Not in My Backyard:
What Local Governments Can Do to Regulate Other Tobacco Products

July 23, 2013
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Tobacco Control Legal Consortium

The legal network for tobacco control policy change.

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Public Health Law Center

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New Jersey GASP
Group Against Smoking Pollution and The Tobacco Control Policy and Legal Resource Center

Tobacco Control Legal Consortium

Public Health Law Center
AT WILLIAM MITCHELL COLLEGE OF LAW

Center for Public Health and Tobacco Policy
What is an OTP?
Dissolvable Tobacco Products

Health Risks:

- Addictive
  - Risk of Tobacco Initiation
  - Risk of Tobacco Continuation (Dual Use)
- Carcinogenic
- Risk of Poisoning, esp. for Children
  - Resemble Candy
Health Risks:

• Addictive
  – Risk of Tobacco Initiation
  – Risk of Tobacco Continuation
    (Dual Use)
• No Manufacturing Standards
• Major tobacco companies have entered the market
Electronic Smoking Devices

- e-Liquid CottonCandy
  - 10ml eLiquid
  - Flavors: Cotton Candy, 10ml each
  - Options: x high (24mg), high (16mg), med (11mg), low (6mg), non (0mg)

- E-Hookah2Go™
  - NO NICOTINE - AWESOME FLAVORS
  - Flavors: Cherry, Apple, Grape, Peach, Strawberry, Watermelon, Lemont Mint, Chocolate, Vanilla, Blueberry, Lemon, Orange (w/Vit-C)

- Product images showing various electronic smoking devices and accessories.
Snus

Health Risks:

• Addictive
  – Risk of Tobacco Initiation
  – Risk of Tobacco Continuation (Dual Use)

• Carcinogenic
Cigars, Cigarillos and Little Cigars
Health Risks:

• Addictive
  – Risk of Tobacco Initiation
  – Risk of Tobacco Continuation (Dual Use)

• Carcinogenic
Tobacco Control before 2009

State

Local
FDA Authority over Tobacco Products

“The term ‘tobacco product’ means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product . . .”
FDA Authority over Tobacco Products

21 U.S.C. § 387a(b):
“This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.”
Where does this leave the public health community?

State and local regulation
Anne Pearson, JD, MA  
Vice President of Programs  
ChangeLab Solutions

Cathy Callaway  
Associate Director of State & Local Campaigns  
American Cancer Society Cancer Action Network

Chris Banthin, JD  
Program Director  
Public Health Advocacy Institute
ChangeLab Solutions creates innovative law and policy solutions that transform neighborhoods, cities, and states. We do this because achieving the common good means everyone has safe places to live and be active, nourishing food, and more opportunities to ensure health. Our unique approach, backed by decades of solid research and proven results, helps the public and private sectors make communities more livable, especially for those who are at highest risk because they have the fewest resources.

Presented by
Anne Pearson, JD, MA
Cigars, cigarillos, and other flavored products
HOW ARE THESE PRODUCTS REGULATED?

HOW MIGHT THEY BE REGULATED LOCALLY?
Family Smoking Prevention and Tobacco Control Act

BANNED
Family Smoking Prevention and Tobacco Control Act
ACTING LOCALLY

BANNING FLAVORED TOBACCO
SO WHAT DOES THIS ALL MEAN FOR OTHER COMMUNITIES?
ACTING LOCALLY

BANNING THE SALE OF SINGLE CIGARS
HUNTINGTON PARK, CA
Limiting “Teen-Friendly” Cigars: What Communities Can Do

Cigars, little cigars, and cigarettes are often among the first tobacco products that teens use. Commonly sold individually or in small packages, these products are often low-priced and flavored like candy, making them especially attractive to young people. Cigarettes are regulated by state and federal law and cannot be flavored or sold individually; but cigar products—which pose similar health risks—are not subject to the same regulations.

Selling cigars individually makes them cheaper and easier for youth to buy. Some little cigars and cigarettes are packaged for individual retail sale, and others are taken out of their original packaging and sold individually by the retailer. To reduce youth access to these flavored, inexpensive tobacco products, a community may want to eliminate the sale of individual cigars or those sold in packages of small quantities.

Restricting the Sale of Cigar Products

Cigar products are not currently regulated at either the federal or state level. However, some communities have taken action to reduce the availability of cigar products to youth. The goal of the model “plug-in” is to limit the availability of cheap, often flavored cigar products that are attractive to youth. The model plug-in offers communities language that would make it illegal to:

- Sell individually packaged cigars
- Open a package of cigars and sell them individually
- Sell sealed packages that contain fewer than a certain number of cigars this could ban two-packs, three-packs, or five-packs, depending on the city’s preference

These restrictions would apply to all cigars, so some cities may want to exempt “premium” cigars when crafting a new law to ban the sale of single cigars, which would allow the sale of more expensive individual cigars, which are not typically consumed by youth and are not usually fruit- or candy-flavored. There are several ways to create an exemption to allow the sale of individual premium cigars if one is necessary—the chart on the next page explores the pros and cons of each.
ELECTRONIC CIGARETTES
Conclusion:
Until such time as a given ENDS is deemed safe and effective and of acceptable quality by a competent national regulatory body, consumers should be strongly advised not to use any of these products, including electronic cigarettes.
HOW CAN E-PRODUCTS BE REGULATED LOCALLY?
Careful Definition
“Tobacco Product” means …

…and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.
Taxation and Other Pricing Strategies
ChangeLab Solutions
www.changelabsolutions.org
510-302-3380
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Current Issues & Industry Practices

July 23, 2013
Reducing Harm

Tobacco Harm Reduction (THR) is about reducing the risks for adult cigarette smokers by providing complete and accurate information about the comparative risks among different tobacco product categories. It is also about removing artificial barriers to informed switching, including:

- High taxes on smoke-free and tobacco-derived products that place those products at the same price level as cigarettes
- Messages and warnings that do not make it clear that cigarette smoking is the most risky form of tobacco consumption

A significant and growing body of evidence shows that the health risks associated with smokeless tobacco are lower than the risks associated with cigarettes.

Policymakers can promote THR by supporting legislative language recognizing the difference in risk between cigarettes and smokeless tobacco and by endorsing THR as a viable strategy for reducing health impacts and health costs for states.

At a minimum, public health authorities should convey truthful information about the comparative risk of tobacco products to smokers, allowing them to make more informed decisions.

Reynolds American Inc.’s (RAI’s) operating companies have invested heavily in the potential to reduce the harm associated with cigarettes. This approach is evident throughout RAI’s businesses, and our position on THR is clearly communicated in Our Guiding Principles and Beliefs. We have adopted this approach because it is the right thing to do.
Tobacco Harm Reduction (THR) According to RJ Reynolds

• “reducing the risks for adult cigarette smokers by providing complete and accurate information about the comparative risks among different tobacco product categories. It is also about removing artificial barriers to informed switching, including:
  – High taxes on smoke-free and tobacco-derived products that place those products at the same price level as cigarettes
  – Messages and warnings that do not make it clear that cigarette smoking is the most risky form of tobacco consumption”
Underage Prevention Laws

R.J. Reynolds and the other operating companies of Reynolds American Inc. (RAI) support legislation that prevents minors from using tobacco products.

As of July 2013, all but five states had youth purchase laws in place. These are Alaska, Massachusetts, Nevada, New York, and West Virginia. All but eight states had youth tobacco possession laws in place. These are Hawaii, Massachusetts, Nevada, New Jersey, New Mexico, New York, North Carolina and Pennsylvania.

A majority of states also have penalties associated with those possession laws. Some lawmakers believe that penalties in some of those states need to be strengthened. RAI’s operating companies continue to lobby for and support the passage of those bills.

To date, 26 states consider e-cigarettes an age-restricted product as related to sales or possession.
Be on the look out for…

- “vapor products”
- “tobacco-derived products”
- “alternative nicotine products”
Tobacco Harm Reduction

The Oklahoma State Capitol, where state lawmakers held a 2012 hearing on tobacco harm reduction

States take a closer look

Reducing the diseases and deaths associated with the use of cigarettes serves public health goals and is in the best interest of our consumers and shareholders.
The Legislature
of the
State of New Mexico

FIFTY-FIRST LEGISLATURE
FIRST SESSION, 2013

SENATE MEMORIAL 22

INTRODUCED BY

SENATOR GERALD ORTIZ y PINO

A MEMORIAL
REQUESTING THE FORMATION OF
A TASK FORCE TO STUDY THE RELATIONSHIP BETWEEN TOBACCO
USE AND EMPLOYER COSTS, INCLUDING THE IMPACTS ON
ORGANIZATIONS THAT EMPLOY TOBACCO USERS
RAI CEO Daniel Delen
November 2012:

• We spend the **majority of our resources still in the combustible space.** 90 percent of the organizational focus, the human resources inside the company, are actually **focused on the combustible space.** And despite a lot of these new innovations that you see coming out, **90 percent of our R&D budgets are actually directed at the combustible category.... That is the category that's still going to deliver a lot of growth into the future...**
Thank You!

Cathy Callaway
Associate Director, State & Local Campaigns
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State and Local Regulation of Other Tobacco Products:

Pricing Strategies

Tobacco Control Legal Consortium
July 23, 1013

Christopher Banthin, Esq.
PHAI | Northeastern University School of Law
Boston, Massachusetts
Presentation:

- Taxation
- Minimum Price Laws
- Coupon Bans
Pricing of Tobacco Products:

- Price has a dramatic effect on use rates, particularly among youth.

- Price affects use across tobacco brands and product types including cigars, smokeless and other OTP.

- The tobacco industry uses pricing strategies extensively in marketing all of its products.
Taxation:

- Tobacco Taxes are the primary tool for increasing tobacco product prices, which lower use rates and raise state revenues.

Enacted State Cigarette Excise Tax Rates - 2011
Taxation:

- The effect of tobacco taxes on rates of use is clear.

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**U.S. Cigarette Prices vs. Consumption 1970-2007**

*Cigarette Consumption (billions of packs) vs. Avg. Retail Price Per Pack (in 2007 dollars)*

Taxation:

- Tobacco Taxes on OTP are much lower compared to cigarettes.

<table>
<thead>
<tr>
<th>State</th>
<th>Snuff Tax²</th>
<th>Chewing &amp; Smoking Tobacco Tax</th>
<th>Cigar Tax¹</th>
<th>Date OTP tax last changed</th>
<th>Cigarette Tax (¢/pack)</th>
<th>Parallel Tax (% mfr. price)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>10.0-12.0¢/oz.</td>
<td>Chewing: 1.5¢/oz.; Smoking: 4-6¢/oz.</td>
<td>4.0-40.5¢/10 cigars</td>
<td>5/18/2004</td>
<td>42.5</td>
<td>14%</td>
</tr>
<tr>
<td>Alaska</td>
<td>75% wholesale price</td>
<td>75% wholesale price</td>
<td>75% wholesale price</td>
<td>10/1/1997</td>
<td>200</td>
<td>64%</td>
</tr>
<tr>
<td>Arizona</td>
<td>22.35¢/oz.</td>
<td>22.35¢/oz.</td>
<td>22.05-21¢/10 cigars</td>
<td>12/8/2006</td>
<td>200</td>
<td>54%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>68% mfr. price</td>
<td>68% mfr. price</td>
<td>68% mfr. price</td>
<td>3/1/2009</td>
<td>115</td>
<td>37%</td>
</tr>
<tr>
<td>California</td>
<td>30.68% wholesale price</td>
<td>30.68% wholesale price</td>
<td>30.68% wholesale price; LC</td>
<td>7/1/2012</td>
<td>87</td>
<td>28%</td>
</tr>
<tr>
<td>Colorado</td>
<td>40% mfr. price</td>
<td>40% mfr. price</td>
<td>40% mfr. price</td>
<td>1/1/2005</td>
<td>84</td>
<td>27%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>100¢/oz.</td>
<td>50% wholesale price</td>
<td>50% wholesale price, 50¢ cap; LC</td>
<td>7/1/2011</td>
<td>340</td>
<td>109%</td>
</tr>
<tr>
<td>Delaware</td>
<td>54¢/oz.</td>
<td>15% wholesale price</td>
<td>15% wholesale price</td>
<td>6/30/2007</td>
<td>160</td>
<td>51%</td>
</tr>
<tr>
<td>DC</td>
<td>75¢/oz.</td>
<td>12% retail price, not pipe tobacco</td>
<td>12% retail price (cigars&lt;$2); LC</td>
<td>1/1/2010</td>
<td>250</td>
<td>30%</td>
</tr>
<tr>
<td>Florida</td>
<td>85% wholesale price</td>
<td>85% wholesale price</td>
<td>None</td>
<td>7/1/2009</td>
<td>133.9</td>
<td>43%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10% wholesale price</td>
<td>10% wholesale price</td>
<td>2.5¢/10 cigars; 23% wholesale price</td>
<td>7/1/2003</td>
<td>37</td>
<td>12%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>70% wholesale price</td>
<td>70% wholesale price</td>
<td>50% wholesale price; LC</td>
<td>9/30/2009</td>
<td>320</td>
<td>102%</td>
</tr>
<tr>
<td>Idaho</td>
<td>40% wholesale price</td>
<td>40% wholesale price</td>
<td>40% wholesale price</td>
<td>7/1/1994</td>
<td>57</td>
<td>18%</td>
</tr>
<tr>
<td>Illinois</td>
<td>30¢/oz. (on 1/1/13)</td>
<td>36% wholesale price</td>
<td>36% wholesale price; LC</td>
<td>7/1/2012</td>
<td>198</td>
<td>63%</td>
</tr>
<tr>
<td>Indiana</td>
<td>24% wholesale price</td>
<td>24% wholesale price</td>
<td>24% wholesale price</td>
<td>7/1/2007</td>
<td>99.5</td>
<td>32%</td>
</tr>
<tr>
<td>Iowa</td>
<td>119¢/oz.</td>
<td>50% wholesale price</td>
<td>50% wholesale price, 50¢ cap; LC</td>
<td>3/15/2007</td>
<td>136</td>
<td>44%</td>
</tr>
<tr>
<td>Kansas</td>
<td>10% wholesale price</td>
<td>10% wholesale price</td>
<td>10% wholesale price</td>
<td>7/1/1972</td>
<td>79</td>
<td>25%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>19¢/unit¹</td>
<td>15% wholesale price</td>
<td>15% wholesale price</td>
<td>4/4/2009</td>
<td>60</td>
<td>19%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>20% mfr. price</td>
<td>Chewing: 20% mfr. price; Smoking: 33%</td>
<td>8%-20% mfr. price</td>
<td>7/1/2000</td>
<td>36</td>
<td>12%</td>
</tr>
<tr>
<td>Maine</td>
<td>202¢/oz. (with min. tax)</td>
<td>Chewing: 202¢/oz.; Smoking: 20%</td>
<td>20% wholesale price</td>
<td>7/1/2009</td>
<td>200</td>
<td>64%</td>
</tr>
<tr>
<td>Maryland</td>
<td>30% wholesale price</td>
<td>30% wholesale price</td>
<td>Non-premium: 70¢ w/s price; Premium: 15¢ w/s price</td>
<td>7/1/2012</td>
<td>200</td>
<td>64%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>90% wholesale price</td>
<td>Chewing: 90¢ w/s price; Smoking: 30%</td>
<td>30% wholesale price; LC</td>
<td>7/25/2002</td>
<td>251</td>
<td>80%</td>
</tr>
<tr>
<td>Michigan</td>
<td>32% wholesale price</td>
<td>32% wholesale price</td>
<td>32% wholesale price</td>
<td>7/1/2004</td>
<td>200</td>
<td>54%</td>
</tr>
</tbody>
</table>
**Taxation:**

- Tobacco Taxes on OTP are much lower compared to cigarettes.

<table>
<thead>
<tr>
<th>State</th>
<th>OTP Wholesale Price (w/ Min. Tax)</th>
<th>OTP Wholesale Price</th>
<th>LC Wholesale Price</th>
<th>Date</th>
<th>Amount</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota</td>
<td>15% mfr. price</td>
<td>15% mfr. price</td>
<td>15% mfr. price</td>
<td>6/1/2006</td>
<td>68</td>
<td>22%</td>
</tr>
<tr>
<td>Missouri</td>
<td>10% mfr. price</td>
<td>10% mfr. price</td>
<td>10% mfr. price</td>
<td>10/1/1993</td>
<td>17</td>
<td>5%</td>
</tr>
<tr>
<td>Montana</td>
<td>05/10 oz.</td>
<td>50% wholesale price</td>
<td>50% wholesale price</td>
<td>1/1/2005</td>
<td>170</td>
<td>54%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>44¢/oz.</td>
<td>20% wholesale price</td>
<td>20% wholesale price</td>
<td>10/1/2009</td>
<td>64</td>
<td>20%</td>
</tr>
<tr>
<td>Nevada</td>
<td>30% wholesale price</td>
<td>30% wholesale price</td>
<td>30% wholesale price</td>
<td>8/1/2011</td>
<td>80</td>
<td>26%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>48% wholesale price</td>
<td>48% wholesale price</td>
<td>48% w/s price (not premium); LC</td>
<td>1/1/2005</td>
<td>168</td>
<td>54%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>75¢/oz.</td>
<td>30% wholesale price</td>
<td>30% wholesale price</td>
<td>7/15/2006</td>
<td>270</td>
<td>86%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>25% mfr. price</td>
<td>25% mfr. price</td>
<td>25% mfr. price</td>
<td>8/1/2009</td>
<td>45</td>
<td>14%</td>
</tr>
<tr>
<td>New York</td>
<td>20¢/oz. (w/ min. tax)</td>
<td>75% wholesale price</td>
<td>75% wholesale price; LC</td>
<td>9/1/2009</td>
<td>45</td>
<td>14%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>12.8% wholesale price</td>
<td>12.8% wholesale price</td>
<td>12.8% wholesale price</td>
<td>9/1/2009</td>
<td>45</td>
<td>14%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>50¢/oz. Chew: 16¢/oz; Smoking: 28¢/oz</td>
<td>28% wholesale price</td>
<td>28% wholesale price</td>
<td>7/1/2001</td>
<td>44</td>
<td>14%</td>
</tr>
<tr>
<td>Ohio</td>
<td>17% wholesale price</td>
<td>17% wholesale price</td>
<td>17% wholesale price</td>
<td>2/1/1993</td>
<td>125</td>
<td>40%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>80¢/oz. mfr. price; Smokin: 80%</td>
<td>3.6-12¢/10 cigars</td>
<td>3.6-12¢/10 cigars</td>
<td>11/1/2009</td>
<td>160</td>
<td>51%</td>
</tr>
<tr>
<td>Oregon</td>
<td>178¢/oz. (w/ min. tax)</td>
<td>65% wholesale price</td>
<td>65% wholesale price; 50¢ cap; LC</td>
<td>9/1/2009</td>
<td>45</td>
<td>14%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>None</td>
<td>None</td>
<td>LC</td>
<td>1/1/2010</td>
<td>118</td>
<td>38%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>10¢/oz.</td>
<td>60% wholesale price</td>
<td>60% wholesale price; 50¢ cap; LC</td>
<td>4/10/2009</td>
<td>350</td>
<td>12%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5¢/oz.</td>
<td>5¢/oz.</td>
<td>5¢/oz.</td>
<td>9/1/2009</td>
<td>45</td>
<td>14%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>35% wholesale price</td>
<td>35% wholesale price</td>
<td>35% wholesale price</td>
<td>1/1/2007</td>
<td>153</td>
<td>49%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6.6% wholesale price</td>
<td>6.6% wholesale price</td>
<td>6.6% wholesale price; LC</td>
<td>7/15/2002</td>
<td>82</td>
<td>20%</td>
</tr>
<tr>
<td>Texas</td>
<td>119¢/oz. (w/ min. tax)</td>
<td>119¢/oz. (w/ min. tax)</td>
<td>1-15¢/10 cigars</td>
<td>9/1/2011</td>
<td>141</td>
<td>45%</td>
</tr>
<tr>
<td>Utah</td>
<td>18¢/oz.</td>
<td>66¢/mfr. price</td>
<td>66¢/mfr. price</td>
<td>7/1/2010</td>
<td>170</td>
<td>54%</td>
</tr>
<tr>
<td>Vermont</td>
<td>197¢/oz. or 22¢/pack if less than 1.2 oz.</td>
<td>92% wholesale price</td>
<td>92% w/s price for &lt;$1.08 w/s price; 2 per cigar for &gt;$1.08 to &lt;$10; 4 per cigar for ≥ $10; LC</td>
<td>7/1/2010</td>
<td>262</td>
<td>84%</td>
</tr>
<tr>
<td>Virginia</td>
<td>18¢/oz.</td>
<td>Chew: 21¢-72¢/unit Other: 10¢/oz</td>
<td>10¢/oz.</td>
<td>1/1/2011</td>
<td>30</td>
<td>10%</td>
</tr>
<tr>
<td>Washington</td>
<td>252.6¢ per 1.2 oz., min.</td>
<td>95¢ taxable sales price</td>
<td>95¢ taxable sales price; 75¢ cap; LC</td>
<td>5/1/2010</td>
<td>302.5</td>
<td>97%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>7¢/oz.</td>
<td>7¢/oz.</td>
<td>7¢/oz.</td>
<td>1/1/2002</td>
<td>55</td>
<td>18%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>100¢/oz.</td>
<td>71¢/mfr. price</td>
<td>71¢/mfr. price</td>
<td>9/1/2009</td>
<td>55</td>
<td>18%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>60¢/oz.</td>
<td>20% wholesale price</td>
<td>20% wholesale price</td>
<td>7/1/2009</td>
<td>80</td>
<td>26%</td>
</tr>
</tbody>
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Taxation:

- Some OTP use rates are increasing.
Taxation:

- The tobacco industry manipulates products to avoid and/or minimize taxation in order to sustain use rates.

The RYO Experience
Taxation:

- Parity in taxation of all tobacco products would lower use rates of all tobacco products.

- “Close the Loophole” tobacco tax campaigns can be successful.

- Technical recommendations for OTP tax language.
Minimum Pricing:

- Remember that taxation is the most effective way to increase tobacco product prices.

- Research by Michael Tynan & colleagues shows that MP Laws have little effect on overall price.

- MP laws could be used to minimize the tobacco industry’s temporary manipulation of prices by time, place or brand.

- Enforcement of MP laws can be difficult.
Coupons:

- Minimize the tobacco industry’s temporary manipulation of prices by time, place or brand through coupon bans.

- Providence RI’s successful litigation (so far).

- Technical recommendations on language for coupon bans.
State and Local Regulation of Other Tobacco Products: Pricing Strategies

Tobacco Control Legal Consortium
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