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September 30, 1996

Editor
Indianapolis Star
307 N. Pennsylvania
Indianapolis, IN 46204

Dear Editor:

I read with pleasure and complete agreement, your Editorial from Sunday, September 29, 1996 titled, "Under-Age Stings". You are right on target and I am very pleased that you recognize that much of what is going on with regard to minor tobacco sales is political in nature and has nothing to do with safeguarding our youth. The Indiana Grocery and Convenience Store Association worked hard during the 1996 session of the Indiana Legislature to pass a law giving clear parameters to retailers throughout the state regarding this issue. Unfortunately, because of political reasons, the bill was vetoed by Governor Bayh.

Stings were discussed and would have been handled with this legislation. Senate Bill 106 would have allowed sting operations by legitimate law enforcement entities under the supervision of law enforcement entities. Our industry feels as you do, that the stings are really not necessary. An 18-year-old attempting to buy cigarettes is either carded or not and thus you have a business which is complying or not. Many Indiana legislators voiced strong opposition to involving children in any form with the sale of tobacco. Unfortunately, Marion County Prosecutor, Scott Newman, and the Attorney General's office insisted that this language had to be a part of the bill or they would oppose it. In the interest of producing a clear set of statewide guidelines, the retail community acquiesced.

Stings can be abused even by law enforcement personnel. Enclosed is a copy of an AP article reporting on a policeman utilizing his son to attempt to bribe retail clerks (five dollars) if the clerk refused to sell. To me, this is a classic example of abuse and in some legal circles, would be considered entrapment.

Of major significance is the political community's refusal to get serious about the sale of tobacco products to minors. One of the most important provisions of Senate Bill 106, which the Governor vetoed, was to make it against the law for minors to possess tobacco products. You will note also that in President Clinton's announcement, he did nothing to make possession by minors against the law. Until we, as a society, address this issue,

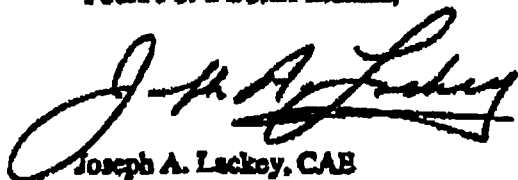
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there is not going to be any real enforcement. The kids know this and consequently, they continue to use tobacco products with impunity.

Our Association represents the groceries and convenience stores in Indiana. Our members have been and will continue to be responsible citizens, conducting our businesses in a way which our customers demand. We are not interested in selling tobacco products to minors, nor are we interested in being harassed by political entities who wish to sensationalize and take advantage of the minor tobacco problem while refusing to pass the laws necessary to address the problem. We applaud your editorial and your realistic evaluation of the situation.

Yours For a Better Indiana,



Joseph A. Lackey, CAB
President

JAL/th

Enclosures

Under-age stings

It was a bad idea when Marion County Prosecutor Scott Newman pushed it and it's even worse coming from the federal government.

The people in charge of President Clinton's crackdown on teen-age smoking want states to use minors as bait to catch businesses making illegal cigarette sales.

Last November and again in May, Newman sent 19 undercover "agents," 14- or 15-years-old, into stores to buy cigarettes. Those who were able to purchase them turned the packs over to a supervising adult waiting outside the store.

Using minors for such duty did not meet universal approval. Earlier this year a bill was introduced in the Indiana General Assembly that would have banned the practice. It was squelched because of opposition from prosecutors.

The U.S. Department of Health and Human Services, which is promulgating the federal regulations, thinks so highly of under-age stings that it is considering withholding federal aid from states that don't go along.

States have been ordered to have inspection programs operating by January 1997 to detect businesses selling tobacco products to children. It strongly urges employing stings with minors who are at least two to three years under the 18-year-old legal smoking age.

States that prefer alternative approaches are warned that the department has no evidence that other detection methods work. Regulations state flatly that the system of determining if states meet expectations is based solely on the "sting method."

More, if states don't comply, they risk losing federal drug prevention funds.

Selling cigarettes to minors is illegal in every state, as it should be. No responsible person would encourage teen-agers to begin using tobacco products or facilitate their access to them. But things have come to a sorry pass when local prosecutors and federal regulators use or mandate stings using impressionable minors.

Surely there is some better way to trap stores that break the law either by flouting it or by failing to instruct personnel in its requirements. And there must be more productive and efficacious ways of ensuring the public's health and exercising the awesome powers of government.

The Newman-HHS stings smack too much of tactics employed by the Hitler Youth brigades. The law should be enforced and prosecuted by those paid to do so, not by under-age volunteers.

THE INDIANAPOLIS STAR

EUGENE C. PULLIAM 1889-1975. Publisher 1944-1975

EUGENE S. PULLIAM
Publisher

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March 8, 1996

FACT SHEET: SB 106 Sale of tobacco to youth and smoking areas

PREPARED BY: Indiana Grocery and Convenience Store Association

Senate Bill 106 establishes a clear state standard for enforcement of youth tobacco laws. The philosophy behind the bill mirrors that utilized by the State for alcoholic beverage laws, IOSHA, Board of Health, Weights and Measures, etc. All of these areas represent issues wherein the State recognizes clear standards, resulting in maximum compliance, is essential. Youth tobacco laws present the same situation.

SPECIFIC PROVISIONS

1. Youth tobacco sales are added to the alcoholic beverage enforcement provisions of the Excise Police, thus insuring that Excise Police have the authority to pursue enforcement at non-alcoholic licensed establishments. Also, this clarifies the current unofficial relationship with the Mental Health Department for compliance with the federally mandated SYNAR Amendment.
2. All law enforcement authorities within the state are empowered to enforce youth tobacco laws.
3. The Division of Mental Health is tasked to coordinate the conduct of random, unannounced inspections at locations where tobacco products are sold, to ensure compliance. Also, this insures that Mental Health captures all enforcement data to be reported in compliance with the Public Health Services Act.
4. The bill bans the sale of single cigarettes or any cigarettes other than unopened packages originating with the manufacturer and bearing the federally required health warning.
5. Law enforcement personnel are empowered to perform "sting" type operations utilizing persons under 18 years of age, with prior parental consent and with law enforcement personnel supervision.
6. The Division of Mental Health is tasked to prepare for submission the annual report on youth tobacco enforcement as required by the U.S. Department of Health and Human Services. The consequences of not filing this report is loss of federal funding to the Department of Mental Health.
7. The bill allows grocery and drug stores to designate their retail sales areas as non-smoking areas and for this designation to have the force of law. Sign posting requirements are specified. Restaurants are required to post conspicuous signage at their entrance advising consumers of their smoking policy.
8. The bill preempts local ordinances which deal with regulation of sale, distribution, or display of tobacco products and restricts these decisions to the General Assembly. Local governments may enact ordinances that would ban billboards advertising tobacco within 200 feet of a school.
9. The bill allows local ordinances to be more restrictive in all other areas. This means, for example, that there are no restrictions on local ordinances restricting smoking prohibitions.
10. Persons under 18 are allowed to handle tobacco products in the course of their employment. It does not allow them to use tobacco products.
11. The law prohibits possession of tobacco products by persons under 18 years of age.
12. Verbiage is present to clarify that zoning restrictions and the ability for local government to utilize zoning decisions are unaffected, as long as they are not tobacco specific.

The bill, as it passed the House and Senate, does nothing to enhance a minor's ability to purchase tobacco products. To the contrary, the bill establishes clear parameters for legitimate sting operations by law enforcement and makes possession by a minor a violation of law.

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KEY POINTS TO CONSIDER

- As the bill passed the House and Senate, the following entities withdrew their objections:
 1. Indiana Attorney General
 2. Indiana Association of Cities and Towns
 3. Prosecuting Attorneys Council
 4. Marion County Prosecutor
- Opponents of this bill, as passed, are entities who want confusion in order to enhance embarrassment of retail operations. Some of these groups have indicated that they wish to force retailers to stop selling cigarettes to anyone through vigilante type pressure.
- Some opponents oppose making possession by minors against the law because it inhibits their ability to conduct vigilante type sting operations since utilization of underage buys is clearly contributing to the delinquency of a minor. (ASSIST Policy Manual I).
- This is not a health issue - it is a law enforcement issue.
- We are simply seeking a statewide standard to allow uniform enforcement and enhance compliance.



CITY OF BOSTON

IN THE YEAR NINETEEN HUNDRED AND NINETY-SIX

AN ORDINANCE

LIMITING TOBACCO ACCESS BY YOUTH

Be it ordained by the City Council of Boston, in accordance with the provisions of Massachusetts General Laws Chapter 43B, Section 12, and any other applicable law, as follows:

1. WHEREAS, tobacco use is a leading public health problem in the City of Boston and throughout the United States; and
- 2.
3. WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies and
4. irritations to the eyes, nose and throat of both the smoker and non-smoker exposed to secondhand smoke; and
- 5.
6. WHEREAS, tobacco use by minors is a continuing problem with grave public health consequences because more than 80% of all smokers begin before the age eighteen and
7. more than 3,000 people begin smoking every day in the United States; and
8. WHEREAS, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of
9. tobacco products to minors.
10. NOW THEREFORE, BE IT ORDAINED that a strict and enforceable system to
11. prevent access to and the illegal sale of tobacco products to minors be enacted as follows:
- 12.
13. Section I. Definitions
14. "Employee" means any individual who performs services for an employer in return for wages or profit.
- 15.
16. "Employer" means any individual, partnership, association, corporation, trust or other organized group of individuals, including the City of Boston or any agency thereof, which regularly uses the services of two (2) or more employees.
- 17.
18. "Individual" means any employee, volunteer or any other person who patronizes an area where tobacco products are sold.
- 19.
- 20.

AN ORDINANCE

1. "Retail Store" means any establishment selling goods or articles or personal services to
2. the public.

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4.

5. "Self Service (also known as "free-standing display") means a display from which
6. "Display" individual packs or cartons of tobacco products may be selected by a
7. customer.

8.

9.

10. "Tobacco Vending Machine" means any machine or device designated for or used for the vending of
11. cigarettes, cigars, tobacco or tobacco products upon the insertion of coins,
12. trade checks, swipe cards, slips, or any other form of payment.

13.

14. Section II: Tobacco Sales to Minors Prohibited

15. A. Sale to Minors

16. In conformance with Massachusetts General Laws, Chapter 270, Section 6,
17. whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to
18. any person under the age of eighteen or, not being his parent or guardian, gives a
19. cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the
20. age of eighteen, shall be punished according to the fine schedule set forth in Paragraph
H of this section.

21. B. Posting State Law

22. In conformance with Massachusetts General Law, Chapter 270, Section 7, a copy
23. of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously
24. by the owner or other person in charge thereof in the shop or other place used to sell
25. cigarettes at retail.

26.

AN ORDINANCE

1. The notice to be posted shall be provided by the Massachusetts Department of Public
2. Health and made available from the Public Health Commission of the City of Boston.
3. Such notice shall be at least 48 square inches and shall be posted at the cash register
4. which receives the greatest volume of single cigarette package sales in such a manner
5. so that it may be readily seen by a person standing at or approaching the cash register.
6. Such notice shall directly face the purchaser and shall not be obstructed from view or
7. placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
8. For all other cash registers that sell cigarettes, a notice shall be attached which is no
9. smaller than nine (9) square inches, which is the size of the sign provided by
10. the Massachusetts Department of Public Health. Such notice must be posted in a
11. manner so that it may be readily seen by a person standing at or approaching the cash
12. register. Such notice shall directly face the purchaser and shall not be obstructed from
13. view or placed at a height of no less than four (4) feet or more than nine (9) feet from
14. the floor.
15. **C. Permit for Location and Sales of Tobacco**
16. 1. After the effective date of this ordinance, the Public Health Commission of
17. the City of Boston will issue a "Permit for Location and Sales" that will
18. specify the name, address, and approved location per the Public Health
19. Commission of the City of Boston or their designated agent(s) for retailers
20. who sell tobacco products.
21. 2. After the effective date of this ordinance, all retailers who are required to
22. hold a state license to sell cigarettes or other tobacco products, will be
23. required to hold and maintain a valid "Permit for Location and Sales" from
24. the City of Boston for each location at which tobacco products are sold.
25. 3. After receiving the permit, the merchant will receive signage that states
26. "Sale of cigarettes or any tobacco products to persons under age eighteen
27. (18) is illegal, M.G.L. Chapter 270, Sections 6 & 7." Any merchant not
28. posting said signage will be in non-compliance of this Ordinance and
29. subject to penalties per Section II, Paragraph H of this Ordinance.
- 30.

AN ORDINANCE

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 10. **D. Tobacco Vending Machines**
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 14. **E. Out-of-Package Sales Prohibited**
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 18. **F. Self-Service Displays Prohibited**
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 - 20.
4. The term of the permit shall be one year.
5. The fee for a one year tobacco retailer's "Permit for Location and Sales" is fifty dollars (\$50.00) for each tobacco retail location.
6. A "Permit for Location and Sales" is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations.
7. During such time that a "Permit for Location and Sales" of tobacco products has been suspended for violations of this Ordinance, all tobacco products must be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined according to Section II, H until said permit is reinstated by the Public Health Commission of the City of Boston or its designated agent(s).
1. After the effective date of this ordinance, cigarette vending machines or any other device used in the sale or distribution of tobacco products will be prohibited in all locations within the City of Boston.
1. It shall be unlawful to remove and commercially sell single cigarettes from the manufacturer's package which states the federally required health warnings. Commercial sale and/or distribution of cigarettes in a form, other than an original factory-wrapped package, is prohibited.
1. Self-Service displays (also known as "free-standing displays") of all tobacco products, from which individual packages or cartons may be selected by the customer, shall be located only in those areas of the place of business which are accessible exclusively to employees of business.

AN ORDINANCE

1. G. Sales by Employees

2. No commercial entity selling tobacco products at retail shall allow any employee to
3. sell cigarettes or other tobacco products until such employee reads the Boston
4. Tobacco Control Ordinance and state laws regarding the sale of tobacco and signs
5. a statement, a copy of which will be placed on file in the office of the
6. employer, that he/she understands the Ordinance.

7. H. Penalties, Fines, Suspension and/or Suspension Hearings of Permit

8. It shall be the responsibility of the permit holder and/or individual in charge of the
9. area where tobacco products are being sold to ensure compliance with all sections
10. of this Ordinance pertaining to their place of business. The permit holder and/or
11. individual in charge of the area permitted for tobacco sales, or persons involved
12. in violation of any of the provisions of this Ordinance may receive:

13. 1. In the case of a first violation, the permit holder and/or individual in
14. charge of the area permitted for tobacco sales, or persons not in
15. compliance with the provisions of this Ordinance shall receive a fine of one
16. hundred dollars (\$100.00).

17. 2. In the case of a second violation, the permit holder and/or individual in
18. charge of the area permitted for tobacco sales, or persons not in
19. compliance with the provisions of this Ordinance shall receive a fine of
20. two hundred (\$200.00) and the permit shall be suspended for
seven (7) consecutive business days.

3. In the case of three or more violations within one (1) year, the permit
holder and/or individual in charge of the area permitted for tobacco sales,
or persons not in compliance with the provisions of this Ordinance shall
receive a fine of three hundred dollars (\$300.00) and the permit shall be
suspended for thirty (30) consecutive business days.

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4. The Public Health Commission of the City of Boston shall provide written notice to the permittee of the intent to suspend a Permit for Location and Sales of Tobacco. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permittee shall have an opportunity to be heard at such hearing and shall be notified of the Commission's decision and reasons in writing.

1. Non-Criminal Disposition

Whoever violates any provision of this Ordinance, the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, section 21D or by filing a criminal complaint at the appropriate venue.

Each day on which any violation exists shall be deemed to be a separate offense.

Penalty: \$100 for the first offense
 \$200 for second offense
 \$300 for third offense

Section III: Enforcement

Enforcement of this Ordinance shall be implemented by the Public Health Commission of the City of Boston or its designated agent(s).

Any citizen who desires to register a complaint of non-compliance under the Ordinance may do so by contacting the Public Health Commission of the City of Boston or its designated agent(s).

FROM: JUSTICE ASSOCIATES
T-4006

AN ORDINANCE

1. Section V: Public Education

2. The Public Health Commission of the City of Boston shall engage in a continuing
3. program to explain and clarify the purposes and requirements of the Ordinance to
4. citizens affected by it, and to guide owners, operators and managers in their compliance
5. with it. Such program may include publication of a brochure for affected business and
6. individuals explaining the provisions of this Ordinance. The Public Health Commission
7. of the City of Boston shall respond to any requests from tobacco retailers for assistance
8. in training sales personnel.

7. Section VI: Severability

8. If any provision, clause, sentence or paragraph of this Ordinance or the application
9. thereof to any person or circumstances shall be held invalid, such invalidity shall not
10. affect the other provisions of this article which can be given effect without the invalid
11. provision or application, and to this end the provisions of this Ordinance are declared to
12. be severable.

12. Section VII: Effective Date

13. This Ordinance shall take effect upon its passage.
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