

US Tobacco Industry Interference Index 2020

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Facts for Context

1. Tobacco use is the leading cause of disease and early death in the U.S.,
2. The most effective strategies for reducing tobacco use involve public policy, and
3. The greatest barrier to enacting effective public policy is tobacco industry interference. Exacerbated by aggressive marketing tactics, the cumulative costs in human suffering are incalculable.

Tobacco Industry Priorities

- The tobacco industry wants to prevent effective tobacco control to maximize tobacco use.
- They have a fiduciary responsibility to their stakeholders to maximize their profits.
- Evidence shows that their tactics interfere with tobacco control policies.



***"215 BILLS DEFEATED
IN 43 STATES."***

- **Tobacco Institute.** 1986
Legislative Report.
Summary of Activity in
State Legislatures.
February 12, 1987.



WHO FCTC Article 5.3

Article 5.3 of the WHO FCTC states:
“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

There is a
FUNDAMENTAL
and
IRRECONCILABLE CONFLICT
between
the tobacco industry's
interests
and public health
policy interests.

- First Guiding Principle of the
WHO FCTC Article 5.3 Guidelines



U.S. Report & Limitations

- U.S. has signed but not ratified the WHO FCTC.
- The scope of US domestic policy making.
- WHO FCTC Article 5.3 prohibited activities that are constitutionally protected in the U.S.
- ***Regardless of these limitations there is much that can and should be done to expose and neutralize tobacco industry interference.***



<https://ash.org/2020index>

U.S. Score 2020

U.S. TOBACCO INDUSTRY INTERFERENCE INDEX 2020

The tobacco industry uses multiple tools and tactics to influence and shape tobacco control public health policy. **The U.S. Tobacco Industry Interference Index 2020** explores and quantifies the indicators that are common entry points for the tobacco industry as well as the WHO Framework Convention on Tobacco Control (WHO FCTC) Article 5.3 Guidelines that strive to counter them. On a scale where lower means less tobacco industry interference and higher is worse, the United States' score is the 42nd highest out of 57 participating countries in the [Global Tobacco Industry Interference Index](#) at 66/100. **This clearly shows that the U.S. has a lot of work left to do.**

TOBACCO INDUSTRY INTERFERENCE IN PUBLIC POLICY

Effective tobacco control policies are in direct opposition with the economic interest of the tobacco industry, their front groups and other associates, individuals, and organizations. There is a large

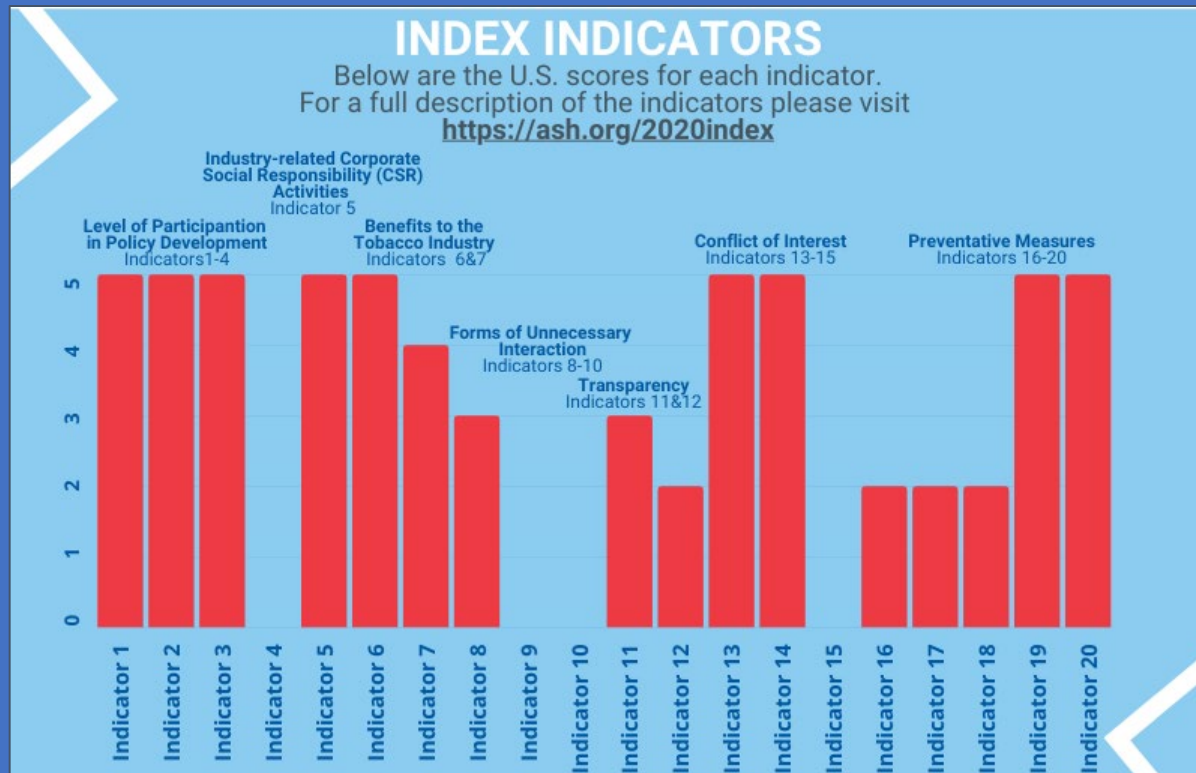
66

How the U.S. Compares

- U.S. score is 66/100
- The higher the score the more tobacco industry interference
- The U.S. ranked 42nd highest out of 57 participating countries in the 2020 global index.
- The top 3 countries with the best rank (lowest level of tobacco industry interference) were #1 Brunei Darussalam (score 14), #2 France (score 27) and #3 Uganda (score 31).
- The bottom 3 countries with the worst rank (highest level of tobacco industry interference) were #55 Zambia (score 78), #56 Indonesia (score of 82) and #57 Japan (score 88).

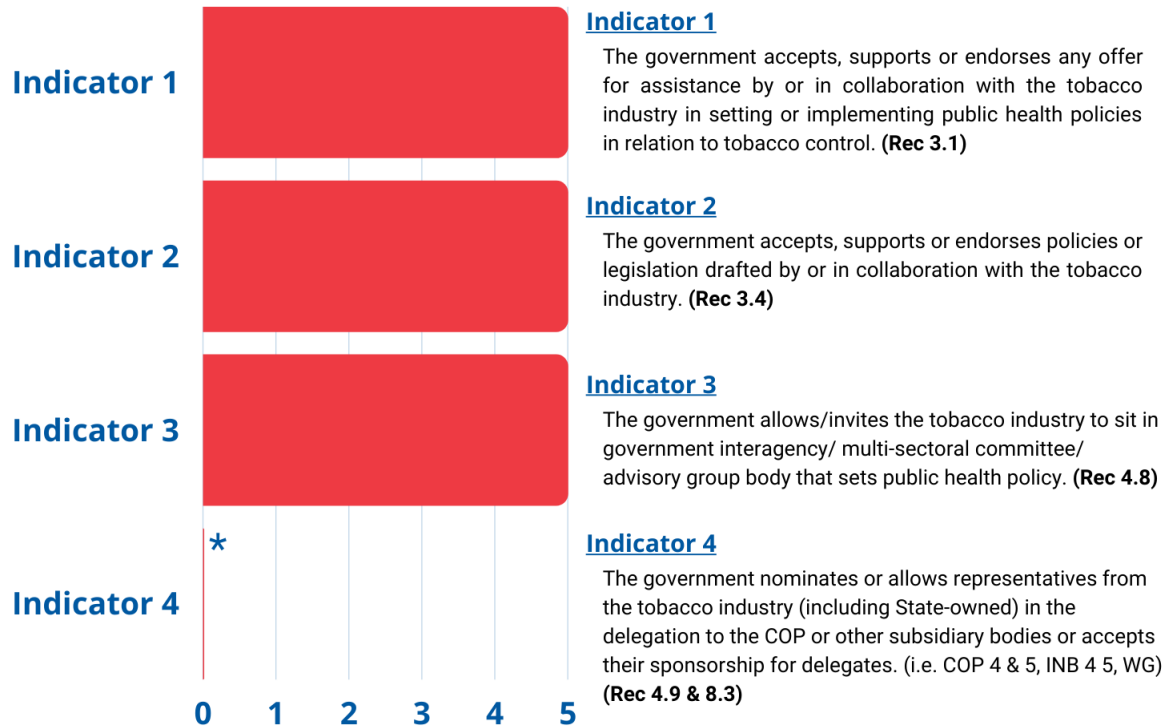


Indicators



- Level of Participation in Policy Development
- Industry-Related CSR Activities
- Benefits to the Tobacco Industry
- Forms of Unnecessary Interaction
- Transparency
- Conflict of Interest
- Preventive Measures

INDICATORS 1-4: Level of Industry Participation in Policy-Development



* Zero would normally be a positive thing, but in this case, the U.S. only has a zero because they have not ratified the WHO Framework Convention on Tobacco Control (FCTC). This means the U.S. doesn't have an official COP delegation for the industry to infiltrate.

Level of Participation in Policy Development

“I don’t think I’d set money above public health...(But) I have responsibilities to employees, stockholders, to the community generally...I would say they’re all equally important”

~(Quote from testimony of Geoffrey C Bible, CEO and Chair of the Board of Philip Morris Companies, Wall Street Journal, March 3, 1998)

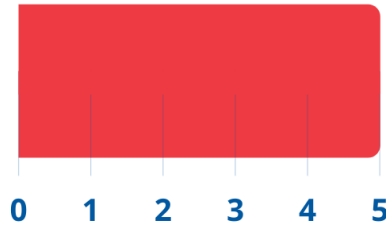
Tobacco Industry CSR & Benefits to the Tobacco Industry

“So our defensive strategy is just to keep on keeping on. We use events, charitable contributions, and entertainment of standing committees.”

~Philip Morris Tobacco Company. Southwest Region State Legislative Summary. 1989.

INDICATOR 5: Tobacco Industry CSR Activities

Indicator 5



Indicator 5

A. The government agencies or its officials endorse, support, form partnerships with or participate in so-called CSR activities organized by the tobacco industry. (Rec 6.2)

B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)

INDICATORS 6-7: Benefits to the Tobacco Industry

Indicator 6



Indicator 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) (Rec 7.1)

Indicator 7



Indicator 7

The government gives privileges, incentives, exemptions or benefits to the tobacco industry. (Rec 7.3)

Forms of Unnecessary Interaction

“Our field staff and lobbyists use a variety of tactics to fight this kind of legislation. We regularly communicate with and influence appointments to the legislative committees that would traditionally review such bills.”

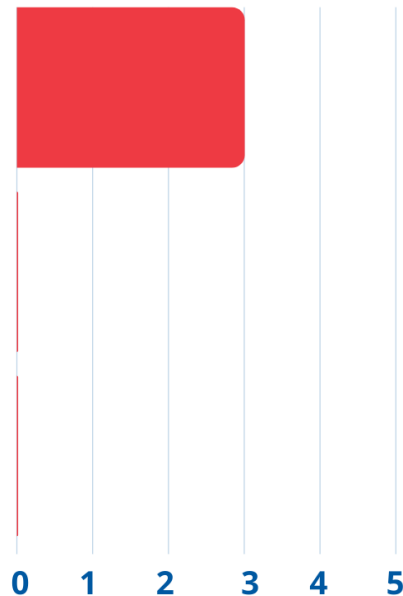
~Tobacco Institute. Outline for Winter Meeting Presentations on Public Smoking. January 8, 1985.

INDICATORS 8-10: Forms of Unnecessary Interaction

Indicator 8

Indicator 9

Indicator 10



Indicator 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. (Rec 2.1)

Indicator 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). (Rec 4.3)

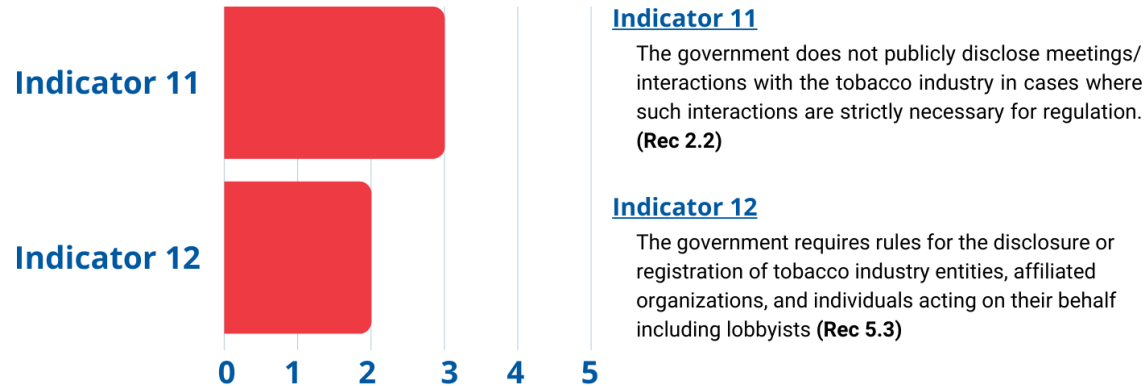
Indicator 10

The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1)

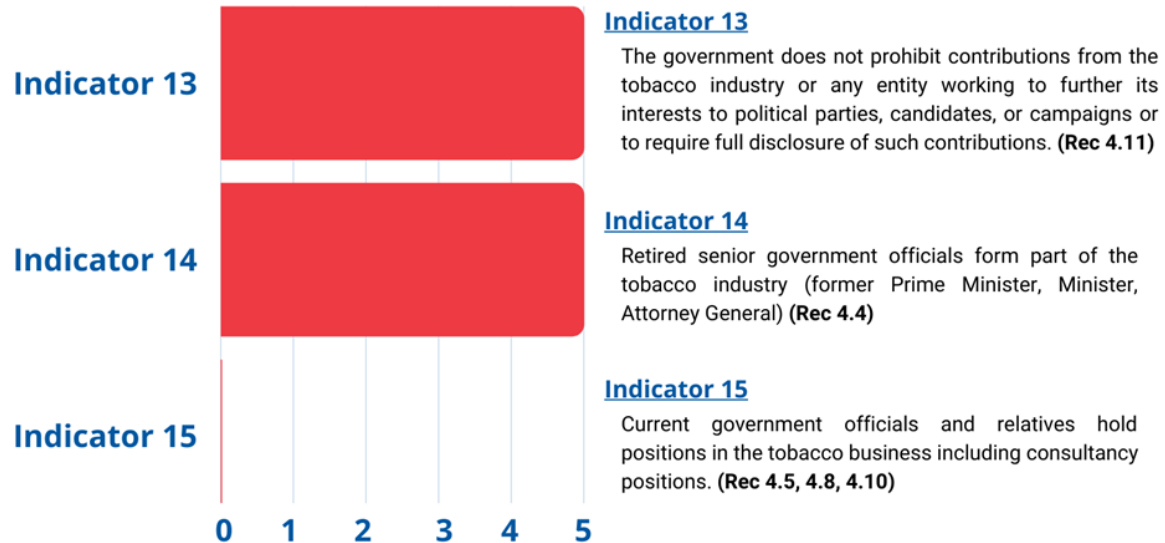
NOTE: This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.

Transparency & Conflict of Interest

INDICATORS 11-12: Transparency



INDICATORS 13-15: Conflict of Interest

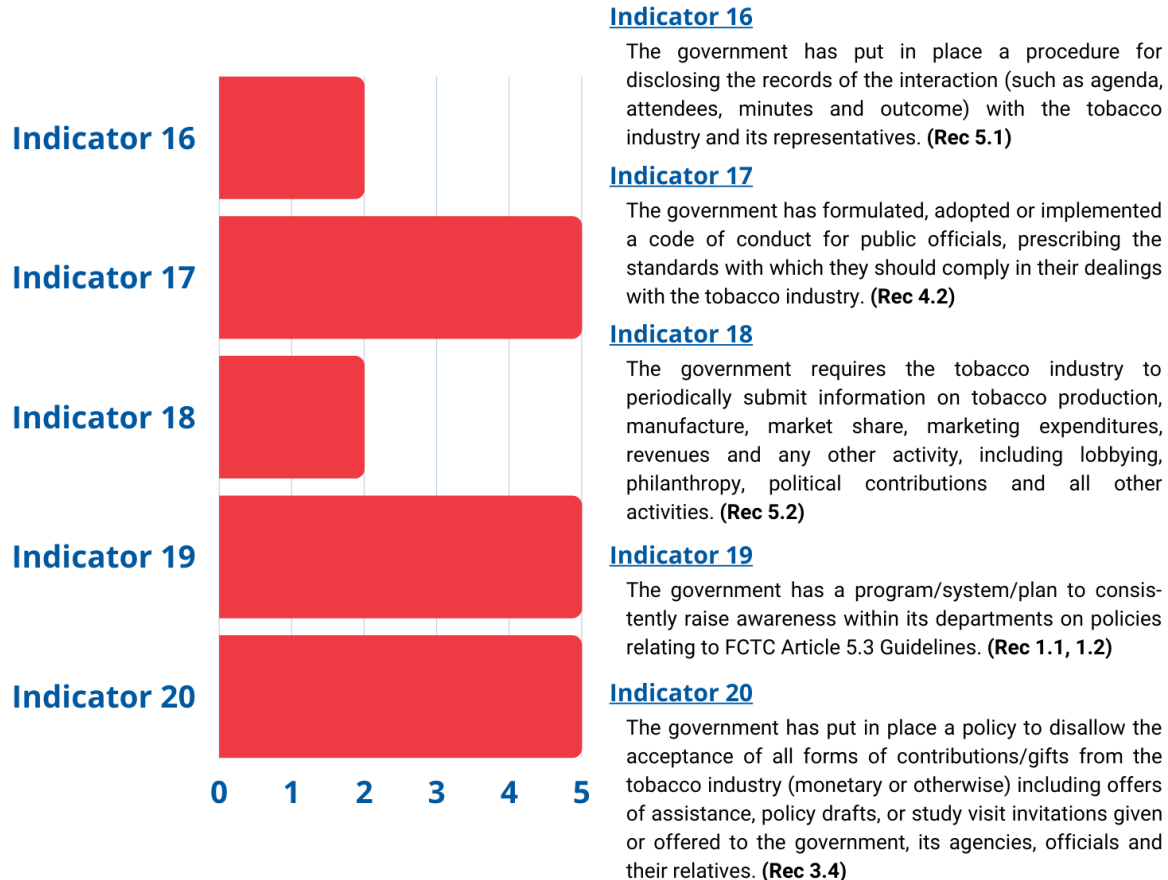


“Attached is a list of contributions we intend to make with the downloaded PHIL PAC funds.”

~Philip Morris USA. Interoffice Correspondence. Phil PAC. Download to Oklahoma PAC. June 16, 1992.

Preventative Measures

INDICATORS 16-20: Preventative Measures



"I would be more cautious in using the pharmic-medical model—do we really want to tout cigarette smoke as a drug? It is, of course, but there are dangerous F.D.A. implications to having such conceptualization go beyond these walls. . . Perhaps this is the key phrase: the reinforcing mechanism of cigarette smoking. If we understand it, we are potentially more able to upgrade our product."

~Feb. 19, 1969 Philip Morris memo from William L. Dunn to researcher Dr. Helmut Wakeham.

Top U.S. Tobacco Companies are Racketeers

- In 2006, a federal court ruled that Altria, Philip Morris USA, R.J. Reynolds, and other tobacco companies had committed at least 145 violations of the Racketeer Influenced and Corrupt Organizations Act (RICO)

The tobacco industry not only lied to the public, but also lawmakers



- The court found that the companies would likely continue to commit fraud
- After 11 years of legal appeals, the tobacco companies began disseminating court-ordered “corrective statements” in November 2017

The RICO case is still active in federal court, with tobacco companies now fighting to avoid placement of the corrective statements at retail points-of-sale

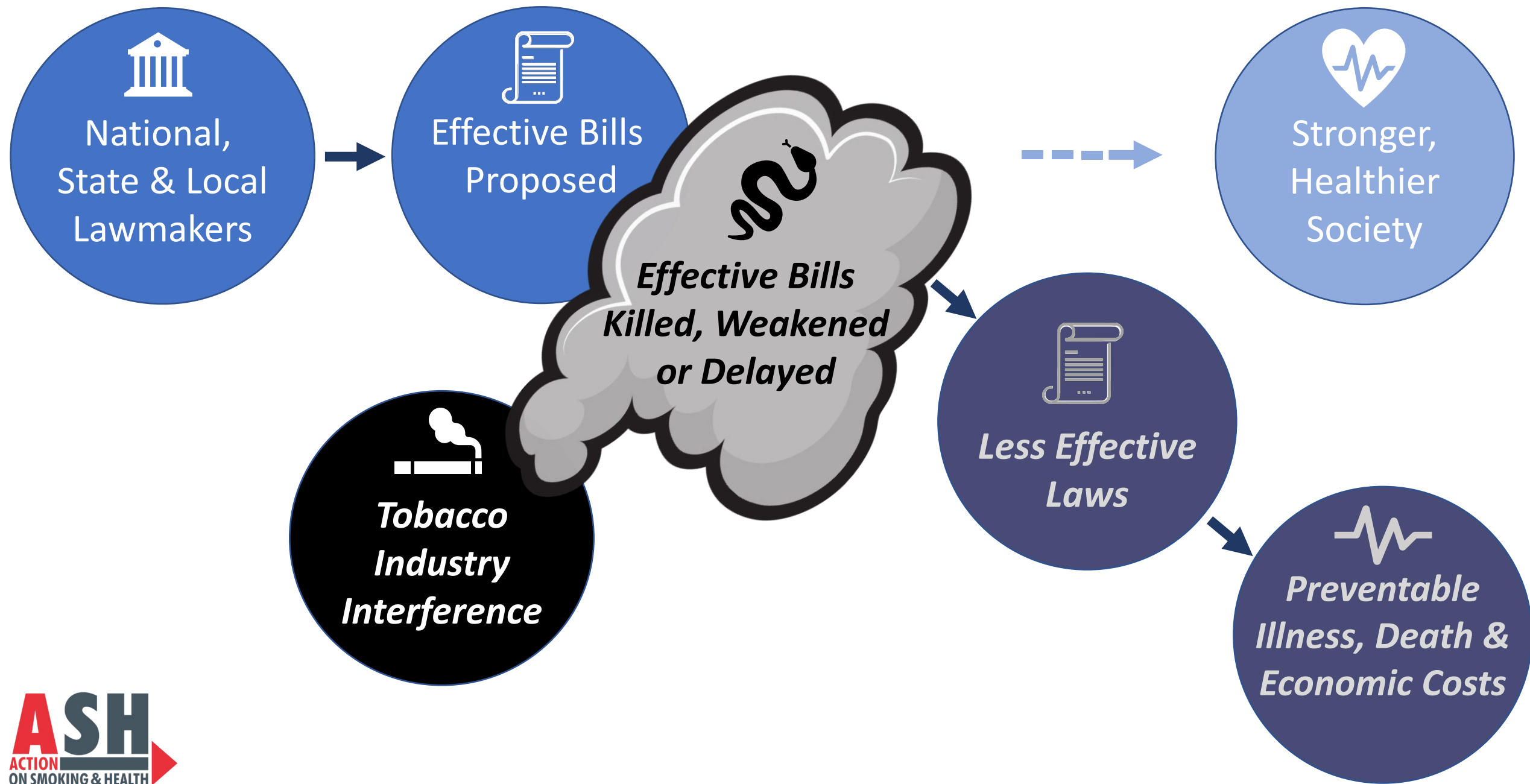
“Company strategy: Defeat or limit legislative attempts to increase cigarette taxes, restrict cigarette advertising and promotion, limit smoking opportunities and regulate industry matters.”

- R.J. Reynolds Tobacco Company. Action Plan and Budget. September 28, 1989.

A recent analysis of internal tobacco industry documents show that since the 1990's tobacco companies have led successful efforts to defeat — **separately and in all 50 states** —

proposed legislation to:

- 1.) restrict public smoking,
- 2.) raise tobacco taxes,
- 3.) limit tobacco marketing,
- 4.) develop tobacco prevention or research, **and**
- 5.) reduce youth access to tobacco





As the leading preventable cause of death, tobacco kills an estimated 480,000 family members, friends and neighbors in the U.S. each year. We will never know how many **lives could have been saved** if not for decades of tobacco industry interference in lawmaking. Moving forward, it is clear that **regular monitoring and public reporting of such interference has become a moral imperative.**

U.S. Tobacco Industry Interference SPOTLIGHT

Arizona

Altria and Juul backed a bad Tobacco 21 bill in Arizona that would have blocked cities, towns and counties from regulating the sale of tobacco products. The bill would have overridden virtually every local regulation now in existence, ranging from how far tobacco shops have to be from schools to enhanced penalties for retailers who sell to anyone who is underage. About the only thing that local governments would have been allowed to do is control tobacco and vaping use on government properties, including any publicly funded stadiums.



U.S. Tobacco Industry Interference SPOTLIGHT

Arkansas

In 2019, JUUL successfully lobbied for T-21 legislation in Arkansas that included language preempting local governments from enacting any laws on the manufacture, sale, storage or distribution of tobacco products, including restrictions on flavored tobacco products.



U.S. Tobacco Industry Interference SPOTLIGHT

California

JUUL was a sponsor of the 2019 California Democratic Party state convention. The vape product manufacturer – of which a 35% stake is owned by Altria – also spent more than \$211,000 in lobbying at the Capitol in Sacramento and bought advertising in capital media. Also in 2019, Juul collected 9,500 signatures needed to place a ballot measure on the November 5 election in San Francisco that would have preempted and overruled the city's ban on flavored tobacco products (including e-cigarettes) as well as the city's Tobacco 21 law and legislation previously passed that prohibited the sale of e-cigarettes in San Francisco until the FDA issues an order authorizing their sale.


On August 31, 2020, the California Coalition for Fairness, funded by R.J. Reynolds and Philip Morris, filed a notice with the state to seek a referendum on the statewide law signed that same month by Governor Gavin Newsome to ban the sale of flavored tobacco products. If opponents qualify for a referendum by collecting signatures of 623,212 registered voters by December 10, implementation of the flavor ban will be delayed for two years (required to be placed on hold until the next statewide general election in November 2022).



U.S. Tobacco Industry Interference SPOTLIGHT

Colorado



Big Tobacco launched a forceful effort to stop a bill that would ask Colorado voters to approve a cigarette tax increase and a new nicotine tax, spending thousands of dollars on a social media campaign against it and hiring some of the most powerful lobbyists at the state Capitol to ensure the measure was killed. Their opposition came quickly – even before the measure was introduced, state records suggest.



U.S. Tobacco Industry Interference SPOTLIGHT

Oklahoma

During 2019 and 2020, up to 14 contract lobbyists were registered to represent the tobacco industry at the Oklahoma State Capitol. Both years, tobacco industry lobbyists succeeded in stalling legislation that would have closed major loopholes in state smoking laws and restored the rights of Oklahoma communities to require smokefree workplaces. In 2020, the tobacco industry worked through their lobbyists to promote legislation of their own design to rewrite Oklahoma's statutory definitions for tobacco products. The proposed amendments would have exempted a broad range of emerging tobacco products – including the R.J. Reynolds Revel brand and the Swedish Match ZYN brand – from any state tobacco excise tax. Also in 2020, tobacco industry lobbyists in Oklahoma worked behind the scenes to ensure that proposed legislation to raise the legal age to purchase tobacco products to 21 (matching the recent change in federal law) did not address any other long-standing deficiencies in the 1994 Oklahoma Prevention of Youth Access to Tobacco Act. As a result, penalties and enforcement remain inadequate to deter Oklahoma's high rates of tobacco sales to youth, state tobacco retail licenses continue to cost only \$10 per year, and no license is required to sell addictive vaping products.



U.S. Tobacco Industry Interference SPOTLIGHT

Oregon

The tobacco industry, including JUUL, was successful in derailing what would have been the first flavor ban in Oregon. On January 8, 2020, the Clatsop County Board of Commissioners (BoCC) adopted a Oregon Retail License ordinance (TRL), the strongest in the state of Oregon because of its inclusion of prohibitions on price discounts and coupon redemption. The final proposed ordinance contained a flavor ban on all nicotine containing products and sailed through the BoCC first reading without a hitch and was supported by all five city councils. Before the second reading, the Public Health Director received a call from a representative of a national tobacco retailer association just inquiring about the TRL. Each commissioner also received a letter from a JUUL representative offering to help write a better ordinance.

The night of the second reading several retailers, smokers and vapers showed up to protest the flavor ban and accused advocates of "bait and switch" because an earlier copy of the ordinance did not include the flavor ban. The JUUL lawyer showed up and repeated her offer of assistance to help write a better ordinance. As a result, the Chair called for an uncommon third reading. In the meantime, county management and the BoCC decided it was best to take out the flavor ban and get the ordinance in place first and then go back with the flavor ban at a later date. The pandemic hit shortly after and the flavor ban is no longer on the radar.



U.S. Tobacco Industry Interference SPOTLIGHT

New York

The Tobacco Hooks Kids Committee was pursuing a ban of all flavors (including menthol) in all tobacco products in New York State. The tobacco industry sent lobbyists to the state capital and worked with the Reverend Al Sharpton and his group the National Action Network and Keith L.T. Wright, the boss of the Manhattan Democratic Party, to raise the specter of unfair police enforcement (invoking Eric Garner) of black people smoking menthol cigarettes. The bill has since been set aside.

Altria is in line to spend nearly \$800,000 this year on lobbying in New York, much of it state lobbying, and some on local ordinance lobbying, according to a review of lobbying records and retainer agreements for the Virginia-based firm. Other big lobbying spenders: Juul (\$516,000); RJR (\$360,000); a cigar trade group (\$57,000); a state and national vapor association (\$150,000); Top Tobacco (\$78,000); SI Group Client Services (\$55,000), and others. In all, they will spend more than \$2 million this year in New York State. Kenmore-based Magellan Technologies employs 200 people locally; it makes and distributes flavored vaping products nationwide. It is spending \$120,000 on a single lobbyist: Joel Giambra, the former Erie County executive. Former Buffalo Assemblyman Sam Hoyt, who ran Cuomo's economic development agency in the region, also was signed up as a Magellan lobbyist.



U.S. Tobacco Industry Interference SPOTLIGHT

Texas

The tobacco industry attempted a last-minute change on a proposed tax on e-cigarettes in 2019. The new language was drafted by Altria lobbyists and brought to the governor's staff the night before the vote. The change would have imposed a nominal tax on e-cigarettes that would have had no impact on public health. Ultimately, the bill died due to an administrative technicality.



U.S. Tobacco Industry Interference SPOTLIGHT

Utah

In 2020, the Utah state legislature was poised to pass strong legislation to address youth e-cigarette use in the state, but industry interference resulted in a weakening of the policies. Vaping industry lobbyists with close ties to state representatives worked behind the scenes to reduce the impact of vaping-related bills, including lowering the level of the originally proposed e-cigarette tax, adding exemptions to a strong proposal to prohibit the sale of flavored e-cigarettes, and amending a proposal so that vape shops could continue to sell products in areas frequented by kids.



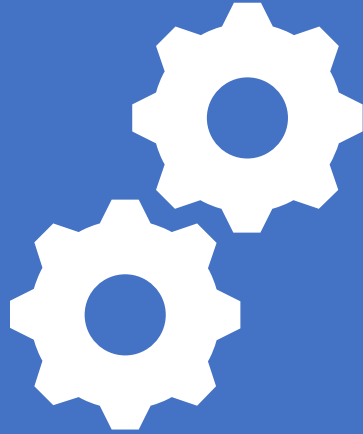
Recommendations

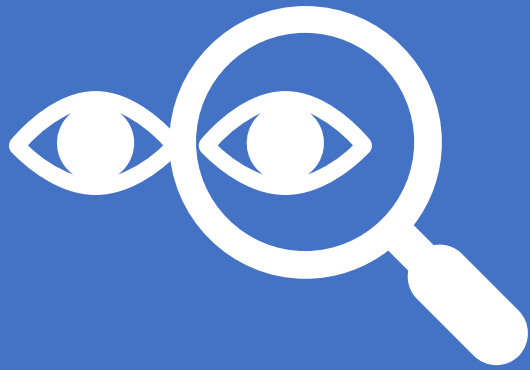
1 RAISE AWARENESS

2 EMPLOY AVAILABLE RESOURCES

3 LEVERAGE PUBLIC SUPPORT

4 TRACK LOBBYING ACTIVITIES





Recommendations

5 INCREASE TRANSPARENCY

6 ADOPT OFFICIAL CODES OF CONDUCT

7 REJECT TOBACCO INDUSTRY GIFTS

8 DIVEST FROM TOBACCO



Industry Interference in Maryland: Preemption of Local Regulation

Kathleen Hoke

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Director

Legal Resource Center for Public Health Policy

December 10, 2020

PRINCE GEORGE'S COUNTY AND BALTIMORE CITY CIGAR PACKAGING LAWS

- ***Baltimore City Health Commissioner Regulation***
 - Dr. Josh Sharfstein, Baltimore City Health Commissioner
 - Executive authority to issue cigar minimum packaging regulation
 - Received public input, including from industry
 - Industry filed suit immediately upon issuance of final regulation
- ***Prince George's County Council Ordinance***
 - Prince George's County Council passed cigar minimum packaging ordinances (in two steps)
 - Plenty of industry presence at public hearings
 - Industry filed suit as ordinance was set to go into effect

Altadis v. Prince George's County: **The *Altadis* Decision**

- ***Altadis v. Prince George's County*, 431 Md. 307 (2013)**
 - The tension between state law and local law reinforces the conclusion that state law regulating the packaging and sale of other tobacco products, including cigars, preempts local ordinances.
 - We shall hold that state law occupies the field of regulating the packaging and sale of tobacco products, including cigars, and thus impliedly preempts the two ordinances enacted by the County Council of Prince George's County.

The “Fall Out”

- Locals are **prohibited from passing NEW local** laws related to tobacco sales and distribution;
- **Locals** hesitate to enforce **EXISTING** tobacco related law

Blocked Opportunities

- Cigar pack size
- T21
- Flavored tobacco products

Attempts at Reversal

- **2016:**
 - HB1485: *Altadis* reversal; failed in Committee
- **2019:**
 - MACo/LOCAL bill: Prohibiting judicial determination of implied preemption generally, not public health specific and not directly reversing *Altadis*; did not proceed with bill
- **2021:**
 - *Altadis* reversal with explicit non-preemption of local tobacco control powers; Priority bill for tobacco-centered public health advocates

Miscellaneous Musings

Time Permitting . . .

Insert here random thoughts from Kathi's 20+ year career in Maryland tobacco control and prevention . . .

Contact Information

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Q&A

Stay Involved



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ADDITIONAL RESOURCES

- ASH US Tobacco Industry Interference Index 2020
<https://ash.org/2020index>
- ASH US Tobacco Industry Interference Index 2019
<https://ash.org/tobaccointerference/>
- STOP (Stopping Tobacco Organizations and Products) Global Tobacco Industry Interference Index: <https://exposetobacco.org/global-index/>



Global action for *everyone's* health.

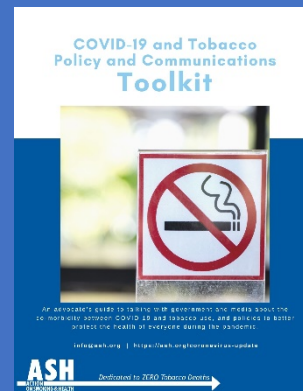
NEXT WEBINARS:

Thank you for your participation!
We would like to wish you and your loved ones
a happy, healthy and safe holiday season.
Please stay tuned for announcements about our
upcoming 2021 webinars.



Recordings from previous webinars
and Live Chats on social media, under
“Resources from ASH” here:

ash.org/coronavirus-update



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