AMERICAN LUNG ASSOCIATION®

2008 State Legislated Actions on Tobacco Issues Mid-Term Report

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2008 State Legislative Sessions

Overview of the issues looked at in this report.

Cigarette Tax Increases

Provides information on state cigarette taxes and activity in 2008.

Cessation Coverage/ Fire-Safe Cigarettes

Looks at legislative activity on covering smoking cessation services and protecting against cigarette-caused fires.

Smokefree Workplace Laws

Explores legislative activity on smoking restrictions in 2008.

Tobacco Prevention and Cessation Programs

Discusses trends in state funding for tobacco control programs in the 2008/2009 fiscal year.

Looking Ahead

Describes how smoking rates have stalled and that political will is what is needed to tackle the tobacco epidemic.

2008 State Legislative Sessions: A Slow Year for Tobacco Control Measures in Many States

As the 2008 state legislative sessions wrap up, the blistering pace at which states have been passing smokefree air laws over the past two years has slowed somewhat. Two states—Iowa and Nebraska—approved comprehensive smokefree laws prohibiting smoking in almost all public places and workplaces. Michigan is also still considering legislation to significantly strengthen its smokefree law.

23 states, the District of Columbia and Puerto Rico have now met the American Lung Association's Smokefree Air 2010 Challenge and passed laws prohibiting smoking in almost all public places and workplaces.

With the economy on a downturn in a number of states, funding for state tobacco control programs has mostly remained at the same level or declined slightly. One notable exception is Ohio, where the governor and state legislature have all but eliminated that state's successful program. Many states saw their annual payments from the Master Settlement Agreement (MSA) increase in April 2008, providing states with a logical revenue source to increase funding for these vital and effective public health programs.

Activity on cigarette tax increases in 2008 has been slightly slower than previous years with two states and the District of Columbia approving increases, all of $1.00 per pack or more. Two states' cigarette taxes will also go up due to scheduled increases passed in previous years.

Laws setting fire safety standards for cigarettes have also continued to be popular this year, with eight states and the District of Columbia enacting them so far. Several states also passed laws requiring their state Medicaid programs to cover tobacco cessation treatments.

While this is all important progress on tobacco control issues, more progress could be made in 2008 in states with ongoing legislative sessions.

Smokefree Workplace Laws: Progress Continues, Although More Slowly

The momentum for providing workers and patrons with protection from toxic secondhand smoke has continued in 2008, although more slowly than in previous years. In the year thus far, two states—Iowa and Nebraska—have approved legislation to significantly strengthen existing smokefree air laws. The new laws in both states are comprehensive and will prohibit smoking in almost all public places and workplaces, including restaurants and bars (although Iowa's law does allow smoking on casino floors). Twenty-three states and the District of Columbia and have now passed comprehensive smokefree laws and have met the American Lung Association's Smokefree Air 2010 Challenge.[1] Michigan is still considering strengthening its smokefree law this year too.

Alabama, Virginia and Wisconsin also came close to strengthening their statewide smoking restrictions. In Alabama, legislation that would have prohibited smoking almost everywhere, except in stand-alone bars passed the state Senate overwhelmingly and a House committee narrowly. But it was left on the House floor when the legislative session adjourned. Legislation making restaurants and bars in Virginia smokefree passed the state Senate, but for the third year in a row was stymied by the House of Delegates. Comprehensive smokefree legislation advanced to the Senate floor in Wisconsin, but was stopped by several legislators opposed to the bill.

Pennsylvania also strengthened its smoking restrictions, prohibiting smoking in many public places and workplaces. However, the law leaves workers unprotected in some restaurants, all bars and casinos. It also prevents local communities from passing stronger laws—meaning these workers will continue to be exposed to toxic secondhand smoke until the state legislature strengthens the law again. Philadelphia was allowed to keep its existing (somewhat) stronger law, although it cannot be strengthened in the future.

There have also been some notable victories at the local level on smokefree ordinances this year. Jackson, the capitol and biggest city in Mississippi, strengthened its ordinance to include restaurants with or without attached bars (the ordinance already prohibited smoking in workplaces other than restaurants or bars). The South Carolina Supreme Court ruled in March that stronger local ordinances are not preempted by existing state law—meaning the 16 cities and counties in South Carolina that have passed stronger laws now know their laws are valid. The Nebraska Supreme Court also ruled that temporary exemptions for certain bars and gaming establishments in Omaha were unconstitutional, and the exemptions were rescinded in June. This made Omaha (the largest city in Nebraska) smokefree a year before the entire state goes smokefree in June 2009.

States that have met the Smokefree Air 2010 Challenge*

Arizona (2007)
California (1998)
Colorado (2006)
Connecticut (2004)
Delaware (2002)
District of Columbia (2007)
Hawaii (2006)
Illinois (2008)
Iowa (2008)
Maine (2003)
Maryland (2008)
Massachusetts (2004)
Minnesota (2007)
Montana (2009)**
Nebraska (2009)**
New Jersey (2006)
New Mexico (2007)
New York (2003)
Ohio (2006)
Oregon (2009)**
Puerto Rico (2007)
Rhode Island (2005)
Utah (2009)**
Vermont (2005)
Washington (2005)

* A state must prohibit smoking in almost all public places and workplaces, including restaurants and bars to meet the challenge. For more information on our Smokefree Air 2010 Challenge, go to: www.lungusa.org/smokefree2010.

** Changes to Montana, Nebraska, Oregon and Utah's laws go into effect in 2009.

On June 30th, a working group of the International Agency for Research on Cancer (IARC) released a report in the journal *Lancet Oncology* looking at the effectiveness of smokefree policies, and made a number of conclusions that adds to the overwhelming evidence in favor of implementation of such policies. These conclusions included: smokefree policies substantially reduce exposure to secondhand smoke, smokefree workplaces decrease cigarette consumption in continuing smokers and that smokefree policies do not hurt restaurant and bar business.[2]

Backing up the last point, the Washington state Department of Revenue released data in June showing that bar business jumped up 20 percent in the second year of its comprehensive smokefree law.[3] Also, data from the Ohio Division of Liquor Control

shows that permits to sell alcohol for on-premises consumption have risen by 211 since December 2006 when Ohio's smokefree law took effect indicating no overall economic impact.

Tobacco Taxes: Half the States Have Cigarette Taxes of $1.00 or Higher

Two states—New York and Massachusetts—as well as the District of Columbia have approved cigarette tax increases in 2008. Of particular importance, each state's cigarette tax increased by a $1.00 per pack or more ($1.25 in New York). Larger increases result in a much bigger public health benefit in decreased smoking because the price of cigarettes goes up more dramatically at one time. Due to scheduled increases passed in previous years, Vermont's cigarette tax rose July 1, and Hawaii's cigarette tax will increase on September 30.

Top Cigarette Tax Rates
(as of 7/15/08)*

1. New York: $2.75
2. New Jersey: $2.575
3. Massachusetts: $2.51
4. Rhode Island: $2.46
5. Washington: $2.025
6. 6 states–AK, AZ, CT, ME, MD & MI tied at $2.00

* Per pack of 20

New Hampshire's tax may also increase by 25 cents on October 1 unless the state earns $50 million in cigarette sales between July 1 and October 1 of this year. This policy means the government of New Hampshire effectively encourages sales of a product that kills over 1,700 people in the state each year.

New York supplants New Jersey as the state with the highest cigarette tax at $2.75 per pack, while South Carolina continues to have the lowest cigarette tax in the country at $0.07 per pack. The South Carolina legislature had a golden opportunity to remove itself from the bottom of the list when a 50-cent increase passed the House of Representatives and Senate this year. However, the governor vetoed the legislation, and the House could not muster enough votes to override the veto.[4]

The current state cigarette tax average is $1.16 per pack. This will increase to $1.184 per pack when increases in Hawaii and the District of Columbia take effect. Twenty-five states and the District of Columbia have cigarette tax rates of $1.00 or higher, and eleven states—Alaska, Arizona, Connecticut, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Rhode Island and Washington—are at or over $2.00 per pack.[5]

A major increase in the taxes on cigarettes will rapidly and significantly reduce the number of children who start smoking and encourage many adults to quit. Studies have shown that a 10 percent increase in the price of cigarettes reduces youth consumption by seven percent and adult consumption by four percent. An independent panel of scientists convened by the National Institutes of Health examined the evidence behind a number of interventions to reduce tobacco use in 2006, and concluded that increases in the price of tobacco products prevent tobacco use among adolescents and young adults, increase attempts to quit and reduce consumption of tobacco products by adults.[7]

Tobacco Control Program Funding: Mostly Steady or Declining; Ohio Guts Program

After a couple of years where a number of states increased funding for tobacco control programs, budgets for the most part have stayed level or are declining in FY2009 (July 1, 2008 to June 30, 2009 for most states). In New York, funding for its program decreased from $85.5 million to $84.4 million due to across-the-board budget cuts. Tennessee, which had appropriated a significant amount of money ($10 million) for a state tobacco control program for the first time in FY2008, saw the budget for the program halved to $5 million in FY2009. South Carolina appropriated no state money for state tobacco control initiatives in FY2009, after providing $2 million each of the previous two years. A few states such as Alaska, Missouri and New Mexico managed to buck the trend and increase funding for their programs.

The biggest loss so far of 2008 was Ohio, where the governor and legislature voted to siphon off $230 million of the Ohio Tobacco Prevention Foundation (OTPF)'s endowment for an economic stimulus package—leaving OTPF with only $40 million. After OTPF tried to prevent the state from taking the money by transferring it to an outside organization, OTPF was abolished, and the $40 million was transferred to the Ohio Department of Health. Due to an ongoing lawsuit, almost none of the $270 million endowment can be spent—currently meaning Ohio's successful program is, for the most part, no longer operating. Ironically, many of the jobs created by OTPF's efforts were also eliminated in the name of economic stimulus. Since its creation in 2000, the Ohio Tobacco Prevention Foundation has helped to reduce Ohio's adult smoking rates by 12.2 percent, high school smoking rates by 38 percent, and middle school smoking rates by 47 percent.[8]

These declines in tobacco control program funding are occurring despite the fact that 46 states and the District of Columbia received an estimated $1 billion in additional funds in April 2008 due to a provision in the MSA. These additional "strategic contribution payments" will last until 2017. After 2017, the regular annual MSA payments are scheduled to increase, meaning MSA payments will not drop off again after 2017.[9]

Studies indicate that thousands of illnesses and deaths from tobacco use could be prevented and billions of dollars in medical expenses could be saved if all states made long-term investments in a sustained campaign to prevent tobacco-related disease and death. A study published in the *American Journal of Public Health* in January 2008 concluded that if states had spent just the minimum amount recommended by the CDC between 1995 and 2003, there would have been between 2.2 million and 7.1 million fewer smokers.

Source: Farrelly MC, Pechacek TF, Thomas KY, Nelson D. The Impact of Tobacco Control Programs on Adult Smoking. *Am J Public Health*. 2008 Feb.; 98(2): 304-9.

If each state funded a comprehensive tobacco control program at CDC-recommended levels for 5 years, an estimated 5 million fewer people in this country would smoke.

2007 CDC Best Practices Executive Summary[10]

In October 2007, the Centers for Disease Control and Prevention released an updated version of its *Best Practices for Comprehensive Tobacco Control Programs*, originally released in 1999. The updated document discusses the best way for a tobacco control program to be structured to be as effective as possible in reducing smoking rates and saving lives. It also recommends funding levels for each state's program based on specific characteristics of each state, such as smoking rates and media market costs. For most states what is needed to combat the tobacco epidemic is significantly higher than previously thought, which makes the cuts in state tobacco control program funding for FY2009 even more damaging. See Appendix A for a chart of the new CDC-recommended funding levels for each state and the amount states funded their tobacco control programs at in FY2008.

Smoking Cessation Coverage: An Emerging Issue States are Starting to Tackle

An emerging tobacco control issue that states are beginning to address is providing coverage for smoking cessation products and services under state Medicaid programs and employee health insurance plans. Almost 35 percent of people on Medicaid smoke versus 20.8 percent of the general population. This higher smoking rate means a higher incidence of tobacco-related disease, as well as significant costs to Medicaid programs averaging $607 million per year.[11] When cigarette taxes go up and smokefree laws are enacted, demand for cessation services increases. Providing coverage of cessation treatments through healthcare systems makes it easier for smokers to use these life-saving treatments.

In 2008, several states passed legislation to provide these treatments to their Medicaid populations. Arizona approved legislation requiring its state Medicaid program to cover all FDA-approved tobacco cessation medications. Nebraska appropriated $500,000 in FY2009 for a new cessation medication and counseling benefit under its Medicaid program. In Washington, a bill authorizing the state Medicaid program to cover smoking cessation medications and counseling was approved and funded.

Fire-Safety Standards: Majority of States Have Passed Laws

More than half the states now have laws setting fire-safety standards for cigarettes that require them to self-extinguish when not being smoked. Fifteen states—Arizona, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Oklahoma, Pennsylvania,

South Carolina, Tennessee, Virginia, Washington and Wisconsin—as well as the District of Columbia have passed these important consumer-protection laws during 2008. They join the 21 other states that have approved nearly identical laws. The laws in all these states are based on the fire-safety standard that has been implemented in New York, the first state to enact such a law.

Cigarette-ignited fires are the leading cause of home fire deaths in the United States, killing between 700 and 900 people each year, according to the National Fire Protection Association. Also, a 2005 study by the Harvard School of Public Health found that self-extinguishing cigarettes sold in New York, while not perfect, were much more likely to go out than keep burning and had no effect on cigarette sales in New York.[12]

Looking Ahead

Although tobacco control activity in the states has been slower than in previous years, states have continued to pass comprehensive smokefree laws and increase tobacco taxes in 2008. Despite this progress, tobacco products still remain the number one preventable cause of death in the United States, killing an estimated 438,000 people per year. Also alarmingly, decreases in smoking rates among adults and youth have stalled recently, with no significant change in either over the past several years. This demonstrates the urgent need for states to implement proven tobacco control policies. Tobacco control and public health experts agree: tobacco use drops when states pass comprehensive smokefree workplace laws, increase tobacco taxes and fund tobacco prevention and cessation programs at the levels recommended by the CDC.

Recent research out of New York City provides a real-world example of the progress that can be made in reducing the toll of tobacco when strong tobacco control policies are implemented. From 2002 to 2006, New York City implemented such measures including a large increase in its cigarette tax, a smokefree workplace law, and hard-hitting tobacco educational campaigns. After a decade with no progress prior to these measures, New York City's smoking rate declined from 21.6 percent in 2002 to 17.5 percent in 2006. After the decline stalled in 2005, the city ran a year-long hard-hitting media campaign to motivate more smokers to quit in 2006. From 2005 to 2006, smoking decreased sharply among males (from 22.5% to 19.9%) and among Hispanics (from 20.2% to 17.1%). By 2006 there were 240,000 fewer smokers in New York City than there were in 2002, which will prevent an estimated 80,000 deaths from smoking-related causes.[13]

By implementing several comprehensive tobacco control measures, New York City has reduced its adult smoking rate from 21.6% to 17.5% since 2002.

In addition, New York City's high school smoking rate is an amazingly low 8.5 percent

due to these policies, according to the 2007 New York City Youth Risk Behavior Survey. This is down from 17.6 percent in the same survey conducted in 2001, and way below the national high school smoking rate of 20 percent in 2007.[14]

Clearly, we know what policies we need to implement to significantly reduce the tobacco epidemic in this country. All that is needed is the political will to do so.

We hope you find this report useful. For more information on state tobacco control laws and policies, visit the American Lung Association's State Legislated Actions on Tobacco Issues (SLATI) website, http://slati.lungusa.org.

Appendix A – New CDC Recommended Levels and State Funding for Tobacco Control Programs in FY2008

This chart lists the new CDC-recommended funding levels for each state and what each state spent on tobacco control programs in the 2007/2008 fiscal year

State	New CDC Recommended Funding Level (in millions of $)	FY2008 Tobacco Control Program Funding* (in millions of $)
Alabama	56.7	2.2
Alaska	10.7	8.8
Arizona	68.1	24.0
Arkansas	36.4	17.0
California	441.9	79.3
Colorado	54.4	27.5
Connecticut	43.9	1.1
Delaware	13.9	11.4
DC	10.5	4.1
Florida	210.9	58.9
Georgia	116.5	3.1
Hawaii	15.2	11.4
Idaho	16.9	2.7
Illinois	157.0	9.8
Indiana	78.8	17.3
Iowa	36.7	13.4
Kansas	32.1	2.8
Kentucky	57.2	4.0
Louisiana	53.5	8.9
Maine	18.5	18.0
Maryland	63.3	19.7
Massachusetts	90.0	14.5
Michigan	121.2	5.4
Minnesota	58.4	23.3
Mississippi	39.2	10.0
Missouri	73.2	1.5
Montana	13.9	9.5
Nebraska	21.5	3.9
Nevada	32.5	4.2
New Hampshire	19.2	2.5
New Jersey	119.8	12.4
New Mexico	23.4	10.9
New York	254.3	87.5
North Carolina	106.8	18.9
North Dakota	9.3	4.4
Ohio	145.0	46.2
Oklahoma	45.0	15.7
Oregon	43.0	9.1
Pennsylvania	155.5	33.1
Rhode Island	15.2	2.2
South Carolina	62.2	3.3
South Dakota	11.3	6.1
Tennessee	71.7	10.8
Texas	266.3	13.5
Utah	23.6	8.5
Vermont	10.4	6.5
Virginia	103.2	15.5
Washington	67.3	28.7
West Virginia	27.8	7.0
Wisconsin	64.3	16.3
Wyoming	9.0	7.1

* FY2008 is July 1, 2007 to June 30, 2008 for most states

1 Laws in 19 states—Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Ohio, Rhode Island, Vermont, Washington as well as the District of Columbia and Puerto Rico—have taken full effect currently. Oregon's law will take effect January 1, 2009. Utah's law will take full effect January 1, 2009. Nebraska's law will take effect June 1, 2009. Montana's law will take full effect October 1, 2009.

2 Pierce J, Leon M. Effectiveness of Smokefree Policies. *Lancet Oncology* 2008; 9: 614-615.

3 Washington State Department of Revenue. "Update: Effect of the Indoor Smoking Ban." June 10, 2008. Available at: http://dor.wa.gov/Content/AboutUs/StatisticsAndReports.

4 For a listing of current state cigarette tax rates, go to: http://slati.lungusa.org/appendixc.asp .

5 States with cigarette excise taxes at or over $1.00: Alaska, Arizona, Connecticut, Delaware, District of Columbia, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington and Wisconsin.

6 Tauras JA, O'Malley PM, Johnston LD, "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 2001. Available at: http://www.impacteen.org/generalarea_PDFs/AccessLaws.pdf , accessed 7/15/08.

7 National Institutes of Health State-of-the-Science conference statement: tobacco use: prevention, cessation, and control. *Ann Intern Med*. 2006 Dec 5; 145(11):839-44. Statement available online at: http://www.annals.org/cgi/content/full/0000605-200612050-00141v1.

8 Centers for Disease Control and Prevention (CDC), 2000 and 2006 Behavioral Risk Factor Surveillance System; 2000 and 2006 Ohio Youth Tobacco Survey, http://www.odh.ohio.gov/odhPrograms/hprr/tob_risk/tob_surv1.aspx.

9 For a short description of the "strategic contribution payments" and estimates of how much each state will receive, see: Campaign for Tobacco-Free Kids Fact sheet. "Big Increases to State MSA Payments Starting April 2008—New Funding for Tobacco Prevention." Available at: http://tobaccofreekids.org/research/factsheets/pdf/0286.pdf , accessed 7/15/2008.

10 CDC. *Best Practices for Comprehensive Tobacco Control Programs*—2007. Atlanta: U.S. Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; October 2007.

11 CDC. *Sustaining State Programs for Tobacco Control: Data Highlights 2006*. Atlanta: U.S. Department of Health and Human Services, CDC; 2006.

12 Alpert RH, Carpenter C, Connolly GN, Rees V, Ferris GF. *"Fire Safer" Cigarettes: The Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity, Smoke Toxicity and the Consumer Market.* Harvard School of Public Health, January 2005. Available at: http://www.hsph.harvard.edu/news/press-releases/archives/2005-releases/press01232005.html, accessed 7/15/2008.

13 Centers for Disease Control and Prevention. Decline in Smoking Prevalence—New York City, 2002-2006. *MMWR Morb Mortal Wkly Rep*. 2007 Jun. 22; 56(24): 604-08.

14 2007 and 2001 data from New York City Youth Risk Behavior Survey; 2007 U.S. data from National Youth Risk Behavioral Surveillance System.

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Beginning our second century, the American Lung Association works to prevent lung disease and promote lung health. Asthma is the leading serious chronic childhood illness. Lung diseases and breathing problems are the primary causes of infant deaths in the United States today. Smoking remains the nation's number one preventable cause of chronic illness. Lung disease death rates continue to increase while other major causes of death have declined.

The American Lung Association has long funded vital research to discover the causes and seek improved treatments for those suffering with lung disease. We are the foremost defender of the Clean Air Act and laws that protect citizens from secondhand smoke. The Lung Association teaches children the dangers of tobacco use and helps teenage and adult smokers overcome addiction. We help children and adults living with lung disease to improve their quality of life. With your generous support, the American Lung Association is "Improving life, one breath at a time."

For more information about the American Lung Association or to support the work we do, call 1-800-LUNG-USA (1-800-586-4872) or log on to www.lungusa.org.

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