



## CDC Releases Latest Numbers on Cigarette Use in NY

The Centers for Disease Control and Prevention (CDC) has released its *Tobacco Control State Highlights 2010*, which includes many New York-specific data on the state of tobacco control.

- The current adult smoking rate in New York is 16.8 percent, below the national rate of 18.4 percent.

- New York ranked 14<sup>th</sup> among states in adult mortality attributable to smoking, with 246.1 smoking-attributable deaths per 100,000 residents.

- 8.2 percent of New York youth between the ages of 12-17 smoked a cigarette within the past month, below the national average of 10.1 percent and is the fifth lowest rate among all states.

- 6 percent of smokers in New York called the QuitLine, above the national average of 2.8 percent and ranking ninth among states.

- New York's \$2.75 excise tax on packs of cigarettes ranks third in the U.S. and is well above the national average of \$1.34.

- In 2007, New York funded tobacco control at 34.8 percent of the amount the CDC recommended, above the national median of 17.2 percent. By using only 15 percent of the revenue from cigarette taxes and payments from the Master Settlement Agreement on tobacco control, New York could fund tobacco control at the full CDC-recommended level.



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## Updates from the FDA's Center for Tobacco Products

As a result of last year's Family Smoking Prevention and Tobacco Control Act ("Act"), which granted the Food and Drug Administration (FDA) limited authority to regulate tobacco products, the FDA has created a Center for Tobacco Products. Over the last few months, the Center for Tobacco Products has begun to implement the Act's provisions.

In late March, the FDA held the first meeting of the Tobacco Products Scientific Advisory Committee, which advises the FDA on implementing the law. The Committee is composed of nine distinguished scientists and three non-voting representatives from the tobacco industry. The first meeting focused on the role of menthol in cigarettes, as the Committee is required by the Act to prepare a report on the impact of menthol on the public's health. For more information about the Committee, click [here](#).

The Center for Tobacco Products also opened a call center, which is open for answering questions about the FDA's role or for reporting violations of the Act. The call center's number is 1-877-CTP-1373 (1-877-287-1373).

To visit the homepage of the FDA's Center for Tobacco Products, click [here](#). You can also sign up for e-mail updates from the Center by clicking [here](#).

## Tobacco Companies on Losing End of Long-Running Litigation

During the past few months, tobacco companies have been losing one legal judgment after another, including significant losses in both Louisiana and Florida.

In the long-running class action case *Scott v. American Tobacco*, a Louisiana appeals court ordered the major tobacco companies to pay more than \$240 billion to create a smoking cessation program for Louisiana residents.

The origins of the *Scott* lawsuit go all the way back to 1994, when a national class action lawsuit (*Castano*) was filed. The plaintiffs in *Castano* claimed that the tobacco companies had been manipulating nicotine levels in cigarettes in order to create and sustain addiction. After a court ruled that conflicting state laws made a national class action impracticable, the *Scott* lawsuit was filed in 1997, with the plaintiff class limited to Louisiana smokers.

Following years of legal wrangling, a multi-phase trial was held between 2001 and 2004. The jury concluded that the tobacco companies had “individually and conspiring with each other, knowingly and deliberately

conspired to commit, and did commit fraud that spanned five decades, directly causing injury to the class of Louisiana smokers . . . [and that they] knowingly and deliberately addicted the population of Louisiana smokers to a product known to them to be both addictive and extremely toxic.” The jury then ordered the tobacco companies to pay nearly \$600 billion to fund a smoking cessation program. The order to fund a smoking cessation program was highly unusual, but it has been upheld on appeal.

The latest ruling, issued in late April, reduced the amount that the tobacco companies are ordered to pay, but it puts the tobacco companies one step closer to exhausting their legal appeals. The tobacco companies will likely appeal the ruling to the Louisiana Supreme Court.

Meanwhile, individual plaintiffs have been defeating the tobacco industry in Florida, in another long-running legal saga that dates back to 1994. In that year, a class action lawsuit was filed against the tobacco industry on behalf of Florida residents suffering from smoking-related diseases (*Engle*). In 2000, a jury ruled for the plaintiff class and awarded \$145 billion in damages.

The Florida Supreme Court later overturned the verdict, finding that the case should not have proceeded as a class action because of differences in the individual circumstances of the plaintiffs. However, the court ruled that class members could bring their own, individual cases, and the factual findings of the *Engle* jury – including, among other findings, that the tobacco companies were negligent, produced defective products, and misled smokers about the harmfulness of cigarettes – would be applied in the individual lawsuits.

Thousands of individuals filed “*Engle* progeny” lawsuits, and in the last two months, juries across Florida have ruled for the plaintiffs. Most recently, on April 26, a Ft. Lauderdale jury awarded \$15 million to the family of a woman who died of lung cancer caused by smoking. The previous week, a Gainesville jury awarded more than \$45 million to the widow of a man who also died of lung cancer 1995. In all, the plaintiffs have won 14 of 16 jury verdicts in the *Engle* progeny cases, including seven in a row in March and April. With thousands more *Engle* progeny cases, this is a significant development worth watching.

## Buffalo Passes Landlord Smoking Policy Disclosure Law

In February 2010, Buffalo’s Common Council unanimously passed an ordinance to amend its city code to include a “landlord disclosure law” under the required duties of rental dwelling permit-holders. Rental agreements must contain information about the dwelling’s smoking policy. The Erie-Niagara Tobacco-Free Coalition worked to educate the city and its Common Council during the ordinance’s passage, and this new law serves as an example to the rest of New York and the East Coast. Both landlords and tenants positively received a similar law in the state of Oregon.

Effective March 1st, section 364-11(C) of Chapter 264 requires that: “The rental agreement or lease for a dwelling unit regulated under this chapter must include a disclosure of the smoking policy for the prem-

ises on which the dwelling is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.” Dwellings that are owner-occupied and have two or fewer units do not fall under Chapter 264.

With the law’s enactment, the Erie-Niagara Tobacco-Free Coalition continues to educate landlords and the community. In addition to providing tobacco control education and compelling reasons for apartment buildings to go smoke-free, the coalition offers incentives to landlords who advertise smoke-free rentals. It also provides assis-

tance and fact sheets to help landlords comply with the law, including informational letters and sample forms and leases as part of its *Landlord Disclosure Law Toolkit*.

[Smoke-Free Home](#) website (including *Landlord Disclosure Law Toolkit*)

[Copy of Ordinance](#)

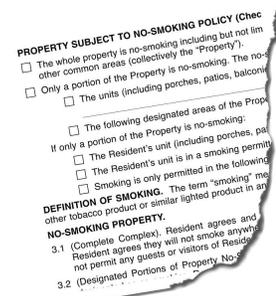


Image from news conference promotional materials publicized by community partner and coalition director Tony Billoni

## Ithaca Adopts Outdoor Smoking Regulations

In early April 2010, Ithaca's Common Council passed an ordinance to add an outdoor smoking chapter to its municipal code, falling just short of a unanimous vote. The ordinance cites to surveys conducted by Tobacco Free Tompkins that found strong local support for smoke-free policies in public areas. It also highlights that other New York jurisdictions have adopted smoke-free outdoor administrative orders and policies. A Common Council Alderperson compared the implementation of this new law to that of clean indoor air regulations: "At the time it seemed scary and radical, but now, I can't imagine the world without it[.]"

Starting August 1st, outdoor smoking is prohibited:

- on public property within twenty five feet of and inside public playgrounds and mass transit shelters;

- on public property within twenty five feet of doors, windows, and ventilation intakes for child care centers, schools, and city-owned

buildings;

- on public property within twenty five feet of mobile vendors;

- on public property at certain special events like block parties;

- on specified parts of Ithaca Commons, a downtown pedestrian mall;

- on certain city trails and walkways;

- in outdoor dining areas that are city-managed or on city-owned property;

- in designated areas or all parts of city parks;

- in city parking garage elevators; and

- in other specified locations.

There is an exception for moving traffic on streets. Parked cars in smoke free zones are not exempted, and an amendment to grant such an exemption failed prior to the ordinance's passage. Fine amounts range from \$75.00 to \$250.00. An Alderperson

anticipates that, in practice, warnings would be issued before fines are given because the purpose of the law is to protect people from secondhand smoke and not to generate revenue. Accordingly, smoke-free signs will be installed and establishments and events operating in smoke-free areas must keep their customers and the public informed.

A comprehensive tobacco-free public areas resolution was introduced into committee in 2007. A Common Council subcommittee, focusing on smoke free outdoor regulation, developed preliminary recommendations and a draft ordinance in 2008. The passage of the ordinance reflects the protracted and coordinated efforts of the City and its community. Within less than a year-and-a-half span, the subcommittee held over twenty meetings. This exciting new law further demonstrates that the efforts and dedication of Ted Schiele, the other TCP partners involved, and the Reality Check youth they rallied to meetings are instrumental in passing effective local tobacco control laws.

## Lawmakers Seek Ban on Dissolvable Tobacco Products

Several U.S. senators have called on the Food and Drug Administration (FDA) to remove dissolvable tobacco products from the market. Sens. Sherrod Brown (D-OH), Jeff Merkley (D-OR), and Frank Lautenberg (D-NJ) have written letters to FDA Commissioner Margaret Hamburg asking the agency to ban the products. The letter followed the release of a study by the Harvard School of Public Health finding that dissolvable tobacco may be consumed by young children and lead to poisoning. "Nicotine is a highly addictive drug, and to make it look like a piece of candy is recklessly playing with the health of children," said the study's lead researcher, Dr. Greg Connolly. The study found that in 2007, there were almost

7,000 cases of children under five being poisoned with tobacco. Previously, Brown and Merkley also authored an amendment to the Family Smoking Prevention and Tobacco Control Act that required the FDA to research the effects of dissolvable tobacco products and publish a report within two years.

Although Star Scientific has been producing dissolvable tobacco products since 2001, R.J Reynolds recently began test-marketing their own product under their Camel brand which is popular with youth. Several months ago, R.J. Reynolds and Star

Scientific were sent a request by the FDA's Center of Tobacco Products (CTP) to produce thousands of pages of information on the products. "CTP is concerned that children and adolescents may find dissolvable tobacco products particularly appealing, given the brightly colored packaging, candy-like appearance and easily concealable size of many of these products," wrote Lawrence Deyton, director of the CTP. "We are also concerned about the extent to which the high nicotine content and rapid dissolution of dissolvable tobacco products may facilitate initiation of tobacco use, nicotine dependence and addiction in adolescents, and may serve as a mechanism for inadvertent toxicity in children."

## Australia Aims to Require Plain Packaging for Cigarettes

Australia has begun drafting legislation that would require all cigarette packaging to be free of all logos or branding of any kind. Australia would be the first country to require plain packaging for cigarettes, and it already has prohibited traditional tobacco advertising. The law would also place limits on internet tobacco advertising. Packages will include the brand and product names in small, standardized print, and include large

graphic health warnings. The proposed law would take effect beginning in July 2012. Taking effect immediately, the Australian government increased the tax on a pack of cigarettes by almost two dollars a pack, the proceeds of which will be devoted to healthcare.

Imperial Tobacco Australia has indicated that it will contest the law in court, although Health Minister Nicola Roxon has said that the law will be crafted to withstand potential legal challenges. "The big tobacco companies will hate what we are doing," said Prime Minister Kevin Rudd. "The government however makes no apology for what we are doing - it is the right decision."

## Updates

### FDA Postpones Enforcement of Plain Packaging and Ads

On May 7th, the U.S. Food and Drug Administration (FDA) released further guidance on its regulations. Black and white text restrictions for ads and packaging were scheduled to take effect June 22. Until further notice, the FDA plans not to enforce this requirement: "At this time, however, in light of the court's order in *Commonwealth Brands*, FDA intends to exercise its enforcement discretion concerning [this advertising regulation] not to commence enforcement actions under this provision during the pendency of the litigation . . . ." Our March 2010 newsletter contains an article about the *Commonwealth Brands* case on page three. You can find the FDA guidance information [here](#).

### New York Court Rejects Tax Evasion Claim Against Cayugas

Last month we highlighted a case between the state of New York and the Cayuga Nation, involving untaxed cigarettes sold by the Cayugas to individuals outside the tribe. Although the New York Court of Appeals found that taxes are owed on the cigarettes sold, the court ruled 4-3 that the Cayugas could not be criminally prosecuted for tax evasion because state regulations on the collection of those taxes have yet to be put in place. The New York Department of Taxation will continue attempts to collect the unpaid taxes. The full decision of the court can be found [here](#).

### California Governor Vetoes Smoke-Free Beaches and Parks

Last month we reported that the California legislature had approved a measure that would prohibit smoking at state parks and beaches. Unfortunately, Governor Arnold Schwarzenegger vetoed that measure May 3. The sponsor of the measure, State Senator Jenny Oropeza, [commented](#): "I'm sorry the governor did not agree with this widely supported effort to increase public awareness about the environmental threats carelessly tossed cigarettes are doing to our marine life and to the great outdoors."



## ***CENTER FOR PUBLIC HEALTH AND TOBACCO POLICY***

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The Center for Public Health and Tobacco Policy (Center) is a new resource for the New York tobacco control community. The Center is funded by the New York State Department of Health and will be working with the New York State Tobacco Control Program and its contractors to develop and support policy initiatives that will reduce tobacco-related morbidity and mortality in New York.

The Center is located at New England Law | Boston and is project of the Center for Law and Social Responsibility. The Center is also affiliated with the Tobacco Control Legal Consortium.

The Center will work with tobacco control advocates in New York to support the adoption of evidence-based policies that reduce the availability of tobacco products, protect non-smokers from secondhand smoke, and minimize tobacco advertising and promotion.

**Please Note: The Center is funded to provide assistance to the New York State Tobacco Control Program and its contractors. At this time, the Center is unable to provide assistance to individuals or groups who are not funded by the New York State Tobacco Control Program.**