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Tobacco Minimum Pricing Laws

Recorded on
October 30, 2014



ChangeLabSolutions

ChangeLab Solutions creates innovative law and policy solutions that transform neighborhoods, cities, and states.

Our unique approach, backed by decades of solid research, helps the public and private sectors make communities more livable, especially for those who are at highest risk because they have the fewest resources.



Tobacco Use

• 18.1% of U.S. adults smoke cigarettes

By Race/Ethnicity

- 21.8% of American Indians/Alaska Natives (non-Hispanic)
- 10.7% of Asians (non-Hispanic; excludes Native Hawaiians and Pacific Islanders)
- 18.1% of Blacks (non-Hispanic)
- 12.5% of Hispanics
- 19.7% of Whites (non-Hispanic)
- 26.1% of Multiple race individuals

By Education

- 24.7% of adults with 12 or less years of education (no diploma)
- 41.9% of adults with a GED diploma
- 23.1% of adults with a high school diploma
- 9.1% of adults with an undergraduate college degree
- 5.9% of adults with a postgraduate college degree

*U.S. Centers for Disease Control and Prevention





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AGENDA


1. Minimum pricing – background & strategies
2. New York City pricing-related policies
3. Legal issues



Tobacco Minimum Pricing: Background and Strategies

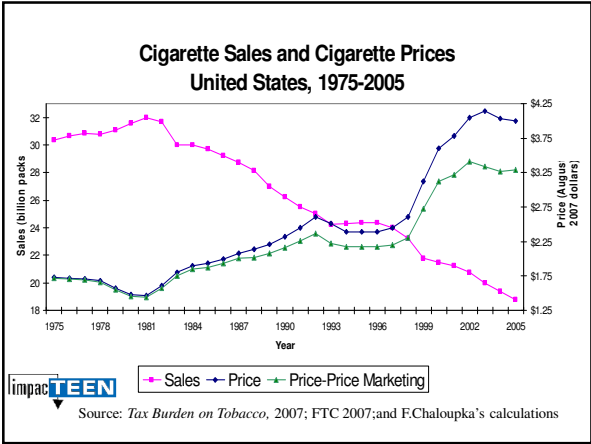
ChangeLab Solutions Webinar
October 30, 2014

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Program Lead, Cancer Prevention and Control, UNC Lineberger Comprehensive Cancer Center



Presentation Overview

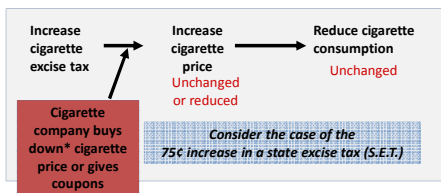
- **Rationale for policy options**
- **Promising policy options: Description & impact**
 - Minimum price laws
 - Markup policy
 - Floor price policy
 - Restrict or ban price-related promotional activities
 - Price discounts (e.g., buydowns), coupons
 - Bonus cigarettes (e.g., buy 2 packs get 1 free)
- **Recommendation: A comprehensive policy**
 - Higher markup + Floor price + Ban promotions
 - NYC Case Study: Sensible Tobacco Enforcement (STE)



Policy Overview

- **Excise taxes** are first line approach
 - Still the gold standard
 - Feasibility issues with getting high taxes
 - Voter ballots
 - Governor/legislative body anti-S.E.T. hike
 - Can be undercut by industry price discounting
- Given these issues, alternatives are needed

Price Increase Overview



How do we restrain cigarette companies from manipulating retail prices and undermining the public health benefits of higher prices?

Goal: Increase cigarette prices by means other than raising excise taxes

- **Option 1:** Minimum Price Laws
- **Option 2:** Restrict or ban price-related promotional activities

Option #1 – Minimum Price Laws (MPL)

- **States** set a minimum cigarette price
- Retailers can sell **at or above** that price
- State sets a **formula** of **minimum markups** for wholesalers and retailers (**markup policy**)
- Do minimum price laws increase prices?

Cigarette Minimum Price Laws- Markup (Status quo)



MPL State Highlights

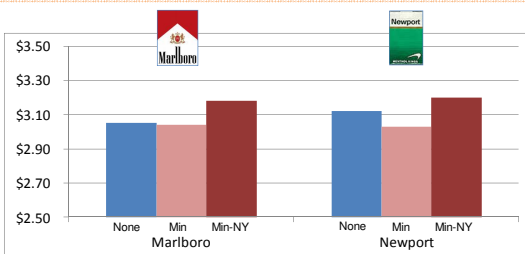
- 25 states had min price law as of 12/31/09
- Median markup wholesale - 4% (range 2.0-6.5%)
- Median markup retail - 8% (range 6.0-25.0%)
 - **Caution: This is probably too low to be effective**
- 7 states ban price discounts (buydowns) in minimum price computation

Ribisl, Patrick, Eidson, Tynan, & Francis (2010)

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Cigarette Prices by presence of MPL

-No diff between 7 "None" & 8 "Minimum" states; NY sig diff. from all others

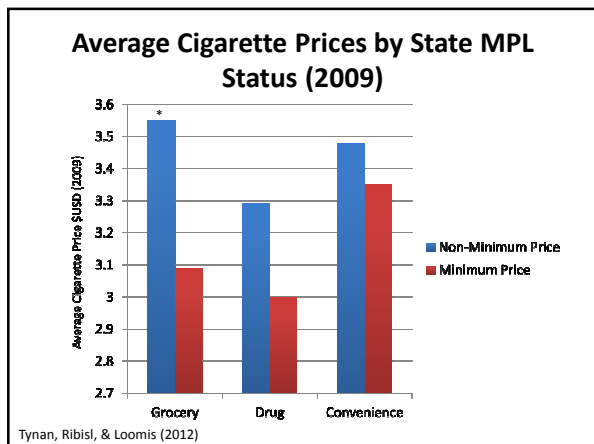


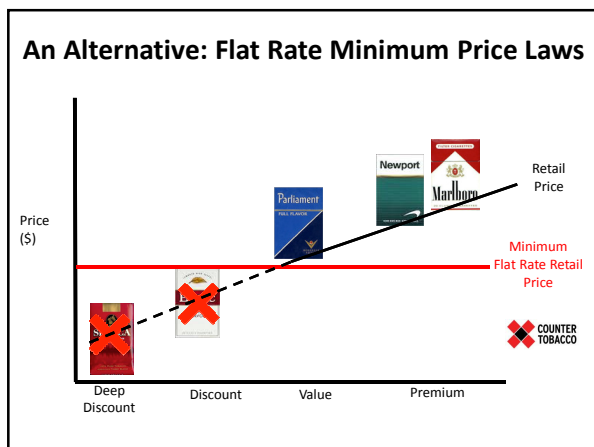
Feighery, Ribisl, et al. 2005, Tob Control, 14, 80-85 Note: 15 states; NY (strong) also in Min states

Impact of cigarette minimum price laws on the retail price of cigarettes in the USA

- Nielsen SCANTRACK retail scanner data
 - 24 states + District of Columbia with MPLS
- Average cigarette price in three channels
 - Grocery Stores
 - Drug Stores
 - Convenience Stores

Tynan, Ribisl, & Loomis (2012)





- ### MPL Caveats
- Need more research re: effectiveness
 - Excise taxes allow prevention fund earmark; not MPL
 - Higher margins enrich tobacco industry
 - Legal challenges
 - Complicated, difficult to enforce
 - Policy must ban promotions in calculation of min price
- 24

MPL Strengths

- Tool to increase price and cut consumption
- Helps preserve impact of tax hike
- Markups across the board (each price tier)
 - Alternative: Standard minimum price (e.g. \$6.00), simpler, cuts deep discounts
- Can be used against contraband cigs if priced below minimum

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Option #2 – Restrict or ban price-related promotional activities

- Price discounts (e.g., Buydowns) →
- Manufacturer’s promotional programs (e.g., volume discounts to retailers, Retail Leaders)
- Coupon redemption
- Bonus cigarettes (e.g., buy 2 packs get 1 free) aka “Retail Value-Added” (FTC) →



Why price discount? Why not just drop price?



- Maximize industry profit:
 - Keep prices high, AND
 - Reach price-sensitive smokers who seek out added value
- Classic retail couponing strategy

Percentage of Stores with Interior and Exterior Cigarette Price Promotions

n=2200 national

	Special Price	Multi-Pack	Both	Any Promotion
Exterior Promotion	21%	6%	0.3%	73.6%
Interior Promotion	59%	12%	2%	27.6%

75.6% of stores have at least one price promotion (either interior or exterior)

Resources for Restricting Tobacco Advertising and Promotions

Best Option: A Comprehensive Policy Floor Price + Promotion Ban

Case Study:
NYC Sensible Tobacco Enforcement (STE)

- Price Promotion Ban
- Floor Price at \$10.50 Per Pack
- Enhanced Tax Enforcement

Conclusions

- In the absence of a promotional ban, MPLs may not have much of an effect.
- The *most promising* minimum pricing strategy is a comprehensive package with:
 - A **floor price** above current market prices
 - **Higher markup** rate
 - A provision to **ban promotions**

Questions?

NYC TOBACCO CONTROL & PRICE-BASED POLICY

Kevin R.J. Schroth, JD
Senior Legal Counsel
Bureau of Chronic Disease Prevention & Tobacco Control
NYC Department of Health and Mental Hygiene



NYC's Five-Point Plan for Tobacco Control

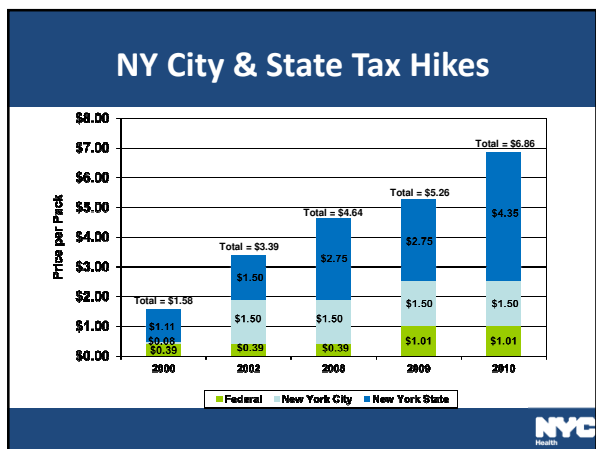
- Taxation
- Legal action
- Cessation
- Education
- Evaluation

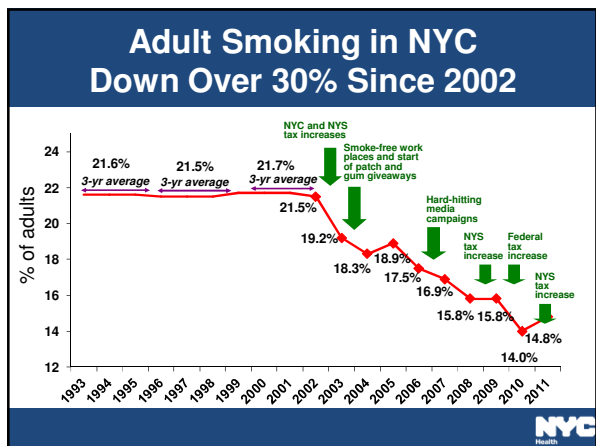
Gimme a box of your best cigars.

Just because we advertise to you, doesn't mean we can sell to you... yet.

Fred's Liquor Shop

NYC
Health





High Prices: Simple Intervention, Enormous Impact

High Prices
 → **Less Smoking**

- ☐ Smokers are price sensitive
- ☐ For a 10% increase in price
 - Adult demand decreases 3-5%
 - Youth demand decreases 7% or more

NYC
Health

Declines in NYC Smoking Stalled

Year	Adult Smoking (%)	Youth Smoking (%)
2001	21.5%	17.6%
2002	19.2%	14.8%
2003	18.3%	11.2%
2004	16.9%	8.5%
2005	17.5%	8.4%
2006	16.9%	8.5%
2007	15.8%	8.5%
2008	15.8%	8.5%
2009	14.0%	8.5%
2010	14.8%	8.5%
2011	15.5%	8.5%
2012	15.5%	8.5%

NYC
Health

Why the Stall?

- ❖ Price-avoidant behavior was undermining impact of high tax rates
- ❖ Sources of cheap tobacco products:
 1. Illegal untaxed cigarettes
 2. Discounts on tobacco products
 3. Dual tobacco use and cheap cigars

NYC
Health



1. Cigarette Tax Evasion is a Health Issue

- Average pack in NYC is over \$11
- Virginia cigarettes cost ~\$5
- Smugglers drive them into NYC
- Littered pack studies estimate 40-70% of packs are non-local
- NYC retailers sell for \$8/pack
 - Big profits
 - Low risks
 - Law-abiding retailers cannot compete
- Smugglers linked to terrorism

Step 1: Increase Risks of Smuggling

- Shift economic incentives
 - More **inspections** and better strategy
 - Increase **penalties**
 - Decrease threshold quantities of cigarettes
 - Prevents retailers from frustrating law my shipping in small quantities
 - **Suspend** and revoke **licenses** for multiple violations
 - **Padlock** stores for multiple violations
- Require signage saying tax stamps are required

2. Discounts on Tobacco Products

- ❑ Tobacco industry spends **~\$7 billion** per year on discounts
- ❑ In NYC, **25%** smokers reported using a discount on their last purchase
- ❑ Average discount **\$1.25** per pack



Price Impact of Coupons



Regular price: **\$11.61**

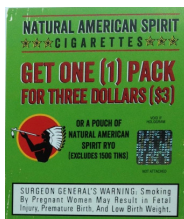
- \$.30 store sale
- \$.75 on pack discount
- \$1.50 manufacturer coupon
- + \$.86 sales tax

\$9.06 final price

Total savings: \$2.55 or 22%



Price Impact of Coupons



Regular price: **\$13.27**

Price with coupon: **\$3**

Total savings: \$10.27 or 77%



Lawsuit: Industry Arguments

- ❑ Tobacco industry argued NYC has “no credible evidence” that youth under the age of eighteen **seek out** and **use** coupons...
 - Coupons used by adult customers
 - Coupons tell customers “you’re getting a deal”
- ❑ NYTS provided survey data that students receive coupons from tobacco companies in a variety of ways



Youth Receipt of Coupons

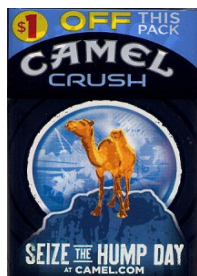
Method of coupon receipt in past 30 days among youth under 18 who bought cigarettes in a store

Mail	18.0%
Email	12.6%
Internet	9.7%
Social networks	8.3%
Text	6.9%
On-pack	32.9%



Youth Use of Discounts

“Of the underage youth who reported purchasing their last pack of cigarettes in a store, **one-third reported receiving an on-pack discount**. This is direct evidence that **youth use coupons.**”



Seeking Out Coupons

- ❑ Industry argued NYC has “no credible evidence” that youth **seek out** coupons...
- ❑ However, NYTS shows youth took affirmative steps:
 - 12.6% received a coupon by **email**
 - 6.9% received a coupon by **text message**



Impact of Coupons (1 of 2)

- ❑ Greater **use** of tobacco products among smokers and nonsmokers
 - a. Students who received coupons were **more likely to have used “any tobacco product”** in the past 30 days than those who did not (41% vs. 12%).
 - b. Students who received coupons were more likely to smoke **cigars, cigarillos, or little cigars** in the past 30 days than those who did not (22% vs. 6%).
 - c. Students who received coupons were more likely to have ever used **sus** than those who did not (15% vs. 4%).



Impact of Coupons (2 of 2)

- ❑ Greater **intention to use tobacco products**
 - d. Smoking students who received coupons were more likely to report **intentions to purchase cigarettes** in the next 30 days than smokers who did not (69% vs. 46%).
 - e. Smoking students who received coupons were more likely to be heavy smokers (11 or more cigarettes per day) than those who did not receive coupons (19% vs. 5%).
 - f. Smoking students who received coupons were less confident in their **ability to quit** successfully than those who did not receive coupons (41% vs. 61%).
 - g. Nonsmoking students receiving coupons were **more susceptible** to smoking than those who did not receive coupons (52% vs. 32%).
 - h. Nonsmoking students were more likely to report **intentions to purchase cigarettes** in the next 30 days if they received coupons than if they did not (3% vs. 1%).



Step 2: Ban Discounts on Tobacco Products

Retailers Cannot:

- Redeem coupons
- Redeem multipack discounts
- Offer discount on product purchased with tobacco
- Sell cigarettes for less than listed price
- Sell cigarettes or little cigars for less than the price floor of \$10.50 per pack



3. The Rise of Cheap Cigars

- From 1995 to 2008, national sales increased by:
 - 316% for little cigars
 - 255% for cigarillos
- Cigars/cigarillos must be sold in packs of 4 or more
- Little cigars must be sold in packs of at least 20
 - \$10.50/price floor



Step 3: Increase Cigar Pack Sizes

- Cigars and cigarillos must be sold in packs of 4 or more
 - Increases purchase price from ~\$1 to ~\$4
 - 4-packs are already common in industry
 - Boston and other Massachusetts towns implemented similar rules
 - ❖ Cigars over \$3 each are exempt
- Little cigars must be sold in packs of 20 or more
 - \$10.50 floor price



Opposition Arguments

1. "It's bad for small business"
2. "It will lead to trafficking"


❖ Responses:

- No evidence tax increases hurt small business; this is expected to have similar impact
- Law targets trafficking
- Honest retailers benefit from level playing field
- Price floor facilitates enforcement
- Coupons not evenly distributed to all retailers




Lessons Learned

- Work with community partners
- Emphasize impact on youth
 - Evidence-based measures
 - Success in other jurisdictions (Providence)
- Combine with anti-trafficking laws (if relevant)
- Highlight positive impact on business



Questions?



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Crafting a Legally Sound Policy



Presented by
Ian McLaughlin
Senior Staff Attorney
and Program Director

1st Amendment Commercial Speech



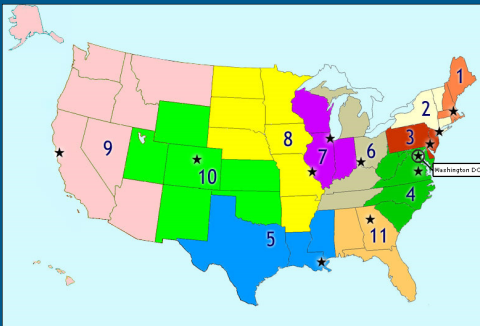
Bill of Rights
OF THE *United States*
CONGRESS OF THE
FIRST AMENDMENT
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FCLAA



Time, place, or manner

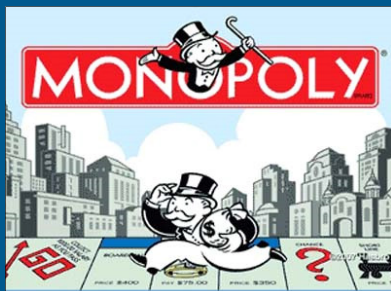
**GUIDANCE FROM 1ST CIRCUIT
(PROVIDENCE), NYC COURT DECISIONS**



Focus on **conduct,
not advertising or promotion**



ANTITRUST LAWS



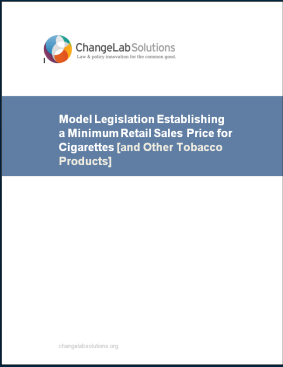
Collusion and Monopolization

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“Flat Rate” Minimum Price

“Markup” Minimum Price

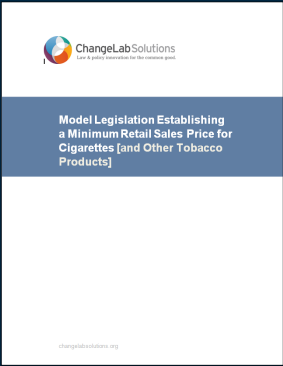
Combination of Both



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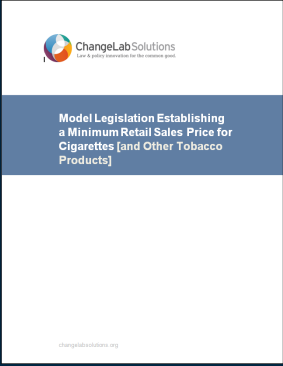
Administration and Enforcement



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Prohibiting Discounts



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**Advertising
Non-Cigarette Products**



Model Legislation Establishing
a Minimum Retail Sales Price for
Cigarettes [and Other Tobacco
Products]

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THANK YOU!

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