



SIMPLE AND INEXPENSIVE GOVERNMENT STRATEGY TO COUNTER TOBACCO PRODUCT ADS (And Reduce Tobacco Use and Its Harms and Costs)

The Master Settlement Agreement (MSA) and the Smokeless Tobacco Master Settlement Agreement (STMSA) specifically prohibit outdoor ads for the brands of cigarettes and smokeless tobacco manufactured or imported by the tobacco companies that have signed onto those agreements. But these restrictions do not reach indoor tobacco advertising, and still allow outdoor cigarette and smokeless ads of up to 14 square feet at certain specific locations, including outside any of the more than half a million retail outlets where cigarettes are sold. The MSA and STMSA also place no restrictions at all on any ads for cigars or other tobacco products besides cigarettes and smokeless – and their restrictions on cigarette and smokeless ads do not reach the ads or products of the many tobacco companies that have not signed onto the MSA or STMSA.¹

Many states and localities want to prohibit or otherwise restrict the many tobacco product ads that are not curtailed in any way by the MSA or STMSA. But they currently face two major obstacles: 1) the Federal Cigarette Labeling Act (FCLA), which preempts state or local governments from regulating the advertising of cigarettes (but not other tobacco products) for public health (but not other) purposes; and 2) the First Amendment to the U.S. Constitution, which limits the extent to which governments may restrict commercial speech, including ads.²

While there are ways to work around these restrictions to regulate some tobacco ads, there are also effective measures state and local governments can implement to counter tobacco product advertising without confronting FCLA or the First Amendment. One of the most inexpensive and easiest is to require signs in key locations that warn consumers of the harms and addictiveness of tobacco products and provide information to help them quit. Some model legislative text follows.³

Model Legislation to Counter Tobacco Product Advertising

Section ____ . Required signage relating to tobacco products at certain locations.

(a) Any person in the business of selling tobacco products to consumers located in this state/town/district shall prominently display messages that can be read easily by its customers which:

- (1) states that cigarettes and other tobacco products are addictive and deadly;
- (2) states that sales of cigarettes and other tobacco products to minors are illegal;
- (3) provides the telephone number "800-QUIT-NOW (800-784-8669)" and, if available, email or website addresses people can use to get assistance for quitting their tobacco use, and encourages tobacco product users to use that information to get help quitting; and
- (4) provides the toll-free number and email address required by paragraph (d) and invites persons to report any suspected violations of applicable laws prohibiting contraband trafficking in tobacco products or tobacco product sales to minors.

(b) For businesses that engage in face-to-face sales of tobacco products to consumers in this state, such messages shall be on signs no smaller than 12 inches high and 12 inches wide and shall be prominently displayed at the following locations:

- (1) at each cash register or place of payment;
- (2) at each entrance to the business so that they can be read by persons entering the business;
- (3) at each exit from the business so they can be read by persons leaving the business;
- (4) at any other location where tobacco products are displayed and visible to customers.

(c) For businesses selling tobacco products to consumers located in this state/town/district through Internet, mail-order or other sales where the seller and the buyer are not in the same location either at purchase or at delivery, the messages required by paragraph (a) shall be posted or delivered on any website or telephone call where the consumer purchase occurs, shall be included with the tobacco products delivered to the consumer, and shall be included in any email or direct mail communications made by the seller to a consumer in this state/town/district relating to a tobacco product purchase or delivery.

(d) The Attorney General in coordination with the Department of Health and the Department of Revenue shall maintain and publicize a toll-free number and email address that residents may use to report to state enforcement officials any suspected violations of applicable laws prohibiting contraband tobacco product trafficking or the sale of tobacco products to minors.

(e) To promote the purpose of this section and this Act, the Department of Health in coordination with the Attorney General and the Department of Revenue may issue regulations, rules or other notices to establish more precise requirements relating to the wording text, size, and characteristics of the messages or signs that must be displayed pursuant to this section, and may produce and distribute or sell, at a reasonable cost, copies of signs or messages that comply with this section.

* * * * *

This model legislation is not meant as a substitute for more effective government action to prevent and reduce tobacco use of its harms, such as raising tobacco tax rates, increasing government tobacco control funding, and implementing strong smoke-free laws. But it does offer a useful complement to those core strategies.⁴

Campaign for Tobacco-Free Kids, March 6, 2008

**For information on tobacco industry marketing, especially in regard to youth, see:
http://www.tobaccofreekids.org/facts_issues/fact_sheets/toll/tobacco_kids/marketing/.**

¹ For more information about the MSA and STMSA see the website of the National Association of Attorneys General at <http://www.naag.org/tobacco.php>. All of the States, the District of Columbia, and the various U.S. Territories (e.g., Puerto Rico and Guam) have signed onto the MSA and the STMSA, except for Mississippi, Texas, Florida and Minnesota, which each have their own independent settlement agreements with the tobacco companies. But any restrictions on tobacco company ads in the MSA or STMSA which are not in the independent settlement agreements usually still apply in those individually-settling states because of a special "most-favored-nation" clause in those individual agreements.

² For more on FCLA and First Amendment restrictions on government efforts to regulate or restrict tobacco product advertising, see the Campaign for Tobacco-Free Kids factsheet, *Permissible State Restrictions on Tobacco Product Marketing - What Can States Still Do Given Federal Preemption and the 1st Amendment?*, <http://tobaccofreekids.org/research/factsheets/pdf/0280.pdf>.

³ Tobacco product companies and retailers might, of course, still attack any such measures as violating FCLA or the First Amendment; but their legal basis would be extremely weak and tenuous or nonexistent.

⁴ For more information on the benefits from raising tobacco tax rates, increasing funding for government tobacco prevention programs and implementing strong smoke-free laws, please see the materials available at http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/. For model legislation on other complementary low-cost strategies to prevent and reduce tobacco use, please email research@tobaccofreekids.org.