

U.S. COMMERCIAL TOBACCO POLICY AND ENFORCEMENT DURING COVID-19 SHUTDOWNS

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Equity



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TODAY'S AGENDA

Topic: U.S. Commercial Tobacco Policy and Enforcement During COVID-19 Shutdowns

1. A Public Health Crisis Within a Public Health Crisis: The COVID-19 Pandemic and Racism
2. COVID-19 Responses: State Executive Orders, Authority to Respond, and Enforcement in the Commercial Tobacco Control Context
3. Policy Implications for the Future:
Commercial Tobacco Control Challenges and Opportunities in the COVID-19 Era
4. Resources
5. Q & A

A PUBLIC HEALTH CRISIS WITHIN A PUBLIC HEALTH CRISIS: THE COVID-19 PANDEMIC AND RACISM

RACISM: A PUBLIC HEALTH CRISIS



“Racism is detrimental to health in all its forms.”

American Medical Association,
May 29, 2020

Photo Credit: Olivier Douliery/AFP/Getty Images <https://www.rollingstone.com/culture/culture-news/racism-public-health-crisis-1014162/>

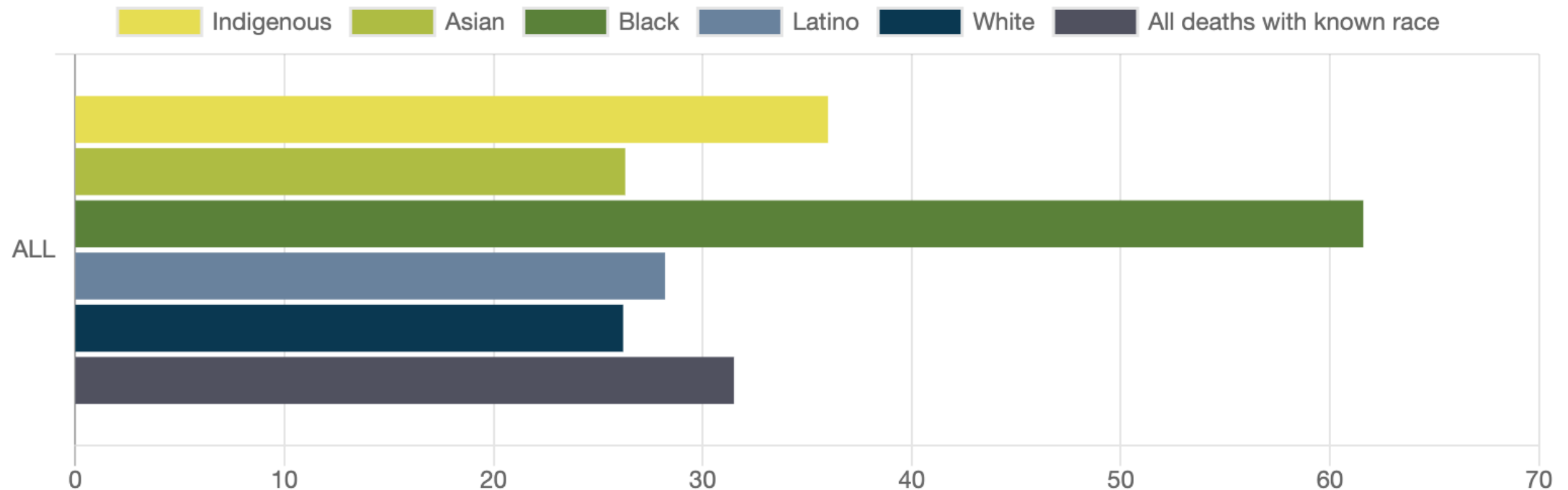
RACISM: A SOCIAL DETERMINANT OF HEALTH

Economic Stability	Neighborhood and Physical Environment	Education	Food	Community and Social Context	Health Care System
Employment Income Expenses Debt Medical bills Support	Housing Transportation Safety Parks Playgrounds Walkability Zip code / geography	Literacy Language Early childhood education Vocational training Higher education	Hunger Access to healthy options	Social integration Support systems Community engagement Discrimination Stress	Health coverage Provider availability Provider linguistic and cultural competency Quality of care
Health Outcomes Mortality, Morbidity, Life Expectancy, Health Care Expenditures, Health Status, Functional Limitations					

COVID-19 RACIAL DISPARITIES UNITED STATES

COVID-19 DEATHS PER 100,000 PEOPLE OF EACH GROUP, THROUGH JUNE 9, 2020

Source: APM Research Lab (<https://www.apmresearchlab.org/covid/deaths-by-race>)

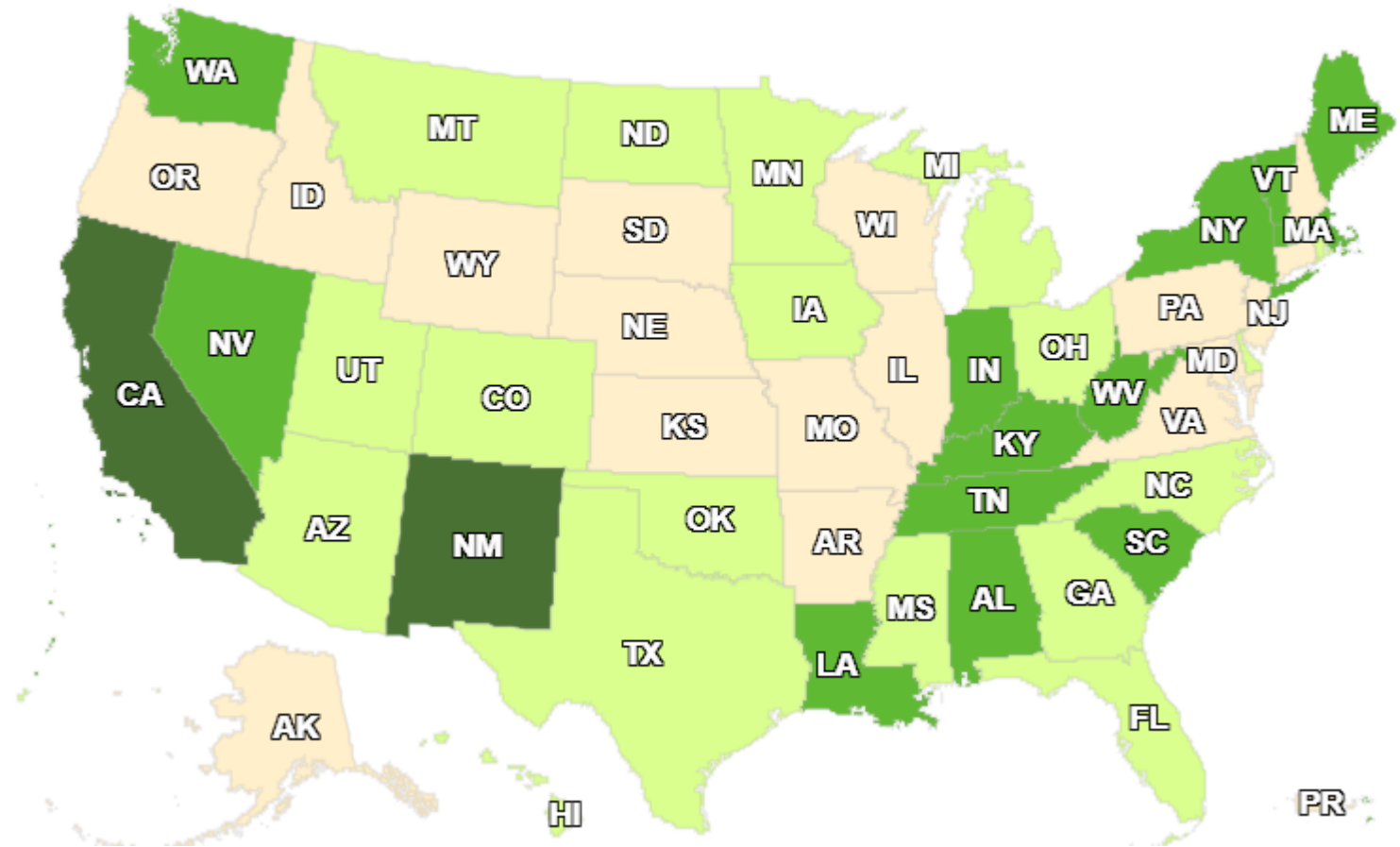


COVID-19 RESPONSES: STATE EXECUTIVE ORDERS, AUTHORITY TO RESPOND, AND ENFORCEMENT IN THE COMMERCIAL TOBACCO CONTROL CONTEXT

STATE, TRIBAL, AND LOCAL RESPONSES

- **States**
 - Executive Orders
 - Declaration of State of Emergency
 - Declaration of Public Health Emergency
 - Administrative Orders
 - Stay at Home Orders
 - Directive
 - Guidance
- **Sovereign Tribal Nations**
 - Many have taken their own actions to protect the public health in their jurisdictions
- **Local jurisdictions**
 - Many have taken their own steps (within their power) to protect public health

STATEWIDE STAY AT HOME ORDERS AS OF JUNE 23, 2020



Navajo Nation declares Public Health State of Emergency for COVID-19 coronavirus



What is Navajo Department of Health doing?

The Navajo Department of Health (NDOH) is authorized through Navajo Nation enabling legislation CO-50-14 to ensure that quality comprehensive and culturally relevant health care and public health services are provided on the Navajo Nation. The NDOH is part of the Navajo Nation Executive Branch.

On February 3, 2020, the Navajo Department of Health drafted the Incident Objectives



AUTHORITY AND LIMITATIONS

- Authority for Executive Action
 - Limited by legislature
 - Limited in duration
- Limitations on Local Action (or preemption)
 - Most states set a floor—allowing local jurisdictions to be more protective
 - A handful attempted to set a ceiling and were met with opposition

STATE OF MINNESOTA
Executive Department



Governor Tim Walz

Emergency Executive Order 20-20

Directing Minnesotans to Stay at Home

I, **Tim Walz**, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

LITIGATION

Wisconsin Supreme Court Strikes Down Stay-at-Home Order

The decision, by a 4-to-3 majority, was a high-profile challenge of the emergency authority of a statewide official during the coronavirus pandemic.



EXECUTIVE ORDERS

GENERAL COMPONENTS

- Defined **essential vs. non-essential businesses, services, and workers**
 - Most states followed the general guidance of the US Department of Homeland Security's Cybersecurity and Infrastructure Security Agency's (CISA) ["Guidance on the Essential Critical Infrastructure Workforce"](#)
 - CISA guidance was expanded upon in the order and definitions refined in subsequent orders or guidance interpreting the order
- Defined **which activities are allowed or not allowed**
 - Businesses: Complete closures, remote work, allowing "minimum basic operations," allowing delivery/curbside pick-up/shipping
 - Travel

TOBACCO SHOPS: ESSENTIAL VS. NON-ESSENTIAL (IOWA)



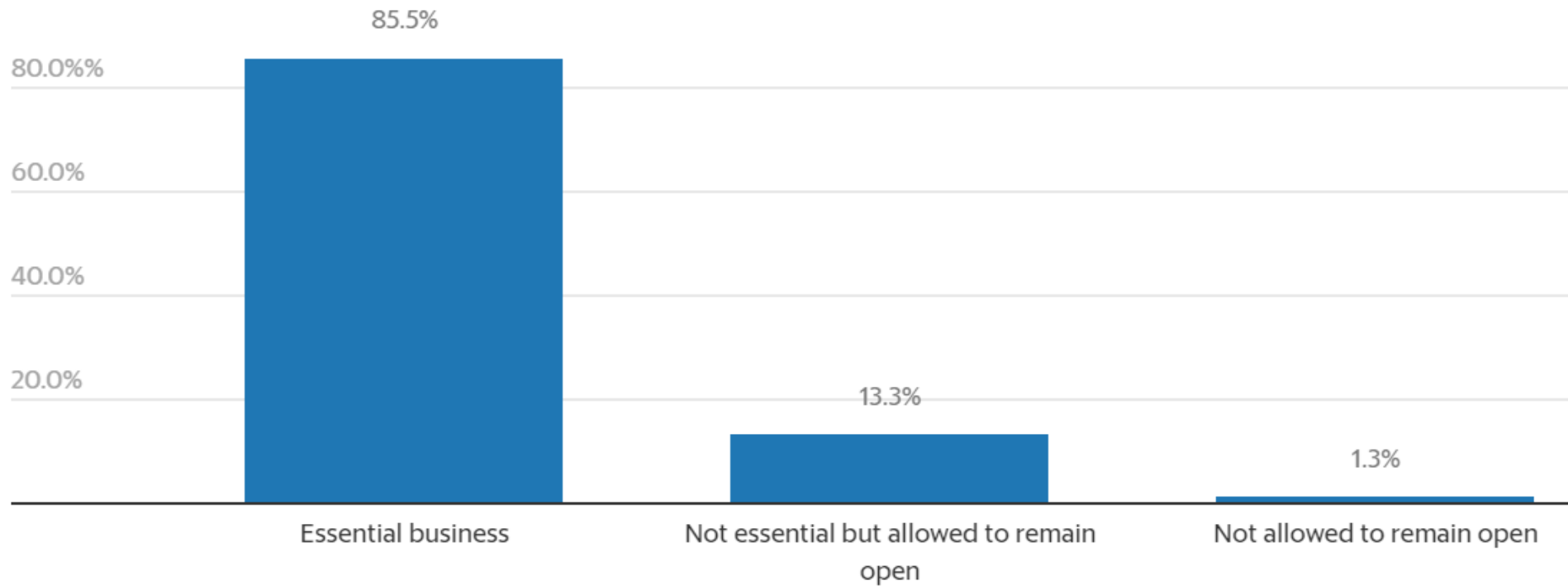
A retail establishment that may be directly accessed from outside the mall is not required to close by this paragraph.

B. Tobacco or vaping stores: All tobacco, cigarette, cigar, or vaping stores shall be closed.

TOBACCO SHOPS: ESSENTIAL VS. NON-ESSENTIAL (NORTH CAROLINA)

OPEN FOR BUSINESS?

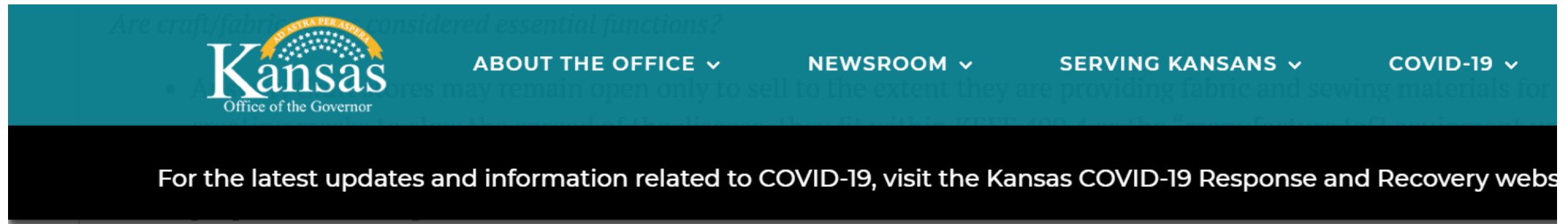
N.C. Department of Revenue approved nearly all requests to remain open during the pandemic.



Data from 3/27 through 4/7

Chart: Gavin Off • Source: NC Department of Revenue • [Get the data](#)

TOBACCO SHOPS: ESSENTIAL VS. NON-ESSENTIAL (KANSAS)



Are vape and smoke shops considered essential functions?

- Answer: Yes, nicotine and CBD sales are permissible under KEFF 400.6 and 300.20 respectively.

EXECUTIVE ORDERS

GENERAL COMPONENTS

Enforcement provisions

- **Lack of clarity**
 - **who** is required to enforce the orders?
 - **how** are the orders to be enforced?
 - **what** exactly are they enforcing?
- **Risk of disparate enforcement**
- **Bottom Line:** Need for direction from state and local agencies to guide enforcement



April 3, 2020

NOTICE

Cigarette/Tobacco Products Shop License Holder:

On March 25, 2020, Governor Walz issued a Stay at Home order (Executive Order 20-20) in response to the COVID-19 pandemic. The Order directed all persons living within the State of Minnesota to stay home through Friday, April 10, 2020 at 5:00 p.m. except to engage in certain activities and critical sector work. Workers performing critical sector work are *exempt* from portions of the Order so that they may travel to and from their critical sector workplace.

On March 31, 2020 clarification was added to the Order plainly stating, "workers supporting tobacco and vaping -product shops are not exempted." As such your tobacco products shop cannot be staffed and therefore must remain closed until Friday, April 10, 2020 at 5:00 p.m. or as otherwise extended by Governor Walz.

EXECUTIVE ORDERS EVOLVING LANDSCAPE AS STATES “OPEN UP”

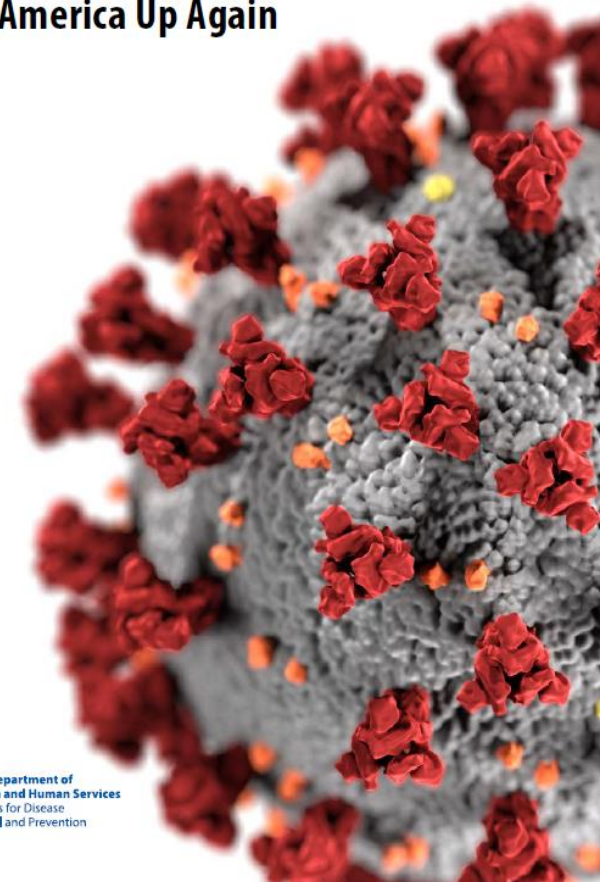
- Guiding principle should be health—what will best protect public health, which has many dimensions
 - physical health
 - preserve health care system capacity
 - mental health
 - economic health
- CDC’s guidance

**CDC Activities and Initiatives Supporting the
COVID-19 Response and the President’s Plan
for Opening America Up Again**

May 2020



U.S. Department of
Health and Human Services
Centers for Disease
Control and Prevention



POLICY IMPLICATIONS FOR THE FUTURE: COMMERCIAL TOBACCO CONTROL CHALLENGES AND OPPORTUNITIES IN THE COVID-19 ERA

CHALLENGES AND OPPORTUNITIES

Challenge 1: Point of sale restrictions not adequate to prevent access to commercial tobacco products.

- **Opportunities:**
 - Strengthen age verification practices/requirements
 - Compliance checks—protect safety of decoys and ensure process continues
 - Restrict or prohibit delivery/curbside pick up
 - Restrict or prohibit online sales
 - Reduce the density of tobacco retailers
 - Remove products from the market



CHALLENGES AND OPPORTUNITIES

Challenge 2: Targeting of Black, Indigenous, people of color, and LGBTQ communities by the tobacco industry

– **Opportunities:**

- End flavored tobacco product sales to protect the health of populations most vulnerable to the pandemic
- FDA: prohibit menthol in cigarettes and all other tobacco products
- State and local: prohibit the sale of all flavored tobacco products (e.g., Massachusetts; Aspen, Oakland)
- Develop culturally specific programs and services



CHALLENGES AND OPPORTUNITIES

Challenge 3: Recession and budget cuts proposed to commercial tobacco programs that will see increasing demand

– **Opportunities:**

- Tax commercial tobacco products to help fund work
- Even greater need to fund public health programs that protect health
- Pandemic should trigger **BOLDER** commercial tobacco control policies



CHALLENGES AND OPPORTUNITIES

Challenge 4: Increased exposure to secondhand smoke due to stay at home orders

– **Opportunities:**

- Smoke-free multiunit housing policies
- Reopening businesses as smoke-free
- Comprehensive, accessible, and culturally competent cessation support



CHALLENGES AND OPPORTUNITIES

Challenge 5: Industry using COVID-19 as an excuse to delay important commercial tobacco control policies due to “hardship” (graphic warning labels and flavor restriction policies)

– **Opportunities:**

- Given the health disparities illuminated by COVID-19 and the greater risk to people who smoke and suffer from chronic diseases, this is the time to expedite and ramp up policies that protect health



CHALLENGES AND OPPORTUNITIES

Challenge 6: Industry using corporate philanthropy and racial equity statements to distract from the facts

– **Opportunities:**

- Continue work to expose the practices and devastating impact of an industry that targets the very people who are most vulnerable to the worst outcomes and incidence of COVID-19

SILENCE IS NOT AN ANSWER, AND WE ARE TAKING ACTION.

From the Philip Morris USA Family:

Many smokers know our cigarette brands but are not as familiar with the company and people who make them. We live and work in Richmond, Virginia, where our headquarters and factory are located. And recently our hometown, much like many of yours across the country, has come together to stand up to the ongoing injustice occurring at a local and global level.

At Philip Morris USA, we do not stand for any form of racism, violence or inequality against the Black community. We are one community. We stand for freedom, respect and equality. We stand behind our family and are in this together to make change for the better.

CHALLENGES AND OPPORTUNITIES

Challenge 7: Increased commercial tobacco use from social isolation, trauma, job loss, etc.

– **Opportunities:**

- Comprehensive, accessible, and culturally competent cessation support




CHALLENGES AND OPPORTUNITIES

Challenge 8: Schools and workplaces changing policies and practices as they adapt to the pandemic




– **Opportunities:**

- Schools and workplaces can expand and update their commercial tobacco-free policies
- Invest in cessation counseling/support for students and workers
- Provide and connect students and workers with mental health support



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TOBACCO-FREE
SCHOOLS

November 2019


COMMERCIAL TOBACCO-FREE
K-12 SCHOOL MODEL POLICY

Questions & Answers



The use or promotion of commercial tobacco products¹ on school grounds and at off-campus school-sponsored events is detrimental to the health and safety of students, staff, and visitors.

Under federal law, smoking is prohibited in any kindergarten, elementary, or secondary school or library serving children under the age of 18 years if federal funds are used in the school.² Many states also have laws that restrict commercial tobacco use, including electronic cigarettes, in public K-12 schools.³ However, federal law and many state laws do not cover outdoor school grounds.

www.publichealthlawcenter.org

MOVING FORWARD

The ongoing devastation of COVID-19 in the Black community, Indigenous community, and other underserved communities reminds us that U.S. public health laws addressing chronic disease through the regulation of commercial tobacco have always been important and are even more important now.

Now is the time to push for equitable, evidence-based, preventative commercial tobacco laws and policies that support healthy, resilient communities.

RESOURCES

Racial Justice and Health Equity Resources:

- NAATPN—Collective Response to the COVID-19 Impact on African Americans and Other Priority Populations <https://www.naatpn.org/covidcollective>
- NAACP—Ten Equity Implications of the Coronavirus COVID-19 Outbreak in the United States https://naacp.org/wp-content/uploads/2020/03/Ten-Equity-Considerations-of-the-Coronavirus-COVID-19-Outbreak-in-the-United-States_Version-2.pdf
- PHLC—Focusing On Equity And Inclusion When We Work On Public Health Laws <https://www.publichealthlawcenter.org/sites/default/files/resources/Focusing-on-Equity-and-Inclusion-2018.pdf>

State Pandemic Response Resources:

- National Governors Association--<https://www.nga.org/coronavirus/#glance>
- National Council of State Legislatures--<https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>

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- **NAACP**—Ten Equity Implications of the Coronavirus COVID-19 Outbreak in the United States https://naacp.org/wp-content/uploads/2020/03/Ten-Equity-Considerations-of-the-Coronavirus-COVID-19-Outbreak-in-the-United-States_Version-2.pdf
- **PHLC**—Focusing On Equity And Inclusion When We Work On Public Health Laws <https://www.publichealthlawcenter.org/sites/default/files/resources/Focusing-on-Equity-and-Inclusion-2018.pdf>

State Pandemic Response Resources:

- National Governors Association--<https://www.nga.org/coronavirus/#glance>
- National Council of State Legislatures--<https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>

RESOURCES

Commercial Tobacco Control Resources:

- **ASH**—COVID-19 and Tobacco Policy and Communications Toolkit <https://2bark924ef5o2dk1z21reqtf-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/COVID-19-and-Tobacco-Policy-and-Communications-Toolkit-2.pdf>
- **PHLC**—smoke free housing web page: <https://www.publichealthlawcenter.org/topics/commercial-tobacco-control/smoke-free-tobacco-free-places/housing>
- **PHLC**—Model Tobacco Retail Licensing Ordinance for Minnesota Cities <https://www.publichealthlawcenter.org/sites/default/files/resources/MDH-City-Retail-Ordinance-2020.pdf>
- **PHLC**—Commercial Tobacco-Free K-12 School Model Policy: Questions & Answers <https://www.publichealthlawcenter.org/sites/default/files/resources/Commercial-Tobacco-Free-K-12-School-Model-Policy-Q-and-A-2019.pdf>

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Q&A

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Global action for *everyone's* health.



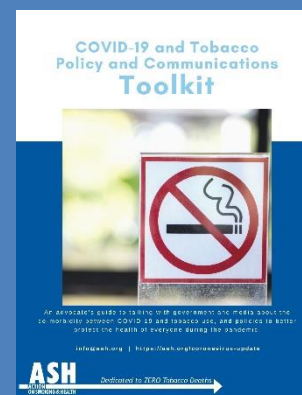
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Recordings from previous webinars
and Live Chats: ash.org/webinars



Toolkit for Advocates

Talking with government and media about the COVID-19 and tobacco use co-morbidity and policies to protect the health of everyone during the pandemic.

ash.org/covid19