Str /

National Association of Attorneys General
Monday, March 25th, 11:00am - 12:00pm
Attendance List

Alaska
Bruce M. Botelho (D)

Arkansas
Winston Bryant (D)

Colorado
Gale A. Norton (R)

Connecticut
Richard Blumenthal (D)

Delaware
M. Jane Brady (R)

Florida
Robert A. Butterworth (D)

Hawaii
Margery S. Bronster (R)

Idaho
Alan G. Lance (R)

Illinois
James E. Ryan (R)

Indiana
Pamela Fanning Carter (D)

Iowa
Tom H. Miller (D)

Kansas
Carla J. Stovall (R)

Maine
Andrew Ketterer (D)

Maryland
J. Joseph Curran, Jr. (D)

Massachusetts
Scott Harshbarger (D)

Michigan
Frank J. Kelly (D)

Minnesota
Hubert H. Humphrey III (D)

Mississippi
Mike Moore (D)

Missouri
Jeremiah W. Nixon (D)

Montana
Joseph P. Mazurek (D)

Nevada
Frankie Sue Del Papa (D)

New Hampshire
Jeffrey R. Howard (R)

New Jersey
Deborah T. Poritz (R)

New Mexico
Tom Udall (D)
President of NAAG

New York
Dennis C. Vacco (R)

North Carolina
Michael F. Easley (D)

Ohio
Betty D. Montgomery (R)

Oklahoma
Drew Edmondson (D)

Pennsylvania
Thomas W. Corbett, Jr. (R)

Rhode Island
Jeffrey B. Pine (R)

South Carolina
Charles M. Condon (R)

Texas
Dan Morales (D)

Utah
Jan Graham (D)

Vermont
Jeffrey L. Amestoy (R)

Virginia
James S. Gilmore III (R)

Washington
Christine O. Gregoire (D)

Wisconsin
James E. Doyle (D)

Wyoming
William Hill (R)

Guam
Calvin E. Holloway, Sr.

Puerto Rico
Pedro R. Pierluisi

U.S. Virgin Islands
Julio A. Brady

CT AG Staff Steve Park 860-566-5374

Following up on previous (2) reports
→ recommendations for retailers
↳ voluntary basis - adopt

Adopt these

— AG's / President jointly —
call on retailers —

— Fast Food Industry to go smoke free — huge amt. of work force is under 18 —

McDonalds / Duncan Donuts — but still a lot of them have not — — e.g. Burger King —

- People brave experience
- renew - call - health hazards second -

Call on Congress — devolve authority back to the states — preempts states from reg advertising (current law)

local school Boards —

Kevin O'Keefe - G's
  860
Bill Halldin [566-8239]
press / issues coord.

Paul Weinstein

— Monday 18th —

Cody Hyman
690-6318

— AG Discussion —

Conf. call or mtg.
[redacted] Something on the back burner —
- anything in the hopper —
— we could announce w/you [redacted]

— Steve Costella — Humphries's AG —

- Get out msg - Synar is impt and we have to do more

—

PHOTOCOPY
PRESERVATION

Aaron Boys - Deputy Atty General 860-566-2026 Bill Bruvillian

News from Attorney General Richard Blumenthal

Office of the Attorney General
65 Elm Street
Hartford, Connecticut 06106

For Immediate Release

Tuesday,
January 2, 1995

BLUMENTHAL LEADS 27 OTHER ATTORNEYS GENERAL IN SUPPORTING PROPOSED FEDERAL REGULATIONS TO REDUCE MINORS' ACCESS TO CIGARETTES AND SMOKELESS TOBACCO TO MINORS

Siting the chilling fact that more than 3,000 American children begin smoking each day, Attorney General Richard Blumenthal today led 27 other state Attorneys General in supporting proposed federal regulations aimed at reducing access and limiting the appeal of tobacco products to children.

"These proposed regulations by the FDA strike at the tobacco industry's strategy to lure children into the deadly habit of smoking and chewing tobacco by hooking them with slick advertising and free tobacco products that eventually make them nicotine addicts," Blumenthal said.

"The tobacco companies reel them in at the alarming rate of more than a million new underage, addicted smokers each year. These young smokers are following a path to cancer, heart disease, emphysema, and other serious illnesses, all while fattening the bottom lines of tobacco industry companies," Blumenthal said. "The pitches and promotions are part of a calculated scheme to start our children smoking so by the time they're adults, they're nicotine addicts who can't stop smoking several packs of cigarettes a day. The statistics are staggering: 90 percent of smokers report that they began smoking as teenagers. Some 20 million Americans try to quit smoking each year, but only three percent of them succeed in kicking the habit."

Blumenthal and the other 27 Attorneys General filed official comments today with Dr. David Kessler, Commissioner of Food & Drugs at the FDA, supporting the agency's entire package of proposed regulations. They also highlighted several points in the regulations that deserve particular emphasis:

Restricting and marketing of tobacco products to children. The tobacco industry spent more than $4.6 billion in advertising and promoting tobacco products in 1991, much of it appealing directly to children. That appears to explain why the three most heavily advertised brands have captured 86-percent of the illegal teen market when the same brands' share of the legal, adult market is only 35 percent.

-more-

Contact: ☐ Bill Halldin 566-8339 ☐ Cheryl Yost Fialkoff 566-7868

Restricting tobacco sponsorship of sporting and entertainment events. This type of sponsorship has been used effectively to avoid the federal ban on broadcast advertising, and to advertise tobacco products on the types of televised events that particularly appeal to teenagers and young adults. "This clever, backhanded device enables tobacco companies to get their products' names and logos flashed across the television screen even though cigarette and smokeless tobacco commercials have been banned from television," Blumenthal said.

Prohibiting the sale or distribution of all non-tobacco items that are identified with a cigarette or smokeless tobacco product brand name or other identifying characteristic. Studies have shown that these items, such as T-shirts, hats and sporting goods have widespread appeal among young people. When teenagers and children wear these items, they become "walking billboards" which can come into schools and other places where tobacco advertising is prohibited.

Requiring purchasers of tobacco products to produce positive identification before making a purchase and eliminate marketing practices that provide young people with easy access to tobacco, including sale of single cigarettes, sale by vending machines, self-service displays and free samples of tobacco products. These measures will greatly assist efforts by the state Attorneys Generals to enforce compliance with existing state laws that prohibit the sale or distribution of tobacco products to minors. Blumenthal has pressed for similar initiatives on the state level.

Preventing the proposed regulation from preempting more stringent state or local requirements relating to the sale, distribution, labeling, advertising or use of tobacco products that do not conflict with the federal regulation. A cooperative, combined effort by federal, state and local authorities is critical to reduce access and limit the appeal of tobacco products to children. In order to succeed, state and local officials must retain their ability to enact and enforce laws they believe are most effective.

The states and territory joining Connecticut in the letter of support for the proposed regulations were Minnesota, Rhode Island, Washington, which joined in drafting the letter, and Alaska, Arkansas, Florida, Guam, Hawaii, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Dakota, Puerto Rico, Texas, Utah, Vermont, West Virginia and Wisconsin.

In 1994, many of the Attorneys General from these states participated in a National Association of Attorneys General (NAAG) working group to study the problem of illegal tobacco sales to minors. The group issued recommendations for legislation and voluntary steps retailers could take to curb illegal tobacco sales in a report entitled, "No Sale: Youth, Tobacco and Responsible Retailing."

Note: Copies of the comments filed by the Attorneys General are available upon request. Contact Cheryl Yost Fialkoff, 860-566-7868.

-30-

RICHARD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(860) [illegible]

Office of The Attorney General
State of Connecticut

January 2, 1996

Dr. David Kessler
Commissioner of Food & Drugs
Food and Drug Administration
Dockets Management Branch (HFA-305)
Room 1-23
12420 Parklawn Drive
Rockville, MD 20857

RE: DOCKET #95N0253--Proposed Regulations Restricting the Sale and Distribution of Nicotine Containing Cigarettes and Smokeless Tobacco Products In Order to Protect Children and Adolescents.

Dear Commissioner Kessler:

The Attorneys General of Connecticut, Minnesota, Rhode Island and Washington are writing on behalf of the Attorneys General of Alaska, Arkansas, Florida, Guam, Hawaii, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Jersey, New Mexico, Puerto Rico, Texas, Utah, Vermont, West Virginia and Wisconsin, whose names appear at the end of this letter, to express our strong support for the FDA's proposed rule to regulate the sale and distribution of tobacco products. We believe that the proposed rule, which emphasizes reducing access and limiting the appeal of tobacco products to children, should be a crucial component of a national effort by federal, state and local officials to help our youngest generation of Americans avoid suffering preventable disease and premature death from the use of tobacco products.

Children who smoke are at high risk of becoming addicted. Ninety percent of smokers report that they began smoking as teenagers. The average age at which teenage smokers first begin smoking is thirteen to fourteen years, and by age eighteen, teens are smoking at a rate very near the adult rate. Studies show that, while most teenage smokers do not plan to be smokers five years from now, in fact less than ten percent will be able to quit. According to the Surgeon General, twenty million Americans try to quit smoking each year, but only three percent have any long-term success. Indeed, the December 8, 1995 Wall Street Journal reported on a tobacco company internal draft report which describes cigarettes as a nicotine delivery system; states that the main reason people smoke is to get nicotine into their bodies; and calls nicotine chemically similar to such drugs as cocaine. Given this analysis by the tobacco industry itself, it is entirely appropriate and necessary for the government, through the FDA (the agency charged with the responsibility for regulating the distribution of drugs in the United States) to implement the proposed measures to regulate the sale and distribution of tobacco products.

We have been active in the national effort to protect our young people from the devastating consequences of tobacco use. In 1993, many of us participated in a working group of Attorneys General which focused on the problems associated with second hand smoke and children. The working group met with the leaders in the fast food industry to discuss the issue of second hand smoke in their restaurants. We were concerned because this industry target markets children as customers, and employs huge numbers of young workers, forty percent of whom are under the age of eighteen. Consequently, every day millions of children who spend time in these restaurants eating, playing in specially designed play areas, socializing with their teenage friends and working behind the counter are exposed to second hand smoke, a Class A carcinogen, for which no safe levels of exposure have been established. The working group issued a series of recommendations to the fast food industry to facilitate the development of smoke free restaurant environments in our report, "Fast Food, Growing Children and Passive Smoke: A Dangerous Menu." We are gratified that many fast food restaurants are now smoke free, and recognize that the effort must continue to ensure that children are not exposed to second hand smoke as a consequence of eating or working in these restaurants.

As the chief law enforcement officers of our respective states, we are especially concerned about illegal tobacco sales to minors. Although every state bans the sale of tobacco to minors, studies show that children have easy access to tobacco. In 1994, many of us participated in another working group to study this problem. The working group issued a series of recommendations for legislation and voluntary steps that retailers could take to curb illegal tobacco sales in a report entitled, "No Sale: Youth, Tobacco and Responsible Retailing."

This report takes note of the grim statistics which underscore the need to make the proposed FDA regulation a part of a cooperative federal and state effort to protect our children from tobacco addiction. These statistics include the fact that underage customers purchase over half a billion packs of cigarettes and twenty-six million containers of chewing tobacco every year. As a result, an estimated 3,100,000 American teenagers, one out of every six, are regular smokers. Tragically, each day 3,000 more children begin smoking—a process that results in over a million new underage, addicted smokers in the United States each year. As noted above, children who smoke are at high risk of becoming addicted.

Perhaps the most distressing statistic of all is that unlike adolescent use of alcohol and other drugs, adolescent smoking behavior has not declined since the early 1980's, and some studies show an increase in underage smoking. This strongly suggests to us that a cooperative federal and state regulatory approach is needed to effectively deal with youth smoking. Your agency's proposed rule would provide a strong federal complement to state and local law enforcement efforts.

While we support the proposed regulations in their entirety, there are several sections of these regulations which merit particular emphasis. Specifically, we wish to express our support for Sections 879.30 and 879.32 which would restrict the advertising and marketing of tobacco products to children. As we noted in our 1994 report, the tobacco industry spent over $4.6 billion advertising and promoting tobacco products in 1991. Much of this advertising appeals directly to children. We suspect that this explains why the three most heavily advertised brands have captured eighty-six percent of the illegal teen market, when the same brands' share of the legal, adult market is only thirty-five percent. In fact, a study published in November, 1995 concluded that each innovative tobacco marketing campaign since the 1890s has led to a major increase in the number of 14-17 year-olds who became regular smokers. This study further concluded that by the 1960s and 1970s, 14-17 year-olds had become the only age group that was responsive to tobacco marketing.

Advertisements that encourage teen smoking undermine the laws and policies of our states. While individual states can use their laws in an attempt to address tobacco advertising which targets children, it is difficult to effectively combat these sophisticated billion dollar national advertising campaigns on a state by state basis. We therefore welcome an increased federal role in controlling this threat to the integrity of state law.

We further support Section 897.34 (c), which would restrict tobacco sponsorship of sporting and entertainment events. Such sponsorship effectively has been used to avoid the federal ban on broadcast advertising, and to advertise tobacco products on the types of televised events which particularly appeal to teenagers and young adults. We also support Section 897.34 (a), which would prohibit the sale or distribution of all non-tobacco items that are identified with a cigarette or smokeless tobacco product brand name or other identifying characteristic. Studies have shown that these items, including tee shirts, hats and sporting goods have great appeal among young people. When worn by young people, these items can become "walking billboards," which can come into schools and other places where tobacco advertising is generally prohibited.

Sections 897.16 (b), (c), and (d) of the proposed rule are critical if we seriously are to reduce youth access to tobacco products. These regulations would require purchasers of tobacco products to produce positive identification before making a purchase, and would eliminate those sales and marketing practices that provide young people with easiest access to tobacco i.e. the sale of single cigarettes, sale by vending machines, self-service displays, and free samples of tobacco products. The Attorneys General working group's 1994 report made similar recommendations, and many of us have supported attempts to enact these measures into laws in our respective states. The adoption of federal regulations requiring age verification and face-to-face sales, and ending distribution of tobacco by mail order, vending machine, single cigarette ("loosies") and "kiddie pack" sales will greatly assist our efforts to enforce compliance with our state laws which prohibit the sale or distribution of tobacco products to minors.

Moreover, we strongly support Section 897.42 (a) of the proposed rule, which expressly states that the rule would not preempt more stringent state or local requirements relating to the sale, distribution, labeling, advertising or use of tobacco products that do not conflict with the rule. This provision reflects our collective view that a cooperative, combined effort by federal, state and local authorities is needed to reduce access and limit the appeal of tobacco products to children. In order to make this effort succeed, it is essential that state and local officials retain the ability to enact and enforce laws which they believe are most effective when actively enforced at the local level.

Finally, we wish to express our willingness to work with the FDA to implement these regulations when they are adopted. We would welcome the opportunity to discuss how existing state laws, such as those which provide for regulation of food and drugs, or those which prohibit unfair or deceptive trade practices, might be used to assist enforcement of the proposed rule.

Congratulations on offering this important regulatory proposal. Please do not hesitate to contact any of us if we may provide any further assistance to you in this most important effort.

Very truly yours,

RICHARD BLUMENTHAL

Attorney General

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Sara Farnsworth —

- Kevin O'Keefe -

- John Hart

- Stakeouts

-

-

Kevin O'Keefe ~ Jen - / Humphries Blumenthal 2-3 that have to be there -

— Consulting w/John Hart on AG's —

RICHARD BLUMENTHAL
ATTORNEY GENERAL

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Office of The Attorney General
State of Connecticut

TELEFAX COMMUNICATION

DATE 3-13-96

TO Elizabeth Drye

TELEFAX # 202-456-7028

NUMBER OF PAGES 50 - 25 at a time
(including this)

FROM Stephen R. Park

TELEPHONE # (203) 566-5374 **TELEFAX #** (203) 523-5536

INFORMATION FAXED BY

COMMENTS Multi-state Retailing Report and our office's letter to school board re: student smoking on campus per your request.

NO SALE: YOUTH, TOBACCO AND RESPONSIBLE RETAILING

December, 1994

Arizona Attorney General Grant Woods
Arkansas Attorney General Winston Bryant
*Connecticut Attorney General Richard Blumenthal
Florida Attorney General Robert A. Butterworth
Guam Attorney General Donald L. Paillette
*Hawaii Office of Consumer Protection
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Washington Attorney General Christine O. Gregoire
West Virginia Attorney General Darrell V. McGraw, Jr.
Wisconsin Attorney General James E. Doyle

* Denotes member of the Working Group

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Executive Summary

In May, 1994 twelve state Attorneys General formed a Working Group to study the problem of illegal tobacco sales to minors.[1] Despite state laws prohibiting these sales, underage customers purchase over half a billion packs of cigarettes and twenty-six million containers of chewing tobacco every year. The Attorneys General are concerned about these sales because, in addition to being illegal, cigarette smoking is an addiction typically initiated during the teenage years.

Ninety percent of smokers report that they began smoking as teenagers. The average age at which teenage smokers first begin smoking is thirteen to fourteen years, and by age eighteen, teens are smoking at a rate very near the adult rate. Unlike adolescent use of alcohol and other drugs, adolescent smoking behavior has not declined since the early 1980's, and some statistics show an increase in underage smoking. In 1990, nineteen percent of high school seniors smoked daily, and twenty-nine percent had smoked in the last month.

These smoking rates illustrate that young people have ready access to tobacco. And, from all studies, it appears that their major source of tobacco is from over-the-counter sales by retail merchants. Because of the health hazards that flow from tobacco use, Congress, in 1992, passed legislation mandating that states improve their enforcement of laws prohibiting the sale of tobacco products to minors. To promote compliance with the requirements of this federal legislation and with our state laws, the Working Group met with various segments of the retail community, including representatives from convenience stores, supermarkets, gas station stores, drugstores, and discount stores, as well as their respective trade associations, to

[1] The members of the Working Group are listed on the inside cover page of this report. Eleven of these states were represented by their Attorney General. Hawaii was represented by the Executive director of its Office of Consumer Protection. In addition, many other Attorneys General have endorsed the recommendations of the Working Group. These endorsing states are also listed on the inside cover page. The views expressed in this report are those of the Attorneys General listed and do not necessarily reflect the public policy of their respective states.

determine what efforts were being made by retailers to prevent tobacco sales to minors. The Working Group was particularly interested in those efforts that had proven most effective at reducing or eliminating illegal tobacco sales.

After carefully reviewing the information we gathered during the course of this investigation, including our meetings with the retail industry and our examination of their current training materials, electronic price scanner systems, product placement criteria, signage and in-house monitoring systems, the Working Group recommends that the following measures be undertaken by all tobacco retailers to substantially reduce illegal tobacco sales to minors:

- USE SECRET SHOPPERS TO MONITOR EMPLOYEE COMPLIANCE WITH THE LAW AND REWARD EMPLOYEES WHO COMPLY
- PROGRAM EXISTING ELECTRONIC PRICE SCANNERS WITH TOBACCO "LOCKS" TO HELP CONTROL TOBACCO SALES
- EXPEDITE THE USE OF PRICE SCANNER SYSTEMS WITH TOBACCO "LOCKS"
- DEVELOP EFFECTIVE TRAINING MATERIALS ON AVOIDING ILLEGAL TOBACCO SALES TO MINORS, AND GIVE THIS TRAINING EQUAL EMPHASIS WITH TRAINING ON AVOIDING ILLEGAL ALCOHOL SALES
- ✓ HOLD STORE MANAGERS ACCOUNTABLE FOR THEIR STORES' COMPLIANCE WITH THE LAW
- ✓ KEEP TOBACCO PRODUCTS BEHIND THE SALES COUNTER OR IN LOCKED CASES
- ✓ DO NOT SELL SINGLE CIGARETTES EITHER IN OPEN DISPLAYS OR FROM BEHIND THE COUNTER
- ✓ POST PROMINENT SIGNS TO REINFORCE THE LAW
- ✓ REMOVE CIGARETTE VENDING MACHINES FROM RETAIL STORES
- ✓ REQUIRE PROOF OF AGE, IN THE FORM OF A RELIABLE PHOTOGRAPHIC IDENTIFICATION, FOR ANYONE WHO APPEARS TO BE TWENTY-FIVE OR YOUNGER
- ✓ REMOVE ADVERTISEMENTS, IN-STORE DISPLAYS AND PROMOTIONAL ITEMS THAT ENCOURAGE MINORS TO BUY TOBACCO

- IN THE ALTERNATIVE. RETAILERS WHO PREFER NOT TO TAKE PROACTIVE STEPS TO PREVENT ILLEGAL SALES SHOULD CONSIDER SIMPLY ELIMINATING TOBACCO FROM THEIR STORES

The Working Group also recommends that the states strengthen laws banning the sale of tobacco to minors and improve enforcement by applying the following principles:

- LEGISLATURES SHOULD BE WARY OF SOLUTIONS ADVANCED BY THE TOBACCO INDUSTRY
- STATE LEGISLATION SHOULD NOT PRE-EMPT LOCAL ORDINANCES
- STATE LAWS SHOULD CREATE OR REQUIRE A LICENSING SYSTEM FOR TOBACCO SALES
- THE LICENSING AND ENFORCEMENT SYSTEM SHOULD BE SELF-SUPPORTING
- THE LICENSING SYSTEM SHOULD USE GRADUATED FINES, WITH LICENSE SUSPENSION FOR REPEAT OFFENSES
- THE LAW SHOULD INCLUDE POSITIVE INCENTIVES FOR RESPONSIBLE RETAILING
- THE LAW SHOULD REQUIRE PERIODIC COMPLIANCE CHECKS
- THE LAW SHOULD NOT LIMIT WHO CAN CONDUCT COMPLIANCE TESTS
- STATE LAWS SHOULD LIMIT YOUTH ACCESS TO TOBACCO BY RESTRICTING VENDING MACHINE SALES AND PROHIBITING FREE SAMPLING
- STATE LAWS SHOULD REQUIRE DRIVER'S LICENSES TO BE DESIGNED TO MAKE AGE IDENTIFICATION EASY

I. TOBACCO USE AMONG YOUTH

Every state bans the sale of tobacco to minors. Yet, every year, over half a billion packs of cigarettes and twenty six million containers of chewing tobacco are sold illegally to children under the age of eighteen. As a result, an estimated 3,100,000 American teenagers -- one out of every six -- are regular smokers.[2] And each and every day, 3,000 more children begin smoking -- a process that results in over a million new underage, addicted smokers in the United States each year.[3] One quarter of these new young smokers will eventually be among the more than 400,000 Americans who die of tobacco-related illness each year -- illnesses that burden our country with close to sixty-five billion dollars annually in health and economic costs.[4]

These numbers are tragic. But the real tragedy is that this epidemic is to a great extent preventable -- and the key opportunities for prevention are in childhood and adolescence.

Most Smokers Become Addicted To Tobacco As Children

Tobacco use usually begins in early adolescence -- on average by age fourteen and in almost all cases before adulthood.[5] By the time they reach age eighteen, about two-thirds of the young people in the United States try smoking, and many quickly become dependent. This is not surprising, because tobacco-delivered nicotine is highly addictive. The Surgeon General

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[2] The terms "tobacco" and "smoking", as used in this report, relate to cigarettes and smokeless tobacco products.

[3] DiFranza, J.R. and Tye, J.B., "Who Profits From Tobacco Sales to Children?" Journal of the American Medical Association, 1991, Vol. 266, pg. 3149-3153.

[4] U.S. Department of Health and Human Services, Substance Abuse Prevention and Mental Health Services Administration, Notice of Proposed Rulemaking, Substance Abuse Prevention and Treatment Block Grants: Sale or Distribution of Tobacco Products to Individuals Under 18 Years of Age, Federal Register, Vol. 58, No. 164, at 45156. August 26, 1993.

[5] Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youth, Lynch, B.S., and Bonnie, E.J. Editors, Institute of Medicine, National Academy Press, 1994 ("Growing Up Tobacco Free") at 199.

reports that nicotine dependency is the most common form of drug addiction and one of the most difficult to overcome. According to the Surgeon General, twenty million Americans try to quit smoking each year, but only three percent have any long-term success.[6]

While tobacco use is extremely dangerous for everyone, young users face special risks. The earlier a person begins to use tobacco, the more difficult it is to quit. Early adolescent users are more likely to remain smokers for the rest of their lives, more likely to smoke heavily, and more likely to die prematurely than those who begin smoking at a later age.[7] In addition, the earlier a smoker begins smoking, the greater his or her risk of developing the numerous illnesses associated with smoking. Teens who smoke regularly experience a general decrease in physical fitness, increased coughing and phlegm, greater susceptibility to and severity of respiratory illnesses, earlier development of artery disease (a precursor to heart disease) and slower lung growth, which, by adulthood, can reduce the level of lung function.[8]

Restricting Youth Access Is The Key To Breaking The Cycle Of Smoking

What is most significant about teens and smoking, however, is that, from all indications, smoking is an addiction that is typically initiated during the teenage years or not at all. For the great majority of smokers, this addiction begins before they are old enough to purchase tobacco lawfully. In fact, seventy-five percent of all adult smokers report that they became addicted to tobacco before they were eighteen years old.[9] Very few smokers take up smoking for the first time as adults. If youth access to tobacco can be controlled effectively,

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[6] Preventing Tobacco Use Among Young People: A Report of the Surgeon General, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1994 ("1994 Surgeon General's Report") at 31.

[7] 1994 Surgeon General's Report at 6.

[8] 1994 Surgeon General's Report at 6-9.

[9] 1994 Surgeon General's Report at 65.

and the decision whether to smoke can be delayed until adulthood, then, over time, smoking will be greatly reduced as a major addiction in our society.

The Number Of Teen Smokers Is Not Decreasing

As a result of the public's increased awareness of the health hazards associated with smoking, the percentage of adult smokers has been declining over the years.[10] Although, initially, adolescent smoking rates dropped in parallel with the decreased usage in the adult population, beginning in the 1980's, this decline leveled off. Over the last decade, the incidence of smoking among adolescents has remained essentially constant.[11]

There are many possible reasons why these numbers have not declined. Some are a matter of simple economics. The American tobacco industry loses, and therefore must replace, approximately two million customers each year who either quit smoking or die. The vast majority of new customers will come from the ranks of young people. This fact is not lost on the tobacco industry.

A. Tobacco Companies Target Young People

Every day our nation's youth are bombarded with commercial messages encouraging the use of tobacco. In 1991 alone, the tobacco industry spent over $4.6 billion dollars advertising and promoting tobacco products.[12] Sophisticated multimillion dollar tobacco

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[10] U.S. Department of Health and Human Services. Health United States 1987. DHHS Pub. No. (PHS) 88-1232. National Center for Health Statistics, 1988.

[11] DiFranza J.R., Norwood B.D., Garner D.W., Tye J.B.,"Legislative Efforts to Protect Children From Tobacco". Journal of the American Medical Association, Vol. 257, at 3387-3389 (1987). Johnston, LD, O'Malley PM, Bachman JG. Smoking, Drinking and Illicit Drug Use Among American Secondary School Students, College Students, and Young Adults, 1975-1991. Rockville, Maryland: U.S. Department of Health and Human Services, Public Health Service, Alcohol, Drug Abuse and Mental Health Administration. National Institute on Drug Abuse, 1992.

[12] Federal Trade Commission Report to Congress for 1991 Pursuant to Federal Cigarette Labeling and Advertising Act, Washington D.C.

ad campaigns address the special psychological needs and concerns of youth, promising, by implication, that coolness, sophistication and peer acceptance will come with the purchase of the right package of cigarettes.

These efforts have paid off. A recent study by the Centers for Disease Control shows that the three most heavily advertised cigarette brands -- the ones represented by Joe Camel, the Marlboro Man, and young Newport couples -- have captured eighty-six percent of the illegal teen market. These same brands, however, account for only thirty-five percent of overall tobacco sales, having far less appeal in the adult market. [13]

The tobacco industry is also one of the biggest outdoor advertisers. In 1989, of the approximately three million billboards in the United States, thirty percent advertised tobacco and alcohol products.[14] Inner city neighborhoods, in particular, are plastered with tobacco billboards portraying beautiful young smokers engaged in glamorous activities and lifestyles. Studies reveal that the intensity of cigarette billboard advertising in some states is two to three times greater in African-American neighborhoods than in white neighborhoods. These billboards which can be found next to homes, schools, churches, shopping centers, and stadiums and along rural, as well as inner city, streets expose children over and over again to pro tobacco messages, giving young people the impression that smoking is the social norm in this country.

Increasingly, tobacco companies are marketing their products through promotional activities likely to appeal to youth, such as the sponsorship of sporting and musical events. The sponsorship of these events makes tobacco highly visible to youth and strengthens the association between cigarettes and athletic ability, artistic expression, entertainment, glamour,

[13] U.S. Department of Health and Human Services, Changes in the Cigarette Brand Preferences of Adolescent Smokers - United States 1989-1993, Morbidity and Mortality Weekly Report, Vol. 43, No. 32, Aug. 19, 1994.

[14] Fahey, Alison. "Outdoors Sets Limits," Advertising Age 61:26 (1990) at 57.

and individuality.[15] Youth-oriented sports equipment, camping gear, boxer shorts, caps, and tee shirts, all carrying tobacco logos, are widely available for free, or at minimal cost, to those who smoke enough of a particular brand of cigarettes to collect the necessary coupons to redeem these products. Decked out in these items, kids become walking tobacco advertisements, carrying the industry's message into schoolrooms, playgrounds, parks and other places which would otherwise be off-limits to tobacco advertising.

B. Youth Are Less Likely To Be Concerned About The Dangers

These intense marketing campaigns are particularly effective with young adolescents, for whom peer acceptance holds great importance. Unfortunately, this same audience is the most likely to deny or ignore the proven dangers of tobacco. Adolescents, as a group, are notoriously unconcerned about risks in what they view as the distant future, and are simply unequipped to understand or evaluate the long-term hazards of tobacco. Young smokers are much more likely than adults to underestimate the harmful effects of tobacco use and do not recognize that experimentation with tobacco can quickly lead to addiction. Indeed, it is the inability of youngsters to make informed, mature decisions about potentially hazardous activities that has prompted the states to outlaw the sale to minors of tobacco, alcohol and other dangerous products.

The available evidence demonstrates that young smokers believe that they will be able to avoid the harmful consequences of tobacco use. Although they understand that a lifetime of smoking is dangerous, young people tend to believe that smoking for a few years will not be harmful. Among twelve through eighteen-year-olds in the 1989 Teenage Attitudes and Practices Survey, twenty one percent of teen smokers said they believed that it is safe to

[15] Growing Up Tobacco Free at 112.

smoke for only a year or two.[16] Young people who smoke do not expect to smoke over a lifetime and, in fact, expect to smoke only for a few years. They believe, in short, that they can escape the harmful consequences of an admittedly risky practice. What these youths do not appreciate is the power of nicotine addiction.

Adolescents' failure to appreciate the long-term consequences of the decision to smoke is dramatically demonstrated by the University of Michigan's Monitoring the Future Study. As high school seniors, the subjects were asked "Do you think you will be smoking cigarettes five years from now?" Among respondents who were occasional smokers (less than one cigarette per day), eighty-five percent predicted that they probably or definitely would not be smoking in five years, as did thirty-two percent of those who smoked one pack per day. However, in a follow-up study conducted five to six years later, of those who had smoked one pack per day as seniors, only twelve percent had quit and seventy percent still smoked one pack or more per day. Of those who smoked occasionally as seniors, only fifty-eight percent had quit, while thirty-seven percent had actually increased their cigarette consumption.

C. <u>Minors Have Easy Access To Tobacco</u>

Youth who want to experiment with smoking have easy access to tobacco. Tobacco is sold virtually everywhere -- in gas stations, convenience stores, grocery stores, drug stores, and from vending machines. Despite the fact that every state has laws prohibiting the sale of cigarettes to minors, study after study shows that minors who want to smoke can purchase tobacco from almost any type of retail establishment where they attempt to buy it.

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[16] Allen, Karen, A. Moss, G.A. Giovino, D.R. Shopland, and J. P. Pierce. "Teenage Tobacco Use Data Estimates from the Teenage Attitudes and Practices Survey, United States, 1989." Advance Data No. 224 (1993): 9.

[17] Johnson, Lloyd, P. O'Malley, and J. Buchman. "Monitoring the Future Study." The University of Michigan, Ann Arbor, January 31, 1994.

This easy access has sent a message to youth that the prevention of tobacco use by young people is not important in our society. Although school-based education programs have been developed to discourage children and teenagers from using tobacco, in their daily lives in the "real world," adolescents observe an abundant supply of tobacco, merchants willing to sell to them, enticing advertisements and promotions and little evidence that society in general views underage tobacco use as a real problem or a priority.

Where Children Purchase Tobacco

Understanding how and where minors obtain tobacco is critical to any effort to reduce youth access to tobacco. Despite existing laws, youngsters who smoke are able to purchase cigarettes from every type of retailer. The Secretary of Health and Human Services has estimated that three-fourths of the approximately one million tobacco outlets in the United States sell tobacco to minors, garnering over one billion dollars in sales each year.[18] The University of Michigan's Monitoring the Future Study in 1993 found that seventy-five percent of eighth graders and eighty-nine percent of tenth graders reported that cigarettes would be fairly easy or very easy to get.[19] And they are correct. Nearly all teen smokers have purchased a pack of cigarettes at least once.

Studies show that most minors who smoke purchase their own cigarettes. In a 1990 survey of ninth grade students, conducted as part of the National Cancer Institute's COMMIT trial, sixty-seven percent of current smokers (those who had smoked at least once in the past month) reported that they usually bought their own cigarettes. Regular smokers

[18] U.S. Department of Health and Human Services. "Model Sale of Tobacco Products to Minors Control Act: A Model Law Recommended for Adoption by States or Localities to Prevent the Sale of Tobacco Products to Minors." May 24, 1990; and DiFranza, Joseph R., and, Tye, Joe B. "Who Profits From Tobacco Sales to Children?", Journal of the American Medical Association 263:20 (1990): 2784-2787.

[19] Johnston, L., J. Bachman, and P. O'Malley. "Monitoring the Future Study." Press release. The University of Michigan, Ann Arbor, January 27, 1994.

(defined as smoking daily within the past month) were nearly twice as likely as occasional smokers to report buying their own cigarettes.[20] In a vending machine industry survey, seventy-two percent of teenage smokers reported that they purchased their own cigarettes.[21] In the COMMIT survey, eighty-two percent of ninth grade students said that it would be easy for them to obtain cigarettes.[22]

The accuracy of this perception has been confirmed in numerous trials designed to measure the prevalence of retail sales of tobacco to minors. The Surgeon General recently summarized thirteen studies of over-the-counter sales, noting that the weighted average of the percentage of minors able to purchase tobacco was sixty-seven percent ranging from thirty-two percent to eighty-seven percent. In studies that include vending machine sales, the weighted average of successful purchases was eighty-eight percent ranging from eighty-two percent to one hundred percent.[23] The most prevalent sources of cigarettes for underage buyers are small convenience stores and gas stations, followed by larger stores such as supermarkets.[24] Among the youngest of adolescents, vending machines are a popular source.[25]

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[20] Cummings, K. Michael, Eva Sciandra, Terry F. Pechacek, Mario Orlandi, and William R. Lynn for the COMMIT Research Group. "Where Teenagers Get Their Cigarettes: A Survey of the Purchasing Habits of 13-16 Year Olds in 12 U.S. Communities." Tobacco Control 1 (1992): 264-267. ("Cummings et al.")

[21] Response Research, Inc. Study of Teenage Cigarettes Smoking and Purchase Behavior. For the National Automatic Merchandising Association. Chicago: June/July 1989. ("Response Research")

[22] Cummings, K. Michael, Terry Pechacek, and Donald Shopland. "The Illegal Sale of Cigarettes to U. S. Minors: Estimates by State." American Journal of Public Health 84:2 (1994): 300-302.

[23] 1994 Surgeon General's Report at 249.

[24] Cummings et al. 1992 and Response Research.

[25] Growing Up Tobacco Free at 202.

II. INCREASED LAW ENFORCEMENT EFFORTS

Government, at all levels, has now begun to address the problem of youth access to tobacco seriously. Consequently, we can expect to see much stricter enforcement of laws prohibiting the sale of tobacco to minors in the near future. Historically, some states have been much more active than others. In Florida, for example, a tobacco enforcement staff of the Department of Business Regulations (funded by tobacco vendor licensing fees) conducts compliance checks using underage test shoppers, observes buys and responds to consumer complaints about retailers who sell tobacco to minors. In Vermont, the Department of Liquor Control recently sent signs, posters and license applications to all tobacco retailers in the state. A team of fourteen liquor control inspectors then conducted random, unannounced visits to monitor compliance. Utah, California, Massachusetts, Minnesota, North Dakota, New Jersey and many other states fund local initiatives to reduce youth access as part of broader tobacco control efforts.[26] On the local level, many towns and smaller municipalities and communities conduct their own compliance checks, issue citations, collect funds, and where permitted, suspend a vendor's license for violations.

The Massachusetts Attorney General recently conducted a state-wide investigation to determine the level of compliance with that state's laws prohibiting the sale of tobacco to minors. In more than 200 compliance checks, underage minors (acting under adult supervision and with their parents' permission) were successful at purchasing tobacco in two out of every three attempts. Massachusetts followed up this effort with law enforcement activity and has now entered into several settlement agreements to ensure compliance by its merchants.

Because of new directives from the federal government, tobacco retailers can expect to see a significant increase in state enforcement of youth access laws in the next few

[26] Office of the Inspector General, Youth Access To Tobacco, Dept. of Health and Human Services. Dec. 1992.

years. In 1992, Congress enacted Section 1926 of the Alcohol, Drug Abuse and Mental Administration Reorganization Act (Public Law 102-321), commonly called the "Synar Amendment," which requires states to enact and systematically enforce laws prohibiting the sale of tobacco products to minors. States that fail to actively enforce these laws will gradually lose federal block grant funding for substance abuse prevention and treatment programs. The law provides that states that do not enforce their "no-sales-to-minors" tobacco laws will lose ten percent of their federal grant funds the first year, twenty percent the second year, thirty percent the third year and forty percent in subsequent years. Because these grants are substantial (for example, New York's grant for 1994 was $103,643,000), and because they fund crucial substance abuse programs, states are likely to make an all-out effort to retain them. Because of these high stakes, tobacco retailers can expect to see a dramatic increase in enforcement of no-sales-to-minors tobacco laws at the state level.

III. THE ATTORNEYS GENERAL'S INITIATIVE

The participating Attorneys General, as the chief civil law enforcement officers of their respective states, are very concerned about the illegal sale of tobacco products to minors. An environment in which minors can easily buy tobacco, increases the likelihood that youth will experiment with, and ultimately become addicted to, tobacco. Moreover, young people's respect for the law and public policy is severely damaged in an environment where retailers routinely violate the law and allow youth easy, illegal access to tobacco.

In May 1994, in an effort to address the widespread availability of tobacco products to minors, the Attorneys General of twelve states formed a Working Group to study this problem. Two things became immediately clear to the Working Group. First, the retail community's current efforts to ensure compliance with the laws prohibiting sale of tobacco to minors are inadequate. Second, it is crucial to have tobacco retailers' active voluntary involvement in any overall strategy to reduce the use of tobacco by underage youth in America.

To get a better understanding of what measures retailers already have in place to prevent these illegal sales, the Working Group, after obtaining written submissions from a number of retailers, held a series of meetings with representatives from a cross-section of tobacco retailers. Participating in these meetings were the principal trade associations representing convenience stores, grocery stores, drugstores and mass retailers, as well as nine of the nation's largest retail chains, including representatives from major convenience stores, gas stations, discount retailers and a supermarket chain. The following is a summary of what we learned.

How The Retail Industry Is Currently Addressing The Problem

A. Gas Station Stores

These small stores, which have become a fixture at most of the nation's filling stations, do a land office tobacco business. For many gas stations, cigarettes are the largest source of income after gasoline. In fact, cigarettes represent as much as forty to sixty percent of non-gasoline sales at such stores. Despite this high volume of tobacco business, gas station store operators told us that their industry has long given higher priority to preventing underage alcohol sales than to the prevention of illegal tobacco sales. There are two principal reasons for this. First, society has emphasized the problem of teen drinking, because of the tragedies caused by drinking and driving. Second, stores have given greater attention to the sale of alcohol because of the stores' potential liability if an underage person purchases alcohol and is subsequently involved in a car accident.

Gas station stores rely primarily on their employee training programs to achieve compliance with state laws regarding the sale of age-restricted products. However, the training programs that the Working Group was able to review were minimal in nature. Under these programs only station managers receive extensive training, while new clerks are generally trained on the job. New employees are taught the legal age for the purchase of tobacco and instructed not to sell to people below the legal age, but are given little additional instruction. Typically, new employees are required to sign a form acknowledging that they have received this instruction. These forms underscore the importance of the no-sales-to-minors laws, but to some extent also serve to allow the retailer to attempt to shift responsibility for violations to the individual employees and away from the employer corporation.

Many gas station stores post signs warning that it is illegal to sell tobacco to minors, and some post signs that age identification will be required. In some stores, a chart or legal "time clock" is posted near the cash register to help cashiers determine whether a customer's identification is acceptable. In most cases, however, these charts and time clocks only address the legal drinking age for alcohol and do not show the date of birth required for the lawful purchase of tobacco products.

Because many gas station stores have only one employee on duty at a time, and because robberies are a serious problem, a majority have surveillance cameras focused on the cash registers. Cigarettes are almost always kept behind the cash register counter, some of which are protected by bulletproof glass. These measures are intended for security purposes. However, they also are likely to have some deterrent effect on minors seeking to make purchases.

Although most of the gas station store operators with whom we met have not made the prevention of illegal tobacco sales to minors a high priority, at least two companies have taken extraordinary measures on their own initiative. Because of the public controversy surrounding R.J. Reynold's "Joe Camel" advertising campaign – which many believe has the effect, if not the purpose, of marketing cigarettes to children – two oil companies have directed their store managers to remove all Joe Camel advertising from their stores. In addition, one of these companies has elected not to sell cigarettes that come packaged with special promotional items like hats, T-shirts, mugs or lighters bearing cigarette company logos. Because the law prohibits the sale of tobacco to minors, these companies decided that it was inappropriate for a retailer to display advertising or to sell promotional items that are particularly attractive to youth and may encourage them to break the law.

The smaller of these two companies, faced with what it saw as a worst case scenario -- a workforce composed mostly of young people between the ages of seventeen and twenty, and a very young customer base -- has also implemented a comprehensive self-monitoring system to make sure its employees comply with laws prohibiting the sale of tobacco to minors. This company has directed all area managers to send young "decoy shoppers" into each of their stores, once a month, as a test to see whether employees request age identification before selling tobacco. If an employee complies with the law, he or she is given a reward such as movie tickets, and a letter of commendation. If an employee makes an illegal sale, the area manager sits down with the employee immediately to discuss the problem and issues a written warning. According to the company, these monthly checks, coupled with the immediate follow-up of a reward or disciplinary action, have been extremely effective in reducing illegal tobacco sales to minors. In addition, the company's auditing departments, which oversee large numbers of store operations by region, have two full-time employees who constantly monitor for compliance by conducting random test shoppings. When the company was asked about the expense of this program, the Working Group was told that the cost is not an issue. In the company's view, compliance with the law is simply a necessary cost of doing business. As a result of this two-tiered monitoring system, this company is widely regarded as having an exemplary record for compliance.[27]

[27] 1994 Surgeon General's Report at 254-255.

B. Convenience Stores

Like gas station stores, convenience stores depend heavily on tobacco sales for revenue. Tobacco products typically account for twenty to thirty percent of the sales at these stores. Convenience stores also rely on training to ensure that their employees comply with state laws regarding the sale of age-restricted products -- such as lottery tickets, alcohol, tobacco and adult magazines -- which make up much of a convenience store's stock in trade.

Some large convenience store chains have developed extensive training programs that include classroom sessions, videotapes and self-testing systems. They use these programs to train new employees in their corporate-owned stores, and make the training materials available to franchisees for their employee training. Independently-owned convenience stores can obtain a similar training program from their trade association, the National Association of Convenience Stores.

The most sophisticated and comprehensive training programs the Working Group reviewed include videos that teach employees, how to determine a customer's age, when and how to check for identification, what types of identification to accept, how to recognize false identification, how to handle a customer who tries to make an illegal underage purchase, how to handle second-party sales (in which a person of legal age is clearly making the purchase for a minor), how to handle an abusive customer, and the consequences of making an illegal sale. To complete these training programs, new employees must pass a written test and acknowledge in writing that the law prohibits underage tobacco sales and that they will not sell tobacco to minors. Several stores indicated that an employee who violated this agreement would receive a warning for a first offense and would be terminated for a second.

Historically, these employee training programs emphasized the prevention of illegal alcohol sales to minors. Some chains acknowledged, quite candidly, that they had not focused on tobacco. They said that they had not felt it necessary to emphasize tobacco sales laws in their training materials because there had been so little enforcement of these laws, and because society had not taken as dim a view of teen smoking as it had of underage drinking. The companies we met with assured us this is no longer their view. In fact, many had already begun revising their training materials to give illegal tobacco sales the same emphasis and importance as illegal alcohol sales.

Complying with the law is made more difficult for convenience stores, as it is for gas stations and supermarkets, by their extraordinary rate of employee turnover. In one typical chain, for example, the average cashier spends only eighty-eight days in the position. Because of this very high turnover rate, convenience stores cannot afford to send new employees to lengthy training sessions at outside facilities. Instead, they rely on in-house training programs, often on videotapes. One company is now developing a pilot, interactive, multi-media program on CD-ROM so that soon, any of its stores with a computer will be able to give each of its new employees quality training.

Convenience stores also employ other measures that may help to reduce the likelihood of underage tobacco sales. Many post signs advising the public that it is illegal to sell tobacco products to minors, and that they require proof of age for these purchases. Because of theft problems, most convenience stores keep tobacco products behind the sales counter or in a locked storage area. The fact that minors have to ask for tobacco to make a purchase is also believed to have some deterrent effect on illegal sales.

C. Supermarket Chains

Tobacco sales are only a small part of the business of supermarkets, accounting for less than five percent of their total sales, yet some members of this industry use the most technologically advanced equipment to help ensure that tobacco products are not sold illegally to minors. Almost all supermarkets now use highly sophisticated price scanners at the checkout counter. At least two major national chains have programmed these price scanners so that when a tobacco product is scanned, the register stops scanning, and displays a message prompting the checker to request age identification.

If the customer appears to be unquestionably over the legal age limit (i.e., at least twenty-six or thirty years old), these grocery chains allow their checkers to use an override code to continue scanning the customer's purchases without requesting identification. However, if there is any question as to whether the customer is of legal age, the checker must ask for a photo identification. Some scanner systems simply require the checker to inspect the identification and then enter a code before continuing to scan the customers other purchases. Other systems specifically require the checker to key the customer's birthdate into the register for automatic approval. If the identification indicates that the customer is under the legal age (or if the identification appears to have been tampered with), the sale is rejected and the checker removes the tobacco product from the counter. This is relatively new technology, but the supermarket chains that are using it indicated that it is working without major problems and that it is not expensive to program existing scanners to perform this function.

New supermarket employees also go through training which includes instruction on the sale of tobacco and other age-restricted products. According to the industry representatives with whom we met, an estimated sixty-five to seventy-five percent of workers at their supermarket check-out counters are themselves under the age of eighteen, and the turnover rate is very high. Retailers said that this makes training difficult. Because of the large number of items in the average shopping cart, and the pressure on checkers to serve customers quickly, several supermarket chains have determined that a point-of-sale reminder to check for identification, in the scanner itself, is the best means to ensure compliance with laws setting age restrictions on the purchase of tobacco.

D. **Drugstores**

Although the Working Group did not meet with drugstore owners, we did meet with the National Association of Chain Drug Stores ("NACDS"), a trade association representing 155 chain companies that operate approximately 30,000 retail pharmacies nationwide. Based on the overview they provided, we learned that tobacco sales account for only a small percentage of the drugstore business and that sales have decreased from seven percent of total sales in the mid-1980's to only three and one-half percent of total sales today.

According to NACDS, the typical shopper in a chain drugstore is a thirty-five to sixty year old woman who comes in about twice a month to fill a prescription or to purchase over-the-counter drugs or cosmetics. Tobacco is generally an incidental purchase, which drugstores sell as a convenience to customers, but not to attract them. Accordingly, drugstores do not, as a general rule, advertise cigarettes, use aggressive price promotions or use in-store promotional displays provided by tobacco companies.

Most large chain drugstores train new employees by using videotapes with instructions on the legal age to purchase tobacco, handling customers who get upset when age identification is requested, and acceptable forms of identification. Many chain drugstores also display signs warning customers that the legal age to purchase cigarettes is eighteen and that age identification will be required. Tobacco products are generally kept in the front of the store, either near the cash register or behind the counter. Tobacco is almost never sold in the pharmacy section of the store. Although sixty percent of chain drug stores use cash register scanners, NACDS was not aware of any chains whose scanners are programmed to lock when a tobacco product is scanned.

Tobacco control activists have criticized drugstores for selling tobacco because their primary purpose is to provide health care products. They argue that it is hypocritical for a store to sell cigarettes and smokeless tobacco alongside nicotine patches and other medical devices intended to help people overcome nicotine addiction. Despite this criticism, and although in isolated instances some individual drug stores have opted to go tobacco free, the Working Group is unaware of any widespread move by drugstores in this country to stop selling tobacco.

E. **Discount Stores**

The Working Group also met with representatives of three of the nation's largest discount retail chains and their trade association, the International Mass Retail Association. These discount retailers told us that tobacco accounts for very little of their business, comprising less than one percent of their total sales. They indicated that they sell cigarettes primarily as a convenience to their customers, who they told us generally do not come to their stores for the purpose of buying cigarettes, but who might shop elsewhere if cigarettes were not available.

Discount chains told us that they do not believe that illegal tobacco sales to minors are a major problem in their sector of retailing, because only a small percentage of their customers are under the age of eighteen, and because almost all of their cigarette sales are by the carton. They believe that minors generally cannot afford to buy cigarettes by the carton, opting instead for single packs. Despite these assertions, compliance checks around the country demonstrate that discount stores are just as likely to sell cigarettes to an underage decoy as are other types of stores.

Although discount store employees at the companies we met with do receive some training in the sale of age-restricted products, these programs put no special emphasis on tobacco. The employees are not required to sign acknowledgments that they understand and will comply with the laws against tobacco sales to minors. Nor do these discount stores post signs advising that it is illegal to sell tobacco to minors or that they require age identification, unless such signs are required by law. Although most of the major discount stores use electronic scanners, the Working Group is aware of only one chain that is testing the use of scanners programmed to instruct the cashier to request age identification whenever a tobacco product is scanned.

F. Tobacco Industry Voluntary Compliance Programs

In late 1990, the Tobacco Institute introduced the "It's the Law" program, an educational campaign to help curb youth access to cigarettes through the distribution of window decals, in-store signs and educational materials to merchants. Some versions of these materials state "It's the law. You must be over 18 to buy tobacco products."[28] Some critics have expressed concern that this wording seems to suggest that an underage purchaser will have committed a crime (whereas, in most states, the law applies to sellers, and not the buyers), and that this language may discourage parents from reporting unlawful sales. In a study conducted in Massachusetts, to assess compliance with that state's laws, underage shoppers were sent into seven businesses participating in the "It's the Law" program. Six of the merchants (eighty-six percent) made illegal sales, approximately the same rate of violation as among non-participating merchants.[29]

R.J. Reynolds (RJR) offers a similar program called "Support the Law, It Works." This program includes in-store signs, stickers, brochures and other materials, as well as television public service announcements. In 1994, RJR also became the sponsor of a program offered by the U.S. Junior Chamber of Commerce. This program, called "JAYS," or "Jaycees Against Youth Smoking," is a community service program to encourage retailers to support tobacco sales-to-minors laws. It incorporates many of the materials developed by RJR for the

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[28] Other versions of these materials state, "It's the Law. We do not sell tobacco products to persons under 18."

[29] DiFranza, J.R., and Brown, L.J. "The Tobacco Institute's "It's the law" campaign: has it halted illegal sales of tobacco to children?." American Journal of Public Health 1992; 82(9):1271-1272.

"Support the Law" program. The Working Group has not identified any studies of the effectiveness of these programs. We are concerned about their effectiveness because these programs are missing what many believe is the most essential component of any effort to prevent illegal tobacco sales to minors -- compliance checks.

In general, the Working Group supports programs for voluntary compliance, but believes they must be designed and implemented carefully. Nothing in such a program should be designed or calculated to minimize the seller's responsibility for compliance with the law, or to shift attention or emphasis away from that responsibility and onto the underage customer. Most importantly, the posting of a few signs should never become a substitute for effective oversight of a retailer's workforce. The most meaningful test of the effectiveness of any voluntary compliance program, the Working Group believes, is whether it significantly reduces the rate of illegal sales by that business. Participation in a voluntary compliance program does not, by itself, satisfy a business's responsibilities under the law, unless it in fact prevents unlawful sales, and businesses should be careful not to assume that, simply because they participate in one of these programs, they have met their legal obligations.

G. Distribution Subsidies

Although the tobacco industry purports to be concerned about illegal tobacco sales to minors, tobacco companies spend approximately one and a half billion dollars each year in subsidies to retailers to ensure that a wide variety of tobacco products are openly displayed and kept in easy reach of all consumers, including minors.[10] Tobacco companies offer financial rewards to retailers who are willing to stock several different brands of cigarettes, even those with little market demand. In addition, retailers are offered financial incentives to place certain tobacco products in highly visible self-service displays, either at the checkout counter or in free

[10] Federal Trade Commission. Report to Congress for 1992 Pursuant to the Federal Cigarette Labeling and Advertising Act, Washington, D.C., 1994.

standing displays.[31] Self-service displays make it much easier for minors to purchase or pilfer tobacco. The Working Group believes that, if the tobacco industry is sincere in its desire to keep tobacco products out the hands of minors, it should offer financial incentives to retailers who keep tobacco behind the counter or in other controlled locations, instead of those who make tobacco readily available to youth by keeping it out in open displays.

IV. RECOMMENDATIONS FOR RESPONSIBLE RETAILING

Despite the efforts by the retail industry outlined above, the overwhelming evidence shows that, when presented with an underage customer attempting to purchase cigarettes, most retailers are as likely to violate the law as they are to comply with it.[32] The Attorneys General believe that this does not constitute adequate compliance with the law. Society should not tolerate this level of disregard for any important law, and certainly not open disregard for laws that so strongly affect the well-being of future generations. Retailers have a duty to tackle this problem affirmatively, not simply because the law requires it, but because they are in the best position to reduce minors' access to tobacco. To be effective, retailers must do more to prevent illegal underage sales. If they cannot, or will not, control these sales through their own initiative, society will inevitably impose stronger measures, through legislation or litigation, to insure that they do.

Fortunately, based on our meetings with major retailers and trade associations, the Working Group is convinced that many in the retailing community are willing to do more to

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[31] Comerford, Anthony, M.A. and Slade, John, M.D. "Selling Cigarettes: A Salesman's Perspective". Prepared for Institute of Medicine, National Academy of Sciences, Washington, D.C. 1994.

[32] See, e.g., Center for Disease Control, Morbidity and Mortality Weekly Report, February 26, 1993, Vol. 42, 125 (describing studies in Missouri and Texas where attempted illegal purchasers were successful forty-six percent and sixty-two percent of the time, respectively). See also Report on the Sale of Tobacco to Minors in Massachusetts, Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, April, 1994, reporting that in sixty-four percent of some 248 attempted purchases, Massachusetts retailers sold tobacco illegally to test shoppers between the ages of thirteen and seventeen.

address this problem. Many are beginning to re-examine the issue, and some are implementing creative approaches to better comply with the law. But much more needs to be done. The Working Group believes that responsible retailers can significantly reduce illegal sales by implementing the following policies.

I. USE SECRET SHOPPERS TO MONITOR EMPLOYEE COMPLIANCE WITH THE LAW, AND REWARD EMPLOYEES WHO COMPLY

At least one company told us, and we agree, that the most effective thing a retailer can do to prevent illegal tobacco sales to minors is to use a "secret shopper" program to test its stores for compliance. Secret shoppers are employees who visit company stores, posing as customers, to assess how the store is maintained and managed and to test for employee honesty. Almost every company we met with already uses secret shoppers as a routine part of its business, to monitor everything from product placement to restroom cleanliness. While several companies had used their secret shoppers to monitor their stores' compliance with laws prohibiting alcohol sales to minors, only one had used these programs to test for illegal tobacco sales.

Retailers acknowledged that simply notifying employees that a company uses a secret shopper system is itself a powerful deterrent to unlawful employee conduct. If workers know their employers are using young undercover decoy shoppers to test whether they are selling tobacco to underage buyers, it is far less likely that such sales will take place. In addition, if attractive rewards are offered to employees who comply with the law and swift disciplinary measures are taken whenever there is a violation, word will quickly spread that the company takes the problem of illegal cigarette sales to minors seriously. Although the Working Group believes that state and local law enforcement efforts must also be increased, the private sector is in the best position to actively monitor and control its own compliance with the law.

Moreover, the Working Group believes these programs will have an additional beneficial effect, in that they will educate senior managers about the widespread nature of the violations of law occurring today. The Working Group was struck by retailers' lack of awareness of the problem, and by their frequent insistence that, whatever the situation in others' facilities, violations in their own stores were uncommon. Despite the apparent sincerity of these beliefs, overwhelming evidence has shown that violations are common, if not the norm, in most stores. In-house secret shopper programs will help company executives face the facts about their own company's conduct -- and that, the Working Group believes, may be the essential first step toward effective change.

2. PROGRAM EXISTING ELECTRONIC PRICE SCANNERS WITH TOBACCO "LOCKS" TO HELP CONTROL TOBACCO SALES

The concept of programming electronic price scanners to interrupt the purchase of tobacco products, by prompting sales clerks to check the customer's identification, and requiring the cashier to key in an override code to proceed with the customer's other purchases, was the most innovative approach to preventing underage tobacco sales that the Working Group encountered in its review. Some scanners now being used for this purpose offer an added benefit, in that, when they prompt a cashier to check identification, the scanners also display the last acceptable date of birth (i.e., the date eighteen years prior to the date of the transaction). This spares cashiers the burden of making frequent and ever-changing mental calculations while under pressure to serve a line of impatient customers. Some of these scanners have also been programmed to require the cashier to key in the customer's birthdate or some other data to confirm that the cashier did, in fact, examine identification.

These innovations demonstrate that the private sector has the resources and creativity to develop effective new techniques for reducing tobacco sales to minors. The Working Group strongly recommends that retailers who use electronic scanners program these machines to "lock" when a tobacco product is scanned and to prompt the cashier to check for identification. This enhancement significantly improves a retailer's ability to prevent illegal sales. Because many cashiers are teenagers themselves, they are often reluctant to ask their peers for age identification. By requiring them to do so, the scanner not only serves as a reminder, but actually removes some of the burden on a young employee who must request identification from, or refuse a tobacco sale to, one of his or her peers.

3. EXPEDITE THE USE OF PRICE SCANNER SYSTEMS WITH TOBACCO "LOCKS"

Many companies indicated that they were considering switching from their current cash register systems to price scanning devices. Because scanners with tobacco "locks" offer an excellent means of reducing illegal tobacco sales, the Working Group recommends that these companies expedite their plans to switch to scanner systems and only consider scanners that can be programmed to cue for age identification whenever tobacco products are scanned.

4. DEVELOP EFFECTIVE TRAINING ON AVOIDING ILLEGAL TOBACCO SALES TO MINORS, AND GIVE THIS TRAINING EQUAL EMPHASIS WITH THAT GIVEN TO TRAINING ON AVOIDING ILLEGAL ALCOHOL SALES

Underage tobacco sales have been neglected in most retail training programs regarding age-restricted products. Although the majority of training programs include detailed instruction on preventing illegal alcohol sales to minors, illegal tobacco sales are often mentioned only as an aside, and sometimes not at all. Tobacco retailers should immediately redesign or develop training programs that emphasize the importance of compliance with laws prohibiting tobacco sales to minors. At a minimum, these training programs should include:

- a clear definition of what constitutes a tobacco product (including smokeless tobacco)
- the legal age for purchase
- instructions on when and how to ask for identification

- age identification checks for any customer who appears to be less than twenty six years old
- instruction on the acceptable forms of identification
- written materials that include samples of acceptable identification
- instruction on how to detect false identification
- instructions on when and how to refuse a sale
- instructions on how to refuse second-party sales (where an adult clearly purchases for a minor)
- the consequences of making an illegal sale

After completing training, all employees should be tested to ensure they understand what they have been taught. They should also be required to sign an acknowledgment that they understand that tobacco sales to minors are illegal, that they will comply with these laws and that the company may fire them if they fail to comply.

5. HOLD STORE MANAGERS ACCOUNTABLE FOR THEIR STORES' COMPLIANCE WITH THE LAW

Mystery shoppers, scanners with tobacco locks and training programs are all geared toward improving compliance by cashiers and sales clerks. However, many existing state laws hold only the individual involved in the sale, and not the store manager or corporation, responsible for illegal tobacco sales to minors. The Working Group believes that, in order to really improve compliance, retailers need to make their store and corporate managers accountable for the company's compliance with state laws banning tobacco sales to minors. Managers who know that they will be held responsible for violations, and who risk losing their jobs if tobacco is illegally sold to minors in their stores, will do a much better job training and supervising their employees with respect to this issue.

6. KEEP TOBACCO PRODUCTS BEHIND THE SALES COUNTER OR IN LOCKED CASES

By keeping tobacco products off the open shelves, retailers can discourage underage buyers. Many retailers told us that, to cut down on theft problems, they already keep cartons of cigarettes behind the counter and single packages of cigarettes at the register. By relocating tobacco products so that minors do not have easy access to them, retailers can reduce the possibility of illegal sales as well as shoplifting. Very young buyers, in particular, are less likely to shop for tobacco products in stores where they have to call attention to themselves by asking a clerk for the product. Although some retailers told the Working Group that it would be difficult or expensive to place tobacco in locked cases or behind the counters in their stores, many of these same companies are voluntarily doing precisely that when it serves to prevent shoplifting. We believe that compliance with no-sales-to-minors laws is every bit as important as preventing theft, and that tobacco should only be sold from these controlled settings.

The Working Group understands that many retailers are reluctant to put tobacco products behind the counter because they will then lose the substantial fees that tobacco companies pay to have their products prominently displayed on the open shelves. Tobacco companies could play a key role in keeping tobacco out of the hands of minors by offering those same financial incentives to retailers who sell tobacco only from controlled locations.

7. DO NOT SELL SINGLE CIGARETTES EITHER IN OPEN DISPLAYS OR FROM BEHIND THE COUNTER

Despite the federal prohibition on selling tobacco without the required warning label, retailers sometimes remove cigarettes from their original packages and sell them individually. These single cigarettes or "loosies" are often kept behind the counter rather than displayed, and are significantly more likely to be sold to minors than to adults. At ten to twenty cents each, single cigarettes can be very attractive to price-sensitive youngsters. Their low cost and easy access may actually encourage children, who might otherwise not have the opportunity, to experiment with tobacco.

The Working Group has been advised that some tobacco companies are now considering packaging single cigarettes in individual wrappers, with the federally-mandated warning, so that they can legally market this product themselves. Regardless of how they are packaged, because of their particular allure for children, the Working Group believes that retailers should not sell single cigarettes at all.

8. POST PROMINENT SIGNS TO REINFORCE THE LAW

During the course of this investigation, the Working Group has had an opportunity to review a wide variety of signs, store displays, buttons and legal time clocks that retailers use to notify the public about age restrictions on tobacco sales. In one focus group study, conducted by a major national convenience store chain, young adult smokers said that, as minors, they avoided shopping for tobacco in stores that posted signs warning that the store checked for age identification. Signs saying "NO ID--NO SALE" were viewed as more effective than those that simply announce that it is against the law to sell tobacco products to persons under eighteen years of age. Some stores also post a "legal time clock," which changes daily and displays the last acceptable date of birth for a legal sale. For example a legal time clock might say:

IF YOU WERE BORN AFTER

JANUARY 1, 1978

**IT IS ILLEGAL TO
SELL TOBACCO TO YOU
IN THIS STATE.**

WE CHECK ID

These legal time clocks, which have been widely used to control illegal alcohol sales, notify minors that is the retailer's policy to check identification. They also make it easier for clerks to determine whether an identification is acceptable. The Working Group believes that these devices should also be used to prevent illegal tobacco sales.

Some jurisdictions already require retailers to display signs disclosing age restrictions on tobacco sales. Some retailers also have their cashiers wear buttons reminding customers, at the point of sale, that tobacco purchases require proper identification. Even without a legal requirement, the Working Group believes that, given the small cost involved in signage, and its potential deterrent effect, all tobacco retailers should prominently post signs notifying the public that they do not sell tobacco products to any one under the legal age and that they require and check age identification.

Focus group studies also show that minors are less likely to attempt to purchase tobacco in stores where there is a surveillance camera behind the cash register. Since many stores already utilize these cameras for security reasons, the Working Group recommends more widespread use to deter illegal tobacco sales. Also, used in conjunction with in-house secret shopper programs, surveillance cameras make it easier for companies to monitor the conduct of their employees and to hold managers responsible for non-compliance.

9. REMOVE CIGARETTE VENDING MACHINES FROM RETAIL STORES

Vending machines provide the best source of cigarettes for very young smokers. In a study commissioned by the vending machine industry, thirteen-year-olds were eleven times more likely to purchase tobacco from vending machines than seventeen-year-olds.[33] Because very young children rely heavily on vending machines as a major source of tobacco products,

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[33] Response Research, Inc., "Study of Teenage Cigarette Smoking and Purchase Behavior" for the National Automatic Merchandising Association. Chicago: June/July 1989.

and because their use of these machines is difficult to police, retail stores should remove cigarette vending machines from their premises and sell tobacco products only from the controlled settings recommended above. At a minimum, such vending machines should require special tokens, that can only be purchased from a store manager, or be programed to operate only if a cashier activates the machine from a remote control switch.

10. REQUIRE PROOF OF AGE, IN THE FORM OF A RELIABLE PHOTOGRAPHIC IDENTIFICATION, FOR ANYONE WHO APPEARS TO BE TWENTY-FIVE OR YOUNGER

The training films used by some of the retailers with whom we met graphically demonstrate how difficult it is to accurately determine the age of a customer. For precisely that reason, many retailers instruct their employees to check the identification of anyone who appears to be younger than twenty-six, or even thirty years old, before selling them tobacco. The Working Group believes that all retailers should follow this model and request identification from every customer who does not appear to be of a "base age," which the Working Group believes should be, at a minimum, twenty-six years old.

Some retailers are very restrictive about the type of identification that they will accept as proof of age, while others will accept any document bearing a purported birthdate. Because of the proliferation of forged identifications, retailers should restrict acceptable identification to those that are the most reliable — primarily government-issued photo identifications such as drivers' licenses, state-issued identification cards, military identification cards and passports. States could make the process of scrutinizing identification easier for retailers by color coding them or otherwise marking drivers licenses to make it easy to distinguish the license of individuals under eighteen or between the ages of eighteen and twenty-one. Employees should also be instructed to check the date of birth closely to make sure that it has not been altered; to check to see if the description on the identification matches the customer; and to examine the photograph to see if it matches the customer or has been tampered with. Guidebooks, which include photographs and descriptions of sample drivers' licenses from each of the fifty states, should also be made available as a reference at the cash register.

11. REMOVE ADVERTISEMENTS, IN-STORE DISPLAYS AND PROMOTIONAL ITEMS THAT ENCOURAGE MINORS TO BUY TOBACCO

At the same time that the states are wrestling with ways to improve their enforcement of laws prohibiting the sale of tobacco to minors, tobacco companies are engaging in multi-million dollar advertising campaigns designed to make smoking particularly attractive to adolescents. Retailers who are sincere in their desire to support laws restricting the sale of tobacco products to minors should not undercut these laws by posting advertisements or offering special promotions that target youth. At least two oil companies have already directed their corporate-owned gas stations to remove these types of advertisements and promotions and the Working Group recommends that others retailers follow their lead. While tobacco companies deny that any of their promotions are designed to appeal to minors, the Working Group believes that retailers, using their own good judgment and common sense, can identify those promotions which have a particular appeal for youth.

12. IN THE ALTERNATIVE, RETAILERS WHO PREFER NOT TO TAKE PROACTIVE STEPS TO PREVENT ILLEGAL SALES SHOULD CONSIDER SIMPLY ELIMINATING TOBACCO FROM THEIR STORES

Some of the retailers with whom we met indicated that, because tobacco comprised only a small part of their business, they are not able to spend resources on improved training or scanner technology designed to decrease illegal sales to minors and are not willing to place the product behind the counter or display age restriction signs unless required to do so by law. The Working Group believes that a retailer who is not able or willing to take the serious steps necessary to improve compliance with the law should consider eliminating tobacco products from its stores altogether.

The Working Group, in particular, recommends that pharmacies give strong consideration to eliminating tobacco from their store inventory. Such a move would send a strong message to youth that tobacco products are incompatible with good health. Dozens of individual drugstore owners in New York, Utah, Washington and other states have opted to go tobacco free on their own initiative. In Michigan a coalition of pharmacists, physicians, a pharmaceutical company and the Department of Health have recently undertaken an effort to discourage pharmacies from selling tobacco (under the banner of the "Tobacco-Free Pharmacy" campaign) and as of October 1993, more than 60 pharmacies were participating in the program.[34] In Minnesota, where the state pharmacists' association has recommended since 1987 that its members discontinue the sale of tobacco, an estimated 100 independent pharmacies have taken tobacco off their shelves. And, in Connecticut, a chain of 40 drugstores operated by the Arrow Corporation have also voluntarily gone tobacco free.

V. LEGISLATIVE RECOMMENDATIONS

State and local governments share some of the responsibility for the ease with which young people can illegally buy tobacco today. Although every state has laws banning the sale of tobacco to minors, many of those laws are weak, and enforcement overall is lax. As mentioned above, legislation adopted by Congress in 1992 requires states to enact and systematically enforce meaningful sales-to-minors laws, or face the loss of substantial federal grant funds. As implementing regulations for this legislation are adopted, states will be re-examining their existing laws and developing improved enforcement strategies.

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[34] U.S. Department of Health and Human Services, "Healthy People 2000: National Health Promotion and Disease Prevention Objectives Update", Dept. of Health and Human Services, October/November 1993.

As this process proceeds. the Working Group believes several principles should guide the design of legislation.

1. LEGISLATURES SHOULD BE WARY OF SOLUTIONS ADVANCED BY THE TOBACCO INDUSTRY

Faced with the prospect that state laws may be strengthened. the tobacco industry's principal trade association. the Tobacco Institute. has initiated a campaign to avert effective reform by enacting its own weaker proposals. designed to give the false appearance of reform without effecting meaningful change. Tobacco companies endorse legislation that makes it illegal to "knowingly" or "intentionally" sell tobacco to minors. Such laws would be violated only if the seller knew, or reasonably should have known, that the purchaser was under eighteen years of age. In practice. these intent requirements operate to relieve stores of liability and to make meaningful enforcement of no-sales-to-minors laws difficult. if not impossible.

In some states. these proposals may be put forward by grocers. convenience store operators or other retailers. without public disclosure of their true origin. In 1994. the Tobacco Institute identified twenty "priority target states" for their legislative campaign, according to one retail trade association.[35] Legislators in all states. and especially in these "target" states. should be alert to such efforts to enact "Trojan horse" legislation that will subvert true reform.

Similarly. the tobacco industry has in the past actively supported legislation to prohibit minors from purchasing or possessing tobacco, as opposed to laws that only prohibit merchants from selling them tobacco. These efforts have been criticized as an effort to deflect responsibility for illegal sales from the tobacco industry and merchants onto children.[36] A few

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[35] Alabama. Arizona. California. Indiana. Kansas. Kentucky. Louisiana. Minnesota. Mississippi. Nebraska. New Jersey. Ohio. Oklahoma. South Carolina. South Dakota. Tennessee. Utah. West Virginia. Wisconsin. and Wyoming.

[36] Carol. J.. "It's a good idea to criminalize purchase and possession of tobacco by minors-NOT!". Tobacco Control 1992; 1(4): 296-7.

states have adopted such laws. The Working Group takes no position on the merits of such an approach, but agrees strongly with the Surgeon General that "[l]aws prohibiting minors' possession of tobacco should be addressed only after effective regulation and enforcement at the retail level are in place.[37]

2. STATE LEGISLATION SHOULD NOT PRE-EMPT LOCAL ORDINANCES

In many states, initiatives for effective control of illegal tobacco sales have come primarily from the local level, in the form of local ordinances and enforcement campaigns. In some areas, these efforts have been so effective that tobacco interests have worked for passage of state laws for the sole purpose of pre-empting, or overriding, these local initiatives. The Working Group believes it imperative that state laws not pre-empt local ordinances. State legislation should set a "floor" or minimum requirements, while allowing the continued operation of ordinances that create a higher level of public protection.

3. STATE LAWS SHOULD CREATE OR REQUIRE A LICENSING SYSTEM FOR TOBACCO SALES

The central flaw in many states' current laws is that they do not clearly impose any sanction on the stores that sell tobacco to minors. Instead, under many of these laws, penalties for violation are imposed only on the individual sales clerk who makes an illegal sale. In an environment where sales clerks typically spend only a few months on the job anyway, the result of enforcement of these laws is simply the dismissal of the individual clerk, rather than any meaningful change in a store's overall practices. Because of this reality, local authorities are discouraged from devoting themselves to aggressive enforcement. It is not surprising, therefore, that the legislative efforts of tobacco interests are devoted in large part to ensuring

[37] 1994 Surgeon General's Report at 254.

that any new legislation continues to impose sanctions only on individual employees, and not on the store.

Most states already require the licensing of parties that sell tobacco products.[38] These laws vary widely, however. Most do not provide for revocation of that license as a sanction for unlawful sales to minors, and most do not designate a specific enforcer.[39] The Working Group agrees with the 1990 recommendation of the former Secretary of Health and Human Services, Dr. Louis Sullivan, that states should use a licensing system similar to those used for alcoholic beverage sales to ensure compliance with tobacco no-sales-to-minors laws.[40]

To be effective and meaningful, laws must hold the store accountable for these sales, just as stores are held accountable for illegal sales of alcohol, or for failure to comply with labor laws, environmental laws, zoning laws, health and safety codes, and other laws. In fact, laws that leave stores free of consequences for their illegal tobacco sales are an anomaly. In virtually every other area, society holds businesses accountable for their employees' compliance with law. The Working Group recommends legislation that requires the store to obtain a license to sell tobacco, and uses the licensing system to hold the store accountable for its sales practices.

In some states it may be appropriate for this licensing system to be run by the state. However, where local ordinances are already in place, and where commitment to enforcement is greatest at the local level, it may be more appropriate for the state law to require

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[38] One compilation counts forty-six states (all but Iowa, Kentucky, South Dakota and West Virginia) with such requirements. Coalition on Smoking or Health, State Legislated Actions on Tobacco Issues(1992) at ii. Another publication counts thirty-one. U.S. Department of Health and Human Services, Youth Access to Cigarettes, Pub. No. OEI-02-00880 (1992).

[39] Id.

[40] Public Health Service. Model Sales of Tobacco Products to Minors Control Act. U.S. Department of Health and Human Services, May 24, 1990.

local licensing systems instead and to specify the minimum essential elements of such a system, while allowing cities or counties to enact stronger protection.

In either event, it is essential that primary responsibility for enforcement be placed in a designated agency, and that this agency have professional training, experience with tough enforcement and a demonstrated record of competence.

4. THE LICENSING AND ENFORCEMENT SYSTEM SHOULD BE SELF-SUPPORTING

Licensing fees should be set at a level sufficient to support an effective compliance program. To date, law enforcement efforts have been most effective in states and localities where there is dedicated funding for enforcement efforts. Licensing will not work unless it is financially self-supporting, at a level sufficient to allow proactive enforcement. In many communities today, annual licensing fees ranging from $150 to $300 have proven sufficient for some degree of affirmative enforcement.

5. THE LICENSING SYSTEM SHOULD USE GRADUATED FINES, WITH LICENSE SUSPENSION FOR REPEAT OFFENSES

The Working Group believes that, to be workable, a licensing law must impose sanctions that are reasonable and realistic. In part, this means that sanctions must be sufficiently large to get the licensee's attention. In other words, a fine or administrative penalty should be large enough that it will prompt a change in the violator's practices, and not simply be paid as a routine "cost of doing business."

At some point, however, the Working Group believes that more onerous sanctions would be counter-productive. Experience has shown that where the prescribed penalty is too harsh -- e.g., incarceration or permanent license revocation for a first offense -- enforcement authorities are reluctant to enforce the law, and licensing authorities and juries are unwilling to impose the sanctions.

For this reason, the Working Group believes that a licensing law should prescribe a graduated set of sanctions, with administrative penalties or fines set in increasing amounts for the first, and perhaps second or third, violations, to be followed by license suspensions for increasing periods of time. We believe that this approach strikes an appropriate balance that will discourage violations, without being so harsh as to discourage decision makers from imposing the sanctions.

6. THE LAW SHOULD INCLUDE POSITIVE INCENTIVES FOR RESPONSIBLE RETAILING

We believe that a licensing law should offer retailers tangible incentives for adopting responsible retailing practices such as those set out earlier in this report. More specifically, the law should reward retailers who endorse and put into practice the twelve retailing principles proposed above.

This incentive could take any of several forms. For example, a retailer who implemented these practices might be subject to a reduced schedule of sanctions, on the theory that where a retailer makes a concerted effort to ensure its employees' compliance, this mitigates its culpability. Or, perhaps more appropriately, such a retailer could be charged a reduced licensing fee, under the theory that a business that genuinely implements these practices will have fewer violations and will therefore impose fewer costs on the compliance system.

There may be other, equally effective, ways to build such an incentive into a licensing system. Whatever form incentives might take, the law should reward those businesses that truly take responsibility for their conduct, and should enlist their active involvement in the effort for improved compliance.

7. THE LAW SHOULD REQUIRE PERIODIC COMPLIANCE CHECKS

The only sure way to know whether the law is being complied with is to check. Any licensing law must require the licensing authority to conduct, or to arrange for, periodic compliance checks at every licensed store. These checks should be conducted, at a minimum, two or three times annually. They should be conducted by teenage testers, acting under adult supervision.

8. THE LAW SHOULD NOT LIMIT WHO CAN CONDUCT COMPLIANCE TESTS

The most effective voices for strengthening America's ineffective tobacco no-sales-to-minors laws have come from non-profit public health and public advocacy groups. In scores of communities across the country, these groups have organized carefully controlled compliance checks of local stores, either to focus public attention on the level of non-compliance, or to encourage more effective enforcement. Embarrassed by the effectiveness of these efforts, tobacco interests have sought to include in any legislative reforms restrictions on the opportunities for these groups to check stores' compliance. Thus, tobacco interests may propose that a legislature prohibit any testing effort except those conducted by, or under the direct supervision of, law enforcement offices.

The Working Group opposes any such restrictions. First, in many jurisdictions, compliance tests can and should be organized by officials who are not law enforcement officers -- licensing inspectors, for example, or public health officials. In other instances, licensing authorities may find it preferable to contract with private groups to conduct tests, under carefully controlled conditions. These are decisions best left to the licensing authority. Finally, there may be cases where private groups may conduct testing on their own initiative and offer their evidence to licensing authorities, as private complainants. If such private complaints are based on reliable evidence, there is no reason to arbitrarily exclude them from consideration. In any of these circumstances, the rights of the licensee will be better protected by ensuring due process in the hearing that precedes any license suspension, rather than by arbitrarily prohibiting certain people from performing the testing.

9. STATE LAWS SHOULD LIMIT YOUTH ACCESS TO TOBACCO BY RESTRICTING VENDING MACHINE SALES AND PROHIBITING FREE SAMPLING

Minors rely heavily on vending machines as a major source of tobacco. These machines, which are located in restaurants, bowling alleys, movie theaters and many other places likely to be frequented by children, provide easy access to tobacco for minors. For young children, vending machines also provide a much less intimidating method of purchase than over-the-counter sales. And, for good reason. Studies show that children as young as thirteen are almost always successful when they attempt to purchase tobacco from vending machines.

The Working Group believes that state wide restrictions on tobacco vending machines are essential to reducing youth access to tobacco. Such measures are also widely supported by the public. One American Cancer Society study shows that a ban on cigarette vending machines is the most popular type of smoking restriction among American voters. Twenty-one states have already adopted laws restricting or eliminating tobacco vending machines and the Working Group recommends that the remaining states seriously consider taking similar action.

The Working Group also recommends that state laws prohibit the distribution of free tobacco products in public places or through the mail. Free sampling has become a very popular method of cigarette and smokeless tobacco promotion. Such sampling encourages experimentation by providing minors with a risk-free and cost-free opportunity to experiment with tobacco. Although many states prohibit distributing free samples to minors, such laws are almost impossible to monitor or enforce. The best way to ensure that free samples of tobacco products do not find their way into the hands of minors is to prohibit free sampling altogether.

10. STATE LAWS SHOULD REQUIRE DRIVER'S LICENSES TO BE DESIGNED TO MAKE AGE IDENTIFICATION EASY

Retailers repeatedly told us that compliance with no-sale-to-minors tobacco laws is complicated by the difficulty they have training employees to quickly recognize acceptable identification for tobacco and alcohol purchases. States could make this process easier by issuing driver's licenses which display a distinctive background color, colored stripe or other distinguishing feature for people who are between the ages of sixteen and eighteen and for people who are between the ages of eighteen and twenty-one. Some states (California and Kansas, for example) have already implemented such measures. If cashiers simply have to check a license for a distinctive color stripe, the age identification process will be quicker and compliance will improve.

CONCLUSION

The Working Group believes that, by taking the proactive steps set out in this report, retailers and state legislatures can significantly limit minors' access to tobacco products and thereby substantially reduce tobacco use by young people in America.

cc: SRP

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March 5, 1996

Region 9 Board of Education
215 Center Road
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Re: Student Smoking Policy at Joel Barlow High School

Dear Members of the Board of Education:

I read with interest the editorial in the January 28, 1996 Danbury News Times, concerning proposals being considered by the Board of Education to allow cigarette smoking by students at Joel Barlow High School.

I have great concern about tobacco use by teenagers, and have actively worked to reduce teen smoking. It is this concern that prompts me to write this letter, strongly opposing any policy which permits students to smoke on school property.

Smoking is an addiction that is typically initiated during the teenage years or not at all. More than 80% of daily adult smokers began smoking before they could legally purchase cigarettes. Each and every day, three thousand more children begin smoking -- a process that results in over a million new underage, addicted smokers in the United States each year. One quarter of these new young smokers will eventually be among the more than four hundred thousand Americans who die of tobacco related illnesses each year.

While tobacco use is extremely dangerous for everyone, young users face special risks. The earlier a person begins to use tobacco, the more difficult it is to quit. According to the Surgeon General, 20 million Americans try to quit smoking each year, but only 3% have any long term success. Early adolescent users are more likely to remain smokers for the rest of their lives, more likely to smoke heavily, and more likely to die prematurely than those who began smoking at a later age. Tobacco is also a gateway drug. For example, children who smoke are 19 times more likely to use cocaine than non-smokers.

Perhaps the most distressing statistic is this one: unlike adolescent use of alcohol and other drugs, adolescent smoking behavior has not declined since the early 1980s, and some studies show an increase in underage smoking. Cigarettes now kill more Americans than AIDS, alcohol, car accidents, murders, suicides, drugs, and fires combined. Unless the trend toward increased tobacco use by our children is reversed, we will not change this terrible reality.

I strongly encourage you to adopt policies which would prohibit all student smoking on school grounds. In my view, educators cannot responsibly adopt policies which approve and promote the development of a destructive life long addiction at the very age when people are at greatest risk to become addicted. In 1991, the tobacco industry spent over 4.6 billion dollars advertising and promoting tobacco products. Much of this advertising appeals directly to children. Our school boards should not assist the tobacco industry's efforts to attract children to smoking by sanctioning and approving the use of tobacco products by young people.

As a major law enforcement officer of our state, I am deeply concerned about the message sent to young people about compliance with the law when our school boards allow them to smoke at school. It is illegal for minors to buy or steal cigarettes, and it is illegal for anyone to sell, give or deliver cigarettes to minors. Therefore, when the school board allows smoking on campus by students under the age of eighteen, the school board is approving the student's use on school grounds of a product which the student could have acquired only through violation of the criminal laws. These laws reflect the public policy that minors, who have not developed the experience and maturity necessary to make informed judgments about using a highly addictive and hazardous substance, should not be allowed to acquire that substance. I have heard those who favor student smoking point out that we do not have a law which expressly makes it illegal for minors to smoke. In my view, it is inexcusable for educators to rationalize violations of the law and public policy by saying that it is not illegal for minors to smoke.

I encourage you to look to the experience of other school districts that have experimented with policies allowing students to smoke in designated areas. Many of these policies were prompted by a concern for students who illegally smoke in bathrooms, thereby exposing other students and faculty to secondhand smoke. When the school board responds to students who violate the rules which prohibit smoking in the bathrooms by creating a designated smoking area for the students, a dangerous message is sent to these students. This message is that those who engage in prohibited activity (smoking on school grounds) which puts others at risk will be rewarded when the authorities change the rules to allow this activity. Instead of fostering respect for and compliance with the law, this policy sends the message that "crime pays." Furthermore, many school districts experimenting with allowing designated smoking areas have found that these policies have not reduced illegal smoking in bathrooms.

I have also heard permissive smoking policies defended by the correct observation that some students are addicted to cigarettes and have difficulty making it through the day without a smoke. There is no question that nicotine is highly addictive and that many young smokers have become addicted. However, it is far more responsible for our schools to offer tobacco education and legitimate medical cessation programs to these students, than it is to simply sanction and promote the continuing growth of this addiction.

In summary, I believe that as a matter of law enforcement and public health, any school board policy which approves of and promotes student smoking on campus is totally unsupportable. Therefore, I strongly urge you to adopt a no smoking policy for students in your school district.

I would welcome the opportunity to discuss these issues further at your convenience. Please feel free to contact me at any time to discuss this issue which is of great concern to me.

Very truly yours,

Richard Blumenthal
Attorney General

RB:SRP:ac
cc: Danbury News Times