

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

YOUTH ACCESS TO TOBACCO



DECEMBER 1992 OEI-02-91-00880

EXECUTIVE SUMMARY

PURPOSE

To assess the level and characteristics of State and local enforcement of laws limiting youth access to tobacco.

BACKGROUND

In 1990, the Office of Inspector General (OIG) inspection, "Youth Access to Cigarettes" found that 45 States had laws prohibiting the sale of cigarettes to minors. However, States were not enforcing their laws. The report provided information for the development of the Secretary's "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."

The Office of the Secretary has asked the Office of Inspector General (OIG) to conduct a follow-up survey of the enforcement of State laws limiting youth access to tobacco. In addition, the Congressional Subcommittee on Health and the Environment has requested the OIG's assistance in determining the extent to which States have adopted and are enforcing youth access laws.

Recently, significant youth access legislation has been enacted. In July 1992, the President signed the ADAMHA Reorganization Act, PL 102-321, which requires States to ban the sale and distribution of tobacco products to anyone under the age of 18 by October 1, 1994. It also requires States to enforce their laws "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to underage youths."

FINDINGS

Although most States **prohibit** the sale of tobacco to minors, their failure to enforce their laws would place them out of compliance **with** the new Federal law

AU but three States ban the sale of tobacco to minors under the age of 18.

Montana does not have a law prohibiting the sale of tobacco, New Mexico only prohibits the sale of smokeless tobacco and Georgia bans sales to minors under 17 years of age rather than 18.

Only two States are enforcing their laws restricting the sale to minors statewide.

In Florida and Vermont, the liquor control agencies enforce their youth access laws statewide.

A few States are funding local initiatives to reduce youth access. Four States (California, New Jersey, North Dakota and Utah) make funds available

specifically to limit youth access or as part of broader tobacco education and control efforts.

Low priority by police and lack of a designated enforcer are seen as obstacles to enforcement. State respondents also frequently cite a lack of community awareness of youth access issues and a lack of commitment to enforcing these laws as serious problems.

Despite lack of State efforts, some localities are demonstrating enforcement is possible. These localities have developed different enforcement models. All, however, enforce State or local laws, designate an agency responsible for enforcement, and choose a method of enforcing that best meets their needs.

Vending machine restrictions are the most common initiative. In addition to their State laws prohibiting the sale of tobacco to minors, 21 States and Washington D.C. have passed laws that restrict vending machines.

CONCLUSION

Our finding that most States are not enforcing their laws limiting youth access to tobacco is a major concern given the requirements of PL 102-321. While we found that most States have laws that prohibit the sale of tobacco to minors, they must move quickly to enforce their laws to avoid the penalty.

State Options

The models that exist at the State and local levels present successful options for enforcing youth access laws. This report describes steps that can be taken by States that can reasonably be expected to reduce tobacco usage by youth. **The States can:**

- Designate an enforcer
- Ban vending machines
- Enact provision of the model law
- Educate communities and vendors
- Post signs
- Conduct stings

Federal Options

HHS has already taken steps to provide guidance to the States, however, as the Department implements the new law, there may be other ways to provide leadership and direction to the States. **The Department can:**

- Provide technical assistance to the States
- Monitor States activities and collect base line data
- Conduct research on effective enforcement models
- Develop criteria

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INTRODUCTION

PURPOSE

To assess the level and characteristics of State and local enforcement of laws limiting youth access to tobacco.

BACKGROUND

The Office of the Secretary has asked the Office of Inspector General (OIG) to conduct a follow-up survey to a 1990 OIG inspection of the enforcement of State laws limiting youth access to tobacco. In addition, the Congressional Subcommittee on Health and the Environment has requested the OIG's assistance in determining the extent to which States have adopted and are enforcing youth access laws.

Federal Initiatives

In 1990, the OIG surveyed States regarding their laws on the sale of cigarettes to minors. The OIG inspection, "Youth Access to Cigarettes," OEI-02-90-023 10, reported that 45 States had laws prohibiting the sale of cigarettes to minors. However, States were not enforcing their laws. The five States that could provide statistical information documented a total of only 32 vendor violations in 1989. The few places actively enforcing youth access to tobacco laws were mostly localities.

The inspection report provided information for the development of the Secretary's "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." The model law called for: (1) licensing of vendors and revocation of their license if they sell to minors, (2) a graduated schedule of penalties so that vendors and employees are punished proportionate to their violation of the law, (3) penalties for failing to post signs, (4) designating State or local, law or health officials for enforcement, (5) civil in addition to criminal penalties to avoid overloading the criminal justice system, (6) an age of legal purchase of at least 19, (7) banning or greatly restricting access to vending machines, and (8) minimizing the burden of compliance on retail outlets. (See Appendix C).

The model law was widely distributed. Each State governor received a copy, as did State health department officials and anti-smoking groups. The law was also made available to localities active in establishing and enforcing youth access laws, and to experts in the youth smoking field. Further, the Secretary and the Surgeon General frequently spoke about the model law.

The Centers for Disease Control's Office on Smoking and Health is the focal point within the Federal government for tobacco-related efforts. The office's activities include expanding the science base of tobacco control through implementation of

epidemiologic studies, surveillance activities and publications such as the Surgeon General's Report on the Health Consequences of Smoking; coordinating national media information and education campaigns to educate the public on the health hazards of tobacco use; and assisting States to build their capacity to sustain broad-based tobacco control programs.

Other Federal activity includes the National Cancer Institute's (NCI) ongoing Community Intervention Trial for Smoking Cessation (COMMIT) and its American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) programs. COMMIT promotes community health concepts and technologies in 11 cities. The ASSIST program incorporates COMMIT's strategy and efforts and extends it statewide. The ASSIST program, currently in 17 States, works to create comprehensive programs to prevent and control tobacco use. The NCI collaborates with the American Cancer Society (ACS), State and local health departments and other related organizations.

Recently, significant youth access legislation has been enacted regarding youth access to tobacco. In July 1992, the President signed the ADAMHA Reorganization Act, PL 102-321. This new law requires States to ban the sale and distribution of tobacco products to everyone under the age of 18. It also requires States to enforce their law "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to underage youths." The States must annually submit a report to the Secretary describing their enforcement activities and annually conduct "random, unannounced inspections," commonly called stings or observed buys. States must implement these provisions by Fiscal Year 1994, or risk a reduction in Federal funds for mental health, alcohol and other drug abuse programs. (See Appendix B).

Tobacco Use Among Youth

Despite the States' laws and national attention to the problem, tobacco use continues to be widespread among youth. The Centers for Disease Control (CDC) estimates that as many as 1 million American minors start to smoke each year, about 3,000 per day. They also estimate that in 1990 teenagers bought 947 million packs of cigarettes and 26 million cans of smokeless tobacco, which is chewing tobacco and snuff. Further, approximately 75 percent of current smokers became addicted to tobacco by age 18, generally before it was even legal for them to purchase tobacco products. About half of the tobacco industry's profits, \$3.35 billion, derives from sales to smokers who became addicted as **children**.¹ Tobacco is also an initial drug preferred by young people and is associated with other drug use.²

Other studies also suggest tobacco use is prevalent among youth. The 1990 school-based Youth Risk Behavior Survey, conducted by the CDC, found that about 36 percent of all students nationally, in grades 9-12, reported using some form of tobacco

during the 30 days preceding the survey. About 32 percent of students used cigarettes, 10 percent used smokeless tobacco, and some used both?

Another study indicates minors use smokeless tobacco extensively. Between 1970 and 1986, the use of snuff increased 15 times and the use of chewing tobacco four times among males aged 17 to 19.⁴ An **OIG** inspection, “Youth Use of Smokeless Tobacco: More Than a Pinch of Trouble/” P-06-86-O058, published in 1986, concluded that “addiction is a serious problem for many (smokeless tobacco) **users...youth** use of smokeless tobacco is a growing national problem with serious current and future health **consequences.**”⁵

Research shows that children can still easily buy tobacco products. A 1990 study by Drug Free Youth, covering 93 communities in 38 States, found that “merchants readily sell cigarettes to children in every **city.**”⁶ This study, as well as others, indicates that 70 to 80 percent of merchants sell cigarettes to minors. These sale rates **support** Secretary Sullivan’s statement that “access of minors to tobacco products is a major problem in every State.” Based on current rates of smoking, he projects 5 million American children alive today will die of a smoking-related disease.

A recent study by the American Cancer Society suggests that the public supports youth access laws and their enforcement. The survey of 1,096 adults from four States found that 86 percent believe there should be stronger laws to prevent tobacco sales to minors; 90 percent believe there should be better enforcement.⁷

METHODOLOGY

The inspection team interviewed the 51 National Network of State Tobacco Prevention and Control contacts, a group of State health department officials representing the 50 States and Washington D. C.. The team asked these respondents to identify legislative and enforcement activity occurring at the State level. State respondents also identified local officials enforcing youth access laws and any research evaluating the effectiveness of enforcement.

Additionally, the team reviewed all State youth access laws. We requested the laws from each State contact and analyzed them according to key components. (See Appendix A).

The team also interviewed selected local officials to assess enforcement activity and to obtain their opinions and experience about effective methods of enforcement. These methods include stings and observed buys. For the purposes of this inspection, a sting is an enforcement technique where underage youth are accompanied by an enforcement agent and attempt to buy tobacco. An observed buy is a technique whereby the enforcer checks or watches stores to see if they sell to minors. The team selected localities based upon discussions with the State respondents, informal discussion with experts in the tobacco field and a review of the Tobacco Access Law News (a compilation of current legislative and enforcement activity). The local

officials interviewed were also selected to represent different geographical locations and enforcement approaches.

FINDINGS

ALTHOUGH MOST STATES PROHIBIT THE SALE OF TOBACCO TO MINORS, THEIR FAILURE TO ENFORCE THEIR LAWS WOULD PLACE THEM OUT OF COMPLIANCE WITH THE NEW FEDERAL LAW

AU but three States ban the sale of tobacco to minors under the age of 18 .

PL 102-321 requires States by October 1, 1994 to ban the sale and distribution of tobacco products to minors under 18 years of age. All but three States have laws that ban the sale of tobacco to minors. Montana is the only State without any law prohibiting the sale of tobacco products. Georgia prohibits sales to minors under 17 years of age rather than 18 and New Mexico only prohibits the sale of smokeless tobacco. (All other laws include both cigarettes and smokeless tobacco.) Three States (Georgia, Louisiana and Virginia) however, only address the sale of tobacco products and not distribution. Since 1990, youth access legislation has been a dynamic area of change; 23 States have enacted new legislation.

States' youth access laws vary. Alabama, Alaska, and Utah prohibit tobacco sales to minors under 19. About two-thirds (36) of the States' laws are criminal; 13 States' laws are civil. California's law may be enforced as either a criminal law or a civil law. However, very few States (8) name a specific agency or organization to enforce the law. Enforcement is often placed, almost by default, with local police departments. All of the States with laws have fines as a penalty for violating the law, and 17 include jail.

Many of the States (29) require that signs be present at the point of sale. Thirty-one States require vendors of tobacco products to be licensed. Further, 23 States make it illegal for minors to purchase tobacco products and 21 limit minors from possessing tobacco products. Lastly, five States preempt localities from creating more stringent local ordinances that relate to minors' access to tobacco products. (See Appendix A for a summary of State law provisions.)

Only two States are enforcing their laws restricting the sale to minors statewide.

State enforcement has not changed greatly since the previous OIG report, "Youth Access to Cigarettes," two years ago. Although States have laws, interviews with the State Tobacco Prevention and Control contacts indicate that 48 States and Washington D.C. do not enforce their laws statewide. Respondents in seven of these States report enforcement is minimal and is conducted randomly at the local level; they cite only a handful of vendor violations.

Florida and Vermont are the only States enforcing their laws statewide. Since 1990 Vermont is the only State that began enforcing youth access laws statewide. Both

Florida and Vermont designate the state liquor control agency for this purpose. However, Florida's law is criminal and Vermont's is civil.

In **Florida**, the Department of Business Regulations enforces tobacco as well as alcohol access laws. It conducts stings, observes buys, and responds to complaints from the public of vendors selling to minors. Alcohol licensing fees in the past have funded these activities. However, recent legislation, effective January 1993, requires tobacco vendors to be licensed and their fees to be used to fund full-time tobacco enforcement staff. State respondents report it is easier to convict vendors in Florida by conducting a sting or a buy in response to a complaint because it establishes a predisposition. Some judges consider random stings to be entrapment. Last year, Florida reported 22 violations.

Vermont has only recently begun enforcing its youth access law. The Department of Liquor Control enforces it statewide. Initially, the liquor agency sent signs, posters and license applications to retailers. Following this campaign, a team of 14 liquor control inspectors began making random unannounced visits twice a week to vendors. No violations have yet been reported.

Two other States, Utah and South Dakota, enforce youth possession laws. In 1991, Utah police and school monitors issued nearly 5,000 violations to minors, but only 30 to vendors. Similarly, in FY 1991 South Dakota police issued 58 violations to minors but only 3 to vendors. PL 102-321 does not address youth possession.

A few States are funding local initiatives to reduce youth access.

While not actually enforcing their State access laws, four States make funds available to localities interested in limiting youth access to tobacco. (Utah, California, North Dakota and New Jersey). Three of them, Utah, California, and New Jersey, encourage local initiatives to reduce youth access as part of broader tobacco education and control efforts. North Dakota makes grants specifically for youth access. Further, Utah and California make grants to all counties while the other two States fund only select local sites.

Utah's Department of Health contracts with district health departments to conduct tobacco control and prevention activities. Districts choose from a number of different tobacco initiatives, ranging from youth access to worksite smoking policies. Every district addresses youth access in some way. All twelve districts have extensive vendor education campaigns; five districts educate law enforcement officers about the importance of the law. Law enforcement and/or health departments conduct observed buys in six districts. In one district, law enforcement officials have issued violations.

California provides funding for local youth access initiatives. In 1988 California passed Proposition (Prop) 99, which increased the cigarette tax to 35 cents to fund anti-tobacco education and control programs. Prop 99 created tobacco

control programs throughout the State by funding county health departments, non profit organizations and schools. These programs include prevention education, cessation and policy initiatives. Many of the programs target youth among other groups. Prop 99 funds two projects specifically to reduce youth access, STAMP, Stop Tobacco Access to Minors Project and TRUST, Teens and Retailers United to Stop Tobacco. So far, TRUST has conducted merchant education, while STAMP has more actively enforced youth access. In conjunction with STAMP, three communities in **Solano** County, conduct regular stings and issue violations. STAMP also conducts merchant and community education campaigns and underage buy surveys in six counties. Three counties are currently exploring civil prosecution of vendors who have repeatedly sold to minors. A study by the University of San Diego suggests that the anti-smoking campaign has contributed to a 17 percent decline in smoking from 1987 to 1990.

New Jersey makes youth smoking prevention grants to localities. The State Health Department issued eight three-year grants to local health departments to encourage innovative education and youth cessation programs. Most of the communities receiving grants focus on educating vendors. Some local health departments visit vendors to inform them of the State law and to encourage them to voluntarily comply. However, one community also uses the grant to conduct observed buys and stings, and to enforce a local vending machine restriction. This community began enforcing the law following a highly publicized educational campaign. So far, health department officials have issued warnings to vendors who violate the law and are planning to issue citations shortly.

North Dakota also encourages local youth access initiatives. Its Department of Health made youth access grants to seven cities. These grants encourage cities to educate and work with police and retailers, and to enact city ordinances limiting vending machines. The seven cities have achieved these goals to varying degrees. Some have successfully enacted local vending machine laws. A few have also conducted observed buys. So far, none have issued violations against vendors.

Low priority by police and lack of a designated enforcer are seen as obstacles to enforcement.

State respondents cite a number of problems in enforcing youth access laws. Most State youth access laws are criminal and, therefore, only enforceable by police. State respondents most frequently cite the low priority given by police to enforcing tobacco sale laws. One respondents notes, “Law enforcement agencies are understaffed and they have no desire to enforce anything not considered pressing.” Other respondents cite the lack of an agency clearly identified as responsible for enforcement as a problem. One respondent, typical of many, said, “There’s no one charged with enforcement, it’s not coordinated in any way.”

State respondents frequently cite a lack of community awareness of youth access and smoking and a lack of commitment to enforcing the laws as serious problems. Several believe that communities do not consider tobacco and youth access important issues. “We need an evolution of attitudes - the public has a general attitude that alcohol should not be sold to kids. They don’t feel the same way about cigarettes.” Several respondents report that the police will not enforce the law if the community is not supportive. One reports, “The community must motivate police to enforce youth access...the police will respond to this pressure.” A few States also mention the lack of concern by vendors as a problem.

State respondents report difficulties in convicting vendors. Several State respondents believe State legislative language is vague and causes difficulties in enforcing the law. Several States’ laws contain the phrase, “to knowingly **sell** tobacco products to minors.” Respondents claim this makes it difficult to convict vendors because vendors claim they did not know the person they sold to was underage. Further, judges are sometimes reluctant to convict clerks for selling cigarettes to minors. They often dismiss the cases, believing the vendor should be penalized, not the clerk. Also, some judges dismiss violations issued as the result of random stings, considering them as entrapment.

DESPITE LACK OF STATE EFFORTS, SOME Localities ARE DEMONSTRATING ENFORCEMENT IS POSSIBLE

Based on our interviews with State respondents and experts and a literature review, we identified localities that enforce laws prohibiting the sale of tobacco to minors and/or laws prohibiting the possession of tobacco by minors. In several instances State and Federal programs have encouraged localities, through grants and contracts, to enforce youth access laws. In other instances, individuals interested in the issue and grassroots groups have taken youth access on as their own cause. Some localities have developed coalitions, working together with advocacy groups and local health departments, to raise community awareness and win the support of local merchants and police. As one local respondent comments “We needed to develop enforcement at the local level... there is no enforcement at the State level and it is easier to enforce at the local level.”

Regarding sale to minors laws, we identified 52 localities in 19 States that enforce these laws and have developed varying models. All, however, enforce either State or local laws, designate an agency responsible for enforcement, and choose a method of enforcing that best meets their needs. Some have conducted research to evaluate the effectiveness of their efforts. The following are examples of how local models differ on these characteristics.

Type of law: Slightly more than half of the localities enforce State laws while the others have enacted and are enforcing local laws. Several localities enforce the State law

prohibiting the sale of tobacco to minors, but have enacted and enforce local ordinances restricting vending machines.

Research suggests that the effect of enacting and implementing local ordinances varies. Preliminary analyses of a study, which compared Marquette County, Michigan to a county with no access law, indicates that passing a law does not significantly change the perceived difficulty of buying tobacco, knowledge of the legal age or smoking rates among youth.⁸ However, the previously mentioned study by Drug Free Youth, conducted in 95 communities in 38 States, found that passage of an ordinance has some effect on sales to minors. Stores in cities with ordinances sold to minors about 48 percent of the time; stores in cities without ordinances sold to them about 82 percent of the time.⁹

Designated Enforcer: In 23 localities, local police enforce the law. In another 21 localities, local health officials enforce the law, and in the remaining localities licensing or regulatory agencies are responsible for enforcement. A few localities have coordinated efforts between the health department and police.

Opinions differ as to who should enforce youth access laws. State respondents most frequently designate health departments. The majority of these respondents believe that health departments are more concerned about tobacco than are police. One comments, “It is not a public safety issue, but rather a health issue.” However, other State respondents consider police the best enforcers. Most of these respondents believe it is more appropriate for the police to enforce because as one says, “enforcement is their business.” Still others believe licensing and other regulatory agencies should be responsible; since these departments would issue the license to sell tobacco, they would have authority to suspend it.

Method of Enforcement: Localities enforce their laws differently. They enforce access by using stings, observing buys, responding to complaints by the public or a combination of these mechanisms. Frequently, localities conduct an initial sting to document that minors can easily buy tobacco and use this information to attract the media, educate retailers and raise community awareness. Twenty-one localities have conducted stings for such educational purposes.

However, research appears to indicate that education alone is not enough. A study in Santa Clara, CA reports that while a retailer education campaign reduced sales to minors, one year later sales rebounded as a result of no enforcement.¹⁰

Other localities enforce the law more extensively. Twenty-one localities conduct stings or observed buys and penalize violators. They issue fines and/or suspend the vendor’s license. Some have taken vendors or clerks to court. Several respondents in these localities believe the only way to get compliance is to penalize vendors. Many comment that if vendors are threatened with suspension of their license to sell tobacco they will comply.

The remaining localities conduct stings or buys, but do not issue violations. They usually warn the vendors or clerks who sell tobacco illegally to minors. Some believe initially warning vendors is only fair, but in the future plan to issue violations. Others believe conducting observed buys without issuing violations sufficiently alerts vendors and discourages them from selling to minors.

Research suggests that regular stings and violations can be effective in reducing youth access and, in some cases, smoking. In Woodridge, Illinois, police conduct regular stings and issue criminal violations to vendors. As a result, tobacco sales to minors decreased from 70 percent to 5 percent. Experimentation and regular use of cigarettes by minors reportedly decreased 50 percent.¹¹ Another study conducted in Everett, Washington suggests that a local ordinance enforced by the threat of fines and license revocation reduced sales to minors and significantly reduced tobacco use among girls.¹²

Other studies indicate that enforcement decreases sales to minors significantly. In Solano County, California, local police in two towns conduct stings twice a year and issue citations. Researchers report that while originally 71 percent of vendors sold to minors, only 24 percent sold after citations were issued.*³ Likewise, in Spokane County, Washington local health departments conduct regular stings but do not issue violations. Researchers here show that passing a local regulation and conducting regular reviews decreased sales to about 27 percent.¹⁴

A study, conducted in **Bollingbrook**, Illinois, suggests frequent checks are necessary to maintain compliance. In 1989 and 1990, when observed buys were conducted quarterly, only 18 percent of stores were noncompliant. In 1991, buys were conducted less frequently and 35 percent were **noncompliant**.¹⁵

Regarding youth possession laws, we identified a few localities that enforce youth possession laws to reduce youth access. Some localities in North Dakota, Wyoming and Minnesota issue violations for possession of tobacco by minors. In **Gillete**, Wyoming, for example, police issue violations to minors to discourage youth from using tobacco. Here, the police initially wanted to stop teens from loitering and they decided to enforce the law against possession of tobacco by minors. They now work successfully with schools to educate and reduce access and tobacco use among youth. They believe possession laws limit peer pressure and send a consistent message to youth to stop using tobacco.

Opinions differ as to whether possession should be made illegal. Some respondents want minors to share the blame with vendors. They believe that possession and sale laws send an appropriate message to both youth and vendors and will effectively reduce youth smoking. However, other respondents believe that youth should not be blamed and that vendors selling to minors is the issue.

VENDING MACHINE RESTRICTIONS ARE THE MOST COMMON INITIATIVE

Restricting tobacco vending machines is the most commonly observed way States and localities limit youth access to tobacco. In addition to their State laws prohibiting the sale of tobacco to minors, 21 States and Washington D.C. have passed laws that restrict vending machines in some manner.

States have adopted different types of vending machine restrictions. Nine States and Washington D.C. restrict the placement of vending machines to areas inaccessible to minors, such as bars, liquor stores, work areas and private clubs. Five States require that vending machines be supervised by the owner or an employee, or that the machines be equipped with a locking device that can be released once the age of the person using the machine is verified. Seven States combine these approaches by restricting the placement and/or requiring supervision. In five of these States localities have enacted even stricter local vending machine ordinances.

Over 140 localities in 19 States have enacted local ordinances limiting vending machines. Nearly one-third of these localities have banned vending machines altogether. The remaining localities have limited placement and/or required supervision or locking of vending machines.

All State respondents interviewed agree that vending machines should be limited in some way. One respondent expressed the beliefs of many when he said, “Ban all vending machines, they are easy access (for minors).” Others believe that localities should “put vending machines only in **places** that can be monitored or just get rid of them altogether.”

Vending machine bans and placement restrictions require minimal enforcement. One State respondent comments, “vending machines are the only part (of youth access laws) that are enforceable.” Often, localities can enforce vending machine restrictions by initially reviewing their placement and sending a follow-up notice to vendors not in compliance. Another State respondent said, a “letter can usually get rid of vending machines.”

Ordinances that call for supervision or locking devices are not as easily enforced. Supervision of vending machines requires the same enforcement efforts as over the counter sales and are therefore, generally not being enforced. Additionally, a recent study in Minnesota concludes that “compliance with locking device laws is a problem.” The study suggests that locking devices require additional enforcement to ensure compliance and may not be as effective as vending machine bans. The author of the study also notes the importance of restricting vending machines, stating “it is hard to get over-the-counter merchants to take the age-of-sale laws seriously when they know that cigarettes are available in vending machines **freely**.”¹⁶

CONCLUSION

Our finding that most States are not enforcing their laws limiting youth access to tobacco is a major concern given the requirements of PL 102-321. While we found that most States have laws that prohibit the sale of tobacco to minors, they must move quickly to enforce their laws to avoid the potential federal penalty on their FY 1994 ADAMHA Block Grant funds.

State Options

The models that exist at the State and local level present different successful options for enforcing youth access laws. Most often they include stings and vending machine restrictions. Each State must develop and implement its own enforcement program to reduce youth access and youth smoking. This report, however, describes several steps that can be taken by the States that can reasonably be expected to reduce tobacco usage by youth. The States can:

- Designate an enforcer
- Ban vending machines
- Enact provisions of the model law
- Educate communities and vendors
- Post signs
- Conduct stings

Federal Options

HHS has already taken steps to provide guidance to the States to assist them with their efforts to reduce the extent to which tobacco products are available to underage youth by developing and disseminating the Model law. However, as the Department implements the new law requiring that States ban the sale and distribution of tobacco products to anyone under the age of 18 and to enforce their laws, there maybe other ways for the Department to provide leadership and direction to the States. The Department can:

- Provide technical assistance to the States
- Monitor States activities
- Conduct research on effective enforcement models
- Develop criteria
- Collect baseline data

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APPENDIX A

STATE LAW PROVISIONS*

● See Lemnd At End Of Matrix

S T A T E	A G E	S A L E	P O S S E S S I O N	P U R C H A S E	L I C E N S E S	S I G N S	V M E A N C H I N G E S	G R A N D A I L P R E M I A T I O N S	F I N E S	J A I L	R E V O C A T I O N	E N F O R C E R	P R E E M P T I O N
AK	19	CV	Y		Y	Y	B		Y		Y		
AL	19	CR			Y				Y	Y	Y		
AR	18	CR			Y	Y	B	Y	Y		Y		
Az	18	CR	Y	Y	Y				Y				
CA	18	**				Y			Y				Y
co	18	CR		Y		Y	B		Y				
CT	18	CV		Y	Y	Y	B	Y	Y				
DC	18	CR			Y	Y	P	Y	Y	Y	Y		
DE	18	CR	Y		Y				Y			Y	
FL	18	CR			Y	Y			Y	Y		Y	
GA	17	CR			Y	Y	s		Y		Y		
HI	18	CV	Y	Y		Y	P	Y	Y			Y	
IA	18	CR	Y	Y	Y		L		Y		Y	Y	Y
ID	18	CR	Y	Y	Y		s	Y	Y	Y			
IL	18	CR		Y		Y		Y	Y				
IN	18	Cv	Y	Y		Y	P		Y				
KS	18	CR		Y	Y				Y	Y	Y		
KY	18	CR				Y		Y	Y				
LA	18	CR		Y		Y			Y				
MA	18	CR			Y	Y		Y	Y	Y			
MD	18	Cv							Y	Y			

S T A T E	A G E	S A L E	P O S S E S S I O N	P U R C H A S E	L I C E N S E	S I G N S	V E A N C H I N G S	G R E N A D A T I E S	F I N E S	J A I L	R E V O C A T I O N	E N F O R C E R	P R E E M P T I O N
ME	18	CV		Y	Y	Y	s		Y				
MI	18	CR	Y	Y		Y			Y			Y	
MN	18	CR		Y	Y		B		Y	Y			
MO	18	CR				Y		Y	Y				
MS	18	CR							Y	Y			
MT													
NC	18	CR							Y	Y			
ND	18	CR	Y		Y		s		Y	Y			
NE	18	CR	Y		Y		P		Y				
NH	18	Cv	Y	Y	Y	Y		Y	Y				
NJ	18	CR			Y	Y			Y				
NM	18	CR		Y	Y	Y	P						Y
Nv	18	Cv			Y				Y		Y		
NY	18	Cv			Y	Y	P	Y	Y		Y	Y	
OH	18	CR					B	Y	Y				
OK	18	CR	Y		Y				Y	Y			
OR	18	Cv	Y	Y		Y	P		Y				
PA	18	CR		Y	Y			Y	Y	Y			
RI	18	CR	Y	Y	Y	Y		Y	Y		Y		
Sc	18	CR							Y	Y			
SD	18	CR	Y	Y					Y				
TN	18	CR	Y		Y	Y		Y	Y	Y	Y		
TX	18	CR			Y	Y			Y				
UT	19	CR	Y	Y	Y		P	Y	Y	Y			
VA	18	Cv	Y	Y		Y			Y				

S T A T E	A G E	S A L E	P O S S E S S I O N	P U R C H A S E	L I C E N S E	S I G N S	V M E A N C H I N G S	G R A D U A L T I E S	F I N E S	J A I L	R E V O C A T I O N	E N F O R C E R	P R E E M P T I O N
VT	18	Cv		Y	Y	Y	P	Y	Y		Y	Y	
WA	18	CR			Y				Y	Y	Y		
WI	18	CV	Y		Y	Y	B	Y	Y		Y	Y	Y
WV	18	CR	Y					Y	Y				
WY	18	CR	Y	Y		Y	P		Y				Y

LEGEND

STATE: The name of the State in abbreviation.

AGE The age at which a person may purchase tobacco products,

SALE: Type of sale law. CR indicates the law is criminal and CV indicates the law is civil. ** indicates that the law may be enforced as a civil law or a criminal law.

POSSESSION: Possession by a minor. Y indicates that it is illegal for a minor to possess tobacco products.

PURCHASE Purchase by a minor. Y indicates that it is illegal for a minor to purchase tobacco products.

LICENSE: Licenses for vendors. Y indicates that vendors must have licenses to sell tobacco products.

SIGNS: Signs at the point of sale. Y indicates that a sign at the point of sale must be present.

VENDING MACHINES: Vending machine restrictions. S indicates that vending machines (vm) have to be supervised by an employee. P indicates that vm are restricted in placement (to areas where minors are not present). B indicates that vm have to be supervised and/or restricted in placement. L indicates that vm must have locking devices.

GRADUATED PENALTIES: Y indicates that there is a set graduated scale of penalties for each offense,

FINES: Y indicates that fines may be a penalty for noncompliance,

JAIL: Y indicates that jail time may be penalty for noncompliance.

REVOCATION: Revocation of license. Y indicates that the revocation of a vendor's license may be a penalty for noncompliance.

ENFORCER. Enforcer of law. Y indicates that the enforcer is stated in the law.

PREEMPTION: Preemption clause, Y indicates that there is a preemption clause not allowing localities to create stricter laws regarding youth access.

APPENDIX B

ADAMHA Reorganization Act PL 102-321

One Hundred Second Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Friday, the third day of January,
one thousand nine hundred and ninety-two*

An Act

To amend the Public Health Service Act to restructure the Alcohol, Drug Abuse, and Mental Health Administration and the authorities of such Administration, including establishing separate block grants to enhance the delivery of services regarding substance abuse and mental health, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “ADAMHA Reorganization Act”.

● 4 4

“Subpart II—Block Grants for Prevention and Treatment of Substance Abuse

“SEC. 1921. FORMULA GRANTS TO STATES.

“(a) **IN GENERAL.**—For the purpose described in subsection (b), the Secretary, a-through the Center for Substance Abuse Treatment, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 1933. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 1932.

● ● ●

“SEC. 1926. STATE LAW REGARDING SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER AGE OF 18.

“(a) **RELEVANT LAW.**—

“(1) **IN GENERAL.**—Subject to paragraph (2), for fiscal year 1994 and subsequent fiscal years, the Secretary may make a grant under section 1921 only if the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18.

“(2) **DELAYED APPLICABILITY FOR CERTAIN STATES.**—In the use of a State whose legislature does not convene a regular session in fiscal year 1993, and in the case of a State whose legislature does not convene a regular session in fiscal year 1994, the requirement described in paragraph (1) as a condition of a receipt of a grant under section 1921 shall apply only for fiscal year 1995 and subsequent fiscal years.

" (b) ENFORCEMENT.—

"(1) IN GENERAL.—For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under Section 1921 is that the State involved will enforce the law described in subsection (a) in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.

"(2) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 1921 is that the state involved will—

" (A) annually conduct random, unannounced inspections to ensure compliance with the law described in subsection (a); and

" (B) annually submit to the Secretary a report describing—

"(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

"(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and

"(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

"(c) NONCOMPLIANCE OF STATE.—Before making a grant under section 1921 to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (a) and (b). If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under such section for the State for the fiscal year involved by an amount equal to—

"(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 1993 for the State for the fiscal year;

"(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 1993 for the State for the fiscal year;

"(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 1993 for the State for the fiscal year; and

"(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 1993 for the State for the fiscal year.

"(d) DEFINITION.—For purposes of this section, the term 'first applicable fiscal year' means—

"(1) fiscal year 1995, in the case of any State described in subsection (a)(2); and

"(2) fiscal year 1994, in the case of any other State.

APPENDIX C

Summary of the Model Law

The model law has several key features. They are summarized below.

- o Create a licensing system, similar to that which is used to control the sale of alcoholic beverages, under which a store may sell tobacco to adults only if it avoids making sales to minors. Signs stating that sales to minors are illegal would be required at all points of sale.
- o Set forth a graduated schedule of penalties--monetary fines and license suspensions--for illegal sales so that owners and employees face punishment proportionate to their violation of the law. Penalties would be fixed and credible.
- o Provide separate penalties for failure to post a sign, and higher penalties for sales without a license.
- o Place primary responsibility for investigation and enforcement in a designated State agency, and exclusive authority for license suspension and revocation in that agency. However, allow local law enforcement and public health officials to investigate compliance and present evidence to the State agency or file complaints in local courts.
- o Rely primarily on State-administered civil penalties to avoid the time delays and costs of the court system, but allow use of local courts to assess fines, similar to traffic enforcement. This would provide flexibility to both State and local authorities to target enforcement resources. (An illegal sale could not result in two fines, but a local conviction would be reported to the State and count towards possible license suspension).
- o Set the age of legal purchase at 19. This is higher than under many existing State tobacco statutes, but lower than the age for alcohol. States may consider age 21.
- o Ban the use of vending machines to dispense cigarettes, parallel to alcohol practice and reflecting the difficulty of preventing illegal sales from these machines. (This is another area where States should examine options carefully; allowing sales in places not legally open to minors or use of store-controlled electronic enabling devices may be acceptable alternatives. States could also consider phasing in the ban to minimize disruption).
- o Contain a number of features to minimize burdens on retail outlets: requiring identification only for those who are not clearly above the age of 19, allowing a driver's license as proof of age; setting a nominal penalty for the first violation; disregarding one accidental violation if effective controls are in place; having the State provide required signs; and setting license fees lower for outlets with small sales volume.