comprehensive smokefree ordinances.

## Local Smokefree Ordinances as of 2020

Dedicated work by health voluntaries, tobacco control advocates and local elected officials in Louisiana led to the adoption of 28 comprehensive smokefree ordinances by January 2020 that were stronger than the Louisiana Smoke-Free Air Act passed in 2006 (Chapter 10) (Table 12.32). Smokefree ordinances safeguard 27.9% of Louisianans from secondhand smoke exposure.<sup>327, 328</sup>

Table 12.32: Localities in Louisiana with 100% Smokefree Venues <sup>2, 6, 21, 327, 329-335</sup>					
City	Year	100% Smokefree Workplaces	100% Smokefree Bars	100% Gaming Establishments	Inclusion of E-Cigarettes into Smoking Restrictions
Alexandria	2012	X	X	X	
Woodworth	2012	X	X	X	
Cheneyville	2014	X	X	X	X
Monroe	2014	X	X	X	X
Ouachita Parish	2014	X	X	X	X

West Monroe	2014	X	X	X	X
Hammond	2015	X	X	X	X
New Orleans	2015	X	X	X	X
Abbeville	2015	X	X	X	X
Bogalusa	2016	X	X	X	X
Glenmora	2017	X	X	X	X
Lafayette Parish	2017	X (2005)	X	X	X
Town of Lecompte	2017	X	X	X	X
Baton Rouge / East Baton Rouge Parish	2017	X	X	X	X
Colfax	2017	X	X	X	X
Roseland	2018	X	X	X	X
Village of McNary	2018	X	X	X	X
Fenton	2019	X	X	X	X
Boyce	2019	X	X	X	X
Cullen	2019	X	X	X	X
Ruston	2019	X	X	X	X
Pineville	2019	X	X	X	X
Ponchatoula	2019	X	X	X	X
Haynesville	2019	X	X	X	X
Natchez	2019	X	X	X	X
Reeves	2019	X	X	X	X
Oak Grove	2019	X	X	X	X
Athens	2019	X	X	X	X

## Conclusion

Between 2012 and December 2019, health and tobacco control organizations made little progress on smoking restrictions at the state level. Turning away from a hostile political environment at the state level to the local level, where constituents have more influence with their representatives, these same health and tobacco control organizations helped secure a majority of the 28 comprehensive local smokefree ordinances passed in Louisiana during that time. TFL first obtained a smokefree ordinance covering bars and gaming establishments in Alexandria during 2012, after determining the city positively received its Healthier Air For All media campaign calling for protecting employees in those workplaces from secondhand smoke (Chapter 4). Healthier Air for All served as the general theme of smokefree ordinance efforts across the state, most notably in the cities of New Orleans and Baton Rouge.

In 2015, health and tobacco control advocates formed the SmokeFree NOLA Coalition to wage a multilevel campaign with state and national partners similar to the CTFLA Coalition in 2006 that secured a statewide smoking restriction law and fully repealed preemption (Chapter 10). SmokeFree NOLA used paid and earned media, smokefree events, and spokespersons from music, bar, and other communities to generate public awareness and support for a clean air ordinance. The Coalition promoted service workers, gaming employees and musicians, as the lifeblood of New Orleans because of its status as a tourist destination and as a jazz music capital. The coalition aggressively countered freedom of choice, harm reduction, and economic harm claims from bar, gaming, and electronic cigarette industry opponents seeking to defeat the ordinance. As a result, health and tobacco control advocates secured a clean air law prohibiting

smoking and vaping in bars and casinos in New Orleans, which is notorious for its unfettered, freewheeling attitudes.

Public health groups subsequently formed the Smoke-Free EBR Coalition and replicated their strategy in that parish and its major city, Baton Rouge. After an initial stumble in 2016, the Smoke-Free EBR Coalition obtained comprehensive smoking and vaping restrictions covering bars and gaming establishments in the city and parish the following year. Besides Baton Rouge, between 2017 and December 2019, 16 more local governments adopted comprehensive clean air laws prohibiting smoking and vaping in bars and gaming establishments despite some not having any existing bingo halls or casinos.

Louisiana's smokefree struggle shows the advocacy power generated when health and tobacco control programs form coalitions and employ multifaceted campaigns with messaging targeted at the specific locality, even within cities that have a strong, anti-tobacco control presence and lax attitudes toward regulation. Smokefree efforts in Louisiana from 2012 to December 2019 indicate that tobacco control advocates can further protect the public from secondhand smoke by securing comprehensive restrictions at the local level when state legislatures are opposed to or apathetic about passing strict smokefree laws.

## Chapter 13: Summary and Conclusions

- The tobacco industry dominated Louisiana tobacco control policy outcomes between the 1970s and 1990s using its lobbyists, campaign contributions, and allies.
- The tobacco industry secured weak youth access and smoking accommodation laws to prevent stronger public health legislation, prevented tax increases, and won tort reform laws to protect the industry from products liability litigation between the 1970s and 1990s.
- Tobacco control advocates lacked a powerful presence in Louisiana until the 1990s and 2000s, with the formation of the Louisiana Tobacco Control Program in the Department of Health and Hospitals in 1993, the Coalition for a Tobacco-Free Louisiana in 2001 and Tobacco-Free Living in 2004.
- Tobacco control advocates formed multilevel coalitions to overturn pro-tobacco industry laws and secure legislation establishing effective statewide smoking restrictions and comprehensive local smokefree laws despite strong opposition.
- Tobacco control advocates utilized their smokefree coalition model to end years of stagnation and bring Louisiana's tobacco taxes from 49<sup>th</sup> highest nationwide to 33<sup>rd</sup> in 2015 and 2016.

The tobacco industry dominated Louisiana's political landscape and health for decades until the early 2000s, when tobacco control advocates developed the resources and capacity to counter the industry's influence and enact tobacco control laws and policies favorable to public health.

### Tobacco Industry Influence Dominates Louisiana 1970s-1990s

Beginning in the 1970s, the tobacco industry made significant efforts to influence state legislation in Louisiana. The tobacco companies and their political arm, the Tobacco Institute, activated their employee advocacy program the Tobacco Action Network to track and oppose legislation in Louisiana that negatively affected industry interests. In the 1970s, 1980s, and 1990s the tobacco industry contracted prominent lobbyists with powerful ties to Louisiana's

Strong lobbyists and business community connections, coupled with campaign contributions, enabled the tobacco industry to significantly influence political outcomes in Louisiana towards its favor during the 1970s, 1980s and 1990s.

business community to represent it in the state. Using shared policy goals and their lobbyists' connections, the tobacco industry formed strong relationships and coalitions with the Louisiana Wholesale Tobacco and Candy Distributor's Association, the Louisiana Hotel-Motel Association, Louisiana Restaurant Association, the Louisiana Association of Business and Industry, and others to block unfavorable legislation and enact laws harmful to public health.

Besides lobbying and coalition building, the tobacco industry used campaign contributions to influence the Louisiana State Legislature to support its policy agenda. Through the 1983 and 1995 election cycles, the Tobacco Institute made most contributions to Louisiana

lawmakers and elected officials among the tobacco industry, followed by Philip Morris (Chapter 3). Philip Morris provided the greatest contributions among tobacco companies to Louisiana lawmakers and elected officials through the 1999 and 2015 election cycles. The tobacco industry initiated contributions in the state during 1982, to sway lawmakers on committees handling smokefree and tobacco tax legislation in its favor on legislation expected in future sessions. From the 1983 to 2015 election cycles, the tobacco industry contributed nearly \$2.2 million in 2019 dollars (\$1.6 million in current dollars) to state and local candidates in Louisiana. Between the 1983 and 1999 election cycles, Democrats, who then controlled the state legislature, received the most contributions from the tobacco industry. Republicans received more donations than Democrats beginning in 2003, as the State GOP gathered strength to take over the state legislature, which it did in 2011 (Chapter 3). The tobacco industry continued providing more donations to Republicans when and after they seized the legislature. Tobacco industry campaign contributions peaked during the 1999 election cycle, when state lawmakers prepared to allocate funds from the Master Settlement Agreement (MSA). Tobacco industry contributions reached their second highest during the 2007 election cycle, when tobacco control advocates successfully pursued a statewide smokefree law that prohibited smoking in public places, government buildings, restaurants, public schools and correctional facilities, and repealed local smoking restriction preemption (Chapter 10). Tobacco contributions subsequently reached their third highest during the 2011 election cycle, when the industry rebuffed most attempts to increase tobacco taxes (Chapter 3).

Strong lobbyists and business community connections, coupled with campaign contributions, enabled the tobacco industry to significantly influence political outcomes in Louisiana. The tobacco industry and its allies prevented meaningful tobacco tax increases (Chapter 6), obtained laws limiting its liability for harm caused by tobacco products (Chapter 8), secured smoker accommodation laws that preempted local smoking restrictions (Chapter 5), and passed and promoted weak youth access restrictions pushed by the tobacco companies (Chapter 7). Although not always successful, lobbying, relationship building, and contributions advanced the tobacco industry's interests in Louisiana during the 1970s, 1980s and 1990s.

### ***Industry Smoking Restrictions***

From 1970 to 1993, the tobacco industry utilized its lobbyists, business allies, and campaign contributions to block 61 smoking restriction bills at the state level. Most smoking restriction bills during that period sought to limit smoking in certain places (in particular workplaces, schools, healthcare facilities, and government property and facilities, Chapter 5), permitted smoking areas or required accommodation policies for smokers and nonsmokers (an industry policy<sup>1</sup>), rendering them ineffective and uncomprehensive. Similarly, local smoking restriction ordinances pursued between 1978 and 1993 (the year local preemption of smoking restrictions was implemented) were limited in scope and effect, prohibiting or restricting smoking on government property, in restaurants, public places and workplaces. By the late 1980s and early 1990s the tobacco industry, facing growing criticism and resistance across the United States, sought to pass weak, preemptive smoking restriction legislation across the country and in Louisiana. The tobacco industry subsequently helped secure three weak smoking restriction bills instituting smoker accommodation in 1992 as well as two accommodation bills preempting local



control in 1993. Tobacco industry interference resulted in 10 years of complete preemption of local smoking laws and 13 years of ineffective state-level smoking restrictions.

### ***Low Tobacco Taxes***

Similar to legislative efforts around smoking restrictions, the tobacco industry dominated tobacco tax policy battles in the 1980s and 1990s using campaign contributions as well as its connected lobbyists and business community allies. Louisiana was among 9 states to first pass a tobacco tax (doing so in 1926). However, starting in 1980, the tobacco industry aggressively fought tax increases on its products after Louisiana lawmakers created the Louisiana Cancer and Lung Trust Fund and unsuccessfully attempted to support the trust using a cigarette tax increase. Between 1980 and 1994, state lawmakers only passed incremental tobacco tax increases in 1984 and 1990 despite a recurring state budget crisis. The tobacco industry partnered with allied businesses to stymie major tobacco tax increase legislation multiple times at the state level, and dedicated significant resources to overturning a local tobacco tax in New Orleans. The tobacco industry repealed the New Orleans local tax, first passed in 1984, in 1992 after years of work to remove the increase. Partly because of tobacco industry interference, Louisiana's tobacco tax rates would stagnate and not increase again until 2000.

### ***Weak Youth Access Laws***

The tobacco industry heavily affected youth access policy in Louisiana, helping secure weak legislation that promoted ineffective industry voluntary programs. The first modern youth access legislation adopted by Louisiana lawmakers was a bill passed in 1988 prohibiting sampling to minors (Chapter 7). While prohibiting sampling protects minors, the bill failed to safeguard youth since Louisiana law still allowed tobacco product sales to people of any age. Louisiana remained one of five states lacking a minimum age of sale until 1991, when the Tobacco Institute (TI) helped pass a law setting the age at 18 years. TI tied the law into its nationwide, "It's the Law" youth access program that was designed to head off meaningful government regulation and enforcement of tobacco product sales by promoting weak unenforceable legislation that codified voluntary industry self-regulation.

Subsequent adoption of the Synar Amendment at the federal level in 1992, which required states to demonstrably reduce sales of tobacco to youth under 18, prompted state lawmakers in Louisiana to pass legislation in 1994 providing the Office of Alcohol and Beverage Control enforcement over youth tobacco sales restrictions and preempt local youth access ordinances (Chapter 7). However, in 1995 lawmakers adopted a bill rendering enforcement ineffective, resulting in a 73% retailer violation rate of youth access laws by 1997. That year, the state legislature adopted a bill to establish a tobacco product licensing system for tobacco product sales that re-enabled effective enforcement of retail restrictions. Although the legislation included weak, tobacco industry-desired penalties for retailer infractions, Louisiana's youth access violation rates improved to one of the best in the United States by 1999. Later, in 2014, state lawmakers passed legislation prohibiting the sale of electronic cigarettes to minors under 18. The bill was developed with tobacco industry input and contained pro-industry language that defined electronic cigarettes separately from tobacco products, requiring extra legislation to include electronic cigarettes in existing tobacco control restrictions. Health advocates supported

the 1997 and 2014 bills despite them containing industry-favorable language and provisions to secure more youth access restrictions in Louisiana. However, health advocates rejected Tobacco 21 legislation proposed in 2019 because of weak enforcement provisions that only held retailers accountable for selling products to minors if they knowingly sold them products illegally. The ineffective language caused health advocates to attack the legislation as an industry bill.

### ***Tort Reform***

The tobacco industry's work on "tort reform" in Louisiana during the 1980s and 1990s effectively eliminated its liability for harm caused by tobacco products and highlighted the power of the tobacco companies' coalition building abilities in the state. In 1986, the Louisiana Supreme Court ruled in *Halphen v. Johns-Manville Sales Corp.* that companies were liable for inherently dangerous products, drawing tobacco industry interest and kickstarting state business community efforts led by the Louisiana Association of Business and Industry (LABI) to nullify the court's decision (Chapter 8). The tobacco industry helped the state business community pass legislation in 1988 that overturned the Halphen ruling and virtually eliminated liability for harm caused by inherently dangerous products, including tobacco.

The tobacco industry's work on "tort reform" in Louisiana during the 1980s and 1990s effectively eliminated its liability for harm caused by tobacco products and highlighted the power of the tobacco companies' coalition building abilities in the state.

The tobacco industry joined and supported LABI's Citizens Against Lawsuit Abuse Coalition, created in 1992 to defend favorable tort reform laws and pursue desired tort reform legislation. CALA served as the grassroots face of business community tort reform efforts in Louisiana but was heavily controlled and influenced by the tobacco industry, which had members and allies serving on CALA's steering committee (Chapter 8). The tobacco industry used CALA for years to demonize its tort opponent, the Louisiana Trial Lawyers Association (LTLA), and defend against adverse legislation backed by LTLA. LTLA had successfully influenced 1991 state elections, changing the Louisiana Legislature's composition to make it hostile to tort reform. Although the tobacco industry and its allies failed to obtain bills to kill ongoing product liability lawsuits after 1991, they defeated adverse legislation and managed to secure laws making it harder to file and sustain product liability cases. We did not find evidence that health advocates countered tobacco industry tort reform efforts. Tobacco industry tort reform activities mostly protected it from being held responsible for harm caused by tobacco products in Louisiana.

### **Tobacco Control Builds its Presence in Louisiana 1990s-2000s**

#### ***Formation of the Louisiana Tobacco Control Program and Health Advocate Coalition***

While the tobacco industry dominated political efforts in Louisiana during the 1970s, 1980s and 1990s, tobacco control programming remained limited in presence and capacity despite high cancer mortality rates in the state. Louisiana's Department of Health and Hospitals

did not establish the Louisiana Tobacco Control Program (LCTP) until 1993, which received virtually no state funding and instead relied instead on federal grants (Chapter 4). LTCP deployed mini grants throughout Louisiana to develop community tobacco control programs and generate public support for tobacco control policies, creating a base for future state and local tobacco control legislative campaigns. While LTCP engaged in community building as well as general tobacco prevention and cessation, health advocates formed the Coalition for a Tobacco-Free Louisiana (CTFLA) in 1999 to lobby for tobacco control policies (Chapters 4). Animosity that developed between members of LTCP and CTFLA partially led to the formation of a state-funded nonprofit tobacco control program.

### ***Louisiana Joins State Litigation Against the Tobacco Industry***

As evidence of the harms caused by tobacco products and the tobacco companies' deceptive practices mounted in the 1990s, the Attorney General of Louisiana joined nascent litigation to hold the industry accountable that ultimately resulted in the 1998 Master Settlement Agreement (MSA) (Chapter 9). Louisiana became the sixth state (after Mississippi, Florida, West Virginia, Texas, and Minnesota) to file a lawsuit seeking to recoup Medicaid funds lost to treating tobacco-related illnesses. Louisiana Attorney General Richard Ieyoub joined the lawsuits in 1996, which began in 1993, after being recruited to replace Minnesota in a settlement with tobacco company Liggett. Liggett demanded that five states participate in a deal to settle, but Minnesota refused to join the settlement believing its terms were too lenient on the company. Louisiana's participation secured the Liggett settlement, providing State Attorneys General access to information and internal documents crucial to their lawsuits against the tobacco companies.

The lawsuits, which grew to have over 40 plaintiffs, culminated in the MSA. The deal restricted tobacco industry marketing practices and provided billions in funds to participating states and territories. Louisiana lawmakers struggled to allocate their state's windfall from the settlement. Rather than using MSA funds for health and tobacco control programming, the Louisiana State Legislature dedicated nearly all of its initial \$199 million in payments to addressing a budget shortfall in 1999 (Chapter 9). State lawmakers initially dedicated 70% of the state's settlement reward anticipated over 25 years into trusts dedicated to education and health initiatives.

### ***MSA Provides Louisiana Limited Tobacco Control Funding***

The State of Louisiana began to provide minimal funding for tobacco control in Fiscal year 2001 when lawmakers started allocating approximately \$500,000 in funds from the MSA annually (compared to the \$137 million in settlement money paid to Louisiana in calendar year 2001<sup>2</sup>). Significant funding for tobacco control materialized in 2002, when health and tobacco control advocates secured annual revenue from 2 cents of a 12 cent per pack cigarette tax increase for tobacco control programming. The yearly dedication resulted in the formation of the Louisiana Campaign for Tobacco-Free Living (TFL). TFL, a tobacco control program administered by the Louisiana Public Health Institute, was able to conduct policy advocacy and operate with minimal political restrictions because it was a nonprofit and not overseen by the

state government (Chapter 4). In contrast, LTCP could not engage in policy advocacy and was subject to limitations placed on it by Louisiana administrations.

Louisiana's MSA payments were repeatedly targeted for securitization or to fund programs amid budget crises. The State subsequently reduced future settlement moneys available for annual appropriations by securitizing \$2.4 billion of the \$4 billion in anticipated MSA funds expected over the deal's first 25 years for \$1.2 billion in immediate funds in 2001 (Chapter 9).<sup>3</sup> The sale, 60% of MSA funds expected by Louisiana over the next 25 years, cut that portion of the fund's value in half. Democratic Governor Kathleen Blanco's Administration later attempted to securitize remaining funds from the first 25 years of MSA payments for coastal restoration in 2007 but failed because of health advocate and Republican resistance. Republican Governor Bobby Jindal successfully redirected some annual MSA money to fund Louisiana's TOPS scholarship program in 2011. He also attempted to securitize remaining funds expected from the first 25 years of MSA payments in 2015 to ensure funding for TOPS for 8 years amid a budget crisis. Despite a lack of health advocate opposition, Jindal failed to get approval for securitization, leaving the funds in place for health and education programming. Securitization and reallocation of MSA payments did not affect the annual \$500,000 dedication to tobacco control established by state lawmakers in FY 2001.

### **A 2002 Tobacco Tax Increase Leads to a Second Tobacco Control Program**

Health advocates pursued smoking restrictions and other tobacco control legislation with increased capacity partly because of their simultaneous efforts to increase tobacco taxes. In 2000, health advocates testified in support of the first tobacco tax hike to pass since 1990, HB 117. The bill increased the cigarette tax by 4 cents per pack (and established a 20% of invoice price tax for smokeless tobacco) but did not provide revenue for tobacco control. Using their re-formed CTFLA coalition, health advocates

Using their re-formed CTFLA coalition, health advocates collaborated with Tulane, Louisiana State University (LSU) and others to pass the Tobacco Tax Healthcare Act in 2002 to secure a 12 cent increase per pack to the cigarette tax.

collaborated with Tulane, Louisiana State University (LSU) and others to pass the Tobacco Tax Healthcare Act in 2002 to secure a 12 cent increase per pack to the cigarette tax. The law annually dedicated revenue from 2 cents per pack towards tobacco control programming by the new Louisiana Cancer Research Consortium (LCRC), a new medical research center jointly administered by LSU and Tulane that the bill was originally created to fund. LCRC contracted with the Louisiana Public Health Institute, a state-based public health nonprofit, to create and annually fund the Louisiana Campaign for Tobacco-Free Living (TFL) with revenue from the 2cent dedication (Chapters 4 and 11).

### ***TFL's Nonprofit Status Provides Insulation from Political and Industry Interference***

TFL's formation provided Louisiana a state-funded tobacco control program that could operate with greater freedom than standard, state-administered programs. Although TFL relied on state monies, it could engage in policy campaigns and community building without specific

authorization by Louisiana's legislative or executive branches because of its independent nonprofit status. For example, TFL created its "Let's Be Totally Clear" and "Healthier Air for All" media campaigns to develop support for comprehensive smokefree policies across the state, helping secure ordinances in New Orleans in 2015 and in Baton Rouge during 2017 (Chapter 12). TFL also participated in legislative advocacy campaigns that secured tax increases (Chapter 11).

Tobacco control programs, particularly state-administered, are susceptible to political and industry interference. For example, state-run media campaigns, which are effective at preventing tobacco use, have been repeatedly attacked by the tobacco industry.<sup>4</sup> After California ran an aggressive media campaign targeting the tobacco industry for five years, in 1996 the industry used its relationship with California Governor Pete Wilson (R) to make it difficult for the California Tobacco Control Program to educate the public about industry behavior and the addictiveness of nicotine.<sup>4,5</sup> Another example was when Minnesota Governor Arne Carlson (R) and state lawmakers reduced funding for their state tobacco control program's media campaign from \$1.5 million to \$1 million in 1990 ostensibly to alleviate a budget crisis that did not exist.<sup>4</sup> Similarly, Louisiana's official state tobacco control program LTCP, which faced interference from state administrations (Chapter 4), did not run advocacy-oriented media and did not participate in legislative campaigns because the agency was prohibited from advocating for policies. After LTCP sponsored "Let's Be Totally Clear" with TFL in its first iteration (when it was not a media campaign focused on policy advocacy), TFL rebooted the campaign without LTCP and used it to advocate for legislative changes (Chapter 4). LTCP also could not participate in policy coalitions while TFL could.

While TFL's nonprofit status has insulated it from political and industry interference, independent, state-funded tobacco control programs are still vulnerable to sabotage. Minnesota's nonprofit tobacco control program, the Minnesota Partnership for Action Against Tobacco, was attacked by its state attorney general in 2001 and 2002.<sup>6</sup> The pressure caused the program to drop smokefree-oriented community intervention programming for less effective cessation interventions.<sup>6</sup> The initial media attacks were fostered by information generated by tobacco-industry linked organizations, and the attorney general had multiple connections to the tobacco industry. In 2011, Indiana's state-funded independent tobacco control agency was ended and transferred to the control of that state's health department with reduced funding via an amendment to budget legislation.<sup>7</sup> Elimination of the program occurred despite the Indiana agency provably lowering youth smoking in the state. In 2006 and 2007 a state funded tobacco control nonprofit in Ohio did not receive expected MSA funds for its tobacco control programming, constraining the program's growth.<sup>8</sup> Still, Ohio's nonprofit tobacco control program managed to forge a statewide network of tobacco control community partners. In contrast to the experiences of other independent tobacco control programs, Louisiana's TFL has not had its funding cut and we did not discover attempts to silence or dismantle the nonprofit program.

Possible reasons for TFL experiencing less political and industry interference than other state-run and state-funded nonprofit programs vary. TFL's annual revenue comes from a permanent tax increase in 2002 (Chapter 11) that is not subject to the general budget and that lawmakers have not attempted to reduce or eliminate. In addition, the tax dedication is awarded

to Louisiana State University and Tulane University's Louisiana Cancer Research Center (LCRC) for it to conduct tobacco control programming. LCRC provides the money to TFL's administrator, independent nonprofit LPHI, through a contract to perform tobacco control programming on LCRC's behalf, further insulating the tobacco control program from political pressure (Chapter 4). Another reason TFL may have avoided attacks is because TFL's media campaigns have not made explicitly attacking the tobacco industry a major messaging component, instead focusing on promoting smoking restrictions using social justice themes. However, media campaigns that did not target the tobacco industry in other states, such as state programs in Minnesota during the 1980s and early 1990s, and Arizona, Oregon and Massachusetts in the early 2000s, were still attacked by the tobacco industry and its allies.<sup>4</sup> TFL's nonprofit status has allowed it to pursue a more aggressive media and policy agenda with less interference from unsupportive or hostile state administrations (Chapters 4, 10, 11, 12).

### **Hurricane Katrina Fosters Cooperation between Louisiana's Tobacco Control Programs**

Despite sharing similar objectives, LTCP and TFL initially did not coordinate their activities. Strained ties formed among the programs because of discord between LTCP and tobacco control advocate leadership, the awarding of recurring state funds to non-LTCP tobacco control programming, and racial tensions (Chapter 4). The devastation wrought by Hurricane Katrina in 2005, combined with strained resources, led LTCP and TFL to align their programming from 2006-2010 with assistance from Emory University's Tobacco Technical Assistance Consortium.

The guided alignment allowed LTCP and TFL to develop complimentary programming that played to each's strengths, and enabled LTCP and TFL to promote and jointly administer cessation services in Louisiana. Separately, LTCP engaged in public education and promoting tobacco-free policies for certain places, while TFL undertook tobacco control policy advocacy, community engagement and policy advocacy programming, and statewide initiatives (Chapter 4). Both programs collaborated and had their own efforts regarding youth tobacco control prevention and advocacy (Chapter 4).

In FY 2020, Louisiana spent \$5.2 million on tobacco prevention, only 8.6% of the amount that the CDC recommended the state expend.

Overall funding remained well below 2014 CDC Best Practices for Comprehensive Tobacco Control Programs.<sup>9</sup> In FY 2020, Louisiana spent \$5.2 million on tobacco prevention, only 8.6% of the amount that the CDC recommended the state expend.<sup>10</sup> Louisiana's tobacco control expenditures are bested by two of its three neighbors, with Mississippi spending \$8.4 million (23.1%) and Arkansas \$11.1 million (30.4%) and Texas only allocating \$4.1 million (1.8%) in FY 2020.<sup>10</sup> Louisiana's tobacco control spending compares poorly to the rest of the nation as well, since the national average for state spending according to CDC best practices recommendations in FY 2020 was 22.4%.<sup>10</sup>

Despite low funding, LTCP and TFL effectively combined their resources to improve tobacco-related health and use outcomes and obtain regulation beneficial to public health. They

expanded cessation services across Louisiana and improving cessation assistance at healthcare providers in the state. TFL promoted smokefree restrictions via strong media campaigns such as “Healthier Air for All.” In addition, TFL collaborated with state and national partners to secure a statewide clean air law in 2006 (Chapter 10), as well as numerous comprehensive local smokefree policies (Chapter 12) and statewide tobacco tax increases (Chapter 11) in the 2010s.

### **Improved Health Community Capacity Enables Public Health Policy Victories**

Tobacco control and health advocates started to develop enough capacity to counter industry influence and obtain smoking restriction laws that protected public health in the 2000s. Tobacco control advocates built a sustained coalition in 2001 by reforming CTFLA, reorganizing it under LPHI using a Robert Wood Johnson Foundation grant that year. The CTFLA enabled health and tobacco control advocates to form consensus goals, leverage grassroots networks, generate earned and paid media, and conduct outreach to state and local lawmakers to build support and agency for local preemption repeal in Louisiana.

### ***Health Interests Overturn Tobacco Industry Accommodation and Preemption Laws***

Health and tobacco control advocates used their increased capacity and coalition building to overturn tobacco industry accommodation laws and secure statewide smoking restriction legislation that protected public health. CTFLA managed to partially repeal state preemption of local smoking restrictions in 2003 (Chapter 10). Tobacco control and health advocates then passed 14 local smoking restriction ordinances between 2003 and June 2006 to build support for total preemption repeal and a statewide smokefree law. A multifaceted campaign by CTFLA (including TFL) in 2006 that consisted of paid and earned media, lobbying, and grassroots outreach enabled the coalition to secure the Louisiana Smoke-Free Air Act that year, replacing the accommodation bills the tobacco industry helped secure in 1992 and 1993 with a prohibition on smoking in most workplaces and public places besides bars and gaming establishments. The Act also eliminated all preemption over local smoking restrictions, allowing health and tobacco control advocates to later obtain comprehensive smokefree policies at the local level when pursuing state smoking restriction legislation became politically unfeasible. The Louisiana Smoke-Free Air Act made Louisiana one of 35 states to prohibit smoking in non-hospitality workplaces and one of 39 states to prohibit smoking in restaurants by January 2019.<sup>11</sup> However, Louisiana remained one of 17 states that permitted smoking in bars as of January 2019<sup>11</sup> and one of 30 that permitted smoking in gaming establishments as of January 2, 2020.<sup>12</sup>

### ***Health Advocates Obtain Tobacco Tax Increases despite Fierce Political Opposition***

Despite obtaining tobacco control funds and further increasing their capacity, health advocates failed to obtain tobacco tax increases during the rest of the 2000’s and early 2010’s because of resistance from Louisiana’s political establishment. Health advocates, partnering with education advocates, unsuccessfully pursued a tobacco tax increase in 2005 to provide salary increases to public educators amidst resistance from Republican lawmakers (Chapter 11). In 2009 and 2011, health advocates failed to secure tobacco tax increases against opposition from Republican Governor Bobby Jindal and the Louisiana GOP, which vehemently opposed tax hikes and actively campaigned against the adoption of proposed tobacco tax increases.

Louisiana's experience under Jindal, particularly in 2011 when he vetoed tobacco tax increase bill HB 591, was similar to South Carolina's experience in 2008, when that state's governor successfully vetoed a tobacco tax hike.<sup>13</sup> However, that year Louisiana health advocates saved a temporary 4-cent cigarette tax from expiring by attaching a rider to permanently renew it to a constitutional amendment desired by the Jindal Administration, preventing the rate from dropping from 36 cents per pack to 32 cents. Louisiana's cigarette tax then stagnated until it became the 49<sup>th</sup> lowest in the United States by 2015.

After earlier unsuccessful attempts to raise taxes, state and national health advocates in Louisiana employed the multilevel coalition and campaign model they used to secure statewide smoking restrictions and local comprehensive smokefree ordinances to secure tobacco tax increases in 2015 and 2016. National and state partners created the Invest in a Healthy Louisiana Coalition in 2015 and utilized grassroots networks, paid and earned media, and lobbying to obtain a 50-cent increase that year (from 36 cents to 86 cents per pack, Chapter 11). The coalition subsequently advocated for a cigarette tax increase in 2016 and helped secure an additional 22cent cigarette tax increase, bringing the total rate per pack to \$1.08 cents. As a result, Louisiana climbed from the 49<sup>th</sup> highest cigarette tax to the 33<sup>rd</sup> highest in two years.

### ***Health Advocates Secure Comprehensive Smokefree Ordinances During 2010s***

Health advocates utilized their coalition and campaign model developed for statewide smokefree policy campaigns to circumvent opposition from Louisiana's state government and obtain numerous comprehensive local smokefree ordinances that prohibited smoking in bars and casinos. TFL led initial efforts, first securing a comprehensive smokefree ordinance for the City of Alexandria in 2012 and for the cities of Monroe, West Monroe and their Parish, Ouachita, in 2013 (Chapter 12). Utilizing this model, national, state and local health organizations and advocates created the SmokeFree NOLA (New Orleans) Coalition to pursue a comprehensive smokefree ordinance for New Orleans in 2014.

Health advocates utilized their coalition and campaign model developed for statewide smokefree policy campaigns to circumvent opposition from Louisiana's state government and obtain numerous comprehensive local smokefree ordinances

The SmokeFree NOLA coalition utilized musicians as well as bar and gaming establishment workers, people whose industries were not protected by smoking restrictions, as spokespersons for the ordinance battle. Coalition messaging promoted them as integral to New Orleans because of its status as a jazz and tourist destination. The SmokeFree NOLA Coalition employed smokefree events, generated paid and earned media, and convinced the American Lung Association and the American Public Health Association (during its 2014 annual meeting in New Orleans) to announce a moratorium on conventions in the city until smoking restrictions were strengthened, creating public support and political pressure for a smokefree ordinance. Coalition members aggressively countered economic harm, freedom of choice, and harm reduction claims from opponents in the bar, gaming, and electronic cigarette industries. A well-coordinated coalition, complimented by a strong legislative champion, enabled health and



tobacco control advocates to secure a comprehensive smokefree ordinance that prohibited smoking in bars, casinos, and all hotel and motel guest rooms in New Orleans by early 2015.

National, state and local health organizations and advocates subsequently formed the Smoke-Free East Baton Rouge Coalition and pursued a similarly comprehensive ordinance in Louisiana's capital during 2016. After an unsuccessful initial campaign, the coalition obtained a comprehensive law in 2017. In total, from 2012 through January 2020 at least 28 comprehensive local smokefree ordinances passed in Louisiana, much legislation with advocate assistance, as most state-level smoking restrictions stagnated.

Even with these successes, as of 2020 comprehensive local ordinances (defined as covering workplaces, bars and restaurants) only covered 27.9% of Louisiana's population.<sup>14</sup> The percentage covered in Louisiana is lower than the 45% average as of June 2019 for the 13 states (including Louisiana) designated "Tobacco Nation" by the Truth Initiative, which have the highest smoking rates in the US.<sup>15</sup> As of 2020, 8 States have more citizens protected by comprehensive local smokefree laws than Louisiana, and 27 have comprehensive statewide smokefree laws safeguarding all of their residents.<sup>14</sup>

The local policy campaigns in Louisiana demonstrate that local legislative battles are a successful means to protect public health when health advocates face resistance from state governments, but there is more work needed.

## **Conclusion**

Louisiana's tobacco control history demonstrates the power the tobacco industry has to influence and corrupt the democratic political process with power and money, but also shows that dedicated and determined health and tobacco control advocates can counter this interference via capacity and coalition building. Using lobbying, campaign contributions, and extensive ties to the business community, the tobacco industry advanced its policy agenda on smoking accommodation, tobacco taxes, youth access, and tort reform with minimal resistance from the health community during the 1980s and 1990s. However, relying on substantially less resources, health and tobacco control advocates developed their presence in Louisiana during the 1990s and early 2000s, forming tobacco control programs LTCP and TFL as well as a network of regional allies and local grassroots activists. This web of state, regional, and local grassroots advocates, complimented by strong relationships and collaborations with national health voluntaries, enabled coalition-led policy campaigns that secured effective, public health-oriented legislation in Louisiana. Advocates passed meaningful state-level smoking restrictions that overturned harmful tobacco industry accommodation laws and fully repealed preemption over local smoking policies in 2006, which subsequently led to numerous comprehensive smokefree ordinances in small towns and major cities. In addition, advocates raised Louisiana's cigarette tax from the 49<sup>th</sup> highest in the country to 33<sup>rd</sup> between 2015 and 2016 after years of legislative stagnation.

Despite health and tobacco control advocates' progress on tobacco control policy in Louisiana, the state continues to struggle with health and tobacco outcomes compared to the rest of the United States. The state ranked 49<sup>th</sup> in overall health and 43<sup>rd</sup> for smoking in the country according to United Health Foundation's 2019 America's Health Rankings.<sup>16</sup> As of 2020,

Louisiana had the 6<sup>th</sup> highest smoking prevalence among states<sup>17</sup> with 20.5% of the public smoking according to the last BRFSS data available from 2018.<sup>18</sup> Louisiana's adult smoker rate is similar to Tobacco Nation's 21% and worse compared to the national average of 16.1%.<sup>15</sup> While Louisiana's adult smoking prevalence has declined, it has grown farther apart from the faster declining US rate (Figure 13.1).

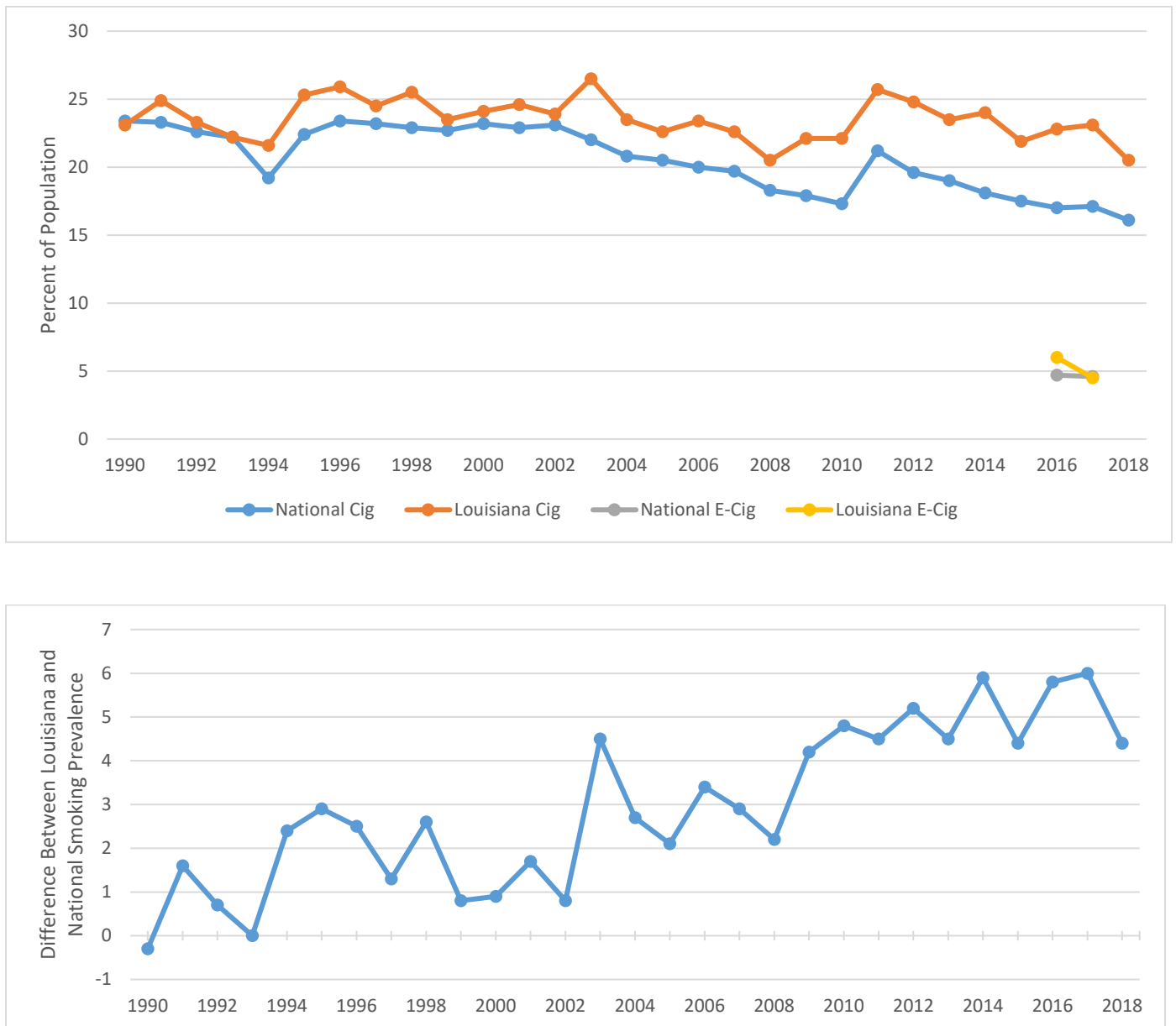


Figure 13.1: (top) Current Cigarette and E-Cigarette Prevalence in Louisiana and the United States.<sup>18</sup> (bottom) The difference between Louisiana and the US average grew over time for cigarettes. (There was a methods change to BRFSS in 2010 that created a new baseline for BRFSS results 2011-2018 that cannot be compared to previous BRFSS results.<sup>19</sup>) (Reproduction of Figure 1.1)

Louisiana's E-cigarette prevalence is only 4.5% according to BRFSS data from 2018, similar to the national average.<sup>18</sup> The state's youth smoking rate also remains worse than the US average,

with 12.3% of Louisiana high school students smoking compared to 8.8% according to 2017 high school YRBS data.<sup>20</sup> 12.2% Louisiana high school students used e-cigarettes, similar to the national average.<sup>20</sup>

Failure to reduce Louisiana's smoking prevalence carries significant consequences for the state. Smoking kills 7,200 people annually in Louisiana<sup>21, 22</sup> and accounts for 32.6% of cancer deaths.<sup>22</sup> If smoking prevalence was reduced by just 1% in absolute prevalence in Louisiana, the state would save \$31.7 million in Medicaid funds the following year. In 2009, the last year of data available, Louisiana's high smoking prevalence cost the state \$1.9 billion treating smoking-linked illnesses.<sup>21, 22</sup> Although health and tobacco control advocates, programs, and organizations have secured greater resources, implemented more prevention and cessation programming, significantly raised taxes and brought comprehensive smokefree protections to 27.9% of Louisianans<sup>15</sup> by 2020, they need to continue aggressively pursuing additional smokefree legislation and programming to lower smoking as quickly or faster than the national average. Lowering Louisiana's smoking prevalence among adults and youth is necessary to curb the health and economic costs inflicted by tobacco on the state and improve the quality of life of all Louisianans.

... the tactics utilized by health partners operating in Louisiana serve as a model for advocates in all states seeking to advance public health policy in the face of a powerful, entrenched tobacco industry and a business-friendly state government.

While Louisiana's overall health and smoking outcomes need further improvement, health and tobacco control advocates have established a network in the state more than apt for the challenge. In fact, the tactics utilized by health partners operating in Louisiana serve as a model for advocates in all states seeking to advance public health policy in the face of a powerful, entrenched tobacco industry and a business-friendly state government.

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#### **Chapter 4: Tobacco Control Programs in Louisiana**

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## Chapter 5: Early Clean Air Efforts and Preemption (1970-1993)

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## Chapter 7: Youth Access Laws

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## Chapter 8: Tort Reform 1986-1999

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### Chapter 13: Summary and Conclusions

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