



From The Director

From our Attorney General to our local health departments, the State has been active in tobacco control efforts this year. In this issue of *Tobacco Regulation Review*, we highlight some of those efforts—like the Caroline County Commissioners' decision to create smoke-free entranceways to public buildings and the Attorney General's lawsuit to stop Brown & Williamson's Kool Mixx campaign targeting youth and African Americans. This issue also describes recent tobacco control conferences and workshops across the State.

This issue also provides an in-depth summary of the tobacco-related legislation considered this year by the Maryland General Assembly. We continue to make progress on important tobacco control legislative initiatives in the State.

Kathleen Hoke Dachille, J.D.
Director

Workshop Opens Discussion on Emerging Ideas in Tobacco Control

Attorneys, state regulators, legislative staff, and advocates from various states gathered to discuss hot topics in tobacco control at the Center's June 18 workshop: State Regulation of Tobacco Products.¹ In advance of the Workshop, participants were provided with resource material and discussion questions so that they could come prepared to address three issues: Fire-Safe Cigarettes; Ingredient Disclosure Laws; and "Reduced-Risk" Tobacco Products.² Having considered the issues before the Workshop, participants engaged in thorough and informative discussion - and some debate - during the daylong event. As a result, the group was able to articulate a tentative plan of action to make the best use of each other's expertise and experience, as well as existing tobacco control resources.

Fire-safe, or reduced-ignition propensity, cigarettes are designed to minimize the likelihood of accidental fires caused by unattended cigarettes. Although there are other ways to create such a cigarette, the primary approach is to add extra bands of paper at certain points around the circumference of a cigarette. Those

bands act like speed bumps such that the cigarette will not burn past the bands unless the user draws upon the cigarette, potentially snuffing out an unattended or dropped cigarette before it has a chance to ignite carpet, upholstery or fabric. Effective June 28, 2004, all cigarettes sold in the State of New York must meet fire-safe standards set by its Office of Fire Prevention and Control. (See *Tobacco Regulation Review*, Vol. 3, Issue 1, page 8, for more information about New York's law.) Although tobacco manufacturers opposed the regulations, they all appear to be complying with New York's law and no lawsuit has been brought to challenge the regulations.

Workshop participants benefited significantly from hearing about the process by which New York enacted the fire-safe cigarette law, promulgated regulations and developed an enforcement plan. Russ Sciandra of the Center for a Tobacco Free New York provided a great deal of insight on the New York process, providing advice on how other states could accomplish the same result. Work-



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shop participants thoroughly discussed the details of the New York regulations, analyzing what would work and what might not work in different jurisdictions based on political and economic considerations. Ultimately the group agreed that model legislation and regulations would be helpful to public health and public safety agencies and advocates across the country. Work is underway at the Center to produce the models.

The most complex, and perhaps most controversial, discussion of the Workshop concerned the tobacco industry's new, "reduced risk" tobacco products. At the workshop, participants first learned about two significant new products: RJR's Eclipse and Vector's Quest. The Eclipse cigarette is marketed as a product that "may present less risk of cancer" and that "reduces secondhand smoke by 80%." (For more on Eclipse, go to www.eclipse.rjrt.com/ECL/eclipse_difference.jsp.) Quest is marketed as "the first cigarette brand that allows adult smokers the choice to either reduce their level of Nicotine or to gradually step to Nicotine Free smoking." (For more on Quest, go to www.questcigs.com.) Additionally, smokeless tobacco products, such as Star Scientific's Ariva, are marketed as substitutes for cigarettes, often sending the message that the product is a safer alternative, particularly with respect to secondhand smoke. Mitch

Zeller of Pinney Associates educated the group about how these products are designed, manufactured and marketed, instigating a lengthy and spirited discussion of whether and how states can or should take action to prevent, or at least regulate, the introduction and distribution of such products in the marketplace.

Debate arose over whether those concerned about the public's health should work to prevent the marketing of a product that may reduce the negative health effects of smoking to the smoker as well as to the non-smoker. Some argued that no cigarette will ever be "safe" and that so-called "reduced-risk" products reduce efforts at cessation and may cause an increase in initiation. Others suggested that if a tobacco product truly could be designed to reduce the negative health effects of smoking, public health advocates should encourage the development and marketing of such products. All attendees agreed, however, that a great deal of research and a healthy dose of skepticism of manufacturer claims are necessary as we start to peel back the layers of this emerging issue in tobacco control.

The group is committed to continuing this dialog, which will in some ways be affected by the success or failure of federal legislation granting the Food and Drug Administration authority, broad or limited, to regulate tobacco products.

To regulate a product in any manner, it is best to know what the product contains. Thus the group spent some time discussing state and federal laws requiring that cigarette manufacturers disclose the ingredients of their products. Existing confidentiality laws severely restrict the government's ability to make use of the information disclosed. Barry Sharp of the Texas Department of Health, Bureau of Chronic Disease and Tobacco Prevention, explained how Texas' ingredient disclosure law was passed and how it is virtually impossible for regulators to gain access to, let alone make use of, the information disclosed by tobacco manufacturers. All agreed that another significant hurdle to making productive use of the disclosed information is the limited budget of every state food and drug agency. Allowing for the possibility that eventually such information could be made fully available to regulators and perhaps private research entities, participants discussed the many uses of such information. Most advocates agree that the potential for future use of the valuable information that may be contained in the disclosures, particularly to measure changes in products over time as well as to determine the composition of reduced risk products, justifies efforts to secure ingredient disclosure laws. Although some attendees expressed an interest in pursuing such legislation, it was universally accepted that any such efforts should be put on hold until the

end of the current Congressional session as the passage of a bill allowing the FDA to regulate tobacco products may have an impact on this issue.

Many questions were answered and many more raised during the Workshop. The thorough and informative discussions contributed to everyone's understanding of the issues and provided an impetus to continue to work together on these issues which have an impact on the public health. That work will include, at a minimum, drafting of model fire-safe cigarette legislation, information-sharing on regulatory efforts in each state, and collaborating to do legal research on the viability of fire-safe, ingredient disclosure or other laws regulating the manufacture of tobacco products.

1 The Workshop was co-sponsored by the Center and the Tobacco Control Legal Consortium (TCLC). TCLC's Executive Director, Doug Blanke, attended the Workshop and shared with participants information about the Consortium's purpose and current projects. For more information on TCLC, visit www.tclconline.org.

2 Workshop materials have been posted at the Center's website in the Documents section: www.law.umaryland.edu/tobacco/documents.

Local Happenings

Charles County Commissioners Seek Smoking Compromise

Recently, the Charles County Commissioners asked County Attorney Roger Fink to draft a proposal that would require restaurants and bars to post signs indicating whether smoking was or was not permitted in the establishment. The signs would be required at the entrances of all bars and restaurants in the county. The proposal is an attempt at compromise between health advocates seeking to prohibit smoking in indoor public places and restaurant/bar owners concerned that a smoking ban would have a negative impact on their businesses. Despite the Commissioners' intention to address the issue without causing controversy, both sides have spoken out against the proposal, labeling it as having "no benefit."

After the statewide smoking ban failed to pass the General Assembly, Commissioner Robert J. Fuller, a former smoker and throat cancer survivor, proposed a county ban on smoking in all indoor public places. When the issue was discussed at a working meeting held July 13, 2004, the Commissioners acknowledged the dangers posed by exposure to secondhand smoke. However, four of the five commissioners expressed

equal concern that an outright ban could hurt business interests. Ultimately, the majority authorized a proposal which would allow restaurants and bars to choose whether to allow smoking, subject to existing state regulations, but would require that signage indicating the smoking status of the establishment be posted at all entrances. Because Maryland law already allows restaurants and bars to prohibit smoking, tobacco control advocates viewed the proposal as purely cosmetic, appearing to address the problem without actually doing anything to change the status quo or protect workers and patrons who continue to be exposed to a known health hazard. Business owners also decried the proposal as another meaningless government mandate which will require financial expenditure without having any practical impact.

Local newspapers originally reported the proposal as one which would require restaurants to choose whether they would allow smoking or prohibit it – an all or nothing proposal that would have eliminated smoking/nonsmoking sections. Such a proposal would be illegal given its inherent conflict with current state law limiting which establishments may allow smoking

and the location and size of acceptable smoking areas.¹ Charles County Attorney, Roger Fink, assured those expressing concern that the proposal was only to mandate appropriate smoking signage.

Charles County voters adopted the Code Home Rule form of government in 2002. Under the County's Code home rule powers, the local government may pass legislation restricting smoking without going to the General Assembly. This proposal marks the first time the Charles County Commissioners are considering using their home rule power to regulate tobacco.

Although the proposal was not the type of legislation hoped for by the advocacy community, the open discussion of the issue in Charles County is an earnest step toward meaningful tobacco legislation. In a county where tobacco farming once drove the economy, the recent discussions and movement toward smoking restrictions are a major development.

1 Md Code, Business Regulations Article, Section 2-105(d)(5) permits a restaurant without an alcoholic beverages license to allow smoking only in a separately enclosed room which can be no bigger than 40% of the total area of the restaurant. The section also permits restaurants that do possess an alcoholic beverages license to allow smoking in a combination of a bar, bar area, and separately enclosed room not to exceed 40% of the total restaurant, including the bar. There are no restrictions on smoking in free-standing bars.

Single Cigarette Sales Targeted in Prince George's County

On July 27, 2004, a bill banning the sale of single cigarettes, commonly called loosies, was introduced before the Prince George's County Council. Although State law requires that cigarettes be sold in packages of at least 20 cigarettes, County inspectors cannot issue citations for violations of the State law as that authority rests solely with the State Comptroller's Office. Adding the loosies prohibition to local law will authorize County inspectors to issue civil citations. Fines of \$300 for a first violation and \$1,000 for subsequent violations may be imposed. The Council's Health, Education and Human Services Committee voted unanimously to support the bill in September. The full Council will soon consider Bill No. CB-73-2004.

The impetus for the bill comes from the experiences of County inspectors who enforce the County's youth access and product placement laws. During enforcement of those provisions, County inspectors discovered the rampant problem of loose cigarette sales, to minors and others. One violator in particular readily offered

inspectors, and later inspectors from the Comptroller's Office. The County first became aware that the vendor was a problem when community members complained that minors could buy cigarettes readily from the store. County inspectors sent undercover youth to the store and witnessed the minors purchasing cigarettes and issued citations for violations of the local law prohibiting such sales. During those buys, however, it was clear that the retailer

ADDING A LOCAL LAW BANNING THE SALE OF SINGLE CIGARETTES WILL ALLOW COUNTY INSPECTORS TO ISSUE CITATIONS FOR THE SALE OF LOOSIES.

was also selling single cigarettes to minors and adults in violation of State law. County inspectors contacted the Comptroller's Office and the controlled buys were made. Because this particular vendor was a burden on the community and had repeatedly violated tobacco laws, the County inspectors requested that the Comptroller take action against the vendor's license. After a hearing, the Comptroller suspended the retailer's tobacco license for ten days.

County inspectors will continue to work with the Comptroller as particularly troublesome tobacco retailers are identified. If Bill CB-73-2004 is enacted, the inspectors will be able to take action locally for single cigarette sales as well. *Tobacco Regulation Review* will continue to track the progress of the bill.

DHMH Supports Network-Building in the Latino Community

Recognizing the growth of the Latino community in Maryland and acknowledging the barriers that have limited comprehensive tobacco control efforts in those communities, the Department of Health and Mental Hygiene recently contracted with community-based organizations to assist in developing a Latino/Hispanic Tobacco Control Network. Latinos for Progress in Baltimore County and the Talbot County Partnership were each awarded grant funds to work on the Network in their respective counties. The organizations must partner with existing groups within the Latino community so that a comprehensive community needs assessment can be performed. The results of the needs assessment will be used in designing tobacco control efforts that will address the community's needs and concerns. Such efforts will include creating culturally sensitive education and cessation materials for both the adult and youth populations. DHMH hopes to award additional contracts to cover other Maryland counties as funds become available. Ultimately, DHMH hopes that the Latino community in Maryland will be actively represented in statewide and local tobacco control coalitions and that the tobacco control message will be

communicated effectively to the Latino community.

Caroline County Expands Smoking Prohibitions

For more than ten years, many Caroline County public buildings were smokefree under a local resolution designed to improve the health of county employees and citizens. In May 2004, the County Commissioners of Caroline County expanded the smokefree policy to include the outside entrance areas of many public buildings. Resolution No. 2004-11 prohibits smoking outside the County Courthouse, Department of Public Works facilities, the Health and Public Services building, the Caroline County Detention Center, and other buildings and vehicles owned or leased by the County. County employees may be disciplined for violating the resolution. In addition to notifying employees and citizens of the prohibitions, the County is to provide cessation information to employees wishing to quit smoking.

Since its adoption, the Resolution has come under fire by some who argue, among other things, that the

outdoor smoking restrictions extend too far from the buildings. Although the Commissioners have expressed their unwavering support for smokefree policies that enhance the public health of County employees and citizens, the Commissioners are open to alternative proposals that respond to the concerns expressed by opponents.

DHMH Holds Second Tobacco Control Summit

More than 120 community activists and local health department employees from around the State came together in early May to learn from tobacco control experts and each other at the Department of Health and Mental Hygiene's second annual Tobacco Control Summit. Held in Baltimore City, the two day conference entitled "Maryland Communities at Work" allowed for open discussion about statewide tobacco control strategy and the coordinated roles local health departments and community members must play to achieve those goals.

On May 10 and 11, summit participants were treated to a number of workshops and presentations. Keynote speeches by Dr. E.D. Glover from the West Virginia University Cancer Research Center and Dr. Linda

THE COUNTY EXPANDED ITS SMOKEFREE POLICY TO INCLUDE THE ENTRANCES OF MANY PUBLIC BUILDINGS.

Hancock from Virginia Commonwealth University inspired and energized the audience members. Participants carried this upbeat tone into breakout sessions, stimulating interactive presentations that were highly productive.

Center staff contributed to the success of the summit as presentation panelists. Center Director Kathleen Dachille spoke as part of a panel on the effective strategies and common pitfalls of conducting a local clean indoor air campaign. The panel's presentation focused on specifics including how to conduct grassroots lobbying, how to talk to local legislators, and what to consider when drafting a bill. Managing Attorney Michael Strande also sat on a panel discussing appropriate lobbying and education activities for health department employees and non-profit corporations involved in tobacco control campaigns. The sessions, held twice during the summit, were well attended and helped clarify often confusing information about what government activities are legal and appropriate. Other offered workshops included topics such as Cessation/Relapse Prevention, Youth/College-Age Initiatives, Faith-based Initiatives, Minority Focused Initiatives, a Tobacco Coordinator's Forum, and a Cigarette Restitution Fund Program Update.

Participants viewed the summit as a success and are looking forward to

putting the new techniques they learned into practice. Thus, the summit educated and invigorated the tobacco control community.

Baltimore City Holds Tobacco Control Conference

Center staff attended and participated in Baltimore City's annual tobacco control conference, held on May 3, 2004. This year's conference, titled "Together We Can Make a Healthy Baltimore," focused on creating and enhancing partnerships between members of community and faith-based organizations, tobacco control advocates, and City residents. Keeping with the theme of community involvement, the conference was held at the New Shiloh Baptist Church, where a diverse mix of advocates and concerned citizens came together to discuss the problems posed by tobacco use in Baltimore City.

Opening comments by City Health Commissioner Dr. Peter Beilenson and State Delegate Salima S. Marriott addressed the disparate impact tobacco has on minorities, and the role Baltimore City's tobacco control program is playing to address those social justice issues. Key note speaker Amber Hardy Thorton, Vice President of the American Legacy Foundation, expanded on the social

justice theme in her discussion of tobacco industry tactics, particularly noting Brown & Williamson's KOOL MIXX campaign and its blatant targeting of African Americans and the hip-hop subculture. (For more information on the KOOL MIXX campaign, see page 13 of this Issue of *Tobacco Regulation Review*.)

Center Director Kathleen Dachille, City Tobacco Control Enforcement Officer Robert Brown and Consultant to the City Health Department, Donald Torres spoke to conference participants about the City's youth access compliance check program and how the community could aid in the program's success. Other break-out sessions included "Faith-based Tobacco Use and Prevention Partnerships," "Youth and Tobacco Control" and "Tobacco Use in Special Populations." After a day of well-attended programs and interactive questioning, the conference organizers claimed success in forging new partnerships and laying a framework for increased community involvement with the state and local tobacco control agendas.

2003 General Assembly Session

Legislative Wrap-Up

One of the regular features of the annual second issue of Tobacco Regulation Review is a summary of the past General Assembly session. This section presents information about recently enacted tobacco control laws as well as bills which were introduced, but failed to gain passage.

In April, the 2004 General Assembly session closed with little fanfare. Faced with the second consecutive year of significant budget shortfalls, tobacco control took a back seat to other, high-profile issues. Despite the surrounding circumstances, state legislators and local advocates acted together to introduce and push a number of tobacco related bills, realizing some significant accomplishments along the way. The following is a brief summary of each bill and its ultimate disposition.

Senate Bill 140/House Bill 260 – Clean Indoor Air Act.

These cross-filed bills prohibited smoking in most enclosed public places, including bars and restaurants. Filed by Senator Ruben and Delegate Frush, the bills were enhanced and improved versions of similar legislation introduced in the 2003 session. The revised bills

provided fewer exemptions and established a dual enforcement structure divided between the Department of Labor, Licensing and Regulation and the Department of Health and Mental Hygiene. While both legislative chambers conducted hearings, the House Health and Government Operations Committee withheld action on the bill, pending a favorable Senate committee vote. This year's Senate bill improved on last year's showing, but ultimately failed a Senate Finance Committee vote by a 5-6 margin. Committee Chairman Middleton cast the tie breaking vote against the bill, effectively killing it for another year. It is expected that the legislation will be reintroduced during the 2005 session.

Senate Bill 240/House Bill 477 – Tobacco Manufacturer Escrow Requirements.

These cross-filed bills altered the formula under which funds placed in escrow may be released back to a tobacco manufacturer who is not a party to the Master Settlement Agreement. The bills required escrow payments to be based on the number of units actually sold in Maryland, and allowed release of only those payments which exceed what the manufacturer would have paid as a party to the MSA. The bills were passed by both chambers of the legislature unanimously (44-0 in the Senate and 139-0 in the House) and signed into

law by the Governor. This legislation should help eliminate the advantage some non-participating manufacturers have had in being able to recover the vast majority of their escrow funds and thus significantly lower the price of their cigarettes.

Senate Bill 339/House Bill 1436 – Bond Limitation.

These cross-filed bills reduced the amount of the bond a party appealing a civil judgment must post. The maximum bond amount would be set at \$25 million, regardless of the amount of judgment. The bills were largely driven by the tobacco industry as protection from sizable bonds required to appeal large awards recently imposed in other states. The Senate Judicial Proceedings Committee gave a favorable report and the bill passed on the Senate floor (29-16). Advocates mounted a vigorous grassroots effort to kill this bill. Supported by the argument that existing Maryland Rules allow judges to lower appeals bonds on a case-by-case basis, the House Judiciary Committee reported unfavorably. This was viewed as a major victory for tobacco control advocates during an otherwise muted session.

Senate Bill 378/House Bill 1226 – Cigarette Tax.

These cross-filed bills sought to increase the tobacco tax rate for

cigarettes from \$1.00 to \$1.50 per pack. Having increased the cigarette tax twice in the last five years, the legislation died a quiet death when neither the House nor the Senate acted on their respective bills. This legislation will likely be back on the table next year as the General Assembly grapples with ways to generate revenue during times of budget shortfall.

Senate Bill 510/ House Bill 871 – Budget Reconciliation Act of 2004.

For the second year in a row, the Governor tried to divert money from the Cigarette Restitution Fund by eliminating codified language requiring that \$21 million be allocated for the program annually. This effort was defeated, with particular thanks to Senate Finance Committee Chairman Middleton, who vigorously opposed repeated diversion attempts. While the FY05 operating budget allocates only \$12 million (the second consecutive year of reduced funding due to the State's fiscal crisis), the \$21 million mandate remains applicable for subsequent years. Under this system, the Governor must specifically ask permission from the General Assembly to fund less than the mandate in any given year. The amended bills were signed into law. This was seen as a victory for the tobacco control community as legislators once again emphasized the importance of funding at least \$21 million for the program

and indicated displeasure at the Governor's repeated attempts to eliminate the mandate.

Senate Bill 528/House Bill 499 – Restrictions on Direct Sales and Shipping of Cigarettes.

These cross-filed bills prohibited any retailer from selling or shipping cigarettes directly to a consumer who purchased via internet, telephone or other electronic network. This legislation was primarily intended to halt internet cigarette sales. While Maryland law already prohibits internet sales, the actual prohibition must be inferred by reading a number of different Code sections together. The bills, which were supported by both the Maryland Attorney General and the State Comptroller, would have clarified the prohibition and tied violations to penalty provisions already in the Maryland Code. The legislation was killed when it received an unfavorable report in the Senate Finance Committee.

Senate Bill 607 – Tax on Tobacco Products Other Than Cigarettes.

This bill required specific entities to pay a tax on tobacco products other than cigarettes. The bill received a favorable report with amendments by the Senate Budget and Taxation Committee. It passed the Senate by a vote of 45-0. The bill ultimately died in the House of Delegates, however, when the House Ways and Means

Committee failed to act on the bill prior to the end of the session.

House Bill 48 – Tobacco License Fees.

This bill increased the yearly licensing fees to act as a manufacturer of cigarettes (from \$25 to \$500), a retailer of cigarettes (from \$30 to \$100), and a cigarette storage warehouse operator (from \$25 to \$45). The fee increases sought to adjust rates which had not been changed in over a decade. The relatively modest rate increases would have brought more than a half million dollars to the Comptroller's Office for administration of the tobacco licensing program, with any unused monies returning to the general fund. Despite the budget shortfall and proposed service cuts and consumer fee increases required to balance the budget, the House Economic Matters Committee reported unfavorably.

House Bill 500 – Cigarette License Revocation.

This bill, sponsored by Delegate Jon Cardin, provided authority to the Comptroller to deny, suspend, or revoke the tobacco retailer's license of any retailer who is convicted of illegally selling tobacco to a minor. The Comptroller's authority to issue a penalty would be the same whether the retailer was convicted under Criminal Law Article 10-107 or an applicable criminal or civil local law. While many of the entities performing

enforcement of state and local youth access laws have expressed the need for a legitimate license suspension penalty for chronic violators, the House Economic Matters Committee returned an unfavorable report.

House Bill 850 – Carroll and Garrett County Product Placement.

This bill prohibited the display or storage of tobacco products in a manner accessible to the consumer without the assistance of a store employee in both Carroll and Garrett Counties. During the hearing on this bill, there was some confusion amongst the committee about the difference between this bill and the statewide tobacco product placement bill, which was heard at the same time. (See House Bill 915 below.) Unfortunately, the House Health and Government Operations Committee failed to act on this bill, instead folding it into the statewide bill. While passage of the statewide bill would have prohibited identical conduct, it would not have provided for local enforcement, as the communities desired. Combining the bills also had the effect of pinning the local communities' hopes of passage to a much broader bill, rather than relying on the long-standing tradition of local courtesy - the tradition of passing legislation for counties with a commissioner form of government when the local legislators request and voice their support for the legislation.

House Bill 915 – Statewide Product Placement.

This bill prohibited the storage and display of tobacco products in a manner accessible to the consumer without the assistance of a store employee throughout the state. Liquor stores and tobacconist establishments were exempted from the law and enforcement was placed with the State Comptroller. This was the second year Delegate Petzold introduced similar legislation. The bill was given a favorable report by the House Health and Government Operations Committee and went on to passage on the House floor by a 92-46 vote. When the bill crossed over to the Senate Finance Committee, a number of amendments were considered. These amendments would have weakened the purpose of the bill and were likely to include preemption language, causing problems for the local jurisdictions already enforcing local product placement laws. When it was likely that some or all of these amendments were going to be included, the advocacy community withdrew support for the bill. The Senate Finance Committee ultimately issued an unfavorable report.

While achieving significant tobacco control policy changes tends to be a slow process, Maryland advocates should be encouraged by some significant successes in the 2004 session. Though a number of

bills were either defeated in committee or on the floor, tobacco control legislation was a visible topic in the legislature. More importantly, a number of bills came closer to passage than ever before. The \$21 million program mandate was retained, statewide product placement and clean indoor air legislation gained valuable ground, and support for new legislation from the State Attorney General and Comptroller was obtained. These and other accomplishments will increase the chances that similar legislation will pass during the 2005 session.

THE MARYLAND
GENERAL ASSEMBLY
SESSION RUNS FOR 90
DAYS, BEGINNING IN
JANUARY AND ENDING IN
APRIL. FOR MORE
INFORMATION ON THE
GENERAL ASSEMBLY GO
TO
WWW.MLIS.STATE.MD.US.

Clinic Students Work on Legislation in Annapolis

Students in the Tobacco Control Clinic took their skills and training to Annapolis for the 2004 General Assembly session to assist legislators interested in pursuing tobacco control legislation. Working with State Senators and Delegates, students focused on issues such as the accessibility of tobacco products at the retail level and on the Internet, the fees paid by tobacco retailers for their licenses and the appropriate discipline for tobacco retailers who sell to minors. The students conducted research on their legislative proposals, drafted bills to accomplish their goals, prepared written testimony for the appropriate committees, educated bill sponsors on the issues, coordinated advocates' testimony, and testified in support of the bills. Although none of the bills passed this year, the students not only learned a great deal from the experience, legislators also received new and interesting information on tobacco control that may make future attempts at legislation more successful.

Sharon Pusin and Samantha Freed worked on statewide and county-specific product placement laws respectively. House Bill 915, sponsored by Delegate Carol Petzold,

would have eliminated self-service tobacco product displays statewide, allowing the Comptroller to take action against a retailer who displays tobacco products in violation of the prohibition. House Bill 850 would have prohibited self-service tobacco displays in Carroll and Garrett Counties, allowing the local health officer to take action on violations. Because Carroll and Garrett County lack home rule powers, it is necessary for them to pursue such legislation at the General Assembly.

Pusin and Freed testified to the House Health and Government Operations Committee about the importance of tobacco product placement laws in reducing youth access to tobacco. The students responded to tough questions from legislators about why the State should impose such limitations through a law

when a significant number of retailers already follow such placement restrictions to reduce theft or because of local requirements. Having provided excellent responses, the students celebrated the favorable Committee vote on the statewide bill. Unfortunately, the bill did not fare as well before the Senate Finance Committee, where Pusin was again asked to testify. At the behest of tobacco industry lobbyists, the Senate Committee was considering adding so many exceptions to the bill that the impact of the legislation would have been severely limited. Ultimately the bill's sponsors and supporters withdrew their support and the Senate Committee issued an unfavorable report leading to the altered bill's demise.

Annie Garibaldi and Michael Clisham worked with Delegate Jon



Center Director Dachille and clinic students Freed and Pusin testify before the House Health & Government Operations Committee.

Cardin on bills that would have increased the fee collected for a tobacco retailer's license and allowed the Comptroller to suspend or revoke licenses of retailers who sell tobacco to minors. If passed, House Bill 48 would have increased the tobacco retailer fee from \$30 to \$100 per year, with the funds directed to the Comptroller for use in regulating tobacco sales. In her testimony and in response to Committee questions, Garibaldi explained to the House Economic Matters Committee that the additional funds would allow the Comptroller to expend more resources on identifying and punishing retailers who sell tobacco to minors.

In turn, Clisham explained to the same Committee that license suspension or revocation is an important tool that the Comptroller should be able to use in punishing retailers who have been identified by police or county enforcement agencies as violating youth sales prohibitions. House Bill 500 would have allowed the Comptroller to take such action even on referral from a local agency. Clisham responded to Committee questions about why simply punishing the clerk, rather than the owner, is not sufficient and why, even if local agencies can impose fines on owners, license suspension or revocation is necessary. Although both Garibaldi and Clisham had

drafted clear bills and provided comprehensive and articulate written and oral testimony, receiving accolades from Committee members for their work, both bills failed to receive a favorable vote from the House Economic Matters Committee.

At the request of sponsor and long-time tobacco control advocate Senator Ida Ruben, Jackie Ford drafted and provided written and oral testimony in support of Senate Bill 528. That bill would have prohibited Internet or direct mail tobacco sales, reducing youth access to tobacco and preventing the loss of State tobacco and sales tax revenue. Despite support by Maryland's Comptroller, who would enforce the provisions, the Senate Finance Committee failed to pass the bill out of Committee.

Without exception, students in the Tobacco Control Clinic rated their legislative experience as exciting and valuable. Reflecting on his experience, Clisham commented: "Testifying in support of H.B. 500 is a highlight of



Reed Correll and Ruth Maiorana of the Harford County Health Department and clinic student Michael Clisham after testifying in the House.

my legal education. Sitting before the Committee and delivering my testimony, I was struck by the importance of my role." The students learned much about the legislative process—the good and the not-so-good. Aptly, Garibaldi noted a significant, and frustrating, difference between legislative advocacy and litigation: "One cannot rebut the other side's testimony and comments." The comprehensive work of this year's class will undoubtedly allow the incoming students to start ahead of the curve on these legislative initiatives and with the benefit of the fine reputation the law school's students now have in Annapolis.

STUDENTS IN THE TOBACCO CONTROL CLINIC DRAFTED AND TESTIFIED ON 5 TOBACCO CONTROL BILLS IN THE 2004 GENERAL ASSEMBLY SESSION.

Maryland Tobacco Control Cases

Maryland Attorney General Sues to Stop KOOL MIXX Campaign

Maryland Attorney General J. Joseph Curran, Jr., a longtime advocate for consumer protection and public health, is again at the front of the fight against big tobacco. On July 1, 2004, the Maryland Attorney General's Office filed suit against Brown & Williamson Tobacco Corp. over its KOOL MIXX promotional campaign. The suit alleges that the campaign violates provisions of the Master Settlement Agreement, including prohibitions on youth marketing, use of brand names on merchandise, brand name placement in the media, and brand name sponsorship of concerts. The suit, filed in Baltimore City Circuit Court, seeks monetary sanctions and other remedial measures.

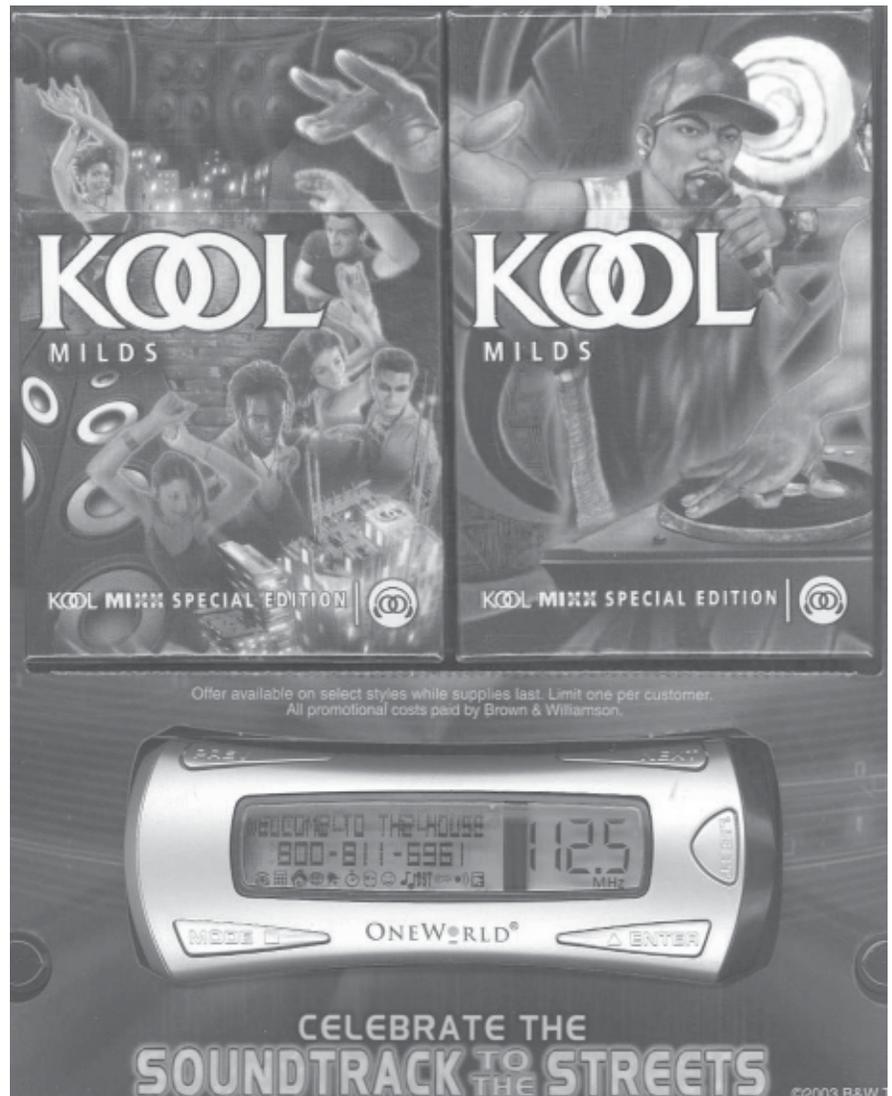
The KOOL MIXX campaign is a massive cigarette promotion associated with hip-hop music and culture. The campaign promotes Kool cigarettes through nationwide advertising, product tie-ins, brand name giveaways, and a national DJ contest. The product tie-ins include music and video game CD-ROMs, redesigned and brightly colored cigarette packs with hip-hop images, flavored cigarettes, and cigarette packs sold with

tiny "Mixx Stick" compact radios. The DJ contests are taking place across the country, culminating in a final competition where a winner will be named. One regional competition was held in Prince George's

FOR THE FIRST TIME, BROWN & WILLIAMSON UNLEASHED A TORRENT OF ADVERTISING AND PROMOTIONAL GIVE-AWAYS AIMED AT AFRICAN AMERICANS AND THE HIP HOP SUBCULTURE.

County on April 4, 2004, where B&W representatives distributed "goody bags" containing Kool promotional items to between 100 and 150 people.

When B&W signed the Master Settlement Agreement in 1998, it agreed to



certain advertising restrictions. While the original KOOL MIXX concept, contests among hip-hop DJs held at bars, ran for the previous five years without objection from the Attorney General, the situation changed this year. For the first time, B&W unleashed a torrent of promotional advertising in magazines with high youth readership, mass distributed CD-ROMs with KOOL advertising placed in and among music and video games, sold limited edition cigarette packs containing cartoon like images forming a four piece hip-hop collage when placed together, and distributed other freebies and brand name merchandise aimed particularly at African Americans and the hip-hop subculture. These actions, according to the Attorney General, were done in such a fashion as to pose particular appeal to urban youth.

The lawsuit follows Attorney General Curran's June 3, 2004 letter, signed by 34 other states' Attorneys General, demanding that B&W cease and desist from violating the MSA through its campaign. B&W responded to the complaining letter, stating that it had stopped shipping the hip-hop tie-in products to the complaining states, including Maryland. However, investigations by the Attorney General's Office revealed that the products were still available to consumers. The suit asks that the campaign be halted, that the remaining tie-in products be recalled, that B&W run anti-smoking ads in all magazines in which its

campaign was advertised, and that monetary sanctions be imposed.

Update: Town of Kensington Covered By Montgomery County Ban

With the Kensington Town Council scheduled to take up debate on enacting its own smoking ban this fall, the town's attorney and mayor have determined that the Montgomery County smoking ban does indeed apply to Kensington. While Montgomery County's law does not apply to incorporated municipalities, Kensington's town code requires restaurants to abide by the County's health and sanitation regulations. Because the smoking ban is located in the Health and Sanitation chapter of the Montgomery County Code, the town attorney and mayor agree that the law applies to the town. One town restaurant, Savannah's, must now prohibit its patrons from smoking. The development leaves Poolesville as the only place in Montgomery County where bar and restaurant patrons may still smoke.

Curran Announces Settlement with Rite Aid

Maryland Attorney General J. Joseph Curran, Jr. announced on

September 8, 2004, an agreement with Rite Aid to implement new policies and business practices to reduce the sale of tobacco products to minors in Rite Aid stores throughout the nation, including 138 stores in Maryland. Rite Aid's signing of the "Assurance of Voluntary Compliance" is the most recent agreement produced by an ongoing, multi-state enforcement effort focused on retailers that have high rates of tobacco sales to minors.

Justice Department's Case Against Big Tobacco Goes to Court

The Justice Department's attorneys who brought the massive federal racketeering lawsuit against the tobacco industry had their first day in court 5 years after filing the original complaint. On September 21, the Justice Department began arguing its case, claiming the tobacco industry launched a criminal enterprise when it formed and funded research organizations developed only to spread misinformation and confusion about the health risks and addictive nature of cigarettes. The suit seeks to disgorge \$280 billion in profits the government contends were illegally gained through the conspiracy which began in the early 1950's.

Update: Effect of Montgomery County Smoking Ban Reported

On June 28, 2004, Montgomery County Councilman Phil Andrews held a news conference to release recently gathered information regarding the County's smoking restrictions. Statistics showed that in the eight months since the ban went into effect on October 9, 2003, restaurants in Montgomery County experienced a 7 percent increase in business. According to Maryland state sales tax data,

receipts increased by \$2 million for all County restaurants – from \$27.3 million between October 2002 and March 2003 to \$29.3 million between October 2003 and March 2004.

Councilman Andrews, lead sponsor of the smoking ban, also reported that 56 new restaurant applications had been submitted to the county. These statistics were used to refute claims that restaurant business was suffering in the County. Councilman Andrews also outlined this information in an affidavit submitted as evidence in SmokeFree DC's legal appeal. (See page 16 in this Issue of *Tobacco*

Regulation Review for more information on SmokeFree DC's appeal.)

Center Director Visits Sister Center in Arkansas

On the invitation of Jacqueline Gaithe, Director of the Tobacco Control Center at the University of Arkansas, Fayetteville, Center Director Kathleen Dachille addressed an audience of tobacco control advocates and attorneys at the Northwest Arkansas Symposium: National Trends and Legal Aspects of Tobacco Prevention. The May 2004 event was designed to provide participants with an overview of the history of tobacco control, particularly efforts to secure clean indoor air legislation in Arkansas and across the country. Local county attorneys discussed how they advised their local legislative

bodies during the process of passing clean indoor air legislation and how they managed litigation when the ordinances were ultimately challenged in court. Josh Alpert, Program Manager for Americans for Non-Smokers' Rights, provided detailed information about existing tobacco control laws as well as the tobacco industry's history of obstreperous and litigious behavior in opposing such legislation at all levels of government. Grandson of R.J. Reynolds, Patrick Reynolds, explained his decision to turn away from the tobacco company that supported his family for generations and enthusiastically described the motivational programs he provides to school children across the country.

As the final speaker of the day, Dachille managed to secure the

attention of participants by surprising them with a pop quiz: "Test Your Tobacco Control Knowledge." During the course of her presentation entitled "Tobacco Control: Past Present and Future," Dachille called on audience members for quiz answers, rewarding correct responses and using incorrect answers to stimulate discussion and to educate the audience. Tracing the history of tobacco control policy from the first Surgeon General's Report in 1964 through New York's 2004 fire-safe cigarette regulations, Dachille provided attendees with context for their current efforts. Advocates and attorneys commented that learning more about the history of tobacco control efforts inspires them to continue with today's efforts toward clean indoor air laws and other tobacco control policies.

Legal Briefs at the National Level

Curran Testifies to Senate on Smoking in the Movies

Maryland Attorney General J. Joseph Curran, Jr., testified to Congress about the impact that the depiction of smoking in movies has on children as part of his effort to persuade the movie industry to voluntarily reduce the depiction of smoking in movies. (See *Tobacco Regulation Review*, Vol. 2, Issue 2, at page 11 for an article about the start of this effort.) On May 11, 2004, Curran testified before the Senate Committee on Commerce, Science and Transportation, detailing the steps that he and fellow Attorneys General are taking to secure voluntary cooperation from and the suggestions they have for the movie industry.¹ Those suggestions include: elimination of tobacco brand appearances, meaning that only nameless, generic products should be depicted; avoidance of gratuitous depictions of smoking; and presentation of anti-smoking messages in all theaters. Noting that the Master Settlement Agreement prohibits tobacco manufacturers from directly or indirectly paying for display of their products in motion pictures, Curran also suggested that all companies involved in the production of films certify that no financial or other benefit has been provided in exchange for the

depiction of smoking.

Curran has led the Attorneys General effort to reduce the depiction of smoking in the movies. In the past few months, Curran and his colleagues have met with representatives of the Motion Picture Association of America, the Directors Guild of America's Social Responsibility Task Force, the Screen Actors Guild, the Writers Guild of America, and the National Association of Theater Owners. Although reform may come slowly and in incremental fashion, Curran and his colleagues remain dedicated to their efforts.

¹ For the full text of Attorney General Curran's testimony, go to www.oag.state.md.us/Press/2004/smokingtestimony.pdf.

Update: Judge Rules Against D.C. Ballot Initiative

District of Columbia Superior Court Judge Mary Terrell ruled against Smokefree D.C., finding its proposed ballot question, which would have prohibited smoking in all indoor workplaces, is inappropriate for inclusion on November's election ballot. (See *Tobacco Regulation Review*, Volume 3, Issue 1 at page 6 for more information on DC's ballot initiative.) After the District Board of

Ethics and Elections approved specific ballot language, the Restaurant Association of Metropolitan Washington filed suit seeking to keep the question off the ballot. Judge Terrell ruled in favor of the Restaurant Association, finding the question inappropriate because it constituted an appropriation of funds and appropriation matters may not be brought to referendum.

The court reasoned that a smoking ban would have either a positive or negative economic effect on bar and restaurant revenues. That change in revenue would cause a proportionate change in tax revenue collected by the District. The court concluded that the potential law's impact on revenue was an "appropriation of funds," and therefore a budget act. Thus, the question was deemed inappropriate because District law does not allow budget acts to be decided by ballot initiative.

Smokefree D.C. has appealed the ruling. While the decision effectively eliminates any possibility that the question will appear on the November 2004 ballot, the appeal will clarify what questions are appropriate for future ballots and will resolve legal issues which may appear during future attempts to gain smokefree legislation.