

Findings from the  
2012 Surgeon General's Report on  
Youth and Young Adult Tobacco Use

# Cause and Effect:

Tobacco Marketing Increases Youth Tobacco Use



*Law. Health. Justice.*

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## Introduction

The 1964 Surgeon General's Report, which concluded that cigarette smoking causes lung cancer and other diseases, dramatically and permanently reshaped the American public's understanding of the harms caused by smoking. By carefully and objectively reviewing the available scientific evidence, the report established that the link between smoking and disease was clear and irrefutable, despite the industry's continued denials.

In the ensuing decades, numerous Surgeon General's Reports further advanced the public's understanding of the harms caused by tobacco use. In 1986, for example, the Surgeon General's Report concluded that "the judgment can now be made that exposure to environmental tobacco smoke can cause disease, including lung cancer, in nonsmokers." Like the earlier 1964 report, this report demonstrated to the public that the industry's denials (in this case about the effects of secondhand smoke) were simply not credible.

In the tradition of these past reports, the 2012 Surgeon General's Report, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, carefully and meticulously lays out the current evidence about tobacco use by youth and young adults. Like these previous reports, this presentation of the evidence shows that the tobacco companies have once again failed to tell the truth. Although "[t]obacco companies have long argued that their marketing efforts ... have no impact on the initiation of tobacco use among young people," the Surgeon General's review finds that the evidence "consistently and coherently points to the intentional marketing of tobacco products to youth as being a cause of young people's tobacco use." In short, a robust body of scientific evidence establishes that **tobacco industry marketing causes youth tobacco use**.

As demonstrated in the Surgeon General's Report, the vast majority of the tobacco industry's marketing is focused on the point-of-sale — the retail establishments where tobacco is sold. For tobacco companies, these retail locations are the primary place where they can recruit new tobacco users, 90 percent of whom are minors. Because the industry is focused on the point-of-sale, tobacco control advocates need to focus their attention there as well. Therefore, after presenting the highlights of the Surgeon General's Report, we summarize policy options that can help reduce the amount and the impact of tobacco marketing at the point of sale.

The Surgeon General notes that "[w]ith 99% of all first use of tobacco occurring by age 26, if youth and young adults remain tobacco-free, very few people will begin to smoke or use smokeless products." We hope that this presentation of the Surgeon General's findings will be a useful and effective resource for those working to make this vision a reality.

Tobacco Control Legal Consortium  
Center for Public Health and Tobacco Policy

## Guidelines for the Reader

Select excerpts from *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* (and the Report's executive summary) are compiled here for easy reference. The excerpts are presented verbatim, but have been reorganized by subject, using headings that we designed. We have excluded internal citations, and we have included clarifying statements in brackets where necessary. Additionally, we have used ellipses wherever we have omitted a word or words (other than a reference) within a quoted passage. The number in parentheses before each passage indicates the page number on which the quote may be found in the report or the executive summary ("ES").

In general, the Surgeon General's Report uses the terms "adolescents," "children," and "youth" to refer to those between 11 and 17 years old. It uses the term "young adults" to refer to those between 18 and 25 years old.

The full text of the Surgeon General's Report can be downloaded from [www.surgeongeneral.gov](http://www.surgeongeneral.gov).

## Acronyms used in this report

### *Studies*

**MTF:** Monitoring the Future, an anonymous cross-sectional and longitudinal self-administered questionnaire administered to youth in grades 8, 10 and 12, college students, and young adults; sponsored by the National Institute on Drug Abuse (administered by the University of Michigan's Institute for Social Research).

**NSDUH:** National Survey on Drug Use and Health, an annual survey of the population ages 12 and older, conducted through computer-assisted interviewing (with additional face-to-face interviews of a representative sample); sponsored by the Substance Abuse and Mental Health Services Administration and focused primarily on the use of illegal drugs.

**NYTS:** National Youth Tobacco Survey, an anonymous cross-sectional self-administered questionnaire administered to youths in grades 6 through 12; sponsored by the Centers for Disease Control and Prevention.

**YRBS:** National Youth Risk Behavior Survey, an anonymous cross-sectional self-administered questionnaire administered to youth in grades 9 through 12; sponsored by the Centers for Disease Control and Prevention.

### *Other*

**CDC:** Centers for Disease Control and Prevention

**HS SMK:** High School Smoking Rate

**NCI:** National Cancer Institute

**SES:** Socio-economic status. This term is defined differently by researchers, but generally is determined by considering poverty level, educational attainment, and employment status, among other factors.

# Section I. The Problem



## Youth Tobacco Use and Addiction

### Tobacco Use is a “Pediatric Epidemic”

**(ES-1)** Tobacco use is a pediatric epidemic, around the world as well as in the United States.

**(iii)** Each day across the United States over 3,800 youth under 18 years of age start smoking.

**(134)** [M]ore than one-third (36.7%) of adults who had ever smoked cigarettes reported trying their first cigarette by 14 years of age, which is the age when one typically enters high school in the U.S.

**(134)** Virtually *no* initiation of cigarette smoking (<1–2%) and few transitions to daily smoking (<4%) actually occur in adulthood after 26 years of age.

**(164)** Smoking initiation [is] most likely to occur in a young person’s 15th or 16th year, which was also true in 1994.

**(165)** Among adults who become daily smokers, nearly all first use of cigarettes occurs by 18 years of age (88%), with 99% of first use by 26 years of age.

### Youth Tobacco Use Rates: One in Four High School Seniors is a Current Smoker

**(ES-2)** One in four high school seniors, and one in three young adults, are current smokers.

**(135)** Young adults (18–25 years old) have the highest prevalence of current cigarette smoking of all age groups, at 34.2%.

**(164)** Almost one-fifth of high school students are current cigarette smokers, and the prevalence rises with age; one-fourth of high school seniors are current cigarette smokers at present. Young adults have the highest smoking prevalence among all age groups.

### Smokeless Tobacco Use

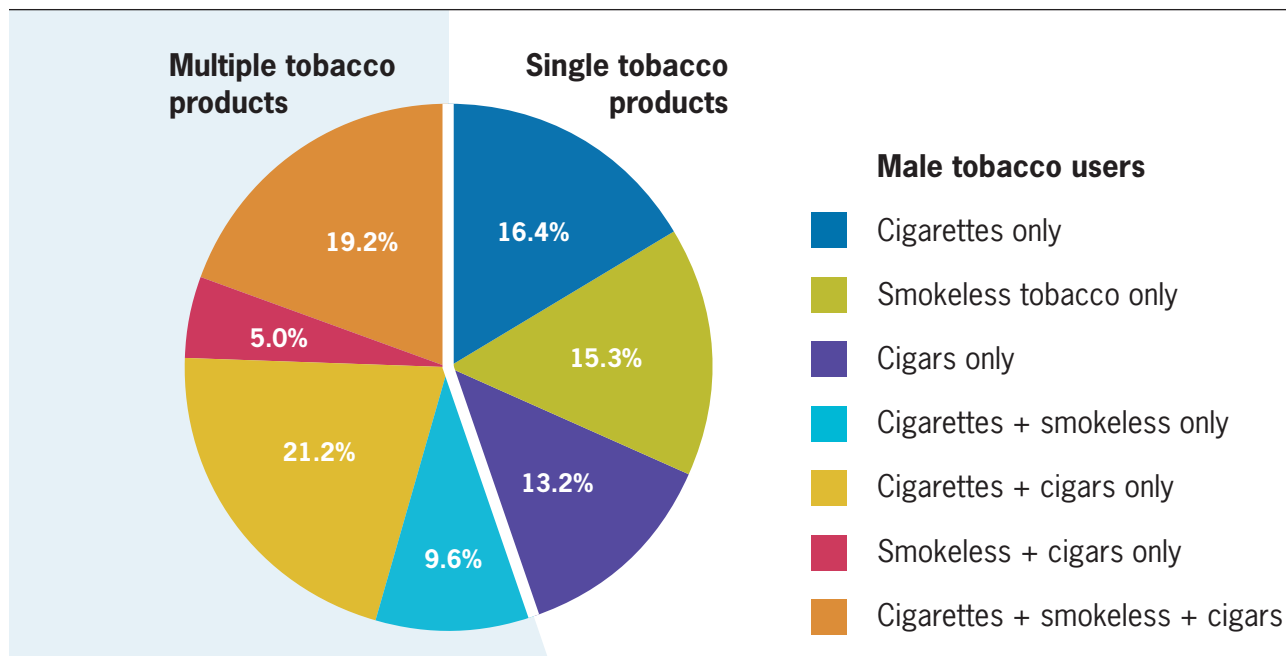
**(142)** According to the 2009 NYTS, about 1 in 10 high school males (11.6%) are current smokeless tobacco users.

**(164)** White male students are far more likely than males in other racial/ethnic subgroups to use smokeless tobacco, with the prevalence of current use among white male high school students at around 20%, based on YRBS data.

**(201)** 10.7% of ever users of smokeless tobacco had done so by the 6th grade, 43.5% by the 9th grade, and 85% by 11th grade.

**(203)** At present, about 1 out of 5 high school males has ever used smokeless tobacco, and about 1 out of 8 currently uses smokeless tobacco.

**(155)** Prevalence of current use of multiple tobacco products among high school males who use tobacco (Figure 3.13; YRBS 2009)



### Cigar Use

**(142)** [A]ccording to the 2009 NYTS—high school, 15.0% of high school males and 6.7% of high school females currently smoke cigars.

**(165)** The prevalence of current use of cigars (including little cigars and cigarillos) is more than 10% for high school students but is more common among White male youth than among other youth subgroups.

**(165)** [A]bout 1 in 5 high school senior males is a current cigar smoker.

**(204)** [T]he prevalence of current cigar use by White male students according to YRBS (21.0%), did not differ appreciably from their prevalence of current cigarette smoking (22.3%). Moreover, in some states, current cigar use among adolescent males actually exceeds the prevalence of current cigarette smoking in this population.

**(206)** Nearly one of three high school seniors has ever tried smoking a cigar.

### Water Pipes (Hookahs)

**(206)** The use of water pipes, also known as hookahs, originated in the Middle East/ancient Persia and is an emerging trend in the twenty-first century. The MTF survey for 12th-grade students first included a question about hookah use in 2010 and found that 17% of high school seniors in the United States had used hookahs in the past year.

**(206)** Other small-scale studies on young adults indicate that the use of a water pipe is more prevalent among university students in the United States, with estimates for past-year use ranging from 22% to 40%.

### Multiple Products

**(155)** Based on data from the YRBS, the majority of high school males who currently use tobacco actually use more than one product concurrently. Concurrent cigarette and cigar smoking is most prevalent among high school male tobacco users (21.2%), followed closely

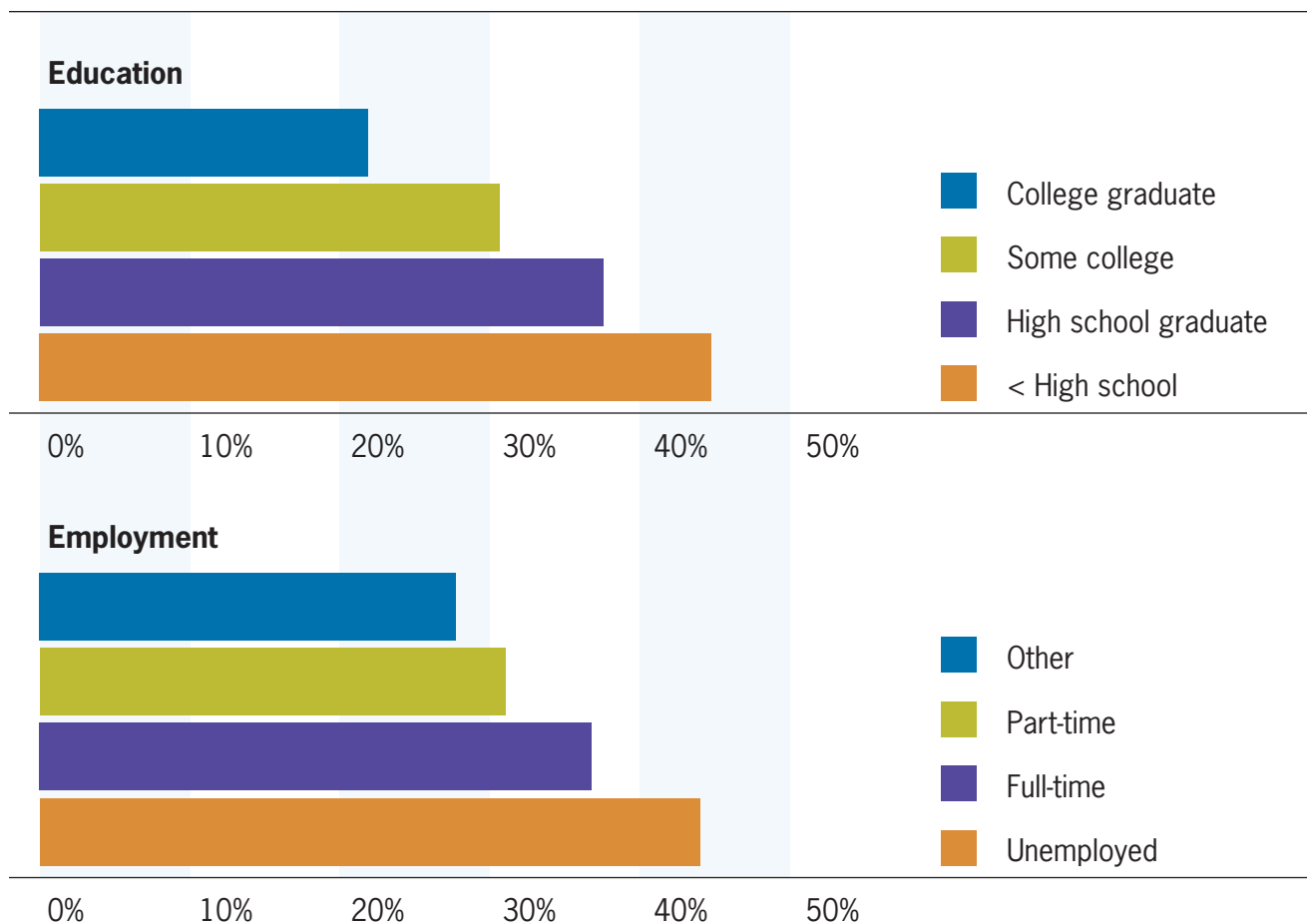
by the concurrent use of cigarettes, cigars, and smokeless tobacco (19.2%). Less than one-half of all high school male tobacco users reported using a single product (i.e., cigarettes, cigars, or use of smokeless tobacco, alone), in the past 30 days, at 44.9%.

**(155)** [T]he concurrent use of multiple tobacco products among adolescents is not inconsequential and is cause for concern, especially for White male and Hispanic male and female high school students. It is noteworthy that the tobacco industry has diversified its portfolio in novel ways in recent years and now offers a variety of flavored (e.g., cigars, cigarillos, snus) and emerging (e.g., dissolvables, orbs) tobacco products that appeal to youth (see Chapter 5 of this report).

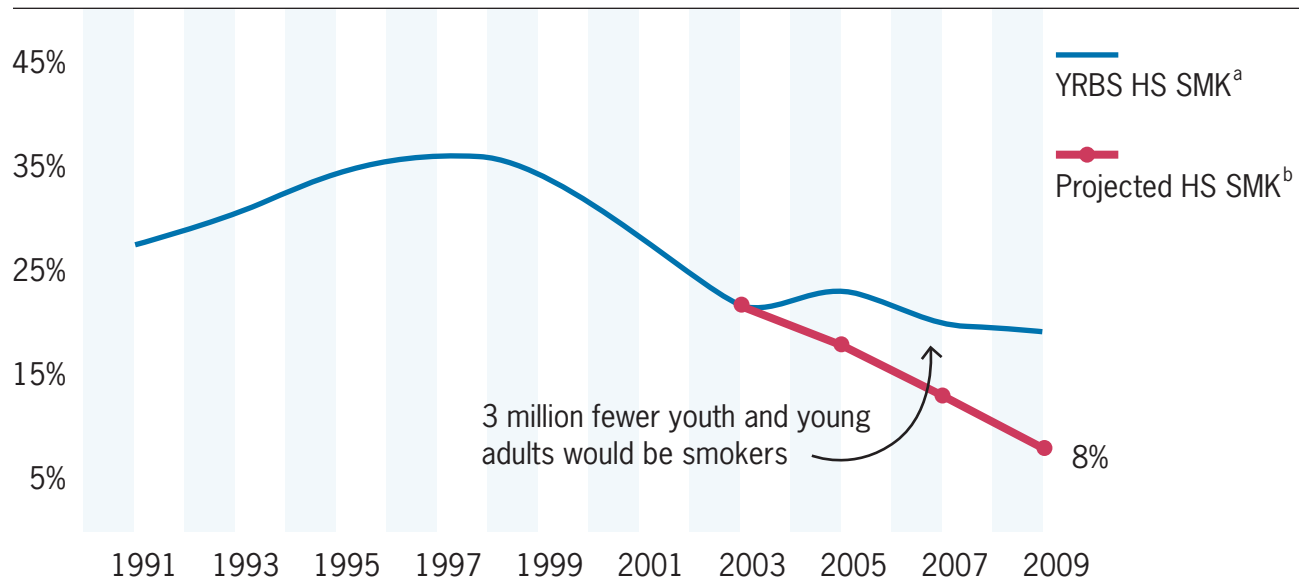
**(165)** Concurrent use of multiple tobacco products is prevalent among youth. Among those who use tobacco, nearly one-third of high school females and more than one-half of high school males report using more than one tobacco product in the last 30 days.

**(850)** More than one-half of White and Hispanic male cigarette smokers in high school also use tobacco products other than cigarettes, as do almost one-half of Hispanic female smokers in high school. This is worrisome as the use of multiple tobacco products may help promote and reinforce addiction, as well as lead to greater health problems.

**(154)** Percentage of current cigarette smoking among young adults (18- to 25-year-olds), by education and employment (as proxies for socioeconomic status) (Figure 3.12; NSDUH 2010)



**(141)** Current high school cigarette smoking and projected rates if decline had continued (Figure 3.4)



**Source:** 1991–2009 YRBS: Centers for Disease Control and Prevention, Division of Adolescent and School Health, Office on Smoking and Health (unpublished data).

**Note:** HS SMK = high school smokers. Based on responses to the question, “During the past 30 days, on how many days did you smoke cigarettes?” Respondents who reported that they had smoked on at least 1 or 2 days were classified as current smokers.

<sup>a</sup> High school students who smoked on 1 or more of the 30 days preceding the survey.

<sup>b</sup> Projected high school students who smoked on 1 or more days of the past 30 days if 1997–2003 decline had been maintained.

## Tobacco Use is Higher Among Low-SES Youth

**(153)** The socioeconomic gradient in current cigarette smoking is clear and consistent ... youth of lower SES [socioeconomic status] have a higher prevalence of current cigarette smoking than youth of a higher SES. The gradient among young adults is especially strong and mirrors other analyses of young adult data that suggest that the prevalence of current cigarette smoking for non-college-educated young adults is twice as high as that for their college-educated counterparts.

**(165)** The prevalence of cigarette smoking is ... highest among lower socioeconomic status youth.

## Youth Tobacco Use Rates are Not Declining

**(8)** After years of steady progress, declines in the use of tobacco by youth and young adults have slowed for cigarette smoking and stalled for smokeless tobacco use.

**(134-135)** Initiation rates for cigarette smoking have been stable over the last 5 years. Comparing 2006 to 2010, the rate of initiation of cigarette smoking among adolescents (12–17 years of age) and young adults (18–25 years of age) did not change overall and for all subgroups (i.e., by gender and race/ethnicity).

**(149)** Like the trends shown for current cigarette smoking, current cigar smoking declined in the late 1990s for high school males overall, then stalled from 2005 forward.



**(164)** Adolescent and young adult initiation rates for cigarette smoking have been stable over the past 5 years. This finding is consistent with the idea that tobacco companies are successfully targeting young people in advertising and promotion efforts to attract new smokers.

**(185)** In the early 1990s, the prevalence of cigarette smoking began increasing until it hit a peak in the late 1990s, at the time of the Master Settlement Agreement (1998), when it began to decline for both adolescents and young adults. Since 2003, however, the decline in the prevalence of cigarette smoking among young people overall has slowed considerably, and may have stopped altogether for some subgroups.

**(202)** Per MTF, progress in reducing [smokeless tobacco] use among male students slowed considerably between 2000 and 2008, and current use increased among 10th- and 12th-grade students overall between 2008 and 2010.

**(856)** If high school students' smoking levels had continued to decline at the rate observed from 1997 to 2003, the prevalence of current smoking among high school students in 2009 would have been only about 8% (vs. 19.5%). This would have resulted in approximately 3 million fewer smokers among youth and young adults by 2009.

## Youth Tobacco Use Causes Immediate and Long-Term Health Consequences

### *Health Consequences of Smoking as an Adolescent*

**(ES-2)** [E]arly use of tobacco has substantial health risks that begin almost immediately in adolescence and young adulthood, including impairment to the respiratory and cardiovascular systems. Many of the long-term diseases associated with smoking, such as lung cancer,

are more likely among those who begin to smoke earlier in life.

**(ES-3)** Research now documents strong causal associations between active cigarette smoking in young people and addiction to nicotine, reduced lung function, reduced lung growth, asthma, and early abdominal aortic atherosclerosis.<sup>1</sup>

**(ES-3)** Smoking is the chief preventable cause of premature death in this country, and the early stages of the diseases associated with adult smoking are already evident among young smokers. For example, young adult smokers under age 30 exhibit signs of and are being diagnosed with early disease of the abdominal aorta, a serious indicator of heart disease.

**(3)** Most young smokers become adult smokers. One-half of adult smokers die prematurely from tobacco-related diseases.

**(22)** For the major chronic diseases caused by smoking, the epidemiologic evidence indicates that risk rises progressively with increasing duration of smoking; indeed, for lung cancer, the risk rises more steeply with duration of smoking than with number of cigarettes smoked per day.

**(28)** Evidence is emerging that smoking is associated with various developmental and mental health disorders that affect adolescents and young adults. The available evidence extends to mental health disorders, such as schizophrenia, anxiety, and depression, and to developmental disorders, such as ADHD and conduct disorder.

**(179)** The initiation of cigarette smoking at a young age increases the risk of later heavy smoking and of subsequent smoking-attributable mortality.

**(856)** Harm from smoking begins immediately, ranging from addiction to serious damage to the heart and lungs.

## *Tobacco Addiction*

**(ES-1)** Because few high school smokers are able to break free from the powerful addicting effects of nicotine, about 80% will smoke into adulthood. Among those who persist in smoking, one-half will die about 13 years earlier than his or her nonsmoking peers.

**(iii)** Cigarette smoking by youth and young adults is proven to cause serious and potentially deadly health effects immediately and into adulthood. One of the most significant health effects is addiction to nicotine that keeps young people smoking longer, causing increased physical damage.

**(iii)** Of every three young smokers, only one will quit, and one of those remaining smokers will die from tobacco-related causes. Most of these young people never considered the long-term health consequences associated with tobacco use when they started smoking; and nicotine, a highly addictive drug, causes many to continue smoking well into adulthood, often with deadly consequences.

**(185)** Compared with adults, adolescents appear to display evidence of nicotine addiction at much lower levels of consumption, making quit attempts potentially more difficult for them. Many young smokers have strong expectations of discontinuing use in the near future, but relatively few are able to do so.

**(457)** [B]iological evidence is accumulating to suggest that the adolescent brain may be particularly susceptible to the addictive properties of nicotine.

**(457)** [E]xposing the developing brain to nicotine has been shown to alter its structure and function in a way that introduces long-lasting vulnerability for addiction to nicotine and other substances of abuse.

**(850-851)** As was noted in the 1979 Surgeon General's report, adolescence through young adulthood remains the period in life when use of tobacco products can be perceived by young

people as being an "acceptable rebellion" or "mild bad behavior" that they can discontinue in the future. If tobacco use were similar to getting a tattoo or dyeing one's hair, for example, which might also be rebellious behaviors, we would not be as concerned. It is the addictiveness of tobacco use and its short- and long-term health and economic consequences that transform this "act of rebellion" into a major public health problem.

## *Lung Disease*

**(80)** [A]ctive cigarette smoking during childhood and adolescence has the potential to slow the rate of lung growth and reduce the level of maximum lung function attained, thus increasing risk for development of chronic obstructive pulmonary disease (COPD) in adulthood.

**(86)** Although quitting smoking at all ages can be beneficial, early quitting may be more valuable than later quitting because of its potential beneficial effect on the still-growing lung.

**(111)** The evidence is sufficient to conclude that there is a causal relationship between active smoking and both reduced lung function and impaired lung growth during childhood and adolescence.

**(111)** The evidence is sufficient to conclude that there is a causal relationship between active smoking and wheezing severe enough to be diagnosed as asthma in susceptible child and adolescent populations.

## *Cardiovascular Disease*

**(94)** Permanent effects of smoking on the cardiovascular system have been found in children, adolescents, and young adults who smoke, and these effects are antecedents of incident cardiovascular disease in later adulthood.

**(108)** [S]tudies have now been conducted around the world in children and young adults showing associations of endothelial

dysfunction<sup>2</sup> with active and passive exposure to tobacco smoke.

**(111)** The evidence is sufficient to conclude that there is a causal relationship between smoking in adolescence and young adulthood and early abdominal aortic atherosclerosis in young adults.

### *Smoking and Other Substance Abuse*

**(28)** Evidence from a number of studies indicates that cigarette smoking is strongly associated with the use of other substances.

**(29)** Among adolescents, early initiation of tobacco use is associated with the use of other substances. In a cohort study of adolescents, reports of “ever” and “daily” smoking were associated with increased risks in the future of using marijuana and other illicit drugs as well as disorders involving the use of multiple drugs. In addition, early-onset smokers were found to be more likely to have substance use disorders than late-onset smokers or nonsmokers.

**(194)** Cigarettes are often considered a “gateway drug,” and smoking cigarettes frequently precedes the use of smokeless tobacco and other types of drugs. Use of cigarettes, at a minimum, often covaries with smokeless tobacco and the use of other drugs. Among high school male cigarette smokers, for example, an estimated 84% also drink alcohol, 53% smoke marijuana, 29% use smokeless tobacco, 8% use cocaine, and 5% use inhalants. These percentages are much higher than the percentages of smokeless tobacco use and other types of drug use among male nonsmokers attending high school. Similar differences are observed among high school girls.

### *Health Effects of Smokeless Tobacco*

**(199)** The use of smokeless tobacco has been linked to both localized oral health consequences at the site of tobacco placement and systemic effects. Smokeless tobacco contains at least 28 carcinogens, and there is strong evidence to show that users have an increased risk of developing leukoplakia, a precancerous lesion on oral soft tissue, as well as oral cancers. Other undesirable oral health outcomes that have been linked to smokeless tobacco use include gingival recession, periodontal disease, and tooth decay.

### *Health Effects of Water Pipe (Hookah) Smoking*

**(207)** In a typical 1-hour hookah smoking session, users may inhale 100–200 times the amount of smoke they would inhale from a single cigarette.

**(207)** Existing studies also indicate that hookah smoking is linked to many of the same adverse health effects as cigarette smoking, including lung, oral, and bladder cancers, low birth weight in offspring, and heart disease.

# Section II. A Major Cause



## Tobacco Marketing at Retail Stores

### Introduction

**(487)** In most developed countries, businesses use a broad variety of marketing techniques to increase their sales, gain market share, attract new users, and retain existing customers. These techniques include product design, packaging, pricing, distribution, product placement, advertising, and a variety of promotional activities. Tobacco companies were among the earliest companies to identify and implement effective, integrated marketing strategies, and cigarettes and other tobacco products have long been among the most heavily marketed consumer products in the United States.

A key point here is that these marketing strategies are designed to “attract new users.” New users of tobacco products, as illustrated in Section I of this report, are overwhelmingly youth who are too young to use the products legally, and too immature to appreciate the dangers of tobacco use and addiction. It seems clear, then, that the tobacco industry’s marketing techniques are intended to — and do — attract youth to tobacco use.

This section highlights those portions of the Surgeon General’s report that find that tobacco companies have invested heavily in marketing strategies that target youth, particularly at the point-of-sale. It should be noted that these

strategies are used to market both cigarettes and other tobacco products. As noted in the report:

**(491, 507)** [T]he traditional division of products, brand identities, and marketing between cigarette and smokeless tobacco companies has all but become nonexistent in recent years as major U.S. cigarette companies, including RJR and Altria, have acquired smokeless tobacco companies and have developed new smokeless tobacco products [that use popular cigarette name brands].

### Despite Industry Assertions to the Contrary, Tobacco Marketing Is Intended to Recruit New Users and Increase Use of Tobacco Products

**(ES-2)** [I]nformation explicitly revealed in tobacco industry documents makes clear the industry’s interest in and efforts to entice young people to use their products.

**(487)** Tobacco companies have long argued that their marketing efforts do not increase the overall demand for tobacco products and have no impact on the initiation of tobacco use among young people; rather, they argue, they are competing with other companies for market share. In contrast, the weight of the evidence from extensive and increasingly sophisticated research conducted over the past few decades

shows that the industry's marketing activities have been a key factor in leading young people to take up tobacco, keeping some users from quitting, and achieving greater consumption among users.

**(508)** In her landmark 2006 ruling that the tobacco industry violated the Racketeer Influenced and Corrupt Organizations (RICO) Act, Judge Gladys Kessler concluded that cigarette marketing recruits youth to smoke and that the major cigarette companies know it.

**(516)** Tobacco companies are very interested in initial brand preference because they know it is highly associated with subsequent brand selection. The tobacco companies know that youth are very brand loyal, and once they have chosen a brand, most will continue with it. For example, a previously confidential Philip Morris document states as its "underlying premise" that "[t]he smokers you have are the smokers you are most likely to keep."

**(517)** Tobacco companies have consistently stated that the purpose of spending billions of dollars on cigarette marketing is to attract and hold current adult smokers to their brands of cigarettes. In addition, the companies deny that marketing campaigns are intended to increase demand for cigarettes among existing smokers or to encourage young people to initiate smoking. The economic value of the amount of brand switching that occurs, however, does not justify the magnitude of marketing expenditures.

**(518)** Despite the industry's arguments about brand loyalty and inducing existing smokers to switch brands, there are times when cigarette company executives themselves have acknowledged that marketing reaches and influences underage adolescents. For example, in 1997, Bennett S. LeBow, CEO of the holding company that owns Liggett, stated: "Liggett acknowledges that the tobacco industry markets to 'youth', which means those under 18 years of age, and not just those 18–24 years of age."

**(541)** Tobacco companies have always claimed that they do not want adolescents to use their products. However, for a tobacco company to be profitable over the long term, it must compete successfully for a share of the youth market. As stated succinctly in one of RJR's marketing research documents, "Young adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years."

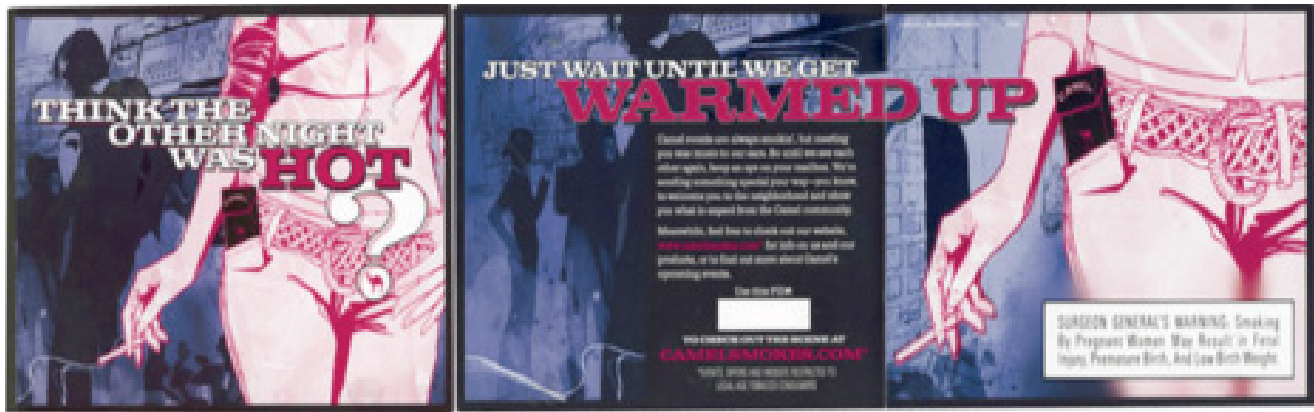
## **Tobacco Companies Invest Billions in Marketing Strategies that Attract Youth**

**(601)** In 2008, tobacco companies spent \$9.94 billion on the marketing of cigarettes and \$547 million on the marketing of smokeless tobacco. Spending on cigarette marketing is 48% higher than in 1998, the year of the Master Settlement Agreement. Expenditures for marketing smokeless tobacco are 277% higher than in 1998.

### *Use of Image Advertising that Appeals to Youth*

**(110)** One reason that some adolescents and young adults start to smoke is that the tobacco industry implies through its marketing that smoking is effective for weight control. This long-used strategy continues to the present, and the belief that smoking is effective for weight control remains prevalent among adolescents and may contribute to the initiation of smoking.

**(519)** As is the case with all advertising, a substantial portion of tobacco advertising consists of imagery that conveys little factual information about the characteristics of the product. In effect, tobacco advertising fulfills many of the aspirations of young people by effectively using themes of independence, liberation, attractiveness, adventurousness, sophistication, glamour, athleticism, social acceptability and inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being "cool."



**(851)** The evidence reviewed in this report indicates that the practices of the tobacco industry are evolving in the areas of promotion and advertising even as it tries to minimize the role played by such activities as major causes of tobacco use among youth and young adults. For example, recent industry campaigns have attempted to reframe the use of tobacco products as an “acceptable rebellion” within a hipster aesthetic.

**(517)** The most plausible justification for advertising expenditures at the levels that have been observed would be to attract new customers to generate a long-term cash flow for the companies. In addition, the nature of the imagery used in the advertisements clearly appeals to the aspirations of adolescents, suggesting that they are a target.

### *Exploitation of Peer Influence*

**(520)** Young people want to be popular, to be seen as individuals by their friends, and to resemble those they most admire. Cigarette advertising exploits these adolescent desires, using imagery to create the impression of popularity, individuality, and kinship. There is substantial evidence that advertising of tobacco affects adolescents’ perceptions of the attractiveness and pervasiveness of smoking ...

**(519-520)** Peer and parental influences are both associated with the decision of an adolescent to begin smoking, but ... it is also important to consider that, to the extent that tobacco industry marketing and promotional activities stimulate peers and parents to smoke, these influences contribute to smoking by adolescents. Therefore, peer and parental

**(517) The most plausible justification for advertising expenditures at the levels that have been observed would be to attract new customers to generate a long-term cash flow for the companies. In addition, the nature of the imagery used in the advertisements clearly appeals to the aspirations of adolescents, suggesting that they are a target.**



influences are acting as mediating variables between advertising and adolescent smoking.

**(520)** From internal industry documents, depositions, and trial testimony, it is clear that the tobacco industry understands the need to be accepted, particularly among youth, and has attempted to exploit this need through its marketing efforts.

**(521)** Plans by Philip Morris to market its Parliament cigarettes to 18- to 24-year-olds in 1987 included the following statement: "This younger age group is more likely to make decisions based on peer pressure. To convey the idea that everyone is smoking Parliament, the brand should have continuous high levels of visibility in as many pack outlets as possible."

**(522)** [F]ar from being a completely independent determinant of youth smoking, peer influence is yet another channel for communication on which the industry can capitalize to promote smoking by youth. It is important to note that the tobacco industry routinely attributes smoking to peer pressure, but it does not acknowledge the relationship between advertising and peer influence or the effects of advertising on normative behavior and perceptions of popularity and peer acceptance.

## **The Tobacco Industry Is Targeting Youth at the Point-of-Sale**

**(540)** Tobacco companies use the retail environment extensively to advertise and stimulate sales of their products.

**(541)** The signing of the Master Settlement Agreement stimulated a dramatic shift of the industry to point-of-sale marketing, one of the few venues not affected by advertising restrictions. However, industry executives have recognized the importance of using displays and advertising at the point of sale for decades. Marketing expenditures reported by cigarette companies to FTC indicate that in 2008 tobacco companies spent approximately 84% of their

marketing dollars in stores, including point-of-sale advertising, price discounts, retail promotional allowances, and retail-value-added items.

**(541-542)** Cigarette companies reach both current and future customers by advertising and promoting their products in stores; consumers, regardless of age, can be exposed to prosmoking messages in stores. Most cigarettes and ads are strategically placed around checkout counters to ensure maximum exposure and stimulate impulse purchases. Like other companies in the retail sector, tobacco companies advertise, offer special sales, and try to motivate retailers to sell their products by offering volume discounts, in-store branded displays, and payments for prime shelf space; these strategies are designed to move products off the shelves quickly. When tobacco products are displayed and featured with a price cut, sales increase by up to 30%.

**(543)** [A]lmost two-thirds of adolescents in the United States report seeing tobacco advertising all or most of the time when they visit convenience stores that do or do not sell gas.

**(543)** About one-third of adolescents shop in convenience stores two or three times a week, and 70% shop in them at least weekly. Convenience stores have more tobacco advertising and promotions than other types of stores, which increases the likelihood of exposing youth to prosmoking messages while they are shopping and which can affect initiation rates among those exposed, particularly if stores are near schools.

**(600)** Although some tobacco advertising and promotion activities are prohibited by the Master Settlement Agreement and the *Family Smoking Prevention and Tobacco Control Act*, consumers, regardless of age, are exposed to prosmoking messages in stores, and tobacco companies have offered retailers price promotions, volume discounts, in-store branded displays, and payment for prime shelf space.

**(851-852)** The evidence continues to show that youth and young adults are more sensitive than adults in general to advertising and promotional campaigns. As greater restrictions have been placed on traditional advertising of tobacco products, the retail environment has become a primary location to bombard youth with brand imagery, which has made tobacco products appear attractive and broadly acceptable.

### *Location of Retail Stores*

#### **Near Schools**

**(543)** Tobacco marketing in stores close to schools is of particular concern because of the increased likelihood of exposure to prosmoking messages as students pass by or shop at these stores. In a study of retail outlets in 163 school catchment areas in the United States, ... [s]tores close to schools were found to have more exterior tobacco advertising than stores further away, and stores where adolescents shop frequently have been found to have more cigarette marketing than other stores in the same community.

**(600)** [M]ore cigarettes are sold in convenience stores than in any other type of store, and 70% of adolescents shop in convenience stores at least weekly. Studies have shown that tobacco advertising is more prevalent in stores located near schools and where adolescents are more likely to shop.

#### **In Minority and Lower Income Neighborhoods**

**(542)** Documents from the tobacco industry reveal that cigarette manufacturers have used advertising to appeal to racial and ethnic minorities and children. Tobacco companies implemented marketing strategies specifically developed for small stores in inner cities and used zip codes to identify and incentivize retailers to reach the target population for

menthol cigarettes — that is, “young, black, relatively low income and education.”

**(543)** In California, the amount of cigarette advertising and the proportion that included a sales promotion rose more rapidly over a 3-year period in stores situated in neighborhoods in which the proportion of African Americans was higher than the statewide average. Similarly, menthol cigarettes were more likely to be marketed in stores near schools with higher proportions of African American students.

**(542-543)** Studies of stores that sell tobacco have confirmed that tobacco industry marketing differentially appeals to people with the lowest income and education through point-of-sale advertising and that there is more in-store tobacco advertising in predominantly racially diverse and low-income neighborhoods. A study of neighborhoods in eastern Massachusetts found that 19.4% of retail environments in a low-income neighborhood sold tobacco products, in contrast to only 3.7% of stores in an affluent neighborhood.

### *Tobacco Product Placement and Packaging*

#### **Product Placement and Retail Contracts**

**(534)** Displays of packages in retail outlets, commonly referred to as “powerwalls,” have high visibility among youth and help to establish brand imagery and social norms at an early age.

**(542)** Industry documents confirm that tobacco companies have sought to make their products easily visible and readily accessible to customers to stimulate impulse purchases. To reach customers, tobacco companies often engage retailers in contractual agreements. These contracts secure the placement of packs and cartons in highly visible locations around the counter where consumers will notice them; in return, the companies provide volume discounts and other financial incentives to retailers so their products can be offered at lower prices than those of their competitors.



**(542)** Cigarette companies exert substantial control over product location, advertising, and pricing in return for the financial incentives they provide to retailers. A Philip Morris contract for its Retail Leaders included several options for retailers to select their level of participation; the options varied by the amount and type of financial incentives offered to the retailer and the amount of control over retail space that the retailer relinquished to the company. Financial incentives include volume discounts, special sales on the companies' current inventory, and multipack discounts. In return, the retailer is required to advertise sales and promotions, accept merchandising fixtures (branded shelving units and displays), follow a detailed marketing plan that includes allocation of shelf space and brand location on shelves, and agree to inspections, reviews of inventory, and audits by the tobacco company.

**(543)** Another common practice is strategically locating tobacco-related marketing materials where young children will be exposed to them. Tobacco industry executives acknowledge that products and advertising should be placed at eye level, but in California, 48% of stores had at least one cigarette marketing item at or below 3 feet from the floor. Furthermore, almost 25% had cigarette displays next to candy.

**(543)** Nationally, a high proportion of tobacco shelving units (85%) and displays (93%) were located in the counter zone. The concentration of these types of merchandizing fixtures around the counter area suggests the important role played by packs and product displays in promoting sales.

**(600)** Research confirms that tobacco companies have sought to make their products easily visible and readily accessible to customers to stimulate impulse purchases and have entered into contractual agreements with retailers to secure placement of their products in highly visible locations around sales counters.

## **Tobacco Product Packaging**

**(488)** The cigarette pack itself is a form of marketing, with companies developing packaging designed to attract attention, appeal to specific consumers, reinforce brand identity, or suggest specific product qualities.

**(530)** Historically, a package's color has also helped to segment brands and establish brand identity. For example, silver and gold colors can be used to convey status and prestige, particularly for "premium" brands. Red packages and logos can convey excitement, strength, wealth, and power, while pastel colors are associated with freshness, innocence, and relaxation and are more common among brands that appeal to females.

**(530)** Research conducted by the tobacco industry consistently demonstrates that the brand imagery portrayed on packages is particularly influential during youth and young adulthood — the period in which smoking behavior and brand preferences develop. In many cases, initial brand preferences are based less on the sensory properties of using the product than on perceptions of the package and brand: "one of every two smokers is not able to distinguish in blind (masked) tests between similar cigarettes."

**(530-531)** Brand descriptors — words that appear on packs and are often incorporated into the brand name — can also promote brand appeal among target groups. For example, "slims" descriptors on packs promote beliefs about smoking and weight control — an important factor in smoking behavior among young women. In Canada, research conducted among young women and published in 2010 demonstrated that "slims" brand descriptors are associated with increased brand appeal and stronger beliefs that smoking is associated with thinness. Other brand names also capitalize on desirable associations with female fashion and sophistication, including names such as *Glamour* and *Vogue*.

**(531)** Tobacco companies have made extensive use of cigarette packages to influence consumer

perceptions about the potential risks of their products.

**(532)** From three recent studies that examined consumers' perceptions of color descriptors in Canada, the United Kingdom, and the United States, it appears that consumers perceive the color descriptors in the same way as the "light" and "mild" descriptors they replaced. For example, in one study more than three-quarters of U.S. adults surveyed indicated that a brand labeled as "silver" would have lower levels of tar and less health risk than a "full flavor" brand.<sup>3</sup>

**(599-600)** In addition to advertising and promotions, the tobacco industry has invested heavily in packaging design to establish brand identity and promote brand appeal. Research conducted by the tobacco industry and cited in this chapter has consistently demonstrated that brand imagery on packages is especially influential during adolescence and young adulthood, when smoking behavior and brand preferences are being developed. Color, words, and images on cigarette packs, as well as container shape and packaging material of smokeless tobacco products, have all been found to suggest specific product characteristics and reduce the perception of risk.

### *Price Promotions that Reduce the Cost of Tobacco Products*

**(ES 2-3)** With young smokers being more price-sensitive than older smokers, tobacco companies have increasingly focused attention on strategies that reduce the price of tobacco products.

**(488)** In 2008, the most recent year reported, expenditures on price discounts accounted for the largest single category [of marketing expenditures by cigarette companies] — nearly three-fourths of total expenditures. When other price-related discounts are included (coupons and free cigarettes from either sampling or retail-value-added promotions), spending on marketing practices that reduced cigarette prices

accounted for about \$6.00 of every \$7.00 (about 84%) spent on cigarette marketing in 2008.

**(491)** As with cigarettes, spending on price discounts accounts for the single largest share of [smokeless tobacco] marketing expenditures, at 59.3% in 2008. When other price-reducing marketing expenditures are added (including coupons, sampling distribution, and retail-value-added bonus products), a little less than \$3.00 of every \$4.00 (72.1%) currently spent on the marketing of smokeless tobacco products goes to reducing their price to consumers

**(527)** When retail prices rise following tax increases, companies engage in a variety of price-related marketing efforts that appear to be aimed at softening the impact of the increased prices. According to [researcher Dr. Frank] Chaloupka and colleagues, from their review of internal industry documents, these efforts have included increased distribution of coupons (through print ads, point-of-sale promotions, and direct mailings) and multipack discounts, often coupled with efforts to encourage smokers to express their opposition to an additional tax increase through mail or telephone campaigns targeting state and federal legislators.

**(527-528)** There is some evidence that the industry uses its pricing promotion strategies to respond to tobacco control efforts other than tax increases.... Specifically, [researchers] found that cigarette prices were lower in states with stronger state and local tobacco control policies, after accounting for differences in taxes, at least in part to offset the impact of these policies on tobacco use.

**(529)** A company that directly changes its prices will have a relatively broad impact, affecting a range of brands, and typically will be matched by other companies (particularly when the price change is made by the industry leader). In contrast, the use of price-reducing promotions can be more targeted, with promotions limited to particular brands, geographic regions, venues, or populations.

# Section III. The Effect



## Tobacco Marketing Increases Youth Tobacco Use

### The Evidence Is Clear that Tobacco Marketing Causes Youth Tobacco Use

**(ES-5)** Since the 1994 Surgeon General's report, considerable evidence has accumulated that supports a causal association between marketing efforts of tobacco companies and the initiation and progression of tobacco use among young people.... This body of evidence consistently and coherently points to the intentional marketing of tobacco products to youth as being a cause of young people's tobacco use.

**(8)** Advertising and promotional activities by tobacco companies have been shown to cause the onset and continuation of smoking among adolescents and young adults.

**(508)** [P]romotion and advertising by the tobacco industry causes tobacco use, including its initiation among youth. This conclusion has been buttressed by a multitude of scientific and governmental reports, and the strength of the evidence for causality continues to grow.

**(508)** A 2003 systematic review of the published longitudinal studies on the impact of advertising concluded "that tobacco advertising and promotion increases the likelihood that adolescents will start to smoke." Both the industry's own internal documents and its testimony in court proceedings, as well as widely accepted principles of advertising and marketing, also support the conclusion that tobacco advertising recruits new users during their youth.

**(508)** There is strong empirical evidence that tobacco companies' advertising and promotions affect awareness of smoking and of particular brands, the recognition and recall of cigarette advertising, attitudes about smoking, intentions to smoke, and actual smoking behavior. In fact, children appear to be even more responsive to advertising appeals than are adults.

**(508)** In addition, industry marketing efforts directed at young adults, which are permitted under the [Master Settlement Agreement], have indirect spillover effects on youth through young adults who are aspirational role models for youth.

**(512)** There is extensive scientific data showing (1) adolescents are regularly exposed to cigarette advertising, (2) they find many of these advertisements appealing, (3) advertisements tend to make smoking appealing, and (4) advertisements serve to increase adolescents' desire to smoke.

**(513)** There is strong and consistent evidence that marketing influences adolescent smoking behavior, including selection of brands, initiation of smoking, and overall consumption of cigarettes.

**(601)** Tobacco company expenditures have become increasingly concentrated on marketing efforts that reduce the prices of targeted tobacco products. Such expenditures accounted for approximately 84% of cigarette marketing and more than 77% of the marketing of smokeless tobacco products in 2008.

**(516)** [Research] findings suggest that after the Master Settlement Agreement, cigarette advertising continues to reach adolescents, that adolescents continue to be responsive to cigarette advertising, and that those who are responsive are more likely to initiate smoking.

**(517)** NCI's tobacco control monograph, *The Role of the Media in Promoting and Reducing Tobacco Use* (NCI 2008), also examined the evidence on how tobacco marketing efforts affect tobacco use among adolescents. Using numerous studies and tobacco industry documents, the report concluded that even brief exposure to tobacco advertising influences attitudes and perceptions about smoking and adolescents' intentions to smoke. In addition, the evidence showed that exposure to cigarette advertising influences nonsmoking adolescents to begin smoking and move toward regular smoking.

**(522)** The continuously accumulating evidence from the studies that have addressed the effect of advertising on smoking is consistent with a dose-dependent causal relationship.<sup>4</sup>

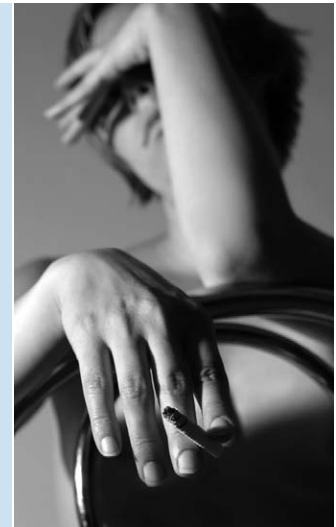
**(522)** Taking together the epidemiology of adolescent tobacco use, internal tobacco company documents describing the importance of new smokers, analysis of the design of marketing campaigns, the actual imagery communicated in the \$10-billion-a-year marketing effort, the conclusions of official government reports, and the weight of the scientific evidence, it is concluded that advertising and promotion has caused youth to start smoking and continue to smoke.

**(598)** [D]espite claims from cigarette manufacturers that marketing and promotion of their products are intended to increase market share and promote brand loyalty among adult



**(513)** There is strong and consistent evidence that marketing influences adolescent smoking behavior, including selection of brands, initiation of smoking, and overall consumption of cigarettes.

**(522) Taking together the epidemiology of adolescent tobacco use, internal tobacco company documents describing the importance of new smokers, analysis of the design of marketing campaigns, the actual imagery communicated in the \$10-billion-a-year marketing effort, the conclusions of official government reports, and the weight of the scientific evidence, it is concluded that advertising and promotion has caused youth to start smoking and continue to smoke.**



consumers, the evidence presented in this chapter is sufficient to conclude that marketing efforts and promotion by tobacco companies show a consistent dose-response relationship in the initiation and progression of tobacco use among young people.

### **Point of Sale Marketing Increases Youth Tobacco Use**

**(544)** [A] longitudinal study of more than 1,600 adolescents aged 11–14 years found that the odds of initiating smoking more than doubled for adolescents reporting that they visited the types of stores that contain the most cigarette advertising (convenience stores, liquor stores, and small grocery stores) two or more times a week.... [The study controlled for] risk factors typically associated with uptake of smoking such as smoking by family and friends.

**(544)** A systematic review of eight cross-sectional studies on the impact of tobacco promotion at the point of sale consistently found significant associations between exposure to point-of-sale tobacco promotions and initiation of smoking or susceptibility to that behavior.

**(545)** In conclusion, tobacco marketing at the point of sale is associated with the use of tobacco by youth. Because point-of-sale marketing is an important channel for the

tobacco companies, with very few restrictions, consumers, including children, are unavoidably exposed to prosmoking messages when they shop or when they are simply passing by stores.

#### *Location of Retail Stores*

**(544-545)** Neighborhoods that are more densely populated with stores selling tobacco may promote adolescent smoking not only by increasing access but also by increasing environmental cues to smoke.

**(545)** In Chicago, Illinois, youth in areas with the highest density of retail tobacco outlets were 13% more likely to have smoked in the past month than those living in areas with the lowest density of outlets. In a California study, the prevalence of current smoking was higher in high schools with the highest density of tobacco outlets in their neighborhoods than in high schools in neighborhoods without any outlets; the density of retail cigarette advertising in school neighborhoods was also associated with smoking prevalence.

**(600)** The presence of heavy cigarette advertising in [convenience] stores has been shown to increase the likelihood of exposing youth to prosmoking messages, which can increase initiation rates among those exposed, particularly if stores are near schools.

**(601)** [R]esearch on the location of retail outlets selling cigarettes indicated that experimental smoking among youth was related to the density of tobacco outlets both in high school neighborhoods and in neighborhoods where youth live.

### *Tobacco Product Placement and Packaging*

**(530)** The brand imagery on cigarette packages is effective to the point that large majorities of youth — including nonsmoking youth — demonstrate high levels of recall for leading package designs.

**(543)** Two studies conducted in countries that ban cigarette advertising at the point of sale confirm that exposure of adolescents to pack displays is associated with increased intentions to smoke among youth.

**(544)** [I]n two experimental studies, students who saw photos of stores with tobacco displays and advertising were more likely to overestimate the percentage of adolescents and adults who smoke and to believe that tobacco is easier to buy than were those who saw photos without retail tobacco materials.

**(600)** Recent research suggests that even when terms such as “light” and “mild” are prohibited in tobacco packaging and advertising, a significant proportion of adult and youth smokers continue to report false beliefs about the relative risk of cigarette brands. Studies suggest that the use of lighter colors on cigarette packs to imply lightness, as well as replacement words such as “smooth,” have the same misleading effect as “light” and “mild” labels.

### *Reducing the Cost of Tobacco Products through Price Promotions*

**(523)** [Y]outh respond more than adults to price changes in terms of their use of tobacco.

**(528)** Given the greater price sensitivity of smoking among young people ... the industry’s targeted pricing and price-reducing promotion strategies will have their greatest impact on youth and young adults.

**(528)** [A] growing and increasingly sophisticated body of research has clearly demonstrated that tobacco use among young people is responsive to changes in the prices of tobacco products. Most of these studies have found that usage levels among young people change more in response to price changes than do usage levels among adults. This research includes studies that have looked at the consumption of cigarettes and smokeless tobacco products as well as various stages of cigarette smoking among youth and young adults.

**(530)** In considering the numerous studies demonstrating that tobacco use among young people is responsive to changes in the prices of tobacco products, it can be concluded that the industry’s extensive use of price-reducing promotions has led to higher rates of tobacco use among young people than would have occurred in the absence of these promotions.

# Section IV.



## Effective Solutions for Ending the Tobacco Epidemic

**(857) The evidence is clear: we can prevent youth and young adults from ever using tobacco products. We can end the tobacco epidemic.**



### Implementing Tobacco Control Policies Can Help End the Tobacco Epidemic

**(ES-1)** [T]here are proven methods to prevent this epidemic from claiming yet another generation, if our nation has the will to implement those methods in every state and community.

**(ES-2)** With 99% of all first use of tobacco occurring by age 26, if youth and young adults

remain tobacco-free, very few people will begin to smoke or use smokeless products.

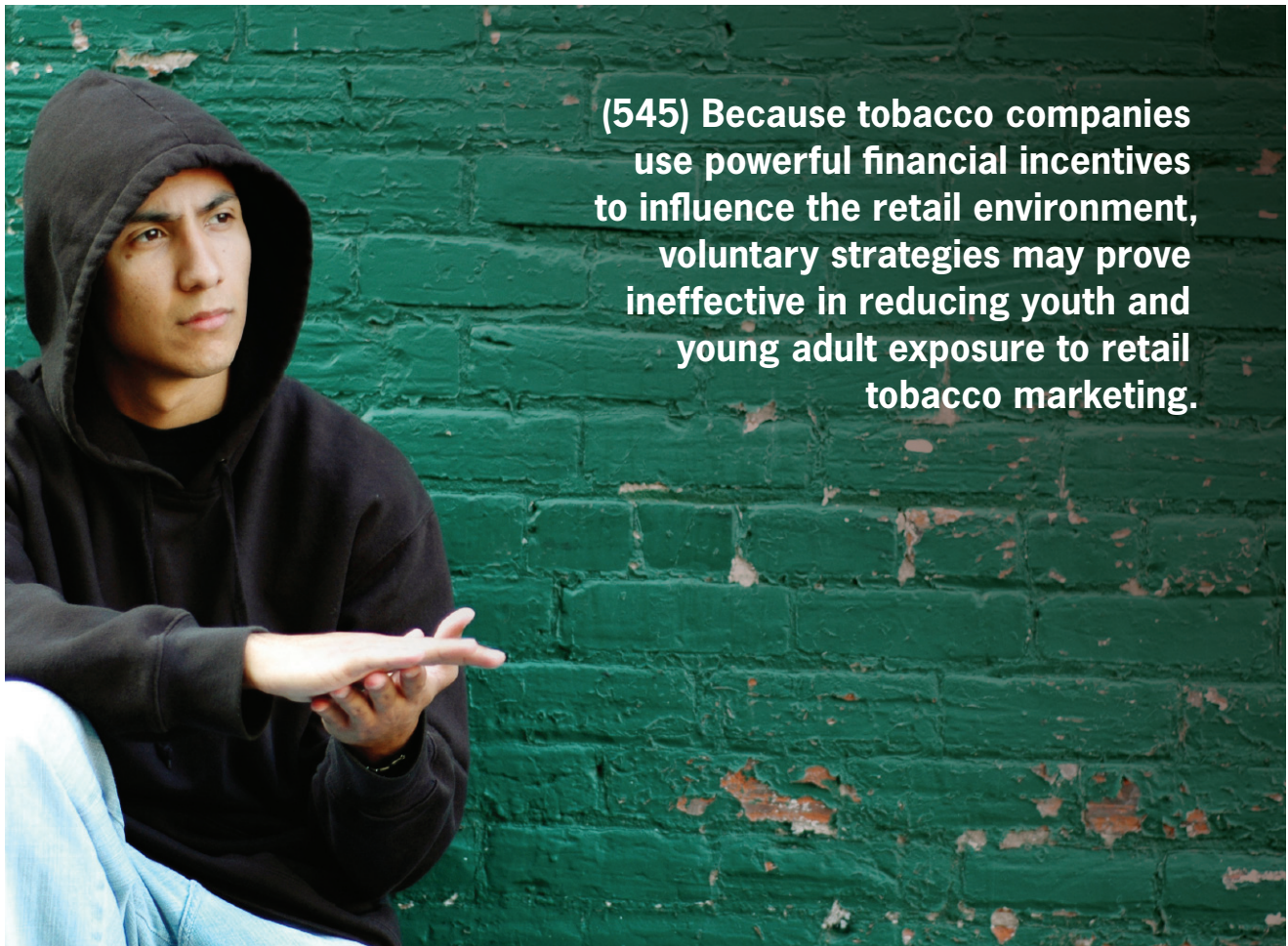
**(ES-7)** Numerous studies over many years have consistently concluded that comprehensive state tobacco control programs that include a range of coordinated and complementary strategies have been effective at not only reducing tobacco use by youth and young adults, but also have resulted in overall reductions in smoking prevalence and concomitant decreases in state spending on tobacco-related health care.

**(ES-7)** Greater consideration of further restrictions on ... promotional activities ... is warranted, given the gravity of the epidemic and the need to protect young people now and in the future.

**(545)** Research supports the policy option of regulatory control over the retail tobacco environment. Studies show that tobacco use is associated with both exposure to retail advertising, and relatively easy access to tobacco products.

**(545)** Policy options include limiting the use of the retail environment by tobacco companies to reach youth, including both potential and current users of its products.

**(854)** [D]ata suggest that rates of smoking among high school students could be reduced by more than 50% over the next decade and thus could be in the single digits by 2020 if all the evidence-based strategies defined in this report were implemented.



**(545) Because tobacco companies use powerful financial incentives to influence the retail environment, voluntary strategies may prove ineffective in reducing youth and young adult exposure to retail tobacco marketing.**

### **Comprehensive State-Level Tobacco Control Programs Work — But Adequate Funding is Required**

**(696)** [R]esults from statewide comprehensive tobacco control programs provide strong evidence that they reduce the prevalence of smoking by youth. To maintain their effectiveness, such programs need to be funded according to CDC recommendations in a sustained manner and include policy change, such as creation of smoke-free environments that reinforce a nonsmoking norm.

**(811)** Numerous studies over many years have consistently concluded that comprehensive state tobacco control programs that include a range of coordinated and complementary strategies have been effective at not only reducing

tobacco use by youth and young adults but also have resulted in overall reductions in smoking prevalence and concomitant decreases in state spending on tobacco-related health care. These comprehensive state tobacco control programs combine the strategies found to be most effective individually; these include mass media campaigns, increasing the price of tobacco products, establishing smokefree policies, and other programmatic and policy interventions that influence social norms, systems, and networks.

**(811)** [T]he evidence indicates that sustained programs combining mass media campaigns; price increases including those that result from tax increases; regulatory initiatives such as those that ban advertising to youth, restrictions on youth access to tobacco, and establishment of smokefree public and workplace environments; and statewide, community-wide,



and school-based programs and policies are effective in reducing the initiation, prevalence, and intensity of smoking among youth and young adults.

**(852)** Unfortunately, our national efforts to counter these influences have not kept pace in recent years, and funding for several of the boldest and most innovative statewide programs, in Florida, Massachusetts, Minnesota, Mississippi, Oregon, New York, and Washington, has been sharply reduced or virtually eliminated. Correspondingly, the overall level of investment in statewide tobacco control programs has declined since 2003. Exposure to counteradvertising, funded by states, is now only 3.5% of recommended levels.

**(853)** [T]he level of [state] investments [in comprehensive tobacco control programs] has since declined to \$643.1 million in 2010, only 17.7% of the investment level recommended by CDC's *Best Practices for Comprehensive Tobacco Control Programs — 2007*. Evidence indicates that states that have made larger investments in comprehensive tobacco control programs have seen the prevalence of smoking among adults and youth decline faster as investments levels increased. And yet, several of the states that were demonstrating the most progress in reducing youth smoking rates (among them California and New York) had their levels of funding severely reduced.

**(857)** Our best strategy for creating large, rapid declines is through coordinated, adequately funded multicomponent interventions rather than a single “silver bullet” program or policy.

# Section V.



## Policy Options for State and Local Governments That Impact Point-of-Sale Tobacco Marketing to Youth

The Surgeon General's Report documents that tobacco marketing at the point-of-sale — including advertisements, product placement strategies, and price discounts — is a major cause of youth tobacco use. It mentions several policy options that state and local governments could use to address tobacco marketing in retail stores. By adopting these measures, state and local governments could enhance the effectiveness of existing tobacco control programs. These policy options, which could be adopted separately or in combination with one another, should be seen as important additions to — and *not* substitutes for — well-funded, comprehensive tobacco control programs.

In considering the options explained below, communities should also assess whether their tobacco control laws need updating to include novel non-cigarette products, like hookahs, snus, and dissolvable products. Additionally, given the importance of a youthful customer base to the tobacco industry, another general option would be to raise the minimum legal sale age for tobacco products. The Tobacco Control Legal Consortium has publications discussing regulation of [non-cigarette tobacco products](#), including a [guide](#) with sample language. The Consortium also has a [policy guide](#) on raising the minimum legal age of sale for tobacco and related products.

### Option 1: Restrict the Number, Type, and Location of Tobacco Retailers

**(545)** The associations found between density of cigarette retail outlets and advertising and adolescent smoking, supported by studies linking the density of retail alcohol outlets and youth's alcohol use, support the recommendation of the Institute of Medicine to restrict the number and location of retail outlets for cigarettes in communities.

The Surgeon General's Report confirms that tobacco retail outlets, and the associated tobacco marketing and promotion found within them, have a significant impact on adolescent tobacco use. Reducing the number and regulating the location of these retailers is key to combating youth tobacco use. Specific regulatory policies might include the use of retail licensing schemes, zoning laws, or direct restrictions on the sale of tobacco.

#### *Retail Licensing*

A license is a mechanism through which a state or local government grants permission to do something such as drive a car or operate a business. Through the implementation of a licensing system for tobacco retailers, a state or local government may restrict the number, location and the type of retailers that are legally permitted to sell tobacco products in the jurisdiction.

**Number:** To address the pervasiveness of tobacco sales and marketing, a community might decide to limit the total number of tobacco retail licenses that will be issued.

**Location:** To protect children from exposure to tobacco marketing, a community could require that tobacco retailers be located a minimum distance from schools, playgrounds, and other youth-oriented facilities. To address the density of tobacco retailers and avoid creating situations where tobacco retailers are concentrated in certain areas, a community could also require minimum distances between tobacco retail locations.

**Type:** A licensing system could prohibit certain types of retail outlets from selling tobacco products. The Surgeon General's Report notes that pharmacies that sell tobacco products face an "incongruity between their primary role in health care and the negative effects of tobacco products on health." Several localities in Massachusetts and California have already prohibited tobacco sales by pharmacies.<sup>5</sup>

**Additional Conditions:** A license may also require tobacco retailers to comply with other laws. For example, a license could be specifically conditioned on compliance with existing laws regarding youth access to tobacco products, or it could be tied to new restrictions on tobacco product marketing, including advertising.<sup>6</sup> A licensing system provides a community with a powerful enforcement tool — retailers who violate the conditions of the license could lose the privilege of selling tobacco products.

Licensing systems can be adopted at the state and local level in most areas.<sup>7</sup> Licenses have been used to regulate many types of businesses; thus, in most communities, it is a familiar regulatory device. Moreover, a fee may be imposed on licensees to cover the costs of administering and enforcing the licensing system, making it economically feasible. In sum, a license may provide a comprehensive and practical way for a community to regulate the number, type and location of tobacco retailers.

The Tobacco Control Legal Consortium has several resources about tobacco licensing policies, available at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

## *Zoning Laws*

**(544)** Local zoning laws may be used to limit the total number of tobacco outlets as a way of reducing the availability of cigarettes and the visibility of cigarette ads; these laws may also require that tobacco outlets be located away from areas frequented by children. Studies that have linked the density of alcohol outlets around college campuses to higher rates of drinking and higher levels of adolescent drinking and driving have set a precedent for the use of zoning laws to reduce adolescent smoking.

Zoning laws (also referred to as land use regulations) may also be an effective tool for regulating the number and location of tobacco retailers.

The purpose of zoning laws is to regulate the use of land within a particular jurisdiction, such as a town, city, or county. A jurisdiction is generally organized into particular districts or zones, and the law identifies specific uses that are permitted within each zone. These uses might be permitted "as-of-right" (e.g., a single family home in a residential district) or might be allowed as a conditional use. A landowner must apply for a special permit (a "conditional use permit") before using his or her land for a purpose identified as a conditional use.

A zoning law could identify tobacco sales as a conditional use and require a conditional use permit before a new tobacco retail outlet could be established. The law could also set eligibility

requirements for issuing a permit. For example, a law could require new tobacco retailers to locate a certain distance away from residential zones, schools or other areas frequented by youth, or from other tobacco retailers. A zoning ordinance could also limit the number of conditional use tobacco retailing permits that could be granted. In this manner, a local government might, over time, reduce the number, density, and location of tobacco retailers within its jurisdiction.

Zoning law is generally a prospective policy solution. Because of legal constraints, it may be difficult to retroactively apply zoning restrictions to currently operating tobacco retailers. Over time, however, as new businesses replace the older ones, the zoning ordinance would have increasing impact.

The Consortium has additional resources explaining how zoning can be used to regulate tobacco retailers, available at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

### *Direct Regulation*

Under the 2009 Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), state and local governments maintain the authority to regulate the sale and distribution of tobacco products.<sup>8</sup> Thus, a state or local government could directly limit the type of retailers that are allowed to sell tobacco products. For example, a law might specifically prohibit pharmacies or other health care facilities from selling tobacco products. In this manner, governments could address the contradictory messages sent by pharmacies when they offer tobacco products alongside pharmaceutical products meant to address illnesses caused or exacerbated by tobacco use. At the same time, prohibiting tobacco sales by pharmacies can produce an immediate reduction in the number and the density of tobacco retailers.

## **Option 2: Restrict the Placement of Tobacco Products in Retail Stores**

**(545)** Efforts to restrict the exposure of U.S. children to the marketing of tobacco products have been uneven.... Comprehensive bans on tobacco advertising and product displays at the point of sale, such as those in Iceland, Ireland, Thailand, and several Canadian provinces, are notable examples of a stronger approach.

As described in Section III, the retail environment is a key focus — indeed, *the* key focus — of the tobacco industry’s marketing efforts. Specifically, product placement techniques are highly engineered to attract youth and influence youth tobacco use. One way to reduce the effect of point-of-sale marketing is to restrict the placement of tobacco products. Such a measure could require tobacco products to be kept under the counter, in a closed and opaque cabinet, or otherwise out of view until a customer of legal age makes a purchase or asks to inspect a product.

As noted above, product placement restrictions have been implemented in many countries. These countries have seen a reduction in youth smoking rates after the implementation of such restrictions. Moreover, while groups that opposed the implementation of these restrictions predicted dire consequences for tobacco retailers, those predictions have not materialized.<sup>9</sup> In fact, convenience store owners have reported no immediate economic effect on their businesses.<sup>10</sup> Rather, any impact is expected to be gradual as the placement restrictions reduce usage rates over time.

Until the enactment of the Tobacco Control Act, state and local governments were preempted from enacting regulations restricting the advertising and promotion of cigarettes. However, the Tobacco Control Act granted state and local governments the authority to “enact statutes and promulgate

regulations, based on smoking and health ... imposing specific bans or restrictions on the time, place and manner, but not content, of the advertising or promotion of any cigarettes.”<sup>11</sup> To the extent that product placement might be considered “promotion” under the federal law, a restriction on product placement at the point-of-sale would be a regulation of the “place” and/or “manner” of cigarette promotion and, as such, should be permissible.

Opponents of laws restricting the placement of tobacco products may claim that such measures violate the First Amendment’s protection of commercial speech. While it is not clear that the First Amendment would even apply to product placement restrictions, communities may want to consider enacting laws that restrict tobacco product placement — which has been shown to contribute to youth tobacco use — but do not otherwise restrict advertising at the point-of-sale. While broad restrictions on advertising likely would be more effective, a restriction that focuses only on product placement more clearly complies with the Supreme Court’s First Amendment case law.

The Consortium has several additional resources about tobacco product placement regulations and about the First Amendment, including a [guide](#) and [synopsis](#) about product placement policies, and a synopsis explaining the role of the First Amendment in tobacco marketing regulation. These and other related publications are available at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

### **Option 3: Pricing Restrictions**

**(699)** [I]ncreases in cigarette prices lead to substantial reductions in cigarette smoking. The consensus estimate from [two recent reviews of the literature on the impact of price on tobacco consumption] is that a 10% increase in cigarette price will result in a 3–5% reduction in overall cigarettes consumed. Second, increases in cigarette prices will decrease not only the prevalence of smoking but also the average number of cigarettes smoked by smokers. Third, a majority of the previous research on cigarette consumption among youth suggests that both youth and young adults are more responsive than adults to changes in cigarette prices, with several studies finding youth and young adults to be two to three times as responsive to changes in price as adults.

Congress and state governments (as well as some local governments) have imposed taxes on tobacco products that benefit public health by reducing tobacco consumption.<sup>12</sup> In response, tobacco companies have crafted innovative price-reducing strategies to retain current users and recruit new ones. These strategies include the use of coupons and multi-pack offers, as well as payments to retailers and wholesalers designed to reduce retail tobacco prices. Local communities could directly regulate these price promotions, or they could amend their minimum price laws to address this issue.

#### *Regulation of Price Promotions*

State and local governments can directly regulate the use of pricing promotions. By doing so, they can keep the price of tobacco products higher, thereby reducing tobacco use. These regulations could come in the form of restrictions on coupon redemption, on the use of multi-pack and cross-promotions (where one tobacco product is included with the purchase of another tobacco product), or on promotional payments to retailers and wholesalers. A combination approach may be the most beneficial so that industry resources are not simply redirected to alternative price reduction strategies.

Under the Tobacco Control Act, state and local governments have the authority to regulate the time, place and manner of cigarette promotions, but not the content of those promotions.<sup>13</sup> Thus, any

restriction on price promotions should be drafted narrowly so that it clearly restricts only the “manner” or type of promotion, and not the content of any advertisement. Similarly, to minimize potential First Amendment concerns, such restrictions should avoid restricting the content of promotional speech and should focus on prohibiting certain types of transactions.<sup>14</sup>

As an initial step or as part of a comprehensive approach to address price promotions, a community also may find it useful to require the reporting of price promotion payments made to or received by tobacco retailers within its borders through what is often called a “sunshine” law. The Consortium has created a [guide](#) with more information about this type of disclosure law. The Consortium also has published a [legal synopsis](#) about state and local tobacco pricing regulations, and an introductory [fact sheet](#) about tobacco price-related promotions.

### *Minimum Prices*

Many states have minimum price laws that prohibit retailers from selling tobacco products for less than a specified minimum price. Existing minimum price laws primarily regulate the price of cigarettes only, however, and many have loopholes that allow discounting mechanisms to reduce actual prices below the minimum set by the law (the statutory minimum). By way of example, New York State’s Cigarette Marketing Standards Act provides a specific formula for calculating the minimum price at which cigarettes may be sold. This law prohibits retailer or wholesaler price discounts that reduce the price of cigarettes below the statutory minimum, but it does not prohibit the use of coupons or other discounting strategies that also cause cigarette prices to fall below the statutory minimum. This kind of law could be strengthened by limiting or prohibiting price discounting mechanisms such as coupons, multipack discounts, and cross-promotions that reduce the price of an individual product below the statutory minimum. The Consortium has a [guide](#) that explains more about minimum price laws.

## **Conclusion**

Tobacco companies spend approximately 90% of their marketing dollars on point-of-sale promotion and price discounts. They invest billions at the point-of-sale because they know that their marketing pays off in the form of new, young customers who, because of the powerful addictive properties of nicotine, are likely to be life-long tobacco users.

The Surgeon General’s report makes it clear that tobacco marketing — and marketing at the point-of-sale in particular — is increasing youth tobacco use rates. But the Report also demonstrates that by adequately funding comprehensive tobacco control programs and by supporting efforts to restrict point-of-sale marketing, state and local governments can deprive the industry of its “replacement” consumers.

The policies described in this section can be used by state and local governments to reduce youth exposure to manipulative tobacco marketing and to improve public health in measurable ways. For more information about these and other tobacco control policies, please visit the Tobacco Control Legal Consortium’s website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org) or contact the Consortium directly.

## Endnotes

- <sup>1</sup> Aortic atherosclerosis is the hardening of the aorta, the largest artery in the body, due to plaque formation. Aortic atherosclerosis reduces blood flow to vital organs, including the lungs, and it is also a cause of heart disease and strokes.
- <sup>2</sup> The endothelium is the inner lining of blood vessels. Endothelial dysfunction immediately precedes the development of atherosclerosis, and may itself be a cause of heart disease and strokes.
- <sup>3</sup> For decades tobacco companies marketed “light” and “mild” cigarettes as less harmful alternatives to regular cigarettes, even though they knew that there was no evidence that these cigarettes were in fact safer. *United States v. Philip Morris*, 449 F. Supp. 2d 1, 560 (2006). In 2009, the Family Smoking Prevention and Tobacco Control Act prohibited the use of descriptors such as “light” and “mild” on cigarette packages. In response to this restriction, tobacco companies have switched to using colors as brand identifiers. For example, cigarettes that were formerly “Marlboro Ultra Lights” are now sold as “Marlboro Silver.”
- <sup>4</sup> A dose-dependent relationship means that the impact of tobacco advertising is directly linked to the amount of exposure to such advertising.
- <sup>5</sup> A prohibition on tobacco sales by pharmacies could be enacted through direct regulation as well as through a licensing law.
- <sup>6</sup> Limits on advertising and marketing could raise First Amendment concerns, as discussed below.
- <sup>7</sup> Certain states may restrict the authority of local communities to regulate business, so any municipality exploring this option should be aware of existing laws.
- <sup>8</sup> 21 U.S.C. § 387p (2012).
- <sup>9</sup> Casey Quinn et al., *Economic Evaluation of the Removal of Tobacco Promotional Displays in Ireland*, 20 *TOBACCO CONTROL* 151 (2011) (finding no economic impact on retail stores in Ireland in the year after the implementation of a display restriction).
- <sup>10</sup> See David Rees, *Living in the Dark*, *CONVENIENCE STORE* (U.K.), Jan 18, 2012, available at <http://www.conveniencestore.co.uk/advice/retail-advice/your-business/living-in-the-dark/225208.article>.
- <sup>11</sup> 15 U.S.C. § 1334 (2012).
- <sup>12</sup> The Consortium has a [fact sheet](#) and other publications relating to tobacco tax policy options available on its website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).
- <sup>13</sup> 15 U.S.C. § 1334 (2012).
- <sup>14</sup> The First Amendment of the United States Constitution provides some protection for commercial speech, but the protection is not absolute.



## **About the Tobacco Control Legal Consortium**

The [Tobacco Control Legal Consortium](#) is a network of legal programs supporting tobacco control policy change throughout the United States. Drawing on the expertise of its collaborating legal centers, the Consortium works to assist communities with urgent legal needs and to increase the legal resources available to the tobacco control movement. The Consortium's coordinating office, located at William Mitchell College of Law in St. Paul, Minnesota, fields requests for legal technical assistance and coordinates the delivery of services by the collaborating legal resource centers. Our legal technical assistance includes help with legislative drafting; legal research, analysis and strategy; training and presentations; preparation of friend-of-the-court legal briefs; and litigation support.