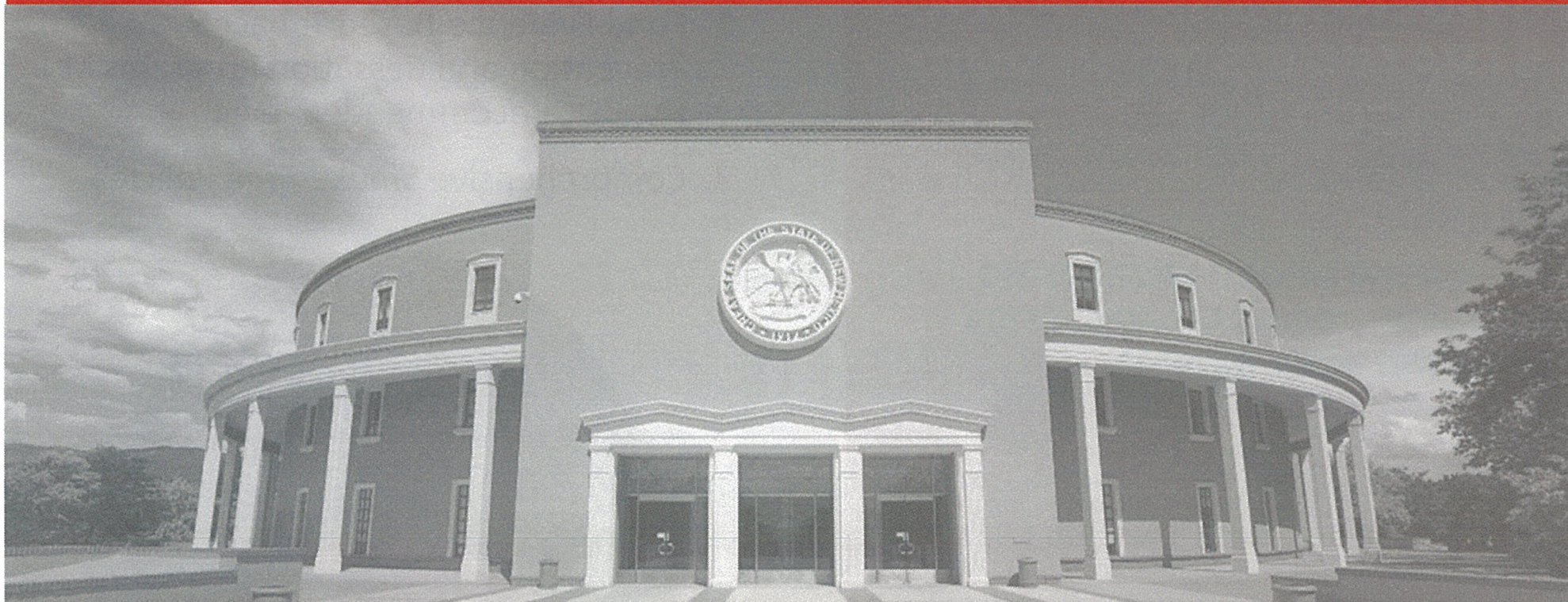


# SAVING LIVES AND SAVING MONEY: REDUCING TOBACCO USE IN NEW MEXICO



Poqueen Rivera, New Mexico Government Relations Director

American Heart Association

Sandra Adondakis, New Mexico Government Relations Director

American Cancer Society Cancer Action Network



**you're** the cure

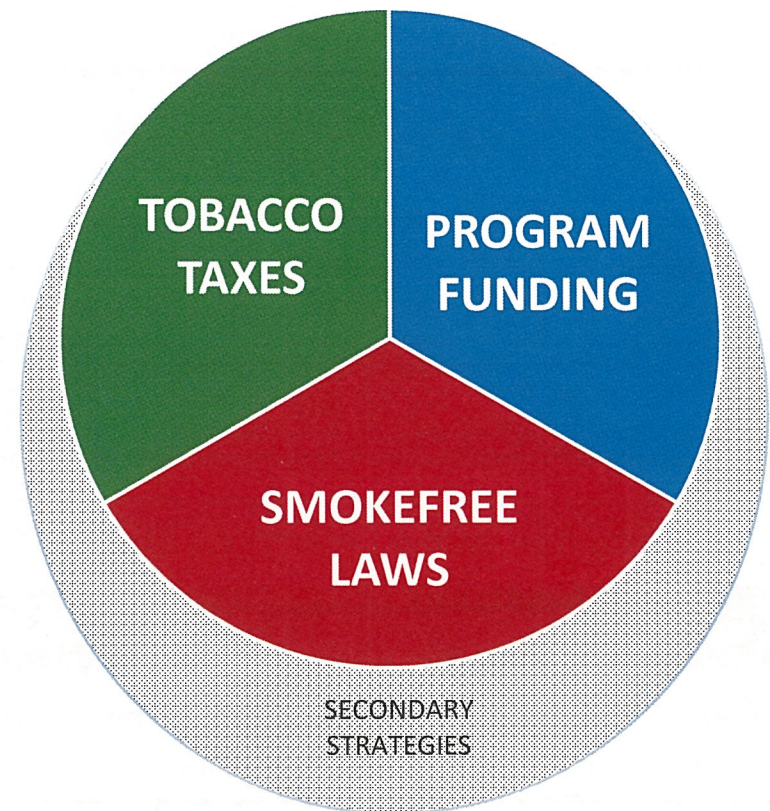


# EVIDENCE-BASED POLICY STRATEGIES TO REDUCE TOBACCO USE

**WE KNOW WHAT WORKS TO REDUCE TOBACCO-RELATED DISEASE AND DEATH**

## Most Effective Strategies

1. Regularly and Significantly Increase Tobacco Taxes
2. Fund Evidence-Based Tobacco Prevention and Cessation Programs at the CDC-recommended level
3. Comprehensive Smoke-Free Policies





# WHERE DOES NEW MEXICO STAND ON THE THREE MOST EFFECTIVE STRATEGIES TO REDUCE DEATH AND DISEASE FROM TOBACCO?

1. Increase Tobacco Taxes
  - Regular, large increases in tobacco taxes are needed
  - NM needs improvement
2. Fund Evidence-Based Tobacco Prevention and Cessation Programs at the CDC-recommended level
  - CDC recommends \$22.8 million for NM
  - NM falls short
3. Comprehensive Smoke-Free Policies
  - Statewide law should include e-cigarettes & not include exemptions
  - NM needs improvement





# WHERE DOES NEW MEXICO STAND ON TOBACCO TAXES?

New Mexico Specifics	Cigarette Excise Tax NMSA 1978, § 7-12	Tobacco Products Excise Tax NMSA 1978, § 7-12A
<b>Tax Rate:</b>	\$1.66 per pack of 20	25% of product value (roughly = wholesale value)
<b>Last Increase:</b>	2010	1986
<b>Compared to Nation:</b>	Lower than the national average	Lower than the national average
<b>Compared to Region:</b>	Lower than Arizona, Nevada and Utah Higher than Colorado and Texas	Lower than Arizona, Colorado, Nevada, Texas and Utah

*And what about e-cigarettes?*





# RAISING CIGARETTE TAXES REDUCES SMOKING

## ESPECIALLY AMONG KIDS

### The scientific evidence says:

- Based on a comprehensive review of evidence, the Surgeon General has called raising prices on cigarettes “one of the most effective tobacco control interventions”<sup>1</sup>
- The Surgeon General and the Institute of Medicine (IOM) have both affirmed that raising the price of cigarettes not only leads to a reduction in smoking – especially among youth – but also provides a source of funding for state governments to invest in tobacco prevention and control programs and other public health programs and services.<sup>2,3,4</sup>

1. U.S. Department of Health and Human Services (HHS), The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General, Atlanta, GA: HHS, Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. <http://www.surgeongeneral.gov/library/reports/50-years-ofprogress/index.html>
2. Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2000. Available at [http://www.cdc.gov/tobacco/data\\_statistics/sgr/sgr\\_2000/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/sgr_2000/index.htm).
3. U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012, <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html>
4. Institute of Medicine. *Ending the tobacco problem: a blueprint for the nation*. Washington, DC: The National Academies Press; 2007.





# RAISING CIGARETTE TAXES REDUCES SMOKING

## ESPECIALLY AMONG KIDS

### The tobacco industry says:

Philip Morris:

- A high cigarette price, more than any other cigarette attribute, has the most dramatic impact on the share of the quitting population...price, not tar level, is the main driving force for quitting.<sup>1</sup>

RJ Reynolds:

- If prices were 10% higher, 12-17 incidence [youth smoking] would be 11.9% lower.<sup>2</sup>



1. Philip Morris Executive Claude Schwab, "Cigarette Attributes and Quitting," March 4, 1993, Bates No. 2045447810.  
2. R.J. Reynolds Executive D. S. Burrows, "Estimated Change In Industry Trend Following Federal Excise Tax Increase," September 20, 1982, Bates No. 501988846/8849.



# **BENEFITS OF INCREASING THE CIGARETTE TAX WITH AN EQUIVALENT TAX ON ALL OTHER TOBACCO PRODUCTS**

1. Save Lives
2. Save Money
3. New Recurring Revenue





# BENEFITS OF INCREASING THE CIGARETTE TAX WITH AN EQUIVALENT TAX ON ALL OTHER TOBACCO PRODUCTS

## 1. SAVE LIVES

Projected Public Health Benefits for New Mexico from a \$1.50 Cigarette Tax Increase <sup>1</sup>	
Percent decrease in youth (under age 18) smoking:	16.7%
Youth under age 18 kept from becoming adult smokers:	11,700
Reduction in young adult (18-24 years old) smokers:	2,400
Current adult smokers who would quit:	14,400
Premature smoking-caused deaths prevented:	7,300
5-Year reduction in the number of smoking-affected pregnancies and births:	1,400



1. *New Revenues, Public Health Benefits & Cost Savings from a \$1.50 Cigarette Tax Increase in New Mexico, 2017*. Ann Boonn, Campaign for Tobacco-Free Kids; Frank J. Chaloupka, Tobacconomics; Melissa Maitin-Shepard, American Cancer Society Cancer Action Network; <http://www.tobaccofreekids.org/research/factsheets/pdf/0281.pdf> or [www.acscan.org/tobaccotaxexplanations](http://www.acscan.org/tobaccotaxexplanations).



# BENEFITS OF INCREASING THE CIGARETTE TAX WITH AN EQUIVALENT TAX ON ALL OTHER TOBACCO PRODUCTS

## 2. SAVE MONEY

Projected Public Health Benefits for New Mexico from a \$1.50 Cigarette Tax Increase	5-Year health care cost savings <sup>1</sup>
Fewer smoking-caused lung cancer cases:	\$2.61 million
Fewer smoking-affected pregnancies and births:	\$3.62 million
Fewer smoking-caused heart attacks & strokes:	\$5.33 million
Medicaid program savings for the state:	\$9.39 million
<b>Long-term health care cost savings from adult &amp; youth smoking declines:</b>	<b>\$533.96 million</b>



1. *New Revenues, Public Health Benefits & Cost Savings from a \$1.50 Cigarette Tax Increase in New Mexico, 2017*. Ann Boonn, Campaign for Tobacco-Free Kids; Frank J. Chaloupka, Tobacconomics; Melissa Maitin-Shepard, American Cancer Society Cancer Action Network; <http://www.tobaccofreekids.org/research/factsheets/pdf/0281.pdf> or [www.acscan.org/tobaccotaxexplanations](http://www.acscan.org/tobaccotaxexplanations).



# BENEFITS OF INCREASING THE CIGARETTE TAX WITH AN EQUIVALENT TAX ON ALL OTHER TOBACCO PRODUCTS

## 3. NEW RECURRING REVENUE

New Recurring Revenue \$1.50 per pack increase with equivalent tax on all other tobacco products	
\$88-94 million	Estimate from LFC <sup>1</sup>
\$42.4 million	Estimate from Campaign for Tobacco Free Kids, ACS CAN and Tobacconomics <sup>2</sup>

LFC Estimated New Recurring Revenue (in thousands) \$1.50 per pack increase with equivalent tax on all other tobacco products <sup>1</sup>		
Fiscal Year	SB 231 Fiscal Impact Report 3.13.17	HB 282 Fiscal Impact Report 2.9.17
FY17	\$ 0.0	\$ 0.0
FY18	\$ 88,721.0	\$ 89,297.0
FY19	\$ 88,958.0	\$ 89,835.9
FY20	\$ 91,271.0	\$ 92,465.6
FY21	\$ 92,993.0	\$ 94,512.6



1. Legislative Finance Committee Fiscal Impact Reports accessed on 8.1.17 for 2017 Senate Bill 231 and 2017 House Bill 282
2. *New Revenues, Public Health Benefits & Cost Savings from a \$1.50 Cigarette Tax Increase in New Mexico, 2017*. Ann Boonn, Campaign for Tobacco-Free Kids; Frank J. Chaloupka, Tobacconomics; Melissa Maitin-Shepard, American Cancer Society Cancer Action Network; <http://www.tobaccofreekids.org/research/factsheets/pdf/0281.pdf> or [www.acscan.org/tobaccotaxexplanations](http://www.acscan.org/tobaccotaxexplanations).



# WHY TAX E-CIGARETTES?

**FDA “DEEMING” OF TOBACCO  
PRODUCTS INCLUDE E-CIGARETTES**



<https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm506676.htm>

The FDA now regulates all tobacco products, including (as shown): hookah, e-cigarettes, dissolvables, smokeless tobacco, cigarettes, all cigars, roll-your-own tobacco, pipe tobacco, and future tobacco products that meet the statutory definition of a tobacco product.





# US SURGEON GENERAL URGES ACTION ON E-CIGARETTES

“E-cigarette use among U.S. youth and young adults is now a major public health concern.”<sup>1</sup>

Recommendations of the Surgeon General to decrease youth e-cigarette use<sup>2</sup>:

- ✓ Incorporate e-cigarettes into smoke free policies,
- ✓ prevent access to e-cigarettes by youth,
- ✓ price and tax policies,
- ✓ retail licensure,
- ✓ regulation of e-cigarette marketing likely to attract youth
- ✓ educational initiatives targeting youth and young adults.

Figure 1.4 E-liquids being poured into an e-cigarette device



Source: Photo by Mandie Mills, CDC.

1. U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. Preface
2. U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. Page 5.

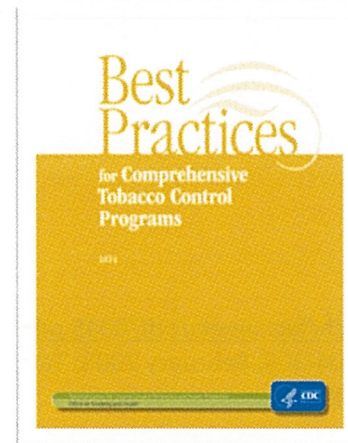


## WHERE DOES NEW MEXICO STAND...

**WITH EVIDENCE-BASED TOBACCO USE PREVENTION AND CESSATION PROGRAMS?**

NM funding to reduce tobacco use is **less than 25%** of the recommended level

CDC Recommendation for NM	\$22.8 million
FY17 Appropriation to DOH & IAD	\$5.68 million
FY16 MSA payment to NM	\$39 million





# FUNDING TOBACCO USE PREVENTION PROGRAMS EFFECTIVELY REDUCES TOBACCO USE

- When adequately funded, comprehensive state tobacco prevention programs quickly and substantially reduce tobacco use, save lives, and cut smoking-caused costs.
- The more states spend on tobacco control programs, the greater the impact.
- States with sustained, well-funded prevention programs have reduced youth smoking by 45 to 60 percent.
- When program funding is cut, smoking rates stop declining (California, Indiana) or actually rise (e.g., Florida, Ohio, Massachusetts).



Sources: <http://www.tobaccofreekids.org/research/factsheets/pdf/0045.pdf>; Farrelly, MC, et al., "The Impact of Tobacco Control Programs on Adult Smoking," *American Journal of Public Health* 98:304-309, February 2008; Tauras, JA, et al., "State Tobacco Control Spending and Youth Smoking," *American Journal of Public Health* 95:338-344, February 2005.



## TO MAINTAIN PROGRESS IN TOBACCO USE REDUCTIONS, STATES MUST:

- ✓ Insulate against the tobacco industry attempts to reduce program funding
- ✓ Sustain funding over time to protect initial tobacco use reductions and to achieve further cuts in tobacco use.

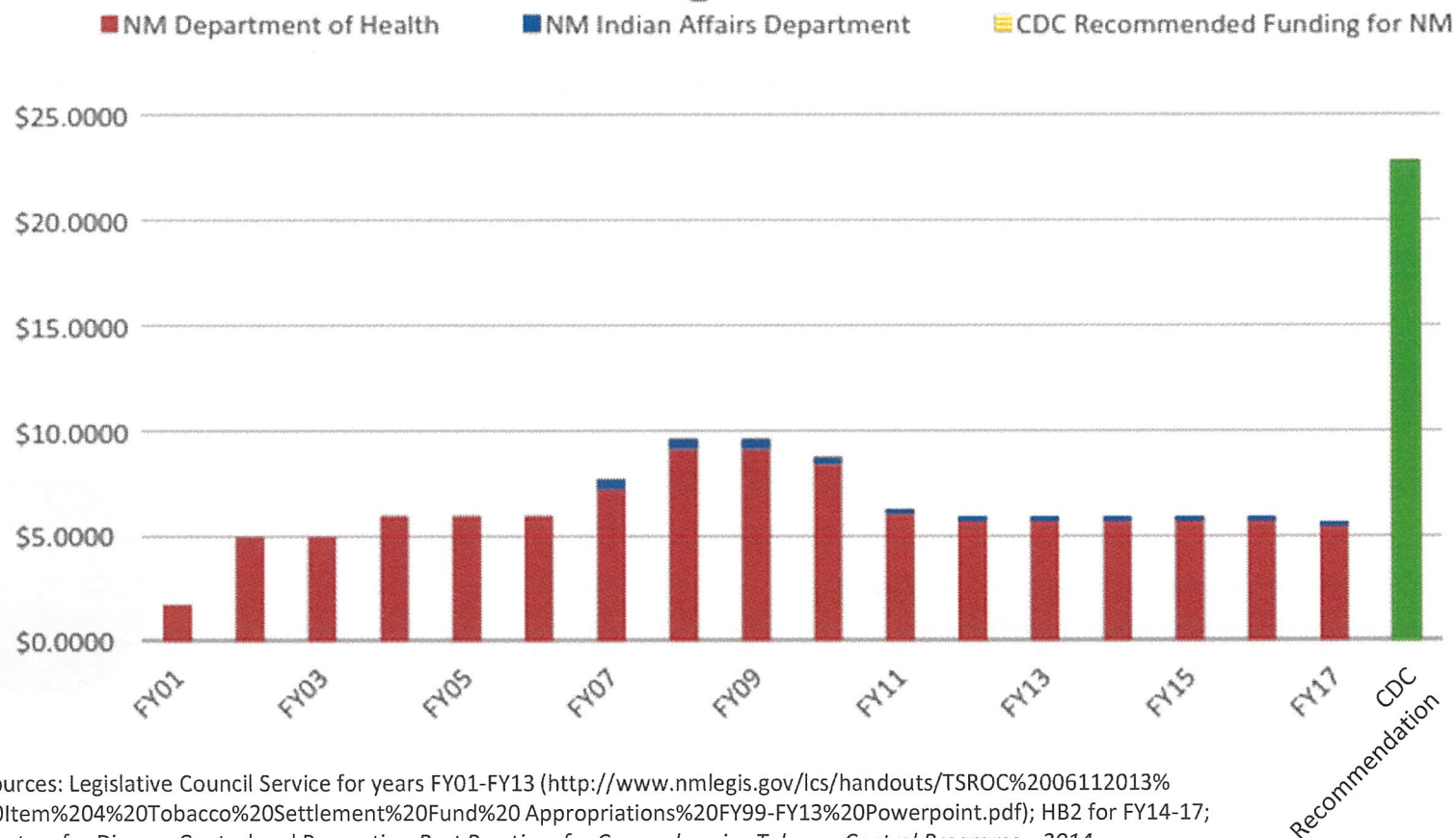
Sources: <http://www.tobaccofreekids.org/research/factsheets/pdf/0045.pdf> &  
<http://www.tobaccofreekids.org/research/factsheets/pdf/0270.pdf>





# WHERE DOES NEW MEXICO STAND ON FUNDING FOR TOBACCO USE PREVENTION AND CESSATION PROGRAMS

## History of NM Tobacco Settlement Funding for Tobacco Use Prevention & Cessation Programs



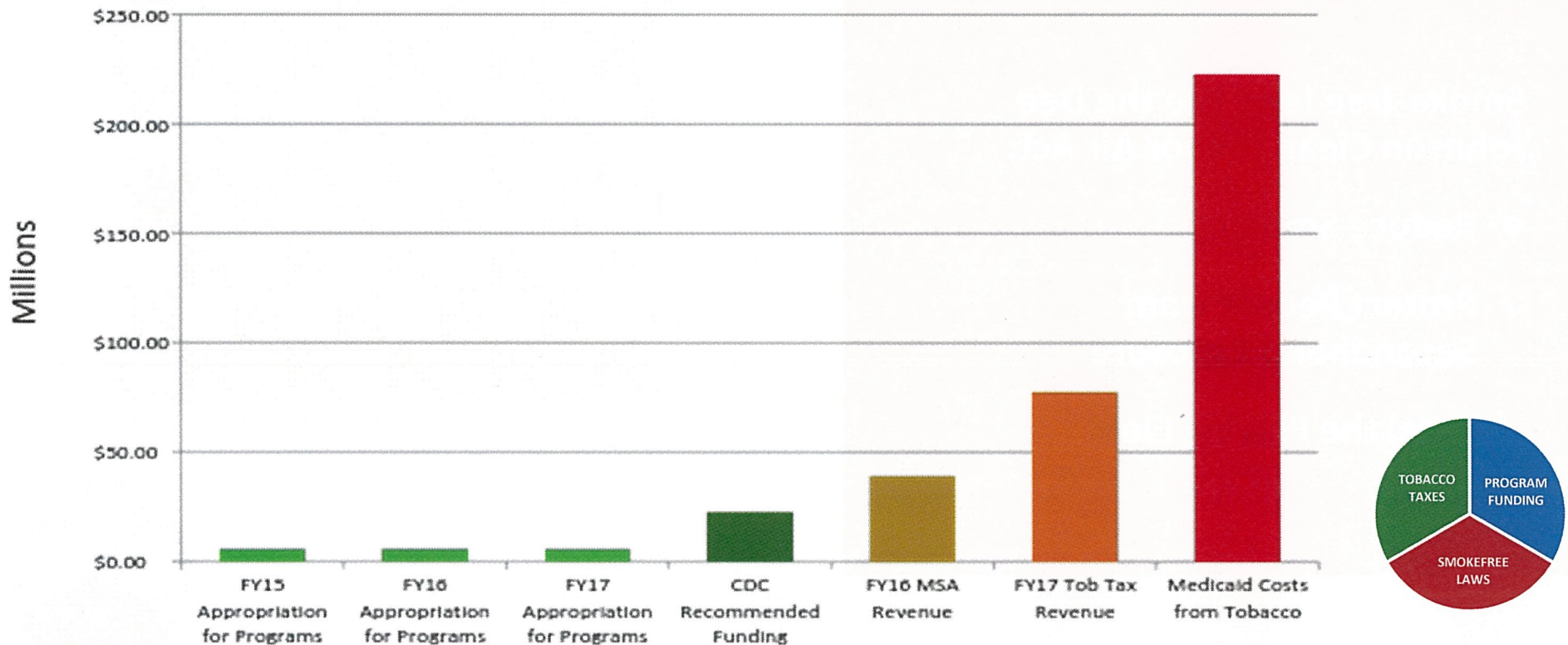
Sources: Legislative Council Service for years FY01-FY13 (<http://www.nmlegis.gov/lcs/handouts/TSROC%2006112013%20Item%204%20Tobacco%20Settlement%20Fund%20Appropriations%20FY99-FY13%20Powerpoint.pdf>); HB2 for FY14-17; Centers for Disease Control and Prevention *Best Practices for Comprehensive Tobacco Control Programs—2014*



# WHERE DOES NEW MEXICO STAND WITH TOBACCO USE PREVENTION PROGRAM FUNDING?

## COMPARED TO TOBACCO-RELATED REVENUE

**NM Tobacco Settlement Funding for Tobacco Prevention & Cessation  
NM Tobacco-Related Revenue and Tobacco-Related Medicaid Costs**



Sources: HB2 for FY15-17; Centers for Disease Control and Prevention *Best Practices for Comprehensive Tobacco Control Programs—2014*; DFA Consensus General Fund Revenue Outlook Aug 2016; LFCFY17 General Fund Monthly Revenue Tracking; Campaign for Tobacco Free Kids *The Toll of Tobacco in New Mexico*, July 2017



# DEE JOHNSON CLEAN INDOOR AIR ACT

Smoke-free laws like the Dee Johnson Clean Indoor Air Act:

- ✓ Reduce Smoking
- ✓ Protect People from Secondhand Exposure
- ✓ Level the Playing Field





# SMOKE-FREE POLICIES REDUCE SMOKING:

The scientific evidence says:

Based on a comprehensive review of evidence, the Surgeon General has called raising prices on cigarettes “one of the most effective tobacco control interventions”<sup>1</sup>

The tobacco industry says:

“Total prohibition of smoking in the workplace strongly affect industry volume. Smokers facing these restrictions consume 11%-15% less than average and quit at a rate that is 84% higher than average.” - Phillip Morris<sup>2</sup>



Sen McSorley speaking at the 10 anniversary of Smoke-free New Mexico

1. U.S. Department of Health and Human Services (HHS), The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General, Atlanta, GA: HHS, Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. <http://www.surgeongeneral.gov/library/reports/50-years-ofprogress/index.html>
2. Philip Morris Executive Claude Schwab, “Cigarette Attributes and Quitting,” March 4, 1993, Bates No. 2045447810.





# 10 YEARS OF SMOKE-FREE NEW MEXICO

## Dee Johnson Clean Indoor Air Act—2007

- NM was 17<sup>th</sup> state in 2007, now 25 states and DC have statewide laws.
- As a state law, it doesn't cover people living & working on tribal land.
- Numerous outdated exemptions expose workers to secondhand smoke, including retail tobacco stores; ballrooms in hotels; limousines under private hire; businesses with fewer than two employees, etc.
- Does not include e-cigarettes
  - SB 318 (McSorley) passed in 2017 with strong bipartisan support;
  - Pocket veto





# WHAT ELSE CAN NEW MEXICO DO?

## SECONDARY STRATEGIES TO DECREASE TOBACCO USE

The "Tobacco Products, E-Cigarette and Nicotine Liquid Container Act" prohibits selling tobacco products to minors under age 18 (NMSA 1978 30-49).

Areas of improvement needed in New Mexico:

- Preventing sales of tobacco to minors
- Increasing tobacco retailer accountability
- Penalty structure
- Enforcement funding

### PROTECTING PUBLIC HEALTH

Ensuring Compliance With Federal Tobacco Product Regulation

EVERY DAY IN THE UNITED STATES:



**1,300+**  
people die each  
day due to  
cigarette use<sup>1</sup>



**~2,500**  
youth under age 18 smoke  
their first cigarette, and nearly  
1,300 use smokeless tobacco  
for the first time<sup>2</sup>



**~600**  
youth under age 18 become  
daily cigarette smokers<sup>1</sup>

<sup>1</sup> U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2014.

<sup>2</sup> Substance Abuse and Mental Health Services Administration (SAMHSA). *Results from the 2015 National Survey on Drug Use and Health: Detailed Tables*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality; 2016. <http://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015.pdf>. Accessed September 9, 2016.



# NO TOBACCO SALES TO MINORS LAWS - ENFORCEMENT

## Overview of Programs

### FDA's Tobacco Retail Compliance Inspection Contracts

The Tobacco Control Act authorizes FDA to contract, where feasible, with States, the District of Columbia, five U.S. Territories (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and American Indian Tribes to assist with inspections of retail establishments.

Section 102 of the Tobacco Control Act required FDA to re-issue its 1996 final regulation restricting the sale and distribution of cigarettes and smokeless tobacco products. The rule contains provisions designed to limit young people's access to tobacco products, as well as restrictions on marketing to curb the appeal of these products to minors. The youth access and advertising regulations took effect on June 22, 2010 (21 C.F.R. Part 1140).

### SAMHSA's Synar Program

The Synar regulation is applicable to the 50 States, the District of Columbia, and eight U.S. Territories (American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Marshall Islands, Palau, Puerto Rico, and the U.S. Virgin Islands). It is not applicable to American Indian Tribes.

The Synar regulation requires States and U.S. Territories (as a condition of receiving their full Substance Abuse Prevention and Treatment Block Grant (SAPT BG) awards) to:

- Have in effect a law prohibiting any manufacturer, retailer, or distributor of tobacco products from selling or distributing such products to any individual younger than age 18;
- Enforce this law;
- Conduct annual, unannounced inspections of retail tobacco outlets in a way that provides a valid probability sample of tobacco sales outlets accessible to minors;
- Negotiate interim target rates and a date to achieve a noncompliance rate of no more than 20 percent; and
- Submit an annual report detailing State and Territorial activities to enforce its law.

Center for Tobacco Products, U.S. Food and Drug Administration. *A Strategic Partnership*.  
[www.fda.gov/tobacco](http://www.fda.gov/tobacco)



# NO TOBACCO SALES TO MINORS LAWS

State and federal law prohibit selling tobacco products to minors under age 18.

But in 2016

- Sales to minors occurred in 15% of inspected retailers
- Eight counties had a violation rate over 20%

Possible explanations:

- No dedicated funding for enforcement
- Current penalty structure focuses on clerk not retailer




*And what about e-cigarettes?*





# FDA COMPLIANCE CHECKS IN NEW MEXICO



U.S. Food & Drug Administration  
Center for Tobacco Products  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

**WARNING LETTER**

VIA UPS

Valero  
Attn: Site Manager  
1620 Carlisle Boulevard Southeast  
Albuquerque, NM 87106

Re: FDA Warning Letter Regarding Tobacco Retailer Inspection Violation  
Reference Number: 16NM001222AB

Dear Sir or Madam:

This Warning Letter is notification from the United States Food and Drug Administration (FDA) advising you that Valero was observed to be in violation of federal tobacco laws and regulations. Failure to correct these violations may lead to federal enforcement actions, including monetary penalties. Your response is requested in 15 working days.


On July 6 and September 3, 2016, an inspector representing the FDA completed an inspection of the establishment, located at 1620 Carlisle Boulevard Southeast, Albuquerque, NM 87106. During this inspection the establishment was in violation because you or your employee sold cigars to a minor.

This inspection revealed that the establishment sells, distributes, and/or advertises tobacco products, including cigars, which requires that the establishment and its owners comply with federal laws and regulations governing such practices. The violation observed during the July 6 and September 3, 2016, two-part inspection includes the following:

1. A minor was able to buy Swisher Sweets Cherry Dynamic cigars on September 3, 2016, at approximately 2:20 PM in the establishment.

A retailer must NOT sell covered tobacco products, such as cigars, to a person under the age of 21. Doing so violates 21 C.F.R. § 1140.14(b)(1) (2016).

Senate District 16



Department of Health and Human Services  
Food and Drug Administration  
Center for Tobacco Products  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

**WARNING LETTER**

VIA UPS

Family Dollar  
Attn: Site Manager  
1416 Eubank Boulevard Northeast  
Albuquerque, NM 87112

Re: FDA Warning Letter Regarding Tobacco Retailer Inspection Violation  
Reference Number: 17NM000222

Dear Sir or Madam:

This Warning Letter is notification from the United States Food and Drug Administration (FDA) advising you that Family Dollar was observed to be in violation of federal tobacco laws and regulations. Failure to correct these violations may lead to federal enforcement actions, including monetary penalties. Your response is requested in 15 working days.

On October 15, 2016, an inspector representing the FDA completed an inspection of the establishment, located at 1416 Eubank Boulevard Northeast, Albuquerque, NM 87112. During this inspection the establishment was in violation because you or your employee sold cigars to a minor.

This inspection revealed that the establishment sells, distributes, and/or advertises tobacco products, including cigars, which requires that the establishment and its owners comply with federal laws and regulations governing such practices. The violation observed during the October 15, 2016, inspection includes the following:

1. A minor was able to buy Swisher Sweets cigars on October 15, 2016, at approximately 2:29 PM in the establishment.

House District 24

Food and Drug Administration  
Center for Tobacco Products  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

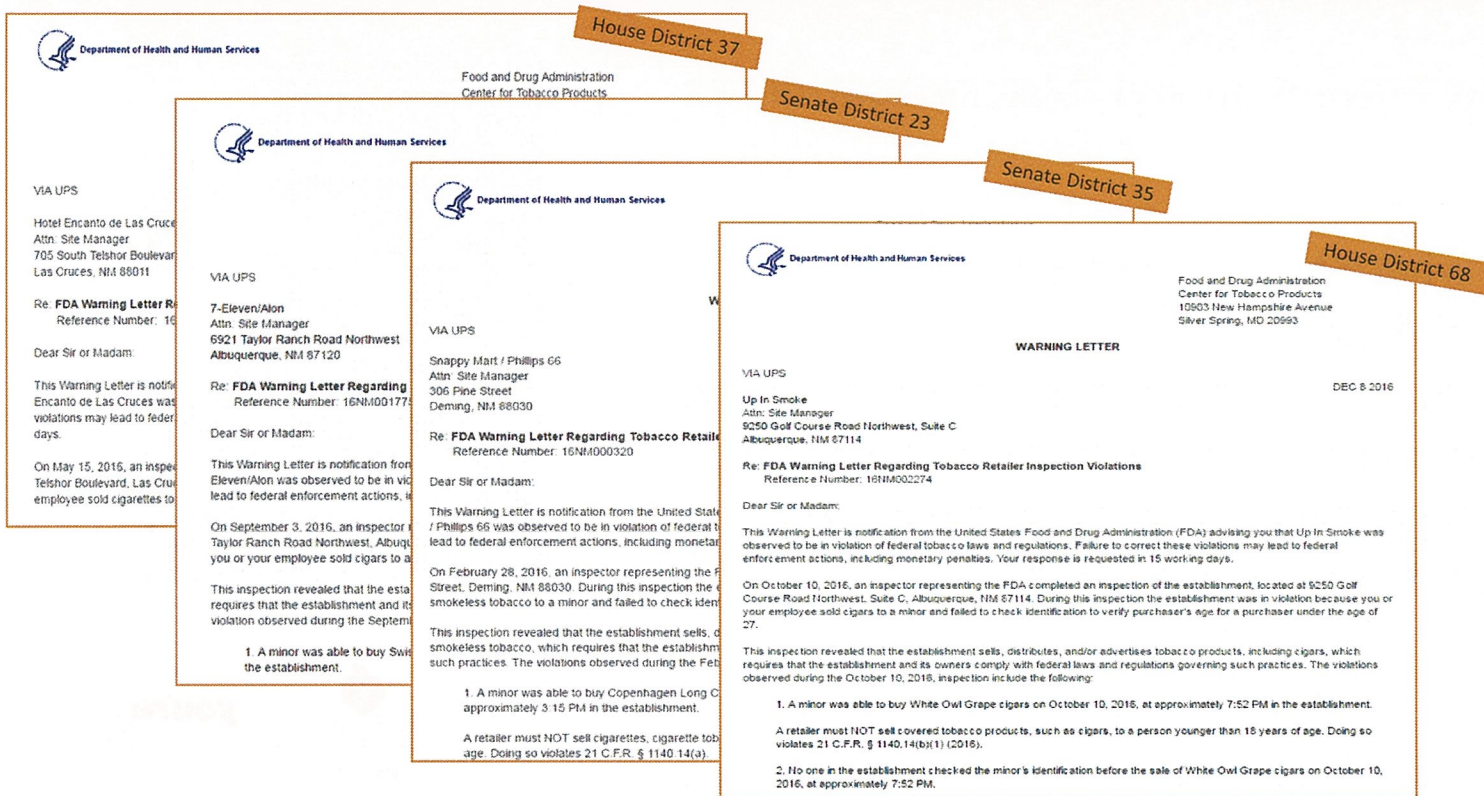
December 15 2016

*Other Strategies to Decrease Tobacco Use: What Else Can New Mexico Do?*





# FDA COMPLIANCE CHECKS IN NEW MEXICO



*Other Strategies to Decrease Tobacco Use: What Else Can New Mexico Do?*



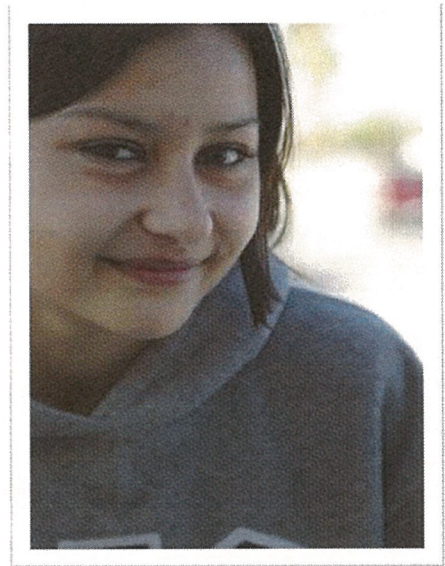


# WHAT ELSE CAN NEW MEXICO DO?

## SECONDARY STRATEGIES TO DECREASE TOBACCO USE

The 2009 Family Smoking Prevention and Tobacco Control Act allows state action on<sup>1</sup>:

- Regulating when and where tobacco can be sold
- Regulating flavors in tobacco
- Limiting the number and size of tobacco ads at retail outlets
- Requiring that tobacco products and advertisements be kept a minimum distance from cash registers in order to reduce impulse purchases by smokers trying to quit



1. *Federal Regulation of Tobacco: Impact on State and Local Authority*, July 2009. Tobacco Control Legal Consortium



# QUESTIONS?



**POQUEEN RIVERA, NEW MEXICO GOVERNMENT RELATIONS DIRECTOR  
AMERICAN HEART ASSOCIATION  
SANDRA ADONDAKIS, NEW MEXICO GOVERNMENT RELATIONS DIRECTOR  
AMERICAN CANCER SOCIETY CANCER ACTION NETWORK**



**you're the cure**



