

X C A L I B E R
I N T E R N A T I O N A L

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HOUSE HEALTH AND GOVERNMENT
OPERATIONS COMMITTEE
240 Taylor House Office Building
Annapolis, Maryland 21401

Re: House Bill 870 - Opposition

Dear Chair Peña-Melnyk and Members of the Committee:

On behalf of Xcaliber International, Ltd., L.L.C. ("Xcaliber"), I wish to thank the House Health and Government Operations Committee for the opportunity to submit written testimony in opposition to House Bill 870 ("legislation" or "bill"). Xcaliber, an Oklahoma Limited Liability Company, manufactures cigarettes and other tobacco products as a Non-Participating Manufacturer ("NPM") under the terms of the 1998 tobacco Master Settlement Agreement ("MSA").

Prior to joining Xcaliber as General Counsel, I served 15 years in the Office of the Arkansas Attorney General. For nine of those years, I oversaw the State of Arkansas' tobacco litigation and enforcement efforts. In total, I have spent 20 years focused on tobacco regulation, compliance, and public policy.

By this letter, I intend to address the following issues: (1) the structure of the bill, (2) arguments concerning the need for a "level playing field" between tobacco product manufacturers, (3) the adverse effects that the bill could have on funds flowing into the Cigarette Restitution Fund, (4) background related to the MSA, to which the bill relates, (5) the comparative and disparate treatment between various types of tobacco product manufacturers permitted by the bill, and (6) the stated legislative justifications for the bill.

1. THE BILL COMPLETELY CHANGES THE RULES UNDER WHICH XCALIBER AND OTHER NPMs HAVE OPERATED FOR TWENTY-FIVE YEARS.

The vast majority of NPMs, including Xcaliber, commenced business after the execution of the MSA in 1998; Xcaliber, for instance, started in 2001. As such, the companies committed none of the tortious activities that brought about the need for the MSA. The companies have, nonetheless, been regulated by Maryland and other Settling States pursuant to the terms of the MSA and legislation passed pursuant thereto. Per the terms of Model Escrow Statute, one such piece of legislation, NPMs deposit sums into a qualified escrow account for sales in Maryland during the preceding year. MD. CODE ANN. BUS. REG. § 16-403(a). Under the terms of the existing law, those moneys are held for a period of 25 years. MD. CODE ANN. BUS. REG. § 16-403(b)(2)(iii). In the interim period, the NPMs are permitted to obtain and use the interest on the escrowed funds. MD. CODE

ANN. BUS. REG. § 16-403(b)(1). The escrowed funds may only be obtained by the State through legal processes to satisfy certain health-related claims relating to an NPM's conduct. MD. CODE ANN. BUS. REG. § 16-403(b)(2). To date, no such claims have been made.

Under the terms of the legislation being considered by the Maryland General Assembly, NPMs operating in Maryland would no longer deposit funds into escrow. Instead, the legislation would require those companies to pay the State an amount, in the form of a new tax, that is ostensibly equivalent to the current escrow obligation.¹ In other words, the money would no longer be deposited into escrow, would no longer generate interest, and the companies would no longer have the right to obtain a release of the escrowed funds after a 25-year period. The new obligations would amount to a tax imposed only on NPMs, as the Participating Manufacturers ("PMs"), those that committed the tortious activities that brought about the MSA and whose sales comprise 99% of the Maryland cigarette market, remain unaffected by the legislation.

2. THE BILL DOES NOTHING TO CHANGE THE COST IMPOSED ON NPMs, SUCH AS XCALIBER.

The sums to be paid to Maryland under the bill do not differ – even to a fraction of a cent – from the deposits currently being made by NPMs, which indicate that they do not, in reality, “level the playing field.” While to date no Fiscal and Policy Note has been prepared on House Bill 870, the Fiscal and Policy Note on 2024 House Bill 1173, which failed to pass out of this Committee, is telling.² On the issue of the sums to be paid, the 2024 Fiscal and Policy Note provides: “The bill terminates an NPM’s ongoing obligation to deposit annually, into a qualified escrow fund, \$0.0188482 (as adjusted for inflation) for each cigarette it sells in Maryland.” Each NPM would “instead pay an equity fee of \$0.0188482, as adjusted for inflation to the comptroller.” In other words, an escrow obligation of \$0.0188482 (as adjusted for inflation) would be replaced by a new tax of \$0.0188482 (as adjusted for inflation). At the end of the day, the bill does nothing to change costs imposed on NPMs, such as Xcaliber.

¹ As outlined more fully *supra*, both the requirement for a tax payment and the amount of that payment are constitutionally suspect. The Model Escrow Statute, including MD. CODE ANN. BUS. REG. §§ 16-401, *et seq.*, has been justified by policymakers and upheld by courts on two fundamental premises: (1) no money is taken from the NPM; it remains the NPM’s property in an interest-bearing account; and (2) the statute is designed to ensure that NPMs pay no more than Participating Manufacturers (“PMs”). By mandating a tax payment to the state in lieu of escrow, the first of these justifications is eliminated. Indeed, the PMs were sued in the courts and had the opportunity to contest and eventually settle those claims made against them. In contrast, NPMs would be found guilty by legislative fiat and deprived of fundamental due process rights. As drafted, the second justification for the Model Escrow Statute would also be eliminated by the bill. NPMs would be able to contest payment amounts within only a yearlong period. PMs, on the other hand, can withhold payments under dispute and obtain credits for years after their deposit. The one-year cutoff for NPM refund claims guarantees that NPMs would pay more than their larger competitors that brought about the need for the MSA. In addition, many PMs have substantial payment exemptions, meaning that they would also pay less to the State than their NPM competitors. Simply stated, these payment exemptions are not afforded to the NPMs either by the terms of the MSA or the legislation. Additional constitutional issues also exist under the proposed legislation.

² A copy of this Fiscal and Policy Note is attached as Attachment 1.

Further, statements that House Bill 870 is somehow necessary to “level the playing field” between PMs and NPMs must be addressed. These statements, whether intentional or not, mistakenly imply that the already dominant market share of the PMs in Maryland – approximately 99%, with NPMs holding the remaining 1% – need some sort of governmental protection. The market share of the PMs, however, indicates the exact opposite. Such statements also mistakenly suggest that the companies that brought about the need for the MSA should somehow be price-protected from companies who have committed none of the bad acts and practices that deceived the American public for decades. Based upon market evidence that is available, a “level playing field” already exists in Maryland and the PMs, at least based on their market share, are the clear winners.³

3. NPMs, SUCH AS XCALIBER, COMMITTED NONE OF THE ACTS AND PRACTICES THAT BROUGHT ABOUT THE NEED FOR THE 1998 TOBACCO MASTER SETTLEMENT AGREEMENT.

As outlined by the terms of the MSA itself, Maryland and the other Settling States filed suit against the PMs “to obtain equitable relief and damages under state laws, including consumer protection and/or antitrust laws.” 1998 TOBACCO MASTER SETTLEMENT AGREEMENT, § I. The bad acts that brought about both the litigation against the PMs and the MSA were numerous. For instance, PM advertisements were littered with false health claims. The PMs asserted the following within their media campaigns: “More doctors smoke Camels than any other cigarette,” “20,679 physicians say Luckies are less irritating,” “As your dentist, I would recommend Viceroy’s,” and “Chesterfield is best for you.” Perhaps most egregiously, another advertisement boldly stated: “Chesterfield cigarettes are just as pure as the water you drink.” Other print advertisements used celebrity endorsements from such people as Ronald Reagan, Lucille Ball, Monte Irvin, Willie Mays, and even Santa Claus. Advertisements further targeted mothers, women, and African Americans. Another harmful subset of advertisements took the form of cartoons, including the figure of Joe Camel, that were undoubtedly intended to lure children and teens into smoking specific cigarette brands.⁴

The acts and practices in which the PMs engaged were also intended to convince the American public that cigarette smoking was not injurious to health and that nicotine was non-addictive. For instance, in 1954, certain PMs took out advertisements in

³ It is possible that arguments related to a “level playing field” are based upon confusion about the NPM Adjustment analysis outlined in the Maryland Department of Health’s 2026 Fiscal Budget Overview, which uses this term. The disputes that have impacted MSA monies flowing into Maryland and the Cigarette Restitution Fund are *historic* disputes relating to the years 2003, 2004, 2005, 2006, and 2007. The disputes and any adjustments related to the disputes are *not* based upon *current* market conditions. Additionally, it appears as though arguments that Maryland did not create a “level playing field” between PMs and NPMs have begun to fail in arbitration. For disputes related to 2004, which were resolved in 2021, the Fiscal Budget Overview states that the Office of the Attorney General “announced that a panel of three arbitrators decided in favor of Maryland, finding that it diligently enforced the qualifying statute,” resulting in the release of \$18,400,000.00 to the state. A “level playing field” existed in 2004. So long as the state continued its diligent enforcement efforts in a similar manner, it is likely that a “level playing field” existed in 2005, 2006, and 2007. It is also likely that a “level playing field” exists today.

⁴ A sampling of these advertisements by the PMs are attached as Attachment 2. One advertisement boasts the use of a micronite filter. The filters contained asbestos.

newspapers throughout the United States to specifically cast doubt on scientific studies linking smoking to cancer and other dangerous health effects. In the advertisement, titled "A Frank Statement to Cigarette Smokers," the companies asserted, "[w]e believe the products we make are not injurious to health."⁵ These false statements did not end in the 1950s; they continued well into the 1990s. In 1994, a number of tobacco executives testified before the United States Congress. In their testimony, the executives argued, almost mimicking each other's statements word-for-word, that nicotine was a non-addictive substance. Asked point-blank whether the products manufactured by his company were addictive, one executive stated, "I do not believe that nicotine or our products are addictive." UNIVERSITY OF CALIFORNIA SAN FRANCISCO: TOBACCO CEOS STATEMENT TO CONGRESS 1994 NEWS CLIP "NICOTINE IS NOT ADDICTIVE" 2 (1994).⁶

While these acts were bad enough, documents later recovered from the PMs showed that their marketing was intended to attract and addict youth smokers. As outlined by the Campaign for Tobacco-Free Kids, these documents disclosed the following statements:

- 1975 Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers ... 15 to 19 years old ... my own data, which includes younger teenagers, shows even high Marlboro penetration among 15-17 year-olds.
- 1981 Because of our high share of market among the youngest smokers, Philip Morris will suffer more than other companies from the decline in the number of teenage smokers.
- 1981 [T]he success of Marlboro Red during its most rapid growth period was because it became the brand of choice among teenagers who then stuck with it as they grew older.
- 1985 [Marlboro must] continue growth among new, young smokers ... While Marlboro continues to attract increasing shares of young smokers, expected declines in the number of young people restrict future volume gains from this source.
- 1992 Thus, the ability to attract new smokers and develop them into a young adult franchise is key to brand development.

CAMPAIGN FOR TOBACCO FREE KIDS: PHILIP MORRIS: A LONG HISTORY OF DOUBLE TALK 2 (2006).⁷

In contrast, Xcaliber, which started business in 2001 – three years after the MSA – committed any of these acts and practices. The same is true of the other NPMs targeted by the legislation at hand. Xcaliber's advertisements include no false health claims, have no celebrity endorsements, do not target specific demographics, and certainly are not in cartoon form with the intent to target children. Rather, the advertisements, which take the form of point-of-sale signage, have the name of the various cigarette products

⁵ A copy of this document is attached as Attachment 3.

⁶ A copy of this document is attached as Attachment 4.

⁷ A copy of this document is attached as Attachment 5.

manufactured by the company, a price, and the U.S. Surgeon General's Warning, which informs the smoking public of the harms associated with the products.⁸

4. THE BILL FAILS TO ADVANCE THE GOALS OUTLINED WITHIN THE PREAMBLE TO THE LEGISLATION.

In its preamble, the legislation sets forth several justifications for the tax measure to be imposed on NPMs. Upon review, however, the bill fails to advance the stated goals in any significant way.

First, the bill asserts the State's "public health obligations" are owed to all persons, "regardless of the brand of cigarette smoked or the status of the tobacco product manufacturer under the [MSA]." Despite this lofty goal, not all tobacco manufacturers would actually be required to make full payment, whether in the form of an MSA payment or a tax under the legislation, to the State. The MSA, by design, allowed for different types of PMs: the Original Participating Manufacturers that signed the MSA at the time of its execution and Subsequent Participating Manufacturers ("SPMs") that signed the agreement after its execution. Of those SPMs, a subset is neither required to make payment on its full sales by the MSA nor, perhaps most notably, by the terms of the legislation under consideration. Under the MSA, SPMs that signed the settlement within a certain amount of time are not obligated to make payment to the Settling States unless their market share "exceeds the greater of (1) its 1998 market share or (2) 125 percent of its 1997 market share." 1998 TOBACCO MASTER SETTLEMENT AGREEMENT, § IX(i). This permits the so-called "grandfathered SPMs" to avoid payment on a portion of their sales. The bill does not correct this market share advantage, despite its goal of wanting all manufacturers, regardless of status, to pay for the alleged harm caused to the State and its citizens. Rather, grandfathered SPMs would continue to avoid full payment to Maryland, thereby rendering the goal of making all manufacturers pay a falsity.

Further, the bill states that the legislation is required to "[p]revent the manufacturers from deriving large, short-term profits and then becoming judgment-proof." Somewhat ironically, this same justification was also used for the passage of the Model Escrow Statute, codified as MD. CODE ANN. BUS. REG. §§ 16-401, *et seq.*, which this legislation seeks to nullify. As originally passed (and still in operative effect), the language of the Model Escrow Statute passed by the Maryland General Assembly stated:

It would be contrary to the policy of the State if those tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive short-term profits in the years before liability may arise without ensuring that this state will have an eventual source of recovery from them if they are proven to have acted culpably.

It is thus in the interests of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from *deriving large, short-term profits and becoming judgment proof* before liability may arise.

⁸ A sample point-of-sale advertisement by Xcaliber is attached as Attachment 6.

MD. CODE ANN. BUS. REG. § 16-401(f) (emphasis added). By requiring NPMs to deposit monies that may later serve as a source for judicially contemplated judgments or settlements by Maryland, NPMs have, per the legislative policy of the State, been prevented from “deriving large, short-term profits and then becoming judgment proof.” Nothing within the current bill changes that. The tax obligations contemplated by the legislation does not change the sum owed by NPMs; the measure only converts the escrow obligation to a tax obligation payable on the exact same schedule. The State has already assured that NPMs cannot enter and exit the market without incurring costs.

Finally, the legislation asserts that the measures contained therein would prevent youth access to tobacco. If that is indeed the goal, the State should target the PMs, rather than the NPMs. As outlined by the Centers for Disease Control and Prevention (“CDC”) as recently as 2018, youth do not smoke brands manufactured by NPMs. Rather, “the top three brands usually smoked among cigarette smokers in all middle school grades combined were Marlboro (38.3%), Newport (21.4%), and Camel (13.4%).” CENTERS FOR DISEASE CONTROL AND PREVENTION: CIGARETTE BRAND PREFERENCE AND PRO-TOBACCO ADVERTISING AMONG MIDDLE AND HIGH SCHOOL STUDENTS – UNITED STATES, 2012-2016 2 (2018).⁹ The CDC more fully outlined the remaining cigarette brands used by youth in subsequent publications. In order, these were Pall Mall, Maverick, Santa Fe, Winston, and Kool. CENTERS FOR DISEASE CONTROL AND PREVENTION: TOBACCO BRAND PREFERENCES 1 (2021).¹⁰ All of these brands are manufactured by PMs. The proposed bill does nothing to correct youth initiation of NPM brands, as the evidence establishes that there is none.

5. UNLESS THE PARTICIPATING MANUFACTURERS HAVE CONSENTED TO THE LANGUAGE OF THE BILL, ITS PASSAGE MAY ADVERSELY IMPACT ONGOING PAYMENT DISPUTES RELATED TO THE CIGARETTE RESTITUTION FUND.

One of the largest downward adjustments to annual MSA payments received by the Settling States, including Maryland, is the so-called “NPM Adjustment.” A Settling State, however, can avoid this adjustment if it “continuously had a Qualifying Statute ... in full force and effect during the entire calendar year immediately preceding the year in which the payment in question is due, and diligently enforced the provisions of the statute during such entire calendar year[.]” 1998 TOBACCO MASTER SETTLEMENT AGREEMENT, § IX(d)(2). The Model Escrow Statute, passed by the Maryland General Assembly as MD. CODE ANN. BUS. REG. § 16-401, *et seq.*, is considered a “Qualifying Statute” only “if enacted without modification or addition (except for particularized state procedural or technical requirements)” *Id.* at § IX(d)(2)(E). Needless to say, the amendments to the Model Escrow Statute proposed by House Bill 870 are substantial and would undoubtedly constitute a “modification or addition” within the meaning of the MSA. At a time when Maryland is already concerned about the funding of the Cigarette Restitution Fund, this would negatively impair tens of millions of dollars received by the State each year from the PMs. Unless and until the PMs have provided so-called “assurance letters” that House

⁹ A copy of this document is attached as Attachment 7.

¹⁰ A copy of this document is attached as Attachment 8.

Bill 870 remains a "Qualifying Statute," it is safe to assume that they will use its passage as a tool to continue to withhold funds from Maryland, adversely impacting both the Cigarette Restitution Fund and public health.

6. THE PMs, DESPITE THEIR LONG HISTORY OF BAD ACTS AND PRACTICES, RECEIVE FAR MORE FAVORABLE TREATMENT THAN PROVIDED TO NON-OFFENDING NPMs UNDER THE BILL.

Despite their long history of bad acts and practices, the MSA and the proposed legislation afford the PMs disproportionate legal protections as compared to NPMs. Examples are as follows:

- PMs were sued in court and given the opportunity to litigate the claims made against them by Maryland and the other Settling States. This constitutes due process within the meaning of the law. To end that litigation, the PMs were able to negotiate the MSA with the Settling States and craft a settlement that permitted them to remain viable, ongoing entities. In contrast, legislative protections within MD. CODE ANN. BUS. REG. § 16-403(b)(2) that were intended to provide NPMs with due process if they committed acts and practices leading to legal liability are eliminated by the legislation. Instead, by mere legislative fiat, NPMs would be deemed legally liable for potential harm and a tax would be imposed against them alone.
- Pursuant to § IX(c) of the MSA, PMs are permitted to make their MSA payments on an annual basis. This gives the companies the use of their monies through the year, including the right and ability to invest and make money from funds that will ultimately be paid to the State. In contrast, NPMs are expected by the legislation to make their tax payments on a quarterly basis, depriving them of the use of the funds over a longer period.
- Pursuant to § XI(c) of the MSA, PMs are given an almost infinite period of time to dispute their payment obligations to the Settling States. In contrast, under the proposed legislation, NPMs would be given only one year from payment to dispute payments. In some cases, this would completely deny NPMs of a remedy, as certain payment disputes occur outside of this one-year limitation.
- Pursuant to § IX(h) of the MSA, if a PM refuses to make a payment due to the Settling States, such payment only accrues interest until paid. In the interim period, the PMs may continue to sell their product, without interruption. In contrast, if an NPM were to fail to make a tax payment under the legislation, the NPM would be fined under the legislation in an amount not to exceed 100% of the amount owed. In the case of a knowing violation, that amount would increase to 300% of the amount owed. Further, the brands manufactured by the NPM would be removed from the list of approved cigarette products maintained by the Attorney General, meaning that the products would be contraband, subject to seizure.

- Pursuant to § VII of the MSA, any disputes between PMs and the Settling States are to be adjudicated by either courts of competent jurisdiction or an arbitration panel. In contrast, the bill provides no forum for the adjudication of payment-related disputes by NPMs, and instead permits the Attorney General, with whom the dispute would relate, the sole ability to resolve the matter.
- Pursuant to § XII of the MSA, the PMs secured a liability release for all past, current, and future legal claims that could be made against them by the Settling States. In contrast, the legislation before these Committees provides no liability release to NPMs, despite the fact that it seeks to permanently secure funds for the State.

All of these protections, per the explicit terms of the MSA, are intended to “effectively and fully neutralize[] the cost disadvantages that the [PMs] experience vis-à-vis [NPMs].” 1998 TOBACCO MASTER SETTLEMENT AGREEMENT, § IX(d)(2)(E). In other words, the measures adopted by the Model Escrow Statutes – and by extension the legislation under consideration – are intended to protect the market share of the PMs whose own acts and practices brought about the need for the MSA. Not only does this constitute a gross miscarriage of justice, but it also raises a number of due process and equal protection violations that will undoubtedly result in litigation against the State.

In sum, House Bill 870 upends the rules under which Xcaliber has operated, without any accusation of wrongdoing, since 2001. It further fails to advance the goals that it seeks to achieve. Indeed, the bill does nothing to change the costs of NPM products or “level a playing field” that is, based upon clear market data, already tilted toward the PMs, whose actions brought about the need for the MSA itself. Ironically, the bill simply supports the PMs who hold 99% of the Maryland tobacco market.

If you have any questions, or need anything further, please do not hesitate to contact me.

Warmest Regards,



Eric B. Estes
General Counsel

attachments

ATTACHMENT 1

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1173 (Delegate Qi)
Health and Government Operations

Tobacco Product Manufacturers - Escrow Act - Alterations

This bill revises the Tobacco Product Manufacturers Escrow Act (Escrow Act) and renames it the Tobacco Product Manufacturers Equity Act (Equity Act). Tobacco product manufacturers that have not joined the Master Settlement Agreement (MSA) – also known as nonparticipating manufacturers (NPMs) – must pay an equity fee to the Comptroller for each unit sold in the State on or after January 1, 2024 (rather than placing an equivalent amount of money into a qualified escrow fund). That equity fee must be paid within a specified timeline. The annual certification that an NPM must submit to the Office of the Attorney General (OAG) must include specified information about equity fee payments. An NPM that pays an equity fee in a timely manner may contest the amount of the fee within one year of payment. The Comptroller must distribute all equity fee payments by NPMs to the Cigarette Restitution Fund (CRF). The Attorney General may adopt regulations to implement the bill. The bill's provisions are not severable.

Fiscal Summary

State Effect: CRF revenues increase by at least \$450,000 annually, beginning in FY 2025, from equity fees paid by NPMs, as discussed below. OAG can absorb any costs associated with the bill's implementation using existing budgeted resources. General fund expenditures for the Comptroller's Office may increase in FY 2025, potentially by a significant amount, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: In renaming the Escrow Act as the Equity Act, the bill replaces various statutory references to “Escrow Act” with “Equity Act” and “escrow” with “equity.”

Legislative Findings

The bill expands certain legislative findings pertaining to the (as renamed) Equity Act as follows:

- It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than the State and, for that purpose, tobacco product manufacturers that have settled with the State pay the State millions of dollars each year, unlike other tobacco product manufacturers that do not make direct payments.
- The public health obligations of the State are owed equally to all individuals in the State who smoke, regardless of the brand of cigarette smoked or the status of the tobacco product manufacturer under the MSA.
- It is consistent with the policy of the State to require tobacco product manufacturers that do not make payments directly to the State through the MSA to pay an amount that is intended to (1) prevent manufacturers from deriving large short-term profits and then becoming judgment proof; (2) require tobacco manufacturers to internalize the health care costs imposed on the State by cigarette smoking; (3) increase the price of cigarettes to reduce smoking rates, particularly among the youth of the State; and (4) serve as partial compensation for the financial burdens imposed on the State by cigarette smoking.

Termination of Escrow Fund Payments and Implementation of Equity Fees

The bill terminates an NPM’s ongoing obligation to deposit annually, into a qualified escrow fund, \$0.0188482 (as adjusted for inflation) for each cigarette it sells in Maryland. That obligation is maintained for each cigarette sold through December 31, 2023, with the escrow amount required to be in place by April 15, 2024. However, for each cigarette sold in the State beginning on January 1, 2024, the bill requires that an NPM instead pay an equity fee of \$0.0188482, as adjusted for inflation, to the Comptroller. Under the bill, by April 30, 2025, and each April 30 thereafter, an NPM must remit the equity fee to the Comptroller.

Certifications to the Attorney General

In its annual certification to OAG, an NPM must certify that it has paid the required equity fee and must include (1) the amount of the payment the NPM has paid for cigarettes sold in the State during the preceding calendar year; (2) the date and amount of the payment; and (3) any additional information that the Attorney General considers to be necessary. The Attorney General must develop and make available for public inspection a directory listing all tobacco product manufacturers that *the Attorney General determines* have provided current and accurate certifications that comply with *all applicable federal, State, and local laws* and all *compliant* brand families that are listed in such certifications. An NPM and any brand family affiliated with the NPM may not be included or retained in the directory if any required equity fee has not been fully paid to the Comptroller.

Nonpayment of Equity Fees

The Attorney General may bring a civil action on behalf of the State against any NPM that fails to pay the equity fee it owes. The Attorney General is entitled to recover the attorney's fees, costs, and expenses of the action for the use of the State and must deposit any recovered funds into CRF.

As under current law for failure to place funds into escrow, a court, upon a finding that an NPM has failed to pay the equity fee, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld per day of the violation, up to a total of 100% of the original amount improperly withheld. An NPM that knowingly failed to pay the equity fee to the Comptroller must be required by the court to pay the fee within 15 days. Upon a finding that an NPM has knowingly failed to pay the equity fee, the court may impose a civil penalty of up to 15% of the amount improperly withheld per day of the violation and in a total amount up to 300% of the original amount improperly withheld. Each failure to pay the equity fee constitutes a separate violation.

Nonseverability – Equity Act and the Master Settlement Agreement

The provisions of the bill are not severable. If any provision of the bill or its application is held invalid for any reason in a court, no other provision or application of the bill may be given effect. Additionally, if all or any portion of the equity fee established under the bill results in a determination by the Firm (as that term is defined by the MSA), that the Equity Act no longer constitutes a qualifying statute (as defined in the MSA), no other provision or application of the bill may be given effect.

Current Law:

Escrow Act Generally

In 1999, the State enacted the Escrow Act, under which a tobacco product manufacturer must either (1) become a participating manufacturer by joining the MSA and generally comply with its financial obligations or (2) establish and pay into an escrow account as an NPM. Each calendar year, an NPM must place a specified amount per cigarette sold in the State into a qualified escrow fund by April 15 of the following calendar year. Since 2007, an NPM has been required to pay \$0.0188482 per cigarette sold.

A “qualified escrow fund” means an escrow arrangement with a federally or State-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1.0 billion where such arrangement requires that such financial institution hold the principal of the escrowed funds for the benefit of releasing parties and prohibits the tobacco product manufacturer that places the funds into escrow from using, accessing, or directing the use of the principal of the funds, except as specified.

In general, funds from the escrow fund may only be released to pay a judgment or claim brought by the State or any releasing party located or residing in the State. A releasing party includes public entities and educational institutions, and persons or entities seeking relief on behalf of the general public or seeking to recover health care expenses paid or reimbursed by the State. Funds can be released early from escrow under certain circumstances; otherwise, the escrow funds are released after 25 years. Interest or other appreciation earned on escrow payments reverts back to the NPM.

Cigarette Restitution Fund

Chapters 172 and 173 of 1999 established CRF, which is supported by payments made under the MSA. Through the MSA, settling tobacco manufacturers pay the litigating parties (46 states, 5 territories, and the District of Columbia) substantial annual payments in perpetuity. The distribution of MSA funds among the states is determined by formula; as of April 2022, Maryland has received over \$3.3 billion since 1999.

The use of CRF funds is restricted by statute. The Governor must include appropriations from CRF in the annual budget bill equivalent to the lesser of \$100.0 million or 90% of the funds estimated to be available to CRF in the fiscal year for which the appropriations are made. At least 30% of the appropriations must be made to Medicaid. At least 50% of the appropriations must be dedicated to the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; specified activities

of the Southern Maryland Agricultural Development Commission; and other programs that serve specified purposes.

Certifications to the Attorney General – Escrow Act

By April 30 each year, a tobacco product manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer, or similar intermediary, must execute and deliver a certification to the Attorney General. Among other things, in this certification, an NPM must (1) include a complete list of all its brand families and (2) certify that it has established and continues to maintain a qualified escrow fund and has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the fund.

OAG must subsequently develop and make available for public inspection a directory listing all tobacco product manufacturers that have complied with the certification requirement and all associated brand families that are listed in the provided certifications. OAG may not include or retain in the directory the name or brand families of any NPM that fails to provide the required certification or whose certification is determined to be out of compliance, unless OAG determines that the violation has been cured.

Nonpayment of Equity Fees – Escrow Act

The Attorney General may bring a civil action on behalf of the State against any NPM that fails to place into escrow the funds it is required to collect for each cigarette sold in the State. An NPM that fails in any year to place funds into escrow must be required within 15 days to place such funds into escrow.

A court, upon a finding that an NPM has failed to place the required funds into escrow, may impose a civil penalty of up to 5% of the amount improperly withheld per day of the violation and in total up to 100% of the original amount improperly withheld from escrow. An NPM that has knowingly failed to place the required funds into escrow is subject to a civil penalty of up to 15% of the amount improperly withheld per day of the violation and in total up to 300% of the original amount withheld from escrow.

State Revenues: According to OAG, three NPMs are registered to operate in Maryland, with one of them only generating nominal cigarette sales in the State over the past few years. OAG advises that NPMs deposited a total of \$362,114 into escrow funds in 2022 and \$535,758 in 2023 (although this figure is not final). Escrow funds are held with an eligible federally or State-chartered financial institution and are not held by the State. Funds held in escrow for an NPM are only disbursed to the State (1) to pay a judgment or claim brought by the State or any releasing party located or residing in the State or (2) if

the NPM joins the MSA. Escrow funds only become realizable as CRF revenues if one of those two situations materializes.

Under the bill, instead of continuing to put funds into escrow, each NPM must pay an equity fee, which is equivalent to the same amount per unit of cigarettes sold that must now be placed into escrow, as both are adjusted for inflation. This equity fee must be paid to the Comptroller by April 30, 2025, and each April 30 thereafter, and is paid into CRF and, thus, received as CRF special fund revenues in the same year. Therefore, although the dollar amount per cigarette that NPMs must set aside for the equity fee in 2024 is essentially the same amount they would be required to deposit into escrow in the absence of the bill, the bill's impact on CRF revenues is meaningful.

OAG estimates that NPMs will remit equity fee payments of between \$500,000 and \$600,000 on their cigarette sales for calendar 2024. OAG anticipates that equity fee payments by NPMs will remain in that same range in future years. While the Department of Legislative Services (DLS) generally concurs, DLS notes that annual escrow deposits have varied considerably over the past five calendar years. On average, escrow deposits in 2022 and 2023 were \$448,936 per year.

Accordingly, CRF revenues increase by *at least* \$450,000 annually, beginning in fiscal 2025. DLS advises that it is unlikely that the CRF revenue increase in fiscal 2025 exceeds \$600,000; however, the increase depends on actual cigarette sales volume by NPMs in calendar 2024. DLS notes that, as NPMs are required to make an equity fee payment for calendar 2024 by April 30, 2025, this analysis reflects receipt of those CRF revenues in the final quarter of fiscal 2025.

The analysis assumes that none of the three NPMs (1) joins the MSA at any point during the period covered by this fiscal and policy note (fiscal 2025 through 2029) or (2) is required to pay a judgment or claim brought by the State or any releasing party located or residing in the State during that time period. To the extent either of those circumstances occurs, DLS notes that CRF revenues would likely have increased even in the absence of the bill (thus, negating at least some of the CRF revenue increase assumed to result from the bill). This is because, in the absence of the bill, should an NPM join the MSA, the NPM's escrow payments would be distributed to the State as part of its initial MSA payment and those funds would accrue to CRF.

OAG advises that, while the bill authorizes the Attorney General to recover the attorney's fees, costs, and expenses of any action brought against an NPM for failure to pay the equity fee, the potential for recovery due to litigation is expected to be minimal.

State Expenditures: The Comptroller Office's advises that it can handle the receipt and processing of equity fee payments from NPMs with existing budgeted resources.

However, the Comptroller's Office advises that it expects to incur at least \$2.0 million in computer programming expenditures in fiscal 2025 to add the equity fee into the Comptroller's Compass system. DLS is unable to independently verify the Comptroller's estimate at this time but acknowledges that contractual computer programming costs may be significant. Accordingly, general fund expenditures may increase for the Comptroller in fiscal 2025, potentially by a significant amount.

DLS also notes that, with the increase in revenues, additional funds become available to OAG and for other authorized purposes of CRF; however, the bill does not require additional spending under CRF.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced in the last three years.

Designated Cross File: SB 1018 (Senator A. Washington) - Finance and Budget and Taxation.

Information Source(s): Alcohol, Tobacco, and Cannabis Commission; Office of the Attorney General; Comptroller's Office; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2024
js/jc

Analysis by: Ralph W. Kettell

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ATTACHMENT 2

He's one of the busiest men in town. While his door may say *Office Hours 2 to 4*, he's actually on call 24 hours a day.

The doctor is a scientist, a diplomat, and a friendly sympathetic human being all in one, no matter how long and hard his schedule.

According to a recent Nationwide survey:

MORE DOCTORS SMOKE CAMELS THAN ANY OTHER CIGARETTE

DOCTORS in every branch of medicine—113,597 in all—were queried in this nationwide study of cigarette preference. Three leading research organizations made the survey. The gist of the query was—What cigarette do you smoke, Doctor?

The brand named most was Camel!

The rich, full flavor and cool mildness of Camel's superb blend of costlier tobaccos seem to have the same appeal to the smoking tastes of doctors as to millions of other smokers. If you are a Camel smoker, this preference among doctors will hardly surprise you. If you're not—well, try Camels now.



Your "T-Zone" Will Tell You...

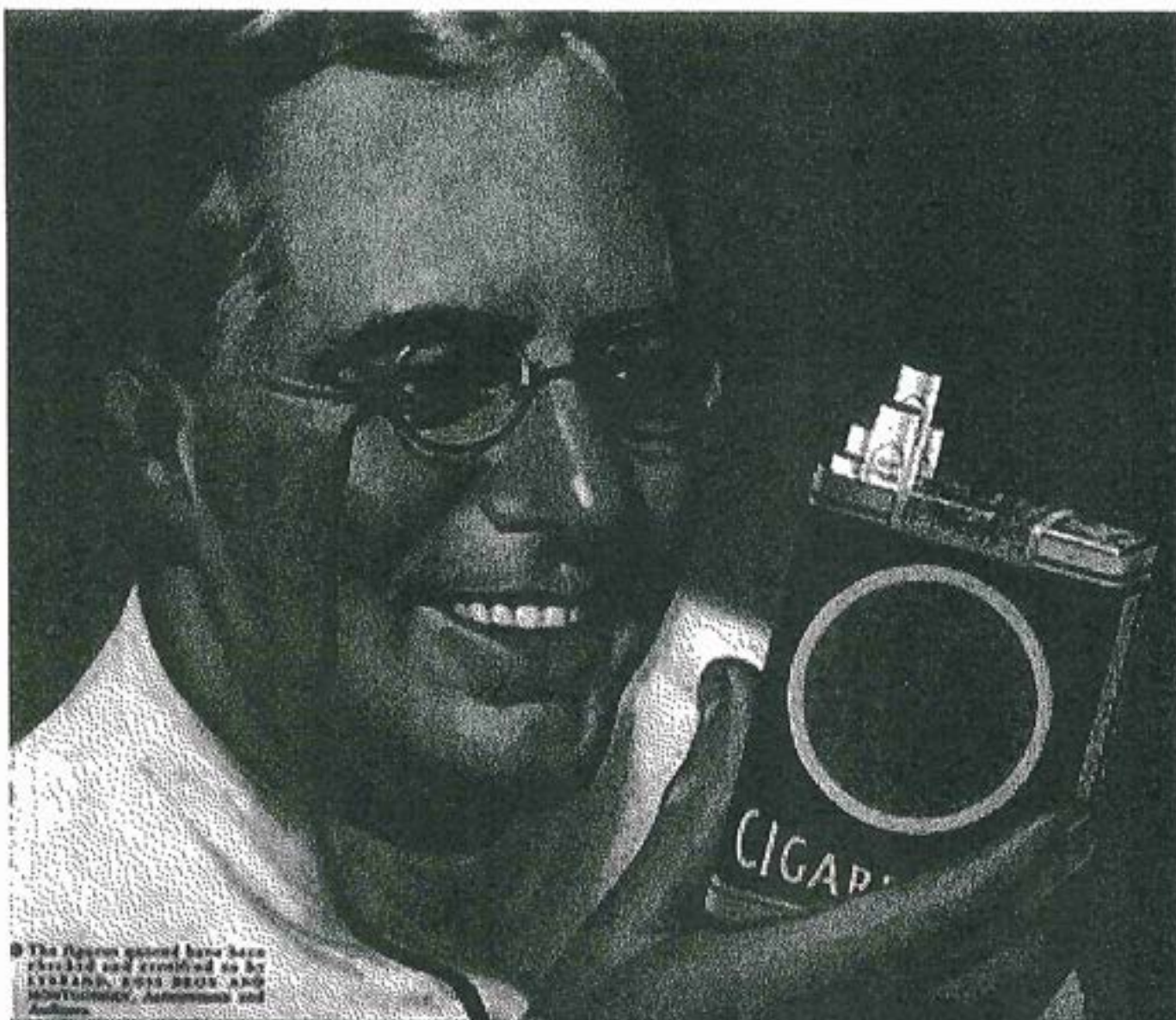
T for Taste...
T for Throat...
that's your
proving ground
for any cigarette.
See if Camels
don't suit your
"T-Zone" to a "T."



CAMELS

Costlier Tobaccos

W. F. Reynolds
Tobacco Company
Raleigh, N. C.



The LUCKIES brand has been
checked and certified as
LYDIA, 1911, 2001, AND
MONTAGNA, 1911, 2001, AND
Audience.

20,679 Physicians

say " "

LUCKIES

are *less irritating*"

"It's toasted"

Your Throat Protection against irritation against cough

Viceroy's FILTER

the Smoke!

As your Dentist,
I would recommend
VICEROYS

VICEROY
Filter Tip
CIGARETTES

"Just as I've told you on our Dragnet shows, I smoke two packs of Chesterfields every day . . . much milder Chesterfield is best for me."

Jack Webb



Chesterfield is Best for YOU!

CHESTERFIELD contains tobaccos of better quality and higher price than any other king-size cigarette . . . the same as regular Chesterfield.



CHESTERFIELD—FIRST CIGARETTE TO OFFER SMOKERS PREMIUM QUALITY IN BOTH REGULAR AND KING-SIZE

WHEN you are asked to try a cigarette you want to know, and you *ought* to know, what that cigarette has meant to people who smoke it all the time.

For a full year now, a medical specialist has given a group of Chesterfield smokers thorough examinations every two months. He reports:

no adverse effects to their nose, throat or sinuses from smoking Chesterfields.

More and more men and women all over the country are finding out every day that Chesterfield is best for them.

Enjoy your Smoking!

Try *Much Milder* Chesterfield with its *extraordinarily* good taste.

An eminent scientist writes the head
chemist in our Research Department:

“Chesterfield Cigarettes are
just as pure as the water you drink”

THE WATER YOU DRINK is tested
from time to time by expert chemists
to make sure that it is free from all injuri-
ous substances—that it is pure.

So it is in the manufacture of CHESTERFIELD
cigarettes. Expert chemists test all the ma-
terials that are used in any way in CHESTER-
FIELD's manufacture, to make sure that
everything that goes into CHESTERFIELD is
just right.

THE LEAF TOBACCO IS PURE.
Long cool cures—drying machines of the
most modern type—scientifically “dry” and
clean and purify the natural tobacco leaves
by exact high-temperature treatment.

Then the threads of cut tobacco, as you
see them in your CHESTERFIELD, are again
heated, cleaned and purified. From these
pure tobaccos the cigarettes are made, and
only the purest paper—the best that can be
made—is used for CHESTERFIELD.

Cigarettes used to be made in an old-
fashioned way, by hand. Now, no hand
but yours touches CHESTERFIELD—another
purity safeguard.

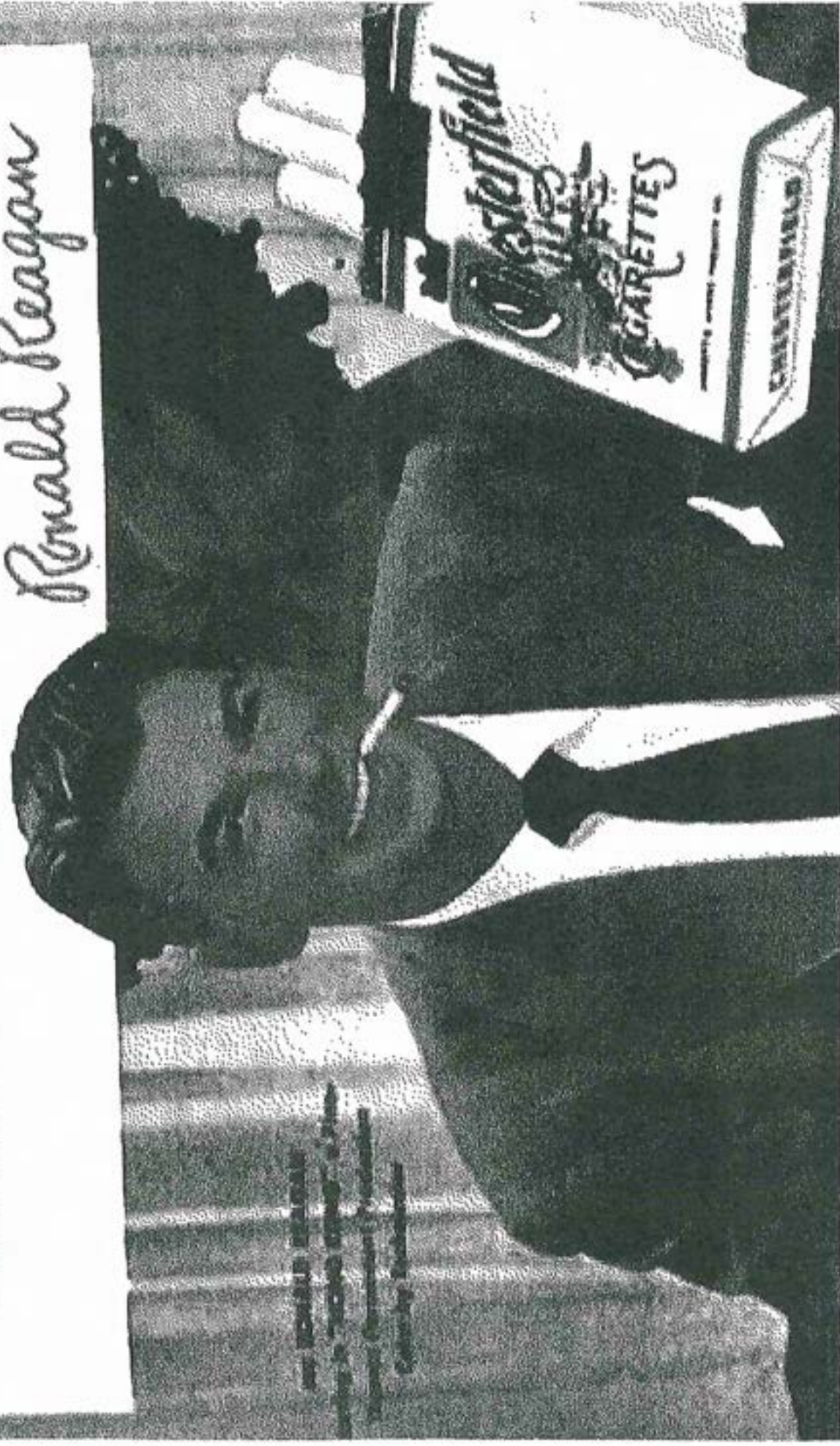
CHESTERFIELD are made and packed in
clean, sanitary factories where even the air
is changed every hour and one-half minute
—purity again.

ALL THIS CARE is taken to give you
CHESTERFIELD as nearly perfect as ciga-
rettes can be made. Delivered in a mois-
ture-proof, sealed package, they reach you
just as good, just as pure as when they leave
the factory. Good . . . they're got to be
good—they're just as pure as the water
you drink!



I'M SENDING CHESTERFIELDS to all my friends.
That's the merriest Christmas any smoker can have —
Chesterfield mildness plus no unpleasant after-taste

Ronald Reagan



Now Millions Know! ONE

KING SIZE

tops 'em all for
TASTE and COMFORT!

*Your throat can tell—
it's PHILIP MORRIS*



No matter what brand of cigarette you are now smoking... there's nothing pleaster waiting for you in the new PHILIP MORRIS King-Size. Millions of smokers have tried them... and are buying them more and more often! There just isn't a rival there, you will see. Because from the very first puff, your throat will tell that here, at last, is a cigarette not only good to smoke, but good to the smoker... a good to you! So, ... get the millions who now love PHILIP MORRIS King-Size cigarettes, all for taste and comfort. Try a nation's love!

America's Finest Cigarette!



CALL
FOR

PHILIP MORRIS



SMOKE
OUR
BRAND

CHESTERFIELD

THEY'RE REALLY *GOOD* TO YOU

Guard Against Throat-Scratch

enjoy the smooth smoking of fine tobaccos

...smoke **PALL MALL**
the cigarette whose mildness
you can measure



Study This Puff Chart:

PUFF BY PUFF...YOU'RE ALWAYS AHEAD WITH PALL MALL



The 100% pure tobacco filter allows the smoke to pass through the tobacco, the milder that smoke is, the more the smoke is mild. Hence, a smoke is milder than any other at any other smoking cigarette.



Again, after 1 puff of each cigarette you can see the smoke. The smoke is mild and the smoke is mild. Hence, a smoke is milder than any other at any other smoking cigarette.



...or 10 puffs. Pall Mall's popular length of 10 puffs will give you the smoke. Hence, a smoke is milder than any other at any other smoking cigarette.

After one year of study, you will see more and more people smoking Pall Mall cigarettes, which will give you more and more.

Outstanding

...and they are mild!



P.S. LET A CARTON OF PALL MALLS SAY "MERRY CHRISTMAS" FOR YOU

IS THIS YOU FIVE YEARS FROM NOW?

When tempted to over-indulge

"Reach for a Lucky instead"



The moderate—be moderate in all things, even in smoking. Avoid that future shadow by avoiding over-indulgence. If you would maintain that modern, ever youthful figure, "Reach for a Lucky instead."

Lucky Strike, the finest Cigarette you ever smoked, made of the finest tobacco—The Cream of the Crop—"IT'S TOASTED." **Lucky Strike** has an extra, secret heating process. Everyone knows that heat purifies and so 20,679 physicians say that **Luckies** are less irritating to your throat.

"It's toasted"

Your Throat Protection—against irritation—against cough.

*We do not say smoking **Luckies** reduces flesh. We do say when tempted to over-indulge, "Reach for a **Lucky** instead."

We make Virginia Slims especially for women because they are biologically superior to men.

That's right, *superior*. Women are more resistant to starvation, fatigue, exposure, shock, and illness than men are.

Women have two "X" chromosomes in their sex cells, while men have only one "X" chromosome and a "Y" chromosome...which some experts consider to be the inferior chromosome.

They are also less inclined than men to congenital baldness, Albinism of the eyes, improperly developed sweat glands, color blindness of

the red-green type, day blindness, defective hair follicles, defective iris, defective tooth enamel, double eyelashes, skin cysts,

shortsightedness, night-blindness, nomadism, retinal detachment, and white occipital locks of hair.

In view of these and other facts, the makers of Virginia Slims feel it highly inappropriate that women continue to use the fat, stubby cigarettes designed for mere men.



Virginia Slims.

Slimmer than the fat cigarettes men smoke.
With rich Virginia flavor women like.

You've come a long way, baby.

Just one question, Mom...



can you afford
not to smoke

Marlboro?



Yes, you need never
feel over-smoked
—that's the Miracle
of Marlboro!



Of all leading filter cigarettes

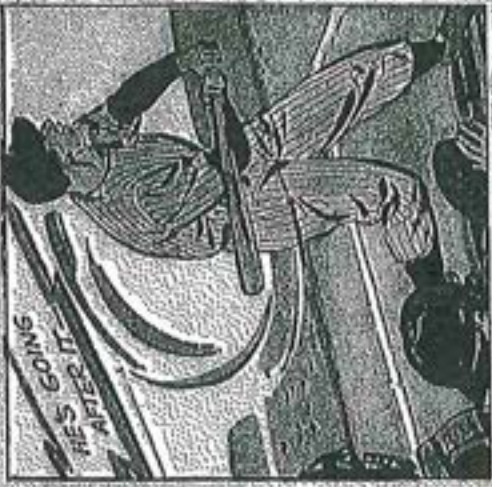
Kent Filters Best

gives you less tars and nicotine

*Kent gives you the rich taste—and full flavor
of premium quality, natural-leaf tobaccos.*

It makes good sense to smoke Kent . . . and good smoking, too!

A Product of P. Lorillard Company—First with the finest cigarettes—through Lorillard Research!



R. J. REYNOLDS TOBACCO COMPANY, WINSTON-SALEM, NORTH CAROLINA

THE SMOKE OF SLOWER-BURNING CAMELS CONTAINS

28% Less Nicotine

THAN THE AVERAGE OF THE 4 OTHER LARGEST-SELLING CIGARETTES TESTED—LESS THAN ANY OF THEM—ACCORDING TO INDEPENDENT SCIENTIFIC TESTS OF THE SMOKE ITSELF



THE CIGARETTE OF COSTLY ECONOMY

By burning 25% slower than the average of the 4 other largest-selling brands tested—slower than any of them—Camels also give you smoking pleasure on the average, to

5 EXTRA SMOKES PER PACK!

**DORAL
MEETS A
SMART
COOKIE!**

MY FORTUNE SAYS:
TASTE OF LOW "TAR" AND
NICOTINE CIGARETTE IS LIKE
DRAGON WITH LOCKJAW!
NO SNAP!

TASTE ME
TASTE ME

MARGO, I THINK OUR
TEAPOT IS SINGING!

OH, NO, THAT
IS DORAL—
LOW "TAR"
AND NICOTINE
CIGARETTE!

LOW "TAR" AND NICOTINE?
THEN HOW CAN IT
SING ABOUT TASTE?

TRY
TASTE
ME
IT!

DORAL

MARVELOUS
TASTE!

CONFUCIUS SAY:
DON'T KNOCK IT TILL
YOU'VE TRIED IT!

TASTE
ME

The Filter
system you'd
need a scientist
to explain...
but Doral says it
in two words,
"Taste me"

DORAL

ATTACHMENT 3

A Frank Statement to Cigarette Smokers

RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings.

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive should be disregarded or lightly dismissed.

At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.

Distinguished authorities point out:

1. That medical research of recent years indicates many possible causes of lung cancer.
2. That there is no agreement among the authorities regarding what the cause is.
3. That there is no proof that cigarette smoking is one of the causes.
4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. Indeed the validity of the statistics themselves is questioned by numerous scientists.

We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business.

We believe the products we make are not injurious to health.

We always have and always will cooperate closely with those whose task it is to safeguard the public health.

For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of a serious disease is a matter of deep concern to us.

Many people have asked us what we are doing to meet the public's concern aroused by the recent reports. Here is the answer:

1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.
2. For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE.
3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities.

This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it.

TOBACCO INDUSTRY RESEARCH COMMITTEE

5400 EMPIRE STATE BUILDING, NEW YORK 1, N. Y.

SPONSORS:

THE AMERICAN TOBACCO COMPANY, INC.
Paul M. Hehn, President

WYSON & HEDGER
Joseph F. Colman, Jr., President

BRIGHT BELL WAREHOUSE ASSOCIATION
F. J. Royter, President

BROWN & WILLIAMSON TOBACCO CORPORATION
Timothy V. Hartnett, President

BURLAY AUCTION WAREHOUSE ASSOCIATION
Albert Clay, President

BURLAY TOBACCO GROWERS COOPERATIVE
ASSOCIATION
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E. A. Darr, President

STEPHANO BROTHERS, INC.
C. S. Stephano, D.Sc., Director of Research

TOBACCO ASSOCIATES, INC.
(An organization of free trade tobacco growers)
J. B. Hutton, President

UNITED STATES TOBACCO COMPANY
J. W. Peterson, President

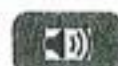
ATTACHMENT 4

University of California San Francisco (<https://www.ucsf.edu>)

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Tobacco CEO's Statement to Congress 1994 News Clip "Nicotine is not addictive."



April 14, 1994 - Hearing on the Regulation of Tobacco Products House Committee on Energy and Commerce Subcommittee on Health and the Environment

The Subcommittee met, pursuant to notice, at 9:05 a.m., 2123 Rayburn House Office Building, Hon. Henry A. Waxman (chairman) presiding.

Opening Statement from Chairman Henry A. Waxman

REP. WAXMAN: The meeting of the subcommittee will come to order. I'd like to ask our guests to please take your seats. This is an historic hearing. For the first time ever, the chief executive officers of our Nation's tobacco companies are testifying together before the U.S. Congress. They are here because this subcommittee has legislative jurisdiction over those issues that affect our health. And no health issue is as important as cigarette smoking. It is sometimes easier to invent fiction than to face the truth. The truth is that cigarettes are the single most dangerous consumer product ever sold. Nearly a half million Americans die every year as a result of tobacco. This is an astounding, almost incomprehensible statistic. Imagine our Nation's outrage if two fully loaded jumbo jets crashed each day, killing all aboard. Yet that is the same number of Americans that cigarettes kill every 24 hours. Sadly, this deadly habit begins with our kids. Each day 3,000 children will begin smoking. In many cases they become hooked quickly and develop a life long addiction that is nearly impossible to break. For the past 30 years a series of surgeons general have issued comprehensive reports outlining the dangers these children will eventually face. Lung cancer, heart disease, emphysema, bladder cancer, and stroke are only some of the diseases caused by tobacco causes. And now we know that kids will face a serious health threat even if they don't smoke. Environmental tobacco smoke is a Class A carcinogen, and it sickens more than 1 million kids every year. In fact, five former surgeons general of

the United States testified before this subcommittee this year, that the most important legislation in disease prevention that we could enact would be restrictions on smoking in public places. This subcommittee will soon act on that legislation, and it will consider other measures as well. This hearing will aid our efforts by presenting an important perspective. But these hearings are important for another reason as well. For decades the tobacco companies have been exempt from the standards of responsibility and accountability that apply to all other American corporations. Companies that sell that sell aspirin, cars, and soda are all held to strict standards when they cause harm. We don't allow those companies to sell goods that recklessly endanger consumers. We don't allow them to suppress evidence of dangers when harm occurs. We don't allow them to ignore science and good sense. And we demand that when problems occur, corporations and their senior executives be accountable to Congress and the public. This hearing marks the beginning of a new relationship between Congress and the tobacco companies. The old rules are out, the standards that apply to every other company are in. We look forward to hearing the testimony this morning, and to working with these companies to begin to reduce the extraordinary public health threat that tobacco poses.

An old proverb says that a journey of a thousand miles must begin with a single step. Today is the first step. Many more are to come as we deal with the most serious health problem facing our Nation.

[Tobacco company CEOs declare, under oath, that nicotine is not
addictive]

REP. RON WYDEN: Let me begin my questioning on whether or not nicotine is addictive. Let me ask you first, and I'd like to just go down the row, whether each of you believes that nicotine is not addictive. I heard virtually all of you touch on it. Yes or no, do you believe nicotine is not addictive?

MR. WILLIAM CAMPBELL

I believe nicotine is not addictive, yes.

REP. RON WYDEN: Mr. Johnston?

MR. JAMES JOHNSTON

Mr. Congressman, cigarettes and nicotine clearly do not meet the classic definition of addiction. There is no intoxication.

REP. RON WYDEN: We'll take that as a "no." Again, time is short. I think that each of you believe that nicotine is not addictive. We would just like to have this for the record.

MR. JOSEPH TADDEO

I don't believe that nicotine or our products are addictive.

MR. ANDREW TISCH

I believe that nicotine is not addictive.

MR. EDWARD HARRIGAN

I believe that nicotine is not addictive.

MR. THOMAS SANDEFUR

I believe that nicotine is not addictive.

MR. DONALD JOHNSTON

And I, too, believe that nicotine is not addictive.

Witnesses:

William Campbell, President & CEO, Philip Morris, USA

James W. Johnston, Chairman and CEO, R.J. Reynolds Tobacco Company

Joseph Taddeo, President, U.S. Tobacco Company

Andrew H. Tisch, Chairman and CEO, Lorillard Tobacco Company

Edward A. Horrigan, Chairman and CEO, Liggett Group Inc.

Thomas E. Sandefur, Chairman and CEO, Brown and Williamson Tobacco Corp.

Donald S. Johnston, President and CEO, American Tobacco Company

Chaired by: Henry Waxman (D-CA)

Resources:

Ballot on Tobacco Industry Funding Research and Tobacco Documents at UC and UCSF ([tobacco-funding](#))

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ATTACHMENT 5



PHILIP MORRIS: A LONG HISTORY OF DOUBLE TALK

"Lying is as natural to tobacco executives as breathing once was to their customers."

Editorial, "Drug Pushers: Tobacco Products Should Be Regulated,"
Newsday, September 1, 2006

* * * * *

For some time now, Philip Morris has been engaged in an aggressive public relations effort aimed at convincing policy makers and opinion leaders (and potential jurors) that it has finally turned over a new leaf and become a good corporate citizen and that the company actually wants to reduce teen smoking. But a look at the cigarette company's history shows that this media campaign is nothing more than the same old double talk. Since at least the 1960's, Philip Morris has repeatedly made similar claims that it does not market cigarettes to kids. But internal company documents revealed in the tobacco lawsuits show that Philip Morris has regularly done just that. There are many effective actions Philip Morris could take to prevent and reduce smoking among kids, but it has not – and just talking a good game is not enough.

What Philip Morris Says In Public

- 1965 The cigarette companies' voluntary "Cigarette Advertising Code" goes into effect. Among its standards: *"Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction."* [Section 1(d)]
- 1966 Philip Morris President Joseph F. Cullman, III: *"we do not favor smoking by young people. We think smoking should be a custom for adults."*¹
- 1969 Philip Morris President Joseph F. Cullman, III: *"It is the intention of the cigarette manufacturers to continue to avoid advertising directed to young persons; to abstain from advertising in school and college publications; not to distribute sample cigarettes or engage in promotional efforts on school and college campuses; not to use testimonials from athletes or other celebrities who might have special appeal to young people; to avoid advertising which represents that cigarette smoking is essential to social prominence, success, or sexual attraction; and to refrain from depicting smokers engaged in sports or other activities requiring stamina or conditioning beyond those required in normal recreation. . ."*²
- 1982 *"On the industry's behalf, The Tobacco Institute began an advertising campaign which was to reach 110 million Americans with the message, 'Do cigarette companies want kids to smoke? No. As a matter of policy. No. As a matter of practice. No. As a matter of fact. No.'"*³
- 1984 Philip Morris Executive Ellen Merlo: *"I have never in my job been involved with trying to get a non-smoker to smoke. ...I don't think that advertising convinces people to smoke... I have not seen statistics on when people usually begin to smoke."*⁴
- 1991 Philip Morris Media Affairs Director Sheila Banks: *"Philip Morris strongly believes that young people should not smoke. Smoking is an adult custom. Selling cigarettes to minors is - and should be- illegal, and Philip Morris fully supports these laws."*⁵
- 1992 Philip Morris Corporate Statement: *"Education and enforcement at the retail level are the only effective means we have of discouraging children from smoking. We want to assure you that Philip Morris remains firmly committed to supporting laws that prohibit unlawful sales to minors. We continue to lend our fullest support to educational programs as well as make very sure that our cigarette advertising is directed exclusively at adults who choose to smoke."*⁶

- 1995 Philip Morris President James Morgan: "We at Philip Morris USA have long held the position that minors should not smoke and should not have access to cigarettes, and we have backed that commitment over the years with a series of concrete actions."⁸⁷
- 1995 Philip Morris President James Morgan: "Philip Morris USA believes now, and always has believed, that minors should not smoke nor should they have access to our cigarettes."⁸⁸
- 1996 Philip Morris CEO Geoffrey Bible: "We do not market cigarettes to children. And we do not want children to smoke."⁸⁹
- 1998 Philip Morris CEO Geoffrey Bible: "I'm ashamed at that. I don't like to see something from the company talking about 16-year-olds. We do not market cigarettes to underage people."⁹⁰
- 1998 Philip Morris CEO Geoffrey Bible: "We should not be marketing cigarettes to young people. It is certainly anomalous to the Philip Morris I know."⁹¹
- 1998 Philip Morris CEO Geoffrey Bible: Real solutions include a "willingness to make fundamental changes in our way of doing business."⁹²
- 1998 Philip Morris CEO Geoffrey Bible: "In all my years at Philip Morris, I've never heard anyone talk about marketing to youth."⁹³
- 1998 Philip Morris President Michael E. Szymanczyk: "We don't want kids to smoke. We're intensifying our efforts that we started a number of years ago by launching this new smoking-intervention initiative, starting with these ads."⁹⁴

What They Say In Private: Anti-Youth Smoking As A Public Relations Ploy

- 1979 *It seems to me our objective is . . . a 'media event' which in itself promises a lot but produces little.*¹⁵
- 1991 *The youth [anti-smoking] program and its individual parts support The [Tobacco] Institute's objective of discouraging . . . federal, state, and local restrictions on cigarette advertising.*¹⁶
- 1992 *[If Philip Morris took] a more progressive position on tobacco, it would enable the company to move onto a higher moral playing field, to neutralize the tobacco issue and to focus attention on other, more appealing products.*¹⁷
- 1995 *If we don't do something fast to project the sense of industry responsibility regarding the youth access issue, we are going to be looking at severe marketing restrictions in a very short time.*¹⁸

What They Say In Private: Marketing to Kids

- 1975 *Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . my own data, which includes younger teenagers, shows even higher Marlboro market penetration among 15-17-year-olds.*¹⁹
- 1981 *Because of our high share of the market among the youngest smokers, Philip Morris will suffer more than the other companies from the decline in the number of teenage smokers.*²⁰
- 1981 *[T]he success of Marlboro Red during its most rapid growth period was because it became the brand of choice among teenagers who then stuck with it as they grew older.*²¹
- 1985 *[Marlboro must] continue growth among new, young smokers... While Marlboro continues to attract increasing shares of young smokers, expected declines in the number of young people restrict future volume gains from this source.*²²
- 1992 *Thus, the ability to attract new smokers and develop them into a young adult franchise is key to brand development.*²³

What They Say In Private: Behavioral Research About Kids

- 1973 A Philip Morris Marketing Research Department document highlights that within a "probability sample of 452 teen-agers ages 12-17" 13 percent smoke an average of 10.6 cigarettes per day and that "the data from the study are consonant with the findings of other such studies, both at Philip Morris and without."²⁴
- 1974 *We wonder whether such children may not eventually become cigarette smokers in their teenage years as they discover the advantage of self-stimulation via nicotine. We have already collaborated with a local school system in identifying some such children in the third grade. . .*²⁵
- 1981 *It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while in their teens . . . It is during the teenage years that the initial brand choice is made.*²⁶

Dr. Carolyn Levy – Philip Morris' Senior Vice President of Youth Smoking Prevention who is in charge of the company's \$100 million anti-youth smoking campaign – previously worked in the Philip Morris research department on studies on nicotine effects and smoking behaviors.²⁷ Dr. Levy was also one of two Philip Morris researchers who formally approved the previously quoted special report that stated "Today's teenager is tomorrow's potential regular customer."

Campaign for Tobacco-Free Kids, September 1, 2006

- ¹ Speech to South Carolina Tobacco Warehouse Association, Inc., June 7, 1966, Bates No. 1002600012.
- ² Testimony before US Congress, July 1969.
- ³ Philip Morris, *On Youth Smoking*, 1979, Bates No. 2077153116/3117.
- ⁴ Ellen Merlo, June 14, 1984, testimony in *Cipollone v. Liggett*.
- ⁵ Philip Morris Media Affairs Director Sheila Banks, speaking to the Advertising Club of Louisville, February 8, 1991, Bates No. 2025895060/5062.
- ⁶ *Statement of Philip Morris with respect to its marketing practices and policies*, 1992, Bates No. 2500081598/1600.
- ⁷ Morgan, J., *New program to address youth access to our products*, Memo to all Philip Morris USA Employees, June 27, 1995, Bates No. 2060138652/8653.
- ⁸ Philip Morris President James Morgan remarks on the "Action Against Access" program, June 27, 1995, Bates No. 2500050029/0033.
- ⁹ Philip Morris CEO Geoffrey Bible remarks at the 1996 Annual Meeting of Stockholders, April 25, 1996, Bates No. 2500082439/2451.
- ¹⁰ Testimony of Bible in Minnesota Medicaid suit, March 2, 1998.
- ¹¹ Dedman, B., "Tobacco Chief 'Horried' Over Evidence," *The New York Times*, March 4, 1998, Bates No. T113660354.
- ¹² Philip Morris CEO Geoffrey Bible, testimony before the House Commerce Committee, January 28, 1998, Bates No. 2065112084/2092.
- ¹³ Geoffrey Bible, CEO of Philip Morris, *Minneapolis-St. Paul Star Tribune*, March 4, 1998.
- ¹⁴ *New York Times*, December 3, 1998.
- ¹⁵ Dryden, F., *August 1 'Pre-Adult Education' Memo*, August 3, 1979, Bates No. TIFL0525654.
- ¹⁶ Tobacco Institute, *Discussion Paper*, January 29, 1991, Bates No. TIMN0164422/4424.
- ¹⁷ Hill and Knowlton, *Philip Morris Corporate Affairs Strategic Plan for 1993*, December 3, 1992, Bates No. 2023586677/6725.
- ¹⁸ Philip Morris, *JJM to PM Invitational – Importance of Youth Issue*, February 9, 1995, Bates No. 2044046017/6022.
- ¹⁹ Johnston, M., *The Decline in the Rate of Growth of Marlboro Red*, May 21, 1975, Bates No. 1000024921-1000024927.
- ²⁰ Johnston, M., *Young Smokers – Prevalence, Trends, Implications, and Related Demographic Trends*, March 31, 1981, Bates No. 1000390803/0855.
- ²¹ Johnston, M., *Young Smokers – Prevalence, Trends, Implications, and Related Demographic Trends*, March 31, 1981, Bates No. 1000390803/0855.
- ²² Plan Overview, 1985, Bates No. 2043440057/0112, 1985.
- ²³ PMI Marketing Research, *Worldwide Marlboro Monitor; Five Year Trends, 1988-1992*, 1992, Bates No. 2044895379/5484.
- ²⁴ PM USA Marketing Research Department, *Incidence of Smoking Cigarettes*, May 18, 1973, Bates No. 2041761791.
- ²⁵ Dunn, W.L., *Smoker Psychology*, June 10, 1974, Bates No. 1003288122/8124.
- ²⁶ Johnston, M., *Young Smokers – Prevalence, Trends, Implications, and Related Demographic Trends*, March 31, 1981, Bates No. 1000390803/0855.
- ²⁷ See, e.g., Philip Morris Memorandum, "Smoker Psychology" (PM Doc. #1003293097).

ATTACHMENT 6

Edgefield

CIGARETTES



\$ 88.88

SURGEON GENERAL'S WARNING: Smoking
By Pregnant Women May Result in Fetal
Injury, Premature Birth, And Low Birth Weight.

ATTACHMENT 7

Morbidity and Mortality Weekly Report (MMWR)



Cigarette Brand Preference and Pro-Tobacco Advertising Among Middle and High School Students — United States, 2012–2016

Weekly / February 2, 2018 / 67(4):119–124Slobhan N. Perks¹; Brian Armour, PhD²; Israel T. Agaku, DMD, PhD² (VIEW AUTHOR AFFILIATIONS)[View suggested citation](#)

Summary

What is already known about this topic?

Nearly all adult smokers first try cigarettes before age 18 years. Tobacco-advertising activities, among other factors, including peer influence and price, are associated with initiation of smoking and the continued use of tobacco products among youth.

What is added by this report?

Analysis of 2012–2016 National Youth Tobacco Survey data found that Marlboro, Newport, and Camel were the most commonly reported usual brands smoked by middle and high school current (past 30-day) cigarette smokers. In 2016, these three brands accounted for 73.1% and 78.7% of current cigarette smokers in middle and high school, respectively. Ads for these three brands were also the three most commonly identified "favorite cigarette ad" in 2012. Current cigarette smokers who reported exposure to neither e-cigarette ads nor cigarette ads reported significantly lower prevalence of having a usual brand than those who reported exposure to both ads during 2015.

What are the implications for public health practice?

Reducing youth-oriented tobacco marketing, as part of a comprehensive approach in concert with other evidence-based strategies, including comprehensive smoke-free policies, increasing the price of tobacco products, and raising the minimum age of purchase for tobacco products to 21 years, could help reduce the acceptability, affordability, and use of tobacco products among youth.

Article Metrics

Altmetric:



News (5)
Twitter (10)
Facebook (1)
Mendeley (69)

Citations: 17

Views: 7,155

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plus PDF downloads

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Figures

Figure 1

Figure 2

Table

Nearly all adult smokers first

try cigarettes before age 18 years (1), and adolescents can show symptoms of nicotine dependence within days to weeks of the onset of occasional cigarette smoking (2). Having a usual cigarette brand among adolescent smokers could reflect exposure and receptivity to pro-tobacco advertising and tobacco product appeal (1). To identify usual cigarette brands smoked among U.S. middle and high school students who were current (past 30-day) cigarette smokers, CDC analyzed data from the 2012–2016 National Youth Tobacco Survey (NYTS). Marlboro, Newport, and Camel were the most commonly reported brands smoked during 2012–2016; in 2016, these three were the brands usually smoked for 73.1% and 78.7% of current cigarette smokers in middle and high school, respectively. These three brands also were the three most commonly identified as having a “favorite cigarette ad” in 2012. Efforts to reduce youth exposure to pro-tobacco advertising could help reduce youth smoking (1,3).

References

Related Materials

 [PDF]

NYTS is an annual national survey of U.S. students in grades 6–12.* During 2012–2016, sample sizes ranged from 17,711 (response rate = 63.4%) in 2015 to 24,658 (response rate = 73.6%) in 2012 (4). Participants were asked, “During the past 30 days, what brand of cigarettes did you usually smoke?” Response options† were “American Spirit,” “Camel,” “GPC, Basic, or Doral,” “Kool,” “Lucky Strike,” “Marlboro,” “Newport,” “Parliament,” “Virginia Slims,” “I did not smoke a usual brand,” “Some other brand not listed here,” “I did not smoke a cigarette in the past 30 days,” and “Not sure.” Responses of “I did not smoke a cigarette in the past 30 days” and “Not sure” were excluded; all other responses were classified as current (past 30-day) cigarette smokers.‡ Among current cigarette smokers, any response other than “I did not smoke a usual brand” was classified as having a usual brand.

In the 2012 NYTS only, participants were asked, “What is the name of the cigarette brand of your favorite cigarette ad?” Response options were “American Spirit,” “Camel,” “GPC, Basic, or Doral,” “Kool,” “Marlboro,” “Newport,” “Some other brand not listed here,” “I don’t have a favorite cigarette ad,” and “Not sure.” Any response other than “I don’t have a favorite cigarette ad” and “Not sure” was classified as having a favorite cigarette ad. In the 2015 NYTS only, exposure to ads for both regular cigarettes and electronic cigarettes (e-cigarettes) over four media categories was assessed (the Internet, newspapers/magazines, retail stores, and TV/movies). An exposure was classified as reporting seeing ads on the assessed medium “Sometimes,” “Most of the time,” or “Always.”¶ The tobacco product exposed to on each advertising medium was classified as 1) neither e-cigarettes nor cigarettes, 2) e-cigarettes only, 3) cigarettes only, and 4) both e-cigarettes and cigarettes.

Among current cigarette smokers, brand-specific prevalence was calculated overall and by school level, sex, grade, race/ethnicity, and smoking frequency within the past 30 days (a response of 20–30 days was considered frequent; a response of 1–19 days was considered infrequent).** Binary logistic regression was used to assess brand-specific linear trends during 2012–2016, adjusting for grade, sex, and race/ethnicity. For 2012 only, agreement between usual brand and favorite cigarette ad was assessed among 1,807 current cigarette smokers with data available for both indicators. For 2015 only, the proportion of current cigarette smokers reporting having a usual brand†† was stratified by amount of reported ad exposure to pro-tobacco advertising across media types. Chi-squared tests and logistic regression were used to determine subgroup differences, with statistical significance set at $p < 0.05$. Data were weighted to yield nationally representative estimates.

During 2016, the top three brands usually smoked among current cigarette smokers in all middle school grades combined were Marlboro (38.3%), Newport (21.4%), and Camel (13.4%) (Table). During 2016, 16.5% of middle school current cigarette smokers smoked some other specific brand, and 10.4% had no usual brand. The proportion of current cigarette smokers who smoked Marlboro cigarettes during 2016 was highest among non-Hispanic whites (whites) (54.6%) and lowest among non-Hispanic blacks (blacks) (11.5%; $p < 0.05$). Conversely, the proportion who smoked Newport

cigarettes during 2016 was highest among blacks (58.4%) and lowest among whites (7.9%; $p < 0.05$). A higher proportion of female smokers (27.2%) smoked Newport cigarettes than did male smokers (16.6%; $p < 0.05$). Trends during 2012–2016 were not significant for middle school students overall or among subgroups.

Among high school current cigarette smokers, the top three brands usually smoked by students in all grades combined in 2016 also were Marlboro (48.8%), Newport (16.6%), and Camel (13.3%) (Table). During 2016, 15.4% of high school current cigarette smokers smoked other specific brands, and 5.9% reported no usual brand. As was the case among middle school students, Newport was the most prevalent brand among black high school students (47.5% in 2016), and Marlboro was the most prevalent brand among white high school students (59.5% in 2016). During 2016, the proportion of high school current cigarette smokers that smoked Camel cigarettes was highest among Hispanics (18.1%) and lowest among blacks (8.9%). Trend analyses during 2012–2016 indicated an increase in the prevalence of Marlboro smoking for all high school students (38.5% to 48.8%), males (39.4% to 50.0%), females (37.5% to 48.0%), ninth graders (34.3% to 42.9%), 10th graders (37.2% to 45.7%), 12th graders (41.1% to 53.2%), whites (45.8% to 59.5%), and both frequent (42.2% to 59.1%) and infrequent smokers (37.8% to 50.8%) (all p -values for trend < 0.05). The prevalence of Newport smoking declined during 2012–2016 among all high school students (23.1% to 16.6%), females (26.0% to 16.8%), and whites (15.4% to 9.5%) (all p -values for trend < 0.05). The prevalence of Camel smoking during 2012–2016 declined among all high school students (17.8% to 13.3%), males (17.0% to 12.5%), females (18.6% to 14.2%), 10th graders (19.4% to 14.2%), 12th graders (19.8% to 13.6%), whites (19.6% to 11.9%), and infrequent smokers (19.8% to 12.4%) (all p -values for trend < 0.05). The proportion of students who smoked no usual brand increased among all high school students (4.1% to 5.9%), females (2.7% to 6.0%), 10th graders (2.9% to 6.8%), 12th graders (3.3% to 5.1%), and blacks (1.6% to 15.9%) during 2012–2016 (all p -values for trend < 0.05).

In 2012, among current cigarette smokers who reported smoking a usual brand, 72.1% identified the same brand as their favorite cigarette ad. The top three favorite cigarette ads were also the top three brands usually smoked (Figure 1).

In 2015, across all advertising media, current cigarette smokers who reported exposure to neither e-cigarette ads nor cigarette ads reported significantly lower prevalence of having a usual brand than those who reported exposure to both ads (Figure 2). By specific advertising media, among those exposed to neither e-cigarette nor cigarette ads versus both ads, the proportion who reported having a usual brand was as follows: for movies/TV (neither ad = 80.5%; both ads = 94.2%), for retail stores (neither = 69.8%; both = 94.8%), for Internet (neither = 79.4%; both = 94.5%), and for magazines/newspapers (neither = 88.0%; both = 94.6%) (all p -values < 0.05).

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Discussion

During 2012–2016, the top three brands usually smoked by U.S. middle and high school current cigarette smokers were Marlboro, Newport, and Camel; these brands also were the top three favorite cigarette ads reported by current cigarette smokers in middle and high school in 2012. Market data also indicated that these three brands accounted for the largest share (62%) of the U.S. cigarette market during 2016; the percentage shares of retail volume for Marlboro, Newport, and Camel during 2016 were 40.2%, 13.8%, and 8.0% respectively (5). Cigarette ads use youth-oriented themes, including those highlighting independence, rebellion, and perceived social acceptability of cigarette smoking (3). Previous epidemiologic studies have demonstrated an association between amount of reported ad exposure and most frequently smoked brands among adolescents (6); efforts to reduce youth exposure to pro-tobacco advertising might help reduce smoking initiation among U.S. youth (7).

Targeted marketing of tobacco products to certain groups can explain differences in brand preferences among subgroups (1,7,8). Whereas Marlboro smoking was more prevalent among whites, Newport, a predominantly menthol brand, was more often smoked by blacks, which is consistent with previous reports that have documented that menthol

cigarettes are marketed to specific demographic groups, including blacks (7,8). Among high school students overall, as well as among females, blacks, and 10th and 12th graders, significant increases were observed in the proportion of smokers reporting no usual brand. Having no usual brand might be an indicator of nonspecific cigarette access patterns, including from social sources such as friends (7).

The findings in this report are subject to at least four limitations. First, self-reported cigarette smoking is subject to social desirability bias and might be underreported among youth. Second, both brand preferences and pro-tobacco ad exposure were measured at the same time in this cross-sectional study; the data therefore did not permit assessment of temporality. Exposure to ads could increase brand use or brand use could lead to a favorable impression of tobacco ads. Third, these findings might not be generalizable to youth who are not enrolled in traditional schools, (e.g., dropouts [approximately 6.4% among high school students]⁸ and those home-schooled [approximately 3.4% of school-aged children]).⁹ Finally, the relationships between "favorite cigarette ad" and cigarette brand preferences as assessed in 2012 NYTS might have limited comparability with subsequent years.

In 2014, U.S. cigarette manufacturers spent approximately \$8.5 billion, or approximately \$1 million per hour, to advertise and promote cigarettes (9). Information on cigarette brand usually smoked can help guide efforts to reduce cigarette smoking among the approximately 1.6 million U.S. middle and high school cigarette smokers (10). Reducing youth-oriented tobacco marketing, as part of a comprehensive approach in concert with other evidence-based strategies could help reduce the acceptability, affordability, and use of tobacco products among youth (7). Such strategies include comprehensive smoke-free policies, increasing the prices of tobacco products, and raising the minimum age of purchase for tobacco products to 21 years (7).

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Conflict of Interest

No conflicts of interest were reported.

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* The study period was restricted to 2012–2016 because the questions assessing cigarette brand usually smoked had different response options in preceding NYTS survey years.

† Because of small sample sizes, "GPC, Basic, or Doral," "Kool," "Lucky Strike," "Parliament," and "Virginia Slims" were collapsed together into one category ("Other specific brand").

‡ Final analytical sample for each year (past 30-day cigarette smokers) was as follows: 2012 (n = 3,292), 2013 (n = 2,377), 2014 (n = 2,386), 2015 (n = 1,823), and 2016 (n = 1,739).

§ For each specific advertising medium assessed, participants could select any one of the following response options that best described their frequency of exposure: "Never," "Rarely," "Sometimes," "Most of the time," or "Always." Participants could also indicate if they did not use the medium assessed (e.g., "I do not use the Internet"). Participants who answered

"Never" or "Rarely," or who indicated they did not use the assessed medium, were classified as nonexposed to that medium; all other responses were classified as exposed.

** Frequency of cigarette smoking was ascertained with the question "During the past 30 days, on how many days did you smoke cigarettes?" Categorical response options were "0 days," "1 or 2 days," "3 to 5 days," "6 to 9 days," "10 to 19 days," "20 to 29 days," and "All 30 days." A response of "0 days" was classified as being a current nonsmoker and was excluded. The remaining response options were dichotomized as infrequent (1–19 days) and frequent (≥ 20 days) cigarette smokers.

†† Outcome was dichotomized as 0 or 1. Persons who reported having a specific brand they usually smoked ("American Spirit," "Camel," "GPC, Basic, or Doral," "Kool," "Lucky Strike," "Marlboro," "Newport," "Parliament," "Virginia Slims," or "Some other brand not listed here") were treated as a positive response. Those who responded, "I did not smoke a usual brand" were treated as not having a brand usually smoked. Responses of "Not sure" or "I did not smoke a cigarette in the past 30 days" were excluded.

⁵⁵ <https://www.census.gov/newsroom/press-releases/2016/cb16-tps142.html> [link].

⁵⁶ https://nces.ed.gov/programs/digest/d15/tables/dt15_206.10.asp?current=yes [link].

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2015, MMWR Morb Mortal Wkly Rep 2016;65:361–7. CrossRef [PubMed](#) [Top](#)**TABLE. Brand of cigarettes usually smoked by current (past 30-day)* cigarette smokers in middle and high school, by selected characteristics — National Youth Tobacco Survey, United States, 2012–2016†**

Characteristic	Marlboro		Newport		Camel		Other specific brand [§]		No usual brand	
	2012	2016	2012	2016	2012	2016	2012	2016	2012	2016
	% (SE)	% (SE)	% (SE)	% (SE)	% (SE)	% (SE)	% (SE)	% (SE)	% (SE)	% (SE)
Middle school										
Total	37.0 (3.5)	38.3 (4.1)	17.1 (2.4)	21.4 (3.5)	17.8 (2.8)	13.4 (2.4)	17.5 (2.2)	16.5 (2.4)	10.5 (1.6)	10.4 (1.8)
Sex										
Male	38.0 (4.5)	38.9 (6.0)	14.6 (2.7)	16.6 (3.8)	19.7 (3.8)	14.5 (3.5)	18.0 (2.7)	17.3 (3.9)	9.7 (1.9)	12.6 (2.7)
Female	35.7 (3.9)	37.2 (4.6)	20.5 (3.2)	27.2 (4.3)	15.4 (2.7)	12.3 (2.9)	16.9 (3.0)	15.6 (3.6)	11.6 (2.1)	7.6 (2.4)
Grade										
6	33.8 (4.9)	40.6 (6.3)	19.7 (4.0)	17.4 (4.6)	15.8 (2.8)	13.4 (4.4)	20.7 (4.5)	18.7 (4.6)	10.1 (2.8)	9.9 (3.6)
7	38.4 (5.9)	33.2 (4.8)	16.3 (3.6)	22.5 (4.6)	16.7 (4.1)	15.8 (3.4)	17.8 (3.7)	13.4 (3.3)	10.8 (2.2)	15.1 (3.5)
8	37.6 (3.8)	41.4 (6.2)	16.5 (2.3)	22.4 (4.7)	19.6 (3.8)	11.5 (3.0)	15.8 (3.2)	17.9 (3.6)	10.6 (2.2)	6.9 (1.9)
Race/Ethnicity										
White, non-Hispanic	44.3 (4.8)	54.6 (5.1)	8.5 (2.1)	7.9 (2.8)	20.3 (5.0)	16.1 (3.5)	17.5 (3.3)	9.4 (3.2)	9.4 (2.3)	12.1 (3.6)
Black, non-Hispanic	28.4 (6.9)	11.5 (5.1)	42.7 (6.6)	58.4 (5.6)	3.8 (0.9)	8.6 (4.3)	16.7 (4.8)	15.5 (5.4)	8.4 (3.7)	6.0 (2.8)

Hispanic	33.2 (4.2)	26.5 (4.2)	14.9 (2.6)	21.3 (5.9)	20.8 (5.5)	18.5 (4.4)	18.8 (4.6)	23.8 (5.2)	12.4 (3.0)	9.9 (3.2)
No. of days smoked in past 30 days[†]										
Frequent (≥20 days)	44.8 (9.2)	47.5 (11.0)	14.8 (4.0)	9.1 (4.8)	17.8 (6.5)	14.7 (7.9)	19.5 (6.8)	26.6 (9.4)	3.0 (2.2)	2.0 (2.0)
Infrequent (1–19 days)	41.6 (4.8)	40.3 (7.6)	19.0 (3.7)	18.6 (5.3)	16.1 (4.1)	17.3 (4.0)	18.5 (3.1)	14.0 (4.5)	4.8 (1.2)	9.9 (4.1)
High school										
Total	38.5 (1.8)	48.8 (2.4)**	23.1 (2.1)	16.6 (1.8)**	17.8 (1.4)	13.3 (1.3)**	16.4 (1.5)	15.4 (1.6)	4.1 (0.4)	5.9 (0.9)**
Sex										
Male	39.4 (2.1)	50.0 (2.8)**	21.0 (2.0)	16.0 (2.2)	17.0 (1.5)	12.5 (1.7)**	17.4 (1.8)	15.6 (2.1)	5.1 (0.7)	5.8 (1.2)
Female	37.5 (2.3)	48.0 (3.5)**	26.0 (2.7)	16.8 (2.4)**	18.6 (2.1)	14.2 (1.9)**	15.2 (1.7)	15.0 (1.9)	2.7 (0.5)	6.0 (1.2)**
Grade										
9	34.3 (2.6)	42.9 (3.7)**	25.1 (2.7)	18.4 (2.8)	17.4 (2.2)	15.9 (3.6)	16.2 (1.5)	17.4 (3.1)	6.9 (1.4)	5.4 (1.5)
10	37.2 (2.4)	45.7 (3.7)**	25.5 (3.1)	19.5 (3.0)	19.4 (2.3)	14.2 (3.9)**	14.9 (1.8)	13.9 (1.7)	2.9 (0.7)	6.8 (2.3)**
11	40.3 (2.7)	50.8 (4.4)	22.5 (2.7)	17.2 (3.1)	14.5 (1.6)	10.0 (1.9)	19.0 (2.2)	15.6 (1.5)	3.8 (0.8)	6.4 (1.5)
12	41.1 (2.5)	53.2 (3.7)**	20.3 (2.4)	12.7 (2.0)	19.8 (2.5)	13.6 (1.8)**	15.5 (2.9)	15.3 (2.6)	3.3 (0.6)	5.1 (1.2)**
Race/Ethnicity										
White, non-Hispanic	45.8 (2.1)	59.5 (3.1)**	15.4 (1.8)	9.5 (1.6)**	19.6 (1.9)	11.9 (1.9)**	15.4 (2.0)	14.1 (2.1)	3.7 (0.6)	5.0 (1.4)
Black, non-Hispanic	10.3 (2.7)	11.0 (3.6)	67.0 (4.3)	47.5 (7.6)	4.2 (1.7)	8.9 (3.0)	16.9 (2.7)	16.7 (5.6)	1.6 (0.7)	15.9 (2.5)**

Hispanic	36.6 (2.6)	40.5 (3.2)	20.5 (3.0)	20.2 (3.3)	20.7 (2.3)	18.1 (2.1)	17.8 (2.3)	16.5 (2.0)	4.4 (1.3)	4.7 (1.4)
No. of days smoked in past 30 days[§]										
Frequent (≥20 days)	42.2 (2.8)	59.1 (5.1)**	25.6 (2.9)	12.5 (3.4)	18.2 (2.3)	14.0 (2.7)	12.7 (1.9)	11.5 (2.7)	1.3 (0.4)	2.9 (1.3)
Infrequent (1–19 days)	37.8 (2.4)	50.8 (3.5)**	21.6 (2.3)	17.1 (2.5)	19.8 (2.3)	12.4 (2.2)**	18.0 (2.2)	16.6 (2.2)	2.8 (0.6)	3.1 (1.1)

Abbreviation: SE = standard error.

* Assessed with the question: "During the past 30 days, what brand of cigarettes did you usually smoke?" Response options were "American Spirit," "Camel," "GPC, Basic, or Doral," "Kool," "Lucky Strike," "Marlboro," "Newport," "Parliament," "Virginia Slims," "I did not smoke a usual brand," "Some other brand not listed here," "I did not smoke a cigarette in the past 30 days," and "Not sure." Any response other than "I did not smoke a cigarette in the past 30 days" or "Not sure" was treated as being a current (past 30-day) cigarette smoker.

† Trend analyses include data for 2012, 2013, 2014, 2015, and 2016. Prevalence estimates are presented only for 2012 and 2016.

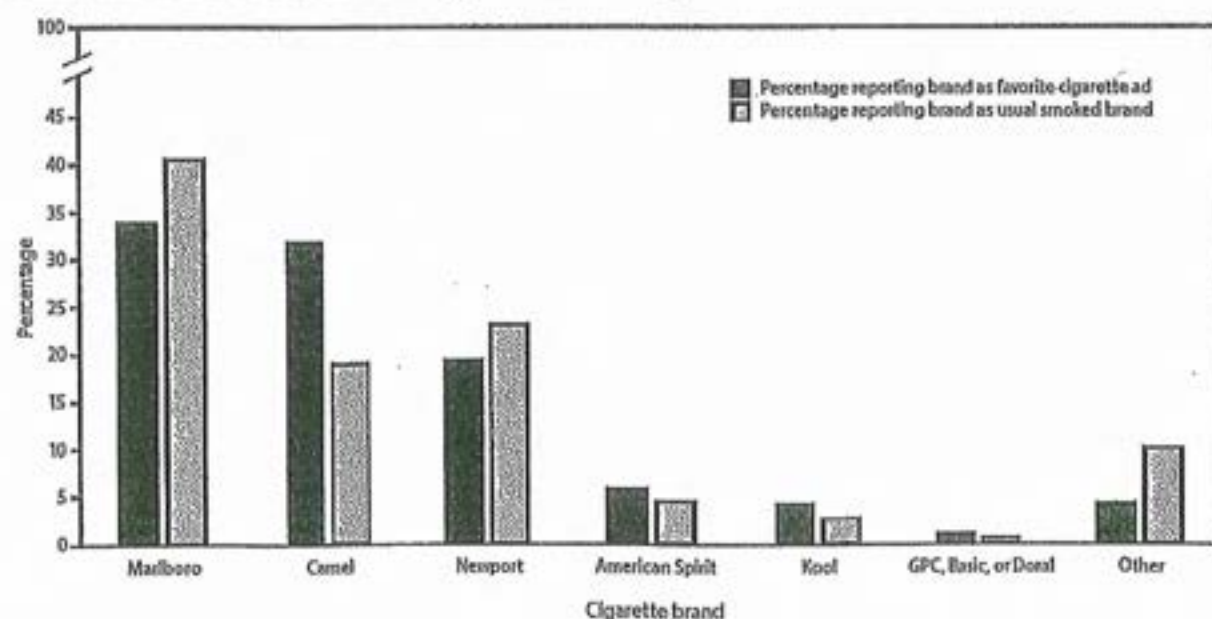
§ Because of small sample sizes, the responses "GPC, Basic, or Doral," "Kool," "Lucky Strike," "Parliament," and "Virginia Slims" were combined together as one category ("Other specific brand").

¶ Assessed with the question "During the past 30 days, on how many days did you smoke cigarettes?" Response options included "0 days," "1 or 2 days," "3 to 5 days," "6 to 9 days," "10 to 19 days," "20 to 29 days," and "All 30 days." Responses of "0 days" were excluded. All other responses were dichotomized as frequent (≥20 days) or infrequent (1–19 days).

** Statistically significant linear trend during 2012–2016 (p-trend<0.05).

FIGURE 1. Agreement* between brand of cigarettes usually smoked† and favorite cigarette brand ad[§] among middle and high school current (past 30-day) cigarette smokers — National Youth Tobacco Survey, United States, 2012

Top
Return



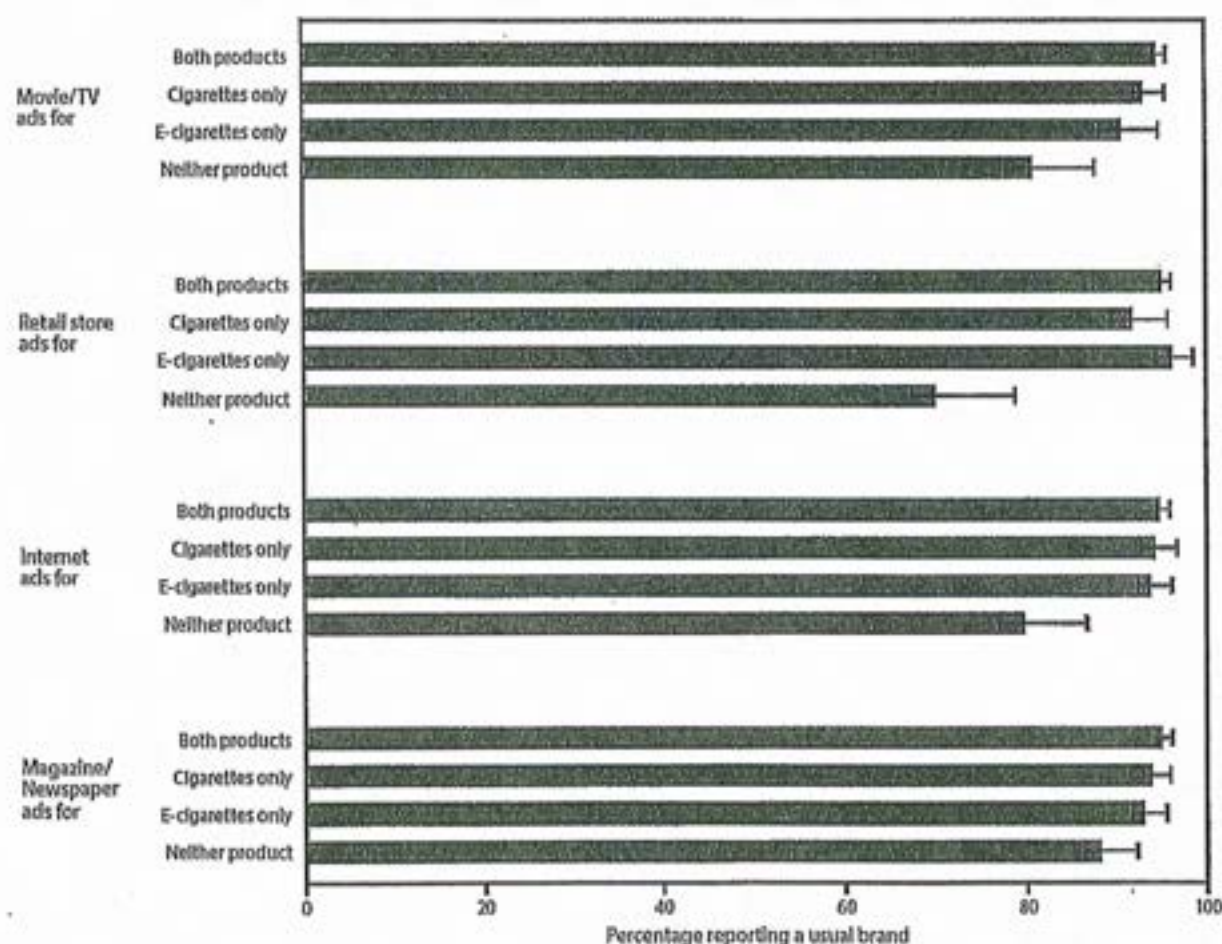
* Restricted to students who smoked cigarettes during the past 30 days and reported having both a favorite cigarette ad and a cigarette brand usually smoked (n = 1,807). The question on favorite cigarette ad was asked only in 2012.

† Assessed with the question: "During the past 30 days, what brand of cigarettes did you usually smoke?" Responses classified as having a brand usually smoked among past 30-day smokers included "American Spirit," "Camel," "GPC, Basic, or Doral," "Kool," "Lucky Strike," "Marlboro," "Newport," "Parliament," "Virginia Slims," and "Some other brand not listed here."

‡ Assessed with the question: "What is the name of the cigarette brand of your favorite cigarette ad?" Responses classified as having a favorite cigarette ad were "American Spirit," "Camel," "GPC, Basic, or Doral," "Kool," "Marlboro," "Newport," and "Some other brand not listed here."

The figure is a bar chart showing agreement between brand of cigarettes usually smoked and favorite brand ad among middle and high school current (within the past 30 days) cigarette smokers in 2012.

FIGURE 2. Proportion of middle and high school current (past 30-day) cigarette smokers reporting a usual cigarette brand,* by advertising medium and status of exposure to cigarette and/or electronic cigarette ads† — National Youth Tobacco Survey, United States, 2015‡



* Outcome was dichotomized as 0 or 1. Persons who reported having a specific brand they usually smoked ("American Spirit," "Camel," "GPC, Basic, or Doral," "Kool," "Lucky Strike," "Marlboro," "Newport," "Parliament," "Virginia Slims," or "Some other brand not listed here") were coded as 1. Those who responded, "I did not smoke a usual brand" were coded

as 0. Responses of "Not sure" or "I did not smoke a cigarette in the past 30 days" were excluded.

[†] Separate questions were asked for electronic cigarettes and regular cigarettes in relation to exposure to pro-tobacco ads on the different media sources (Internet, newspapers/magazines, retail stores, and TV/movies). For both electronic cigarettes and regular cigarettes, respondents' ad exposure status was coded on each medium as either: 1 = exposed (responses of "Sometimes," "Most of the time," and "Always") or 0 = nonexposed ("Never," "Rarely," or those who indicated not using the assessed medium).

[§] The questions on exposure to both electronic cigarette and regular cigarette ads were asked only in 2015.

The figure is a bar chart showing the proportion of middle and high school current (within the past 30 days) cigarette smokers reporting a usual brand by advertising medium and status of exposure to cigarette and/or electronic cigarette ads.

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ATTACHMENT 8



Centers for Disease Control and Prevention
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Smoking & Tobacco Use Home

Tobacco Brand Preferences

Cigarettes

Market Share Information

- According to 2017 sales data, Marlboro is the most popular cigarette brand in the United States, with sales greater than the next seven leading competitors combined.¹
- The three most heavily advertised brands—Marlboro, Newport, and Camel—continue to be the preferred brands of cigarettes smoked by young people.²

2017 Market Shares for Leading Cigarette Brands¹

Brand	Market %
Marlboro	40%
Newport	14%
Camel (filter only)	8%
Pall Mall Box	7%
Maverick	2%
Santa Fe	2%
Winston	2%
Kool	2%

NOTE: Market share—or market percentage—is defined as the percentage of total sales in the United States.

Industry Marketing Practices

Tobacco Industry marketing practices can influence the brands that certain groups prefer. For example:²

- The packaging and design of certain cigarette brands appeal to adolescents and young adults.
- Historically, menthol cigarettes have been targeted heavily toward certain racial/ethnic groups, especially African Americans.
 - Among African American adult, adolescent, and young adult cigarette smokers, the most popular brands are all mentholated.
- Cigarettes with brand names containing words such as "thins" and "slims" have been manufactured to be longer and slimmer than traditional cigarettes to appeal directly to women—e.g., Virginia Slims and Capri brands.

Brand Characteristics

- Of all the cigarettes sold in the United States in 2018—³
 - 99.7% were filtered
 - 36.0% were mentholated brands
- Use of mentholated brands varies widely by race/ethnicity. The percentage of current smokers aged 12 years or older who reported using mentholated brands in 2012-2014 was:⁴
 - 84.6% Non-Hispanic black
 - 46.9% Hispanic
 - 38.0% Non-Hispanic Asian
 - 28.9% Non-Hispanic White
- Before 2010, manufacturers were allowed to label cigarettes as "light" or "ultra light" if they delivered less than 15 mg of tar when measured by an automated smoking machine.⁵
 - Such labeling allowed tobacco companies to deliberately misrepresent "light" cigarettes as being less harmful and an acceptable alternative to quitting smoking.⁶
 - The 2009 Family Smoking Prevention and Tobacco Control Act, however, prohibits use of terms like "light," "low," and "mild" on tobacco product labels.⁷

Other Tobacco Products

Cigars

According to 2015 sales data, Swisher Little is the most popular brand of cigars in the United States, with sales substantially greater than any little cigar competitor and the leading large cigars and cigarillos competitors.⁸

2015 Market Shares for Leading Cigar Brands⁸

Brand	Category	Market %
Swisher Little	Little cigars	60%
Swisher Sweets	Large cigars and cigarillos	16%
Black & Mild	Large cigars and cigarillos	11%
Garcia y Vega	Large cigars and cigarillos	5%
White Owl	Large cigars and cigarillos	5%

NOTE: Market share—or market percentage—is defined as the percentage of total sales in the United States.

Smokeless Tobacco

The five major U.S. smokeless tobacco companies experienced decreased sales from 2018 to 2019, from 128.4 million pounds to about 126 million pounds.⁹ Smokeless tobacco products include dry snuff, moist snuff, plug/twist, loose-leaf chewing tobacco, snus, and dissolvable products.

2011 Market Shares for Leading Smokeless Tobacco Brands⁹

Brand	Category	Market %
Levi Garrett Plug	Moist plug tobacco	52%
Day's Work	Plug tobacco	45%
Red Man Plug	Moist plug tobacco	36%
Grizzly	Moist snuff and fine cut tobacco	26%
Copenhagen	Moist snuff and fine cut tobacco	25%
Garrett	Dry snuff	24%
Skoal	Moist snuff and fine cut tobacco	24%
Red Man	Loose leaf tobacco	18%

NOTE: Market share—or market percentage—is defined as the percentage of total sales in the United States.

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