**CDC/Office on Smoking and Health**

**Bimonthly Point-of-Sale Strategies Webinar**

**July 26, 2011**

*Tobacco Retailer Licensing: Critical Concepts for State and Local Governments*

**Welcome – Jerry Spegman, CDC OSH**

* Introduction and Agenda Overview

**Announcement – Kurt Ribisl, UNC Gillings School of Global Public Health**

* Counter Tobacco Website: <http://www.countertobacco.org>

**Preemption – Dave Schaibley, Tobacco Control Legal Consortium**

*PPT: “POS Webinar 7.26.11 – Critical Concepts at the State and Local Level”*

* Provided an overview of tobacco retailer licensing (TRL) and what makes it an effective and viable policy option for tobacco control advocates
* Discussed the basics of preemption and described its practical effects on policy development
  + Preemption: situation when a higher level of government has law that trumps the lower level of government’s ability to regulate or pass a law in the same area
  + Federal law can preempt state legislation on the same issue, and state law can preempt local ordinances
  + Preemption can either be expressively stated in the body of the preemptive law itself, or it can be implied
* Provided examples of where preemption can be found, specifically referring to instances in which preemption has played a significant role in smoke-free air efforts
  + Some statewide smoke-free laws establish a *floor* of smoking restrictions which can be exceeded by more aggressive local regulations, while others set a *ceiling* of restrictions which localities are not permitted to exceed

**Preemption – Alicia Lerud, Nevada Office of the Attorney General**

*PPT: “POS Webinar 7.26.11 – Critical Concepts at the State and Local Level”*

* Presented on the specifics of Nevada’s tobacco retailer licensing law (NRS 370)
  + Law is relatively weak and does not require retailers to pay a licensing fee
  + Annual application – enables state to keep hold on who’s in business
  + Law is expressively non-preemptive and it clearly invites further local licensing requirements around Nevada
* Provided 2 examples of Nevada local governments enacting licensing provisions that exceed the requirements of the state licensing law
  + Mesquite City passed an ordinance requiring a local tobacco retail license w/ a $100 fee
  + Lincoln County requires tobacco shops to be in completely enclosed buildings

**State and Local Interaction – Maggie Mahoney, Tobacco Control Legal Consortium**

*PPT: “POS Webinar 7.26.11 – Critical Concepts at the State and Local Level”*

* Don’t need to choose between: state and local public health agencies can work together
* State legislation can ensure uniformity of at least minimum requirements, while local ordinances, where not preempted, can result in more aggressive and effective enforcement
* Very helpful to tap into local knowledge – local law enforcement and/or public health authorities have advantage in carrying out regular inspections, localities are more familiar with problems in communities and where retailers are located if you want to focus on density or schools, parks, residential neighborhoods, etc.

**State and Local Interaction – Brent Saron, Harrison County Department of Home and Public Health (IA)**

*PPT: “POS Webinar 7.26.11 – Critical Concepts at the State and Local Level”*

* Iowa takes a unique approach to tobacco retailer licensing, with state law specifically delegating to local governments the authority to issue licenses and share responsibility for enforcing various state requirements (Governed by 453A)
  + Annual permit issued by state
  + Paper pdf application emailed to cities and counties
  + Permit issued as long as using forms issued by the Iowa Department of Revenue and fees within 453A
  + Licensing fees are set by state law but collected and retained by localities with amounts varying between $50 and $100, depending on the local population
  + Fees can’t be changed in 453A
* Enforcement of 453A
  + Required by state law to inspect retailer annually; if non-compliant, must perform second inspection
* Discussed whether localities can exceed licensing requirements established by state law. A few local governments are currently considering their options, in consultations with TCLC.

**Setting Fees – Ian McLaughlin, Public Health Law & Policy**

*PPT: “POS Webinar 7.26.11 – Setting Fees (Ian McLaughlin)”*

* Discussed fundamental aspects of regulatory fees in general, distinguishing fees from taxes, and stating that fees are charged to businesses in order to pay for costs associated with the enforcement of government regulations
* Enforcing licensing scheme costs money so Public Health Law & Policy developed tool to assess how much it will cost
* Tool helps local governments and advocates calculate a reasonable fee level based on the administrative and enforcement costs involved in implementation of a local retailer licensing scheme
* Tool has been used across California where there is a very high level of local policy advocacy and development on retailer licensing

**Setting Fees – Jordan Mathis, Southwest Utah Public Health Department**

*PPT: “POS Webinar 7.26.11 – Setting Fees (Jordan Mathis)”*

* Utah has a state licensing requirement with a very modest fee
  + Tax Commission issues licenses: $30 fee good for 3 years (no annual fee/application); after first 3 years, re-application fee is $20
* Advocates in local health departments across the state have been looking into the possibility of expanding the role of local authorities in enforcing state regulations
* Challenges include conducting retailer inspections in a vast geographic region that is sparsely populated
* Discussed the need for a licensing fee structure that reflects the varying local costs of enforcement, and that can sustain those efforts without the need for other general fund revenues

**Closing Remarks – Jeff Willett, New York Tobacco Control Program**

* Summary of highlights

**\*\*\* Next POS Webinar: Tuesday, September 27, 2011 2:00pm – 3:30pm EDT\*\*\***

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