

## **House Energy and Commerce Committee passes HR 1108 on April 2, 2008**

On April 2, 2008, the House Energy and Commerce Committee voted overwhelmingly, 38 to 12, to approve the bill to grant the FDA authority over tobacco products. The committee also defeated all amendments to weaken the bill. This is the first time a House committee has ever approved such legislation, and the strong, bipartisan vote provides powerful momentum. This is the next critical step toward enacting this bill into law this year. It is a sign of the Congressional leadership's strong commitment to passing this bill.

Energy and Commerce Committee Chairman John Dingell and Rep. Henry Waxman, the sponsor of the legislation, have been working hard to secure the votes of a majority of the committee for a strong bill.

The Energy and Commerce Committee is split between 31 Democrats and 26 Republicans. Chairman Dingell and Congressman Waxman worked not only to secure final passage of the bill, but also to defeat weakening amendments that may produce party-line votes. So the attendance and vote of every member was critical.

To address concerns raised by key members of the committee, Chairman Dingell and Congressman Waxman have agreed to several narrow changes to the legislation that do not weaken the strong, broad authority public health advocates believe the FDA must have over the manufacturing and marketing of tobacco products. These changes primarily address concerns that have been raised by convenience stores, small tobacco manufacturers and tobacco growers.

While public health groups would not have proposed these changes, we have urged sponsors of the legislation to ensure that these changes are as narrowly tailored as possible and preserve the strong authority the FDA needs. We believe this effort has succeeded. In fact, we are very pleased that the bill has come so far with minimal change and with the FDA's core authority fully preserved.

Specific changes that are being made to the bill include the following:

- Convenience stores: As introduced, the bill requires retailers to verify age for all over-the-counter sales and provides for federal enforcement and penalties against retailers who sell to minors. To address convenience store concerns, one change would require FDA to also develop regulations governing sales, promotion and marketing in remote transactions, such as mail order, which are not face-to-face. Other changes clarify penalties on retailers for violations, for example requiring FDA and states to coordinate in penalizing retailers. Overall, these changes preserve the strong youth access provisions of the bill.

Small manufacturers: Small tobacco manufacturers have expressed concern that, unlike large manufacturers with their own labs, they would not have timely access to laboratories needed to comply with the product testing and reporting requirements in the bill. One change being made to the bill would give these small manufacturers more time to comply with these requirements. However, this extra time would apply only to the provision of the bill dealing with the testing and reporting of the contents of tobacco products. Small manufacturers would have to comply in the same way and in the same time frame as large manufacturers with regard to other testing requirements and other provisions of the bill, including meeting product standards that establish nicotine levels or require the reduction or removal of harmful ingredients. Small manufacturers, defined as having fewer than 350 employees, have less than 10 percent of the tobacco market. We believe the extra time to comply with the product testing and reporting requirements is a minimal change that applies to only a small segment of the industry and does not weaken the overall bill.

Tobacco growers: The bill is intended to apply to manufactured tobacco products, not tobacco farming. To address concerns that growers have raised, the bill is being changed to make clear that imported tobacco must have the same standards for pesticides and insecticides as domestic tobacco, to give growers the opportunity to comment on whether a proposed product standard would favor foreign-grown tobacco over domestic, and to give the Secretary of Agriculture the opportunity to submit comments on proposed product standards.

While gaining support for the bill, these changes fully preserve the FDA's authority to take strong action to protect public health and reduce tobacco use.

The FDA retains full authority to:

- Crack down on tobacco marketing and sales to children.
- Ban candy-flavored cigarettes, which clearly are aimed at kids.
- Require disclosure of the contents of tobacco products and tobacco industry research about the health effects of their products.
- Set product standards that require changes in tobacco products (both new and existing), such as the removal or reduction of harmful ingredients.
- Stop tobacco companies from making health claims about their products that are not scientifically proven or that would discourage current tobacco users from quitting or encourage new users to start.
- Require larger, more effective health warnings on tobacco products.
- Prohibit terms such as "light", "mild" and "low-tar" that mislead consumers into believing that certain cigarettes are safer than others.

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