

# Marlboro Man to Congress: Drop dead

But an antismoking law is likely anyway



Antismoking activists protested Big Tobacco's pullout from the deal.

BY SUSAN HEADDEN AND MAJOR GARRETT

**P**olitical reality can sometimes alter itself with breathtaking speed. That's the lesson the Big Five tobacco companies are most likely absorbing from their ill-fated experiment with political compromise, which they called to a halt last week.

Just last June, Big Tobacco, which for years had assumed a give-no-quarter stance against antismoking measures, struck a historic agreement with 40 state attorneys general to pay \$368 billion to settle lawsuits brought by states seeking to recover the Medicaid costs of treating sick smokers. It was a staggering amount of money, and it seemed to herald a new era of accommodation between public-health officials and the tobacco industry. But rather than convince Congress and the White House of Big Tobacco's new reasonableness, the deal fostered an impression that Big Tobacco was politically weaker, and therefore more vulnerable to legislative restrictions, than was previously thought. Within days, the "historic" compromise was being criticized as too

generous to an industry whose products kill 400,000 Americans each year and which—as industry documents made public in recent years had strongly suggested—had lied to the public for decades about whether its marketing was aimed at minors. Soon Democrats and Republicans were competing to show who could inflict more pain on tobacco companies. "I will

not let Bill Clinton get to the left of me on this," Newt Gingrich recently told tobacco lobbyists, according to the *Washington Post*. "We're not going to support anything the industry is for."

**Reynolds rap.** Last week the industry responded in kind by formally declaring itself no longer willing to negotiate with lawmakers and the White House. "I will not voluntarily sign my company into bankruptcy," Steven Goldstone, CEO of RJR Nabisco Holdings Corp., told Republican leaders. "I prefer to go bankrupt the old-fashioned way—through the courts." But passage of youth antismoking legislation remains likely both in the Senate, which is already moving on a tough bill sponsored by Arizona Republican John McCain, and in the House, which is starting to put together a less sweeping bill. "I don't give a hoot that the tobacco companies walked out of these negotiations," says Rep. Deborah Pryce, Republican from Ohio, whom Gingrich has designated to coordinate tobacco issues. "In some ways, it may make our job easier."

Does Big Tobacco's new no-compromise stance matter at all? Simply to raise the question shows how far tobacco politics have shifted since 1996, when presidential candidate Bob Dole hesitated to declare nicotine an addictive substance. It also challenges the notion that money always rules in Washington. During the 1995-96 election cycle, Philip Morris, the nation's largest tobacco manufacturer, spent \$4.2 million in campaign contributions—more than any other corporate or individual donor. Yet one now needs a magnifying glass to find any staunch tobacco defender in Congress, even among Republicans, whose party receives most of Big Tobacco's largess.

Coincidentally, it was McCain, recently best known as the Senate's foremost Republican crusader for campaign finance reform, who cobbled together the tobacco bill that emerged from the Senate Commerce Committee earlier this month. This bill was much more punitive to the tobacco industry than the June settlement. The earlier agreement, which came after months of negotiations with the attorneys general, private lawyers, and public-health advocates, required the industry to pay \$368 billion over 25 years and was projected to raise the price of cigarettes by \$1.50 a pack over 10 years. The crucial concession to Big Tobacco was a grant of immunity from punitive damages for past conduct and protection from future class action lawsuits. In exchange, the industry also agreed to be regulated by the Food and Drug Administration and to end certain advertising and marketing cam-

## Tobacco reform, filtered

*Even if Congress passes only a minimal teen smoking bill, it is likely to do the following:*

- Raise legal smoking age from 18 to 21.
- Ban vending machine sales of tobacco products.
- Give states more federal funds to stop tobacco sales to minors.
- Restrict somewhat tobacco advertising tailored to teens.
- Raise excise taxes on tobacco products slightly.

paigns widely thought to be aimed at minors—a charge the industry denies.

By comparison, the McCain bill is far tougher. It increases the industry's required payments to \$516 billion; it raises the annual cap on individual liability claims to \$6.5 billion (the industry had wanted it limited to \$5 billion); and it raises taxes up to \$1.10 a pack over five years. Most damaging to the industry, it doesn't grant tobacco companies any legal immunity. The financial penalties in the bill are so severe that even some attorneys general fear it might force tobacco companies into Chapter 11—a prospect pleasing to antismoking advocates, but one that threatens thousands of jobs and could deprive plaintiffs of the very compensation the settlement seeks to secure.

House leaders are said to dislike the broad sweep of the McCain bill, and they are especially nervous about raising cigarette excise taxes too high. According to Pryce, the House proposal is likely to avoid the liability issue altogether. Instead, it would raise the legal smoking age from 18 to 21; ban all vending machine sales of cigarettes; distribute block grants to states to curb sales to minors; and increase cigarette taxes to pay for research into tobacco-related illnesses and a campaign against teenage smoking.

**Tax aversion.** House Republicans are more acutely sensitive than their Senate counterparts about raising excise taxes—a levy considered necessary to increase the price of cigarettes to the point where teenagers can't afford to buy them. Republicans don't generally like to support tax increases of any kind, and the cigarette tax disproportionately hits lower-income people, who tend to smoke more. Pryce says that any tobacco-tax increases in the House bill will be offset with tax cuts; one example is House Ways and Means Committee Chairman Bill Archer's suggestion that self-employed workers get the same tax deductions for health insurance that corporations now enjoy.

A too narrowly framed House bill, though, could backfire against Republicans. If there is no comprehensive bill like McCain's, Clinton's political advisers think tobacco might serve as

a wedge issue to use against Republican conservatives this fall. White House strategists don't think the House's approach is enough. If the House goes ahead with "tobacco lite," Democrats could turn the debate to their advantage, portraying the GOP as beholden to tobacco interests and insensitive to issues of health and children. "They are very vulnerable," says Kent Conrad, the Senate's Democratic point man on tobacco. "They are worried sick about what this is doing to them."

RJR Nabisco's Goldstone may have been bluffing when he defied both Congress and the president before an audience at the National Press Club last week. President Clinton, his aides said, suspected the pullout was just such a ploy, designed to get a softer deal from the administration and Congress. But others said it was more likely that the executive's strong rhetoric and lectern pounding reflected a sincere disgust with a legislative process he could not shape. The next day, the industry bought full-page advertisements in national newspapers blaming politicians for destroying a well-intentioned offer. "We



RJR's Goldstone

agreed to change the way we do business ... not to go out of business," the ads said.

Some in the health care community were relieved at tobacco's walkout, since they had opposed the settlement as being too easy on the industry all along. "Good riddance," said Stanton A. Glantz, a University of California health policy expert and noted tobacco foe.

"Congress shouldn't be dealing with Big Tobacco anyway." Opponents worry that Congress needs the tobacco industry's support for advertising and marketing restrictions envisioned by the settlement in order to avoid First Amendment challenges. But it's possible some of these can be addressed without the approval of the industry. According to former FDA Commissioner David Kessler, Congress can restrict cigarette and chewing-tobacco advertising as long as it tailors each provision of the law as an effort to reduce youth smoking. Congress can also grant the FDA the power to regulate nicotine—which, in turn, would mean the ability to regulate tobacco marketing. The industry has appealed a federal court ruling that, in effect, gave the FDA that power; a decision is pending in a Richmond, Va., court.

The political environment is so hostile to tobacco that some version of McCain's bill may be the best deal the industry will get. Tobacco executives, however, say they became convinced that \$516 billion had become the lower—not upper—limit on penalties against the industry, a fear Democrats say is justified. ("The McCain bill should be the floor," says Conrad.) With the possibility of endless amendments on the Senate floor, Goldstone may have been right when he said Congress was treating the industry like a "Brink's truck overturned on the highway."

But if the tobacco industry is indeed walking away from the June settlement, it is taking its chances in 37 state courts, where it is threatened with billions of dollars in liability judgments. Anticipating protection from Congress, the industry has already settled four suits, but absent a bill with immunity, it may be unlikely to settle any more. Goldstone notes that jurors have sided with the tobacco industry for the past 40 years. These days, however, the release of devastating industry documents has given rise to new, potentially more costly legal claims. In court, as in Congress, the tide may be starting to turn.

With Kenneth T. Walsh and  
Marianne Lavelle



The Clinton White House has either a bill or a wedge issue.