



# **TOBACCO RETAILER LICENSING: TAILORING A POLICY TO REDUCE HEALTH DISPARITIES**



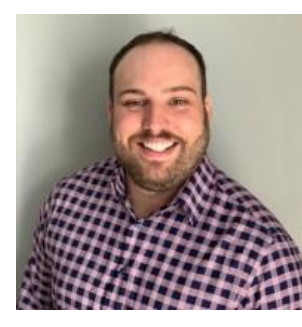
**PUBLIC HEALTH  
LAW CENTER**  
at Mitchell Hamline School of Law

# THE PUBLIC HEALTH LAW CENTER











# COMMERCIAL TOBACCO CONTROL TEAM



# LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby



based on work for First Nations Health Authority at Gathering Wisdom VI

Drawing  
change

Image credit: Sam Bradd <https://drawingchange.com/gathering-wisdom-visuals-for-a-healthy-future/>

# TOBACCO CONTROL ACT: FLAVORED TOBACCO

## FEDERAL, STATE, AND LOCAL AUTHORITY

### Preservation

**Nothing** in the Act **limits state/local authority to enact a law “prohibiting the sale . . . of tobacco products.”**

### Preemption

**No** state/locality may establish “any requirement which is different from . . . any requirement under [the Act] relating to tobacco **product standards.**”

### Saving Clause

The preemption restriction above “does not apply to [state or local] requirements relating to the sale” of tobacco products.





# KEY ELEMENTS OF GOOD POLICY

- Comprehensive
- Clear definitions and concise language
- Relies on a strong evidence base
- Well-planned implementation process
  - Enforcement, enforcement
- Equitable
  - Intended effects achieved for all
  - Unintended consequences: penalties



# TOBACCO RETAILER LICENSING EXCELLENT “VEHICLE” FOR SALES POLICIES

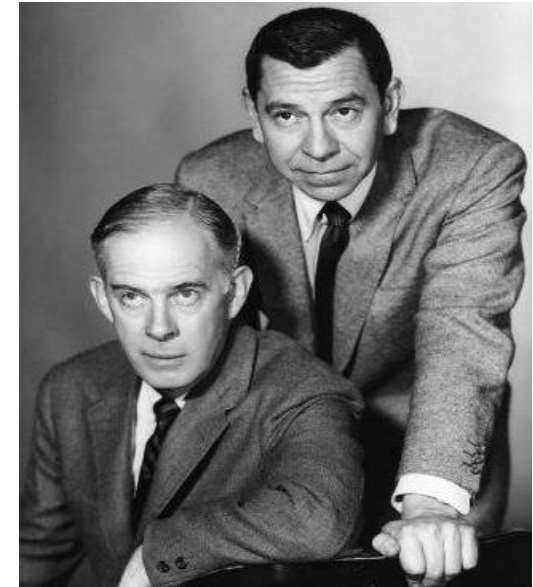
- Sets the rules for applying and renewing.
- Houses all other point-of-sale policies.
- Provides funding for compliance checks.
- Streamlines enforcement.
  - Graduated penalties with suspension/revocation.
  - Do not need to go to court to stop sales.
  - Induces owner to train staff.





# WHEN WHEREAS DOESN'T HAVE TO BE WEIRD

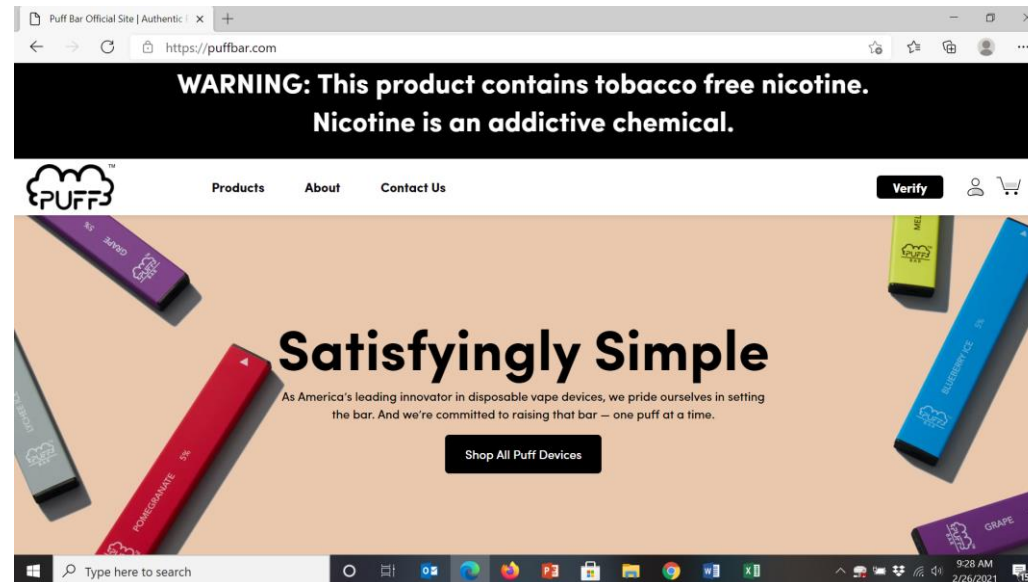
- Findings clauses can be protective by providing rationale.
- Evidence is overwhelming.
- Just the facts, e.g., 22% of South Carolina high school students reported current use of e-cigarettes – mostly flavored.



# HOW: COMPREHENSIVE DEFINITIONS

“Tobacco product” means:

- any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- any **electronic smoking device** as defined in this [section, chapter, etc] and any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- any component, part, or accessory of 1) or 2), **whether or not any of these contains tobacco or nicotine**, including but not limited to **filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.**



# MINIMUM LEGAL SALES AGE

“If a man has never smoked by age 18, the odds are three-to-one he never will. By age 21 the odds are twenty-to-one.”

-Marketing Report for R.J. Reynolds, 1982





# **WHO CAN SELL?:** **MINIMUM CLERK AGE**



# WHICH PRODUCTS CAN BE SOLD?

## FLAVORED PRODUCT RESTRICTIONS

Considerations for local policies:

- Which flavors? Remember that menthol is THE flavor!
- Which products?
- How is it enforced?
- Exemptions?

Best public health practice – **all flavors, all products, no exemptions**



# HOW PRODUCTS ARE SOLD & MARKETING

- Minimum price
- Coupons and discounts
- Minimum pack size





# MINIMUM PACK/PRICE

*“Young people are very price-sensitive.”*

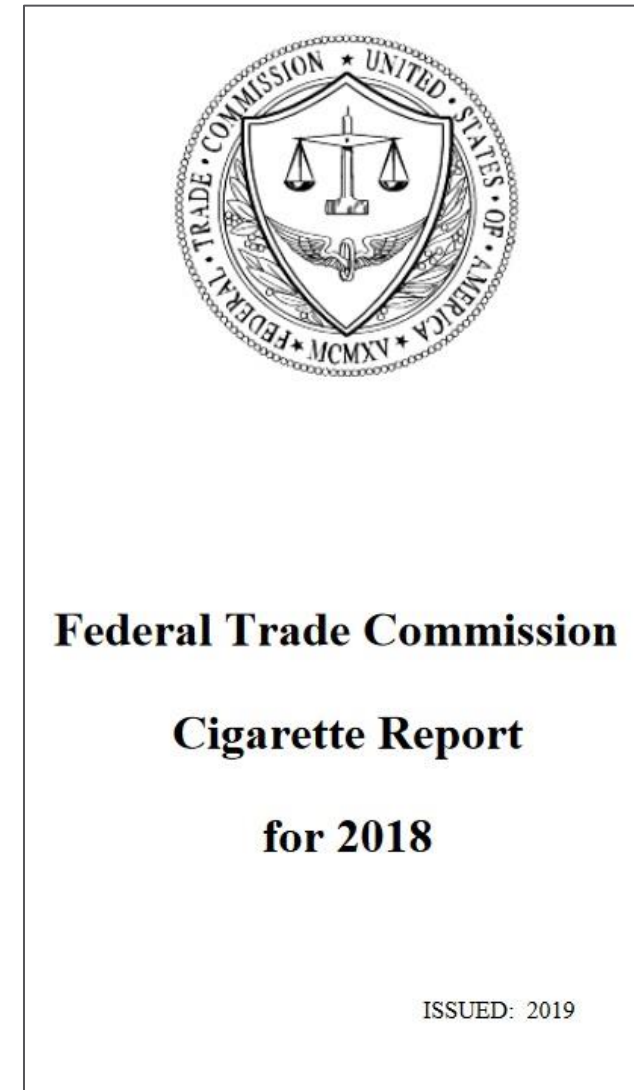
Marketing Report for R.J. Reynolds, 1982



# MINIMUM PRICE DISCOUNTS = MARKETING

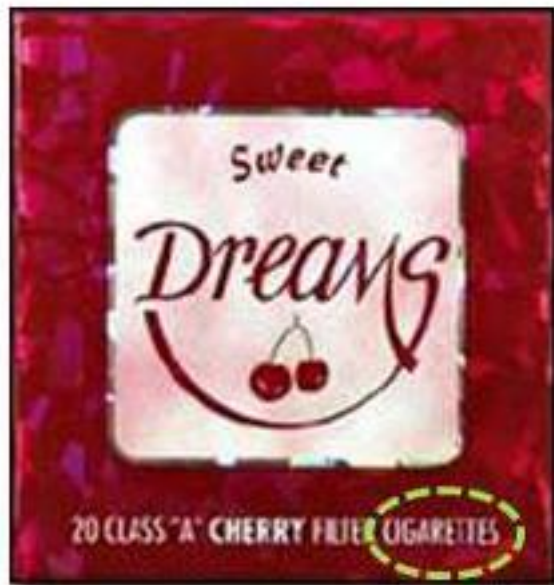
According to 2018 FTC report:

- More than **73%** of all advertising and promotional spending by the cigarette industry is focused on reducing the price of tobacco products **at the point-of-sale**. Over **85%** if you include **wholesale** discounts.
- Coupons - **\$316.2 million**
- Price discounts - **\$7.2 billion**



# MINIMUM PACK

## INDUSTRY PRODUCT MANIPULATION



**Before**



**After**



**Today**



# MINIMUM PACK/PRICE IN MODEL ORDINANCE

- Minimum pack size (little cigars, cigars).
- Minimum prices (e.g., e-cigarettes, pack of cigarettes/little cigars).
- Paired with prohibiting:
  - Coupons and discounts
  - Value-added (e.g. multipack discounts and freebies with purchase).



# WHO CAN'T SELL

Prohibitions on sales by:

- Pharmacies
- Mobile “stores”
- Online/delivery sales
- Curbside pickup

JOHN

The New York Times

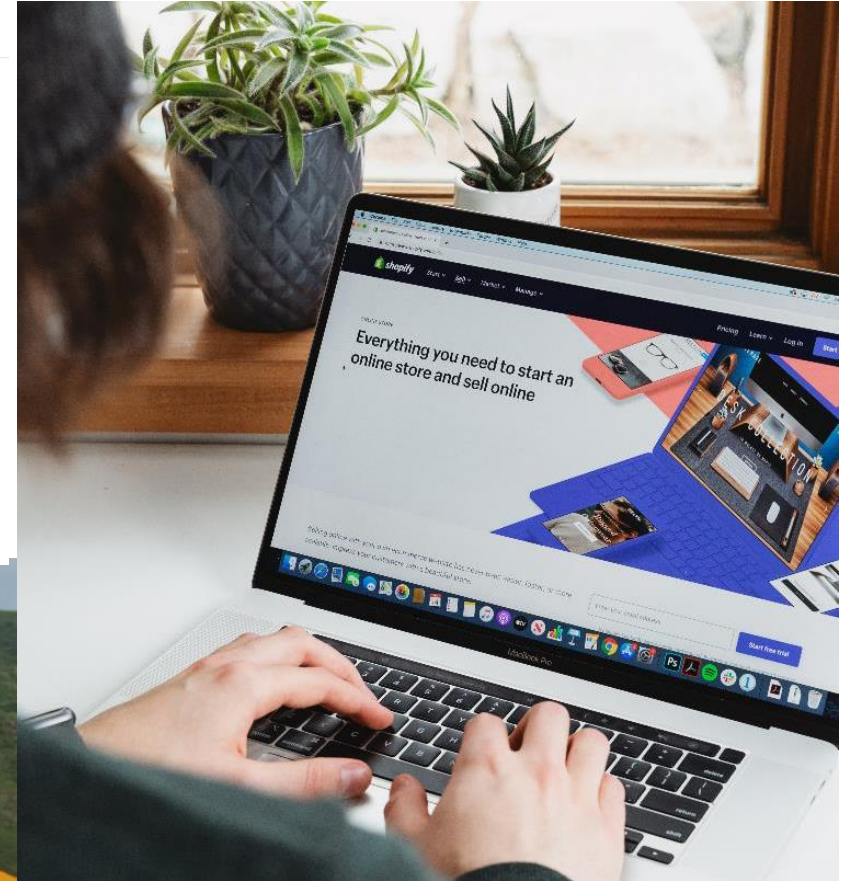
BUSINESS DAY

## CVS Stores Stop Selling All Tobacco Products

By RACHEL ABRAMS SEPT. 3, 2014



Antismoking signs are posted where cigarettes once were displayed at a CVS in Manhattan that no longer sells tobacco products. Andrew Rensen/The New York Times



# WHERE PRODUCTS CAN BE SOLD

- Density
  - Distance from existing retailers
  - By zone/distance
    - Not near schools or residential areas
  - By population
- Number of retailers
  - Cap licenses
  - Cap and reduce





# PENALTY STRUCTURE IMPLEMENTATION

- Penalties on retailer – not on clerks and not on youth.
- Health equity work requires rethinking all these penalties, and helping people out of addiction instead of harming them
- Specify compliance checks
- Set appropriate fees.



# EXEMPTIONS ARE THEY WORTH IT?

- Increase health disparities by leaving communities behind.
- No public health benefit.
- Increased likelihood of litigation.

**EXEMPT**



# WHAT IS PREEMPTION?

- “Higher” level of government eliminates or reduces authority of a “lower” level of government.
- Tobacco industry weaponized it 35 years ago.



[grassrootschange.net](http://grassrootschange.net)

# PREEMPTION ALERT!

- Preemption is a fundamental health equity issue.
  - Punishing cities like Philadelphia.
- Industry is attaching it to “public health” bills.
- JUUL works with ALEC.
- It’s never a good trade-off.
- State laws should have anti-preemption language.





# PREEMPTION IN SOUTH CAROLINA

- South Carolina Code Sections 16-17-500 to 504.
- Appears to just limit sales age restrictions.
- SC Supreme Court interpreted narrowly in Foothills Brewing v. Town of Greenville.
  - Sales, purchase, distribution of tobacco products to minors, vending machine location, and penalties.
  - BUT, case was on smoke-free, so not completely resolved.



Source: Lonely Planet

# PROPOSED PREEMPTION IN SOUTH CAROLINA

- Local authority preempted for youth access law, but not likely for licensing.
- H3681
  - "Section 44-95-45. (A) Political subdivisions of this State may not enact any laws, ordinances, or rules pertaining to ingredients, flavors, or licensing, beyond a general business license..."
- Didn't succeed this session, but will likely be back.



# KNOW YOUR RESOURCES



SALES RESTRICTIONS

April 2020



## U.S. SALES RESTRICTIONS ON FLAVORED TOBACCO PRODUCTS



This chart provides select examples<sup>1</sup> of U.S. cities and counties that restrict the sale of flavored tobacco products. The chart captures variations among these flavor restrictions by noting when (1) flavors are prohibited generally or only within certain "buffer" zones, (2) menthol is prohibited, (3) flavors are restricted in e-cigarettes,<sup>2</sup> and (4) exemptions are provided for certain retailers. The chart also provides links to each jurisdiction's laws and summarizes relevant legal challenges. Beneath the chart is a supplemental list showing these select flavored tobacco restrictions organized by type rather than by state.

A state or local government considering whether to adapt any language from the following policies should take care to ensure that the language is appropriate, practical, and legal for its jurisdiction. Please note that the Public Health Law Center does not endorse or recommend any of the following policies. We have included these examples to illustrate how various jurisdictions regulate the sale of flavored tobacco products and related electronic nicotine delivery devices.

This chart is not comprehensive. Feel free to contact the Public Health Law Center for more information about flavored tobacco restrictions where you live.



**PUBLIC HEALTH  
LAW CENTER**  
at Mitchell Hamline School of Law



HEALTH EQUITY

October 2018



## FOCUSING ON EQUITY AND INCLUSION WHEN WE WORK ON PUBLIC HEALTH LAWS



### Introduction

Law and policy are essential tools for improving public health and addressing the social determinants of health. Laws, in the form of statutes or codes, ordinances, and administrative or agency rules, are a particularly potent type of policy because they have the power of government behind them. Laws are also powerful because they reflect and help to shape and reinforce social norms.

Law impacts our health and our opportunities to lead healthy lives in multi-layered ways. It regulates our access to healthcare services, which directly affects our health. Law also impacts our health in less direct but still significant ways by shaping where we live and what our physical environment is like (is there safe tap water to drink? clean air to breathe? safe places to walk outside?), and restricting or widening the choices and opportunities that are available to us (can we get appealing, nutritious food? can we get a job that pays a living wage? can we use public restrooms?). In other words, the law is a key force for equity and health equity, both for good and for ill.

There are many helpful ways to explain what equity means. PolicyLink provides this concise and inspiring definition: "This is equity: just and fair inclusion into a society in which all can participate, prosper, and reach their full potential. Unlocking the promise of the nation by unleashing the promise in us all." In turn,

**Law is a key force  
for equity and  
health equity, both  
for good and for ill.**

Dr. Paula Braveman describes the pursuit of health equity as striving for the highest possible standard of health for all people and giving special attention to the needs of those at greatest risk of poor health, based on social conditions.<sup>2</sup> Right now, the leading causes of poor health and death in the U.S. are chronic diseases that are largely preventable—cancer, heart disease, high blood pressure, and diabetes. As Dr. Georges C. Benjamin, Executive Director of the



MENTHOL

September 2018



## REGULATING MENTHOL TOBACCO PRODUCTS

### Tips and Tools



The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain commercial



6/14/2021

# CONTACT US



651.290.7506



[publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu)



[www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)



[@phealthlawctr](https://twitter.com/phealthlawctr)



[facebook.com/publichealthlawcenter](https://facebook.com/publichealthlawcenter)