

CAMPAIGN CHRONICLES

A NEWSLETTER FOR COMMUNITIES
WORKING ON TOBACCO CONTROL POLICIES

Produced by

The CENTER FOR TOBACCO POLICY & ORGANIZING

 **AMERICAN LUNG ASSOCIATION**
of California
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MYTHS AND REALITIES OF AB71

Grocers, Retailers Use State Tobacco Licensing Law to Confuse Local Policy Makers

By

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Now that all tobacco retailers in California are required to be licensed by the state (the deadline is September 30, 2004) some grocer and retail associations are trying to derail local licensing efforts by spreading myths about what the state licensing law, passed under AB 71, does and doesn't do.

We know that California's new tobacco licensing law does little, if anything, to stem the flow of cigarettes from retailers to underage youth. But the retailers and their associations are using AB 71 to complicate the issue of tobacco retailer licensing, undermining local policy maker

interest and support for truly effective enforcement of the laws against selling tobacco to minors. This means that we in the tobacco control community need to be even clearer and more forceful when explaining the limits of AB 71.

On the following page we highlight some of the inaccurate "Retailer Myths" about the state tobacco licensing law (AB 71) that retailers and grocers may use to attempt to persuade your local elected officials to oppose local licenses with fees and enforcement programs. You'll find a quick review of the "Reality" and arguments that may be effective in communicating this truth about the state law.

■ See Myths, page 2

Free Regional Trainings

Strategic Planning sessions being scheduled now

As many Local Lead Agencies have written new tobacco control policies such as licensing and smokefree outdoor areas into their work plans, the Center will be coordinating as many as five regional community organizing trainings across the state to help get your policy campaign underway.

While each 4-7 hour training will be tailored to fit the experience and policy objective of participants, certain common elements will be present. A general session will describe how to proceed through each phase of developing a campaign strategy from assessing the political environment through developing tactics. Breakout sessions divided by policy objective will then address the details of completing a Strategy Chart for your campaign.

Much of the training is based on the proven organizing model of the Midwest Academy however modifications for tobacco control advocacy have also been included.

We will do our best to locate trainings near you however locations will be determined largely by the first agency in a regional area to call the Center.

With about 25 projects tackling licensing in their new work plans, we encourage you to call the Center soon to schedule a training in your area.

Center to Provide Comprehensive TA

During the next three years the Center will work closely with 6-10 communities providing comprehensive campaign technical assistance. This level of TA is much more than piecemeal consulting. We become a partner in your campaign, assisting with all phases from assessment of the political environment to community organizing to strategy development and implementation of tactics. Throughout the process our staff and subcontractors will be there to help with the often messy details of any campaign along

with offering their expertise when and where you need it.

If you have little campaign experience and will be working on a significant new tobacco control policy, give us a call soon. As campaigns often take many months to complete, coordinating with us early will ensure we can provide your effort with the best support. Our service is free to Prop. 99 funded agencies but we do have some criteria before committing to a long-term campaign, please contact us for more details.

■ **Myth**, from page 1

Retailer Myth 1: “I just got a state tobacco retailers license, which does the same thing as this proposed local license.”

Reality: The state law does NOT do the same thing that a local licensing law would do. AB 71 is designed to reduce cigarette smuggling and the resulting loss of tobacco tax revenues to the state. There is no additional funding for enforcement to reduce illegal tobacco sales to minors. In contrast, the local ordinance will collect a fee to fund strong enforcement through compliance checks, which is the only way to ensure that sales to youth laws are enforced.

Retailer Myth 2: “Under AB 71 there are already inspectors checking for this sort of thing. I had one come into my store last week.”

Reality: Wrong. The inspectors that are hired by the state Board of Equalization are inspecting stores with a state tobacco license to check for black market cigarettes and tobacco tax stamp fraud. These inspectors are NOT doing anything to check for compliance with sales-to-minors laws. A local license would pay for police officers or other local officials to conduct these youth compliance checks.

Retailer Myth 3: “I just paid a huge fee to get a license under AB 71”

Reality: A retailer who applied for a state tobacco license was only required to pay a onetime fee of \$100. They will never be asked to pay another dime into the state tobacco licensing program. These retailer licensing fees only pay for the enforcement program to catch smugglers and cigarette counterfeiters. There are no

funds under AB 71 for funding any enforcement activities designed to reduce illegal sales of tobacco to minors, including STAKE Act or PC 308 (a) compliance checks using youth decoys. In contrast, the local license fee would be collected locally and used in the local community to pay for police officers or other local officials to conduct compliance checks in order to curb the high rate of sale of tobacco products to youth in our community.

Retailer Myth 4: “The state licensing law already covers illegal tobacco sales to minors so a local law is unnecessary and we’ll be punished twice for the same thing.”

Reality: In fact, AB 71 specifically does NOT preempt local governments from passing their own tobacco licensing ordinance, including annual fees on retailers to pay for local enforcement of the laws against selling tobacco to minors. Under AB 71 there will be no additional enforcement of sales to minors laws.

Retailer Myth 5: “I read AB 71, it says A retailer’s license can be revoked if they sell to a minor.”

Reality: Contrary to what the retailers and grocers might say, AB 71 sets up a flawed, unworkable system to suspend or revoke a retailer’s tobacco license for selling to minors. It makes sense for them to promote AB 71 as the answer to local licensing because they know that the faulty provisions on sales-to-minors will never result in a license suspension or revocation, or they would have opposed AB 71, which they did not. Remember, under the new state tobacco licensing law, there is no money and no enforcement of

California’s law against selling tobacco to children.

Under AB 71, the provision allowing for license suspension or revocation only goes into effect in years when the statewide sales of tobacco to minors rate is greater than 13 percent. Currently, this “trigger” mechanism is not activated because the 2003 statewide illegal sales rate was 12.2 percent. (The 2004 results are not available yet.) Therefore any convictions that occur under the laws prohibiting tobacco sales to minors, PC 308 or the STAKE Act, during this time will have no effect on a tobacco retailer’s state license. And even in years when the state’s illegal sales rate is greater than 13 percent a retailer is at little to no risk of losing their license. They would have to be convicted of selling to minors four times in one year before a suspension. It takes eight convictions in two years before a license can be revoked. These conviction rates are unrealistic considering that since 1995 the STAKE program has not fined the same retailer more than three times, due to a lack of sufficient funding to do enforcement compliance checks and inspections. A local license would mandate active inspections of retailers to enforce the sales to minors law.

What’s Next?

For the last year retailers and some grocers associations have pointed to AB 71 as a reason not to pass local licensing. We expect that these arguments will continue to be made until local policy makers learn the truth about the state’s new statewide licensing law. It will be up to you to bust the retailers’ myths and help your elected officials sort out the reality.

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