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# Legal Landscape of Tobacco Pricing Strategies

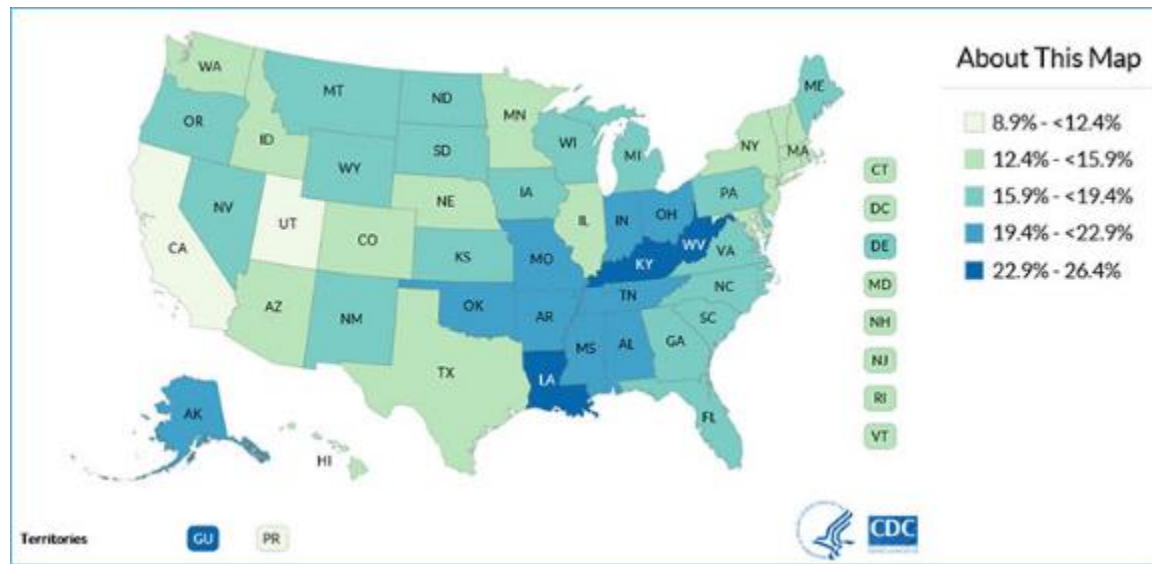
**Promoting Health and Cost Control in States: Webinar Series Segment 1 –  
Exploring the Health and Economic Impacts of Tobacco Pricing Strategies**

**Lindsay K Cloud, JD**

**Background**

# Tobacco use in the United States

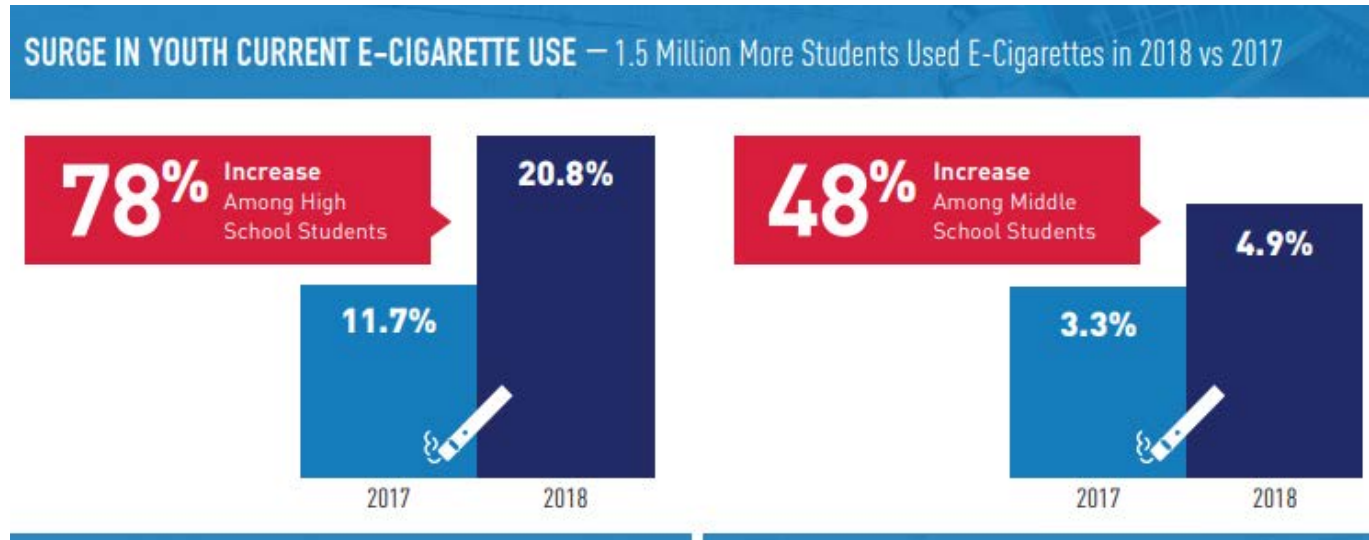
- 14% of U.S. adults were identified as current smokers in 2017
- Regional and demographic variations
- Usage rates vary among insured and uninsured groups



Source: CDC, *Percentage of adults in each state who were current smokers in 2017*

# Tobacco-related health risks

- Smoking accounts for 480,000 deaths per year (roughly 1 in 5 deaths)
- Smokeless tobacco carries its own health risks (increases risk for certain types of cancer, and of gum disease and other oral health related issues)
- Electronic nicotine delivery systems (ENDS) are leading to emerging health concerns



Source: FDA, 2018 National Youth Tobacco Survey Finds Action For Concern

# Fighting back



Source: FDA, *The Real Cost Campaign*

- Campaigns to raise public awareness, particularly those using graphic imagery showing the visual harms of tobacco usage
- Regulation of product warnings and advertising bans
- Tobacco pricing strategies, both minimum sales cost regulations and tobacco taxation

# Tobacco taxation

- One of the **best** mechanisms for limiting tobacco use
- Particularly in the form of tobacco **excise** taxes
- Most impactful on **younger** populations and **low-income** individuals
- There is a federal tobacco tax, but state level taxation exists in **all 50 states and Washington, D.C.**

# Law is a powerful influence on health



CDC  
CENTERS FOR DISEASE CONTROL  
AND PREVENTION

April 2, 1999 / Vol. 48 / No. 12

**MMWR**<sup>TM</sup>  
MORBIDITY AND MORTALITY  
WEEKLY REPORT

241	Ten Great Public Health Achievements — United States, 1900–1999
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## Ten Great Public Health Achievements — United States, 1900–1999

- Vaccination
- Motor-vehicle safety
- Safer workplaces
- Control of infectious diseases
- Decline in deaths from coronary heart disease and stroke
- Safer and healthier foods
- Healthier mothers and babies
- Family planning
- Fluoridation of drinking water
- Recognition of tobacco use as a health hazard



[www.healthfacts.com](http://www.healthfacts.com)



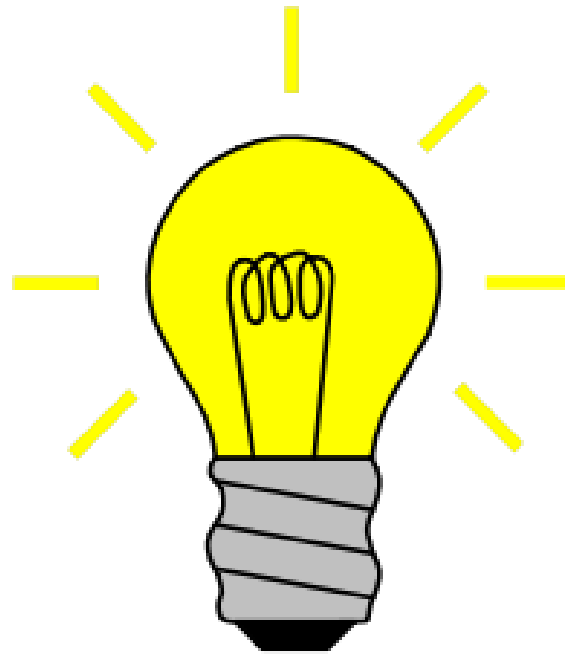
Law is *NOT* developed, implemented,  
and evaluated strategically or systematically



Defendants on Probation Can Be Jailed for  
Drug Relapse, Court Rules

**U.S. attorney sues to stop supervised injection sites in  
Philadelphia**

**But it could be....**



# PHACCS Initiative: Tobacco Pricing Strategies

Creating a comprehensive database of state-level statutes and regulations to capture the state of tobacco taxation and tobacco minimum pricing requirements across all 50 states and the District of Columbia



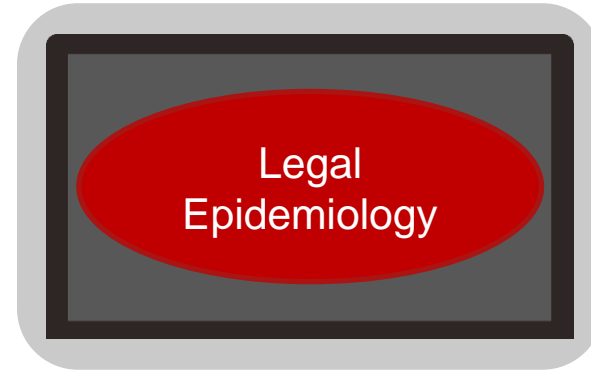
# Focus areas

The team focused on three different types of products:

- Cigarettes
- “Traditional” tobacco products
- ENDS products

# Methods

- Legal epidemiology is the scientific study and deployment of law as a factor in the cause, distribution, and prevention of disease and injury in a population
- A team of lawyers followed the policy surveillance process to collect and code the law



# Policy surveillance

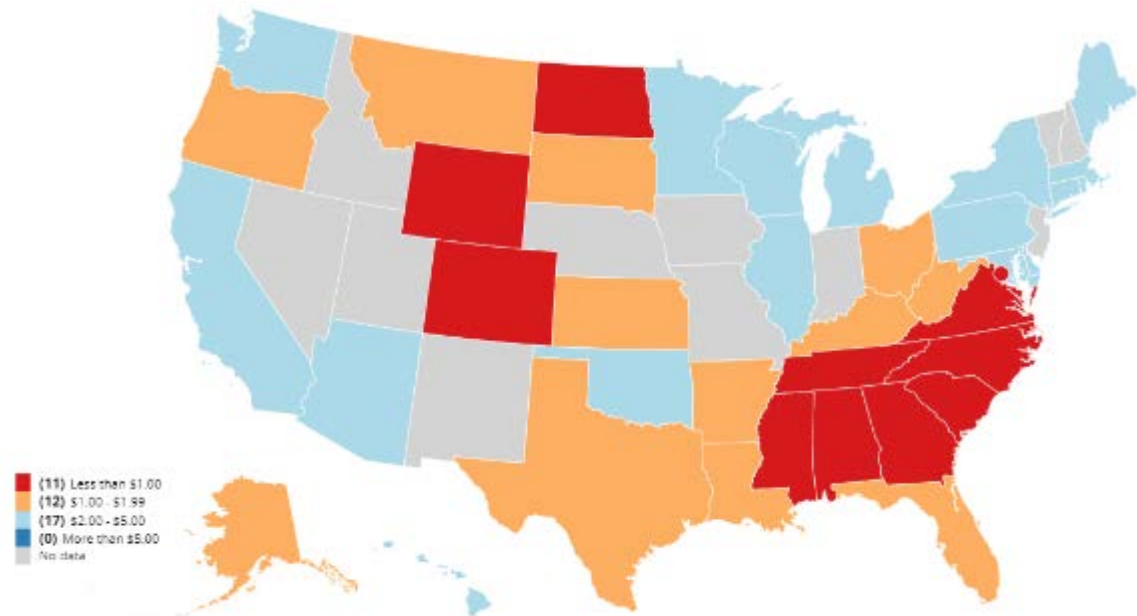


The systematic collection, analysis, and dissemination of laws and policies across jurisdictions or institutions, and over time

# Preliminary Findings

# Overview of the legal landscape

- All states currently impose some form of cigarette excise tax
- The total amount of the tax varies dramatically
- Geographic trends (generally, smoking rates tend to be higher in states with low tax rates)



Source: LawAtlas, *Tobacco Pricing Strategies Dataset (Preliminary Data)*



# Cigarette pricing strategies

- The general model is that the selling party, be it the wholesaler, distributor, or retailer pays the tax, and then the presumption is that they will pass cost along to the consumer

...but to what degree do states embed that presumption within the law?

- Minimum pricing laws

# Cigarette taxing revenue streams

Seven separate revenue streams

- General Fund
- Health Fund
- Tobacco Fund
- Other Specific Fund
- Cancer Related Fund
- Education Fund
- Administrative Costs

# Minimum pricing

- A majority of states set minimum pricing requirements for tobacco products
- Provided as a defined equation rather than a specific number
- Not all states that set minimum pricing requirements for tobacco products actually prohibit sales below cost
- The majority of the states that do prohibit sales at less than cost do so specifically for cigarettes



# Preemption

In addition to taxes at the state level, tobacco taxes can also occur at the county or municipal level, unless the state government exercises preemptory power

- Preempt local taxation of tobacco products
- Allow local taxation of tobacco products
- Silent

*Because of the ways in which states differentiate between cigarettes and tobacco products, there were instances in which a state would affirmatively preempt taxation of cigarettes, but remain silent on tobacco products generally*

# Interact with the data!



Citations

California

Excerpts from the law:

Cal Rev & Tax Code §...

....

(b) There shall be imposed upon every distributor a tax upon the distribution of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the combined rate of tax imposed on cigarettes by subdivision (a) and the other provisions of this part.(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this

California

1.4. Which state fund receives the tax?

§ • General fund

- Education fund
- Health fund
- Cancer fund
- Tobacco specific fund
- Other specific fund

2. What other tobacco products does the state tax distinctly?

§ • E-cigarettes

- E-cigarette fluid
- All other tobacco products taxed at same rate

3. What is the total amount of tax on electronic smoking devices?

*Is there a specific tax on e-cigarette fluid?*



**COMING SOON**

**Visit [LawAtlas.org](http://LawAtlas.org) - datasets will be  
available on November 19!**

**THANK YOU**

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