

## WHAT IS A MINIMUM FLOOR PRICE LAW (MFPL)?

One of the most effective ways to reduce tobacco use is to increase the prices of tobacco products. **A *minimum floor price law (MFPL)*\* is one strategy to increase prices.** An MFPL sets a price below which the product cannot be sold.

For some products, an MFPL may need to be paired with a packaging size requirement to ensure application of clear floor prices. For a more comprehensive pricing approach, MFPLs can also be paired with a discount ban that prohibits the redemption of price promotions or discounts on tobacco products.

## WHY CONSIDER AN MFPL?

### MFPLS ARE LIKELY TO REDUCE TOBACCO USE.

When tobacco prices rise, tobacco use decreases.<sup>1</sup> Because MFPLs are a relatively new tobacco control strategy, there is little research about how they affect tobacco use when implemented. Two recent studies projected the likely impact of MFPLs on cigarette use. One concluded that a federal \$10 cigarette pack MFPL would reduce US cigarette sales by 5.7 billion packs per year and result in 10 million smokers' quitting.<sup>2</sup> The other considered state-level MFPLs and found that implementing an MFPL designed to raise average prices by \$2 per pack would reduce cigarette consumption by 15.9%.<sup>3</sup> A minimum floor price for alcohol has been shown to be effective in reducing alcohol consumption, hospital visits, and alcohol-related deaths.<sup>4,5</sup>

### MFPLS COUNTERACT INDUSTRY PRICE DISCOUNTING.

Tobacco companies often reduce prices or offer coupons in response to other price policies, like excise taxes. By setting a floor price, MFPLs can offset industry price manipulation, especially if a discount ban is included in the policy.

### MFPLS MAY REDUCE DISPARITIES.

MFPLs require a **larger price increase for cheaper products than for more expensive ones and may price discount brands out of the market** (see figure). Neighborhoods with more African Americans and low-income residents have cheaper tobacco prices and more marketing.<sup>6</sup> Residents in these neighborhoods may therefore face larger price increases when an MFPL is implemented. However, underserved communities generally have the highest tobacco-related morbidity and mortality and a history of being targeted by the tobacco industry.<sup>6-8</sup> When accompanied by strong cessation resources, MFPLs may therefore benefit these groups the most, reducing disparities in tobacco use and associated health outcomes.

Lower prices in underserved communities mean that MFPLs may benefit retailers in areas that need economic support. Unlike excise taxes, which generate revenue for governments, MFPLs generate additional revenue for those who sell tobacco products.

### MFPLS MAY BE MORE FEASIBLE TO IMPLEMENT THAN OTHER PRICE POLICIES.

- Excise taxes are often politically unpopular; MFPLs provide an alternative policy option.
- In places where excise taxes are already high, MFPLs are a potential complementary pricing policy.
- In California, local governments are prohibited from taxing tobacco products<sup>9</sup> but not from implementing MFPLs.



\* We use the term *minimum floor price law* to differentiate it from a minimum markup law, which establishes minimum markups when tobacco products are sold by wholesalers to retailers or retailers to consumers. About half of US states have such laws, but they are often easy to circumvent with price discounting and are difficult to enforce because they establish brand-specific minimum prices. Evidence on the effectiveness of markup laws in raising tobacco prices is mixed.

## WHERE HAVE MINIMUM FLOOR PRICE LAWS BEEN IMPLEMENTED?



**Three California communities have passed MFPLs.** In 2016, Sonoma County approved a \$7 per pack MFPL for cigarettes, little cigars, and cigars, adjusted annually for inflation.<sup>10</sup> In 2017, as part of a tobacco retailer licensing law, San Leandro set a minimum price of \$7 for 5 cigars or little cigars (and \$5 for a single premium cigar).<sup>11</sup> In 2018, the city of Alameda enacted a minimum price of \$7 for cigarettes and \$5 for little cigars and cigars.<sup>12</sup>

**Other cities in the United States have also implemented floor prices.** In 2011, Boston and several other Massachusetts towns passed regulations requiring retailers to sell cigars in packages of at least 4, unless they sold fewer cigars for at least \$2.50 each.<sup>13</sup> In 2017, New York City raised the minimum price for cigarettes from \$10.50 to \$13.00 and set a minimum price for most tobacco products, including \$8 for 4 cigars, \$13 per pack of little cigars, \$8 for smokeless tobacco tins, and \$17 for shisha tins.<sup>14</sup>

## ARE MINIMUM FLOOR PRICE LAWS LEGAL?

Yes. All states and many local governments may adopt MFPLs pursuant to their basic police power to protect the health, safety, and welfare of their community. Moreover, neither federal law nor the US Constitution prohibit well-designed MFPLs.

- The Federal Cigarette Labeling and Advertising Act (FCLAA) does not preempt (ie, prohibit) MFPLs. FCLAA restricts state and local authority to regulate the content of cigarette advertising and promotions (“marketing”).<sup>15</sup> However, MFPLs regulate *how* cigarettes (and other tobacco products) are sold, not the *content* of their marketing. Moreover, MFPLs fall within FCLAA’s “savings clause,” which authorizes state and local regulations on the “time, place, and manner” of cigarette marketing.<sup>16</sup> For example, based on this savings clause, a federal appellate court upheld Providence, Rhode Island’s prohibition on tobacco coupon redemption, finding that FCLAA did not preempt regulations on how cigarettes are sold.<sup>17</sup>
- Well-crafted MFPLs do not violate the First Amendment’s protections on free speech because they regulate tobacco product *sales* rather than marketing. For example, jurisdictions may prohibit the *redemption* of tobacco coupons (ie, prohibit certain *conduct*) but have more limited authority to prohibit the *distribution* of coupons (ie, prohibit certain *speech*).
- MFPLs do not violate antitrust laws because the government imposes them without the tobacco industry’s involvement.

## WHAT ELSE DO WE NEED TO KNOW ABOUT MFPLS?

- Excise taxes provide funds for government, some of which may be earmarked for prevention of tobacco use. MFPLs do not produce government revenue; price increases may instead increase profit margins on tobacco sales (see table for a comparison between excise taxes and MFPLs).
- MFPLs should be designed to regularly adjust floor prices in proportion to the Consumer Price Index, to account for inflation.
- Like all tobacco control policies, MFPLs require strong penalties and equitable enforcement.

| Outcomes  | Tax | MFPL |
|---|-----|------|
| <b>Raises funds for government</b>                                    | X   |      |
| <b>May increase profit margins for retailers or tobacco companies</b> |     | X    |
| <b>Raises prices on all products</b>                                  | X   |      |
| <b>Focuses on cheapest products</b>                                   |     | X    |
| <b>Prevents youth tobacco initiation</b>                              | X   | X    |
| <b>Guards against discounts</b>                                       |     | X    |
| <b>May reduce disparities</b>   | X   | X    |

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