U.S. TOBACCO INDUSTRY INTERFERENCE INDEX 2019

ASH
ACTION ON SMOKING & HEALTH

Dedicated to ZERO Tobacco Deaths

ABOUT ACTION ON SMOKING AND HEALTH

Action on Smoking and Health (ASH) is one of the nation's oldest anti-tobacco organizations. ASH's vision is to end the worldwide disease, damage and death caused by the tobacco industry. Over its fifty plus years, ASH has consistently pioneered new ways to combat tobacco use, including negotiating the global anti-tobacco treaty (WHO Framework Convention on Tobacco Control), incorporating tobacco into the UN development agenda, and pushing for public health exemptions in trade agreements.

For nearly 15 years, ASH served as the secretariat for the Framework Convention Alliance, a coalition of over 500 anti-tobacco organizations. Today ASH works domestically and globally on initiatives that include:

- Pushing for legal liability for the tobacco industry, including criminal liability for tobacco executives;
- Changing social norms to end the age of the cigarette;
- Developing and releasing publications and research documents for tobacco control best practices; and
- Demanding respect for basic human rights, and protections against the tobacco industry and their products.

ABOUT THE OKLAHOMA TOBACCO RESEARCH CENTER

The Oklahoma Tobacco Research Center (OTRC), part of the NCI-designated Stephenson Cancer Center at the University of Oklahoma, addresses the entire translational continuum – from the discovery of basic mechanisms of tobacco use, cessation, and relapse, to the development and evaluation of novel tobacco cessation treatments, to the dissemination and implementation of treatments, policies, and education. In 2016, the OTRC launched the Tobacco Industry Interference, Deception and Exposure (TIIDE) study to examine the extent and effects of tobacco industry interference in lawmaking by analyzing relevant internal tobacco industry documents and assessing awareness and attitudes among the general public, current smokers, and lawmakers.

ACKNOWLEDGEMENTS

ASH and OTRC would like to thank Dr. Mary Assunta, Senior Policy Advisor for the Southeast Asia Tobacco Control Alliance (SEATCA) for including ASH in the parent report (The Global Tobacco Industry Interference Index) and for technical assistance and guidance for the preparation of this report.

We also wish to extend our thanks to the state and local advocacy representatives of local, state and national organizations that helped us develop this report by reviewing data and providing detailed information through calls, correspondence and the ASH U.S. Tobacco Industry Interference Survey 2019.

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INTRODUCTION: TOBACCO INDUSTRY INTERFERENCE INDEX

This report is the first to use a standardized index to quantify tobacco industry interference in public policy in the United States. For context, three facts are helpful: 1) tobacco use is our country's leading cause of disease and early death, 2) the most effective tool for reducing tobacco use is public policy and, 3) the greatest barrier to enacting effective public policy is tobacco industry interference. This year, 33 countries used the standard indicators outlined in this report to objectively rate the extent to which tobacco companies are allowed to interfere with lawmaking in their respective nations. On a scale where lower means less tobacco industry interference and higher is worse, the United States' score is the eighth highest overall (in the top quartile) and more than double that of the United Kingdom or France.

We can gain a deeper understanding of the problem in our country from a landmark federal court case filed in 1999 and still active today. The court ruled in 2006 that Altria, Philip Morris, R.J. Reynolds, and other major tobacco companies had engaged in a five-decade organized conspiracy to commit fraud. Citing 145 violations of federal civil racketeering laws, the court concluded that their destructive behavior would likely continue. This report supports that conclusion, providing recent examples of how the companies are still building upon their many previous successes of using deceptive tactics to defeat or influence legislation. The ever-mounting costs in human suffering and premature death are incalculable.

> "The World Health Organization Framework Convention on Tobacco Control (FCTC) calls on all countries to protect their tobacco control policies from tobacco industry interests"

In 2017, by federal court order, tobacco companies began publishing corrective statements addressing their fraudulent acts. However, corrective statements will do little good without *corrective action*. Internal tobacco company documents reveal—in their own words—that they wrote or influenced many state laws still in effect today. Reversing the tragedy of tobacco industry interference will not be easy. Despite claims that they have changed, tobacco companies continue to promote doubt and controversy, advance devious strategies through powerful lobbyists and front groups, and reward legislative allies with contributions and gifts.

The World Health Organization Framework Convention on Tobacco Control (FCTC) calls on all countries to protect their tobacco control policies from tobacco industry interests. Accomplishing this moral imperative is impossible without monitoring and exposing tobacco industry interference. By taking concerted and sustained action to raise awareness, public health advocates can denormalize lawmakers' acquiescence and vastly improve the legislative climate for enacting best practices in all 50 states. Tobacco companies do not want their interference in lawmaking known. That is exactly why this report is needed.

LIMITATIONS

The Tobacco Industry Interference Index was designed to track implementation of Article 5.3 of the FCTC, the world's first global public health treaty. Article 5.3 addresses the role of the tobacco industry in policymaking; the article and its Guidelines forbid parties to the treaty from including the industry in their policy deliberations. The U.S. has not ratified the FCTC, and is not legally bound by it. However, the U.S. was a full participant during the negotiations, was part of a unanimous vote to adopt the FCTC text by the World Health Assembly, and signed the treaty in 2004, indicating that it intends to ratify and will not undermine the FCTC's goals. Furthermore, the Department of Health and Human Services has indicated that the U.S. is in compliance with the FCTC.

There are two significant limitations to undertaking the Index in the U.S. The first is the scope of domestic policy making. For most countries, public health is regulated at the national level. The points of entry for the tobacco industry in these countries are limited; one legislature, one executive branch, one regulatory ministry or department.

In the U.S., tobacco control policy is addressed at the national, state and local levels. There are thousands of points of entry, and while the tobacco industry is more powerful at the federal and state levels, they or their proxies are consistently present at every level. It was beyond the scope of this project to undertake a thorough survey of every jurisdiction's experience during the period covered by this report. The data collected should be read as a sample of tobacco industry interference rather than a comprehensive tally.

Second, many government-industry interactions that are forbidden under the FCTC are not only legal but constitutionally-protected in the U.S. Industry lobbyists need not hide their efforts, other than to avoid negative publicity. This reality further increases the number of potential data points. It is unlikely that laws governing industry lobbying will change in the near future. Our efforts in the U.S. are therefore meant to shine a light on industry interference and raise the awareness of policy makers.

TOBACCO INDUSTRY INTERFERENCE INDEX FINDINGS

The indicators highlighted in the next section represent common entry points for industry interference as well as the Article 5.3 guidelines of the FCTC that strive to counter them. The scores reflect research and data obtained from documented industry interference in the U.S. between 2017 and 2018.

Each country participating in the Global Tobacco Industry Interference Index is given a score based on their level of implementation of Article 5.3 of the FCTC. The lower the country score the better the ranking. The U.S. currently has an Index score of **72/**100, which indicates a very high level of interference. The tables on the following pages demonstrate U.S. scores for each individual Global Index indicator and reflect the data submitted to the Index between March and May 2019. The Global Index as well as scores for all participating countries can be found here: exposetobacco.org

In June 2019, ASH conducted a survey of state and local advocates representing local, state and national organizations to collect specific examples of their recent experiences with tobacco industry interference to include in this report. Responses obtained from this first survey of its kind and other cited sources describe occurrences of tobacco industry interference in lawmaking between 2017 and 2019 and can be found in each of the respective *"Snapshot"* sections.

LEVEL OF PARTICIPATION IN POLICY DEVELOPMENT

In the U.S. the tobacco industry operates at the federal, state and local levels. Federally, the industry has been invited to weigh in on the Food and Drug Administration's (FDA) regulatory approach to tobacco and e-cigarettes. The FDA Tobacco Products Scientific Advisory Committee is composed of 3 non-voting members who have an identified interest with the tobacco industry including manufacturing (large industry and small business) and growing.[1]

The industry spent over $46 million in federal lobbying alone between 2017 and 2018 and utilized lobbyists and multiple front groups to thwart state and local legislation, including raising the age of purchase to 21 (T21), flavored tobacco (including menthol) and tax bills.[2,3,4,5] Nationwide all 50 states have at least one lobbyist registered to represent a tobacco company.[6] Altria employed at least 409 lobbyists in 49 states in 2017; Reynolds had 257 in 39 states, according to the most recent complete data from the National Institute on Money in Politics.[7] Juul increased its lobbying force from 16 in 2017 to at least 40 in 2018.[8]

In 2017 and 2018, the industry also continued its practice of drafting legislation with pre-emptive language (i.e., removing the right of lower governments to enact stricter regulations) and delaying and weakening state and federal action and authority.

Tobacco Industry Collaboration in Setting and Implementing Tobacco Control Public Health Policies

Indicator	0	1	2	3	4	5
1. The government accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry in setting or implementing public health policies in relation to tobacco control.						X

Tobacco Industry Collaboration Drafting Tobacco Control Policies

Indicator	0	1	2	3	4	5
2. The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry.						X

1 Center for Tobacco Products. "Tobacco Products Scientific Advisory Committee." U S Food and Drug Administration Home Page. January 23, 2018. https://www.fda.gov/advisorycommittees/committeesmeetingmaterials/tobaccoproductsscientificadvisorycommittee/default.htm.
2 Open Secrets. "Tobacco: Lobbying, 2017." OpenSecrets.org. https://www.opensecrets.org/lobby/indusclient.php?id=A02&year=2017.
3 Open Secrets. "Tobacco: Lobbying, 2018." OpenSecrets.org. https://www.opensecrets.org/industries/lobbying.php?cycle=2018&ind=A02.
4 Campaign for Tobacco Free Kids. "Tobacco Industry Interference with State Policy." TI Political Interference in State Policy. https://www.tobaccofreekids.org/assets/factsheets/0389.pdf.
5 Glenza, Jessica, and Juweek Adolphe. "Free-market Groups and the Tobacco Industry – Full Database." The Guardian. https://www.theguardian.com/world/ng-interactive/2019/jan/23/free-market-thinktanks-tobacco-control-polices-database.
6 Matheny JD, Stevens EM, Chen S, Christiansen BA, Kowitt SD, Osman A, Vidrine DJ. The RICO Verdict and Corrective Statements: Catalysts for Policy Change? Tob Regul Sci. 2019;5(3):206-228.
7 The Center for Public Integrity. "Big Tobacco's surprising new campaign to raise the smoking age." USA TODAY and The Arizona Republic. May 23, 2019. https://publicintegrity.org/federal-politics/state-politics/copy-paste-legislate/big-tobaccos-surprising-new-campaign-to-raise-the-smoking-age/.
8 Ibid.

Tobacco Industry Participation in Advisory Bodies that Set Tobacco Control Public Health Policy

Indicator	0	1	2	3	4	5
3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. 1 Never 5 Yes				X		

Tobacco Industry Participation at the WHO Framework Convention on Tobacco Control Conference of the Parties (COP)

Indicator	0	1	2	3	4	5
4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG).	X					

*Note: The U.S. negotiated and signed the FCTC on May 10th, 2004 but has not yet ratified the treaty and is not a party to the FCTC.[9]

SNAPSHOT: HAWAII

In 2018, Hawaii House Bill 1895, an otherwise well-meaning bill to fund needed kidney dialysis centers in the state, contained a tobacco industry provision snuck into the bill behind closed doors without public discussion or review. This provision blocked (preempted) county governments in Hawaii from passing their own laws to reduce tobacco use, including measures addressing the sale of candy-flavored tobacco products and menthol cigarettes that attract kids. The tobacco industry worked in secret to include this damaging last-minute provision, showing how far the industry is willing to go to preserve its profits at the expense of kids and lives. As adopted, HB1895 severely impedes future progress to save more lives from tobacco use. Preemption measures have long been a favored tobacco industry tactic for blocking tobacco control efforts because the industry knows that localities have played a critical role in reducing tobacco use in Hawaii and across the nation.[10]

9 United Nations. United Nations Treaties. Treaties. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=_en
10 Campaign for Tobacco Free Kids. "Hawaii Health Law Includes Last-Minute Provision Benefiting Big Tobacco; Legislature Must Repair Damage." Joint Statement by Matthew L. Myers, President, Campaign for Tobacco-Free Kids; Harold P. Wimmer, National President and CEO, American Lung Association; Nancy Brown, CEO, American Heart Association. July 13, 2018. https://www.tobaccofreekids.org/press-releases/hawaii-health-law-includes-last-minute-provision-benefiting-big-tobacco-legislature-must-repair-damage.

SNAPSHOT: ARKANSAS

A 2019 Arkansas law raised to 21 the legal age for tobacco purchases. However, it also included a tobacco-industry-supported preemptive clause that severely undermines community-level efforts to reduce the toll of tobacco. According to the Arkansas Center for Health Improvement, "The tobacco lobby had a pretty strong presence. We couldn't overcome those forces."

Based on data from the National Institute on Money in Politics, the primary sponsors of the bill had accepted a combined $6,400 in campaign contributions from tobacco companies. Also, state records indicate that a lobbyist for Juul had given $18,000 to balls hosted by legislative leaders.[11]

SNAPSHOT: MINNESOTA

Since January 1, 2017, Minnesota has passed more than 50 local tobacco policies and worked to advance and/or defeat numerous statewide legislative proposals. In almost every case, the tobacco industry was present. However, the intensity and visibility of their engagement varied dramatically.

The tobacco industry surfaced in 2017 as communities started to contemplate menthol/flavor restrictions and Tobacco 21 policies. In particular, R. J. Reynolds and Altria both hired new lobbyists, public relations consultants and grassroots organizers with connections to local communities and elected officials that were considering these cutting-edge policies.

Before the 2019 Legislative Session, JUUL also expanded their lobbying presence in Minnesota and across the country. They hired a Midwest government relations manager who lives in Minnesota. They also contracted with a reputable lobbying firm - Larkin Hoffman - to represent their interests at the state and local level.

In 2017 and 2018, the Big Tobacco companies (RJR and Altria) and their allies were generally opposed to the Tobacco 21 bills that were introduced at the State Legislature. However, they indicated they would be willing to support a Tobacco 21 bill that included preemption, which was strongly opposed by the tobacco control coalition.[12]

11 The Center for Public Integrity. "Big Tobacco's surprising new campaign to raise the smoking age." USA TODAY and The Arizona Republic. May 23, 2019. https://publicintegrity.org/state-politics/copy-paste-legislate/big-tobaccos-surprising-new-campaign-to-raise-the-smoking-age/..
12 Action on Smoking and Health. "U.S. Tobacco Industry Interference Survey 2019." Survey. June 2019.

INDUSTRY-RELATED CSR ACTIVITIES

Corporate social responsibility (CSR) is an opportunity for the private sector to positively affect the communities they operate in and build public goodwill. Today, social responsibility for individuals, organizations, corporations, and more has become a driving force and tool to manage reputation. The tobacco industry is similar yet different. They fund certain charitable causes, self-promote their donations, and cleverly refer to this marketing as CSR. But there is no amount of charitable goodwill the tobacco industry can produce to mitigate the fact that their products kill.

In 2017 and 2018 few specific examples of government agencies or its officials endorsing, supporting, forming partnerships with or participating in so-called CSR activities organized by the tobacco industry could be identified.

Tobacco Industry Participation in So-Called CSR Activities

Indicator	0	1	2	3	4	5
5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activites organized by the tobacco industry. B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry for so-called CSR.	X					

SNAPSHOT: OKLAHOMA

In 2017, at least five proposals were introduced in the Oklahoma State Legislature to increase the price of cigarettes by $1.50 per pack. Tobacco industry lobbyists actively opposed these efforts. According to the Tulsa World editorial board, "the army of big tobacco company lobbyists are pushing the false notion that a sharp increase in the cigarette tax would so reduce the number of people smoking that it would cut the amount of money coming into the state treasury. But history shows that wouldn't be the case. The only people we've heard say otherwise are those making money off cigarettes."[13] When it became clear a cigarette tax increase was likely to be approved, tobacco company lobbyists and the Oklahoma Council on Public Affairs (OCPA) cried foul over the amount of the increase. OCPA had accepted multiple donations from Altria, parent company of Philip Morris USA. In addition to fighting cigarette taxes, the OCPA used misinformation to advocate for redirecting future tobacco settlement payments from a public endowment that funds tobacco prevention and cessation programs.[14]

13 Tulsa World editorial: A morally courageous, fiscally rational act in the Oklahoma Legislature. February 20, 2017. https://www.tulsaworld.com/archive/tulsa-world-editorial-a-morally-courageous-fiscally-rational-act-in/article_a09a5aa5-453e-534e-98c2-8a8d4a52336a.html.
14 Action on Smoking and Health. "U.S. Tobacco Industry Interference Survey 2019." Survey. June 2019.

BENEFITS TO THE TOBACCO INDUSTRY

In 2017 and 2018, the FDA extended the ingredient listing deadline for manufacturers as well as the ingredient compliance deadlines for newly deemed tobacco products.[15] The FDA also delayed the premarket review of e-cigarettes.[16] The FDA e-cigarette plan exempts mint and menthol from proposed restrictions and the US government provides crop insurance premium subsidies to tobacco farmers.[17] There are also common state level exemptions for T21 (including the members of the military), grandfathering provisions and government-sponsored compliance checks.[18]

Tobacco Industry Receiving Extensions/Postponement for Tobacco Control Law Implementation

Indicator	0	1	2	3	4	5
6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month).					X	

Tobacco Industry Given Privledges

Indicator	0	1	2	3	4	5
7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry.						X

In 2018 – 2019, Altria and other cigarette and e-cigarette company lobbyists spent hundreds of thousands of dollars to influence legislators on a Statewide Tobacco Free School Property Policy. Two legislators pushed for the bill to be debated so it could not be voted on. Surveys and polls showed that the majority of Kentuckians supported a comprehensive statewide Tobacco Free School policy but two legislators opposed the bill, creating a delay in its passing.[19,20,21]

15 FDA. "Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule (Revised)*." Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule. March 2019. https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM557716.pdf.
16 Truth Initiative. "6 Takeaways from the FDA's E-cigarette and Flavored Tobacco Plan." Truth Initiative. November 21, 2018. https://truthinitiative.org/research-resources/emerging-tobacco-products/6-key-takeaways-new-fda-plan-e-cigarettes-and-other.
17 Ibid.
18 ASTHO. "Tobacco 21 Legislative Policy Analysis." http://www.astho.org/ASTHOBriefs/Tobacco-21-Legislative-Policy-Analysis/.
19 KY Government. Statewide Tobacco Free School Property Policy. https://apps.legislature.ky.gov/recorddocuments/bill/19RS/hb11/orig_bill.pdf.
20 Patrick, Melissa. "Tobacco-Free Schools Bill Hits a Snag; Prospects Still Appear Favorable, but Floor Leader Carney Says 'Nothing Is Certain'." January 1, 1970. http://kyhealthnews.blogspot.com/2019/02/tobacco-free-schools-bill-hits-snag.html.
21 Action on Smoking and Health. "U.S. Tobacco Industry Interference Survey 2019." Survey. June 2019.

FORMS OF UNNECESSARY INTERACTION

In 2017 and 2018, the tobacco industry sponsored and funded events for both federal and state politicians. Altria gave $500,000 to President Trump's inaugural activities.[22] Multiple states relied heavily on unproven tobacco industry sponsored public relations programs to address tobacco sales to minors.

Tobacco Industry Sponsoring Events

Indicator	0	1	2	3	4	5
8. Top level government officials (such as President/ Prime Minister or Minister) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests.						X

Tobacco Industry Assistance with Enforcement

Indicator	0	1	2	3	4	5
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors (including monetary contribution for these activities).					X	

Government Partnership with Tobacco Industry

Indicator	0	1	2	3	4	5
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry.						X

22 Center for Public Integrity. "Donald Trump's Inauguration Fueled by Tobacco, Oil and Drug Company Money – Center for Public Integrity." October 16, 2015. https://publicintegrity.org/federal-politics/donald-trumps-inauguration-fueled-by-tobacco-oil-and-drug-company-money/.

TRANSPARENCY

At the national level, the FDA does not have policies in place to (1) disclose all public comments on FDA dockets and (2) to provide copies of communications between the FDA and tobacco industry representatives. In most states, lawmakers are not typically required to disclose the full nature of their informal interactions with lobbyists.[23] That being said, there are other government disclosure rules such as annual tobacco company registration under The Family Smoking Prevention and Tobacco Control Act[24], registration of firms with in-house lobbyists when income/expense minimums are met under the Federal Lobbying Disclosure Act[25], permit requirements under the Alcohol and Tobacco Tax and Trade Bureau (ATB)[26] and permit requirements for businesses related to the manufacture of tobacco under Chapter 52 of the Internal Revenue Service (IRS) Code. All 50 states do provide public access to registration information for lobbyists and/or entities who contract for lobbying services.[27]

Government Disclosure of Tobacco Industry Meetings

Indicator	0	1	2	3	4	5
11. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation.						X

Tobacco Industry Registration Requirements

Indicator	0	1	2	3	4	5
12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists.			X			

23 Public Health Law Center. "Fall 2013 Legal Update - Publichealthlawcenter.org." https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-legal-update-fall-2013.pdf.
24 Center for Tobacco Products. "Compliance, Enforcement & Training - Family Smoking Prevention and Tobacco Control Act - An Overview." U S Food and Drug Administration Home Page. https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/family-smoking-prevention-and-tobacco-control-act-overview.
25 U.S. Senate. "Public Disclosure." U.S. Senate: Public Disclosure. April 12, 2019. https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm#lobbyingdisc=lda.
26 Nrc. "Tobacco Manufacturer." TTB. https://www.ttb.gov/tobacco/manufacturer.
27 Matheny JD, Stevens EM, Chen S, Christiansen BA, Kowitt SD, Osman A, Vidrine DJ. The RICO Verdict and Corrective Statements: Catalysts for Policy Change? Tob Regul Sci. 2019;5(3):206-228.

CONFLICT OF INTEREST

The industry has spent millions in political campaign contributions including over $5 million in federal level campaign contributions during the 2018 election cycle alone.[28] The industry has also infiltrated state governments, with former lobbyists and directors taking government positions. Dr. Brenda Fitzgerald, the former Director of the Centers for Disease Control and Prevention (CDC) stepped down from her position when it was revealed that she invested in tobacco and drug companies, which was deemed inconsistent with the mission of the CDC.[29]

Tobacco Industry Campaign Contributions

Indicator	0	1	2	3	4	5
13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. **1 Never 5 Yes**						X

Retired Government Officials Work for Tobacco Industry

Indicator	0	1	2	3	4	5
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General).		X				

Current Government Officials Work for Tobacco Industry

Indicator	0	1	2	3	4	5
15. Current government officials and relatives hold positions in the tobacco business including consultancy positions.					X	

28 Open Secrets. "Tobacco: Long-Term Contribution Trends." OpenSecrets.org. https://www.opensecrets.org/industries/totals.php?cycle=2018&ind=A02.
29 Bloomberg.com. " CDC DIrector Steps Down Amid Tobacco Stock Scandal." https://www.bloomberg.com/news/articles/2018-01-31/trump-s-cdc-director-steps-down-amid-tobacco-stock-scandal.

PREVENTIVE MEASURES

The FDA Tobacco Scientific Advisory Committee provides links to agendas, rosters, webcasts, presentations, public submissions, minutes and questions for their meetings. Federal oversight is also conducted by several government agencies (for example FDA, IRS, CDC, ATB). However, a government code of conduct for public officials when dealing with the industry, policies disallowing the acceptance of contributions/gifts from the tobacco industry to government agencies and officials and programs to help raise awareness within government departments on FCTC Article 5.3 guidelines could not be identified.

Disclosing Interactions with Tobacco Industry

Indicator	0	1	2	3	4	5
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives.			X			

Government Code of Conduct

Indicator	0	1	2	3	4	5
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.						X

Federal Oversight of Tobacco

Indicator	0	1	2	3	4	5
18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities.			X			

SNAPSHOT: UTAH

In 2019, tobacco lobbyists worked with legislators and legislative staff to insert language into T21 legislation (HB 324 S01). The language inserted would have created several preemption barriers for local municipalities. These included preempting flavor bans/restrictions, marketing and advertising, and others.

Again in 2019, tobacco tax (specifically e-cigarettes) legislation was thwarted. After 5 years of running an e-cigarette tax the state finally had traction behind the bill. After it passed the House with a 2:1 majority it was held up in the Senate where tobacco lobbyists worked with key members of leadership to hold the bill where it died in the last few days.[30,31]

From: King, Mark A. (ALCS) <Mark.A.King@altria.com>
Sent: Monday, February 4, 2019 12:43 PM
To: Hogan, John (Jack) J <HoganJ@RJRT.com>
Subject: UT Preemption Language

Jack – I had my law support look at the preemption language and they just had one small edit to make it conform to current statute (see attached). We agree this would strengthen the current preemption law. You around later today to talk about this?

Thanks,
Mark

Mark King
Altria Client Services LLC
Senior Director, State Government Affairs
Cell: 678-232-5200

From: "Hogan, John (Jack) J" <HoganJ@RJRT.com>
Date: February 4, 2019 at 1:50:31 PM MST
To: "Nancy Sechrest (nsechrest@msn.com)" <nsechrest@msn.com>, Nate Sechrest <nsechrest@gmail.com>, "Nancy Sechrest (nsechrest@msn.com)" <nsechrest@msn.com>
Subject: FW: UT Preemption Language

Nancy and Nate:

Attached please find preemption language slightly modified by Altria. RAI supports this modified preemption language.

Please coordinate with your Altria colleagues to provide this language to the Age 21 sponsor.

Thanks,

Jack

EXAMPLES OF TOBACCO INDUSTRY CORRESPONDENCE REGARDING LEGISLATION

30 Gehrke, Robert. "Gehrke: Why Did the Legislature Vote to Increase the Smoking Age, but Not to Tax Vaping?" The Salt Lake Tribune. Accessed September 26, 2019. https://www.sltrib.com/news/2019/03/25/gehrke-why-did/.
31 Action on Smoking and Health. "U.S. Tobacco Industry Interference Survey 2019." Survey. June 2019.

FCTC Article 5.3 Awareness

Indicator	0	1	2	3	4	5
19. The government has a program / system/ plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines.						X

Tobacco Industry Contribution Policy

Indicator	0	1	2	3	4	5
20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives.						X

In 2019 members of the Tobacco Free Kansas Coalition were approached by a lobbyist for Juul during the legislative session in the Capital. The representative said they were supportive of T21 legislation and wanted to participate with the Coalition in their effort to introduce T21.

A coalition of Kansas State Department of Education, Kansas Department of Health and Environment, Kansas teacher's union, American Lung Association, Tobacco Free Kansas and others began meeting to formulate a response to e-cigarette use by youth. The representative of JUUL asked to be included in this group - the request was denied.[32]

32 Action on Smoking and Health. "U.S. Tobacco Industry Interference Survey 2019." Survey. June 2019.

TOBACCO INDUSTRY INTERFERENCE AND ELECTRONIC CIGARETTES

As this report goes to press, the U.S. is in the midst of a national conversation about the regulation of electronic cigarettes. This attention was heightened by the first confirmed deaths from using vaping devices starting August 23, 2019 and the sudden appearance of hundreds of cases of mysterious lung illnesses connected to vaping. Several jurisdictions have temporarily banned the sale of flavored or, in some cases, all electronic cigarettes, and there are dozens of bills at the local, state, and national level, aiming to end what is being called a youth vaping epidemic.

> "WE ARE STILL LIVING WITH – AND DYING FROM – TOBACCO INDUSTRY INTERFERENCE OVER THE LAST 75 YEARS. ALLOWING OURSELVES TO BE FOOLED AGAIN BY PERMITTING E-CIGARETTE COMPANIES A VOICE IN PUBLIC HEALTH REGULATION WOULD BE SHAMEFUL."

The information in this report is pertinent to electronic cigarettes for two reasons. First, e-cigarette companies are tobacco companies. The FDA defines them this way, and the nicotine in e-cigarettes is derived from tobacco leaf (e-cigarette companies have taken legal action to prevent the FDA from regulating their products in the same manner as tobacco cessation aids). Furthermore, in many cases, they are literally the same company. Last year, Altria, one of the world's largest cigarette companies, purchased a 35% share in Juul Labs, the number one vaping supplier in the U.S. and in September 2019, the CEO of Juul Labs was replaced by an Altria (previously Philip Morris USA) executive.

Second, the e-cigarette industry is following the tobacco industry playbook in seeking to block regulations of their product. Their lobbyists are extremely active on Capitol Hill and in many state capitals fighting against any proposed legislation that might limit the sales of their products or the profits of their companies. Political campaign donations are flowing. Scores of pro-vaping groups have appeared on social media and elsewhere. While some are undoubtedly interested citizens, others are paid front groups for e-cigarette companies. Juul has been particularly active. The company created the JUUL Advisory Council for Youth Prevention, which mirrors many similar efforts by cigarette companies in the past to appear as if Juul is part of the solution, rather than a source of the problem. Juul has also run advertisements in newspapers, on television and on social media, stating firmly that their products are aimed entirely at adult smokers, not children, while marketing child-friendly flavors and product designs.

The nature of the health threat from electronic cigarettes is not entirely known. Certainly, combustible cigarettes remain the most dangerous consumer product in history. We are still living with – and dying from – tobacco industry interference over the last 75 years. Allowing ourselves to be fooled again by permitting e-cigarette companies a voice in public health regulation would be shameful. Repeating the mistakes that we as a society made with cigarettes has deadly consequences; consequences that we have unfortunately already begun to suffer. We cannot allow another generation to be held hostage by the addiction, disease, and death spread by the tobacco industry.

CONCLUSION & RECOMMENDATIONS

Tobacco kills over 480,000 family members, friends and neighbors in the U.S. each year. Tobacco companies not only make lethal products, they also block valiant efforts to reduce their toll. We will never know how many millions of lives could have been saved if not for decades of industry interference in lawmaking. We do know (from internal documents made public by court order) that tobacco companies have led successful efforts to defeat—separately and in all 50 states—legislation that would have restricted public smoking, raised tobacco taxes, limited tobacco marketing, developed tobacco prevention or research, and reduced youth access to tobacco. When they cannot stop a good bill, tobacco companies fight to weaken it and add self-serving clauses (e.g., preemption of local ordinances). Despite pockets of progress, all states' tobacco control laws fall far short of best practices.

We also know that support for effective tobacco control policy is high. Even most smokers want laws requiring all workplaces—including restaurants and bars—to be completely smoke-free. Most smokers also agree that lawmakers should not trust tobacco companies; not surprising given that the vast majority became addicted in their youth and are still trying to quit. Few believe that tobacco companies are now taking responsibility for the harm caused by their products.

> "AS AN ETHICAL MATTER OF PRINCIPLE AND REFLECTING STRONG PUBLIC OPINION, LAWMAKERS SHOULD REFUSE ALL TOBACCO INDUSTRY INTERFERENCE AND IMMEDIATELY WORK TO REMEDY PAST HARMS."

In every state, there is at least one lobbyist representing a tobacco company named in the ongoing federal racketeering case. Much of their attention (including campaign contributions and gifts) tends to target legislative leaders or others in positions to help advance their objectives, including sponsoring tobacco industry bills, weakening public health bills, and setting agendas. Fortunately, tobacco control policy is not a partisan issue. Most lawmakers across the political spectrum strongly support effective tobacco control policies.

So, what can be done? The United States negotiated and signed the FCTC on May 10th, 2004, but unfortunately the U.S. has not yet ratified the treaty and is not a party to the FCTC. Government officials and advocates should encourage the U.S. to become a party. However, regardless of whether the U.S. ever ratifies the treaty, the FCTC still provides excellent lessons and examples that federal, state, and local governments can adopt in order to further protect the health of the U.S. population. As an ethical matter of principle and reflecting strong public opinion, lawmakers should refuse all tobacco industry interference and immediately work to remedy past harms. Raising awareness of tobacco industry interference in lawmaking should become a key component of the tobacco control "vaccine" promoted by

public health advocates (along with effective policies and programs). Many of the most crucial advancements in tobacco control in the U.S. began at the local level and national ratification of the FCTC is not a prerequisite for greater action. Some scalable and adaptable interventions include:

1. **Track lobbying.** While a complete ban on lobbying is prohibited in the U.S., there are measures that states can undertake to help prevent tobacco industry interference. For example, states should improve lobbying disclosure by requiring timely reporting of all expenditures for or against tobacco-related legislation.

2. **Limit CSR.** A complete ban of industry CSR activities would be prohibited by the U.S. Constitution; however, states can enforce some limits. Maryland, for example, passed the first "benefit corporation" legislation in the U.S. in the spring of 2010.[33]

3. **Divest from Tobacco.** Several states and localities have already complied with Article 5.3 requirements to divest from tobacco; others should follow.

33 Md. Code Ann., Corps & Ass'ns §§5-6C-01 to 08 (2010).

4. **Adopt official code of conduct/conflict of interest policies.** States should reject partnerships with the tobacco industry and adopt a code of conduct for their agencies and officials when interacting with the tobacco industry.

5. **Increase transparency.** Government officials should be required to report interactions with the tobacco industry and its affiliates. The transcripts of meetings with the industry should be made public. Lobbyists should be required to divulge what proportion of their services or their campaign contributions, meals or gifts are financed by the tobacco industry or its affiliates.

6. **Educate lawmakers.** Advocates can share fact sheets to inform lawmakers of key findings from the federal racketeering case. They can also identify and distribute state-specific quotes from internal tobacco industry documents illustrating examples of historical interference in each state.

7. **Leverage support.** Advocates can leverage strong public support for lawmakers to correct all current laws influenced by tobacco companies (including preemption and a myriad of other harmful statutes).

CHECKLIST

- ✓ Track Lobbying
- ✓ Limit CSR
- ✓ Divest from Tobacco
- ✓ Adopt Official Code of Conduct/Conflict of Interest Policies
- ✓ Increase Transparency
- ✓ Educate Lawmakers
- ✓ Leverage Support
- ✓ Raise Awareness

8. **Raise Awareness.** Advocates and lawmakers can employ earned media strategies such as press events, op-eds and resolutions to raise awareness of tobacco industry interference and the need to enact effective policies.

Calling attention to tobacco industry interference can help reinvigorate stalled tobacco control initiatives and accelerate adoption of essential policies. Just as community norms change after enacting a smoke-free workplace law, norms will change within legislative bodies after holding tobacco companies and their allies publicly accountable. The pace at which this change is fully accomplished will directly correspond with the pace at which the tremendous public health benefits accrue. All families, friends, and neighbors win. Only tobacco companies lose.

RELATED INFORMATION & RESOURCES

Action on Smoking and Health. Publications

Americans for Nonsmokers' Rights. United States v. Philip Morris USA Inc., et al.: The Case against Big Tobacco

Campaign for Tobacco Free Kids. Tobacco Industry Interference with State Policy

Campaign for Tobacco Free Kids. Industry Watch: Policy Interference

Campaign for Tobacco Free Kids. Big Tobacco: Exposing its Deadly Tactics

Campaign for Tobacco Free Kids. U.S. Racketeering Verdict: Big Tobacco Guilty as Charged

Campaign for Tobacco Free Kids. Corrective Statements: Ads and Social Media

Minnesotans for a Smoke-free Generation. Big Tobacco Lies have Served them Well – Until Now

Oklahoma Tobacco Research Center. Policy Briefs and White Papers

Public Health Law Center. United States v. Philip Morris (DOJ Lawsuit)

Public Health Law Center. Racketeers at the Table: How the Tobacco Industry is Subverting the Public Health Purpose of Tobacco Regulation

Public Health Law Center. The Verdict Is In: Findings from United States v. Philip Morris

Stopping Tobacco Organizations and Products. Crooked Nine: Nine Ways the Tobacco Industry Undermines Health Policy

UCSF Truth Tobacco Industry Documents. Topical Collection: Tobacco Industry Influence in Public Policy

UCSF Center for Tobacco Control Research and Education. Reports on State Tobacco Policy Making

United States Department of Justice. Litigation against Tobacco Companies

World Health Organization. Tobacco Industry Interference with Tobacco Control

World Health Organization. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the Protection of Public Health Policies with Respect to Tobacco Control from Commercial and Other Vested Interests of the Tobacco Industry

HQ@ASH.ORG
202-659-4310
1250 CONNECTICUT AVENUE NW
SEVENTH FLOOR
WASHINGTON , DC 20036

@ASHORG
@ASHGLOBALACTION

HTTPS://ASH.ORG/TOBACCOINTERFERENCE

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