



## THE MULTISTATE TOBACCO SETTLEMENT AGREEMENT DOES NOT REDUCE THE NEED FOR COMPREHENSIVE FDA AUTHORITY OVER TOBACCO

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Despite the multistate settlement agreements between the states and some of the major tobacco companies, comprehensive U.S. Food and Drug Administration (FDA) jurisdiction over tobacco products and marketing is still needed to protect the public and to prevent and reduce smoking and other tobacco use, especially among kids. The multistate settlement agreement (MSA) simply does not address many important matters, and some of the matters it does address are not covered adequately.

Most notably, providing FDA with comprehensive jurisdiction over tobacco would for the very first time in history provide the U.S. Government with comprehensive authority over manufactured tobacco products and their marketing in order to better protect the public health and safety. With this authority FDA could, for the first time:

1. Create an enforceable mechanism to require the tobacco companies to truthfully disclose what they are placing in their products, including harmful additives, and what they know about the health and safety of their products.
2. Institute a nationwide, comprehensive, and enforceable system for restricting youth access to tobacco products.
3. Put in place a system and set of rules to restrict or eliminate all of the major tobacco advertising and marketing tools that have the greatest influence over children.
4. Adjust and improve its tobacco-related rules and regulations whenever justified by new events and new information or necessary to better protect the public health and safety.
5. Implement and enforce certain provisions of the FDA Tobacco Rule, which was blocked by the March 21, 2000 U.S. Supreme Court ruling that Congress has not yet provided FDA with jurisdiction over tobacco.

### **The MSA is Not a Law**

The MSA is only a contract between the states, the major U.S. cigarette companies, and other cigarette manufacturers that have chosen to sign on. Other cigarette companies are not subject to its restrictions; and the U.S. government has no authority to enforce any of the MSA's terms. While there is a parallel Smokeless MSA, the only smokeless company that has signed onto it is UST. In addition, the MSA agreements do not even apply to tobacco product retailers; but the FDA legislation places direct restrictions and requirements on tobacco product retailers (including Internet retailers and retailers based on Tribal lands, which are beyond the scope of the MSA).

### **The MSA Does Not Adequately Restrict Those Forms of Tobacco Marketing That Have the Greatest Appeal to Children**

Even in relation to the cigarette companies that are parties to the MSA and to UST through the Smokeless MSA, the MSA agreements do not include key marketing restrictions that the FDA legislation would immediately establish. Nor does the MSA give FDA the authority to develop and implement additional marketing restrictions to prevent and reduce youth use or otherwise protect and promote public health.

- ***The MSA does nothing about in-store tobacco advertising.*** In sharp contrast, the FDA tobacco legislation would immediately put into place limits on tobacco product ads in retail outlets to black text on white backgrounds. In addition, the FDA legislation would prohibit tobacco product sales through self-service displays in any sales outlet where youth can gain access.

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- ***The MSA permits outdoor tobacco product ads near schools and playgrounds.*** While the MSA bans large billboards paid for by the MSA tobacco companies, it permits such outdoor or outdoor-facing signs of up to 14 square feet on the buildings or property of businesses that sell tobacco products, even if they are right next to schools or playgrounds. The FDA tobacco legislation would prohibit all outdoor tobacco product ads within 1,000 feet of schools, regardless of who pays for it, while limiting other outdoor ads to black text on white backgrounds.
- ***The MSA restricts but does not eliminate tobacco brand-name sponsorship of events.*** The FDA tobacco legislation would prohibit all tobacco brand-name sponsorship of events.
- **The MSA allows cigarettes in packages of less than 20.** The FDA would prohibit them.

### **Compared to the FDA Tobacco Legislation, the MSA Does Little to Restrict Youth Access to Tobacco**

The FDA tobacco legislation would put in place a comprehensive system for restricting youth access to tobacco. The MSA does little or nothing to reduce tobacco sales to kids. For example, the MSA has no restrictions on vending machine sales or self-service sales. It also contains no requirement that retailers verify with a photo I.D. that young persons attempting to purchase tobacco products are 18 or older. The FDA legislation would do all of these things and more.

### **The MSA Does Not Provide for the Regulation of Tobacco Products or Their Constituents for Health and Safety Purposes**

The FDA tobacco legislation would enable FDA to regulate tobacco products for health and safety purposes to the same extent FDA already regulates other products. The MSA does not address these issues at all. Until FDA is provided authority over tobacco products and their marketing, the U.S. Government will have no ability to do any of the following:

- Block the introduction of new tobacco products or new tobacco marketing efforts that would increase the harm caused by tobacco use.
- Require testing and disclosure of any ingredients added to tobacco products during the manufacturing process.
- Require the tobacco companies to remove or reduce additives or other constituents in tobacco products that have been shown to make the products more addictive, attractive to children, or otherwise contribute to the products' harmfulness.
- Require tobacco companies to disclose their health research concerning their products.
- Require tobacco companies to take reasonable steps to reduce the harm caused by their products.

***Campaign for Tobacco-Free Kids, February 19, 2009 / Eric Lindblom***

***For more on FDA authority over tobacco products, see***

- <http://tobaccofreekids.org/reports/fda>
- <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=12>

***For more on the MSA, see***

- <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=8>
- <http://tobaccofreekids.org/research/factsheets>