

# Prohibition of Promotionally Priced Tobacco Products

## Background

- A prohibition on the sale of promotionally priced tobacco products means that a retailer is not permitted to sell any multi-pack tobacco products at a discounted price (e.g., buy-two, get-one free), provide tobacco products to consumers at no charge, or sell tobacco products for less than the listed or non-discounted price.
- Although promotional pricing is widely used on all different kinds of products, a tobacco promotional price ban prevents a retail selling legal tobacco products to adult consumers at promotional prices.
- Generally, a violation of a promotionally priced tobacco product sales ban law results in a fine assessed to the retailer and, for subsequent violations, may also involve the suspension or revocation of the retailer's license to sell cigarettes and tobacco products.

## Arguments in Favor of Not Adopting a Ban on Promotionally Priced Tobacco Products

- A promotional price sales ban violates the First Amendment to the U.S. Constitution that protects free speech, and which the U.S. Supreme Court has ruled includes commercial speech in the form of communicating truthful product price information to consumers.
- Manufacturers and retailers have a protected interest or a right in communicating truthful price information about tobacco products through the use of promotionally priced products and consumers have an expectation of being provided accurate and legal price information.
- Prohibiting the ability to sell promotionally priced tobacco products prevents the communication of product price information by manufacturers and retailers to consumers, making a promotional price ban unlawful and unconstitutional.
- A ban on promotionally priced tobacco products has nothing to do with reducing underage tobacco use because state and federal laws already prohibit the sale of tobacco products to underage individuals *at any price*. For this reason, a promotion price ban only impacts adults who are of legal age to purchase and use tobacco products.
- The Federal Cigarette Labeling and Advertising Act does not allow local and state governments to adopt any "requirement or prohibition based on smoking and health...with respect to the advertising or promotion of any cigarettes." 15. U.S.C. § 1334. Federal courts have held that "promotion" includes the announcement and offering of price discounts and, for this reason, cities and states are precluded from adopting a promotion price ban on cigarettes.
- A promotion price ban would result in lost sales by retailers since consumers would seek out other sources of promotionally priced tobacco products, including traveling to nearby towns and cities where no such ban exists.

