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ROLLING YOUR OWN CIGARETTES MIGHT GO UP IN SMOKE

By Dave Stephens

South Bend Tribune (Indiana)

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State may look at increase taxes on smoke loophole

If there's anything hotter than the burning tip of a cigarette in the tobacco industry, it might be the machine that allows smokers to cut the price of smokes in half.

In the past year, at least five tobacco shops in St. Joseph County have added "roll your own" cigarette machines to their inventory -- including four more machines since the Tribune first wrote about the machines last fall.

The jukebox-sized machines turn loose tobacco and rolling papers into a product that look almost identical to their mass-produced counterpart -- with one big difference: The price. Because loose tobacco is taxed at a far lower rate than mass-produced cigarettes, the cigarettes cost half as much to produce.

Stores in South Bend advertise their "roll-your own" cigarettes, in which the customer has to wait 10 to 15 minutes for the machine to produce 200 cigarettes -- the equivalent of a carton + for \$20 to \$25. Regular cartons cost to \$35 to \$55.

Those savings are the driving force behind the new roll-your-own phase, customers told the Tribune last fall.

But now, those savings -- and the investments made by stores to stock the new machines -- could go up in smoke.

Last month in the Indiana House of Representatives, Rep. Bob Cherry (R-Greenfield) introduced a bill that proposes creating a study session to study the issue of creating roll-your-own cigarettes at retail establishments.

If the bill passes -- it was already approved by the House's Committee on Public Policy, but still needs to be approved the full legislature -- it means a group of legislators will spend part of this summer and fall studying the issue.

Specifically, the bill asks the committee too look at the general operation of roll-your-own retail establishments, and their tax consequences.

To the state, those consequences can be huge, considering the \$270 million collected each year from smokers in the form of cigarette tax revenue. While each pack of cigarette sold in Indiana comes with a \$1 per pack state tax, the loose tobacco used in roll-you-own cigarettes, which tax loose tobacco at 24 percent of the retail price of the tobacco, is usually less than 25 cents for the equivalent of a pack.

Nationally, states across the nation are looking at the same issue -- worried the roll-your-own machines represents a loophole in a law that was designed to decrease the number of people smoking.

In New York this past week, according to Associated Press reports, stores were shuttered after concerns were raised about the use of machines to roll cigarettes.

State legislatures in South Dakota, Virginia and Wisconsin are also debating the issue.

And locally, even though it's unlikely that the state laws regarding roll-you-own will change this year -- the proposed study committee wouldn't even start meeting until July -- the national debate is being watched closely.

"It's saved me a lot of money," said Jeff Masterson, of Niles, who drives across the state line to buy cigarettes in Indiana, where the tax is less. "If they make the machines cost more, I'll probably buy a roller and make them at home."

Masterson was asked if the higher prices would get him to quit.

"I don't know, maybe," said Masterson, who said his wife quit several years ago, in part, because of the price.

"But if I was going to quit, I probably should have done it a long time ago."

TOBACCO MACHINES, BET LIMITS UP FOR DEBATE

By Austin Hoffman

KELOLAND TV (Sioux Falls, SD)

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South Dakota lawmakers are expected to discuss a bill Friday that targets business that provide roll your own tobacco machines.

Customers can go in, buy the tobacco and rolling paper, and use the machines themselves to roll their own cigarettes. This way they don't have to pay the tobacco tax that usually comes when retailers sell pre-packaged cigarettes.

Under HB 1138, these businesses would be considered a manufacturer and still have to pay the tax.

And in the Senate, lawmakers are expected to vote on a bill that increases the bet limit in Deadwood ten times its current maximum. The current limit is \$100. Senate Bill 108 would allow gamblers to bet up to \$1000 on a hand.

Deadwood revenue has been steadily dropping since the smoking ban passed. This could give casinos a new way to bring in more money.

See video here: <http://www.keloland.com/videoarchive/index.cfm?VideoFile=120210tobaccoam>

NORQUIST ASKS MASS. LAWMAKERS TO REJECT TAX HIKES

By Bob Salsberg
Associated Press
February 8, 2012

Anti-tax activist Grover Norquist called on Massachusetts lawmakers to reject what he termed "lifestyle tax increases" proposed by Gov. Deval Patrick, saying hikes in taxes on tobacco products and soda would hurt the state's economy while doing little to encourage healthier habits.

Norquist, a Massachusetts native who heads Americans for Tax Reform, recently sent a pair of letters to members of the state House of Representatives and Senate, who will be considering the proposed tax increases as part of a \$32 billion state budget for the fiscal year starting July 1.

"As you work through the budget process, I encourage you to focus on cutting the fat in government, rather than trying to control the personal choices of your constituents through misguided lifestyle taxes," he wrote.

Patrick has proposed hiking the cigarette tax 50 cents from \$2.51 to \$3.01 per pack and doubling taxes on smokeless tobacco, cigars and other tobacco products. The increase is expected to generate \$73 million in revenue that would be used to help offset the cost of a

recent ruling by the state's high court that legal, non-citizen immigrants are eligible to enroll in Commonwealth Care, the state's subsidized health insurance plan.

Patrick is also asking the Legislature to make soda and candy subject to the state's 6.25 percent sales tax, a move expected to generate \$61 million for other public health programs.

In addition to raising money, Patrick said the higher taxes would also have the added benefit of discouraging consumption of unhealthy products, a stance backed by anti-tobacco groups.

Norquist has received considerable attention nationally for circulating a no-tax pledge that, according to Americans for Tax Reform, has been signed by 238 U.S. Representatives and 41 U.S. Senators, the vast majority Republicans.

In one of the letters sent to Massachusetts legislators, Norquist said the proposed cigarette tax hike was misguided public policy. He wrote that it would hurt small businesses by driving smokers across state lines to make purchases, noting that New Hampshire and Vermont have considerably lower taxes on cigarettes.

Norquist claimed that after South Carolina raised its cigarette tax by 57 cents in 2010, revenue from the tax actually dropped in the state while neighboring states, including Georgia, saw increases in cigarette sales.

By also raising taxes on other tobacco products, including smokeless tobacco, Norquist said Patrick was undercutting his own effort to reduce cigarette smoking and "perpetuating the egregious misconception that use of smokeless tobacco is as harmful as smoking."

In the second letter, Norquist decried the proposal to tax soda as a "job-killer," noting that Polar Beverages, a major soda producer, is based in Massachusetts. He also said the tax would restrict freedom of choice by consumers while doing little to curb obesity.

"No one should have to incur higher prices from a nanny state to curb their consumption, particularly perfectly healthy individuals who enjoy soda and other sweetened drinks," he wrote.

The governor said he had not seen Norquist's letter, but defended the proposed tax increases.

"We have made these proposals before, we're making them now because they are reasonable, they are very popular among the general public and they help us deal with the cost of public health and the kinds of services that people need," Patrick told reporters.

The Legislature did not act on a similar proposal to tax soda and candy last year. The last time the cigarette tax was increased was in 2008, when it jumped \$1 to \$2.51 per pack.

GOP PREVENTING REP. MARY STILL'S TOBACCO TAX, OTHER PROPOSALS

By George Kennedy

Columbia Missourian (Opinion)

February 9, 2012

In Greek mythology, Sisyphus is condemned to push a boulder up a steep hill. The boulder slides back down, and the poor guy has to start over.

Rep. Mary Still's self-imposed challenges make that legend look like a walk in the park.

She's pushing at least three legislative boulders up a hill that's been greased by the Republican majorities in both houses. Like Sisyphus, she's no quitter. Unlike him, she's also running for the state Senate.

Mary's biggest metaphorical boulder is her proposal to increase Missouri's lowest-in-the-nation cigarette tax. In a rational world, this would be a no-brainer. The revenue — estimated at \$396 million a year — would come close to eliminating the budget shortfall that has led Gov. Jay Nixon to slash funding for higher education by 15 percent. As a bonus, research shows that the extra cost of a pack would discourage smoking, especially among the young.

Of course, ideology trumps rationality. The Republican majority in the legislature and our Democratic governor are in agreement that no tax shall be raised on anything for any purpose. Neither is likely to be swayed by the fact that an increase of 72 cents a pack would leave Missouri below our neighboring states and far from the national average of \$1.46.

The same ideology probably dooms her proposal that Missouri join an interstate compact to tax Internet sales. Mary's bill is called the Main Street Protection Act. Estimated revenue: \$20 million per year. Estimated chance of passage: Slim.

That's also the likelihood that her proposed limit on payday loan interest will pass. You'll recall that in the last session, Mary's bill was assigned to a committee chaired by a former payday lender. To get past that obstacle, the Rev. Jim Bryan is heading an initiative campaign to cap interest at 36 percent. Maybe citizens can overcome this special interest. You can bet the legislature won't.

Mary put her journalism degree to work in an opinion piece that ran last month in the Columbia Daily Tribune. She made a strong argument for her tax proposals and took a swipe at Kurt Schaefer, whose Senate seat she seeks.

She even called out Chris Kelly, who was the only Democrat in the House to join the Republicans in passing a constitutional amendment limiting growth in the state budget. No doubt the Senate will follow suit. At least we voters will get a chance to weigh in on that one.

She accurately calls it a "shortsighted Hancock-like proposal."

As you can tell by now, I'm a fan. It was not always thus. When Mary ran the university's news bureau and I was in the Missourian newsroom, we had a few arguments. I don't recall ever winning one. She was relentless in protecting the institution's secrets.

That stubbornness has become a virtue in the legislature.

I caught her on the way to a meeting last week and asked just what she really hopes to accomplish in the face of overpowering Republican opposition.

In her Arkansas drawl that sounds misleadingly soft, she made clear that she plans to persevere. These issues, she said, "are bipartisan everywhere in the state except Jefferson City."

Her Republican colleagues, she said, "are wrong on these issues, and they know it."

She admitted she may not prevail, but "I make it uncomfortable for them."

She's comfortable with that. I'm just glad we're on the same side now.

TOBACCO SALE CONCERNS DELAY INDIAN AFFAIRS SECRETARY'S APPOINTMENT

By Milan Simonich

Las Cruces Sun-News (New Mexico)

February 9, 2012

State senators, concerned about possible illegal tobacco sales at a tribal store in which Arthur Allison has an interest, delayed a vote today on whether to confirm him as secretary of the Department of Indian Affairs.

Allison, 64, told the Senate Rules Committee that he no longer makes any day-to-day decisions about operations of the Five Star Oil & Gas store on the Navajo nation near Farmington. He said he is "a passive member" of a partnership, but his son runs the business.

At issue for the Senate is whether the store is continuing to sell cigarettes to non-tribal members without charging a state tax.

Allison said tobacco products at his store are taxed by the Navajo Nation. He said his lawyer did not believe the law required that an additional tax be collected and paid to the state government if someone outside the tribe makes a purchase.

Gary King, attorney general of New Mexico, said otherwise last spring, after Gov. Susana Martinez nominated Allison to run the Department of Indian Affairs.

Under a 1998 settlement, big tobacco companies pay states to help cover medical expenses linked to smoking. New Mexico also has laws requiring cigarette companies that are not part of the settlement to make similar payments.

Sen. Tim Jennings, D-Roswell, said he did not want to deny Allison the cabinet appointment but was worried that his store's practices could jeopardize the tobacco settlement.

The agreement brings New Mexico \$35 million to \$45 million a year, so the issue cannot be taken lightly, said Sen. Dede Feldman, D-Albuquerque. The Rules Committee asked Allison to turn over records of his relationship to the business. He agreed, and will return to the committee Wednesday. Sen. George Muñoz, D-Gallup, opposed a delay. He wanted to confirm Allison immediately.

"This man never should have been subjected to this," Munoz said.

He said Allison was targeted for political reasons, and that he had done nothing wrong.

Muñoz, who chews tobacco, says he never has been asked about his residency when buying the product at any tribal store. In addition, truckers and tourists who purchase cigarettes at tribal stores are never asked for proof of residency so the state can collect a tax on the sale, Muñoz said.

For his part, Allison said he considered the committee's caution to be fair, even though he effectively had severed ties to store.

"I take no profit. I am not the managing member," Allison said.

But Sen. Linda Lopez, the committee chairwoman, said it would be best if Allison documented his statements with records. If his nomination were forwarded to the full Senate, he no longer would be able to answer questions or make a case for himself, she said.

Allison is the first Navajo nominated for the cabinet post.

PEPSICO UNIONS SEEK NLRB HELP TO COMBAT COMPANY'S \$50 TAX ON FAT, SMOKING

By Holly Rosenkrantz
Bloomberg News
February 9, 2012

Teamster union members at PepsiCo (PEP) Inc. in upstate New York are seeking National Labor Relations Board help to fight the company's health-care policy that charges employees \$50 a month when they smoke or have medical issues that may trigger weight gain.

Three International Brotherhood of Teamsters locals, representing about 300 drivers, sales agents and warehouse workers in Binghamton, Latham and Syracuse, complained to the labor board in October. PepsiCo is hindering the union's effort to shop for a health plan without a "sin tax," said Ozzie Martucci, secretary-treasurer of Teamsters Local 669.

"We're against that type of tax, frankly," Martucci said yesterday in a phone interview. "It feels wrong to tax workers if they are overweight or happen to have diabetes or smoke, and we wanted to look elsewhere for different insurance."

PepsiCo (PEP) workers can avoid the fee if they join programs to stop smoking or lose weight, said Dave DeCecco, a company spokesman. "These programs enable our associates and their families to live a healthier lifestyle," he said.

The fee is applied to smokers, as well as to workers who have diabetes, hypertension, high blood pressure or asthma, conditions that often lead to being overweight, he said.

U.S. companies adding financial incentives and penalties to control workers' health-care management rose 50 percent from 2009 to 2011, according to a survey of 355 employers by Towers Watson and the National Business Group on Health. The use of penalties may double this year, with 38 percent of respondents saying they plan to punish people who miss targets linked to cholesterol levels or body-mass index, the study showed.

Data Dispute

The New York Teamsters locals turned to the NLRB, which mediates disputes between employers and workers, after the company refused to turn over gender and age demographics the unions needed to shop for an alternative health plan, violating the labor agreement, Martucci said. The NLRB is reviewing the case.

"We have always been willing to provide the unions with as much information as possible," DeCecco said. "We will collaborate with the NLRB to determine the best way forward, balancing the unions' desire for information with our need to protect the privacy of our employees."

The NLRB regional office in Buffalo, where the complaint was filed, told PepsiCo it would issue a complaint unless they settled the matter -- a step that is "standard practice" in such cases, Nancy Cleeland, the board's Washington spokeswoman, said.

"Unless there is a settlement, the NLRB will issue a complaint saying it unlawfully withheld the information," she said. The NLRB is not weighing in on the sin tax.

CIGARETTE MAKER LORILLARD 4Q PROFIT GROWS 20 PCT

By Michael Felberbaum
Associated Press
February 9, 2012

Cigarette maker Lorillard Inc. said Thursday that its net income grew nearly 20 percent in the fourth quarter as it sold more cigarettes at higher prices.

The nation's third-biggest tobacco company said it earned \$310 million, or \$2.32 per share, for the three-month period ended Dec. 31, up from \$259 million, or \$1.74 per share, a year ago. The per-share figure was boosted by a lower number of shares outstanding.

Lorillard, based in Greensboro, N.C., said adjusted earnings that exclude a benefit from expenses related to a tobacco settlement were \$2.20 per share, beating analyst expectations of \$1.94 per share.

Revenue excluding excises taxes rose about 10 percent to \$1.12 billion. Analysts polled by FactSet expected revenue of \$1.09 billion.

Lorillard was bucking industry trends as broader cigarette volumes declined, CEO Murray Kessler said in a conference call with investors.

Shares rose \$7.81, or 6.9 percent, to \$121.17 in morning trading Thursday.

The number of cigarettes Lorillard sold rose about 6 percent to 9.8 billion. Newport, its biggest brand, rose 4 percent, while low-priced Maverick cigarettes rose 16 percent. Lorillard estimates that the industry as a whole sold about 3 percent fewer cigarettes during the quarter.

High unemployment and rising cigarette prices and taxes have caused many smokers to smoke less and trade down to cheaper brands during the recession in a bid to save money. Lorillard's Maverick and Reynolds American Inc.'s Pall Mall have been among the beneficiaries.

Lorillard's retail market share increased 0.8 points during the quarter to 14 percent of the U.S. market. Newport's share of the menthol market grew slightly to 35.6 percent, while its top competitors have ramped up efforts to grab some of the growing menthol market. The company said promotion of Newport non-menthol, the Maverick brand's growth and Newport's geographic expansion drove market share gains.

Most tobacco companies have been raising prices and cutting costs to keep profits up as the recession and declining demand cut into cigarette sales. Tax increases, smoking bans, health concerns and social stigma also have made the cigarette business tougher.

The company also said Thursday that it lifted its quarterly dividend by 19 percent and repurchased 3.3 million shares during the quarter.

For the full year, the company said it earned \$1.11 billion, or \$7.99 per share, in 2011 compared with \$1.03 billion, or \$6.78 per share, in 2010. Revenue excluding excise taxes increased about 10 percent to \$4.45 billion.

On Wednesday, Reynolds American, which also makes Camel brand cigarettes, said its fourth-quarter profit rose 16 percent as higher prices and productivity gains helped offset declining cigarette sales. Volumes fell 7 percent to 10.5 billion cigarettes during the quarter.

Last week, rival Altria Group Inc., owner of the nation's biggest cigarette maker, Philip Morris USA, said its fourth-quarter profit fell about 9 percent on charges even as higher prices and gains from its smokeless tobacco products helped bolster its sales. Its cigarette volumes were flat at 33.7 billion cigarettes and its top-selling Marlboro brand lost 0.7 points of market share. It has nearly 42 percent of the U.S. market.

Lorillard, the oldest continuously operating U.S. tobacco company, spun off from Loews Corp. in 2008.