

The truth about tobacco industry retail practices

HIGHLIGHTS

- The largest U.S. cigarette and smokeless tobacco manufacturers spent over **\$8.6 billion** in 2014 on advertising and promotional expenditures in the retail environment, including advertisements posted at the retail location, price discounts, promotional allowances, coupons and sampling.
- The advertising and promotional efforts of tobacco companies in the retail environment cause the initiation and progression of tobacco use among young people.
- Tobacco retailers include convenience stores, supermarkets, liquor stores, newsstands and pharmacies. These tobacco retailers are often more heavily populated in areas with a greater number of minority and low-income populations.
- Tobacco companies use a variety of methods in the retail environment to advertise and promote their products, including:
 - » Reducing the prices of their products to circumvent higher taxes by dropping wholesale prices and employing tactics such as couponing, multipack discounts (e.g., buy-two-get-one-free or buy-two-for-one deals) and price discounts (e.g., \$2.50 off one pack);
 - » Promoting products in the retail environment by using displays and advertisements, providing retailers with incentives for advertising their products; and
 - » Paying retailers to strategically place tobacco products front-and-center in retail environments which are easy-to-see for customers, often around the checkout counter.
- Several states and localities have implemented policies around the retail environment, supplementing and augmenting federal restrictions.



BACKGROUND

Tobacco companies make extensive use of the retail environment to reach both current and future customers by advertising and promoting their products and normalizing the presence of tobacco products in everyday life.¹⁻³ Point-of-sale (POS) tobacco marketing, includes product displays and placement, exterior and interior advertisements, and promotional and price incentives to consumers.^{4,5}

The industry's investment in POS marketing reveals the importance it places on this consumer sales tool. In 2014, the tobacco industry spent nearly \$9.1 billion on marketing its cigarette and smokeless tobacco products. Over \$8.6 billion (or 95.4%) of that was spent on POS marketing, amounting to almost \$990,000 every hour.^{2,3}

This fact sheet and policy resource reviews the science around POS marketing and the huge impact it has on driving smoking behavior, particularly among youth and young adults. State and local governments have been the centers of innovation to combat this impact and this document also highlights some of the best examples of policies in this area.

Over \$8.6 billion was spent on POS marketing, amounting to almost \$990,000 every hour.

While retail display, price discounting and promotional practices and policies may include anything related to the retail environment (including health warnings, minimum legal sales age*, and tobacco taxation), this resource focuses on tobacco-retailer licensing, retailer density, price discounting, retail placement and promotional practices. What follows does not cover the online tobacco retail environment or focus on the rapidly developing e-cigarette industry and its retail and promotional practices.

*Truth Initiative strongly supports raising the minimum age of sale to 21 for all tobacco products, as part of a strong tobacco control policy program. Our policy statement on this issue is available at <http://truthinitiative.org/news/where-we-stand-raising-tobacco-age-21>.

ADVERTISING AND PROMOTIONAL EXPENDITURES BY THE LARGEST U.S. CIGARETTE AND SMOKELESS TOBACCO MANUFACTURERS^{2,3}

	2013	2014
Point-of-Sale (advertisements posted at the retail location, excluding outdoor advertising)	\$87,956,000	\$271,144,000
Price Discounts (payments made to retailers and wholesalers to reduce the price of tobacco products to consumers, including off-invoice discounts, buy-downs, voluntary price reductions and trade programs)	\$7,925,119,000	\$7,121,252,000
Promotional Allowances (payments made to retailers and wholesalers to facilitate the sale or placement of tobacco products, including payments made for stocking, shelving, displaying and merchandising brands, volume rebates, incentive payments and the cost of tobacco products given to retailers for free for subsequent sale to consumers)	\$763,297,000	\$702,114,000
Coupons	\$281,025,000	\$561,772,000
Sampling (smokeless tobacco only)	\$6,369,000	\$8,030,000
Total	\$9,063,766,000	\$8,664,312,000

IMPACT OF POS TOBACCO MARKETING

The reason the industry invests in POS marketing is simple: it works. For example, tobacco product sales increase by roughly 30 percent when discounts and promotions are advertised in stores.¹

POS marketing is associated with impulse purchases of tobacco products. Cigarette displays at the point-of-sale tempt smokers to buy tobacco, even among customers not intending to do so and smokers trying to quit.⁶ In a 2009 study of adult daily smokers, unintended cigarette purchases were made by 22 percent of study participants, and POS displays caused nearly four times as many unplanned purchases as planned purchases.⁷ Another study found that 11.3 percent of cigarette pack buying was described as unplanned. Young adults (18-24 years of age) in particular were more likely to make unplanned cigarette pack purchases.⁸ These impulse purchases are sometimes made instead of a planned purchase on items like food.⁹

Retail marketing, in-store advertising and display is also associated with compromising quit attempts.^{10,11} A study interviewing smokers who had attempted to quit in the last six months, found that the high visibility of tobacco product advertising in-store was highly tempting and stymied cessation attempts.¹¹ Another study found that higher exposure to in-store advertising and price promotion at the point-of-sale was associated with a lower probability of successful quitting among adult smokers.¹²

Tobacco product sales increase by roughly 30 percent when discounts and promotions are advertised in stores.



YOUTH

Youth are especially affected by POS marketing. Advertising and promotional efforts of tobacco companies cause the initiation and progression of tobacco use among young people.^{1,13-15} Studies show that tobacco use is associated with exposure to retail advertising and relative ease of in-store access to tobacco products.¹ Some studies have shown that youth who were frequently exposed to POS tobacco marketing were twice as likely to try or initiate smoking than those who were not as frequently exposed.¹⁵ Frequent exposure to tobacco product advertising and marketing at retail normalizes tobacco and smoking for youth over time and makes them more likely to smoke.^{14,16,17}



POS marketing is also associated with youth brand preference.^{1,18} Youth who described frequent exposure to tobacco marketing in retail stores had a greater likelihood of attributing positive imagery to users of specific tobacco-product brands. Other studies show that youth who view photos of stores with tobacco displays and advertising, have a greater likelihood of overestimating the percentage of adolescents and young adults who smoke, and they believe that tobacco products are easier to buy than those who view photos without retail tobacco advertising. Research also shows that young adult smokers prefer tobacco brands marketed most heavily in the convenience store closest to their schools.¹

Youth who were frequently exposed to POS tobacco marketing were twice as likely to try smoking than those who were not as frequently exposed.

LICENSING AND RETAILER DENSITY

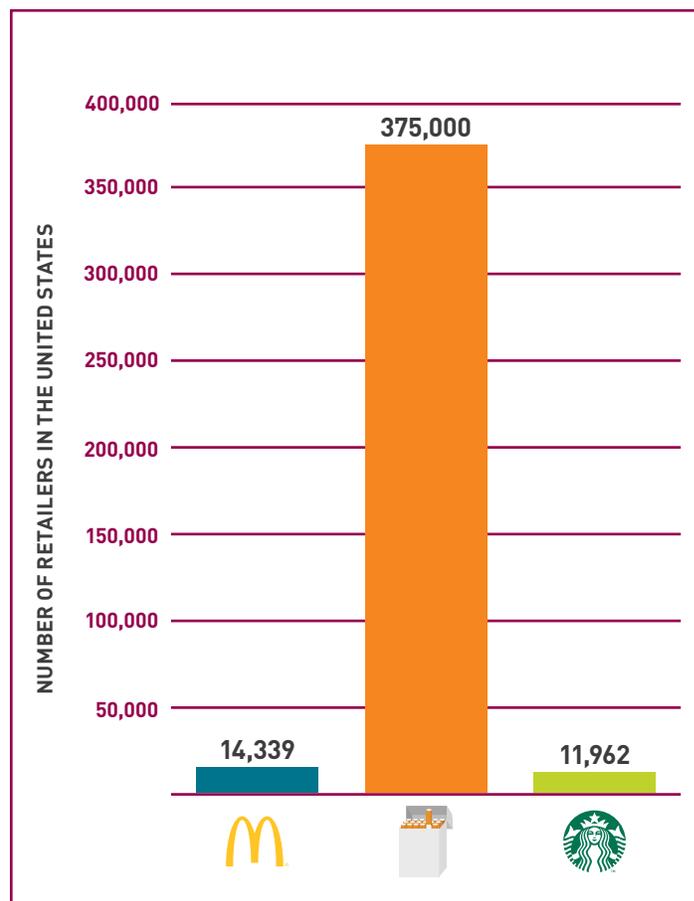
Retailer density is an important predictor of youth and young adult smoking. This is unsurprising since, as noted above, youth are especially susceptible to POS marketing. As the number of tobacco retailers increase, so does exposure to tobacco advertising and promotion. An estimated 375,000 retailers sell tobacco products in the U.S. That is equivalent to 27 times more tobacco retailers than there are McDonald's and 28 times more tobacco retailers than there are Starbucks.¹⁹ Of these U.S. tobacco retailers, an estimated 48 percent are convenience stores (with and without gas), 25 percent are supermarkets, 13 percent are off-premise liquor stores, seven percent are pharmacies, four percent are tobacco shops and three percent are discount department stores, warehouse stores, and newsstands.¹⁹ The number of tobacco retailers that are pharmacies may be underestimated as many supermarkets and warehouses also contain retail pharmacies.

There are 27 times more tobacco retailers than there are McDonald's and 28 times more tobacco retailers than there are Starbucks in the U.S.

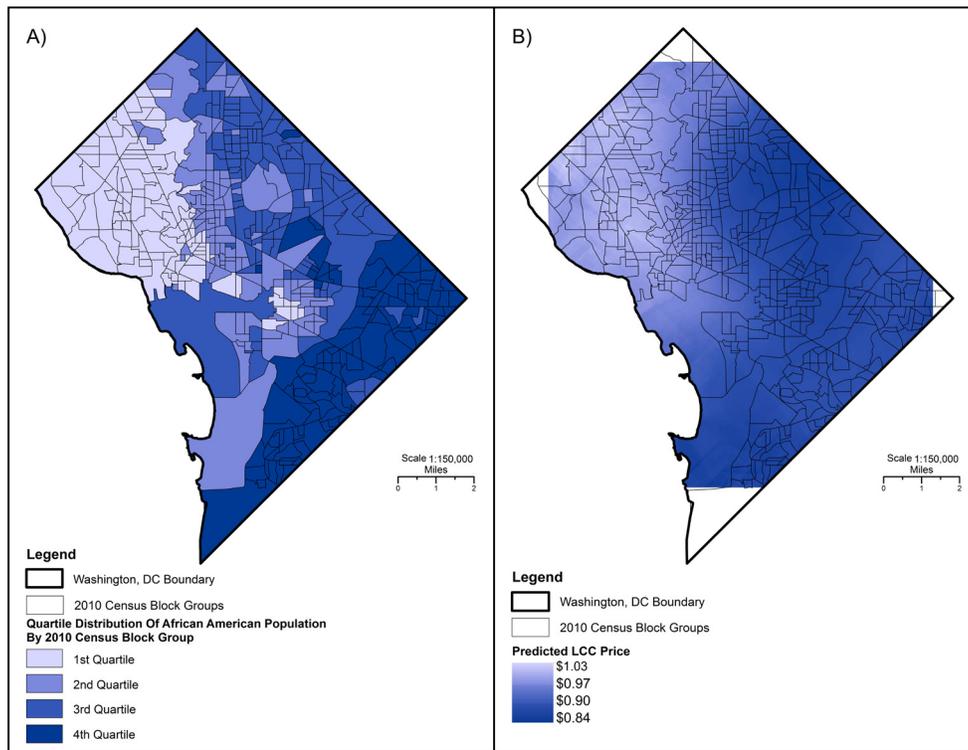
Experimental smoking among youth is correlated with the number of tobacco retailers in high school neighborhoods and in communities where youth live.¹ In one study, the incidence of smoking was significantly higher among students in schools with the highest density of surrounding tobacco retailers compared with students in schools without any tobacco retail outlets.²⁰

Tobacco retailers are disproportionately located in more heavily populated in areas with a greater number of minority and low-income populations.^{21,22} This may account for the significantly higher percentage of youth and young adult smoking in low-socioeconomic status (SES) populations. In Philadelphia, for example, low-income areas have 69 percent more tobacco retailers per person and more tobacco retailers within 500 and 1,000 feet of schools than high-income neighborhoods. These low-income areas also have higher young adult smoking rates than the high-income areas.²³ In major cities like Washington, D.C., there are roughly ten times more tobacco advertisements in black neighborhoods than in other neighborhoods.²⁴⁻²⁶ Little cigars and cigarillos and menthol- tobacco products are also cheaper in African American and some young adult neighborhoods, a technique used by the tobacco industry to increase demand among these price-sensitive populations.^{24,27}

NUMBER OF TOBACCO RETAILERS VERSUS MCDONALD'S AND STARBUCKS IN THE U.S.



The figure below shows that as the proportion of African American residents in Washington, D.C. neighborhoods increases, the predicted price per cigarillo decreases. Figure A shows the quartile distribution of the African American population in Washington, D.C., with darker colors representing a greater number of African Americans. Figure B shows a prediction map of price per cigarillo, with darker colors representing lower prices.



Pharmacies are a trusted source of health information and services, and thus should not be a retail location where tobacco products are readily available. Yet, in 2016, almost 54,000 pharmacies in the U.S. sold tobacco products.²⁸ In 2014, CVS Health stopped selling tobacco products and eight months later, reported that cigarette purchases had dropped a percentage point in states where the company has a large presence. That amounted to 95 million fewer packs of cigarettes sold in those states in the eight months following the tobacco

In 2016, 54,000 pharmacies in the U.S., including Walgreens, sold tobacco products.



removal.²⁹ Consumers who purchased cigarettes exclusively at CVS were 38 percent more likely to cease buying cigarettes after the tobacco removal. Those who had bought three or more packs during the study's baseline, or had greater baseline cigarette consumption, were more than twice as likely to cease buying cigarettes.³⁰ Furthermore, a study, using the Centers for Disease Control and Prevention (CDC) data, found that 66 percent of U.S. young adults favor a ban on tobacco products in pharmacy stores, including nearly half of smokers.³¹

POLICIES AFFECTING TOBACCO RETAILER LICENSING AND DENSITY

Big Tobacco understands the impact of policies that limit tobacco retailer licensing and density and has, in fact, sued to prevent these types of policies. In 1999, Lorillard Tobacco Company sued the Attorney General of Massachusetts over a regulation prohibiting outdoor advertising within 1,000 feet of a school or playground.³²

Licensing and commercial zoning are areas of local concern. The federal government has no regulations affecting tobacco retailer licensing and density. The 2009 Family Smoking Prevention and Tobacco Control Act clearly preserves the authority of state and local governments to impose specific bans or restrictions on the time, place and manner, but not content, of the advertising and promotion of tobacco products.³³

The following are noteworthy examples of state and local government policies regarding tobacco retailer licensing and density:

- Several cities in **California, Colorado, Illinois, New York**, and **Wisconsin** limit tobacco retailers within 500 or 1000 feet of schools.³⁴
- **California**³⁵
 - » Eleven municipalities in California, including Berkeley and San Francisco, prohibit pharmacies from selling tobacco products.
- **Massachusetts**³⁶
 - » 82 municipalities in Massachusetts have caps on the number of tobacco retail licenses.
 - » 151 municipalities in Massachusetts, including Boston, prohibit pharmacies from selling tobacco products.
- **Philadelphia, Pa.**³⁷
 - » The number of tobacco retailers in each planning district is limited to 1 per 1,000 people and new tobacco retailers are prohibited within 500 feet of a school.
- **Rock County, Minn.**³⁵
 - » Pharmacies are prohibited from selling tobacco products.
- **Rockland County, N.Y.**³⁵
 - » Pharmacies are prohibited from selling tobacco products.
- **San Francisco, Calif.**³⁸
 - » The number of tobacco sales permits in each of the city's 11 districts are capped at 45, and new tobacco retailers are prohibited within 500 feet of a school or another tobacco retailer.

PRICE

Over time, tobacco company expenditures have become increasingly concentrated on marketing efforts that reduce the retail price of tobacco products.¹ Tobacco companies employ several options for reducing the prices of their products, ranging from directly dropping the wholesale prices to engaging in a variety of price-reducing tactics such as couponing, multipack discounts (e.g., buy-two-get-one-free or buy-two-for-one deals) and price discounts (e.g., \$2.50 off one pack).¹ Retailers also frequently sell cigars, little cigars and cigarillos as singles or in multi-packs for less than one dollar. In recent years, price-reducing promotions have been the primary means of price competition among manufacturers, with some evidence that these promotions have been targeted to specific brands or venues that are important for young people.¹ For example, in 1985-1986, R.J. Reynolds promoted its Camel brand cigarettes to males in the Midwest, 18-24 years of age, with price-reducing promotions like “buy three, get three free” discounts, leading to its share in this market increasing dramatically after a previously flat to declining share trend.³⁹



These price-reducing promotions also mitigate the impact of tax increases. When retail prices rise following tax increases, tobacco companies engage in a variety of price-related marketing efforts to soften the impact of the increased prices, such as increased distribution of coupons and multipack discounts.¹ There is also evidence that the tobacco industry uses pricing-promotion strategies to lower cigarette prices in states with stronger state and local tobacco control policies than in states with weaker policies. This strategy is used to offset the impact of tobacco control policies on tobacco use.¹ This was shown in a study using data from 1960-1990 which found that states and localities with stronger tobacco control laws had lower cigarette prices.⁴⁰



The industry knows that price increases have an immediate negative impact on sales. Evidence shows that both youth and adult smokers are sensitive to price promotions and low-income and minority smokers also have greater price-responsiveness.^{1,41,42} The 2012 Surgeon General’s Report—Preventing Tobacco Use Among Youth and Young Adults concluded that “the industry’s extensive use of price-reducing promotions has led to higher rates of tobacco use among young people than would have occurred in the absence of these promotions.”⁴¹ Little cigars and cigarillos are cheaper in African American and some young adult neighborhoods, a technique used by the tobacco industry to increase demand among these price-sensitive populations.⁴⁴ For example, in California, for each 10 percentage point increase in the proportion of black high school students in a given neighborhood, the cost of Newport cigarettes, which are menthol cigarettes, was 12 cents lower.²⁷

Keeping the price of tobacco products high is a great benefit to public health. In fact, a CDC study found that a \$10 per-pack retail price (a target established by the U.S. Surgeon General in 2014⁴³) combined with eliminating discounts, could result in almost 638,000 fewer youth smokers, almost 4.2 million fewer young adult smokers and more than 7.7 million fewer adult smokers ages 26 years and up, one year after implementation. A \$10 per-pack retail price and no discounts would be expected to avert the early deaths of approximately 1.5 million U.S. youth and young adults.⁴⁴

The US Surgeon General has stated a \$10 price-per-pack combined with eliminating discounts would result in 683,000 fewer youth smokers.

THE IMPACT OF A \$10 PER-PACK RETAIL PRICE MINIMUM



POLICIES AFFECTING PRICE OF TOBACCO PRODUCTS AT THE POINT-OF-SALE

Other than taxation of tobacco products, the federal government has limited impact on the price of tobacco products at the point-of-sale. However, states and localities are becoming more innovative, where they are not pre-empted from doing so, in establishing policies to counter industry tactics to keep tobacco prices low.

The federal government has few regulations affecting the price of tobacco products at the point-of-sale:

- The 2009 Tobacco Control Act gave the U.S. Food and Drug Administration (FDA) the authority to regulate tobacco products. The law prohibits the sale of packages of fewer than 20 cigarettes and prohibits free giveaways or free sample cigarettes or smokeless tobacco.⁴⁵
- In May 2016, the FDA finalized its “deeming” rule, extending its authority to all tobacco products, including e-cigarettes, cigars, hookah, pipe tobacco, nicotine gels and dissolvables. The rule bans free samples of these tobacco products, including any of their components or parts, and prohibits vending machine sales, except in adult-only facilities.⁴⁶

Several state and local governments have enacted policies regarding the price of tobacco products at the point-of-sale. Below are prominent examples:

- **Massachusetts**^{36,47}
 - » As of February 28, 2017, 139 municipalities in Massachusetts, including Boston, require single cigars to be sold for at least \$2.50 and multi-packs of two or more cigars for at least \$5.
- **Chicago, Ill.**⁴⁸
 - » Retailers are prohibited from redeeming coupons or other discounts on tobacco products.
- **New York, N.Y.**⁴⁹⁻⁵¹
 - » Retailers are prohibited from redeeming coupons, multi-pack deals, buy-one-get-one deals, or any other price-reduction promotions.
 - » Cigarettes and little cigars cannot be sold at retail for less than \$10.50 per 20-pack, including sales tax, or \$9.65 excluding sales tax. The price floor can be modified due to inflation or tax rate changes.
 - » Cigars that cost less than \$3.00 individually must be sold in packs of 4 or more.
 - » Little cigars must be sold in packs of 20.
- **Minneapolis, Minn.**^{52,53}
 - » The minimum price of cigars (after coupons and discounts have been applied and before sales tax) is \$2.60 for a single cigar, \$5.20 for a 2-pack or “double” pack, \$7.80 for a 3-pack, and \$10.40 for packs with 4 or more cigars.
- **Providence, R.I.**⁵⁴⁻⁵⁶
 - » Retailers are prohibited from accepting or redeeming any coupon that provides a tobacco product for free or for less than the listed retail price. Retailers are also prohibited from selling tobacco products at a multi-pack discount or buy down (for example, buy-two-get-one-free or purchase tobacco product in exchange for another free or discounted tobacco product).
- **Sonoma County, Calif.**⁵⁷
 - » Beginning January 1, 2018, the minimum price is \$7 for a pack of cigarettes, for a 20-pack of little cigars, and for a five-pack of cigars.
- **Washington, D.C.**⁵⁸
 - » Convenience stores and gas stations are prohibited from selling single cigars.

IN-STORE PROMOTION

The tobacco industry promotes its products at the point-of-sale with displays and advertisements and spends a great deal of money to do so. In 2014, the tobacco industry spent over \$270 million dollars promoting its products at the point-of-sale through displays and advertisements.^{2,3}

Tobacco companies provide retailers with incentives for advertising their tobacco products and many retailers take advantage of these incentives. A majority of retail stores participate in a minimum of one cigarette company incentive program and nearly four-out-of-five participating retailers report that the tobacco company supervises the location of marketing materials in their stores.^{1,59} A 2012 study found that 96 percent of stores that sold cigarettes, including gas stations, convenience stores and tobacco shops, had at least one tobacco marketing item, with an average of 29.5 items per store. These marketing items included branded signs, displays, shelving units and functional items, such as door mats.¹⁹

Youth are frequently exposed to tobacco product in-store promotion. Stores where adolescents shop have been found to have more cigarette marketing than other stores in the same community.^{1,60} Studies show that youth are more likely to progress from never smoking to experimental smoking as the frequency of point-of-sale tobacco-product advertising and promotion increases.¹

Youth are more likely to progress to experimental smoking as the frequency of point of sale advertising and promotion increases.



The convenience store environment, where 70 percent of youth shop at least once a week, heavily promotes tobacco products.¹ Convenience stores have more tobacco marketing and sell more cigarettes than any other type of retail store. Cigarette sales account for one-third of all purchases at convenience stores.¹ Ninety-two percent of convenience stores have at least one tobacco-branded advertisement or display and a majority of youth in the U.S. describe seeing tobacco-product advertising and promotion all, or most, of the time when they visit convenience stores.^{1,59}



The odds of a Newport promotion was 50 percent higher in black neighborhoods.

Tobacco industry marketing differentially appeals to people with the lowest income and education through point-of-sale advertising. There is more in-store tobacco advertising in predominantly racially diverse and low-income neighborhoods.^{1,25,61} The marketing of smokeless tobacco products is greater in rural neighborhoods and neighborhoods with more white residents.⁶¹ In California, for each 10 percentage point increase in the proportion of black high school students, the proportion of menthol advertising in the neighborhood increased by 5.9 percentage points and the odds of a Newport (menthol cigarettes) promotion were 50 percent higher.²⁷ This may account for the extraordinarily higher proportion of African American smokers who use menthol cigarettes, as nearly nine-in-10 African American smokers (88.5%) ages 12 years and older use menthol cigarettes.⁶²

NINE-IN-10 AFRICAN AMERICAN SMOKERS USE MENTHOL CIGARETTES.



Restricting the promotion of tobacco products at the point-of-sale would benefit public health. A recent modelling study suggests that restricting POS tobacco product displays and ads in the U.S. would reduce smoking prevalence by approximately 16 percent by the year 2065, preventing 630,000 smoking-attributable deaths, 215,000 low birth-weight deliveries, 140,000 preterm births and 1,900 infant deaths from SIDS.⁶³

POLICIES AFFECTING PROMOTION OF TOBACCO PRODUCTS AT POS

While states and localities are permitted to regulate the time, place and manner of tobacco advertising, policies dealing with advertising restrictions must be dealt with carefully due to First Amendment considerations. However, there are some policies that pass constitutional muster and help restrict exposure to POS advertising.

The federal government has few regulations affecting the promotion of tobacco products at the point-of-sale:

- The 2009 Tobacco Control Act gave the FDA the authority to regulate tobacco products. The law prohibits vending-machine sales, except in adult-only facilities and prohibits brand-name, non-tobacco promotional items.⁴⁵
- The 2009 Tobacco Control Act also preserves the authority of state and local governments to impose specific bans or restrictions on the time, place and manner, but not content, of the advertising and promotion of tobacco products.³³

The following locations have enacted policies regarding the promotion of tobacco products at the point-of-sale:

- **Minnesota**⁶⁴
 - » Self-service (open displays accessible to the public without the intervention of a store employee) sales are prohibited, except in adult-only facilities.
- **New York, N.Y.**⁴⁹⁻⁵¹
 - » Retailers are prohibited from giving away or discounting other items, such as lighters, with the sale of tobacco products or cigarettes.

Some cities and communities have enacted laws that limit the number, size and placement of signs, in general, at retail outlets. Because these are general-sign laws that limit advertising of all types including tobacco, alcohol and candy, this can lead to a reduction in tobacco advertising.

- **California**⁶⁵
 - » Alcohol retail stores are prohibited from covering more than 33 percent of the square footage of windows and clear doors with signs of any sort. This includes grocery stores, liquor stores and any other store that is licensed to sell alcohol for consumption away from the premises, but not restaurants or bars.
- **Dallas, Texas**⁶⁶
 - » Window signs may not exceed 50 percent of the total surface area per window.
- **Philadelphia, Pa.**⁶⁷
 - » Twenty percent of windows and transparent doors facing a street can be covered with signs at businesses located in a fixed structure.

PLACEMENT

Point-of-sale marketing encourages impulse purchases and increased sales of tobacco products, so it is not surprising that tobacco companies strategically put their products front-and-center and easy-to-see for customers at the point-of-sale. They frequently do this by entering contractual agreements with retailers who then receive financial incentives in return for the placement of tobacco products in highly visible locations around the counter. These incentives help those stores price their tobacco products lower than competitors.¹

In most retail stores, the cashier counter is the best place for advertising and where impulse buying is encouraged since customers must stop there before leaving the store. Tobacco companies use this to their advantage and place their products and ads strategically around checkout counters to ensure the most exposure and stimulate impulse purchases of their products.¹ For example, in California, 85 percent of stores have marketing materials for tobacco products within four feet of the counter and nationally, 85 percent of tobacco shelving units and 93 percent of tobacco displays are located in the counter zone.¹

While the tobacco industry acknowledges that products and advertising should be placed at adult eye level to avoid exposure to young children, about one-third of stores have low-height interior tobacco ads. In a California study, almost half of stores had at least one cigarette marketing item at, or below, three feet from the floor and almost 25 percent had cigarette displays next to candy.¹ A 2012 study of 2,231 stores in 40 states selling cigarettes found that nine percent of those retail stores had tobacco products displayed less than three feet from the floor (not including behind the counter) and 10 percent of those stores displayed tobacco products within one foot of candy products.¹⁹ While the Tobacco Control Act requires cigarettes and smokeless tobacco products to be displayed behind the counter, this does not apply to other tobacco products, such as cigars.^{68,69} Thus, products like little cigars and electronic cigarettes, which are often produced in youth appealing flavors, are not subject to the behind-the-counter restriction and may be placed on countertops where they are visible and accessible to youth.

About one-third of stores have low-height interior tobacco ads, visible to young children.



Placement of tobacco products at the point-of-sale affects impulse purchases by recent quitters. One study used a virtual convenience store to create scenarios in which the tobacco-product display was either fully visible or enclosed behind a cabinet (display ban). Compared with recent quitters in the fully visible tobacco-product display conditions, recent quitters in the display-ban condition had lower urges to smoke. Additionally, compared with current smokers in the fully visible conditions, current smokers in the display-ban conditions were less likely to attempt to purchase cigarettes in the virtual store.⁷⁰

POLICIES AFFECTING PLACEMENT OF TOBACCO PRODUCTS AT POS

The federal government has few regulations affecting the placement of tobacco products at the point-of-sale:

- The 2009 Tobacco Control Act gave the FDA authority to regulate tobacco products. The law prohibits vending-machine sales, except in adult-only facilities, and prohibits self-service displays.⁴⁵
- In May 2016, the FDA finalized its “deeming” rule, extending its authority to all tobacco products, including e-cigarettes, cigars, hookah, pipe tobacco, nicotine gels and dissolvables. The rule prohibits vending-machine sales, except in adult-only facilities.⁴⁶
- The 2009 Tobacco Control Act also preserves the authority of state and local governments to impose specific bans, or restrictions, on the time, place and manner, but not content, of the advertising and promotion of tobacco products.³³



The following locations have enacted policies regarding the placement of tobacco products at the point-of-sale:

- **Minnesota**⁶⁴
 - » Self-service (open displays which are accessible to the public without the intervention of a store employee) sales are prohibited, except in adult-only facilities.
- **New York**⁷¹
 - » Tobacco products must be stored for sale behind a counter in an area accessible only to store personnel or in a locked container, except in adult-only facilities.

Our position on retail tobacco marketing, price discounting and promotion

Truth Initiative's mission is to achieve a culture where all youth and young adults reject tobacco. Strong restrictions on the conditions of advertising, discounting, promoting and selling tobacco at point-of-sale are important to protect youth and young adults from a potential lifelong addiction to tobacco and the disease and death that result from its use.

Regulation of point-of-sale tobacco marketing practices is not as widespread or commonly employed as taxation or clean indoor-air laws; however, evidence exists to suggest they are potentially powerful policy options. Restrictions on price, promotion and placement of tobacco products to reduce supply, availability and ultimately, consumer demand should be more frequently added to the traditional tobacco-control toolbox of taxation, public education and clean air laws to accelerate tobacco prevalence declines through increased cessation and prevention of initiation and progression.

Consistent with Truth Initiative's vision of a future where tobacco is a thing of the past, we support the following policies with regard to tobacco retail marketing, discounting and promotional practices:

- The FDA must use all its powers to enforce restrictions at the point-of-sale, including:
 - » Age of sale restrictions that are aggressively monitored and enforced;
 - » Requirements that all tobacco products be displayed behind the counter;
 - » Bans on:
 - Vending machine sales
 - Free samples
- Given the well-documented association of exposure to point-of-sale tobacco marketing and initiation and progression of tobacco use among youth and young adults, state and local governments should use their powers to protect citizens from tobacco and regulate the tobacco retail environment by:
 - » Prohibiting pharmacies from selling tobacco products;
 - » Limiting the number and location of tobacco retail outlets, including prohibiting tobacco retailers from selling tobacco within 1,000 feet of schools;
 - » Making tobacco retail licenses nontransferable and restricting the issuance of new licenses to control retailer density;
 - » Setting a minimum pack size for all tobacco products, including cigars;
 - » Requiring retail stores to keep all tobacco products out-of-view or behind the counter so that no product is easily visible to children;
 - » Banning self-service displays for all tobacco products;
 - » Prohibiting couponing and other discounting tactics designed to circumvent the impact of tobacco taxes;
 - » Setting minimum prices for tobacco products; and
 - » Placing restrictions on all advertising in retail stores so that no advertisements of any tobacco product are allowed near cash registers and restricting tobacco advertisements to a defined percentage of window space.
 - » Truth Initiative also strongly supports a minimum age-of-sale of 21 for all tobacco products. Our resource on that issue is available at <https://truthinitiative.org/news/where-we-stand-raising-tobacco-age-21>.

The truth about tobacco industry retail practices

The tobacco industry spends \$8.6 billion per year on point of sale marketing.

That equals \$990,000 per hour that the tobacco industry spends to market its products by:



Offering financial incentives to retailers to lower the selling price of tobacco



Paying retailers to display their products and place promotional signage in stores



Offering consumer incentives such as coupons, 2-for-1 deals, and other consumer redeemable price discounts

Tobacco products are sold everywhere. An estimated 375,000 retailers sell tobacco products in the U.S.



180,000
CONVENIENCE
STORES



93,750
SUPERMARKETS



11,250
OFF-PREMISE
LIQUOR STORES



26,250
PHARMACIES



15,000
TOBACCO SHOPS



11,250
DISCOUNT DEPARTMENT
STORES, WAREHOUSE
STORES, NEWSSTANDS

Where you live and go to school impacts your likelihood of smoking.



In Washington, D.C., there are roughly

10x

more tobacco advertisements in black neighborhoods than other neighborhoods.

Tobacco product sales increase by roughly 30% when discounts and promotions are advertised in stores.



BUT, there are policies that can help make the POS environment a less tobacco-friendly place.

Protective policies to reduce tobacco exposure at the point of sale

There are policies that work to make retailer outlets a less tobacco-friendly place. Federal law prohibits vending-machine sales (except in adult-only facilities) and prohibits brand-name, non-tobacco promotional items. Also, federal law preserves the authority of state and local governments to impose specific bans or restrictions on the time, place and manner of the advertising and promotion of tobacco products. We urge states and localities to protect their citizens from tobacco by considering implementation of the following approaches.

Pricing



Minimum pack sizes for tobacco products



Minimum price floors



Prohibition on retailers participating in price-reduction promotions (i.e. redeeming coupons, multi-pack deals, buy-one-get-one free deals)

Licensing and retailer density

- Limit tobacco retailers' proximity to schools
- Prohibit the sale of tobacco products at some types of retailers (i.e. pharmacies)
- Cap the number of tobacco retailers in a district

Tobacco product placement and in-store promotion



Prohibition of self-service tobacco product displays, except in adult-only facilities



Requirement that tobacco products be placed behind a sales counter or locked in a container, except in adult-only facilities



Limitations on the size and placement of all product promotions – including tobacco product promotions (i.e. percentage of window surface area)

REFERENCES

- 1 U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2012.
- 2 Federal Trade Commission. Federal Trade Commission Cigarette Report for 2014. Retrieved from https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2014-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_2014.pdf. 2016.
- 3 Federal Trade Commission. Federal Trade Commission Smokeless Tobacco Report for 2014. Retrieved from https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2014-federal-trade-commission-smokeless-tobacco-report/ftc_smokeless_tobacco_report_2014.pdf. 2016.
- 4 Lavack AM, Toth G. Tobacco point-of-purchase promotion: examining tobacco industry documents. *Tobacco Control*. 2006;15(5):377-384.
- 5 Bloom PN. Role of slotting fees and trade promotions in shaping how tobacco is marketed in retail stores. *Tobacco Control*. 2001;10(4):340-344.
- 6 Wakefield M, Germain D, Henriksen L. The effect of retail cigarette pack displays on impulse purchase. *Addiction* (Abingdon, England). 2008;103(2):322-328.
- 7 Carter OB, Mills BW, Donovan RJ. The effect of retail cigarette pack displays on unplanned purchases: results from immediate postpurchase interviews. *Tobacco Control*. 2009;18(3):218-221.
- 8 Clattenburg EJ, Elf JL, Apelberg BJ. Unplanned cigarette purchases and tobacco point-of-sale advertising: a potential barrier to smoking cessation. *Tobacco Control*. 2013;22(6):376-381.
- 9 Siahpush M, Shaikh RA, Robbins R, et al. Point-of-sale cigarette marketing and smoking-induced deprivation in smokers: results from a population-based survey. *BMC Public Health*. 2016;16:302.
- 10 Germain D, McCarthy M, Wakefield M. Smoker sensitivity to retail tobacco displays and quitting: a cohort study. *Addiction* (Abingdon, England). 2010;105(1):159-163.
- 11 Hoek J, Gifford H, Pirikahu G, Thomson G, Edwards R. How do tobacco retail displays affect cessation attempts? Findings from a qualitative study. *Tobacco Control*. 2010;19(4):334-337.
- 12 Siahpush M, Shaikh RA, Smith D, et al. The Association of Exposure to Point-of-Sale Tobacco Marketing with Quit Attempt and Quit Success: Results from a Prospective Study of Smokers in the United States. *International Journal of Environmental Research and Public Health*. 2016;13(2):203.
- 13 Paynter J, Edwards R. The impact of tobacco promotion at the point-of-sale: a systematic review. *Nicotine & Tobacco Research : Official Journal of the Society for Research on Nicotine and Tobacco*. 2009;11(1):25-35.
- 14 Robertson L, Cameron C, McGee R, Marsh L, Hoek J. Point-of-sale tobacco promotion and youth smoking: a meta-analysis. *Tobacco Control*. 2016;25(e2):e83-e89.
- 15 Henriksen L, Schleicher NC, Feighery EC, Fortmann SP. A longitudinal study of exposure to retail cigarette advertising and smoking initiation. *Pediatrics*. 2010;126(2):232-238.
- 16 Dube SR, Arrazola RA, Lee J, Engstrom M, Malarcher A. Pro-tobacco influences and susceptibility to smoking cigarettes among middle and high school students--United States, 2011. *The Journal of Adolescent Health : Official Publication of the Society for Adolescent Medicine*. 2013;52(5 Suppl):S45-51.
- 17 Portnoy DB, Wu CC, Tworek C, Chen J, Borek N. Youth curiosity about cigarettes, smokeless tobacco, and cigars: prevalence and associations with advertising. *American Journal of Preventive Medicine*. 2014;47(2 Suppl 1):S76-86.
- 18 Wakefield MA, Ruel EE, Chaloupka FJ, Slater SJ, Kaufman NJ. Association of point-of-purchase tobacco advertising and promotions with choice of usual brand among teenage smokers. *J Health Commun*. 2002;7(2):113-121.
- 19 Center for Public Health Systems Science. Point of Sale Report to the Nation: The Tobacco Retail and Policy Landscape. St. Louis, MO: Center for Public Health Systems Science at the Brown School at Washington University in St. Louis and the National Cancer Institute, State and Community Tobacco Control Research Initiative, 2014.

-
- 20 Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Preventive Medicine*. 2008;47(2):210-214.
 - 21 Loomis BR, Kim AE, Goetz JL, Juster HR. Density of tobacco retailers and its association with sociodemographic characteristics of communities across New York. *Public Health*. 2013;127(4):333-338.
 - 22 Lee JG, Sun DL, Schleicher NM, Ribisl KM, Luke DA, Henriksen L. Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPiRE Study. *Journal of Epidemiology and Community Health*. 2017.
 - 23 Philadelphia Department of Public Health. Tobacco Sales and Neighborhood Income in Philadelphia. 2016; <http://www.phila.gov/health/pdfs/CHART%20v1e2.pdf>. Accessed May 8, 2017.
 - 24 Cantrell J, Kreslake JM, Ganz O, et al. Marketing little cigars and cigarillos: advertising, price, and associations with neighborhood demographics. *American Journal of Public Health*. 2013;103(10):1902-1909.
 - 25 Moreland-Russell S, Harris J, Snider D, Walsh H, Cyr J, Barnoya J. Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies. *International Journal of Environmental Research and Public Health*. 2013;10(10):4571-4583.
 - 26 Seidenberg AB, Caughey RW, Rees VW, Connolly GN. Storefront cigarette advertising differs by community demographic profile. *American Journal of Health Promotion : AJHP*. 2010;24(6):e26-31.
 - 27 Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine & Tobacco Research : Official Journal of the Society for Research on Nicotine and Tobacco*. 2012;14(1):116-121.
 - 28 Center for Public Health Systems Science. Point-of-Sale Report to the Nation: Realizing the Power of States and Communities to Change the Tobacco Retail and Policy Landscape. St. Louis, MO: Center for Public Health Systems Science at the Brown School at Washington University in St. Louis and the National Cancer Institute, State and Community Tobacco Control Research Initiative, 2016.
 - 29 Polinski JM, Howell B, Brennan TA, Shrank WH. Impact of the CVS tobacco sales removal on smoking cessation: When CVS Health quit tobacco, many smokers quit, too. 2015; <https://cvshealth.com/sites/default/files/%20Impact%20of%20the%20CVS%20Tobacco%20Sales%20Removal%20on%20Smoking%20Cessation.pdf>. Accessed May 3, 2017.
 - 30 Polinski JM, Howell B, Gagnon MA, Kymes SM, Brennan TA, Shrank WH. Impact of CVS Pharmacy's Discontinuance of Tobacco Sales on Cigarette Purchasing (2012-2014). *American Journal of Public Health*. 2017;107(4):556-562.
 - 31 Wang TW, Agaku IT, Marynak KL, King BA. Attitudes Toward Prohibiting Tobacco Sales in Pharmacy Stores Among U.S. Adults. *American Journal of Preventive Medicine*. 2016;51(6):1038-1043.
 - 32 *Lorillard Tobacco v Reilly*, 533 U.S. 525 (2001).
 - 33 Food, Drug and Cosmetic Act as amended by the Family Smoking Prevention and Tobacco Control Act. §203 and §916, (2009).
 - 34 CounterTobacco. POS Trends to Watch in 2017. 2017; <http://countertobacco.org/the-war-in-the-store/pos-trends-to-watch-in-2017/>. Accessed March 31, 2017.
 - 35 Americans Nonsmokers' Rights Foundation. Municipalities with Tobacco-Free Pharmacy Laws. 2017; <http://no-smoke.org/pdf/pharmacies.pdf>. Accessed May 3, 2017.
 - 36 Massachusetts Association of Health Boards. Tobacco Maps of Massachusetts. 2017; <http://www.mahb.org/tobacco-control/ma-tobacco-maps/>. Accessed March 31, 2017.
 - 37 City of Philadelphia Department of Public Health. Regulation Relating to Tobacco Retailing. 2016; <http://www.phila.gov/health/pdfs/TobaccoRetailingRegulation.pdf>. Accessed March 31, 2017.
 - 38 San Francisco Board of Supervisors. San Francisco Health Code Article 19H. 2014; <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0259-14.pdf>. Accessed March 31, 2017.
 - 39 Creighton, Fran V.. Camel Growth Among Males 18-24 Years Old in the Midwest. 1986 July 25. Joe Camel Collection. Unknown. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/lfyg0097>.
 - 40 Keeler TE, Hu TW, Barnett PG, Manning WG, Sung HY. Do cigarette producers price-discriminate by state? An empirical analysis of local cigarette pricing and taxation. *J Health Econ*. 1996;15(4):499-512.

-
- 41 Hill S, Amos A, Clifford D, Platt S. Impact of tobacco control interventions on socioeconomic inequalities in smoking: review of the evidence. *Tobacco Control*. 2014;23(e2):e89-97.
 - 42 Garrett BE, Gardiner PS, Wright LTC, Pechacek TF. The African American Youth Smoking Experience: An Overview. *Nicotine & Tobacco Research : Official Journal of the Society for Research on Nicotine and Tobacco*. 2016;18(Suppl 1):S11-15.
 - 43 U.S. Department of Health and Human Services. The Health Consequences of Smoking – 50 Years of Progress: a Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health;2014.
 - 44 Marynak KL, Xu X, Wang X, Holmes CB, Tynan MA, Pechacek T. Estimating the Impact of Raising Prices and Eliminating Discounts on Cigarette Smoking Prevalence in the United States. *Public Health Reports (Washington, D.C. : 1974)*. 2016;131(4):536-543.
 - 45 Food, Drug and Cosmetic Act as amended by the Family Smoking Prevention and Tobacco Control Act. §102, (2009).
 - 46 Food and Drug Administration. Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products. 2016; <https://www.federalregister.gov/articles/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the>. Accessed Jun 20, 2016.
 - 47 Massachusetts Department of Public Health. Cigar Packaging Regulation. 2017; <http://makesmokinghistory.org/my-community/local-priority-policies/cigar-packaging-regulation/>. Accessed April 13, 2017.
 - 48 City of Chicago. Tobacco Regulations. 2016; https://www.cityofchicago.org/city/en/depts/bacp/supp_info/tobaccoregulations.html. Accessed February 7, 2017.
 - 49 New York City Department of Health and Mental Hygiene. New Law Regulating Tobacco Sales in New York City Tobacco Retail Stores: What You Need to Know. <https://www1.nyc.gov/assets/doh/downloads/pdf/smoke/ts-faq.pdf>. Accessed February 7, 2017.
 - 50 New York City Department of Health and Mental Hygiene. New Laws Governing Cigar Sales in New York City Tobacco Retail Stores: What You Need to Know. <https://www1.nyc.gov/assets/doh/downloads/pdf/smoke/cigar-sales-faq.pdf>. Accessed February 7, 2017.
 - 51 New York City Department of Health and Mental Hygiene. Smoking and Tobacco Control Laws. <https://www1.nyc.gov/site/doh/business/food-operators/smoking-legislation.page>. Accessed February 7, 2017.
 - 52 City of Minneapolis. An Ordinance of the City of Minneapolis by Yang and Gordon. Amending Title 13, Chapter 281 of the Minneapolis Code of Ordinances relating to Licenses and Business Regulations: Tobacco Dealers. 2015; <http://www.ci.minneapolis.mn.us/www/groups/public/@clerk/documents/webcontent/wcms1p-142066.pdf>. Accessed February 9, 2017.
 - 53 City of Minneapolis. Complying with Minneapolis' Tobacco Flavor and Pricing Requirements. 2016; <http://www.ci.minneapolis.mn.us/www/groups/public/@regservices/documents/webcontent/wcms1p-150533.pdf>. Accessed February 9, 2017.
 - 54 City of Providence. City of Providence Tobacco Sales Laws. <https://www.providenceri.com/license/new-city-of-providence-tobacco-sales-laws-0>. Accessed February 7, 2017.
 - 55 City of Providence. No. 43. An ordinance amending Section 14-300 and Section 14-303 of Article XV of Chapter 14 of the Code of Ordinances of the City of Providence, entitled: "Licenses - Tobacco Dealers.". 2012; <https://www.providenceri.com/efile/2037>. Accessed February 7, 2017.
 - 56 City of Providence. No. 224. An ordinance amending Chapter 14 of the Code of Ordinances of the City of Providence, entitled Licenses by adding thereto Article XV, entitled Tobacco Dealers. 2011; <https://www.providenceri.com/efile/2038>. Accessed February 7, 2017.
 - 57 Sonoma County Code of Ordinances. Chapter 32A: Licensure of Tobacco Retailers. 2016; https://www.municode.com/library/ca/sonoma_county/codes/code_of_ordinances?nodeId=CH32ALITORE. Accessed February 9, 2017.
 - 58 D.C. CODE § 7-1721.06. <https://beta.code.dccouncil.us/dc/council/code/sections/7-1721.06.html>.
 - 59 Feighery EC, Ribisl KM, Schleicher NC, Clark PI. Retailer participation in cigarette company incentive programs is related to increased levels of cigarette advertising and cheaper cigarette prices in stores. *Preventive Medicine*. 2004;38(6):876-884.
 - 60 Henriksen L, Feighery EC, Schleicher NC, Haladjian HH, Fortmann SP. Reaching youth at the point of sale: cigarette marketing is more prevalent in stores where adolescents shop frequently. *Tobacco Control*. 2004;13(3):315-318.

-
- 61 Lee JG, Henriksen L, Rose SW, Moreland-Russell S, Ribisl KM. A Systematic Review of Neighborhood Disparities in Point of Sale Tobacco Marketing. *American Journal of Public Health*. 2015;105(9):e8-18.
 - 62 Giovino GA, Villanti AC, Mowery PD, et al. Differential trends in cigarette smoking in the USA: is menthol slowing progress? *Tobacco Control*. 2013.
 - 63 Levy DT, Lindblom EN, Fleischer NL, et al. Public Health Effects of Restricting Retail Tobacco Product Displays and Ads. *Tobacco Regulatory Science*. 2015;1(1):61-75.
 - 64 Minn. Stat. §461.18, subd. 1. <https://www.revisor.mn.gov/statutes/?id=461.18>.
 - 65 California Business and Professions Code. § 25612.5(c)(7). http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=25612.5. Accessed April 5, 2017.
 - 66 City of Dallas. Development Code. Chapter 3.6 Signs; <http://www.ci.dallas.or.us/documentcenter/view/3172>. Accessed April 5, 2017.
 - 67 Philadelphia's Window Sign Law: What Businesses Need to Know. City of Philadelphia,; <http://www.phila.gov/health/pdfs/WindowSignLawPresentationRetailers.pdf>. Accessed April 5, 2017.
 - 68 Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents, 61 Fed. Reg. 44,396 (1996).
 - 69 Family Smoking Prevention and Tobacco Control Act. Public Law No: 111-31. Vol HR 12562009.
 - 70 Nonnemaker J, Kim A, Shafer P, et al. Influence of point-of-sale tobacco displays and plain black and white cigarette packaging and advertisements on adults: Evidence from a virtual store experimental study. *Addictive Behaviors*. 2016;56:15-22.
 - 71 N.Y. Pub. Health Law §1399-cc(7). http://law.onecle.com/new-york/public-health/PBH01399-CC_1399-CC.html.