

Minding the Store:

Curtailing the Sale of Tobacco to Minnesota Teens



Enforcement Practices, Challenges and Recommendations

A Report Prepared By
The Tobacco Law Project
For The Minnesota Department Of Health

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CONTENTS

EXECUTIVE SUMMARY	<i>iv - viii</i>
1. INTRODUCTION	1
2. AN OVERVIEW OF MINNESOTA LAWS GOVERNING THE SALE OF TOBACCO TO MINORS	1
3. MINNESOTA'S EXISTING ENFORCEMENT PRACTICES	3
4. THE RETAIL ENFORCEMENT SURVEY	7
The Part V Grantees	8
The Grantee Survey Pool	9
The Non-Grantee Survey Pool	9
The Objectives and Design of the Retail Enforcement Survey	9
Survey Results: Key Findings	10
5. TOBACCO RETAILER ENFORCEMENT PROCESSES AND ADVANCES IN OTHER STATES	14
California	14
Florida	16
Iowa	18
Maine	19
Massachusetts	22
New York	25
Oregon	28
Washington	31
6. BARRIERS TO EFFECTIVE ENFORCEMENT: CHALLENGES AND RECOMMENDATIONS	34
A. Systemic Barriers: Monitoring, Oversight and Funding Challenges	34
1. The absence of centralized, statewide enforcement oversight and administration	34
2. The absence of a fully functioning statewide enforcement database	35
3. Limited coordination between the Department of Human Services' responsibility for Synar regulation and the Department of Health's youth access activities	36
4. Insufficient funding for compliance checks and related expenses	36

6.	BARRIERS TO EFFECTIVE ENFORCEMENT: CHALLENGES AND RECOMMENDATIONS (continued)	
	B. Vendor, Clerk and Related Point-of-Sale Barriers and Challenges	39
	1. Retailer indifference/Lack of will	39
	2. Clerk inability or failure to read youth driver’s licenses and identification cards	42
	B. Technical Assistance, Training and Communication Barriers and Challenges	45
	1. Weak support for youth access enforcement efforts from Minnesota prosecutors and district court judges	45
	2. Enforcement agencies throughout Minnesota lack meaningful opportunities to confer with one another to troubleshoot and exchange information and ideas	46
	D. Challenges Regarding Non-commercial Access to Tobacco	46
	1. Key stakeholders and communities-at-large have insufficient program components in place to effectively address minors’ non-commercial, social access to tobacco	46
	E. Legislative Challenges at the Local and State Level	47
	1. The absence of an actively maintained statewide ordinance database or repository and the absence of a statewide youth access coordinator at the state agency level severely limits the capacity of local communities to stay up-to-date on ordinance options implemented successfully elsewhere and to consider new ordinance initiatives in their own communities	47
7.	CONCLUSION	48
8.	REFERENCES	50
9.	APPENDICES	52
	1. Tobacco Law Project Retail Enforcement Survey	
	2. Part V Youth Access Enforcement Grantees, 2001 Map	
	3. Part V Grantees – Abstract	
	4. Part V Grantees – Types of Initiatives	
	5. City of Savage, Minnesota – Scanner Ordinance	
	6. Interview Questions for Multi-state Analysis	

Executive Summary

The Rationale for Commercial Youth Access Enforcement

We begin with the premise that enforcing laws that prohibit the sale of tobacco to minors and providing education and training to vendors and clerks will reduce the retail supply of tobacco to minors – and we know that this works, at least to a degree. We operate, as well, with the premise that enforcement of commercial youth access laws is not a total panacea. We know that enforcement is but one of several essential program components in the effort to reduce teen tobacco use in Minnesota, the others being the *Target Market* youth movement, and prevention, population-at-risk and community-based interventions, the latter of which includes initiatives to reduce exposure to secondhand smoke, public information and education campaigns and counter-marketing initiatives.

Analysis of Minnesota's Commercial Youth Access Enforcement Efforts

In *Minding the Store*, the Tobacco Law Project takes stock of local community perspectives from throughout Minnesota regarding commercial youth access enforcement barriers and examines the complexities of what constitutes an effective enforcement strategy at the local and state level. How do we sustain commercial youth access enforcement efforts at the local level and improve them over time? How do we measure success? How do we maintain connectivity between local level commercial youth access strategies and Minnesota's statewide youth-centered tobacco prevention and control strategy? For connect it we must – commercial youth access enforcement cannot succeed as a stand-alone. Local-level commercial youth access efforts must mesh with and complement the activities and goals of the essential components of the State's teen prevention strategy. According to the Centers for Disease Control and Prevention, it is integral to success to unify the essential, complementary components that share a common vision and work in tandem to achieve a common purpose.

The values of enforcing state and local commercial youth access laws are twofold. Effective enforcement can, over time, dramatically reduce the retail supply of tobacco to minors. Enforcement initiatives can also help shift community norms about teen use of tobacco. In the long run, the latter value may prove to be the most important. This is because the issue of teen use of tobacco is not only about reducing supply, but also about reducing demand. As the majority of retail sources of tobacco dry up, youth turn to non-commercial, social sources for tobacco, looking to family members, friends, acquaintances and strangers who are 18 or over to furnish them with tobacco. Strategies that address youth access to tobacco must focus on commercial and social sources, always keeping in mind the role that enforcement-related initiatives and interventions can play in shifting community norms.

Fact-gathering: Enforcement Practices, Outcomes and Challenges

In order to identify key barriers to effective commercial youth access enforcement efforts in Minnesota communities, the Tobacco Law Project designed a Retail Enforcement Survey to gather information and opinions about local level commercial enforcement activities. The survey was mailed throughout the state to many of the local law enforcement and public health agencies that are responsible for enforcement of commercial youth access laws. The survey was also sent to numerous community agencies that have partnered with local law enforcement and public health agencies to provide support for their commercial youth access enforcement interventions.

The Tobacco Law Project also interviewed enforcement officials from eight other states about their respective commercial youth access enforcement practices, challenges and priorities. The information

gathered from these sources, coupled with a literature review¹ and consultations with community stakeholders, contributed to the development of the recommendations and strategies contained in *Minding the Store*.

Implementation of the Tobacco Law Project's Retail Enforcement Survey

The Retail Enforcement Survey was conducted by mail in June and July of 2001. In June, surveys were mailed to 29 local law enforcement and public health agencies that received grants (known as *Part V grants*) in 2001 from the Minnesota Department of Health (MDH) to enhance local commercial youth access enforcement efforts. Surveys were also mailed to 95 of the grantees' respective community partners. In July, a separate set of the same survey was mailed to 84 additional local law enforcement agencies that had not participated in the Part V grant process, to identify their perspectives on local commercial youth access enforcement challenges. The combined survey findings are based on responses from a total of 137 respondents and draw from all eight regions of the state.²

Summary of Key Findings Identified in the Retail Enforcement Survey

- In both the grantee and non-grantee survey pools, the greatest number of barriers identified by survey respondents involved vendor, clerk or related point-of-sale problems.
- Retailer indifference or lack of will was the most frequently cited barrier to effective local-level commercial youth access enforcement.
- Other key barriers to effective local-level, commercial youth access enforcement identified by grantees were: community complacency and lack of knowledge about local commercial youth access laws; clerks who either can't or don't read youth driver's licenses or identification cards; the need for additional clerk training; youth attitudes about tobacco use; parental apathy; parental furnishing of tobacco to teens; teens selling to teens; weak sanctions; the absence of restrictions on the age of sellers; and, furnishing of tobacco to teens by persons 18 and older.
- In addition to citing many of the above key barriers to effective enforcement, the non-grantees identified the following barriers: a need for law enforcement funding for compliance checks; and, reluctance or failure of the court system to treat youth tobacco issues seriously.
- Many survey respondents expressed strong support for increased public education and social norms campaigns, as well as media efforts, to build support for local commercial youth access enforcement activities, indicating their belief that the public-at-large and community leaders must be convinced about the importance of tobacco retailer enforcement efforts in order for effective enforcement to be sustained.
- Several respondents called for enhanced vendor penalties, including earlier and more active use of license suspensions, and many called for improved retailer education. Several

¹ See, References.

² The Retail Enforcement Survey was designed to collect relevant and timely information from the local-level individuals and agencies from throughout Minnesota that have been working most actively on commercial youth access concerns. The survey made it possible for the Project to reach a broad audience and ask uniform questions using a consistent format. The survey was not designed to produce a statistically significant sample and no such claims are intended by this report.

respondents argued in favor of setting a minimum age of 18 for individuals who sell tobacco products. Many respondents requested continued state agency funding to increase the number of rounds of compliance checks per year and to otherwise increase local-level commercial youth access enforcement capacity.

Categorizing Key Barriers to Commercial Youth Access Enforcement Efforts at the Local Level

Key barriers to effective, local commercial youth access enforcement that are identified and discussed in *Minding the Store* can be divided into four main categories. Some barriers overlap categories.

(1) Systemic, funding and legislative barriers that speak to the need to address local and state commercial youth access infrastructures. These barriers include a lack of:

- Sanctions for the failure of local governments to enforce the law
- Funding for local government units to actively enforce the law
- State level oversight and monitoring of local commercial enforcement activities
- Consistency in local application of commercial youth access laws
- Coordination of local-level, commercial enforcement activities in many communities
- Uniform, statewide reporting requirements for compliance checks and enforcement activities
- A statewide database to collect local level compliance check and enforcement data
- A statewide repository/database to collect local ordinances and track ordinance initiatives
- A citizen complaint or tip line (e.g., toll-free telephone line)
- Criteria for merchant education
- In-store signage requirements

(2) Communication and technical assistance barriers that limit the ability of local communities and state agencies to build capacity and generate strong public support for local commercial youth access initiatives. These barriers include a lack of:

- In-store signage requirements that inform the public about local and state youth access laws
- A citizen telephone complaint or tip line that instructs the public how to report violations
- Communication systems to link local enforcement and public health agencies with one another, the State, tobacco control advocacy groups and other service providers, including the Tobacco Law Project, effectively
- Community-based, coordinated education and advocacy mobilization efforts that support commercial youth access interventions and initiatives
- Training for, and support from, district court personnel, city and county prosecutors and other civic leaders and organizations

(3) Vendor and point-of-sale barriers that limit the ability of local law enforcement agencies and public health advocates to chart progress in reducing the sale of tobacco to minors. These include a lack of:

- Effective positive and negative incentives for retailers to comply with the law
- Effective local approaches to vendor and clerk education
- Initiatives to address clerk failure to check youth driver's licenses and identification cards
- In-store signage that reminds clerks and the public about enforcement of youth access laws

(4) Non-commercial, social access barriers that overlap with commercial enforcement barriers and hinder the ability of local communities to reduce youth access to tobacco from commercial sources. These include a lack of:

- Community-wide mobilization efforts that are designed to enlist support from civic leaders and the public-at-large and address the links between commercial and social youth access.

Summary of Key Recommendations

- Local government units with tobacco retailer licensing authority should consider providing merchants with incentives, including exemptions from or reductions in license fees or fines, if they can demonstrate that they have instituted practices prescribed by a local licensing authority to improve compliance.
- Local communities, as well as state agencies and/or statewide organizations, should explore the availability of cost-effective mechanisms for incorporating meaningful messages about the unacceptability of selling or furnishing tobacco to minors into existing tobacco control programs and media campaigns and examine potential new avenues for delivering this message.
- Local communities should review their commercial youth access ordinances once a year to consider possible amendments to improve, strengthen or enhance ordinance provisions.
- Local communities should, to the extent feasible and practicable, form countywide or regional commercial youth access task forces, including, at a minimum, representatives from county and municipal public health units, law enforcement agencies, city and/or county prosecutor's offices, youth groups and advocacy organizations or institutions; task forces should meet monthly or bimonthly to increase partnership potential and develop collaborative approaches to address local commercial youth access needs.
- The State of Minnesota should establish a full-time equivalent position at a state agency to oversee and monitor local-level commercial youth access enforcement efforts statewide. This position would provide active, centralized administration and coordination of local enforcement programs, promote effective enforcement at the local level and ensure that local communities are knowledgeable about and in sync with statewide tobacco prevention and control initiatives and nationwide advances.
- The State of Minnesota should consider the creation of a long-term statewide advisory committee to assist state agencies, including the Minnesota Department of Health and the Department of Human Services, in their respective oversight functions and to help build strong inter-agency support for commercial youth access enforcement initiatives among community stakeholders, including retailers and retailer associations.
- The State of Minnesota strongly needs a centralized database that can meet current and anticipated statewide enforcement data collection needs and be easily accessed by local enforcement agencies via a web-based or another format. The Department of Health (MDH) has an existing youth access database that could be utilized, upgraded or replaced; however,

MDH is not directly responsible for commercial enforcement activity and is not mandated to maintain an enforcement database. The Department of Human Services might be an appropriate placement.

- State-level grant funding for compliance checks should continue to be made available to local enforcement agencies for at least the next three years to continue to build and maintain momentum for reducing local commercial youth access non-compliance rates.
- Where feasible, and to the extent permissible, statewide funders should make the receipt of grant funds for compliance checks contingent upon a local program's agreement to meet certain enforcement-related criteria, including recording all enforcement data. Where not feasible, local programs should be encouraged to adopt state agency or inter-agency guidelines.
- State agencies, including the Department of Health and the Department of Human Services, should explore cost-effective ways to bolster local-level commercial youth access enforcement efforts across Minnesota through the use of signage, citizen tip lines, media, marketing or other strategies that help build community-wide recognition of and support for commercial youth access local enforcement activities.
- The State of Minnesota is encouraged to create and adopt state guidelines or criteria for merchant training. Once such guidelines are created, where feasible, potential statewide funders, including the Department of Health, should consider tying the receipt of tobacco control funds to a community's agreement to adopt the State's guidelines or criteria.
- State agencies, statewide organizations and/or local or regional community partners, should provide training opportunities for city and county prosecutors, court personnel, and civic leaders to increase understanding of and interest in commercial youth access enforcement initiatives from a public health perspective.
- State agencies and/or statewide organizations should provide or facilitate opportunities for locally based commercial youth access enforcement stakeholders from throughout Minnesota to meet and exchange information about enforcement practices, challenges and initiatives.
- A statewide ordinance database or repository is needed for statewide agencies and local communities, as well as advocacy groups, to track ordinance activity and progress.

Conclusion

Commercial youth access enforcement at the local level should be viewed as an essential component of the state's overall youth prevention strategy and should include strong links to community-wide initiatives that are designed to change social norms in order to maximize its effectiveness. Due to budget and staffing constraints, as well as lack of other critical resources, local enforcement programs have limited capacity to initiate, design, implement and monitor enforcement activities and initiatives on their own. Local enforcement efforts would benefit greatly from long-term, state-level assistance that can strengthen and sustain them by providing consistent statewide program support, guidance, coordination and improved communication linkages.

Introduction

The Tobacco Law Project received a statewide grant in 2001 from the Minnesota Department of Health to study Minnesota's local-level enforcement of state laws and local ordinances that prohibit the sale of tobacco to minors. To carry out the grant objectives, the Tobacco Law Project consulted with grantees, policy makers, law enforcement personnel and community organizations to identify:

- Key barriers to effective commercial youth access enforcement efforts at the local level;
- Evidence of successful strategies for overcoming at least one key barrier;
- Training and technical assistance needs for improving commercial youth access enforcement efforts at the local level.

The terms of the grant required the Tobacco Law Project to:

- Compare and contrast communities that have achieved high rates of retailer compliance with communities that have been less successful to attempt to isolate meaningful patterns and characteristics;
- Summarize the successful youth access enforcement compliance efforts of other states;
- Improve training and technical assistance consultations and promote linkages between local stakeholders to improve communication, mobilize resources and reduce existing barriers to effective enforcement; and,
- Make written recommendations, in consultation with others, for reducing at least of the identified key barriers at the local level.

This report summarizes the Tobacco Law Project's grant activity and includes the Tobacco Law Project's written recommendations. Grant activity occurred between March and September 2001.

An Overview of Minnesota Laws Governing the Sale of Tobacco to Minors

Retail tobacco licensure is regulated under Chapter 461 of Minnesota Statutes, which provides for youth access enforcement implementation and coordination primarily at the county or municipal level. Minn. Stat. §461.12, subd. 1, makes local governments responsible for the regulation of retail tobacco sales, including the establishment of license fees to recover the estimated costs of enforcement.

The regulatory provisions of Chapter 461 are crafted to ensure that local government units will not be preempted from enacting enforcement measures that are more restrictive than the minimum requirements specified under state law. In other words, the state law creates a minimum enforcement floor, leaving open the opportunity for local government units to adopt more stringent requirements and to craft provisions to meet their unique community needs.

Minn. Stat. §461.12, subd. 5, mandates that the local licensing authority (town board, governing body of a home rule charter or statutory city, or county board) conduct unannounced compliance checks at least once each calendar year, at each location where tobacco products are sold, to test compliance with section 609.685. Minors who participate in compliance checks must have parental permission.

Chapter 461 of Minnesota Statutes establishes minimum penalties for the retail sale of tobacco to minors. Under Minn. Stat. § 461.12, subd. 2, a retail licensee or employee who sells tobacco to youth

under the age of 18 is charged an administrative penalty of \$75 on a first offense, and \$200 for a second violation at the same location within 24 months of the first violation. A third violation at the same location within 24 months of the first violation triggers a \$250 administrative penalty, plus a mandatory suspension of the licensee's authority to sell tobacco at that location for not less than 7 days. Under Minn. Stat. § 461.12, subd. 3, an individual who sells tobacco to a minor will be charged an administrative penalty of \$50. No suspensions or penalties may occur until a licensee has been provided with notice and an opportunity for an administrative hearing before a person authorized by the licensing authority. All administrative decisions must be made in writing and are may be reviewed in district court. Chapter 461 requires licensing authorities to consult with interested educators, parents, children and court system personnel to develop alternative penalties for minor who violate the criminal code provisions that prohibit youth from purchasing, using and possessing tobacco.

Chapter 609 of Minnesota Statutes contains the applicable criminal code provisions. Under Minn. Stat. § 609.685, subd. 1a, anyone who sells tobacco to a person under the age of 18 is guilty of a misdemeanor for an initial violation, and a gross misdemeanor for a subsequent violation within five years of a previous conviction. Under Minn. Stat. § 609.685, subd. 2, a person who furnishes tobacco or tobacco-related devices to a minor is guilty of a misdemeanor for the first violation, and a gross misdemeanor for any subsequent violations.

A person under the age of 18 who possesses, uses, purchases or makes attempts to purchase tobacco or tobacco-related devices is guilty of a petty misdemeanor under Minn. Stat. § 609.685. Penalties are more severe for youth who use false identification to purchase or attempt to purchase tobacco products. Under Minn. Stat. § 609.685, subd. 2(b), a minor who uses any type of false identification to purchase or attempt to purchase tobacco or tobacco-related devices is guilty of a misdemeanor and, if convicted, will also receive a 90-day driver's license suspension under Minn. Stat. § 171.171(3).

As of April of 2001, all 87 Minnesota counties have complied with the state mandate that they must license and regulate the retail sale of tobacco. Within numerous counties, municipalities have adopted their own ordinances. In such instances, the county ordinance is enforced in unorganized areas of the county and in municipalities or towns that have not enacted their own ordinances. Enforcement of local ordinances, policies, funding mechanisms, staffing, procedural protocols and related activities vary considerably from one community to another. Minnesota's statutory scheme contains no penalties for local inaction. There are no sanctions for a local government's failure to enforce youth access laws and no penalties for a county's failure to conduct state mandated compliance checks.

Minnesota's regulatory scheme for tobacco sales and licensing is also, for the most part, an unfunded mandate. The state requires each licensing authority (local or county government units that license tobacco retailers) to conduct at least one unannounced compliance check of each licensed tobacco retailer each calendar year; however, no state-legislated funding is allocated specifically for enforcement compliance activities. Instead, the intent of the state law is that the revenue from each local government unit's tobacco retailer licensing fees will cover the cost of local enforcement.

Minnesota's unique approach to youth access enforcement, including the above features, presents numerous challenges for the assessment of Minnesota's statewide efforts and for comparisons with other states.

Minnesota's Existing Enforcement Practices

Responsibility for Synar Reports and Responsibility for Oversight of Youth Access Enforcement

The Department of Human Services (DHS) is responsible for conducting Minnesota's Synar Regulation investigations and reporting the outcomes to the federal CSAP office. This function falls to DHS because it is the agency that receives and controls distribution of federal Substance Abuse Prevention and Treatment block grants. However, it is the Minnesota Department of Health (MDH), not DHS, which coordinates Minnesota's tobacco prevention and control programs and activities, including oversight of youth access activities. Historically, DHS has had little direct involvement in Minnesota's tobacco prevention and control efforts beyond its role in conducting Synar investigations. Recently, however, DHS has strengthened its commitment to tobacco enforcement, emphasizing its prominent place within the construct of ATOD (alcohol, tobacco or drugs).

Enforcement Practices and Challenges at the Local Level

The decentralized youth access enforcement model that Minnesota has adopted means that there is considerable variation from one community to the next in enforcement practices and in levels of commitment to enforcement activities. Data from the Retail Enforcement Survey, as well as anecdotal accounts, indicate that some communities conduct two or more rounds of compliance checks per year, while others conduct one round or none at all. Some communities actively tag youth for possession; others do so rarely, if at all. Some communities actively cite violators and follow-through with the implementation of sanctions; others do not. On the flip side, a substantial benefit of the decentralized model has been the emergence of strong and active alliances between public health and law enforcement personnel in many Minnesota counties and municipalities – ongoing task forces, work teams, and regularly scheduled meetings between enforcement representatives and other community leaders are helping to build a strong and unified voice, keeping retail enforcement issues in the spotlight and drawing public attention to, and support for, youth access initiatives.

An unfortunate reality is that at the county and municipal level, law enforcement funds are often spread thin, requiring local agencies to balance numerous, competing priority issues and demands upon their time. Municipal police departments and county sheriffs' offices typically face major budget constraints and staffing shortages, and are dependent upon the use of overtime hours, before taking into account the State's requirement that they conduct compliance checks. Although Minnesota state law does not require local government units to use law enforcement officials to conduct compliance checks, in practice, data collected in the Retail Enforcement Survey suggests that the majority of Minnesota counties look to their local police departments, county sheriff's departments, or a combination of the two, to conduct State-mandated compliance checks. In some communities, county or municipal public health departments conduct the checks or work with local law enforcement agencies, sharing this responsibility. In the State's two largest municipalities, the cities of Minneapolis and St. Paul, city inspectors conduct the compliance checks.

Each of these models – law enforcement, public health, city inspections, or some combination of these – can provide effective enforcement. Existing research and the experiences of successful enforcement programs in other states support the conclusion that to be fully effective, enforcement practices must be well coordinated, from pre-planning for compliance checks, to recording and reporting outcomes, to carrying through with citations and the implementation of sanctions. In addition, perhaps the most critical indicator of successful, ongoing enforcement is the degree of community-wide support for youth access initiatives. In order to achieve broad-based, visible

community support, tobacco retailers must understand and respect the law, community leaders and entire spectrum of enforcement providers, including the administrative and district court systems, must understand and value the importance of enforcing the prohibition against the sale of tobacco to minors, and the public must also understand, value and support the law and its implementation.

Statewide Oversight Practices and Challenges

This past year, the MDH's Tobacco Prevention and Control Section provided local government units with the opportunity to apply for one-time grant funds to enhance or improve existing youth access enforcement initiatives or to introduce new ones. Many communities have availed themselves of this opportunity, implementing a wide range of enforcement-related activities specifically geared toward their individual community needs.³ Regional grant managers from MDH's Tobacco Prevention and Control Section have helped link local government units and community partners with MDH program managers, as well as with resources, information and technical assistance available within the statewide network of tobacco prevention and control organizations. MDH has provided some direct training and technical assistance and is the primary source for retail educational materials.

Perhaps the greatest challenge Minnesota faces in trying to ensure an ongoing, effective statewide enforcement system is to determine how to provide statewide coordination of its decentralized approach efficaciously. This systemic challenge is addressed in more detail in the section that identifies barriers to effective enforcement and how they might be addressed. Currently, there appear to be at least three significant obstacles to effective statewide coordination. First, local government units that are responsible for enforcing the State's youth access laws are not required to report compliance check or enforcement activities to the State, beyond what is required for federal Synar reporting. Secondly, Minnesota lacks a fully functioning database to track enforcement activities and outcomes. Although Minnesota took early steps to create a database to collect information about local ordinances and enforcement activities,⁴ habitual use of the existing database has been spotty. A third obstacle is that there is no full-time or part-time statewide coordinator to monitor commercial youth access enforcement activities. These systemic gaps substantially restrict the ability of state agencies to provide effective oversight and guidance to local communities or to maintain statistics and other meaningful data on the relative effectiveness, strengths and weaknesses of enforcement programs and practices statewide. Currently, DHS conducts an annual enforcement survey as part of its Synar report, but no annual report is prepared by a state agency that effectively summarizes all commercial enforcement activity throughout the state for a given year.

Existing Retailer Initiatives

As summarized in *Preventing Teenage Access to Tobacco*,⁵ retailers have many incentives to take youth access issues seriously, including concerns about the public perception that youth can purchase tobacco and the possible enactment of new, more stringent regulations. State and local tobacco prevention and control programs can work with retailers who want to take active steps to reduce the perception that they are ignoring or contributing to the problem and are motivated to try to contribute to the success of existing regulatory processes.

³ Summaries of the types of initiatives and abstracts of grantees are included in Appendices 3 and 4.

⁴ Minnesota Department of Health. Tobacco Database Software Program, Tobacco Free Communities For Children, February 1999.

⁵ Tobacco Retailer Responsibility Initiative. *Preventing Teenage Access to Tobacco, A Report to the National Association of Attorneys General*, June 1999, at 26.

Perhaps the strongest incentive for retailers to cooperate with state and local enforcement compliance efforts is the desire and need to avoid the suspension or loss of their license to sell tobacco products. For many retailers, tobacco sales constitute a sizeable portion of all profits; the loss of that revenue stream might threaten their economic viability. This is particularly true for convenience stores, where tobacco sales represent approximately 30% of all revenue from the sale of merchandise.⁶ A retailer's lost revenue from the sale of tobacco tends to have a substantial spillover effect, impacting the sale of lottery tickets, food, beverages, newspapers and other convenience store items that customers typically purchase along with tobacco products. When customers must find an alternate store for purchasing tobacco, they take their total business elsewhere and may not return to the sanctioned store as a regular customer after the store's sanctions are lifted. Without question, lost income resulting from a tobacco license suspension or revocation can seriously damage a retailer's revenues, client stream, and reputation within a community.

In April 2001, the Minnesota Department of Health's Minnesota Tobacco and Prevention Initiative circulated newly updated tobacco retailer educational packets statewide to local public health and law enforcement agencies and other community partners in local tobacco prevention and control efforts, along with recommendations for distributing the materials directly to retailers. MDH discouraged bulk mailings to retailers; instead, MDH encouraged community partners to schedule in-person presentations for tobacco retailer clerks or to schedule meetings with storeowners or managers.

The educational materials include: a tip sheet for clerks about how to check IDs; a visual guide to Minnesota driver's licenses, distinguishing between licenses for those over 21 and under 21 years of age; tips for employee training; ideas and activities for retailers to help remind clerks and customers about Minnesota's prohibition against the sale of tobacco; employee and employer agreements which acknowledge an understanding of the Minnesota's youth access law and how to implement the law; a role play; and, additional fact sheets about in-store *best practices*, proper identification and the health risks and economic costs associated with youth smokers.

Many local government units provide vendor and clerk training opportunities on an annual or as-needed basis. This training is usually provided either by law enforcement or public health agencies. In almost all instances, these training sessions are voluntary. Attendance at such sessions has tended to be low – in some instances, no one shows up. In addition, some major retail chains, including at least one major convenience store chain, include vendor or clerk training regarding the retail sale of tobacco to minors in their new employee training. A few Minnesota communities are trying to establish local protocols or provide new alternatives for retail training. At least one community is designing an interactive web site; in the City of St. Paul, youth access enforcement statutes have been translated into six languages to meet the diverse needs of storeowners, clerks and store customers; and, the City of Savage recently passed an ordinance that provides retailers with incentives to install scanning devices.⁷ Minnesota has not established a statewide *best practices* protocol for the provision of retail training. Although MDH has contracted with local government units for the implementation of enforcement-related grant projects, the agency lacks clear statutory authority to require that certain training criteria be met in order to trigger the release of grant funds.

⁶ *Id.*

⁷ A copy of the Savage scanner ordinance is included in the Appendices, at Appendix 5, and is discussed in more detail in the discussion of barriers and recommendations for overcoming barriers.

Other enforcement practices, initiatives and gaps

Minnesota's commercial enforcement practices and statutory scheme vary, in certain respects, from structures in place in other key states that are leaders in advancing comprehensive tobacco prevention and control strategies. For example, Minnesota has no statutory in-store signage requirements and no statewide media campaign efforts devoted to commercial youth access enforcement issues. Some Minnesota storeowners still post the old FDA signs and many, if not most, use the tobacco industry-sponsored *We Card* signs. Only a few local government units have designed and distributed signage for vendors to display. Some retail chains have designed straightforward messages to notify customers that clerks do check identification, including one major convenience store chain that places this message on the front of t-shirts worn by store clerks. In contrast, some states that are active in tobacco prevention and control have codified signage requirements in state law and have supplemented the signage requirements with a variety of media tools, such as bumper stickers, posters, store counter-top materials, radio and/or television spots, and publication of violations. In Maine, the Partnership For a Tobacco-Free Maine, Bureau of Health, Department of Human Services and the Department of the Attorney General teamed together and designed several theme-based media pieces, including a video for retailers and clerks, posters, bumper stickers and other pieces.⁸

Also absent from the Minnesota commercial youth access enforcement landscape is the availability of a statewide citizen tip line or complaint line. Several states have established a mechanism for concerned citizens to telephone in complaints or tips concerning the commercial sale of tobacco to minors. In California, for example, radio and/or television media spots run periodically to remind and encourage citizens to make use of this enforcement tool. In the State of New York, as well as in California, the number, origin and/or type of tips or complaints are tracked. The information is forwarded systematically to enforcement agencies and officers, who then follow-up on the complaints in accordance with established procedures. In New York, complaints and complaint investigations are tabulated, county-by-county, in the State's youth access enforcement program annual report.

Enforcement tools such as citizen tip lines and in-store signage may, at first glance, appear superfluous or peripheral to the exacting work of direct enforcement activities – providing training and technical assistance to enforcement agencies and retailers, conducting compliance checks and following through with the meaningful implementation of sanctions. But supplemental tools such as these, as well as targeted media campaigns on enforcement issues, can play major complementary roles, often without substantial investments of cost, that can help shift community norms about teen smoking. They put the commercial enforcement issue squarely in the public eye and encourage citizen participation.⁹ These types of efforts also help retailers and clerks in their compliance efforts by providing a visible, state-sponsored summary of laws and the retailers' responsibility to uphold them.

The success of any one enforcement tool is difficult to measure. In fact, it is doubtful that any one intervention can, by itself, be shown to account for substantial reductions in rates of youth sales or consumption. However, there is growing evidence that well-coordinated community mobilization efforts, when implemented in conjunction with the existence of strong ordinances, active commercial enforcement, retailer education with reinforcement and school-based education, can make a winning

⁸ The recently launched enforcement media campaign slogan for the State of Maine is: "NO BUTS! for kids here; BLOCKING UNDERAGE TOBACCO SALES."

⁹ An example is the State of California's use of a toll-free citizen complaint or tip line, operated through the State's tobacco clearinghouse. The clearinghouse distributes a wide range of training and informational materials to retailers and citizens. Enforcement officials report that the tip line, when used in conjunction with occasional radio and TV spots that highlight the availability of the tip line, triggers a significant rise in the number of complaints received about problem retailers.

combination, effectively reducing youth tobacco use and youth access to commercial sources of tobacco.¹⁰ Community mobilization efforts include: community-wide assessments of compliance by tobacco retailers and dissemination of results via the mass media; presentations to local government units and civic groups; community and school-based activities; and, direct interactions with local government units through testimony, petitions, letters or phone calls.

Two recently announced campaigns show great promise for helping to shift community norms about youth access to tobacco within Minnesota. Target Market, Minnesota's anti-tobacco youth movement, has undertaken a new project, *Operation Storefront*, to document the amount and placement of tobacco advertising in stores around the state. Target Market plans to publicize their findings and may meet with storeowners and/or retailer chains to try to effect changes. A separate campaign, sponsored by the U.S. Environmental Protection Agency, has been initiated to encourage parents not to smoke inside their homes in the presence of their children. Initiatives such as these increase public exposure to and awareness of commercial and social youth access issues.

The Role of the State Attorney General in Minnesota's Youth Access Enforcement Activities

Involving State Attorneys General in enforcement efforts can be an effective tool in communicating to tobacco retailers the critical importance of compliance with youth access laws and can strengthen the efforts of local and state tobacco control programs. This can be done without committing substantial resources or diverting attention from other priorities. One way that the Attorney General's Office can maintain meaningful involvement is by staying in the loop – having annual Synar reports and/or state enforcement reports sent to the Consumer Protection Division for review and comment. Attorney General involvement has helped some states bring retailer chains to the table to consider the implementation of plans to reduce youth access.

Significant improvements in compliance rates and cost savings in states that have adopted a comprehensive, collaborative approach toward youth access activities are indicators of success and demonstrate that a well-coordinated, multi-agency approach can improve enforcement outcomes, create opportunities for meaningful dialogues with retailers, and increase public understanding and support for youth access issues and activities.

The Tobacco Law Project's Retail Enforcement Survey

In addition to the statewide grant that the MDH awarded to the Tobacco Law Project in 2001, the MDH awarded a total of 31 one-time, local-level enforcement grants, collectively referred to as *Part V* grants. The Part V grants were awarded to county or municipal public health agencies or boards, law enforcement agencies and community organizations throughout Minnesota to bolster local-level youth access commercial enforcement compliance efforts. Each Part V grantee was asked to partner with other community agencies or organizations to carry out the designated grant activities. The Part V grants spawned a wide variety of community-based initiatives, each of which were designed to enhance and expand youth access enforcement activities at the local level.

¹⁰ Biglan A, Henderson J, Humphrey D, Yasui M, Whisman R, Black C, James L. Mobilising positive reinforcement to reduce youth access to tobacco. *Tob. Control* 1995, 4:42-48; Task Force on Community Prevention Services (TFCPS), Draft report: *Recommendations Regarding Interventions to Reduce Minors' Access to Tobacco Products*. This report makes recommendations on the use of evidence-based interventions to reduce minors' access to tobacco products through commercial sources. The recommendations made by TFCPS, an independent, non-federal entity, are consistent with and complementary to the recommendations of DHHS (SAMSHA 1997 (PEPS), USDHHS 2000, CDC (*Best Practices*) and others (IOM 1994).

The Tobacco Project decided to survey Part V grantees and many of their community partners, believing that the heightened level of involvement with commercial enforcement activities in Part V grantee communities might yield valuable information about how to improve the effectiveness of Minnesota's youth access enforcement policies, practices and training statewide. The Project also surveyed enforcement officials in many Minnesota communities that did not seek Part V grant funding to provide a meaningful basis for comparison of communities, as well as a more complete overview of successes, challenges and needs throughout the state.¹¹ The latter communities are referred to within this report as "non-grantees."¹²

The Part V Grantees

The Minnesota Department of Health's Tobacco Prevention & Control Section has divided the state into eight geographic regions for purposes of oversight and review and has assigned a Regional Manager to manage tobacco grants and provide technical assistance within each region. MDH received Part V grant applications from all but one region of the state, the exception being Region 6 (South Central).¹³ Grantees received between \$10,000 and \$81,000 to implement grant activities in conjunction with their community partners. All grant activities were scheduled to take place primarily during the spring and summer of 2001.

The nature of each grantee's activities and the number of community partners selected by each grantee varied from project to project. Many grant projects were multifaceted and contained multiple components; some grantees were multi-county entities. An abstract and a summary of each of the initiatives undertaken by the Part V grantees, broken out by subject matter and region, are included in the Appendices.^{14 15}

The 31 Part V grantees included:

- 18 public health agencies or boards
- 7 law enforcement agencies (3 sheriff's departments and 4 police departments)
- 1 municipal government licensing unit
- 2 human services agencies/councils
- 2 non-profit community organizations
- 1 statewide task force.¹⁶

Two of the Part V grantees received funding for enforcement-related activities that did not directly involve tobacco retailer compliance efforts; for this reason, these grantees were provided with copies

¹¹ The survey's design and methodology are non-scientific and the results are not statistically valid; however, the results do provide substantial feedback from all eight regions of the state.

¹² The first set of surveys was mailed in June 2001 to Part V grantees and their community partners. *See*, Appendix 1, Retail Enforcement Survey (grantees). The second set of surveys was mailed in July 2001 to non-grantees. Surveys were mailed to recipients with a cover letter that explained the purpose of the survey. All survey recipients were assured that their individual responses would remain confidential. Postcard reminders were mailed to recipients one week after the initial mailing. A second copy of the survey with a reminder letter was mailed one week after the postcard reminder to recipients who had not yet responded. All recipients were instructed to return completed surveys to the Minnesota Center for Survey Research, at the University of Minnesota, for data collection and tabulation.

¹³ *See*, Appendix 2, Part V Youth Access Enforcement Grantees, 2001 Map.

¹⁴ *See*, Appendix 3, Part V Grantees – Abstract.

¹⁵ *See*, Appendix 4, Part V Grantees – Types of Initiatives.

¹⁶ Indigenous Peoples Task Force.

of the Tobacco Law Project's retail enforcement survey, but were excluded from the base number of grantee survey recipients.¹⁷

The Grantee Survey Pool

The grantee pool for the Tobacco Law Project's Retail Enforcement Survey included 29 Part V grantees and 95 community partners.¹⁸ The initial survey base was later adjusted downward from 124 to 114.¹⁹ Surveys were completed by 70% of the adjusted base [80/114].

The Non-grantee Survey Pool

The non-grantee pool for the Retail Enforcement Survey was comprised of 84 law enforcement agencies, consisting of a combination of sheriff and police departments from communities throughout the state. The communities included in the non-grantee pool were drawn heavily from MDH's Region 6, the South Central region, as no communities from that region sought Part V grant funding, and MDH's Region 7, the Twin Cities metropolitan area, as approximately 53.7% of the state's population reside within the seven-county Twin Cities area.²⁰ An effort was also made to include law enforcement agencies from sizeable communities in greater Minnesota that had not sought Part V funding. The initial base of 84 was adjusted downward to 82.²¹ Surveys were completed by 69.5% of the adjusted base [57/82].

The Objectives and Design of the Retail Enforcement Survey

The Tobacco Law Project's Retail Enforcement Survey,²² while non-scientific, was designed to elicit:

- Factual information about the range of tobacco retailer enforcement practices and policies in place in Minnesota communities;
- Opinions about ongoing needs and ideas for improvements to the effectiveness of local enforcement compliance efforts, including training and technical assistance needs; and,
- Statistical information about each community surveyed and its enforcement activities.

The survey contained a total of 44 questions, the majority of which were presented in a multiple-choice format. The survey included five open-ended inquiries that asked survey recipients to identify, within their respective communities:

- The three greatest barriers to reducing the rate of illegal sales of tobacco products to minors;
- Any additional barriers or obstacles;

¹⁷ Two lead grantees were excluded from the survey base – Asian Media Access and Indigenous Peoples Task Force.

¹⁸ The list of community partners was compiled by reviewing each Part V grantee's grant application materials.

¹⁹ The grantee survey pool base was adjusted downward to exclude recipients who, upon receipt of the survey, identified themselves as community supporters, not partners. These recipients had no direct involvement in grant activities. Also excluded were recipients who informed the Tobacco Law Project, upon receipt of the survey, that more than one person within their agency had received a copy of the survey.

²⁰ Based on 2000 Profiles of General Demographic Characteristics, State of Minnesota, the Twin Cities metropolitan area had a population of 2,642,056 and the statewide population was 4,919,479.

²¹ One survey was inadvertently sent to a law enforcement agency that had participated in the survey in the grantee pool; in the other instance, a law enforcement agency requested exclusion due to the recent departure of the officer who had handled their enforcement activities.

²² A copy of the survey is included in the Appendices, at Appendix 1. The survey questions for the grantee and non-grantee survey pools are virtually identical, the only difference being that references to "Part V grantee, partner or collaborator" in Question No. 3 and to "Part V grants" in the survey's closing comments are deleted in the survey prepared for the non-grantee pool.

- Ideas for overcoming barriers they identified;
- How youth access enforcement compliance efforts are being met presently; and,
- How the Tobacco Law Project can strengthen retail enforcement compliance efforts.

The survey also gathered information about:

- Population size and other demographics of each recipient’s community;
- The agencies responsible for conducting compliance checks and/or engaging in other tobacco retailer enforcement activities in each recipient’s community;
- Community characteristics related to enforcement activities and objectives;
- How frequently compliance checks and other enforcement activities occur; and,
- Documented outcomes of enforcement activities.²³

The scope of this Report does not allow for a full analysis of all survey results. The Report focuses primarily on survey responses that address barriers to effective enforcement and how they might be overcome.²⁴

Survey Results: Key Findings

Identification of key barriers to effective enforcement

The Retail Enforcement Survey collected data about tobacco retailer enforcement practices in all eight regions of Minnesota. The survey provided an opportunity for those persons who have been most actively involved in enforcement activities to comment on what they perceive to be the key barriers to effective enforcement and how they think current enforcement efforts in their respective communities can be strengthened.

Survey respondents from the grantee and non-grantee survey pools identified a wide range of barriers. These have been grouped into five categories and ranked based upon the number of barriers that were identified within each category, with the first category representing the most prevalent area of concern raised by survey respondents:

- 1) Vendor/Clerk/Point of Sale
- 2) Enforcement Protocols
- 3) Community Norms
- 4) Social Sources
- 5) Training

The number of barriers identified within each of the above five categories resulted in the same ranking order for both the grantee and non-grantee survey pools. There were significant differences, however, in how the grantee and non-grantee survey pools ranked individual barriers.

²³ Each survey was pre-coded with a number that identified each recipient’s state region. The coding system provided a straightforward mechanism to tally the number of surveys completed within each region and to distinguish between the grantee and non-grantee survey pools.

²⁴ The raw survey data provides rich opportunities for further study and analysis of the Minnesota youth access enforcement landscape.

Barriers identified by grantees

The three greatest barriers identified by grantee survey recipients were:

- 1) Retailer indifference/Lack of will
- 2) Community complacency and lack of knowledge about youth access laws
- 3) Clerks who either can't read IDs properly or who simply don't check IDs

Grantee survey recipients also identified the following barriers frequently:

- Uncaring/Indifferent clerks
- The need for additional and improved clerk training
- Youth attitudes about tobacco use
- Parental apathy and/or parental supply of tobacco to minors
- Minors selling to minors
- Weak sanctions
- The absence of a restriction on the age of tobacco sellers/clerks
- Friends, family and others over 18 years of age who furnish and purchase tobacco for minors

Barriers identified by non-grantees

The three greatest barriers identified by non-grantee survey recipients resulted in ties for the first, second and third position rankings:

- 1) (a) The need for additional and improved clerk training
(b) The need for law enforcement funding to do compliance checks
(c) Youth attitudes about tobacco use
- 2) (a) Reluctance/failure of court system to treat the youth tobacco issue seriously
(b) Over-18 year olds purchasing and furnishing tobacco to minors
- 3) (a) Retailer indifference/Lack of will
(b) Parental apathy and/or parental supply of tobacco to minors
(c) Community complacency and lack of knowledge about youth access issues

Other Obstacles

In addition to being asked to identify the greatest barriers to effective enforcement, survey recipients were asked to pinpoint other obstacles that stand in the way of local efforts to reduce the rate of the illegal sale of tobacco products to minors. The following obstacles were among those identified:

- varying levels of commitment from one community to another within a county;
- varying levels of commitment among older and younger law enforcement officials (sheriffs/deputies);
- community indifference to youth access enforcement efforts in predominantly blue collar communities where the cultural norm among adults is often accepting of smoking; and,
- the need to recognize that small, independently-owned stores often lack the training resources of large retailer chains.

Survey Respondents' Ideas for Ways to Address Barriers to Effective Enforcement

Many grantees and non-grantees expressed strong support for increased public education, social norm campaigns and media efforts to build support for local enforcement activities, indicating their belief that the public-at-large and community leaders must be convinced about the importance of tobacco retailer enforcement efforts in order for effective enforcement to be sustained. Several respondents called for enhanced vendor penalties, including an earlier and more active use of license suspensions, and many respondents called for improved vendor education. Respondents were divided in opinion about who is responsible for retail training. Many individuals believe it is the responsibility of vendors to provide training, while others believe that State or local government units should provide training materials and opportunities. Several respondents argued that a minimum age limit of 18 years of age should be set for individuals who sell tobacco products. Many respondents also requested continued State funding to increase the number of rounds of compliance checks per year and to increase enforcement capacity in other ways. One respondent suggested that under-18 clerks should obtain training through academic work programs before beginning their employment as clerks.

Survey Respondents' Ideas for How the Tobacco Law Project Can Provide Assistance and Technical Support

The responses from the majority of respondents demonstrated a good understanding of the range of services that could potentially be offered by Tobacco Law Project. Respondents expressed interest in having the Tobacco Law Project participate in providing the following types of technical assistance:

- increasing and improving training programs for law enforcement officials to generate support for retailer enforcement compliance activities, including provision of training for elected officials and court personnel in the State's smaller, more rural communities where support for youth access initiatives tends to be uneven;
- helping to develop improvements in retailer education and training, including provision of technical assistance to large retailer chains;
- providing information about existing laws and potential new laws to regulate the sale of tobacco to minors, drawing from within and outside Minnesota, including development of *best practices*;
- providing legal updates, research and training, including ideas about how communities can build strong community support for enforcement activities and goals;
- assisting with efforts to get all stakeholders, including the League of Cities, the Association of Minnesota Counties, the court system and others, on the same page;
- helping to gather and disseminate data or reports that will provide a comprehensive, statewide picture of compliance check and other retailer enforcement activities, including compliance check processes, tobacco retailer rates of sale and education efforts;
- helping to build support for initiatives that will address non-commercial sources of youth access to tobacco and make connections to second-hand smoke issues;
- helping communities to network with one another to pinpoint what is and isn't working;
- increasing the visibility of the Tobacco Law Project and its capabilities;
- convincing recalcitrant counties or localities to enforce existing laws.

Other Findings

The merged survey pools provide enforcement data on a total of 131 communities; 77.8% of these communities have populations of 50,000 or less. The total population size breakdown is as follows²⁵:

²⁵ Retail Enforcement Survey Question #4, merged frequencies.

- 35 communities (26.7%) have populations between 2,000 and 10,000
- 67 communities (51.1%) have populations between 10,000 and 50,000
- 17 communities (13%) have populations between 50,000 and 100,000
- 7 communities (5.3%) have populations over 100,000
- 3 communities (2.3%) have populations under 2,000
- 2 communities (1.5%) did not respond to the question about population size

Survey recipients were asked to report the number of licensed tobacco vendors within their communities.²⁶ Of the 119 communities that responded to this question:

- 50.4% reported between 9 and 26 tobacco vendors;
- 25.2% reported between 27 to 54 vendors;
- 15.2% reported between 59 and 105 vendors; and,
- 9.2% (11 communities) reported between 125 and 750 vendors, of which 3.4% (5 communities) reported 399 or more vendors.

Survey recipients were asked to report the frequency of rounds of compliance checks in their communities in 2001.²⁷ Of the 130 responses received, 53.8% conducted two rounds of checks; 36.2% conducted one round; 2.3% (3 communities) conducted no checks; and 7.7% (10 communities) reported “other,” indicating a combination of the above within given counties and, in some instances, three or more rounds of checks in a few communities.

The majority of communities, 64.1%, reported that compliance checks are funded, at least in part, through general budgets. In addition, 25.2% of all respondents, or 33 communities, reported that their compliance check activities are self-supporting. Twenty-three of these communities reported that their compliance checks are self-supported through license fees, eight reported that compliance checks are funded through the collection of fines, and eleven reported other sources of funding, primarily referencing receipt of grants or combinations of the above.²⁸

A total of 71.8% of all survey respondents (94/131) did not perceive funding of compliance checks to be a problem in their community; whereas, twenty-four communities, or 18.3% of all respondents, did consider compliance check funding to be problematic.²⁹ Approximately 70% of all respondents reported that their enforcement agencies have individual officers or units specifically assigned to conduct compliance checks and to perform other retail tobacco enforcement duties.³⁰ Over 52% of all respondents (69/131) reported that overtime hours are needed to complete mandated compliance check activities in their communities.³¹ Only 14.5% of respondents (19/131) identified the reliance upon use of overtime hours as a barrier to effective enforcement.

A total of 65 grantee communities and a total of 51 non-grantee communities reported their population sizes and their non-compliance rates. No communities with populations over 100,000 reported achieving a non-compliance rate of 10% or less. In the grantee pool, three of the five

²⁶ Retail Enforcement Survey Question #5, merged frequencies.

²⁷ Retail Enforcement Survey Question #8, merged frequencies.

²⁸ Retail Enforcement Survey, Question #10, merged frequencies.

²⁹ Retail Enforcement Survey, Question #11, merged frequencies.

³⁰ Retail Enforcement Survey, Question #12, merged frequencies.

³¹ Retail Enforcement Survey, Question #14, merged frequencies.

communities with populations over 100,000 reported achieving a non-compliance rate of 20% or less and, in the non-grantee pool, one out of a total of two communities with populations over 100,000 reported achieving a non-compliance rate of 20% or less.

In the grantee pool, 28/65 communities, or 43.1% of those reporting, had populations ranging from 10,000 to 50,000; approximately 75% of these communities reported non-compliance rates of 20% or less. Of these 28 communities, a total of thirteen, or 46.4%, reported non-compliance rates of 10% or less and a total of eight communities, or 28.6%, reported non-compliance rates of 11-20%.

In the non-grantee pool, 30/51 communities, or 58.8% of those reporting, had populations ranging from 10,000 to 50,000; approximately 73.4% of these communities reported non-compliance rates of 20% or less. Of these 30 communities, a total of 14, or 46.7%, reported non-compliance rates of 10% or less and a total of 8 communities, or 26.7%, reported non-compliance rates of 11-20%.³²

Tobacco Retailer Enforcement Processes and Advance in Other States

In preparation for this report, the Tobacco Law Project designed a telephone questionnaire template to conduct interviews with enforcement officials from other states.³³ Eight states were selected based upon their documented success and commitment to commercial youth access enforcement compliance efforts, recent Synar non-compliance rates and, in some instances, demographics or location. All interviews were conducted by telephone.³⁴ Most of the individuals interviewed either shared or had total responsibility for statewide oversight and management of commercial youth access enforcement compliance programs within their respective states.³⁵ The eight states included in this report are California; Florida; Iowa; New York; Maine; Massachusetts; Oregon, and Washington. Key features of each state's youth access enforcement compliance programs are summarized below.³⁶

California

Responsibility for Synar checks

The Tobacco Control Section of the California Department of Health Services is responsible for the Synar survey, media and education. The State contracts with a University for preparation of the randomized Synar survey and for oversight of a youth database. There are three separate youth recruitment contracts, one for each of three regions of the state – north, central and south.

Responsibility for enforcement of State youth access laws

Enforcement under California's STAKE Act is housed in the Food and Drug Branch of the Department of Health Services, which is separate from the Tobacco Control Section. The Food and Drug Branch does the state's compliance checks.

³² Retail Enforcement Survey, Questions 4 and 21c, cross-tabulation.

³³ See Appendix 6, Interview Questions for Multistate Analysis

³⁴ The principal investigator and author of this report, Susan Weisman, Senior Staff Attorney, Tobacco Law Project, conducted all interviews.

³⁵ The exception was Eileen M. Sullivan, Regional Field Director, who has responsibility for managing contracts of local boards of health for the State of Massachusetts' Department of Public Health.

³⁶ It is important to note that there is considerable variation from state to state with regard to scope of statutory authority and whether a state has adopted a centralized or decentralized approach to addressing commercial youth access issues. These differences must be kept in mind when comparing and contrasting enforcement approaches.

Funding for youth access enforcement

Court enforcement is funded through the collection of fines and penalties. All enforcement-related activities in California are coded by the nature of the activity and are tracked in a state database. The collected amounts cover enforcement expenses, which are defined in California to include only those enforcement-related expenses that occur after an investigator submits a report of a violation. Enforcement expenses include court costs, collection of fines and penalties, and work performed at state headquarters to process violations. California defines enforcement-related activities that occur prior to an illegal sale, including compliance checks, as “unannounced inspections” not “legal enforcement.” The State receives Synar funds through its Alcohol and Drug Prevention Program, and the funding for STAKE compliance checks comes through that source. Therefore, California’s compliance check process is far from totally self-supporting.

Funding for enforcement of tobacco laws other than the STAKE Act is also provided through the State’s master settlement funds. This source funds numerous local agencies through a grant process wherein the local agencies contract with the Tobacco Control Section to engage in local ordinance enforcement and/or clean indoor air initiatives in their communities. Local communities can also contract with the State of California for a higher level of enforcement for their communities. For example, the City of Los Angeles pays a set amount per compliance check to the State for a greater number of compliance checks than would otherwise be possible for the State to conduct in that municipality, and for collection of data used for enforcement of its local ordinances by State investigators.

The compliance check process

The STAKE program develops a work plan for each year. A zip code sort sets up most activities. The program maintains its own sub-set from the California Board of Equalization (BOE) master database. Most data is tracked on spreadsheets sorted by calendar year, fiscal year and cumulative data (since inception of the database program). The BOE, which collects vendor taxes, supplies the vendor identification list. The database sorts stores by nine types. There are 58 counties in California and approximately 80,000 vendors. All but 20 of the least populace counties are checked each year. The State concentrates on counties that are most problematic. Approximately 2,000 checks are done each year. Checks are done in remote locations (approximately 20 counties) every other year. Of the 2,000 checks done per year, approximately 600 result in the issuance of civil citations. The STAKE program issues a notice of violations, followed by a letter that indicates the applicable fines/graduated penalties. California does not have a state licensure requirement. Some communities have adopted licensure ordinances. The STAKE program does not enforce the State’s Penal Code and there is little Penal Code enforcement that occurs statewide.

Compliance checks are conducted by “peace officers” employed as investigators by the Department of Health Services, Food and Drug Branch, which regulates all food, drugs and medical devices. There are approximately 140 investigators in the Branch for the entire State, all of whom have B.S. degrees. The STAKE investigators work in pairs, each pair completing 500 compliance checks per year. One of the investigators is also responsible for maintaining the STAKE database. The investigators decide what zip codes they want to concentrate on within their assigned regions. The zip codes are fed into the STAKE database and the database kicks out random stores within the specified zip code. When doing investigations, one plainclothes investigator goes into the store with each teen and one investigator stays in a vehicle. Pre-surveillance is done on stores in most instances. The STAKE program attributes its success to the dedication of its staff, which have been described as “100% invested.”

Other notable features, challenges and priorities

California has a telephone citizen complaint or tip line. In addition, every store is required to post signage that includes the toll-free number. Occasionally, radio and TV spots make reference to the tip line; when so, this tends to trigger a significant rise in the number of tips received about stores that are selling to minors. The state averages about 1,000 complaints per year. Complaints are forwarded to investigators. At present, when investigators receive complaints, they place them in their own tickler systems so that when they visit a particular zip code area, they can cross-reference to the complaints received for that area. Investigators also stay in touch with local law enforcement offices to learn about problem stores. When assigned to a particular zip code, investigators visit stores about which complaints have been received, as well as stores that have been cited previously, in addition to conducting their randomly assigned checks. The STAKE program recently obtained legal authority under California law to do follow-up visits and respond to complaints.

California also has a tobacco clearinghouse toll-free number that gets broad public exposure, sometimes resulting in tips about problem stores. The clearinghouse distributes training and informational materials to both retailers and consumers.

Florida

Responsibility for Synar checks

The State Division of Alcoholic Beverages and Tobacco is responsible for Synar checks.

Responsibility for enforcement of State youth access laws

The State Division of Alcoholic Beverages and Tobacco also bears responsibility for enforcement. The State statute gives local government units authority to enforce the state law but this has been a low priority for many local law enforcement agencies. Most Florida local ordinances address product placement, not enforcement compliance.

Funding for youth access enforcement

Enforcement is funded through regular budgeting by the State legislature.

The compliance check process

Special agents, who are state law enforcement officers certified by the State, conduct Florida's compliance check investigations. In total, there are 180 special agents spread throughout the State. They are each assigned to a District Office and they report to a District Office supervisor. There are approximately 16 district offices statewide. In-house training is provided for the special agents. The training is 16 weeks long.

Florida's licensee database (Youth Survey System) has evolved over the years and is now quite large. There are approximately 33,000 – 36,000 licensees in Florida. The Department of Business and Professional Regulation maintains the database. As each retailer purchases a license to sell tobacco, the license information is fed into the database.

The database is used to randomly select vendors within each district for Synar survey checks, based upon the Synar specifications fed into the database. In addition, the database randomly selects at least 40% of the licensees within each county each year for enforcement compliance inspections (10% for Synar survey and 40% for enforcement inspections). The 40% rate for enforcement inspections is an annual mandated minimum. Typically, the percent of non-Synar, enforcement compliance inspections

ranges from 40 to 70 percent. Some districts are able to conduct enforcement compliance inspections on 100% of their vendors. In 2000, the statewide average for enforcement compliance inspections was 72%.

During inspections, special agents check for compliance with all laws relating to tobacco – they check signage to ensure proper posting, cigarette stamps, product placement, and all other tobacco-related activity or requirements. They are authorized to inspect and search each store’s paperwork and sales records without a warrant to determine compliance with state tobacco statutes.³⁷ They provide on-the-spot training if they observe a violation and time allows; otherwise, they schedule training for another date.

Investigations are done in pairs, with a variety of pairings depending upon the needs within a given jurisdiction: (a) Two special agents working with one teen; (b) one special agent paired with a local law enforcement officer and a teen. Depending on the jurisdiction, electronic devices (*body bugs*) may be used. Generally, they are used in rural areas or in small towns. In large metropolitan areas, body bugs are not used; instead, an undercover special agent enters a store with a teen while another special agent is posted in a car just outside the store. The undercover special agent must be able to be sworn in court to testify about his or her first-hand observations of an alleged illegal sales transaction.

The special agents report all inspection data into the database and file weekly reports with their district supervisors. The district supervisors check the statistics to make sure that the special agents are meeting internal goals (percentiles). The database can pull up information down to the day of each inspection, including the name of each store and the outcome. An annual summary report is sent to the Governor of Florida to justify the continuation of funding.

Youth receive civil citations that may lead to fines, community service and/or attendance at a school-sponsored anti-tobacco session, if available. On a third violation, a teen’s driver’s license may be taken. A clerk who sells will receive a notice to appear and, if the owner is present, the owner will receive a notice, too. For a first violation, a vendor receives a warning. After three documented sales, a vendor faces revocation. There are no age-of-seller restrictions in place in Florida. The State encourages responsible retailers to hire clerks who are 17 years of age or older.

Other notable features, challenges and priorities

Florida has a youth access citizen complaint process in place. Citizens can call any district office. Often, a sworn law enforcement officer will follow up by going out to the store in question or to a family’s home. Signage is required in stores. The signs set out the law and provide a 1-800 number. They are furnished to all vendors and must be posted in plain view to customers. The signs are helpful to clerks, who can point to them when customers become irked. They’ve been in place for several years. Enforcement-related media spots are produced through the Department of Health.

Florida enforcement officials attribute their program’s success to the dedication of the people who work in the tobacco program and the people who fund them. Although additional special agents would allow the enforcement program to do more retail education and would provide better results, enforcement officials consider their youth access enforcement program to be very good, as is. They take pride in having become very adept at doing “more with less.”

³⁷ See Florida Statutes, Section 569.004 (2000).

Among the greatest challenges facing Florida's youth access enforcement community is that Florida's tobacco settlement funds were shut down entirely in the most recent legislative session. Now that the money has run out, work is no longer being done. For example, vendor education products will not be produced. The tobacco settlement money had helped pull in local law enforcement personnel to assist with conducting compliance checks. One hundred and sixteen contracts were granted to 82 law enforcement agencies, each of which was six months in length. Some law enforcement agencies applied for two contracts (adding up to an entire year's worth of activity). Under these contracts, approximately 6,285 or more stores were checked.

Iowa

Responsibility for Synar checks

The Department of Public Health is currently responsible for Synar checks; however, Iowa intends to transfer responsibility to the Iowa Alcoholic Beverages Division (IABD).

Responsibility for enforcement of State youth access laws

The Iowa Alcoholic Beverages Division is responsible for enforcement of State youth access laws. The Director of the IABD sits on an advisory committee to the Department of Public Health and reports to the Department on IABD activities.

Funding for youth access enforcement

Funding for youth access enforcement is provided through the tobacco settlement funds. The Department of Public Health receives the funds and sub-contracts with the IABD, which, in turn, sub-contracts with local jurisdictions throughout Iowa. Tobacco retailer licensure is handled by local jurisdictions. Local officials enter the information into the State's database. Revenue from license fees goes into local jurisdictions and is spent however those communities see fit.

The compliance check process

The State of Iowa has roughly 5,000 tobacco retailers. The IABD contracts with local jurisdictions to conduct two compliance checks per retailer per year, in accordance with a written agreement that specifies the time when the checks must be done during the year. Local jurisdictions are paid \$50 per check, or \$100 per retailer location. Iowa has 99 counties and approximately 995 cities within its borders. There are approximately 202 local jurisdictions involved in the enforcement program, encompassing approximately one-half of Iowa's counties. County sheriff departments or municipal police departments conduct most of the compliance checks, and the State Highway Patrol conducts some, as well. Beyond that, the Attorney General's Office prosecutes retail tobacco violations if a community fails to conduct prosecutions on its own, with funding provided by the IABD. IF the IABD has to call upon the Attorney General's Office to prosecute a community's tobacco violations, then that community does not receive any of the revenues from civil fines that might result; instead, the fines collected would go to the State's General Fund.

The State of Iowa's IABD employs five field investigators who are assigned to regions of the state based upon the number of retailers and the geography within different regions. The field investigators are responsible for ensuring that compliance checks are being done properly within their respective regions; they explain enforcement protocols and provide retailer training. Retail training is voluntary.

Although Iowa uses certified peace officers to do its compliance checks, the State does not provide any special training for the law enforcement agencies. The State provides law enforcement agencies

with the enforcement protocols and then lets each law enforcement agency decide how to proceed with the enforcement activities. Iowa pays teens to participate in compliance check investigations. The law enforcement agencies are responsible for selecting the youth.

Iowa maintains a retailer database at the IABD. The database has been operational for approximately one year and is maintained by one full-time equivalent employee who has other, related job duties. Law enforcement agencies that participate in the IABD enforcement program report their enforcement data via an on-line reporting system that audits and tracks their efforts. An agency will not be reimbursed for the enforcement expenses they incur until they file their data.

Teens who are found in possession of tobacco receive civil fines, coupled with community service requirements. Community partnerships have designed community service programs in cooperation with the State court system. Vendors are sanctioned under Iowa civil laws that provide for a graduated penalty structure. Second and third violations can result in suspensions and a fourth violation can result in license revocation. Iowa's tobacco retailer penalty structure is modeled after the State's retailer liquor license laws. Under Iowa law, clerks are subject to criminal misdemeanor charges and mandatory court appearances for selling tobacco products to minors.

Other notable features, challenges and priorities

Iowa's IABD wants to add a statewide licensing provision to ensure that the State has an accurate tobacco retailer list and to match up the list with liquor license certifications. The IABD also would like to see fines added for retailers on repeat violations. Iowa's IABD sees its strength in the creation of a system that places trust and authority in local jurisdictions, while at the same time providing statewide oversight and management.

In-store signage is not mandatory in Iowa; however, the State makes signage available to retailers and encourages its use. Iowa utilizes media spots in newspapers and on billboards to draw public attention to youth access enforcement issues. Retailers are asked to take a pledge not to sell tobacco products to minors; youth pledge not to purchase or use tobacco products; and, law enforcement personnel are asked to take a pledge to enforce Iowa's tobacco laws.

The IABD sponsors a retailer advisory committee that is composed of law enforcement officers, teens, legislators and retail chains with historical problems involving the sale of tobacco to minors. The Attorney General's Office also participates. A key purpose of the advisory committee is to partner with retailers to obtain their voluntary support.

Maine

Responsibility for Synar checks

Maine's Office of Substance Abuse, in the Department of Mental Health, Mental Retardation and Substance Abuse Services, is responsible for Synar checks; however, pursuant to an interagency agreement, the Office of the Attorney General oversees the conduct of the Synar checks, which are done by the Department of Human Services. The Tobacco Control Coordinator within the Office of the Attorney serves as the contract administrator for the Department of Human Services.

Responsibility for enforcement of State youth access laws

The Department of Human Services has statutory authority to enforce the law. The Office of the Attorney General represents the Department of Human Services and handles all violations. The

Tobacco Control Coordinator at the Office of the Attorney General is responsible not only for enforcement of Maine's youth access laws, but also for enforcement of the smoking ban in restaurants under Maine's ETS law.

Funding for youth access enforcement

Funding consists of a mix of Synar block grant funds, which fund the Synar checks, and other federal funds that are used for enforcement. Maine has a one-time licensing fee set-up that the tobacco control coordinator describes as "problematic." Revenue from the license fees funds the administration of the licensing process and the court's involvement in the enforcement process. One-half of the revenue from the collection of fines goes to the State's general fund and the other half goes to a special fund that is returned to law enforcement agencies to be used for substance abuse and/or anti-tobacco activities. If a local community's law enforcement agency wants to do its own compliance checks, it may apply for a grant from the special fund to finance the effort; however, the agency would be competing with a number of other proposals that include *Smokeless Saturday* and other youth at-risk interventions.

The compliance check process

The Office of the Attorney General sets the protocol, which is very similar to the process that had been set up by the federal Food and Drug Administration (FDA). The State contracts with individuals with law enforcement backgrounds – retired law enforcement officers, for example, or current police officers or sheriff deputies – through the Maine Sheriff's Association. The State contracts separately, with a private firm called Howe & Company, for the recruitment of teens, aged 15 to 17, and adult supervisors for the teens. Howe & Company represents a number of organizations, including the Maine Sheriff's Association.

The adult supervisors transport the teens to stores in separate vehicles. Teens do not ride with law enforcement personnel. Two teens go into stores; one observes and one attempts to purchase. In urban areas, the law enforcement officers often go into the stores to observe or observe from outside the store. When a violation occurs, the law enforcement officers go into the store and issue a notice of civil administrative action. This is served on the store and the clerk. All cases are filed in one district court (in Augusta, Maine) and are heard as administrative hearings in selected district courts throughout the State. Approximately 98% settle by consent.

The law enforcement officers report directly to a coordinator who is employed by the Maine Sheriff's Association. All reports are forwarded to the Tobacco Control Coordinator at the Office of the Attorney General. The Coordinator reviews all procedures and provides training. He also keeps in touch with the contract supervisor at the Sheriff's Association and keeps on file information about everyone who assists with compliance checks. Background checks are done on all the enforcement officers and supervisors.

The degree of funding available each year determines the spread of assignments. The Synar randomized list breaks out Synar checks by county. There are approximately 2,700 total tobacco vendors in Maine. The Synar sample covers approximately 750 retail store locations. After the State completes its Synar checks, law enforcement officials continue down the randomized list to do as many more as funding permits. On the average, Maine has completed approximately 1,700 checks per year.

In July of 2001, Maine implemented a web-based, electronic reporting system. Law enforcement officers are required to file reports on palm pilots immediately after a violation occurs. The reports

are transmitted by modem onto a server. At the end of each day, the enforcement supervisor at the Sheriff's Association forwards the information to the secure server where the Tobacco Control Coordinator at the Office of the Attorney General can retrieve it through a secure web site. Other authorized persons can also access the data. The Tobacco Control Coordinator provides the data to the Office of Substance Abuse and also prepares an annual published report for the Department of Human Services and the State legislature. In the past, this has been done on a calendar year basis, but changes are underway to convert to a fiscal year set-up to bring the data reporting in sync with the Synar FFY timetable.

Maine is not a preemption state, but there is not much local level activity on youth access issues. The general sentiment appears to be that the State program is strong. When the FDA regulations were intact, the Office of the Attorney General contracted with the four largest communities within the State, but this has fallen to the wayside. Local authorities may enforce the State law if they choose to, in which case they would cooperate with the Office of the Attorney General and any official complaints would be filed with the district court through the Attorney General's office. However, the Tobacco Control Coordinator reports that district attorneys in local communities are not interested in youth access issues.

The penalty for possession by youth is either a \$100 fine, attendance at a *Smokeless Saturday*, where available, * or community service assigned by the district court. The court works with community coalitions to make community service options a better fit.

Clerks are fined \$50 for a first violation. Vendors are fined \$200 for a first violation in most instances, \$500, plus a 30-day license suspension, for a second violation, and up to a \$1,500 maximum fine for repeat violations. In addition, the Office of the Attorney General enters into consent orders that require vendors to take other active steps, including adoption of responsible tobacco retailing practices. Vendors are sometimes required to do internal compliance checks or to meet specific reporting requirements. To date, there have been several suspensions but no revocations. The Tobacco Control Coordinator is responsible for doing follow-ups. No criminal penalties exist other than for unlicensed sales.

Other notable features, challenges and priorities

Signage is required in Maine, stating that the sale of tobacco to minors is illegal.

Little enforcement is being done in Maine with regard to social access issues; however, a great deal of education and media work is done by the Partnership for a Tobacco Free Maine within the Department of Human Services. The Tobacco Control Coordinator and others are trying to work with vendors to get them to join forces. Maine has launched a *NO BUTS* training program campaign that is aimed at vendors. The program is voluntary, but if vendors agree to participate they have to agree to abide by certain policies and practices. Maine has produced a video, called *In the Driver's Seat*. Vendors who participate in the program and fulfill program requirements get potential breaks if their store violates the youth access law. If they have three consecutive good checks, the store receives a compliance check credit. Stores with a compliance check credit that have a subsequent violation will have the violation placed on file. Three more consecutive inspections would have to be passed in order to avoid a sanction. One year ago, a vendor received a \$10,000 fine in a 14-count complaint based on several locations operated by the chain. In addition to the fine, two locations had their licenses suspended for 30 days. That chain has done an about-face and has endorsed the *NO BUTS* program.

There is a current legislative initiative in Maine to set a minimum age of at least 18 for selling tobacco. Maine still has State law language saying that everyone under age 27 must be carded when purchasing tobacco.

Gaps or flaws in Maine's youth access enforcement system include: the one-time licensing fee; and, the absence of laws addressing Internet sales. Legislation has been proposed that would prohibit shippers from delivering tobacco products to Maine unless the seller is licensed by the State (i.e., the products must be shipped from a licensed Maine tobacco retailer).

Maine's youth access enforcement success can be attributed to the active involvement of the Attorney General's Office. The involvement of the Attorney General has helped tremendously to get the courts to buy in. The Chief Judge of the district courts has been very supportive and has helped to get the work out to the courts statewide, meeting with judges.

Massachusetts

Responsibility for Synar checks

The Department of Public Health's Bureau of Substance Abuse is responsible for Synar checks, but the Massachusetts Tobacco Control Program (also within the Department) collects the data and provides it to the Bureau and the Bureau prepares the annual Synar report. Local Boards of Health do the compliance checks for Synar as part of their regular compliance check process.

Responsibility for enforcement of State youth access laws

The State Attorney General is legally responsible for enforcement but in practice the enforcement is occurring at the local level through the activities of local Boards of Health. One Assistant Attorney General is assigned to handle all state tobacco-related issues. Enforcement of the state statutory provisions is not considered a priority, however, because the local enforcement is very effective and the overall approach being taken in Massachusetts is to focus on the local level. As in Minnesota, many local regulations in Massachusetts are stronger than the state provisions.

Funding for youth access enforcement

There are 351 cities and towns in Massachusetts, each with its own Board of Health. Approximately 90% of these communities apply for and receive grant funds from the State's Department of Public Health (DPH). This grant program constitutes one of six grant categories available through the DPH. The Board of Health grants cover policy development, youth access enforcement and ETS. The grants have conditions – in order to receive a grant, a local Board of Health must agree to do four compliance checks per year for every licensed tobacco retailer within its jurisdiction. Each local Board must also track the compliance check data for each retailer on forms that are maintained in the local Board's office. A local Board of Health must be able to produce the form if requested to do so by the DPH, for Synar reporting, for example. Each local Board of Health must complete monthly reports, summarizing work activity. This evaluation report contains less detailed information, but includes information about how many compliance checks were done during a given timeframe and other enforcement information. The policy development portion of the grant focuses on work efforts to pass new ordinances, strengthen existing ones or assist with other types of community policy efforts.

The amount granted is based on a formula, which depends upon various factors, including a community's population size, health disparities, and the number of retail tobacco outlets. Generally speaking, more than one dollar is allocated per person, per community. Grant sizes range from

roughly \$10,000 to a cap of \$375,000 (Boston). The average grant ranges from \$70,000 to \$120,000. Some Boards of Health band together to apply for a joint grant and then coordinate local enforcement activities jointly, as well. There are two sources for the grant funds. The majority of the funding comes from one of the State's excise taxes – a 1992 voter referendum 25 cents tax – that goes into a health protection fund and some of the money is then dispersed for the Board of Health grants. The remainder of the funding (which is shrinking) comes from the State's settlement funds.

The compliance check process

There is a lot of variation among communities in Massachusetts with regard to enforcement protocols. Local Boards of Health set their own procedures and the parameters are somewhat flexible. The local Boards of Health hire their own local tobacco control staff and are responsible for the supervision of these staff persons. The Boards set the specific employment requirements. The staffers become *agents* of the Boards and therefore can issue citations and give fines. In some communities (not many, apparently), police departments are involved, but this is becoming less so with the passage of time. Some communities use criminal sanctions while most use non-criminal sanctions. Non-criminal provisions and enforcement efforts predominate in Massachusetts. Very few communities use both, although if a retailer ignores a non-criminal fine, a criminal complaint can be filed.

The DPH provides a one-day training on how to conduct compliance checks, which includes power-point presentations and role-plays. The DPH also provides a two-day training session on policy skills and issues.

Massachusetts encourages the use of 16 and 17 year olds to assist with inspections and recommends using youth from adjacent communities, rather than from within a given community. For most inspections, the youth enter the stores by themselves. They do not use electronic devices of any kind. Communities are encouraged to do conduct compliance checks at a variety of times – some after school and some on Friday nights and/or on weekends when vendors are not expecting investigators to be out and about. They have found that they detect more problem stores this way. In the early phase of the State's youth access enforcement efforts, they worked closely with the DARE program, but found it difficult to schedule law enforcement officers for inspections. They also found that some DARE officers didn't feel strongly about tobacco issues and tried to cut corners. Compliance checks are done in liquor stores, where they tend to find high sales rates, as well as in bar areas of restaurants.

Many details of the inspection process are controlled locally. In urban areas, including Boston, there is acknowledgement of the fact that certain areas are high crime, unsafe areas.³⁸ Safety comes first – in these areas, inspections are conducted during daylight hours and some locations are designated as *x-routes* – off-limits. Efforts are made to hire staff members who are comfortable with and familiar with a given community.

Database reporting is handled as follows. The monthly progress reports from local Boards of Health go to an independent evaluation company hired by the DPH. The information is fed into the database. The database contents are sent to the DPH research unit electronically for internal use only. The database information is made available to each of the regional directors as summary data. Detailed information appears in the paper reports that the local Boards of Health are required to maintain in their files. Some results from the summary data are published for public dissemination.

³⁸ Unfortunately, Massachusetts has a number of smaller cities that have higher crime rates than Boston.

For the approximately 10% of Massachusetts communities (small towns only) that do not participate in the DPH grant program, the DPH contracts with former FDA inspectors to conduct the research-based Synar checks in those communities.

With regard to sanctions, the State of Massachusetts tobacco control community pushes for non-criminal sanctions – a common sentiment among the tobacco prevention community there is that criminal sanctions do not help build community support. In practice, most violators pay fines.

Treatment of the youth possession issue varies from community to community. There is no current state law on youth possession. Generally, the Massachusetts tobacco prevention and control community is opposed to youth possession. Concerns have been raised in Massachusetts about racial profiling, the targeting of youth by the tobacco industry, and youth lack of knowledge. There is also concern that possession draws away from the State's focus on compliance checks.

With regard to vendor and clerk violations, the emphasis in Massachusetts is on storeowners, not clerks. Tobacco control and prevention advocates in Massachusetts support the application of the *master-servant doctrine*, wherein the vendor is deemed responsible for the actions of the clerk. In some communities, clerks are cited for selling and do receive fines. It is up to the local communities to choose what to regulate; however, statewide, the emphasis is clearly on vendors. Local communities are encouraged by DPH to work locally with retailers and retail associations to establish meaningful relationships that stress the importance to the community-at-large of not selling tobacco to minors.

Sanctions proceed most often through an administrative court process, with hearings conducted by hearing officers who sometimes are political appointees. The DPH encourages suspensions for repeat violators. Most suspensions occur on the fourth violation, with a proviso that if no further violations occur within two years, the vendor will revert to a first offense status. Some communities suspend a license on a third offense. Many communities fine a vendor \$100 for a first offense, \$200 for a second offense and \$300 for a third offense. Some communities offer a warning for a first offense and then institute graduated monetary penalties and other sanctions for subsequent offenses.

In Massachusetts, vendors are licensed locally and by the State. The State license fee is \$25 per year. This amount goes to the Department of Revenue. Local license fees vary, ranging from zero to \$100, generally,³⁹ and the norm is from \$25 to \$50.

Other notable features, challenges and priorities

An interesting feature in Massachusetts is the creation and ongoing involvement of a statewide advisory group on policy issues on youth access and ETS. The group is called CAST (Community Assistance State Team). The group meets quite regularly, every other week, and functions as an advisory committee for all Massachusetts local communities. Participants include attorneys and public health professionals from the Massachusetts Municipal Association, the Massachusetts Health Board Association, Northeastern University School of Law's Tobacco Law Center (TCRC) and, attending from the DPH, six regional field directors who are responsible for managing the contracts with the local Boards of Health. CAST advises communities on the pros and cons of taking specific steps, helps craft and/or review model ordinance language, and brainstorms policy ideas.

³⁹ A recent exception is a town that has set its license fee at \$500. The Massachusetts Office of the Attorney General is reviewing the matter.

Massachusetts does require signage in stores. Signs must be posted near the actual point-of-purchase and must state the State law and fines. Some local communities have additional signage, either required by ordinance or produced voluntarily by a community. The State is developing a statewide packet for vendors that will include signage and stickers. The Office of the Attorney General has regulations that require stores to provide training. In addition, many local Boards of Health offer free training to vendors and clerks.

Some complementary measures are being undertaken at the local level. The impact of these measures is still unclear; however, the State is experiencing some forward momentum with these approaches. Some local communities have created their own websites. There are many local educational initiatives, including signage that focuses on youth access and enforcement. One advertisement campaign in western Massachusetts mirrors the *Got Milk?* campaign, instead asking, *Got ID?* Lowell youth are involved in a separate advertising campaign, placing enforcement messages on grocery store bags and stickers. These efforts are intended to provide alternatives to the industry's campaigns that target youth. Communities are borrowing freely from the CDC's youth access materials – the CDC had designed a billboard campaign, as well as a bus advertisement campaign with youth access messages.

One challenge in Massachusetts is that not all communities within the State have passed local laws yet and the DPH would like to see all communities get on board. The local Boards of Health are now in their third funding cycle and each year the State is increasing restrictions – tying the level of funding to having certain regulations in place, e.g., licensing, graduated penalties, including suspension. Another ongoing challenge is the need to develop positive vendor relationships at the local level – this depends largely on the skill and experience background of local staff persons. Written retail education materials are available statewide but building the face-to-face relationships with vendors has been a challenge in some communities.

Massachusetts attributes its youth access retail enforcement success to the funding of local community efforts, where strong, long-term community support is being built at the local level in ways that can be tailored to meet the needs and goals of individual communities. Massachusetts believes that the compliance check process is changing and shifting community norms within its borders.

New York

Responsibility for Synar checks

The Tobacco Enforcement Program of the New York State Department of Health, Bureau of Community Sanitation and Food Protection, coordinates with and conducts the Synar compliance checks for another State agency, the Office of Alcoholism and Substance Abuse Services (OASAS). OASAS contracts for the federal block grant funds.

Responsibility for enforcement of State youth access laws

The Department of Health's Tobacco Enforcement Program, housed within the Bureau of Community Sanitation and Food Protection, is responsible for enforcing New York's youth access laws.

Funding for youth access enforcement

In 1997, Governor Pataki signed a law, which allowed funding for local enforcement officials – 2.5 million dollars was dispersed to 35 counties and New York City, and funded state district office positions to provide oversight of 22 counties that lacked organized health departments. Since 2000,

funding has been provided through the Health Care Reform Act (tobacco settlement funds). In the fourth and fifth program years, funding was increased to 4.1 million dollars. Program monies fund the Bureau's Tobacco Enforcement Program and staff, nine state district office positions (including training and travel expenses), thirty-six counties and New York City as an expenditure plan on a per year basis. The funding formula used to disperse three million dollars to the counties and New York City in the fifth program year was a baseline amount of \$11,000, plus an additional sum based upon the number of tobacco vendors within each jurisdiction.

The fifth year funding initiative was released in August 2001, and contains a work plan and letter of agreement that each applicant must agree to adhere to. A standard voucher triggers the release of the funds once an application is approved. This year, the number of tobacco vendors per local jurisdiction ranges from 44 to approximately 14,000 in New York City. The funding fiscal cycle is October to September. For the fifth year funding cycle, the smallest municipality will receive \$14,946 and the largest, New York City, will receive \$1,280,016. The program receives very strong support from Governor Pataki and State Health Commissioner Novello.

Initial funding in 1997 provided for a two-year, \$500,000 contract for merchant associations to provide vendor training for vendors and staff. Although the training succeeded in increasing the knowledge of attendees, turnout for some sessions was poor, even though registration tallies indicated that adequate numbers signed up. Currently, local enforcement officials are required to provide training as an outcome of a violation and for newly licensed/registered vendors.

The compliance check process

There are over 30,000 retail tobacco vendors in New York State and approximately 5,000 vending machines. Vendors are required to register annually with the State's Department of Taxation and Finance. Some counties and New York City have more stringent local licensing ordinances and more stringent requirements than the State law. If the local law is tougher, the local law prevails. The compliance checks for Synar and enforcement are one and the same, unless from a calendar year timing standpoint a Synar check has to be done when an enforcement check would not have been done otherwise.

Per the State's work plan, each vendor is to receive one compliance check a year. If a sale occurs, a repeat check is to be done within six months after a finalized enforcement action occurs. A standardized inspection form is used for all compliance checks. It is up to local units to implement the compliance check process within their jurisdictions. Each local unit must have an enforcement program in place that must meet the State's minimum specifications. Local enforcement officials are monitored throughout the year. They must submit quarterly reports, showing the number of compliance checks, the number of sales, enforcement actions and the amounts of revenue collected. The State attempts to complete 40% of the annual round of compliance checks within the first six months of the year. This request is contained in the State's work plan.

Counties cannot receive the State's funding package unless they meet the State's minimum enforcement specifications and requirements. To date, only one county has opted not to accept the funding commitment (for the fourth program year). In this instance, a neighboring State district office conducted that county's compliance checks; however, the county remained responsible for pursuing any resulting enforcement actions.

The State of New York requires all enforcement officials to maintain program databases. The nine district offices and several counties use the State's eHIPS Tobacco Enforcement Program database; others, including New York City, maintain their own databases, separate from the rest of the State. The Department of Health maintains the eHIPS database. All enforcement officials are required to file their quarterly compliance check reports (including the type of visit and what prompted the visit) and to comply with certain other work plan terms.

The State provides compliance check training to all enforcement officials, following the protocol established for Synar checks. Beyond this basic protocol, the process may vary depending upon the jurisdiction having oversight (i.e., individual counties, state district offices or New York City). In counties that receive dispersed funding, each county's health department is responsible for program oversight. In New York City, the Health Department sub-contracts with the New York City Department of Consumer Affairs. In the nine state district offices, State Health Department employees coordinate the program.

All enforcement officials must arrange to hire teens or locate teen volunteers, ages 15 to 17, to assist with compliance checks, provide them with necessary training, schedule and conduct the compliance checks and, when indicated, take enforcement action. Some agencies pay teens minimum wages, some pay \$10 per hour, and some use volunteers and provide gift certificates. A few agencies employ youth. Most enforcement officials assign public health employees (e.g., inspectors, technicians, sanitarians) to conduct compliance checks; however, some assign a combination of public health employees and law enforcement officers (police officers, sheriff's deputies). Two counties use law enforcement staff exclusively (Erie and Oneida counties). In New York City, two staff members from the Department of Consumer Affairs accompany teens for each compliance check.

Regional variations exist regarding the number of individuals who conduct the compliance checks. In some jurisdictions, parents are invited to accompany the teens and inspectors and, in some locales, the parent functions as the adult who enters the store with the teen to witness an attempted sales transaction. No electronic monitoring devices are used.

Each local jurisdiction is responsible for enforcement of New York State's Public Health Law Article 13F, known as ATUPA, the Adolescent Tobacco Use and Prevention Act. ATUPA prohibits the sale of tobacco to persons under the age of 18. Violators face civil penalties, including the temporary or permanent loss of their registration to sell tobacco and, when applicable, their lottery license. Fines range from \$300 to \$2,500. New York State stresses that enforcement action is to occur on every non-compliant transaction. ATUPA's emphasis is on vendors, not clerks.⁴⁰ Some local jurisdictions have enforcement ordinances that are more stringent than the ATUPA provisions. In general, New York has a two-part approach to tobacco prevention activity. The State Department of Health's Tobacco Control Program works with community coalitions on cessation and outreach issues, while youth access enforcement (ATUPA) and the Clean Indoor Air Act (CIAA) are handled through the Department of Health's Tobacco Enforcement Program. State Public Health Law Article 13E addresses CIAA requirements. Most local ordinances in New York focus on clean indoor air issues, not youth access.

⁴⁰ The State of New York's Penal Law prohibits the sale of tobacco to persons under the age of 18 and allows law enforcement officers to file criminal charges against violators; however, this law has not been enforced actively.

Other notable features, challenges and priorities

New York identifies needs for improvement with regard to inconsistencies in the way compliance checks are implemented and/or variations in enforcement actions. Because of the fact that local enforcement officials do not all conduct compliance checks and enforcement in the same manner, vendors and merchant associations have complained about program inconsistencies. Areas of concern are being addressed.

The State's funding has been instrumental in establishing a strong statewide enforcement program. Without it, the Tobacco Enforcement Program would have remained an unfunded mandate, and few locales would have actively enforced the youth access law. The Tobacco Enforcement Program's work plan and up-front agreement have allowed the program to function with relative ease – the work plan sets minimum program guidelines and provides a unified program across the State, while the funding supports localities to commit to the program and enforce the law. The Program's reporting requirement ensures program monitoring, helping to identify issues of concern so that they can be addressed promptly and showing the program's progress. The New York Tobacco Enforcement Program also has benefited from a strong staff and public commitment to address tobacco issues. The Program also has received very strong support from the Governor and the Health Commissioner. New York does not have a statewide telephone tip-line; however, a 1-800 number appears in tobacco enforcement publications and enforcement officials do respond to citizen complaints. Complaints are reported on local quarterly reports and are published in a required annual report. Signage is required and it must be a set size and color. Retailers report that they like the signage because they can point to and say, "It's the law."

Brochures describing the ATUPA requirements are provided to vendors and vending machine operators and a descriptive brochure also is available for the public. New York issues annual press releases to announce funding and issuance of the annual report. Names of violators are published in the annual report. An amendment to the ATUPA in 2000 requires that this information also be published in local newspapers. With the exception of press releases and publications, there has been minimal additional effort to advertise the aims of the Tobacco Enforcement Program, but this is something that the State of New York would like to improve upon.

Oregon

Responsibility for Synar checks

The Department of Human Services is responsible for conducting Synar checks. Because law enforcement officers must conduct the compliance checks, the Department of Human Services contracts with the Oregon State Police. All of the 10-15 officers assigned to conduct compliance checks are retired state police officers. Oregon is among the states that were penalized for failing to meet targeted Synar rates. The State's general fund is paying for the penalty phase. Approximately \$650,000 in enforcement funds are included; in addition, the State has focused on statewide prevention and education efforts, including much that addresses youth access. Synar block grant funds pay for ongoing Synar checks.

Oregon is stretching its penalty phase over 2.5 years. There are approximately 2,700 tobacco vendors in Oregon that are not age-restricted, and the State is attempting to check all of them during the penalty phase. After the Synar penalty requirements are met, Oregon anticipates that it will probably cut back to doing the required Synar inspections only. Oregon's Synar sample consists of approximately 750 vendors yearly.

Responsibility for enforcement of State youth access laws

Where local ordinances exist, municipal and state laws are enforced by local law enforcement. There are approximately eight communities in Oregon that have strong local ordinances and these communities tend to be enthusiastic about enforcement activities. Many of them require licensure and fine retailers in addition to, or in lieu of, fining clerks. Oregon funds a statewide coordinator to oversee enforcement issues and activities, including responsibility for overseeing the Synar compliance check process - giving assignments, developing the methodology for the Synar checks, drawing up the samples, maintaining the retailer list and the State's retail enforcement database, and other duties.

Funding for youth access enforcement

Enforcement is considered a priority in Oregon; however, at the present time, funding is inadequate to provide ongoing, large-scale enforcement efforts. There are approximately 20-40 targeted inspections per year, based on information supplied by retired officers, citizens, county tobacco program coordinators and others. The Department of Human Services would like to expand its reach and maximize its capabilities; however, convincing the State legislature to support additional enforcement has proved difficult. Licensure issues have come before the legislature the last three sessions, but no legislation has resulted. This is true, as well, for registration proposals – the State's Attorney General has encouraged registration of vendors but the legislature has taken no action on this issue. Revenues from fines feed back into the general fund. The Attorney General has fought to use a portion of the master settlement to fund enforcement but, to date, there has been no strong legislative support for this approach.

The compliance check process

Oregon's Synar sample has historically been based on the percentage of youth aged 12 to 17 who reside in each county. The State has adopted an updated system, wherein the State randomizes all vendors without a county-by-county breakdown. Assignments for inspection officers and statistical reporting purposes will still be made county-by-county, though.

Under Oregon's contract with the State Police, the State Police determine when to do the compliance checks; however, the State requires that all assignments must be completed between October and the end of June. Officers volunteer to do this work and are paid under the state police payroll system at a set hourly wage. It typically takes an officer about one month to complete all assigned work. Individual officers are each given randomized lists of selected sites and randomized alternate lists. During past years, if an inspection officer determined that vendors on the main list had gone out of business or were otherwise disqualified, the officers used substitute vendors from the alternate list. If vendors or clerks violate the law during compliance checks, it is up to the individual officers to choose whether or not to re-inspect through a "targeted" inspection. Some officers are more vigilant than others – they talk with non-compliant clerks or vendors and if the clerk or vendor doesn't seem to grasp the meaning of the law, they tend to re-inspect. Oregon's administrative rules require that compliance checks must be done only at times when teens would typically visit stores, between 3:00 to 8:00 p.m., and on weekends. In addition, inspections may only happen once within a 30-day period at any given location.

The Oregon State Police hires its own coordinator to supervise the officers who conduct compliance checks and provides specialized training for the officers. This past year, the state police hired a retired officer for the coordinator position. This arrangement worked well, as the coordinator was able to focus exclusively on this issue.

Oregon maintains a statewide retailer database. The Synar coordinator in the Department of Human Services manages the database. The list is updated annually, based on updates about openings and closings, etc., that are filed with the Department by county tobacco program coordinators, as well as inspecting officers. When individual officers conduct compliance checks, they are required to complete paper forms that detail their activities and mail the forms to the state police coordinator, who then checks the forms over for accuracy and forwards them to the statewide coordinator at the Department of Human Services.

There are no consequences in Oregon for a community's failure to enforce the state's youth access laws. Local police tend to take a hands-off approach to retail enforcement efforts. Many of the county tobacco program coordinators conduct local *reward and reminder* visits to vendors, even though there is no force of law behind their efforts. They talk to vendors and promote a rewards system, wherein vendors can receive gift certificates or other rewards for passing inspections. Local merchants show support for these efforts by supplying gift certificates. The tobacco prevention and control community sees this approach as a good opportunity to build bridges with vendors and provide them with more information. At present, in light of the fact that the Oregon legislature just passed a pre-emptive law on smoke-free workplaces, county coordinators have been putting more emphasis on youth access issues, as their ability to make much progress on secondhand smoke issues has been slowed.

Currently, there are no meaningful incentives for vendors to comply with Oregon's youth access laws. One problem is that only clerks are penalized in Oregon. The State's tobacco prevention and control community believes that no impact will be felt on non-compliance rates until and unless retailers face consequences – that the vendor non-compliance rate will level off and not drop below a certain point.

Clerks typically receive a \$100 fine for selling tobacco to a minor. On repeat offenses, they sometimes receive a steeper fine, with a maximum fine of \$600. Usually, the amount is set before a court appearance occurs and the matter is handled much like a traffic ticket. Clerk fines are not progressive – every violation is a fresh event.

It is illegal for minors to possess tobacco in Oregon; however, there is an exception on the books that permits parents to give tobacco to their children in their own homes. Youth possession is not enforced very much in Oregon, although some counties treat this issue more seriously than others. Youth possession is treated as an administrative ticket; typically, if a youth is cited, she/he is fined and sent to a tobacco education class. The state law does provide, however, for suspension of a driver's license for one year on a second offense. Within the state's tobacco prevention and control community, the general sentiment is that the focus should be on the supply side, rather than on sanctioning children, but the sentiment also exists that children must take responsibility for their actions.

Other notable features, challenges and priorities

Oregon enforcement officials consider the absence of a licensure requirement to be the state's largest gap in its enforcement system. Other major gaps include the absence of vendor sanctions and the need for funding that is specifically earmarked for enforcement. With regard to vendor sanctions, one idea that is being discussed is the adoption of a graduated fine system, e.g., \$500, plus retail training, for a first violation; \$1,000 for a second violation; and, \$5,000, plus a suspension, for a third violation.

Oregon's enforcement success is rooted in its strong prevention and education program, which is funded by excise taxes. Other strengths are that local vendors are hearing directly from their local county public health coordinators through the *reward and reminder* visits and that coordinators are assessing vendors regarding their clerk training and understanding of the youth access laws. Another strength is that state and/or local officials send every vendor written materials once a year at the beginning of the Synar and/or enforcement cycles, including letters from state and local officers (e.g., mayors). These coordinated activities help build and maintain vendor and clerk awareness and appreciation of Oregon's youth access laws.

Oregon has no age of seller restrictions in place and there is no formal citizen complaint process. State law does require signage – it can be either the State-supplied signage from the merchant education packet or the industry-sponsored *We Card* signage, as long as it conforms to mandated content requirements. The State issues press releases that identify stores that do not pass inspections. Last year, Oregon instituted a reporter ride-along program that has had a good response and plans are underway to repeat the program. Adding the ride-along program to the mix has resulted in a reduction in negative press/editorials.

Washington

Responsibility for Synar checks

The Department of Health is responsible for doing Synar compliance checks. There are 39 counties in Washington and 34 local health jurisdictions. The Department of Health determines the random sample and assigns the random selections to each of the 34 local health jurisdictions with instructions for implementation. The Department provides standardized forms and sets the protocols.

Washington's local health jurisdictions are autonomous. The State gives direction and funding but the local health jurisdictions can decline to participate. Many of them receive state funding and some also receive county and municipal funding. Local health jurisdictions are referred to as *departments* or *districts*.⁴¹ Some of these local health jurisdictions serve multi-county areas, primarily in rural, lower population areas. Boards of Health, which in some cases are composed of elected county commissioners, oversee all of the local health jurisdictions.

Responsibility for enforcement of State youth access laws

The Liquor Control Board (LCB) enforces the State's youth access laws. The LCB does its own compliance checks, has its own licensing administration, and maintains relationships with local government units. The LCB may assist with compliance checks conducted by locals and sends representatives to local and state level coalition meetings. The LCB is divided into four regions. Local agents are stationed at various locations around the state and report to regional managers. Quarterly reports summarize county-by-county data.

Of Washington's 34 local health jurisdictions, 28 conduct Synar compliance checks and 7 of those 28 local health jurisdictions conduct checks in addition to the Synar sample. In King County, which

⁴¹ Health Departments are part of county government structures and may be single county departments, single departments serving multiple counties, or single departments serving a city-county entity (such as Seattle-King County and Tacoma-Pierce County). Health Districts differ in that they are separate political subdivisions with boards of health that are usually larger than those of departments and include county and city representation (such as Snohomish County Health District).

encompasses the City of Seattle, the local health jurisdiction, not the LCB, conducts all of its own compliance checks. King County has a full-time staff of health inspectors who conduct compliance checks.

Funding for youth access enforcement

Seventy percent of the funding that results from the implementation of Washington's youth access law goes to local jurisdictions and thirty percent goes to the LCB. The Department of Health funds the LCB's compliance check activity. Local law enforcement agencies get no specific funding to enforce youth access laws or to conduct compliance checks. In addition, Public Health Seattle-King County (the Seattle area) has received funding from the Division of Substance and Alcohol Abuse Division (DASA), a division of the Department of Social and Health Services and recipient of the funding that is tied to Synar checks (like Minnesota's Department of Human Services), to increase the number of compliance checks statewide. Washington has a total of approximately 8,400 tobacco retailers.

There are three funding sources for tobacco prevention and control activities in Washington: settlement funds; youth access funds (from license fees); and, Centers for Disease Control (CDC) funding. Every county receives a set number of dollars based on population. Youth access money is used for compliance checks, enforcement, retailer/community education and social sources efforts. The amount of youth access money allocated to each county is based on the number of retailers within each county. If a county needs more money than has been allocated, additional funding may be supplied from settlement funds.

The compliance check process

The Department of Health supervises training and ensures that established protocols are followed correctly. The Department has a statewide coordinator who is responsible these tasks. This individual is also responsible for providing training to ensure the proper maintenance of the integrity of the evidence resulting from a violation.

Synar inspections place an emphasis on teamwork. One or two adults work with two or three teens, ages 14 – 16. No electronic devices are used. When inspecting large stores, one teen goes in, accompanied by an adult observer. For inspections of small stores, the adult usually observes the attempted transactions from a vehicle.

The LCB compliance checks result from: routine visits, as part of observations obtained in the course of normal job duties; complaints; prior violations, in which case a second unannounced inspection is done within 30 days after the first violation; and, random checks.

Compliance checks are conducted during the first six months of each calendar year. Additional compliance checks are done throughout the remainder of the year on an as-needed basis.

Washington is in the process of setting up a statewide database to track all enforcement activity; the database is projected to be up and running in December 2001. This reporting system will be an add-on to an already established web-based reporting system, called CATALYST, which collects data for several other program areas. CATALYST has been receiving high marks. When the program becomes available for tracking compliance check activity, the computer program will pull up a county and local health jurisdiction personnel will enter the applicable data. Starling & Associates, a private company, designed and supports the web-based CATALYST program. The Department of Health

gave local health jurisdictions one year's notice about the upcoming reporting system requirements. The Department of Health's Epidemiology Division will manage the new reporting system.

As of 2002, in order for local health jurisdictions to receive youth access funding, they will be required to conduct Synar compliance checks or contract with another appropriate agency to ensure their completion (e.g., another local health jurisdiction, police department, or LCB agent). For local health jurisdictions that choose not to participate, the Department of Health will hold back the amount of money it would cost to conduct the required checks and then contract with another agency to complete them. This requirement will be written into the Department of Health's contracts with local health jurisdictions.

For now, Washington has a Synar database that is maintained by the Department of Health's Epidemiology Division for all counties in the State. King County (the Seattle area) tracks its own compliance check data, by city, for both Synar and non-Synar compliance checks. The Department's coordinator tracks the data from at least one other major metropolitan area, Pierce County (the Tacoma area), for both Synar and non-Synar checks. Data from other counties' non-Synar checks are not being tracked systematically at the present time.

Other notable features, challenges and priorities

Youth possession has been illegal in Washington since 1999. Enforcement, however, has been spotty – it occurs around some schools and in certain counties, usually at the initiative of concerned local law enforcement and/or school personnel.

Washington cites need for improvement in the following areas: (1) enforcement of the youth possession law; (2) creation, and effective distribution, of more vendor education materials – at present, vendors typically receive an information sheet with their license and nothing more, unless a need arises for intervention or a particular community supplies its own educational materials; (3) the specific needs of population groups for whom English is not their primary language, e.g., Koreans and Russians, must be met; and, (4) more compliance checks are needed and more funding is needed for compliance checks.

Within the next five years, the Department of Health will increase the percentage of youth access funds that must be earmarked exclusively for youth access activities: compliance checks, programs/activities that address the problem of social sources, retailer education and community education on youth access issues.

Washington attributes its enforcement success to strong state leadership, particularly from Public Health Seattle-King County, which has promoted its interest in this issue throughout the State, and to putting strong protocols in place, leading to a 2.5% improvement in one year's time. There is also strong, statewide community support and interest in youth access issues.

Although Washington does not yet have a central 1-800 tip line for complaints, all citizen complaints are followed up on. The State is examining this issue and trying to refine a centralized statewide complaint process. One idea being considered is a poster that all stores would be required to post, listing either a phone number for a local health jurisdiction or a 1-800 number that would ring to the LCB. Washington plans to publicize its youth access activities, including compliance check results, in local newspapers and on the Department's tobacco website, once CATALYST gets up and running.

Barriers to Effective Enforcement: Challenges and Recommendations

A. Systemic Barriers: Monitoring, Oversight and Funding Challenges

1. The absence of centralized, statewide enforcement oversight and administration

The absence of a centralized, enforcement oversight and administration mechanism is, in a sense, a by-product of one of the key strengths of Minnesota's youth access enforcement landscape, that being the state's orientation toward focusing on community-based initiatives and local ordinances to address commercial youth access issues. The push for local control is designed, in part, to prevent industry-driven weak, pre-emptive legislative measures from taking hold at the state level. Additionally, it is hoped that local government units will take ownership of tobacco control issues as they grapple with the passage of ordinances designed to address youth access prevention and enforcement issues.

The benefits of an orientation toward decentralized implementation and enforcement must be balanced, however, with effective statewide oversight and management.⁴² Without centralized enforcement oversight, individual Minnesota communities are sometimes left dangling with laws on the books, but without an effective infrastructure to achieve meaningful implementation and enforcement of youth access laws. Communities that have weak enforcement programs, as well as communities that have been successful in implementing and enforcing youth access laws, stand to benefit from centralized leadership, guidance and oversight of youth access enforcement initiatives.

Statewide oversight of enforcement activities has strong potential to significantly strengthen and unify the enforcement efforts in individual communities throughout the state. Adding an oversight function at the state level would facilitate the state's efforts to monitor the effectiveness of commercial enforcement activities, showcase best practices, troubleshoot successfully, and provide ongoing assistance to those communities most in need of support.

Recommendation: A state agency position should be created⁴³ to coordinate, oversee and monitor statewide youth access to tobacco commercial enforcement efforts. This position could include responsibility for the following functions:

- Oversight of database design, monitoring and reporting
- Preparation of reports to the legislature summarizing enforcement efforts
- Design and coordination of training materials for vendors
- Design and coordination of training materials for enforcement officers
- Liaison between state agencies re: annual Synar Report
- Liaison with local youth access enforcement agencies statewide
- Liaison with local public health agencies and public health advocacy organizations
- Liaison with youth-led anti-tobacco movement (Target Market)
- Liaison with retailers, retailer chains and associations
- Internal representative to state agency management teams regarding enforcement issues
- Maintenance of clearinghouse of enforcement statistics and literature.

⁴² Presently, Minnesota law provides no clear statutory authority for a particular state agency to provide statewide enforcement oversight and management.

⁴³ Strong, consistent and well-informed leadership of Minnesota's youth access to tobacco retail enforcement system is essential to its success, regardless of what agency is made responsible for this function.

Recommendation: State agencies involved in youth access to tobacco issues should consider the creation of a long-term statewide advisory committee on youth access enforcement issues to assist in defining and working toward the design of a statewide oversight function, and to help build strong support for enforcement initiatives among community stakeholders, including retailers, at the local level. At least two other states, Massachusetts and Iowa, have created active advisory committees on commercial enforcement issues that can serve as alternative working models for Minnesota. The Massachusetts advisory group has a public health and policy orientation, whereas the Iowa advisory group is oriented toward building strong retailer and law enforcement support for enforcement initiatives. The intent of the Massachusetts advisory group is to advise local communities on tobacco prevention and control policies and ordinance language. The intent of the Iowa advisory group is to encourage the state's tobacco retailers to voluntarily "buy in" to Iowa's enforcement objectives by actively partnering with the State to identify and solve enforcement-related problems as they arise.

2. The absence of a fully functioning statewide enforcement database

Without a fully functioning database, accurate, up-to-the-minute statistics or reports on youth access commercial enforcement activities cannot be generated at the statewide level, thereby weakening the capacity of state agencies to monitor enforcement, identify and respond to emerging problems, or highlight successes.

In some Minnesota counties, including Dakota and Washington Counties, commercial enforcement activity is tracked routinely and effectively with the use of the State's existing database or custom-designed databases. These counties, and others, have established a record of aggressive youth access commercial enforcement activity, with dedicated support from public health and law enforcement personnel, and can serve as role models and advisors to the State as it considers whether to reconfigure the existing database, design a new database or examine any other options.

A related problem is that, at present, Minnesota's state youth access laws contain no reporting requirement. Neither are there sanctions for a community's failure to enforce youth access laws. However, as can be seen by looking at retail enforcement protocols already in place in other states, in the absence of a statutory mandate, a variety of voluntary incentives can be employed successfully to achieve widespread, if not total, participation.

Recommendation: Minnesota either needs to re-design and retrofit its existing database to meet current and anticipated enforcement data collection needs or design a new database. Minnesota can benefit from examining the experiences of other states that have demonstrated success in implementing an enforcement database. Doing so should speed the design process. An approach should be selected and set in motion as swiftly as possible.

Recommendation: Incentives for local law enforcement agencies to report data collection need to be created and implemented at the state agency level. An incentive process that appears to be working in other states is to tie the receipt of compliance check funding (or other funding) to the performance of specific criteria, including entry of all retail enforcement data. This approach is discussed in more detail, below, in conjunction with the recommendation regarding funding mechanisms for compliance checks. Local government units should be given advance notice (e.g., 6-month notice) of the State's intent to implement an incentive program by a certain date so that individual communities can express any concerns they might have and take steps to prepare for that eventuality. The provision of advance

notice to local government units should help to avoid implementation delays. (Incentives should be designed so that they can be implemented at the same time as the new or updated database system.)

3. Limited coordination between the Department of Human Services' responsibility for Synar regulation and the Department of Health's youth access activities

In Minnesota, responsibility for doing Synar checks and preparing the annual Synar report rests with the Department of Human Services, which is the state agency responsible for the administration of federal substance abuse block grant funds. If Minnesota fails to meet the annual Synar objectives, the allocations of federal substance abuse block grant funds to the state can be reduced substantially, affecting many of the state's substance abuse programs. Historically, the Department of Human Services has had little direct involvement with the Department of Health's youth access and other tobacco prevention and control activities.

Throughout the country, states that have retained responsibility for enforcement of youth access laws within their Departments of Health tend to view their enforcement responsibility as a key component of their overall health strategy to reduce youth access and consumption of tobacco products. Several states, including New York and Massachusetts, have incorporated Synar inspections into the regular enforcement of their youth access laws, with apparent success.

Other states, including Iowa, have elected to house the enforcement function in agencies other than their Departments of Health. In Iowa, the Commerce Department's Iowa Alcohol and Beverage Division is responsible for the enforcement function and this arrangement appears to have garnered strong support from local law enforcement agencies.

Now that Minnesota and other states have completed a few solid years of enforcement activity and Synar reporting, Minnesota should review and assess its present system for possible modifications. Because Minnesota's current configuration is based on an inter-agency relationship, wherein DHS has primary responsibility for Synar checks and enforcement and MDH has primary responsibility for tobacco prevention activities, effective coordination between the two agencies is essential.

Recommendation: MDH and DHS should assess the current commercial youth access enforcement-related configuration to consider ways to enhance or improve coordination of responsibilities between the two agencies. A formal recommendation should then be made to the Commissioners of the respective agencies.

4. Insufficient funding for compliance checks and related expenses

Minnesota's youth access law is intended to create a self-supporting enforcement system using revenues from each community's tobacco retailer license fees. The state law requires local government units to establish license fees to recover the estimated costs of enforcement.⁴⁴ This approach was recommended by the Working Group of State Attorneys General in their 1994 report, *No Sale: Youth, Tobacco and Responsible Retailing*.⁴⁵ Dedicated funding for compliance checks and other enforcement activities was considered essential to the success of a compliance program. The Working

⁴⁴ Minn.Stat. § 461.12, subd. 1 (2000).

⁴⁵ Working Group of State Attorneys General. *No Sale: Youth, Tobacco and Responsible Retailing*, December 1994, at 38.

Group of State Attorneys General recommended that license fees be set at a level sufficiently high to support an effective compliance program.

In reality, licensing fees in many Minnesota communities do not cover all enforcement-related expenses or even the sole expense of compliance checks. Revenues from license fees go directly into a community's general fund or general law enforcement fund and, in many instances, no amount is specifically earmarked for compliance checks or other enforcement activities. Law enforcement agencies are often understaffed, financially strapped, and burdened with other responsibilities that tend to take precedence over tobacco enforcement issues. Many local law enforcement agencies have assigned responsibility for tobacco law enforcement concerns to a particular officer or unit. This practice can help build a strong level of commitment to tobacco enforcement within a particular law enforcement agency but it does not guarantee continuity of an enforcement agency's commitment to tobacco issues over the passage of time.⁴⁶

On the Tobacco Law Project's Enforcement Survey, grantee and non-grantee survey recipients cited lack of funds, staffing and time as key barriers or challenges to the effective implementation of enforcement efforts. In other words, in the Minnesota communities surveyed, many law enforcement personnel believe that the current amount of law enforcement funding, staffing and time is inadequate and operates as a barrier to effective enforcement.

In Minnesota, local communities are required by state law to conduct an unannounced compliance check of every licensed tobacco retailer at least once a year. National reports suggest, however, that in order to attain and sustain meaningful rates of non-compliance and effectively reduce retail youth access to nominal levels, compliance checks need to be done more frequently – at least two and, preferably, three or four checks per year, per store.⁴⁷ Enforcement activity encompasses much more than just compliance checks, including such things as court-related costs, administrative expenses, and retailer and youth outreach and training. Local communities should be encouraged to review their tobacco license fee structures to ensure that they are meeting a reasonable portion of enforcement expenses; still, it may be unrealistic, in the short-term, to expect local licensing fees alone to cover all enforcement-related expenses.

The funding of compliance checks and other local enforcement activities is an ongoing challenge in many jurisdictions throughout the United States. Of the eight states contacted by the Tobacco Law Project for this report, none are funding their compliance checks and other enforcement activities entirely from license fee revenues. In several states, including Iowa, New York, Massachusetts and Washington, enforcement activities are funded, in part, with tobacco settlement funds, combined with a variety of other funding mechanisms. The State of Washington uses its licensing fees to help pay for its compliance checks; however, of the 28 local health jurisdictions in Washington that conduct Synar compliance checks, only seven also conduct non-Synar enforcement compliance checks; the remainder conduct Synar checks only. The State of New York has become aggressive in its enforcement efforts and funds its enforcement activity with a per year expenditure under the state's

⁴⁶ One lesson learned during the preparation of this report is that law enforcement officers tend to move or relocate from one jurisdiction to another somewhat frequently for a variety of reasons, including the search for better pay and benefits. Staffing changes can seriously hamper administration and implementation of tobacco enforcement activities at the local level, especially if a departing officer is the person with primary responsibility for conducting compliance check activity and no one else is available immediately to assume these responsibilities.

⁴⁷ Centers for Disease Control (CDC). *Best Practices for Comprehensive Tobacco Control Programs*, August, 1999; Working Group of State Attorneys General, *No Sale: Youth, Tobacco and Responsible Retailing*, December 1994, at 40.

Health Care Reform Act, plus tobacco settlement funds. The State of Massachusetts funds enforcement activity with revenue from a state excise tax, plus settlement funds. The State of Florida's enforcement efforts are funded through regular budgeting from the state legislature.

Recommendation: Minnesota should continue to work toward the goal of establishing a self-supporting statewide enforcement system by exploring options such as those outlined below, realizing, however, that it may take several years to reach this goal. Interim steps should be taken to ensure that Minnesota sets and achieves annual statewide enforcement goals that are consistent with Minnesota's overall commitment to reduce youth access to and use of tobacco products.

The following funding ideas should be pursued:

- MDH should encourage local government units to review their tobacco license fees structure to determine if increases are warranted to cover commercial enforcement costs and to determine if license revenues should be specifically earmarked to cover commercial enforcement costs;
- State agencies that are involved in youth access initiatives and commercial enforcement, including MDH and DHS, should support a significant increase in the cigarette excise tax that would bring Minnesota in line with cigarette excise tax rates in other states that are prominent proponents of tobacco prevention and control activities. Minnesota should consider designating a portion of the excise tax earmarked for compliance checks and/or other commercial enforcement activity. (Earmarking only a few cents of the excise tax per pack might pay for most, if not all, statewide enforcement activities, without the need for any other source of funding).
- For at least the next three state fiscal years, MDH and/or DHS should strive to make grant funds available to local communities to conduct compliance checks. To the extent possible under existing law, receipt of funding should be made contingent upon each community's written agreement to comply with criteria set by the state agency with oversight responsibility, including: (a) agreeing to conduct a certain number of checks per store, per year (at least two and, preferably, three or four times per year, depending on the availability of funds); (b) following a state-endorsed protocol for conducting enforcement compliance checks; (c) training retailers and clerks; and, (d) reporting enforcement outcome data into a statewide database. State agencies would be able to use this enforcement data to track violation rates of communities throughout the State and compare funded and un-funded communities to further refine its *best practices* guidelines.

Recommendation: A consideration of alternatives to Minnesota's heavy reliance upon local police and sheriff's departments to conduct compliance checks should be explored at the state agency level. The existence of successful alternative models in place in other states, as referenced in this Report, when juxtaposed with the perceived need to increase the number of rounds of compliance checks per community per year and the very real competing needs within Minnesota's local law enforcement agencies, raises the issue of whether an alternative model may exist that could provide greater efficiency, consistency and improved vendor rates of non-compliance. This issue could be addressed under the auspices of a long-term statewide advisory committee on commercial youth access issues.

B. Vendor, Clerk and Related Point-of-Sale Barriers and Challenges

1. Retailer Indifference/Lack of Will

In response to open-ended questions in the Retail Enforcement Survey asking survey respondents to identify the greatest barriers to effective commercial enforcement within their communities, grantees and non-grantees expressed the most concerns about retailer, clerk and other point-of-sale problems. Survey respondents in both pools identified retailer indifference or lack of will more frequently than any other barrier within this category, making it the most frequently identified barrier in the survey.⁴⁸

Certainly, at the state agency level, there is awareness that in order for Minnesota to make continuous progress in lowering its tobacco retailer non-compliance rate, retailers must either become active partners in the state's commercial youth access enforcement efforts or, at the very least, be motivated to abide by all relevant federal, state and local youth access laws. The fact that retailer indifference was cited most frequently as a barrier to effective enforcement by the very individuals from throughout the state who are charged with enforcing the youth access laws suggests that intensified effort is needed in this area.

At the state level, vendors have participated in at least one commercial youth access task force formed by MDH and DHS.⁴⁹ Throughout the state, many local government units offer periodic, in-person training sessions for vendors and clerks; the Retail Enforcement survey results show, however, that these programs are typically voluntary and tend to be poor draws unless a vendor is required to participate as a condition of licensure or as a sanction for a violation. A few survey respondents reported the development of strong working relationships with individual stores or convenience store chains in certain localities, suggesting that in some communities, local tobacco control advocates have succeeded in developing strong communication and support links with vendors. Still, the fact that few respondents made comments to this effect suggests that tobacco vendors may be marginally involved in many of Minnesota's local community efforts to curtail youth access to tobacco.

One means of increasing vendor and clerk support for commercial youth access enforcement is to provide retailers with visual aids that will help them communicate the law to their customers, especially when confronted with underage youth who attempt to make tobacco purchases. All eight states surveyed for this report have signage requirements included in their state youth access laws. In contrast, Minnesota's state youth access law contains no signage requirements. Most Minnesota retailers either have no signage or rely solely upon industry-supplied signage (the *We Card* advertising campaign).

Even without a legislative mandate, Minnesota should design signage and implement incentives that will ensure widespread use by storeowners. Anecdotal information gathered from enforcement

⁴⁸ Overall, grantees identified a total of approximately 183 barriers to effective enforcement; 83 of these, or 45%, addressed vendor, clerk or related point-of-sale concerns and, within this category, 27, or 32.5% addressed concerns about vendor indifference, lack of will or anger. Non-grantees identified a total of approximately 101 barriers to effective enforcement, of which 34, or 33.7%, addressed vendor, clerk or related point-of-sale problems; within this category, 7, or 20.6%, identified vendor indifference or lack of will as a barrier to effective enforcement.

⁴⁹ The Youth Access to Tobacco Task Force was convened in the Fall of 1999 and was co-chaired by Assistant Commissioners from the Department of Human Services and Department of Health. The Task Force included over 30 representatives from state agencies, academia, associations of counties, townships and cities, law enforcement agencies, retail associations, advocacy organizations and others.

officials in other states supports the conclusion that vendors and clerks benefit from the presence of government-sponsored signage because they can point to it when faced with protesting customers, making it clear that they are following state law when they refuse to make sales. Where in place, state signage laws typically specify that the signage must be posted visibly in a specific location within a storefront where all members of the public can see it, that it must be of a certain size, that it must summarize the state and/or local laws and, often, that it must contain a tip line telephone number for citizen complaints. Enforcement efforts, in general, enhance the success of tobacco control policies by deterring violations and sending a clear message to the public that community leaders value the importance of these policies.⁵⁰ Signage, as a component of a comprehensive enforcement strategy, can help shift community norms by putting all members of the public on notice that youth access laws and enforcement responsibilities are taken seriously.^{51 52}

State-level agencies and other state-level funders have the capacity to motivate tobacco vendors and their employees to participate actively in local tobacco control initiatives, as outlined in the following recommendations. Some of these recommendations could be implemented in the form of *best practices* guidelines designed for local government units with licensing/enforcement authority.

Recommendation: Local government units and state agencies and/or state-level organizations should attempt to craft ways to link the privilege of selling tobacco to the overriding responsibility of vendors not to sell tobacco products to teens by providing retailer chains and independent vendors with clear incentives to embrace community-based initiatives and abide by the law. Local government units are in need of additional incentives to build lasting, productive relationships and alliances with vendors. MDH has exercised leadership recently by designing and disseminating detailed retailer educational packets. State-level agencies should also consider creating *best practices* guidelines for retail training and, to the extent possible, tying the receipt of grant funds to a local community's written agreement to adopt the state's *best practices* guidelines for use in retail training efforts.

Recommendation: State-level agencies involved with commercial youth access issues should take additional steps to give retailers every opportunity to buy in to local tobacco control initiatives by exploring ways to facilitate making the vendors' and clerks' role in curtailing tobacco sales to teens as user-friendly and straightforward as possible. The following ideas are consistent with practices in other states that are active in tobacco prevention and control activities.

⁵⁰ Youth Tobacco Surveillance – United States, 2000. In: *CDC Surveillance Summaries*, November 2, 2001. MMWR 2001;50 (No. SS-4): [40-41], citing Forster JL, Wolfson M. Youth access to tobacco: policies and politics. *Annu Rev Public Health* 1998, 19:203-35.

⁵¹ Biglan A, Henderson J, Humphrey D, Yasui M, Whisman R, Black C, James L. Mobilising positive reinforcement to reduce youth access to tobacco. *Tob. Control* 1995, 4:42-48. This article summarizes an evaluation of an Oregon community intervention to mobilize positive reinforcement for not selling tobacco to minors. The intervention had five components: mobilization of community support; merchant education (including the use of signage regarding no sales to minors); changing consequences for clerks who sold or did not sell to minors; publicity about clerks' refusals to sell; and, feedback to store owners or managers about the extent of their sales to minors. The intervention significantly reduced the proportion of stores willing to sell to minors and increased the proportion of clerks asking for proof of age. The authors concluded that mobilizing social and material reinforcements for stores is a viable means of reducing sales to minors, particularly in communities where laws are inadequate or seldom enforced.

⁵² A similar argument, applied to counter-marketing, is made in the CDC's report, Youth Tobacco Surveillance – United States, 2000: "Counter-marketing messages can also substantially influence public support for tobacco-control intervention and build a supportive climate for school and community efforts." Youth Tobacco Surveillance – United States, 2000. In *CDC Surveillance Summaries*, November 2, 2001. MMWR 2001;50 (No. SS-4): [40-41].

- Design, distribute and promote signage for store interiors that summarizes state law and encourages citizen reporting of violations; in the alternative, encourage local government units to design and post their own signage that summarizes state law and local ordinances and provides a local telephone number for citizen complaints;
- Establish a statewide, toll-free telephone number for citizen complaints and design a system for database entry and the forwarding of complaints to local enforcement agencies.

The following ideas might also be considered:

- Continue to develop and/or improve user-friendly vendor and clerk training materials, including consideration of the production of either a video or a web-based, self-training unit that emphasizes both the legal and health ramifications of the failure to enforce commercial youth access laws.⁵³ Different training materials could be designed for different retailer audiences, recognizing that retailer chains have different training challenges than do small, independently owned stores.
- Encourage local communities to include retailers and retailer associations in enforcement activities or forums to engage them in their civic responsibility not to sell to teens;
- Encourage local licensing jurisdictions to make at least one scheduled, in-person, sanction-free visit to each licensed tobacco vendor each year to review training essentials, provide written updates on current laws and policies, inspect sale procedures and signage (to the extent mandated), and stress the importance and value of compliance to the community at large.

Recommendation: Local government units that have licensing authority should be encouraged to provide vendors with incentives, such as breaks in licensure fees or fines (e.g., exempting a vendor from an assessment for a first-time sales violation), if vendors can demonstrate that they have taken certain prescribed steps. For example, vendors might qualify for a reduced licensed fee or a one-time exemption from a fine if:

- They have implemented a state-endorsed, in-house training program or completed a local government unit's retail training program;
- They have purchased and are regularly using a state-endorsed or locally-endorsed scanning system;
- They engage in self-policing through the active use of secret shoppers;
- They have posted signage supplied to them by the State or a local licensing jurisdiction; or,
- They have taken certain other steps prescribed by a local licensing jurisdiction.

⁵³ Some local communities within Minnesota have designed, or are in the process of designing, video or web-based retail training units, including the City of Albert Lea; other state governments have done so, also. In addition, the Centers for Disease Control (CDC) have developed relevant resource materials that are accessible to the public.

Recommendation: Local government units should consider, and be encouraged by state-level agencies to consider, the following ideas to strengthen local commercial enforcement efforts:

- Publicly recognize and/or reward vendors who pass compliance checks;
- Increase graduated sanctions for vendors with repeat violations and explore implementation of new initiatives, sending a clear message to vendors that enforcement of the state’s commercial youth access law is a local priority;
- Strengthen enforcement follow-up when violations occur either by making one-on-one visits to vendors to review training essentials and stress the importance of compliance or by issuing warnings of repeat unannounced checks;
- Increase the use of sanction-free, non-binding compliance checks and publish results to facilitate community-wide support for commercial youth access enforcement efforts.

The State could generate *best practices* guidelines on these, and other, enforcement topics for local government units, which, in essence, would create a statewide protocol for follow-up actions.

Recommendation: The State should consider increasing the number of compliance checks per year until a certain target percentile is met statewide; thereafter, the number of checks required per year could be reduced by local government units to a once per year minimum for so long as the targeted non-compliance percentile remains stable or continues to decrease. Although this recommendation could be pursued legislatively, it could also be implemented, as noted earlier, to the extent permissible under state law, by tying receipt of state grants for compliance checks to a local community’s agreement to satisfy certain criteria.

2. Clerk inability or failure to read youth driver’s licenses & identification cards

The inability or failure of clerks to read youth driver’s licenses and identification cards when engaged in tobacco sales transactions is a seemingly ever-present problem, and law enforcement and public health personnel throughout Minnesota are quick to identify this barrier. A few years ago, in response to these concerns, there was a big push in Minnesota to modify the appearance of youth driver’s licenses and identification cards to make them easier for clerks to read – essentially eliminating the need for clerks to do any math calculations to determine the age of customers for tobacco sales transactions. The modified driver’s licenses have been in effect since January 31, 2000; some survey respondents, in identifying this barrier, may have referenced their experiences prior to the complete changeover. Still, the fact that a high number of survey respondents pinpointed this barrier indicates that many Minnesota law enforcement and public health personnel believe that this barrier persists and that the recent modifications made to youth driver’s licenses and identification cards, while helpful, have yet to drastically reduced this problem, as had been hoped. Numerous Minnesota communities appear to be frustrated by and eager to overcome this barrier.

The use of scanning equipment has been gaining popularity in Minnesota. Scanning equipment automatically calculates a person’s age when a store clerk or bar employee swipes a customer’s driver’s license through a scanning machine. The machines use essentially the same technology as that used by retail businesses to swipe credit cards. Scanners automatically calculate the age of a customer based

on the birth-date encoded on the magnetic strip of the customer's identification card, using the Department of Motor Vehicles' database. The scanners can be equipped with two settings, one for tobacco sales and one for alcoholic beverage sales. If the customer's identification card's magnetic strip is damaged, a clerk can enter the birth-date information given on the face of the card and the scanner will calculate the age. Scanners such as these cost approximately \$500 per unit.

Recently, the City of Savage passed an ordinance that provides vendors with incentives in the form of sanction reductions if they install scanning systems.⁵⁴ Perhaps there is no be-all, end-all that will eliminate this enforcement barrier; still, scanning technology may hold promise for facilitating sales transactions. The standardized use of scanners can help reduce the likelihood of clerk error and failure to read identification, to the extent that they are used regularly and properly; however, just as clerks sometimes fail to check identification when faced with a tobacco purchase attempt, they can fail to use scanning equipment or override the equipment. Perhaps if used in combination with video cameras that track sales transactions and/or the use of in-store secret shoppers, their promise could be realized. Widespread use of scanning technology could help build community acceptance for the need to verify identification. Press coverage of the Savage ordinance indicated strong support for this initiative from both vendors and clerks.

Addressing clerk inability or failure to read youth identification cards can be approached from other angles, as well. Several survey respondents expressed support for a legislative initiative to set a minimum age for selling tobacco or tobacco products, for example, setting a minimum age of 18. The State of Maine has a legislative initiative underway to do just this. The State of Florida has no legislation or formal initiatives in place; instead, it simply encourages responsible retailers to hire clerks who are at least 17 years old to sell tobacco. Typically, clerk positions in convenience stores, gasoline stations and other venues where tobacco products are sold offer low wages, part-time hours and poor, if any, benefits; consequently, these positions are often filled by entry-level employees, including youth who are under 18 years of age. Restricting the age of sellers of tobacco to persons 18 or over would not prevent a vendor's ability to hire entry-level employees, including youth under 18; rather, it would require a vendor to ensure that an employee who meets the age restriction is always on-site to transact tobacco sales.

As referenced above, in addition to the advent of scanning technology, some Minnesota vendors are using in-store video cameras to track customer sales transactions. This technology provides a valuable tool, not only for monitoring theft, but also for monitoring clerk conduct during tobacco sales transactions. Storeowners and managers can regularly review video footage to ensure that clerks are following approved sales procedures. Problem behaviors can be identified and corrected, thereby avoiding sanctions for storeowners and clerks.

Currently, Minnesota law penalizes clerks, who can be charged with a misdemeanor for selling tobacco to a minor and assessed an administrative fine. A troublesome aspect of this enforcement approach is that it can promote a revolving door phenomenon – anecdotal accounts suggest that storeowners often choose to simply dismiss clerks who are caught selling tobacco to minors, rather than taking affirmative steps to address internal dysfunctions and work with sanctioned clerks to improve and correct their performance. This phenomenon, when coupled with the fact that clerk turnover rates

⁵⁴ See, Appendix 5, City of Savage, Minnesota, Resolution to Re-establish Annual Fee For City of Savage Tobacco License and Ordinance No. 331, To Establish Two-Tier Fee Structure For Sale of Tobacco Products.

tend to be high, in general, can make it difficult to ensure that clerks are knowledgeable about commercial youth access laws and enforcement protocols.

In Massachusetts, the *master-servant* legal doctrine, wherein the master is deemed responsible for the acts of the servant, is applied, holding vendors responsible in large part for the actions of their clerks. Although some local communities in Massachusetts do fine clerks, the statewide enforcement emphasis is clearly on vendors. This approach puts the onus of responsibility on the vendor to ensure that clerks are appropriately trained and monitored. Vendor sanctions proceed mostly through an administrative process with a graduated penalty structure, including suspensions for repeat violators. Most suspensions occur on the fourth violation and include a proviso that if there are no further violations within two years, the vendor reverts back to a first offense status. In addition, the State of Massachusetts recommends that the tobacco prevention community work actively at the local level with retailers and retail associations to try to establish a meaningful relationship that stresses the importance to the community-at-large of not selling tobacco to minors.

On the Retail Enforcement Survey, the inability or failure of clerks to read youth driver's licenses or identification cards was closely associated with several other barriers that were identified by survey respondents, some of which are addressed in the above discussion. Related barriers that were identified included:

- uncaring clerks;
- kids selling to kids;
- age of seller;
- high clerk turnover rates; and,
- inadequacy of clerk training.

The following recommendations address these barriers, to the extent that they have not been addressed in previous recommendations in this Report.

Recommendation: State-level funders and advocates should encourage their local tobacco and prevention community partners to push for ordinance provisions that will provide strong incentives for vendors to install and use scanning technology and/or in-store video cameras and/or in-store secret shoppers to track clerks' sales transactions. State-level funders should also explore the possibility of launching a direct statewide initiative to encourage the widespread use of these technologies or practices.

Recommendation: The State should monitor and review vendor and clerk training efforts provided by local government units to ensure that the quality of training being provided throughout the state is of a uniformly high standard and that the information being disseminated is up-to-date, accurate and consistent with statewide enforcement and prevention goals. Training programs should not only address commercial enforcement issues, but also educate vendors and clerks about the health consequences of tobacco use for youth and families. To facilitate these efforts, provided that authority to do so exists, state agencies should consider tying the receipt of state tobacco control funding to a community's agreement to follow the State's *best practices* training guidelines when conducting training sessions for retailers and clerks.

Recommendation: Local government units and/or tobacco prevention and control community partners should consider measures to encourage or restrict vendors to hire clerks who are 18 years of age or older.

Recommendation: Local government units should be encouraged to consider ordinance language that would require clerks to verify identification of all persons or of all persons who are under the age of 25 (or 27, as the former FDA regulations required), to substantially reduce the likelihood of clerk failure to read youth identification and/or inability to distinguish age, to reduce clerk stress, and to encourage public awareness and support of the importance of youth access laws.

C. Technical Assistance, Training and Communication Barriers and Challenges

1. Weak support for youth access enforcement efforts from Minnesota prosecutors and district court judges

Several grantees and non-grantees cited this issue as a barrier to effective enforcement. At present, little evidence exists about the extent to which this may be a problem in Minnesota. Minnesota judges have not been surveyed about tobacco control and commercial youth access enforcement issues. A diversion study is underway at the University of Minnesota's Epidemiology Department that includes a survey of Minnesota prosecutors; however, the survey instrument for that study is designed to elicit information about placements for diversion programs, not enforcement compliance, per se.

A recent training forum held in southwestern Minnesota provides a useful working model for bringing together prosecutors, judges, law enforcement officers, public health tobacco coordinators, community corrections and other court services personnel.⁵⁵ Sponsored by Countryside Public Health, one of the goals of the forum was to ensure that all public participants in the youth access enforcement compliance process have a thorough and common understanding of the applicable laws, the rationale for the laws, and the importance of enforcement from the public health perspective. The forum provided a rich opportunity for participants to learn about their respective roles in tobacco enforcement, discuss the challenges and obstacles they each face, and explore ways to work together to improve local enforcement efforts system-wide.

Recommendation: MDH, DHS and/or other statewide funders and regional or local community partners should provide training opportunities for prosecutors and court personnel to increase their interest in and understanding of statewide commercial youth access enforcement initiatives from a public health perspective. Court leadership should be encouraged to champion tobacco issues among colleagues.

2. Enforcement agencies throughout Minnesota lack meaningful opportunities to confer with one another to troubleshoot and exchange information and ideas

Minnesota's emphasis on local control and implementation of youth access enforcement has meant that we have a very decentralized enforcement system, with few opportunities for enforcement personnel from one part of the State to learn about enforcement successes, challenges and initiatives

⁵⁵ The training program, *Tobacco Enforcement Laws – What's Legal, What's Not!*, was offered by Countryside Public Health on June 20, 2001, in two locations, Montevideo and Benson, Minnesota, with funding provided by the MDH Minnesota Youth Tobacco Prevention Initiative, Youth Access Enforcement Projects.

in other parts of the State. Much of the same analysis in the earlier recommendation for centralized administration and guidance applies here. Local government units, multi-county enforcement personnel, regional coordinators, statewide advisors, advocates and others would benefit from the design and implementation of well-coordinated communication systems that would link enforcement agencies and individuals from around the State and provide them with opportunities to learn from one another and explore new initiatives.

Recommendation: A list-serv should be developed to promote active and timely statewide exchange of information and concerns regarding commercial youth access enforcement practices and initiatives. The list-serv could be moderated or not moderated. A moderated list requires a designated person who will read all messages posted to the list and then pass messages to the list, to the extent appropriate. The list could be moderated by a staff person at MDH or another state agency or, possibly, by staff at the Tobacco Law Project or another state-level program.⁵⁶ Lists that are not moderated are more common. A list that is not moderated allows individuals to post any message to the list without it first going to a moderator. In addition, or in the alternative, periodic cyber-reports could provide local communities with regular updates about commercial youth access breaking news from Minnesota communities and around the nation, summaries of new academic studies or reports, and recently released statistics.

Recommendation: An annual statewide meeting on commercial and social youth access enforcement should be coordinated, preferably as a multi-agency, multi-organizational effort. This could be done as a half-day or full day add-on to the Annual Institute for Tobacco and Youth Risk Behavior Prevention, for example, or as a stand-alone meeting. In addition, state-level agencies and organizations, along with community partners, should sponsor semi-annual or quarterly regional commercial youth access enforcement meetings that bring together the full spectrum of community stakeholders in the commercial (and social) youth access enforcement arena.

Recommendation: Increase the exposure of the Tobacco Law Project to local government units throughout the State by involving the Project in presentations, forums, etc.

D. Challenges Regarding Non-commercial Access to Tobacco

1. Key stakeholders and communities-at-large have insufficient program components in place to effectively address minors' non-commercial, social access to tobacco

Minnesota law prohibits the furnishing of tobacco to minors. In practice, however, this provision is rarely enforced, in part, because of inherent difficulties in enforcing a provision of this type. It is unlikely that the courts and law enforcement personnel will aggressively enforce this provision absent a showing of community consensus regarding the unacceptability of furnishing tobacco to minors. As survey respondents pointed out, in some communities the social or cultural norm remains pro-smoking. Certainly, in these communities, active enforcement is unlikely to occur. Even in communities that take strong stances concerning the negative impact of tobacco on the public, including communities where ordinances have been passed or introduced banning smoking in restaurants, laws that prohibit the furnishing of tobacco products to minors will likely remain difficult

⁵⁶ It would be logical for the same person who maintains a clearinghouse on youth access enforcement to also monitor an enforcement list-serv.

to enforce. Consequently, these laws should not be looked upon as the sole means of addressing non-commercial access.

Possible approaches for addressing non-commercial/social access include:

- Raising the legal age for selling tobacco to at least 19, to reduce the incidence rate of high-school aged clerks selling to other high-school age youth;
- Raising the legal age for purchasing tobacco products to at least 19, to reduce the exposure of high-school age children to tobacco products (as many high school seniors turn 18 prior to graduation);⁵⁷
- Raising the age for which age-verification must be provided in order to process a sales transaction to at least 25 years of age;
- Limiting locations where tobacco products can be used, for example, passing ordinances that would prohibit smoking in places frequented by young people, such as restaurants, recreational facilities, public parks, community events and sports events;
- Promoting social norms and educational campaigns, including media campaigns, that help adults and youth identify and champion the issue of the unacceptability of furnishing tobacco to minors.

Recommendation: Local communities, as well as state-level agencies and advocacy organizations, should explore whether there are cost-effective mechanisms for incorporating meaningful messages about the unacceptability of furnishing tobacco to minors into existing tobacco control programs and media campaigns and examine potential new avenues for delivering this message.

Recommendation: Local and state tobacco control advocates should attempt to gauge the level of community support for direct approaches, such as those discussed above, and determine whether it might be appropriate to address this issue by seeking to adopt or revise ordinances.

E. Legislative Challenges at the Local and State Level

1. The absence of an actively maintained statewide ordinance database or repository, and the absence of a statewide youth access coordinator at the state agency level, severely limits the capacity of local communities to stay up-to-date on ordinance options implemented successfully elsewhere and to consider new ordinance initiatives in their own communities

No repository exists within Minnesota that can provide a comprehensive, up-to-date summary of all commercial and social youth access ordinances in place throughout the state. This absence handicaps the efforts of state-level agencies and advocacy organizations to provide effective leadership and guidance. Local communities that want to address commercial and social youth access issues aggressively lack ready access to information about the full range of ordinances in place around the State and examples of what has succeeded or failed elsewhere. Without ready access to such information, local communities are very much on their own and may find the challenges they face in trying to effect change insurmountable. Communities that want to review their youth access

⁵⁷ Increasing the legal age for purchasing tobacco might help lower social access by increasing the difference in age between a teenager who wants to obtain tobacco and a person of legal age who can purchase tobacco products as a proxy. Rigotti N, "Reducing the Supply of Tobacco to Youths," in Rabin R, Sugarman S, (ed. 2001), *Regulating Tobacco*, at Ch. 6; Tobacco Retailer Responsibility Initiative. *Preventing Teenage Access to Tobacco, A Report to the National Association of Attorneys General*, June 1999.

ordinances for possible language additions or deletions would benefit greatly from being able to review ordinances adopted by other communities and/or *best practices* ordinance language.

Recommendation: To the extent that local communities are able to provide the needed impetus to mount an ordinance campaign, commercial youth access enforcement enhancements that could be addressed through adoption of local ordinances include:

- Encouraging the use of age-verification scanning equipment or video monitors by adding incentives in ordinances in the form of breaks in license fees or fines for vendors who install and use approved equipment;
- Raising the legal age for the purchase, possession and use of tobacco or tobacco products to age 19, 20 or 21;
- Raising the legal age for the sale of tobacco or tobacco products to at least 18 or 19 years of age;
- Mandating vendor and clerk training as a condition of licensure or as a sanction for violations;
- Mandating, as a condition of licensure, in-store signage that provides notice of the prohibition against the sale or furnishing of tobacco to minors and encourages citizens to report violations;
- Strengthening existing ordinances, where applicable, by specifically prohibiting the sale of single cigarettes (“loosies”), bidis, and herbal (non-tobacco) cigarettes to minors.

Indirect enforcement enhancements that could possibly be addressed through adoption of local ordinances include:

- Restricting tobacco-related in-store and store exterior advertisements by limiting the size, location and appearance of all such advertisements, including all non-tobacco advertisements;
- Restricting the location of tobacco sales through a combination of licensing and zoning ordinances to prohibit the sale of tobacco within certain distances of schools, public parks, or other areas frequented by minors.

Recommendation: A statewide ordinance repository or database is needed for state agencies and local communities, as well as statewide advocacy groups, to be able to track ordinance activity, progress and obstacles. A collection mechanism needs to be designed that will work from year to year so that the repository of information remains current over the course of time, and a logical location for housing the repository or database needs to be determined.

Conclusion

Much has transpired since Minnesota passed its statewide youth access law in 1997; in all 87 counties, local youth access enforcement ordinances are in place at the county or municipal level and implementation of enforcement efforts is underway, with some communities demonstrating more interest and greater success in enforcement and reducing the tobacco retailer non-compliance rates than others.⁵⁸ In many, if not most, Minnesota communities, commercial youth access enforcement

⁵⁸ At the time that Jacobson and Wasserman’s *Tobacco Control Laws: Implementation and Enforcement* was written, Minnesota interviewees who participated in the study identified three major barriers to effective enforcement of tobacco control laws, including youth access laws: (1) the low salience of tobacco issues relative to other issues and the focus on enactment, rather than on implementation and enforcement; (2) concerns about how enforcement of tobacco control laws would become part of the general fabric of local law enforcement, including concerns about how enforcement efforts would be funded and how the active support of local law enforcement agencies would be obtained and sustained; and (3) concerns about whether the state’s passage of the Minnesota Clean Indoor Air Act in 1975 would impede local progress toward

has become institutionalized, characterized by the development of strong, collaborative working relationships between public health officials and law enforcement agencies.

State agency planners and other state-level planners, strategists and activists have now reached a plateau where they have the opportunity to review the state's commercial youth access enforcement goals and assess the role that enforcement plays within the framework of the State's post-settlement, tobacco prevention and control strategy. If Minnesota tobacco prevention and control strategists agree that the investment of time and funds in commercial youth access enforcement efforts has a larger purpose than reducing retailer non-compliance rates to meet federal Synar reporting requirements – that the end-goal of commercial youth access enforcement efforts is to reduce teen tobacco supply AND demand, as well as to shift community norms about youth tobacco consumption – then commercial youth access enforcement efforts fit squarely within the state's prevention and control strategy and need to be analyzed within that framework. If, on the other hand, commercial youth access enforcement is viewed as a supply-side concern only, then perhaps planners and strategists may choose to reduce involvement in enforcement-related youth access initiatives.

As discussed in this report, commercial enforcement activities, when combined and coordinated with community-wide mobilization efforts, can help shift community norms about youth access to tobacco and reduce youth consumption. For this reason alone, enforcement efforts have tremendous value. The response rate to the Retail Enforcement Survey indicated a strong level of commitment to this issue among law enforcement and public health personnel from all regions of the state. Individual responses revealed substantial support for enforcement efforts, while at the same time acknowledging frustrations with program limitations, including funding, staffing, and time constraints.

In addition to the somewhat expected voicing of concern about retailer and clerk indifference and the need for improved retail training, many enforcement officers voiced strong concerns about the lack of community understanding and buy-in on this issue, citing as key barriers to effective enforcement the public's general lack of knowledge about the law and the willingness of adults, including, all too often, parents, to furnish tobacco to minors. These responses suggest that Minnesota's enforcement officers understand the connection between commercial enforcement and the shifting of community norms and recognize the need for improved linkages. The recent decision of Target Market to focus attention on in-store tobacco advertisements and the U.S. Environmental Protection Agency's recently announced campaign to encourage parents not to smoke in their homes in the presence of their children, are welcome and exciting developments. These initiatives hold promise for helping to shift community norms about teen access to tobacco among retailers and the community-at-large and should be strong complements to more traditional, local enforcement efforts.

Minnesota is viewed throughout the nation as a leader in tobacco prevention and control activities. The recommendations contained in this report are intended to build upon and continue that tradition.

passage of clean indoor air ordinances if communities viewed local actions as unnecessary or superfluous in light of state law. Jacobson P, Wasserman J. (1997). *Tobacco Control Laws: Implementation and Enforcement*. Santa Monica, CA: RAND.

References

- Altman, D. G., A. Y. Wheelis, M. McFarlane, H. Lee, and S. P. Fortmann. 1999. The relationship between tobacco access and use among adolescents: A four-community study. *Social Science Medicine* 48:759–75.
- Americans for Nonsmokers Rights Foundation. 2000. Local Tobacco Control Ordinance Database. Berkeley: Americans for Nonsmokers Rights. June 5.
- Biglan, A., D. V. Ary, V. Koehn, et al. 1996. Mobilizing positive reinforcement in communities to reduce youth access to tobacco. *American Journal of Public Health* 24:625–63.
- Biglan, A., D. V. Ary, K. Smolkowski, T. E. Duncan, and C. Black. 2000. A randomized controlled trial of a community intervention to prevent adolescent tobacco use. *Tobacco Control* 9:24.
- Clark, P. I., S. L. Natanblut, C. L. Schmitt, C. Wolters, and R. Iachan. 2000. Factors associated with tobacco sales to minors: Lessons learned from the FDA compliance checks. *JAMA* 284:729–34.
- Cummings, K. M., E. Sciandra, T. F. Pechacek, M. Orlandi, and W. R. Lynn. 1992. Where teenagers get their cigarettes: A survey of the purchasing habits of 13–16 year olds in 12 U.S. communities. *Tobacco Control* 1:264–7.
- DiFranza, J. R. 1999. Are the federal and state governments complying with the Synar Amendment? *Archives of Pediatric Adolescent Medicine* 153: 1089–97.
- . 2000. Youth access: The baby and the bath water. *Tobacco Control* 9:120–1.
- DiFranza, J. R. and N. A. Rigotti. 1999. Impediments to the enforcement of youth access laws at the community level. *Tobacco Control* 8:152–5.
- Feighery, E., D. G. Altman, and G. Shaffer. 1991. The effects of combining education and enforcement to reduce tobacco sales to minors. A study of four northern California communities. *JAMA* 266:3168–71.
- Forster, J. L., D. M. Murray, M. Wolfson, T. M. Blaine, A. C. Wagenaar, and D. J. Hennrikus. 1998. The effects of community policies to reduce youth access to tobacco. *American Journal Public Health* 88:1193–8.
- Forster, J. L., and M. Wolfson. 1998. Youth access to tobacco: Policies and politics. *Annual Review of Public Health* 19:203–35.
- Forster, J. L., M. Wolfson, D. M. Murray, A. C. Wagenaar, and A. J. Claxton. 1997. Perceived and measured availability of tobacco to youths in 14 Minnesota communities: The TPOP study. *American Journal of Preventive Medicine* 13:167–74.
- Glantz, S. A. 1996. Preventing tobacco use—The youth access trap. *American Journal of Public Health* 86:156–7.

- Jacobson, P. D., and J. Wasserman. 1997. *Tobacco Control Laws: Implementation and Enforcement*. Santa Monica, CA: RAND.
- Levy, D. T., K. M. Cummings, and A. Hyland. 2000. A simulation of the effects of youth initiation policies on overall cigarette use. *American Journal of Public Health* 90:1311–4.
- Rabin, R. L., and S. D. Sugarman, Eds. 2001. *Regulating Tobacco*. New York: Oxford University Press.
- Ribisl, K. M., G. J. Norman, B. Howard-Pitney, and K. A. Howard. 1999b. Which adults do underaged youth ask for cigarettes? *American Journal of Public Health* 89:1561–64.
- Slovic, P., Ed. 2001. *Smoking: Risk, Perception & Policy*. Thousand Oaks, CA: Sage Publications, Inc.
- Substance Abuse and Mental Health Services Administration (SAMHSA). Implementing the SAMHSA tobacco regulation for the substance abuse prevention and treatment block grant. Online. Available: <http://www.samhsa.gov/centers/csap/csap.html>.
- Synar Law. 1992. State Law Regarding Sale of Tobacco Products to Individuals Under Age of 18. *U. S. Code*. Vol. 42, sec. 1926.
- Tobacco Retailer Responsibility Initiative. 1999. *Preventing Teenage Access to Tobacco. A Report to the National Association of Attorneys General*. Waltham, MA: Institute for Health Policy, Heller Graduate School, Brandeis University.
- Wagenaar, A., and D. O'Malley. 1991. Effects of minimum drinking age laws on alcohol use, related behaviors, and traffic crash involvement among American youth, 1976–1987. *Journal of Studies on Alcohol* 52:478–91.
- Wagenaar, A., and M. Wolfson. 1994. Enforcement of the legal minimum drinking age in the United States. *Journal of Public Health Policy* 15:37–53.
- Working Group of State Attorneys General. 1994. *No Sale: Youth, Tobacco and Responsible Retailing. Developing Responsible Retail Sales Practices and Legislation to Reduce Illegal Tobacco Sales to Minors*. Washington, DC: National Association of Attorneys General.

Appendices

1. Tobacco Law Project Retail Enforcement Survey
2. Part V Youth Access Enforcement Grantees, 2001 Map
3. Part V Grantees – Abstract
4. Part V Grantees – Types of Initiatives
5. City of Savage, Scanner Ordinance
6. Interview Questions for Multi-state Analysis

**Tobacco Law Project
Retail Enforcement Survey**

Please circle the number or letters that correspond to the answer closest to your opinion, or write in the information requested. All individual answers will be kept confidential.

1. What is your job title? _____

2. In which agency do you currently work? (*Circle one.*)
 1. Police Department
 2. Sheriff's Department
 3. Community Health Services Agency or Board
 4. Public Health Department
 5. Other (*Please specify*) _____

3. Please identify the names of the counties, cities, towns or townships where your agency is involved in retail enforcement compliance efforts as a Part V grantee, partner or collaborator.

- For this survey, COMMUNITY refers to the local area (city, town, township, etc.) where your agency is working on retail enforcement activities. If your agency's efforts involve an entire county, COMMUNITY refers to the county.*

4. What is the population of the community/county where you work? (*Circle one.*)
 1. 2,000 – 10,000 people
 2. 10,000 – 50,000 people
 3. 50,000 – 100,000 people
 4. Over 100,000 people
 5. Other (*Please specify*) _____

5. How many **licensed tobacco retailer outlets** are there in your community/county? _____

6. What agency is responsible for conducting tobacco retailer compliance checks in your community/county? (*Circle one.*)
 1. Sheriff's Department
 2. Police Department
 3. Other (*Please specify*) _____

7. **Prior to 2001**, how frequently were tobacco retailer compliance checks conducted in your community/county? (*Circle one.*)
 1. Never
 2. Once a year
 3. Twice a year
 4. Monthly
 5. Other (*Please specify*) _____

8. **During 2001**, how frequently will tobacco retailer compliance checks be conducted in your community/county? *(Circle one.)*

- 1. Never
- 2. Once a year
- 3. Twice a year
- 1. Monthly
- 2. Other *(Please specify)* _____

9. Is your community/county planning to increase the frequency of compliance checks in **2002** or thereafter? *(Circle one.)*

- 1. Yes ----->

IF YES: Please describe.

- 2. No ----->

IF NO: What are the obstacles to more active enforcement?
--
- 3. Don't know

10. How are compliance checks funded in your community/county? *(Circle all that apply.)*

- a. General budget
- b. Grant funds
- c. Self-supporting through: *(Circle all that apply.)*
 - a. License fees
 - b. Fines
- d. Other *(Please specify)* _____

11. Is the funding of compliance checks a problem in your community/county? *(Circle one.)*

- 1. Yes ----->

IF YES: Please describe.

- 2. No
- 3. Don't know

12. Does your community's/county's law enforcement agency have an internal unit or an individual officer designated to conduct tobacco prevention and control activities? *(Circle one.)*

- 1. Yes ----->

IF YES: What effect does this have on enforcement activities?
--
- 2. No
- 3. Don't know

13. Please estimate the total number of law enforcement (or other agency) hours needed per year to conduct all currently mandated tobacco retailer compliance checks and follow-ups in your community/county. _____

14. Are overtime hours needed to complete all mandated compliance checks within your community/county? (Circle one.)

- 1. Yes ----->
- 2. No
- 3. Don't know

IF YES: Please estimate the number of overtime hours needed per year to complete all mandated compliance checks in your community/county.

_____ Number of overtime hours per year

15. Is reliance upon overtime hours to conduct compliance checks a barrier to effective enforcement in your community/county? (Circle one.)

- 1. Yes ----->
- 2. No
- 3. Don't know
- 4. Not applicable

IF YES: Please explain.

16. Does your community/county use a computerized database to track compliance checks? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know

IF YES: What agency maintains the database?

IF NO: How are compliance check data recorded and tracked in your community/county?

17. What activities, other than compliance checks, are conducted in your community/county to ensure retailer compliance with youth access to tobacco laws? (Circle all that apply.)

- a. Retailer education
- b. Follow-up on complaints &/or violations (Please specify) _____
- c. No activities
- d. Other (Please specify) _____

18. Are there any current initiatives to amend ordinances or to pass new ordinances that address tobacco retailer youth access enforcement compliance in your community/county? (Circle one.)

- 1. Yes ----->
- 2. No
- 3. Don't know

IF YES: Please describe.

19. Are the following youth access enforcement measures in use in tobacco retail establishments in your community/county? (Circle one answer for each item, a - j.)

	Yes	No	Don't Know
a. In-store cameras that track sales activity	1	2	3
b. Retailer (in-house) secret shoppers	1	2	3
c. Scanners	1	2	3
d. In-store observation by law enforcement personnel (other than compliance checks)	1	2	3
e. Anti-tobacco advertisements/signage within stores	1	2	3
f. Location/zoning restrictions	1	2	3
g. Anti-tobacco television, movie theater or radio spots	1	2	3
h. Print media coverage or publication of compliance check results	1	2	3
i. Citizen "tip line" or another type of violation reporting initiative	1	2	3
j. Other (Please specify) _____	1	2	3

20. When was the **last round of compliance checks completed** in your community/county?

_____ Month _____ Year

21. For this last round of compliance checks, **please indicate the numbers** for the following:

- a. Total number of tobacco retailers checked: _____
- b. Total number of tobacco retailers found non-compliant: _____
- c. Rate of non-compliance: _____ Percent

22. Does your community/county track data on retailer and clerk administrative penalties/sanctions? (Circle one.)

- 1. Yes ----->
- 2. No
- 3. Don't know

IF YES: What agency tracks the data?

23. Since the completion of the last round of compliance checks in your community/county:

		Number
a.	How many retailers have been issued warnings?	_____
b.	How many retailers have been cited?	_____
c.	How many retailers have been fined?	_____
d.	How many clerks have been cited?	_____
e.	How many clerks have been fined?	_____
f.	How many retailers have had their licenses suspended?	_____
g.	How many retailers have had their licenses revoked?	_____
h.	How many retailers are facing suspension proceedings?	_____
i.	How many retailers are facing revocation proceedings?	_____

24. Are tobacco retailer administrative penalties enforced consistently in your community/county? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know ----->

Please explain.

25. In your community/county, are the administrative penalties for tobacco **retailers** reasonable? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know ----->

Comments:

26. In your community/county, are the administrative penalties for tobacco **retail clerks** reasonable? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know ----->

Comments:

27. In your community/county, are reward or recognition programs used to encourage tobacco retailer and clerk compliance with youth access to tobacco laws? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know ----->

IF YES: Please describe.

28. Does your community/county have a set of procedures (protocol) in place to train retailers and clerks about youth access to tobacco products? *(Circle one.)*

- 1. Yes
- 2. No
- 3. Don't know

29. Does your community/county conduct in-person training sessions for retailers and clerks on youth access to tobacco? *(Circle one.)*

- 1. Yes
- 2. No **(PLEASE SKIP TO 29d)**
- 3. Don't know **(PLEASE SKIP TO 29d)**

29a. What agency provides in-person training sessions for retailers/clerks?
(Circle all that apply.)

- a. Police Department
- b. Sheriff's Department
- c. Public Health Board or CHS
- d. Youth, under the supervision of the following agency: _____
- e. Other *(Please specify)* _____

29b. How often are in-person training sessions offered to retailers/clerks? *(Circle one.)*

- 1. Once a year
- 2. Twice a year
- 3. Other *(Please specify)* _____

29c. Does your community/county track attendance of tobacco retailers/clerks at in-person training sessions?
(Circle one.)

- 1. Yes
- 2. No
- 3. Don't know

29d. If your community/county does not conduct in-person training sessions, how are retailers and clerks educated about youth access enforcement compliance issues? *(Circle all that apply.)*

- a. Literature drops
- b. Scheduled visits with store managers/owners by the following agency: _____
- c. On-line education
- d. Video education
- e. No education or training is provided
- f. Other *(Please specify)* _____

30. Is funding for retailer/clerk training on youth access issues a problem in your community/county? *(Circle one.)*

- 1. Yes ----->
- 2. No
- 3. Don't know

IF YES: Please describe.

31. Should the minimum age of sellers of tobacco be restricted in your community/county? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know ----->

To what age? _____
If already restricted, what is the minimum age of sellers in your community/county? _____

32. In your community/county, should retail owners be required by ordinance to complete a youth access enforcement compliance training session as a condition of licensure? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know ----->

Comments:

33. In your community/county, should retail owners be required by ordinance to provide certification for each clerk who sells tobacco products showing that the clerk has completed a training session on youth access enforcement? (Circle one.)

- 1. Yes ----->
- 2. No ----->
- 3. Don't know ----->

Comments:

34. How effective would the following measures be in deterring the retail sale of tobacco products to minors in your community/county? (Circle one answer for each item.)

	Very Effective	Somewhat Effective	Not Very Effective	Not At All Effective
a. Increase license fees	1	2	3	4
b. Increase retailer administrative penalties or sanctions	1	2	3	4
c. Restrict the age of the seller	1	2	3	4

35. In **your community/county**, how much of a problem is youth access to retail sources of tobacco? (Circle one.)

- 1. Major problem ----->
- 2. Moderate problem ----->
- 3. Minor problem ----->
- 4. Not a problem ----->

Please explain.

36. In **surrounding communities/counties**, how much of a problem is youth access to retail sources of tobacco? *(Circle one.)*

- 1. Major problem ----->
- 2. Moderate problem ----->
- 3. Minor problem ----->
- 4. Not a problem ----->

Please explain.

37. For each of the following, please indicate the level of support for tobacco retailer enforcement compliance efforts in your community/county. *(Circle one answer per item.)*

		Strong Support	Moderate Support	Little Support	No Support	Does Not Apply
a.	Mayor	1	2	3	4	5
b.	City Council	1	2	3	4	5
c.	County Commissioners or Board	1	2	3	4	5
d.	Sheriff's Department	1	2	3	4	5
e.	Local Police Department	1	2	3	4	5
f.	District Court Judges	1	2	3	4	5
g.	County Prosecutor's Office	1	2	3	4	5
h.	City Prosecutor's Office	1	2	3	4	5
i.	Public school administrators	1	2	3	4	5
j.	Retail associations (Please identify) _____	1	2	3	4	5
k.	Retailer chains (Please identify) _____	1	2	3	4	5
l.	Faith communities (Please identify) _____	1	2	3	4	5
m.	Youth organizations (Please identify) _____	1	2	3	4	5
n.	Other (Please specify) _____	1	2	3	4	5

38. Are youth compensated for their assistance with compliance checks in your community/county? *(Circle one.)*

- 1. Yes ----->
- 2. No ----->
- 3. Don't know

IF YES: Please describe.

IF NO: What alternative approaches are used?

39. Is the amount of effort required to recruit and train youth to assist with compliance checks a barrier to effective enforcement in your community/county? *(Circle one.)*

- 1. Yes ----->
- 2. No ----->
- 3. Don't know

Please describe.

40. What are the **three greatest barriers** to reducing the rate of the illegal sale of tobacco products to minors in your community/county?

- 1. _____
- 2. _____
- 3. _____

41. What **other barriers or obstacles** does your community/county face for reducing the rate of the illegal sale of tobacco products to minors?

42. Please describe your ideas for **overcoming the barriers** you have identified.

The purpose of the Tobacco Law Project is to help communities develop and refine anti-tobacco initiatives by providing: (a) legal resources (literature searches, summaries, or legal research); (b) “best practices” policies and/or model ordinances; (c) networking assistance; and (d) training and technical support.

43. Please describe how your community’s youth access enforcement compliance needs are currently being met.

44. How can the Tobacco Law Project help to strengthen your community’s retail enforcement compliance efforts?

Please use this space for any additional comments:

Please complete the survey as soon as possible and return it to the Minnesota Survey Research Center in the enclosed, stamped envelope.

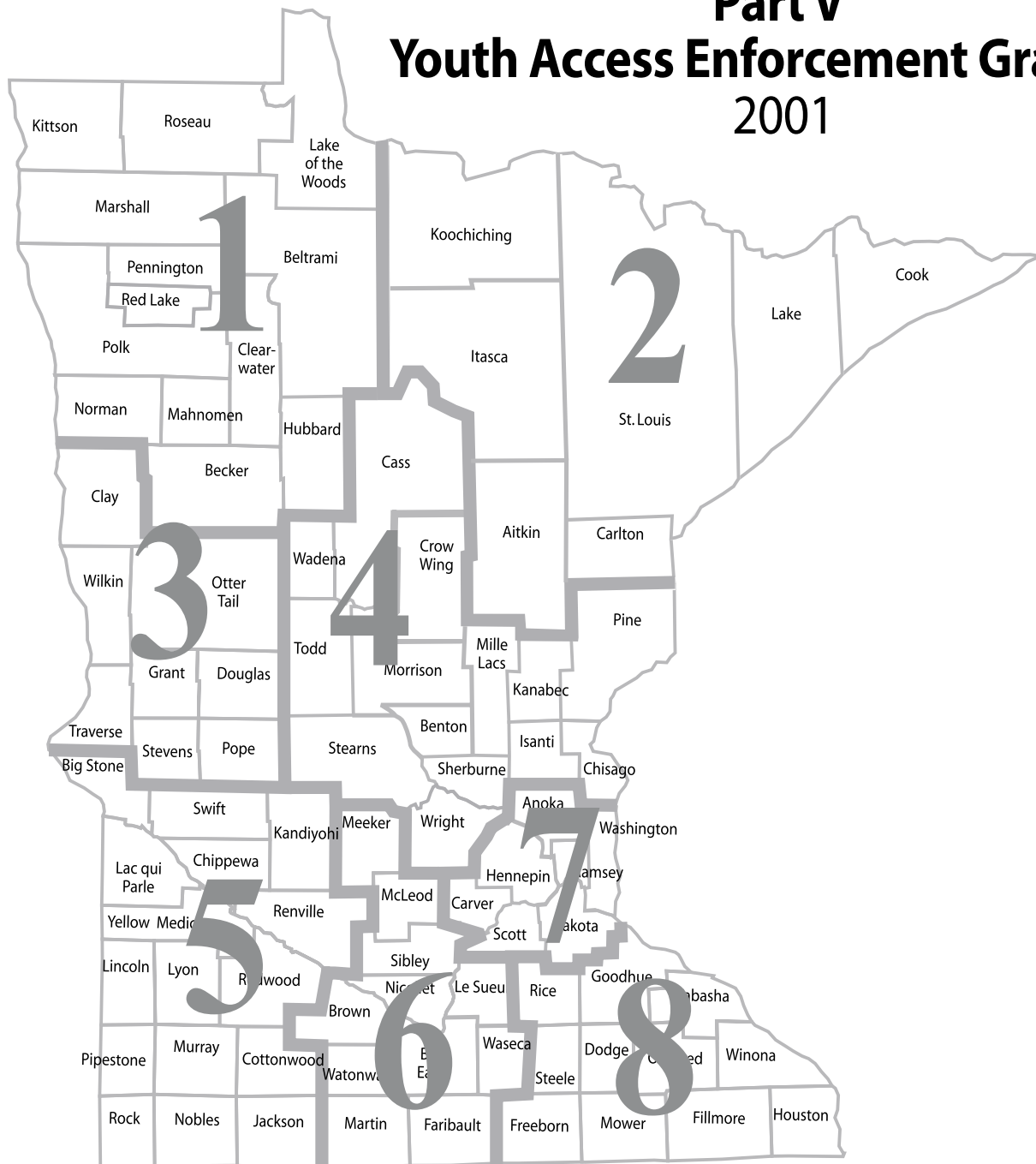
If you have received this survey and are not directly involved in implementing a Part V grant, please forward the survey to the person within your agency who is directly involved with the implementation of a Part V grant or return the survey to us in the enclosed envelope so that we can update our database.

Thank you for taking the time to complete this survey!

Part V

Youth Access Enforcement Grantees

2001



Region 1 Northwest (3)

Beltrami County Sheriff's Office
 Polk County Community Health Services
 Quin County Community Health Services

Region 2 Northeast (2)

Aitkin-Itasca-Koochiching CHS
 Carlton, Cook, Lake, St. Louis Community Health Board

Region 3 West Central (3)

Clay-Wilkin CHS
 Douglas County Sheriff's Department
 Mid-State Community Health Services

Region 4 East Central (3)

Chisago County Pubic Health Dept.
 Mille Lacs - Isanti CHS
 Wright County Human Services Agency

Region 5 Southwest (3)

Affiliated Community Health Foundation
 Countryside Public Health
 Nobles-Rock Public Health Service

Region 7 Metro (10)

Asian Media Access
 Association For Nonsmokers Rights
 Burnsville Police Department
 Carver Co. Community Health Board/Carver County CHS
 City of Minneapolis

Region 7 Metro (continued)

City of St. Louis Park Police Department
 Northwest Hennepin Human Services Council
 Plymouth Police Department
 Ramsey Police Department
 Washington County PH

Region 8 Southeast (6)

Fillmore Houston CHS
 Freeborn County Public Health
 Mower County Sheriff
 Olmsted County Public Health
 Steele County Public Health Nursing Service
 Winona County CHS

Statewide (8 reservations) (1)

Indigenous Peoples Task Force

Part V Grantees – ABSTRACT

Page 1 of 8

Region 1 Northwest (3 Grantees)

Beltrami County Sheriff's Office: Conduct checks twice yearly. Use computer to track enforcement, recruit and train youth. Use newspaper articles and radio to educate the public on calling in violations. Publish names and results of checks in local media. Have youth teach diversion programs.

Polk County Community Health Service: Increase to 2 compliance checks. Train youth and law enforcement in protocol found in compliance manual. Immediately notify retailers of violations. Document enforcement activities. Offer education for clerks who violate. Warn retailers of check beforehand. Publish check results.

Quin County Community Health Service: Focus area is reducing youth access to tobacco products. Our proposal is built on the following predictive factors: "Policies and practices make tobacco products available and affordable through commercial or social sources." This means that Quin CHS proposes to test the system by implementing a complete round of tobacco retailer education, tobacco compliance checks and any required re-checks with the approximately 140 retailers in its database. The database will be updated as a result. Data gathered will be shared with the public in an effort to change community norms. In addition, the project will begin work on social access to tobacco with direction from youth.

Region 2 Northeast (2 Grantees)

Aitkin-Itasca-Koochiching CHS: The Part V Youth Access Enforcement Project will be implemented in Itasca and Koochiching Counties. Due to extensive program commitments, Aitkin County Health and Human Services has elected not to participate in the Part V project. Aitkin County continues, however, to conduct compliance checks and views enforcement as an important component of tobacco reduction strategies. The Itasca component will consist of two parts. One will be to focus on educating retailers. The second will be to enhance current compliance checks within Itasca County both with existing ordinances that have ongoing, regular compliance checks done and those ordinances that have not yet done any compliance checks. The Koochiching component will contract with a health educator to increase education of vendors to include at least one face-to-face encounter and to promote community awareness through radio and newspaper public service announcements. The health educator will work with law enforcement and youth to conduct two compliance checks per year.

Carlton, Cook, Lake, St. Louis Community Health Board: The Part V grant project will be implemented in Carlton County only. Due to extensive program commitments, the time, effort and capacity it takes to participate in a competitive grant program, and the short duration the money is available, Cook, Lake and St. Louis counties have elected not to participate in the Part V Project. Carlton County's overall goal will be to reduce the rate of underage tobacco sales by providing retailer education, conducting compliance checks and providing youth-led student and community education. The funding will be used to support the enforcement of local youth access to tobacco ordinances, monitor sale of tobacco products to youth and educate retailers. Youth will be involved in many of the grant activities.

Part V Grantees – ABSTRACT

Page 2 of 8

Region 3 West Central (3 Grantees)

Clay-Wilkin CHS: The purpose of this grant application is to strengthen the Youth Access to Tobacco ordinance and enforcement activities of Clay-Wilkin. Proposed activities include but are not limited to: 1) Increasing the number of times per year that compliance checks will be conducted with all retailers in Clay and Wilkin counties. (Note: Currently, one unannounced compliance check is proposed as an effort to increase the compliance rate. Law enforcement hours are part of the proposed budget.) 2) Provision of law enforcement staff hours to conduct repeat compliance checks on retailers who consistently fail to comply. 3) Implementation of a reward scheme for retailers who consistently pass compliance checks. (This could be public recognition at a County Board meeting, presentation of a plaque, publishing names in newspaper, etc.) 4) Provision of health department staff time to work with county attorney's office to complete and implement diversion program for youth offenders charged with unlawful smoking or purchase of tobacco products. (Note: Clay County Public Health and County Attorney's Office have already met twice to discuss this plan and have drafted preliminary plans.)

Douglas County Sheriff's Department: Fifteen hours of over-time will be committed each month. Mandatory forms will be used. Will increase media attention to 4 times per year. Will do 3-month follow-up.

Mid-State Community Health Services: The Mid-State Youth Access Enforcement Project is but one spoke of the entire Mid-State Youth Tobacco Prevention wheel. While all retailers in the county Mid-State area are licensed to sell tobacco products in accordance with a local ordinance, inconsistent enforcement continues to be an issue. This project will establish a minimum enforcement standard throughout the four counties. Rewards and recognition, in addition to the existing sanctions, will be utilized to gather retailer and community support. In addition to the enforcement aspects, this project will incorporate a broad-based prevention and education approach directed at youth, merchants and the general public. Youth will understand the prevailing laws and the consequences of breaking those laws. Merchants will understand their legal responsibilities as sellers of tobacco and will establish measures to assure that those responsibilities are carried out in accordance with state and local laws. In addition, the community will understand that we all share the obligation to reduce youth access. As with the other tobacco prevention initiatives currently being implemented in the Mid-State area, youth will provide leadership in planning, implementing and evaluating the youth access enforcement project.

Part V Grantees – ABSTRACT

Page 3 of 8

Region 4 East Central (3 Grantees)

Chisago County Public Health Department: This project will provide the opportunity to increase the number of compliance checks conducted by law enforcement agencies within Chisago County. Youth will be involved in conducting compliance checks as well as recognizing retailers who follow the ordinances adopted by the city they are operating in. Merchants will receive merchant education regarding youth access to tobacco. Chisago County Public Health will work collaboratively with other agencies to recruit and train youth who participate in enforcement activities and will collect and disseminate data regarding compliance checks.

Mille Lacs – Isanti CHS: Checks on violators. Public Health will support law enforcement. Shall distribute additional merchant education information and materials to retailers. Disseminate information to communities about the importance of youth access laws and how they can become involved. Award and publish names of compliant stores and publish names of failures. Develop and implement diversion program. Encourage townships to adopt version of County ordinances.

Wright County Human Services Agency: The Wright County youth access enforcement project will be a collaborative effort between Wright County Human Services, Wright County Public Health and Wright County Sheriff's Department. The main goal of this project is to focus on enforcement activities and strategies that reduce youth commercial access to tobacco by working on community-based interventions in Wright County. The Wright County Public Health Department will be the lead agency in providing fiscal oversight, planning activities, data collection, evaluation, reporting and communication with partners. Will continue use of TFCC software. Will use MDH manual. Will enforce ordinance. Will provide education to retailers and continue to publish compliance check results in newspaper.

Part V Grantees – ABSTRACT

Page 4 of 8

Region 5 Southwest (3 Grantees)

Affiliated Community Health Foundation: We will have youth and adults from Kandiyohi County tobacco coalition complete a minimum of 30 presentations during calendar year 2001 (15 during the grant period). The volunteer presenters will use laptop computers, presentation software and projectors to spread the message about the dangers of youth tobacco use to an audience of area civic groups and other organizations. A training will be held to educate tobacco retailers on the local tobacco ordinance, as well as other youth prevention/cessation and environmental tobacco smoke efforts in the County, so they will be aware of the full impact of tobacco programming going on locally and in the state and be able to see how their efforts in their establishments complement the total effort. Retailers will be encouraged to examine their policies regarding tobacco sales and to have clerks wear identification tags, and information on identification scanning equipment will be available. Local billboard, movie theaters, newspaper. Youth will design and distribute clingy stickers with a “don’t sell to minors” message. Diversion class will link with cessation program.

Countryside Public Health: Our local youth access enforcement project will include three major components: 1) Law enforcement requested an education opportunity on the topic of tobacco-related street enforcement. Law enforcement from the 5-county area will be provided with an opportunity to attend a session on street enforcement that would meet requirements for post education. 2) Retailers have requested more education for their employees. It was decided that an interactive web site would be an ideal way to make education available to all retail employees. A local high school computer/web site instructor is willing to assist his students in creating this site. The students will be involved in designing the site, using information and guidelines from ASSIST, the American Cancer Society, MDH, and other tobacco-related sources. 3) A final major component will be funding for an additional compliance check for all retailers in the 5 counties. Countryside Public Health provides yearly compliance checks for those counties and cities that have chosen to contract with us. This would, in effect, double the number of checks CPHS is able to provide. Local governments that provide compliance checks through another source will also be given funding to increase compliance checks.

Nobles-Rock Public Health Service: Nobles/Rock Public Health is using this grant opportunity to build partnerships with law enforcement, schools, family service agencies and youth to strengthen the local tobacco coalition. Although Nobles/Rock Public Health enforces a two county tobacco ordinance and currently has a tobacco compliance check program, we are using this grant to further educate retailers about compliance checks and youth access. With this grant, an additional compliance check will be conducted on each tobacco retailer in Nobles and Rock County. We will follow up the compliance check with an education component provided by youth. Youth will present a framed certificate to retailers who pass the compliance check, as well as educate and reinforce youth access laws to all retailers. In addition, we will work with youth in developing youth access advertisements, which will be shown in theaters, and provide educational opportunities with law enforcement to local business groups to increase knowledge of youth access laws. The youth access enforcement grant will enhance and build upon what Nobles/Rock Public Health is already doing in tobacco prevention and in youth risk behavior reduction.

Part V Grantees – ABSTRACT

Page 5 of 8

Region 7 Metro (10 Grantees)

Asian Media Access: Develop posters, stickers, and educational package in 4 SE Asian languages (Khmer, Hmong, Laotian and Vietnamese), for knowledge about age of sale laws & social responsibilities. The targeted groups will participate through: Planning meetings; focus groups; advisory committee; assisting with distribution of poster, sticker and educational package; display of posters and stickers in their stores and offices. Develop Web banners containing youth access enforcement messages in 4 SE Asian languages. Write articles for all major Asian newspapers promoting the importance of youth access enforcement.

Association for Nonsmokers Rights: The Part V youth access grant for Ramsey County will double the compliance checks done annually with each tobacco retailer in the City of St. Paul, translate statutes into 6 languages for non-English reading retailers, and provide education and training for retailers. St. Paul has the 2nd largest number, over 400, of tobacco vendors in the State. Annually, each vendor has one compliance check done by the City of St. Paul's License Inspections & Environmental Protection (LIEP) Department. With this funding, LIEP will be able to complete 2 compliance checks annually on each licensed tobacco vendor in St. Paul.

Burnsville Police Department: Through enhancing our current tobacco compliance check procedures with modern technology for our enforcement teams and our retail outlets, we intend to take the next step in eliminating tobacco use and its health risks among our young people. Age verification devices in the stores, modern investigative devices for our enforcement teams, and the funding for extra effort from our personnel, will combine with new educational materials for more effect. Seminars that inform our people about tobacco's addictive qualities and the pain and misery it can cause will help to reduce the tobacco demand among young people. In partnership with state, county, and local agencies, the Burnsville Police Department will continue to limit the access of our youth to tobacco.

Carver County Community Health Board: The focus of the project will be to standardize and enhance the compliance check program of our county-wide youth tobacco prevention initiative, as well as to put a diversion program in place. This effort will begin with those cities in Carver County that fall under the jurisdiction of the Sheriff's Department for this initial project year.

City of Minneapolis: The City of Minneapolis Division of Licensing and Consumer Services has conducted youth access to tobacco compliance checks among Minneapolis retailers who sell tobacco since 1993. These compliance checks are required by the City. Grant funding is sought to expand the current compliance check program to full operation. It will include performing all the needed 620 checks and follow-up checks; filling system gaps, including better data tracking and monitoring; and, improving fine collection and sanction enforcement.

City of St. Louis Park Police Department: The St. Louis Park Police Department, along with our partners in the community, will train our officers to present training to employees of tobacco licensees. This voluntary training seminar will help retail employees to understand the responsibilities of selling tobacco products, prevent sales of tobacco products to minors, and communicate specific policies and procedures to follow. Our department will also increase our compliance checks to a minimum of 2 for each licensee. Employees who participate in our program and pass a compliance check will receive a reward.

Part V Grantees – ABSTRACT

Page 6 of 8

Northwest Hennepin Human Services Council: A partnership between 8 Northwest Hennepin Police Departments, Northwest Hennepin Human Services Council, and the Hennepin County Community Health Department. We have developed a project to address the barriers and issues related to the enforcement of youth access to tobacco. All of the participating police departments are currently completing at least one compliance check per year. The project will support a more comprehensive enforcement program, including garnering the support and participation of underage buyers and educating license holders and merchants. The police departments have identified the recruitment of underage as a barrier to completing compliance checks. The project will address this barrier by working with police departments, school liaison officers, school chemical health coordinators and youth, to develop a recruitment strategy. Another issue identified by the police departments is the lack of information among license holders about how to prevent clerks from selling tobacco to minors. To address this issue, the project will create a curriculum that can be used by all police departments to educate license holders and merchants in Northwest Hennepin County. The participating police departments believe the best way to disseminate this information is to hold training sessions for license holders and merchants at the police departments. Therefore, the project will provide resources to the departments for staff time to coordinate these trainings. A staff person from Northwest Hennepin Human Services Council will coordinate the proposed activities. These activities are: Implementing and evaluating a standardized system for the recruitment of youth to conduct compliance checks; developing, implementing and evaluating a curriculum for police officers to use to train license holders and merchants; and, funding police departments to conduct compliance checks and training sessions with license holders and merchants. Hennepin County Community Health Department will provide technical assistance.

Plymouth Police Department: Our project will investigate Internet sales of tobacco products to minors. Lower prices, and the fact that Internet sellers typically do not verify a purchaser's age, make the on-line purchase of tobacco products particularly attractive to under-age youth. These factors, coupled with the absence in Minnesota of any enforcement activities that target Internet-based sales of tobacco to youth, make this a potentially significant loophole in the continuum of prevention efforts and enforcement activities. Our project will perform legal research to determine the statutory basis for enforcement actions and to identify preemption and jurisdictional problems. We will also recruit, hire and train underage youth to attempt to purchase tobacco products over the Internet. Finally, we will issue a report describing our findings and the policy implications. The report will be distributed to public health and law enforcement agencies.

Ramsey Police Department: Conduct compliance checks once monthly. Letters of congratulations will be provided to compliant stores. Will do follow-up with violators. Instead of the general fund, money will go to a special tobacco prevention account for prevention and enforcement. Remove all vending machines. Thorough educational efforts with all retailers.

Washington County PH: Participating enforcement agencies will share policies and procedures to assure consistency of practices throughout Washington County. Monthly meetings with compliance check officers to facilitate consistency and communication. Implement a vendor and clerk reward system. Conduct follow-up as needed. Publish compliance check results in local media.

Part V Grantees – ABSTRACT

Page 7 of 8

Region 8 Southeast (6 Grantees)

Fillmore Houston CHS: Houston and Fillmore County Public Health will work collaboratively with law enforcement, human services, and other collaborative partners, to reduce youth access to tobacco and, ultimately, to reduce youth tobacco use by 30% by the year 2005. The project will focus efforts on providing consistent tobacco compliance checks and consistent enforcement of ordinance violations throughout all jurisdictions within each county. The project will try to increase the number of compliance checks done annually. Finally, the project will work with community groups and retailers to educate them on youth tobacco access and work with them to develop policies and practices that reduce youth access to tobacco.

Freeborn County Public Health: The Youth Access Enforcement Activity grant will increase Freeborn County's efforts to reduce commercial youth access to tobacco. The compliance checks will continue to be conducted once a year in Albert Lea and Freeborn County. The grant money will be used to train new law enforcement staff in the Sheriff's Department and further educate the staff already in place. If additional youth are needed to complete the compliance checks, the money will be used for training. Youth will be paid to complete the compliance checks twice a year, with additional follow-up checks on those businesses that are non-compliant. Retail clerks will be rewarded when they comply. The results of the compliance checks will be published in the local newspapers. The STAT committee will be informed about all activities and will serve as the communication link to judges, Court Services Department, and the tobacco diversion program. Tobacco retailer education sessions will continue with the support of the STAT committee.

Mower County Sheriff: We will ensure that checks happen, enforcement happens, and records are kept. We will use MDH forms, conduct rechecks and provide retailer education. The Sheriff/Police Chief will meet with court system personnel to develop a diversion program, train officers. Will provide positive publicity, plaques. Training for officers and retailers.

Olmsted County Public Health: This project will enhance our current program by developing relationships and partnerships with other community agencies that have not been involved with the Tobacco Sales and Youth Access Program in Olmsted County. It will also offer the ability to try new systems for compliance checks that can further improve our current system in responding and relating to retailers. Finally, this project will offer an opportunity to add new and improved components to the merchant education that is currently offered to retailers and employees.

Steele County Public Health Nursing Services: Our project will continue to conduct frequent retailer compliance checks. We will also propose that retailers submit a plan describing the training they offer their employees on access issues before a tobacco license can be issued. We will strongly encourage retailers to attend a (mandatory) youth access training session before the license is issued. We propose to reward merchants who pass compliance checks with certificates (plaques after reaching 5 consecutive years of compliance), pins to clerks who pass compliance checks, and signage outside of retailer establishments that will warn buyers of the penalties for providing tobacco to underage youth. This will increase positive compliance outcomes and, in turn, will help to change the acceptability of providing tobacco to youth. Our goal will be to have a more restrictive tobacco ordinance in place. Community norms reinforce the perception that most teens and adults smoke and that smoking is an acceptable behavior. Education will be our tool to change these community norms.

Part V Grantees – ABSTRACT

Page 8 of 8

Winona County CHS: Winona County adopted a local public health ordinance restricting youth access on January 6, 1998. The community health planning process in the public meetings to adopt this ordinance allowed cities and townships to consider their own ordinances. However, due to the state enabling legislation without funding, only the City of Goodview and the City of St. Charles, who employ their own police departments, found it feasible to adopt their own ordinances. This project is the first funded opportunity to collaborate and coordinate our ordinances, by utilizing youth in the compliance checks and reporting consistent data collection and compliance check results to the Minnesota Department of Health. This project further desires to reinforce the community norm that youth access to tobacco products is unacceptable. The predictive factors known to encourage young people to smoke or use other forms of tobacco will be targeted for reduction. Those predictive factors are summarized as follows and will be noted as areas to change in Winona County: Community norms that allow youth and adults to smoke as acceptable; lack of policies and practices at the commercial source to assure that only adults are sold the products; no opportunities for youth to learn refusal skills regarding tobacco use; the constant industry use of advertising and media to promote product use by friends and family members; and, locations where people can smoke. Winona County Community Health Services will be the lead agency, with the following collaborative partners: Winona County Department of Human Services; City of Goodview; and the City of St. Charles.

Statewide (1 Grantee)

The Indigenous Peoples Task Force: We have found very limited resources on how to reduce commercial access within tribal communities. We propose to combine two planning grants to conduct an educational/planning meeting in central Northern MN during the spring of 2001. The proposed meeting will focus on providing basic education on youth access issues, but we will also begin a dialogue on cultural and social issues. We will bring together the statewide partner on policy issues, the Tobacco Law Project, with the American Indian grantees to discuss the application of federal and state laws on reservations. The meeting will have three basic goals: 1) Educate American Indian grantees and Statewide partners on basic aspects of youth access applicable to reservation communities; 2) Share ideas and tools for developing and conducting activities in this area; and 3) Develop an action plan specific to each community.

Part V Grantees - Types of Initiatives

ENFORCEMENT INITIATIVES

Increase/improve # of compliance checks

- Region 1: Beltrami; Polk; Quin
- Region 2: Itasca; Koochiching; Carlton
- Region 3: Clay-Wilkin; Douglas – 15 hours of mandatory over-time per month and use of mandatory forms; Mid-State CHS – establish a minimum enforcement standard in 4-county area.
- Region 4: Chisago; Mille Lacs-Isanti; Wright
- Region 5: Countryside PH; Nobles-Rock
- Region 7: Assn. For Nonsmokers' Rights (Ramsey County/St. Paul); Burnsville; Carver County CHB/CHS – standardize/enhance comp. checks in cities under sheriff jurisdiction; Minneapolis – expansion and follow-up; St. Louis Park; NHHSC; City of Ramsey; Washington County – develop consistent enforcement practices and follow-up.
- Region 8: Fillmore-Houston – increase; consistent checks and enforcement; Mower; Olmsted; Steele; Winona (Goodview and St. Charles)

Computer tracking/Database management

- Region 1: Beltrami; Polk; Quin
- Region 2: Carlton – monitor sale of tobacco products
- Region 4: Chisago; Wright (?)
- Region 7: Minneapolis; City of Ramsey – follow-up with violators/monitor
- Region 8: Mower; Winona

Improve fine collection and sanction enforcement

- Region 7: Minneapolis; Ramsey (city) – fine collection to go to a special tobacco prevention account.

Technology enhancements for enforcement efforts

- Region 7: Burnsville – age verification and modern investigative devices
- Region 8: Olmsted – trying new systems for compliance checks

Warnings to retailers before checks

- Region 1: Polk

Immediate notice to retailers of violations

- Region 1: Polk

Retailer reward or recognition schemes

- Region 3: Clay-Wilkin; Mid-State
- Region 4: Chisago; Mille Lacs-Isanti
- Region 5: Nobles-Rock
- Region 7: St. Louis Park – employee rewards; Washington County
- Region 8: Freeborn – clerks; Mower – rewards and positive publicity; Steele

Investigate prevalence of internet sales to minors

- Region 7: Plymouth

Removal of all vending machines

- Region 7: City of Ramsey

Tighten ordinance restrictions

- Region 8: Steele – Effort to require retailers to submit employee-training plan and attend mandatory y.a. training as a pre-condition to obtaining a license.

Encourage townships to adopt version of County ordinances

- Region 4: Mille Lacs-Isanti

RECRUITMENT, TRAINING & EDUCATION INITIATIVES

Youth recruitment and training

- Region 1: Beltrami; Polk
- Region 4: Chisago
- Region 7: NHHSC
- Region 8: Freeborn – youth paid for 2 checks/year, with additional follow-ups

Law enforcement training

- Region 1: Polk
- Region 5: Countryside PH – tobacco-related street enforcement
- Region 7: St. Louis Park – training police to educate retail employees;
NHHSC – training police to educate retailers at police departments;
Washington County – develop consistent enforcement practices and follow-up
- Region 8: Freeborn – train new staff and increase training for existing staff;
Mower

Clerk education for violators

Region 1: Polk

Retailer education

- Region 1: Quin
- Region 2: Itasca; Koochiching – at least one face-to-face encounter; Carlton
- Region 3: Mid-State
- Region 4: Chisago; Mille Lacs-Isanti; Wright
- Region 5: Affiliated CHF-Kandiyohi; Countryside PH – for retailer employees via an interactive web site; Nobles-Rock – pre-compliance and post-compliance check education with youth-led follow-up
- Region 7: Asia Media Access; Assn. For Nonsmokers' Rights – Ramsey County County (City of St. Paul) – translation of statutes into 6 languages for St. Paul retailers; Burnsville (?); St. Louis Park (employee training); NHHSC; City of Ramsey
- Region 8: Fillmore-Houston; Freeborn – establish STAT communication link to judges, court services, diversion program); Mower; Olmsted

Youth-led (or participation in) community and/or student education

- Region 2: Carlton
- Region 3: Mid-State
- Region 5: Affiliated CHF – Kandiyohi
- Region 7: Asia Media Access (?)
- Region 8: Fillmore-Houston (Youth participation?); Steele (youth participation?); Winona (youth-led?)

Youth-directed work on social access to tobacco

Region 1: Quin

Youth access education and policy planning meeting

Statewide: Indigenous Peoples' Task Force

PUBLICATION, PSAs, ADVERTISEMENTS & SIGNAGE INITIATIVES

Public Service Announcements (PSAs), Advertisements, "Tip-line" ideas, news articles.

- Region 1: Beltrami
- Region 2: Koochiching
- Region 3: Douglas (?)
- Region 5: Affiliated CHF-Kandiyohi; Nobles-Rock
- Region 7: Asian Media Access

Signage

Region 8: Steele – warning buyers of penalties for providing to youth

Publishing names of violators and/or those who comply

Region 1: Beltrami; Polk; Quin – data gathered will be shared with public to change community norms

Region 3: Douglas

Region 4: Mille Lacs-Isanti; Wright

Region 7: Washington County

Region 8: Freeborn

DIVERSION PROGRAM INITIATIVES

Youth-led diversion programs

Region 1: Beltrami

Region 5: Affiliated CHF-Kandiyohi – ? youth-led – link with cessation program

Design and implement a youth diversion program

Region 3: Clay-Wilkin

Region 4: Mille Lacs-Isanti

Region 7: Carver

Region 8: Mower

RESOLUTION NO. R-01- 43

RESOLUTION TO RE-ESTABLISH ANNUAL FEE FOR CITY OF SAVAGE TOBACCO LICENSE

WHEREAS, the applicant for a City of Savage tobacco license currently pays an annual fee of \$100; and

WHEREAS, the City of Savage wishes to change the fee structure for a tobacco license so that incentive is given for the licensee who possesses and utilizes age verification technology; and

WHEREAS, such technology gives assurance that the age of prospective purchasers is sufficiently tested, and it increases the accountability of hired employees toward code enforcement; and

WHEREAS, the City of Savage wishes further to be a leader in the campaign to keep tobacco from underage smokers, and to thereby minimize the legal and health risks that are involved; and

WHEREAS, the Mayor and Council of the City of Savage therefore approve and authorize a two-tier fee structure based upon whether or not a licensee utilizes age verification technology.

NOW THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of Savage, Scott County, Minnesota hereby approve an amended two-tier annual fee structure for a City of Savage tobacco license, effective April 1, 2001.

- 1. \$250 for the licensee who utilizes age verification technology, in compliance with performance standards established by the City, to include the capability of recording when and how often the device is put to use.
- 2. \$500 for the licensee who does not utilize age verification equipment.

Adopted by the Mayor and Council of the City of Savage, Scott County, Minnesota this 16th day of April, 2001.

Rob Fendler
Rob Fendler, Mayor

Attest:
Stephen P. King
Stephen P. King, City Administrator

Motion by Wilson
Second by Schneider

Fendler	aye	Schneider	aye
Wilson	aye	Johnson	aye
Bernick	aye		

ORDINANCE NO. 331

ORDINANCE TO AMEND SECTION 3-10-2
OF THE SAVAGE CITY CODE
TO ESTABLISH A TWO-TIER FEE STRUCTURE
FOR SALE OF TOBACCO PRODUCTS

BE IT ORDAINED by the Mayor and Council of the City of Savage, Scott County, Minnesota, as follows:

Section 1. That Subsection 3-10-2-A of the Savage City Code shall be deleted in its entirety, and a new Subsection 3-10-2-A substituted therefore, as follows:

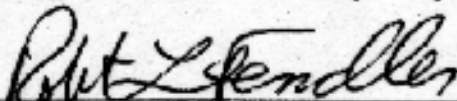
- A. **Application and Issuance:** Application for such license, together with the appropriate fee, shall be submitted to the City Clerk on a form supplied by the City. The form shall disclose the name and address of the applicant and such information deemed necessary by the City for the proper administration of this section and all other requirements of law. The applicant shall be specifically required by sworn statement to declare whether it will utilize age verification technology. The application shall be presented to the City Council and, if approved, the City Clerk shall issue a license.

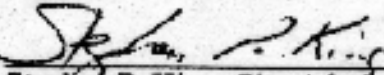
Section 2. That Subsection 3-10-2-B of the Savage City Code shall be deleted in its entirety, and a new Subsection 3-10-2-B substituted therefore, as follows:

- B. **License Fees:** Fees for a tobacco license shall be set, and from time to time amended, by resolution of the City Council. The City Council may establish a two-tier license fee structure whereby incentive is provided to a license holder to utilizing age verification technology that meets performance requirements determined by the City, including the capability of recording when and how often vendor personnel utilize the technology. If the license is purchased subsequent to October 1, the fees established herein shall be one-half of the annual fee.

Section 3. That this ordinance shall take effect on June 1, 2001.

Passed by the Mayor and Council of the City of Savage this 16th day of April, 2001.


Robert L. Fendler, Mayor

Attest:

Stephen P. King, City Administrator

Multistate Comparison Interview Questions

1. What agency is responsible for doing Synar checks?
2. What agency is responsible for enforcing your state's youth access law regarding enforcement of the prohibition of the retail sale of tobacco to minors? (Request contact information: name and title, phone number, address, e-mail address).
3. How is enforcement of your youth access laws funded?
4. Please describe your state's protocol for "sting" process on enforcement of state law. Who conducts the enforcement compliance checks – police, sheriff's deputies, some type of licensing division investigators, peace officers, etc.? (Request as clear an explanation/definition as possible.) How are they supervised? To whom do they report? Minimum job requirements? Training? Do they work solo? In teams of two adults? Other? What age youth assist with the enforcement checks? Do youths go into the stores alone or does an adult accompany them? Is an adult undercover person present in the store when the sting occurs? Are youths wired with any electronic device? Is some other form of electronic device used during enforcement checks?
5. How are "stings" (enforcement compliance checks) assigned (e.g., what geographic areas are covered, etc.)? How is it decided how many checks are done, and where and when?
6. How are enforcement compliance checks monitored? How are outcomes measured? Does your state maintain a statewide database? What agency maintains the database? How is information reported and who is responsible for reporting?
7. What kind of enforcement powers (authority) exists at the local level (cities, counties, etc.)? (Examples – criminal code, local enforcement of youth access ordinances and state smoke-free laws.)
8. Is your enforcement compliance check process self-supporting? How is it funded?
9. What consequences exist for a community's failure to enforce the law that prohibits the sale of tobacco to minors?
10. Re: penalties and sanctions. Are youths penalized? Clerks? Vendors? Are retail sanctions administrative or criminal or both? Are tobacco vendors licensed?
11. Are there any age of seller restrictions in place?
12. What flaws or gaps exist in your state's enforcement of laws that prohibit the sale of tobacco to minors? What are your perceived needs for improvement?
13. To what do you attribute your success?
14. What types of complementary measures do you have in place? Citizen complaint process or tip line? Signage? Posters? Media spots – radio, TV, movie trailers? Do you have any evidence that any of these measures are contributing to the effectiveness of enforcement efforts in your state? Is there any evidence that any of these measures help lower retailer rates of non-compliance?
15. What kind of retailer and clerk training is provided? Is it mandated in your state?