

February 7, 2012

## **ROLL-YOUR-OWN CIGARETTE SHOPS: SELF-SERVICE OR MANUFACTURING?**

By Heather Sullivan

WWBT NBC-12 (Richmond, VA)

February 6, 2012

Small businesses have popped up where smokers can make their own cigarettes for a lot less money than buying them in a store. But Richmond-based Philip Morris is backing a bill in the General Assembly to get these Roll-Your-Own companies to pay the same percentage of taxes that they do.

Here's the question: Is a machine in Roll-Your Own stores a self-serve machine for making cigarettes? Or is it a manufacturing device?

Here's how it works. You put in tubes with filters, pour in tobacco, press a button, and out pop a carton's worth of cigarettes. The cost for that carton is under \$25, which is much cheaper than up to \$45 for a carton of cigarettes manufactured by a cigarette company.

Philip Morris' parent company Altria is urging lawmakers to declare Roll-Your-Own shops to be manufacturers and make them pay the same excise taxes as cigarette companies.

"We think that everyone who manufactures cigarettes in Virginia should be held to the same standards, make the same settlement payments, pay the same taxes to the Commonwealth," said Altria's David Sutton

But Roll-Your-Own shop owners, like Leneia Horton, say it's not manufacturing because the customer chooses the tobacco and tubes and puts them in the machine.

"They don't go up to the Marlboro factory and get them off the conveyor belt," said Horton. "The customers are 100% in charge of how their product comes out."

The Roll-Your-Own stores usually offer pipe tobacco, which is taxed at a much lower rate than cigarette tobacco.

Sutton says that results in lost federal, state, and local tax revenue. "You're talking about \$8 a carton that's lost in totality," he explained. "That includes the state excise tax at \$0.30 a pack, as well as an average rate for all the local excise tax that various municipalities have in Virginia."

But Horton points out they pay 5% sales tax and 10% tobacco tax. "We have to pay the Other Tobacco Products tax, the OTP tax," she countered. "That is something that when we purchase our products from distributors, we only buy from distributors who pay the OTP tax."

Altria wants Roll-Your-Own cigarettes to have to meet the same safety standards and bear the same warning labels that theirs do. But Horton says being classified a manufacturer would mean having to move to a manufacturing zone, higher production costs, and going out of business.

"I really feel this is an example of bullying," Horton said. "Lobbying to go against the little guy."

Both the state House and Senate have passed versions of the bill to classify Roll-Your-Own shops as manufacturers.

## **TOBACCO IS NOT AN EQUAL OPPORTUNITY ADDICTOR OR KILLER**

By Lorraine Lathen

Milwaukee Sentinel Letter to the Editor

February 6, 2012

Tobacco related disparities are no accident. Armed with targeted marketing strategies, cigarettes and a whole line of addictive OTPs (other tobacco products), the tobacco industry's tactics intentionally cause a higher burden on some populations than on others.

Smoking cigarettes leads to many health problems, including cancer, and many of us know one or more of these risks. But most people aren't familiar with OTPs and the risks associated with using them. Packaged and flavored like candy, OTPs are noncigarette products that range from little cigars and Swisher Sweets to smokeless products like Orbs, which look like Tic Tacs. Cigarettes and OTPs are not marketed or taxed equally, resulting in many tobacco related disparities.

While Wisconsin ranks 8th in the nation for highest cigarette taxes (\$2.52 per pack), we fail to protect our most vulnerable populations by taxing OTPs at much lower rates. Because of their affordability, low-income populations and youth can more easily access these addictive products. And in urban communities, product placement plays a key role in higher OTP consumption rates.

African Americans are one of several populations that carry the brunt of tobacco's burden. In fact, according to the Campaign for Tobacco Free Kids (CTFK), African Americans suffer the greatest burden of tobacco related deaths than any other ethnic or racial group in the nation.

Although African Americans usually begin smoking later in life and smoke fewer cigarettes per day than white smokers, they are twice as likely to die from a smoking related illness.

Menthol flavored cigarettes have played a major role in disparities related to African Americans and tobacco use.

More than 75 percent of African American smokers prefer smoking menthol-flavored cigarettes compared to 23 percent of white smokers. Menthol is believed to ease the harshness of smoking, allowing users to inhale more deeply and consume more tobacco and deadly chemicals.

The complexities of these disparities lead to lower quit rates among African American smokers. According to CTFK, the percentage of white smokers who ultimately quit smoking is 50.5 percent versus 35.4 percent among African American smokers.

New research shows that even in the African American community disparities exists within subpopulations. Researchers from Legacy, a national organization dedicated to helping current smokers quit and preventing new smokers, recently found that dual users of cigarettes and cigars are more likely to be young, African American and male.

The researchers analyzed the demographics of a sample of people who smoke cigarettes and cigars and found that the profile of dual users differed from cigarette only smokers. Results showed that the 12.5 percent adults within the sample who said they smoked both cigarettes and cigars were more likely to be young African American men who were unemployed and of "low educational attainment."

Other key findings emerged from this study including:

1. Dual users are less likely than cigarette-only smokers to be daily smokers;
2. Dual users are more likely to have made a recent quit attempt;
3. And because dual users are less likely than cigarette-only smokers to be daily smokers but more likely to use OTPs, cessation help may be less effective because doctors might underestimate the amount of tobacco being used.

Legacy's study (along with everything we know about tobacco related disparities) shows the critical need for legislative policies that better regulate OTPs. All OTPs, including cigars and cigarillos, need to be taxed at the same level as cigarettes because higher costs reduce consumption rates.

Tax equity, as we call it, would tax OTPs at the equivalent of \$2.52 per cigarette pack. If Wisconsin taxed all tobacco products the same it would make it harder for youth and low-

income residents to purchase these addictive products, and it would generate tax dollars to help balance the state budget and supplement the TPCP budget.

Tobacco use goes beyond affecting the individual smokers. It affects communities in many ways, and some communities experience more adversity because of higher cigarette and OTP usage. As a community it is our responsibility to work towards reducing tobacco harm because tobacco companies certainly aren't looking out for our health. Make a difference by writing to your legislatures today about how cigarettes and OTPs affect people in your community.

*Lorraine Lathen is president of Jump at the Sun Consultants, LLC (JATSC) and project director for the Wisconsin African American Tobacco Prevention Network (WAATPN). JATSC convenes the WAATPN.*

## **SENATE BILL LOOKS FOR TAXES FROM 'ROLL-YOUR-OWN' SHOPS**

By Ann Ali

State Journal (Charleston, WV)

February 6, 2012

It's not often that Sen. Dan Foster, D-Kanawha, a physician, works with the tobacco industry for legislation. But a bill he's sponsoring that was introduced Feb. 6 is a little different.

"Well this bill is actually promoted by the tobacco industry, those who make normal cigarettes, because they are seeing that these folks are circumventing the process that they are having to go through themselves, so this is a little different," Foster said following the bill's introduction.

West Virginia law currently taxes cigarettes at 55 cents per pack. Stores that sell loose tobacco and single cigarettes are able to avoid the tax, and Senate Bill 514 looks to close what Foster called a loophole.

"It's a significant amount, 10's of millions of dollars that are being avoided through these businesses related to the sale of cigarettes," Foster said.

The bill does not set what the tax per cigarette should be, but defines anyone who has a "roll your own" cigarette machine at a retail business as a manufacturer of cigarettes, and those cigarettes are sold to consumers, which would include them as requiring payment of excise tax on those cigarettes.

Foster said the tax raises revenue for the state, which may be used for public health.

"I'm certainly a proponent of trying to decrease the prevalence of smoking, and the two most important policy measures to do that are one, to increase the price, and usually the tax is the best way to do that," he said." And the second is dealing with clean indoor air ordinances."

The bill was sent to the Senate health and human resources committee and is scheduled to go to the Senate finance committee next.

## **CIGARETTE ROLLING MACHINE CONTROVERSY**

Fox-25 Boston  
February 7, 2012

A controversial new machine is popping up in Bay State stores and it helps smokers roll their own cigarettes and makes lighting up a whole lot cheaper.

A pack of cigarettes goes for nearly \$10, with roughly \$2.50 in state taxes. The new "roll your own" machines eliminate the state tax. A carton of hand-rolled cigarettes costs one-third of the price of manufactured ones.

People FOX 25 spoke to stand on both sides of the issue.

Governor Deval Patrick has another idea. He wants to filter \$73 million into the state by adding 50 cents in taxes to every pack of cigarettes sold.

That would bring the taxes to more than \$3 per pack.

Read more: <http://www.myfoxboston.com/dpp/news/local/cigarette-rolling-machine-controversy-20120207#ixzz1li3OdhKr>

## **CITY FILES LAWSUIT AGAINST CITY SMOKES IN BROOKLYN AND STATEN ISLAND'S VICTORY SMOKE SHOP**

By Reuven Blau  
New York Daily News  
February 7, 2012

*Mayor wants to snuff out roll-your-own cigarette shops*

The Bloomberg administration wants to snuff out two more roll-your-own cigarette shops.

City lawyers Monday filed suit against City Smokes in Brooklyn and Victory Smoke Shop in Staten Island, arguing that they evade taxes by selling paper tubes and loose tobacco — taxed at a much lower level than prepackaged cigarettes.

“These legal actions are part of our ongoing efforts against businesses that think they can invent loopholes to skirt New York City’s tough cigarette laws,” said Corporation Counsel Michael Cardozo.

In December, the city forced two similar shops to close after threatening to make them pay back taxes.

## **ROLL-YOUR-OWN CIGARETTE SHOP CRACKDOWN CONTINUES WITH 2 MORE STORES SUED**

Gothamist.com (New York City)  
February 7, 2012

The city's Law Department has filed two more lawsuits against stores that exploit a perceived loophole in the city's obscene cigarette tax law. You'll recall that New York Smokes, a retail tobacco outlet on Staten Island, was making bank selling customers loose tobacco, which is taxed at a far lower rate than cigarettes. Customers would then roll their own smokes in the store using cigarette stuffing machines, walking out with a pack for about \$6—far less than the average \$13 price. But then the city cracked down on that enterprise, and now the gov'ment is going after two more shops.

The Law Department announced it has filed lawsuits against City Smokes, on Coney Island Avenue in Brooklyn, and Victory Smoke Shop, on Victory Boulevard in Staten Island. According to the Law Department, both businesses evade cigarette taxes by providing customers with loose tobacco, tubes of cigarette paper and access to machinery that instantly produces finished cigarettes. The city charges that these businesses, along with their owners and employees, violate the Federal Contraband Cigarette Trafficking Act and the state Cigarette Marketing Standards Act by selling cigarettes on which the required taxes have not been paid.

Michael McGowan, the owner of Victory Tobacco, tells us he plans to fight the city. "We're not doing anything illegal," insists McGowan. "Why did they give us a license if we're illegal? We just rent machines so people can make their own cigarettes. We do not manufacture cigarettes. And the excise taxes are paid by the supplier of the tobacco, Fresh Choice tobacco."

But McGowan's odds of winning a battle against City Hall seem slim: In December the city won a court-ordered consent decree in December that shut down another roll-your-own operation on Staten Island, and New York Smokes entered into a settlement with the city in which it has agreed to shut down.

## **BILL WOULD OUTLAW BULK SMOKE-ROLLING MACHINES**

By Brett Cihon  
Port Orchard Independent (Washington)  
February 7, 2012

Anti-tobacco legislation making its way through Olympia would close a downtown small business, as well as many others around the state, if passed into law.

Senate Bill 6564, sponsored by Sen. Karen Keiser, D-Kent, and Sen. Rodney Tom, D-Bellevue, would ban cigarette-rolling machines at stores that sell bulk tobacco.

For business owners like Casey Kroesser, the owner of DIY Tobacco in downtown Port Orchard, the legislation would be a death knell.

“If this bill went through it would close us down,” she said.

But stopping the proliferation of tobacco is more important than saving local businesses that operate these machines, Keiser said.

“I’m sorry if they’ve built an entire business solely around a product that is an addictive, health-harming product,” she said in a phone interview Tuesday. “That was their choice.”

Kroesser’s shop at 170 Harrison Ave. is sparsely decorated, although there are leather couches and a big-screen TV for customers while they wait. A small counter displays bins of hazel-colored tobacco and cartons of empty cigarette tubes.

To many, the shop would appear a typical convenience store, if not for a large brown box whirring with activity in the back of the shop.

The machine, a fast-action cigarette roller, is rented by customers who buy bulk tobacco and empty cigarette tubes to make their own smokes.

“It’s easy to do,” said DIY employee Jessica Rieber, 18, who works at the store in the afternoons. “I love teaching people how to use it.”

It’s easy and it’s cheap. According to Kroesser, a carton of 200 cigarettes would cost \$60-90 at a convenience store or gas station. But at her store, 200 rolled smokes cost about \$32, a saving of around 50 percent or more. Savings, Kroesser said, that smokers are hungry for.

“When I buy \$100 worth of tobacco, you have to pay \$195 because of taxes,” she said. “Over half of the cost is tax. It’s ridiculous. The cost of smoking is so high that some people have resorted to growing their own tobacco.”

Kroesser realized about a year and a half ago that smokers were desperate for an inexpensive alternative to store-bought cartons. She decided to open DIY Tobacco in December last year. She has since opened stores in Silverdale and Bremerton, employing a total of 12 people. There are 65 such stores around the state.

Cheaper cigarettes, however, have raised eyebrows. At the beginning of the 2012 legislative session, house and senate bills were introduced that would have classified the rolling-machine operations like DIY Tobacco as manufacturers, increasing the amount the stores would have to pay in taxes.

Then last week, the language of the senate bill was changed to outright prohibit use of rolling machines in stores such as DIY.

“I think they (DIY stores) will become very popular everywhere if we don’t stop them,” Keiser said. “It’s a way for people who are hooked to cigarettes to get them at a lower cost.”

Keiser, the chair of the Health and Long-Term Care Committee in the senate, said she would “make tobacco illegal if possible.” But in lieu of making cigarettes illegal, she will make them harder to find at low prices.

“I cannot abide that we allow proliferation and this operation,” she said.

Kroesser is outraged that the government would legislate her store out of business. Her store, she said, offers a desirable product at a competitive price.

“This is less freedom and squashing more small businesses,” she said.

She speculated that the legislation has been lobbied for by Big Tobacco firms such as Phillip Morris, which are afraid that cheaper tobacco undercuts their monopoly. Keiser said she didn’t doubt this was possible, but said it has no effect on her decision to sponsor the bill.

The Korean Grocers Association recently filed a complaint with the Washington State Liquor Control Board that tobacco shops with roll-your-own machines had made their “sales drop dramatically” and that the tax loophole was unfair to businesses who have to pay the cigarette tax, said TK Bentler, spokesman for the Washington Association of Neighborhood Stores.

“I have no doubt that the tobacco world has strange bedfellows,” she said. “I take actions to support policies that improve public health.”

Roll-your-own cigarette machines do affect other stores in the area. The Korean Grocer’s Association filed a complaint two months ago with the Washington Liquor Control Board that tobacco shops with roll-your-own machines had made their “sales drop dramatically,” and that a tax loophole that made cigarettes still cheaper to buy unpackaged was unfair to businesses who have to pay the cigarette tax, said T.K. Bentler, spokesman for the Washington Association of Neighborhood Stores.

The senate bill was referred to the Labor, Commerce and Consumer Protection Committee on Tuesday. A House bill that would change the classification of stores like DIY to be considered manufacturers of cigarettes, essentially putting them out of business because of the increase



the stores would pay in taxes, passed out of the house committee on Business and Financial Services on Tuesday, and was referred to the the Ways and Means committee.

In the meantime Kroesser, who flew to a meeting of tobacco retailers in Las Vegas this week, waits on the fate of her business.

“You kind of expect if you do good business, your business will thrive,” she said. “You don’t expect the government to come in and shut you down.”