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EXECUTIVE SUMMARY

- Iowa was a tobacco control leader in the 19th Century. In 1897 the General Assembly completely prohibited the use, sale, and possession of tobacco products in the state. When the law was repealed in 1921, the General Assembly enacted strong measures to prevent tobacco use by minors. In 1921 Iowa passed the first state cigarette excise tax (2 cents).
- Tobacco control reemerged in the 1970s, however a coalition of health groups were consistently outmaneuvered by tobacco industry lobbyists.
- In 1990 health groups attempted to strengthen Iowa's Clean Indoor Air Act (passed in 1987), however the tobacco industry, represented primarily by Charles Wasker, co-opted the bill, stripping meaningful tobacco control provisions and using it to include ambiguous language to preempt localities from passing clean indoor air laws, which chilled local clean indoor air action for a decade.
- In 1993 the voluntary health organizations founded Tobacco Free Iowa (TFI), a dedicated statewide tobacco control coalition to advocate for tobacco control policy change. In 1995 TFI hired Serge Garrison, a former R.J. Reynolds (RJR) lobbyist, to lobby to repeal clean indoor air preemption. Garrison, who helped draft the preemption clause when working for RJR, questioned whether Iowa's ambiguously worded clause actually preempted local clean indoor air action.
- Iowa, represented by Attorney General Tom Miller (D), was a party in the 1998 Master Settlement Agreement. Miller and the Iowa Attorney General's Office, have been strong allies to tobacco control in Iowa.
- After the MSA, in 2000, Iowa created the Division of Tobacco Use Prevention and Control within the Iowa Department of Public Health to implement a state tobacco control program funded with MSA revenue.
- In 2001 the General Assembly passed legislation to securitize the MSA revenue stream to receive an upfront lump sum in lieu of most future MSA payments. Politicians framed MSA securitization as a way to create stable funding for health programs, including tobacco, but the vast majority of the money went to infrastructure projects.
- The Health Iowans Tobacco Trust created through securitization to fund tobacco and other health programs was continually raided by the General Assembly from 2001 to 2008, and zeroed out in 2009.
- The Iowa Tobacco Division has never been funded at or near the CDC recommended best practices for tobacco control and tobacco control advocates have not mobilized enough political pressure to demand and protect funding for the Tobacco Division.
- From 1998 to 2008, \$44,577 in campaign contributions were given to Iowa legislative candidates and party committees by five tobacco companies: Altria/Philip Morris, Farnert-Bocken (an Iowa-based distributor), Myers-Cox Company (an Iowa-based distributor), R.J. Reynolds, and US Smokeless Tobacco.
- Tobacco industry contributions spiked in 2000 when the Iowa General Assembly was considering legislation to create the Iowa Tobacco Division and deciding the use of their MSA payments. Contributions dropped in 2004 after the General Assembly mandated that the Tobacco Division have a youth focus (a pro-industry position) and securitized most of their MSA revenue. In 2004, industry contributions jumped back up (and steadily

increased though 2008) concurrent with an increase in the introduction of tobacco control initiatives (which were repeatedly killed until 2007).

- The tobacco industry focused contributions on legislative leaders. Rep. Christopher Rants (R-Woodbury) former Iowa House Majority Leader (1999-2003) and Speaker of the House (2003-2006) received the most industry money from 1998-2008 (\$7,397). Rants was a key player in killing tobacco tax and local control bills throughout the 2000s. Representative Jamie Van Fossen (R- Scott) who served as the Chair of the House Ways and Means Committee received the second greatest amount (\$6,050), followed by Sen. Stewart Iverson, Jr. (R-Wright), Senate Majority Leader from 1997-2006 (\$2,220).
- From 1998 to 2008, tobacco industry contributions to Republican candidates and the Republican party (\$27,947) far outweighed contributions to their Democratic counterparts (\$15,130). From 1998 to 2007, Republicans controlled both houses (except in 2006 when the Senate was tied).
- Republican legislators were significantly more pro-tobacco than Democrats.
- Legislators who accepted campaign contributions from the tobacco industry were significantly more pro-tobacco than those who did not, controlling for party.
- The tobacco industry maintains a significant lobbying presence, between 2003 and 2008 the tobacco industry reported \$667,875 in lobbying expenditures in Iowa.
- After an inquiry prompted by Serge Garrison in the late 1990s, Attorney General Tom Miller (D) issued an opinion in November 2000 stating that state law did not preempt local clean indoor air ordinances.
- From 1999 to 2003 there was a tide of local clean indoor air action. In March 2002, Ames passed Iowa's first clean indoor air ordinance. Ames' ordinance included a tobacco industry inspired "hours" provision that allowed smoking after 8:30pm, advocated for by hospitality interests, making the ordinance weak. Its passage created momentum for other localities to pass clean indoor air measures.
- In January 2002, Iowa City passed Iowa's first 100% smokefree restaurant ordinance. Other localities, aided by the Iowa Attorney General's Office and TFI, began considering ordinances and enactment of voluntary clean indoor air policies.
- Local clean indoor air progress was blocked in 2003, after a group of Ames business owners, funded by Philip Morris, challenged the Ames ordinance in court. In May 2003, the Iowa Supreme Court ruled that the 1990 Clean Indoor Air Act was preemptive.
- In 2003, TFI collapsed, leaving Iowa without a functioning tobacco control coalition until 2006. In 2003 some advocates reorganized to create CAFE Iowa and CAFE Iowa CAN, primarily to repeal preemption.
- Beginning in 2005, under the direction of Iowa Tobacco Division Director Bonnie Mapes, Iowa advocates reorganized and created a strategic plan. In 2006 the Iowa Tobacco Prevention Alliance was created to assume the role of Iowa's statewide tobacco control coalition.
- The combination Democrats taking control of the legislature in 2007 and the reorganization of tobacco control advocates in 2006 led to substantial tobacco control policy changes.

- In 2007 the Iowa General Assembly passed a \$1 increase in the cigarette tax, the first increase in 16 years.
- In 2008 the General Assembly passed the strong Iowa Smokefree Air Act that extended smokefree environments to 99 percent of Iowa employees and repealed preemption.
- Following the 2007 tax increase, adult smoking rates in Iowa fell from 18 to 14% in two years (2006 to 2008).
- Youth smoking rates increased from 2004 to 2006 following a substantial cut in allocations to the Tobacco Division in 2002, leading to a substantial decrease in expenditures for Just Eliminate Lies, Iowa's youth counter-marketing campaign.
- Tobacco control advocates must make securing and maintain adequate funding for Iowa's Tobacco Division a top priority. The CDC recommends that tobacco control programs in Iowa be funded at \$36.7 million per year. In FY 2009, the Tobacco Division received only \$11.0 million, less than a third of the CDC recommended level. An increase in funding is particularly important because of the increase in youth smoking rates since JEL's 2002 funding cut.
- Given the Tobacco Division's limited budget and the increasing levels of youth and young adult smoking, the Tobacco Division should focus less on funding individual level cessation services (other than the Quitline, which is a public health intervention) and instead increase its emphasis on media and community-based programs that are more cost-effective public health interventions to reduce tobacco use.
- Advocates should work to require health insurance to provide cessation services through the medical services budget, not public health.
- Advocates need to expand their base beyond major cities to rural areas of Iowa to broaden the base of support for smokefree environments and expand the political base to maintain and expand funding for tobacco control efforts.

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INTRODUCTION

Iowa's population (3 million) represents roughly 1 percent of that of the United States.³ 4,440 adults in Iowa died each year from smoking-related diseases and smoking costs Iowans \$1 billion in annual health care and another \$1 billion in lost productivity.⁴

The state that is as well known for its corn as it is for its caucus is characterized by distinctly metropolitan and rural areas, whose differing interests create a political divide, that at times, has more influence on policy and politics than the divide along partisan lines.

Early Iowans were successful in enacting strong tobacco control measures to combat what they saw as harmful moral and health effects of tobacco, going as far as to completely prohibit the use of tobacco in 1897. After a repeal of this prohibition 1921, Iowa enacted significant youth access restrictions, while allowing adults to use tobacco products. Additionally in 1921, Iowa was the first state to enact a state level cigarette excise tax.

Despite early successes, in the 1970s, 1980s and 1990s, as tobacco control policy change was gaining traction across the United States, tobacco control advocates in the legislature and representatives of the national voluntary health organizations (the American Heart Association, American Lung Association, and American Cancer Society) were consistently outmaneuvered by the tobacco industry, serving as an example of how the industry could proactively secure passage of weak tobacco control laws to prevent more meaningful measures that had an actual protective health effect.⁵

In 1990 the Iowa General Assembly passed a bill that initially was meant to extend smoking restrictions to restaurants, but was co-opted by the tobacco industry. In the end, restaurants were amended out of the law, other provisions were weakened and language was added that preempted Iowa localities from passing stronger measures. Similarly, in 1991, an attempt by tobacco control advocates to pass a strong state youth access law that included vending machine restrictions allowed the industry to co-opt the bill to include a provision that overturned a de facto sampling restriction, language that only weakly regulated vending machines, and extended preemption to youth access laws.

In the late 1990s, Iowans questioned whether localities were in fact preempted from passing clean indoor air ordinances, and, in 2000, Ames, Iowa began to draft a local clean indoor air restaurant smoking ordinance. Later that year, Attorney General Tom Miller (D) issued a formal opinion that stated that the Attorney General's Office did not believe that localities were preempted from passing smokefree ordinances regarding public places. In 2001, Ames passed their ordinance, but as with earlier tobacco control measures, what began as a 100 percent smokefree restaurant ordinance ended up as a weak ordinance, undermined by hospitality interests that only prohibited smoking during certain times of day. Iowa City, Iowa was able to pass a 100 percent smokefree restaurant ordinance the following year. However, a challenge of the Ames ordinance, funded by Philip Morris, that reached the Iowa Supreme Court invalidated both local ordinances in 2003 on the grounds that they were preempted by state law. Attempts to repeal preemption at the state level were not successful until 2008, because pro-tobacco Republicans who controlled the legislature through 2007 consistently killed tobacco control bills.

Tobacco control advocates in Iowa have had difficulty developing and maintaining a unified front, another factor (in addition to power of the tobacco industry and its allies) that has hindered tobacco control in Iowa. Iowa health groups first worked collectively on tobacco control issues in the mid-1980s, and in 1993 the voluntary health organizations formed Tobacco Free Iowa, a statewide tobacco control coalition, in the hope of extending their allies. The group was successful in forming relationships with local substance abuse organizations and Attorney General Tom Miller (D, 1979-1991, 1995-). Miller became a state and national level tobacco control advocate through his involvement with the Master Settlement Agreement (MSA), which settled the state's lawsuit against the major cigarette companies in 1998 and resulted in billions of dollars in payments from the industry to states.⁶ However the group went defunct in 2003 after a long period of dysfunction. Iowa was without a statewide tobacco control coalition until 2006.

Iowa has never had a state tobacco control program funded at or near the Centers for Disease Control and Prevention's (CDC) recommended level for state tobacco control programs.^{7,8} The struggle for tobacco control funding began in 2000, the year that the Iowa Department of Public Health, Division of Tobacco Use Prevention and Control was created, when advocates were caught off guard and the legislature passed legislation to securitize a portion of Iowa's MSA funds, receiving up front, instead of future MSA payments. While the General Assembly created a fund for tobacco control and other health related causes when the MSA funds were securitized, tobacco control advocates were neither able to secure adequate funding among other health interests nor able to ward off raiding of the dedicated health fund by the Iowa General Assembly for other purposes. As a result, in 2009 the fund ran out of money and there was no longer settlement funding available for tobacco control. Beginning in FY 2009 funding for tobacco control was allocated from the Iowa General Fund and a trust fund created in 2007 after the passage of a \$1 increase in the cigarette tax.

The formation of the Iowa Health Initiative in 2002, a group representing broad interests dedicated to passing a \$1 cigarette tax increase, made increasing Iowa's relatively low cigarette tax, an election issue in 2006. Although advocates were unsuccessful at passing state level tobacco control measures and unable to pass clean indoor air legislation at the local level, an effort from 2004 to 2008 led by the Iowa Attorney General's Office, the American Cancer Society, CAFE Iowa (an Iowa state-level tobacco control coalition), and the Iowa Hospital Association, to encourage the passage of voluntary smokefree policies pertaining to the grounds of medical facilities, created momentum for clean indoor air policy change.

After years of unsuccessful state level tobacco control policy change efforts, in 2007 the Iowa General Assembly passed a \$1 increase in the state cigarette excise tax and in 2008 passed a comprehensive smokefree air act covering workplaces as well as public places (except the floors of gaming facilities). The creation of a unified tobacco control front through the organization of the Iowa Tobacco Prevention Alliance was paramount to these policy change successes, as was the shifting of power in the legislature from Republican to Democrat in 2007.

Tobacco Use

In 2008, according to the CDC’s Behavioral Risk Factor Surveillance System (BRFSS) surveying, 18.7 percent of adult Iowans smoked cigarettes compared to a nationwide median smoking prevalence of 18.3 percent ⁹ (Figure 1). In addition, in 2007, according to the CDC’s Youth Risk Behavior Surveillance System (YRBSS), 18.9 percent of Iowa youth were current smokers, slightly below the 2007 national average of 19.4 percent.¹⁰ While the overall adult and youth smoking rates were slightly below the national average, according to data from the National Survey on Drug Use and Health (NSDUH) from 2006, 42.3 percent of Iowans between the ages of 18-25 were current smokers, higher than the national average of 38.7 percent among the same age group.¹¹

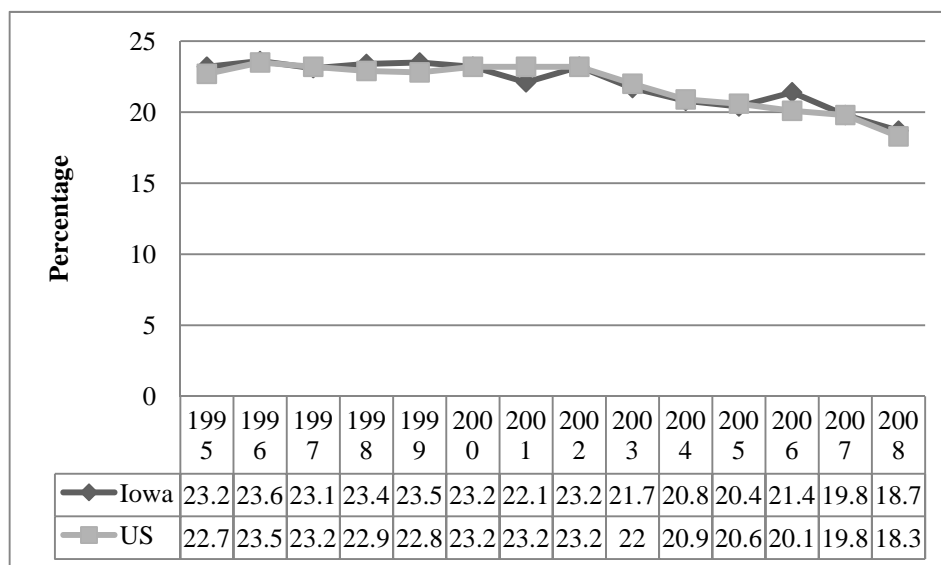


Figure 1: Adult smoking prevalence in US and Iowa, 1995-2008 ⁹

The Iowa Department of Public Health, Division of Tobacco Use Prevention and Control contracted with the Center for Social and Behavioral Research of the University of Northern Iowa to conduct their own survey of adult tobacco use trends. The “Iowa 2008 Adult Tobacco Survey” found that adult Iowans had a 14 percent cigarette smoking prevalence, significantly ($P < .0005$) lower than the national CDC’s BRFSS estimate of 18.7 percent prevalence (Figure 2). The Division of Tobacco Use Prevention and Control has not responded to inquires about the differences between the two data sets.

Iowa General Assembly

A “General Assembly” in Iowa spans two years, beginning with an odd numbered year, with each year making up a legislative session. A bill passed by one chamber during a legislative session can be taken up by the other in the following session as long as it is within a General Assembly period.¹

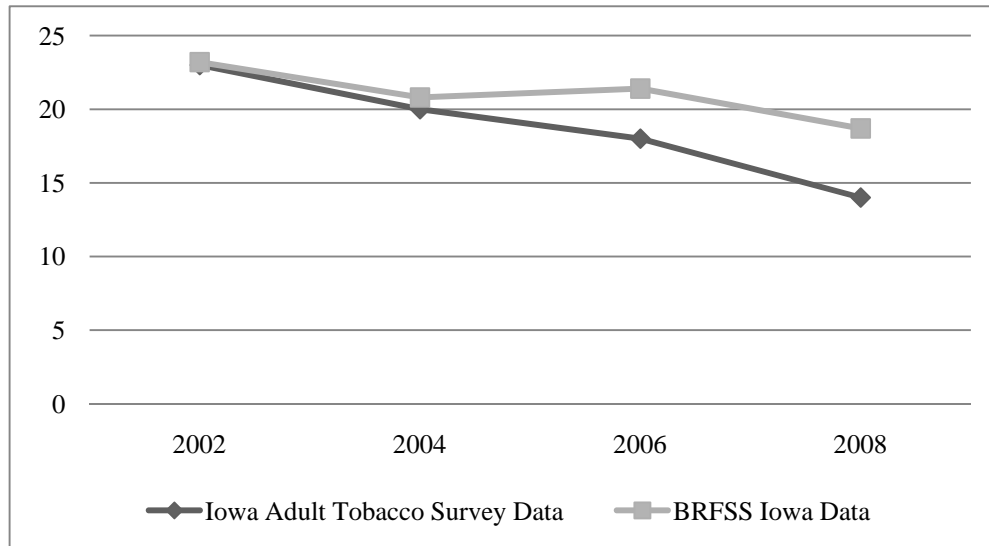


Figure 2: Adult smoking prevalence in Iowa and the US according to the Iowa Adult Tobacco Survey compared with CDC BRFSS results¹²

Funnel Week

The Iowa General Assembly has predetermined dates by which action has to be taken on legislation. If action is not taken by the specified date the legislation is dead. The week preceding the deadline for action is referred to as “funnel week.” Funnel rules exist to make the legislative session more manageable,¹ but have also traditionally been the time when important tobacco control bills have been killed.

How A Bill Becomes A Law

The steps required for a bill to become a law are many. Figure 3 illustrates the processes by which a bill becomes a law in Iowa. Importantly, the Governor has line-item veto power when considering appropriation bills, allowing him or her to strike certain provisions of an appropriation bill while signing other provisions of the same bill into law.

KEY PLAYERS

Tobacco Control Advocacy Organizations

The National Voluntary Health Organizations

Health groups first organized to work toward tobacco control policy change in the mid-1980s when a coalition of the American Lung Association (ALA), the American Cancer Society (ACS), and the American Heart Association (AHA) began working with legislators to pass legislation to restrict smoking in public places. Prior to the 1980s the health groups worked primarily on local cessation initiatives rather than advocacy for tobacco control policy change.¹³

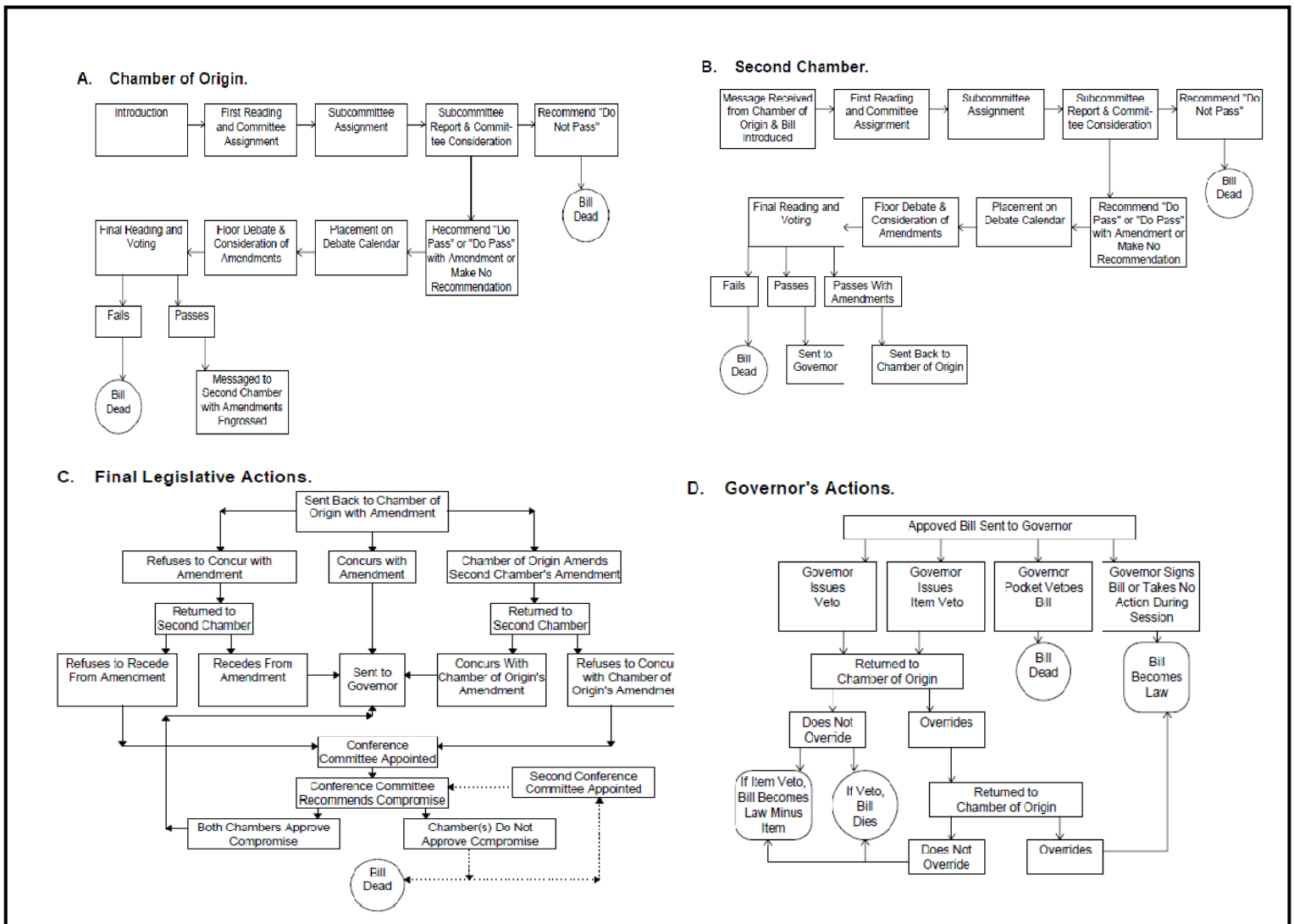


Figure 3: How a bill become a law in Iowa ¹

Tobacco Free Iowa

Tobacco Free Iowa (TFI) was a statewide coalition founded by the ALA, ACS, and AHA in 1993 to expand the tobacco control coalition beyond the voluntary health organizations.. Prior to creation of TFI, ALA, ACS, and AHA worked individually and collectively as an informal coalition on tobacco control issues.¹⁴ TFI ran several initiatives, including the Spend It Right campaign in 1999 which focused on securing funds from the Master Settlement Agreement for tobacco control. In 2001, TFI was awarded a SmokeLess States grant from the Robert Wood Johnson Foundation. The purpose of the grant was to change public policy to the public's exposure to secondhand smoke,¹⁵ primarily through the passage of local clean indoor air policies. The ALA of Illinois-Iowa was the fiscal agent for the grant.

From 2000 through 2003, TFI worked with the Iowa Attorney General's Office to educate Iowa communities about secondhand smoke and how to pass and implement local clean indoor air ordinances in their communities. In 2003 a ruling by the Iowa Supreme Court found

that Iowa communities did not have the power to pass local clean indoor air ordinances. This development, along with conflict surrounding hiring choices by the ALA, led to a dysfunctional coalition unable to fulfill the terms of its grant. As a result, the Robert Wood Johnson Foundation pulled its funding after only a year; a very unusual action. Tobacco Free Iowa continued to exist in name, but no longer functioned as a statewide coalition.

Ames Tobacco Task Force

The Ames Tobacco Task Force was a tobacco control coalition founded in 1999 by several organizations including the American Cancer Society and Youth & Shelter Services, a local organization focused on providing shelter and resources to youth in need. The group was largely responsible for the passage of the state's first local clean indoor air ordinance in Ames in 2001.

Clean Air for Everyone

Clean Air For Everyone (CAFE) Johnson County, a local coalition formed in November 1996 as the Johnson County Citizens for Tobacco Free Youth, originally focused on improving the enforcement of state level youth access restrictions passed by the Iowa General Assembly in 1991. In 1999 the organization shifted its focus from youth access to trying to pass a local clean indoor air law in Iowa City, Iowa because they realized that clean indoor air policies had a greater impact on smoking in their community than youth access laws. With their change in focus, the group changed its name to CAFE Johnson County. The organization was successful in passing the second local smokefree ordinance in Iowa in 2002.

After the Iowa Supreme Court ruled in 2003 that Iowa localities could not pass clean indoor air laws, members of CAFE Johnson County led the development of CAFE Iowa, a 501(c)3 nonprofit educational organization, with members in several Iowa communities with the goal of restoring local control of tobacco control policy making in Iowa. The founder of the organization, Eileen Fisher, simultaneously organized Clean Air For Everyone Iowa Citizen Action Network (CAFE Iowa CAN), a 501(c)4 nonprofit political lobbying advocacy organization, also with the goal of restoring local control to Iowa communities. CAFE Iowa secured several grants to support public education on the health effects of secondhand smoke, grassroots mobilization initiatives, and to train advocates. Meanwhile, CAFE Iowa CAN raised money through membership and donations to hire a state level lobbyist and fund a grassroots media campaign. While CAFE Iowa had a presence in several Iowa communities and at the state level, the organization did not have the financial capacity to become a statewide organization as Tobacco Free Iowa had been.

In 2006, after several strategic planning meetings focused on improving Iowa's tobacco control advocacy efforts, CAFE Iowa reorganized as the Iowa Tobacco Prevention Alliance, a statewide coalition that worked with the Iowa Department of Public Health, Division of Tobacco Use Prevention and Control.

Iowa Tobacco Prevention Alliance

The Iowa Tobacco Prevention Alliance (ITPA) was founded in 2006 to serve as Iowa's unified statewide tobacco control coalition. Bonnie Mapes, the Director of the Iowa Department of Public Health, Division of Tobacco Use Prevention and Control, and Cathy Callaway, Senior Representative for state and local campaigns for the national American Cancer Society Cancer Action Network (ACS-CAN), and former Director of the Iowa Division of Tobacco Use Prevention and Control, led the development of ITPA. The coalition was a 501(c)3 organization, founded with two primary policy objectives: to increase Iowa's cigarette tax by \$1 and to reduce secondhand smoke exposure in Iowa through the passage of clean indoor policies. In 2007 ITPA was integral in the passage of a \$1 cigarette tax increase and in 2008 was key to the passage of a comprehensive statewide smokefree law.

The Tobacco Industry and Its Allies

The Tobacco Institute

Lobbying against tobacco control measures in Iowa was coordinated predominately by the Tobacco Institute before it was disbanded as a result of the Master Settlement Agreement in 1998. The Tobacco Institute's main lobbyist was Charles Wasker. The Tobacco Institute also retained the counsel of William Wimmer, an associate at Wasker's firm, Sullivan, Wasker, and Ward. The Tobacco Institute found their member companies' staff and Iowa retailers to be their most effective allies, while they believed that the Iowa wholesalers, particularly the Iowa Association of Candy and Tobacco Distributors, represented by Executive Director George Wilson, were the Institutes' least effective partner.¹⁶

The Tobacco Institute also engaged the Iowa labor community, particularly the Iowa Citizen Action Network (ICAN), in opposition to tobacco excise taxes in Iowa (discussed below). The partnering of the tobacco industry with state level organized labor group arguably began when the Tobacco Institute became a member of ICAN in 1986. The Tobacco Industry retained Lowell Junkins as counsel to the Tobacco Institute's Labor Management Committee (LMC) to work with ICAN and other organized labor groups in Iowa. (The Tobacco Institute formed the LMC nationally in 1984 with four trade unions with the goal of lobbying elected officials to oppose tobacco control measures as well as to recruit progressive groups and labor organizations to fight tobacco excise taxes.¹⁷)

Lobbyists

Charles Wasker was the Tobacco Institute's head lobbyist in Iowa beginning in the early 1980s. Wasker was considered by the Tobacco Institute to be the "best available" in Iowa.¹⁸ In addition to lobbying on behalf of the Tobacco Institute Wasker represented Hy Vee Food Stores, Inc, a large tobacco distributor in Iowa, Charter Community Hospital, the Iowa Pharmacists Association, among others (Table 1). In 2007, Wasker still lobbied on behalf of tobacco interests, including the Cigar Association of America, the Iowa Wholesaler Association, and Reynolds America.¹⁹

William Wimmer served as a "back-up" lobbyist for the Tobacco Institute in Iowa. Wimmer had "strong Democratic ties" in the Iowa General Assembly and proved to be a valuable compliment to Charles Wasker who was "strongly" Republican according to the Tobacco Institute.¹⁸ William Wimmer, in his capacity as an associate at Wasker's firm, Wasker, Sullivan, and Ward, also represented Hy Vee Food Stores, Inc, Charter Community Hospital, and the Iowa Pharmacists Association (Table 2). Wimmer became a prominent tobacco industry lobbyist in the 2000s, while continuing to simultaneously lobby on behalf of health organizations (Table 2). Additionally, Charles Wasker and William Wimmer both became shareholders in Wasker, Dorr, Wimmer, & Marcouiller, P.C.

Lowell Junkins was hired by the Tobacco Institute's Labor Management Committee (LMC) in 1987 to serve as a political and legislative consultant in Iowa.²² Junkins had close ties in the Iowa legislature and with liberal organizations in Iowa because he was a former Democratic state Senator, serving from 1974 to 1986. From 1980 to the end of his career in the Senate, Junkins served as the Iowa Senate Majority Leader and in 1986 he made an unsuccessful bid for the Governorship.²²

Table 3 shows the annual payments to Charles Wasker and Lowell Junkins paid by the Tobacco Institute and the LMC, respectively

The Tobacco Institute's Tobacco Action Network

The Tobacco Institute's Tobacco Action Network (TAN) was created by the Tobacco Institute's Executive Committee in September 1977 to coordinate the tobacco industry's grassroots capacity including tobacco growers, manufacturers, wholesalers, retailers. Members of TAN in localities across the US were asked to monitor and mobilize against excise taxes and

Table 1: Clients of Charles Wasker, 1989

he Tobacco Institute Hy Vee Food Stores, Inc Charter Community Hospital IA Pharmacists Association A Trial Lawyers Association IA Retired Teachers Association IA Lumberman's Association IA Shorthand Reporters Association Home Builders Association IA Association of Electric Cooperative Transport Insurance Company IA Tall Corn Chapter of Club Managers Youth Law Center IA Area Development Group Central Iowa Power Corporation Des Moines Metropolitan Transit Authority IA Network Services North American Securities Administrator's Association IA Bankers & Business Leaders for Interstate Banking IA Network Services

Table 2: Clients of William Wimmer, 1989 and 2009^{20, 21}

1989	2009
The Tobacco Institute Hy Vee Food Stores Charter Community Hospital IA Pharmacists Association Retired Teachers Association IA Psychological Association IA Lumberman's Association IA Shorthand Reporters Association Home Builders Association of Iowa IA Association of Electric Cooperative Transport Insurance Company IA Tall Corn Chapter of Club Managers IA Trial Lawyers Association IA Area Development Group Central IA Power Cooperative Des Moines Metropolitan Transit Authority IA Network Services North American Securities Administrators Association IA Bankers & Business Leaders for Interstate Banking IA Network Services	Reynolds American Inc. Cigar Association of America, Inc. Hy-Vee, Inc. IA Wholesale Distributors Association IA Beverage Association AFLAC Cedar Rapids Physician - Hospital Organization IA Pharmacy Association Des Moines Area Regional Transit Dubuque Greyhound Park & Casino Enterprise Rent-A-Car Home Builders Association of Iowa IA Association For Justice IA Court Reporters Association IA Judges Association IA Lumber Association IA Network Services, Inc. IA Retired School Personnel Association National Popular Vote Satellite Broadcasting and Communications Association Stoltze & Updegraff, P.C. Tyco International/ADT

	Charles Wasker	Lowell Junkins
1982	\$3,500	
1983	\$20,000	
1984	\$25,000	
1985	\$28,000	
1986	\$28,000	
1987	\$31,000	
1988	\$33,000	
1989	\$35,000	\$0
1990	\$44,444	\$0
1991	\$44,000	\$0
1992	\$44,000	\$0
1993	\$50,000	\$0
1994	\$48,000	\$15,000
1995	\$52,000	\$0
1996	\$55,000	\$18,000
1997	\$60,000	\$19,500
1998	\$0 or \$65,000**	\$33,000
1999	\$0	\$33,000

*Empty cells indicate years where data was not available, however, there were likely no contributions made during those years.
 **It is not clear how much Wasker was paid in 1998. A 1999 Tobacco Institute budget shows \$65,000 in 1998 Budgeted but \$0 in 1998 Estimated column.³¹

Dwight Alford <i>Philip Morris</i>	William S. Farner <i>Farner-Bocken Co.</i>
Spencer Brooks <i>U.S. Tobacco</i>	Bennett Gordon <i>Gordon's Wholesale</i>
Joe Carew <i>Capital-Myers Cox</i>	Roger Skarie <i>Brown & Williamson</i>
Bill Davenport <i>R.J. Reynolds</i>	Leo Stuckle <i>Lorillard</i>
Dave Evans <i>General Cigar and Tobacco</i>	George Wilson <i>Legislative Counsel</i>
Joe Eveland <i>National Cigar Store</i>	Mike Yamnitz <i>Liggett & Meyers</i>

clean indoor air legislation.^{33, 34}

The organizational structure of TAN consisted of a national director who worked with the TAN Corporate Coordinators Committee, made up of senior executives of each of the major participating cigarette manufactures. Additionally, most states, including Iowa, had a State TAN Director who worked closely with the State TAN Advisory Committee, a committee of representatives of each segment of the tobacco industry in the state.³⁴ In 1980 TAN organized in Iowa³⁵ and in September 1980 the Iowa TAN Advisory Committee had its first meeting³² (Table 4). By June 1987 the Committee had doubled in size (Table 5).

Iowa Association of Candy and Tobacco Distributors

The Iowa Association of Candy and Tobacco Distributors (IACTD) was the first organization to lobby against tobacco control measures in Iowa (prior to efforts coordinated by the Tobacco Institute).³⁶ The development of TAN, coordinating state lobbying activities at the

national level, created conflict between the Tobacco Institute and the Iowa Association of Candy and Tobacco Distributors.

During the 1982 legislative session, George Wilson, Tobacco Institute lobbyist and Executive Director of the Iowa Association of Tobacco Distributors agreed to support an amendment that would have prohibited sampling in Iowa in exchange for the passage of a bill supported by the IACTD that would have set minimum prices for tobacco products at their wholesale value. (Both measures later failed.) The IACTD's willingness to support a sampling prohibition made it clear to the Tobacco Institute that its allegiance was first to the interests of distributors in Iowa.³⁷ From that point forward, the IACTD, which began as the Tobacco Institute's primary ally in Iowa, had a strained relationship with the Tobacco Institute, although it continued to be a member of TAN and often would lobby against the same legislation. Because

Table 5: Members of the Iowa TAN Advisory Committee, 1987³⁸

Joe Fontanini <i>Brown & Williamson</i>	Dave Meyer <i>Brown and Williamson</i>
Lee Null <i>Brown and Williamson</i>	Joe Carew <i>Capital-Myers Cox Company</i>
Bob Bocken <i>Farner-Bocken</i>	Dave W. Evans <i>General Cigar & Tobacco Company</i>
Bennett Gordon <i>Gordon's Wholesale, Inc.</i>	George Wilson <i>Iowa Association of Candy and Tobacco Distributors</i>
Mike Lux <i>Iowa Citizen Action Network</i>	Michael Yamnitz <i>Liggett & Meyers</i>
Harriet Wigmore <i>Lorillard</i>	Joe Berger <i>Philip Morris</i>
Ken Potter <i>Philip Morris</i>	A. L. Selby <i>Philip Morris</i>
Pat Wilson <i>Philip Morris</i>	Frank Armstrong <i>R.J. Reynolds</i>
Brian Boer <i>R.J. Reynolds</i>	Don Crees <i>R.J. Reynolds</i>
A. Michael Curry <i>R.J. Reynolds</i>	Dean Garrison <i>R.J. Reynolds</i>
Richard Hild <i>R.J. Reynolds</i>	Jim Hockins <i>R.J. Reynolds</i>
John Perkins <i>R.J. Reynolds</i>	Charles Wasker <i>Wasker, Sullivan, Ward</i>

of the loss of IATD as a reliable ally, the national level tobacco organization lacked grassroots capacity in Iowa.

Iowa Citizen Action Network

The Tobacco Institute became a dues paying member of Iowa Citizen Action Network (ICAN) in January 1986 after several years of seeking potential organizations in Iowa to join in order to expand the Tobacco Institute’s grassroots capacity in the state which was described by the Tobacco Institute as “slim at best”.³⁹ ICAN was a state affiliate of Citizen Action, a federation of 25 state labor organizations. ICAN had a populist and progressive agenda, which was seemingly incongruent with the conservative ideology of the tobacco industry, however arguments that tobacco excises taxes were regressive resonated with ICAN.⁴⁰ In 1986, ICAN consisted of 100 dues-paying member organizations including churches, citizen’s groups, the

Iowa Federation of Labor, the United Auto Workers, the Independent Schools Education Association, the Machinists, the Association of Federal, State, City, and Municipal Employees (AFSCME), the State Council of Senior Citizens, and Iowa’s Farm Unity Coalition. The organization was well versed in mobilizing their members for legislative and electoral work and ICAN had fulltime staff canvassers that in 1986 spoke to over 3,000 people per week.³⁹

Funding to organizations by the Tobacco Institute

Table 6 shows funding from the Tobacco Institute to various organization in Iowa until the Tobacco Institute was disbanded in 1998 as a result of the Master Settlement Agreement.

Other Industry Lobbyists and Allies

Serge Garrison

Serge Garrison was an R.J. Reynolds (RJR) lobbyist in the 1980s²⁰ (Table 7). Garrison was active in drafting and lobbying for preemption language amended into Iowa’s Clean Indoor Air Act in 1990, which prevented localities from passing clean indoor air measures. However after his work with for the tobacco industry, Garrison was hired by the voluntary health organizations to serve as their contract lobbyist. In this position, Garrison was integral in challenging Iowa’s preemption language.¹³ Garrison continued to work for health interests through the mid-2000s.¹⁴

Table 6: Funding by the Tobacco Institute to organizations in Iowa^{23, 24, 40-43}

	Iowa Association of Candy and Tobacco Distributors	Iowa Citizen Action Network	Iowa Retail Merchant Association	Iowa Restaurant and Beverage Association	Iowa Grocers Association
1982	\$27,000	\$0			
1983	*\$10,000	\$0			
1984	\$10,000	\$0			
1985	\$5,000	\$0			
1986	\$10,000	\$1,000			
1987	\$0	-			
1988	\$0	\$5,000			
1989	\$0	\$15,000			
1990	\$0	\$5,000			
1991	\$0	\$30,000	\$0	\$0	
1992	\$0	\$36,000	\$0	\$0	\$500
1993	\$0	\$36,000	\$0	\$0	\$500
1994	\$0	-	\$0	\$0	\$0
1995	\$0	-	\$500	\$1,000	\$0
1996	\$0	-	\$500	\$1,000	\$0
1997	\$0	\$15,000	\$1,000	\$1,000	\$0
*Money returned by George Wilson of behalf of the Iowa Association of Candy and Tobacco Distributors to the Tobacco Institute					
Blank cells indicate years where data was not available and there were likely no contributions. Cells containing “-“ indicate years where no data was available, but there were likely contributions made.					

The Iowa Restaurant Association

The Iowa Restaurant Association was active in opposing clean indoor air measures in Iowa. In the late 1980s, as clean indoor air policies began to pass across the United States the tobacco industry began to fund and form alliances with the hospitality industry through which the hospitality industry would serve as a local surrogate of the tobacco industry to fight clean indoor air policies.⁴⁴ In 1990, the Iowa Restaurant Association actively opposed House File 209, a clean indoor air bill. Nearly two decades later, in 2008, the Iowa Restaurant Association continued to oppose clean indoor air measures, lobbying against the 2008 Iowa Smokefree Air Act.

R.J. Reynolds
IA Life Insurance Association
Honeywell Bull
Iowa Independent Automobile Dealers Association
Baumann & Hagerman
Ahlers Law Firm

The Iowa Gaming Association

The Iowa Gaming Association (IGA) was able to lobby for an exemption from the 2008 Iowa Smokefree Air Act for the floor of gaming facilities. The organization, represented by lobbyist Wes Ehrecke, was comprised of 17 commercial riverboat and racetrack casinos in Iowa.

The organization worked specifically to demonstrate the positive impact that gaming revenue had on the Iowa economy.⁴⁵ In the case of the Smokefree Air Act, the IGA was able to use claims about the impact of gaming on the Iowa economy to subvert regulation, arguments developed collaboratively by the tobacco industry and gaming interests.⁴⁶

Continued Lobbying Activities and Expenditures

Iowa Code Chapter 68B requires all entities which hire lobbyists in the state of Iowa to file annual “lobbyist client reports” that disclose all expenditures by the entity on lobbyists. Lobbyist client reports must be filed by July 31 each year and must disclose all salaries, fees, retainers, and reimbursements of expenses paid by a client to lobbyists during the preceding 12 months. Lobbyist client reports for Executive Branch lobbying are filed with the Iowa Ethics and Disclosure Board. All legislative lobbying is filed with the Iowa General Assembly. Table 8 contains data pertaining to tobacco industry and tobacco industry ally expenditures on Executive and Legislative Branch lobbying from 2003-2008. Executive Branch lobbying data was available beginning in 2002, however there were no reported tobacco industry or ally Executive Branch expenditures until 2003. Expenditures pertaining to lobbying of members of the Iowa General Assembly was only available for 2007 through 2008 (July 1, 2007 through June 30, 2008) however, in many cases the tobacco industry or its allies paid retainers for lobbying services, meaning that Executive Branch lobbying expenditures likely encompass all lobbying expenditures in each given year.

After the Tobacco Institute was disbanded in 1998 as a result of the Master Settlement Agreement, individual tobacco companies continued to fund lobbyist in Iowa to fight tobacco control measures (Table 8). Philip Morris spent the greatest amount on lobbying between 2003 and 2008, with \$284,305 in total expenditures, followed by R.J. Reynolds with \$172,820 in total expenditures.

In 2003/2004 and 2004/2005 the tobacco industry spent nearly \$200,000 on lobbying in Iowa. This vast increase from no reported expenditures in 2002 corresponds with an increase in introduction of local control and tobacco tax bills by in the Iowa General Assembly beginning in 2002. Interestingly in 2005/2006, tobacco industry lobbying expenditures were cut in half, despite continued introduction of local control and tobacco tax bills. This may be because Republican legislative leadership in Iowa was firmly committed to killing all local control and tax increase attempts and demonstrated no wavering on that position through 2007.

Tobacco Institute lobbyists Charles Wasker and William Wimmer (and their law firm Wasker, Dorr, Wimmer & Marcoullier) continued to lobby both on behalf of tobacco companies after the Tobacco Institute was disbanded in 1998. Wasker, Dorr, Wimmer & Marcoullier represented Brown & Williamson, the Cigar Association of America, and R.J. Reynolds and were key in securing tobacco industry legislative victories throughout the 2000s, including lobbying for special treatment of cigars under the 2007 increase in Iowa’s tobacco tax (See “Tobacco Control Renaissance”).

Expenditures by tobacco industry allies, the Iowa Gaming Association and the Iowa Restaurant Association skyrocketed between 2007 and 2008. In 2007 Democrats took control of

the Iowa legislature and the tobacco industry's strongest legislative allies no longer controlled the General Assembly. During the 2008 legislative session the Iowa General Assembly considered (and passed) a statewide clean indoor air bill. Both the Iowa Gaming Association and the Iowa Restaurant Association strongly opposed the clean indoor air bill. While the Iowa Restaurant Association was not successful in their legislative goal of killing the 2008 bill, the Iowa Gaming Association was able to secure an exemption from the law.

Conclusions

Tobacco industry activity from the early 1980s through 1998 was coordinated by the Tobacco Institute through their Tobacco Action Network. After a disagreement on policy priorities between the Tobacco Institute and TAN, the national tobacco manufacturers lacked grassroots capacity in Iowa, causing them to seek out new allies. Through this search, the Tobacco Institute formed a relationship with the progressive Iowa Citizen Action Network, one of the first ties between the Tobacco Institute and a state-level progressive organization to fight tobacco excise taxes. The Tobacco Institute also formed relationship with the Iowa Retail Merchants Association, Iowa Restaurant and Beverage Association, and the Iowa Grocers Association.

After the Tobacco Institute was disbanded in 1998, individual tobacco companies continued to fund lobbying activities in Iowa to fight tobacco control measures. The Tobacco Industry, led by Philip Morris, spent significant amounts of money on lobbying from 2003 to 2008. Lobbying expenditures peaked in 2004/2005 and then were cut in half through 2008, likely because the industry had successfully recruited legislative allies to kill tobacco control measures. In 2007, with a more tobacco control friendly legislature, for the first time in a decade tobacco control measures had a legitimate chance of passing at which time expenditures by tobacco control allies the Iowa Restaurant Association and Iowa Gaming Association significantly increased in an attempt to fight clean indoor air legislation in the Iowa General Assembly.

TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS AND POLICY SCORES

Data on campaign contributions from the tobacco industry to Iowa legislators from 1998 through 2008 was collected by the National Institute on Money in State Politics from filings by candidates and political parties to the relevant state disclosure agency.⁴⁷ Details of tobacco industry campaign contributions from 1998 through 2008 can be found organized by candidate in Appendix A and by contributor in Appendix B. Data relating to tobacco industry contributions to Iowa-based 527 political organizations were collected by Campaignmoney.com, a non-partisan website, from public records provided by the Federal Election Commission.⁴⁸

Iowa Code chapter 68A is Iowa campaign law.⁴⁹ As of 2009 there were no campaign contribution limits in Iowa, however, financial institutions, insurance companies, and corporations were prohibited from making campaign contributions to candidates, state political action committees (PACs) and state parties (except for state party building funds, separate funds that cannot be used to advocate for candidates).⁵⁰ The restriction on contributions by corporations was a rather meaningless limitation because tobacco companies were permitted to

Table 8: Expenditures by the tobacco industry and industry allies on Executive and Legislative Branch lobbying, 2003-2008								
		2003-2004	2004-2005	2005-2006	2006-2007	2007-2008		Total Expenditure
		Executive Branch	Executive Branch	Executive Branch	Executive Branch	Executive Branch	General Assembly	
<u>Company</u>	<u>Lobbyist</u>							
Brown & Williamson	Wasker, Dorr, Wimmer & Marcoullier	\$8,750						
Brown & Williamson Totals		\$8,750	\$0	\$0	\$0	\$0	\$0	\$8,750
Cigar Association of America	Wasker, Dorr, Wimmer & Marcoullier				\$33,000*			
	William Wimmer		\$30,000	\$16,000*		\$35,000*		
Cigar Association of America Totals		\$0	\$30,000	\$16,000	\$33,000	\$35,000	\$0	\$114,000
Philip Morris	Cal Hultman		\$25,000	\$22,500*	\$15,000*	\$22,500*		
	Crawford Law Firm				\$2,000*	\$3,000*		
	Derek Crawford	\$4,000	\$3,000	\$12,500	\$4,167			
	Gerald Crawford		\$27,500	\$15,000*				
	Hultman Company	\$90,378				\$22,500		
	Kim Haus		\$12,000	\$14,000*				
	State Haus Communications				\$10,080*	\$1,680*		
Philip Morris Totals		\$94,378	\$67,500	\$64,000	\$31,247	\$27,180	\$0	\$284,305
R.J. Reynolds	Charles Hutchins & Associates	\$46,500	\$28,238*		\$9,996*			
	Susan Cameron & Jennifer Kingland			\$4,070*				
	Wasker, Dorr, Wimmer & Marcoullier		\$50,553*	\$12,888*	\$9,243*	\$11,338*		
R.J. Reynolds Totals		\$46,500	\$78,785	\$16,958	\$19,239	\$11,338		\$172,820
US Smokeless Tobacco	David Scott	\$43,000*	\$21,500*				\$23,500	
US Smokeless Tobacco Totals		\$43,000	\$21,500	\$0	\$0	\$0	\$23,500	\$23,500
Tobacco Company Lobbyist Expenditures Totals		\$192,628	\$197,785	\$96,958	\$83,486	\$97,018		\$667,875

Iowa Gaming Association	Wes Ehrecke	\$3,618	\$7,210	\$4,670	\$3,950	\$4,897	\$28,220	
Iowa Gaming Association Totals		\$3,618	\$7,210	\$4,670	\$3,950	\$4,897	\$28,220	\$12,000
Iowa Restaurant Association	Craig D. Walter						\$12,000	
Iowa Restaurant Association Totals		\$0	\$0	\$0	\$0	\$0	\$12,000	\$12,000
Tobacco Industry Ally Lobbyist Expenditures Totals		\$3,618	\$7,210	\$4,670	\$3,950	\$4,897	\$40,220	
TOBACCO INDUSTRY AND INDUSTRY ALLY TOTAL EXPENDITURES		\$196,246	\$204,995	\$101,628	\$87,436	\$78,415	\$63,720	
<p>*Companies paid retainers for these lobbyists meaning that reported Executive Branch lobbying expenditures likely encompass all lobbying expenditures (both lobbying executive and legislative) by the given company to the given lobbyist. Blank cells indicate that there were no known expenditures. Source: Iowa Ethics and Campaign Disclosure Board; Iowa General Assembly Lobbyist Client Reports^{51, 52}</p>								

	<u>1998</u>	<u>2000</u>	<u>2002</u>	<u>2004</u>	<u>2006</u>	<u>2008</u>	<u>Total</u>
<u>Tobacco Companies</u>							
Altria/Philip Morris	\$0	\$0	\$0	\$5,512	\$7,000	\$11,250	\$23,762
Farner-Bocken	\$3,030	\$4,175	\$0	\$0	\$0	\$0	\$7,205
Meyers-Cox Company	\$100	\$0	\$0	\$0	\$0	\$0	\$100
R.J. Reynolds	\$0	\$0	\$0	\$2,000	\$1,385	\$0	\$3,385
US Smokeless Tobacco	\$0	\$4,375	\$1,500	\$250	\$3,000	\$1,000	\$10,125
<u>Total</u>	\$3,130	\$8,550	\$1,500	\$7,762	\$11,385	\$12,250	\$44,577

create both in-state and out-of-state PACs through which they made contributions to candidates for statewide office in accordance with Iowa law.

Total Tobacco Industry Campaign Contributions

Tobacco industry contributions to candidates in Iowa from 1998-2008 were made by five companies: Altria/Philip Morris; R.J. Reynolds; US Smokeless Tobacco; Farner-Bocken, an Iowa-based wholesale distributor that distributes tobacco and other products, and Myers-Cox Company, an Iowa based tobacco distributor (all members of TAN) (Table 9).

Contributions from tobacco companies to Iowa candidates were sporadic and significantly less than lobbying expenditures by the tobacco industry in the same time period. Altria/Philip Morris contributed the greatest amount to Iowa candidates and parties between 1998 and 2000 (\$23,762) although they made no reported contributions during the 1998, 2000, or 2002 election cycle.

Between 1998 and 2008, the tobacco industry contributed \$44,577 to Iowa candidates and state political parties through in-state and out-of-state PACs (Figure 4). Contributions considerably increased in the 2000 election cycle when Iowa was working to create a tobacco-specific division within the Iowa Department of Public Health and determining the use of their portion of MSA payments. Contributions dropped off in 2002 after the Iowa General Assembly voted to securitize Iowa’s Master Settlement

Agreement funds for an upfront lump sum rather than future

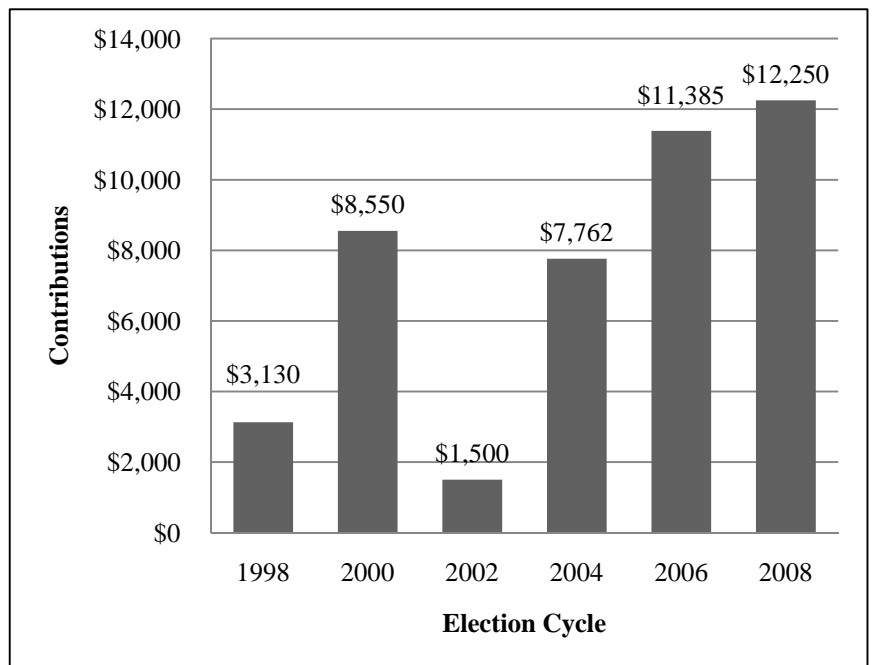


Figure 4: Tobacco Industry Campaign Contributions by Election Cycle, 1998-2008

payments and the creation of the state Tobacco Division, but jumped back up in 2004, after which contributions steadily increased. The increase in funds to candidates coincided with an increase in legislative tobacco control activity. The introduction of local control and tax initiatives spiked in 2004 and also continued to increase through 2008 (discussed in later sections).

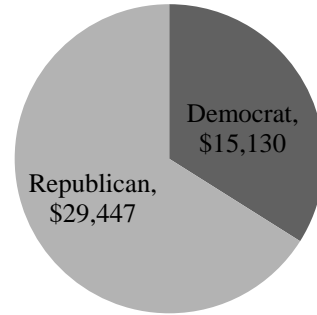


Figure 5: Total Tobacco Industry Contributions by Party Affiliation, 1998-2008

Total contributions to Republican candidates far outweighed contributions to their Democratic counterparts (Figure 5). Republican candidates and the Iowa Republican Party received 66 percent of total industry contributions between 1998 and 2008, receiving \$29,447 compared to \$15,130 received by Democratic candidates and the Iowa Democratic Party. Interestingly, no tobacco companies made direct contributions to political parties until 2008, when Altria/Philip Morris contributed \$1,000 to the Iowa Republican Party and \$5,000 to the Iowa Democratic Party (which controlled the legislature beginning in 2007).

During the 1998 and 2000 legislative campaign cycle, Democrats received more contributions than Republicans; Republican candidates have received a greater amount of money from the tobacco industry than Democratic candidates since (Figure 6). Republicans controlled both chambers of the Iowa General Assembly from 1998 to 2004, in 2004 there was equal membership from both parties in the Senate and a 51 to 49 Republican advantage in the House, and from 2006 through 2009 Democrats have controlled both chambers of the Iowa General Assembly.

Tobacco Policy Scores

“Tobacco policy scores” were created for each member of the Iowa General Assembly during the 2009-10 legislative sessions to test the relationship between tobacco industry campaign contributions and actual legislative behavior on tobacco control issues. Policy scores were obtained by asking three knowledgeable individuals to rate the receptiveness of each member of the 2009-10 legislative sessions to tobacco control policies on a scale of 0 to 10, where 0 was extremely pro-

tobacco industry and 10 was extremely pro-tobacco control. Legislators with

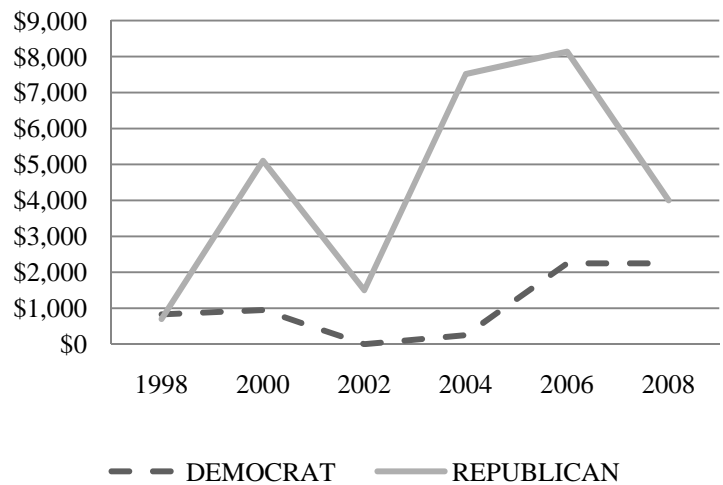


Figure 6: Tobacco Industry Contributions to Legislative Candidates by Political Affiliation, 1998-2008

scores ranging from 0 to 3.9 were

considered pro-tobacco industry, those with scores ranging from 4.0 to 6.0 were considered neutral, and those with scores above 6.1 were considered pro-tobacco control.

The average policy score for members of the 2009-10 session was 5.1 (SD 2.4), a

neutral score. Members of the Iowa Senate had an average score of 5.4 (SD 2.6), slightly higher than their counterparts in the House who had an average policy score of 4.9 (SD 2.4), but this difference was not significant (P=0.289 by t-test). Republican legislators were significantly more pro-tobacco industry compared to Democratic legislators; the average score for Republican legislators was 2.8 (SD 1.1) compared 6.7 (SD 1.8) for Democrats (P<0.0005).

Policy Scores and Tobacco Industry Contributions to Legislative Candidates

Representative Christopher Rants (R-Woodbury) had the least favorable tobacco control policy score, with a 0.3, and the highest amount of tobacco industry contributions, receiving \$7,397 from 1998 to 2008 (Table 10). Rants, who served as House Majority Leader from 1999 through 2003 and Speaker of the Iowa House from 2003 through 2006 was a key player in killing tobacco tax and local control bills throughout the 2000s. Senators David Hartsuch (R-Scott) and Brad Zaun (R-Polk) also received policy scores that were less than 1.

Senators Joe Bolkcom (D-Johnson), Matt McCoy (D-Polk), and Herman Quirnbach (D-Story) received the most favorable tobacco control score, all receiving a 10, and received no reported tobacco industry contributions (Table 11). Interestingly, Senator Matt McCoy played an integral role in the passage of an amendment to Iowa’s 2007 tobacco tax increase bill that was significant victory for the

Table 10: Legislators with the least tobacco control favorable policy scores

<u>Legislator</u>	<u>Party</u>	<u>Office</u>	<u>District</u>	<u>Score</u>	<u>Industry Contributions</u>
Rants, Christopher	R	H	54	0.3	\$7,397
Hartsuch, David	R	S	41	0.7	\$0
Zaun, Brad	R	S	32	0.7	\$0
Hahn, James F.	R	S	40	1.0	\$0
Bailey, McKinley D.	D	H	9	1.3	\$0
De Boef, Betty R.	R	H	76	1.3	\$0
Behn, Jerry	R	S	24	1.3	\$0
Alons, Dwaune	R	H	4	1.7	\$0
Grassley, Pat	R	H	17	1.7	\$0
Horbach, Lance J.	R	H	40	1.7	\$0
Huser, Geri D.	D	H	42	1.7	\$1,000
Pettengill, Dawn E.	R	H	39	1.7	\$0
Watts, Ralph C.	R	H	47	1.7	\$0
Wieck, Ron	R	S	27	1.7	\$500

Table 11: Legislators with most tobacco control favorable policy scores

<u>Legislator</u>	<u>Party</u>	<u>Office</u>	<u>District</u>	<u>Score</u>	<u>Industry Contributions</u>
Bolkcom, Joe	D	S	39	10.0	\$0
McCoy, Matt	D	S	31	10.0	\$0
Quirnbach, Herman C.	D	S	23	10.0	\$0
Olson, Tyler	D	H	38	9.7	\$0
Peterson, Janet	D	H	64	9.7	\$0
Appel, Staci	D	S	37	9.7	\$0
Lensing, Vicki S.	D	H	78	9.3	\$0
Mascher, Mary	D	H	77	9.3	\$0
Abdul-Samad, Ako	D	H	66	9.0	\$0
Gayman, Elesha L.	D	H	84	9.0	\$0
Dvorsky, Robert E.	D	S	15	9.0	\$0

tobacco industry (see “Tobacco Control Renaissance”) that apparently did not affect his reputation among knowledgeable individuals.

The tobacco industry focused contributions on legislators in leadership positions that could have the greatest effect on the outcome of legislation (Table 12). During the 2008 election cycle only nine legislators received tobacco industry contributions (Table 13). Representative Pat Murphy (D-Dubuque) received one of the greatest amounts in industry contribution during the 2008 cycle (\$1,000 from Altria/Philip Morris). Murphy became the Speaker of the House in 2007 and through that position was key in securing an exemption for gaming facilities under Iowa’s 2008 Smokefree Air Act (see “Tobacco Control Renaissance”).

Table 12: Top 10 (>\$900) Recipients of Tobacco Contributions from 1998-2008

<u>Name</u>	<u>Party</u>	<u>Office</u>	<u>District</u>	<u>Amount</u>	<u>Leadership Position(s)</u>	<u>Policy Score</u>
Rants, Christopher	R	H	54	\$7,397	House Majority Leader, 1999-2003 and Speaker of the Iowa House from 2003 - 2006	0.3
Van Fossen, Jamie	R	H	81	\$6,050	Chair House Ways and Means Committee, 2000-2006	n/a
Iverson Jr, Stewart	R	S	9	\$2,200	Majority Leader of the Iowa Senate from 1997 to 2006	n/a
Siegrist, Brent	R	H	84	\$1,500	House Majority Leader, From 1993-1999 and Speaker of the House 1999-2002	n/a
Murphy, Pat	D	H	28	\$1,500	Minority Leader, 2003-2007, Speaker of the House, 2008-	7.3
Zieman, Mark	R	S	8	\$1,250	Co-chair Ways and Means Committee, 2005-2007 and Minority Whip, 2007	n/a
Gronstal, Michael	D	S	50	\$1,200	Majority Leader, 2006-	8.0
Huser, Geri	D	H	42	\$1,000		1.7
Gipp, Chuck	R	H	16	\$950	Majority Whip, 1995-1996 and Majority Leader, 2003-2007	n/a

Table 13: All Recipients of Tobacco Contributions in 2008

<u>Name</u>	<u>Party</u>	<u>Office</u>	<u>District</u>	<u>Amount</u>	<u>Policy Score</u>
Murphy, Pat	D	House	28	\$1,000	7.3
Van Fossen, Jamie	R	House	81	\$1,000	n/a
Zieman, Mark	R	Senate	8	\$1,000	n/a
Quirk, Brian J.	D	House	15	\$750	2.0
Gronstal, Michael	D	Senate	50	\$500	8.0
Kettering, Steve	R	Senate	26	\$500	3.0
Paulsen, Kraig	R	House	35	\$500	2.7
Rants, Christopher	R	House	54	\$500	0.3
Wieck, Ron	R	Senate	27	\$500	1.7

Of the 150 members serving in the General Assembly during the 2009-10 legislative session, 135 had no record of receiving industry contributions between 1998 and 2008, representing the vast majority of legislators (Table 14). Controlling for party, legislators who accepted money from the tobacco industry were significantly ($P=0.023$) more pro-tobacco, by an average of -1.0 (SE 0.4) point.¹

Table 14: 2009-10 legislators who had no record of tobacco industry campaign contributions, 1998-2008

Name	Party	Office	District	Score
Abdul-Samad, Ako	Democrat	House	66	9.0
Alons, Dwaune	Republican	House	4	1.7
Anderson, Richard	Republican	House	97	4.0
Appel, Staci	Democrat	Senate	37	9.7
Bailey, McKinley D.	Democrat	House	9	1.3
Bartz, Merlin	Republican	Senate	6	2.5
Baudler, Clel	Republican	House	58	4.3
Beall, Daryl	Democrat	Senate	25	7.7
Beard, John W.	Democrat	House	16	5.0
Behn, Jerry	Republican	Senate	24	1.3
Bell, Paul A.	Democrat	House	41	5.3
Berry, Deborah L.	Democrat	House	22	6.7
Black, Dennis H.	Democrat	Senate	21	5.3
Boettger, Nancy J.	Republican	Senate	29	3.0
Bolkcom, Joe	Democrat	Senate	39	10.0
Bukta, Polly	Democrat	House	26	6.3
Burt, Kerry	Democrat	House	21	8.0
Chambers, Royd E.	Republican	House	5	2.3
Cphoon, Dennis M.	Democrat	House	88	6.7
Courtney, Thomas G.	Democrat	Senate	44	7.0
Cownie, Peter	Republican	House	60	5.0
Dandekar, Swati A.	Democrat	Senate	18	6.0

¹ This conclusion is based on a multiple regression analysis in which Tobacco Policy Score is predicted from party (with Democrat coded as 0 and Republican coded as 1) and whether or not the legislator accepted campaign contributions (coded as 0 if not contributions and 1 if the legislator accepted contributions): The regression equation is $\text{Score} = 6.74 - 3.82 \text{ RepParty} - 0.955 \text{ ContribYES}$. The detailed results are:

	Coeff	SE	P	VIF
Constant	6.7	0.2	<.0005	
RepParty	-3.8	0.3	<.0005	1.0
ContribYES	-1.0	0.4	0.023	1.0
S = 1.5	R ² = 0.61			

Table 14: 2009-10 legislators who had no record of tobacco industry campaign contributions, 1998-2008

Name	Party	Office	District	Score
Danielson, Jeff	Democrat	Senate	10	7.0
De Boef, Betty R.	Republican	House	76	1.3
Dearden, Dick L.	Democrat	Senate	34	6.3
Deyoe, Dave	Republican	House	10	2.3
Dolecheck, Cecil	Republican	House	96	3.0
Dotzler, William A., Jr.	Democrat	Senate	11	3.3
Drake, Jack	Republican	House	57	2.7
Dvorsky, Robert E.	Democrat	Senate	15	9.0
Feenstra, Randy	Republican	Senate	2	3.0
Ficken, Gene	Democrat	House	23	5.0
Ford, Wayne W.	Democrat	House	65	7.3
Forristall, Greg	Republican	House	98	2.7
Fraise, Gene	Democrat	Senate	46	5.3
Frevert, Marcell R.	Democrat	House	7	6.7
Gaskill, Mary	Democrat	House	93	8.0
Gayman, Elesha L.	Democrat	House	84	9.0
Grassley, Pat	Republican	House	17	1.7
Hagenow, Chris	Republican	House	59	3.0
Hahn, James F.	Republican	Senate	40	1.0
Hamerlinck, Shawn	Republican	Senate	42	3.0
Hancock, Tom	Democrat	Senate	16	4.3
Hartsuch, David	Republican	Senate	41	0.7
Hatch, Jack	Democrat	Senate	33	8.7
Heaton, David E.	Republican	House	91	4.3
Heckroth, William M.	Democrat	Senate	9	5.7
Heddens, Lisa	Democrat	House	46	8.0
Helland, Erik	Republican	House	69	3.0
Hogg, Robert M.	Democrat	Senate	19	8.0
Horbach, Lance J.	Republican	House	40	1.7
Houser, Hubert	Republican	Senate	49	3.0
Hunter, Bruce L.	Democrat	House	62	6.7
Huseman, Daniel A.	Republican	House	53	3.3
Isenhardt, Charles	Democrat	House	27	5.0
Jacoby, Dave	Democrat	House	30	7.7
Johnson, David	Republican	Senate	3	3.0
Kapucian, Tim L.	Republican	Senate	20	3.0

Table 14: 2009-10 legislators who had no record of tobacco industry campaign contributions, 1998-2008

Name	Party	Office	District	Score
Kaufmann, Jeff	Republican	House	79	2.3
Kearns, Jerry A.	Democrat	House	92	5.0
Kelley, Doris	Democrat	House	20	6.0
Kibbie, John P. "Jack"	Democrat	Senate	4	6.7
Koester, Kevin	Republican	House	70	2.0
Kreiman, Keith A.	Democrat	Senate	47	6.3
Kressig, Bob M.	Democrat	House	19	6.7
Kuhn, Mark A.	Democrat	House	14	6.3
Lensing, Vicki S.	Democrat	House	78	9.3
Lukan, Steven F.	Republican	House	32	2.3
Lykam, Jim	Democrat	House	85	5.0
Marek, Larry K.	Democrat	House	89	5.0
Mascher, Mary	Democrat	House	77	9.3
May, Mike	Republican	House	6	4.7
McCarthy, Kevin M.	Democrat	House	67	7.7
McCoy, Matt	Democrat	Senate	31	10.0
McKinley, Paul	Republican	Senate	36	3.0
Miller, Helen	Democrat	House	49	6.7
Miller, Linda J.	Republican	House	82	4.3
Oldson, Jo	Democrat	House	61	8.3
Olive, Rich	Democrat	Senate	5	5.3
Olson, Donovan	Democrat	House	48	7.7
Olson, Rick	Democrat	House	68	6.7
Olson, Steven N.	Republican	House	83	2.7
Olson, Tyler	Democrat	House	38	9.7
Palmer, Eric J.	Democrat	House	75	7.7
Peterson, Janet	Democrat	House	64	9.7
Pettengill, Dawn E.	Republican	House	39	1.7
Quirnbach, Herman C.	Democrat	Senate	23	10.0
Raecker, Scott J.	Republican	House	63	3.0
Rayhons, Henry V.	Republican	House	11	4.0
Reichert, Nathan K.	Democrat	House	80	6.3
Reynolds, Kim	Republican	Senate	48	3.0
Rielly, Tom	Democrat	Senate	38	5.7
Roberts, Rod A.	Republican	House	51	3.3
Sands, Thomas R.	Republican	House	87	2.7

Table 14: 2009-10 legislators who had no record of tobacco industry campaign contributions, 1998-2008

Name	Party	Office	District	Score
Schmitz, Becky	Democrat	Senate	45	8.0
Schoenjahn, Brian	Democrat	Senate	12	6.7
Schueller, Tom J.	Democrat	House	25	6.7
Schulte, Renee	Republican	House	37	5.5
Schultz, Jason	Republican	House	55	4.0
Seng, Dr. Joe M.	Democrat	Senate	43	5.7
Seymour, James A.	Republican	Senate	28	3.7
Shomshor, Paul C	Democrat	House	100	6.0
Smith, Mark D.	Democrat	House	43	8.0
Sodders, Steven J.	Democrat	Senate	22	6.3
Soderberg, Chuck	Republican	House	3	3.0
Sorenson, Kent	Republican	House	74	3.0
Steckman, Sharon S.	Democrat	House	13	5.0
Stewart, Roger	Democrat	Senate	13	6.7
Struyk, Doug	Republican	House	99	2.3
Swaim, Kurt	Democrat	House	94	6.7
Sweeney, Annette	Republican	House	44	4.0
Taylor, Dick	Democrat	House	33	5.7
Taylor, Todd E.	Democrat	House	34	6.3
Thede, Phyllis	Democrat	House	81	5.0
Thomas, Roger	Democrat	House	24	5.7
Tjepkes, David A.	Republican	House	50	4.7
Tymeson, Jodi S.	Republican	House	19	2.3
Upmeyer, Linda L.	Republican	House	12	2.7
Van Engelenhoven, Jim	Republican	House	71	2.3
Wagner, Nick	Republican	House	36	2.0
Ward, Pat	Republican	Senate	30	4.7
Warnstadt, Steve	Democrat	Senate	1	5.7
Watts, Ralph C.	Republican	House	47	1.7
Wendt, Roger F.	Democrat	House	2	6.7
Wenthe, Andrew J.	Democrat	House	18	6.0
Wessel-Kroeschell, Beth	Democrat	House	45	8.7
Whitaker, John R.	Democrat	House	90	6.7
Whitead, Wesley E.	Democrat	House	1	6.3
Wihelm, Mary Jo	Democrat	Senate	8	6.0
Willems, Nathan	Democrat	House	29	7.7

Name	Party	Office	District	Score
Winckler, Cindy	Democrat	House	86	7.3
Windschitl, Matt W.	Republican	House	56	2.7
Worthan, Gary	Republican	House	52	2.3
Zaun, Brad	Republican	Senate	32	0.7
Zirkelback, Ray S.	Democrat	House	31	4.3

Tobacco Industry Contributions to Candidates for Statewide Office

Candidates running for the Iowa Governorship also accepted campaign contributions from the tobacco industry (Table 15). Unlike the legislature, more money was contributed to Democratic than Republican gubernatorial candidates. Tom Vilsack (D) and Sally Pederson (D) served as Governor and Lieutenant Governor, respectively, from 1999 to 2007 and received the greatest amount of campaign contributions of all candidates. Governor Vilsack’s publicly claimed to be a tobacco control ally throughout his tenure in office, however he repeatedly removed tobacco tax increase proposals from the Iowa budget in closed-door meetings (see “Tobacco Taxes (1991-2006)”).

Name	Party	Office	Contributor	Election Cycle				Total
				1998	2000	2002	2006	
Vilsack, Tom & Pederson, Sally	D	G/LTG	Farner-Bocken	\$1,100	\$2,500			\$3,600
Nussle, Jim & Vander Plaats, Bob	R	G/LTG	Altria/Philip Morris				\$1,000	\$1,000
Gross, Doug & Durham, Debi	R	G/LTG	UST			\$500		\$500
Lightfood, James & Hawkins, Almo	R	G/LTG	Farner-Bocken	\$500				\$500

Tobacco Industry Contributions to Iowa Political 527 Groups

A 527 organization is a tax-exempt group generally organized specifically to raise money for political activities including voter mobilization and issue advocacy.⁵³ These organizations are not covered by state campaign disclosure rules, which makes it easier for the donors to avoid disclosure. Tobacco industry contribution to candidates in Iowa and Iowa political parties were modest compared to the donations that the tobacco industry and industry allies made to 527 political organizations. Tobacco industry allies that made contributions included Iowa gaming facilities (which the industry has worked with to oppose clean indoor air legislation by arguing that clean indoor air laws at gambling facilities will lead to substantial losses in gambling

revenue⁴⁶) and convenience store chains (which the industry formed coalitions with to promote self-regulation as it pertained to youth access laws to prevent more meaningful legislation and often times mobilized against other tobacco control legislation^{54, 55}).

Two Iowa 527's received substantial contributions from the tobacco industry and industry allies. Midwest Enterprise Group, a liberal leaning group founded in August 2007, received \$122,500 in tobacco-related contributions since 2007 (Table 16). Although the tobacco industry traditionally has had a conservative political disposition, the industry began to reach out to liberal leaning groups in 1984 to broaden their allies to fight excise taxes by arguing that tobacco taxes

were regressive.^{17, 56} The industry was later able to mobilize many of the same liberal organization (predominately organized labor) to fight clean indoor air measures.⁴⁰

Table 16: Tobacco industry and tobacco industry ally contribution to Midwest Enterprise Group

Company	Year		Total
	2007	2008	
UST Public Affairs, Inc (smokeless tobacco*)	\$20,000	\$10,000	\$30,000
Isle of Capri Casinos Inc		\$42,500	\$42,500
Riverside Casino and Golf Resort, LLC		\$25,000	\$25,000
Harrah's Operating Company, Inc	\$15,000		\$15,000
Farner-Bocken Co		\$5,000	\$5,000
Penn National Gaming, Inc		\$5,000	\$5,000
Total	\$35,000	\$87,500	\$122,500

*Altria bought UST in fall 2008.

Isle of Capri Casinos, a Missouri based gaming corporation with four gaming facilities in Iowa, was the largest tobacco-related contributor to the Midwest Enterprise Group. Gaming interests were able to successfully lobby Democratic leadership, (including Speaker of the House Pat Murphy (D-Dubuque, Policy Score: 7.3, Industry Contributions: \$1,500) who represented a district where an Isle of Capri Casino is located) to include an exemption in the 2008 Iowa Smokefree Air Act for gaming facilities (see "Tobacco Control Renaissance"). In 2008 Midwest Enterprise Group donated \$115,000 to the Iowa Democratic Party Building Fund. Additionally the group spent over \$200,000 on campaign related mailers in 2008.

A second 527, the Iowa Leadership Council (ILC), founded by Rep. Christopher Rants (R-Woodbury, Policy Score: 0.3, Industry Contributions: \$7,397) in 2006, accepted \$165,500 in tobacco-related contributions (Table 17). Altria/Philip Morris contributed the greatest amount of money to the ILC of all tobacco-related interests. Between 2005 and 2008 the ILC spent \$34,282 on issue advocacy calls, \$75,560 on media, and \$904,303 on polling and research.⁵⁷ A main mission of the ideologically conservative ILC was to "restrain taxes." Representative Rants, in his capacity as Speaker of the Iowa House from 2003 to 2006, fought to kill numerous tobacco tax bills during his tenure (See "Tobacco Tax 1999-2006").

Conclusions

Tobacco industry campaign contributions to candidates in Iowa were sporadic among the five tobacco companies which donated money to Iowa candidates. From 1998-2008, the years for which campaign contribution data was available, contributions to Republic candidates far

<u>Company</u>	<u>Year</u>				<u>Total</u>
	2005	2006	2007	2008	
Altria/Philip Morris	\$25,000	\$25,000			\$50,000
Reynolds American			\$40,000		\$40,000
Farner-Bocken Company	\$15,000		\$10,000		\$25,000
Casey's General Store (an Iowa convenience store chain)		\$5,000		\$10,000	\$15,000
Isle of Capri, Casinos				\$12,500	\$12,500
Kum & Go (an Iowa convenience store chain)			\$10,000		\$10,000
UST Public Affairs Inc		\$5,000		\$3,000	\$8,000
Lorillard Tobacco Company				\$5,000	\$5,000
Total	\$40,000	\$35,000	\$60,000	\$30,500	\$165,500

outweighed their Democratic counterparts. During that same time period, with the exception of 2007 and 2008, Republicans controlled the Iowa legislature and as a result held more powerful positions than Democrats.

Republicans had markedly more pro-tobacco control policy scores than their Democratic counterparts. Tobacco industry campaign contributions in Iowa were largely focused on candidates that held leadership position in the Iowa General Assembly. Representative Christopher Rants, who was repeatedly responsible for killing or undermining tobacco control legislation received the most pro-tobacco policy score and the greatest amount of contributions from tobacco companies.

EARLY TAXES (1921-1991)

On April 11, 1921, Iowa enacted the first state cigarette tax in the United States, 2 cents per 20-cigarette package⁵⁸ (24 cents in 2009 dollars). The revenue generated from the tax went to the state General Fund.⁵⁹ The tax was increased to 3 cents per pack in 1953 (24 cents in 2009), which simply adjusted the earlier rate for inflation, and continued to be increased incrementally in the following decades by between 1 and 3-cents until 1991 (Table 18).

<u>Year</u>	<u>1921</u>	<u>1953</u>	<u>1959</u>	<u>1963</u>	<u>1965</u>	<u>1967</u>	<u>1971</u>	<u>1981</u>	<u>1985</u>	<u>1988</u>	<u>1989</u>	<u>1991</u>	<u>2007</u>
Total Tax Rate	2¢	3¢	4¢	5¢	8¢	10¢	13¢	18¢	26¢	34¢	<i>31¢</i>	36¢	\$1.36
2009 Equivalent	24¢	24¢	29¢	35¢	54¢	64¢	69¢	42¢	52¢	61¢	53¢	57¢	\$1.40

*Italicized cells indicate a cigarette excise tax rate decrease, rather than an increase in the rate of Iowa's cigarette tax.

1981 – Cigarette Tax Increase and the Presence of the Tobacco Industry

In 1981, at the suggestion of Governor Robert Ray (R, 1969-1983), Senate File 576, was introduced in the Iowa General Assembly that sought to increase the cigarette tax from 13 cents per pack to 18 cents. The bill passed with little resistance in the Senate on May 21, the same day it was introduced, but the passage through the House was not as swift due to lobbying by the tobacco industry.⁶⁰

Lorillard lobbyist George Wilson, the Executive Director of the Iowa Candy and Tobacco Distributors Associations, was able to successfully prevent the passage of the bill in the House for almost the entire 1981 legislative session. However, one hour before the conclusion of the session, a coalition of Democrats and Republicans came together to push through the legislation. The bill passed and went into effect on July 1, 1981.⁶⁰

While last minute passage of the tax bill was successful, the tobacco industry was able to include a sunset clause in the bill⁶⁰ that required that the tax increase be rolled back to 13 cents per pack in 1983 if no subsequent legislation was passed. The tobacco industry saw the sunset clause as a possible opportunity in the future to reduce the tax, but acknowledged they would confront a difficult battle when that time came.⁶⁰

During the following two legislative sessions 8 bills were introduced that had language that would have repealed the sunset provision in Senate File 576.⁶¹ Of those one, Senate File 543, introduced in the 1983 session, was successful and the tax increase became permanent.

In the fiscal year following the enactment of the 1981 tax excise increase, cigarette sales dropped 13 percent.⁶²

Tax Increases Under Governor Terry Branstad

Governor Terry Branstad (R, 1983-1989) was elected in 1983. Branstad was particularly pro-tobacco control, influenced heavily by his wife, Chris Branstad, who was a vocal anti-smoking advocate.⁶³

During the 1980s, Iowa's farm-based economy was in a state of financial crisis. Farmland values plummeted from their speculated values in the 1970 and farmers faced a credit crunch, resulting in many farmers losing their farms. With the foundation of Iowa's economy falling apart, the state faced reoccurring budget deficits throughout the 1980s.⁶³ Throughout the 1980s Governor Branstad's consistently introduced tobacco tax increases as part of his budget plans in order to address Iowa's budget crisis. Despite Branstad's pro-tobacco control leanings, he introduced tobacco tax measures predominantly for the revenue, rather than as public health measures.⁶⁴

1985 – An 8-cent increase

In 1985, Senate File 395 was introduced by the Senate Ways and Means Committee. The bill as introduced did not contain any provision pertaining to cigarette taxation and instead was a

bill about sales tax on wine.⁶⁵ However, when it was passed the Senate to the House Ways and Means Committee, the bill was amended to include an 8 cent cigarette tax increase. The House passed the bill, sending it back to the Senate. The tax increase was unchanged in conference committee and both houses approved the conference report. The bill was sent to Governor Branstad, who signed it in April 1985, with the tax increase going into effect in October 1985.⁶⁶

In October 1985, Tobacco Institute Vice President, Michael F. Brozek, explained in a memo to William P. Buckley, Regional Vice President of the Tobacco Institute State Activities Division, that the Tobacco Institute needed to work with their legislative counsel and the regional director for Iowa to reorganize their allies and coalitions in preparation for the subsequent legislative sessions.⁶⁷

The Tobacco Institute lacked grassroots capacity because in 1982 the IACTD, represented by George Wilson, refused to put the agenda of the national tobacco manufacturers represented by the Tobacco Institute, before the interests of Iowa tobacco distributors. Specifically, during the 1982 legislative session a bill that contained an amendment supported by the distributors amending the Iowa Unfair Cigarette Sales Act to set the minimum price of tobacco products at their wholesale value, was amended to include a prohibition of giving away free samples of cigarettes in Iowa. The Tobacco Institute told George Wilson to kill the bill if the sampling amendment could not be removed. Wilson refused because the amending of the Unfair Cigarette Sales Act was of greater importance to Iowa distributors than defeating a sampling prohibition.³⁶ The Tobacco Institute sent additional representation to Iowa to kill the bill, and were successful in killing the sampling prohibition and the amendment to the Unfair Cigarette Sales Act. As a result, a rift was created between Iowa distributors and manufacturers.³⁷

The Tobacco Institute cut funding to IACTD from \$27,000 in 1982 to \$10,000 in 1983 (a check later returned by Wilson).³⁷ In subsequent years the Tobacco Institute and IACTD reconciled, and the IACTD again accepted Tobacco Institute funding, but at a much lower level.²³ However the IACTD was no longer a primary ally of the Tobacco Institute.

The following year the Tobacco Institute began to seek out allies and in 1986, at the suggestion of Tobacco Institute lobbyist Charles Wasker, the Tobacco Institute became a member of the Iowa Citizen Action Network, a prominent labor organization, to expand grassroots capacity in fighting cigarette excise taxes. Outreach to labor unions, a seemingly incongruent partner for the tobacco industry because of organized labor's traditionally liberal and the tobacco industry's traditionally conservative policy agenda, began in 1984 when the Tobacco Institute formed their Labor Management Committee to seek out alliances with labor groups. The use of labor unions to at the state level arguably began in Iowa in 1986 through the ICAN⁴⁰, a local affiliate of Citizen Action, a federation of statewide organizations, that the Tobacco Institute funded to fight tax increases at the state level from 1986 to 1998³⁹.

1987 – A Tobacco Industry Victory

In January 1987, Governor Branstad introduced a proposal for a 10 cent increase in the then-26 cent tobacco tax as part of his budget for the year. The proposal was introduced by the

House Ways and Means Committee in House File 327 and a companion bill, Senate File 246, was introduced in the Senate Ways and Means Committee. House File 327 originally failed when put to a vote on the floor (51 yays, 46 nays) but was granted reconsideration.⁶⁸

The Tobacco Institute worked to defeat House File 327 through its Tobacco Action Network (TAN). The day after reconsideration was granted, Gene Ainsworth, RJR Vice President of Government Relations and a member of the Tobacco Institute State Activity Policy Committee, wrote to G.H. Long, RJR employee and a member of the Tobacco Institute State Activity Policy Committee, explaining that, “state cigarette tax increase bills continue to be introduced at an accelerated rate of this same period last year. This week and next, our major efforts will be in ... Iowa.”⁶⁹

At the beginning of April, RJR drafted a letter to be sent to field employees in Iowa encouraging them to “ask ... your friends and business associates – anyone with an interest, please write your State Representative and your State Senator to express opposition to this unfair tax, asking what action the legislator intends to take. Also please let me know what you’ve done and what response you receive.”⁷⁰ The letter was signed A. Michael Curry, RJR Manager of Government Relations. The letter asked that inquiries for additional information about the bill be directed to him or Charles Wasker.⁷⁰

On April 22, the bill passed the House (65-33) then defeated in the Senate by a vote of 47-2. The bill as originally passed by the House was carried over to the 1988 session. The Senate version of the bill, SF 246, was assigned to a subcommittee where it stayed for the remainder of the 1987 session. It, too, was carried over to the 1988 session.⁶⁸

On May 15, Ainsworth wrote again to Long informing him that the Iowa Legislature had adjourned without enacting the tax increase, explaining that the RJR Field Sales staff in Iowa, through TAN, helped to lobby the Senate leadership against the tax increase.⁷¹ A newsletter sent to RJR field employees that July included a profile of Don Crees, a local chain account manager in Des Moines, Iowa and member of the TAN Advisory Committee. Crees was credited with using his, “personal contacts and effective lobbying techniques to help defeat a tax increase that could have damaged RJR sales in Iowa,”⁷² explaining that Crees was able to gain access to the Iowa State Senate Majority Leader, C.W. Hutchins (D-Guthrie), because they were from the same small town in Iowa.⁷²

In June, Governor Branstad called a special legislative session on revenue to address Iowa’s budget deficit. Included in the governor’s revenue package introduced during the special session was a 5 cent cigarette tax increase. The Senate removed the cigarette tax increase from the bill and replaced it with a 0.5 cent increase in the Iowa sales tax. The bill as revised was passed by the Senate to the House where the tax increase was later defeated.⁷³

At the conclusion of the year, Governor Branstad announced his intent to introduce a 12 cent tax increase with his 1988 budget.⁶⁸

1988 – Cigarette Tax Increased

In the beginning of the 1988 session, the Senate Ways and Means Committee reported out House File 327, carried over from the previous session with the 10 cent tax increase passed the House. On the Senate floor, the 10 cent increase was amended to an 8 cent increase, with a sunset clause that would reduce the tax by 3 cents in 1989 pushed by Charles Wasker.⁷⁴ The bill was voted on but failed to receive the necessary 26 votes for a third reading passage, but it was again reconsidered. The next day the Senate passed the third reading of HF 327 by a vote of 27-23. Because the bill was amended in the Senate, the bill was sent back to the House. The House concurred with the Senate amendments with a vote of 59-39. Governor Branstad signed the bill into law on March 1 with a scheduled 3 cent roll back on July 1, 1989 that would revert the cigarette tax from 34 cents to 31 cents.⁷⁵

After the passage of the 1988 tax increase with the inclusion of a sunset provision, the tobacco industry was poised to opposed anticipated attempts to repeal the sunset provision. The Tobacco Institute believed that the industry could utilized their new ally, Iowa Citizen Action Network, to fight any sunset repeal attempts because ICAN had substantial clout with the Democratically controlled legislature⁷⁶ (Table 19).

	House	Senate
Democrats	58	30
Republicans	42	20

1989 – Cigarette Tax Sunset Repeal Attempts

Senate File 312 and House File 635 were companion bills introduced in their respective chambers in 1989 with the intent of repealing the 3 cent sunset in the 1988 tax increase legislation. They were each introduced in March, however no action was taken on either during the session. Iowa legislative rules required that they both be carried over to the 1990 session, but they were both moot because the sunset was set to take effect in July 1989.^{75, 77}

In addition to tax-specific bills introduced to repeal the sunset tax provision, attempts were made to add amendments to repeal the sunset clause of the tobacco tax to bills relating to other subject matters. A sunset repeal amendment was attached to a solid waste management bill, however the amendment was ruled non-germane and was withdrawn. Senate File 363, a second bill to which a sunset repeal provision was attached to, was also later ruled non-germane and withdrawn.^{75, 77}

Despite several legislative attempts to repeal the 3 cent tax sunset, none were successful. The Tobacco Institute saw this as an “outstanding success” for the industry, but knew that this meant they would have to be prepared for a reinvigorated effort for a tax increase in the coming legislative session.⁷⁸ The Institute prepared a comprehensive strategic plan to combat any proposed tax legislation in 1990. Tobacco Institute’s Senior Vice President, Dan Malmgren, outlined the Iowa State Tax Plan in a memo to the Vice Presidents of the appropriate divisions at RJR, Lorillard, American Tobacco Company, Liggett, US Smokeless Tobacco, Philip Morris, and Tobacco Institute, State Activities Division Vice President, John Nelson. Malmgren explained that he would be working with Charles Wasker to find a labor consultant to assist in fighting

excise taxes at the state level by strengthening their regressivity arguments with organized labor groups beyond ICAN.⁷⁸

Malmgren forecast that at the “appropriate time” the Tobacco Institute would mobilize its grassroots allies including retailers and tavern owners/managers by way of phone banking to lobby against any proposed legislation. In addition, the Tobacco Institute decided to use Des Moines as a “test market” for a new anti-excise tax advertising campaign that encouraged citizens to speak out against a potential federal excise tax increase.⁷⁸

1991 – Cigarette Tax increased

In fall 1990 Iowa held its gubernatorial election. Incumbent Terry Branstad (R) was challenged by Iowa Speaker of the House, Don Avenson (D) for the governorship. A \$70 million budget shortfall was a central issue in the campaign. As a result of the budget difficulties and the 1989 tobacco tax sunset, the Tobacco Institute anticipated another attempt by the Governor, and Legislature to increase the tobacco tax during the 1991 legislative session.⁷⁹

Branstad won the election and, as expected, included a 10 cent cigarette tax increase in his 1991 budget bill, House File 479. The omnibus budget bill began in the Iowa House, where the cigarette tax was amended out of the bill by a 76-23 vote in early March. The bill went to the Senate where the bill was amended to include a 5 cent cigarette tax increase and a 3 percent increase in the wholesale other tobacco product (OTP) tax. The House once again voted (67-30) to remove all tobacco related tax increases from the bill. The bill went to conference on May 1, 1991.⁸⁰

When reported from conference, the bill included a 5 cent cigarette tax increase as well as a 3 percent increase in the tax rate of other tobacco products. The bill passed by a narrow margin. The House adopted the conference report with a 51-49 vote and the Senate concurred with a 26-24 vote. Governor Branstad signed the bill into law on May 31, 1991 and the tax increase went into effect the following day.⁸⁰

Conclusions

During the 1980s, tobacco excise tax bills were continually introduced as revenue measures in an attempt to solve Iowa’s budget deficit caused primarily by the 1980s Farm Crisis. Because of conflict among tobacco interests the industry struggled to defeat excise tax increases. Differing interests among the national tobacco manufacturers and Iowa tobacco distributors led the Tobacco Institute to search for new coalition partners in the state. At the urging of lobbyist Charles Wasker, in 1986 the Tobacco Institute became a member of ICAN, a relationship they maintained until the Tobacco Institute was disbanded in 1998 as a result of litigation against the tobacco industry.

In 1988, lobbyist Charles Wasker was able to include and defend a sunset clause in the tax measure that year, a victory for the tobacco industry. In 1991, another tax increase introduced by Governor Branstad to ameliorate Iowa’s budget deficit passed. Following the

1991 legislative session, the tobacco industry and its allies were successful in preventing another tax increase for 16 years.

EARLY CLEAN INDOOR AIR LEGISLATION AND PREEMPTION (1897-1995)

Prohibition

In 1897, the Iowa General Assembly passed a law that disallowed the manufacturing, sale, exchange, and disposition of cigarettes and cigarette paper on the common law principal of the right to breathe fresh and pure air, and passed based on moralist and health related concerns.⁸¹ Across the country other states were passing similar laws (Table 20).

Retailers and manufacturers challenged Iowa’s cigarette law in court, with two cases going as far as the United States Supreme Court in 1905. However, in all cases the state prevailed, with the courts upholding the law.⁸¹ Iowa’s law was repealed in 1921 as the result of a change in attitude about cigarettes after they had been distributed to soldiers in mass during World War I and became associated with patriotism.⁸²

Table 20: States that passed laws prohibiting the sale of cigarettes.⁸²

	<u>Enacted</u>	<u>Repealed</u>
North Dakota	1895	1925
Iowa	1896	1921
Tennessee	1897	1921
Oklahoma	1901	1915
Indiana	1905	1909
Nebraska	1905	1919
Wisconsin	1905	1915
Arkansas	1907	1921
Illinois	1907	1907*
Kansas	1909	1927
Minnesota	1909	1913
South Dakota	1909	1917
Washington	1909	1911
Idaho	1921	1921
Utah	1921	1923

*Held unconstitutional by the Illinois Supreme Court

1978 – The First Modern Clean Indoor Air Legislation

The first modern clean indoor air legislation was passed in 1978. In January 1978, Senator Joann Orr (D- Poweshiek) introduced Senate File 2022, “An Act prohibiting smoking in certain public areas and providing a penalty,” in the Iowa State Senate. The bill as introduced prohibited smoking in public places such as elevators, indoor theatres, auditoriums, and “similar establishments,” allowing (but not requiring) the person “in custody of buildings to ... permit smoking by persons seated at tables provided for the purpose of consuming food or beverages ... on the premises and [to] make available smoking areas adjacent to such facilities within the same structure where the words ‘smoking permitted’ are posted.”⁸³ Additionally, the bill required areas, “of sufficient capacity to accommodate all persons who [did] not wish to be ... in a smoking area” on public transportation and in rooms of health care facilities. Public waiting areas of health care facilities, government owned buildings, and retail establishments were also made smokefree except in places where the person in custody or control of the facility designed smoking sections.⁸³ The penalty for a violation of the law was a fine of \$5 for a first offense and a fine between \$10 and \$100 for subsequent offenses.⁸³

The bill passed the Senate by a large margin (39-8) and was sent to the House. The House State Government Committee added amendments that would have made the law stronger, including adding restaurants to the list of establishments covered by the clean indoor air law where, like other public places in the law, smoking areas could be designated by the person in

control of the restaurant. However, when the final vote was cast on the House floor the bill was stripped of amendments and reverted to the text originally provided in by the Senate. The bill passed the House with a 65-15 vote and was signed into law by the governor on May 8, 1978.⁸⁴

Iowa’s 1978 clean indoor air law was considerably weaker than other clean indoor air legislation passed by neighboring states during the 1970s (Table 21). Minnesota⁸⁵, North Dakota⁸⁶, and Nebraska⁸⁷ laws all included provisions that restricted smoking in restaurants as well as educational facilities, both of which were absent from Iowa law.

While the Tobacco Institute tracked the progress of Senate File 2022,^{84, 88} there is no evidence that it fought the bill, probably because of its weak provisions. The health groups do not appear to have played any role in passage of this law; the first work that the health groups did toward clean indoor air policy change was not until the mid-1980s.

Table 21: Comparison of Iowa's 1978 clean indoor air law to clean indoor air legislation passed in neighboring states in the 1970s⁸⁹

	Iowa 1978 Law	Minnesota 1974	North Dakota 1979 Law	Nebraska 1979 Law
Posted public buildings		X	X	X
Elevators	X	X	X	X
Public Transportation	X	X	X	X
Educational Facilities		X	X	X
Cultural Facilities	X	X	X	X
Health Care Facilities	X	X	X	X
Government owned buildings/Pubic meetings	X	X	X	X
Food Stores		X		X
Retail Stores		X		X
Restaurants		X	X	X
Government workplaces		X		X

A Coordinated Effort

It was not until nearly a decade later that a more expansive clean indoor air law was proposed. In 1986 the Iowa Lung Association, American Heart Association, and American Cancer Society Iowa units began to work collaboratively to pass a law that restricted smoking in public places.⁹⁰ These organizations, which had previously worked together on smoking prevention and cessation efforts, decided to extend their efforts to include tobacco control policy change because of an increase in calls from Iowa citizens to their organizations complaining about smoking in public places,¹³ likely prompted by the release of the 1986 Surgeon General’s Report on secondhand smoke⁹¹ that concluded that secondhand smoke caused cancer and that the simple separation of smokers and nonsmokers in the air space did not eliminate the risks caused by secondhand smoke. The group was further encouraged to address public smoking because the Iowa law that had passed in 1978 was falling further behind legislation passed in other states

across the United States. Additionally, Representative Johnie Hammond (D-Ames), an asthmatic who had previously led an unsuccessful campaign to make the floor of the Iowa House of Representatives smokefree, was passionate about passing a clean indoor air law in Iowa.¹³

To broaden the voluntary health organizations' advocacy capacity, the ALA took the lead in forming a coalition consisting of the voluntary health organizations, the Iowa Medical Society, the Iowa Pharmacy Association and the Iowa Nurses Association.¹³ For five legislative sessions clean indoor air bills were introduced and defeated, until 1987 when the groups were able to pass the Iowa Clean Indoor Air Act.

1987 – The Iowa Clean Indoor Air Act

On January 21, 1987, Representatives Johnie Hammond (D-Ames), Jack Holveck, Jr. (D-Des Moines), and Dorothy Carpenter (R-Polk) introduced House File 79 which was assigned to the House State Government Committee.⁹² House File 79, drafted collaboratively with the coalition of Iowa health groups,¹³ sought to prohibit smoking in all public places and meeting areas, unless the person in control of the public place designated smoking sections⁹² (Table 22). In the original version of HF 79 public places included both private and government workplaces, commercial establishments, publicly owned buildings, and restaurants, and required a \$50 fine for those found in violation of the law.⁷³ The coalition engaged in grassroots advocacy to encourage the passage of House File 79. Coalition organizations lobbied members of the legislature directly and contacted their memberships to request letter writing and phone banking to encourage members of the Iowa General Assembly to pass the clean indoor air legislation.¹³

The bill was amended in the House Government Committee to reduce the fine to \$10 and stipulate that bars be the only place allowed to be designated as entirely smoking establishments.⁷³ Additionally the bill was amended to specify that restaurants that sat 50 or fewer persons were not considered “public places” for the purposes of the bill. The 50 or fewer amendment was pushed for by legislators representing districts in rural Iowa areas whose constituents were predominantly farmers. They argued that during winter months farmers in rural Iowa would routinely travel into their local town for a cup of coffee at their local restaurant during which time they also smoked cigarettes. The small-town restaurants predominantly had a seating capacity that was less than 50, so in effect the amendment was an exemption for those rural Iowa restaurants and their patrons.⁹³ With the restaurant amendment the bill passed from committee with a 13-6 vote and later passed from the House in March with a vote of 77-18.

In the Senate, the State Government Committee amended restaurants out of the bill entirely and reported it to the floor with a vote of 8-4. The bill passed the Senate with the restaurant amendment and was reported back to the House for concurrence on the changes made. The House accepted the amendments and passed the bill with a vote of 67-14. On May 8, the bill was sent to Governor Terry Branstad (R, 1983-1999) and exactly one month later the bill was signed into law. The Clean Indoor Air Act of 1987 went into effect on July 1 of that year.⁷³

The tobacco industry did not mount an obvious campaign against the bill, probably because the 1987 Iowa Clean Indoor Air Act was only a slight improvement on existing law that was still not as strong as clean indoor air laws passed in neighboring states a decade before.

While the Act added retail stores and education facilities to the areas regulated under clean indoor air law, the omission of restaurants left Iowa with what the Tobacco Institute called a “very weak” law.⁹⁴

As with the previous clean indoor air law, the Tobacco Institute monitored the progress of HF 79⁶⁸, but did not appear to fight the bill, instead focusing on defeating cigarette excise tax measures in Iowa.

1988 – The Tobacco Institute’s Great American Welcome

Clean indoor air policies enacted in the 1970s and 1980s posed a significant financial threat to the tobacco industry. In response, the industry developed a proactive approach to confronting legislation through the development of a strategy called “accommodation,” which presented voluntary creation of smoking and nonsmoking sections as an alternative to legal requirements for smokefree environments.⁴⁴ In the late 1980s and early 1990s the industry began to reach out and donate money to the hospitality industry to create alliances through which the hospitality industry would serve as a local surrogate of the tobacco industry to fight clean indoor air policies.⁴⁴

One such program promoted in Iowa and across the United States was the *Great American Welcome* developed by the Tobacco Institute in 1988 (Figure 7). The *Great American Welcome* was developed as a national preemptive public relations strike to divert attention from the American Cancer Society’s *Great American Smokeout*, a program started by ACS in 1976 to encourage smokers to try quitting for a day in November each year.⁹⁵

The Tobacco Institute created packets for restaurant and hotel owners that explained the importance of smokers to their livelihood and encouraged creating a business environment that sought to welcome both smokers and non-smokers. The packet also include an image of a sign that business owners could hang in their windows that showed that they were a part of the *Great American Welcome* program. The sign had two hands giving a thumbs-up sign, one with a cigarette between its fingers, the other without (Figure 7).⁹⁶ In June 1988, John Lyons, a Tobacco Institute Issue Manager, made a presentation to the Iowa Restaurant and Beverage Association about the *Great American Welcome*. The Executive Officer of the Restaurant Association, Les Davis, agreed to assist the Tobacco Institutes’ Public Affairs Division by contacting the Iowa Restaurant



The Great American Welcome is dedicated to a simple proposition: smokers and nonsmokers appreciate courtesy. Now you can take your business to businesses who appreciate you.

Restaurants, hotels and businesses who are part of The Great American Welcome are committed to extending a warm welcome to smokers and nonsmokers alike. You can look for The Great American Welcome decal at participating businesses nationwide.

Any business wishing to join The Great American Welcome can call 1-800-XXX-XXXX. If you're a customer who wants to know where you are welcome, call the same toll-free number. It's that easy.

Figure 7: *Great American Welcome* mock up created by the Tobacco Institute when proposing the program to trade organizations

Table 22: Progression of House File 79			
	As Introduced on 1/21/1987	As Passed by the House 3/6/1987	As Passed by the Senate (5/8/1987) and Signed by the Governor (6/8/1987)
Public places where smoking was prohibited unless a smoking section was designated by persons having custody or control of the public place:			
<u>Any enclosed indoor areas used by the general public or serving as a place or work, including but not limited to:</u>			
Restaurants	X	X - with a seating capacity greater than 50 people	<i>Exempt</i>
Retail stores	X	X - with less than 50 percent sales in tobacco	X- containing 300 or more square feet of floor space and less than 50 percent of sales from tobacco
Offices	X	X- containing 300 or more square feet or the portion of a retail store where tobacco was sold	<i>Exempt</i>
Waiting rooms	X	X- of 300 or more square feet	X- of 300 or more square feet
Other commercial establishments	X	X	X
Public conveyances with departures originating in Iowa	X	X	X
Educational facilities	X	X	X
Hospitals	X	X	X
Clinics	X	X	X
Nursing homes	X	X	X
Other health care and medical facilities	X	X	X
Auditoriums	X	X	X
Elevators	X	X	X
Theaters	X	X	X
Libraries	X	X	X
Art museums	X	X	X
Concert halls	X	X	X
Indoor arenas	X	X	X
Meeting rooms	X	X	X
Areas where smoking was not regulated:			

Private, enclosed offices occupied exclusively by smokers even if the office may be visited by non smokers	X	X	X
Dorms and other rooms used primarily as residences at education facilities	X	X	X
Resident rooms in health care facilities	X	X	X
Lobbies and malls	<i>Not included</i>	X- less than 300 square feet	X
Hotel/motel rooms	<i>Not included</i>	X	X
Non-smoking rooms had to be provided	X	X	X
Enforcement:			
Persons can tell the other person that it is against the law to smoke	X	X	
Smoking designation and no smoking signs had to be posted in appropriate areas	X	X	X
Penalty for violation	No greater than \$50 fine	No greater than 10 dollars	\$10 fine

Association's membership about the program. In addition, the Davis showed strong interest in having the Tobacco Institute purchase advertising space in their trade association publication.⁹⁷

The Iowa Restaurant Association and the Tobacco Institute believed that encouraging voluntarily weak regulation would prevent the Iowa legislature from passing more comprehensive clean indoor air laws.⁹⁸

On November 15, 1988, two days before that year's *Great American Smokeout*, the Tobacco Institute launched their *Great American Welcome*. To publicly kick-off the *Great American Welcome* the Tobacco Institute took out full-page advertisements with the *Great American Welcome* logo in 17 newspapers including *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Chicago Tribune*, *The Boston Globe* and *USA Today*.⁹⁹ In addition 1,200 press releases were distributed by the Tobacco Institute to media outlets nationwide.⁹⁵ Brennan Dawson, the Tobacco Institute staff person who headed the *Great American Welcome* program, explained to *The New York Times* in November 1988, "We are giving the hospitality industry an easy way of letting customers, both smoking and non-smoking, know that in this establishment they will be treated with courtesy and respect."⁹⁹

The *Great American Welcome* took a substantial share of media attention away from the *Great American Smokeout* and the Tobacco Institute was successful in engaging hospitality allies across the country in their effort. However the program was abandoned in 1989 because the Tobacco Institute felt that the program positioned against the *Smokeout* brought too much attention to the smoking debate.¹⁰⁰

In addition to creating alliances with the hospitality industry, the tobacco industry sought out other partners to forward their policy agenda of preventing the regulation of smoking. As corporate clean indoor air workplace policies began to increase in popularity, the Tobacco Institute began an outreach campaign to labor organizations to fight clean indoor air work environments in addition to cigarette excise tax increase.⁵⁶ In an August 1987 Public Affairs Management Plan Progress Report, the Tobacco Institute reported that their "outreach to labor began to bear fruit; four unions contacted [them] for help in arbitration hearings on smoking restrictions. At the same time, [they] heard from 93 companies and individuals seeking information on policy development."¹⁰¹ One "highlight" in an August 1987 Tobacco Institute report was a story about a union representing employees at the *Des Moines Register*, a statewide newspaper, that had asked the Tobacco Institute for help with overturning a smoking policy that restricted workplace smoking.¹⁰¹

1990 – Clean Indoor Air Act Revision and the Introduction of Preemption

In preparation for the 1988 legislative session across the United States, the Tobacco Institute State Activities Division conducted a survey of all states to determine whether it was "prudent and/or possible to seek state level smoking restriction laws which preempt local jurisdictions."⁹⁴ They found 22 states that could be considered for local preemption, including Iowa.

Preemption is the power of state governments to pass laws that prevent local governments from passing laws on the same subject matter, or from passing laws that are more restrictive than state law on that subject matter. The tobacco industry, recognizing that it was weaker at influencing policy outcomes at the local level than at the state level, strongly promoted preemptive state laws with weak smoking restriction provisions as a means of cutting off the ability of localities to pass strong clean indoor air ordinances.¹⁰²⁻¹⁰⁴ There are two general types of preemption. Explicit (or express) preemption includes a clause in which the preemptive language is written clearly in the law. Implied preemption occurs when a measure adopted by the state legislature could be argued in the courts to “occupy the field” in question, therefore preventing local regulation.¹⁰⁴ (The tobacco industry has generally not been successful in arguing for implied preemption.¹⁰⁵)

The State Activities Division determined that it was possible that the Iowa Legislature would adopt a local preemption clause if there was an attempt to strengthen the 1987 Clean Indoor Air Act, and found it likely that such an attempt to strengthen the law would occur in 1988 because the law that passed in 1987 only weakly regulated smoking.⁹⁴

On one hand, the Tobacco Institute’s State Activities Division believed that their lobbyists in Iowa, particularly Charles Wasker and William Wimmer, were “very strong” and that they had strong member company allies, and “very good” new allies that had been developed through phone banking.⁹⁴ On the other hand, the State Activities Division saw Governor Terry Branstad as an obstacle because he “hate[d] the tobacco industry” and his wife was an active member of GASP,⁹⁴ the “Group Against Smoking Pollution,” a loose collection of nonsmokers’ rights activists that existed in several states.

As anticipated by the tobacco industry, Representatives Johnie Hammond (D-Ames), Jack Holveck, Jr. (D-Des Moines) and David Osterberg (D-Mt. Vernon) introduced House File 209 on February 6, 1989, which sought to expand the Iowa Clean Indoor Air Act to include restaurants. Additionally, the bill contained provisions that if enacted would require the Iowa Department of Inspections to inspect facilities for compliance with the Clean Indoor Air Act when inspecting a facility for any other purpose, would require that all retail stores and public transportation conveyances announce smoking restriction hourly, and would increase the penalty for violating the law from \$10 to \$50¹⁰⁶ (Table 23).

As with the previous clean indoor air effort in 1987, the coalition, led by the ALA, and consisting of the ACS, AHA, Iowa Medical Society, Iowa Pharmacy Association, and Iowa Nurses Association, advocated on behalf of the bill. The groups engaged in direct lobbying at the capitol as well as coordinated letter writing and phone banking campaigns to mobilize their grassroots membership to pass the bill as introduced.¹³

In the House, the State Government Committee amended the bill to exempt workplaces that were smaller than 250 square feet, which was 50 fewer square feet than stipulated in the existing law, and to exempt restaurants that sat 25 or fewer people. At the beginning of April, nearly 20 amendments to the bill were filed for consideration. Included in those amendments were two that would have included chewing tobacco in the definition of tobacco products

Table 23: Progression of House File 209

<u>As Introduced</u>	<u>As Amended and Passed by the House</u>	<u>As Amended by the Senate</u>	<u>Final Provisions</u>
Added restaurants to the definition of public places where smoking was regulated	Amended to require tobacco vending machine to be in "clear view" of a person of legal age, rather than "under the supervision" or a person of legal age	Preemption clause amended to read: "For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter"	Changed the size of public places regulated by the Clean Indoor Air Act from 300 square feet to 250 square feet
Included a provision that required restaurants to provide sufficient seating to accommodate persons who wanted to sit in nonsmoking areas	Amended to include a penalty of \$500 for a cigarette vendor and retailer if a vending machine was not in clear view of an adult for a first violation and the revocation of the vendors permit and retail license for any subsequent violations	Striped of all language pertaining to vending machines	Required that the Iowa Department of Inspections and Appeals inspect facilities for compliance with the Clean Indoor Air Act when inspecting a facility for any other purpose
Required that the Iowa Department of Inspections and Appeals inspect facilities for compliance with the Clean Indoor Air Act when inspecting a facility for any other purpose	Amended the definition of public place to have to be 250 or more square feet to be regulated by the Clean Indoor Air Act	Removed restaurants from the list of regulated public places	Included an implicit preemption clause
Required all retail stores, malls, and public conveyances with public address systems to announce smoking regulations hourly	Amended the definition of restaurants regulated under the act to have to have a seating capacity greater than 50		Increased the penalty for violation of the Clean Indoor Act from a \$10 fine to a \$50 fine
Increased civil penalty for violation of the law to \$50 from \$10	Added a weak attempt at a preemption clause which read, "Enforcement of this chapter shall be implemented in an equitable manner throughout the state"		
	Decreased the penalty from \$50 to \$25		

regulated in indoor environments, which were both later rejected.^{75,77} The bill was not voted on in the House before adjournment of the session and was carried over to the 1990 session.

The Tobacco Institute credited their extensive lobbying, specifically lobbyist Charles Wasker and the Iowa Restaurant Association, for keeping House File 209 from moving out of the Iowa House in 1989.¹⁰⁷ In an email from Tobacco Institute Regional Director Dan Nelson to Paul Emrick, Tobacco Institute Vice President, Nelson explained that Tobacco Institute lobbyist Charles Wasker had successfully held off the passage of a Clean Indoor Air Act expansion in 1989.¹⁰⁸ Looking forward toward the 1990 session, Wasker wanted to review possible preemption amendment language to introduce if it appeared that House File 209 would pass, but preferred outright defeat of that bill or any other legislation that would strengthen tobacco regulation in the state of Iowa.¹⁰⁸

A Tobacco Institute document entitled *Pro-Active Legislative Targets 1990* stated that the Iowa Restaurant Association would remain in opposition to House File 209 with or without preemption language.¹⁰⁷ Having the Iowa Restaurant Association as an ally was helpful to the Tobacco Institute unless the bill progressed and the Tobacco Institute was able to amend strong local preemption language into the bill at which point the Tobacco Institute would support HF 209 and the Iowa Restaurant Association would be in opposition. The Tobacco Institute decided that if that time came, they would educate trade groups and the Iowa Restaurant Association about the “benefits” of uniformity in smoking laws in order to garner their support for HF 209.¹⁰⁷

In January 1990, at the beginning of the new legislative session, the bill was reconsidered in the House. On the House floor the bill was amended to include a provision relating to the supervision of vending machines including a penalty (Table 23). Another amendment changed the capacity for exempting restaurants from 25 back to 50 seats, while another decreased the penalty for violating the law from \$50 to \$25. A final amendment introduced by Mary Lundby (R-Linn) and Tony Bisignano (D-Polk) included a clause that required that the smoking law be enforced “uniformly” throughout the state,⁷⁵ an amendment pushed for by industry lobbyist Charles Wasker. We could not identify any active opposition to these changes from the health groups. A memo was sent from Melinda Sidak at Covington and Burling, a law firm that plays a central role in orchestrating the tobacco companies’ activities around clean indoor air globally, to Dan Nelson and others. The industry’s lawyer discussed the language of the clause about uniformity and concluded that it was not actually preemptive. Sidak wrote:

Although it is not clear exactly what this vaguely worded provision is intended to mean, it clearly would not operate as a preemption clause. It says nothing whatsoever about the bill’s relationship to local laws and regulations. In the absence of a clear expression of the legislature’s intent to preempt, a court is unlikely to hold that HF 209 preempts local regulation of either public smoking or the sale of cigarettes through vending machines.¹⁰⁹

Sidak provided a brief summary of precedent of preemption in a similar situation in Iowa, along with language that would explicitly preempt local action on public smoking.¹⁰⁹ She explained:

In order to preempt local laws, HF 209 must be amended to express the intent to preempt in clear terms. A suggested preemption amendment might read as follows:

‘Chapters 98 and 98A are expressly intended to preempt all laws, ordinances or regulations by any municipal, county or other governmental unit or political subdivision relating to the consumption, sale, distribution or use of tobacco or tobacco products.’...

Barring an amendment of this kind, HF 209 would not preempt the enactment by local governments of additional public smoking ... regulations.¹⁰⁹

The Tobacco Institute closely tracked the progress of HF 209 in an effort to ensure that a meaningful preemption clause was included in the bill. In a memo from M. Hurst Marshall, a Tobacco Institute Vice President, to Roger Mozingo, a Vice President at RJR, Marshall explained that no attempts to strengthen preemption language were made when HF 209 was in subcommittee, but that the amending would come during Senate floor debate.¹¹⁰

On March 15, 1990, there was open debate on the Senate floor regarding many amendments including changes in fines, changes in vending supervision provisions, and an amendment that would preempt local smoking ordinances. During this debate, all provisions relating to cigarette vending machines were amended out of the bill. Additionally, a proposed amendment to explicitly preempt local smoking restrictions was ruled non-germane. Final action on the bill was then deferred.⁷⁵

Four days later, M. Hurst Marshall reported to Roger Mozingo that, “Senate action gutted the bill¹¹¹,” restaurant smoking restrictions were amended out of the bill and what Hurst Marshall characterized as “strong preemption language” was adopted.¹¹¹ However the language of S-5490, the HF 209 preemption amendment, differed from the language Melinda Sidak had said would be necessary for the law to actually preempt local legislation. The strengthened amendment read:

In order to provide uniform application of this chapter and chapter 98A relating to the regulation of cigarettes, the imposition of tobacco taxes, and the enforcement of smoking prohibitions, this chapter and chapter 98A shall preempt all *inconsistent* laws and regulation of political subdivision of this state relating to the consumption, sale, distribution, or use of tobacco and tobacco products. Any laws or regulation of political subdivisions of this state, whether or not enacted prior to July 1, 1990, which are inconsistent with the provisions of this chapter or chapter 98A, are void.⁷⁸ [emphasis added]

The word “inconsistent” undermined the attempt at preemption, because a law can both be stronger than, and consistent with, state law. The law could have served as a floor rather than a ceiling for acceptable clean indoor air legislation, meaning that all regulated public places would have to comply with the provisions required by the Clean Indoor Air Act and the 1990 amendments, but a community could pass stronger laws in addition to

the provision required by the state. However this distinction was overlooked for nearly a decade by the tobacco control community, which assumed that the law actually preempted local action on clean indoor air (along with national coalition partners) preventing local action by Iowa communities until 1999.

After the Senate action all that remained of HF 209 was an attempt at preemption because restaurants had been removed from the list of regulated public places and all vending machine restrictions had been stripped from the bill. As a result, the pro-tobacco control sponsors, Representatives Hammond, Osterberg, and Holveck, pulled the bill, which postponed it from consideration.¹¹¹ However, three weeks later, on April 4, a motion to reconsider the bill was passed. Representatives from the voluntary health organizations advised Rep. Hammond to again pull the bill with preemption off of the table because at that point the health groups considered it a step backward, but Hammond felt that “something was better than nothing” and did not go along with the American Heart Association, American Lung Association and American Cancer Society.⁹³

The amended bill’s final provisions included changing the size requirement of a regulated public place from 300 feet to 250 feet, an inspection requirement of places regulated under the Clean Indoor Air Act by the Iowa Department of Inspections if they were inspecting a regulated building for any other purpose, an increase in the fine for violation of the law from \$10 to \$50 and the ambiguous preemption language; it passed by a vote of 37-12. The House concurred with the bill’s amendments and Governor Branstad signed House File 209 into law on April 24. The bill went into effect July 1, 1990.^{75, 77}

Attempt to Overturn Preemption at the State Level

Beginning in 1995, the ACS, ALA, and AHA pooled funds to, for the first time, jointly hire a contract lobbyist, Serge Garrison, to lobby at the state level to repeal preemption.¹¹² Interestingly, Garrison was a former RJR lobbyist and was responsible for drafting the preemption language that passed in 1990. In 1995, he had a change of heart and decided to work for, rather than against, tobacco control. (In his capacity as a lobbyist for RJR in 1990 he may have known that the industry did not think the preemption language passed was strong enough.) The voluntary health organizations chose to hire Garrison because he was not only an extremely qualified lobbyist, but he was also well educated on tobacco issues and had a unique perspective into tobacco industry tactics used to defeat tobacco control efforts because of his work for the industry.¹⁴

Garrison continued to lobby to repeal preemption until 1999, when Attorney General Tom Miller issued a formal opinion stating that Iowa was not preempted from passing local laws¹¹² (discussed below). While Garrison was not able to win legislation to repeal preemption, he was the impetus for tobacco control advocates to start questioning whether Iowa’s law did in fact preempt local clean indoor air action.⁹⁰ Although the voluntary health organizations worked to repeal preemption at the state level, there was no effort to build pressure at the community level in support of repealing preemption.¹⁴

Conclusions

Clean indoor air measures passed in Iowa in 1978 and 1987 were weak, even by tobacco industry standards. In 1990, in an attempt to expand clean indoor air coverage in Iowa, health groups were outmaneuvered by the tobacco industry. Led by Charles Wasker, tobacco interests were able to both remove provisions that would have regulated smoking in restaurants, as well as inserted assumed preemption language into the bill. Pro-tobacco control legislators, led by Representative Johnie Hammond voted for House File 209, despite urging by the voluntary health organizations to defeat the bill because of the inclusion of preemption. HF 209 had the affect of preventing local action on clean indoor air for a decade.

COMMUNITY INTERVENTION TRIAL FOR SMOKING CESSATION (1988-1992)

In 1987, while health groups were working toward passing tobacco control measures at the state level, Cedar Rapids, Marion, and Davenport, Iowa (Table 24) were selected to participate in the National Cancer Institute’s (NCI) Community Intervention Trial for Smoking Cessation (COMMIT), a national community intervention trial to test if community interventions could encourage heavy smokers to quit. The research question that NCI sought to answer was whether an externally developed protocol, implemented by community groups, institutions, and other organizations, with minimal external assistance, could result in quit rates in heavy smokers that were at least 10 percent higher than in control communities. COMMIT involved 11 pairs of communities nationwide, with one receiving the intervention and one selected as a control. In Iowa, Cedar Rapids/Marion were chosen to receive the intervention through randomization of the two communities and Davenport, Iowa was designated as the control community.¹¹³ Dr. Paul Pomrehn of the University of Iowa served as the Principal Investigator for the Iowa COMMIT intervention.¹¹⁴

The COMMIT intervention included three phases. Phase I focused on the development of the intervention within the community (October 1986-October 1988), Phase II implemented the intervention (October 1988-December 1992), and Phase III involved final surveying and data collection on cessation rates and the associated analysis (January 1993-March 1995).¹¹³

While the primary outcome that the COMMIT intervention hoped to influence was an increase in smoking cessation among heavy smokers, there were several other community-based changes that NCI believed needed to occur for to increase cessation. These community-based changes included increasing: the priority of smoking as a public health issue, the community capacity to modify smoking behavior, the influence of policy and economic factors within a community that discourage smoking, and social norms and values supporting non-smoking.¹¹³

Table 24: Sociodemographic characteristics of Iowa COMMIT community pairs at time of intervention

Community/Area	Population	White (%)	Female (%)	Ages 25-64 (%)	High School Graduate (%)	Low Income (%)
Cedar Rapids/Marion	144,243	96.3	51.8	52.1	85.0	20.6
Davenport	125,593	91.0	51.4	50.5	81.5	24.9

In order to achieve these process goals the COMMIT intervention protocol sought to mobilize community members around tobacco control issues; involve health care providers in cessation activities; increase the support and promotion of cessation in workplaces; increase the amount of cessation resources and services available in a community; facilitate community-wide public education about smoking as a public health problem, smoking prevention, and to bring awareness to local cessation services; and involve diverse community organizations and schools in the process.¹¹³ The national COMMIT investigators developed required activities to be conducted in each community to attempt to increase cessation rates in intervention communities. Although there were mandated activities for each community, the organizations involved at the local level were given latitude in how exactly to implement the required activities.¹¹³

COMMIT Intervention Activities

Mobilization

The community mobilization component of the COMMIT intervention sought to create an environment in which members of the community developed an awareness of smoking as a problem, then identified it as a high priority, and finally would take steps to resolve the problem of smoking. To facilitate community mobilization, the COMMIT research staff identified community members for initial planning of the intervention in each community. The chosen community members served on a community planning group and were charged with recruiting a Community Board in order to manage the COMMIT intervention. Aside from the development of the community planning group the COMMIT intervention protocol required eleven other mobilization activities including creating four task forces to assist in the intervention: a health care providers' task force, a worksites and organizations task force, a cessation resources and services task force, and a public education task force¹¹³ (Table 25).

Within Cedar Rapids/Marion the American Cancer Society was well-established through their work on tobacco prevention and other health issues. As a result, the American Cancer Society took the lead in mobilization of the community. The American Heart Association and American Lung Association also had representatives on the COMMIT community board as did local hospitals Mercy Medical Center and St. Lukes. In addition, there was representation from local schools and the *Gazette*, Cedar Rapids' newspaper, in attempt to garner positive media for the intervention.

The COMMIT board had strong support from the Linn County Public Health Department (the county in which Cedar Rapids and Marion were located) because the brother of the COMMIT director, Elena Emerson, was the director the county public health department. Additionally, the recruitment of well-established community organizations in Cedar Rapids/Marion, provided immediate credibility to the Community Board as they sought to engage others in the intervention.¹¹⁴ The COMMIT board and staff

Table 25: Required mobilization activities and process objectives¹¹³

<ul style="list-style-type: none"> Establishment of a community planning group Planning for the program office and staff First community board meeting Creation of task force member list and recruitment Writing of by-laws Field site management plan Smoking control plan First annual action plan Second annual action plan Third annual action plan Fourth annual action plan Transition Plan

were charged with implementing educational and motivational activities aimed at organization and places where it was believed smokers might be receptive to encouragement to quit smoking.¹¹⁵

Health Care Providers

Intervention activities involving health care providers focused on involving community health professionals in smoking cessation in their practices. Interested professionals were given leadership roles in facilitating the intervention and were given training to recruit their colleagues. While the intervention staff in the 11 intervention communities were able to recruit health care providers for the intervention, there was across-the-board difficulty in getting a high rate of attendance at trainings and other required intervention activities¹¹³ (Table 26).

As required by NCI, the Cedar Rapids/Marion COMMIT board worked to engage the dental and medical community (both groups that had high credibility with community members, including smokers) in the intervention. Principal Investigator Paul Pomrehn received training from the NCI to then train local health providers about how to encourage cessation among their patients and within their own workplaces. He and the COMMIT staff and board were particularly successful in engaging the dental community to encourage smoking cessation.¹¹⁴

Worksites

There were four intervention goals for the worksite component of the COMMIT intervention. The intervention sought to increase smoking cessation among workers who smoked, produce changes in worksite norms to support no-smoking, increase adoption and effective implementation of comprehensive worksite nonsmoking policies, and enhance support for clean indoor air policies in the business and labor sectors. In order achieve these goals, the COMMIT intervention outlined required workplace-related activities to be carried out over the course of the intervention¹¹³ (Table 27).

Table 26: Required health care provider activities and process objectives¹¹³

<p>Three or more local influential medical care providers trained Three or more local influential dental care providers trained Annually, at least three physicians will be active on community board Annually (from 1989) at last one dental care provider will be active on community board Annually (from 1989) at least three dental care providers will be active on community board At least on physician attended national training At least on dentist attended national training At least two dental care providers attended national or regional training Basic training of physicians Basic training of dentist/dental care providers Comprehensive training of physicians Comprehensive training of dentists/dental care providers Physician office staff training Dentist office staff training Resource materials sent to physician offices Resource materials sent to dentist offices Promotional materials sent to physician offices Promotional materials sent to dentist offices Presentations to physician offices not smokefree Presentations to dentist offices not smokefree Presentation to health care facilities not smokefree</p>

Table 27: Worksite activities and process objectives

<p>Presentation to business groups Annual workshop for worksites Compile resource list for smokefree worksites Distribute resource list to worksites annually Policy consultations to worksites Promotional activities to worksites Distribute incentive guidebooks to worksites Three between worksite competitions Distribute self-help cessation materials to worksites Promote smokers' network in worksites</p>

The Cedar Rapids/Marion intervention staff found engaging the local business community to be particularly challenging. Major employers such as Rockwell Collins, an international company headquartered in Cedar Rapids, were receptive to distributing cessation materials to employees as well as to participating in cessation activities ran by the COMMIT staff, however smaller employers were much harder to engage.¹¹⁴

Cessation Resources

Research prior to the COMMIT intervention showed that smokers were unlikely to be aware of smoking cessation resources available in their communities. As a result, heightening awareness about cessation services and increasing the number of resources available to people in the intervention communities was central to the protocol dealing with cessation resources (Table 28).¹¹³

The most widely distributed material of the COMMIT intervention were cessation resources guides (CRGs). CRGs were community-specific guides providing information about available cessation resources within the community. 16,183 cessation guides were distributed to health care provider offices, workplaces, and at community events in Cedar Rapids/Marion during the intervention.¹¹³

<p>Table 28: Cessation resources activities and process objectives¹¹³</p> <p>Produce cessation resources guide</p> <p>Annually deliver cessation resources guide to physicians dentists, targeted worksites, and targeted organizations</p> <p>Semiannually produce and distribute newsletters</p> <p>Develop network recruitment plan</p> <p>Recruit heavy smokers in a network</p>

Another cessation initiative in Cedar Rapids/Marion was the use of CityLine, a local telephone information service that provided around-the-clock cessation services over the phone. The service was not an interactive quit-line, but instead delivered a recorded message with cessation information and the option to leave a message to receive cessation materials. Over a 9 month period, CityLine received 2,450 calls and 912 “Quitpacks” containing cessation materials were distributed to callers. CityLine was also used to promote local cessation events such as the American Cancer Society’s *Great American Smokeout*.¹¹³

Public Education and Schools

Public education through the COMMIT program focused on promoting its activities through the media. Among other things, the COMMIT protocol required multiple news conferences as well as the release of information about tobacco issues through media¹¹³ (Table 29). Despite having a member of the *Gazette* staff on the Cedar Rapids/Marion Community Board, Principal Investigator Paul Pomrehn recalled in a 2009 interview that the local media did not embrace the intervention, leading to a lack of positive media coverage for intervention activities.¹¹⁴

<p>Table 29: Activities and process objectives for involving the public</p> <p>Nationally, train on person in media advocacy</p> <p>Train minimum of eight community members in advocacy</p> <p>Hold news conference for smoking control plan</p> <p>Hold annual news conference for annual action plan</p> <p>Annually produce eight local news releases on tobacco issues</p> <p>Develop campaigns to publicize availability of cessation resources guide and other aspects of smoking cessation</p> <p>Annually (from 1989) design and implement two magnet events</p>

The Cedar Rapids/Marion public education committee was successful in educating the public about the need for stronger clean indoor air policies at schools (something also only weakly regulated under Iowa state law). The public education committee created a smokefree schools subcommittee to work toward changing smoking policies at the school district level. The smokefree schools subcommittee was able to work toward process objectives relating to public education as well as schools, another focus of the COMMIT intervention (Table 30) simultaneously. At the time, youth were prohibited from smoking on school grounds, but faculty and staff were allowed to smoke in designated areas that were both inside and outside of school buildings. (These exceptions largely nullify the effectiveness of student restrictions on smoking behavior.) The smokefree schools subcommittee sought to prohibit smoking in all district buildings and vehicles, but would still allow smoking by staff outside in designated areas. The subcommittee wrote letters to PTA presidents and school board members and circulated a petition that received 300 signatures to show local support for the proposed policies.¹¹³

Table 30: Activities and process objectives for schools

Distribute smoking policy materials to school boards
Annually contact schools not smokefree
Provide tobacco curriculum to educators

Two public hearings were scheduled by the school board to discuss the smoking issue. The first hearing was not well attended and there was no opposition. However, at the second hearing opposition to the proposed policy made their case by presenting a counter-petition circulated by staff and teachers who disagreed with the proposed policy.¹¹³ Despite the opposition by teachers and staff, the school board approved the smoking policy by a vote of 4 to 2.¹¹³

An important component of the COMMIT program in schools was integrating youth in the goal of mobilizing communities in tobacco control initiatives. One initiative that realized this goal, as well as promoted smokefree workplaces in Cedar Rapids/Marion, was a program that matched third-grade students with local companies. The students created posters encouraging employees to quit smoking in conjunction with the American Cancer Society’s *Great American Smokeout*. A committee of smokers and former smokers at each company judged the posters and displayed the winner of the contest at their worksite.¹¹³

Community Organizations

Another component of the COMMIT intervention was involving a wide array of community organizations in tobacco control activities (Table 31). The Cedar Rapids/Marion staff gave grants to ALA, ACS, and AHA to carry out some of the COMMIT activities. For example, the Cedar Rapids/Marion COMMIT staff worked with representatives of the ALA to rally public support for the then-new federal law making almost all domestic flights smokefree in 1990. The staff along with volunteers distributed “panic packs” at the airport the day that the law went into effect. The packs included tips for surviving the

Table 30: Activities and process objectives for organizations¹¹³

Short presentations to organization targeted for intervention
Comprehensive seminars to organizations targeted for intervention
Promotional activities in organizations targeted for intervention
Distribution of self-help materials in organizations targeted for intervention
Distribution of promotional materials to organizations targeted for intervention
Annually involve organizations targeted for promotion in magnet events

flight, cessation resource guides, candy, buttons, and headless matches, among other things. The event brought a great deal of media attention the groups.¹¹³

The Cedar Rapids/Marion COMMIT staff also created partnerships with other national, state, and local organizations. A coalition of representatives from the U.S. Attorney's Office, the Substance Abuse Free Environment (SAFE) coalition, Iowa Substance Abuse Information Center, and COMMIT sponsored a conference for religious leaders. The event entitled "Congregations for a Substance-Free Environment: A Conference for Clergy and Lay Leaders" brought together 150 people across a range of religious groups in February 1992. The conference led to a strategic planning conference to discuss possible community interventions to promote cessation and a workshop to train ministers and lay leaders in interventions.¹¹³

Results

The COMMIT intervention communities were successful at implementing the external protocol developed by the NCI, but there was no statistically significant difference between cessation rates of heavy smokers in control and intervention communities. There was, however, a significant difference in quit rates of light to moderate smokers in the intervention communities. Additionally, comparisons of pre- and post-intervention surveying showed an increased awareness in intervention communities of cessation services available to citizens in those communities.¹¹³

In Cedar Rapids/Marion 25 percent of all smokers who were identified through pre- and post-intervention surveying quit during the time of the intervention (1988-1992), compared to 21 percent of smokers in the control community of Davenport. There was no statistically significant difference in the quit-rates of heavy smokers in the two communities, however roughly 16 percent of the 10,000 heavy smokers in the two communities quit during the time of the intervention. Because there was no difference between the control and intervention community, the quit rates could not be attributed to the efforts of the COMMIT staff in Cedar Rapids/Marion. However, among light to moderate smokers, Cedar Rapids/Marion did see a statistically significant drop in smoking rates compared to Davenport.¹¹⁵

Impact on the Tobacco Control Infrastructure in Iowa

Although the COMMIT intervention did not result in a statistically significant difference in smoking rates among heavy smokers in Cedar Rapids/Marion or in the other 10 intervention communities in the national trial, the intervention did have an influence on future tobacco control in Cedar Rapids/Marion. In October 1992, the Cedar Rapids/Marion COMMIT staff announced that pending the conclusion of the implementation of the COMMIT intervention, 11 community organizations, including the ACS, ALA, and the Iowa Substance Abuse Information Center, would continue community work toward helping Iowan to quit smoking.¹¹⁶ As of 2009 the COMMIT Tobacco Free Coalition continued work on tobacco prevention. The group also supported tobacco control initiatives including overturning preemption that prevented localities from passing local level smokefree laws.¹¹⁷

In addition to the continued work of the COMMIT Tobacco Free Coalition, in 2000 the Principal Investigator of the Iowa COMMIT intervention, Paul Pomrehn, was chosen by Governor Tom Vilsack (D) to serve as the first chair of the Iowa Tobacco Use Prevention and Control Commission.¹¹⁴

YOUTH ACCESS

In 1894, the Iowa General Assembly passed a law prohibiting the sale of cigarettes to minors (defined as persons under 21 years old) except in cases where the minor was 16 or over and had a note from his or her parent.¹¹⁸ Iowa's first youth access law preceded Iowa's complete prohibition of possession and use of tobacco products by in 1897. When the complete prohibition of tobacco use was repealed in 1921, the 1894 youth access provision went back into effect and an additional provision was added that required minors to identify where they received cigarettes if they were caught with cigarettes in their possession. A 1939 tax law required all distributors, wholesalers, cigarette vendors, and retailers of cigarettes to obtain a retail cigarette permit. In 1956, the law was amended to reduce the age for sale to minors from 21 to 18 years, and raise the age for purchase with a note from a parent from 16 to 18 years, which effectively nullified the note provision. A person in violation of Iowa's early youth access laws was guilty of a misdemeanor and the Iowa Department of Revenue or local permit issue authority was compelled to revoke the tobacco sales permit of a person or retailer who furnished cigarettes to minors for one year.¹¹⁸

While Iowa's youth access laws on the books were extensive and strong, in practice they were not well enforced.¹¹⁹ In 1991, Iowa health groups along with legislative champions decided to introduce legislation to strengthen Iowa's laws pertaining to youth access to tobacco products.

1991 – The Iowa Adolescent Smoking Prevention Act

In the late 1980s, Rep. Johnie Hammond (D- Story), a sponsor of the 1987 clean indoor air legislation and the subsequent legislation clean indoor air legislation passed in 1990 that led to preemption of local clean indoor air laws, was chosen by the voluntary health organizations to attend a national conference promoted by the ACS, ALA, and AHA to represent the state as a legislative advocate. The conference was a national-level conference where advocates and legislators from across the United States met to discuss activities in their own states and to develop new tobacco control advocacy strategies to bring back to their home states. It was at this conference that Rep. Johnie Hammond and representatives of the Iowa voluntary health organizations decided to make passing a comprehensive youth access law a legislative goal for Iowa.⁹³

House File 232 – An Industry Co-opted Bill

House File 232, introduced by the House Committee on Human Resources on February 13, 1991, was the legislative vehicle for Rep. Hammond and the voluntary health organizations' youth access law. As introduced, House File 232 sought to expand the definition of products sold in vending machines to include tobacco products other than cigarettes (to ensure that other tobacco products were covered under the provisions of the law), added a definition of tobacco

products (i.e., cigars, snuff, clippings, etc.), removed the language pertaining to purchasing cigarettes with a parent’s note, designated enforcement authority, allowed inspection for enforcement, made all violations of the law a misdemeanor, changed the penalty structure for retailers, prohibited tobacco sales through vending machines, prohibited sampling, and removed preemption from the 1990 Iowa Clean Indoor Air Act (Table 32).

Tougher, yet not necessarily more effective, penalties were included in the bill for both youth and retailers. Under the law, minors who attempted to purchase or purchased tobacco products would be charged with a misdemeanor and have to pay a fine less than or equal to \$100 and/or serve community service. Most public health experts oppose criminalization of tobacco use by youth because there has been no proof that such penalties are effective and furthermore are a tactic used by the tobacco industry to divert attention from more meaningful penalties for tobacco retailers.¹²⁰ Retailers or employees of retailers who sold products to minors faced graduated penalties including a \$300 fine for a first violation and suspension or revocation of a cigarette sales permit for subsequent violations¹²¹ (Table 33). While the penalties for retailers included in House File 232 were significant, they were weaker than the required revocation of a sales permit upon a first violation under the existing law on the books.

The ALA, ACS, and AHA were involved with the drafting of HF 232, engaged in direct lobbying to support the passage of the bill and took part in mobilization of their grassroots base to demonstrate local support for the bill to legislators. The American Lung Association again took the lead in coordinating advocacy efforts surrounding the bill.¹³

<u>Violation 1</u>	<u>Violation 2 within a period of 2 years</u>	<u>Violation 3 within a period of 5 years</u>	<u>Violation 4 within 5 years</u>
\$300 fine	30 day permit suspension	60 day permit suspension	Revocation of permit

The Tobacco Industry Wields Its Influence

The Tobacco Institute anticipated the introduction of state-level legislation regarding vending machine sales and other youth access issues because local interest had begun to arise in those areas. For example, in 1990, a group of University of Iowa medical students proposed a local ban on the sale of cigarettes through vending machines, a proposal that the Iowa City, City Council considered, but did not pass.⁷⁵

A Tobacco Institute report entitled, “1991 Legislative Analysis: Iowa” explained that a preemptive vending machine law was necessary in order to “stop a hodge-podge of local ordinances and to prevent the State Legislature from enacting a total vending machine ban.”¹²² In order to pass a weak statewide law, the Tobacco Institute sought to strengthen relationships with Iowa organizations that would represent their interests. The Tobacco Institute planned a meeting for August 1990, in Des Moines, to determine who in the vending machine industry would be willing to assist the industry in promoting their legislative agenda. The Tobacco Institute also planned on using a National Automatic Merchandising Association report on

Table 32: Progression of the Adolescent Smoking Prevention Act⁷³			
<u>As Introduced on February 13</u>	<u>House Amendments, Passed March 27</u>	<u>Senate Amendments, Passed May 1</u>	<u>Final Provision of the Adolescent Smoking Prevention Act</u>
Expanded the definition of the products sold in vending machines to ensure that “other tobacco products” were covered under the statute.	Amended to also make it illegal for a person under 18 to smoke, use or attempt to purchase tobacco products.	Amended to remove other tobacco products from sampling restrictions.	Broadened definition of the products sold in vending machines to ensure that other tobacco products were covered under the statute.
Added a definition of tobacco products beyond just cigarettes.	Amended to allow sales through vending machines given the machines were equipped with a lock-out device under the control of a person of legal age who directly regulated the same of items through the machine. Lock-out devices were not required for machines operated in a bar, a private facility not open to the public or a workplace not open to the public.		Added a definition of tobacco products beyond just cigarettes.
Removed provision from 1894 that allowed minors to purchase tobacco products w/ a note from a guardian.	Amended to allow sampling if not given to anyone under 18, not distributed within 500 feet of any playground, school, or other facility when the facility was being primarily used by persons under age 18 for recreational, educational, or other persons.		Removed provision from 1894 that allowed minors to purchase tobacco products w/ a note from a guardian and made it illegal for minors to use or attempt purchase tobacco products.
Provided authority for direct enforcement against a permit holder by cities, counties, and the state.	Amended to remove the de facto sampling restriction, required proof of age if a person appeared less than 18.		Provided authority for direct enforcement against a permit holder by cities, counties, and the state in district court and before a permit-issuing authority.
Allowed for inspections by the state and local health departments for enforcement.	Removed language that allowed state and local health departments to conduct inspections for enforcement.		A person in violation of the Code was guilty of a misdemeanor.

Made all violations of sale to minors laws a simple misdemeanor replacing a 1976 law that provided that a second offense was a serious misdemeanor.	Amended to include the same preemption language amended into representative Hammond's 1990 Clean Indoor Air Act.		Included graduated penalties for retailer that violated the law
Created graduated penalties for permit holders that sold products to minors, replacing a 1939 law that required permits to be revoked if anyone willfully violated the section or any other subsection.			Vending machines were required be under the supervision of an adult and equipped with a lock-out device. Lock-out devices not required in bars. Vending machine requirements did not go into effect until July 1, 1994
Prohibited vending machine sales of cigarettes and tobacco products.			Sampling to minors or within 500 feet of any playgrounds, school, high school, other facility that was primarily being used by persons under 18 years old was prohibited
Prohibited free sampling of cigarettes and tobacco products, although Iowa had a de facto prohibition of sampling as cigarettes were generally sampled in packs of 6 and an Iowa law passed in 1939 prohibited sampling in packs greater than 4.	Amended so that vending machine restrictions did not go into effect until July 1, 1994.		Preempted local youth access laws (same language as clause included in the 1900 Clean Indoor Air Act).
Removed preemption clause from the 1990 Clean Indoor Air Law.			A minor in violation of the law was guilty of a misdemeanor and required to pay a fine of \$100 or less or was required to perform community service.
Coordinated provision with the Iowa juvenile justice code in order to allow the same penalties for youth as adults, except that a \$100 fine or community service could be imposed on a juvenile.			

teen purchasing of cigarettes to persuade lawmakers that their preemptive law would be sufficient to curb youth access to tobacco products by way of vending machines.¹²²

The report entitled, *Vending Machines and Cigarette Purchases by Minors* published by the National Automatic Merchandising Association in March 1986, argued that “current and past studies published by the U.S. Government and other [sic] show that: less than 2 out of 10 teenagers smoke, 97% of teenagers never buy from vending machines, [and] only 7% of high school seniors smoke a pack or more a day.” The report argued that a ban of cigarette vending machines called for by the American Medical Association in 1985 was not grounded in fact and that the vending industry had long engaged in self-regulation which meant that no other regulation was necessary.¹²³

The Tobacco Institute was successful in achieving their ideal legislative outcome by co-opting House File 232, which was substantially weakened through industry-favorable amendments (Table 32) House Amendment 3077, introduced by Rep. Emil Pavich (D-Pottawattamie), Rep. Tony Bisignano (D-Polk), Stewart Iverson (R-Wright), Mary Lundby (R-Linn), David Schrader (D-Marion), and Daniel Jay (D-Appanoose), not only eliminated the provision in HF 232 that repealed preemption as it pertained to passing clean indoor air laws at the local level in Iowa, but also inserted a preemption clause (with the same language as included in the Clean Indoor Air Act) that prohibited localities from passing stricter laws pertaining to youth access. A second amendment removed the prohibition of sampling and instead inserted language that restricted sampling to adults, requiring weak proof of age requirements if a person appeared to be a minor. The amendment also struck from Iowa Code a de facto sampling prohibition passed in 1939 which required sampling in packages no greater than 4 cigarettes¹⁰⁷. (Philip Morris sampled in packages of six and other companies used full packs.) A third adopted amendment removed the provisions that allowed the Iowa Department of Public Health (IDPH) to inspect establishments to ensure compliance with proposed vending machine restrictions.¹²¹ A final amendment was passed in the House that attempted to salvage some of the original strength of the bill: Rep. Jane Teaford (D-Black Hawk), Lee Plaiser (R-Sioux), Dorothy Carpenter (D-Polk), introduced House Amendment 3342, which required that vending machines be equipped with lock-out-devices controlled by a person over 18, another provision that the tobacco companies promoted. Lock-out-devices were not required in establishments that only permitted adults to enter.¹²¹ Following the amendment process the House passed House File 232 with a vote of 72 to 25.

The bill was amended once in the Senate, further weakening its provisions. Senate Amendment 3413, removed all restrictions on sampling for tobacco products other than cigarettes. Subsequently, the bill was passed by the Senate on May 1, 1991 by a vote of 45 to 2.¹²¹ The law, named the Iowa Adolescent Smoking Prevention Act went into effect on July 1, 1991.¹²⁴

Media Coverage of the Adolescent Smoking Prevention Act

Although the tobacco industry was able to completely amend the Adolescent Smoking Prevention Act before its passage, the Director of Programs for the ALA in Des Moines, Carol Sipfle, inaccurately claimed to the *Richmond Times Dispatch* that the Iowa law was the toughest in the country.¹²⁴ The law was arguably seen as strong because of the stiff penalties for retailers

and minors for sale or attempt to purchase, respectively, of tobacco products. The Chief of Government Relations for the Iowa Department of Public Health, Michael J. Coverdale, also touted the merits of the bill in the media, emphasizing its possible influence on norm changes and doing well to frame the youth access law as a public health measure that could have the effect of saving the state millions of dollars in future health care costs.¹²⁵ As noted above, however, the actual provisions of the law as finally passed were very weak. Reflecting the fact that the law was a victory for tobacco interests, the Tobacco Institute announced its support for the law after its passage, using the Adolescent Smoking Prevention Act as an opportunity to improve the industry's public image. When asked about the industry support of the law, Michael Coverdale explained that the Tobacco Institute's support only came because the tobacco industry was able to successfully remove the provision to overturn preemption.¹²⁵ The support of the Tobacco Institute was likely also part of a larger campaign to appear as a responsible industry genuinely interested in reducing youth smoking. The tobacco industry has supported the development of weak youth smoking regulations since the 1980s in order to prevent regulations that would ban sampling and industry advertising and marketing efforts.⁵⁵

As with the clean indoor air legislation introduced by tobacco control advocates the previous year, tobacco industry lobbyists were able to wield their influence to turn an initially strong bill into favorable legislation for the industry. The provision of the Adolescent Smoking Prevention Act had lasting repercussions on enforcing youth access laws, specifically because enforcement of the weak provisions in the act was in the hands of local law enforcement that found youth access issues to be a low-level concern, leading to little enforcement of the laws on the books. There was little practical effect on youth access to tobacco because the law was weak, but it did set a bad precedent because local law enforcement was allowed to give implementation of tobacco laws a low priority, which did become problematic later, when the state started passing strong tobacco control laws.

1992 – The Federal Synar Amendment

The following year, 1992, the United States Congress enacted the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act. One component of that act was the "Synar Amendment" added by Representative Michael Synar (D-OK) designed to reduce youth access to tobacco by requiring states to have and enforce laws prohibiting the sale or distribution of tobacco products to youth. The legislation required states to conduct annual inspections of retail tobacco outlets and report the level of non-compliance to the U.S. Department of Health and Human Services (HHS). The Amendment also required states to submit an annual report to the Substance Abuse and Mental Health Services Administration (SAMHSA), the implementing body of the Synar Amendment, which documented activities carried out to enforce youth access laws during the reporting year, the success the state had in reducing tobacco sales to minors, and strategies the state intended to use to enforce youth access laws in the following fiscal year. States that were not in compliance with the Synar Amendment faced a penalty of losing up to 40 percent of their Federal Substance Abuse Prevention and Treatment Block Grant funding.¹²⁶

In 1996 SAMHSA issued the Synar Regulation which stipulated specific guidelines which states had to meet in order to be in compliance with the Synar Amendment. Under the Synar Regulation states were required to develop a strategy and timeframe with SAMHSA in

which to achieve and document a retailer violation rate of 20 percent or less.¹²⁶ Iowa was required to reach the 20 percent threshold by 2003.

Iowa's Attempts to Meet Synar Requirements

The Iowa Department of Public Health (IDPH) was the lead agency working on Synar Amendment compliance by providing technical assistance to local law enforcement agencies. IDPH developed and made available an informational pamphlet targeted at retailers entitled "Check that ID" that summarized applicable state law, penalties, and suggestions about how to minimize youth access to tobacco products. Additionally, local substance abuse agencies received technical assistance from IDPH to train merchants to effectively comply with youth access laws. IDPH also began holding an annual tobacco compliance conference in 1995 in order to bring local advocates and law enforcement together to work toward enforcing laws.¹²⁷ Despite the technical assistance provided by the IDPH, there was no centralized coordination for youth access enforcement. Local law enforcement independently conducted compliance checks because state law gave no authority to a state level agency to conduct checks. Police reports publicly identified non-compliant vendors and results of compliance checks were publicized in media across the state.¹²⁷ However, there was little actual enforcement of the provisions requiring citations of clerks and retailers contained in the Adolescent Smoking Prevention Act.^{119, 127}

In FY 1997, non-compliance in Iowa was at 40 percent, considerably worse than the target of 25 percent or less required by that point under the Synar Amendment. This failure was likely the result of administrative and legal constraints built into applicable Iowa law that made youth access enforcement difficult. One challenge was the lack of a centralized tobacco permit registry to facilitate systematic compliance checks. A second problem was an emphasis in the Iowa Adolescent Smoking Prevention on local enforcement of youth access laws, where local police that did conduct compliance check using minors to attempt to purchase tobacco products rarely followed through with citations.¹²⁸ Third, at the time, neither the state or any local government specifically funded youth enforcement activities.¹²⁷

IDPH attempted to overcome some of the systematic problems that resulted from the Youth Adolescent Smoking Act. At the local level, in 1997, IDPH collaborated with substance abuse agencies to push for local law enforcement to prioritize tobacco enforcement at the same level that they treated enforcement of laws relating to youth access to alcohol. IDPH also began a grant program in 1997, which issued grants to law enforcement agencies in order to measure the effectiveness of education through pre- and post-tests of retailer compliance. The grants were funded by the Centers for Disease Control and Prevention.¹²⁷

Efforts in reducing non-compliance had fleeting success. Between 1997 and 1998, non-compliance fell substantially, from 40 percent to 27 percent. However, in 1999 rates jumped back up to 36 percent, much higher than the 25 percent goal set by DHHS and IDPH (Figure 8). Because of the high rate of non-compliance, Iowa faced a cut of \$5 million in their federal substance abuse funding. The cut in funding could have affected 50 programs that were funded through the federal grants.¹²⁹

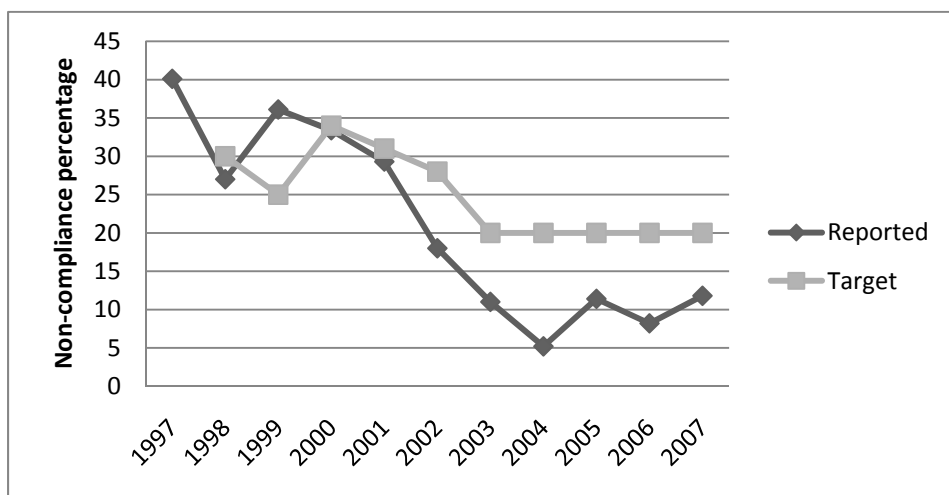


Figure 8: Synar non-compliance rates and target non-compliance rates in Iowa between FY 1997 and FY 2007

Because of the potential loss of funding, in October 1999, the IDPH changed their strategy in enforcing youth access laws. They began directly filing charges themselves against non-compliant merchants based on compliance checks done by local law enforcement because local authorities had not been following through with citations.¹²⁸

In 1999, the IDPH, through Director Janet Zwick of Substance Abuse and Health Promotion, partnered with the tobacco industry to promote the industry’s “We Card” program^{130, 131} that consisted of tobacco retailer-focused “Youth Smoking Prevention” the industry developed for retailers about nominally preventing underage tobacco sales.¹³² Retailer training programs such as “We Card” subverted meaningful tobacco control programs. Programs such as “We Card” facilitated the creation of a network of retailers that the industry could mobilize to fight regulation. Such programs also prevented regulation because the industry could claim that they were proactively engaging in self-regulation. Additionally, the tobacco industry could use programs such as “We Card” to improve their public image.^{54, 55, 133}

Five “We Card” training sessions were held in Iowa in 1999. The tobacco industry was able to extensively advertise their partnership with the Iowa Department of Public Health¹³² and involvement by the Iowa Alcoholic Beverages Division in “We Card” trainings.¹³⁴ Additionally, Janet Zwick publicly touted the merits of the “We Card” program.¹⁴

When the legislative session convened in January 2000, legislative action was taken to improve enforcement of youth access laws and create an Iowa-specific youth access prevention program created by tobacco control advocates rather than the tobacco industry, (although the program was housed with the Iowa Alcoholic Beverages Division which also promoted “We Card”). This also coincided, and was related to, the development of a tobacco specific division in Iowa Department of Public Health.

Case Study: Local Efforts for Youth Access Enforcement

In 1995, Eileen Fisher, then a Ph.D. student at the University of Iowa School of Public Health and mother of a son that had recently become a smoker, became interested in enforcing youth access in Johnson County (where the University of Iowa was located) after observing high school students smoking cigarettes near the city high school. In summer 1996, after graduating from the University of Iowa, Fisher met with the Dean of the School of Public Health for suggestions of people she could contact to form a local coalition to work on addressing the problem of youth smoking.¹¹⁹

At the suggestion of the Dean, Fisher recruited the Johnson County Health Director, a representative of student health from the University of Iowa, a representative of MECCA (Mideastern Council of Chemical Abuse, a local substance organization), a representative from the IDPH, and a local convenience store owner. The group held its first meeting in November 1996 and met monthly thereafter.¹¹⁹ The group brainstormed how to address the amount of tobacco use by minors in Johnson County. They decided that the best strategy would be to encourage enforcement of the provisions of the Youth Adolescent Smoking Prevention Act in their community. At the time, no one was doing compliance checks of local retailers and no one was assessing penalties for violations of youth access provisions.¹¹⁹

Natalie Roy, who worked at the College of Public Health, and had previous involvement with tobacco control at the local level in Maryland, led the coalition in developing a formal structure, drafting bylaws, and developing operating procedures.¹¹⁹

The group conducted a literature review to determine the best way to approach enforcing the state law. Through that process they found information about a local effort in a suburb of Chicago, in neighboring Illinois, where law enforcement worked with schools and the city council as well as initiated public education about youth access laws to improve enforcement. The efforts in the Illinois community resulted in a significant fall in the number of tobacco sales to youth.¹¹⁹

Using Illinois as a model, members of the Johnson County Citizens for Tobacco Free Youth began meetings with local law enforcement, government officials, and other citizens of Johnson County that could be beneficial to their cause. The group met with the Johnson County Attorney, Patrick White, to discuss their goal of enforcing the provisions of the Adolescent Smoking Prevention Act. White became an ally in their campaign. They also met with local juvenile councilors, the county sheriff, the Iowa City and Coralville police departments, school boards, and the Johnson County superintendent of schools.¹¹⁹

During meetings with these members of the community Johnson County Citizens for Tobacco Free Youth provided information about the toll of tobacco (information they collected from national technical assistance organization Americans for Nonsmokers Rights) and youth smoking rates in Iowa. The group also educated city officials about the fact that the city kept any penalties collected from violators, meaning that the city would not lose money by making enforcement of youth access laws a part of their law enforcement activities.¹¹⁹

The chief of police was reluctant to make enforcing of youth access laws a priority. However, the coalition utilized the relationship that they were able to build with County Attorney Patrick White and City Council officials to bring local law enforcement on board.¹¹⁹

Johnson County Citizens for Tobacco Free Youth decided that they would utilize the provision in the Adolescent Smoking Prevention Act that allowed for youth to be penalized with community service in lieu of a fine to make the enforcement on youth less punitive because of the lack of proven effectiveness of penalizing minors. The representatives of MECCA that were members of the Johnson County Citizens for Tobacco Free Youth developed a two-hour education curriculum about the health effects of tobacco use, how much it costs to be a smoker, and alternative uses of money spent on tobacco as a community service option for any youth cited under the law.¹¹⁹

After over a year of planning and relationship building, in early 1998 law enforcement began conducting compliance checks. Law enforcement officers were accompanied by Iowa minors trained by MECCA staff who attempted to purchase tobacco. Retailers who sold to minors were cited.¹¹⁹

Between 1998 and 1999 Johnson County Citizens for Tobacco Free Youth helped to coordinate three rounds of compliance checks of local retailers, however in 2000 the infrastructure for enforcing youth access laws was changed at the state level. The Iowa Alcoholic Beverages Division, through funding from the Master Settlement Agreement began to coordinate local compliance checks at the state level (discussed below). This policy change, as well as a change in goals for the Johnson County Citizens for Tobacco Free Youth, led to end of the coalition's involvement with local enforcement of youth access laws.¹¹⁹

2000 – Change in Penalties

Senate File 2366, introduced by the Senate Human Resources Committee on February 28, 2000, sought to increase the penalties for youth, clerks, and retailers who violated youth access laws and to create a better infrastructure for the enforcement of youth access laws to lay the groundwork for the Iowa Pledge Program (discussed below). The bill as introduced did not contain any particularly controversial provisions and as a result it passed unanimously in the Senate and with only 9 dissenting votes in the House.¹³⁵

Senate File 2366 made it a misdemeanor for a minor to use fake identification or to alter identification to purchase tobacco products with the possibility of an additional penalty of loss of a minor's drivers license for violating the law; it empowered tobacco retailers to seize identification that was thought to be altered, fake, or did not appear to belong to the person using it, with procedures to turn the identification over to law enforcement; it also increased penalties for retailers and minors in violation of youth access laws and created specific penalties for employees who violated the law (Table 34). SF 2366 also created an exemption in the law for minors working with law enforcement to conduct compliance checks and included a provision that required local governments to submit copies of retail tobacco permits issued within their jurisdiction to the IDPH to create a centralized database of all retailers in the state to facilitate enforcement.¹³⁵

Table 34: Penalties under Senate File 2366 ¹³⁵				
<i>Penalties for Retailers</i>	<u>Violation 1</u>	Violation 2 within a period of 2 years	Violation 3 within a period of 3 years	Violation 4 within 3 years
	\$300 fine	30 day permit suspension	60 day permit suspension	Revocation of permit
<i>Penalties for Minors</i>	<u>Violation 1</u>	<u>Violation 2</u>	Violation 3 and subsequent violations	
	\$50 and 8 hours community service	\$100 and 12 hours community service	\$250 and 16 hours community service	
<i>Penalties for Employees</i>	<u>Violation 1</u>	<u>Violation 2</u>	Violation 3 and subsequent violations	
	\$100	\$250	\$500	

Senate File 2366 in combination with the Iowa Pledge Program, a state tobacco enforcement program created in 2000, improved youth access compliance rates in the following years.

2000 – The Iowa Pledge Program

The Iowa Pledge Program was developed by Tobacco Free Iowa (TFI) with funding from a Robert Wood Johnson SmokeLess States grant. The program was designed both to increase compliance with youth access laws within Iowa as well as to build TFI’s grassroots database.¹⁴ The Iowa Pledge Program created a three-fold pledge. Iowa youth pledged not to use tobacco products, Iowa retailers pledged not sell tobacco products to minors, and Iowa law enforcement pledged to enforce Iowa’s tobacco laws.¹³⁶

In 2000, as part of the Iowa Pledge Program infrastructure, a tobacco enforcement division was added at the Iowa Alcoholic Beverages Division (ABD). The division included five field agents whose responsibilities were to work with local law enforcement, tobacco retailers, and community partnerships to increase Iowa's compliance with youth access laws. The enforcement program was funded at \$1.7 million in its first year through Master Settlement Agreement funds¹³⁷ and thereafter by the IDPH, Division of Tobacco Use Prevention and Control, which did not have the capacity to conduct the compliance checks themselves.¹⁴ The goal of the program was to achieve a rate of zero tobacco sales to youth. To achieve that goal, the Iowa ABD developed a strategy that consisted of providing Iowa retailers with educational training in order to familiarize them with applicable laws and to teach responsible sales techniques; performing compliance checks on every Iowa tobacco permit holder at least once a year; and working with the Iowa Tobacco Advisory Committee, a committee of tobacco retailers in the state created to consult with the ABD, to develop a statewide program to reduce youth

tobacco sales.¹³⁸ Members of the committee included allies of the tobacco industry such as Iowa Grocery Association and Iowa Hospitality Association,¹³⁹⁻¹⁴¹ as well as representatives of local convenience store chains and members of the Iowa General Assembly.¹⁴²

The ABD worked to create a partnership with the Attorney General's Office and local law enforcement agencies to conduct compliance checks with minors trained to conduct tobacco purchasing stings. Communities that chose to participate in the Iowa Pledge Program were compensated \$50 per compliance check. Local law enforcement partners were also expected to conduct local youth tobacco enforcement around their community.¹³⁸ In 2001, nearly 80 local law enforcement agencies took the Iowa Pledge, creating a partnership with the ABD. The goal in 2001 was to conduct at least two compliance checks of all tobacco retailers over the course of the year.¹³⁷

Beginning in 2001, the Alcoholic Beverages Division conducted at least one random check per year of every Iowa establishment with a tobacco retail permit and budget permitting additional rounds of checks. Additionally, follow up compliance checks were conducted for any establishment that failed a compliance check. Any retailer who failed a compliance check was also issued the appropriate citation.¹⁴³

The ABD, as well as its local law enforcement partners, began innovative tactics to try to increase compliance with youth access laws. For example, in 2000, in a kickoff event for the Iowa Pledge Program, the ABD conducted compliance checks of retailers and enforced youth compliance at the Iowa State Fair.¹⁴⁴

Another program focused primarily on deterrence was the "Cops in Shops" program. Beginning in 2001, law enforcement officers affiliated with the Iowa Pledge program occasionally worked behind the retail counters of businesses that sold tobacco products. Minors who attempted to buy tobacco products, or adults who attempted to buy tobacco products on a minor's behalf were cited.¹⁴⁵ The point of the program was to raise awareness that it was not only illegal for minors to purchase tobacco products, but also for adults to purchase tobacco products for minors.¹⁴⁶ It was the ABD's hope that the program would encourage people to contemplate when planning on illegally buying tobacco products, whether it was a clerk or a police officer behind the counter, having the effect of deterring one from breaking youth access laws and keeping tobacco out of the hands of minors.¹⁴⁵

The Iowa Pledge Program also had an educational component. In 2002, ABD held their first annual Conference on Tobacco Enforcement for local enforcement agencies. The conference focused on compliance check procedures and educational initiatives run at the state and local level.¹⁴⁷ The program also provided educational materials free of charge on their website including branded materials that outlined how to check an ID, a full ID checking guide, an age to purchase calendar, Cops in Shops buttons, and a pamphlet with information about Iowa youth access laws.¹⁴⁸

In addition, in March 2003, the Iowa General Assembly Passed Senate File 401, which required that the ABD provide tobacco compliance employee training courses, free of charge, for tobacco retailers.¹⁴⁹ The bill passed within 9 days of introduction by a vote of 41 to 6 in the

Senate and unanimously in the House. The bill was only amended once to require local authorizes to transfer power to the IDPH if they did not assess a penalty to a violator within sixty days of a case being heard. The bill also changed the penalties for retailers under the law (Table 35), including a one-violation free pass for retailers certified under the educational program.¹⁴⁹ Forgiven one violation created an incentive for participating in the Iowa Pledge education program, but also was likely a compromise reached with the retail community whose interests were represented through the ITAComm.

	<u>Violation 1</u>	<u>Violation 2 within a period of 2 years</u>	<u>Violation 3 within a period of 3 years</u>	<u>Violation 4 within 3 years</u>	<u>Violation 5 within 4 years</u>
<i>Penalties for Retailers</i>	\$300 fine	\$1,500 fine or 30 day permit suspension	\$1,500 AND 60 day permit suspension	\$1,500 fine AND 60 day suspension	Revocation of permit

The ABD developed curriculum for the course made available online for all retailers and clerks across the state of Iowa. In addition the ABD continued to provide branded Iowa Pledge materials to retailers as they had done before Senate File 401.

Results Under the Iowa Pledge Program

Non-compliance rates with youth access laws dropped in Iowa after 1999. In 2007, non-compliance was approximately 11 percent under the Synar and ABD compliance check systems,¹⁵⁰ well under the 20 percent non-compliance goal for the Synar requirement, but still not to the ABD's zero percent goal.

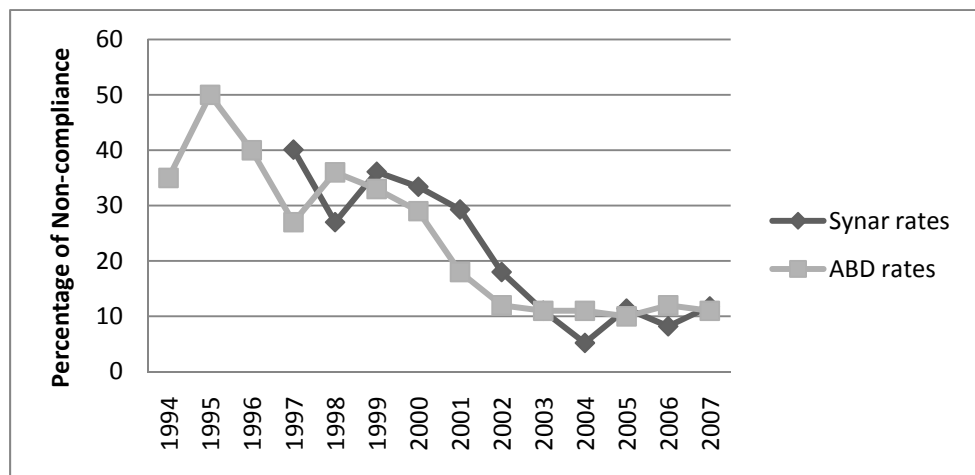


Figure 9: Comparison of Synar non-compliance rates in Iowa to ABD non-compliance rates

Compliance checks under the Iowa Pledge Program were independent of compliance checks done for Synar compliance, and as a result their numbers varied slightly from year to year (Figure 9), but overall showed similar results. Other states such as Hawaii and Arizona also have two separate compliance check structures.^{151, 152} The Synar compliance checks often yielded lower non-compliance rates because more retailers were checked under the state-specific

compliance program and the state checks were conducted more randomly throughout the year.¹⁵¹⁾

Conclusions

Iowa's early youth access laws were strong. However, the tobacco industry was able to wield its influence to gut the Iowa Adolescent Smoking Prevention Act in 1991 and insert their own language, amending out sampling and vending machine prohibitions as well as amending in preemption of stricter sales laws at the local level. The Adolescent Smoking Prevention Act included strict provisions that both punished minors for purchasing tobacco products and retailers for sales; however the laws were poorly enforced.

The passage of the federal Synar Amendment with the threat of losing valuable state substance abuse funding acted as an impetus for states to better enforce their laws. Still, at the local level where enforcement took place, law enforcement did not make enforcing youth access laws a high priority. Johnson County proved to be an exception to the rule because of the efforts of the Johnson County Citizens for Tobacco Free Youth coalition, which was able to build relationships with local law enforcement and elected officials to encourage enforcement of youth access laws in their community.

It was not until the development of a tobacco division within the ABD that worked with the IDPH, Division of Tobacco Use Prevention and Control (a division not friendly to the tobacco industry) and the Iowa Attorney General's Office, that widespread enforcement took place and non-compliance really fell. Iowa saw significant results under the Iowa Pledge Program as a result of actual enforcement of youth access laws, facilitated by changes in state laws that created an infrastructure for enforcement, as well as encouraged education for retailers, support from local law enforcement, and funding from the IDPH, Division of Tobacco Use Prevention and Control.

THE MASTER SETTLEMENT AGREEMENT

The Master Settlement Agreement (MSA), signed in 1998, settled lawsuits brought by 46 state Attorneys General against the four major U.S. tobacco manufacturers (Brown & Williamson, Lorillard, Philip Morris, and R.J. Reynolds). (Four other states – Mississippi,¹⁵³ Florida,¹⁵⁴ Texas,¹⁵⁵ and Minnesota⁸⁵ had already settled their individual suits.) The Attorneys General sued the tobacco companies to recoup Medicaid costs incurred by the state as a result of tobacco-related illnesses and to secure injunctive relief to restrict tobacco industry marketing practices directed at children. The settlement of the lawsuits through the MSA reclaimed billions of dollars to the states to be paid out indefinitely based on a formula that considered estimates of tobacco-induced health costs for each state, the role of some of the states in leading the litigation effort, and changes in the overall level of cigarette sales. The settlement also included public health measures including provisions that restricted advertising, promotion, and marketing of tobacco products by the tobacco companies.⁶

Iowa's Attorney General Tom Miller was a leader in the fight that resulted in the MSA.¹⁵⁶ Miller filed a suit on behalf of the state of Iowa on November 27, 1996, the 17th state to do so.

During the settlement negotiations, Attorney General Miller led the “public health caucus” of about a dozen states which placed measures that would reduce youth tobacco use and the toll of tobacco-related illnesses as the highest priority in the negotiations.¹⁵⁷ Following the execution of the MSA, Attorney General Miller and his staff continued to be an ally of the tobacco control community on many important public health initiatives.

Iowa’s Share of the Funds

MSA funds were paid annually to states. Iowa’s total share of the MSA funds was approximately \$1.9 billion over the first 25 years, adjusted annually for inflation and cigarette sales volume¹⁵⁸ (Table 36). In addition, Iowa was allocated approximately \$234 million from an \$8.6 billion Strategic Contribution Fund. The Strategic Contribution Fund was created to compensate states over a period of 10 years for their contributions to litigating and negotiating the MSA.¹⁵⁹ The \$234 million received by Iowa was the 12th largest amount allocated to a state and began to be paid to the State Treasurer over ten years in 2008.¹⁵⁸

<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
40.2	50.0	52.8	60.2	49.9	54.1	55.4	50.7	52.8

Advocacy for Use of Settlement Funds for Tobacco Control

The first annual installment of Iowa’s tobacco settlement payments, \$20.9 million, was moved by the General Assembly from the General Fund to the Tobacco Settlement Fund in an appropriations bill in June 1999. At that time, how the settlement money would be spent was yet to be determined and many ideas began to emerge about how to use the payments.

Attorney General Miller strongly advocated that a significant portion of the settlement payments go toward funding a comprehensive tobacco prevention and control program in Iowa.¹⁶⁰ The Attorney General’s Office and Tobacco Free Iowa initially advocated for legislation that would create a commission to oversee the use of Iowa’s MSA funds. House File 582 was introduced on March 10, 1999 by Rep. Brad Hansen (R-Pottawattamie, Policy Score: n/a, Industry Contributions: \$0) and Rep. Frank Chido (D-Polk, Policy Score: n/a, Industry Contributions: \$0). It would have created the Cigarette and Tobacco Control Advisory Commission within the Iowa Department of Public Health to establish a comprehensive tobacco control program to be funded with MSA monies. Members of the Commission would have been appointed by the Director of Public Health from organizations that had as their primary purpose the reduction of tobacco use. The bill died without even a committee hearing. While House File 582 did not limit the scope of the comprehensive program the Commission could establish, the bill focused on youth smoking.

Senate File 2120, introduced February 9, 2000 by Sen. Joe Bolkom (D-Johnson, Policy Score: 10, Industry Contributions: \$0) suffered a similar fate. It would have created a Tobacco Use Advisory Committee in IDPH with members appointed by the governor representing health, education and law enforcement communities and other groups with a special interest in tobacco

use prevention and education. The Committee would have made recommendations regarding the comprehensive tobacco control program created by the bill, and related policy matters. The bill would have appropriated \$18 million from the tobacco settlement fund escrow account to the IDPH and an additional \$3.6 million to the Department of Justice for youth access law enforcement.

A Thousand Lives – Protecting Iowa Kids from Tobacco Addiction, Disease and Death

After the failure of to get a bill passed in 1999, Attorney General Miller called on the Iowa State Legislature to allocate MSA revenue to fund a comprehensive smoking prevention plan called, “A Thousand Lives – Protecting Iowa Kids from Tobacco Addiction, Disease and Death” developed with help from Tobacco Free Iowa using the US Centers for Disease Control and Prevention (CDC) 1999 Best Practices for Comprehensive Tobacco Control Programs as a guide¹⁶¹ (Table 37). Attorney General Miller called for an annual funding level of \$20.5 million for the program,¹⁶¹ which was slightly above the CDC’s recommended minimum funding level of \$19.3 million annually for Iowa.⁸) The focus of the program was primarily on reducing youth access and uptake of tobacco products, but also addressed adult tobacco use.

Table 37: Recommended programmatic elements and funding level under the A Thousand Lives plan¹⁶¹ (millions)

Youth, Community, and Statewide Partnerships	Cessation Programs	Research	Media Campaign	Local Enforcement of Tobacco Control Laws	School Programs to Reduce Tobacco Use	Statewide Tobacco Law Unit	Monitoring and Evaluation	Administration and Management
\$4.5	\$3	\$1	\$6.2	\$2.5	\$2	\$0.3	\$0.7	\$0.3

Spend it Right

In addition to the calls by the Attorney General to use settlement funds for tobacco control, Tobacco Free Iowa (TFI) ran a statewide campaign called “Spend It Right!” in support of the Attorney General’s “A Thousand Lives” plan. The Spend It Right campaign was funded by a \$60,000 Robert Wood Johnson Foundation grant.¹⁴ TFI endorsed the provisions outlined by the Attorney General¹⁶² and called for Iowans to sign a petition to show their legislators that they supported a well-funded tobacco control program.¹⁶³

TFI also engaged in public education about the MSA. In November and December 1999, members of the coalition held approximately 60 educational breakfasts and lunches across Iowa to explain how the MSA had come about, what the settlement meant for the state, and to advocate for use of the funds for tobacco control. TFI invited health groups, law enforcement, members of the education community, legislators, and the general public to the meetings. The public education campaign not only informed Iowa citizens about the MSA, but was the center of TFI’s earned media campaign, creating momentum for TFI and Attorney General Miller’s policy goals.¹⁴

Legislative Opposition

During the 1999 and 2000 legislative session when TFI, other health groups, the Attorney General’s Office, the Governor’s Office, and the General Assembly were debating and negotiating the use of the MSA revenue, Republicans controlled the Iowa legislature

Table 38: Composition of Iowa’s 78th General Assembly, 1999-2000

	Republicans	Democrats
Senate	30	20
House	56	44

(Table 38). During this time, tobacco industry contributions to legislative candidates spiked. In March 2000, Democratic Governor Tom Vilsack held a series of private meetings with Republican legislative leaders to negotiate the use of MSA funds. Both Democrats and Republicans wanted money to go to health care and there was general agreement about creating a comprehensive program aimed at reducing smoking among minors, but the Republican leadership was only willing to allocate \$3.8 million to tobacco control,¹⁶⁴ considerably less than the \$20.5 million funding level proposed by Attorney General Miller and Tobacco Free Iowa. Negotiations between the Governor, Attorney General, tobacco control advocates, and the Republic leadership continued throughout the rest of the 2000 legislative session.

Actual Allocation of Funds

By May 2000, Iowa had received \$71.2 million in Master Settlement funds which had been set aside in the tobacco settlement fund escrow account until the General Assembly passed legislation that determined the use of the revenue. The Iowa General Assembly allocated the entirety of their expected 2001 MSA payment of \$50 million, in combination with the \$70 million in funds that had already been received, to fund health-related programs in FY 2001¹⁶⁵ (Table 39).

The General Assembly also passed legislation to create a state tobacco control program within the IDPH beginning in July 2000.¹⁶⁶ Prior to the creation of the tobacco-specific division, tobacco issues fell under the purview of the Division of Substance Abuse within the IDPH. Programs falling under the Department of Human Services received the majority of the funding, with the Republican-controlled legislature only allocating \$9.3 million to the tobacco control program, an amount that totaled approximately 48 percent of the CDC minimum recommended funding level,

compared with 106 percent under Attorney General Miller’s proposal.¹⁶⁵

Because of Iowa’s budgetary structure, which requires that state programs be funded annually, tobacco control advocates had to fight for funding for

Table 39: Allocation of MSA funds by the Iowa General Assembly in the 2000 Legislative Session for FY 2001²

<u>Program</u>	<u>Amount Allocated (millions)</u>
Public Health Tobacco Cessation Programs	\$9.3
Human Services Healthy and Well Kids in Iowa (HAWK—I)	\$0.2
Human Services Provider Rates	\$26.3
Public Health Healthy Iowans 2010 Programs	\$2.8
Public Health Substance Abuse Treatment	\$11.9
Community-Based Corrections (CBC) for drug courts and day programming	\$0.6
Savings Account for Healthy Iowans	\$3.8
Transfer to the General Fund	\$64.6
Total	\$119.0

the tobacco division every legislative session. However, in subsequent years Iowa tobacco control advocates were unsuccessful in securing funding for the program, even under a Democratic legislature that was favorable to tobacco control beginning in 2007. Iowa never met the recommended funding called for by the Attorney General, advocates and CDC (See “The State Tobacco Program”).

Securitization

Tobacco control advocates lobbied for a tobacco control-specific fund to be created by the legislature. However representatives of substance abuse organizations, drug courts, and nursing homes (many of whose lobbyists also representatives of tobacco industry) were also fighting for MSA revenue.¹⁴ Governor Vilsack pushed for funds to be set aside for health broadly, explaining to health groups that they would likely have a better chance of lobbying for a fund collectively rather than each lobbying for their own fund. Under Governor Vilsack’s plan there was no specific allocations to different health interests from the general health-related fund, requiring each individual group to lobby legislators for a part of the funding.¹⁴

Governor Tom Vilsack and Attorney General Tom Miller were both prominent supporters of securitizing Iowa’s revenue stream^{167, 168} out of a fear that the tobacco industry would go bankrupt in the future and be unable to continue to make MSA payments to the states.¹⁶⁹ They thought bankruptcy of the industry seemed possible because of pending multi-billion dollar, individual class-action lawsuits including *Miles [Price] v. Philip Morris*¹⁷⁰ and *Engle v. R.J. Reynolds*¹⁷¹ that seemed to likely to find in the plaintiffs favor after the landmark MSA.¹⁷² These fears had lead other states to securitize their MSA revenues. To protect the state from further losses to bondholders if the tobacco industry did go bankrupt, the Tobacco Settlement Authority was specifically prohibited from pledging any general fund or other revenues as security for the bonds. Governor Vilsack and Attorney General Miller also supported a substantial portion of the MSA funds to be used for infrastructure projects across Iowa in addition to tobacco control and other health interests.¹⁴ Tobacco control advocates never supported securitization,¹⁶⁹ but did not have sufficient evidence to effectively counter claims that the tobacco industry would go bankrupt. As a result, there was no campaign by tobacco control advocates against securitization of Iowa’s MSA funds.¹⁴

The Tobacco Settlement Authority

On April 19, 2000 Representative Christopher Rants (R-Woodbury, Policy Score: 0.3, Industry Contributions: \$7,397), the most pro-tobacco legislator in the Iowa legislature, introduced House File 2579, an act to establish the process for securitizing Iowa’s Master Settlement Fund revenue. Securitization involved the selling of state bonds backed by future MSA payments at a substantial discount in exchange for an immediate payment.¹⁷³

During the 2000 legislative session, the Iowa General Assembly passed House File 2579, the Tobacco Securitization Act. The Act created the Tobacco Settlement Authority (TSA) that was charged with exploring the options for using the MSA funds, including selling the tobacco settlement revenue stream, and established the Tobacco Settlement Trust Fund to be the

depository for the MSA funds.¹⁵⁹ The power given to TSA was very broad: It could sell bonds backed by any part or all of the MSA funds.

A related bill also became law in 2000. Senate File 2452, introduced by the Senate Appropriations Committee, created the Tobacco Settlement Endowment Fund to expend MSA funds for “purposes related to healthcare, substance abuse treatment and enforcement, tobacco use prevention and control and other purposes related to the needs of children, adults and families in the State.”

The view of the proponents was that securitization was necessary to ensure that Iowa had a stable revenue source to fund health related programs including tobacco control, but also allowed use of funds for broad and ill-defined, “other purposes related to the needs of children, adults and families in the State.”¹⁷⁴

Tobacco Settlement Authority Exploration of Options

The Tobacco Settlement Authority governing board consists of the Treasurer of the State, the State Auditor, and the Director of the Iowa Department of Management. The board hired Public Financial Management (PFM), a Des Moines based company that provided financial and investment advisory services across the United States, as its financial advisor. The group retained Hawkins Law Firm, a firm that had handled other tobacco securitization issues in other states, as senior counsel. Additionally the Authority hired Dorsey and Whitney Law Firm, a group familiar with the State’s investment policies and related legislation, to consult in their area of expertise. The payment of all the financial advisors and legal counsel fees were contingent up MSA funds being securitized.⁴²

Analyses of states that securitized their MSA revenue stream show that risks were heavily exaggerated and securitization resulted in large, up front bond sale expenses and prolonged interest costs for states. If the funds received from the sale of the bonds were put in a trust fund and invested, some of those costs could be recovered. Additionally, securitization plans often diverted funds away from tobacco control, even in states that set up trust funds specifically for public health or tobacco prevention purposes. This was because often times money from these funds were raided for other purposes, which became the case with Iowa.¹⁷⁵

Legal counsel to the Settlement Authority outlined possible scenarios in which future tobacco industry payments would be in jeopardy. Arguments raised in support of securitization included possible declines in tobacco sales in domestic markets, potential bankruptcy of the tobacco industry, and possible Food and Drug Administration regulation of cigarettes as reasons that the tobacco industry could fail to fulfill their MSA payment obligations.¹⁷⁶ (Table 40).

Based on their assessment of the risks if funds were not securitized, the Tobacco Settlement Authority made recommendations to the legislature of several different schemes under which Iowa could securitize the future funds.¹⁷⁴

The Securitization Plan

The Tobacco Settlement Authority developed a Tobacco Settlement Program Plan in February 2001 for analyzing its options in use of the MSA funds.¹⁷⁴ That plan led to a report to the General Assembly in October 2001 recommending that securitizing up to 80% of the MSA revenues for up to 25 years would be sufficient to fund the programs, as provided in Senate File 2452 passed in 2000, for health care, substance abuse treatment and enforcement, tobacco use prevention and control.¹⁷⁷ TSA projected that the Endowment Fund would grow to \$1.0 to \$1.3 billion by 2030 by depositing and investing the 20% of the MSA money not used to secure the bonds in the Endowment Fund.¹⁷⁸

The General Assembly then passed a series of bills that created a complex and convoluted funding structure for various Iowa programs. In 2001, the Iowa General Assembly authorized TSA to sell \$650 million in bonds by passing Senate File 532. The bill passed virtually unanimously with only 3 people in the Senate voting against it.

TSA pledged 78 percent of money coming to the state from the MSA for the 30 years. This totaled approximately \$644 million dollars of bonds sold with up to 30-year maturity dates and interest rates of 4.6% to 5.7%.¹⁵⁹ TSA incurred costs of \$16,549,000 in selling the bonds (Table 41). Although securitization had been framed as a way to consistently fund health programs,¹⁶⁸ only a small portion of the securitized funds were actually set aside for health programs. Of the \$664 million in bond proceeds, only \$39.6 million went to the public health, with the balance going to capital projects, debt service on prior capital projects, MSA attorney fees and enforcement costs (Table 42).

Senate File 532 also changed the name of the Tobacco Settlement

Table 40: Review of MSA risk areas by counsel to the Tobacco Settlement Authority¹⁷⁶

- Declining sales in the domestic market.
- Conflict of interest for the states. States were depended upon tobacco tax revenues and were required to enforce laws regarding use.
- The Food and Drug Administration may regulate cigarettes.
- Anti-trust challenge to the Master Settlement Agreement.
- Bankruptcy, primarily due to future litigation costs.
- Challenges to the Model Act. (Cigarette companies were required to set aside funds for future potential health-related claims. There was one company challenging this requirement.)
- The MSA payments were based on cigarettes containing nicotine. Future technology may eliminate nicotine from the product.
- The MSA could always be renegotiated.

Table 41: Costs of Bond Issuance

\$9.3	Original discount
\$5.3	Underwriter's discount
\$1.9	Cost of issuance

Table 42: Allocation of Series 2001 Bond Proceeds¹⁵⁹ (in millions)

\$39.6	Deposited in the Endowment for Iowa's Health Account
\$139.7	Refunding and defeasance purposes
\$374.4	Capital projects over 6 years beginning in FY 2002
\$25.5	Attorney fees related to the Master Settlement Agreement
\$0.2	Operating expenses of the Tobacco Settlement Authority (1 year)
\$48.1	Deposited in the Debt Service Reserve Account
\$0.2	Costs related to enforcing the Master Settlement

Endowment Trust to the Healthy Iowans Tobacco Trust, and divided the Tobacco Settlement Trust Fund controlled by TSA into two accounts, the Tax-Exempt Bond Proceeds Restricted Capital Funds Account (for infrastructure projects) and the Endowment for Iowa's Health Account (for health-related programs). The Tobacco Settlement Trust Fund

	<i>Wagering Tax</i>	<i>General Fund</i>	<i>Total</i>
FY 2002	\$80	\$7.2	\$87.2
FY 2003	\$75	\$27.1	\$102.1
FY 2004	\$70	\$28.3	\$98.3
FY 2005	\$70	\$29.8	\$99.8
FY 2006	\$70	\$29.6	\$96.9
FY 2007	\$70	\$17.8	\$87.8

was to hold the unsecuritized MSA monies (22 percent), the portion of the proceeds of MSA bond sales designated by the General Assembly to be deposited in the Trust Fund and earnings on Trust Fund assets. Senate File 532 also established an annual transfer of \$55 million from the Endowment for Iowa's Health Account of the Tobacco Settlement Trust Fund to the Healthy Iowans Tobacco Trust beginning July 1, 2001 and continuing thereafter with an inflation adjustment of 1.5% each year unless changed by the General Assembly by a three-fifths majority of both houses. Since money controlled by TSA was deemed to be its money and not state money, such transfers were not subject to the annual appropriations requirement that applied to state money. Because of the requirements of a super-majority vote of both houses and the perpetual nature of the transfer to the Healthy Iowans Tobacco Trust, long-term funding for the Trust seemed secure.

Allocations of MSA funds to the state tobacco control program in the Department of Public Health came from the Endowment for Iowa's Health Account through transfers to the

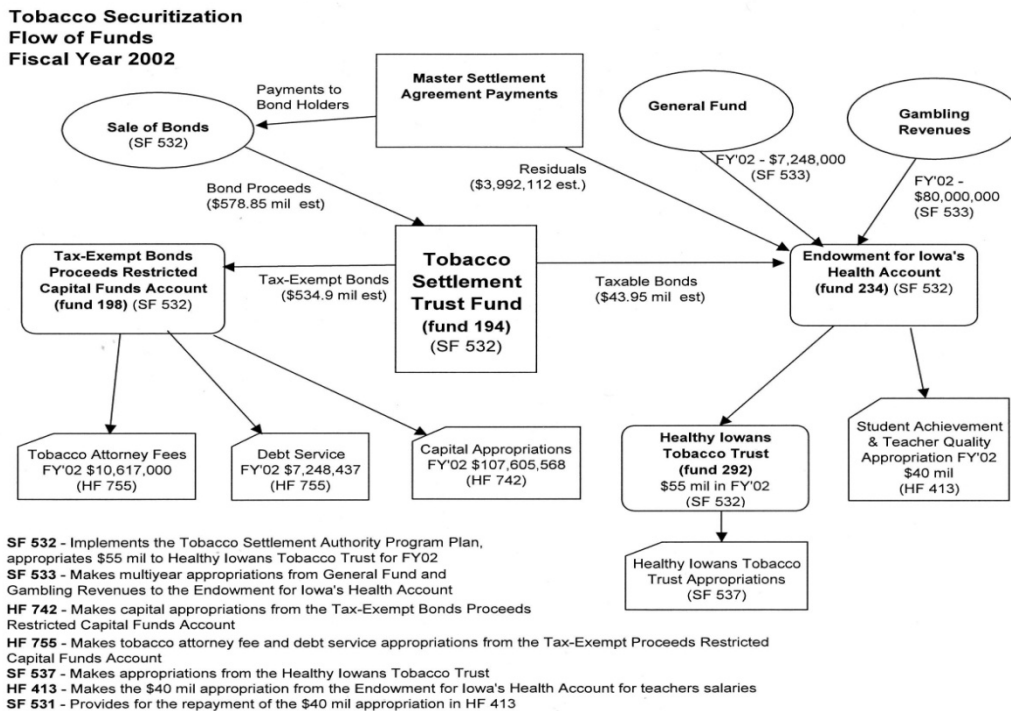


Figure 10: Flow of tobacco securitization funds and related legislation ²

Healthy Iowans Tobacco Trust to the Department. Between FY2002 and FY2009, \$439.1 million in MSA funds were transferred from the Endowment to the Trust, but only \$48.3 million went from the Trust to the tobacco control program (Appendices C and D).

Senate File 533 redirected the state wagering tax from the Rebuild Iowa Infrastructure Fund to the Endowment for Iowa's Health Account and created an annual appropriation from the General Fund to the Endowment, both for a period of 6 years (Table 43). Other bills allocated specific amounts from the Endowment and other MSA funds to specific projects for FY 2002, including education initiatives, supported by Attorney General Miller and Governor Vilsack under the condition that the General Assembly pay back the endowment¹⁶⁸ and infrastructure projects.¹⁵⁹

Raiding of funds

Following the securitization of MSA funds in 2001, the Iowa General Assembly did not stand firm on their initial commitment to maintain a steady revenue fund for public health and the complexity of the securitization funding streams was such that it hindered advocates ability to hold the legislature accountable.¹⁴ As soon as the Endowment for Iowa's Health Account was created the legislature began dipping into the Endowment for causes unrelated to health. For example in 2002, the General Assembly approved Senate File 2304 which reduced appropriations from the General Fund to the endowment by one-percent, transferred \$15 million in wagering tax receipts from the Endowment to the General Fund, and transferred another \$7 million from the Endowment to the General Fund (Table 44).

Initially the General Assembly passed legislation that would require that the Endowment be reimbursed for any transfers, a bill that tobacco control advocates supported.¹⁴ However in 2005, with House File 288, the General Assembly repealed their commitment to reimburse the Endowment, jeopardizing its financial stability.¹⁵⁹ There is no evidence that tobacco control advocates fought the diversion of funds from the HITT to the General Fund and other non-health related issues.

As a part of Governor Chet Culver's (D) FY 2009 budget plan¹⁷⁹, in 2008, the General Assembly authorized the TSA to securitize the remaining 22 percent of MSA revenue to fund the construction of a state prison.¹⁸⁰ Tobacco control advocates opposed the second securitization through earned media, but did not mount a grassroots campaign against the plan, instead focusing on advocating for funding without regard for which specific fund the money was allocated.¹⁴ As a result of the 2008 securitizations, the Healthy Iowan's Tobacco Trust Fund was zeroed out and allocations to the Division of Tobacco Use Prevention and Control instead came from the General Fund¹⁸¹, an even less reliable funding source, and a fund created as a result of a \$1 per pack increase in the tobacco tax (see "Tobacco Control Renaissance").

Table 44: Legislation in the Iowa General Assembly that affected the Endowment for Iowa Health Account, 2002-2005¹⁵⁹

<u>Legislative Session</u>	<u>Bill Number</u>	<u>Bill Name</u>	<u>Provisions</u>
2002 Legislative Session	Senate File 2304	FY 2002 Budget Adjustment Act	Across the board reduction of 1% for FY 2002 that reduced the General Fund appropriation to the Endowment by \$72,000
			\$15 million in wagering tax receipts transferred from the Endowment to the General Fund
			\$7 million from the Endowment to the General Fund
	House File 2245	FY 2002 Medicaid Supplemental Appropriations Act	\$2.5 million from the Endowment to the Department of Human Services for Medicaid
	House File 2075	FY 2002 Endowment Reimbursement Act	Committed future General Fund receipts for reimbursing the Endowment up to \$91.5 million for the appropriations made by the 2002 General Assembly
	Senate File 2615	FY 2003 Healthy Iowans Tobacco Trust Appropriations Act	Appropriated \$65.2 million to the Departments of Human Services, Public Health, Corrections, and Education
			Transferred \$9 in FY 2003 wagering tax receipts from the Endowment to the Healthy Iowans Tobacco Trust
			Eliminated FY 2003 General Fund appropriation of \$27.1 million to the Endowment
	Senate File 2315	FY 2003 School Foundation Aid Act	Appropriated \$20 million from the Endowment's FY 2003 wagering tax allocation for School Foundation Aid
	House File 2614	FY 2003 Infrastructure Appropriations Act	Appropriated \$16.8 million from the Endowment's wagering tax allocated for the Board of Regent's Tuition Replacement
	Senate File 2317	Tobacco Settlement Enforcement Act	Provided a FY 2002 supplemental appropriation of \$945,000 to the Treasurer of State for payment of litigation fees incurred pursuant to the Master Settlement Agreement
	House File 2627	FY 2003 Second Omnibus Appropriations Act	Transferred \$9 million from the Endowment to the General Fund

Table 44: Legislation in the Iowa General Assembly that affected the Endowment for Iowa Health Account, 2002-2005¹⁵⁹

<u>Legislative Session</u>	<u>Bill Number</u>	<u>Bill Name</u>	<u>Provisions</u>
	House File 2625	FY 2002 Adjustments and Transfers Act	Increased the amount of money to be repaid to the Endowment from \$91.5 million to \$93.5 million
2003 Legislative Session	Senate File 458	FY 2004 Standing Appropriations, Salary Provisions, and Statutory Changes Act	Deappropriated \$28.3 million from the Endowment for FY 2004
			Transferred \$20 million from the Endowment to the General Fund in FY 2004
			Increase the amount of money to be repaid to the Endowment from \$93.5 million to \$101.8 million
	House File 685	FY 2004 Healthy Iowans Tobacco Trust Fund Act	Transferred \$5.2 million from the Endowment to the Healthy Iowans Tobacco Trust Fund (in addition to the standing appropriation of \$56.7 million)
	Senate File 375	Enhanced Tobacco Enforcement Act	Provided a FY 2003 supplemental appropriation of \$646,000 from the Restricted Capital Fund to the Treasurer of State for payment of litigation fees from the MSA
2004 Legislative Session	Senate File 2298	FY 2005 Omnibus Appropriations Act	Eliminated the \$29.8 million General Fund Appropriation to the Endowment for FY 2005
			Transferred \$11 million to the Rebuild Iowa Infrastructure Fund
	House File 2277	FY 2005 Health Iowans Tobacco Trust Appropriation Act	Committed future General Fund receipts to reimburse the Endowment \$171.5 million
			Transferred \$6.3 million for the Endowment to the Healthy Iowans Tobacco Trust (in addition to the \$57.5 million standing appropriation)
2004 Interim	Vibo Corporation, doing business as General Tobacco, agreed to sign the Master Settlement Agreement. The company agreed to make payments to the states totaling approximately \$1.7 billion. Iowa's share of the payments was approximately \$14.8 million over 10 years. Iowa also received an immediate payment of approximately \$660,000.		
2005 Legislative Session	House File 882	FY 2006 Standing Appropriations Act	Eliminated the FY 2006 General Fund appropriation of \$29.6 million to the Endowment

Table 44: Legislation in the Iowa General Assembly that affected the Endowment for Iowa Health Account, 2002-2005¹⁵⁹

<u>Legislative Session</u>	<u>Bill Number</u>	<u>Bill Name</u>	<u>Provisions</u>
			Repealed statutory provision that required the General Fund to reimburse \$171.5 million to the Endowment
			Appropriated funds the Healthy Iowan's Tobacco Trust to the Department of Public Health
	House File 862	FY 2006 Healthy Iowans Tobacco Trust Appropriations Act	Transferred \$7.6 million for the Endowment to the Healthy Iowans Tobacco Trust
			Appropriated funds from the Healthy Iowans Tobacco Trust to the Department of Public Health, Human Services, Corrections, Education, and the Department for the Blind
House File 811	FY 2006 Justice System Appropriations Act	Appropriated \$800,000 from the Healthy Iowans Tobacco Trust to Iowa's eight Community-Based Corrections District Departments	
2005 Interim	The Tobacco Settlement Authority restructured the debt related to the Series 2001 Bonds. Proceeds from the restructuring were put into a new account, the Endowment for Iowa Health - Restricted Capitals Fund.	Escrow - Pay off Series 2001 Bonds	\$666,800,000
		Debt Services Reserve Account - Series 2005	\$59,200,000
		Costs of Issuance	\$2,300,000
		Proceeds to the State of Iowa	
		Endowment for Iowa's Health - Restricted Capitals Fund	\$100,500,000
		Endowment for Iowa's Health Account	\$50,200,000
		Enforcement Reserve Account	\$3,000,000
		Total	\$882,000,000

THE STATE TOBACCO CONTROL PROGRAM

Using Florida as a Model

In 2000, in addition to allocating funds for Iowa's state tobacco control program, legislators and advocates had to develop the structure for the program. Representative Dave Heaton (R-Henry, Policy Score: 4.3, Industry Contributions: \$0), former President of the Iowa Restaurant Association (a tobacco industry ally), worked with Cathy Callaway, President of TFI and lobbyist for the ALA, and Threase Harms, lobbyist for ACS, to develop Iowa's Division of Tobacco Use Prevention and Control.¹⁴

At the time that Iowa was developing the structure of its program, Florida's state youth-focused tobacco control program, the Florida Tobacco Pilot Program, had achieved notable results.^{182, 183} As a result of an individual settlement between the state of Florida and the tobacco industry in 1997, Florida had \$200 million to develop a youth-focused tobacco control program. The Florida Tobacco Pilot Program's most publicized component was the "Truth Campaign," an extensive counter-marketing advertising campaign that focused on exposing the truth about tobacco industry manipulation and misinformation. The program had significant results. Between February 1998 (the launch of the program) and 1999, the number of teens who self-identified as a current smokers dropped from 23.3 percent to 20.9 percent.¹⁵⁴

Republican legislative leadership, particularly House Majority Leader Christopher Rants (R-Woodbury, Policy Score: 0.3, Industry Contributions: \$7,397) and Senate Majority Leader Stewart Iverson, Jr. (R-Wright, Industry Contributions: \$2,200), both top recipients of industry funding, were adamant that Iowa's tobacco control program had to focus on youth, because it was their belief it was not the state's place to tell adults not to smoke (standard pro-tobacco rhetoric). Representative Heaton also felt that the program should have a heavy youth focus.

In February 2000, Representative Heaton met with members of the Tobacco Control Unit of the State of Florida and felt strongly that the Florida Tobacco Pilot Program should serve as the model for Iowa's program.¹⁸⁴

Callaway and Harms attempted to educate Heaton and other legislators about the fact that adult cessation was also an important component of a comprehensive tobacco control program, but Republicans controlled the legislature and were unwavering about having a youth-only program.¹⁴ Advocates made a conscious decision to concede in fighting the youth-only ideology knowing that they had a favorable Governor and Attorney General¹⁸⁵ that would likely allow the program to be broadened through the administrative rules process by making the case that in order to prevent youth from starting to smoking that the state had to provide an infrastructure for adults to quit.¹⁴ Callaway and Harms were however successful in convincing legislators that "youth" should include college-aged students (up to 24 years old) because the tobacco industry had begun to heavily target that age group.¹⁴

House File 2565 – The Foundation of Iowa’s Tobacco Control Program

The Iowa state tobacco control program was created through legislation introduced by House Majority Leader Christopher Rants (R-Woodbury, Policy Score: 0.3, Industry Contributions: \$7,397), the most pro-tobacco member of the legislature, on April 10, 2000. The bill, House File 2565, contained the language developed by Heaton, Callaway, and Harms and passed both houses virtually unanimously with only one vote against the bill in the Senate. House File 2565 created a three-part tobacco control infrastructure: the Iowa Tobacco Use and Prevention Initiative, the Iowa Department of Public Health’s, Division of Tobacco Use Prevention and Control (TUPC or “Tobacco Division”), and the Iowa Tobacco Use Prevention and Control Commission (TUPC Commission).¹⁸⁶

Iowa Tobacco Use Prevention and Control Initiative

HF 2565 established the Iowa Tobacco Use Prevention and Control Initiative. The goals of the initiative as outlined in the legislation were to reduce youth smoking, facilitate a high level of youth involvement in efforts to reduce youth tobacco use and to promote cessation, increase the ability for youth to make healthy choices, reduce tobacco use by pregnant women, and increase compliance with youth access laws by minors and retailers.¹⁸⁶

Florida	Iowa
Change youth attitudes regarding tobacco use	Enhance capacity of youth to make healthy choices
Empower youth in leading community involvement against tobacco	Strong, active youth involvement to prevent youth tobacco use and to promote cessation of youth tobacco use
Reduce availability of tobacco to youth	Increased compliance by minors and retailers with youth access laws
Reduce youth exposure to secondhand smoke	
	Reduce tobacco use by youth
	Reduced tobacco use by pregnant women

The goals outlined under the initiative reflected those of the Florida Tobacco Pilot Program with the addition of addressing tobacco use by pregnant women to the priorities of the program (Table 45) . HF 2565 also outlined the infrastructure that would be necessary to achieve these goals. The bill called for the initiative to include youth programs; a communications, media, and marketing program; to be independently evaluated annually; to have continual assessment of relevant data throughout the state; to include an education program; and to also include an enforcement component¹⁸⁶ (Table 46). The Tobacco Division, with the advice of the TUPC Commission, was empowered with the responsibility of fulfilling the goals of the initiative.¹⁸⁶

Iowa Department of Public Health, Division of Tobacco Use Prevention and Control

House File 2565 created the Division of Tobacco Use Prevention and Control to “develop, implement, and administer the [Iowa Tobacco Use Prevention and Control] initiative.”¹⁸⁶ From this legislative mandate, the Tobacco Division developed a mission,

Florida	Iowa	CDC recommended components for a comprehensive tobacco program
Youth programs and community partnerships	Youth programs	School Programs
Education and training	Tobacco use prevention and control education program	
Marketing and communication	Media, marketing, and communication	Counter-marketing
Enforcement	Enforcement	Enforcement
Research and evaluation	Independent evaluation	Surveillance and Evaluation
	Ongoing assessment of data to assess program effectiveness	
		Community programs
		Statewide programs
		Chronic Disease
		Cessation programs
		Administration and management

which set out to “establish a comprehensive partnership among state government, local communities, and the people of Iowa to foster a social and legal climate in which tobacco use becomes undesirable and unacceptable.”¹⁸⁷ To fulfill this mission, TUPC funded several programs, required by statute throughout the state of Iowa including a community partnership program, Just Eliminate Lies (the youth arm of the tobacco program) and a counter-marketing program. Additionally, TUCP funded a statewide quit line, administered grants to entities for tobacco control, contracted independent evaluation and surveillance of the state tobacco program, and provided funding for three free medical clinics throughout the state. Beginning under the first Director of TUPC, Cathy Callaway, TUPC was able to extend programs that to adults in part by taking advantage of the legislative focus on pregnant women and arguing to prevent children from smoking you must convince adults to quit, and in part by just offering the programs, despite the narrow focus of HF 2565.¹⁸⁸

Iowa Tobacco Use Prevention and Control Commission

House File 2656 also called for the creation of the Tobacco Use Prevention and Control Commission. The TUPC Commission was created to develop policy and provide direction for the tobacco control initiative. The commission was also charged with overseeing the development of the tobacco initiative, acting as a forum for discussion on the issues surrounding tobacco control, and providing technical assistance as deemed necessary to the best fulfill the aims of the initiative. Additionally, the Commission was responsible for reviewing the programs that fell under the initiative and prioritizing funding needs.¹⁸⁶

HF 2565 required the Commission to be comprised of ten voting members appointed by the governor to serve three-year staggered terms. Three had to be active with non-profit health organizations that did tobacco control-related work, one retailer, three members active with

health promotion at the community level, and three youth members selected by participants in the annual JEL summit. In addition, the Commission was required to have four non-voting members from the Iowa General Assembly and a liaison from the Department of Education, the Drug Policy Coordinator, the Department of Justice, the Office of the Attorney General, the Department of Human Services, and a representative from the Alcoholic Beverages Division, all of whom were also nonvoting members.¹⁸⁶

The Commission was given broad power over the Tobacco Division under HF 2565, but simultaneously the wide range of required representatives on the commission diluted the Commission's expertise. Governor Tom Vilsack (D, 1999-2007) and Chet Culver (D, 2007-) tended to appoint members to the Commission that had a tobacco control background or interest.¹⁸⁹ The appointment of members genuinely interested in tobacco control has prevented a situation where the Commission undermined the strength of the tobacco program. Instead, in practice, the Commission was advisory and supervisory, where the main function was overseeing the budget of the tobacco program, which was reviewed at every commission meeting (approximately every 2 months).¹⁹⁰ In addition, the Commission was free to actively lobby at the capitol, a power members frequently exercise.¹⁹⁰ Since its inception some of Iowa's most influential tobacco control advocates served on the Commission.

Division of Tobacco Use Prevention and Control Programs

Community Partnership Programs

HF 2565 required a community partnership program that acted as a local arm of the state tobacco control program (Table 47). Community partnerships were public agencies or non-profit organizations that received funding from the Division of Tobacco Use Prevention and Control, after being selected through an application process. Partnerships were charged with working to prevent smoking initiation among young people, promoting cessation, working to eliminate disparities related to tobacco use, and eliminating nonsmokers' exposure to secondhand smoke. Groups funded through the partnership program included local health departments, substance abuse agencies, and other local entities with experience with health promotion and tobacco control such as CAFE Johnson County. As of 2009, 95 of Iowa's 99 counties had a community partnership.¹⁹¹

Most partnerships focused on direct services (i.e., cessation classes, classroom presentations, and health fairs) and individual behavior change until 2005, when their focus shifted away from direct services and more toward influencing changes in public policy as it pertained to tobacco prevention and control under the direction of the Director of Tobacco Use Prevention and Control, Bonnie Mapes¹⁸⁹ (discussed below). The shift marked a positive change for the partnerships because direct cessation services are an inefficient use of public health (as opposed to medical care) funds to get smokers to quit compared to passing smoke free policies. A study comparing the cost effectiveness measured by cessation rates of free nicotine replacement therapy programs to passing smoking free workplace policies in Minnesota, found that workplace policies were nine times more cost effective per new non-smoker than free nicotine replacement therapy.¹⁹²

Just Eliminate Lies (JEL)

Just Eliminate Lies (JEL) was created to serve as the youth arm of the Division of Tobacco Use Prevention and Control. HF 2565 required that the youth program include a structure for youth interaction at the local level, a statewide youth summit to be held annually, and youth representatives to be members of the TUPC Commission. In addition, it was made clear that an important tenet of the youth program was a high level of youth involvement in the development of the program and all aspects of implementation of the program.¹⁸⁶ Youth, for the purposes of programs falling within the Division of Tobacco Use Prevention and Control, was defined in House File 2565 as a person 5 to 24 years old.¹⁸⁶

JEL was developed by Tammi Blackstone, the JEL Coordinator in the Tobacco Division from 2000-2002 under the direction of Cathy Callaway, who was hired as the first Division director in 2000.¹⁴

The goal of the JEL program was to “change the general social attitude towards tobacco use, raise awareness through education, create effective counter-marketing, protect the rights of all Iowans from secondhand smoke, and support cessation among the young tobacco uses so they quit or never being using tobacco.”¹⁹¹

Table 47: Structure of Community partnerships developed through the administrative rule process.	
Definition	
"A public agency or nonprofit organization which utilizes broad community involvement and represents a broad coalition of community groups, organization and interests...[that] promotes activities that discourage tobacco use and support smokefree environments." Including by developing coalitions with local organizations, conducting educational programs and encouraging policies that support tobacco use prevention and cessation.	
Partnership Areas	
Composed of one or more counties, school districts, economic development enterprise zones, or community empowerment areas.	
Follow existing boundaries of one or more counties, school districts, economic development enterprise zones, or community empowerment areas.	
Serve a population of at least 4,000, including a minimum school-age population of 5,000.	
Serve a minimum geographic area of one county	
Funding	
<u>From the Division of Tobacco Use Prevention and Control</u>	
Rural counties: \$.84 per resident Metropolitan statistical areas: \$.52 per resident	
<u>Matching funds from partnership agency</u>	
Matched at a one-to-one basis	
At least 25 percent cash match	
Up to 75 percent matched in in-kind services, office support, or other tangible support of offset of costs.	

Counter-Marketing Campaign

The Tobacco Division counter-marketing campaign was a part of the broader JEL program. Reminiscent of the American Legacy Foundation's Truth campaign, which was also modeled after the original Florida Truth campaign,¹⁹³ JEL Iowa produced provocative counter-marketing ads, using messaging decided on by the JEL Executive Council members (the leadership group of JEL), revealing the deceptive and manipulative marketing techniques of the tobacco industry and the addictiveness of nicotine.¹⁹⁴ Billboards, TV commercials, mall kiosks, and radio ads were all mediums that had been used to spread the JEL counter-marketing messaging. The tobacco division used media produced in other states as well as products from a contract with ZLR Ignition, a Des Moines based marketing firm, for locally-produced media.¹⁹⁴ Counter-marketing messages such as those used by JEL were effective in terms of cost¹⁹⁵ and ability to prevent smoking uptake by youth through young adulthood.¹⁹⁶

Efforts to Defund JEL

The JEL counter-marketing campaign was arguably the most visible component of the Tobacco Division and won more than 120 state, regional, and national awards between its inception in 2000 and 2009.¹⁸⁹ Its visibility, success, and edgy messaging made it a target for defunding by legislators opposed to tobacco control. Since the creation of JEL, Republican leadership in the legislature argued that the media campaign was a waste of money. Mirroring efforts by pro-tobacco forces against similar campaigns in other states,¹⁹⁷ some legislators even argued that the JEL counter-marketing campaign was an inappropriate use of state money.

In 2009, Representatives Linda Upmeyer (R-Hancock, Policy Score: 2.7, Industry Contributions: \$0), Kraig Paulsen (R-Linn, Policy Score: 2.7, Industry Contributions: \$500), and Scott Raecker (R-Polk, Policy Score: 3.0, Industry Contributions: \$0) sponsored House Amendment 1089 to an appropriations bill (House File 414) to "suspend" all funding to JEL for the remainder of FY 2009 and all of FY 2010.¹⁹⁸ The amendment was defeated with a vote of 44-55, along party lines.¹⁹⁹

Challenges to state counter-marketing programs by the tobacco industry and their legislative allies are common because of the threat counter-marketing campaigns have to the industry's credibility and bottom line. The tobacco industry has a history of trying to prevent the creation of counter-marketing campaigns and when possible has also created their own, ineffective, youth smoking prevention programs to convince legislators that state run programs were a waste of state resources (rhetoric which was used in Iowa). The industry and its political allies also use claims of fiscal crisis (whether or not valid) as a way to divert funds away from state media campaigns (also rhetoric use in Iowa).¹⁹⁷

The ALA, AHA, and ACS have continuously lobbied to protect JEL funding. JEL Iowa students also advocated for funding for the program during annual Youth Advocacy Days at which JEL members talked to legislators about the benefits of the program as well as how the tobacco industry specifically targets youth.¹⁴ Cathy Callaway, Director of the Division of Tobacco Use and Prevention from 2000 to 2002 and a representative of the American Cancer Society explained in a 2009 interview:

[Legislators] say the “Just Say No” message is strong enough. We’re getting them to understand that the industry is having rock concerts. The industry is packing their stuff like makeup and perfume and bubble gum. ... Even though every legislator uses mass marketing and media in their campaigns, they don’t feel that it’s a good use of state dollars to keep kids from smoking. They don’t want to see the flashy billboards, they don’t want to see the TV ads.¹⁴

“What Town is Next?”

A statewide campaign coordinated by the Division of Tobacco Use Prevention and Control that began in September 2008 came under particular fire. In Springville, Iowa, (population 1,101) JEL members posted yard signs that read “We’ll Miss You, Springville.” They also took out a half page add in *The Gazette*, a local Iowa paper servicing Eastern Iowa, bearing the same message. The intent of the campaign was to show that Springville’s population was roughly equal to the number of Americans that died each day from tobacco-related disease and that in essence on any given day a Springville disappears as a result of tobacco. The signs were followed by a YouTube video and ads that ran statewide.

However, in the time between the launch of the ads and messaging revealing why Springville would be missed, some residents of the community became anxious thinking that the message could be a related to some sort of attack on the city. These fears were quickly quelled, but contributed to a great deal of talk about the campaign including by national media outlets such as CNN and MSNBC.²⁰⁰

The Springville campaign was the kick-off of the broader, “What Town is Next” campaign that featured different towns across Iowa that could be wiped out by the tobacco industry within the period of a day. Director of the Division of Tobacco Use Prevention and Control Bonnie Mapes explained in a 2009 interview that the “What Town is Next” Campaign:

... did exactly what it was supposed to do. We have a very small media budget. So you want it to go out and be talked about and get articles about it and it did. But that’s not what [legislators] want to see. Some of them truly don’t understand how that’s a youth prevention message, but some of them just don’t like it.¹⁸⁹

The Tobacco Division took down one billboard in Lakeview, Iowa, another town in which the “What Town is Next” campaign focused, at the request of the Lakeview City Council after Senator Steve Kettering (R-Lakeview, Policy Score: 3.0, Industry Contributions: \$500) issued a press release that claimed that taxpayer dollars were being used for “shock” advertising in his district. Tobacco division staff also met with the City Council of Eldon, Iowa which also considered requesting that the billboard in their town be removed. However after meeting with the Tobacco Division staff, the Eldon City Council decided to allow the billboard to remain.¹⁹⁹

Nevertheless, the media coverage of the Springville campaign spurred heightened efforts in the legislature to defund the JEL media campaign¹⁸⁹ even though JEL was simply following its legislative mandate to follow the model of the effective Florida Tobacco Pilot Program that had demonstrated the effectiveness of strong anti-industry messaging in reducing youth smoking rates.

In 2009, the “What Town is Next” campaign was awarded a Gold ADDY, the American Advertising Federation’s top award.²⁰¹

Quitline

Quitline Iowa was created as a statewide toll free telephone line that offered free smoking cessation guidance by the Division of Tobacco Use Prevention and Control in 2000. The Quitline was staffed by trained coaches who offered specifically tailored cessation plans for callers, as well as provided the option of follow-up calls for those who were interested.²⁰² In 2008, the Division of Tobacco Use Prevention and Control began offering a free two-week supply of nicotine replacement therapy, made possible by a \$1 increase in the Iowa tobacco tax, which resulted in a surge in Quitline call volume (Figure 11).

From 2001-2008 administration of the Quitline was contracted to the University of Iowa. In 2008 because of the increase in funding to for the Quitline, state fiscal procedures required that the contract was put up for a competitive bid. The National Jewish Health based in Denver, Colorado won the contract to administer the Iowa Quitline.¹⁹⁰

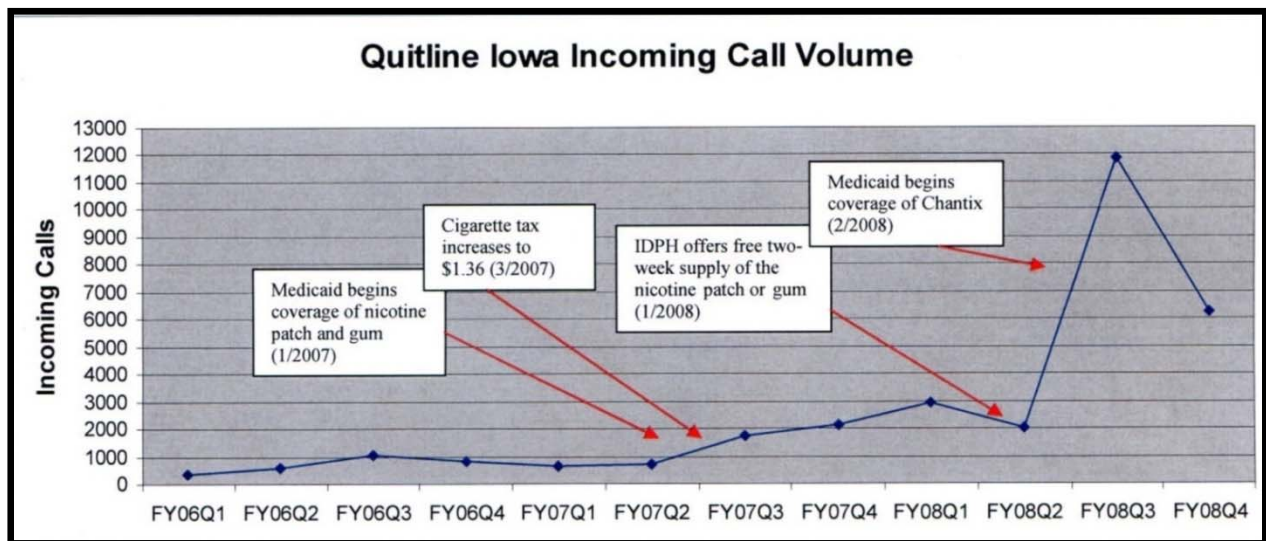


Figure 11: Quitline Iowa Incoming Call Volume, 2006-2008²⁰³

Grants

The Division of Tobacco Use Prevention and Control provided grants as part of the Tobacco Use and Prevention Initiative. Through 2008, three \$50,000 grants, funded in part by the US Centers for Disease Control were awarded to three organizations to focus on youth and adult interventions in priority populations. Proteus, a non-profit organization serving low income Iowans, particularly farm workers, was awarded a grant to focus on interventions in the Iowa Hispanic/Latino community. A second grant was awarded to Employee and Family Resources, a non-profit human services organization, to focus on interventions in Asian communities in Iowa. A third grant was awarded to Youth & Shelter Services, a non-profit organization serving youth and families, to focus on interventions for homeless youth.¹⁹⁹ CDC

funded grants ended in 2008. In 2009, using revenue from a 2007 \$1 per pack increase in the Iowa tobacco tax, the tobacco division expanded funding for grants to five priority populations: Hispanic/Latino, Asian, African American, LGBT, and Native American communities.¹⁹⁹

Evaluation and Surveillance

House File 2565 required TUPC to present annual progress reports to the Iowa legislature. Consequently, surveillance and evaluation were key components of TUPC’s programming. A myriad of surveys are used to evaluate the Tobacco Division (Table 48). Surveys collected data on tobacco use among adults, youth, and pregnant women, youth perceptions of JEL, attitudes pertaining to smokefree environments, exposure to secondhand smoke and attitudes toward the tobacco industry. Biannually, under contract with TUPC, the Center for Social and Behavioral Research at the University of Iowa, prepared a Tobacco Control Progress Report to the TUPC Commission and the legislature based on all applicable survey data.¹⁹⁹

<u>Survey</u>	<u>Conducted by:</u>	<u>Frequency</u>
Adult Tobacco Survey (ATS)	Center for Social and Behavioral Research at the University of Northern Iowa	Biannually since 2000
Youth Tobacco Survey (YTS)	Center for Social and Behavioral Research at the University of Northern Iowa	Biannually since 2000
Behavioral Risk Factor Surveillance System (BRFSS)	Centers for Disease Control	Year since 1984
Iowa Youth Survey (IYS)	Iowa Department of Education	Every 3 years
Iowa Family and Household Survey	IDPH	Every 5 year
Women's Health Information System	IDPH Maternal/Child Health program	-
Pregnancy Risk Assessment Monitoring System	IDPH	Pilot 2009

Clinics

Through 2007 funding was provided to three Iowa clinics to provide free cessation counseling and pharmaceuticals for uninsured adults. In 2008 funding to those clinics ended, after the Tobacco Division entered a contract with the Iowa/Nebraska Primary Care Association to fund a service that offered up to 12-weeks of any FDA-approved cessation pharmaceuticals and counseling for low-income smokers who were not eligible for Medicaid at 20 federally-funded Community Health Centers in Iowa.¹⁹⁹

State Funding of the Division of Tobacco Use Prevention and Control

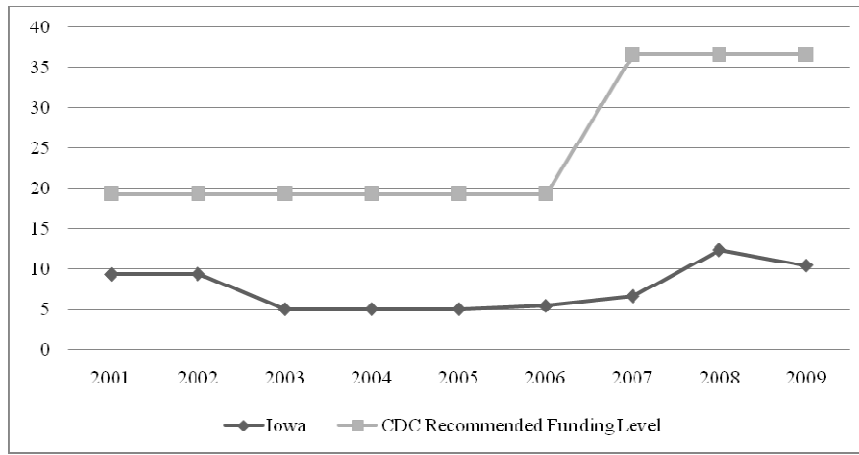


Figure 12: Allocations to the Division of Tobacco Use Prevention and Control from the Iowa General Assembly

The 1999 Centers for Disease Control and Prevention Best Practices for Comprehensive Tobacco Control Programs recommended that tobacco control and prevention in Iowa be funded at a minimum level of \$19.3 million;⁸ in 2007, the CDC revised its recommendation, increasing the amount for Iowa to \$36.7 million.⁷ The Iowa Division of Tobacco Use Prevention and Control was never funded at, or near, the level recommended by the CDC (Figure 12).

Fluctuations in Funding Levels

In Fiscal Year 2001 and Fiscal Year 2002 the Division of Tobacco Use Prevention and Control was funded at \$9.3 million (Table 49), 48 percent of the CDC recommended level, despite calls by the Attorney General and tobacco control advocates for a greater amount of funding.

Initially funding to the tobacco control program came directly from Master Settlement Funds until FY 2002 when the funding structure changed as a result of the securitization of 78 percent Iowa's Master Settlement payments. A portion of the proceeds from the securitization of the MSA monies were deposited into the Healthy Iowan's Tobacco Trust, from which money was allocated to the Division of Tobacco Use Prevention and Control (Table 50).

In July 2002 (FY 2003), funding to the TUPC was cut by 40 percent to \$5 million. The decrease in funding was a partisan effort led by House Appropriations Dave Millage (R-Scott, Industry Contribution: \$0). Public health advocates attempted to fight the cut to the program. Representative Dave Heaton (R-Henry, Policy Score: 4.3, Industry Contributions: \$0) tried to garner bi-partisan support among his House colleagues to maintain the funding level to Tobacco Division he helped to create. To show widespread support for the tobacco program, Tobacco Free Iowa released a poll while the FY 2003 budget bill was in the House Appropriations Committee that found that 82 percent of Iowa voters believed that the Tobacco Division should be funded at or above its FY 2002 funding level of \$9.3 million.²⁰⁴ TFI also coordinated a "Kick

Table 49: Tobacco generated revenue in Iowa and revenue allocated to tobacco control										
Fiscal Year: July 1 - June 30	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
TOBACCO GENERATED REVENUES (regardless of use)										
Tobacco taxes (dedicated)				94.5	95.1	96	98.9	133.7	250.7	199.2
MSA	71.2	54.5	63.6	60.2	49.9	54.1	55.4	50.7	52.8	
Total	71.2	54.5	63.6	154.7	145	150.1	154.3	184.4	303.5	199.2
STATE RESOURCES AVAILABLE FOR TOBACCO CONTROL										
<i>State funds</i>										
Dedicated taxes (HCTF)	0	0	0	0	0	0	0	0	5.9	1.8
MSA (dedicated)		9.3	0	0	0	0	0	0	0	0
State General Fund		0	0	0	0	0	0.5	0.7	1	1.5
Allocations from the Healthy Iowans Tobacco Trust			9.3	5.0	5.0	5.0	5.0	5.9	5.9	6.9
Total state		9.3	9.3	5	5	5	5.5	6.6	12.8	10.2
<i>Federal funds</i>										
IMPACT										
CDC		0.9	0.9	1	0.9	0.9	1.1	1.1	1.1	0.8
SAMHSA		0.7	0.7	0.7	0.7	0.7				
Total federal		1.6	1.6	1.7	1.6	1.6	1.1	1.1	1.1	0.8
<i>Other sources</i>										
American Legacy Foundation (grants to state)				0.1	0.5	0.03	0.02	0.005	0	0
Total other		0	0	0.1	0.5	0.03	0.02	0.005	0	0
Total available funds		10.9	10.9	6.8	7.1	6.6	6.6	7.7	13.9	11.0

Butts” rally during the annual Youth Advocacy Day (also coordinated by TFI) that occurred while the appropriations bill was up for a vote by the full House. During the Youth Advocacy Day young Iowans advocated for sustaining funding to the tobacco control program.²⁰⁵ Additionally, Attorney General Tom Miller urged the legislature to maintain funding to the tobacco division at the” Kick Butts” rally and in the media.²⁰⁴

These advocacy efforts failed.

Fiscal Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Amount Allocated to TUPC	\$9.3	\$5.0	\$5.0	\$5.0	\$5.0	\$5.9	\$5.9	\$5.9	\$0.0
Resources available in the HITT	\$66.8	\$66.6	\$63.4	\$64.0	\$66.8	\$71.7	\$71.1	\$38.1	\$0.0
Remainder*	\$57.5	\$61.6	\$58.4	\$59.0	\$61.8	\$65.8	\$65.2	\$32.2	\$0.0

*The remainder of funds from HITT were allocated to other programs within the Department of Public Health, Department of Human Services, Department of Corrections, Department of Education, and the General Fund. In certain fiscal years funds were also allocated to the Department for the Blind, the Department of Economic Development, and the Department of Management.

The 2002 budget cuts led the Tobacco Division to cut pregnant women and family-based cessation and school based funding programs completely (21 total contracts). Additionally, funding to Quitline Iowa was cut by 39 percent and funding to the JEL Iowa, counter-marketing program, and program evaluation was cut by 70 percent.²⁰⁴

The funding for the program remained between \$5 million and \$6 million until FY 2008, during which time health groups individually lobbied for tobacco control funding, but there was no coordinated statewide tobacco control funding campaign. The lack of coordination was the result of TFI becoming defunct in 2003, turnover in the directorship of the Tobacco Division from 2003-2004, and a period of reorganization in 2005 after Bonnie Mapes became the director of TUPC.

In FY 2008, a \$1 per pack cigarette tax increase, fought for by tobacco control advocates and other health groups, led to a funding increase for TUPC, resulting in a total the allocation of \$12.8 million to the tobacco division for the year.²⁰⁶

Also as a result of the \$1 per-pack cigarette tax increase in 2007, the Iowa General Assembly created the Health Care Trust Fund (HCTF). The tax legislation required that all revenue generated by tobacco taxes, up to \$127.6 million annually, be deposited into the HCTF. The tax legislation also required that all funds from the HCTF be allocated to health-related programs, including tobacco control.²⁰⁷

In FY 2009, due to economic constraints, Governor Chet Culver (D) called for an across the board 6.5 percent cut to all government programs. As a result the Iowa General Assembly allocated \$10.2 million to the Tobacco Division, which was a decrease from the FY 2008 budget, but significantly more than the funding before the tax increase. During the FY 2009 budgetary process the Iowa Tobacco Prevention Alliance, Iowa's statewide tobacco control coalition, the ALA, the ACS, and the AHA successfully fought to ensure that allocation of funds from the General Assembly to the Tobacco Division were not cut disproportionately compared to other programs. Senator Joe Bolckom (D-Johnson, Policy Score: 10, Industry Contributions: \$0) assured advocates that any attempts to specifically defund the tobacco control program would be defeated.

In addition to the 6.5 percent cut, in FY 2009, \$1.5 million was cut from the program as a result of an error when preparing the Division's budget by the Iowa Legislative Services Agency.¹⁸⁹ Initially \$2 million was cut unintentionally by the Legislative Services Agency, but due to lobbying led by the Iowa Tobacco Prevention Alliance \$500,000 of the \$2 million was restored to the Tobacco Division.¹⁹⁹ The FY 2009 budget cut resulted in a \$43,000 cut by the Tobacco Division to the \$1 million contract with the Iowa/Nebraska Primary Care Association which provided free cessation services to low-income Iowans at Community Health Centers across the state. Additionally, two administrative assistant vacancies within the tobacco division that were scheduled to be filled in 2009 were left vacant.¹⁹⁹

In 2009, future funding to the Division of Tobacco Use Prevention and Control was on unsteady ground. Due to raiding of the Healthy Iowans Tobacco Trust Fund by the Iowa General Assembly and a second securitization of the remaining 22 percent of Iowa's MSA revenue stream, FY 2009 was the last year that funding for tobacco control would be allocated from HITT, because the fund ran out.²⁰⁶ Anticipating the Healthy Iowans Tobacco Trust becoming defunct, the General Assembly pledged to fund all programs at a comparable level to their funding from the HITT with money coming straight from the General Fund.²⁰⁷ Funding to the Tobacco Division was also supplemented by funds from the revenue of a \$1 per pack increase in the cigarette tax, passed in 2007.

Hard economic times, as well as substantial policy victories by the Division of Tobacco Use Prevention and Control in 2007 and 2008, which left the impression on some legislators that the Tobacco Division has fulfilled all of its aims, again left the Division a target for potential funding cuts.¹⁸⁹ As of 2009, tobacco control advocates had yet to develop effective messaging to convince legislators that the budget to the Tobacco Division not only needed to be maintained, but needed to be increased.

Division Expenditures and Best Practices

The 1999 US Centers for Disease Control and Prevention *Best Practices for Comprehensive Tobacco Control Programs* outlined the necessary programmatic elements and necessary funding in those areas for an effective, comprehensive tobacco control program.⁸ Expenditures by the Division of Tobacco Use Prevention and Control to the CDC recommended program areas have fluctuated over time (Table 51).

The funding of community programs, predominantly through funding to community partnerships, was between \$1.9 and \$3.1 million annually from 2001-2007. Since FY 2004 funding to community programs has exceeded that of any other program area, representing 40 percent of the FY 2007 expenditures.

Funding to the JEL counter-marketing program fell beginning in FY 2002. In FY 2001 and 2002, the Division of Tobacco Use Prevention and Control spent \$3.7 and \$3.3 million, respectively on counter-marketing (Table 51), above the 1999 CDC recommended minimum spending level of \$2.85 million.⁸ Beginning in FY 2002, counter-marketing funding fell substantially, such that in FY 2007, only \$0.9 million was spent on counter-marketing despite the division having a higher total budget than in previous years (Tables 49 and 50).

Table 51: Expenditures by the Division of Tobacco Use Prevention and Control in program areas recommended by the Centers for Disease Control and Prevention for a comprehensive tobacco control program

	CDC Recommendations	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Community programs	\$2.85	\$1.60	\$2.10		\$2.00	\$1.90	\$1.95	\$3.13	
Chronic disease	\$2.83	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	
School programs	\$2.67	\$0.40	\$0.50		\$0.00	\$0.00	\$0.00	\$0.00	
Enforcement	\$1.39	\$1.40	\$1.50		\$1.10	\$1.10	\$1.10	\$1.10	
Statewide programs	\$1.41	\$0.30	\$0.30		\$0.20	\$0.20	\$0.30	\$0.30	
Counter-marketing	\$2.85	\$3.70	\$3.30		\$1.00	\$1.10	\$0.98	\$0.90	
Cessation programs	\$3.11	\$0.40	\$0.80		\$0.30	\$0.40	\$0.45	\$1.10	
Surveillance and evaluation	\$1.60	\$0.40	\$0.40		\$0.10	\$0.10	\$0.07	\$0.10	
Administration and management	\$0.84	\$0.50	\$0.50		\$0.40	\$0.30	\$0.43	\$0.50	

*Blank cells indicate Fiscal Years for which complete expenditure data was not provided by Division of Tobacco Use Prevention and Control

According to data collected by the Iowa Youth Tobacco Survey between 2001 and 2006, current cigarette among Iowa high school students fell during the same period that counter-marketing expenditures increased and use increased as counter-marketing budgets fell (Table 52).^{208, 209}

2001/2002	2004	2006
26%	18%	22%

Awareness of the Just Eliminate Lies Program fell among high school and middle school students after the budget of the Tobacco Division was cut by 40 percent in FY 2003 (Table 52a), as did the level of perceived effectiveness of the JEL program among the same populations.^{208, 209}

	2001/2002	2006
High School	21.9	14
Middle School	32.7	18

The CDC recommended that Iowa spend \$3.11 million on a cessation program.⁸ From 2001 to 2007 cessation was never funded at the CDC recommended level, however in 2008 cessation services were funded at \$3.8 million and in 2009 at \$3.2 million,¹⁹⁹ near the 2007 best practices recommended funding level of \$3.72 million.⁷

There was no increase in quit attempts concurrent with Iowa's increase in funding for cessation, but calls to Quitline Iowa significantly increased. According to the CDC's Behavioral Risk Factor Surveillance System (BRFSS), from 2000 to 2001 the number of smokers who quit for a day or more increased significantly from 38 to 51 percent, then remained steady, around 50 percent through 2009,⁹ demonstrating no correspondence between cessation funding and quit attempts. Despite no increase in quit attempts, in 2007, 6 percent of Iowa's individual smokers called Quitline Iowa after increased funding to the tobacco division allowed for the tobacco division to fund a two-week supply of nicotine replacement therapy products to callers. That equated to more calls than all previous years combined.¹⁹⁹

Although the Tobacco Division's budget fluctuated, enforcement expenditures remained steady between \$1.1 and \$1.4 million per fiscal year from 2000 to 2009. As discussed in "Youth Access," increased enforcement of youth access laws by the ABD led to a substantial drop in non-compliance rates with youth access laws by retailers. Beginning in FY 2009, the ABD also began enforcing the Iowa Smokefree Air Act (see "Tobacco Control Renaissance").

Since the inception of the Tobacco Division, little or no funds were provided by the Tobacco Division for chronic-disease programs, statewide programs or school programs. Additionally, funds spent on surveillance and evaluation were much lower than the CDC recommended level and funds used for administration and management were consistently below the CDC recommended funding, however as a proportion of the overall budget, administration and management were at or above the recommended level (Table 51).

Conclusions

The inadequate funding of the Iowa Tobacco Division by the General Assembly has prevented the Tobacco Division from being able to fund all tobacco control programs at the CDC recommended level. Instead the Tobacco Division has had to choose particular programs on which to focus its spending to make the largest impact given limited funds. From the inception of the Tobacco Division in 2000, through 2002, JEL was allocated a significant portion of the Tobacco Division's budget. Subsequently youth smoking rates fell. In 2003, after funding to the Tobacco Division was cut by 40 percent, JEL expenditures were cut significantly, and subsequently youth smoking rates increased. Despite an increase in the Tobacco Division's budget beginning in FY 2008, JEL has never been funded at its 2002 level. Instead, the increase in funding to the Tobacco Division has been focused on cessation services. While calls have significantly increased to Quitline Iowa, there has not been a concurrent increase in quit attempts.

The Division in Practice

Distrust of the Broader Iowa Department of Public Health

When the Division of Tobacco Use Prevention and Control was established in 2000, tensions quickly developed between tobacco control advocates, including the staff of the Tobacco Division and the TUPC Commission, with the broader IDPH. Advocates felt that IDPH did not fully support the program in a way that would best achieve tobacco control goals because the broader IDPH argued that the Tobacco Division was inefficient due to its small staff and relatively large budget,¹⁹⁰ rather than acknowledging the success of the Tobacco Division (compared to the rest of the Department) for being able to run a large program with a small staff. This tension culminated in 2004 when the IDPH attempted to absorb the Tobacco Division into another already existing division at the Department of Public Health, leading to legislative action, initiated by the TUPC Commission, to protect the independence of the Division of Tobacco Use Prevention and Control.

Attempt to Subsume the Tobacco Division

From 2000 to 2002, Cathy Callaway served as the Director of the Tobacco Division. In 2002, Callaway left to work for the American Medical Association in Chicago, and Threase Harms, who had also worked to develop the tobacco program, was hired to replace her.¹⁴ Harms served as director from 2002-2003, when she left the director position to start her own lobbying firm.¹⁸⁵ In 2003, after Harms left the Tobacco Division, Janet Zwick, Director of the Division Health Promotion, Prevention and Addictive Behavior (who in 1999 worked with the tobacco industry to promote its “We Card” program), served as the interim director, temporarily making the Tobacco Division a program within the Division of Health Promotion, Prevention and Addictive Behavior. During her time in this position, Zwick closed the Commission out of its advisory and supervisory role, causing Commission Chair, Christopher Squier, to demand reports on the Tobacco Division’s budget and other information pertaining to the Division from Zwick.¹⁹⁰

In April 2004, the TUPC Commission invited Director of the Iowa Department of Public Health, Mary Hansen, to attend one of its meetings to discuss hiring a new director of the Tobacco Division. In that meeting IDPH Director Mary Hansen explained that due to economic constraints the IDPH could not justify hiring a new Tobacco Division and that instead she wanted to permanently subsume the Tobacco Division into the Division of Health Promotion, Prevention, and Addictive Behavior.²¹⁰

The Tobacco Control Commission and the Attorney General’s Office adamantly opposed Director Hansen’s plan to make the Tobacco Division a program within another division of the IDPH. They argued that subsuming the Division would not only make TUPC less effective because running a tobacco use prevention and control program required unique and distinctly different methods than those used to combat the use of other drugs, but also that House File 2565 required that the Tobacco Division be its own, separate division within the Department of Public Health.²¹⁰

The TUPC Commission took several steps to ensure that the Division of Tobacco Use Prevention and Control remained its own division, including encouraging legislative action to mandate that the Iowa Department of Public Health hire a separate division director.²¹¹ Lobbying by the TUCP Commission, the American Cancer Society and CAFE Iowa CAN, promoted an amendment pertaining to protecting the tobacco division during the 2004 legislative session. Language was added to amend House File 2577, an appropriations bill related to the Healthy Iowan's Tobacco Trust Fund, requiring that the Iowa Code pertaining to the tobacco division be re-written to include a section that required the Iowa Department of Public Health to "employ a separate division administrator ... in a full-time equivalent position whose sole responsibility and duty shall be the administration and oversight of the division."²¹² The bill, as amended, passed both chambers of the Iowa General Assembly with only one dissenting vote coming from the Senate.²¹²

The executive committee of the TUPC Commission, made up of the current and past presidents and president-elect of the TUPC Commission, also drafted a letter to Governor Tom Vilsack to alert him about the issue at the IDPH and to encourage him to refrain from exercising his line-item veto power to remove the amendment attached to the appropriation bill pertaining to the Tobacco Division.²¹¹ Governor Vilsack took the TUPC Commission's request into account and signed House File 2577 into law including the amendment regarding hiring a separate director of the tobacco division. In a veto message of House File 2577 in 2004, Vilsack wrote:

I approve Section 8, which requires the Department of Public Health to provide a separate division administrator for the Division of Tobacco Use Prevention and Control. I fully recognize the importance of focusing on the importance of preventing and reducing tobacco use and appreciate the interest of stakeholders in maintaining a separate division administrator. However, I retain this language with some reservation. I am concerned that this new position may not be the most efficient use of tobacco prevention dollars. The tobacco division consists of nine employees and two vacant positions...The next smallest division in the Department has four times as many employees, and all of the other divisions have multiple programs. Over the last two years, the Legislature has decreased the budget of the tobacco division by 40 percent. I am hopeful that this language marks a shift in legislative priorities and that the Legislature will restore these funds and provide a strong fiscal commitment to reducing tobacco use. Without an accompanying financial commitment, this language and the new division administrator are primarily a symbolic act.²¹³

Governor Vilsack's signing of House File 2577 allowed the Tobacco Division and TUPC Commission to continue their search for a new director.

The Division of Tobacco Use Prevention and Control Under Bonnie Mapes

During the search for a new tobacco division director, CAFE Iowa CAN became concerned that IDPH was not advertising the director position outside of the IDPH, much less outside the state. After obtaining the job description for the TUPC director position, CAFE Iowa

CAN sent an announcement over GlobalLink, an international computer network for tobacco control professionals and advocates, and through Americans for Nonsmokers' Rights for a "battle hardened tobacco control advocate."²¹⁴ Bonnie Mapes, an advocate with 15 years experience in tobacco control in California and Colorado, applied for the position. Upon receipt of her application, Mapes was heavily recruited by members of the TUPC Commission, who were advisory to the Director Mary Hansen in the hiring decision.¹⁹⁰

When Mapes arrived at the Tobacco Division in 2004, Iowa was at a tobacco control low. During the year before her arrival, the Iowa Supreme Court had ruled that Iowa localities did not have the power to pass smokefree laws. Additionally, Iowa's statewide tobacco control coalition had disintegrated in 2003 and the events that almost prevented her hiring resulted in significant tension between tobacco control advocates and the IDPH. In a 2009 interview, Director Mapes recalled that when she arrived, "nobody was working together and nothing was happening."¹⁸⁹

As a relative outsider to the Iowa tobacco control community, Mapes was able to come into the situation with a fresh perspective that allowed her to increase the effectiveness of Iowa's tobacco control infrastructure. She was integral to the restructuring of the Tobacco Division's community partnership program to focus on policy change rather than individual behavior change, a more effective use of their resources, to reestablish a statewide tobacco control coalition in Iowa after several years without one, and brought advocates together to develop a four year strategic plan for the Iowa tobacco control community.

Restructuring Community Partnerships

As one of her first initiatives as Director of the Division of Tobacco Use Prevention and Control, Mapes, reinstated an annual statewide tobacco control conference to bring advocates including members of community partnerships and representatives of Iowa's health groups together.¹⁸⁹ During the statewide conference held in November 2005, Mapes announced her plan to restructure the community partnership component of the tobacco control program, a plan developed with the involvement of the Tobacco Division staff, the TUPC Commission, and the Director of the IDPH.

Director Mapes announced that the community partnerships would be changing their focus. Prior to the 2005 conference, community partnerships had focused primarily on offering direct cessation services to members of their communities. After the conference, partnerships were required to focus on community norm changes through population- and policy-change initiatives such as work to encourage voluntary smokefree policies,²¹⁵ as outlined in CDC recommended best practices.⁷ Mapes also provided \$100,000 worth of materials, such as posters, t-shirts, and educational literature, to the Iowa Substance Abuse Clearinghouse which were made available to the partnerships at no cost in order to facilitate the transition.²¹⁵

State law required that the funding to community partnerships be allocated from the Division of Tobacco Use Prevention and Control on a per capita basis. In a 2009 interview, Mapes explained,

The problem was given the funding level ... some of these counties were getting less than \$4,000 to try to run a program every year. You can't buy pamphlets for that much, much less do anything. They had a person who was working maybe two hours a week at the most... While it looked good on paper, there really wasn't enough – statewide there were 30 [full-time employees] total and that included the program staff and the administrative staff and the secretarial staff, everybody. So you've got this big state, all these counties and probably less than 15 people working on programs. That needed to be fixed.¹⁸⁹

To fix the funding problem, Mapes created the Community Partnership Capacity Building grant program. The grant program was made possible by a funding increase to the tobacco division of \$500,000 from the Iowa legislature during FY 2006. In order for partnerships to receive a capacity building grant they were required to send representatives to training sessions about local level policy change, conducted by the Tobacco Technical Assistance Consortium (TTAC), a national organization that provided technical assistance and resources to state and local tobacco control programs. The capacity building grants spanned a two year period and technical assistance was available through TTAC throughout the grant period.¹⁸⁹

With the training from TTAC, the capacity building grant, and new focus determined by the tobacco division, the community partnerships were required to build stronger local coalitions, develop better actions plans¹⁹⁹ that included fundraising and charging membership dues to fund advocacy activities that state dollars could not be used for²¹⁴ and to gain a better understanding of CDC best practices.¹⁹⁹

The transition was not without push back. Letters were written by community partnership staff to legislators, the Director of the IDPH, and to the editors of Iowa newspapers²¹⁵ arguing that changing focus from direct services (i.e., cessation classes, classroom presentations, and health fairs) to population-based interventions, was going to ruin their local tobacco control programs.¹⁹⁹ However, because the Director of the IDPH and the TUPC Commission were involved with the restructuring of community partnership program, they supported the Tobacco Division during the transitional time and there were few attempts to actually circumvent the restrictions on providing direct services.¹⁸⁹ Tobacco Division staff kept closely oversaw community partnerships during the transition period, stopping activities that were not approved and in a few cases refusing to reimburse activities that fell outside of approved action plans.¹⁹⁹

The changes in the community partnerships toward policy change were integral in the passage of the 2007 increase in the Iowa tobacco tax and 2008 passage of the Iowa Smokefree Air Act, with the partnerships functioning as the grassroots infrastructure necessary to pressure legislators to make those meaningful tobacco control policy changes

Creating a Functional Statewide Coalition

Another important change that came began at the 2005 statewide conference was the reestablishment of a statewide tobacco control coalition. In 2003, Tobacco Free Iowa, a statewide coalition that had been in place for nearly a decade was defunded by the Robert Wood Johnson Foundation and died, leaving the state of Iowa without a functioning statewide tobacco control coalition.

After the 2005, conference former members of Tobacco Free Iowa and representatives of Iowa’s community partnerships worked to develop what became the Iowa Tobacco Prevention Alliance (ITPA), a 501(c)3 tax exempt educational organizations, guided by a strategic plan created in collaboration with Division of Tobacco Use Prevention and Control. ITPA was charged with being the lead agency to work to increase the state excise tax on tobacco products, as well as to serve as the lead agency to coordinate and implement a cohesive public education campaign to increase the number of workplaces and public places that were smokefree.²¹⁶ These initiatives came to fruition in 2007 and 2008, respectively.

The Iowa Comprehensive Tobacco Prevention, Control and Treatment Strategic Plan, 2007-2010

After the creation of the Iowa Tobacco Prevention Alliance, Iowa tobacco control and prevention advocates began a three part strategic planning process to improve tobacco control and prevention effort in Iowa (Table 53).

<u>Phase</u>	<u>Activity</u>	<u>Date</u>
Phase I	Assessment of Tobacco Control in Iowa	
Phase II	Four Year Strategic Planning	August 2006
Phase III	First Year Operation Planning	September 2006

Phase I of developing the Iowa Comprehensive Tobacco Prevention, Control and Treatment Strategic Plan consisted of an assessment of tobacco control in Iowa by organizations particularly active in tobacco control in Iowa (“Iowa Partners”) (Table 54). The survey was designed to elicit opinions, perspectives, and recommendations pertaining to the four goals areas of Iowa tobacco control movement: eliminating exposure to secondhand smoke, preventing the initiation of tobacco use by youth, access to cessation resources for adults and youth, development of a statewide infrastructure for tobacco use prevention.²¹⁶ Results of the surveying were used to develop a four year strategic plan.

In Phase II Iowa Partners (Table 54) met in August 2006 to develop a four year strategic plan using the information from the survey. The strategic plan developed by the partner organizations outlined gaps in the four goal areas discussed above, objectives to address the gaps, and target populations that needed to be involved to achieve each objective. (Table 55 is a summary of components included in the strategic plan.) Gaps that needed to be addressed included the lack of an effective statewide coalition, lack of funding for tobacco control, preemption of local ordinances, too few programs to promote smokefree environments, and inadequate funding for cessation.²¹⁶

Phase III, the first year operation planning, started in September 2006, when the partner organizations met for a one day planning session to develop a first year operation plan to begin the implementation of the full strategic plan, the Iowa Comprehensive Tobacco Prevention, Control and Treatment Plan.²¹⁶

Iowa tobacco control saw significant results under the comprehensive strategic plan including the passage of a \$1 increase in the tobacco tax in 2007 and the passage of the Iowa Smokefree Air Act in 2008.

Conclusions

The Iowa Division of Tobacco Use Prevention and Control, modeled after the Florida Tobacco Pilot Program, was created with a heavy youth focus at the insistence of tobacco industry-favorable legislators who controlled the Iowa General Assembly. Tobacco control advocates were able to convince legislators to define youth as people up to 24 years old and otherwise conceded to the youth-focused program with the hope of later interpreting the statutes created by HF 2565 broadly to allow for programming directed at adults. Advocates were correct in assuming that they would be able to interpret statutes broadly, and have been able to allow for cessation services for adults Iowans.

Despite calls by Republican legislators for a youth-focused program based on the Florida model, JEL Iowa continually came under-fire from Republican legislators who argued that the edgy counter-marketing messaging based on the Florida truth campaign was a waste of state funds, some even arguing that the JEL program was an inappropriate use of state dollars. Although legislators have had negative reaction to the program, the JEL counter-marketing campaign won numerous advertising awards, and during periods when funding was high, smoking rates among youth fell.

Funding to the Tobacco Division has fluctuated over time. In 2002, the tobacco program budget was cut by 40 percent in a partisan effort led by House Appropriations Committee Chair Dave Millage (D-Scott). Advocates attempted to prevent the funding cut, but were unsuccessful. From 2003 through 2008, tobacco control allocations from the Iowa legislature remained between \$5 and \$6 million, during which time advocates failed to create a coordinated campaign to secure tobacco control funding. After reorganization of advocates, a process which began in 2005 and led to the creation of the Iowa Tobacco Prevention Alliance and a comprehensive strategic plan for tobacco control in Iowa, advocates were able to push for a \$1 per pack increase in Iowa's cigarette tax and subsequently secure a portion of that revenue for tobacco control. In 2009, Iowa faced a budget shortfall that resulted in cuts to the budgets of all Iowa programs. Advocates were successful in ensuring that the tobacco control program did not receive a disproportionate cut compared to other Iowa programs. Still, funding to Iowa's tobacco program falls well below the CDC recommended level.

Table 54: Organizations surveyed to assess Iowa Tobacco Prevention and Control

American Cancer Society American Heart Association American Lung Association CAFE Iowa CAN Horn Memorial Hospital Iowa Attorney General Office Iowa Department of Public Health Iowa Tobacco Prevention Alliance Just Eliminate Lies New View Proteus Quitline Iowa SIEDA Tobacco Use Prevention and Control University of Iowa Youth & Shelter Services

Table 55: Goals, gaps, objectives, and strategies included in the Iowa Comprehensive Tobacco Prevention, Control and Treatment Strategic Plan, 2010-2007²¹⁶	
<i>Goal: Development of a Statewide Infrastructure for Tobacco Use Prevention and Control</i>	
<u>Gaps:</u>	
Lack of consistency in direction and messages	
No effective statewide coalition	
Lack of funding	
Lack of collaboration and communication among partners	
<u>Four Year Objective:</u>	<u>Four Year Strategy:</u>
Develop and sustain a statewide tobacco prevention and control coalition	The Iowa Tobacco Prevention Alliance (ITPA) will develop annual operation plans that will define roles and responsibilities of members in advocating for comprehensive tobacco control programs.
	ITPA will design a communication process to facilitate information sharing, coordination, and collaboration between ITPA members and local programs.
	ITPA will develop and implement a strategic plan to ensure its sustainability, financial stability, and capacity to support the long range plan.
Increase the state excise tax on tobacco products	Educate and advocate with policy/decision makers and the public on the impact of tax increases on tobacco use and health care costs in Iowa. Mobilize statewide partners and the grassroots network to secure support for tobacco tax increases.
	Educate and advocate policy/decision makers and then public to secure support for adequate funding for a comprehensive tobacco control program.
Goal: Eliminate Exposure to Secondhand Smoke	
<u>Gaps:</u>	
Need to address preemption of local ordinances: build consensus between the statewide verses local effort on how to strategically eliminate preemption; need a stronger grassroots advocacy network.	
Need a stronger statewide tobacco free law: build consensus among all partners in Iowa and build a stronger statewide grassroots network	
Need more local activities promoting the elimination of secondhand smoke. Iowa movement lacks the grassroots strategy to promote SHS efforts. Need to diversity support to all regions in the state.	
Need to promote a social norm change in Iowa that does not tolerate secondhand smoke in any public places and work places.	
Need to educate our grassroots network on effective smokefree laws. Need more local activities promoting the elimination of secondhand smoke. Also need to educate the public and elected official on the health effects of secondhand smoke and the need for smokefree laws.	
Insufficient funding to support a statewide secondhand smoke media/education campaign for the general public.	

Table 55: Goals, gaps, objectives, and strategies included in the Iowa Comprehensive Tobacco Prevention, Control and Treatment Strategic Plan, 2010-2007²¹⁶

<u>Four Year Objectives</u>	<u>Four Year Strategy</u>
Increase the number of workplaces and public places that are smokefree	Educate all Iowans on the harmful effects of secondhand smoke and mobilize grassroots supporters to advocate for voluntary smokefree policies.
	Advocate and educate policy/decision makers, business owners, and the public in order to secure support for state legislation to restore control to communities to allow passage of local smokefree ordinances.
	Advocate and educate local policy/decision makers, business owners, and the public in order to secure support for passage of local smokefree ordinances.
	Educate all Iowans on the harmful effects of exposure to secondhand smoke and mobilize grassroots supporters to advocate for passage of a model comprehensive statewide smokefree law.
	Educate policy/decision makers and candidates on the harmful effects of exposure to secondhand smoke and pass a model statewide smokefree law.
Goal: Increase Cessation of Tobacco Use by Iowans	
Gap:	
Lack of provider involvement in promoting cessation with their patients	
Lack of insurance coverage for cessation	
Inadequate funding for the state cessation program	
<u>Four Year Objectives</u>	<u>Four Year Strategy</u>
Increase access to cessation resources for Iowans	Educate and advocate for large Iowa employers to purchase private insurance carrier comprehensive tobacco cessation coverage as well as reimbursement to health care providers for brief cessation interventions.
	Increase awareness and participation in cessation efforts of health care provider education institutions (e.g., medical, dental, nursing, etc.) and practicing health care providers.
	Educate and advocate policy/decision makers and candidates on the need to increase access to and promote effective, comprehensive tobacco cessation services (e.g., NRT, cessation counseling).
Goal: Preventing the Initiation of Tobacco by Youth	

Table 55: Goals, gaps, objectives, and strategies included in the Iowa Comprehensive Tobacco Prevention, Control and Treatment Strategic Plan, 2010-2007²¹⁶	
Need a tobacco tax increase to fund: JEL/Counter-marketing aimed a middle school students, local assessment/evaluation, Life Skills – other evidence based curriculum	
Greater enforcement and enactment of tobacco-free campuses – adopting a model policy	
<u>Four Year Objectives</u>	<u>Four Year Strategy</u>
Increase the proportion of tobacco free campuses at schools, colleges and universities; including all buildings, grounds, vehicles and school events	Meet with academic and education associations and institutions to discuss the endorsement of model tobacco free campus policies.
	Ensure access and availability of cessation and cessation aides for all students, staff and individuals affected by change in school policy.
	Advocate for, and educate about the benefits of tobacco free environments for youth in order to secure support from students, school personnel, policy/decision makers and the public for passage of enforceable tobacco free schools laws.
Reduce youth initiation of tobacco use	Increase funding for counter-marketing to at least the CDC 1999's recommended minimum of \$2.8 million or \$1.00 per capita so as to include: reach all 99 counties, ensure messages are heard and seen repeatedly by youth.
	Increasing funding for evidence-based curricula in the schools to at least CDC 1999's recommended minimum of \$2.7 million or \$4.00 per student.

The 2002 cut in funding to the JEL program, and subsequent failure to increase funding to the program as the Tobacco Division budget increased, has directly affected perception of the JEL program by Iowa youth and smoking rates of Iowa youth. Through the tobacco tax increase in 2007, funding was however increased for cessation, a goal under the 2007-2010 strategic plan.

Advocates were able to secure a significant victory in 2004 though legislatively requiring that the tobacco division remained a separate division within its own director. That victory led to the hiring of Bonnie Mapes who was integral to bringing advocates together and creating a unified tobacco control front, working under a specific plan. The development of ITPA and creation of the 2007-2010 strategic plan began a process that eventually led to significant policy changes in the following years (See “Tobacco Control Renaissance”).

CLEAN INDOOR AIR AND PREEMPTION (1997-2008)

Preemption?

In 1997, Sen. Johnie Hammond (D-Story) and Rep. Minnette Doderer (D-Johnson) requested a formal opinion from the Iowa Attorney General Tom Miller to determine whether Iowa Code chapters 142B and 453A preempted all local ordinances related to smoking or tobacco, or whether the Code only prohibited ordinances “inconsistent with state law.”²¹⁷ As in most states, an Attorney General’s opinion does not act as the final word on a subject, but is “given respectful consideration by courts addressing the same issue.”²¹⁸

Shortly before the opinion request, Serge Garrison, a former R.J. Reynolds lobbyist who became the contract lobbyist for the AHA, ALA, and ACS, in 1995, explained to the voluntary health organizations that he did not believe that the preemption language included in the 1990 Clean Indoor Air Act was as strong as Iowans had believed. Garrison had drafted the language for the clause in 1990 as a lobbyist for RJR⁹⁰ and likely knew that the industry was pushing for more explicit language than the General Assembly had actually passed in the 1990 bill. As a result, Senator Hammond (D-Story), who had worked closely with the voluntary health organizations in the past, requested the Attorney General’s opinion.

Solicitor General Elizabeth Osenbaugh of the Iowa Attorney General’s Office replied to the two legislators. Osenbaugh explained that as a matter of policy, the Attorney General’s Office supported local regulation of smoking and believed that the General Assembly did not preempt all local legislation pertaining to smoking. However, Osenbaugh also explained that the Attorney General’s Office had made strong public statements during legislative debate about preemption, and as a result felt it was inappropriate to issue an official opinion on the question.²¹⁷

It is not clear how the information about the Attorney General’s unofficial reading of the Iowa Code was disseminated, however in 1999 Iowa localities began to work toward passing local clean indoor air ordinances without any legislative changes made to Iowa Code 142B or 453A.

Local Ordinances

Ames

In 1999, the ACS, the Ames Mayor's Youth Committee (a group of seventh- through twelfth-grade students who met bi-monthly to address concerns of youth people living in Ames, particularly substance abuse and violence prevention²¹⁹) and Youth and Shelter Services, Inc. (an Ames based organization that, among other things provided prevention, education and treatment for children and youth as well as advocated on their behalf²¹⁹), formed the Ames Tobacco Task Force. The Task Force was formed to address the fact that communities and states across the United States were passing strong clean indoor air ordinances and laws, but Iowa had only a weak state law that was a decade old and provided little protection to Ames citizens, despite increased evidence and awareness of the deleterious health effects of tobacco. Members of the Task Force worked to develop a proposal for the City Council for a 100 percent smokefree ordinance that covered any establishment that served food.²²⁰

Developing the Language for the Ordinance

As results of criticism by George Belitsos, co-chair of the Ames Tobacco Task Force and founder of Youth and Shelter Services, Inc., about poor Synar compliance in Iowa as well as a question by a constituent about smokefree policies, Herman Quirnbach, an Ames City Council member, decided to take a proactive stance on smoking in Ames. In early 2000, Quirnbach, with the support of fellow Council member Judi Hoffman, proposed that the City Council pass a smokefree restaurant (defined as an establishment that received 50 percent or more of its revenue from food sales²²¹) ordinance,²²² making Ames the first town to consider a local clean indoor air law in Iowa. (At the time, in 2000, 65 percent of Ames restaurants were already smokefree²²¹.) The Council referred the proposal to the City Attorney, John Klaus, to determine whether an ordinance would be within the authority of the council given the "inconsistent" language in the 1990 state smoking restriction law. While Klaus reviewed the possibility of passing a clean indoor air ordinance, George Belitsos authored a letter to the editor in the *Ames Tribune* in support of a clean indoor air ordinance. Belitsos' letter spurred an outpouring of letters to the editor both in support of and against an ordinance. The letter was the beginning of a large amount of discourse about the proposal; as publicity grew for an ordinance so did pushback.²²² Organizations in Ames began to take public positions on passing an ordinance. Health organizations such as McFarland Clinic's Board of Directors and the Mary Greeley Medical Center Executive Committee of the medical staff and Board of Trustees supported a clean indoor air law, while the Ames Chamber of Commerce's Board of Directors stood in opposition.²²³

With talk circulating about the potential for a local clean indoor air ordinance in Ames, Senator Johnnie Hammond (D-Story), the Senator representing Ames, requested a clarification of the informal opinion handed down in 1997 from the Attorney General's Office. During the Attorney General's Office's time of deliberation, the Task Force and City Council moved forward with considering a clean indoor air ordinance.

The Ames' City Attorney's review of the legality of passing a local clean indoor air ordinance took many months, however in September 2000 Klaus determined that it would be

acceptable for the council to pass such a law. Following Klaus' determination that a clean indoor air ordinance would be acceptable, the Ames City Council voted unanimously on September 12 for Klaus to draft language for Ames' clean indoor air ordinance by their October 10 meeting. Because of the contentious nature of the clean indoor air proposal, the City Council also voted to have the Center for Creative Justice, an Ames-based organization that specialized in conflict resolution, to manage public comment surrounding the proposal and to act as a moderator between the opposing interests in hopes of developing language for an ordinance that would suit health interests and restaurant owners, alike.²²⁴

With news of the possibility of a clean indoor air ordinance in Ames, the National Smokers Alliance (NSA), a national organization created for Philip Morris by the public relations firm Burson-Marsteller in 1993 to combat the rising number of clean indoor air ordinances being passed at the local level, became involved.^{225, 226} In particular, several months prior, Philip Morris used the NSA to lobby against and help to undermine a local clean indoor air ordinance in Duluth, a town in neighboring Minnesota.²²⁷

The NSA sent a letter to Steve Goodhue, a member of the Ames City Council, and John Klaus, the City Attorney, arguing that the proposed ordinance violated state law because of preemption.²²⁸ Renee Giachino, the person corresponding on behalf of the NSA, argued that Iowa Code Section 142B's provisions superseded local laws, communicating her interpretation that under the code business owners had the right to designate smoking areas. Giachino encouraged Council members "to remain mindful of the constitutional guarantees for equal protection and due process granted under federal and state law to the business owners in Ames."²²⁸ Equal protection and due process claims have been used – generally without success – by the tobacco industry to fight local clean indoor air laws.¹⁰⁵ Despite the efforts by the NSA, development of the language for the Ames ordinance continued.

Between September 12 and October 8, the Center for Creative Justice held three closed-door meetings with restaurant owners' representatives and representatives of the Ames Tobacco Task Force. Each meeting was contentious and no consensus language was reached between the opposing sides.²²⁹ Additionally, the private nature of the meetings created further contention around the ordinance proposal because the public felt shut out of the process.²²²

While the Center for Creative Justice held private meetings, the Ames Tobacco Task Force made an effort to involve the entire community in discussions about the ordinance. In October the Task Force hosted a public forum with a panel that consisted of a wide array of local citizens to provide different perspectives about the clean indoor air proposal. The speakers included Arne Hallan the chair of the Department of Economics at Iowa State University (Iowa State University is located in Ames, Iowa), Fred Miller, a respected business owner who owned all of the Pizza Hut restaurants in Ames (which he had voluntarily made smokefree years before the smokefree ordinance was discussed), and Kirk Daddow, a teacher and football coach at a local high school.²²²

The Ames Tobacco Task Forces used the forum as an opportunity for public education and member recruitment to expand support for the ordinance. Task Force members distributed literature that described the harmful effects of secondhand smoke as well as flyers that allowed

community members to provide their contact information to the Task Force if they were interested in joining the fight for the clean indoor air. Literature distributed by the Task Force particularly emphasized the harmful effect of smoking on children.²²¹

In the public forum, Fred Miller suggested that the ordinance not only apply to restaurants, but also be applied to bars to provide a “level playing field” between the two different kinds of establishments. This position was surprising to the Task Force because prior to the forum Task Force members did not know whether Miller was in support of any clean indoor air ordinance, despite his restaurant’s policy.²²² Inclusion of bars under the ordinance was a change that other restaurateurs supported. Task Force members endorsed the restaurant owners’ suggestion and requested that the City Council extend the proposed law to bars.²²⁹

On October 10, by a unanimous vote, the Ames City Council accepted the expansion of the proposed smoking ordinance to include bars,²³⁰ with an exemption for any establishment that received 10 percent or less of their revenue from food sales. Although the expansion was in some respects a compromise between restaurant owners and the Ames Tobacco Task Force, it was not met without opposition from some restaurant owners who did not agree with an expansion, bar owners who would be covered under the expanded law, and citizens who did not want any clean indoor air ordinance. Protesters packed the City Council meeting, hoping to prevent the smoking ordinance’s expansion.²³¹ City Council members then began receiving a flood of emails on a daily basis with citizens expressing their opinions of the proposed ordinance.²²²

At the beginning of November, City Council member Sharon Wirth arranged a meeting between the Council and Ames citizens from the hospitality industry, specifically Bob Cummings and Rich Johansen, two Ames restaurant owners, to further discuss a compromise.²²² Representatives of Ames restaurant and bar owners made a “one-time compromise” offer regarding the proposed clean indoor air ordinance. Members of the hospitality industry said they would back the proposed ordinance if it were changed from a comprehensive smokefree ordinance to one which included hours provisions allowing smoking after 8:30pm in restaurants, bars, and taverns that received more than 10 percent of their revenue in food sales.²³²

Local representatives of the American Cancer Society insisted that the Task Force refuse the compromise. However, after a split vote, the Ames Tobacco Task Force accepted the restaurant and bar owners’ deal (Table 56). Members believed that while the hour provisions would allow smoking after 8:30pm, most restaurants would become completely smokefree because with the exception of two restaurants in the city that were open 24-hours, and two that were open until midnight (but were already smokefree), most Ames restaurants closed their kitchens at 9pm would be unlikely to allow smoking for only 30 minutes. Task Force members believed that the compromise language for truck stops and bowling allies were acceptable because there was only one of each in the city. They anticipated that bars would allow smoking after 8:30pm, but accepted that exemption because it was not their original intent to include bars under the clean indoor air ordinance.²³³

Table 56: Agreed upon provisions under the Ames compromise²²¹
<p>1. Restaurants, bars, and taverns shall be non-smoking from 6am through 8:30pm daily. At 8:30pm, these establishments may designate a smoking are in compliance with state law.</p> <p>Bars, and taverns are exempt if food sales are 10% of gross sales or less. In the case of food served on premise from outside vendors, these sales are to be included in food sales and gross sales.</p> <p>Should an establishment decide, on a consistent and regularly scheduled basis, to terminate food sales prior to 8:30 PM, these establishments may begin to allow smoking at the scheduled time.</p> <p>Outdoor seating areas will be considered seating areas if food is served.</p>
<p>2. Truckstop establishments are allowed to establish an unrestricted smoking are that is fully enclosed and has a separate ventilation system. Should the establishment later enlarge the dining area, no expansion can be made to the smoking area.</p>
<p>3. Bowling alleys shall be non-smoking from 6am through 6pm. After 6pm, these establishments may designate a smoking are in compliance with state law. Due to specific league play, the time to allow smoking on Thursdays is advanced to 3pm. Bowling alleys are allowed to establish an unrestricted smoking area that is enclosed and has a separate ventilation system.</p>
<p>4. Common areas of hotels and motels shall be smokefree.</p>
<p>5. A Smokefree zone of 15 feet at the main entrance/exit of all restaurants, bars, taverns, truckstops and bowling alleys shall be maintained except where adjacent establishments preclude such zones.</p>
<p>6. Customers under 18 years of age are not allowed in smoking areas.</p>
<p>7. An ordinance developed from these guidelines shall be effective no earlier than six months following enactment. Diligent enforcement is expected.</p>

Pushing for hours provisions was a common tactic promoted by the tobacco industry to weaken smokefree efforts. Americans for Nonsmokers Rights and other national technical assistance and health organizations consider hours provisions to be a comprise that is "unacceptable and should be actively opposed" when passing clean indoor air laws.²³⁴ There are four primary problems with passing a law with hours provisions. Hours provisions fail to provide meaningful protection against secondhand smoke. Chemicals in secondhand smoke linger in buildings even after active smoking has ended, meaning a person in a building that allows smoking during certain hours is still exposed to chemicals in secondhand smoke during times that smoking is not permitted. Secondly, hours provisions often result in lower compliance with a clean indoor air law. Physical cues, such as ashtrays and discarded cigarette butts, suggest that a building allows smoking. Hours provisions also make compliance checks more difficult. Lastly, hours provisions are often included with the intention of prohibiting smoking only when minors are present. Framing smoking as a youth issue, rather than a health issue that affects everyone is a tobacco industry tactic to undermine smokefree laws. Furthermore, in building hours provisions youth, are still exposed to lingering secondhand smoke.²³⁴

The compromise also included another common provision promoted by the tobacco industry, separately ventilated rooms at truck stops and bowling allies. Like hours provisions, ventilation exemptions are among compromises that national technical assistance and health organizations advocate should never be accepted. Separately ventilated smoking rooms do not protect patrons in the same building as a smoking room from secondhand smoke. The American for Nonsmokers' Rights explains, "Unless a room is completely separated with no ventilation, doors, windows, entryways, or openings of any kind, secondhand smoke from an enclosed, separately ventilated room will infiltrate into smokefree areas."²³⁴

After the endorsement of the Ames Tobacco Task Force, the Ames City Council unanimously adopted the new language endorsed by the Task Force into the proposed ordinance. Former Council member Herman Quirnbach explained in 2009, “I brought the compromise to a meeting of the proponents ... and said, ‘Look, this is a darn good thing. It isn't everything we wanted, but it's the first in Iowa. Let's take what we can get and declare a victory.’²²²”

The compromise was a deal breaker from for the ACS.²²² Accordingly, the ACS publicly opposed the proposed language of the Ames ordinance.²²² The compromise also changed the position of the Ames Chamber of Commerce, which went from opposition to neutral on the ordinance.²²²

On November 14, 2000, the same day the compromise ordinance language was adopted, Attorney General Tom Miller completed his review of Iowa Code 142B and issued a formal opinion that stated that localities were not preempted by state law under Chapter 142B. In his opinion, Attorney General Miller explained, “A city ordinance enacted to prohibit smoking in any public place, as defined by Iowa Code 142B.1(3), would not be inconsistent with or in conflict with the Iowa Code chapter 142, and would not be preempted.”²³⁵ A publication later released by the Attorney General’s Office explained:

Generally speaking, Iowa’s tradition of “Home Rule” means that cities and counties may build on state laws through local ordinances intended to shape the law to local needs, desires, and conditions. The state law may set one standard of conduct relating to public safety, for example, but a given locality may feel that an even higher standard is appropriate for the protection of its local citizens, and accordingly set a higher standard by ordinance.²¹⁸

The official opinion by the Attorney General gave momentum to efforts in Ames and other Iowa localities that were contemplating passing smokefree laws.

Passage of the Ordinance

After a year of discussing language for a smokefree restaurant ordinance, at the beginning of 2001 the Ames City Council began the process of passing the law, which had to pass three readings by the City Council to go into effect.

In January 2001, the President of the Midwest Board of the ACS contacted its member in Ames, requesting that they urge the City Council to vote down the ordinance.²²¹

Despite advocacy by the ACS, on February 13 the compromise smoking ordinance passed its first reading in the Ames. Bar owners in attendance lobbied for an increase in the provision of the proposed ordinance that only granted exemptions from the law to bars that brought in less than 10 percent of their total revenue from food sales.²³⁶ However the threshold was not changed.

The ACS, joined by the AHA, ALA and members of Tobacco Free Iowa, continued to voice opposition to the Ames smoking ordinance arguing that the “compromise” ordinance was,

in fact, a victory for the tobacco industry. Smokefree advocates explained that having restricted times still put employees and patrons at risk during smoking times, that smoke lingered in enclosed spaces up to two weeks even after active smoking ended, and that hours provisions made it more difficult to enforce the law. George Belitsos, co-chairman of the Ames Tobacco Task Force was displeased with the voluntary health organizations' criticism, arguing that Ames was the first community to pass a restriction and should be commended instead of criticized.²³⁷

Despite the urging of Iowa's voluntary health organizations and other tobacco control advocates, on March 6, 2001, after months of discussion, the Ames City Council passed compromise clean indoor air ordinance (Table 56). In addition to the compromise language developed by restaurant owners and the Ames Tobacco Task Force, the ordinance included a provision that prohibited minors from any place where smoking was allowed. The ordinance also provided penalties, but included no enforcement procedures to ensure that establishments were in compliance with the new law.²²¹

In an interview in 2009 former Ames City Council member Herman Quirnbach explained that the opposition of the American Cancer Society was integral to the passage of the ordinance:

It actually turned out to be very useful to have the Cancer Society opposed to it. We've got the Cancer Society over here saying, "You're not going far enough," and you got the smokers over here saying, "You're going way too far," and we're in the happy middle – the Goldilocks solution. So that turned out to be quite useful.²²²

The ordinance took effect on August 1, 2001,²³⁸ in order to allow bar and restaurant owners to prepare for the new restrictions and before students at Iowa State University returned to school, in order to prevent any confusion about the law.²²²

Implementation of the Ames Restaurant Ordinance

In anticipation of the Ames clean indoor air ordinance going into effect, the Ames Tobacco Task Force launched a public awareness campaign that highlighted the dangers of secondhand smoke and explained the provisions of the clean indoor air ordinance. The campaign was made possible by a \$5,000 grant from the Centers for Disease Control.²³⁹ The Task Force created signs to post in areas that were smokefree and signs that explained that there was no smoking with 15 feet of entranceways and exits of smokefree restaurants and bars.²⁴⁰ Additionally, the task force held an educational meeting for business owners in preparation for implementation.²³⁹

Implementation was relatively quiet, until a lawsuit backed by Philip Morris was filed in the fall of 2001 (described below).

Effect of Ames Ordinance

The passage of the Ames clean indoor air ordinance created momentum for other localities to pass clean indoor air measures in their own communities. As expected by the Task Force, many restaurants in Ames became completely smokefree. Still, the Ames ordinances' hours provisions, smoking rooms, and lack of enforcement provisions set poor precedent for other localities interested in passing laws. The Tobacco Task Force failed to effectively convince their own members, Ames citizens, and Council members that public health was more important than appeasing the business community. The Ames compromise may have applied to more establishments than the Task Force sought out to, however the ordinance guaranteed no full protection from secondhand smoke, in any establishment, for anyone in their community. The Ames experience provided a guide of compromises that were unacceptable for Iowa City, Iowa, whose local coalition, with the help of the American Cancer Society, passed Iowa's first 100 percent smokefree restaurant ordinance the following year.

Iowa City

Clean indoor air policies in Iowa City began out of concerns about youth access to tobacco products. The Johnson County Coalition for Tobacco Free Youth was founded in 1997 by Eileen Fisher,^{190, 241} a mother of high school-aged children, who became concerned about the rate of youth smoking in her community¹⁹⁰ and the proximity of establishments that sold tobacco products to schools.²⁴¹ The coalition began by working to enforce state laws on underage smoking at the local level. Specifically, Fisher was able to encourage the enforcement of a law already on the books, that not only fined individual clerks that sold products to underage customers but also fined permit holders at the establishments that sold to youth (see "Youth Access").¹⁹⁰

The coalition shifted its focus in 1999 after years of urging by Christopher Squier, an oral pathologist and professor in the University of Iowa School of Dentistry in Johnson County. Squier would sporadically attend the Johnson County Citizens for Tobacco Free Youth meetings and explain that focusing solely on youth access was not only not the most effective tobacco control strategy, but also an industry tactic to divert efforts from more meaningful tobacco control measures, particularly raising the price of tobacco and passing clean indoor air policies.¹¹⁹ The shift was further facilitated by a conference on pulmonology at the University of Iowa later that year that had former US Surgeon General C. Everett Koop scheduled to be the keynote speaker.¹¹⁹

Restaurant Proclamations

In February 1999, Eileen Fisher was asked by physician Kemp Kernstein, who was coordinating the conference C. Everett Koop was scheduled to attend in March 1999, to assist in involving the Johnson County community in the conference rather than limiting the conference to doctors and other health professionals. In addition, Kernstein called on Fisher to work with the Johnson County Citizens for Tobacco Free Youth to pass clean indoor air restaurant ordinances in Coralville and Iowa City, two Johnson County communities, by the time of Koop's arrival the following month.¹¹⁹

Fisher discussed the possibility of passing two clean indoor air ordinances with the other members of the Johnson County coalition and they agreed that passing the ordinances in less than a month was likely to be too difficult to accomplish. Instead, Christie Sheetz, a representative of Mercy Hospital in Iowa City and a member of the coalition, suggested that they use their relationships with the City Councils of Coralville and Iowa City and the Johnson County Board of Supervisors to encourage them to sign a proclamation asking all restaurants in their community to go smokefree for the weekend of the conference. The group was successful, and later that month the local governments passed smokefree restaurant proclamations.¹¹⁹

To bring awareness to the proclamations, the coalition worked with the County Board of Health to create packets with copies of the proclamation and a list of reasons restaurants should go smokefree. Coalition members and volunteers hand delivered the packets to every restaurant (about 150) in Johnson County. The conference and proclamation campaign gained local media attention for the Johnson County Citizens for Tobacco Free Youth and clean indoor air policies. As a result of the coalition's efforts in coordination with the conference, five Johnson County restaurants became smokefree in March 1999.¹¹⁹

Following C. Everett Koop's visit, local media asked Eileen Fisher how many Johnson County restaurants were totally smokefree. This prompted the coalition to survey every restaurant in Johnson County about their policy on smoking. With the results of the survey, the coalition created a smokefree dining guide in 1999. Coalition members distributed the dining guides to local hotels, visitor centers, libraries and other places frequented by the public. The printing of the dining guides was made possible through funding by Mercy Hospital in Iowa City, a member of the coalition.¹¹⁹

The Johnson County Citizens for Tobacco Free Youth's work surrounding the conference led the coalition to come to the decision that passing a local smokefree restaurant ordinance would be their new priority. In 1999 Iowa City began their clean indoor air ordinance campaign. This campaign began before Ames began consideration of an ordinance, however the passage of an ordinance in Iowa City took longer due to an extensive public education surrounding smokefree air and recruiting community support for the passage of a strong restaurant ordinance.

Iowa's Second Local Ordinance

In December 1999, the Johnson County Citizens for Tobacco Free Youth created a Smokefree Taskforce to begin a campaign for a smokefree restaurant ordinance in Johnson County. The Smokefree Taskforce had the support of the Johnson County Department of Public Health, the Mercy Community Health Partnership, MECCA (a local substance abuse agency), the Iowa City Community School District, and the school district-wide parent organization, Secondary Safety Committee; all organization that had contributed to the coalitions efforts on enforcing youth access laws.²⁴²

The following the month Johnson County Citizens for Tobacco Free Youth decided to change its name to the Johnson County Tobacco Free Coalition because they had moved beyond only youth-focused activities. That same month Christopher Squier attended the Iowa American

Cancer Society's regional meeting and asked representatives of the ACS for their assistance with passing a smokefree ordinance, which they agreed to provide to the coalition.²⁴³

In preparation for proposing an ordinance, the Smokefree Public Places Committee of the Johnson County Tobacco Free Coalition began to develop a campaign concept and debated the provisions that their proposed ordinance would contain in February 2000. The committee decided on the name Clean Air for Everyone (CAFE) because they found it clear, easy to say, and if they decided to focus exclusively on restaurants the name would have additional significance. In addition, they debated the pros and cons of passing a city or county-wide law, whether Coralville or Iowa City would be the better city in which to pass an ordinance, and whether or not to include bars or workplaces.²⁴⁴

CAFE began meeting with ACS representatives Threase Harms and Karla Wysoki the following month to develop the focus of their campaign. On the advice of ACS, CAFE chose to focus exclusively on restaurants when developing their ordinance in order to improve their chances of passing a strong restaurant law. Additionally, the group determined that a city ordinance in Iowa City would be the most politically and logistically practical option.²⁴⁵

Having determined the broad focus of their ordinance, CAFE members, in consultation with Threase Harms and Karla Wysoki, began to develop language for the law using the Americans for Nonsmokers Rights (ANR) "Clearing the Air" model ordinance as a baseline.¹¹⁹ In addition, the group identified Council member Ross Wilburn, a politically moderate member of the Council, to be their champion for the ordinance.¹¹⁹

Throughout the summer the group worked on recruiting new members, including members of the Johnson County Medical Society and local representatives of the American Lung Association. Local dentists assisted by collecting names through petitions to build CAFE's grassroots database.²¹⁴ After months of developing their campaign, in September 2000 the group began discussions with the City Council.²⁴⁶

On October 2, 2000, while Ames was discussing their compromise, at the urging of CAFE, the Iowa City City Council voted unanimously to consider a clean indoor air ordinance.²⁴⁷ CAFE Johnson County hoped to pass a resolution that would end smoking in all Iowa City restaurants (defined as an establishment that generated 50 percent or more revenue from food sales).²⁴⁸ The City Council charged City Attorney Eleanor Dilkes with drafting an ordinance using the language proposed by CAFE as a model.¹¹⁹

With the smokefree restaurant ordinance on the City Council's agenda, CAFE began a public education campaign to increase their grassroots capacity and visibility that spanned the following year. CAFE mobilized youth to show their support for smokefree environments,²⁴⁹ they circulated petitions to demonstrate support for their ordinance to Council members,²⁴⁹ circulated and continually updated their smokefree dining guides developed originally during C. Everett Koop's visit to Iowa to highlight the benefits of having a smokefree restaurant and to develop relationships with restaurant owners.¹¹⁹

One particularly large endeavor organized by CAFÉ culminated in May 2001: a conference to educate interested citizens about the coalition and provide information about how to pass a local law, made possible by an \$18,000 grant from the American Cancer Society to CAFE Iowa. Speakers at CAFE's conference included University of California at San Francisco tobacco control expert Stanton Glantz (an author of this report), advocates from neighboring Wisconsin with experience in passing local clean indoor air ordinances, and Iowa Attorney General Tom Miller.¹⁹⁰

In addition to public education, each CAFE Johnson County member made their presence known to the Iowa City City Council. Each CAFE member was charged with developing a relationship with members of the Council. Members of the coalition met regularly with Council members to discuss the ordinance, provide them with information, and discuss changes and ideas. Additionally, CAFE members attended Council meetings on a regular basis over a two year period in order to show their continued support.²⁴¹

CAFE was able to garner the definite support of three of the seven Iowa City City Council members, including their champion Ross Wilburn, Dee Vanderhoef (a nurse and a smoker), and Irvin Pfab, for their proposed ordinance. On the other hand, CAFE believed that Council members Connie Champion, Michael O'Donnell, and Mayor Ernie Lehman would vote against the ordinance. As a result, they needed to secure the vote of Council member Steven Kanner.¹¹⁹

Kanner genuinely wanted an ordinance that covered all public places, something that CAFE had determined was not politically feasible. After talks with CAFE members, Kanner explained that he would lower his threshold and vote for language that defined restaurants as an establishment that received less than 35 percent of its revenue or more from food sales, again a threshold that CAFE did not believe they had the votes to pass.¹¹⁹

CAFE founder Eileen Fisher contacted state Senator Joe Bolkcom (D-Johnson, Policy Score: 10, Industry Contributions: \$0) with whom CAFE had built a relationship during its work in the county. Bolkcom agreed to contact Kanner to persuade him to vote in favor of adopting an ordinance with a 50 percent restaurant threshold.¹¹⁹

Over the course of a two hour conversation, Senator Bolkcom explained that there would be political fallout if Kanner did not support CAFE's ordinance. He explained that not only were CAFE members Kanner's constituents, who he would need for reelection, but that if he did not support CAFE's desired language that Senator Bolkcom would not support Kanner's reelection.¹¹⁹

On October 16, 2001, the Iowa City Council held a public hearing to consider the pros and cons of passing a smokefree restaurant ordinance and to discuss definitions of a restaurant for the purposes of the ordinance. At the public hearing CAFE coordinated the testimony of fifteen people, including six local physicians, on behalf of a restaurant ordinance. Five people spoke in opposition, three of whom owned restaurants in Iowa City.¹¹⁹ Despite the appeal by Senator Bolkcom and CAFE members, Council member Kanner proposed that the smoking ordinance define a restaurant as an establishment that derives 35 percent or more of its revenue

from food sales. To CAFE's surprise the 35 percent threshold became the consensus among the group, poisoning the ordinance for a first reading.¹¹⁹

At the first reading on November 27, 2001, tensions were high. The council had a two part vote: first, whether or not to pass a restaurant ordinance, and second, how to define a restaurant. During an hour long open comment session, restaurant and bar owners (whose establishments would likely be defined as restaurants under the law) made pleas for the council to vote against an ordinance, making common, but incorrect,²⁵⁰ claims that if passed, an ordinance would lead to financial ruin for their establishments. Other business owners threatened to back out of contracts that they had with the city for urban renewal projects if the ordinance was passed.¹¹⁹ Despite the pleas and threats by business owners Council members Kanner, Pfab, Vanderhoef, and Wilburn voted in favor of passing an ordinance as well as for a restaurant to be defined as an establishment that received 35 or more percent of their revenue from food sales. With the 4-3 vote, the proposal moved forward for a second reading.

The Iowa City ordinance was considered by the City Council at a second reading on December 11. During the second reading of the ordinance, the City Council agreed to consider a compromise proposal for an ordinance that defined restaurants as establishments that receive 50 percent or more of their revenue from food sales, with a decrease in the food revenue threshold to 35 percent in 2004. Council members Vanderhoef, Kanner, Pfab and Wilburn again voted in favor of an ordinance, as well as voted in favor of the compromise proposal for the definition of a restaurant.²⁵¹ The ordinance progressed to a third and final vote.

On January 8, 2002, Iowa City passed a clean indoor air ordinance using the compromise restaurant definition agreed upon in at the third reading. The law made an exemption for new restaurants and those making changes in their operation, for example changing from a restaurant to a bar, for one year (language developed by City Attorney Dilkes when drafting the initial ordinance).²⁵² As with the Ames law, the ordinance contained penalties, but no enforcement provisions.²⁵³ The ordinance passed again with the support of the four Council members who had supported the ordinance throughout the process.²⁵²

After the passage of the ordinance Mayor Ernie Lehman argued that it was a "bad ordinance" because the 50 percent threshold was arbitrary and was not in the best interest of public health.²⁵⁴ Immediately upon the passage of the ordinance, Lehman made a motion to expand the ordinance to apply to all establishments that prepared or served food on site; these attempts were not considered genuine, because advocates believed he knew that the council would not support an expanded ordinance.¹¹⁹

Implementation of the Iowa City Ordinance

The city made attempts to ensure that business owners were aware of the new law. Information about the ordinance was sent to restaurant and bar owners, as well as copies of an affidavit to apply for an exemption if applicable.²⁵⁵ The city also sent the police department a list of establishments that were exempt from the law. With the possibility of gaining an exemption in mind, some business looked for ways to circumvent regulations by reducing the

prices of food items, removing certain high-priced food items from their menus, or by eliminating food sales altogether.²⁵⁵

When the ordinance finally went into effect on March 1, 2001, some restaurant owners made claims in the media that they were saying goodbye to customers forever due to the smoking regulations. Others posted signs that read, “Effective March 1 smoking will no longer be permitted on our premises. We didn’t make this decision. The City Council did.” In addition, because neighboring Coralville did not pass a clean indoor air ordinance, some were convinced that Iowa City would lose business to their neighbor.²⁵⁶ Their fears were never realized.

As has been shown in many other cities,²⁵⁰ Megan Sheffer, a student at the University of Iowa later did a survey, published in 2005, on the financial impact of the ordinance for her Ph.D. thesis and found no economic impact of the Iowa City clean indoor air law on restaurants.¹⁹⁰

Conclusions

While CAFE Johnson County’s ordinance took over a year to pass from the time that they first approached the Iowa City City Council, their extensive public education campaign and close work with individual members of the City Council prevented the passage of an undermined ordinance as had occurred in Ames months before. However, the loose definition of restaurant, availability of exemptions, and limited focus still made it a weak model for other localities.

Philip Morris Bankrolls a Lawsuit Against the Ames Ordinance

In September 2001, owners of Cyclone Truck Stop, Wallaby’s, Dublin Bay, Café Baudelaire, Tradewinds Café, Whiskey River, and People’s Bar & Grill, establishments in Ames, sued the city of Ames for enacting and enforcing their clean indoor air ordinance. They argued that the law overstepped state law which, in their opinion, gave business owners the right to designate smoking areas in their establishments.²⁵⁷

At the onset of the lawsuit, the issue was framed as small businesses struggling against big government, until it was publicly announced that Philip Morris was paying the owners’ legal bills. The backing by Philip Morris was revealed by an Ames citizen who was suspicious of the restaurant owners’ challenge of the law after agreeing to the compromise ordinance and the fact that the law firm, Wasker, Dorr, Wimmer and Marcoullier, PC, which had tobacco industry contracts, was representing the business owners. The citizen called Wasker, Dorr, Wimmer, and Marcoullier, pretending to be a restaurant owner. He was then informed that Philip Morris was backing the lawsuit and subsequently tipped off the *Des Moines Register* which later confirmed Philip Morris’ funding and ran a front-page story.

Former Ames City Council member Herman Quirnbach explained in 2009, “The initial publicity on the filing of the lawsuits was this is the poor little business owners up against big bad City Hall—until about a week later it came out that Philip Morris was paying their legal bills, and then it was little City Hall against big tobacco.”²²²

The announcement of the backing of the Ames business owners by Philip Morris was a unique situation because the company was no longer able to employ the traditional tobacco industry strategy of quietly funding front groups with a better public image to do the fighting on their behalf.⁴⁴ After being exposed, Philip Morris USA spokesperson Bill Abshaw explained to the *Des Moines Register* on October 3, 2001, “We believe in business owner choice. As they made the request to us, we decided this meets our business objective. We think that our goals are mutual, and if there’s something we can do to help, we will.”²⁵⁸

The addition of Philip Morris USA as the financial backer of the Ames lawsuit worked to galvanize public health advocates that had previously opposed the weak Ames law because of the need to protect the option of localities to pass clean indoor air ordinances. Then Government Relations Director for the American Cancer Society, Therese Harms, a future director of the Iowa Tobacco Division, explained to the *Ames Tribune*, “We came back in because we thought this was an opportunity for us to rally with our coalition partners who believe that reducing people’s exposure [to secondhand smoke is an important goal].”²⁵⁹

Advocates came together because they realized the halting effect that a victory for the tobacco industry could have on the entire state²⁵⁹ and to publicize Philip Morris’ involvement in lawsuit. The Division of Tobacco Use Prevention and Control ran a \$16,000 newspaper media campaign publicizing Philip Morris’ funding of the Ames lawsuit (Figure 13).²⁵⁹ The department ran 2 to 3 ads in the *Ames Tribune*, *Des Moines City View*, and the *Iowa City Press Citizen*.¹⁴

The funding by Philip Morris USA also increased the number of plaintiffs in the lawsuit. Café Lovish, a local Ames restaurant, joined the lawsuit in mid-October. That addition brought the lawsuit to a total of eight businesses listed as plaintiffs in the suit fighting to repeal the Ames clean indoor air law.²⁶⁰

In October 2001 the Ames business owners and Philip Morris filed a motion to enjoin the Ames ordinance while the lawsuit was in progress.²⁶¹ On October 23, Judge Carl Baker ruled against the injunction.²⁶²

After the denial of an injunction, the plaintiffs filed a motion for summary judgment. The district court held a hearing on the motion, which then was denied. Additionally, in the same hearing Judge Baker issued a ruling that upheld the Ames ordinance on the merits based on the legal conclusions reached during his deliberation of the business owners’ motion for summary



Figure 13: JEL counter-marketing add highlighting Philip Morris' involvement in the Ames lawsuit

The text reads: Philip Morris is paying for a lawsuit against the city of Ames. Their mission is to overturn a city ordinance that protects the health of Iowans and our right to breathe clean air. Obviously, they believe their profits are more important than lives. So, the next time you hear Philip Morris say they’re “working to make a difference,” ask yourself what that difference really is.

judgment, and dismissed the plaintiffs' claims.²⁶³ Judge Baker ruled that state law did not preempt the passing of a smokefree ordinance in Ames. His opinion stated, "The Legislature has not specifically stated that smoking prohibitions cannot be the subject of local action."²⁶⁴

In response, the plaintiffs filed an appeal of the district court decision. In Iowa appeals are filed with the Iowa Supreme Court (Iowa's highest court). The Supreme Court can choose to hear the case or can transfer the case to the Iowa Court of Appeals.²⁶⁵ In March 2002, the Supreme Court agreed to hear the case. Because of the pending lawsuit, later that year the Ames Tobacco Task Force decided to suspend work to strengthen the Ames ordinance until the lawsuit was resolved²⁶⁶ (discussed below).

Tobacco Free Iowa

In 2001, when Ames and Iowa City were working to pass their local clean indoor air ordinances, Tobacco Free Iowa applied for a Robert Wood Johnson Foundation (RWJF) SmokeLess States grant. TFI applied for funding from RWJF to run a coordinated clean indoor air campaign, building off of the momentum toward local action in Ames and Iowa City.²⁴¹

TFI was successful, receiving a \$1 million SmokeLess States grant in March 2002.²⁶⁷ The Lung Association of Illinois-Iowa was the fiscal agent of the grant and with the funding TFI was able to hire five staff,²⁴¹ who coordinated public education about the dangers of secondhand smoke and the need for clean indoor air,²⁶⁷ as well as provided technical assistance to Iowa localities interested in passing clean indoor air policies in conjunction with the Attorney General's Secondhand Smoke Initiative (discussed below).

While other groups such as the Ames Tobacco Task Force halted their clean indoor air efforts when until the Iowa Supreme Court considered the Ames lawsuit, TFI charged ahead. In September 2002, TFI spokeswoman Clair Celsi announced that the group would be targeting Grinnell, Cedar Rapids, Cedar Falls, Waterloo and Des Moines,²⁶⁷ all of which had local advocacy capacity and community readiness.¹⁴

The Attorney General's Secondhand Smoke Initiative

The Iowa Attorney General's Office also continued work to encourage the passage of clean indoor air policies. In 2002 Bill Roach, Executive Officer in the Iowa Attorney General's Office, worked with Marilyn Lantz, also in the Attorney General's Office, to develop the Attorney General's Secondhand Smoke Initiative. The motivation for the initiative was to create a replicable model for passing local clean indoor air ordinances to facilitate community endeavors. To fund the initiative, the Attorney General's Office applied for funding from the American Legacy Foundation. The office was awarded \$97,000 from Legacy from 2002 to 2003.⁶⁴

Steve St. Clair, a lawyer in the Attorney General's office, drafted a model ordinance for distribution to communities interested in local action, heavily based upon the model ordinance made available by Americans for Nonsmokers' Rights.²⁶⁸ The Attorney General's Office, in conjunction with TFI, provided policy, legal, political, and organizational-structural support to

local groups interested in passing clean indoor air ordinances with the hope that they would be able to create the momentum to eventually have an entirely smokefree state.²⁶⁸

During this period (2002-2003) there was a tide of community activities supporting clean indoor air. Universities, schools, and correctional facilities were enacting smokefree policies, local organizations were creating guides to smokefree dining in their towns, and other local communities including Cedar Rapids, Grinnell and Coralville were considering local ordinances (Table 57).²¹⁸

In May 2003, Attorney General Tom Miller published *The Iowa Attorney General's Report on Secondhand Smoke*²¹⁸ to distribute throughout the state. The report highlighted the health risks of secondhand smoke, local action taking place throughout Iowa, information on how to create a local coalition, information about Iowa law (including the model clean indoor air ordinance), and information disputing claims of loss of business because of clean indoor air ordinances.²¹⁸

The report marked a high point in tobacco control in Iowa that was cut short with a surprising decision handed down by the Supreme Court the same month.

Table 57: Excerpt from <i>The Iowa Attorney General's Report on Secondhand Smoke</i> highlighting local activity across the state of Iowa through May 2003.
Ames / Ordinance. Ames was the first community in Iowa to pass a clean indoor air restaurant ordinance. Although the ordinance contains "red light / green light" time-of-day provisions not recommended by most clean indoor air advocates, Ames deserves great credit for being the first community in the state to achieve a wide-spread smoking ban in restaurants. The local coalition continues work on the issue including planning to strengthen the ordinance in the future.
Ames / Iowa State University Dorms. Beginning in the fall of 2002 all Iowa State University residence halls will be smoke-free. Smoking is still allowed outside of the residence halls and in some student apartments. University policy requires students to keep a reasonable distance from the smoke-free buildings when smoking. The ban was initiated by the student government and was voted on in the spring of 2002.
Battle Creek - Ida Grove / Tobacco Free School. In July 2002 the Battle Creek - Ida Grove school board adopted a tobacco free campus policy to go into effect September 1, 2002. Advocacy for the policy was generated by youth in the local Teens Against Tobacco Use (TATU) organization. Signs to aid in enforcement of the policy are being provided through the Ida County Community Partnership.
Burlington / Smoke Free School Proposed. The Burlington High School chapter of Students Against Destructive Decisions, SADD, in June, 2002 asked the school board to consider a policy which would prohibit smoking on school grounds, including sports venues, or in school district vehicles. School buildings in Burlington are currently smoke-free. The students collected 2,200 signatures of Burlington students and staff in support of the ban. A decision by the board is pending at the time of publication.
Cedar Falls / UNI Dorms. Dormitories at the University of Northern Iowa became completely smoke-free in the fall of 2002. The movement towards the policy began several years ago by a student advisory group to the Department of Residence.
Cedar Rapids / Ban in Taxi Cabs. As the Cedar Rapids Gazette said in a May 3, 2002 editorial, "Look at what happened with the smoking ban in taxis, now one year old. Opponents claimed it would hurt business and that customers and drivers wouldn't obey. Yet, as Wednesday's Gazette reported, it hasn't caused conflicts, business hasn't declined and cab owners say they have fewer burns in their upholstery." Discussion of the ban has led to mobilization of the community and increased youth involvement.

Table 57: Excerpt from *The Iowa Attorney General's Report on Secondhand Smoke* highlighting local activity across the state of Iowa through May 2003.

Cedar Rapids / Smoke Free Dining Guide. The Commit Tobacco Free Coalition of Linn County has published a "Smoke Free Dining Guide for Cedar Rapids" listing smoke free restaurants in the community. CAFE, a sub-committee of the coalition, has published an accompanying brochure "Clean Air For Everyone" that lists seven easy ways the public can get involved, i.e. sign a petition, talk to restaurant owners, send a letter to the editor etc.

Cedar Rapids - Linn County / Ordinance Discussion. Cedar Rapids and Linn County, Iowa are in the educational phase of a policy / ordinance campaign. The Cedar Rapids Mayor appointed a citizen task force to study the issue and make a recommendation to the Council. The Linn County Board of Health is also considering a county-wide secondhand smoke rule. Community forums are being conducted by the local CAFE organization and more than 4,000 signatures have been collected.

Cedar Rapids / No Smoking in Schools Enforcement. The local coalition sent letters to the 16 school Superintendents in Linn County asking for strong enforcement of smoking restrictions in the schools. In conjunction with this effort, they also sent educational materials to the school boards.

Cedar Rapids / Workplace Survey. CAFE in conjunction with the Linn County Health Department conducted a county-wide poll of employers to determine existing workplace smoking policies. Larger employers were found to have strong workplace smoking policies.

Clarinda / Correctional Facility. The Clarinda Correctional Facility put a tobacco ban within the secure perimeter of the facility. The ban went into effect April 1, 2002. Previously the institution didn't permit tobacco use inside cell houses but did allow inmates to smoke in the prison yards. Violations of the old smoking policy by inmates were resulting in longer prison terms due to the loss of "good time." These violations have declined since the adoption of the more comprehensive ban. Previously inmates were taking apart light sockets to light cigarettes in their cells which increased maintenance costs and presented safety risks to both inmates and staff. Facility physicians report fewer respiratory and asthma problems among inmates and staff since the new policy was instituted.

Creston / Tobacco Free School. In Creston the use of tobacco on school property is prohibited in school buildings, parking lots, athletic fields and vehicles. Students have aided school officials in enforcement.

Council Bluffs / Smoke Free Dining Guide. The Pottawattamie County Tobacco Prevention Coalition has created a smoke free dining guide for Council Bluffs restaurants. Restaurants listed will also be presented with a window sticker from the coalition thanking them for their smoke free status.

Davenport - Quad Cities / Smoke Free Restaurant Recognition Program. As part of a smoke free restaurant recognition program, Tobacco Free QC has published a smoke free dining guide for area restaurants. Smoke free restaurants also receive a certificate and window sticker to commend them for making this choice. These recognition packets are personally delivered to each food establishment. New editions of the dining guide will be published each year.

Davenport - Quad Cities / Speakers Bureau. Tobacco Free QC is in the process of creating a speakers bureau to provide education in the community regarding secondhand smoke. Presentation materials are being prepared for use by area doctors and other professionals.

Denison / Smoke Free School. The Denison School District has adopted a policy for a completely smoke free campus. The local TATU youth organization is planning to push for stronger enforcement of the policy by collecting cigarette butts at local football games to measure success. They are also pushing for other second-hand smoke initiatives in the community.

Des Moines - Four County Area. / Smoke Free Dining Guide, and Schools.

Table 57: Excerpt from *The Iowa Attorney General's Report on Secondhand Smoke* highlighting local activity across the state of Iowa through May 2003.

The Central Iowa Tobacco Free Partnership has created a smoke free dining guide listing 167 smoke free restaurants in the area. Release of the publication was the occasion for significant media activity including a kick-off event with the Attorney General, a restaurant owner and a physician as speakers. Accompanying support materials such as certificates and window stickers help restaurants promote the fact that they are smoke-free. The Partnership is working to create regular publicized events featuring entertainment at a different smoke-free restaurant each time.

Youth in the communities are also working for smoke free campuses at several area schools.

Ft. Dodge - Webster County / Healthy Dining Guide. The Webster County Health Department has issued a healthy dining guide listing the health related characteristics of area restaurants including whether the restaurant is smoke free.

Grinnell / Ordinance The Grinnell City Council is considering the adoption of a clean indoor air ordinance and a committee has been appointed to study the issue. Numerous educational activities preceded the discussion of the ordinance. A community forum has been held featuring local doctors an economist from the local college, and a business owner who believes that sales increased after the business went smoke-free. Approximately 1,300 signatures in support of an ordinance have been collected - an impressive percentage in a community of approximately 9,000 residents. A two-hour petition drive yielded about 700 signatures. As a result of these actions, some businesses and other institutions have voluntarily gone smoke-free. Action is expected on the ordinance sometime in the spring of 2003.

Grinnell / Smoke free ball park. The Grinnell Youth Baseball and Softball Association passed a policy in August, 2002 to make the city ball park complex a smoke free facility.

Grinnell - Poweshiek County / Workplace Assessment and Assistance. All Poweshiek County businesses and industries have been contacted by telephone survey to determine their workplace smoking policies. Educational materials are also provided to the businesses. When needed, advice is provided to establish or strengthen smoke free workplace policies.

Iowa City / Ordinance. The City of Iowa City was the second city in the state to pass a smoke free restaurant ordinance. The ordinance, which went into effect March 1, 2002, prohibits smoking in restaurants with 50% or more of their revenue from food, as opposed to alcohol. The ordinance will become more inclusive in 2004 when the percent changes to 35% or more. The ordinance was the result of a comprehensive two year campaign, beginning in December 1999. A study of restaurant openings and closings and sales tax data is underway in the community enforcement problems.

Iowa City / UI dorms. In August 1999 smoking was prohibited in all dormitories at the University of Iowa. Smoking bans had previously existed in other University buildings, including sports facilities. A study of the effects by the College of Dentistry at the University was released in June, 2002. The study demonstrates that the smoke free dorms had a significant role in reducing smoking rates among students. The study compared smoking rates at the University of Iowa over a ten year period with the University of Minnesota, a similar university that does not have smoke free dorms. The results showed that the "prevalence of cigarette smoking between 1991 and 1998 at the two universities showed remarkable similarity, increasing steadily from less than 24% in 1991 to over 40% in 1998. Thereafter, prevalence at UI declined markedly to 28.3% in 2001, whereas that at UM increased to 48.5% in 2000." The most recent survey of UI students, in October, 2002, shows a continuing decline in the prevalence of smoking to 25.3%. The researchers speculate that the decline in smoking among Iowa students is due in part to education efforts, the three-year-old ban on smoking in dorms, and publicity over the push to prohibit smoking in restaurants.

Jefferson County / Business Survey. The Jefferson County Community Tobacco Partnership conducted a survey of 250 businesses during January and February, 2002 to learn about the businesses' tobacco policies. The information will be used to educate businesses about the benefits of smoke-free environments and to aide in planning.

<p>Table 57: Excerpt from <i>The Iowa Attorney General's Report on Secondhand Smoke</i> highlighting local activity across the state of Iowa through May 2003.</p>
<p>Johnson County / Smoke Free Dining Guide. The Johnson County Smoke Free Coalition has created a Smoke Free Dining Guide for Johnson County.</p>
<p>Knoxville / Tobacco Free School Policy. The school last spring strengthened its smoking policy to prohibit tobacco use anywhere on school property including non-school sponsored activities. The push for the change came from concerned community members and students who are also studying the pursuit of the issue in other school districts.</p>
<p>Marshalltown / Educational Forums. The local Marshalltown youth group, GIFT (Guiding Individuals Fighting Tobacco) is conducting a series of educational activities such as community forums and school activities aimed at increasing awareness of the dangers of tobacco and secondhand smoke.</p>
<p>Newton / Smoke Free School. Beginning July 1, 2002, the Newton Community School District Board of Education has banned tobacco at all school events. The policy bans all uses of tobacco on all school district facilities and grounds, regardless of whether school is in session, and does not provide for designating smoking areas at events open to the public. The policy applies to students, school employees and visitors and will be enforced in all facilities or grounds owned or used by the district, including the athletic stadium. More than a dozen high school students representing the anti-tobacco group Breath of Fresh Air (BOFA) advocated for the change.</p>
<p>Northwood / Northwood - Kensett Smoke Free School. The Northwood - Kensett schools have adopted a totally smoke free campus including sporting venues such as the football field. To aide in enforcement of the policy, announcements are made during sporting events reminding guests of the no smoking policy.</p>
<p>Ottumwa / Business Survey. In June and July of 2002, the Wapello Community Action Team to Prevent Cancer conducted a survey of 479 businesses in Wapello County to determine their current policies regarding tobacco. Survey results will be used to help the businesses adopt better non-tobacco policies and establish a benchmark for future tobacco advocacy efforts.</p>
<p>Waterloo - Cedar Falls / Smoke Free Dining Guide. The Black Hawk County Tobacco Free Coalition and "cia" (clean indoor air) coalition has published a "Waterloo / Cedar Falls 2002 Smoke Free Dining Guide." The guide lists smoke free restaurants in the area and provides the facts on secondhand smoke. Response to the brochure has been so great, particularly from restaurants wanting to be included, that a second edition has been required after only several months. Businesses who adopt smoke free policies are recognized with a certificate from the Black Hawk County Tobacco Free Coalition and the Black Hawk County Board of Health to post in their establishment.</p>
<p>Waterloo - Black Hawk County: Alternative To Suspension Program. A youth cited for possession of tobacco may enroll in a class on tobacco issues as an alternative to suspension from school and legal penalties. Cessation classes are also offered. If they do not sign up for the class within seven days, the citation is delivered and a mandatory court appearance follows. The program has been in place for about four years and is considered a success.</p>

2003 – Iowa Supreme Court Rules That Preemption Applied to Clean Indoor Air Ordinances

In February 2003, while advocates were engaged across the state passing local clean indoor air policies, the Iowa Supreme Court heard oral arguments in the case against Ames' clean indoor air law. City Attorney John Klaus defended the Ames clean indoor air ordinance while Fred Dorr argued for the eight Ames businesses and Philip Morris.²⁶⁹ Attorney Fred Dorr was the managing shareholder at the law firm Wasker, Dorr, Wimmer, and Marcoullier, PC. Other shareholders at the firm included Charles Wasker and William Wimmer, long time tobacco

industry lobbyists who were active in the original inclusion of the challenged preemption clause in Iowa's law.

Klaus argued that the Ames smokefree ordinance was within the scope of authority of the City Council under the Home Rule power granted to municipalities under the Iowa Constitution, under which municipalities "are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government."²⁷⁰ The pro-tobacco interests argued that the legislature clearly preempted municipalities from enacting stronger smokefree provisions in public places than what was called for by state law.²⁷⁰

On May 7, 2003, the Iowa Supreme Court ruled unanimously that Ames neither had the authority to enact nor enforce a clean indoor air law because the city was not permitted to set a higher standard than state law.²⁷¹ The decision came as a surprise to the Attorney General's Office and advocates alike.^{190, 268}

The ruling made both the Ames and Iowa City clean indoor air law unenforceable. In Ames, City Attorney Klaus wanted to remove the ordinance from the books, but the City Council voted to keep the law on the books as a symbol of community values.²²²

Public health advocates lamented the high court's decision.²⁷² Attorney General Miller asked the legislature to change state law to explicitly allow local control on smoking-related issues.²⁷¹

The Ames Tobacco Task Force encouraged restaurants to continue to operate as if the ordinance was in place despite the invalidity of the Ames law. While some businesses reintroduced smoking in their restaurants, others, including the majority of the plaintiffs in the lawsuit against the Ames ordinance, continued to have a clean indoor air policy.²⁷³

2003 – Tobacco Free Iowa Goes Under

While Tobacco Free Iowa was one of the few organizations that continued to push for local clean indoor air policies during the Ames lawsuit, their efforts soon faltered because poor hiring choices by the American Lung Association under the Smokeless States grant resulted in poor leadership of TFI.^{185, 190} Specifically, Joe Henry, the TFI SmokeLess States project coordinator was not fulfilling his duties. In 2001 Eileen Fisher, who had become the president of TFI, along with other members of the TFI board, fought to hold Henry accountable to fulfill his role as project coordinator, but were unsuccessful.¹¹⁹ Representatives from the SmokeLess States program went to Iowa to try to mediate what had become a dysfunctional organization.¹⁸⁹ The combination of TFI's stagnation due to Henry's poor leadership¹⁹⁰ and the Supreme Court's preemption decision led the Robert Wood Johnson Foundation to pull Iowa's SmokeLess States grant in 2003, because the coalition was not able to fulfill the goals of the grant.²⁴¹ TFI continued to exist in name but its influence dwindled. As a result, Iowa was left without a functioning statewide tobacco control coalition through 2006.²⁴¹

Some Advocates Reorganize

2003 – CAFE Iowa CAN

In response to the Supreme Court's preemption decision, members of CAFE Johnson County held a stakeholders' meeting in Des Moines in August 2003 to determine how to proceed in a state that officially had preemption. Representatives from the Iowa Department of Public Health, Attorney General's Office, American Cancer Society, American Lung Association, American Heart Association, Story County Task Force, Ames City Council and other community coalitions were in attendance.¹¹⁹ Advocates concluded that the best way to move forward was to develop lobbying capacity at the state level to reestablish local control. To do this, in 2003 Eileen Fisher created CAFE Iowa as a statewide 501(c)3 nonprofit educational coalition organization²⁴¹ and established CAFE Iowa Citizen Action Network, or CAFE Iowa CAN, as a statewide 501(c)4 nonprofit political lobbying organization.²⁷⁴ CAFE Iowa began to apply for grants to fund their non-lobbying efforts. The group required members to pay dues and held fundraisers. Members of local coalitions funded in part through the state community partnership programs from the IDPH, including CAFE Johnson County and the Ames Tobacco Task Force, also began to raise money for CAFE Iowa CAN.

CAFE Iowa CAN hired Advocacy Strategies, a lobbying firm started by Threase Harms, former head of the Tobacco Division at the Iowa Department of Public Health, as well as former Representative of the American Cancer Society, Natalie Battles, who worked with CAFE in Iowa City, to fight for the organization's agenda of repealing preemption to restore local control to communities at the capitol.¹⁸⁵

In addition to a presence at the capitol, CAFE Iowa worked to develop grassroots capacity across the state. CAFE was able to develop coalitions in 17 Iowa counties: Ames, Boone, Burlington, Carroll, Cedar Rapids, Cherokee, Council Bluffs, Davenport, Grinnell, Iowa City, Keosauqua, Marengo/Victor, Mason City, Ottumwa, Pella, Sioux city, Tipton, Waterloo, and Washington.²⁷⁵ The American Cancer Society, American Lung Association and American Heart Association were also part of CAFE Iowa's membership.

CAFE Iowa worked closely with the Division of Tobacco Use Prevention and Control, a relationship facilitated by Christopher Squier, founding member of CAFE Johnson County, and board member of CAFE Iowa and CAFE Iowa CAN, who was Chair of the TUPC Commission from 2003-2008.¹¹⁹

In 2006 CAFE Iowa reorganized as the Iowa Tobacco Prevention Alliance, Iowa's statewide tobacco control coalition. CAFE Iowa CAN was active in the passage of a \$1 per pack increase in Iowa's tobacco tax in 2007 and the Iowa Smokefree Air Act in 2008, although their focus was primarily repealing preemption of clean indoor laws policies.¹⁸⁵

2003-2008 – Adoption of Voluntary Smokefree Policies and Passage of Clean Indoor Air Laws in Areas Not Preempted by State Law

Voluntary Smokefree Policies- “The Legacy of the Legacy Grant”

After the Supreme Court ruling in 2003, the Iowa Attorney General’s Office, again under the leadership of Executive Officer Bill Roach, continued work toward tobacco control goals at the local level in areas not preempted by state law and work at the local level building support for local control that would, in turn, help to influence the legislature to repeal state preemption. The primary focus of the effort led by Roach was to encourage businesses and other organizations to adopt voluntary smokefree policies as well as to explain what types of ordinances were, and were not, acceptable after the Supreme Court ruling.

In 2004, Roach along with Karla Wysoki of the American Cancer Society, organized conferences across the state to engage communities in continuing the fight for clean indoor air. The American Lung Association, American Heart Association, and CAFE Iowa also contributed to the effort. Roach, Wysoki, and Christopher Squier, chair of the TUPC Commission, led conferences in Iowa communities.⁶⁴

One concern that was raised by conference attendees on multiple occasions was the fact that health care facilities in Iowa were not completely smokefree. In a 2009 interview, Roach recalled:

I can remember vividly a couple of people saying, “How can we go out and try and get a bar or a restaurant to be smokefree when the hospital isn’t?” It really struck a chord with us. It was kind of one of those lightning bolt moments for us. It was like, ‘Yeah, you’re right. How can you? Indeed.’²⁶⁸

At dinner one evening following a conference where an attendee had again brought up the fact the smoking was permitted on hospital grounds, Roach, Wysoki, and Squier realized that a campaign focused on smokefree medical facility grounds would not only increase the number of smokefree environments in Iowa, but that the medical community would be a strong partner for tobacco control community because of the public respect for medical professionals across the state.⁶⁴ In 2005 the group initiated an informal coalition between the Attorney General’s Office, the Iowa Hospital Association, and community health partnerships funded by the Division of Tobacco Use Prevention and Control¹⁴ to begin work on smokefree grounds policies for health care facilities.²⁶⁸

Hospitals

Bill Roach traveled across the state along with a local advocate from Grinnell, Julie Tabatabai, a cardiac nurse who had written her Masters’ thesis about the implementation of smokefree policies in hospitals and who was herself a hospital employee, to meet with boards of hospitals to encourage the adoption of voluntary smokefree grounds policies. She and Roach held approximately 20 regional meetings, meeting with “literally every hospital administrator in

the state.”²⁶⁸ Together Roach and Tabatabai would explain the merits of adopting smokefree policies in health care facilities and the practicalities of enacting such policies. Roach explained:

I would get up and talk about why it was important to do in terms of the hospital's role in the community and the whole secondhand smoke spiel. Then she would get up and say, “I work in a hospital. We've done it in our hospital. Here's how we did it. Here's how much time you need to allow to do this. Be sure you talk to your neighbors and surrounding property. Here's how you handle it if you have a nursing home in part of your hospital. Here are some ways to handle that issue.’ It was hugely successful.”²⁶⁸

Over the course of the smokefree health care facilities campaign between 2005 and 2008, 42 adopted 100 percent smokefree grounds policies²⁷⁶ (Table 58) and about a dozen more adopted a policy that increased the percentage of the facility’s grounds that were smokefree.²⁶⁸ The work encouraging health care facilities to adopt smokefree policies not only had the benefit of creating more smokefree environments, but also helped to create momentum for future clean indoor air campaigns.²⁶⁸ These relationships with the medical community were sustained and were useful in other policy campaigns at the state level.

Schools, Colleges, and Universities

At the same time that advocates were working to implement voluntary smokefree policies in hospitals, JEL Iowa was working to encourage the adoption of voluntary smokefree policies at Iowa schools because local school boards had the authority to determine their school’s policies.

Table 58: Iowa Hospitals with 100% smoke free campus grounds as of 2009.^{276, 277}

Anamosa Area Ambulance	Ellsworth Municipal Hospital	June E. Nysten Cancer Center	Siouxland Community Blood Bank, IA
Audubon County Memorial Hospital	Floyd County Memorial Hospital	Keokuk Area Hospital	Siouxland Community Health Center
Baum-Harmon Mercy Hospital	Grundy County Memorial Hospital	Mercy Capitol	Siouxland District Health Department
Blank Children’s Hospital	Hamilton Hospital	Mercy Hospital [†]	Siouxland Hematology and Oncology
Broadlawns Medical Center	Hancock County Memorial Hospital	Mercy Medical Center	Siouxland Medical Education Foundation
Burgess Health Center	Health Inc	Mercy Medical Center-North Iowa	Siouxland Paramedics
Cass County Memorial Hospital	Iowa Lutheran Hospital	Mitchell County Regional Health Center	St. Luke’s Regional Medical Center
Clarinda Hospital	Iowa Methodist Medical Center	Pocahontas Community Hospital	Washington County Hospital & Clinics
Community Health of Jones County	Jackson Recovery Center	Regional Health Services of Howard County	Waverly Health Center
Community Memorial Hospital [†]	Jefferson County Hospital	Sartori County Memorial Hospital	
Covenant Medical Center	Jones Regional Medical Center	June E. Nysten Cancer Center	

[†] Smokefree policy extends to all medical clinics owned and operated by the health system.



Figure 14: Message at the entrance of Bettendorf High School stadium.

Most commonly, JEL students would bring their smokefree message to sporting and other community events, creating signage and setting up booths to inform the community about the dangers of tobacco. For example, during homecoming at Bettendorf High School in 2004 two JEL students posted the message “Smoking Kills” at the entrance of the Bettendorf High stadium (Figure 14). Additionally, the students hosted a booth with information available to thousands in attendance and wrote a press release about the event.²⁷⁸

In addition to the work being done by JEL Iowa, another youth advocacy group, Teens Against Tobacco Use (TATU), a national program run by the American Lung Association with chapters in Iowa, that predated JEL,²⁷⁹ was active on the local level working toward smokefree school policies. One of TATU’s advocacy victories occurred at West Hancock High School, a high school in Hancock County in Northern Iowa, in April 2004. The student group, which averaged nine students per year, successfully lobbied the school board to pass a policy that prohibited the use, distribution, and sale of tobacco on any school property by staff, students and visitors, with disciplinary action tied to any violation of the policy.²⁸⁰

Colleges and Universities

Colleges and universities were also adopting or strengthening clean indoor air policies, a practice that gained momentum at the height of local clean indoor air action in Iowa in 2002 when localities across Iowa were considering clean indoor air laws. Beginning in 2005 hospitals, were making their grounds smokefree as a result of the efforts by the collaborative efforts between tobacco control advocates and the Iowa Hospital Association, but medical sciences campuses that were adjacent to hospitals were not covered under the policies.¹⁹⁰ In 2007 the Iowa Hospital Association led an effort to make health sciences campuses completely smokefree.

The Mercy College of Health Sciences in Des Moines and the University of Iowa Health adopted such policies in 2008.

Among non-medical sciences universities, private colleges were among the first to pass 100 percent smokefree policies. The University of Iowa (assisted by CAFE Johnson County in addition to the Iowa Hospital Association) was the first public university in the state to adopt a 100 percent policy in 2008, in conjunction with an effort to make their College of Public Health smokefree.

Efforts ended April 2008 when all educational facilities were required to become smokefree through the passage of the Iowa Smokefree Air Act.

Smokefree Laws in Areas Not Preempted by State Law

Voluntary policies were not the only tobacco control measures being implemented at the local level in Iowa. Preemption as interpreted by the Iowa Supreme Court barred localities from passing clean indoor air laws in indoor places, but did not prohibit passing laws that made outdoor environments smokefree. In 2005, Muscatine and Urbandale passed laws prohibiting smoking at outdoor recreational facilities used predominantly by youth.²⁸¹ In 2007, the Des Moines City Council passed a measure making it illegal to smoke in city parking garages except in designated smoking areas.²⁸²

Attempts to Repeal Preemption

2004 Legislative Session

In January 2004, Rep. Ro Foege (D-Mount Vernon, Industry Contributions: \$0) and Rep. Kraig Paulsen (R-Hiawatha, Policy Score: 2.7, Industry Contributions: \$500) introduced House File 2004 to remove the preemptive language from Iowa Code 142B.²⁸³ Health groups did not have a role in developing the language of HF 2004, but CAFE and the Division of Tobacco Use Prevention and Control were supportive of the bill upon introduction.¹⁹³ The same legislative session Representative Foege introduced a \$1 per pack increase in the cigarette excise tax in Iowa, one of the first legislators to introduce legislation for such a substantial increase in the tax, and from that point on he introduced tobacco control legislation during every General Assembly session until his retirement in 2008. In a 2009 interview, Foege explained that he became interested in tobacco control primarily for three reasons:

One, I was a smoker so I know how addictive it is. Number two, my older brother died of tobacco-related illness – esophageal cancer and stomach cancer – and I spent some time with him. It's a horrible, horrible death. You don't wish that on your worst enemy. So that was the motivator. Then a third, more distant factor, my first cousin's name is Bill Foege. Bill used to be the head of the CDC, and a very strong anti-tobacco person.¹⁹³

The local control bill was referred to the Local Government Committee, where it was then sent to a Local Government subcommittee comprised of Rep. Donovan Olson (D-Boone, Policy Score: 7.7, Industry Contributions: \$0), Rep. Bill Schickel (R-Mason, Industry Contributions: \$500), and Rep. Jim Hahn (R-Muscatine, Policy Score: 1, Industry Contributions: \$0). Subcommittees in the Iowa legislature are traditionally comprised of three members, where a majority vote is required to pass legislation to a full committee vote. Representative Foege was able to secure a guarantee that two representatives on the subcommittee, Olson (D-Boone) and Schickel (R-Mason), a moderate Republican with constituents that supported local control and which whom Rep. Foege had developed a good working relationship, would approve the bill and send it to a vote of the full 21 member committee.²⁸⁴

The voluntary health organizations, CAFE Iowa, and CAFÉ Iowa CAN mobilized to support the bill. The groups contacted their membership bases requesting that members who were constituents of representatives on the subcommittee contact their legislator to demonstrate support for HF 2004, while CAFE Iowa CAN lobbied at the statehouse.²¹⁴

During the 2004 legislative session's funnel week, when action was required by the House Local Government subcommittee for HF 2004 to continue through the legislative process, Chairman Hahn (R-Muscatine, Policy Score: 1, Industry Contribution, \$0) called a last minute public meeting to discuss the bill. The meeting was so impromptu that it was held in the lobby of the House Chamber. Attorney General Miller, TUPC Commission Chair Christopher Squier, tobacco industry lobbyists, and members of the press were in attendance. Attorney General Miller spoke on behalf of the bill, while industry lobbyists spoke out against. In the end, Chairman Hahn refused to call for a vote on the bill, and it died.²⁸⁴

2005 Legislative Session

In the 2005 legislative session, Rep. Foege again co-sponsored a bill to restore local control, House File 261, this time with Rep. Schickel (R-Mason, Industry Contributions: \$500).¹⁹³ CAFE and the voluntary health organizations met with legislative leaders and key House Local Government committee members to try to garner support for the bill. However, despite efforts by advocates and bipartisan support for HF 2004, the bill was again killed in subcommittee in the House Local Government Committee during funnel week.²⁸⁵

Former Ames City Council and Ames Tobacco Task Force member, Herman Quirnbach (D-Story, Policy Score: 10, Industry Contributions: \$0), who had been elected to the Iowa Senate in 2002, shortly after he led efforts to pass the Ames clean indoor air ordinance, also introduced a bill for local control in 2005. As with the bill introduced in the House, Senate File 70 did not make it out of subcommittee. In a 2009 interview, Quirnbach recalled:

I had been a ranking member of local government committees since I was first elected. I started there in '03. But Republicans were in control, and the Republican majority leader Stewart Iverson ... [made clear that] this bill wasn't going anywhere.²²²

Majority Leader Iverson (R-Wright) a distinctly pro-tobacco legislator, received \$2,200 in campaign contributions from the tobacco industry from 1998 and 2008, the third greatest amount of all legislators in the Iowa General Assembly during that time period.

Four tobacco tax increase bills, three of which had bipartisan co-sponsors were also killed during the 2005 legislative session (see “Tobacco Taxes 1991-2006”).

Conclusions

While the passage of a local clean indoor air ordinance in Ames created poor example for other Iowa communities, the passage of their ordinance combined with the stronger ordinance passed in Iowa City, created substantial momentum for tobacco control advocates across the state. Localities, schools, and businesses began adopting policies that increased the number of public and private places with clean indoor air. However the lawsuit against the city of Ames, funded by Philip Morris, took the wind out of the advocates’ sails, chilling action across the state.

The subsequent Iowa Supreme Court finding that localities were prohibited from passing smokefree laws in public places, halted action by local governments and represented a huge step backward for public health in Iowa. In spite of the ruling, the continued efforts by the Iowa Attorney General’s Office, the American Cancer Society, CAFE Iowa, local tobacco control advocates, youth, and the health professional community to encourage voluntary adoption of smokefree policies in health care settings and in schools, continued progress and momentum toward clean indoor air policy change.

At the state level, the stranglehold by Republican legislative leadership unfavorable to tobacco control made the prospect of passing state level legislation related to tobacco control bleak. In 2006 a change in political climate as well as the restructuring of Iowa’s tobacco control coalition, facilitated substantial policy changes in both clean indoor air and tobacco taxation in the legislative sessions that followed.

TOBACCO TAXES (1991-2006)

Tobacco Tax Stagnation

After the 5 cent cigarette tax increase in 1991, a decade passed before raising the tobacco tax became a priority for Iowa tobacco control advocates. Advocates instead focused on repealing preemption and passing clean indoor air laws at the local level. As time passed, Iowa’s 36 cent tax fell further and further below the national average (Figure 15). Between 1991 and 2001, only two bills were introduced in the General Assembly to increase the cigarette excise tax. This number increased exponentially between 2002 and 2007, during which time 15 bills were introduced as both tobacco control advocates and legislators began to focus on increasing the tobacco tax (Table 59).

Table 59: Tobacco Tax Bills Introduced in the Iowa General Assembly, 1996-2007 (No bills were introduced after the 1991 increase until 1996)						
General Assembly	Year Introduced	Bill Number	Sponsor (s)	Bill Name	Amount of tax increase	Bill Status
76th GA (1995-1996)	1996	House File 2078	Rep. Philip Brammer (D-Linn)	A bill for an act relating to tobacco products by increasing the tax imposed on cigarettes and appropriating and specifying the use of additional tax moneys.	\$0.14	Defeated
77th GA (1997-1998)	1998	House File 2067	Rep. Rosemary Thomas (R-Linn), Rep. Bob Brunkhorst (R-Bremmer)	A bill for an act relating to tobacco products and cigarettes, providing penalties, providing for an increased tax on cigarettes, and providing for appropriations.	\$0.02	Defeated
79th GA (2001-2002)	2002	Senate File 2082	Sen. Johnie Hammond (D-Story)	A bill for an act relating to an increase in the tax imposed on cigarettes and tobacco products, establishing a health care access fund in the state treasury, and providing for the use of the moneys deposited in the health care access fund.	\$0.50	Defeated
	2002	House File 2205	Rep. Jane Greimann (D-Story) Rep. William Witt (D-Black Hawk) Rep. Mary Mascher (D-Johnson) Rep. Vicki Lensing (D-Johnson) Rep. Rebecca Reynolds (D-Jefferson) Rep. Polly Bukta (D-Clinton) Rep. Ed Fallon (D-Polk) Rep. Don Shoultz (D-Black Hawk) Rep. Paul Scherrman (D-Delaware) Rep. Janet Petersen (D-Polk) Rep. Jack Hatch (D-Polk) Rep. Cindy Winckler (D-Scott) Rep. Geri Huser (D-Polk) Rep. Marcella Frevert (D-Clay)	A bill for an act relating to an increase in the tax imposed on cigarettes and tobacco products, establishing a health care access fund in the state treasury, and providing for the use of the moneys deposited in the health care access fund.	\$0.50	Defeated
80th GA (2003-2004)	2004	Senate File 144	Sen. Matt McCoy (D-Polk)	A bill for an act increasing the tax imposed on cigarettes.	\$1.00	Defeated
	2004	House File 283	Rep. Don Shoultz (D-Black Hawk)	A bill for an act relating to increasing the tax on cigarettes and tobacco products.	\$0.62	Defeated
	2004	House File 284	Rep. Henry Rayhons (R-Hancock) Rep. Jane Greimann (D-Story)	A bill for an act increasing the taxes on cigarettes and tobacco products.	\$1.00	Defeated
	2004	House File 539	Rep. Ro Foege (D-Linn)	A bill for an act to increase the tax imposed on cigarettes and tobacco products.	\$1.00	Defeated
81st GA (2005-2006)	2005	House File 130	Sen. Robert Dvorsky (D-Johnson) Sen. David Mulder (R-Sioux) Sen. Jack Hatch (D-Polk)	A bill for an act relating to an increase in the taxes on cigarettes and tobacco products, creating a medical assistance and health promotion fund, providing for appropriations, and providing an effective date.	\$1.00	Defeated

Table 59: Tobacco Tax Bills Introduced in the Iowa General Assembly, 1996-2007 (No bills were introduced after the 1991 increase until 1996)

			Sen. Maggie Tinsman (R-Scott)			
	2005	House File 215	Rep. Bill Schickel (R-Cerro Gordo) Rep. Dave Tjepkes (R-Webster) Rep. Walt Tomenga (R-Polk) Rep. Henry Rayhons (R-Hancock) Rep. Beth Wessel-Kroeschell (D-Story) Rep. Don Shoultz (D-Black Hawk) Rep. Ro Foege (D-Linn) Rep. Roger Wendt (D-Woodbury)	A bill for an act increasing the taxes imposed on cigarettes and tobacco products and providing for appropriation of the increased revenue generated to the medical assistance program and for tobacco control and prevention, and providing an effective date.	\$1.00	Defeated
	2005	House File 237	Rep. Mary Mascher (D-Johnson)	A bill for an act increasing the taxes imposed on cigarettes and providing for appropriation of the revenue generated to the medical assistance program and for tobacco control and prevention, and providing an effective date.	\$1.64	Defeated
	2005	House File 2022	Rep. Walt Tomenga (R-Polk) Rep. Rick Olson (D-Polk)	A bill for an act increasing the taxes imposed on cigarettes and tobacco products and providing for deposit of the increased revenue generated in the senior living trust fund, and providing an applicability date and an effective date.	\$0.64	Defeated
82nd GA (2007-2008)	2007	House File 395	Rep. Vicki Lensing (D-Johnson)	A bill for an act increasing the taxes imposed on cigarettes and tobacco products and providing for deposit of the increased revenue generated in the healthy Iowans tobacco trust, and providing an effective date.	\$1.17	Defeated
	2007	House File 14	Rep. Rick Olson (D-Polk) Rep. Walt Tomenga (R-Polk)	A bill for an act increasing the taxes imposed on cigarettes and tobacco products and providing for deposit of the increased revenue generated in the senior living trust fund, and providing an applicability date and an effective date.	\$0.64	Defeated
	2007	House File 180	Rep. Mary Mascher (D-Johnson)	A bill for an act increasing the taxes imposed on cigarettes and providing for appropriation of the revenue generated to the medical assistance program and for tobacco control and prevention, and providing an effective date.	\$1.64	Defeated
	2007	House File 346	Rep. Ro Foege (D-Linn)	A bill for an act increasing the taxes imposed on cigarettes and tobacco products and providing for deposit of the increased revenue generated in the healthy Iowans tobacco trust, and providing an effective date	\$1.00	Defeated
	2007	Senate File 128	Senate Ways and Means Committee	<i>A bill for an act relating to an increase in the taxes on cigarettes and tobacco products, imposing an inventory tax on tobacco products, creating a health care trust fund, providing for a standing appropriation, and providing an effective date and providing an applicability provision.</i>	\$1.00	Passed

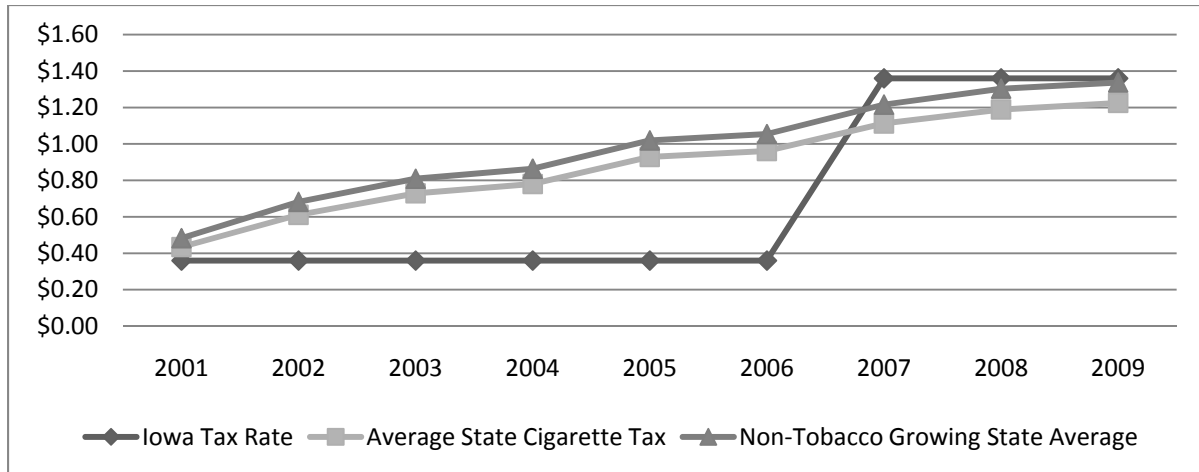


Figure 15: A comparison of the Iowa cigarette excise tax rate to both the national average state cigarette tax rate as well as the non-tobacco growing state average cigarette tax rate between 2001 and 2009^{58, 286}

Tobacco Tax Becomes a Focus

Advocates and legislators independently and collectively began to bring attention to the benefits of increasing Iowa’s tobacco tax in 2002 because of Iowa’s increasingly low tobacco tax rate.^{14, 193} Representative Ro Foege (D-Linn) began talking at legislative forums about the merits of increasing the tobacco tax, framing an increase not just a tax increase that brought revenue to the state, but as a public health measure.¹⁹³ In 2009, Foege recalled,

I was able to talk about it in forums and wrote articles about it, about why [raising the tax] was important. And I kept emphasizing that it’s not about tax increases, it’s not about increasing revenues for the state of Iowa; it’s to get people to consider quitting smoking and for teens not to start smoking.¹⁹³

Beginning in 2002, tobacco control advocates teamed up with organizations more broadly concerned with health to form Iowa’s Health Initiative (Table 60), a statewide coalition that sought to “improve the health of all Iowans by reducing tobacco use and health care expenditures.”²⁸⁷ The Iowa Health Initiative was led by Eileen Fisher on behalf of Tobacco Free Iowa, Natalie Battles of the American Cancer Society, Karla Fultz McHenry of the Iowa Medical Society, Linda Goeldner of the Iowa Nurse’s Association, John Lowe of the University of Iowa’s College of Public Health, and Marci Nichols of the American Federation for State, County and Municipal Employees (AFSMCE).²⁸⁸ Iowa’s Health Initiative sought to increase the tobacco tax by \$1 in order to:

- Improve the health of Iowans by decreasing the number of tobacco users and the incidence of tobacco related death and disease.
- Reduce tobacco use by Iowa’s youth and strengthen the state tobacco use prevention and control program. To create additional revenue to support health care programs and services.²⁸⁷
- To create additional revenue to support health care programs and services.²⁸⁷

AARP	Employee & Family Resources	Iowa Community Action Association	Iowa Optometric Association	March of Dimes
AFSCME	Genesis Health System, Davenport	Iowa Comprehensive Cancer Control Consortium	Iowa Osteopathic Medical Association	Mercy Medical Center
Advocacy Network for Aging Iowans	Grinnell Regional Medical Center	Iowa Conference United Methodist Churches	Iowa Pharmacy Association	Mercy Medical Center Clinton
Ames Tobacco Task Force	Hospice of North Iowa	Iowa Dental Association	Iowa Physician Assistant Association	Polk County Medical Society
American Cancer Society	Iowa Academy of Family Physicians	Iowa Department of Public Health Iowa Dietetic Association	Iowa Public Health Association	State Public Policy Group
American Lung Association	Iowa Asthmas	Iowa for Health Care	Iowa State Education Association	Tobacco Free Black Hawk County Coalition
American Heart Association	Iowa Association for Home Care	Iowa Health System	Iowa Substance Abuse Program Directors' Association	Tobacco Free Iowa
CAFE	Iowa Association of Rural Health Care Clinics	Iowa Hospice Organization	JEL	Tobacco Use Prevention & Control
Central Iowa Tobacco-Free Partnership	Iowa Association of Area Agencies on Aging	Iowa Hospital Association	Johnson County Tobacco Free Coalition	Trinity Regional Health System
Community Family Resources	Iowa Caregivers Association	Iowa Medical Society	Johnson County Board of Health	Visiting Nurse Service
Ecumenical Ministries of Iowa	Iowa Child Care and Early Education Network	Iowa Nurses Association	League of Women Voters of Iowa	Zeta Phi Beta Sorority, Inc

Iowa’s Health Initiative sought to raise the tax without stipulations for the use of the revenue.²⁸⁹

The coalition publicized how low Iowa’s tax rate was in relation to other states (by 2005 was the 42nd among all states), the tobacco-related health costs incurred by the state, as well as the benefits of raising the tax by \$1 (Figure 16). The Iowa Health Initiative used fact sheets to inform legislators and the memberships of the individual member groups about the importance of raising the tobacco tax.

Tobacco control organizations worked with their membership to make raising the tobacco tax an election issue. CAFE Iowa CAN surveyed every Iowa legislator asking two questions: would they vote to vote for a \$1 increase in the cigarette tax and would they vote to restore local control to Iowa communities. CAFE also held training sessions for local advocates about talking to legislators, including what questions they should ask and how they should respond. ACS sent action alerts with dates, times, and locations of legislative forums across the state, which CAFE, AHA, and ALA would the forward to their membership databases. CAFE and the voluntary health organizations also worked together to call advocates to ensure that there was a presence at every legislative forum. Cathy Callaway of the ACS Cancer Action Network recalled in a 2009 interview:

We did a fantastic job at ... going to legislative forums all during the [legislative] session and during the off-season, summers and stuff, and making sure that we were asking... ‘Do you support the dollar increase in the cigarette tax?’ ... and it really became an election issue.¹⁴

ACS and CAFE also held annual volunteer training session during the Iowa legislative session and monthly conference calls for lobbyists to update local advocates and vice versa. Eileen Fisher, founder of CAFE Iowa and CAFE Iowa CAN explained in 2009, “the volunteer training session taught advocates to tell their story, ask their questions, overcome the dodge and get an answer, and always, always be polite even when you disagreed.”²¹⁴

Iowa’s Health Initiative

To improve the health of all Iowans by reducing tobacco use and health care expenditures

Action:
To increase Iowa’s excise tax on cigarettes by \$1.00 per pack and increase the tax on other tobacco products by a percent consistent with the increase of the tax on cigarettes.

Goals:

- Improve the health of Iowans by decreasing the number of tobacco users and the incidence of tobacco related death and disease;
- Reduce tobacco use by Iowa’s youth and strengthen the state tobacco use prevention and control program;
- To create additional revenue to support health care programs and services.

Current Situation:

- Current State Cigarette Tax: **36 cents per pack** (42nd among all states)
- Last Iowa Cigarette Tax Increase: **06/01/91**
- Smoking-caused costs in state per taxed pack sold: **\$7.43**
- Average retail price per pack: **\$3.54**
- Total state Medicaid program smoking costs each year: **\$277 million**
- State cigarette tax revenue each year: **\$86.9 million** (2004)
- High school students in Iowa who smoke: **20%**
- Adults in Iowa who smoke: **20%**

Projected Benefits from a \$1 Cigarette Tax Increase in Iowa:

- New state cigarette tax revenues each year: **\$146.9 million**
- Pack sales decline in state: **- 73.1 million**
- Percent decrease in youth smoking: **19.3%**
- Increase in total number of kids alive today who will not become smokers: **39,700**
- Number of current adult smokers in the state who would quit: **20,900**
- Number of smoking affected births avoided over next five years: **6,530**
- Number of current adult smokers saved from smoking-caused death: **5,500**
- Number of kids alive today saved from premature smoking-caused death: **12,700**
- 5-year healthcare savings from fewer smoking-affected pregnancies & births: **\$9.3 million**
- 5-year healthcare savings from fewer smoking-caused heart attacks & strokes: **\$8.5 million**
- Long-term healthcare savings in state from adult & youth smoking declines: **\$812.4 million**

Figure 16: Iowa’s Health Initiative 2005 Fact Sheet²⁸⁷

Obstacles to a Tax Increase

Although increasing the tax began to resonate with some legislators beginning in 2002, the leadership of the Democratic minority did not want their members sponsoring a tax increase of any kind. In 2009, Rep. Foege explained:

We were in the minority at the time as Democrats, and my leader came to me and said, “I don’t want you being out there on [increasing the cigarette tax]. We don’t want Democrats – people talking about Democrats increasing tax.” I said, “It’s too late. I’m out there, and I’ve been talking about it. And I’m not talking about it as a tax increase. I’m talking about it as a public health measure.”¹⁹³

Additionally the Republican leadership that controlled the House and Senate during this period (with the exception of 2005-2006 when the Senate was made up of 25 Democrats and 25 Republicans controlled by co-leaders²²²) was unwilling to allow a tax increase out of committee.²⁹⁰ In particular, then-Speaker of the House Christopher Rants (R-Woodbury, Policy Score: 0.3, Industry Contributions: \$7,397) ardently opposed any increase in the cigarette tax. In his capacity as Speaker of the House, Rants controlled the legislative agenda and the referral of bills to committee,¹ allowing him to control the fate of any tax increase measures. Rep. Rants received \$7,397 in tobacco industry campaign contributions between 1998 and 2008, the most of any legislator in the Iowa General Assembly during that time period.

Possibly more important than the opposition of the leadership of both parties was the lack of real support for a tax increase by then-Governor Tom Vilsack (D, 1999-2007). Governor Vilsack publicly supported a tobacco increase, but when it came down to end of session budget negotiations, Governor Vilsack would take tobacco tax increase proposals off of the table.²⁹⁰ In 2009, Cathy Callaway :

When it came around to the tobacco tax campaign, he always talked a really good game about supporting an increase in the [tobacco tax], but we learned from talking with other legislators that when leadership would all meet together to hash out the budget, Governor Vilsack would take it off of the table right off the bat.”¹⁴

In 2006 significant changes in the political make up of the statehouse and a change of hands in the executive set the stage for advocates to advance their legislative agenda.

TOBACCO CONTROL RENAISSANCE (2006-2009)

Iowa Tobacco Prevention Alliance

In November 2004, the Division of Tobacco Use Prevention and Control hired its new director, Bonnie Mapes.¹⁸⁹ Although CAFE Iowa had expanded their scope to a statewide organization after the Supreme Court decision asserting preemption, Iowa still lacked a cohesive statewide coalition to coordinate tobacco control initiatives, something first on Mapes’ list of improvement. With CDC funding, Mapes brought together Iowa’s major tobacco control advocates (Table 61) and a mediator to facilitate the development of a new, functioning

coalition. Mapes also hired a consultant from the Tobacco Technical Assistance Consortium to assist in the development of a strategic plan for the new coalition and the entire tobacco control community (See “The State Tobacco Control Program”).¹⁸⁹

CAFE Iowa’s Board Members at the meeting offered to reorganize CAFE Iowa to become the new statewide coalition because the organization already was a 501(c)3 nonprofit tax deductible education organization, with a well established grassroots capacity and sister lobbying arm, CAFE Iowa CAN.¹¹⁹ The advocacy organizations agreed that the reorganization was the best way to move forward and decided to rename the coalition the Iowa Tobacco Prevention Alliance. Cathy Callaway, former director of the Iowa Tobacco Division and Senior Representative for State and Local Campaigns with the American Cancer Society Cancer Action Network, became the president of ITPA.

Table 61: Organizations represented at coalition development meetings
American Cancer Society
American Heart Association
American Lung Association
CAFE Iowa CAN
Horn Memorial Hospital
Iowa Attorney General Office
Iowa Department of Public Health
Iowa Tobacco Prevention Alliance
Just Eliminate Lies
New View
Proteus
Quitline Iowa
SIEDA
Tobacco Use Prevention and Control
University of Iowa
Youth & Shelter Services

As a 501(c)3 organization ITPA was able to hire their own staff and apply for their own grants. This status was important because much of the dysfunction of Tobacco Free Iowa stemmed from the organization having to work within the hiring and firing practices and operating procedures of whichever voluntary health organization was the administrator of a given grant.¹⁴ When TFI’s project administrator, Joe Henry, was not fulfilling his duties under the Smokeless States grant, the TFI board and membership had no power to fire Henry and find a new administrator, something that was overcome by ITPA being their own 501(c)3. The Tobacco Division gave ITPA \$45,000 in seed money to develop administrative capacity from funds the division received from the CDC.¹⁸⁹

In accordance with the strategic plan, the ITPA set two main objectives: to increase the tobacco tax and to restore local authority over clean indoor air. They applied for and were given grant money from the Robert Wood Johnson Foundation and the Americans for Nonsmokers’ Rights Foundation to work toward those goals.¹⁸⁹ The ITPA was up and running in January 2006, the same year that a significant midterm election would set the stage for major progress in Iowa tobacco control.

Change in Political Climate

2006 – Gubernatorial election

2006 was a gubernatorial election year and two-term incumbent Democratic Governor Tom Vilsack announced that he would not be seeking reelection. Secretary of State Chet Culver received the Democratic nomination for governor. He was opposed by United States Representative Jim Nussle (R-IA). While Secretary of State Culver had no record either pro- or anti-tobacco control, Rep. Nussle had publicly opposed US Food and Drug Administration

regulation of tobacco products¹⁴ and received \$1,000 in tobacco industry campaign contributions for his 2006 gubernatorial campaign. Culver received no industry contributions.

Advocates were successful in making a \$1 increase in the Iowa cigarette tax and restoring local control to Iowa communities an election issue.¹⁴ ITPA and CAFE Iowa CAN volunteers attended legislative forums across Iowa throughout the 2006 campaign cycle. Each volunteer was provided with a list of questions to ask; in a 2009 interview Cathy Callaway, recalled:

[W]e were asking three questions: one, do you support the dollar increase in the cigarette tax; two, do you support local control or a statewide smokefree law – and just finding out as much information about each candidate as possible, where they stood on the smokefree law; and then do you support increased funding for tobacco control.¹⁴

Because tax and local control legislation had been repeatedly introduced and debated in the Iowa General Assembly, tobacco control was well covered by Iowa news outlets. The *Des Moines Register*, Iowa's largest newspaper, asked state office candidates about their position on the tobacco tax, local control, and statewide clean indoor air legislation and published their responses. The *Des Moines Register* also sponsored televised election debates featured on Iowa Public Television where they asked candidates about their position on tobacco control measures.¹⁴

In October 2006, at a forum on health care at Drake University, both candidates discussed their positions on an increase in Iowa's cigarette tax. Chet Culver explained his support for a \$1 increase in the cigarette tax noting the benefits such a tax increase would have in discouraging the uptake of smoking by Iowans, especially youth, as well as the benefit that increased revenues could have on paying health care costs. Jim Nussle opposed such an increase.²⁹¹

At the same forum, each candidate was asked about their position on repealing preemption of localities from passing clean indoor air ordinances. Both gubernatorial candidates announced that they supported restoring local control in Iowa, giving them the right to pass clean indoor air ordinances.²⁹¹ The fact that both candidates supported local control was a tremendous victory for tobacco control advocates. Furthermore, the fact that raising the tobacco tax and restoring local control was discussed at a health care forum demonstrated that advocates had successfully framed tobacco control policy changes as public health measures.

In 2009 Cathy Callaway recalled,

We did a really good job of getting that information out to our volunteers and to our membership so that they knew going into the ballot box exactly where people stood on our issues. And, you know, candidates knew they were going to be asked about it, and the media wrote about it in the papers, and so it really was a key issue to most certainly the gubernatorial race.¹⁴

In November 2006, Chet Culver defeated Jim Nussle for the governorship and took office in January 2007, ushering in a new era of genuine support for tobacco control measures from the Governor's Office.

2006 – Change in Composition of the Iowa General Assembly

In addition to the change in governor, the composition of the Iowa General Assembly shifted significantly as a result of the 2006 midterm election. The Iowa Senate and House went from evenly split and a Republican majority, respectively, to both having Democratic majorities²²² (Table 62). The shift to a Democratic majority also led to a change in leadership in both chambers.¹ Significantly, Kevin McCarthy (D-Polk), who had formerly worked in the Iowa Attorney General's Office on tobacco issues, became the House Majority Leader.²⁶⁸

	<u>Democrats</u>		<u>Republicans</u>	
	Before	After	Before	After
Senate	25	30	25	20
House	49	54	51	46

2007 – \$1 Tax Increase

The election of Chet Culver and the control of the both chambers of the General Assembly changing to Democrats gave tobacco control advocates a more receptive audience to a tax increase. At the beginning of his term, Governor Culver proposed a \$1 cigarette tax increase, and the Senate Ways and Means Committee introduced Senate File 128 on February 8, 2007, to legislatively fulfill the proposal.²⁹² Governor Culver was committed to raising the tobacco tax for the health impact such an increase would have, and told the Democratic legislative leadership that he would sign nothing less than a \$1 per pack increase.^{222, 277, 290}

Provision of Senate File 128

As proposed, Senate File 128 sought to increase the tobacco tax to from \$1 to \$1.36 per pack, increase the tax on other tobacco products from 22 percent of the wholesale price to 55 percent, require that cigarettes be sold in packages of 20 or more, create a health care trust fund for all revenue from the tax, and require that all revenue generated by the tax increase be only used for health care; substance abuse treatment and prevention; and tobacco use prevention, cessation, and control. Although many amendments were proposed, only two were adopted, both in the Senate (Table 63).

Senate Amendment 3066 capped the amount of tax revenue annually appropriated to the health care trust fund at \$127.6 million and specified that tobacco use prevention and control, among other things, was an appropriate use of the trust fund, a provision supported by ITPA. Any funds above \$127.6 million would be deposited in the General Fund. Additionally, the amendment increased the 44 percent other tobacco product tax introduced with the legislation to a two part tax (a 22 percent tax and then an additional 28 percent tax) totaling a tax of 50 percent of the wholesale price of tobacco products. The amendment also specified that the second 28 percent tax could not exceed 50 cents per cigar.²⁹³ ITPA opposed the cigar provision and CAFE lobbyists attempted to fight this amendment through meetings with legislative leadership¹⁸⁵ but

cigar lobbyists, Charles Wasker, William Wimmer, and Craig Schoenfeld (who concurrently held lobbying contracts for the Cedar Rapids Physician-Hospital Organization and the Iowa Pharmacy Association), proved to be more powerful and advocates were not willing to jeopardize the entire tax bill over this concession.¹⁸⁵ Additionally, Sandra Quilty, American Cancer Society Director of Iowa Government Relations and lobbyist, conceded on the amendment as long as the tax was increased by \$1.

The second amendment, Senate Amendment 3077, introduced by Senate Majority Leader Michael Gronstal (D- Polk), changed language of Senate File 128 to distinguish snuff from other tobacco products and changed the structure under which snuff was taxed. The tax on snuff was changed to a weight based tax of \$1.19,²⁹³ a legislative victory for smokeless tobacco companies such as US Smokeless Tobacco, Inc., which lobbied in favor of Senate File 128. The change in a tax structure meant that while other tobacco products' tax would increase as the wholesale price of those products increased, the tax on snuff would remain constant at \$1.19 unless a new bill was passed.

Similar language regarding the taxation of snuff had been introduced in past legislative sessions. As a result, advocates were prepared to fight the amendment. Meetings were held with the Attorney General's Office and legislative champions to inform them of the implications of changing to a weight-based tax system for smokeless tobacco. Despite the fact that changing to a weight-based system would lower the cost of smokeless tobacco over time, the amendment passed for political reasons.¹⁸⁵

During 2007 Sen. Matt McCoy (D -Polk, Policy Score: 10, Industry Contributions: \$0), floor manager of SF 128, was indicted on federal extortion charges;²⁹⁴ he was represented by F. Montgomery Scott of Brown Scott, PLC and Jerry Crawford of Crawford Quilty Law Firm. (He was subsequently acquitted.)²⁹⁵ Brown Scott, PLC simultaneously held a contract to lobby on behalf of US Smokeless Tobacco. Crawford Quilty Law Firm had a contract with Altria and Philip Morris USA. Senator McCoy agreed to support the smokeless tobacco amendment. The American Cancer Society's Director of Iowa Government Relations and lobbyist, Sandra Quilty, whose husband was a partner at Crawford Quilty Law Firm, acquiesced to the deal.

Tobacco control advocates (both legislators and health group lobbyists) attempted to fight the amendment throughout the legislative session, however they were told by legislative leadership to back off because the amendment had to pass. Republican members of the General Assembly also attempted to strike the language that changed the tax system for snuff, however they did so in an attempt to kill the tax bill rather than to genuinely strengthen the provisions of the legislation.

Support for Senate File 128

Advocates across the state worked with a unified message to increase the cigarette tax by \$1 per pack. The ITPA worked with Iowa's Health Initiative to advocate for the cigarette tax (Table 64).²⁹³ Members of JEL Iowa were given advocacy training by the ITPA for their annual Youth Advocacy Day. Approximately 300 JEL members went to the capitol on the advocacy day with postcards that had a dime taped to them to distribute to legislators. Their message was,

Table 63: Adopted Amendments to Senate File 128²⁹³		
<p>Senate Amendment 3066</p> <p>Sponsor: Matt McCoy (D-Polk)</p> <p>Filed: March 7, 2007</p> <p>Adopted: March 7, 2007</p>	<ul style="list-style-type: none"> • Changed language to require that all funds, up to \$127.6 million annually, brought into the state through the cigarette tax be deposited into the health care trust. Previously there was no cap on the amount deposited into the health care fund. • Changed language to make it more clear that substance abuse treatment and prevention, and tobacco use prevention, cessation and control were suitable uses of the health care trust monies. • Changed the other tobacco product (OTP) tax rate structure (excluding little cigars which were taxed at the same rate as cigarettes) from an across-the-board tax of 44% of the wholesale price for distributors, to a two part tax: <ul style="list-style-type: none"> ○ A 22% tax imposed on all OTPs ○ An additional 28% tax imposed on all OTPs except cigars, where the additional tax could not exceed 50-cents per cigar. 	<p>Of particular note was the separate treatment of cigars under the two part OTP tax scheme.</p>
<p>Senate Amendment 3077</p> <p>Sponsor: Michael Gronstal (D-Polk)</p> <p>Filed: March 7, 2007</p> <p>Adopted: March 7, 2007</p>	<ul style="list-style-type: none"> • Added a subsection that defined snuff. • Delineated what were considered other tobacco products. The list included: <ul style="list-style-type: none"> ○ Cigars ○ Little cigars ○ Stogies ○ Periques ○ Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco ○ Snuff ○ Cavendish ○ Plug and twist tobacco ○ Fine-cut and other chewing tobaccos ○ Shorts ○ Refuse scraps ○ Clippings ○ Cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking • Inserted the word “snuff” into several subsections discussing the tax rate on tobacco products to distinguish that snuff would be taxed under a different scheme. • Added a subsection that imposed a tax on distributors of snuff at a rate of \$1.19 per ounce. 	<p>Of particular note was that US Smokeless Tobacco, Inc. supported SF 128. This was likely because the legislation differentiated snuff from other tobacco products through Senate Amendment 3077 and taxed snuff on a weight-based system rather than a percentage of price scale.</p>

raise the tax a dollar and give a dime, or 10 percent to tobacco control, lobbying legislators both for a dollar increase in the tax and to allocate 10 percent of the tax for tobacco control.²⁹³ The Division of Tobacco Use Prevention and Control created and distributed FAQs to legislators

about the need for and impact of an increase in the tobacco tax. The Division also did a great deal of public education, including the meetings with legislators about passage of the tax, advocacy Governor Vilsack had not previously allowed, but was permitted by Governor Culver.¹⁹⁹

Arguably one of the most influential demonstrations of support for the tax increase was an op-ed published in the *Des Moines Register* written by George Weiner, Director of the Holden Comprehensive Cancer Center and chair of the Iowa Consortium for Cancer Control. Dr. Weiner’s editorial entitled, “For best bang, increase tax on tobacco by a buck,” succinctly and compellingly delineated the benefits of raising Iowa’s tax by a dollar, including its impact on youth smoking. The editorial also refuted arguments made by opponents to the tax increase such as the idea that raising the tax would mean that Iowans would travel to neighboring states to buy cigarettes and that tobacco taxes were regressive. Gary Streit, an Iowa tobacco control advocate who served on as a voting member of the TUPC Commission and a member of the American Cancer Society Cancer Action Network’s Board of Directors, explained in a 2009 interview, “George wrote an op-ed piece that was kind of like the thing that every legislator you talked to had read. He really just made the case for the tax increase... He was a doctor, he runs the Cancer Center, he had amazing credibility.”²⁹⁰

Table 64: Organizations in support of Senate File 128.²⁹⁶

A Mid-Iowa Organizing Strategy (AMOS)	Iowa Nurses Association
AARP Iowa	Iowa Planned Parenthood Affiliate League
AFSCME Iowa Council 61	Iowa Podiatric Medical Society
American Cancer Society	Iowa School Nurses Organization
American Heart Association	Iowa Society of Respiratory Care
Blank Children’s Hospital	Iowa State Education Association
Board of Regents, State of Iowa	Iowa Substance Abuse Program Directors
Broadlawns Medical Center	Iowa/Nebraska Primary Care Association
CAFE Iowa CAN	March of Dimes
Child and Family Policy Center	Orchard Place
Communication Workers of America (CWA) Iowa State Council	Osteopathic Medical Association
Health Systems	Planned Parenthood of Greater Iowa
Iowa Academy of Family Physicians	Polk County
Iowa Commission on the Status of Women	Polk County Medical Society
Iowa Dental Association	School Administrators of Iowa
Iowa Department of Human Services	United Auto Workers (UAW)
Iowa Federation of Labor (AFL-CIO)	Urban Education Network of Iowa
Iowa Hospital Association	UST, Inc
Iowa Medical Society	

Opposition to Senate File 128

The tobacco industry also had a presence in the fighting against the tax increase (Table 65). R.J. Reynolds, Reynolds America, Inc, Philip Morris, USA and the Cigar Association of America lobbied against the bill, as did long-time allies of the tobacco industry, the Iowa Grocery Association and the Iowa Wholesale Distributors

Table 65: Organizations against Senate File 128

Cigar Association of American, Inc
Iowa Association of Business and Industry
Iowa Grocery Industry Association
Iowa Retail Federation
Iowa Wholesale Distributors Association
League of Women Voters of Iowa
Philip Morris USA, Inc
R.J. Reynolds Tobacco Co.

	FY 2008	FY 2009 w/ 1.5% across the board cut
Revenues		
Balance Forward	\$ 0	\$ 2,995,303
General Fund Appropriation	127,600,000	126,000,000
Less 1.5% ATB		-1,914,000
Interest	2,604,757	1,000,000
Total Revenues	130,204,757	129,681,303
Appropriations		
<i>Department of Public Health</i>		
Addictive Disorders	\$ 6,993,754	\$ 3,178,602
<i>Division of Tobacco Use Prevention and Control</i>	5,861,754	1,847,602
Healthy Children and Families	687,500	664,262
Chronic Conditions	1,188,981	1,158,187
Community Capacity	2,790,000	2,775,635
<i>Total Department of Public Health</i>	11,660,235	7,776,797
<i>Department of Human Services</i>		
Medical Assistance	\$ 99,518,096	\$ 114,351,496
State Children's Health Insurance	8,329,570	0
Mental Health/Developmental Disabilities Growth Factor	7,592,099	7,553,010
ATB cut		39,089
<i>Total Department of Human Services</i>	\$ 115,439,795	\$ 121,904,506
<i>General Assembly</i>		
Commission on Affordable Health	\$ 500,000	
Reversion	-390,545	
Total Appropriations	\$ 127,209,454	\$ 129,681,303
Ending Balance	\$ 2,995,303	\$ 0

Association. Reynolds America, the Cigar Association of America, and the Iowa Wholesale Distributors Association were all represented by Wasker, Wimmer, and Schoenfeld.²⁹⁸ Legislators, specifically Christopher Rants (R-Sioux, Policy Score 0.3, Industry Contributions: \$7,397) and other Republicans, also spoke out against the bill. Some argued that the tax was regressive, disproportionately burdening Iowan's of modest income, arguments developed in the 1980s when the tobacco industry was attempting to form relationships with organized labor.⁵⁶ Such arguments were used to recruit the Iowa Citizen Action Network to lobby against previous tax legislation on behalf of the industry two decades earlier. Others argued that if the tax was going to be increased than the legislation should require that all funds be used toward cessation, not health care broadly.²⁹⁹

Outcome

Despite the lobbying presence of the tobacco industry and its allies, and the opposition of some legislators, Senate File 128 passed the Senate on March 7, 2007, (34-14) and the House on March 13 (58-40).²⁹³ Governor Culver signed the bill into law two days later, increasing Iowa's tobacco tax for the first time in 16 years. The bill in its final version also increased the tax on other tobacco products (except for snuff) from 22 percent of the wholesale price to 50 percent, introduced a \$1.19 per ounce tax on snuff, introduced an inventory tax on tobacco products, required that cigarettes be sold in packages of 20 or more, and created a health care trust fund into which the first \$127 million in taxes collected on tobacco products were required to be deposited. After the passage of the tax increase, tobacco control advocates had to focus their efforts on the FY 2008 budgetary process to secure funds of the Division of Tobacco Use Prevention and Control.

Use of Tax Funds

The ITPA, CAFE Iowa CAN, and the Division of Tobacco Use Prevention and Control monitored the FY 2008 budgetary process and advocated for increased funding for tobacco control, particularly for cessation. Legislators were receptive to allocating funds that taxed smokers towards helping them quit.¹⁴ Still, the IDPH was allocated a very small portion of tax revenue in FY 2008 and FY 2009, especially compared to the amount allocated to the Department of Health and Human Services (most of which went toward funding Iowa’s Medicaid program) (Table 66).

Tobacco taxes generated \$250.7 million and \$199.2 million in revenue for the state of Iowa in FY 2008 and FY 2009 (through April 2009), respectively (Table 67). In both fiscal years \$127.6 million was appropriated to the Iowa Health Care Trust Fund (HCTF) as required by SF 128. Of the \$127.6 million appropriated to the trust fund, \$11.7 million was allocated to the Iowa Department of Public Health in FY 2008 and \$7.8 million was allocated in FY 2009 (Table 67). The reduction of funding to IDPH in FY 2009 was the result of an across-the-board cut in budgets of state programs in FY 2009 as the result of budgetary shortfalls amid a national economic crisis in 2008 and 2009.

Medical interests were far more successful than the Iowa Department of Public Health and tobacco control advocates at advocating for funding for their programs. While the Iowa Department of Public Health received an increase in funding of \$11.7 million in 2008 and \$7.8 million in 2009, the Department of Human Services was able to advocate for \$115.4 million and \$121.9 million in those same years. Additionally, when the FY 2009 budget included a 6.5 percent across the board allocation cut funding to the Department of Public Health from the Health Care Trust Fund was cut by 33 percent, while funding to the Department of Human Services increased by nearly 6 percent. Tobacco control advocates were, however, successful in protecting funding under the across the board cut from disproportionately affecting the tobacco program.³⁰⁰

Funding to the Division of Tobacco Use Prevention and Control from the Iowa Department of Public Health was allocated from revenue received to address addictive disorders. In FY 2008, TUCP was allocated \$5.9 million in tobacco tax revenue, increasing their budget to \$13.4 million, and in FY 2008 the division received \$1.8 million.²⁹⁷

Funds received by the Tobacco Division from the tobacco tax increase and creation of the Health Care Trust Fund were used primarily for cessation services, an area that the Tobacco Division sought to increase funding for under their 2007-2010 strategic plan.²¹⁶ Additionally, many legislators believed that if smokers were being

	Cigarette Tax	Tobacco Tax	Total	Appropriations to the HCTF	Total to General Fund
FY 2008	\$229.5	\$21.2	\$250.7	\$127.6	\$123.1
FY 2009 (Through 4/30/09)	\$179.4	\$19.8	\$199.2	\$127.6	\$71.6

taxed, money should be used to help smokers quit and as a result, when negotiating the passage of SF 128, it was agreed that funds would be used for cessation services. In 2009, Bonnie Mapes, Director of the Iowa Tobacco Division recalled:

[There were] lots of meetings with legislators wanting to know how we would use additional funding and what the impact would be...A lot of them said we'll pass the tax, but we have to have services for the people that are going to be paying it, which made perfect sense. And so therefore there was a lot of support to put most of it toward cessation.¹⁸⁹

In FY 2008, the Division of Tobacco Use Prevention and Control planned to spend \$3.2 million on cessation services, a significant increase from FY 2007 when they were spending just over \$1 million.³⁰¹ With the increase in funds directed toward cessation, TUPC worked toward developing the effectiveness of Iowa's Quitline (Table 68).

Beginning in January 2008, the Division of Tobacco Use Prevention and Control began providing 2 weeks of free nicotine patches or gum to Iowans through Quitline Iowa to supplement the counseling that was already available. In addition, in February 2008 Medicaid added Chantix to its list of cessation products it covered (NRT gum, NRT patch, Varenicline, Bupropin, and counseling), leading to three times the referrals from Medicaid providers to Quitline Iowa. Funding of nicotine replacement therapy by the Iowa Department of Public Health and Medicaid, combined with the increase in price of cigarettes led to the quit line receiving more calls in FY 2008 than they had received in FY 2001-2007 combined (Figure 11).

In addition to the cessation services provided through Quitline Iowa, the Tobacco Division began funding clinical cessation for low income smokers in February 2008. The Division entered a contract with the Iowa/Nebraska Primary Care Association to fund a service that offered up to 12-weeks of any FDA-approved cessation pharmaceuticals and counseling for low-income smokers not eligible for Medicaid. The services were available at 20 federally-funded Community Health Centers in Iowa. The contract with the IA/NEPCA totaled \$1 million annually. While the contract with IA/NEPCA brought Iowa closer to the CDC

<i>Cessation</i>	3.32
Quitline Iowa operations	0.8
Nicotine patches and gum	1.7
Healthcare provider education/outreach	0.6
Healthcare provider training (5 regional)	0.07
Patient/provider materials	0.07
Free clinic grants	0.08
<i>Just Eliminate Lies</i>	1.35
Counter marketing	0.95
Chapter grants	0.4
<i>Secondhand smoke education</i>	0.18
SHS community education project	0.08
SHS statewide media campaign	0.1
<i>Other projects</i>	0.08
Tobacco-free campus grants (3)	0.05
Iowa Tobacco Control Conference	0.03
<i>Program Support and Administration</i>	0.27
Personnel (Salaries and Benefits)	0.23
Operations	0.04
<i>Iowa Department of Public Health Administration</i>	0.3

recommended funding level for cessation services, funding clinical cessation is not a cost-effective public health intervention, but rather services that should be funded by the medical system.¹⁹²

Although the Tobacco Division focused heavily on increasing cessation services, after the increase in the tobacco tax, the national American Lung Association gave Iowa an “F” for their cessation coverage in their annual “State of Tobacco Control” report³⁰² because Iowa did not offer all FDA- approved cessation pharmaceuticals through Medicaid and had limits on the amount of medication a patient could receive. Additionally, Iowa also did not have cessation coverage for state employees nor did the state require private insurance carriers to cover nicotine dependence treatment.³⁰³ Doing so would not only have improved cessation coverage for the population as a whole, but would have relieved the Tobacco Division from using limited resources for providing clinical cessation services, which, while very cost-effective when viewed as a clinical intervention, are not cost effective when viewed as a public health intervention.¹⁹²

Additionally, although the tobacco tax significantly increased the FY 2008 budget, as well as the FY 2009 budget to a lesser degree, the Division of Tobacco Use Prevention and Control still only received about one third of the CDC-recommended amount of state funding.⁷ The low level of funding also received an “F” in 2009 from the American Lung Association.³⁰³

Effect of the Tax Increase on Advocates

The success of the 2007 tax increase not only had the tangible effect of an increase in tobacco control funding but also had a less quantifiable, but real, effect on the confidence of advocates. Through involving community partnerships and JEL in the tobacco tax campaign there was a greater awareness of the power of “citizen advocacy.”²⁹⁰ The ability to pass the tobacco tax legislation also demonstrated the effectiveness of the reformed state coalition, which was integral to the passage of the tobacco tax. The realization of their power by advocates and the lessons learned by running a successful campaign was vital to the passage of a comprehensive statewide smokefree law in 2008, during the following legislative session.

Push for Local Control and the Smokefree Air Act

Under ITPA’s strategic plan they were not only trying to raise the cigarette tax, but also restore local control to Iowa’s communities. In the 2007 legislative session, when advocates were able to successfully pass a tobacco tax, they were simultaneously focused on restoring local control to Iowa communities.

2007– The fight for local control

Beginning at the start of the 2007 legislative session, the ITPA was active at the local level to garner support for state level legislation to restore the right of localities to pass clean indoor air laws. ITPA coordinated a campaign that encouraged local governments and boards of health to pass resolutions that demonstrated their support for repealing preemption.

The ITPA drafted a model resolution for distribution that request that the “Iowa General Assembly and Governor of the State of Iowa pass legislation allowing local control of smoking in public places,” citing the dangers of secondhand smoke as the foundation for the need for local governments to be given the authority to pass clean indoor air laws. Between January 2007 and February 2008, 31 local governments and boards of health passed resolutions showing their support for local control³⁰⁵ (Table 69).

Senate File 236: A Local Control Bill Passes the Senate

The Iowa Restaurant Association (IRA), a long time tobacco industry ally,²³ made defending preemption one of their 2007 legislative priorities.³⁰⁶ On February 12, while the Senate Local Government Committee and House Local Government Committee were considering whether to introduce preemption repeal bills in their respective chambers, the Iowa Restaurant Association sent an action alert to their membership requesting that members contact legislators to urge them to vote against any preemption repeal. The IRA action alert explained to IRA members that over 20 cities were ready to immediately adopt local clean indoor air ordinances if the Iowa General Assembly passed a preemption repeal bill. IRA action alert instructed IRA members to make four points when contacting their legislators:

- Current state preemption law related to smoking is working well – leave it alone!
- Dealing with 900 different smoking ordinances in the state will create chaos for business owners.
- 80 percent of Iowans are non-smokers and 80 percent of Iowa restaurants are already non-smoking. As a business owner you want to retain your right to accommodate the customer market you chose.
- This will jeopardize the viability of your business.³⁰⁷

All of the arguments used by the IRA were tobacco industry messaging developed specifically to mobilize the hospitality industry against clean indoor air measures,^{44, 227, 308} including the accommodation messaging included in the IRA action alert that was pitched to the IRA in 1987 by the Tobacco Institute as part of the *Great American Welcome*,^{96, 97} one of the

Table 69: Local Governments or Boards of Health that adopted resolutions requesting that the Iowa General Assembly repeal the preemption clause in Iowa Code Chapter 142.B³⁰⁴

<i>Local Government or Board of Health</i>	<i>Date of Passage</i>
Ames	1/09/07
Story County	1/30/07
Cool	2/5/07
Story City	3/19/07
Waukee	9/10/07
North Liberty	9/11/07
Johnson County	8/23/07
Iowa City	9/18/07
Fairfield	9/25/07
Des Moines	9/24/07
Coralville	9/25/07
Buchanan County	10/9/07
Linn County	10/10/07
Cedar Falls	11/12/07
Cedar Rapids	11/14/07
West Burlington	11/21/07
Greene County Board of Health	11/29/07
Adams County	12/12/07
Iowa Falls	12/19/07
Warren County Board of Health	1/4/08
Cass County	1/9/08
Alden	1/14/08
Carlisle	1/14/08
Primghar	1/14/08
West Des Moines	1/14/08
Dubuque	1/21/08
Orange City	1/21/08
Ventura	1/28/08
Cerro Gordo County	1/29/08
Van Buren County	1/29/08
Delaware County Board of Health	2/5/08

tobacco industry's first accommodation programs designed to prevent the passage of strong clean indoor air policies (See "Early Clean Indoor Air Legislation").

Despite the mobilization of the IRA, on February 20, 2007, the Senate Local Government Committee introduced Senate File 236. The bill, entitled "An act relating to local regulation of smoking," sought to repeal preemption, allowing local governments to pass stricter clean indoor air laws than the weak law at the state level.³⁰⁹ ITPA and CAFE Iowa CAN worked with legislators to draft the bill.¹⁴ As introduced, Senate File 236 allowed cities and counties to enforce public clean indoor air laws that were more stringent than state law.³⁰⁹

Eight amendments were filed after the introduction of Senate File 236, but only three were adopted.³⁰⁹ Two amendments were adopted that better defined terms used within the bill and made language in the bill more precise. The third amendment adopted, introduced by Senator Mark Zeiman (R-Allamakee, Policy Score: n/a, Industry Contributions: \$0), exempted fraternal benefit societies from the definition of public places where local governments were able to adopt stricter regulations than the state law.³⁰⁹ This amendment was a compromise between Senate Republicans and Democrats; Republicans wanted to exempt taverns and casinos under the bill in addition to fraternal organizations while Democrats were only willing to exempt the fraternal societies.³¹⁰ Senator Herman Quirnbach (D-Story) who floor managed the bill recalled in 2009:

I floor managed [SF 236], and I fought off a bunch of amendments – I fought off all the amendments except one from the Republican side. We had some Democrats who were very dicey on [the issue of local control]. Even though we had a 30-20 majority, I was beating down amendments only with about 26 or 27 votes...Had we lost one amendment on the floor, the dam may have broken. They would have flooded this with a bunch more amendments.²²²

After two days of debating and voting on amendments, Senate File 236 passed the Senate on March 14 by a vote of 30-20, straight along party lines.

The bill was sent to the House's Local Government Committee, but no action was taken on the bill during the 2007 session.³⁰⁹ Under the rules of the Iowa General Assembly, the bill was carried over to the 2008 session where it would only need to be passed by the House during that session.¹ The passage of a local control bill by the Senate demonstrated monumental progress after more than a decade of failed attempts at passing state level legislation to repeal preemption in Iowa.

Also during the 2007 legislative session, the House Local Government Committee introduced House File 778, a companion bill to Senate File 236. However, unlike its Senate counterpart, House File 778 did not move beyond the Local Government Committee during the 2007 legislative session.³¹¹

Local Control Now

After the 2007 legislative session, the Division of Tobacco Use Prevention and Control launched a campaign to show that Iowa citizens most affected by smoking environments were in support of local control of public smoking regulations. In the fall of 2007 the Division ran a counter-marketing campaign featuring Iowa hospitality workers explaining circumstances in which the individuals were exposed to secondhand smoke and asserting that they had the right to smokefree air (Figure 17). Each advertisement had a caption that said “Everybody has the right to smoke free air. Local control now.”¹⁸⁹ The ads were run in rural areas of Iowa in print and on billboards.¹⁹⁹

In January 2008, the IRA filed a complaint with newly-appointed Director of IDPH Tom Newton. At a TUPC Commission meeting tobacco division Director Bonnie Mapes provided Newton and the TUPC commission with information that showed that best practices supported such campaigns and that many other states had run similar ads. Mapes also provided attendees at the TUPC Commission meeting with examples of similar ads in Nebraska.³¹²

Although these ads were common counter-marketing material used in states across the US, the Department of Public Health came under fire because of their dissemination. A group of Republican legislators claimed that the ads were lobbying material and thus an illegal use of state funds.¹⁸⁹ The controversy came despite the fact that the Attorney General’s Office and the Iowa Ethics and Campaign Disclosure Board had asserted that the advertisements were a legal use of state funds.³¹³

Filing complaints of “illegal lobbying” has long been a tobacco industry tactic to chill progress toward tobacco control goals.³¹⁴ The charges against the IDPH and its Tobacco Division resulted from a strained interpretation of lobbying and were arguably borne from the fact that local control had become such a politicized issue, rather than because of a genuine conflict over Iowa lobbying laws.

During the 2008 legislative session, when Iowa’s statewide smokefree bill (discussed below) was in the House, Senate Republicans challenged the confirmation Tom Newton, who

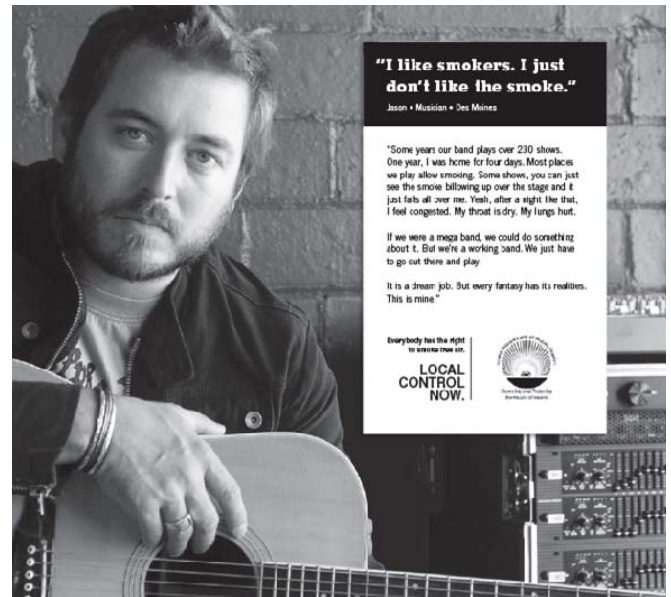


Figure 17: Counter-marketing ad supporting local control, printed in fall of 2007.

The text read: “I like smokers. I just don’t like the smoke.”
Jason – Musician – Des Moines

“Some years our band plays over 230 shows. One year, I was home for four days. Most places we play allow smoking. Some shows, you can just see the smoke billowing up over the stage and it just falls all over me. Yeah, after a night like that, I feel congested. My throat is dry. My lungs hurt. If we were a mega band, we could do something about it. But we’re a working band. We just have to go out there and play. It is a dream job. But every fantasy has its realities. This is mine.”

Everybody has the right to smoke free air. LOCAL CONTROL NOW.

had been appointed Director of IDPH while the Senate was out of session, because he had allowed the ads to continue to be disseminated. The Republican legislators charged that the ads were partisan political ads and that they were inappropriate use of state funds.³¹³ Because two-thirds of the Senate was necessary to confirm Director Newton, the lobbying challenges could have prevented his confirmation in a chamber where Democrats had to pick up four Republican votes to complete his confirmation. This controversy led to a drawn out and deadlocked confirmation process.

The ITPA sent out an “action alert” to its membership to encourage ITPA members to contact their legislators and ask for their representatives to vote in favor of Director Newton’s confirmation.³¹⁵ Additionally, the Iowa Nurses Association, the Iowa Public Health Association and other health groups sent letters of support for Newton’s confirmation to the legislature.¹⁹⁹

In an attempt to move beyond the impasse that had resulted during the confirmation hearing, Senate Majority Leader Michael Gronstal (D-Pottawattamie, Policy Score: 8.0, Industry Contributions: \$1,200) and Senate Minority Leader Ron Wieck (R-Woodbury, Policy Score: 1.7, Industry Contributions: \$500) introduced Senate File 2427. Senate File 2427 prohibited state agencies from running paid advertisements or public service announcements 30 days prior to or during a legislative session that encourage passage, defeat, approval, or modification of a bill being considered during that, or was considered in the previous, legislative session.³¹⁶ Senate File 2427 quickly moved through the chambers of the General Assembly. The bill was introduced April 21, 2008, and passed the Senate the same day with a vote of 46-3. Health groups attempted to fight the bill, but relented because they did not believe that they would be able to prevail and their opposition could have resulted in further restrictions on the Tobacco Division’s counter-marketing program.¹⁴

The following day one amendment was filed in the House that would have restricted state agencies from ever running advertisements or public service announcements that encouraged or could encourage the passage, defeat, approval or modification of a bill.³¹⁶ This amendment would have completely prohibited any advertisement or public service announcement that could at any point be related to a policy issue, which would have been detrimental not only to public health but all other areas about which government agencies conducted public education. The amendment failed (44-51) and the following day the House passed Senate File 2427 with a vote of 95-1³¹⁶ after legislators were informed that it would be unconstitutional to in effect, completely prohibit public service announcements by state agencies.¹⁹⁹ Governor Culver signed the bill into law on April 24.³¹⁶

The same day Director Newton was confirmed as Director of IDPH by a vote of 37-10.³¹³

As a result of the controversy surrounding the advertisements, the “Local Control Now” tagline was removed (Figure 18), however the modified ads stressing the right to breathe smokefree air continued to run

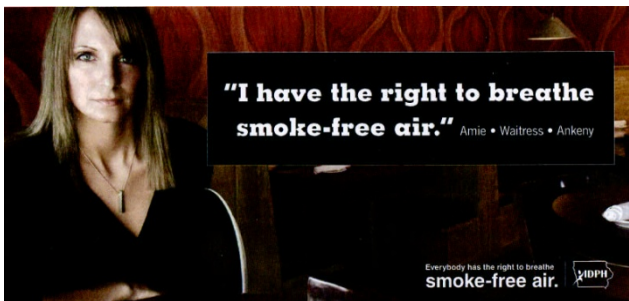


Figure 18: Smokefree air advertisement with the “Local Control Now” tagline removed

during the legislative session in the Des Moines metro market, including on television.¹⁹⁹

2008 – The Iowa Smokefree Air Act

Local Control or Statewide Smokefree?

In the midst of the controversy during the 2008 legislative session caused by the Division of Tobacco Use Prevention and Control's local control advertisements, the legislative focus shifted away from passing legislation that would have removed preemption from Iowa's law and instead to a statewide clean indoor air law.

In the summer of 2007, Representative Janet Peterson (D-Polk, Policy Score: 9.7, Industry Contributions: \$0), chair of the House Commerce Committee, began talking with Cathy Callaway, Senior Representative of the American Cancer Society Cancer Action Network and President of the ITPA, about the possibility of introducing a statewide clean indoor air law to determine whether tobacco control advocates would support such legislation. Representative Peterson had worked the American Heart Association as an intern in 1991 and later as staff in 1993, where she lobbied for tobacco control measures.³¹⁷ As a result of Petersen's past work in tobacco control, she had a history of supporting strong tobacco control policies.¹⁴ Rep. Petersen did not think that there were enough votes to pass a local control bill from the House. Additionally, she believed that it was in the best interest of Iowa's business community to have a law that was uniform throughout the state.

To increase the viability of passing a smokefree bill Petersen sought out to engage Principal Financial, a Des Moines-based provider of retirement plans, health insurance, and life insurance, among other financial services, and one of the largest employers in Iowa.³¹⁷ In fall 2007, Peterson met with Principal Financial's head of government relations. In the meeting Petersen made the case that a statewide clean indoor air law would be beneficial for their recruitment of employees because there was the demand for smokefree air across Iowa communities and having a statewide law would mean that every office that they had would be smokefree, rather than if there were local control and different localities had different policies.³¹⁷

Principal Financial needed assurance that there was a legitimate chance that a statewide clean indoor air bill would pass before publicly supporting it. In response, Representative Petersen set up a meeting that took place in summer 2007, between the head of government relations at Principal Financial, Governor Chet Culver and Lieutenant Governor Patty Judge. In that meeting she again explain why she believed that a statewide bill was not only more politically feasible than a local control bill free of exemptions, but also her opinion that it was a better option for the business community. In that meeting, Governor Culver agreed that he would support her bill if she was able to build additional support for a statewide clean indoor air law. The Governor's support, pending recruitment of additional proponents, was enough assurance for Principal Financial to join the fight. Petersen then approached legislative leadership to garner their support for a statewide bill. She again made her case and they agreed to support her endeavor.³¹⁷

While Rep. Petersen did not believe the votes existed to pass a local control bill in the Iowa House, Callaway and other advocates did not think that they would be able to get the votes necessary to pass a statewide clean indoor air bill. Some advocates were also concerned about fallout that could occur if strong smoking regulations were introduced in communities that were “not ready” for such regulations.¹⁸⁹ Out of these concerns, tobacco control advocates, the IDPH, the TUPC commission, the Attorney General’s Office, and the Governor’s Office continued to support restoring local control to Iowa communities, rather than a statewide clean indoor air bill, and prepared for the 2008 legislative session with the goal of only repealing preemption in mind.¹⁸⁹

Despite the hesitance communicated by advocates, Peterson asked Cathy Callaway to provide model language for a statewide clean indoor air bill so that Peterson could introduce the best possible language for a statewide law. Accordingly, Callaway assisted in drafting a bill, and on January 22, 2008, Representative Petersen introduced House Study Bill 537, a comprehensive statewide smokefree bill, to the Commerce Committee for consideration on January 22, 2008 (Table 70). Study bills were used to determine receptiveness in the General Assembly. If they passed from committee they were introduced to the full chamber as a regular bill.¹

In January 2008 six bills that had either been carried over from the 2007 session or had been introduced at the start of the 2008 legislative session sought to restore local control or create statewide smoking regulations that were stronger than those already on the books (Table 70).

<i>Bill</i>	<i>Sponsor</i>	<i>Provisions</i>
Senate File 236	Senate Local Government Committee	A local control bill that exempted fraternal service organizations from the definition of public places. Passed the Senate by a vote of 30-20 during the 2007 legislative session.
House Study Bill 537	Rep. Janet Peterson (D-Polk)	A statewide smokefree bill that would repeal Iowa Code 124B and establish the Iowa Smokefree Air Act. The bill sought to prohibit public smoking statewide and included a provision to allow local governments to pass stricter laws.
House Study Bill 565	Rep. Mark Smith (D-Marshall)	A bill that would have restored local control to Iowa communities.
House File 778	House Local Government Committee	A local control bill (companion to SF 236). Amended to include exemption for bars and casinos and as a result was passed unanimously from the House Local Government Committee on March 5, 2008. The added exemptions to the bill were unacceptable to and not supported by public health advocates .
House File 2054	Rep. Philip Wise (D-Lee)	A statewide smoking bill that would have prohibited smoking in restaurants beginning July 1, 2008 and bars on July 1, 2009. The bill included an exemption for gaming facilities.
House File 2067	Rep. Ro Foege (D-Linn)	A bill that would have restored local control to Iowa communities.

It quickly became evident that, as Representative Petersen expected, the local control bills were not going to advance and that the House leadership had put their support behind Peterson's proposal for a statewide clean indoor air bill (House Study Bill 537).²⁶⁸

Understanding the political reality that whichever bill the leadership preferred would be the bill that advanced, advocates attempted to convince the legislative leadership to instead put their support behind a local control bill. Director of the Division of Tobacco Use Prevention and Control Bonnie Mapes recalled in 2009:

We were pushing for local control because we were afraid of what would happen if we suddenly jumped from having no local ordinances [to a statewide bill]... So we were a little reticent right at first. It was like, "No, we [the legislative leadership] want to go for a state[wide] law." And we're going, "We would prefer local control." And finally it came down to, "You're going to get the state law and not local control. What are you going to do?" And we said, "Okay we'll support this." That was the reticence. It didn't last long, but we were still trying to explain to them and get them to support local control as opposed to the state law and they wouldn't do it.¹⁸⁹

Executive Officer of the Iowa Attorney General's Office Bill Roach, who had been continually involved in Iowa's tobacco control measures, recalled a similar conversation:

The legislative leadership essentially said to us, "No, we not only think we can do a statewide law, we're not particularly interested in only going part way. We want it to go all of the way." It put us in the position of saying, "Essentially, if we're successful getting a smokefree law passed, we're 10 years down the road from where we thought we were going to be." It was too good a deal to pass up.²⁶⁸

As a result of such conversations, in the middle of the legislative session before the bill came up for its first vote, representatives of the voluntary health organizations, the ITPA and CAFE Iowa CAN shifted their focus away from repealing preemption of local clean indoor air ordinances toward a passing a statewide clean indoor air law. The groups began lobbying and grassroots advocacy.²⁶⁸ However, advocates never dropped the local control bill in case a statewide bill failed.

In a 2009 interview CAFE Iowa CAN lobbyist Threase Harms recalled the difficulty in abruptly changing focus from local control to a statewide clean indoor air law in the middle of the legislative session, "Let me tell you, try sending that to legislators. They were like, 'I thought you wanted local control. That's why I supported that. I told you I would support that.' And I was like, 'I don't know.'"¹⁸⁵

House File 2212 – The Iowa Smokefree Air Act

HSB 537 was a comprehensive clean indoor air law providing coverage for all Iowans with only minor exemption when introduced in the House Commerce Committee by Rep.

Petersen (Table 71). Several provisions were added between the discussion of House Study Bill 537 and the introduction of House File 2212 that appeared to make House File 2212 a stronger bill than House Study Bill 537. However, when introduced, House File 2212 also included important exemptions and provisions not present in House Study Bill 537 that weakened the proposed law in way that out-weighed any provisions added to extend the coverage of the bill. Most controversially, House File 2122 removed gaming facilities from the list of public places where smoking was regulated and included an explicit exemption for gambling structures and hotels/motels owned by licensed gaming facilities (Table 71).^{318, 319}

During discussion of HSB 537, Republican members of the Commerce Committee proposed a provision to extend smoking prohibition to state-owned buildings and other state property. The provision was proposed as an attempt to kill the bill rather than extend the coverage of smokefree places. Governor Culver's wife was a smoker and Republicans believed that the Governor would oppose the bill if it included smokefree state-owned grounds (including the Governor's mansion). Democrats called the Republicans' bluff and voted in favor of adding the language to HF 2212.¹⁴

The changes made between House Study Bill 537 and House File 2212 that weakened the language were necessary for a bill to be passed from the Commerce Committee to the General Assembly. In order for a bill to pass the Commerce Committee, Representative Petersen needed 12 legislators to vote in favor of the bill. Ten members of the committee were Republican and under orders from their leadership to vote against the bill. The remaining 13 members were Democrats meaning that Rep. Petersen could not afford to lose the support of members of her own party. The removal of explicit language that explained that the law would not preempt local activity and the inclusion of a gaming exemption were concessions made to maintain the support of Democratic legislators in the Commerce Committee.³¹⁷ Additionally, Speaker of the House Pat Murphy (D-Dubuque, Policy Score: 7.3, Industry Contributions: \$1,500) made it clear in caucus conversations at the beginning of the legislative session that he would not allow a clean indoor air law to pass the House without an exemption for casinos.¹⁴ Murphy represented a district that contained an Isle of Capri Casino, a Missouri-based gaming corporation with four gaming facilities in Iowa, represented by the Iowa Gaming Association⁴⁵ an ally to the tobacco industry in fighting the clean indoor air laws.

The Gaming Exemption

The gaming exemption was decided upon by leadership in the Iowa House in early caucus conversations regarding the possibility of introducing statewide clean indoor air legislation. Although advocates strongly opposed an exemption for casinos and other gaming facilities, they felt as if they never were given the opportunity to fight against the provision.^{14, 189} In 2009, Cathy Callaway recalled:

We never really had the opportunity to push for the casinos. They were kind of off the table before we even started. And we had done, I think, a really good job of educating people on protecting everyone's right to breathe smokefree air, and so it was very frustrating throughout the session when leadership in the House would be yelling at us: "Why are your people still talking about local control?" "Why are your people still talking about casinos?"

Table 71: Progression of House File 2212						
<u>Provisions</u>	<u>HSB 537</u>	<u>HF 2212 as introduced</u>	<u>HF 2212 passed by House 2/19</u>	<u>HF 2212 passed by Senate 2/27</u>	<u>HF 2212 passed by House 3/12</u>	<u>Final version from Conference passed by House 4/8, Senate 4/8, and signed by the Governor 4/15</u>
AREAS IN WHICH SMOKING WAS PROHIBITED						
Indoor public places	X	X	X	X	X*	X
Gaming facilities	X			X		*smoking was permitted on the floor of gaming facilities but not in restaurants at gaming facilities
Enclosed places of employment	X	X	X	X	X*	X
Outdoor areas where smoking could filter into smokefree areas	X	X	X			X
Public transportation	X	X	X	X	X*	X
School grounds	X	X	X	X	X*	X
Grounds of public buildings	X	X	X	X	X*	X
State owned vehicles		X	X	X	X*	X
State owned private residences		X	X	X	X*	X
Outdoor seating or service area of restaurants						X
Outdoor seating areas of entertainment venues						X
AREAS EXPLICITLY EXEMPTED FROM REGULATION UNDER HOUSE FILE 2212						
*All places that were only open to persons 21 years and older and any restaurant or other establishment during designated hours when they only allow persons 21 or older to enter					X	
Private residences	X	X	X	X	X	X
Up to 20% of contiguous hotel/motel rooms	X	X	X	X	X	X

<u>Provisions</u>	<u>HSB 537</u>	<u>HF 2212 as introduced</u>	<u>HF 2212 passed by House 2/19</u>	<u>HF 2212 passed by Senate 2/27</u>	<u>HF 2212 passed by House 3/12</u>	<u>Final version from Conference passed by House 4/8, Senate 4/8, and signed by the Governor 4/15</u>
Hotels/motels owned by gaming facilities		X	X	X	X	
Private/semi-private rooms in long-term care facilities	X	X	X	X	X	X
Private clubs with no employees except for an event that was open to the general public or if the club was created to avoid compliance with the Act	X	X	X	X	X	X
AREAS EXPLICITLY EXEMPTED FROM REGULATION UNDER HOUSE FILE 2212						
Limousines under private hire	X	X	X	X	X	X
Work vehicles used by only one person	X	X	X	X	X	X
Enclosed places where smoking was necessary for medical or scientific research or therapy	X	X	X	X	X	X
Veterans organizations except during functions to which the public was invited	X	X				
State fair grounds				X	X	X
Correctional facilities				X	X	X
Iowa National Guard facilities				X	X	X
The Iowa Veteran's Home			X		X	X
Retail tobacco stores						X
Farm tractors, farm trucks and implements of husbandry				X	X	X
LOCAL CONTROL PROVISIONS						
Provision that explicitly stated that HF 2212 did not preempt local action	X					
Provision repealing Iowa Code chapter 142B which contained the implied preemption clause	X	X	X	X	X	X

[ITPA's membership] get the issue. That's why. If you wouldn't have pulled out so fast, we could have provided you a lot of coverage protecting everyone's right to breathe smokefree air instead of the casino exemption.¹⁴

Despite opposition from tobacco control advocates, the Iowa House leadership felt that without the exemption it was politically unfeasible to pass the clean indoor air bill because the Iowa Gaming Association was a powerful political player in Iowa. Legislators were beholden to the Iowa Gaming Association as a result of campaign contributions and because the state had become reliant upon gaming revenue.¹⁹⁰ The Iowa Gaming Association made standard tobacco-industry inspired claims that the state would lose tens of millions of dollars in gaming revenues if they were not exempted, because patrons would choose to take their business to casinos in neighboring states or to Indian casinos that did not fall under the state's jurisdiction. These claims resonated with key legislators, particularly Speaker of the House Murphy.^{46, 320} Advocates provided legislators with economic impact studies that demonstrated that the Iowa Gaming Association, was making exaggerated claims about the effect of a smokefree law on gaming revenue. Additionally, advocates countered the gaming industry attacks as they came up.¹⁴

The exemption for casinos was divisive. It was a deal breaker for the American Lung Association which made a decision that they would not support the bill; they did not, however, actively oppose it. Other Iowa advocacy groups made a concession to their "no exemption" policies because they argued that the other provisions were a major step forward.¹⁹⁰ The IRA, which opposed the bill, also opposed exempting casinos because they felt that an exemption for casinos created an unequal playing field between establishments.³²⁰ Opposing the exemption for casinos was a difficult decision for the IRA because the IRA also represented some of Iowa's casinos, causing them to have to take a position that was unpopular with some of their own members.³²¹ The debate about exempting casinos continued throughout the entirety of the 2008 legislative session.

Provisions of HF 2212

House File 2212, the successor to House Study Bill 537, was introduced by the House Commerce Committee on February 11, 2008. The bill included strong provisions to regulate smoking. As introduced, House File 2212 prohibited smoking in all indoor public places as well as designated outdoor areas (Table 72). The bill also delineated public places that were explicitly exempt from coverage (Table 71).

Under the bill, enforcement of law would be put under the purview of the IDPH or its designee, and the IDPH was also charged with developing administrative rules regarding enforcement. In addition, the legislation empowered individual citizens with the right to bring legal action to enforce the chapter and to register complaints with IDPH or its designee.³¹⁸

Strict penalties for violations of the clean indoor air law were also included. An individual could be cited for smoking in a place where smoking was regulated and would receive a fine that would not exceed \$100 for the first violation, with the penalty increasing incrementally depending on the number of violations and the proximity in time that the violation

occurred. Any employer who took retaliatory action against an employee that made a complaint or took legal action under the clean indoor air law would face a fine between \$2,000 and \$10,000. Any establishment found in violation of the law would be subject to suspension or revocation of any license or permit issued for the premises on which the violation occurred, a particularly important provision for establishments with liquor licenses. The legislation also stipulated that each day a violation occurred constituted a separate violation of the law.³¹⁸

The Fight for Passage of HF 2122

When House File 2212 was introduced in the House on February 12, 2008, numerous amendments were also filed. Several amendments sought to weaken House File 2122, including House Amendment 8017, filed by Rep. Cecil Dolecheck (R-Ringold, Policy Score: 3.0, Industry Contribution: \$0), Rep. Doug Struyk (R-Pottawattamie, Policy Score: 2.3, Industry Contribution: \$0), Dan Rasmussen (R-Buchanan, Policy Score: n/a, Industry Contribution: \$500), Matt Windschilt (R-Harrison, Policy Score: 2.7, Industry Contribution: \$0), Tom Sands (R-Louisa, Policy Score: 2.7, Industry Contribution: \$0), which sought to allow smoking in any establishment that only permitted persons 21 or older to enter.³¹⁸ House Amendment 8017 was also supported by the Iowa Restaurant Association³²⁰ and tobacco industry lobbyists¹⁴ who pushed standard industry messaging that smoking was an adult choice.⁴⁶

Only one amendment was adopted, House Amendment 8027, introduced by the bill’s floor manager Rep. Tyler Olson (D-Linn, Policy Score: 9.7, Industry Contribution: \$0). The amendment changed provisions pertaining to outdoor smoking regulations, reducing the proximity in which a person could smoke near a public place from either 20 or 50 feet (dependent upon the outdoor area) to 10 feet.³¹⁸ With this revision, the bill passed the House by a 56-44 vote and the bill moved to consideration in the Senate.³¹⁸

In the Senate, Sen. Staci Appel (D-Warren, Policy Score: 9.7, Industry Contribution: \$0), floor manager of the bill in the Senate, filed Senate Amendment 5035, which removed the exemption for gambling facilities and veterans homes and also removed provisions

Table 72: List of public places delineated in the introduced version of House File 2212. The legislation explained that public places included but were not limited to the following:

Financial institutions
Restaurants
Bars
Public and private educational facilities
Health care provider locations
Hotels and motels
Laundromats
Public transportation facilities and conveyances under the authority of the state of its political subdivisions, including buses and taxicabs, and including the ticketing, boarding, and waiting area of these facilities
Reception areas
Aquariums, galleries, libraries, and museums
Retail food production and marketing establishments
Retail service establishments
Retail stores
Shopping malls
Entertainment venues including but not limited to theaters; concert halls, auditoriums and other facilities primarily used for exhibiting motion pictures, stage performances, lectures, musical recitals, and others similar performances; bingo facilities; and indoor arenas including sports arenas
Polling places
Convention facilities and meeting rooms
Waiting rooms
Public buildings, places of public assembly, and vehicles owned, leased, or operated by or under the control of the state government or its political subdivisions and including the entirety of the private residence of any state employee any portion of which is open to the public
Service lines
Common areas
Private clubs only when being used for a function to which the general public is invited
Private residences only when used as a child care facility, a child care home, or health care provider location
Child care facilities and child care homes

that allowed smoking sections at outdoor entertainment venues. The amendment also added new exemptions to House File 2212, including one that removed all of the provisions regarding outdoor smoking in proximity to smokefree public places, removing restrictions for smoking near windows, doors, and other places where smoke could infiltrate into smokefree environments. The amendment also added exemptions for the Iowa state fair grounds, correctional facilities, and facilities of the Iowa National Guard. Finally, Senate Amendment 5035 added a provision to allow incorporated family farmers to smoke on their own property.³¹⁸ Health advocates continually explained that they did not support any amendments that weakened the provisions of the bill, however the exemptions included in HF 2212 helped them pick up votes in favor of the bill.¹⁴

Senate Amendment 5035 passed on February 27, 2008, by a vote of 30 to 20 and later in the day House File 2212 was passed by a vote of 29 to 21. Five Republicans voted for House File 2212 and six Democrats voted against the bill. The bill was sent back to the House for consideration of the changes made by the Senate.³¹⁸

The House did not concur with the amendments passed by the Senate and proceeded to again amend the bill, adding two provisions that seriously weakened House File 2212. House Amendment 8079A, filled by Rep. Mark Smith (D-Marshall, Policy Score: 8.0, Industry Contribution: \$0) and Rep. McKinley Bailey (D-Hamilton, Policy Score: 1.3, Industry Contribution: \$0) reinserted an exemption for the Iowa Veteran's Home. The amendment passed by a vote of 51 to 30. House Amendment 8084, introduced by McKinley Bailey (D-Hamilton, Policy Score: 1.3, Industry Contributions: \$0), Tom Schueller (D-Jackson, Policy Score: 6.7, Industry Contributions: \$0), Roger Wendt (D-Woodbury, Policy Score: 6.7, Industry Contributions: \$0), Wayne Ford (D-Polk, Policy Score: 7.3, Industry Contributions: \$0), Ray Zirkelbach (D-James, Policy Score: 4.3, Industry Contributions: \$0), Roger Thomas (D-Clayton, Policy Score: 7.0, Industry Contributions: \$0), Dolores Mertz (D-Kossuth, Policy Score: 3.3, Industry Contributions: \$100), Brian Quirk (D-Chicksaw, Policy Score: 2.0, Industry Contributions: \$750), Marcella Frevert (D-Palo Alto, Policy Score: 6.7, Industry Contributions: \$0), Rick Olson (D-Polk, Policy Score: 6.7, Industry Contributions: \$0), Geri Huser (D-Polk, Policy Score: 1.7, Industry Contributions: \$1,000) and Deborah Berry (D-Black Hawk, Policy Score: 6.7, Industry Contributions: \$0), reincorporated an exemption for casinos, and added age restriction provisions pushed by tobacco industry lobbyists. Specifically, under House Amendment 8084, any establishment that was only open to persons 21 years and older was automatically exempt from the clean indoor air law. Additionally, any restaurant or other establishment could have hours of operation provisions, where smoking was allowed during designated times when the establishment was only open to persons 21 years and older.³¹⁸ House Amendment 8084 passed 51 to 44 on March 12. Interestingly, the Senate Democratic legislators were predominately insisted that House File 2212 remained a strong bill, while in the House Democrats were undermining the bill.

A severely weakened House File 2212 passed the House as amended on March 12 by a vote of 59 to 40. Rep. Janet Peterson and legislative leadership allowed such a weak bill to pass the House because they knew that the provision would be stripped from the bill in conference committee with the Senate. As expected, the Senate refused to concur with the House amendments and the House insisted on their version. As a result, the bill went to a conference

committee of both chambers in order to develop a compromise bill.³¹⁸

Opposition and Support

The usual suspects used their lobbying capacity to fight House File 2212 (Table 73). This included the Wild Rose franchise, (a gaming facility), Kum and Go, (a local convenience store chain), and tobacco company Reynolds America.

Wild Rose, Inc of Clinton	Wild Rose, Inc of Emmetsburg
Iowa Wholesale Distributors Association	Reynolds American Inc
Iowa Restaurant Association	Petroleum Marketers and Convenience Stores of Iowa
Kum and Go	

Throughout the ping-pong of House File 2212 between the Iowa House and Senate, a much broader range of organizations lobbied on behalf of the bill. Organizations including tobacco control groups, public health organizations, local communities, and insurance providers lobbied for the passage of House File 2212 (Table 74). ITPA coordinated the overall campaign in favor of House File 2212, working closely with CAFE Iowa, the American Cancer Society, and lobbyists provided by Principal Financial.¹⁴

Principal Financial was an important and new addition to the fight for smokefree laws in Iowa. The company provided the service of several of their contract lobbyists to fight for HF 2212, they held news conferences to publicize their support for the law, as well as issued press releases. The CEO of Principal Financial took time to meet with legislators and voice his support of the law and lobby for theirs, and the company mobilized its employee base to increase grassroots capacity in the fight for the law. The engagement of Principal Financial had the effect of garnering the support of legislators sitting on the fence about the law, particularly some of the more socially moderate and fiscally conservative legislators who saw the support of such a big financial institution as a signal that they too could support the smokefree legislation.¹⁸⁵

In addition, the ITPA did public education about the conditions that necessitated a smokefree law. The ITPA released a study that found that indoor pollution in establishments that allow

American Cancer Society	Iowa Insurance Institute
Qwest	Iowa Annual Conference of the United Methodist Church
Community Health Charities	American Lung Association
Urban Education Network of Iowa	ABATE of Iowa
Iowa Community Education Association	School Administrators of Iowa
Allied Insurance	Nationwide Agribusiness
Nationwide Mutual Ins. Co	Coalition of Family and Children’s Services for Iowa
Iowa Department of Public Health	AFSCME Iowa Council 61
Iowa Medical Association	Iowa Nurses Association
Iowa School Nurses Association	Iowans for Wellness and Prevention
Mercy Health Network	Child and Family Policy Center
CAFE Iowa Citizen’s Action Network	Pfizer
Iowa Osteopathic Medical Association	Polk County Medical Society
Iowa Hospital Association	Iowa Health Systems
Iowa Commission on the Status of Women	Iowa Hospice Organization
Principal Financial Group	City of Cedar Rapids
Des Moines University	Linn County
John Deere Company	Wellmark, Inc.

smoking was 17 times higher pollution in establishments where smoking was not permitted. That level was 15 times higher than a level of pollution that would be considered safe.³²² The report was released in time to be taken into consideration by the House File 2212 conference committee.

House File 2212 in Conference

The House File 2212 Conference Committee consisted of 5 legislators from each chamber (Table 75). In conference, the committee developed a much stronger version of the bill than the amended version passed by the House (Table 71).

Throughout the conference advocates provided their legislative champions, particularly Rep. Petersen, Rep. Olsen, Rep. Appel and Rep. Bolkcom with talking points and information as they requested it.¹⁴

The bill that emerged from the conference committee was far stronger than the final version passed from the Iowa House (Table 71). As with versions passed initially from the House and Senate, the bill prohibited smoking in a broad range of public places. A compromise on the gaming exemption allowed for smoking on the floor of gaming facilities, but not in restaurants within the facilities. Additionally, the bill from conference repealed Iowa Code chapter 142B, removing preemption as it pertained to clean indoor air from Iowa law.

Legislator	Policy Score	Contributions from the tobacco industry 1998-2008
Rep. Tyler Olsen (D-Linn)	9.7	\$0
Rep. Janet Petersen (D-Polk)	10	\$0
Rep. Mike Reasoner (D-Union)	5.7	\$250
Rep. Cecil Dolecheck (R-Ringgold)	3.0	\$0
Rep. Chuck Soderburg (R-Plymouth)	3.0	\$0
Sen. Staci Appel (D-Warren)	10	\$0
Sen. Joe Bolkcom (D-Johnson)	10	\$0
Sen. Bill Dotzler (D-Black Hawk)	3.3	\$0
Sen. Ron Wieck (R-Woodbury)	1.7	\$500
Sen. Mark Zieman (R-Allamakee)	N/A	\$250

On April 8, the House passed the conference version of House File 2212 by a vote of 54 to 45. The same day the Senate passed the bill with a vote of 28 to 22. The following week on April 15, 2008, Governor Culver signed the Iowa Smokefree Air Act into law.³¹⁸

Reactions to the Iowa Smokefree Air Act were divided. Many bar and restaurant owners were dissatisfied with the exemption for casinos because they believed that it would lead to unfair competition between their establishment and casinos that allowed smoking. In addition, tobacco control advocates would have preferred a bill that did not include the casino loophole.³²³ However, at the same time, advocates were thrilled with the provisions that they were able to have passed and they felt prepared to address loopholes in the law in subsequent legislative sessions.¹⁴

The Smokefree Air Act in Practice

Administrative Rules for Enforcement of the Iowa Smokefree Air Act

With passage of the Iowa Smokefree Air Act in 2008, the IDPH was charged with the responsibility of developing administrative rules for enforcement of the new law. The Department had only ten weeks to develop the rules before the law went into effect and was given no additional funds to hire personnel to work on the development of the rules or to educate the public about the new regulations. The Director of the Tobacco Division, Bonnie Mapes, was able to use a limited amount of carryover JEL funds for the purpose of developing the rules and public education.¹⁸⁹ Through the administrative rule making process, IDPH had to define “school grounds” and grounds of public buildings for the purpose of the Act, differentiate between restaurants and bars for enforcement purposes, outline a process for receiving and investigating complaints, and develop an enforcement process.³²⁴

In Iowa, the administrative rulemaking process has several procedural requirements mandated by law. These requirements include public notice by the agency drafting administrative rules of the intent to adopt rules, publishing of the drafted rules in the Iowa Administrative Bulletin, a public comment and public hearing period, formal adoption of the rules by the rulemaking agency, and a legislative review of the final adopted rules. Normally this process can take no less than 108 days, however, the Iowa Department of Public Health only had only about 50 business days to draft the rules before the Iowa Smokefree Air Act went into effect on July 1, 2008. As a result the initial administrative rules had to be drafted under Iowa’s emergency rulemaking process.³²⁵ Under the emergency rulemaking process, the Department of Public Health was able to draft rules to go into effect when the Smokefree Air Act went into effect on July 1 through an expedited procedure.³²⁵

In preparation of the drafting of the administrative rules, the IDPH collected model language from other states that had passed similar laws to serve as examples for definitions of terms that needed to be defined and to understand other states’ enforcement procedures. Americans for Nonsmokers Rights, the Tobacco Control Network, and the Tobacco Control Legal Consortium, all national tobacco control technical assistance organizations, provided IDPH with help throughout the process.

The IDPH also held a meeting with all Iowa state agencies that would be affected under the law, including representatives from the state universities, the Department of Public Safety, the Governor’s Office, and the Department of Inspections and Appeals. In addition, the Department of Public Health held individual meeting with agencies that wanted to address agency specific questions. The IDPH also held meeting with interested parties such as the Iowa State Association of Counties and the Iowa League of Cities. Finally, the Iowa Restaurant Association was given the opportunity to give input on the rulemaking process.³²⁴

The IDPH and other entities involved with the rulemaking process worked swiftly. By June 2, 2008, the Department prepared and posted a draft of the Smokefree Air Act’s administrative rules on its website in order to begin the public comment process. The IDPH also received comment from the Iowa Administrative Rules Review Committee. On June 27, three

days before the effective date of the Smokefree Air Act, the Iowa State Board of Health and the Iowa Department of Public Health adopted the emergency administrative rules.³²⁴

After the adoption of the emergency rules, the IDPH then began the standard rulemaking process, which opened the emergency rules up for public comment before they could be adopted as final rules by the State Board of Health. Throughout the summer, the Tobacco Division held a series of teleconferences and public meetings to gather public input.³²⁶ Between June 2 and September 30, 2008, the date when public comment closed, the Department received 1,090 comments, 125 of which were relevant to the administrative rules.³²⁵ On November 12, the final rules were adopted, with minimal clarifications to make language in the rules more specific and a provision to allow for complaints to be anonymously filed.

In July 2008 the IRA submitted a request to the IDPH for a regulatory analysis of the Smokefree Air Act’s administrative rules (Table 76). Under Iowa Code a state agency is required to issue a regulatory analysis of a proposed administrative rule if it has a substantial impact on small business and if a regulatory analysis was requested by an organization that represented 25 or more small business owners. The IDPH did not believe that the Smokefree Air

Act had a substantial impact on small business, but conducted a regulatory analysis “in the interest of furthering the public discussion on this important topic.”³²⁷ The regulatory analysis was completed and published two months later, added an additional item to IDPH’s already full plate.

The Smokefree Air Act’s final administrative rules went into effect January 7, 2009. Under the final rules the IDPH, as the primary enforcement agency, designated state and local law enforcement to assist with the enforcement of the Act. The Iowa Alcoholic Beverages Division was designated as the agency to manage the law enforcement inspection and reporting system.³²⁸ The administrative rules defined terms relevant to the Smokefree Air Act that may have been ambiguous in the smokefree legislation. Among

Table 76: Elements required in a regulatory analysis
A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.
A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.
The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.
A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.
A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.
A discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:
Establish less stringent compliance or reporting requirements in the rule for small business.
Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
Consolidate or simplify the rule’s compliance or reporting requirements for small business.
Establish performance standards to replace design or operational standards in the rule for small business.
Exempt small business from any or all requirements of the rule.

other terms, the Department defined school grounds as, “grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds,” and grounds of public buildings were defined as:

An outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building.³²⁹

The IDPH differentiated between bars and restaurants using definitions used by the Iowa Department of Inspections and Appeals.¹⁸⁹ This distinction was important because under the Smokefree Air Act, smoking was only prohibited in the outdoor seating or serving areas of restaurants, thus the outdoor areas of bars were exempt.³³⁰ Bars were defined as, “an establishment where one may purchase alcoholic beverages, as defined in Iowa Code section 123.3, for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.”³²⁹ “Serving of food incidental to the consumption of alcoholic beverages” was defined as, “food preparation that is limited to the service of ice, prepackaged snack foods, popcorn, peanuts and reheating of commercially prepared foods that do not require assembly, such as frozen pizza, prepackaged sandwiches, or other prepackaged, ready-to-serve products.”³²⁹

Some argued that the Iowa Department of Public Health should have used a more broad definition of a bar based on food-sales percentages, however the state did not have the data that would have been necessary for such a designation.¹⁸⁹ In 2009, Tobacco Division Director Bonnie Mapes explained:

There is no system for collecting food sales percentages. So we had no way of going in. We’ve got no money to set up any system. And we only had 10 weeks and we went with the [Department of Inspections and Appeals] definition, which of course we knew would be controversial. It has been the main source of controversy. [I’ve been asked,] “You mean to tell me that if I cook a hotdog that I’m a restaurant and if I heat it up in the microwave I’m not?” And I said, “Yeah.”¹⁸⁹

The controversy went beyond just the distinction between bars and restaurants and even deeper into the language of the exemption for outdoor seating areas of restaurants. The Smokefree Air Act specified that smoking was prohibited in the outdoor *seating or service* areas of restaurants.³³⁰ There was a substantial amount of public comment against the prohibition of smoking outside of restaurants and as result the Department of Health was pushed by legislative leadership to develop a compromise on that rule. The Department worked with the Attorney General’s Office to interpret a compromise. Director Mapes recalled:

We said, “Okay, if you don’t sit and you’re not served then you’re okay.” Which meant you could have high bar tables and people could go out there and stand and smoke and take their own drink out and bring their cup back. We needed to come up with some kind of compromise. I said [to the leadership], “The way you’ve written the law there isn’t any other compromise. This is the only compromise we could make. So, of course, people think that’s silly, too, but it’s like, “Hey we didn’t write it.” This is the way it’s written.”¹⁸⁹

In addition to defining terms pertaining to bars and restaurants, the final administrative rules delineated enforcement procedures under the law. A complaint could be filed with the Division of Tobacco Use and Prevention by a citizen by calling a toll-free number, registering a complaint on the department’s website, or downloading a complaint form and mailing the complain to the division. The complaint would then be reviewed by the department. A complaint could also be filed after an inspection of a public place by the state or political subdivision of the state. If a complaint was found to be credible, the Division would issue a written notice of potential violation to the owner, operator, or person having custody or control of the establishment with the details of the complaint as well as educational materials about how to comply with the Smokefree Air Act. If there was a second complaint within a year, a second notice of potential violation would be sent, the division could authorize one or more public agencies to conduct a compliance check of the location, and the establishment could face civil penalties, including possible suspension or revocation of a license. The same procedure was to be followed for subsequent violations with a year.³²⁹

After the adoption of the rules, the State Board of Health voted to slightly amend the rules to allow local authorities to determine whether or not smoking would be permitted on government-owned sidewalks. The Board of Health also amended the administrative rules to allow for smoking complaints to be made anonymously. The Board made this change to protect employees who made complaints from retribution by employers. Initially there was opposition to this change by bar owners, however no bar owners attended the Board of Health meeting when the changes were being discussed whereas tobacco control advocates “lined up to urge the board [to] adopt the change.”³³¹

Conclusions

The administrative rules drafted to guide implementation of the Iowa Smokefree Air Act were extremely strong in ensuring that areas made smokefree through the Act, such as school grounds and bars, were defined broadly. The only concession made through the administrative rules process was to allow smoking on bar patios in the narrow circumstance that patrons were neither seated nor being served by an employee of the bar. Not only was this exemption narrow, but because of the low average temperature in Iowa thorough out most of the year, patios were rarely desirable places to be, meaning that smokers would be additionally deterred from smoking in those areas.

Enforcement provisions defined through the rules were also strong. The Alcoholic Beverages Division was designated to coordinate enforcement as they had been for other tobacco laws. Additionally, citizens were provided many options to report any violations of the law, including through a toll-free telephone number and online. The number was required to be

included on all signs that said an area was smokefree, which were required to be posted in all places regulated under the law.

Public Education About the Smokefree Air Act

The Division of Tobacco Use Prevention and Control did public education about the provisions of the Smokefree Air Act across the state. Division staff met with local law enforcement agencies and county executives to discuss the new law. Additionally, the Division had a dedicated website about the law online by June 3. The website provided a Frequently Asked Questions section that explained all provisions of the law. A mass mailing was sent by the tobacco division to every food license holder in the state containing information specific to implementation of the law in restaurants.

Additionally, the American Lung Association produced tens of thousands of window clings that conformed with sign requirements under the Smokefree Air Act (Table 77) and distributed them for free to any business that asked.¹⁸⁹

Table 77: Sign requirements under the Smokefree Air Act

The words “No Smoking” or the international “no smoking” symbol
The Smokefree Air Act Helpline: “1-888-944-2247”
The official Web site: “www.IowaSmokefreeAir.gov”

Legal Challenges to the Smokefree Air Act

As with other instances in Iowa and across the United States when clean indoor air laws have passed^{44, 46, 227, 308} (for example, the lawsuit filed by business owners and Philip Morris that asserted preemption in Iowa’s state law), hospitality organizations mobilized to oppose the Iowa Smokefree Air law. One such organization, the Clinton Organized Bar and Restaurant Association (COBRA) formed specifically to challenge the Smokefree Air Act in court.

On April 24, 2008, COBRA held a meeting, inviting restaurant and bar owners across the state to attend. There they discussed a plan to file for an injunction to halt the implementation of the state smokefree law. COBRA President Jon Van Roekel asked the attendees to donate money to help pay for an attorney to fight the law. In addition, Brian Froehlich, an Iowa restaurant owner, discussed the formation of the Iowa Bar Owners Coalition, a coalition that could be formed to influence legislators. COBRA hoped to raise \$110,000 to \$150,000 for the lawsuit, asking each business owner for a \$200 donation.³³²

Froehlich was successful in creating the Iowa Bar Owners Coalition, and upon the Smokefree Air Act going into effect, the Iowa Bar Owners Coalition, Choose Iowa Freedom (an umbrella group created to oppose the Smokefree Air Act), COBRA, Froehlich Properties, and Ron Overson filed a lawsuit in Polk County District Court in August.³³³ In court, the group sought out multiple avenues to stop the enforcement of the smokefree law. They requested a temporary injunction of the law as well as challenged the constitutionality of the Act’s provisions. In order for the request for an injunction to be granted, the court required that the bar owners both prove that “irrevocable harm will result if the enforcement isn’t blocked” and that they were likely to win their lawsuit if a temporary injunction were to be granted.³³⁴ The coalition argued that business had dropped off substantially because of the Smokefree Air Act, that the law infringed on their rights, that it improperly subjected them to possible search and

seizures, and that it turned them into an enforcement body. Claims of substantial loss of business were similar to those made by the business owners in Ames and are standard industry rhetoric. Economic studies have proven time and again that there is no negative economic impact on business.²⁵⁰ Claims that smokefree laws infringe upon business owners rights are also standard industry rhetoric and do not hold up in court.^{105, 308, 335}

To defend the law against the business owner's erroneous claims, the Tobacco Division provided the Iowa Attorney General's Office, which was defending the Smokefree Air Act, with data and other information about the actual impact of the law.¹⁹⁹

Media coverage of the lawsuit was substantial. Local news outlets focused predominantly on business owners who claimed that the law was forcing them out of business. Plaintiffs in the case challenging the smokefree law were particularly vocal. One business owner and plaintiff who was interviewed by the *Des Moines Register* claimed a personal sales loss of 15 percent over the course of July 2008 and claimed that others had business fall off by as much as 20 percent. Another plaintiff testified that she had made only \$11 in the day preceding her testimony. The attorney for the Iowa bar owners, George Eichhorn, argued that while there was an economic impact of the new law, the real issue was one of property rights.³³⁶

Despite claims in the media and in court that the Act was deleterious to business, in August 2008, Judge Staskal, the Polk County District Court judge hearing the challenge to the Act, denied the request for an injunction to block state health officials for enforcement of the Iowa Smokefree Air Act, because the plaintiffs did not provide sufficient proof that they had suffered irreparable harm as a result of the smokefree law. The Iowa Bar Owners Coalition and other parties to the lawsuit made clear that they would continue with their constitutional challenge.³³⁷

After the denial of the temporary injunction, arguments in the case were scheduled to be heard in June 2009. Between August 2008 and June 2009, plaintiffs in the case against the Smokefree Air Act tried other avenues of changing the law. In fall 2008, an election year, the members of Choose Freedom Iowa, attempted to elect members of their leadership to the Iowa General Assembly, to no avail.³³⁸ Additionally Iowans opposed to the smokefree law held protests at the Iowa capitol during the 2009 legislative session and attempted to have legislation introduced to repeal the Iowa Smokefree Air Act, again without success.²²²

In May 2009, a month before the constitutional challenge to the smokefree law was to be heard, the plaintiffs dropped their lawsuit. The Iowa Bar Owners Coalition, COBRA, and other parties in the lawsuit were no longer willing to finance the challenge of the law. However, a second case brought by a bar owner, Larry Duncan, who was not a member of the coalition continued.³³⁹ The plaintiffs in the case that was dismissed publicly announced their support for Duncan's fight (case still pending at the time of publication).³⁴⁰

The legal challenges to the law did not affect the implementation of the Smokefree Air Act. However, the claims of unconstitutionality did resonate with some local law enforcement leading to a lack of enforcement in some Iowa localities (discussed below).

Violations of the Smokefree Air Act

The infrastructure created through the smokefree legislation and the Act's administrative rules gave the IDPH the authority to refer establishments with more than one complaint against them to the Iowa ABD. The ABD would then refer the complaints to the Iowa Attorney General's Office and request that local law enforcement conduct an inspection of establishments with complaints against them. If the establishment was found to be in violation of the law, for example by having active smoking, visible ashtrays, or no signage that indicated that the business was smokefree, the local law enforcement would refer back to the ABD. The Iowa Department of Public Health would then contact the appropriate City or County Attorney to request prosecution of civil penalties against business. These civil penalties included the possibility of fines and suspension or revocation of one's liquor license.³²⁸

While state-level agencies worked diligently to enforce the smokefree law, many local-level law enforcement agencies and City and County Attorneys refused to enforce the law because of various reasons, including a claim that the enforcement of the act was diverting them from more important law enforcement activities and the belief that the law was unconstitutional.¹⁸⁹ (Pro-tobacco forces have challenged smokefree laws on constitutional grounds in several states, all without success.¹⁰⁵) There was an economic incentive of \$100 per inspection for local law enforcement that completed inspections, however that was not as strong a carrot as the IDPH had hoped.³²⁸ However, even without the cooperation of some local officials, the state-level agencies continued strong enforcement of the law.

Complaints Filed Under the Smokefree Air Act

Between January 1, 2008 and June 30, 2009, there were 3,318 complaints submitted to the IDPH pertaining to violations of the Smokefree Air Act. Of those 2,101 were determined to be valid.³⁴¹ The most common valid reported violation concerned smoking in prohibited areas (1,575). Other violations of the Smokefree Air Act included the presence of ashtrays in smokefree establishments (1,037), the failure to post no-smoking signs in smokefree areas (1,000), proprietors failing to inform customers that they could not smoke in areas where smoking was prohibited (270), and smoke infiltrating into a no-smoking area from an area where smoking was allowed (55).³⁴¹

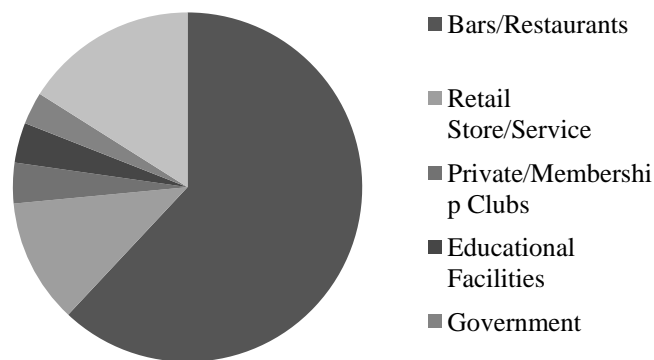


Figure 19: Valid Complaints of Violations of the Iowa Smokefree Air Act by Type of Establishment

Nevertheless, compliance with the Smokefree Air Act was high among employers in Iowa. The penalty for the owner, operator or manager of found in violation of the Smokefree Air Act consisted of a fine of up to \$100 for a first offense, \$200 for a second offense, and \$500 for third and subsequent offenses within a 12-month period.³⁴¹ One percent of all Iowa employers received a notice of potential violation, and for 80 percent of those, there were no subsequent

complaints filed. The greatest number of valid complaints of violations of the Smokefree Air Act concerned smoking in bars and restaurants (Figure 19); establishments that faced the revocation of their liquor license for continuous non-compliance.³⁴¹

Attempts to Subvert the Law by Restaurant and Bar Owners

Several Iowa establishments ignored the Smokefree Air Act. Because the penalties assessed against establishments were civil in nature (comparable to parking ticket) many complaints would build up before prosecution took place and as a result businesses were able to defy the law for long periods of time before penalties were assessed.¹⁸⁹

One business owner, Brian Froehlich, who was also a party in the lawsuit that challenged of the Iowa Smokefree Air Act, refused to comply with the smokefree law. From the enactment of the law through August 2008, Froehlich was issued two public notices for failure to comply. A hearing was set by the Iowa Alcoholic Beverages Division to review the complaints and determine whether consequences such as the lost of Froehlich's liquor license would result.³⁴² As a result of opened and continued defiance of the law, Froehlich's liquor license was suspended for 30 days.³⁴³ Subsequent to the suspension of his liquor license, Froehlich came into compliance with the law.¹⁹⁹

Another particularly recalcitrant Iowan, Larry Duncan, owner of Otis Campbell's Bar and Grill, refused to comply with the smokefree law. Over the course of just seven weeks, 48 official complaints were filed against the restaurant and Duncan was issued three warning letters.³⁴⁴ Duncan's failure to comply resulted in the complete revocation of his liquor license.³⁴³ However the ABD, reinstated Duncan's license after he signed a written agreement to comply with the smokefree law. Simultaneously, Larry Duncan independently challenged the Iowa Smokefree Air Act's constitutionality in court³⁴⁵ After signing the written agreement Duncan came into compliance with the law while pursuing his lawsuit.¹⁹⁹ (Duncan's lawsuit was not resolved at the time of publication in August 2009).

While sanctions against Brian Froehlich and Larry Duncan were the only ones in which a final decision had been reached at the time of publication, 75 establishments had been referred to the Attorney General's office for action. Of those referred, no complaints were filed against 25, there were pending hearings for 14, 2 business were awaiting a decision by an Administrative Law Judge, there were 9 pending settlements, and decisions had been reached with 25 establishments (Table 78).³⁴³ Despite violations of the law by the aforementioned bar and restaurants, overall compliance with the Smokefree Air Act was high.³⁴¹

Closing Loopholes

As the 2009 legislative session began in January 2009, there was discussion of revising the Smokefree Air Act both by those who hoped to close loopholes in the law as well as those who hoped to weaken or repeal the act. Legislative leaders and Governor Culver made it clear that they would not allow any bill to pass that sought to weaken the smokefree law.

Additionally, because of a change in the composition of the Iowa legislature, tobacco control advocates believed that opening the law up for revision would likely result in a weakened

version. After the Smokefree Air Act passed in 2008, nearly all of the 12 Republicans that voted for the smokefree law, support that was integral to the passage, retired. As a result, any revisiting of the law would have likely meant that there would not be sufficient votes to strengthen the act, but rather only support for weakening.³⁴⁶

Despite legislative leadership making clear that they would not support any changes that weakened the smokefree law, a bipartisan bill with 50 cosponsors (many more cosponsors than most bills) was introduced in February 2009 that sought to change the rules implemented by the IDPH and State Board of Health regarding smoking on outdoor patios of restaurants and bars. Legislators that both supported and opposed the smokefree legislation argued that the Board of Health rules went beyond their legislative intent. Representative Peterson (D-Polk, Policy Score: 9.7, Industry Contributions: \$0), the chair of the House Commerce committee and original impetus for the Smokefree Air Act, explained to the media, advocates, and fellow legislators that she did not intend to act on a bill that changed the smokefree law, and assigned the bill to a subcommittee made up of three members: herself, Rep. Tyler Olson (D-Cedar Rapids) who floor managed the smokefree bill the previous session, and a cosponsor of the bill up for debate. The bill died in the subcommittee.³⁴⁷

Table 78: Decisions reached in cases of businesses that violated the Iowa Smokefree Air Act³⁴³

Establishment	Location	Sanction
<i>Administrative Law Judge proposed decision</i>		
Angel Inn	Walford	40 days
Dalton's Pub	Sioux City	30 days
Gordie's Bar & Grill	Centerville	30 days
John & Gary's Gametime	Grinnell	30 days
Larry Bob's Oasis	Davenport	14 days
Outer Limits	Des Moines	21 days
Woody's Bar & Grill	Fort Atkinson	30 days
TeeGee's Bar & Grill	Webster City	7 days
<i>Administrative Law Judge decision appealed to administrator</i>		
Angel Inn	Walford	40 days
Dalton's Pub	Sioux City	30 days
Gordie's Bar & Grill	Centerville	30 days
Outer Limits	Des Moines	21 days
Smokin' Jo's	Ottumwa	30 days
Veterans of Foreign Wars	Ottumwa	Revocation
Woody's Bar & Grill	Fort Atkinson	30 days
<i>Administrator's final order</i>		
Fro's	Wilton	30 days
Otis Campbell's	W. Burlington	revocation
<i>Settled</i>		
Alibi	Centerville	7 days, \$1,000
Beer Tent	Burlington	7 days, \$1,000
Bow Lounge	Webster City	7 days, \$1,000
C&C American Tap	Webster City	7 days, \$1,000
Crazy Coyote	Burlington	7 days, \$1,000
Doris' Tavern	Burlington	7 days, \$1,000
Edo's Sports Bar & Grill	Waterloo	7 days, \$1,000
Jack Daddy's Bar & Grill	Council Bluff	7 days, \$1,000
Joeseppes	Des Moines	7 days, \$1,000
The Keg	Ottumwa	7 days, \$1,000
Paddlewheel Lounge	Burlington	7 days, \$1,000
Summer Street Station	Burlington	7 days, \$1,000
T. McGill's	Moulton	7 days, \$1,000
Trucker Bar	Waterloo	7 days, \$1,000
Wine Street Nugget	Ottumwa	7 days, \$1,000

The strong stance by persons in leadership roles in the Iowa legislature led to no legislative changes to the Iowa Smokefree Air Act during the 2009 legislative session. Moreover, although prisons were exempted in the statewide law, prison officials voluntarily made all of Iowa prisons smokefree shortly after the passage of the Smokefree Air Act,³⁴⁸ something that prison officials had discussed with the Tobacco Division in prior years but did

independently in 2008.¹⁹⁹ Rising health care cost for inmates was cited as the reason for the new policy.³⁴⁸

With preemption repealed, there was also work at the local level to expand the smokefree protections beyond provisions of the Smokefree Air Act. On September 10, 2008, the Iowa City, City Council unanimously passed an ordinance that prohibited smoking in outdoor public places including sections of city parks, city-owned parking ramps, the Iowa City Municipal Airport, the downtown Pedestrian Mall, and at special events such as the University of Iowa homecoming parade.³⁴⁹ The ordinance was initiated by the City Council and supported by CAFE Johnson County.²¹⁴

Conclusions

After seventeen years without state level tobacco control legislation, Iowa tobacco control advocates were able to pass a \$1 increase in the tobacco tax in 2007 and a comprehensive statewide smokefree law. The passage of both laws were heavily aided by the change of composition of the Iowa General Assembly and the Iowa Governorship in 2006 as well as by tobacco control advocates re-establishing a unified front. The initiative of Representative Janet Petersen to insist on being given a chance to pass a statewide law advanced Iowa tobacco control years ahead of what advocates thought possible. The Smokefree Air Act was not met without opposition, but strong enforcement by the Iowa Alcoholic Beverages Division, Attorney General's Office, and Division of Tobacco Use Prevention and Control guaranteed the provisions of the law were not undermined.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Iowa was an early leader in the late 19th Century in enacting strong tobacco control measures to address what early Iowans saw as the harmful moral and health effects of tobacco use. In 1921 the Iowa General Assembly completely prohibited the use, sale, and possession of tobacco products in the state. After the repeal of this prohibition in 1921, the General Assembly again allowed tobacco use by adults, but enacted a strong measure to prohibit tobacco use by minors. In 1921 Iowa enacted the first state cigarette excise tax.

The tobacco issue re-emerged in Iowa in the 1970s, but in 1970s, 1980s, and 1990s, tobacco control advocates in the legislature and representatives of the voluntary health organizations failed to realize the same success in tobacco control that had been seen at the turn of the century. They were repeatedly outmaneuvered by the tobacco industry, which either blocked or co-opted legislative proposals to secure weak tobacco control laws to prevent more meaningful measures that would have actually protected the health of Iowans. The most important tobacco industry victory was the insertion of a preemption clause in the 1990 state Clean Indoor Air, which had the effect of preventing clean indoor air advancement for a decade. Additionally, after the passage of a cigarette tax increase from 31 to 36 cents in 1991, the tobacco industry and its allies were successful in preventing another tobacco tax increase for 16 years.

In 1996 Attorney General Tom Miller joined a lawsuit with 46 other state Attorneys General against that tobacco industry, that resulted in the 1998 Master Settlement Agreement. Through his involvement with the MSA, Miller became a strong proponent of tobacco control measures nationally, and was a consistent ally of the Iowa tobacco control community. In 2000 the Iowa General Assembly authorized the securitization of Iowa's Master Settlement revenue and created the Iowa Division of Tobacco Use Prevention and Control. Although the securitization was framed as a way to ensure stable funding for health-related programs, including the Iowa Tobacco Division, the vast majority of the revenue was allocated to a fund for infrastructure projects. Furthermore, the funding scheme developed by the Iowa General Assembly to direct the use of the Master Settlement Agreement revenue was so complex that it hindered the ability of anyone to track the flow of funds and hold legislators accountable for diversions from the Healthy Iowans Tobacco Trust for issues unrelated to health. Under the complex system, the Iowa General Assembly diverted funds from the Healthy Iowan's Tobacco Trust every legislative session leading to the emptying out of the fund in FY 2009, leaving funding for the Iowa Tobacco Division to come from the General Fund and from tobacco tax revenue.

After a decade of tobacco control stagnation, in 2000 local tobacco control advocates began to make progress. In the mid-1990s, Serge Garrison, a former R.J. Reynolds lobbyist turned health lobbyist, began to question whether Iowa localities were actually preempted from passing clean indoor air measures, probably because he knew that the preemption clause included in the 1990 Clean Indoor Act (which he helped to draft) was not as explicit as the tobacco industry had hoped. His questioning led to a legislative request for the Iowa Attorney General's Office to review local preemption. While the review was taking place, the Iowa localities of Ames and Iowa City began efforts to pass clean indoor air measures. In November 2000, in the middle of the local efforts in Ames and Iowa City, Attorney General Tom Miller issued a formal opinion that localities were not preempted from passing smokefree ordinances. In March 2001, Ames passed its, which, although substantially weakened during the legislative process, broke the ice on passage of local clean indoor air ordinances. In January 2002, Iowa City passed Iowa's first 100 percent restaurant law. However, in 2003 both ordinances were overturned (although Ames kept their law on the books) after a legal challenge of the Ames funded by Philip Morris, when the Supreme Court ruled that the implied preemption language in the 1990 Clean Indoor Air Act in fact prevented local regulation of smoking.

Attempts to overturn preemption at the state level were unsuccessful until 2008, when Democrats took control of the state Legislature. Prior to 2007, pro-tobacco Republican legislative leadership consistently killed all proposed repeal attempts. More pro-tobacco control legislators in power, resulted in the passage of a strong state law that also repealed preemption, allowing localities to continue to strengthen smoking restrictions.

Tobacco control advocates had difficulty developing and maintain a unified front, also hindering tobacco control efforts. The first formal tobacco control coalition, Tobacco Free Iowa, died in 2003 after a long period of dysfunction, leaving Iowa without a statewide tobacco control coalition until 2006. However, after the Iowa Supreme Court found that localities were preempted from passing clean indoor air measures, some tobacco control advocates organized in a local effort from 2004 to 2008 led by the Attorney General's Office, the ACS, CAFE Iowa, and

the Iowa Hospital Association, to encourage the passage of voluntary smokefree policies pertaining to the grounds of medical facilities. Their efforts created substantial momentum for future state-level victories.

The establishment of the Iowa Department of Public Health, Division of Tobacco Use Prevention and Control in 2000, created a state level, tobacco specific program. However, the Tobacco Division has never been funded at or near the CDC recommended level limiting its ability to provide strong and comprehensive programming.^{7, 8} Republican legislative leadership which controlled the legislature from 2000, when the tobacco control program was started, to 2007, were unwilling to fund tobacco control at an CDC recommended levels. Additionally, tobacco control advocates have not seriously mobilized enough strong political pressure to demand and protect funding for the state tobacco control program; even with a more favorable legislature, the Iowa Tobacco Division has been funded at approximately one-third of the CDC recommended level.

In 2005 tobacco control advocates, led by Tobacco Division Director, Bonnie Mapes began the process of reorganization to create a unified tobacco control front. In 2006 the Iowa Tobacco Prevention Alliance was created and tobacco control advocates developed a strategic plan to guide future efforts. The unification of tobacco control advocates coupled with a shifting of power in the Iowa General Assembly in 2007, led to important policy progress on tobacco control.

In 2007 the Iowa General Assembly passed a \$1 increase in the tobacco tax and in 2008 passed the Iowa Smokefree Air Act. After the passage of the tobacco tax the Iowa Adult Tobacco Survey found a 22 percent decrease in adult smoking, from 18 percent of adults indentifying as current smokers in 2006 to 14 percent in 2008.³⁵⁰ The statewide Iowa Smokefree Air Act that provided clean indoor air coverage for 99 percent of Iowa employees,³⁴¹ has had high overall compliance due to strong enforcement by the Iowa Department of Public Health, the Iowa Attorney General's Office, and the Alcoholic Beverages Division. Tobacco control advocates ended the 2008 legislative session years ahead of where they previously thought possible.

Recommendations

Tobacco control advocates must make funding of the Iowa Tobacco Division a top priority. The CDC recommends that tobacco control programs in Iowa be funded at \$36.7 million per year. In FY 2009, the Iowa Tobacco Division only received \$11.0 in funding,⁷ receiving an "F" from the national American Lung Association in their 2008 *State of Tobacco Control* report.³⁰² An increase in funding is particularly important because, although adult smoking rates have declined from 2006 to 2008,¹² youth smoking rates have increased.^{208, 209}

As the Iowa General Assembly looks for ways to reduce costs in the Iowa Department of Public Health, tobacco control advocates must be vigilant to ensure that the Tobacco Division remains its own, separate division within the IDPH.

Given the Tobacco Division's limited budget and the increasing levels of youth and young adult smoking, the Tobacco Division should focus less on funding individual level

cessation services (other than the Quitline, which is a public health intervention) and more emphasis on media and community-based programs that are more cost-effective public health interventions to reduce tobacco use.¹⁹²

While clinical cessation is not cost-effective as a public health intervention, it is highly cost-effective as a medical intervention. Advocates should work to pass legislation that mandates that private and public health insurance, including the state employee health plan provides full cessation coverage.

The Division of Tobacco Use Prevention and Control should increase funding the JEL counter-marketing program. In FY 2001 and 2002 JEL, \$3.7 million and \$3.3 million respectively, were spent on the counter-marketing. Since, funding has been steady around \$1 million. When the JEL program was funded at an adequate level, youth smoking rates fell from 26 percent in 2001/2002 to 18 percent in 2004. After funding to the Tobacco Division was slashed and expenditures on JEL were significantly reduced in FY 2003, youth smoking rates increased from 18 percent to 22 percent in 2006 in two years.^{208, 209} Additionally, according to data from the National Survey on Drug Use and Health (NSDUH) from 2006, 42.3 percent of Iowans between the ages of 18-25 were current smokers, higher than the national average of 38.7 percent among the same age group.¹¹

Advocates need to expand their base beyond major cities to rural areas of Iowa to broaden the base of support for smokefree environments and expand the political base to maintain and expand funding for tobacco control efforts.

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APPENDICIES

A: Tobacco Industry Campaign Contributions by Candidate, 1998-2008

B: Tobacco Industry Campaign Contributions by Contributor, 1998-2008

C: Flow of Flow of Funds To and From the Endowment for Iowa's Health Account

D: Flow of Funds To and From the Healthy Iowan's Tobacco Trust Fund

Abbreviations

D	Democrat
G	Governor
H	House of Representatives
LTG	Lieutenant Governor
PP	Political Party
R	Republican
S	Senate
SW	Statewide Office

APPENDIX A: Summary of Tobacco Industry Campaign Contributions, 1998-2008

Name	Party	Office	District	1998		2000		2002	2004			2006			2008		Total
				Farner-Bocken	Myers-Cox	Farner-Bocken	UST	UST	Altria/PM	RJ Reynolds	UST	Altria/PM	RJ Reynolds	UST	Altria/PM	UST	
Anderson, Andy	R	H	37									\$500					\$500
Angelo, Jeff	R	S	48						\$250								\$250
Arnold, Richard D.	R	H	91	\$100													\$100
Borlaug, Allen	R	S	15	\$100													\$100
Cormack, Michael	R	H	13	\$150		\$200											\$350
Dix, Bill	R	H	17					\$200	\$250								\$450
Gipp, Chuck	R	H	16				\$200		\$250	\$500							\$950
Gronstal, Michael	D	S	50	\$350		\$350									\$500		\$1,200
Gross, Doug & Durham, Debi	R	G/LTG	SW					\$500									\$500
Halvorson, Rod	D	S	7	\$200													\$200
Horn, Wally	D	S	27	\$150			\$200										\$350
Huser, Geri	D	H	42									\$1,000					\$1,000
Iowa Democratic Party	D	PP													\$5,000		\$5,000
Iowa Republican Party	R	PP													\$1,000		\$1,000
Iverson Jr., Stewart	R	S	9	\$250		\$200	\$1,000		\$250			\$500					\$2,200
Jochum, Pam	D	H	35		\$100												\$100
Judge, John	D	S	46			\$100											\$100
Kettering, Steve	R	S	26												\$500		\$500
Lamberti, Jeff	R	S	33				\$650										\$650
Lightfood, James & Hawkins, Almo	R	G/LTG	SW	\$500													\$500
McLaren, Derryl	R	S	43			\$100											\$100
Mertz, Dolores	D	H	15			\$100											\$100
Mundie, Norman	D	H	14	\$30													\$30
Murphy, Pat	D	H	28									\$500			\$1,000		\$1,500
Noble, Larry L.	R	S	35									\$500					\$500
Nussle, Jim & Vander Plaats, Bob	R	G/LTG	SW									\$1,000					\$1,000
Paulsen, Kraig	R	H	35												\$500		\$500

APPENDIX A: Summary of Tobacco Industry Campaign Contributions, 1998-2008

Name	Party	Office	District	1998		2000		2002	2004			2006			2008		Total
				Farner-Bocken	My-Cap	Farner-Bocken	UST	UST	Altria/PM	RJ Reynolds	UST	Altria/PM	RJ Reynolds	UST	Altria/PM	UST	
Phillips, Joan	D	S	40			\$200											\$200
Quirk, Brian J.	D	H	15													\$750	\$750
Ragan, Amanda	D	S	7									\$750					\$750
Rants, Christopher	R	H	54						\$3,512	\$1,500		\$500	\$1,385		\$500		\$7,397
Rasmussen, Dan	R	H	23									\$500					\$500
Reasoner, Michael J.	D	H	95						\$250								\$250
Rife, Jack	R	S	20			\$100											\$100
Schickel, Bill	R	H	13						\$250			\$250					\$500
Sexton, Michael	R	S	7			\$325	\$125										\$450
Siegrist, Brent	R	H	84													\$1,500	\$1,500
Sievers, Bryan J.	R	S	42						\$250								\$250
Teig, Russell W.	R	H	17	\$100													\$100
Van Fossen, James	R	H	42														\$700
Van Fossen, Jamie	R	H	81					\$800	\$250		\$250	\$750		\$3,000		\$1,000	\$6,050
Vilsack, Tom & Pederson, Sally	D	G/LTG	SW	\$1,100		\$2,500											\$3,600
Wieck, Ron	R	S	27													\$500	\$500
Zieman, Mark	R	S	8									\$250			\$1,000		\$1,250
				1998		2000		2002	2004			2006			2008		
				Farner-Bocken	My-Cap	Farner-Bocken	UST	UST	Altria/PM	RJ Reynolds	UST	Altria/PM	RJ Reynolds	UST	Altria/PM	UST	
				\$3,030	\$100	\$4,175	\$4,375	\$1,500	\$5,512	\$2,000	\$250	\$7,000	\$1,385	\$3,000	\$11,250	\$1,000	
Total				\$3,130		\$8,550		\$1,500	\$7,762			\$11,385			\$12,250		\$44,577

APPENDIX B: Tobacco Industry Campaign Contributions by Contributor, 1998-2008

<u>Contributor</u>	<u>Year</u>	<u>Recipients</u>	<u>Party</u>	<u>Office</u>	<u>District</u>	<u>Amount</u>		<u>Total By Year</u>	
Altria/Philip Morris	2004	Angelo, Jeff	R	S	48	\$250	2004	Total Altria/PM	\$5,512
		Dix, Bill	R	H	17	\$250			
		Gipp, Chuck	R	H	16	\$250			
		Iverson Jr, Stewart	R	S	5	\$250			
		Rants, Christopher	R	H	54	\$3,512			
		Reasoner, Michael J.	D	H	95	\$250			
		Schickel, Bill	R	H	13	\$250			
		Sievers, Bryan J.	R	S	42	\$250			
		Van Fossen, Jamie	R	H	81	\$250			
			2006	Anderson, Andy	R	H			
Huser, Geri	D			H	42	\$1,000			
Iverson Jr, Stewart	R			S	5	\$500			
Murphy, Pat	D			H	28	\$500			
Nobel, Larry L.	R			S	35	\$500			
Nussle, Jim & Vaner Plaats, Bob	R			G/LTG	SW	\$1,000			
Ragan, Amanda	D			S	7	\$750			
Rants, Christopher	R			H	54	\$500			
Rasmussen, Dan	R			H	23	\$500			
Schickel, Bill	R			H	13	\$250			
	2008	Van Fossen, Jamie	R	H	81	\$750	2008	Total Altria/PM	\$11,250
		Zieman, Mark	R	S	8	\$250			
		Gronstal, Michael	D	S	50	\$500			
		Iowa Democratic Party	D	PP		\$5,000			
		Iowa Republican Party	R	PP		\$1,000			
		Kettering, Steve	R	S	26	\$500			
		Murphy, Pat	D	H	28	\$1,000			
		Paulsen, Kraig	R	H	35	\$500			
		Quirk, Brian J.	D	H	15	\$750			
		Rants, Christopher	R	H	54	\$500			
		Wieck, Ron	R	S	27	\$500	1998-2008	Altria/PM Total	\$23,762
		Zieman, Mark	R	S	8	\$1,000			
Farner-Bocken	1998	Arnold, Richard D.	R	H	91	\$100	1998	Total Farner-Bocken	\$3,030
		Borlaug, Allen	R	S	15	\$100			
		Cormack, Michael	R	H	13	\$150			
		Gronstal, Michael	D	S	42	\$350			

APPENDIX B: Tobacco Industry Campaign Contributions by Contributor, 1998-2008

<u>Contributor</u>	<u>Year</u>	<u>Recipients</u>	<u>Party</u>	<u>Office</u>	<u>District</u>	<u>Amount</u>		<u>Total By Year</u>	
		Halvorson, Rod	D	S	7	\$200			
		Horn, Wally	D	S	27	\$150			
		Iverson Jr, Stewart	R	S	9	\$250			
		Lightfoot, James & Hawkins, Almo	R	G/LTG	SW	\$500			
		Mundie, Norman	D	H	14	\$30			
		Teig, Russell W.	R	H	17	\$100			
		Vilsack, Tom & Pederson, Sally	D	G/LTG	SW	\$1,100			
	2000	Cormack, Michael	R	H	13	\$200	2000	Total Farner-Bocken	\$4,175
		Gronstal, Michael	D	S	42	\$350			
		Iverson Jr, Stewart	R	S	9	\$200			
		Judge, John	D	S	46	\$100			
		McClaren, Derryl	R	S	43	\$100			
		Mertz, Dolores	D	H	15	\$100			
		Phillips, Joan	D	S	40	\$200			
		Rife, Jack	R	S	20	\$100			
		Sexton, Michael	R	S	7	\$325			
		Vilsack, Tom & Pederson, Sally	D	G/LTG	SW	\$2,500			
							1998-2008	Farner-Bocken Total	\$7,205
Myers-Cox Company	1998	Jochum, Pam	D	H	35	\$100	1998	Total Myers-Cox Company	\$100
							1998-2008	Myers-Cox Company	\$100
RJ Reynolds	2004	Gipp, Chuck	R	H	16	\$500	2004	Total RJ Reynolds	\$2,000
		Rants, Christopher	R	H	54	\$1,500			
	2006	Rants, Christopher	R	H	54	\$1,385	2006	Total RJ Reynolds	\$1,385
							1998-2008	RJ Reynolds Total	\$3,385
US Smokeless Tobacco	2000	Gipp, Chuck	R	H	31	\$200	2000	Total UST	\$4,375
		Horn, Wally	D	S	27	\$200			
		Iverson Jr, Stewart	R	S	9	\$1,000			
		Lamberti, Jeff	R	S	33	\$650			
		Sexton, Michael	R	S	7	\$125			
		Siegrist, Brent	R	H	84	\$1,500			
		Van Fossen, James	R	H	42	\$700			

APPENDIX B: Tobacco Industry Campaign Contributions by Contributor, 1998-2008

<u>Contributor</u>	<u>Year</u>	<u>Recipients</u>	<u>Party</u>	<u>Office</u>	<u>District</u>	<u>Amount</u>		<u>Total By Year</u>	
	2002	Dix, Bill	R	H	17	\$200	2002	Total UST	\$1,500
		Gross, Doug & Durham, Debi	R	G/LTG	SW	\$500			
		Van Fossen, Jamie	R	H	81	\$800			
	2004	Van Fossen, Jamie	R	H	81	\$250	2004	Total UST	\$250
	2006	Van Fossen, Jamie	R	H	81	\$3,000	2006	Total UST	\$3,000
	2008	Van Fossen, Jamie	R	H	81	\$1,000	2008	Total UST	\$1,000
							1998-2008	UST Total	\$10,125

APPENDIX C: Flow of Flow of Funds To and From the Endowment for Iowa's Health Account

FISCAL YEAR		FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
<i>Resources</i>								
	Balance	0.0	22.4	25.8	27.2	38.3	109.7	90.5
	Bond Proceeds (MSA)	39.6	0.0	0.0	0.0	50.2	0.0	0.0
	General Fund Transfers	7.2	27.1	28.3	29.8	29.6	17.7	0.0
	Wagering Tax Allocation	80.0	75.0	70.0	70.0	70.0	70.0	0.0
	22% of MSA payment	14.0	21.2	12.8	14.9	14.4	14.0	19.7
	Tobacco Settlement Residuals	0.0	16.7	0.0	0.0	0.0	0.0	0.0
	Interest Earned	1.1	1.0	0.7	1.0	2.8	5.5	4.2
	Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.1
	Deappropriations	-0.1	-27.1	-28.3	-29.8	-29.6	-17.8	0.0
<i>Total Available Resources</i>		141.9	136.2	109.3	113.1	175.7	199.2	114.4
<i>Appropriations and Transfers</i>								
	Standing Appropriation to the Healthy Iowans Tobacco Trust	55.0	55.8	56.7	57.5	58.4	59.3	60.1
	Wagering Tax Allocation to Healthy Iowans Tobacco Trust	0.0	9.0	5.2	6.3	7.6	10.9	9.1
	Student Achievement/Teacher Quality	40.0	0.0	0.0	0.0	0.0	0.0	0.0
	School Aid Appropriation	0.0	20.0	0.0	0.0	0.0	0.0	0.0
	Medicaid Supplemental	2.5	0.0	0.0	0.0	0.0	0.0	0.0
	Tuition Replacement	0.0	16.8	0.0	0.0	0.0	0.0	0.0
	Transfer to Rebuild Iowa Infrastructure Fund	0.0	0.0	0.0	11.0	0.0	0.0	0.0
	Transfer to General Fund	7.0	9.0	20.0	0.0	0.0	0.0	0.0
	Wagering Tax Transfer to General Fund	15.0	0.0	0.0	0.0	0.0	0.0	0.0
	Watershed Protection	0.0	0.0	0.0	0.0	0.0	5.0	5.0
	Senior Living Trust Fund	0.0	0.0	0.0	0.0	0.0	25.0	0.0
	Lake Restoration	0.0	0.0	0.0	0.0	0.0	8.6	0.0
<i>Total</i>		119.5	110.6	81.9	74.8	66.0	108.8	74.2
	Reversions	0.0	-0.2	0.0	0.0	0.0	0.0	0.0
<i>Ending Balance</i>		22.4	25.8	27.5	38.3	109.7	90.4	40.1
Source: Iowa Legislative Fiscal Bureau, Iowa Fiscal Services Division								

APPENDIX D: Flow of Funds To and From the Healthy Iowan's Tobacco Trust Fund

FISCAL YEAR				FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
											Estimated	
<i>Assets</i>												
	Balance Forward			11.3	1.7	1.5	0.1	0.7	1.1	1.6	1.2	0.0
	Balance Adjustment				-0.02		0.0	0.0	0.0	0.0	0.0	0.0
	Transfer from the Endowment for Iowa's Health Account			55.0	55.8	56.7	57.5	58.4	59.3	60.1	36.7	0.0
	Endowment (Wagering tax allocation)			0.0	9.0	5.2	6.3	7.6	10.9	9.1	0.0	0.0
	Interest Earned			0.50	0.11	0.08	0.15	0.18	0.47	0.29	0.25	0.0
	Interest Receivables			0.010			0.0	0.0	0.0	0.0	0.0	0.0
	Miscellaneous			0.0001	0.0	0.002	0.0	0.0	0.0	0.0	0.0	0.0
	<i>Total Available Resources</i>			66.8	66.6	63.5	64.1	66.8	71.7	71.2	38.2	0.0
<i>Appropriations</i>												
	Department of Public Health											
	<i>Tobacco Use Prevention/Control</i>			9.3	5.0	5.0	5.0	5.0	5.9	5.9	6.9	0.0
	Substance Abuse Prevention			0.0	0.0	0.4	0.0	0.2	0.2	0.0	0.0	0.0
	Substance Abuse Treatment			11.8	10.0	11.8	11.8	11.8	13.8	13.8	13.8	0.0
	Substance Abuse Prevention - Boys and Girls Clubs			0.0	0.0	0.0	0.0	0.2	0.0	0.0	0.0	0.0
	Substance Abuse Prevention - Children			0.0	0.0	0.0	0.0	0.4	1.1	1.1	1.1	0.0
	Healthy Iowans 2010			2.6	2.4	2.3	2.3	2.5	2.5	2.5	2.5	0.0
	Smoking Cessation Products			0.08	0.08	0.08	0.75	0.75	0.08	0.00	0.00	0.0
	Defibrillator Grant Program			0.0	0.0	0.0	0.0	0.25	0.35	0.04	0.00	0.0
	Capitol Complex Defibrillator			0.0	0.0	0.0	0.0	0.10	0.0	0.00	0.00	0.0
	Phenylketonuria (PKU) Assistance			0.0	0.0	0.0	0.0	0.06	0.10	0.1	0.10	0.0
	AIDS Drug Assistance Program			0.0	0.0	0.0	0.0	0.28	0.28	0.28	0.28	0.0
	Substance Abuse Treatment Facility			2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Birth Defects Institute			0.0	0.0	0.0	0.03	0.03	0.03	0.0	0.3	0.0
	Epilepsy Education			0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.0
	Total Dept. of Public Health			25.8	17.5	19.6	19.9	21.6	24.3	23.8	25.0	0.0
	Department of Human Services											
	Physician and Other Medical Providers			8.1	8.1	8.1	8.1	0.0	0.0	0.0	0.0	0.0
	Dental Provider			3.8	3.8	3.8	3.8	0.0	0.0	0.0	0.0	0.0
	Hospital Provider			3.0	3.0	3.0	3.0	0.0	0.0	0.0	0.0	0.0
	Home Health Care Provider			2.1	2.1	2.1	2.1	0.0	0.0	0.0	0.0	0.0
	Critical Access Hospitals			0.3	0.3	0.3	0.3	0.0	0.0	0.0	0.0	0.0
	Home Health and Habilitative Day Care Expansion			2.0	2.0	2.0	2.0	0.0	0.0	0.0	0.0	0.0
	Respite Care Expansion			1.1	1.1	1.1	1.1	0.0	0.0	0.0	0.0	0.0
	CHIP Expansion to 200% of Federal Poverty Level			0.2	0.2	0.2	0.2	0.2	0.2	0.0	0.0	0.0

APPENDIX D: Flow of Funds To and From the Healthy Iowan's Tobacco Trust Fund

FISCAL YEAR				FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
	Department of Human Services											
		Breast/Cervical Cancer Treatment		0.3	0.3	0.3	0.3	0.0	0.0	0.0	0.0	0.0
		Supplement Medicaid		7.5	17.5	14.3	14.3	35.0	35.0	35.3	0.0	0.0
		Res. Treatment Support Services Provider		3.2	3.2	3.2	3.2	0.0	0.0	0.0	0.0	0.0
		Adoption, Indv. Living, Shelter Care, and Home Studies Program		0.5	0.5	0.5	0.5	0.0	0.0	0.0	0.0	0.0
		Provider Rate/Methodology Changes		0.5	0.5	0.5	0.5	0.0	0.0	0.0	0.0	0.0
		HIPAA Implementation		0.0	2.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
		Purchase of Service Provider		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.0
		General Administration		0.0	0.0	0.0	0.3	0.3	0.3	0.3	0.3	0.0
		Child and Family Services		0.0	0.0	0.0	0.0	4.3	4.3	3.8	3.8	0.0
		Other Provider Services		0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.2	0.0
		Juvenile Detention		0.0	0.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0
		Total Department of Human Services		32.7	44.8	39.6	39.9	39.9	39.9	40.7	4.4	0.0
	Department of Corrections											
		CBC District I		0.0	0.0	0.0	0.0	0.0	0.2	0.2	0.4	0.0
		CBC District II		0.1	0.13	0.13	0.10	0.1	0.4	0.41	0.44	0.0
		CBC District III		0.04	0.04	0.04	0.04	0.4	0.2	0.20	0.22	0.0
		CBC District IV		0.2	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.0
		CBC District V		0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.0
		CBC District VI		0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6	0.0
		CBC District VII		0.0	0.0	0.0	0.0	0.0	0.2	0.2	0.3	0.0
		CBC District VII		0.0	0.0	0.0	0.0	0.0	0.3	0.3	0.3	0.0
		Fort Madison Special Needs Unit		0.0	1.1	1.2	1.2	1.2	1.5	1.5	1.5	0.0
		Newton Value Based Program		0.0	0.0	0.3	0.4	0.4	0.3	0.0	0.0	0.0
		Transitional Housing Pilot		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.03	0.0
		Total Department of Corrections		0.6	1.7	2.1	2.1	2.5	4.0	4.0	4.5	0.0
	Department of Education											
		Iowa Empowerment Fund		1.2	1.2	2.2	2.2	2.2	2.2	2.2	2.2	0.0
		Before and After School Program Grants		0.0	0.0	0.0	0.0	0.0	0.2	0.3	0.5	0.0
	Department for the Blind											
		Newsline for the Blind		0.0	0.0	0.0	0.1	0.1	0.1	0.0	0.0	0.0
	Department of Management											
		Appeal Board Claims - Standing		0.0	0.0	0.0	0.002	0.002	0.1	0.2	0.0	0.0
	Department of Economic Development											
		Iowa Promise & Mentoring Partnership		0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.0

APPENDIX D: Flow of Funds To and From the Healthy Iowan's Tobacco Trust Fund

FISCAL YEAR					FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
	<i>Total Appropriations</i>				66.3	65.2	63.5	63.9	63.9	7.6	71.2	36.4	0.0
	Reversions				-1.2	-0.1	-0.1	-0.4	-0.4	-0.7	-1.3	0.0	0.0
	Transfer to General Fund				6.0	0.0	0.0	0.0	0.0	0.0	0.0	1.7	0.0
	Ending Balance				1.7	1.5	0.1	0.7	0.7	1.7	1.2	0.0	0.0