



**NATIONAL LOCAL  
ADVOCACY ALLIANCE**

# Bans on Promotionally-Priced Tobacco Products

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## Background

A prohibition on the sale of promotionally-priced tobacco products would prohibit retailers from selling multi-pack tobacco products at a discounted price (e.g. buy two, get one free), providing tobacco products to adult consumers at no charge, or selling tobacco products for less than the listed or non-discounted price.

Generally, a violation of a promotionally-priced tobacco product sales ban law results in a fine assessed to the retailer and, for subsequent violations, may also involve the suspension or revocation of the retailer's license to sell tobacco products.

## Arguments Against Bans on Promotionally-Priced Tobacco Products

Banning promotionally-priced tobacco products prevents the communication of product price information by manufacturers and retailers to consumers, making a promotional price ban unlawful and unconstitutional.

- A promotional price sales ban violates the First Amendment to the U.S. Constitution. The U.S. Supreme Court has ruled that free speech provisions of the First Amendment include commercial speech in the form of communicating truthful product price information to consumers.
- Manufacturers and retailers have a vested interest in communicating truthful price information about tobacco products through the use of promotionally-priced products, and consumers have an expectation of being provided accurate and legal price information.

A ban on promotionally-priced tobacco products does nothing to reduce illegal, underage tobacco use because state and federal laws already prohibit the sale of tobacco products to underage individuals at any price. For this reason, a promotion price ban only impacts adults who are of legal age to purchase and use tobacco products.

The Federal Cigarette Labeling and Advertising Act does not allow local and state governments to adopt any "requirement or prohibition based on smoking and health...with respect to the advertising or promotion of any cigarettes." 15. U.S.C. § 1334. Federal courts have held that "promotion" includes the announcement and offering of price discounts and, for this reason, cities and states are precluded from adopting a promotion price ban on cigarettes.

## Conclusion

The implementation of a ban on promotionally-priced tobacco products violates the First Amendment, state and federal laws, and the rights of both retailers and consumers. Furthermore, such bans would result in lost sales by retailers since consumers would seek out other sources of promotionally-priced tobacco products, including traveling to nearby towns and cities where no such ban exists, hurting local businesses and tax revenues.

Information Source: The National Association of Tobacco Outlets, Inc.