

Policy Work Group

Examination of Private and Public Policies re: Underage Sales Conference Draft March 2005

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Section I Background:

Evidence of the harm from underage use of alcohol and tobacco products has increased greatly in recent years. Tobacco dependence has come to be recognized as a “pediatric disease” in which adolescent dependence leads to the high morbidity and mortality associated with long-term use. For alcohol, the consequences of underage use are both more immediate and more visible. The September 2003 report by the Institute of Medicine of the National Academies, *Reducing Underage Drinking: a Collective Responsibility*¹ summarizes the harm associated with underage alcohol use, including: harm to the developing brain; problematic and risk-taking behavior for the underage alcohol user; and harm to the community in the form of vandalism, violence and sexual aggression, and traffic accidents and fatalities. National surveys have demonstrated that a significant percentage of underage alcohol users (15%² - 30%³) and tobacco users (>30%⁴) purchase these products directly from retailers. Additionally, a significant amount of the alcohol and tobacco products acquired by underage users from “social sources” (family members and friends) may itself have been illegally purchased by other underage individuals. Consequently, one important strategy to reduce underage use of these products—and the harm caused by that underage use—is to promote compliance with laws prohibiting sales to minors.

Policies to prevent underage sales, known descriptively as “Responsible Retailing”—verifying customers’ age and ID authenticity; declining sales to underage (and, for alcohol, intoxicated)

customers and to adult customers who purchase on behalf of underage customers (so-called “3rd party sales”)—have been developed both by retailers to govern the conduct of their employees (“private policies”) and by legislative and regulatory agencies to govern the conduct of licensees and their employees (“public policies”). Public policies may additionally impose penalties for underage customers who attempt to purchase alcohol or tobacco products and for adults who purchase or otherwise furnish these age-restricted products to underage users.

Such RR policies, however, have sometimes proved to be problematic. A session of the 2004 RR Forum (March 10-12, 2004) facilitated by Lynn Walding, Director of the Iowa Alcoholic Beverages Division and Ronnie Volkening, director of government affairs for Southland Corp., identified several problematic policies to prevent underage sales of alcohol or tobacco products. Participants in this session identified several ways in which policies could be problematic:

- Some policies may be ineffective. For instance, many companies have a policy of “zero tolerance” in which a single underage sale results in automatic termination. But it is not clear whether terminating an employee—especially one who is experienced and invested in the job—will improve the future RR conduct of the store.
- Some policies may have unintended consequences. Scott Hartman of Rutters Farm Stores (and an officer of NACS) related that in Pennsylvania, the termination of a sales clerk for unlawful sales to minors triggers an unemployment compensation claim. This penalizes retailers who terminate a clerk for continued laxity in following store age-verification policies.
- Some policies may work against their own aims. Strong penalties have been established in many jurisdictions to deter underage sales or purchases. But in the national 2004 RR Forum—and in the state RR Forums conducted in Alabama, Iowa, Missouri and New Mexico as part of the 4-state pilot demonstration of the integrated Responsible Retailing System model⁵—law enforcement officers recounted numerous instances in which judges and court officials failed to impose penalties upon clerks who sell to minors, or upon minors who attempt a purchase, because they feel that the penalties are too harsh for the infraction.

2004 Responsible Retailing Forum participants recommended that the examination of problematic policies be continued and they established a Policy Work Group to continue that examination. The process for this examination was intended to replicate the one that in 2001-2002 produced the *Report on Best Practices for Responsible Retailing* as a federal guidance document for the Center for Substance Abuse Prevention (CSAP).

- A core group of Report Committee members directed the examination. The eight individuals on the Report Committee are drawn from a diverse group of stakeholders representing the retail, law enforcement, regulatory and research communities.
- A group of Primary Consultants and Outside readers provided detailed feedback on the work of the Report Committee in preliminary and revised versions and provided assistance to the Report Committee in their specific areas of expertise.

In its initial discussion, the Report Committee honed in on policies that could be characterized as “Dispositions for underage sales” and identified three specific categories of policies for examination:

1. Private policies relating to employees who sell to a minor
2. Public policies relating to employees who sell to a minor
3. Public policies relating to licensees

Additionally, the Report Committee determined to canvass other stakeholders with comparable experience and background. Accordingly, the Report Committee developed and distributed surveys for retailers and for law enforcement officers and regulatory agents. Five surveys were returned by retailers—too few to be seen as representative but the replies have still helped to inform this examination. Twenty law enforcement / regulatory officers representing 18 states returned surveys and these replies have also shaped the examination. A copy of each survey instrument is attached.

Section II. Examination of Policies

IIA. Private policies relating to employees who sell

Zero Tolerance

Enforcement of sales to minors laws by regulatory / enforcement (“R/E”) agencies has been shown to improve rates of compliance with sales to minors laws^{6, 7, 8, 9}. In response to this enforcement, and to forestall the escalating penalties that states impose upon licensees whose employees violate these laws, licensees have adopted a variety of Responsible Retailing (“RR”) policies designed to insure that employees consistently follow protocols for age-verification / underage sales refusal. Among these policies are training in age-verification and ID authentication, prescribed use of point-of-sales aids like specialty calendars (“In order to purchase alcohol, you must have been born this day or earlier in 19__”) and electronic ID scanners, and cash register programming to prompt age-verification. Some licensees have required employees to sign affidavits acknowledging an understanding of laws and company policies prohibiting sales to underage customers and affirming that the sales associate will not sell to a minor.

One policy that has been adopted by many chains is a “zero tolerance” policy: a clerk who sells to a minor—and for many of these chains, a manager who sells to a minor—will be peremptorily terminated, regardless of length of employment or a history of no prior violations. There appears to be two primary motives for a zero tolerance policy:

1. to deter remaining employees from non-compliance with store policies and state / local laws through a harsh penalty (termination)
2. to remove unreliable employees (“bad actors”)

1) A zero tolerance policy for employees who unlawfully sell an age-restricted product demonstrates the serious resolve of the chain to eliminate unlawful sales. But demonstrate to whom? Clearly, to the employee—that no lapses in age-verification / underage sales refusal conduct will be tolerated. The termination of a non-compliant employee is a powerful reinforcement to remaining co-workers that they must conscientiously adhere to store policies if

they wish to retain their jobs. Chains with zero tolerance policies may be equally interested in demonstrating to R/E agencies, and perhaps to a trial court, that the chain is taking decisive actions to prevent underage sales. Retailers have frequently expressed a belief that zero tolerance policies conform to what R/E agencies *want* retailers to do. There may be some basis for this perception. In earlier consumer protection actions against retailers who sold tobacco to minors, the Kansas Office of the Attorney General requested that retailers terminate any employee who violated sales to minors laws. When some retailers responded that they had made significant investments in their work force (particularly in managers), the Office of the Attorney General agreed that retailers could retain non-compliant employees; but penalties for future violations would be greater if non-compliant employees were retained—even if the subsequent violation were committed by a different employee¹⁰ (this is no longer the practice of the Kansas Office of the Attorney General). Assistant Attorneys General who have negotiated Assurances of Voluntary Compliance with national chains on issues of RR have similarly found that retailers have presumed—incorrectly—that the Attorneys General favored zero tolerance policies.

2) Clerks or servers who have shown themselves unwilling or unable to follow these policies and laws as instructed can not be trusted to follow these policies and laws in the future. (One R/E survey respondent noted, “Would a store retain someone who broke the rule about not stealing?”) Consequently, it is in the interest of the chain—and of the public, as well—to remove an unreliable employee from the sale / service of age-restricted products.

Although retailers may be concerned with the significant investments they may have made in an employee who fails a compliance inspection, public stakeholders are more concerned with the implications for public health and safety. The more compelling issue for this examination is whether zero tolerance is effective, i.e. Does zero tolerance produce higher compliance with sales to minors laws? The arguments against zero tolerance are:

- Like a broken bone that heals to be stronger than before, an employee who has shown him/herself to be productive and dependable in the past can be retrained to more effectively verify age and decline underage sales than before. One R/E survey respondent characterized the non-compliant employee who is retained as “battle-hardened” and able

to serve as an example and a motivator for other employees. Additionally, the aggressive response to violations by management in many chains—re-training of all employees, re-inspections, managerial involvement—should improve subsequent performance by the non-compliant store whether the employee is retained or not.

- There is no assurance that an individual hired to replace the terminated employee will perform age-verification / underage sales refusal protocols more consistently than the terminated employee. Newly trained, and thus inexperienced, cashiers may perform these protocols less effectively and consistently than an experienced employee. And since newly hired replacements have higher turnover rates, the long-term employee may actually be replaced by a series of new clerks.

Length of employment may itself be predictive of compliance with age-verification / underage sales refusal conduct. In a large scale mystery shopper program (>8,000 inspections) conducted by the Pennsylvania Food Merchants Association, clerks who were new in their jobs were least likely to verify age and decline underage sales; and age-verification behavior increased proportional to length of employmentⁱ. The North Carolina ALE similarly found that length of employment was associated with correct age-verification behavior: sellers employed for one month or less sold at a rate almost two times that of the next highest category of length of tenure selling alcohol. The Pennsylvania and North Carolina results suggest that zero tolerance policies may in some cases replace experienced clerks who exhibit a low rate of non-compliance with inexperienced clerks who exhibit a higher rate of non-compliance. If non-compliance is indeed associated with inexperience, then zero tolerance actually exacerbates the problem of underage sales.

But the strongest argument against zero tolerance is that zero tolerance misconstrues an emerging understanding of RR. Absent a point-of-sales system that requires positive electronic age-verification / ID authentication in order to consummate a transaction and disallows operators to by-pass the process, there is always a potential for human error. Even a conscientious clerk or manager may—due to stress, multi-tasking or simple mental lapses—inadvertently fail to verify

ⁱ Employees in their 1st week of employment were non-compliant 48% of the time; employees in their 1st month, 46%; employees with 1 – 3 months employment, 39%; employees with 4 – 6 months employment, 31%; employees with 7 – 12 months employment, 29%; employees with 1 – years employment, 23%.

age. Some individuals may be “bad actors” who are indifferent to store and public policy and these bad actors surely should be removed from the store or chain’s work force. But even conscientious and productive employees are susceptible to human error. Such lapses may be quite infrequent. And the chance that they will be observed during a compliance check is unlikely (since even aggressive compliance inspections programs, public or private, will observe far fewer than 1/100th of 1% of all transactions). But with inspections—both law enforcement compliance checks and mystery shopper inspections—as an increasingly important and prevalent component of RR systems, some such lapses will be detected. For conscientious and productive clerks and managers who uncharacteristically fail to verify age and detect an underage sale, less severe penalties—such as suspension, loss of bonus or other benefits—and re-training may preserve a more experienced and productive work force and actually improve the level of consistent age-verification behavior in the store.

The potential advantages of retaining a non-compliant long-term employee may not apply to non-compliant new employees. If non-compliance is associated with inexperience, then presumably an inexperienced employee who fails to verify age correctly could, over time, become a valued long-term employee who exhibits exemplary age-verification / sales refusal conduct. But in the absence of a history of exemplary conduct, and with the high turnover rates among new employees, a chain may understandably be reluctant to take chances with, and make further investments in, new employees who are non-compliant. [One retailer reports an interesting policy of terminating any non-compliant employee with < 1 year with the chain a warning for anyone with > 1 year employment.]

In many states, retailers report that the employees they terminate can walk across the street and be hired as clerks by other retailers. The ready availability of jobs in the retail sector, and the low sense of employer loyalty or commitment to the job displayed by many newly hired clerks, undermines the deterrent effects of zero tolerance upon clerk conduct. Consequently, zero tolerance may simply shift problematic clerk behavior from one store to another rather than solve it. (Many best practices for RR adopted by licensees may similarly shift underage purchase attempts to other stores with less aggressive RR practices: the failure of an individual licensee’s

RR practices to reduce underage access *at the level of community*, however, is not an argument against best practices for RR *at the level of the store*.] To counter the movement of poor employees from one employer to another, the No Buts program in Maine requires employers to adopt a hiring practice of asking applicants if they have had prior tobacco sales violations. Employers in Maine may also check with the Attorney General's office to learn if an applicant has any prior violations, just as they may check with local Regulatory or Enforcement agencies in other states. Certifying or licensing individual clerks to sell age-restricted products, with suspension of the certificate / license for non-compliance, might remedy this problem of "bad actors" moving from store to store; but this would be a policy for public agencies, and not individual employers, to adopt.

Eliminating zero tolerance also has pitfalls. Case-by-case decisions by managers whether to retain and retrain a non-compliant employee might leave open the possibility of job discrimination actions. Additionally, perceived double standards could have a negative impact upon employee morale (although one Report Committee member, not a retailer, suggests that compassion and a second chance could build loyalty and commitment to the store) and strict, written procedures for determining whether to retain or terminate an employee would be needed to offset this perception.

IIB: Public policies re: employees who sell to underage customers

Every state and territory imposes a penalty upon a clerk who sells to an underage customer. In response to problems of underage use of age-restricted products and over-consumption of alcohol, some states and their subdivisions have increased the penalties for clerks/servers and licensees who violate the law (e.g. New Mexico in 2004 raised the penalty for clerks/servers who sell alcohol to minors to a 4th degree felony, involving the immediate arrest of the clerk/server). Increasing the penalties for sales to underage and intoxicated customers expresses a public resolve that these actions violate community standards and expectations and will not be tolerated. But the primary purpose for these penalties for clerks/servers appears to be to deter non-

compliant behavior. (In states that use fines to fund R/E agency operations, however, there may be a paradoxical dependence upon non-compliance, as with enforcement of parking regulations, for example, which serves a dual purpose of deterring non-compliance and also generating revenues upon which the municipality may depend.) Deterrence operates on the principle of aversion of risk: an individual or business both assesses the *likelihood of being caught* for acting (or failing to act) in a specific way, and the *severity of the penalty*, in deciding whether to act in compliance with a law or regulation. A severe penalty that is seldom if ever applied will have a small deterrent effect. Conversely, a small penalty that is very likely to be imposed can be an effective deterrent. Hence, a group of experts convened by the Pacific Institute for Evaluation and Research to advise the FDA on its tobacco inspection policy recommended lower penalties with more frequent enforcement rather than higher penalties with lower levels of enforcement¹¹.

Bad actors—whether clerks, servers or owner-managers—may flout laws prohibiting underage sales and over-service. But a significant percentage of the underage sales cited in enforcement inspections are unintended. Unintentional violations by clerks/servers are, of course, unacceptable and inexcusable. Store policies (e.g., vigorous training; incentives for clerks/servers who pass a law enforcement compliance check) and systems (e.g., shift reminders to check IDs; frequent mystery shopper inspections and reports to store personnel) may prove effective in maintaining clerk/server awareness and thus reducing unintentional sales. Sustained increases in enforcement frequency could also presumably enhance clerk mindfulness of the necessity of checking IDs. But since unintentional sales do not occur in the context of awareness and assessment of risk, there is doubt whether they are likely to be averted through higher penalties under state and local laws and regulations.

Judicial review

In addition to questions whether severe penalties for clerks / servers actually deter non-compliant behavior, an additional concern about severe penalties is that they are less likely to be imposed by judges and other court officials. Repeatedly, local law enforcement agents in some jurisdictions report that the penalties for underage sales are not meted out against the clerk /

server. Sometimes this occurs simply because the clerk / server cannot be found to serve notice at the time of adjudication or the clerk / server does not come to the hearing (“We can’t fine them,” New Mexico Division of Alcohol and Gaming Director Gary Tomada explains, “because we can’t find them!”). But other times, clerks / servers do not receive the prescribed penalty because the judge or court officer feels that the punishment is too severe. The inadvertent sale or service to a minor of an age-restricted product may be viewed as a “mistake” rather than a “crime.” This perception is supported by an unsuccessful attempt in North Carolina to develop an offender profile: Investigators found that in most cases, underage alcohol sales were not intentional crimes¹². Language and culture, cognitive ability and avoidance of conflict may also be factors in clerk non-compliance that could lead a judge or court officer to waive or reduce a penalty stipulated in law. When criminal penalties attach to the sale or service to underage or intoxicated customers, the judge or court officer may choose not to impose a penalty that carries a criminal record that will follow the clerk / server throughout his or her life. Going through the court process may be seen as punishment enough; or, as in the expression used in law enforcement, “You can beat the *rap* but you can’t beat the *ride*.” Another factor impeding the imposition of harsh penalties is that more aggressive and extensive legal defenses—predictable responses to harsher penalties for selling or furnishing alcohol to a minor (as well as other alcohol-related crimes, like DUI)—also lead to reductions in penalties.

The dismissal of a penalty against the clerk / server can be upsetting to public health stakeholders—and, if not a 1st offense, demoralizing to law enforcement agents, undoing their hard effort in enforcing sales to minors laws (hard effort that some in law enforcement argue should instead be directed to other areas). When penalties prescribed under law are dismissed, any deterrent effect upon clerks/servers—whether *specific deterrence* (upon the individual) or *general deterrence* (upon other employees who observe what happens to their non-compliant fellow employee)—is lost. And the dismissal of a penalty against the clerk/server is particularly grating upon the licensee, whose penalties are far less apt to be dismissed. From the licensee’s

perspective, the employee who violated laws and explicit store policies has his or her penalties dismissed yet the licensee is penalized for the employee's conductⁱⁱ.

Part of the problem described above is that court officers may not be fully aware of the seriousness of underage use of alcohol and tobacco products and, in the case of alcohol, the social consequences of underage use. The PWG survey of R/E agents indicated that in communities and states where R/E agencies and/or public health agencies pro-actively educate the judiciary on the seriousness of underage sales and use, penalties are more apt to be imposed upon non-compliant clerks / servers. Another partial explanation for what other stakeholders might characterize as “judicial lassitude” is that judges place great importance upon consistency in their sentencing practices. Judges may be reluctant to impose more severe penalties—even in the face of educational outreach on the seriousness of underage sales and public concerns—than they imposed in prior cases. One strategy against judicial lassitude is mandatory sentences, such as imposed by the North Carolina and New Mexico legislatures. However, in some cases, judges who view the mandatory penalties to be inappropriately severe may refuse to convict at all. Courts which regularly hear cases relating to alcohol and substance abuse (so-called “Drug Courts”) may be more likely to recognize the gravity of underage use of alcohol or tobacco products. Drug Court judges may also detect if the clerk's own problematic behaviors around alcohol or drugs might be a factor in the failure to perform age-verification / underage sales refusal protocols. These judges have wide latitude to prescribe case-appropriate actions—such as community service and/or education—and postpone final disposition of a case until these actions are satisfactorily performed.

Section IIC: Public policies relating to licensees

Most (all?) states impose escalating penalties upon licensees whose employees sell or serve alcohol to an underage customer. Many states similarly impose escalating penalties for sales to tobacco (although some hold only the clerk responsible and not the retailer). Since repeat

ⁱⁱ In many states, the non-compliant clerk may appear before a civil or criminal judge who may be lenient; but the licensee may appear before a Regulatory Board which may be less lenient.

infractions within a specified time period can result in larger fines and / or license suspension / revocation, these escalating penalties cause licensees to pay close attention to potential improvements in RR practices. The question that arises for the licensee, however, is: What specific measures should be taken to forestall future infractions? The answers are not self-evident.

Since 1994, state Attorneys General (“AGs”), acting under the authority of Consumer Protection statutes, have executed Assurances of Voluntary Compliance (“AVCs”) with regional and national retail chains found to have low rates of compliance with tobacco sales to minors laws. The initial AVCs with northeast regional chains executed by the AGs of MA, NY and VT required signatory chains to train and supervise store employees to verify age and decline underage sales¹³. The AVCs did not specify what the training and supervisory practices would consist of: the AGs believed that the chains would know how best to produce employee compliance with the goal of consistent age-verification / sales refusal. But external mystery shopper inspections subsequently showed that explicit store policies communicated to all employees to verify the age of customers appearing to be under a trigger age (often 27 or higher) did not translate into compliant age-verification and sales refusal conduct at the point-of-sales. Later AVCs, such as those executed by 43 state AGs with ExxonMobil and Wal-Mart, have been much more specific in stipulating the “process changes” that the signatory chains would undertake. These process changes included: clerk training with stipulated content (e.g., role-playing situations in which youth employ various strategies to purchase age-restricted product); restricting sales to specific registers (Wal-Mart) or to clerks of legal age to use the product (ExxonMobil); and external mystery shopper inspections to measure and provide feedback to management on actual store-level conduct. In Maine, notices issued by state-contracted enforcement agents for violations of tobacco sales to minors laws are immediately referred to the Office of the Attorney General, which initiates a civil administrative action and, in cases of repeat violations by license holders, settlement offers prescribe future conduct by the licensee, including participation in the state’s No Buts RR program. The agreed-to conduct would often not be attainable in court; but by negotiating to not seek stricter statutory provisions such as license suspension, retailers are willing to implement RR practices.

The practice employed by state AGs of prescribing specific remedial actions to reduce the likelihood of future infractions could be replicated by state R/E agencies. R/E agencies could require individual licensees to adopt specific process changes as a partial means of discharging citations for underage sales under state/local laws. There is ample anecdotal evidence that R/E agents and agencies have proposed specific process changes to retailers found to be non-compliant in compliance inspections. Florida Alcohol and Tobacco Bureau state supervisors, functioning as Hearing Officers for sales to minors, have routinely entered into settlements with licensees that include provisions for changes in store conduct that are not stipulated in state law. Requiring specific remedial process changes—preceded by a formal process to identify those practices that would consistently be required of non-compliant licensees—would increase the likelihood that changes would be adopted and that the changes would be effective. Stipulating the adoption of RR Best Practices as a partial means of discharging a citation would be consistent with the *CSAP Report*, which recommends that public agencies not only enforce sales to minors laws but also assist retailers to identify and implement effective RR policies. Greater R/E agency resources would be required in order to develop (in conjunction with other public and private stakeholders) and stipulate general and/or store-specific process changes (a grocery store, for instance, typically utilizes different cash register systems and more check-out aisles than a convenience store/gas station or package store, requiring different process changes). Some reporting and review process would be necessary to insure that the stipulated changes have been implemented. But if these process changes were required only of non-compliant licensees as an additional requirement to discharge a citation, the scope of additional work for the R/E agency would be on a manageable scale (since only a small percentage of licensees would be found non-compliant at any time).

A small and manageable scale, however, is not necessarily in the public interest. Since enforcement programs may inspect only a small percentage of licensees, and since licensees who are compliant at the time of an inspection may be non-compliant at other times when different

clerks/servers are on dutyⁱⁱⁱ, requiring stipulated changes *only* with licensees found to be non-compliant by law enforcement engages only a small number of the retailers whose present age-verification and underage sales refusal performance may, at best, be inconsistent.

What policies, alternatively, could stimulate the adoption of best practices for RR by large numbers of licensees? Some states have offered incentives for retailer adoption of aggressive RR practices. In Iowa, a retailer whose employees complete the state's *Iowa Pledge* clerk training program receives an affirmative defense (that can be used once in four years) that will waive penalties for underage tobacco sales. In Autauga County, Alabama, only those restaurants that join and continue to participate in the Responsible Vendor Program are permitted to sell alcoholic beverages on Sunday. Similarly, several states afford an affirmative defense to licensees who employ an electronic age verification ("EAV") device that reads the encoded data on the magnetic strip or bar code on the back of a state drivers license and calculates whether the individual to whom the ID was issued is of legal age to purchase alcohol or tobacco products. [Providing an affirmative defense for licensees with EAV devices provides an important cautionary insight about policies to incentivize RR process changes. EAV devices offer an appealing and promising technology. An experiment in Fort Myers, Fl ¹⁴and a larger study conducted by the PA Liquor Control Board¹⁵ demonstrated that EAV devices were efficacious, i.e. they correctly read the data encoded on the back of a state ID and calculated the current age. There is anecdotal evidence that the EAVs, and signage about their use, deter underage purchase attempts. A field effectiveness study by Brandeis University¹⁶, however, found that the EAV devices were used infrequently and were thus ineffective: stores with EAV devices did not exhibit improvements in age-verification conduct over time or in comparison with control stores. Policy makers must be careful that the process changes they incent will be effective.]

Apart from the importance of determining that any RR policy sanctioned by a legislative, regulatory or enforcement agency be effective, there is a larger underlying question of whether it is appropriate public policy to offer incentives to licensees to practice RR effectively. R/E survey respondents showed, at most, only tepid support for such incentives as lower license fees, or

ⁱⁱⁱ A Brandeis University study found that 1/3rd of licensees in Tallahassee, FL and 4/10th in Iowa City, IA that verified the age of a mystery shopper failed to verify the age of a 2nd mystery shopper that same week.

mitigation of future infractions, for licensees who adopt stipulated RR practices. As one R/E survey respondent so simply put the case: “We do not provide rewards for not breaking the law.” R/E survey respondents were quite supportive, however, of policies to require non-compliant licensees to adopt aggressive RR practices as an additional condition for discharging their citation. (A summary of some of these R/E attitudes appears at the end of this report.) Retailer survey respondents, however, were consistently and enthusiastically supportive of incentives for voluntary adoption of aggressive RR practices. The difference in attitudes between retailers and R/E agents is not surprising.

One Report Committee member suggested that R/E agent objections to retailer incentives would lessen significantly if R/E agents and agencies came to appreciate the costs of implementing a continuous RR system. These costs may include mystery shopper inspection programs and technology at the point-of-sales, such as EAV devices, or software and hardware to scan IDs electronically and store and report that data. The labor costs for enhanced training and re-training of sellers and for managerial review of age-verification conduct through point-of-sales videotapes or electronic cash register or EAV data are also significant. But the more substantial costs, as Michael Roman of ExxonMobil explains, may be the impact on the labor pool: Will prospective hires decline to work in an environment which calls for such rigorous procedures when the store across the street does not? Hopefully, over time, field effectiveness studies will show that aggressive RR policies are part of an overall business improvement model whose impacts will include lower turnover, improved employee morale and concern for the well-being of the employer and fellow employees, and enhanced productivity and profitability. In the absence of such evidence, and with intense public concerns for the consequences of underage sales and use of alcohol and tobacco products, the question of incentives remains.

A different and perhaps more productive way of examining the question of retailer incentives for adopting RR practices is: What will be the public health and public safety impacts of retailer incentives? This is a question that can be tested empirically. Do incentives to retailers significantly improve compliance rates? If so, which incentives—and which ways of structuring

those incentives—have the greatest impacts? What is the cost effectiveness of an incentive? What is the cost—benefit relationship?

- In a Best Case scenario, incentivizing RR conduct by licensees could raise age-verification / sales-refusal conduct throughout the community and produce a higher rate of compliance than could be accomplished through a) enforcement only or b) enforcement and non-voluntary changes adopted by non-compliant licensees. Through public incentives, the total investment in RR by private stakeholders is increased. R/E agencies could direct their limited resources to licensees who are unable to demonstrate that they have adopted and sustained RR practices or for whom complaints have been received

Alternatively:

- In a Worst Case scenario, the retailers who receive the incentives are the retailers who would have, or already have, adopted more aggressive RR practices *even without incentives* simply because avoiding unlawful sales (and the penalties they bring) is the smart decision for their businesses and their communities. These retailers would receive reductions in their out-of-pocket costs and/or receive additional benefits like mitigation or an affirmative defense. But the total investment in RR remains unchanged and compliance rates do not improve.

But whether a Best Case or a Worst Case—or, as is more likely, somewhere in between—the case can be tested empirically by designing and offerings RR incentives on a pilot basis and evaluating impacts at the level or store and community.

¹ National Research Council and Institute of Medicine. *Reducing Underage Drinking: A Collective Responsibility*. Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, Richard J. Bonnie and Mary Ellen O’Connell, Editors. Board on Children, Youth and Families, Division of Behavioral and Social Sciences and Education. Washington, D.C.: The National Academies Press, 2003.

² The Century Council, National Research on Underage Alcohol Access and Parental Discussions, Washington, DC, April 2002.

³ Dent WC, Grube JW, Biglan A. Community level alcohol availability and enforcement of possession laws as predictors of youth drinking. *Preventive Medicine* 40 (2005) 355-362.

⁴ Usual Sources of Cigarettes for Middle and High School Students --- Texas, 1998—1999. Accessible at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5140a2.htm> .

⁵ http://fcpr.fsu.edu/retail/integrated_RR_model.html

⁶ Forster JL, Wolfson M. Youth Access to Tobacco: Policies and Politics. *Annual Revue of Public Health*, 19, 1998.

⁷ Wagenaar AC; Wolfson, M. Deterring sales and provision of alcohol to minors: a study of enforcement in 295 counties in 4 states. *Pub Health Rep* **110**(4):428-38, 1995.

⁸ Grube JW. Preventing sales of alcohol to minors: results from a community trial. *Addiction* **92**: S251-60, 1997

⁹ Preusser D, Williams A, Weinstein H. Policing underage alcohol sales. *J Safety Res* **25**:127-33, 1994.

¹⁰ Krevor BS, Strickler G, Albrecht J, Archard J, Benintendi K, Brill J, Hering M, St.Clair S, Lefman C. *Preventing Teenage Access to Tobacco: A Report to the National Association of Attorneys General*. Institute for Health Policy, Heller Graduate School, Brandeis University, June 1999.

¹¹ Levy D, Chaloupka F, Slater S. Expert opinions on the effective enforcement of minimum purchase age laws for tobacco. *Journal of Public Health Management and Practice*, 6(3), 107-114, 2000.

¹² William Chandler, Ph.D, N Carolina Alcohol Law Enforcement Bureau.

¹³ Krevor, 1999.

¹⁴ David Myers, Report on EAV devices , FL Dept. of Business and Professional Regulation, 1998.

¹⁵ Beirness, D.J. Using Smart Card Technology to Prevent Sales of Alcohol to Underage Persons. DOT HS 809 321. Washington DC: National Highway Traffic Safety Administration, 2001.

¹⁶ Krevor BS, Capitman JA, Oblak L, Cannon J, Ruwe, M. Preventing illegal tobacco and alcohol sales to minors through electronic age verification devices: a field effectiveness study. *JPHPH* 24 (2003), 251-269.

Excerpts from Survey of Law Enforcement Agents

Summary prepared by Rebecca Hutchinson
for Dr. Bill Chandler, Deputy Director, NC ALE
Date: 16 November 2004

Question 27: A policy of mandatory termination is a necessary and/or appropriate measure to insure that all employees follow the store policy to check Ids and refuse underage sales

	1 (Strongly Disagree)	2	3	4	5 (Strongly Agree)
N	3	5	5	1	3
Percentage	17.65%	29.41%	29.41%	5.88%	17.65%

Question 28: A policy of suspending, without pay, an employee who sells to a minor and/or re-training that employee is likely to produce equal or greater improvements in sales conduct as a mandatory termination policy.

	1 (Strongly Disagree)	2	3	4	5 (Strongly Agree)
N	1	3	4	3	5
Percentage	6.25%	18.75%	25%	18.75%	31.25%

Question 29: Comments on mandatory termination policies?

- ✓ First time offenders usually become the best employees.
- ✓ This is a complicated and burdensome process. I would rather see higher penalties for these offenses and of course, mandatory licensing of employees.
- ✓ When an employee who sells to a minor is arrested, goes through the courts, and pays an attorney, that employee will be more vigilant in the future.
- ✓ If the employee breaks the law, they should be fired. The employer would certainly fire an employee caught stealing. There is no difference.

-
- ★ Personally I do not want anything to do with someone keeping or losing their job. A business owner needs to be responsible enough to make those decisions him/herself.
 - ★ I think that mandatory termination is effective in certain circumstances. However, if the courts are upholding the criminal violations, then the employee going through the criminal process is less likely to violate again. I see this, as the employee will not want to go through a criminal arrest again. Some of these employees have become the best employees for the licensee.
-

Question 30: A licensee that fails a compliance check should be required to adopt aggressive RR policies (e.g. training / retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct).

	1 <i>(Strongly Disagree)</i>	2	3	4	5 <i>(Strongly Agree)</i>
N	0	1	1	3	11
Percentage	0%	6.25%	6.25%	18.75%	68.75%

Question 31: A licensee that voluntarily adopts aggressive RR policies (e.g. training /retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct) should receive lower license fees:

	1 <i>(Strongly Disagree)</i>	2	3	4	5 <i>(Strongly Agree)</i>
N	7	6	3	1	0
Percentage	41.18%	35.39%	17.65%	5.88%	0%

Question 32: A licensee that voluntarily adopts aggressive RR policies (e.g. training /retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct) should receive lower insurance rates:

	1 <i>(Strongly Disagree)</i>	2	3	4	5 <i>(Strongly Agree)</i>
N	3	1	7	5	2
Percentage	16.67%	5.56%	38.89%	27.78%	11.11%

Question 33: A licensee that voluntarily adopts aggressive RR policies (e.g. training /retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct) should receive reductions in financial penalties for sales to minors' violations:

	1 <i>(Strongly Disagree)</i>	2	3	4	5 <i>(Strongly Agree)</i>
N	4	4	7	1	1
Percentage	23.53%	23.53%	41.18%	5.56%	5.56%

Question 34: A licensee that voluntarily adopts aggressive RR policies (e.g. training /retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct) should receive no reductions in financial penalties for sales to minors' violations but avoidance of license suspension or termination:

	1 <i>(Strongly Disagree)</i>	2	3	4	5 <i>(Strongly Agree)</i>
N	3	4	5	3	2
Percentage	17.65%	23.53%	29.41%	17.65%	11.76%

Comments:

- ✓ Licenses have a valuable privilege to sell alcohol. In return they have a duty to obey the law. Regulators should not start down the slippery slope of rewarding licenses for only doing what the law requires they do as a condition of holding the liquor license.

SURVEY OF RETAIL STORE POLICIES

In 2001, a group of diverse stakeholders examined practices to prevent underage sales of age-restricted products in a report prepared for the federal government, *Report on Best Practices for Responsible Retailing*¹⁶. The focus of that report was store-level practices for hiring, training and supervision and point-of-sales protocols. At the second annual Responsible Retailing (“RR”) Forum (March, 2004), a Policy Work Group (“PWG”) was established to extend the earlier examination to questions of RR policies *at the level of state and corporation* and their potential impacts upon store-level behavior (a description of the PWG is attached). Part of this examination involves gathering the experiences and insights of retailers, enforcement agencies and regulatory agencies. Would you please take the few minutes to complete the following survey and return it, electronically or via the mails, to:

Jim Smith, Executive Director, FPMA, 209 Office Plaza Drive, Tallahassee, FL 32301-2807 email: Jim@fpma.org. phone: (850) 877-5178

Feel free as well to contact Jim by phone to discuss any of these questions in greater detail. The PWG’s examination will be reported at the 2005 RR Forum in Santa Fe, NM (March 30 – April 1) and then widely disseminated among RR stakeholders.

Training.

1. Are newly hired employees trained (check each that applies)

In the store in which they will work ____
 In an off-site facility operated by the chain ____
 In an off-site location operated by another agency ____

2. Is the training program:

A proprietary program developed by the chain ____
 A program conducted by a:
 private agency (e.g. We Card, TIPS) ____ If so, name of program or organization that provides the program _____

public training program ___ If so, name of program or organization that provides the program _____

3. Is the length of the training

< 30 minutes ___

30 – 60 minutes ___

61 – 120 minutes ___

> 120 minutes ___

4. Does the training employ (check each that applies)

A trainer / facilitator ___

Work book ___

Videotape ___

Computer ___

A written test ___

Role-playing ___

5. What apparent age of a customer seeking to purchase a tobacco product should trigger clerks to ask for an ID? ___

6. What apparent age of a customer seeking to purchase an alcoholic beverage should trigger clerks to ask for an ID? ___

Compliance policies

7. Does your chain conduct internal mystery shopper inspections? ___

If yes, how often: 1 x per year ___

2 x per year ___

4 x per year ___

more than 4 x per year ___

8. Does your store or corporate office give an incentive (e.g. cash bonus, in-store credit) to a sales clerk if s/he refuses to sell tobacco or alcohol to a minor during an **internal mystery shopper inspection**? ___

If yes, please describe the incentive: _____

9. Does your store or corporate office give an incentive (e.g. cash bonus, in-store credit) to a sales clerk if one refuses to sell tobacco or alcohol to a minor during:

a compliance check conducted by a public agency? ___

an internal inspection conducted by you or your vendor? ___

If yes, please describe the incentive: _____

10. What actions are taken with a clerk who sells an age-restricted product in an **internal mystery shopper inspection** (check each that applies)

Warning ___

Suspension ___

Termination ___
Penalty (eg loss of a benefit) ___
Describe the penalty _____
Re-training ___
Re-inspection ___
Other? (please describe) _____

11. What actions are taken with a clerk who sells an age-restricted product in a **compliance inspection by a public enforcement agency** (check each that applies)

Warning ___
Suspension ___
Termination ___
Penalty (eg loss of a benefit) ___
Describe the penalty _____
Re-training ___
Re-inspection ___

12. Looking more closely at Termination Policies, which of the following applies if a clerk or assistant manager sells alcohol or tobacco to a minor in a compliance check conducted by a public agency (check each that applies):

Clerk is terminated on the 1st offense ___
Management will determine selectively whether to terminate the clerk on the 1st offense ___
Clerk will be warned on a 1st offense and forced to review store policy ___
Clerk is terminated on a 2nd offense ___
Clerk will be suspended without pay ___ For how long? _____

13. What appear to you to be the pluses and minuses of this policy?

14. What actions are taken with a **manager** who sells an age-restricted product in an **internal inspection** (check each that applies)

Warning ___
Suspension ___
Termination ___
Penalty (eg loss of a benefit) ___
Describe the penalty _____
Re-training ___
Re-inspection ___

15. What actions are taken with a **manager** who sells an age-restricted product in a **compliance inspection by a public enforcement agency** (check each that applies)

Warning ___
Suspension ___

Termination ____
Penalty (eg loss of a benefit) ____
Describe the penalty _____
Re-training ____
Re-inspection ____

16. What are the consequences for a **store manager** if an employee of that store sells tobacco or alcohol to a minor in **an internal mystery shopper inspection**?

17. What are the consequences for a **store manager** if an employee of that store sells tobacco or alcohol to a minor in **a compliance inspection by a public enforcement agency**?

Please indicate your own personal views for the following 2 questions (circle one):

18. A policy of mandatory termination is a necessary measure to insure that all employees follow the store policy to check IDs and refuse underage sales

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

19. A policy of suspending, without pay, an employee who sells to a minor and/or re-training that employee is likely to produce equal or greater improvements in sales conduct as a mandatory termination policy.

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

Store Policies

20. Does your store provide any of the following at the cash register where alcohol and/or tobacco are sold? (check each that applies)

Book containing proper state IDs (for out-of-state IDs) ____
Specialty calendar to compute the age of the buyer ____
Electronic age verification (EAV) discrete device ____
Other (please describe) _____

21. Does the cash register employed in stores (check each that applies)

Prompt clerks to check IDs for age-restricted products ____
Require clerks to enter a date-of-birth ____
Contain EAV technology to swipe and read an ID ____

22. What supervisory practices are employed by store managers
Review cash register records (eg review ID swipes or date of birth entries) ____
Review video tapes to observe age-restricted transactions ____
Other? (describe) _____

23. Is the compensation of store managers affected by results on internal and / or compliance inspections? ____ If yes, how _____

24. Is the compensation of district / corporate managers affected by results on internal and / or compliance inspections? ____ If yes, how _____

Public Policies

The following questions ask for your own personal opinions and recommendations regarding appropriate public policies relating to underage sales.

25. A licensee that fails a compliance check should be required to adopt aggressive RR policies (e.g. training / retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct). Circle one.

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

A licensee that adopts aggressive RR policies (e.g. training / retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct) should receive . . . (circle one for each question)

26. lower license fees:

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

27. lower insurance rates:

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

28. reductions in financial penalties for sales to minors violations :

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

29. no reductions in financial penalties for sales to minors violations but avoidance of license suspension or termination:

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

30. My company is a:
Chain of fewer than 20 stores ____
Chain of > 20 and < 200 stores ____
Chain of > 200 stores ____

31 Would you be interested in working further with the RR Forum Policy Work Group that is examining these issues and identifying potential policy changes for stores and regulatory / enforcement agencies? (Yes or No) ____

Name: _____
Company: _____
Phone number: _____ email: _____
The information above (check one):

- ____ Should remain confidential: no direct attribution to me personally or the chain in the PWG report
____ Can be attributed to me in the PWG report
____ Please speak with me directly before any attribution

SURVEY OF LAW ENFORCEMENT AGENTS

In 2001, a group of diverse stakeholders examined practices to prevent underage sales of age-restricted products in a report prepared for the federal government, *Report on Best Practices for Responsible Retailing*¹⁶. The focus of that report was store-level practices for hiring, training and supervision and point-of-sales protocols. At the second annual Responsible Retailing (“RR”) Forum (March, 2004), a Policy Work Group (“PWG”) was established to extend the earlier examination to questions of RR policies *at the level of state and corporation* and their potential impacts upon store-level behavior (a description of the PWG is attached). Part of this examination involves gathering the experiences and insights of retailers, enforcement agencies and regulatory agencies. Would you please take the few minutes to complete the following survey and return it, electronically or via the mails, to any of these PWG committee members:

Jan Byrne, Alabama ABC, 2715 Gunter Park Drive West, PO Box 1151, Montgomery, AL 36109.
phone: 334 260-5406 email: rvp@abcboard.state.al.us .
William Chandler, Ph.D, NC ALE, 4707 Mail Service Center, Raleigh, NC 27699-4707. phone:
919 733-4060 email: bchandler@ncale.org .
Mark Willingham, Center for Tobacco and Alcohol Access Prevention, 4839 Mariners Point Drive,
Jacksonville, FL 32225. phone: 904 707-4400 email: mwilling@fbinaa.org

Feel free as well to contact any of these PWG members by phone to discuss these questions in greater detail. The PWG’s examination will be reported at the 2005 RR Forum in Santa Fe, NM (March 30 – April 1) and then widely disseminated among RR stakeholders.

- 1) Do you enforce your state's laws prohibiting underage alcohol sales by merchants?
Yes _____ No _____ (If no, there is no need to complete the rest of the survey).
- 2) Do your processes include administrative action involving the permit/license holder? Yes _____
No _____
- 3) Do your processes include an action involving the individual seller? Yes _____ No _____

20) What problems do you see in the penalty structure and/or administration of penalties **for minors**? _____

Store Policies

21) Do your agency personnel make recommendations to store owners/managers if that licensee is cited for an underage sale? Yes _____ No _____

21a) If yes, what types of recommendations do you make to the store supervision/ management personnel? _____

22) Is there a statutory or administrative requirement in your area that employees who are convicted of selling alcohol to a minor be terminated? Yes _____ No _____

Please indicate your own personal views for the following 2 questions (circle one):

23) A policy of mandatory termination is a necessary and/or appropriate measure to insure that all employees follow the store policy to check IDs and refuse underage sales

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

24) A policy of suspending, without pay, an employee who sells to a minor and/or re-training that employee is likely to produce equal or greater improvements in sales conduct as a mandatory termination policy.

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

Comments on mandatory termination policies? _____

Public Policies

The following questions ask for **your own personal opinions and recommendations** regarding appropriate public policies relating to underage sales.

23. **A licensee that fails** a compliance check **should be required** to adopt aggressive RR policies (e.g. training / retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct). (Circle one)

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

A licensee that voluntarily adopts aggressive RR policies (e.g. training / retraining; internal mystery shopper inspection program; electronic technologies to verify age / ID authentication and/or to monitor clerk conduct) **should receive** . . . (circle one for each question)

24. lower license fees:

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

25. lower insurance rates:

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

26. reductions in financial penalties for sales to minors violations :

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

27. no reductions in financial penalties for sales to minors violations but avoidance of license suspension or termination:

1 2 3 4 5
1 = strongly disagree 5 = strongly agree

28. Would you be interested in working further with the RR Forum Policy Work Group that is examining these issues and identifying potential policy changes for stores and regulatory / enforcement agencies? (Yes or No) ____

Name: _____

Agency: _____

Phone number: _____ email: _____

The information above (check one):

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