Federal, State and Local Tobacco Control Laws

William C. Tilburg
December 15, 2014
Overview

- Importance of Local Compliance Checks
- Sources of Tobacco Control Law
- Federal and State Tobacco Laws
- Local Authority to Regulate Tobacco
<table>
<thead>
<tr>
<th>Source of Law</th>
<th>Synar</th>
<th>FDA</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synar Amendment to the Alcohol, Drug Abuse and Mental Health Admin. Reorganization Act (Public Law 102-321)</td>
<td>Family Smoking Prevention and Tobacco Control Act, Section 102 21 C.F.R. §1140.14</td>
<td>Maryland Code, Criminal Law §10–107 County Ordinance</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Synar</th>
<th>FDA</th>
<th>Local</th>
</tr>
</thead>
</table>
| • Enact/Enforce tobacco sales to minors laws  
• 10% random sample of each jurisdiction  
• Retailer Violation Rate of 20% or less | • Prohibit sale of cigarettes/smokeless tobacco to minors  
• Face to face transactions  
• ID Check under 27  
• Labeling and advertising restrictions | • Prohibit sale of all tobacco products to minors  
• Sale of unpackaged cigarettes |

<table>
<thead>
<tr>
<th>Who Enforces the Law?</th>
<th>Synar</th>
<th>FDA</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Behavioral Health Admin., Statewide Projects Tobacco Staff and a minor</td>
<td>FDA commissioned officer and a minor (16–17 yr. old)</td>
<td>Law Enforcement Health Officer or designee</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Penalties</th>
<th>Synar</th>
<th>FDA</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>Violation letter and civil money penalties</td>
<td>Misdemeanor and fine up to $300, $1,000 and $3,000</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Referral to Comptroller</th>
<th>Synar</th>
<th>FDA</th>
<th>Local</th>
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</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
Importance of Local Compliance Checks

- **Local compliance checks do not factor into SYNAR compliance rates, but greatly impact retailer behavior**

- **Reported Retailer Violation Rates**
  - FY09 – **5.1%** (Last year of statewide funding for local compliance inspections)
  - FY10 – **16.8%** (Highest rate in U.S.)
  - FY11 – **17.0%** (3rd Highest rate in U.S.)
  - FY12 – **17.3%** (2nd highest rate in U.S.)
  - FY13 – **16.8%** (2nd highest rate in U.S.)
  - FY14 – **24.1%** (Highest rate in U.S.)

- **National Average FY09–FY13 → 9.48%**
Maryland SYNAR Retailer Violation Rates by Retailer County
Behavioral Health Administration
FFY 2014 and FFY 2015*

*FFY 2015 figures are preliminary
Sources of Law

- Tobacco control governed by federal, state and local laws:
  - Family Smoking Prevention and Tobacco Control Act
  - Maryland Code
    - Criminal Law Article §10–107
    - Health–General §24–305
  - County Ordinances

- Tobacco retailers must abide by all laws, but law enforcement may only enforce state and local laws
Who is in Charge of Tobacco Control?

Tobacco control authority is shared between federal, state and local authorities:

- **Federal**
  - FDA
  - SAMHSA
  - Alcohol and Tobacco Tax and Trade Bureau

- **Maryland**
  - DHMH (CTPC and BHA)
  - Office of the Comptroller

- **Local**
  - County Health Department
  - Local Law Enforcement
  - Other Executive Agencies (i.e. Dept. of Liquor Control)
Types of Tobacco Sales Laws

- Sales to Minors
- ID Check
- Product Placement
- Packaging
- Licensing
- Excise Tax
- Samples
- Product Restrictions (i.e. Flavored ban)
Federal and State Law
<table>
<thead>
<tr>
<th></th>
<th>Federal Law</th>
<th>Maryland Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age to Purchase</td>
<td>18 (for cigarettes and smokeless tobacco)</td>
<td>18 (for all tobacco products)</td>
</tr>
<tr>
<td>ID Check</td>
<td>Required for anyone under 27</td>
<td>–</td>
</tr>
<tr>
<td>Vending Machines</td>
<td>Only in 18+ establishments</td>
<td>Only in 18+ establishments</td>
</tr>
<tr>
<td>Self-Service Displays</td>
<td>Banned (for cigarettes and smokeless tobacco)</td>
<td>–</td>
</tr>
<tr>
<td>Packaging</td>
<td>Ban sale of unpackaged cigarettes</td>
<td>Ban sale of unpackaged cigarettes</td>
</tr>
<tr>
<td>Licensing</td>
<td>–</td>
<td>Required ($25)</td>
</tr>
<tr>
<td>Excise Tax</td>
<td>• $1.01 per pack</td>
<td>$2.00 per pack</td>
</tr>
<tr>
<td></td>
<td>• Varying rates per/lb. (OTP)</td>
<td>15%–70% (OTP)</td>
</tr>
<tr>
<td>Samples</td>
<td>No Free Samples</td>
<td>No Free Samples</td>
</tr>
<tr>
<td>Product Restrictions</td>
<td>• Flavored cigarette ban</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>• No “Light,” “Mild,” &amp; “Low” labels</td>
<td></td>
</tr>
</tbody>
</table>
What Can Local Authorities Issue Citations for?

Maryland Law

- **Sale or Distribution of a Tobacco Product to a Minor**
  - Misdemeanor and fine up to $300 (1st) $1,000 (2nd) and $3,000 (3+)

- **Sale of Unpackaged Cigarettes**
  - Misdemeanor and fine up to $500 or up to 3 months imprisonment (or both)

- **Sale of Electronic Cigarettes**
  - Misdemeanor and fine up to $1,000

- **Vending Machines**
  - 18+ establishment and operated by token/card purchased from establishment
  - Misdemeanor and fine up to $100

- **Youth Possession/False ID**
  - Civil penalty

- **Sale of Clove Cigarettes**
  - Misdemeanor and fine up to $500
What Can Local Authorities NOT Issue Citations for?

- Failure to Check ID (except Baltimore County)
- Self-Service Displays (No state law)
- Sale of Flavored Cigarettes
- Sale of tobacco products with “reduced harm” claims (i.e. light, mild, low)
- Licensing, Taxation and Minimum Cost Violations
Comptroller Authority

Local authorities may notify Office of the Comptroller of the following violations:

- **No Maryland Tax Stamp**
- **No Cigarette and/or OTP license**
- **Sales Below Minimum Cost**
- **Issuance of Sales to Minors Violations**

Regional Tobacco Enforcement Training
Workshop December 15, 2014
Notifying the Comptroller

- The Comptroller has the authority to reprimand, suspend and revoke cigarette and other tobacco product licenses.
- Repeat violators should be referred to the Comptroller for disciplinary hearings.
  - FDA and state/local inspection check violations qualify
  - Sales to minors violations only
- A law enforcement officer or health official must provide testimony at the disciplinary hearing.
- Referrals to the Comptroller should include:
  - Letter describing violation
  - Copy of citation
  - Proof of fine payment/court record
Local Laws
Local Authority

Three types of local government in Maryland: Commissioner, Code and Charter

Carroll and Garrett sought local authority to levy civil penalties for tobacco sales to minors from the Maryland General Assembly

Allegany and Frederick have the authority to adopt local ordinances making tobacco sales to minors a civil violation

Washington County must seek legislation in General Assembly

Local Tobacco Ordinances by Jurisdiction:
- Sales to Minors – Carroll and Garrett
- Product Placement – Carroll and Garrett
- Sales to Minors (Electronic Cigarettes)
- ID Check
- Flavored Wrappings
- Sales of Unpackaged Cigarettes

Regional Tobacco Enforcement Training Workshop
December 15, 2014
Who may conduct local compliance checks?

- **Law Enforcement** → Every jurisdiction allows law enforcement to enforce state (criminal) and local (civil) tobacco control laws

- **Health Officer or Designee** → Most jurisdictions with local tobacco control ordinances grant authority to Health Officers and/or their staff

- **Other Local Agencies** → Several jurisdictions designate specific agencies or enforcement officials to conduct inspections
Questions?