

Editorial

# When Will the Tobacco Control Act be Considered a Failure?

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## Editorial

In 2009, the Family Smoking Prevention and Tobacco Control Act (TCA) was signed into law in the United States, touted by its champions as a measure to lower smoking rates and decrease the health costs of tobacco-related disease. This is a worthy goal, given that smoking is the most important modifiable risk factor among the top four causes of death in Americans- heart disease, lung cancer, chronic obstructive pulmonary disease, and stroke [1]. It has been attributed as a cause of death in almost 400,000 Americans every year [2]. In the first year since it went into effect, smoking rates decreased from 19.3% to 19% [3] hardly an auspicious beginning. As the measure is less than five years old and not all provisions were enacted initially, supporters could argue that it will give sizeable results with more time, but analysis of the law is not encouraging for future gains.

First, the TCA primarily limits labeling and advertising as a means to decrease tobacco use. It requires larger text labels and graphic color pictures of the side effects of smoking on cigarette packages, measures which have been shown to decrease smoking rates in other countries and are effective across educational and socioeconomic strata [4]. However, while the Food and Drug Administration (FDA) is now charged with enforcing these requirements, the law also states that cigarettes cannot be outright banned. This leads to forcing manufacturers to label their product in such a manner that it discourages its own use, more so than a simple text warning, while being a legal item and having the implicit approval from the FDA. This would seem to be an unnecessary burden for commerce and infringe on free speech rights, which was the basis of a successful lawsuit by several tobacco companies [5]. The TCA also tries to prevent children from smoking by limiting advertising. While there are already restrictions on such ads aimed at children, the law adds a prohibition on any advertising within 1000 feet of a school. Despite a lack of evidence that this is an effective anti-smoking measure, it also is unequally burdensome, as it would limit advertising much more in high population-density areas like New York City and San Francisco, but may not require any change in practice for more rural retailers. This would seem to invite further litigation.

The Tobacco Control Act also has requirements that have not been shown to decrease smoking rates and would not be expected

to do so. One example is the requirement to list all ingredients in tobacco products, a daunting task, given that there are thousands of chemicals within cigarettes, even more when they are ignited, and not all are known [6]. Like food regulations, the statute also limits the amount of rodent feces and insect parts in tobacco products, as if this would make smoking healthier. The law bans candy- and fruit-flavored cigarettes, a very small portion of the cigarette market, [7] but notably excepts menthol from this ban, despite the fact that many adolescents begin smoking menthol cigarettes and are more likely to continue smoking if they start with these [8]. Most shamefully, the TCA stipulates that while the FDA can limit the amount of nicotine in tobacco products, it cannot ban it, thus leaving tobacco addictive, nor can tobacco products become a prescription drug per the Controlled Substance Act, even though nicotine perfectly meets the definition of a Schedule I drug- high addiction and abuse potential with little to no medicinal properties. Compare this approval of a harmful substance with a medicine deemed too dangerous to remain on the market- rofecoxib. A woman taking rofecoxib regularly for arthritis increased her stroke risk by 64%, [9] but being a regular smoker increases her risk by 400% [2].

Lastly, the law does nothing to protect nonsmokers from second-hand smoke (SHS), which is estimated to cause more than 42,000 deaths a year in the US [10]. SHS has repeatedly been associated with disease in children, ranging from respiratory illness to neurocognitive disorders [11]. The increased risk of asthma in children exposed to smoke in early life has been found to be as high as 80% [12]. Additionally, the decrease in smoke-free homes in recent years has been followed by a decrease in the rate of sudden infant death syndrome (SIDS) [13]. While it would be difficult to argue that sharing alcohol or prescription narcotics with young children is not negligent behavior, the FDA now must tacitly approve children being exposed to SHS.

If the Tobacco Control Act is ineffective to decrease smoking and lead to a healthier nation, what does work? An easy start is public smoking bans, as workplace smoking ordinances have been shown to decrease smoking rates, as well as hospital admissions for myocardial infarction [14]. Tan and Glantz [15] not only found that smoke-free legislation was associated with lower admission and death rates for acute coronary syndromes, other heart disease, strokes, and respiratory disease, but that there was a dose-response to this legislation, with a greater decrease in the above outcomes in more comprehensive bills that banned smoking in workplaces, restaurants, and bars. Decreases in smoking rates and admissions for myocardial infarction, sudden cardiac death, and asthma have also been seen with price increases, especially when cigarettes cost more than four dollars a pack [16]. Indeed, the greatest single year decline in smoking rates in recent years has been after the settlement with tobacco companies in 1998, when these corporations raised the price of their products to cover the cost of the \$250 billion settlement [17].

The cost of healthcare has been a growing issue in the United States, with concerns over a rising elderly population, an obesity epidemic, and a depressed economy making funding for government insurance programs tenuous. A decrease in smoking rates and exposure would lead to decreases in hospital admissions, chronic disease, and deaths. This could be easily accomplished with widespread public smoking bans and increased excise taxes on tobacco products. Effective anti-smoking legislation should also protect those who cannot avoid smoke, with penalties for exposing children to SHS. Knowing this, how long must we wait before the Family Smoking Prevention and Tobacco Control Act is considered a failure and we enact laws that will attain the goals of decreasing tobacco use?

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