

STATE LAWS TO REDUCE THE IMPACT OF ALCOHOL MARKETING ON YOUTH: Current Status and Model Policies

Introduction

The alcohol industry spends more than \$4 billion each year marketing its products.*1 Underage youth receive substantial exposure to this marketing,²⁻⁴ and multiple longitudinal studies have correlated this exposure with greater likelihood of drinking, or if young people have already initiated alcohol use, drinking more.^{5,6} Reducing the impact of alcohol marketing on young people is an important public health goal since underage drinking is a significant contributor to youth alcohol-related motor vehicle crashes and other forms of injury, violence, suicide, and problems associated with school and family.⁷

State public health departments in California, Massachusetts, and Florida have made crucial strides in reducing underage smoking rates in their states by sponsoring tobacco counter-advertising campaigns.^{8,9} Research indicates that this approach should also be used as part of a comprehensive public health strategy to reduce underage drinking.¹⁰ However, in the case of alcohol, few experiments in counter-advertising have been carried out. Alcohol-specific media literacy is another strategy that has shown promise,¹¹ but it is expensive to implement and has not been tested on a broad scale.

The appeal of alcohol to underage youth can also be limited by reducing youth exposure to alcohol advertising and marketing. The Federal Trade Commission has issued a series of reports on the topic and has encouraged voluntary action on the part of the alcohol industry.^{1,12,13} In response, alcohol marketers have made some limited reforms in their voluntary codes. However, these revisions fall far short of recommendations from the National Academy of Sciences,¹⁴ state attorneys general,^{15,16} and other scientific and advocacy organizations. In the last decade, while youth exposure to alcohol advertising has declined in magazines,² it has increased substantially on television, growing at a pace faster than the exposure of adults age 21 and above and young adults ages 21 to 34.³

Alcohol advertising regulation can apply to *measured* and *unmeasured* media. Measured media encompass traditional forms of advertising—electronic media (radio and television), outdoor billboards and signs, and print (magazines and newspapers). Regulation of these media can be directed at either the advertisement’s *content* or its *placement*. Content regulation addresses which images and statements the ad can carry, and placement regulation addresses where the ad can be shown to the public.†

* In 2008, the Federal Trade Commission published marketing expenditures for 2005 from 12 companies accounting for 73 percent of alcohol sales in that year. Marketing expenditures totaled \$3.1 billion for these 12 companies; \$4 billion is an extrapolation from this figure for the entire U.S. industry.

† In general, content regulation is more likely to raise constitutional issues, as the U.S. Supreme Court is reluctant to permit states to determine the content of advertising so long as it is not false and misleading. “Time, place, and manner” regulations are more acceptable to the Court provided that the regulation targets a legitimate state interest (in this case reducing youth exposure) and permits the advertising in at least some venues for the intended (adult) audience. For discussion, see *Lorillard Tobacco Co. v. Reilly*, 533 US 525 (2001).

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JOHNS HOPKINS
UNIVERSITY



The Center on
Alcohol Marketing and *Youth*

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Center on Alcohol Marketing and Youth
Johns Hopkins Bloomberg School of Public Health
624 N. Broadway, Room 288
Baltimore, MD 21205
(410) 502-6579
www.camyo.org

Unmeasured media include nontraditional venues for promoting a product: Internet marketing, consumer contests, prizes, giveaways, product placement in movies and television shows, novelties and other consumer items (e.g., logos on T-shirts), and sponsorships of concerts, sporting events, and other forms of entertainment and celebrations. These marketing venues and strategies are part of a dramatic shift in advertising strategy, termed *branding*, where the advertiser establishes an emotional connection between the brand and the targeted audience. The brand becomes embedded in the audience's experience, cultural icons, and values.^{17, 18} Content and placement therefore merge, and, to be effective, regulation must address both variables concurrently. The alcohol industry's increasing reliance on unmeasured media strategies reflects a general trend within the consumer products and marketing industries and creates new challenges for regulators and public health advocates, particularly given the appeal of new media to youth.

Federal and State Authority to Regulate Alcohol Advertising

The federal government enacted the Federal Alcohol Administration Act (FAAA) shortly after the repeal of Prohibition, and this legislation has served as the primary vehicle for regulating alcohol advertising in the United States. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has primary responsibility for enforcing the FAAA. Consumer protection and advertising regulation are not, however, areas of expertise for the TTB, which is located within the Department of the Treasury, and the FAAA provides only limited authority and guidance. The Federal Trade Commission (FTC), the agency that regulates most forms of product advertising and does have expertise and experience in consumer protection regulation, has concurrent jurisdiction with the TTB but has traditionally deferred to the primary agency. The FTC published findings from investigations of alcohol industry marketing practices in 1999, 2003, and 2008 but chose to recommend only voluntary standards of conduct.^{1, 12, 13}

Although the federal government has exercised primary responsibility, states have concurrent jurisdiction; indeed, state authority is included in the 21st Amendment of the U.S. Constitution. Yet states have also largely ignored the public health impact of alcohol advertising and, as this report documents, have taken only minimal steps to address youth exposure to alcohol marketing. Whatever limitations exist within state statutes and laws are further hampered by the lack of enforcement by state agencies. Several factors contribute to this:

1. States have focused primarily on the alcohol retail trade and have generally deferred to the federal government on regulatory issues affecting the national market and the marketing practices of alcohol industry producers.
2. To the extent that they have addressed advertising issues, states have focused primarily on the ability of distributors and producers to provide promotional items to retailers. This issue dates back to the end of Prohibition and the concern about "tied houses"—the undue influences producers had over retail practices prior to Prohibition when retailers were often owned ("tied") by producers. This issue is of only tangential interest in the world of modern marketing.
3. Recent decisions by the U.S. Supreme Court expanding the commercial speech doctrine under the First Amendment have dampened the states' interest in regulating alcohol advertising. The decisions do not prohibit a wide array of regulatory options that could have a positive public health impact, but they do create a great deal of uncertainty and ambiguity.
4. State resources devoted to alcohol industry regulation are minimal and shrinking.
5. States have had little guidance regarding what works in the area of alcohol advertising regulation and have not had the resources to coordinate efforts across states.

The Potential Role of State Law

This report focuses on a set of tools to address youth exposure that has been largely ignored: State laws that restrict youth exposure to alcohol advertising in both measured and unmeasured media venues. States have systems already in place for administering alcohol advertising regulations, usually (but not always) housed in an Alcoholic Beverage Control (ABC) state agency. Alcohol producers, distributors, and retailers must obtain state licenses to do business in a state. Although specific authority varies by state, in general the ABC agencies have broad authority to enact regulations (based on state statutes), investigate potential violations, and impose administrative sanctions. In control states, where the state itself may operate retail and/or wholesale operations, retail advertising practices in state stores can be established through operational procedures.

Given these factors, it is important for the public health community to review state laws that may reduce youth exposure to alcohol advertising and advocate to expand the role of the state ABC agencies in enforcing those laws.

Methods

In 2003, to support efforts at the state level to reduce youth exposure to alcohol marketing, the Center on Alcohol Marketing and Youth (CAMY) issued a report on state advertising laws.¹⁹ It identified key state regulatory strategies that can be effective in reducing youth exposure to alcohol advertising, assessed state practices, and reviewed each state's law. The report was designed to provide a means for each state to evaluate priorities for enforcement and statutory and regulatory reform. This report updates the earlier research from 2003 to the states' 2010 legislative sessions, identifying trends across states and highlighting recent activities by state agencies to reduce youth exposure to alcohol advertising.

For both reports, a team of attorneys examined potential state regulatory strategies for both measured and unmeasured media advertising, dividing measured media regulations into those that focus on content and those governing placement. For each regulatory category the analysis defined the key elements of a "best practice." Each state's law (both statutory and regulatory) was then rated as follows:

- BP:** All elements of the best practice are present.
- I:** At least one but not all elements of the best practice is present.
- :** The state does not address the regulatory category, the law has none of the elements of best practices, or the law may be unenforceable (e.g., unconstitutional).

In the course of updating the earlier research, the authors reviewed the 12 regulatory categories covered in the original report and eliminated three of them (restrictions on portraying children, athletic achievement, and intoxication) because of their limited scope and the difficulty in enforcing them. Two of the earlier placement categories (outdoor ads near children and outdoor ads near schools, playgrounds, and churches) had substantial overlap and were combined into a single "outdoor ads" category. As a result, this report reviews state laws (statutory and regulatory) in eight categories.

During the course of the update, the authors also reviewed the policy descriptions and criteria used to rate each state's laws. Modifications were deemed appropriate in several instances because of either changes in the courts' interpretation of constitutional law as it impacts alcohol advertising regulation, or the need to improve accuracy, clarity, and comparability across states. These revisions are described in Appendix A. Because of these revisions, findings in the original 2003 table of state laws and the table in this report are not necessarily comparable in particular cells; any differences found in a state's code may be the result of revisions in the coding rules rather than a change in the underlying law. This problem is exacerbated by the fact that legal research tools typically do not provide guidance regarding the history of particular regulations. If a code change based on a regulation was made in 2010, it is not possible to determine definitively whether the change is owing to a revised or new regulation or to a change

in the coding rules. For these reasons, Table 1 is best viewed as a snapshot of state laws as of January 1, 2010 (except where noted). We have provided a description of trends between the two reports across all the states in the Trends section (page 12). Appendix A should be consulted to review the revised coding rules applied in this report.

In interpreting the findings of this report, it is important to note the following:

1. Each of the eight categories used to rate states in this report has specific and narrow definitions that may not mirror either the law of any particular state or a customary definition in any one state or group of states. The categories and definitions were chosen with legal conventions and requirements in mind. It is important to consult the definitions when interpreting the ratings assigned to each state. State law may cover a topic generally but not include the specific language required in the rating criteria used for this report.
2. The ratings are based on a review of state statutes and regulations, and not on their implementation or enforcement. In some cases, ABC agencies may have implemented laws in a manner that accomplishes the desired result, even though the laws themselves did not meet the criteria used for this analysis. Since implementation was not included in the analysis, these states may have received a lower rating based on the statutory and regulatory mandates only.
3. The analysis focuses exclusively on state statutes and regulations that have statewide impact. Local jurisdictions may have enacted alcohol advertising regulations that meet the criteria, but these provisions are not included in this analysis. At least two states—Hawaii and Nevada— regulate alcohol industry practices primarily through local legislation. Maryland also regulates alcohol primarily at the local level, through local ABC boards that are subject to state requirements specific to their local jurisdictions. The ratings for these three states might therefore be artificially low.
4. The legal research was conducted in the fall of 2010. Most states had reported legislative actions taken during the 2010 legislative session. It is possible, however, that some laws passed in 2010 were not filed with the legal research services employed to conduct the research and therefore are not included here.

State Alcohol Advertising Provisions: Content and Placement

1. Prohibit False or Misleading Alcohol Advertising

This is a crucial provision that can provide a foundation for state regulation of alcohol advertising. There is no constitutional protection for false or misleading advertising, and any advertisement that appeals to underage persons could be interpreted as misleading because it is inviting an illegal transaction. Although legal interpretations of the terms *false*, *misleading*, and *targeting/appealing* are not well-developed as they apply to alcohol advertising,[‡] such a provision provides a basis for conducting investigations, establishing specific rules regarding ad content that is attractive to minors (those under 21 years of age), and developing remedies to ensure that the ad will not be misleading. A state can use the provision to enforce other content-based provisions (e.g., prohibitions against portraying children, athletic achievement, and alcohol intoxication) even if the specific provisions are not included in the state's regulatory structure. To be effective, the false and misleading provision should be in the state ABC code so that the ABC agency has the authority to enforce it. Provisions outside the ABC code are not included in this analysis.

[‡] The Supreme Court has questioned the application of false and misleading provisions that deny or unduly limit adults' access to accurate commercial information in the context of state restrictions on tobacco advertising. See *Lorillard Tobacco Co. v. Reilly*, 533 US 525 (2001).

An effective false or misleading law has three key components:

1. prohibits false advertising;
2. includes *misleading* as a specific term and has language to the effect that the provision covers advertising that can create a misleading impression, regardless of falsity; and
3. applies to alcohol advertising generally in the state (i.e., is not limited to certain types of advertising or products or applies only to some advertisers).

The analysis omits provisions that address false and misleading statements related exclusively to product quality or ingredients since they are not relevant to youth advertising exposure.

The federal statute provides an excellent definition of *misleading*, though the provision applies only to “statements” in the ad and does not include “images” that might be misleading:

The advertisement of [any alcoholic beverage] shall not contain: ... Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression.[§]

The same federal statute also prohibits subliminal or similar techniques in alcohol advertising, which could potentially be regarded as a form of misleading advertising:

The advertisement of [any alcoholic beverage] shall not contain: ... (k) Deceptive advertising techniques. Subliminal or similar techniques are prohibited. *Subliminal or similar techniques*, as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

Eleven states received a **BP** rating, in many cases because they adopted the federal regulations by reference. Fifteen states and the District of Columbia had at least one, but not all three, of the best practices elements noted above and received an I rating. The remaining 24 states received a **--** rating: Either their laws did not include a false or misleading statute or the provision only addressed the quality and ingredients of the product.

2. Prohibit Alcohol Advertising That Targets Minors

This is also a foundational content-based restriction. Although a state agency can argue that advertising that targets minors is false or misleading, enforcement will be much easier if a specific provision is included. On the other hand, a provision that is poorly drafted will probably undermine a general false or misleading statute—a court is likely to conclude that the state legislature intended the targeting minors provisions to override (or serve as an interpretation of) a more general false and misleading statute. For this reason, if a state has a targeting minors provision, it is important that the state not unduly restrict its scope.

The examination of state statutes found that, in many cases, the laws were diluted or made ineffective by including one or more of the following provisions:

[§] 27 CFR 4.64, 27 CFR 5.65, 27 CFR 7.54.

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1. proof that the advertiser “intended” to target underage persons or “directed” messages at them (which implied an intent requirement);
 2. limitations regarding the types of advertising included (limited to specific objects or images, such as the Easter Bunny or Santa Claus);
 3. use of the terms *child*, *children*, *immature persons*, or *juvenile*, which can be interpreted to omit those 18 to 20 years of age; or
 4. requirement that the targeting induces the minor to “purchase” instead of, or in addition to, consume or possess alcohol.

Federal court opinions have suggested that the state must show that a particular ad has “special appeal” to minors in order to restrict it under the First Amendment commercial speech requirements (for discussion, see *Lorillard Tobacco Co. v. Reilly*, 533 US 525 [2001]). A statute that does not include the “special appeals” language is likely to be interpreted to require it. Statutes are classified as **BP** if they prohibit advertising that targets minors with or without this qualifying clause.

Delaware provides a model for a targeting minors statute:

No licensee shall sell or offer to sell alcoholic liquor by means of any advertisement or promotion including any statement, representation, symbol, depiction, or reference, directly or indirectly, which...[w]ould reasonably be expected to induce minors to purchase or consume alcoholic liquor (4 DE Admin Code 27 [VI]).

Nine states received a **BP** rating: Alabama, Delaware, Maine, New Hampshire, North Carolina, Oregon, Utah, Vermont, and Virginia. These states had a targeting provision that was not constrained by any of the elements listed above. No states fall into the intermediate or incomplete category, since a law with any of the limitations was rated as less effective than no provision at all. Forty-one states and the District of Columbia earned a **--** rating—either there is no targeting minors law in the state, or the law includes one of the four limitations.

3. Establish Explicit Jurisdiction Over In-State Electronic Media

States have largely abdicated regulatory authority for electronic media—television and radio—even though a review of federal preemption law suggests that only transmissions into a state from out of state or on cable are preempted. In other words, broadcasts that originate within a state are subject to state regulation. Although a state may claim such jurisdiction without a provision that makes the authority explicit, an explicit statement of jurisdiction is substantially preferable.

A state may achieve this purpose with a statute that explicitly permits electronic media advertising, even if it does not impose any specific requirements. Such a provision provides the state ABC department with clear authorization to apply restrictions on electronic media advertising found in other parts of the ABC code.

In some cases, the jurisdictional provision is part of a statute that may raise constitutional problems. For example, Alabama claims jurisdiction over all forms of media in a statute that requires prior approval by the ABC board before any advertisement can be aired or published. The prior-approval provision does not include specific application guidelines or strict timeline limits, the absence of which may raise constitutional questions. In these cases, the statute received a **--** rating.

Nineteen states and the District of Columbia have provisions that explicitly provide the alcohol control agency with jurisdiction over both television and radio advertising and therefore received a **BP** rating. Texas received an **I** classification because its provision included radio but not television; three states (Alabama, Minnesota, and West Virginia) have provisions that may raise constitutional questions. These states, as well as the remaining 27 states, received a **--** designation.

4. Restrict Outdoor Alcohol Advertising in Locations Where Children Are Likely to Be Present

Outdoor advertising includes all forms of print advertising placed in locations where the general public can view it. Billboards, paintings, banners, posters, and the like are all included in this category. Legal provisions draw a distinction between outdoor advertising associated with alcohol retail outlets and that in other locations, a distinction maintained in this report (see subsection 5 below).

There are two types of provisions included in this category:

1. Restrictions or prohibitions on outdoor advertising without regard to advertising content; and
2. Restrictions on outdoor alcohol advertising in locations where youth are likely to be present.

Clearly, the first type is the most effective means for reducing youth exposure to outdoor alcohol advertising. Four states (Alaska, Hawaii, Maine, and Vermont) strictly limit outdoor advertising without reference to ad content. These states received a **BP** rating on this basis. No other states had provisions of this type.

The second type of restriction focuses on alcohol advertising specifically. Constitutional issues that do not apply to other forms of commercial speech arise when restrictions are placed on advertising of particular products, including alcohol. Careful drafting is required to establish that the purpose of the regulation is to limit youth exposure (referred to as youth presence restrictions) to avoid having the statute invalidated.

Baltimore City was the first jurisdiction to enact a youth presence outdoor alcohol advertising ordinance. It provided that, with certain exceptions, billboards could not be placed in residential areas of the city. The ordinance made a sharp distinction between locations where children are routinely present and those where children are less likely to congregate, and it allowed billboards in numerous locations where adult consumers could be reached by the advertisers. Several cities followed suit after a federal appellate court held that the Baltimore ordinance was constitutional (*Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325 [4th Cir., 1996]). That opinion, as well as the recent U.S. Supreme Court decision *Lorillard v. Reilly*, establishes that to be constitutional, a law restricting outdoor alcohol advertising must be tailored in this manner so that its purpose is clearly to reduce youth exposure without unduly restricting adult viewing.

Two states (New Hampshire and South Carolina) have statutes that are probably unconstitutional because their provisions are too broad, prohibiting all, or most, forms of outdoor alcohol advertising. For example, the New Hampshire statute says that “all advertising of liquor and [alcoholic] beverages within the state through the medium of billboards is hereby prohibited” (N.H. Rev. Stat. § 175:4). These two states received a **-** rating because their laws are probably unenforceable.

A narrow exception to this general rule involves prohibitions of outdoor alcohol advertising in dry counties. Three states (Alabama, Mississippi, and Tennessee) have this type of provision and received an **I** rating. Their laws are likely to be found constitutional since there is no commercial free speech right to advertise an illegal product.

States with valid youth presence laws prohibit alcohol advertising within close proximity to youth-oriented locations including schools, playgrounds, and churches. Requirements may vary by the distance requirements and the types of alcoholic beverage advertising and youth venues specified. Distances greater than 500 feet may raise constitutional problems, depending on the impact such a provision has on adult viewing. Shorter distances, on the other hand, severely restrict the impact of the provision. A best practices rating for a youth presence law requires:

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1. a distance threshold of 500 feet;
 2. inclusion of all types of alcoholic beverage advertising; and
 3. inclusion of schools, public playgrounds, and churches as youth venues.

Virginia received a **BP** rating as its law meets all three of these criteria. Five states received an **I** rating. Ohio's statute states that no billboard advertising of "any brand of alcoholic beverage" is permitted within 500 feet of any church, school, or public playground. However, it is limited to billboards that are "visible" to the specified youth venues and appears to allow nonbranded alcohol advertising. Three states have statutes with distance requirements of under 500 feet (Indiana, 200 feet; Kentucky, 100 feet; Pennsylvania, 300 feet). Pennsylvania includes public playgrounds in its provisions, and Indiana and Kentucky do not. Kentucky's provisions relate only to malt beverages. Washington has a unique statute that creates implementation challenges. It bans outdoor alcohol advertising within 500 feet of "schools, places of worship, public playgrounds, or athletic fields used primarily by minors where the administrative body of said schools, churches, public playgrounds, or athletic fields object to such placement," as well as in any "place which the board in its discretion finds contrary to the public interest."

Virginia's experience with this policy is instructive. It had an overly broad statute, which an outdoor advertising company challenged in 2011. The state attorney general and state ABC agency declined to defend the law owing to the constitutional issues involved, and they settled the case by agreeing to rescind the relevant regulations.²⁰ In response, the Virginia Legislature enacted a youth-presence law with a 500-foot distance requirement, shifting its coding from a **--** to a **BP**.

States can also prohibit outdoor advertising in any public venue, e.g., buses, public buildings, and stadiums, without raising constitutional issues. In this case, the state (or municipality affected) constitutes the advertiser and has the authority to determine ad content.²¹ Several municipalities have enacted such restrictions, e.g., on public transit or in public parks. No state laws were found with this type of restriction, however, and it was not used as a coding criterion.

In summary, five states received a **BP** rating, four based on their restrictions on all forms of outdoor advertising without regard to ad content and one state with a well-crafted youth presence law. Eight states received an **I** rating, three because of their bans on alcohol advertising in dry counties and five because of their youth presence laws that met some but not all of the **BP** criteria. The remaining 37 states and DC received a **--** rating.

5. Restrict Alcohol Advertising on Alcohol Retail Outlet Windows and in Outside Areas

Most states have extensive regulation of print advertising used at retail alcohol outlets. Most of the provisions relate to how distributors and producers provide promotional materials to the retailers, a part of the states' overall goal of restricting the influence of distributors and producers over retailers. These provisions, termed *tied house laws*, are highly complex and varied across jurisdictions. Since they do not directly address youth targeting, they were not included in this analysis. Also omitted were sign regulations related exclusively to the inside of an establishment (except signs placed on the inside of windows and visible from the outside). Although such restrictions can reduce youth exposure to alcohol advertising, particularly in grocery and convenience stores where children are likely to be present, their complexity and entanglement with tied house provisions placed them beyond the scope of this analysis.

This analysis has examined specifically the provisions that restrict print advertising on windows that are viewable from outside the establishment, a significant public health concern particularly in many inner-city communities. Alcohol outlets frequently dominate the retail landscape in these neighborhoods²² and windows often constitute the bulk of the buildings' outside space, so that the outlets can become a large outdoor advertisement for alcohol. This situation can constitute a blight and unduly expose high numbers of young people who reside there to alcohol and tobacco advertising. Restrictions are therefore permissible as a means both to reduce youth exposure and to address a public nuisance problem.

Coding for this policy relied on one key criterion: The regulation must significantly limit the amount of advertising placed on both the inside and outside of windows. To be effective, the regulation should establish a specific, strict limitation. Restrictions that only apply to alcohol advertising (without restricting advertising of other products such as tobacco and soft drinks) or only apply to state stores were not included in coding decisions.

California has a statute that establishes a regulatory strategy that meets the general criterion. It reads as follows:

No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises. (CA. Bus. & Prof. Code § 25612.5[c][7])

Vallejo, California was dissatisfied with the 33 percent limitation and enacted its own ordinance that restricted window coverage to 15 percent with some exceptions (City of Vallejo, CA Zoning Code § 16.64.040[B][1]).** A lower limit is preferable in reaching the goals of this policy.

A best practices rating required strict limitations on advertising on the inside or outside of retail outlet windows (no more than 15 percent of the space or a functional equivalent).

Only Virginia received a **BP** rating. Its statute does not limit window advertising to a particular percentage of window space, but it establishes a functional equivalent by limiting the number of signs (no more than two, unless at an intersection, then three), the size of the advertisements (limited to 12 inches height/width), and the content of the signs (not animated and limited to the terms appearing on the face of the license describing the privileges of the license). It also prohibits interior advertising that can be viewed from the outside.

Four states (California, Kansas, Missouri, and Texas) are classified as **I**, with significant variation among the relevant provisions. As noted above, California is the only state that limits window advertising to a particular percentage of window space, but its 33 percent requirement is greater than the 15 percent threshold. The remaining three states vary in their regulation of the number, size, and placement of signs, none of which rose to the equivalent of a 15 percent restriction. Oklahoma's statute is probably unconstitutional because it is overly broad (*Oklahoma Broadcasters Assn. v. Crisp*, 636 F. Supp. 978 [W.D. Okl. 1985]). The remaining 45 states, and the District of Columbia received a **--** rating.

6. Prohibit Alcohol Advertising on College Campuses

The rationale for this policy rests on the fact that a large percentage of college students are underage and that restrictions on alcohol advertising on college campuses and in campus publications are justified to reduce youth alcohol problems.

The constitutionality of the policy has been challenged twice since the publication of the CAMY's original 2003 report, with conflicting results. In *Pitt News v. Pappert* (379 F.3d 96 [3d Cir. 2004]), a 2004 case, the U.S. Court of Appeals (Third Circuit) struck down a Pennsylvania law that banned alcohol advertisements in any communications media affiliated with a university, college, or other educational institution. The U.S. Court of Appeals (Fourth Circuit) reached a contrary result in *Educational Media*

** The code provision applies to all retail establishments, although liquor stores are a major target.

Co. at Virginia Tech Inc. v. Swecker (602 F.3d 583 [4th Cir. 2010]), decided in 2010. The *Swecker* Court based its decision in part on the fact that Virginia’s regulation was not a complete ban (allowing restaurants to advertise alcoholic beverages), was limited to college publications that target those under 21 years of age, and was part of a comprehensive strategy to address underage drinking. In each case, the U.S. Supreme Court refused to hear the case on appeal, so the constitutionality of this policy remains in doubt.

In light of these conflicting legal decisions, the key criteria for this policy were modified in this report to enhance the likelihood that the best practice standards would be upheld if challenged in court. Note that until the U.S. Supreme Court takes up the issue, the *Pitt News* case restricts states in the Third District from enacting this policy.

Key criteria include the following:

1. advertising is prohibited in college student publications that have a substantial readership under 21 years of age;
2. exceptions are provided to protect advertisers’ ability to reach those of legal drinking age; and
3. all college campuses in the state are included.

Provisions in four states (New Hampshire, Pennsylvania, Utah, and Virginia) met these three criteria and received a **BP** rating. However, it should be noted that the Pennsylvania statute, while meeting the BP criteria, was ruled unconstitutional, as noted above, so is not effective in that state. The remaining 46 states and the District of Columbia received a **--** rating.

State Alcohol Advertising Provisions: Promotions

Promotions involve unmeasured marketing expenditures, such as sponsorships, giveaways, rebates, and alcohol-branded merchandise, such as T-shirts. This report examined two key types of promotions that are likely to reach underage youth and are potentially subject to state regulation: sponsorship of civic events and giveaways. The analysis was limited in part because of the complexity of the legal provisions, which are difficult to interpret and compare across states. The analysis therefore examined specific marketing practices and assessed whether existing state provisions applied to them.

7. Restrict Sponsorship of Civic Events

States can restrict the alcohol industry’s ability to sponsor civic events such as fairs, public celebrations, music concerts, sporting events, and the like. Blanket prohibitions are permissible on public property, such as parks and municipal stadiums and government buildings. Restrictions in private venues are permissible, at least if tied to the percentage of participants who are underage.²³ Thus, sponsorship of school and college events can be prohibited, since a substantial percentage of likely participants will be underage.

State provisions regarding sponsorship vary widely and generally are not based on public health concerns. They often explicitly permit sponsorships and then place restrictions on how they may be accomplished. For example, California has a law permitting alcohol producers to sponsor nonprofit and community public service and fundraising events (Cal. Adm. Code Title 4, Rule 106[h]).^{††}

^{††} In many cases, the state is concerned with producer/distributor/retailer relationships. Note that civic events that occur in licensed premises (including large venues such as sports arenas) may be subject to tied house laws, which place restrictions on what producers and distributors can supply to retailers. In such cases, the distributor/producer must abide by signage restrictions and may be limited in its ability to fund the event. Many states have enacted exceptions to the tied house laws to accommodate the industry’s desire to sponsor events in licensed venues, most notably in sports arenas and entertainment settings. These tied-house-related provisions were not analyzed primarily because of the complexity of the legal analysis.

A best practices rating required that the state provisions:

1. prohibit alcohol industry sponsorship of college/school events; and
2. prohibit alcohol industry sponsorship of events in public venues (e.g., parks, street fairs, government buildings).

No state met these criteria. Four states (Florida, Minnesota, Utah, and Virginia) received an **I** classification. All four address sponsorship of college and school events; no state provision addresses sponsorships in public or private venues. Virginia has the most inclusive provision. It prohibits alcoholic beverage advertising in connection with “any sponsorship on a college, high school, or younger age level” (VA ABC Board Regulation § 3VAC 5-20-100). Minnesota’s provision is narrowed by the fact that it prohibits sponsorship of college/school events only when the sponsorship involves the sale or consumption of alcohol. Florida’s provision applies only to the University of Florida. The remaining 46 states and the District of Columbia received a **--** rating.

8. Limit Giveaways (Contests, Raffles, etc.)

Many states limit the industry’s ability to provide free goods and services to consumers. Most common are provisions that limit what producers and wholesalers can give to retailers under the state’s tied house laws, as noted above. These indirectly affect consumers, since retailers are a common source of free goods. However, they do not address what producers and distributors can give to consumers directly. Another common regulation involves giveaways by on-sale retailers within their own establishment that are not derived from producers or distributors—free drinks, contests that result in free drinks, etc. Since the focus of this report is on advertising and marketing that may reach young people, the report catalogs neither of these two types of provisions, which are complex and have only an indirect effect on underage advertising exposure.

The specific focus is therefore on provisions that restrict the ability of distributors and producers to provide rewards or prizes directly to consumers. Examples include promotions that award consumers prizes when proof of purchase is provided (e.g., an Anheuser-Busch Company promotional campaign that awarded prizes to consumers who turned in specified numbers of Budweiser bottle caps); and distribution of consumer goods with company logos or advertising on them as a reward for winning a contest or lottery (which typically occurs at fairs and midways). The latter can be either banned or limited to people 21 years or older.

The analysis searched for provisions that:

1. prohibit any giveaways as rewards for purchasing the producer’s or distributor’s products; and
2. prohibit the distribution of promotional materials at commercial or civic events at least to those under the legal drinking age.

Washington was the only state found to have restricted the distribution of promotional materials at commercial or civic events, though in a very limited manner. Its provision states:

- Liquor advertisements may offer consumers premiums or prizes, upon completion of any coupon, contest, or competitive event, which may or may not require proof of purchase of the advertised product provided that:
- (a) No one under twenty-one years of age is allowed to participate, and no premiums, prizes, coupons, contests, or competitive events are targeted to persons under twenty-one years of age. (Washington Admin. Code § 314-52-040)

Although limited, the provision was given an **I** rating in recognition of being the only one to address this criterion.

Sixteen additional states meet the first criterion and received an **I** rating: Alabama, California, Connecticut, Georgia, Indiana, Mississippi, Montana, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Utah, and Virginia. There was relatively little diversity in the language used in these state provisions. They all prohibit promotions, gifts, prizes, sweepstakes, contests, coupons, and/or rebates that are predicated upon product purchase. One state also prohibits entry fees for contests or sweepstakes, and another prohibits either directly or indirectly requiring purchase of products to enter contests and sweepstakes. The remaining 33 states and the District of Columbia received a **--** rating.

Discussion: Trends in State Alcohol Advertising Regulation

As noted in the Introduction, the coding rules for this report have been modified since the 2003 report. Because of these modifications, detailed assessments of changes between the two reports are not possible. Several observations can nevertheless be made:

1. In general, states have not been active in this legislative and regulatory arena—relatively few new or revised laws relevant to coding were identified in the eight years between the two reports.
2. States continue largely to ignore these important tools for reducing youth exposure to alcohol advertising. Twenty-two states have no best practices across the eight policies, and 14 of these states have neither a **BP** nor an **I** score. Only 11 states have more than one best practice. Most of the **BP** scores are found in the false/misleading and electronic media policies. These are best practices in that they provide vehicles for investigation and regulation but do not in themselves limit youth exposure to alcohol advertising.
3. Virginia and Washington provide two notable exceptions. As reported above, the Virginia State Legislature, responding to a constitutional challenge to its prohibition of alcohol advertising on outdoor signs, revised its law to conform to the best practices standards identified here. Virginia now has five **BP** and three **I** codes, the only state with legislation on all eight policies. The Washington Liquor Control Board conducted a broad review of its advertising rules in 2010, including many of the topics found in this report. The preamble to its new rules states that the “liquor control board regulates alcohol advertising to...reduce youth exposure to alcohol advertising and marketing” (Washington Admin. Code § 314-52-005). Although the revisions were relatively modest (see Table 1), they represent an important first step in asserting state control over alcohol advertising that targets youth.
4. A significant number of states enacted provisions prohibiting some forms of giveaways (17 **I** scores in 2010, eight **I** scores in 2003). There were no **BP** scores for this policy in either 2010 or 2003.
5. This report found that a significantly larger number of states have **BP** scores for false or misleading provisions (11 in 2010, three in 2003) and for in-state electronic media (20 in 2010, 13 in 2003). Fewer states have **BP** scores for targeting minors provisions (nine in 2010 compared to 11 in 2003). These differences are largely due to changes in coding rules.

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Table 1: Ratings of State Alcohol Advertising Laws

State	False or Misleading	Targeting Minors	Electronic Media	Outdoor Ads	Retail Windows	College Campuses	Sponsoring Civic Events	Promoting Giveaways		
Alabama	--	BP	--		--	--	--		BP - 1	1 - 2
Alaska	--	--	--	BP	--	--	--	--	BP - 1	
Arizona	--	--	--	--	--	--	--	--		
Arkansas	--	--	--	--	--	--	--	--		
California	--	--	--	--		--	--			1 - 2
Colorado	--	--	--	--	--	--	--	--		
Connecticut		--	--	--	--	--	--			1 - 2
Delaware		BP	BP	--	--	--	--	--	BP - 2	1 - 1
DC		--	BP	--	--	--	--	--	BP - 1	1 - 1
Florida	--	--	--	--	--	--		--		1 - 1
Georgia	--	--	--	--	--	--	--			1 - 1
Hawaii	--	--	--	BP	--	--	--	--	BP - 1	
Idaho	BP	--	--	--	--	--	--	--	BP - 1	
Illinois	BP	--	BP	--	--	--	--	--	BP - 2	
Indiana	--	--	BP		--	--	--		BP - 1	1 - 2
Iowa	--	--	--	--	--	--	--	--		
Kansas		--	BP	--		--	--	--	BP - 1	1 - 2
Kentucky		--	BP		--	--	--	--	BP - 1	1 - 2
Louisiana	--	--	--	--	--	--	--	--		
Maine	BP	BP	BP	BP	--	--	--	--	BP - 4	
Maryland		--	BP	--	--	--	--	--	BP - 1	1 - 1
Massachusetts	BP	--	--	--	--	--	--	--	BP - 1	
Michigan		--	--	--	--	--	--	--		1 - 1
Minnesota		--	--	--	--	--		--		1 - 2
Mississippi	--	--	BP		--	--	--		BP - 1	1 - 2
Missouri		--	BP	--		--	--	--	BP - 1	1 - 2
Montana	BP	--	--	--	--	--	--		BP - 1	1 - 1
Nebraska		--	BP	--	--	--	--	--	BP - 1	1 - 1
Nevada	--	--	--	--	--	--	--	--		
New Hampshire	BP	BP	BP	--	--	BP	--	--	BP - 4	
New Jersey		--	--	--	--	--	--			1 - 2
New Mexico	--	--	--	--	--	--	--	--		
New York	--	--	--	--	--	--	--	--		
North Carolina		BP	BP	--	--	--	--		BP - 2	1 - 2
North Dakota	--	--	--	--	--	--	--	--		
Ohio	BP	--	BP		--	--	--		BP - 2	1 - 2
Oklahoma	--	--	--	--	--	--	--	--		
Oregon		BP	BP	--	--	--	--		BP - 2	1 - 2
Pennsylvania	--	--	BP		--	BP	--		BP - 2	1 - 2
Rhode Island	--	--	--	--	--	--	--	--		
South Carolina	--	--	--	--	--	--	--	--		
South Dakota	--	--	--	--	--	--	--			1 - 1
Tennessee		--	BP		--	--	--	--	BP - 1	1 - 2
Texas	BP	--		--		--	--		BP - 1	1 - 3
Utah	BP	BP	BP	--	--	BP			BP - 4	1 - 2
Vermont	BP	BP	--	BP	--	--	--	--	BP - 3	
Virginia		BP	BP	BP	BP	BP			BP - 5	1 - 3
Washington		--	BP		--	--	--		BP - 1	1 - 3
West Virginia	BP	--	--	--	--	--	--	--	BP - 1	
Wisconsin	--	--	--	--	--	--	--	--		
Wyoming	--	--	--	--	--	--	--	--		
	BP - 11 1 - 16	BP - 9 No 1 grade	BP - 20 1 - 1	BP - 5 1 - 8	BP - 1 1 - 4	BP - 4 1 - 0	BP - 0 1 - 4	BP - 0 1 - 17		

APPENDIX A: Coding Rule Revisions: 2003 vs. 2010 Reports

Policy #1: Prohibit False or Misleading Alcohol Advertising:

New coding rule: Adoption by state statute of federal law that includes the three stated components is sufficient to apply a **BP** coding. However, the fact that a state provision merely states that the federal law applies (but does not adopt the federal law as a state standard) is not sufficient to apply a **BP**.

Other coding rule revisions made for clarity without changes in application.

Policy #2: Prohibit Alcohol Advertising That Targets Minors

New coding rule: A law that requires that the targeting induces the minor to “purchase” instead of or in addition to “consume or possess” alcohol disqualifies it from a **BP** code.

New coding rule: Laws that require that the ad have “special” appeal to minors are not disqualified from **BP** grade.

Policy #3: Establish Explicit Jurisdiction Over In-State Electronic Media

New coding rule: A law that states that electronic media advertising is permitted without any requirements is treated as granting explicit jurisdiction.

Policy #4: Prohibit Outdoor Alcohol Advertising in Locations Where Children Are Likely to Be Present (including near schools, public playgrounds, and churches)

New coding rule: This policy was treated as two policies in 2003.

Policy #5: Restrict Advertising (including alcohol advertising) on Retail Windows (viewable from the outside)

No coding rule changes.

Policy #6: Prohibit Alcohol Advertising on College Campuses

No coding rule changes.

Policy #7: Sponsoring Civic Events

New coding rule: Deleted third criterion from 2003 report regarding sponsorship of events in private venues.

Policy #8: Limit Giveaways

No coding changes.

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