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A Comprehensive Review of State Laws Governing Internet and Other Delivery Sales of Cigarettes in the USA

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Abstract

All U.S. states regulate face-to-face tobacco sales at retail outlets. However, the recent growth of delivery sales of tobacco products by Internet and mail order vendors has prompted new state regulations focused on preventing youth access and tax evasion. To date, there are no comprehensive and systematic analyses of these laws. The objectives of this study were to: (1) document the historical enactment of the laws; (2) assess the nature and extent of the laws; and (3) conduct preliminary analyses to examine the relationship between states with laws and other factors that might predict enactment of or be impacted by these laws. Between 1995 and 2006, thirty-four states (67%) enacted a relevant law, with 23 states' laws (45%) enacted between 2003 and 2006. Four states banned direct-to-consumer shipment of cigarettes. The remaining 30 states' laws included a combination of requirements addressing minimum age/ID, payment issues, shipping, vendor licensure and related issues, tax collection/remittance, and penalties/enforcement. States with delivery sales laws also have stronger state excise tax rates, youth access to tobacco policies, and state tobacco control environments as well as higher cigarette excise tax revenue, past month cigarette use rates, and perceptions of risk of use by adolescents. This paper provides

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COMPETING INTERESTS
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the policy context for understanding Internet and other cigarette delivery sales laws in the U.S. It also provides a systematic framework for ongoing policy surveillance and will contribute to future analyses of the impact of these laws on successfully reducing youth access to cigarettes and preventing tax evasion.

INTRODUCTION

Most cigarette sales in the United States (U.S.) and elsewhere occur via face-to-face transactions; however, there is a growing trend toward delivery sales of cigarettes. Delivery sales represent the sale of cigarettes to consumers whereby: (1) the purchaser submits the order for the cigarettes by telephone, mail, facsimile, Internet, or delivery service; and (2) the cigarettes are delivered via the mail or by a delivery/carrier service. Mail order cigarette sales have occurred for over a half century and comprise a small segment of the overall cigarette market. However, delivery sales have been bolstered in recent years by the advent of the Internet, and particularly by the lure of Websites touting "tax-free" cigarette sales as state cigarette excise taxes have risen in many states. The number of English-language Internet cigarette vendors has risen from approximately 88 in early 2000 (Ribisl, Kim, & Williams, 2001) to 775 in early 2004 (Ribisl, Kim, & Williams, in press). The emergence and growth of Internet cigarette sales has concerned policymakers and tobacco control advocates because the Internet has the potential to undermine years of progress in restricting tobacco advertising and promotion, reducing youth access to tobacco, and increasing the unit price through excise taxes (Cohen, Sarabia, & Ashley, 2001; Connolly, 2001; Fisher, 2000; Knowles, Wanke, & Kawachi, 2004; Ribisl, 2003; Ribisl et al., in press). Several empirical studies have shown that a very large proportion of (if not all) Internet vendors violate one or more state and federal tax reporting laws in the U.S. (Ribisl et al., in press), sell cigarettes to minors (Hong & Cody, 2002; Ribisl, 2003), or market or promote tobacco products (Jensen, Hickman, Landrine, & Klonoff, 2004; Ribisl, 2003). Data also suggest that smokers who buy low-taxed and untaxed cigarettes from the Internet and other sources are less likely to make quit attempts and are less likely to quit smoking, thereby undermining the public health benefit of cigarette tax increases (Hyland, Higbee, Li, et al., 2005).

In the U.S., more than one-half dozen federal bills have been proposed to regulate Internet, mail order, and delivery sales of tobacco, but all have failed (Graff, 2006). The U.S. Congress held hearings on the problems posed by Internet and mail order tobacco sales in 2003, and all testifying agreed that something needed to be done to prevent minors' access to tobacco products via Internet sales and retailer evasion of state taxes (H.R. 1839, 2003). The Jenkins Act of 1949 (Pub. L. No. 364, 63 Stat. 994, 1949) is the only federal law currently restricting delivery sales of cigarettes (Banthin, 2004; General Accounting Office, 2002). The Jenkins Act requires that tobacco vendors selling to customers out-of-state must "first file with the tobacco tax administrator of the State into which such shipment is made" (Pub. L. No. 364, 63 Stat. 994, 1949). The vendors must also report all cigarette sales to state taxation authorities by the 10th day of each calendar month. These reports must include "the name and address of the person to whom the shipment was made, the brand, and the quantity thereof" (Pub. L. No. 364, 63 Stat. 994, 1949). For example, when a smoker from New York City purchases three cartons of cigarettes from an Internet vendor based in

Virginia, the Virginia Internet vendor is obligated to report to the New York tobacco tax administrator the name and address of the buyer, and the brand and quantity of cigarettes purchased so that the New York tax administrator can collect any unpaid taxes. An investigation conducted by the U.S. General Accounting Office (GAO) in 2002 concluded that most Websites openly stated that they violate the Jenkins Act and that there have been no successful prosecutions of noncompliant Internet cigarette vendors (GAO, 2002).

History of State Delivery Sales Law Development

In the absence of federal regulations, individual states have passed legislation to regulate cigarette delivery sales. Indicative of the states' concerns regarding Internet and delivery sales of cigarettes, the majority of these states have specifically referenced sale of cigarettes via the Internet (26 states), mail order (27 states), or via the telephone (24 states) as the focal point for sales restrictions involving non-face-to-face sales (other than vending machines). These laws have primarily focused on preventing tax evasion and youth access and, as such, are aimed at addressing state fiscal and public health concerns, respectively. Given that states with high cigarette excise taxes can lose revenue if smokers purchase tax free cigarettes from the Internet, it is not surprising that states have acted to curtail tax evasion. Although this figure is probably an overestimate (Ribisl et al., in press), the private firm Forrester Research estimated in 2001 that by the end of 2005, online tobacco sales would exceed $5 billion and states would lose $1.4 billion in lost tax revenue annually (Rubin, Charron, & Dorsey, 2001). Further, although Internet sales are not the predominant means of minors' access to cigarettes, youth may increasingly attempt to buy cigarettes online as access to cigarettes at retail stores becomes more restricted (Abrams, Hyland, & Cummings, 2003; Fix, Zambon, Higbee, et al., 2006; Office of Applied Studies, 2002; Unger, Rohrbach, & Ribisl, 2001).

The development of state cigarette delivery sale laws has emanated from a combination of state laws (discussed in detail in the results section) as well as model legislative provisions developed by diverse organizations such as Philip Morris USA and the Campaign for Tobacco Free Kids (CTFK). Philip Morris (PM) developed model legislative language for states to place restrictions on the direct to consumer sale of tobacco products to ensure compliance with applicable laws (Philip Morris USA, 2003). The PM model legislation included requirements for delivery sales-related age verification, disclosure, shipping, registration and reporting, tax collection, penalties, and enforcement (Philip Morris USA, 2003).

Recognizing the areas in which the PM model fell short of sufficiently addressing the concerns associated with the delivery sale of tobacco products, CTFK subsequently developed three comprehensive models for state legislation (Lindblom, 2005a, 2005b, 2005c). Housed within these models were provisions designed to either: (1) restrict Internet and mail order tobacco product sales, (2) prohibit all Internet or mail order sales of tobacco products, or (3) block illegal tobacco product sales to state residents through a delivery list enforcement mechanism (Lindblom, 2005a, 2005b, 2005c). The CTFK models cover the same areas as the PM model, but go a step further to correct what they considered the PM model's deficiencies. One CTFK model, for example, recommends a ban on shipping and transporting cigarettes directly to consumers, specifies maximum order limits, and includes carrier penalties that are not included in the PM model (Lindblom, 2005a). Other models include provisions such as “do not ship to” list provisions, purchaser penalties, and requirements that sellers provide carriers with proof of licensure (Lindblom, 2005b, 2005c).

Study Purpose

To date, a comprehensive review of state cigarette delivery sale laws has not been undertaken. In this article, we present an original analysis of the state laws effective as of December 31, 2006 to: (1) examine the enactment of state laws in this area over time; (2) present baseline data on the nature and extent of the state laws in this area, focusing on the tax evasion and youth access -related provisions (i.e., shipping bans, purchase-related provisions, shipping-related provisions, vendor-related provisions, Jenkins Act and/or tax collection/remittance compliance, and penalty and enforcement provisions) that could have bearing on state fiscal and public health concerns and that are emphasized in the state laws; and (3) present preliminary analyses to explore the relationship between states with delivery sales laws and a series of factors that may be associated with policy action in this area or may be impacted by policy action in this area. This paper will provide new information to add to the extensive body of knowledge that already exists regarding state tobacco control laws. This baseline identification and analysis of state laws is a necessary first step that will help guide future policy research aimed at identifying effective policy solutions to the problems posed by cigarette delivery sales.

METHODS

Policy Data Sources and Inclusion Criteria

Using primary legal research methods (Mersky & Dunn, 2002), staff from the National Cancer Institute’s (NCI) State Cancer Legislative Database (SCLD) Program identified and collected statutory and administrative (i.e., regulations) law for each of the 50 states and the District of Columbia (collectively referred as “states”) from Westlaw, an online legal reference service. Searches were inclusive of all laws effective as of December 31, 2006. A Boolean search strategy was devised to search each state’s Westlaw statutory and administrative code databases: (tobacco OR cigarette) AND ((mail OR Internet OR fax OR facsimile OR “delivery service” OR carrier) OR (ship! OR deliver!)). Because of the variation in state publishing of their statutory and administrative codes, it was necessary to search each state separately to ensure that the laws in effect as of December 31, 2006 were captured. In other words, some states’ 2006 codes reflect laws in effect as of January 1, 2006 while other states’ 2006 codes reflect laws effective as of December 31, 2006. Additionally, the legislative history for each state’s law was reviewed to identify possible other relevant laws and the statutory annotations were used to identify relevant administrative code sections for each state. Statutory and administrative tables of contents and indices also were searched to ensure complete capture of each state’s law. The statutory and administrative law data were compared to other sources of information on state laws prohibiting or restricting Internet tobacco product sales (Campaign for Tobacco-Free Kids, n.d.; Graff, 2006; SCLD, 2007) to ensure that all relevant states were identified and each state also was coded to reflect the extent to which its provisions contained the PM or CTFK model (or similar) provisions. Additionally, case law was identified and analyzed for three states (Arkansas, Maine, and New York) where the outcome of the court decision(s) impacted the analysis of the states' laws.

The deciding factor in determining to include a law in the analysis was whether it: (1) banned the shipment and transport of cigarettes directly to consumers; or (2) related to the sale of cigarettes to consumers ordered via a remote (i.e., non-face-to-face and non-vending machine) transaction and/or to the shipping and/or delivery of cigarettes ordered remotely.

Variables and Analysis

Policy Variables and Analysis—A qualitative coding scheme was developed for analyzing each state's laws (see Appendix for code sheet and variable descriptions). The policy areas were based on a review of the literature, the Philip Morris (2003) model law, the Campaign's model laws and fact sheets (Lindblom 2005a, 2005b, and 2000c), and a review of the laws in the states. Six major policy categories were coded to reflect a combination of provisions related to preventing youth access, tax evasion, or both: (1) complete shipping ban, (2) purchase-related provisions, (3) shipping-related provisions, (4) vendor-related provisions, (5) Jenkins compliance and/or tax collection and remittance, and (6) penalty and enforcement provisions. Within the 6 major policy categories, 18 sub-categories containing 22 sub-topics were identified (see coding scheme in Appendix). With the exception of the penalty/enforcement provisions category, all of the coding categories reflected requirements to be imposed on the vendor of cigarettes sold through the Internet and/or other delivery sales mechanisms (as opposed to voluntarily or optional provisions).

Two dichotomous dummy variables were computed to indicate whether each state's laws were youth access-specific or tax evasion-specific, regardless of penalty or enforcement provisions. The youth access dummy variable was computed (1=yes) if the state law addressed minimum age of sale or identification requirements or there was a complete ban on shipping of tobacco products to consumers. The tax evasion dummy variable was computed (1=yes) if the state law addressed tax collection/remittance, Jenkins Act compliance (or registration/reporting), or there was a complete ban on shipping of tobacco products to consumers.

Two of the study authors (JFC, RMW) with legislative research and analysis experience independently analyzed and coded each law. The coding process was guided by decision rules that were developed to ensure that data were being captured consistently. To assess the inter-coder agreement, intra-class correlation coefficients (ICC) were computed (Shrout & Fleiss, 1979). The overall ICC was high (α =.94), with a perfect ICC (α=1.00) achieved for 19 of the items. Following the computation of the ICC statistics, the two coders reviewed the discrepancies and developed a consensus coding. The results presented in this paper reflect the consensus coding. Descriptive statistics on the policy data were computed using SPSS v. 14.0.1.

State Policy and Other Environmental Factors and Analyses—Descriptive statistics (means, standard deviations) were computed using SPSS v. 14.0.1 to assess the differences between states with and without delivery sales laws for selected state policy and other environmental factors that might be associated with delivery sales policy enactment or implementation or that might provide contextual information regarding the state environment surrounding delivery sales policy action. Because data for all states were included and analyzed, we did not conduct statistical significance testing, which is appropriate for making population inferences from samples. Seven variables were included in the analyses, including three state policy environment variables, one tobacco tax revenue variable, two indicators of youth smoking prevalence and perceived risk, and state median household income. The variables included the most recently available data at the time of the analysis. As indicated below, most of these variables reflect 2004–2005 time points.

The policy environment variables included: state cigarette excise tax rates as of December 31, 2005 (National Cancer Institute, 2006); a measure of the relative ranking of state tobacco control efforts, known as the Strength of Tobacco Control (SOTC) index, in the states as of 2004 (obtained from Frank Chaloupka, Ph.D. and the SmokeLess States Evaluation; see Stillman, F.A., Schmitt, C.L., Clark, P.I., Trochim, W.M.K., & Marcus, S.E., 2006 for a description of the computation of this index); and a rating of the extensiveness of state youth access policies as of December 31, 2005 (National Cancer Institute, 2006; see Alciati et al., 1998 for a description of the computation of this measure). The youth access rating measure is a longitudinal measure of the extensiveness of state youth access policies (Alciati et al., 1998; Chriqui et al., 2002) that has been validated in other policy impact studies (see, for example, Luke et al., 2000 and Hyoshin & Clark, 2006). As a measure of fiscal impact of tax revenue on the states, data were included on net cigarette excise tax revenue for Fiscal Year 2005 (Orzechowski & Walker, 2005). Youth smoking prevalence and perceived risk were assessed via past month cigarette use for 12–17 years olds for 2003–2004 (SAMHSA, n.d.) and 12 to 17 year olds' perceptions of "great risk" of smoking one or more packs of cigarettes per day for 2003–2004 (SAMHSA, n.d.). Median household income for 2004–2005 was obtained from the U.S. Bureau of the Census (U.S. Census Bureau, 2006).

Since the laws themselves focus primarily on preventing tax evasion and youth access to tobacco, we analyzed subsets of the state policy and environmental variables for states with tax evasion provisions and states specifically addressing youth access issues, respectively, as well as all of the variables for all states with relevant laws (regardless of emphasis). Variables included in the tax evasion law analysis included: cigarette excise tax rate, net cigarette excise tax revenue, median household income, and the strength of tobacco control. The youth access analysis examined: state youth access ratings, strength of tobacco control, past month cigarette use, and perceived risk of use by 12–17 year olds.

RESULTS

Enactment of Laws over Time

As of December 31, 2006, thirty-four states (67%) had cigarette delivery sale laws in effect (Table 1).* The laws were primarily enacted over the past decade, with 27 of the states' initial laws (79% of states with laws) effective between 2003 and 2006.

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*For ease of exposition, all legal citations to the state laws referenced throughout the Results and Discussion sections are centrally identified in Table 1.

The first relevant law, enacted in Michigan in 1992, regulated the sale or distribution of tobacco products by mail or common carrier. The first law to address minors' access to cigarette delivery sales was enacted in Tennessee in 1995. Tennessee's law required tobacco product distributors to obtain an affirmative statement that the purchaser was at least 18 years of age and notifying the purchaser that s/he (i.e., the distributor) is prohibited from distributing tobacco products to anyone under age 18.

In August 2000, New York enacted the first law to prohibit the shipment of cigarettes to anyone who is not a licensed cigarette tax agent; wholesale dealer; export warehouse proprietor; or an officer, agent, or employee of a federal, state, or local government agency. Alabama's law was the last to take effect before the end of 2006. Eleven states' laws (32% of states with laws) underwent substantive amendments after the initial law's enactment.

Nature and Extent of the Laws

The results of the analysis of the nature and extent of the states' laws according to the six major policy categories are presented in Table 2. The policy provisions varied across states by category. There were no instances where all 34 states with laws were coded as having a specific provision, although 33 of the 34 states (97%) specified vendor penalties for violations (discussed further below). Thirty-one states' laws (91% of the states with laws) specifically addressed youth access issues (excluding penalty/enforcement provisions), while 30 states' laws (88% of the states with laws) specifically addressed tax evasion-related issues (excluding penalty/enforcement provisions). The states did not completely overlap across the two issue areas. The laws in Montana, Ohio, and Wyoming did not address youth access issues; and the laws in Illinois, Michigan, Missouri, and Utah did not address tax evasion-related issues.

Shipping/Delivery Ban—Four states' (Arkansas, Connecticut, Maryland and New York) laws banned the shipping/delivery of cigarettes directly to consumers. Arkansas' law was deemed a ban based on the Arkansas Supreme Court December 9, 2004 ruling that the state's face-to-face cigarette sales requirement also applied to Internet cigarette vendors, thereby banning Internet cigarette sales (Arkansas Tobacco Control Bd. V. Santa Fe Natural Tobacco Co., Inc., 2004). New York's law was challenged as unconstitutional but was upheld in 2003 by the U.S. Court of Appeals for the Second Circuit (Brown & Williamson Tobacco Corp., et al. v. Pataki, 320 F.3d 200 (2d Cir. 2003)).

Purchase-Related Provisions—Purchase-related provisions addressed both youth access and tax evasion-related issues including age/identification verification as well as payment types and methods, although the age/identification provisions were more prevalent across the states (see Table 2). Twenty-six states' laws (77% of states with laws) address the purchaser's age/identity—to be verified either at every sale (12 states, CTFK model provision) or only at the time of the first purchase (13 states, PM model provision). Missouri law prohibits the sale or distribution of tobacco products by mail or the Internet to persons under age 18 without specifying that the age/identify must be verified or when it must be verified. Further, the type of identification verification also varied across the states and could reflect a combination of: (1) customer attestation, (2) identification check, and/or (3) checking the age/identity against a commercial database of government identifications. Twenty-three states' laws (68% of states with laws) addressed the type of verification—2 states only required customer attestation, 17 states required two types of verification (PM model provision), and 4 states required all three types of verification (CTFK model provision).

Provisions governing the payment for the cigarettes ordered via delivery sale were addressed in 20 states (59% of states with laws), with payment types including some combination of check, credit card, or debit card. So as to further ensure that the buyer was the same as the person paying for the cigarettes, 16 states (47% of states with laws) required that the payment type (i.e., check, credit card, or debit card) must be in the buyer's name. Only three states (California, Idaho, and New Jersey) went so far as to require that the credit/debit card billing address match the shipping address and/or government identification address.

Shipping-Related Provisions—The shipping-related provisions in the state laws heavily emphasized requirements governing the language to be stated on the shipping documents/ packaging and/or the sellers location (whether inside or outside of the state). Twenty-eight states' laws (82% of states with laws) required that tobacco product content language be specified either on the bills of laden or on the shipping package while 19 states' laws (56% of states with laws) required that tax collection/remittance requirements and minimum age of sale language (mutually exclusive) be specified on the packaging/documents. In 19 states (56% of the states with laws), the law specifies that the delivery sale of cigarettes is considered a sale, regardless of the seller's location (i.e,. inside or outside of the state or on tribal land). Only four states' laws (12% of states with laws) addressed minimum/maximum product quantities that may be ordered/shipped—three states specified the maximum amount ranging from 2 cartons (Maryland) to 5 cartons or 1000 cigarettes (Illinois). While New York prohibits delivery sale directly to consumers, the law also prohibits persons other than carriers from transporting more than 4 cartons (800 cigarettes) at any one time. California's law requires the distributor or seller to impose a 2 carton minimum on each order.

Vendor-Related Provisions—The vendor-related provisions addressed both youth access and tax evasion and included licensure, compliance, and notification issues. Twenty-five states' laws (74% of states with laws) required delivery sales vendors to be licensed. For purposes of this analysis, a state was given credit for having a licensure provision if its law specifically required delivery sellers to be licensed or indicated that delivery sales vendors comply with existing state tobacco product vendor licensure provisions. Interestingly, only 11 states' laws (32% of states with laws) required vendors to provide carriers with evidence of complying with tax collection and remittance provisions and only 2 states' laws required that vendors provide carriers with evidence of complying with the licensure provisions. One-half of the states with laws (17 states, 50%) follow the CTFK lead to require that customers be notified and/or that vendors disclose the minimum age of sale and/or tax collection and remittance requirements prior to shipping the tobacco products. These provisions were intended to serve as a "check and balance" to ensure that the customers were, in fact, the ones who submitted the order and/or that they were informed of the tax collection/remittance requirements. Maine was the only state to include in its law a requirement that a list of unauthorized retailers be posted. Several other states also included requirements that state agencies develop and maintain a list of authorized tobacco retailers/vendors; however, these provisions were not included in this analysis but are available from NCI's State Cancer Legislative Database (http://www.scld-nci.net).

At the same time, twenty states' laws (59% of states with laws) included some type of provision that required vendors to use carriers that will impose specific requirements at the time of delivery (i.e., that the carrier verify the purchaser identification, obtain an adult signature, and/or deliver only to the address on the identification). However, on May 19, 2006, the U.S. Court of Appeals for the First Circuit [New Hampshire Motor Transp. Ass'n, et al., v. Rowe, 377 F.Supp.2d 197 (D. Me.), rev'd in part, aff'd in part, 488 F.3d 66 (1st Cir. 2006), motion for leave to file cert. granted, 75 U.S.L.W. 3163 (U.S. Oct 2, 2006) (No. 06-M20)] held that the provisions of Maine's law [22 Maine Rev. Stat. Ann. §1555-C(3)(C)] requiring that delivery services used by tobacco retailers meet specific requirements were preempted by the Federal Aviation Administration Authorization Act (FAAA) and, therefore, unenforceable against the delivery service. On October 2, 2006, the U.S. Supreme Court granted a motion for the State of Maine for leave to file a petition for a writ of certiorari, meaning that the court has agreed to make a determination as to whether to hear the case. If the court grants a writ of certiorari, an opinion by the Supreme Court deciding the outcome of the case is likely to be issued before the Court's 2006-07 term ends in July 2007. The final outcome of the case may have implications beyond Maine and may prevent the enforcement of other states' laws that impose requirements on delivery services.

Jenkins Compliance and/or Tax Collection and Remittance—Although tax collection and remittance is a key concern with regard to cigarette delivery sales, only 23 states' laws (68% of the states with laws) specifically require that vendors register and report delivery sales to the state and/or comply with the Jenkins Act. Further, only 22 states' laws (65% of states with laws) require that sellers collect taxes or notify purchasers that they (the purchaser) are responsible for applicable taxes on all tobacco products sold via delivery sale.

Penalty and Enforcement Provisions—Nearly all of the states with laws (33 states, 97% of states with laws) specified penalty provisions for violations of the law, although only 28 states' laws (82% of states with laws) specified an enforcement authority. The penalty provisions fell into three distinct categories: (1) vendor penalties, (2) carrier penalties, and (3) purchaser penalties. Only 11 states (32% of states with laws) followed the CTFK model and specified carrier penalties[†]; while 33 states' laws (97% of states with laws) specified vendor penalties and 13 states' laws (38% of states with laws) specified purchaser penalties. The state penalty schemes ranged in severity from no penalties (i.e., Michigan) to violation-specific penalties (e.g., Arizona). Like other aspects of state tobacco control laws, the penalty provisions varied greatly with some violations deemed a civil offense and other violations considered a criminal offense. As a way to illustrate this variability, Table 3

[†]See prior discussion regarding the case before the U.S. Supreme Court regarding the appeal of a decision by the U.S. Court of Appeals for the First Circuit Court relative to enforcing provisions against common carriers.

highlights the penalty provisions for two states--Arizona (typical of a state with PM model law-like language) and Idaho.

Arizona's provisions specified vendor, purchaser, and carrier penalties with an additional penalty levied for failure to pay required taxes. A few states specify penalties for knowingly submitting a false certification, however, Arizona was the only state to penalize minors for delivery sale violations.

Idaho's delivery sale provisions are housed within the state's prevention of minors' access to tobacco law. As such, the penalties apply to all violations therein. Uniquely, vendors incur a $100 fine for each violation while the penalties for the actual permittee are much higher ranging from a written notification for a first violation to license revocation for a fourth and subsequent violation within a two year period.

Relationship between Delivery Sales Laws and Other Policy and Environmental Factors

Overall, state delivery sales policy action is consistent with state approaches regarding other tobacco control policy areas (see Table 4). The analyses of the relationship between states with delivery sales laws and other policy and environmental factors indicated that states with a delivery sales law also have stronger state excise tax rates, youth access to tobacco policies, and state tobacco control environments as well as higher cigarette excise tax revenue, past month cigarette use rates, perceptions of risk of use by adolescents, and median household incomes. With two exceptions, the findings were fairly consistent for the sub-analyses of states with youth access-related and tax evasion-related delivery sales provisions—past month cigarette use by 12–17 year olds was slightly lower in states without youth access-specific provisions and the median household income was slightly lower in states without a tax evasion-related provision.

DISCUSSION

This paper provides the first systematic and comprehensive review and analysis of state laws governing cigarette delivery sales. As such, it provides the necessary policy context for understanding Internet and other cigarette delivery sale practices and occurrences within individual and groups of states.

Although there are no federal laws banning Internet and mail order tobacco sales, thirty-four states have some type of law designed to either prevent tax evasion, youth access to cigarettes from delivery sales, or both. Four states completely banned delivery sales during our study period ending December 31, 2006. There is only one federal law, the Jenkins Act (Pub. L. No. 364, 63 Stat. 994, 1949), designed to reduce tax evasion from mail order cigarette sales. Jenkins dates back to 1949 and was passed because of concern that interstate mail order cigarette sales would deprive revenue from states with the higher cigarette excise taxes (Graff, 2006). Our analysis reveals that 30 states have some form of regulation designed to minimize tax evasion from delivery sales of cigarettes.

The fact that states have been proactive in recent years in regulating delivery sales of cigarettes is not surprising. Under the current system of taxation, cigarettes cannot leave the manufacturer unless the federal excise tax is collected. As a result, there is very little federal tax evasion. State excise taxes, however, are levied by wholesaler and distributors. Internet and mail order vendors in a “low tax” state can easily sell cigarettes to smokers in “high tax” states. In this scenario, the state with the higher tax loses revenue. Therefore, these states have a greater incentive to ensure that cigarette taxes are collected from delivery sellers. Many of the states with the highest state excise tax (e.g., Alaska, New York, Rhode Island) are the same ones with laws regulating delivery sales. In fact, as Table 4 indicates, as of December 31, 2006, the average cigarette excise tax rate was $1.00 in states with a delivery sales law containing tax evasion-related provisions as compared to $0.77 in states without such laws.

Our analysis should help guide future studies to identify which types of laws are most effective at reducing tax evasion or cigarette delivery sales to minors. This study elucidates the diversity of regulatory strategies that are being employed by the states. Which strategy is best is an empirical question that has yet to be answered. For instance, is a complete ban on delivery sales the most effective option or are less restrictive options governing the manner of the sale just as good? Studies are needed to evaluate the implementation and effectiveness of these laws. Moreover, these studies should evaluate whether the laws successfully address challenges posed by cigarette sales on tribal lands (Ribisl et al., 2001; Hodge, Geishirt Cantrell, Struthers, & Casken, 2004) and from offshore vendors (Ribisl et al., in press).

We also realize that this study only focused on one piece of the state policy environment. Voluntary actions by the commercial sector to help to curtail Internet cigarette sales also hold the potential to greatly impact delivery sales. For instance, on March 17, 2005, the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives and several state Attorneys General (AG) reached a voluntary agreement with the major credit card companies and PayPal to cease the processing of all transactions with Internet cigarette vendors (ICVs) (National Association of Attorneys General, 2005). While media reports lauded this as the end of Internet cigarette sales, suggesting that even in the first weeks following the agreement, “… scores of Internet cigarette merchants have effectively lost the means to do business profitably, and are either limping along or have shut down their operations altogether” (Tedeschi, 2005), the agreement is voluntary and could be rescinded at any time. Further, the impact of this agreement on existing state laws that require credit card payment for Internet cigarette sales remains to be seen. At the same time, UPS, Inc., the world’s largest shipping carrier, announced on October 24, 2005 that it will stop delivering cigarettes to consumers (Associated Press, 2005). The decision by UPS joined similar policies put in place recently by DHL and long in place at FedEx, leaving ICVs with only one widely available shipping option, the United States Postal Service (USPS). Legislation was recently introduced in the US Congress that would ban the shipment of tobacco products through the US Postal Service (Schumer and Spitzer…, 2006), but it did not pass.

Implementation and enforcement also are as important, if not more important, than simply having a law on the books. One of the greatest challenges facing states with existing delivery sales laws is maximizing their compliance. A recent purchase survey from 101 Internet vendors found that none of them complied with all of the six provisions of California’s law designed to reduce cigarette sales to minors (Williams, Ribisl & Feighery, 2006). In fact, there were four provisions with which no vendors complied. Enforcement actions and lawsuits have been brought against vendors with limited success (Laura Kaplan, CA Deputy Attorney General, written communication, November 2005; Attorney General, 2003). While this paper did not address implementation of the state laws, the tobacco control field will be positioned to monitor such activities since NCI's State Cancer Legislative Database (see http://www.scld-nci.net) contains detailed information on each of the statutory and case law (case law forthcoming) reported herein as well as laws enacted since the study reference date. Also, prospective monitoring of related state attorney generals' opinions will be fruitful for understanding how the laws are being implemented in practice.

Future research would be well-served to continue to monitor state statutory and administrative law actions and related court decisions governing cigarette delivery sales and to assess the related implementation and enforcement activities. The outcome of the challenge to Maine's provisions could have particularly significant implications for new legislative approaches to delivery sales taken by states as well as implications for the enforcement of existing state delivery sales laws. Implementation measures might include the extent to which state legislatures specifically appropriate, and state budget offices later provide, state agencies/attorney general's offices with the funds necessary to ensure implementation and enforcement. As we have learned all too well from other aspects of tobacco control, implementation is not likely unless the resources are available to support such activities (Jacobson & Wasserman, 1999).

Additionally, we also recognize that an important next step involves building upon this descriptive analysis to measure the extensiveness of state cigarette delivery sales laws akin to the rating systems for youth access (Alciati, Frosh, Green, et al., 1998; Chriqui, Frosh, Brownson, and Stillman, 2006) and clean indoor air (Chriqui, Frosh, Brownson, et al., 2002; Chriqui, Frosh, Brownson, and Stillman, 2006). Such a measurement system will provide continuous measures of the relative "comprehensiveness" of each states' delivery sales law and will enable us to efficiently compare and contrast the true state variability in such laws and relate stringency of laws to outcomes such as reduced tax evasion or lower rates of cigarette sales to minors. It will also provide a measure of the policy "input" as suggested by Wakefield and Chaloupka (1998) for use in analyses of the impact of these laws on reductions in illegal Internet cigarette sales, youth access to cigarettes, and violations of state cigarette tax provisions.

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Table 1

Enacted and Effective Dates and Legal Citations for State Delivery Sales Laws (as of 12/31/06)

State[a]	Initial Law Enacted Date	Initial Law Effective Date	Substantive Amendment Year	Statute/Administrative Code (AC)/Court Decision (CD) Citation(s)
Alabama	4/26/06	4/26/06		Ala. Code §§ 13A-2-3.1 to 13A-12-3.7 (2006)
Alaska	6/16/03	1/01/04	2004	Alaska Stat. § 43.50.105 (2006)
Arizona	6/01/04	8/31/04		Ariz. Rev. Stat. Ann. §§ 42-3221 to −29, 13-3622 (2006)
Arkansas	12/09/04[b]	12/9/04[b]		*Arkansas Tobacco Control Bd. v. Santa Fe Natural Tobacco Co., Inc., 360 Ark. 32, 2004 WL 2823339 (Ark. 2004)*
California	9/18/02	1/01/03	2003	Cal. Bus. & Prof. Code § 22963 and Cal. Rev. & Tax Code § 30101.7 (West 2006)
Connecticut	7/09/03	7/01/03		Conn. Gen. Stat. Ann. § 12-285(c) (West 2006)
Delaware	6/30/03	6/30/03		Del. Code Ann. tit. 30, §§ 5361 to −69 (West 2006)/ **7:12 Del. Reg. Regs. § 1641 (June 1, 2004)**
Idaho	4/08/03	7/01/03	2005 (AC)	Idaho Code Ann. §§ 39-5701 to −5718 (West 2006)/**Idaho Admin. Code r.16.06.14.001, −.010, −.022, −.051 (2005)**
Illinois	8/20/04	7/01/04		720 Ill. Comp. Stat. Ann. §§ 678/5, -/10, -/99 (West 2006)
Indiana	4/30/03	7/01/03	2005	Ind. Code Ann. §§ 24-3-5-0.1 to 24-3-5-0.3, 24-3-5-1 to 24-3-5-8, and 34-24-1-1 (West 2006)
Kansas	5/13/04	7/01/04		Kan. Stat. Ann. § 79-3333 (2006)
Louisiana	7/02/03	7/02/03		La. Rev. Stat. Ann. §§ 47:871 to -:878 (2006)
Maine	5/28/97	8/26/97	2006 (CD)	Me. Rev. Stat. Ann. tit. 22, §§1551 to 1555-D (2006)/ **10-144-203 Me. Code R. §§ 1 to 10 (2006)/***New Hampshire Motor Transp. Ass'n, et al. v. Rowe, 377 F.Supp.2d 197 (D. Me.), rev'd in part, aff'd in part, 488 F.3d 66 (1st Cir. 2006), motion for leave to file cert granted*, 75 U.S.L.W. 3163 (U.S. Oct 2, 2006) (No. 06-M20)
Maryland	5/26/05	10/1/05		Md. Code Ann., Bus. Reg. § 16–223 (West 2006)
Michigan	12/16/92	12/16/92	2004	Mich. Comp. Laws Ann. §§ 205.429, −.431 (West 2006)
Minnesota	7/13/05	8/01/05		Minn. Stat. Ann. §§ 325F.781, 297F.031 and 297F.09 (West 2006)
Missouri	7/13/01	10/10/01		Mo. Ann. Stat. §§ 407.924 to −.932 (West 2006)
Montana	4/28/05	7/27/05		Mont. Code Ann. §§ 16-11-102, −104, −128, −129, −131, −142, −148 (2006)
Nevada	6/13/01	6/13/01	2005	Nev. Rev. Stat. Ann. §§ 202.2485 and −.24935; 370.085, −.0285, −.321 to −.329, −.382, −.395, −.419, −.425, −.530. (West 2006)
New Jersey	5/4/05	11/01/05	2006	N.J. Stat. Ann. §§ 54:40A-46 to −53 (West 2006)
New York	8/16/00	11/14/00		N.Y. Pub. Health Law § 1399-ll (McKinney 2006) *Brown & Williamson Tobacco Corp., et al. v. Pataki 320 F.3d 200 (2d Cir. 2003)*
North Dakota	4/25/05	4/26/05		N.D. Cent. Code §§ 51-32-01 to 51-32-08 (2006)
Ohio	6/30/05	6/30/05		Ohio Rev. Code §§ 2927.023, 5743.01, 5743.15, 5743.16, 5743.20, and 5743.71 (West 2006)
Oklahoma	6/06/03	11/01/03		Okla. Stat. Ann. tit. 68, §§ 301, 304, 317.1 to −.7 (West 2006)/**Okla. Admin. Code § 710:70-2-2, -:70-2-5 to -:70-2-7 (2005)**
Oregon	9/24/03	1/01/04		Or. Rev. Stat. Ann. §§ 323.500 and 323.700 to −.730

State[a]	Initial Law Enacted Date	Initial Law Effective Date	Substantive Amendment Year	Statute/Administrative Code (AC)/Court Decision (CD) Citation(s)
				(West 2006)
Rhode Island	8/07/96	8/07/96	2000, 2005	R.I. Gen. Laws §§ 11-9-13.4, −13.11 and 44-20.1-1 to 44-20.1-9 (2006)
South Dakota	3/03/05	7/01/05		S.D. Codified Laws Ann. §§ 10-50-1 and 10-50-93 to 10-50-97 (2006)
Tennessee	6/12/95	7/01/95	1999, 2005	Tenn. Code Ann. §§ 39-17-1504(d), −1509 and 67-4-1001, −1029 (West 2006)
Texas	6/20/03	9/01/03	2005 (AC)	Tex. Health & Safety Code Ann. §§ 161.451 to −.462 (Vernon 2006)/**34 Tex. Admin. Code § 3.1205 (2005)**
Utah	3/19/04	5/03/04		Utah Code Ann. § 76-10-105.1 (West 2006)
Virginia	4/02/03	4/02/03		Va. Code Ann. §§ 18.2-246.6 to −.15 (West 2006)
Washington	5/07/03	7/27/03		Wash. Rev. Code Ann. §§ 70.155.010, −.105, −.110 (West 2006)
West Virginia	4/01/03	6/30/03		W. Va. Code Ann. §§ 16-9E-1 to −7 (West 2006)
Wyoming	2/22/05	7/01/05		Wyo. Stat. Ann. §§ 39-18-101, −106, −108 (2006)

Note. Administrative code (AC) citations are indicated in **bold**; court decision citations are indicated in *italics*.

[a]Thirty of the 34 states with delivery sales laws address tax evasion-related provisions. The following four states' laws do not address tax evasion provisions: Illinois, Michigan, Missouri, and Utah. Thirty-one of the 34 states with delivery sales laws address youth access issues. The following three states' laws do not address youth access issues: Montana, Ohio, and Wyoming.

[b]Arkansas' inclusion based on 2004 court decision regarding statutory interpretation.

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Table 2

Summary of the Components of State Cigarette Delivery Sales Laws[a] by Category (as of 12/31/06)

Category[b]	# of states[c]	% states with laws (N=34)	% all states (N=51)	Topic: Youth Access (N=31)	Topic: Tax Evasion (N=30)	Model Provision: Philip Morris[d]	Model Provision: CTFK[e]
Shipping/Delivery Ban							
Ban shipping/delivery of cigarettes directly to consumers	4	12%	8%	√	√		√
Purchase-Related Provisions							
Age/ID verification of purchaser	26	77%	51%	√		√	√
Required one time/first purchase only	13	38%	26%	√		√	
Required at all times/every sale	12	35%	24%	√			√
Type of Age/ID verification	23	68%	45%	√		√	√
Requires customer attestation only	2	6%	4%	√			
Requires any 2: customer attestation, check govt. ID, or check age and/or ID against commercial government ID database	17	50%	33%	√		√	
Requires all 3: customer attestation, check govt. ID, and check age/ID against commercial government ID database	4	12%	8%	√			√
Any payment issues (Type or Other)	20	59%	39%	√	√	√	√
Required payment types	20	59%	39%	√	√	√	√
Credit or debit card or check	12	35%	24%	√	√	√	
Credit or debit card	4	12%	8%	√	√		√
Check or credit card	4	12%	8%	√	√		
Other payment issues							
Payment type (credit card, debit card, or check) must	16	47%	31%	√	√	√	√

Category[b]	# of states[c]	% states with laws (N=34)	% all states (N=51)	Topic: Youth Access (N=31)	Topic: Tax Evasion (N=30)	Model Provision: Philip Morris[d]	Model Provision: CTFK[e]
be in buyer's name							
Credit/debit card billing address must match shipping address/ government ID, and/or database address	3	9%	6%	√	√		
"Tobacco product" language to be printed on credit card statement	1	3%	2%	√	√		√
Shipping-Related Provisions							
Shipping document and/or packaging requirements	29	85%	57%	√	√	√	√
Specify tobacco product content	28	82%	55%	√	√	√	√
Specify minimum age of sale language	19	56%	37%	√		√	√
Specify tax collection/ remittance obligation	19	56%	37%		√	√	√
Product quantity order/shipping restrictions	4	12%	8%		√		√
Specifies minimum amount	1	3%	2%		√		
Specifies maximum amount	3	9%	6%		√		√
Sale considered delivery sale regardless of seller location (i.e., outside/inside state or tribal)	19	56%	37%		√	√	√
Vendor-Related Provisions							
Requires delivery sales vendors to be licensed[f]	25	74%	49%		√	√	√
Vendor to provide carrier[g] with evidence of compliance with:	12	35%	24%	√	√	√	√
Licensure requirements	2	6%	4%	√	√		√
Tax collection/remittance provisions	11	32%	22%	√	√	√	
Vendor required to use carrier	20	59%	39%	√		√	√

Category[b]	# of states[c]	% states with laws (N=34)	% all states (N=51)	Topic: Youth Access (N=31)	Topic: Tax Evasion (N=30)	Model Provision: Philip Morris[d]	Model Provision: CTFK[e]
that will:							
Verify purchaser ID at delivery time	18	53%	35%	√		√	√
Obtain adult signature	17	50%	33%	√		√	√
Deliver only to address on ID	7	21%	14%	√			√
Requires adherence to do not ship to list	1	3%	2%		√		√
Requires customer prior notification/disclosure	17	50%	33%	√	√		√
Jenkins Compliance and/or Tax Collection and Remittance							
Registration and reporting requirements and/or Jenkins Act (15 U.S.C. 326) compliance	23	68%	45%		√	√	√
Tax collection and remittance requirements	22	65%	43%		√	√	√
Penalty and Enforcement Provisions	**33**	**97%**	**65%**	√	√	√	√
Penalties to Vendor	33	97%	65%	√	√	√	√
Penalties to Carrier	11	32%	22%	√	√		√
Penalties to Purchaser	13	38%	26%	√	√	√	√
Enforcement provisions and authority	28	82%	55%	√	√	√	√

[a]For this analysis, “laws” was defined to includes statutes, administrative rules and regulations, and case law, as appropriate.

[b]Items in **bold** reflect major coding categories. Items listed below **bold items** reflect sub-categories.

[c]“States” includes the 50 states and the District of Columbia.

[d]PM=Philip Morris model law provision (Rubin, Charron, & Dorsey, 2001).

[e]CTFK=Campaign for Tobacco-Free Kids model law provisions (Lindblom, 2005a, 2005b; Philip Morris USA, 2003).

[f]Vendor licensure provisions were captured if specifically referenced in the delivery sales statutes. In other words, a state received credit for requiring delivery sales vendors to be licensed if they explicitly stated this requirement in the delivery sales law OR indicated that delivery sales vendors must comply with existing licensure provisions.

[g]The U.S. Court of Appeals for the First Circuit held on May 19, 2006 that the provisions of Maine's law (22 Maine Rev. Stat. Ann. §1555-C(3)(C)) requiring that delivery services used by tobacco retailers to deliver the tobacco products in a certain manner (i.e., assure that that the purchaser must be the addressee, the addressee must be of legal age to purchase tobacco products and must sign for the products, and show valid government issued identification at the time of delivery) were preempted by the Federal Aviation Administration Authorization Act (FAAA) and, therefore, unenforceable against the delivery service. On October 2, 2006, the U.S. Supreme Court granted a motion by the Attorney General of Maine for leave to file a petition for a writ of certiorari, meaning the court may agree to hear an appeal of the decision of the U.S. Court of Appeals for the First Circuit. The outcome of the case may have implications for other states' laws that contain provisions imposing requirements on delivery services.

Table 3

Examples of State Penalty Provisions for Selected States (as of 12/31/06)

Violation Types	Arizona	Idaho
Vendor Violations		
Sale of tobacco products to a minor	**1st violation:** Class 5 felony; fine, greater of $1,000 or 5 times retail value of tobacco products **2nd /subsequent violation:** Class 5 felony; fine, greater of $5,000 or 5 times retail value products	**Each violation:** Fine to seller of $100 **1st violation:** Written notification to permittee[a] of penalties to be levied for further violations **2nd violation (within 2 years)**: $200 fine to permittee and written notification of penalties to be levied for further violations **3rd violation (within 2 years)**: $200 fine to permittee and up to 7 day permit suspension ($400 fine if the violation is by an employee, at the same location, who was involved in any previous citation for violation) **4th or more violation (within 2 years)**: $400 fine to permittee and permit revocation for no less than 30 days until permittee demonstrates effective training plan
Violation of delivery sale requirements	**1st violation:** Class 5 felony; fine, greater of $1,000 or 5 times retail value of tobacco products **2nd /subsequent violation:** Class 5 felony; fine, greater of $5,000 or 5 times retail value of tobacco products	Not specified
Failure to collect/remit taxes	**Each violation:** In addition to other penalties, a fine of 5 times retail value of tobacco products	Not specified
Carrier Violations[b]		
Delivery of tobacco products to a minor	**Each violation:** Petty offense	Not specified
Purchaser Violations		
Submission of false certification (adult)	**Each violation**: Class 5 felony; fine greater of $10,000 or 5 times retail value of tobacco products	Not specified
Submission of false certification (minor)	**Each violation:** Petty offense	Not specified
Minor violating any delivery sale provisions	**Each violation:** Petty offense	Not specified
Failure to pay taxes	**Each violation:** Additional fine of 5 times retail value of tobacco products.	Not specified

[a] Permittee (person who holds a permit to sell tobacco products) may or may not be the same as the vendor.

[b] Carrier violations are presented for illustrative purposes only. See footnote "g" on Table 2 regarding the case before the U.S. Supreme Court regarding the appeal of a decision by the U.S. Court of Appeals for the First Circuit Court relative to enforcing provisions against common carriers.

Table 4

State policy and environmental characteristics for states with and without delivery sales laws by area of legislative emphasis

	YOUTH ACCESS-RELATED PROVISION	
Variable	**Yes (n=31)** M (SD)	**No (n=20)** M (SD)
Youth Access Ratings, 2005	17.39 (6.04)	16.30 (4.75)
Strength of Tobacco Control, 2004	0.24 (0.85)	−0.36 (1.12)
Past Month Cigarette Use by 12–17 year olds, 2004 (%)	12.86 (2.36)	12.93 (2.51)
Perceptions of Great Risk of Smoking One or More Packs of Cigarettes Per Day by 12–17 year olds, 2003–2004 (%)	66.09 (2.74)	65.46 (1.56)
	TAX EVASION-RELATED PROVISION	
Variable	**Yes (n=30)** M (SD)	**No (n=21)** M (SD)
Cigarette excise tax, 2005 ($)	1.00 (0.64)	0.77 (0.51)
Strength of Tobacco Control, 2004	0.28 (0.88)	−0.40 (1.05)
Net Cigarette Excise Tax Revenue, FY 05 ($ million)	241 (264)	239 (318)
Median Household Income, 2004–2005 ($)	45,988 (7135)	46,255 (6432)
	ANY DELIVERY SALES-RELATED PROVISION	
Variable	**Yes (n=34)** M (SD)	**No (n=17)** M (SD)
Cigarette excise tax, 2005 ($)	0.99 (0.64)	0.73 (0.45)
Strength of Tobacco Control, 2004	0.19 (0.86)	−0.38 (1.17)
Youth Access Ratings, 2005	17.29 (5.90)	16.29 (4.85)
Net Cigarette Excise Tax Revenue, FY 05 ($ million)	268 (298)	184 (254)
Past Month Cigarette Use by 12–17 year olds, 2004 (%)	12.99 (2.31)	12.68 (2.62)
Perceptions of Great Risk of Smoking One or More Packs of Cigarettes Per Day by 12–17 year olds, 2003–2004 (%)	66.05 (2.62)	65.42 (1.66)
Median Household Income, 2004–2005 ($)	46,159 (6849)	45,976 (6877)