

April 4, 2001

I am grateful for the time and attention that the members of my Committee on Kids and Tobacco devoted to the question of how we could improve on our ability to help children avoid addiction to tobacco and the resulting sickness or premature death. The members' names and affiliations are listed in the Appendix to this report.

Several recommendations in this report have broad support on the Committee. But we did not strive for a false consensus on any of the issues. The text and recommendations in this report are mine.

I want to extend a special note of thanks to the young people -- some still in grade school -- who took the time to tell us about their own efforts to help other children steer a course clear of tobacco. Today, in every part of Oregon, young men and women are giving generously of their time in a myriad of creative projects aimed at helping their classmates. In the end, the fundamental challenge for adult policymakers is whether we can match, and how we can best support, the enthusiasm and commitment of the youngest warriors in the fight against tobacco.

Sincerely,

HARDY MYERS  
Attorney General

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## **THE COMMITTEE'S CHARGE**

Cigarettes are addictive and deadly. Nearly all adult smokers began when they were kids, typically by age 16. Most adults want to stop but cannot – as a result, many will die prematurely. Oregonians will pay billions to provide medical care for smokers. Kids obtain cigarettes despite laws making it a crime for minors to possess tobacco and for adults to provide them with it. Communities and responsible retailers have worked to address the problem, yet it persists.

What should be done to reduce this problem?

To answer this question, Attorney General Hardy Myers convened the Attorney General's Committee on Kids and Tobacco in March of 2000. The Committee conducted hearings in Portland, Salem, Eugene, Medford, Pendleton, and Bend. The Committee received testimony from retailers, children as young as fourth grade, adults affected by smoking, health experts, and even a manufacturer of tobacco products.

## **EXECUTIVE SUMMARY OF THE REPORT**

Tobacco is a stubborn foe. Thousands of young Oregonians regularly use tobacco. Defeating tobacco's hold on children in Oregon is not the responsibility of one person, of one part of society, or of the government alone. No single program and no isolated change in policy will unlock its grip.

Comprehensive approaches to tobacco control are demonstrably effective in reducing the number of people who will sicken and die as adults from addictions that they acquired as children. Oregon's comprehensive approach has yielded good results despite inadequate funding. As part of this effort, creative approaches to tobacco control are flowering in local jurisdictions throughout the state. State government should not preempt local lawmaking that addresses tobacco control issues more strongly than state law.

Children acquire tobacco products from adults. We can interdict this avenue of distribution by enlarging local "reward and reminder" programs, enlisting the cooperation of responsible retailers, further restricting point of sale access, and increasing the consequences of violating laws against delivery of tobacco to minors.

Efforts should be made to reinforce our existing broad strategy. Money from the Master Settlement Agreement should be applied first to bring funding for Oregon's comprehensive approach closer to the minimums recommended by the Center for Disease Control. Schools should be completely tobacco-free. Cessation programs specifically aimed at youth should be made available upon demand.

## HOW MANY KIDS USE TOBACCO PRODUCTS? HOW OFTEN?

Nationally, many children regularly use tobacco products, and many more report that they have used a tobacco product in the past 30 days. Thousands of Oregon's children light up or chew tobacco products daily.

The American Legacy Foundation<sup>1</sup> and the Center for Disease Control (CDC) recently reported on cigarette smoking among youth.<sup>2</sup> Nearly two-thirds of high school students and nearly one-third of middle school students surveyed in 1999 reported having had at least a puff or two of a cigarette during their lifetimes. Current usage, as measured by students who reported smoking on 20 or more days in the past month, is 2.2% for middle school students and 13.2% in high school.

In Oregon, children use tobacco products at lower rates than the national averages. Even so, the 2000 Youth Risk Behavior Study (YRBS) and Public School Drug Use Surveillance Survey revealed that 3.4% of all sixth graders, 13% of all 8<sup>th</sup> graders and 22% of all 11<sup>th</sup> graders had smoked at least one cigarette in the past 30 days.<sup>3</sup> Although cigarette usage did not vary significantly by region, the number of high school students who reported using smokeless tobacco in the past 30 days did vary. The 1999 Oregon Youth Risk Behavior Survey reported that 16% of 11<sup>th</sup> graders surveyed in Eastern/Central Oregon reported having used smokeless tobacco at least once in the past 30 days. In contrast, 7% of 11<sup>th</sup> graders in the Portland Tri-County area had used smokeless tobacco in the past 30 days.

**The number of kids who regularly smoke exceeds the seating capacity of Autzen Stadium.**

Many young Oregonians regularly use tobacco products. In 2000, an estimated 50,000 children in grades 6 – 12 were regular smokers. Approximately 1600 of these smokers were sixth graders. The number of smokers increases by grade to approximately 12,000 12<sup>th</sup> graders.<sup>4</sup>

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<sup>1</sup> The American Legacy Foundation is a 501(c)(3) organization formed and funded by the Master Settlement Agreement (MSA) negotiated by state Attorneys General in November 1998.

<sup>2</sup> *Legacy First Look Report*, American Legacy Foundation (June 2000); Centers for Disease Control and Prevention, *Tobacco Use Among Middle and High School Students – United States, 1999*, Morbidity and Mortality Weekly Report 49(3):49-53.

<sup>3</sup> Tobacco Prevention and Education Program, Oregon Health Division, *Oregon Tobacco Facts*, April, 1999. Available online at <http://www.ohd.hr.state.or.us/tobacco/facts99/yuse.htm> (Viewed Thursday, November 30, 2000).

<sup>4</sup> 1996 and 2000 Oregon Public School Drug Use Survey and 2000 Youth Risk Behavior Study.

## HOW DO CHILDREN GET TOBACCO PRODUCTS?

There is no mystery about the answer to this question. Testimony presented to the Committee suggests that parents sometimes give tobacco to children or make it accessible to them. Other adults buy the products for their younger friends or relatives – or even at the request of a complete stranger. Adult clerks and careless or uncaring retailers sell it to kids. Some children steal tobacco products from adult retailers use self-service displays or who do not adequately monitor tobacco displays. But whether the product is given to a child, sold to a child, or shoplifted by a child, *every* case of a minor in possession of tobacco is ultimately traceable to the combination of the child's act with an adult choice. The problem of youth access thus can be viewed in part as a problem of adult choice.

### BY PURCHASING FROM STORES

In Oregon, youths have very little difficulty finding an adult retailer who will sell them cigarettes.

In a 1999 survey of approximately 35,000 children, 37% of smokers between the ages of 14 and 17 had purchased tobacco in the 30 days before they were surveyed. Sixty percent of the children surveyed who were between the ages of 14 and 17 reported that they had successfully purchased cigarettes *every time they tried*.<sup>5</sup>

Oregon and all other states conduct undercover checks of randomly selected retail establishments to measure compliance with underage sales laws. These inspections suggest that about a fifth of Oregon's retailers will sometimes sell tobacco to minors. In 1995/1996, 39% of the retailers checked were willing to sell tobacco products to minors. 23.2 percent of Oregon retailers checked in 1999/2000 were willing to sell tobacco to minors.<sup>6</sup>

Students repeatedly told the Committee that retail clerks sold them cigarettes *even after* the students provided clerks with identification showing the minor's true age. These sales took place even though clerks who knowingly sell any tobacco product to a person under 18 years of age

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<sup>5</sup> 1999 Youth Risk Behavior Study.

<sup>6</sup> Oregon noncompliance rates from Synar Inspections by year and percentage of sales to minors: 1994/1995(38.9%); 1995/1996(39.3%); 1996/1997(23.6%); 1997/1998(28.7%); 1998/1999(18.3%); 1999/2000(23.2%).

commits a criminal violation punishable by a fine of not less than \$100 nor more than \$500.<sup>7</sup>

The Committee heard testimony from retailers that they would take employment disciplinary action, including termination, against retail clerks who violate Oregon's prohibition on delivery of tobacco products to minors. A member of the committee who represents an association of grocery retailers reported that four companies who account collectively for 86% of the retail grocery market in Oregon have policies that permit discharge of employees who make even one sale to a minor. In addition, some stores conduct their own "sting" operations to test compliance with law and with store policy. The only tobacco manufacturer to testify reported that it places a high priority on teaching clerks about their obligations under the law.

### **WHY DO SALES TO MINORS PERSIST?**

The persistence of sales to minors in the face of existing deterrents can be attributed to three causes. Although minors initiate each purchase, each of the three reasons for their ability to purchase tobacco is ultimately traceable to a choice by an adult.

*First, some adult clerks simply cannot determine the prospective purchaser's age.* In some instances, the press of customers in check-out lines contributes to clerks' making sales to underage buyers. Driver's licenses and other forms of identification issued by the Oregon Department of Transportation include a printed statement that the holder is a minor. But the visual cues provided by the form of warning used on state-issued identification do not seem to be perceived by all clerks in the hustle and bustle of transactions at the point of sale.

*Second, technology that could help prevent inadvertent or careless sales by clerks has not been installed in many establishments.*<sup>8</sup> For example, systems exist that will freeze or lock the system until the clerk enters the customer's birthday or affirmatively acknowledges that the customer's age has been verified. Stand-alone devices, some costing as much as \$2,000, are available for retailers who do not already have sophisticated point of sale systems. Use of such systems has been deterred by lack of uniform standards for the encoding of data on state driver's licenses, by rapid

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<sup>7</sup> ORS 163.575(3).

<sup>8</sup> Some computer-based point of sale systems can be adapted to scan or read digitized information encoded on identification such as drivers' licenses.

hardware and software advances in point of sale systems, and by acquisition costs.<sup>9</sup>

*Third, to some retailers, the risk and consequence of getting caught selling tobacco to minors is outweighed under current law by the benefits of making such sales.* Testimony received by the Committee suggests that sellers of tobacco products vary in their judgments about this cost-benefit analysis. Some have taken aggressive steps to curb sales to minors simply because it is the right thing to do. But others may persist in sales to minors until they decide that the likely consequence of violating the law makes it uneconomical to do so. One commentator who presented testimony to the committee has previously described the cost-benefit analysis for some retailers as follows:

The benefits of selling tobacco to minors include profits, social reinforcement from young people to whom it is sold, and the avoidance of aversive reactions from customers who are asked for identification. The costs of such sales could include civil and criminal penalties, and disapproval and loss of business from those who oppose such sales. Unfortunately, penalties are seldom imposed and those who might disapprove of sales are typically unaware of them and ill equipped to take action.<sup>10</sup>

Employers are criminally liable for helping their clerks sell to minors only if the employer acted with the intent to promote or facilitate the commission of the crime.<sup>11</sup> Employers whose employees sell cigarettes to minors may also be liable for civil penalties under the state's Unlawful Trade Practices Act.<sup>12</sup>

The Committee did not learn of any instance in which criminal laws or the Unlawful Trade Practices Act had been used in any community to impose consequences on any retailer for the acts of that retailers' employees. Unlike 30 other states and territories, Oregon does not license those who sell tobacco products.

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<sup>9</sup> Tobacco Retailer Responsibility Initiative of the Institute for Health Policy, Heller Graduate School, Brandeis University, *Preventing Teenage Access To Tobacco: A Report To The National Association of Attorneys General*, June (1999).

<sup>10</sup> Anthony Biglan, et al., *Mobilizing Positive Reinforcement To Reduce Youth Access To Tobacco*, *Tobacco Control*, 4:42-18 (1995).

<sup>11</sup> ORS 161.155(2).

<sup>12</sup> ORS 646.605 *et seq.*

Although the Committee learned of many local efforts to test retailer compliance with the law forbidding tobacco sales to minors, retail clerks have very little chance of encountering an undercover shopper. The scant risk of being detected in an underage sale is evident from the fact that only 755 state compliance checks were conducted in 1999/2000 – each involving a single pack of cigarettes -- while millions of cigarettes were distributed in Oregon during the same period.

On the other hand, undercover shoppers operating as part of the state's compliance program or attached to local tobacco control programs are not the only risk clerks run of being detected in a violation of law. As noted above, some retailers have instituted aggressive compliance checks of their own. These include in-store electronic surveillance and secret shopper programs conducted by retailers themselves. The Committee received no data about the extent of retailer-operated compliance programs.

The Committee learned the level of active involvement by law enforcement agencies in tobacco control enforcement efforts varies widely from jurisdiction to jurisdiction. The Mayor of Eugene testified that his city's police do not cite minors for possession of tobacco or conduct retail compliance checks because Eugene has barely enough resources to investigate serious personal and property crimes. On the other hand, the Committee learned that in some areas law enforcement agencies have helped organize tobacco control investigations. The Oregon State Police are directly involved in tobacco control efforts because they have contracted with the Office of Alcohol and Drug Abuse Policy of the Department of Human Services to conduct the state's compliance checks.

Contractual "discipline" imposed on retailers by manufacturers could be another potential cost of selling tobacco products to minors. In May 2000, a representative of Phillip Morris told the committee that Oregon no longer provided his company with the identities of retailers who had failed a Synar compliance check. Since then, the Office of Alcohol and Drug Abuse Policy has instituted a system that will notify manufacturers of the identity of retailers who have been detected making a sale to a minor. Phillip Morris' representatives did not offer the Committee any evidence about the number of times, if any, the manufacturer had imposed any sanction on an Oregon retailer for selling tobacco to a minor.

Payments from tobacco manufacturers can create incentives for retailers to choose self-service tobacco displays. One retailer provided a letter to the Committee in which she described her experience with cigarette company payments for shelf space for their products. According to Rae Ellen Stillings, who manages six retail stores in Central Oregon, the companies “have paid different amounts according to some complex set of rules that it seems very hard to understand.”<sup>13</sup> Ms. Stillings stated that the companies “seem to have required the cigarettes to be available for self-service for the customer in order for them to pay the retailer a shelf payment.” Nevertheless, Ms. Stillings found that the companies would continue to pay subsidies even after placing the products behind the counter if the retailer treated all brands in the same restrictive manner.

**The tobacco companies  
“try to tell you they  
won’t pay . . . when you  
make changes, but they  
do in the end.”**

-- Rae Ellen Stillings

Community, law enforcement, and state authorities contribute to the low risk of apprehension by failing to share information systematically. No system presently exists that allows communities to share the results of community-based compliance checks with other communities. There is no easily accessible central clearinghouse of data about sales to children that includes the identity of the retail establishment.

The Committee received information about the types of retail establishments in which sales to minors have taken place. Data from the 757 state compliance checks conducted in federal fiscal year 1999 – 2000 showed the following rates of noncompliance:

Other	45.5%
Department Store	31.8%
Mini Mart	29.1%
Mini Mart & Gas	28.8%
Drug Store	28.6%
Grocery Store	26.7%
Market	25.5%
Statewide Average	23.2%

<sup>13</sup> Letter of Rae Ellen Stillings, dated September 11, 2000.

## FROM ADULTS

Some minors who smoke told the committee they often got cigarettes from adults. Some witnesses pointed out that 17-year-old minors have 18-year-old classmates who are willing to purchase and distribute cigarettes.

Other minors said they simply asked adults who were entering the store to purchase cigarettes for the minor with money provided by the minor. The practice of asking a passing adult to make the purchase is so common that youths have created a name for it: “shoulder-tapping.” Some evidence suggests that increasing the effectiveness of point of sale restrictions on sales of tobacco to minors will increase the number of incidents in which adults purchase tobacco for children.<sup>14</sup>

Sadly, parents are another source of cigarettes for kids. No parent told the Committee he or she knowingly provided tobacco to his or her child, but all agree there are households in which the adults condone smoking by teenagers. Further, cigarettes left accessible in a household are even more vulnerable to pilfering by addicted children than cigarettes displayed in a self-service display in a store.

Adults who supply tobacco to persons under 18 years of age commit a violation punishable by a fine of not less than \$100 or more than \$600.<sup>15</sup> In contrast, permitting a child to engage in unlawful gambling is a class A misdemeanor punishable by a jail term of up to one year and a potential fine of \$5,000.<sup>16</sup> The owner of an establishment that provides tobacco to minors is not criminally responsible for the acts of the sales staff unless he or she directs the staff to sell tobacco to minors.

Minors who purchase or possess tobacco are also in violation of law. A person under 18 years of age commits an unclassified violation, punishable by a fine of up to \$300, when he or she purchases or attempts to purchase or acquire tobacco products.<sup>17</sup> Once the minor has taken possession of the product, he or she is guilty of the additional violation of possessing

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<sup>14</sup> Tobacco Retailer Responsibility Initiative of the Institute for Health Policy, Heller Graduate School, Brandeis University, *Preventing Teenage Access to Tobacco: A Report to the National Association of Attorneys General*, June (1999).

<sup>15</sup> ORS 163.575(1)(d); ORS 163.575(3); ORS 153.018(2)(a).

<sup>16</sup> ORS 163.575(1)(c); ORS 163.575(2).

<sup>17</sup> ORS 167.401(2); ORS 153.015(1); ORS 153.018(2)(b).

tobacco.<sup>18</sup> Possession of tobacco products is a class D violation, punishable by a maximum fine of \$75.

Purchasing or attempting to purchase tobacco products can have significant consequences for a the minor who is repeatedly caught and convicted. Upon the first conviction, the child may be ordered to participate in a tobacco education program or directed to perform community service. If the minor has twice been apprehended and convicted of attempting to purchase tobacco *by a misrepresentation of his or her age*, the sentencing judge could suspend that the minor’s driving privileges up to one year.<sup>19</sup>

Some jurisdictions have established peer or teen courts that deal with minors who have been caught in possession of tobacco products. In these programs, the youth’s peers serve as jurors who determine the appropriate sentence. If the youth successfully completes the sentence of his or her peers, the conviction is set aside.

#### **FROM VENDING MACHINES**

Oregon limits cigarette vending machines to hotels and motels, adult-only establishments, and certain industrial facilities.<sup>20</sup> No cigarette vending machine is allowed in any other establishment. State law prohibits political subdivisions from enacting stricter limits on the placement of vending machines that “are in any manner accessible to minors.”<sup>21</sup>

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<sup>18</sup> ORS 167.400.

<sup>19</sup> 167.401.

<sup>20</sup> ORS 167.402.

<sup>21</sup> ORS 167.404.

## WHAT ARE THE CONSEQUENCES OF TOBACCO USE BY CHILDREN?

In a word, devastating.

The injurious effects of tobacco may begin in infancy. Dr. Mike Stark, representing the Oregon State Epidemiologist, told the Committee environmental tobacco smoke is a contributory factor in many reported pediatric health problems.

Nearly all adults who regularly smoke began as children. Almost 90 percent of adult smokers had begun smoking as teens.<sup>22</sup> A 1997 study of Oregon adult smokers – the latest data available – showed that adult Oregonians who smoke started in their teens or before just as the national data predict. In the Oregon study, 5.5% of adult smokers started before age 12, 19.8% started between ages 12 and 14, 37.5% between ages 15 and 17, and 19.7% between ages 18 and 20.<sup>23</sup> The United States Surgeon General reported in 1994 that eighty-two percent of smokers begin their habit before age 18.<sup>24</sup>

The fact that children are much more likely to begin smoking than adults parallels the lack of judgment that society expects of minors before maturity.<sup>25</sup> Surveys confirm that young people “often underestimate the dangers of smoking and the youngest among them are the least equipped to exercise good judgment about tobacco . . . . Teenagers also underestimate the addictiveness of tobacco and the difficulty of quitting.”<sup>26</sup>

**“Chicks don’t dig [smoking].”**

- W. Zander, a junior at Newport High

Representatives of the Oregon Health Division told the Committee that there is increasing scientific support for the proposition that addiction may follow from very few exposures to tobacco.<sup>27</sup> Nationally, as many as five million children alive today will die sooner than they otherwise would

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<sup>22</sup> 1997 Behavioral Risk Factor Surveillance Survey.

<sup>23</sup> 1997 Behavioral Risk Factor Surveillance Survey.

<sup>24</sup> U.S. Department of Health and Human Services, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* (1994).

<sup>25</sup> For example, persons under 18 cannot vote and they have restricted driving privileges.

<sup>26</sup> *Supra*, note 24.

<sup>27</sup> Clay Parton, testimony to the Committee.

have from a behavior they began at a much earlier age.<sup>28</sup> Dr. Stark told the Committee the economic costs of smoking-related illnesses in Oregon alone total over \$800 million per year in lost work time and increased private employer and public health care costs.<sup>29</sup>

The Committee heard graphic evidence of tobacco's impact. Nate Brown, an 18-year-old who has been smoking since he was nine, told the Committee that smoking prevented him from participating in many social events held where smoking is prohibited. William Zander, a high school junior and two-year-smoker, said he can no longer run a mile. John Hansen told the Committee he had begun smoking as a youth – more than three decades ago. He paid ten cents per pack when he began (roughly one twentieth of the current price). He testified through an opening in his larynx. Shirley Sanders recently turned 50. She told the Committee about the impact her severe emphysema has had on her life. She brought a supplemental breathing apparatus to the witness table.

**“Tobacco doesn’t just affect those who use it. My father is dying of tobacco-related disease. He weighs 87 pounds.”**

- T. Tucker of Sheridan, testifying at the Committee’s Salem meeting

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<sup>28</sup> U.S. Centers for Disease Control and Prevention, *Projected Smoking-Related Deaths Among Youth – United States*, Morbidity and Mortality Weekly Report, 45(44) (1996).

<sup>29</sup> Smoking-Attributable Morbidity, Mortality and Economic Costs, Centers for Disease Control and Prevention.

## WHAT WORKS TO REDUCE TOBACCO'S TOLL?

The problems caused by tobacco consumption stubbornly resist simplistic solutions. Even so, four comprehensive strategies applied together have reduced the problem:

- Establish smokefree workplaces and schools.
- Help people quit.
- Reduce tobacco promotion.
- Reduce youth access.

When applied as part of a comprehensive attack, these strategies will reduce youth use of tobacco.<sup>30</sup> Oregon's comprehensive program is currently funded at about \$8.86 million annually. Although funded at about 30% of the per capita expenditure recommended by the Center for Disease Control, these four strategies have already helped Oregon save 1,200 lives and \$300 million per year by reducing adult tobacco use rates from 23.4% in 1996 to 21.4% in 1999.

### CREATE SMOKEFREE WORKPLACES AND SCHOOLS

Establishment of smokefree workplaces and schools is effective because it protects kids from second-hand smoke, reduces adult modeling of smoking behaviors, reinforces addicted children's efforts to quit, reduces opportunities for tobacco product advertising and promotion, counters the notion that many people smoke and that tobacco products are generally accepted by society, and prevents addiction due to environmental smoke exposure.

The Committee learned that many communities are working to implement smokefree workplace and tobacco free school ordinances. For example, effective July 2000, an ordinance adopted in Central Point requires clerk-assisted sales, restricts tobacco to behind-the-counter locations, and establishes a general rule that workplaces are to be smokefree. Baker City adopted a smokefree workplace ordinance in July of 2000. Corvallis

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<sup>30</sup> For a discussion of the comparative advantage of a comprehensive approach over singular school-based tobacco prevention programs, see Anthony Biglan, et al., *A Randomized Controlled Trial Of a Community Intervention To Prevent Adolescent Tobacco Use*, *Tobacco Control*, 9:24-32 (2000).

adopted its own version of a smokefree workplace ordinance and prohibition on self-service tobacco displays in July of 1998. In all three jurisdictions, voters in an election subsequently affirmed the initial decision by the City Council.

The policies chosen by local jurisdictions are not uniform. For example, some communities have chosen to protect citizens from environmental tobacco smoke in bars and taverns to the same extent that citizens are protected under the terms of the ordinance from this hazard in establishments open to minors. Clay Parton told the Committee that minors who worked in establishments to which newly-adopted environmental smoke ordinances were applied were more likely to be able to quit their own smoking as a result of the change in their workplace.

### **HELP PEOPLE QUIT**

Oregon helps kids and adults quit smoking. The Oregon Tobacco Quit Line has recently added a special program for teens. There are a number of references about cessation resources on the web site [www.ohd.hr.state.or.us/tobacco](http://www.ohd.hr.state.or.us/tobacco). Getting smokers to stop contributes to reduction in youth smoking by reducing adult modeling and by countering the tobacco manufacturers' efforts to portray smoking as a desirable and pleasurable activity. Several young smokers told the Committee that programs to help them quit needed to be specially designed for youths.

### **REDUCE TOBACCO PROMOTIONS**

Many youths involved in school or community-based tobacco control activities told the committee that they believed advertising continues to be aimed at them by tobacco companies. They cited self-service displays of smokeless tobacco placed near candy, advertising posters placed below three feet and therefore at eye level for youngsters, counter-top displays and change pads with tobacco companies logos, tobacco advertising in magazines with youth readership, and advertising themes such as "B-Kool" that appeal to their needs for acceptance and independence.

Recently, a tobacco manufacturer offered free book covers to school districts. The covers include the name of the company and artwork that some contend associates the company with images that are attractive to children who may use the covers to protect their school-owned textbooks. Some school districts have rejected the offer.

Youths in several parts of the state have surveyed the placement of tobacco advertising. In Lincoln County, for example, the survey showed that:

- 49% of the stores surveyed had tobacco advertising placed at three feet above the ground or lower.
- 47% had self-service tobacco displays.
- 58% of stores within 1,000 feet of schools or youth organization headquarters had tobacco advertisements placed at three feet above the ground or lower.

The Master Settlement Agreement entered into by the states and territories with the tobacco companies prohibits participating manufacturers from directly or indirectly aiming their products at children. The Committee heard testimony that Oregon is participating in multi-state investigations that have led to voluntary changes in some advertising practices and may lead to formal state action to enforce the agreement. To ensure that uniform interpretations are given to identical terms on which an individual state may choose to seek enforcement, Oregon must coordinate any contemplated enforcement action with other states through the National Association of Attorneys General.

No part of the funds due Oregon under the settlement agreement have yet been allocated. In addition to the unrestricted funds payable to Oregon, each state is eligible to apply for grants to help fund enforcement actions. Oregon has not yet made an application for an enforcement grant.

Several witnesses told the Committee they were uncertain about how the marketing restrictions contained in the Master Settlement Agreement applied to particular forms of advertising that they had observed in their communities. The Oregon Department of Justice has not published a guide to the terms of the settlement agreement.

### **REDUCE YOUTH ACCESS**

Community coalitions, including responsible retailers, can have measurable positive impacts on reducing illegal sales of tobacco.<sup>31</sup> The

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<sup>31</sup> Anthony Biglan, et al. *Mobilizing Positive Reinforcement To Reduce Youth Access To Tobacco*, Tobacco Control, 4:42-18 (1995).

Committee heard example after example of communities that achieved significant reductions in the willingness of retailers to sell tobacco to minors.

The Committee heard testimony from adults and youth involved in what have been dubbed “reward and reminder” programs. True to their name, these efforts use undercover shoppers to test retailers for compliance with Oregon law, and then reward compliant clerks with inexpensive gifts or public recognition. Non-compliant clerks receive a warning/reminder of the requirements of Oregon law as to sales of tobacco products to minors.

## RECOMMENDATIONS

### FUNDING

1. For the 2001-2003 biennium, appropriate \$24 million from Oregon's Master Settlement Agreement revenues to Oregon's comprehensive anti-smoking program conducted by the Health Division. The Center for Disease Control called for tobacco control expenditures in Oregon of \$5.46 to \$15.37 per person in 1999.<sup>32</sup> In the year 2000, Oregon spent \$2.62 per capita on its comprehensive tobacco control program.
2. Apply to the National Association of Attorneys General for an enforcement grant to help fund enforcement activities relating to the Master Settlement Agreement.
3. Eliminate the "sunset" on the tobacco excise tax.

### ENCOURAGE ADULT COMPLIANCE WITH PROHIBITIONS ON SALE OR DELIVERY OF TOBACCO PRODUCTS TO MINORS

1. Organize "reward and reminder" programs and other forms of ongoing positive reinforcement in more communities for retailers who respect Oregon's laws as to sale of tobacco products to minors. Increase the frequency of these efforts.
2. Local tobacco control coalitions should continue to seek responsible retailers to participate in community efforts to reduce underage access. Local tobacco control coalitions should redouble efforts to enlist responsible business leaders in their cause.
3. Through state and other enforcement agencies, share the identity of non-compliant retailers detected in Synar or other enforcement-related compliance checks with manufacturers.
4. The state and community organizations should conduct public awareness campaigns directed at adults who might otherwise succumb to a "shoulder-tapping" addict or who might carelessly or intentionally allow a minor to obtain tobacco from an adult within the household.

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<sup>32</sup> Centers For Disease Control, *Best Practices for Comprehensive Tobacco Control Programs*, 31 (August, 1999). Year 2000 figures for Oregon were between \$6.51 and 16.29 per person. No formal citation for the year 2000 figure was available at publication of this report.

## **INCREASE THE CONSEQUENCES OF VIOLATING LAW**

1. Continue to permit cities and counties to enact local licensing programs. Continue to reject state preemption of local licensing requirements or other local tobacco-control measures.
2. During the 2001-2003 interim, examine the costs and benefits of a uniform statewide licensing requirement for retailers who sell to minors.
3. Adopt Department of Justice administrative rules under the Unlawful Trade Practices Act to impose financial consequences on retailers that violate laws prohibiting sale of tobacco products to minors. Add the staff resources needed adequately to enforce the rule.
4. Enact a state law imposing financial consequences on retailers who repeatedly violate of laws prohibiting the sale of tobacco products to minors. Add the staff and resources needed adequately to enforce the statute.

## **INCREASE THE LIKELIHOOD AND CONSEQUENCES OF BEING APPREHENDED**

1. Create a statewide database to house the results of Synar compliance and other enforcement-related compliance checks. Open this database to law enforcement, community organizations and the public. Provide staff and resources to maintain the database.
2. Encourage Congress to declare that cigarettes are drug-delivery devices and that tobacco products are subject to regulation by the Food and Drug Administration.
3. Encourage local coalitions to get local law enforcement, within available resources, more aggressively to enforce prohibitions of selling tobacco products to minors.
4. As part of the state's overall strategy and within available means, seek increased enforcement by city and county law enforcement agencies of laws against purchase and possession of tobacco products by minors.
5. Establish youth courts, or other means outside ordinary juvenile court procedures, to assure some measure of accountability for youth cited by

local police for being in possession of tobacco. Sentences for being in possession should emphasize cessation.

6. State health agencies and local coalitions should continue to encourage and support ongoing education to teach retail clerks about their obligations not to sell tobacco to minors.

#### **FURTHER RESTRICT POINT OF SALE ACCESS**

1. Enact a statewide ban on self-service tobacco product displays. Require that a clerk assist the consumer in all tobacco transactions.
2. Enact a complete ban on cigarette vending machines or, alternatively, extend the ban on cigarette vending machines to all areas in which children are allowed.
3. Prohibit all monetary incentives from manufacturers to retailers if the incentive is payable in return for placement of tobacco products in places accessible to kids. Prohibit manufacturers from terminating or reducing incentives solely because the retailer elected to change to clerk-assisted sales or took other action to help prevent sales to minors.
4. Prohibit the sale of cigarettes in packages containing fewer than 20 cigarettes.
5. Help retail clerks identify underage buyers by changing the design of Oregon's driver's license and other identification to more effectively convey the fact that the would-be purchaser is a minor.

#### **ENCOURAGE CONTINUED LOCAL TOBACCO CONTROL ORDINANCES**

1. Create a model ordinance covering youth access, environmental smoke, and smoking in public places. Provide staff and resources to draft the model ordinance and explanatory materials.
2. Resist any state effort to preempt local tobacco control and to prevent local jurisdictions from providing more protection than state law.
3. Eliminate the existing prohibition against local control of cigarette vending machine placement.

## **RESTRICT AND DISCOURAGE ADVERTISING THAT REACHES KIDS**

1. Adequately staff and fund efforts to enforce terms of the Master Settlement Agreement that restrict promotions and advertising aimed directly or indirectly at children.
2. Discourage tobacco manufacturers from advertising at family style events, such as rodeos.
3. To the extent permitted by the Oregon and United States Constitutions, require tobacco advertisements to be placed above the three-foot level in stores.
4. To the extent permitted by the Oregon and United States Constitutions, restrict tobacco advertising within 1,000 feet of schools.
5. Encourage retailers voluntarily to change tobacco promotion policies. Prohibit manufacturers from penalizing retailers who voluntarily agree to restrict or limit their advertising.
6. Conduct and regularly publicize surveys of the placement of advertising by retailers, with particular emphasis on the placement of advertising in proximity to schools.

## **ENHANCE EXISTING SCHOOL-RELATED TOBACCO LIMITATIONS**

1. Ban tobacco use on all school grounds and at all school events by all kids and adults.

## **CESSATION PROGRAMS**

1. Using money from the Master Settlement Agreement, enhance programs aimed at helping school-age tobacco users quit.
2. Using money from the Master Settlement Agreement and to the extent recommended by the CDC guidelines, enhance cessation programs for adults.

## **APPENDIX**

**John Chism, American Heart Association**

**Joe Gilliam, Oregon Grocery Industry Association**

**Ellen Lowe, Tobacco Free Coalition**

**Jeff Ruscoe, DHS Office of Drug and Alcohol Prevention**

**Liling Sherry, Northwest Portland Area Indian Health Board**

**Larry Welty, Oregon State Police**

**Anne Blaker, Oregon Health Division**

**Paula Christianson, Kim Burkey, American Lung Association**

**Dr. David Gilmour, Dr. Martin Jones, Oregon Medical Association**

**Mike Sherlock, Oregon Gasoline Dealers Association**

**Jim Spinden, Oregon State Sheriffs Association**

**Jerry Spegman, John Valley, American Cancer Society**