

March 21, 2012

WASHINGTON REPORT: THE VALUES OF ADVOCACY

NACS News Blog
March 20, 2012

NACS Day on Capitol Hill kicks off with an issues briefing and a networking reception with members of Congress and their staff. Today, attendees take our industry messages to the U.S. House of Representatives and Senate.

Industry advocacy on the issues important to the livelihood of the convenience and fuel retailing industry is in full effect today in Washington, with more than 100 retailers and industry stakeholders participating in 230 meetings with members of Congress.

NACS Day on Capitol Hill, taking place yesterday and today in Washington, D.C., gives our industry a platform to put grassroots advocacy efforts into action, as well as to build relationships with members of Congress and educate them on our businesses. NACS Vice President of Government Relations John Eichberger briefed attendees on the six key issues being discussed today with House and Senate leaders:

I. Fuels Liability Reform

NACS is anticipating the introduction of legislation that would provide fuel retailers the opportunity to sell new fuels in a responsible and legal manner. One of the key challenges facing retailers who want to sell new fuels, like higher ethanol blends above E10, which will be necessary to meet the mandated 36 billion gallons of renewable fuels that must be available in the marketplace by 2022, is equipment compatibility. Also, retailers can be held liable under Clean Air Act regulations if a customer misfuels their vehicle with a new fuel.

Attendees are on Capitol Hill today asking their elected officials to support “fuel neutral” legislation that ensures Environmental Protection Agency (EPA) equipment compatibility guidelines are recognized, protects retailers from misfueling liability and prevents retroactive liability if a fuel sold today is later declared defective.

II. PCI Data Security

If retailers are paying \$10,000 to \$20,000 per store to be PCI compliant, why aren't they protected from liability in the event of a data breach? This is just one reason why members of Congress are hearing

more today about why NACS and its members support an independent, consensus-based approach to long-term data security — and not a small group of companies that have a financial stake in the outcome of PCI standards.

Attendees are sharing why our industry needs their support on this issue and how the current patchwork approach is not a viable option. NACS supports and is a member of the X9 Committee accredited by ANSI and believes the work of this committee is the type of effective, long-term solution necessary to protect consumer data. Stay tuned for more on this issue in the coming months.

III. Menu Labeling

As part of the health-care reform law, a menu-labeling provision states that any store with 20 or more outlets operating under the same name must have nutritional information on their menu boards. As part of the implementation process, the Food and Drug Administration (FDA) issued a rule that says establishments with 50% or more of floor space dedicated to food, including packaged and pre-labeled food items, are subject to the law.

NACS is advocating for changes to these proposals, and Day on Capitol Hill attendees are asking House members to support menu-labeling regulations that would only affect stores that generate 50% of their revenue from food sales (food for immediate consumption or food that is prepared and processed onsite). Prepackaged food would not be included in this calculation. NACS is anticipating that Rep. John Carter (R-TX) will soon introduce legislation outlining these regulations.

IV. Roll Your Own Tobacco

The myth about roll-your-own-tobacco (RYO) creates a “David versus Goliath” scenario, but the reality is that legislation supported by NACS seeks to provide regulatory certainty that is compromised by the use of lower-taxed pipe tobacco in RYO machines.

Attendees are asking House members to support H.R. 4134, a bill introduced by Rep. Diane Black (R-TN) that would level the playing field for all retailers selling tobacco products and provide long-term regulatory and tax certainty. The legislation does not call for a new tax on RYO cigarettes made with a commercial RYO machine — it simply ensures that all state and federal tobacco taxes are legally collected.

V. Gas Prices

While gas prices are not an advocacy issue, it is a topic attendees are being asked about by members of Congress and their staff. This is the perfect opportunity for retailers to tell their story and share insights from the NACS Retail Fuels Report.

IV. Credit Card Swipe Fees

Also not an advocacy issue, attendees are thanking members of Congress who supported the industry on this issue. They are also reminding members that credit card fees are still outrageous, costing our industry \$11.3 billion in 2011.

NACS Day on Capitol Hill ends today, but our industry's advocacy efforts are ongoing. If you couldn't attend this year, consider coming to Washington next year, attending an Industry Update Luncheon or meeting with your members of Congress back home in their district office. To learn more, visit nacsonline.com/grassroots.

Originally published here: <http://www.nacsonline.com/NACS/News/Daily/Pages/ND0321121.aspx>

STATE PREVAILS IN ROLL-YOUR-OWN CIGARETTE DEBATE

By David Brooks
Nashua Telegraph (NH)
March 21, 2012

The state has won a long-running fight over whether a Brookline store was avoiding cigarette taxes by letting customers use a machine to roll loose tobacco into their own smokes.

In a settlement filed last week in Merrimack County Superior Court, the owner of Tobacco Haven on Route 13 has agreed to stop using the roll-your-own-cigarette machines and make back payments into a settlement fund from cigarette manufacturers.

The exact amount of payments has to be calculated, but Assistant Attorney General David Rienzo, who described the proposed settlement, said it would probably be in "five figures." The money exists in an escrow account that had been collected for some time, said Rienzo.

Manchester attorney Andrew Schulman, local attorney for North of the Border Tobacco LLC, the company that runs Tobacco Haven, declined to comment Monday. The owner and operator of Tobacco Haven, Joe Correia Jr., has consistently deferred comments to his attorneys.

The proposed settlement has not yet been accepted by a judge.

The case began in 2009 when the state said North of the Border should pay into an escrow account established by the state in 1998 after 46 states settled health claims with major cigarette manufacturers.

The money from that so-called Master Settlement Agreement, used to pay for various health care and other initiatives, is collected as a tax of 42 cents per pack of cigarettes. Each year the manufacturers generate a total pot of around \$7 billion, some \$50 million of which goes to New Hampshire.

At Tobacco Haven, customers could buy loose pipe tobacco as well as paper cigarette "tubes," then use machines to insert the tobacco in the tubes and create cigarettes. The machines, which reportedly cost about \$30,000 each, can roll 200 cigarettes in a few minutes. Loose pipe tobacco is not covered by the health-settlement escrow account, and pays much smaller federal taxes than cigarette tobacco.

Last year a carton at Tobacco Haven cost about \$26, \$7 less than discount brands and as much as \$20 less than name-brand cartons.

North of the Border argued that this business is not covered by the settlement involving commercial cigarette manufacturers. The state disagreed and brought suit; last summer, the New Hampshire Supreme Court upheld the state's argument, and after several months of debate over issues involving corporate ownership, the draft settlement was reached.

Coincidentally, the tax status of cigarettes created from loose tobacco is also being debated by the federal government. As reported by the Washington Post, the \$109 billion federal highway bill includes an amendment that would classify shops that offer the machines, as Tobacco Haven did, as "cigarette manufacturers."

That is exactly the argument taken by state regulators.

If the federal definition becomes law, it would not only require stores using rolling machines to pay into the health escrow account, but also to pay much larger federal excise taxes. They might possibly also have to meet various other requirements about labeling and conditions.

The Post said the bill was supported by major cigarette manufacturers as well as public health advocates, who argued that the machines are a way to skirt tax and health laws.

The issue is complicated, as Schulman noted in his brief filed with the state Supreme Court as part of last summer's arguments, by the federal government's tobacco-taxing policy. Taxes are much higher on loose "cigarette tobacco" than on loose "pipe tobacco" – in 2009, they were \$2.83 a pound on pipe tobacco and \$24.78 per pound on cigarette tobacco – even though the two can be identical.

Much, although not all, of the tobacco sold at Tobacco Haven was labeled "pipe tobacco," but the state argued, and the state Supreme Court agreed, that when rolled into cigarettes it was subject to state laws concerning cigarette tobacco.

But the designation may affect payments made into the health-settlement account.

Originally published here: <http://www.nashuatelegraph.com/news/954184-196/state-prevails-in-roll-your-own-cigarette-debate.html>

PENSION SPIKING, TOBACCO TAX BILLS ADVANCE

By Nanea Kalani
Honolulu Civic Beat Blog (HI)
March 20, 2012

Late last week I reported on the status of money bills still in play at the Legislature.

A mini update on some of those measures:

Pension Spiking — The House Labor committee on Tuesday morning advanced Senate Bill 2750, which aims to curb so-called spiking. It would cap how much overtime can count toward pension benefits and

would require the state and counties be on the hook for costs tied to employees who spike their retirement benefits.

Tobacco Tax — The House Health committee on Friday advanced Senate Bill 2422, which appears to be the only proposed tax increase this session. The measure would increase the tax on non-cigarette tobacco products other than large cigars to be at least equal to the tax on a pack of cigarettes.

Film Tax Credits — The Senate Committee on Economic Development and Technology on Monday advanced House Bill 2869. The bill proposes extending the state's refundable tax credit program for film/TV productions and upping the cap.

Originally published here: <http://hawaii.money.blogs.civilbeat.com/post/19644499586/pension-spiking-tobacco-tax-bills-advance>