

Tobacco Product Display Bans in Retail Stores

Background

- A tobacco display ban prohibits a retailer from displaying any cigarettes and other tobacco products in a manner that allows the public to view the products prior to a purchase.
- The only time when the public could see cigarettes and tobacco products is during the restocking of inventory or during the sale of a tobacco product to an adult customer.
- To comply with this kind of prohibition, a retailer would need to stock tobacco products underneath store counters in special cabinets that obscure the public's view, behind opaque doors on store shelves, or in an enclosed storage room.
- Generally, a violation of a tobacco display 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 Banning Retail Tobacco Displays

- A tobacco display 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 product advertising and product packaging.
- Manufacturers and retailers have a protected interest in communicating information about tobacco products through the use of store displays, including the message that the products are for sale, and adult customers have an interest in seeing tobacco products and receiving that product information.
- Prohibiting tobacco product displays prevents the communication of product information through product packaging, making display bans unlawful and unconstitutional.
- There is no credible evidence that displaying tobacco products in a retail store causes underage youth to use tobacco products or that banning displays will reduce underage tobacco use.
- The U.S. Supreme Court has ruled that the Federal Cigarette Labeling and Advertising Act does not allow the adoption of any "requirement or prohibition based on smoking and health" that is "with respect to the advertising or promotion of cigarettes." 15 U.S.C. § 1334.
- A display ban would be costly for retailers, especially small family-owned stores, due to the cost of purchasing new storage cabinets with opaque doors, remodeling the space under store counters to accommodate special storage cabinets, or moving all tobacco products into a storage room.

