



Health, Education, and  
Human Services Division

B-279685

April 22, 1998

The Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform and Oversight  
House of Representatives

Subject: Tobacco Settlements: States' Use of Settlement Proceeds

Dear Mr. Waxman:

On June 20, 1997, the nation's largest tobacco companies and 40 state attorneys general that had filed suit against the industry agreed on a proposed settlement that, if implemented, would pay about \$368.5 billion (in 1997 dollars) over a period of 25 years.<sup>1</sup> Of the \$368.5 billion, the states would reportedly receive in direct payments about \$196.5 billion over the 25-year period,<sup>2</sup> and much of the balance eventually would be returned to the states to administer anti-tobacco programs.

Following this national agreement, three states—Mississippi, Florida, and Texas—negotiated settlements to their own lawsuits against the tobacco companies in which they initially sought to recoup Medicaid<sup>3</sup> payments made to residents with smoking-related illnesses, as well as other claims. On July 2, 1997, Mississippi settled its suit so that its share of the \$196.5 billion would come to at least \$3.3 billion over 25 years, with annual payments of at least \$135 million continuing in perpetuity. On August 25, 1997, Florida settled for at least \$11 billion over 25

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<sup>1</sup>The agreement also states that additional annual payments will continue in perpetuity.

<sup>2</sup>Under the proposed agreement, the tobacco companies would pay each state a portion of a \$10 billion up-front payment and make scheduled annual payments to each state over a period of 25 years that will continue in perpetuity.

<sup>3</sup>Medicaid is a jointly funded federal and state health insurance program for low-income people.

years, with annual payments of at least \$440 million continuing thereafter. On January 16, 1998, Texas settled for at least \$14.5 billion over 25 years, with annual payments of at least \$580 million continuing thereafter.<sup>4</sup> In addition, each of the settlement agreements contains a provision, referred to as the "most favored nation" clause, that allows a settling state to incorporate the terms of any later nonfederal settlement agreements that are more favorable.

As the Congress now considers national tobacco legislation, you asked us to provide information on how the three states are using the proceeds of the settlement agreements. Specifically, you asked us to gather information on (1) whether any of the settlement agreements specify how the proceeds are to be spent, including expenditures for health-related activities such as tobacco prevention or control efforts; (2) whether the funds need to be spent within certain time frames; (3) who is involved in deciding how the funds should be spent; (4) on what programs and activities the states plan to spend the proceeds; and (5) what tobacco prevention or control efforts are under way or planned in selected states.

To address these concerns, we reviewed the settlement agreements of Mississippi, Florida, and Texas, as well as other settlement documents related to states' efforts to implement the settlements.<sup>5</sup> We interviewed the Attorney General of Mississippi, officials representing the Governor and the Department of Health in Florida, and officials representing the Governor, Attorney General, and the Department of Health in Texas to obtain information on how the settlement agreements are being implemented, including the terms of the settlement agreements, parties involved in determining how the funds should be spent, and the programs and activities that states are planning to fund with the proceeds of the settlements. We also obtained information on the tobacco prevention and control efforts each state was funding before the settlement agreements. Finally, we interviewed officials from the Centers for Disease Control and Prevention and the National Cancer Institute to identify states considered to have

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<sup>4</sup>Each state's settlement with the tobacco companies stipulates the percentage of the \$10 billion up-front payment and annual payments from the tobacco companies, specified under the proposed national settlement, that the state will receive. Mississippi would receive 1.7 percent under its settlement, Florida would receive 5.5 percent, and Texas 7.25 percent.

<sup>5</sup>The Attorney General of Mississippi told us that he negotiated a separate agreement with the tobacco companies to fund a tobacco pilot program for the state. According to Texas officials, a February 3, 1998, Memorandum of Understanding between the Attorney General and state legislature supersedes the January 16, 1998, settlement agreement.

comprehensive tobacco prevention and control programs. These officials identified California, Massachusetts, and Oregon as having established innovative programs based on recognized best practices. We did our work between March and April 1998 in accordance with generally accepted government auditing standards.

In summary, we found the following:

- In Florida and Texas, the settlement agreements specify which health-related and tobacco prevention or control activities are to receive funding. The Florida agreement does not specify how much will be spent for each of the health-related activities identified, but it earmarks \$200 million for a pilot program targeted at reducing the use of tobacco products by minors. The Texas agreement specifically earmarks about \$1.3 billion for health-related activities at several educational institutions. These activities include funds for establishing a children's cancer center at the University of Texas Health Science Center at San Antonio and endowments for research and other programs that benefit the public health. The Texas agreement also specifies \$200 million for a tobacco prevention and control pilot program. The Mississippi agreement does not specify which programs or activities are to receive funding. However, using the more favorable terms of the Florida settlement agreement, the Mississippi Attorney General negotiated a separate agreement with the tobacco companies to fund its pilot program with about \$62 million. (Details on the terms of the settlement agreements are in enc. I.)
- The three settlement agreements do not specify that the funds be spent within certain time frames, except for the tobacco pilot programs described in the Florida and Texas agreements. Florida's agreement stipulates that the \$200 million for the tobacco pilot program be spent over 2 years at the rate of \$100 million each year. The Texas agreement stipulates that the pilot program is to last for not less than 2 years.<sup>6</sup> (See enc. I for more details on time frames.)
- Decisions about how the funds should be spent ultimately rest with the three state legislatures, based on recommendations from the governors, attorneys general, the departments of health, and other public and health related organizations. For example, Florida officials told us that the governor's office and the Department of Health established select

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<sup>6</sup>Pursuant to the "most favored nation" clause, the officials in Florida told us that they are in the process of adopting the time period stipulated in the Texas settlement agreement.

committees to review and plan for the use of settlement funds. Additionally, public input has been provided through forums, and Florida's youth has played an important role in the planning process. (For more details on the parties involved in making funding decisions, see enc. II.)

- The three states are in different stages of planning for how they will spend the funds. As of March 31, 1998, each state had certain amounts of the settlement proceeds in escrow accounts. In Mississippi, officials have focused on developing plans for the tobacco pilot program called the Partnership for a Healthy Mississippi. According to Mississippi's Attorney General, plans for the pilot program should be completed in May 1998. In Florida, the state legislature is considering an appropriation of about \$100 million of its settlement proceeds to fund the federally supported Children's Health Insurance Program (CHIP),<sup>7</sup> related Medicaid expansions, and other health-related services. Florida is also authorized to spend about \$23 million in 1998 for the pilot program focused on reducing tobacco use by minors. In Texas, the Department of Health has convened an interagency work group to develop a plan for implementing the tobacco prevention and control pilot program. Consideration is also being given to requesting voter approval of a constitutional amendment to establish two permanent funds that would serve as a perpetual source of funding for children's programs, health-related services, and higher education initiatives. (See enc. II for more details on states' plans for using the settlement funds.)
- Officials in Florida told us they used tobacco prevention and control efforts in California and Massachusetts as models for their own efforts, and Texas may also adopt the models of these states, according to state officials. The programs include media campaigns, tobacco education and training, youth community partnerships, enforcement, and evaluation and research. (Enc. III describes the tobacco control and prevention efforts in the three states.)

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Officials in Mississippi, Florida, and Texas reviewed a draft of this correspondence and generally agreed with our characterization of the use of the settlement funds in their respective states. We have incorporated their technical comments where appropriate. In addition, officials in California, Massachusetts, and Oregon provided us with technical comments on the information in enclosure III.

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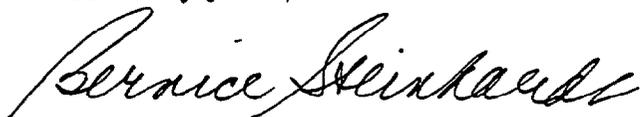
<sup>7</sup>The Children's Health Insurance Program under title XXI of the Social Security Act provides health care coverage to uninsured children in families with incomes too high for Medicaid but too low to afford private coverage.

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this correspondence until 30 days from the date of this letter. At that time, we will send copies to interested parties and make copies available to others on request.

If you have any questions about this correspondence, please call me at (202) 512-7119 or John Hansen at (202) 512-7105. Other major contributors included Darryl Joyce, Anne Dievler, and Claude Hayeck.

Sincerely yours,

A handwritten signature in cursive script that reads "Bernice Steinhardt".

Bernice Steinhardt  
Director, Health Services Quality  
and Public Health Issues

Enclosures - 3

TERMS OF THE TOBACCO SETTLEMENT AGREEMENTS IN THREE STATES

Terms	Mississippi	Florida	Texas
Total amount	At least \$3.3 billion over 25 years	At least \$11 billion over 25 years	At least \$14.5 billion over 25 years
Range of annual payments*	From \$68 million in 1999 to at least \$135 million in 2004, and at least \$135 million continuing thereafter	From \$220 million in 1998 to at least \$440 million in 2003, and at least \$440 million continuing thereafter	From \$290 million in 1998 to at least \$580 million in 2003, and at least \$580 million continuing thereafter
Activities and funding in the settlement agreements	Tobacco prevention and control pilot program (\$62 million)  Other Mississippi claims	Will be used for  <ul style="list-style-type: none"> <li>•Medicaid expenses</li> <li>•Children's health care coverage and health-related services</li> <li>•State medical expenses</li> <li>•Reduction of tobacco sales to minors</li> <li>•Other Florida claims</li> <li>•Tobacco prevention and control pilot program (\$200 million)</li> </ul> May be used for  <ul style="list-style-type: none"> <li>•State match for children's health care coverage, substance abuse prevention and intervention, and children's mental health services</li> </ul> Funding specified only for the pilot program	<ul style="list-style-type: none"> <li>•Children's Health Insurance Program (\$151 million)</li> <li>•Endowment to establish a children's cancer center at the University of Texas Health Science Center at San Antonio (\$200 million)</li> <li>•Endowments for research and other programs that benefit public health at eight educational institutions (\$280 million)</li> <li>•Endowment for research and other programs including border health initiatives at Texas Tech Health Science Center (\$50 million)</li> <li>•Tobacco prevention and control pilot program (\$200 million)</li> <li>•Constitutional amendment would establish permanent funds for children and public health and higher education (\$428 million)</li> <li>•Other Texas claims</li> </ul>
Activities with specified time frames	2-year tobacco prevention and control pilot program	2-year tobacco prevention and control pilot program. Funding of \$200 million, at a rate of about \$100 million per year	At least a 2-year tobacco prevention and control pilot program

Note: The table includes information on an agreement reached in Mississippi with tobacco companies to fund a tobacco pilot program and a February 3, 1998, Memorandum of Understanding that superseded the settlement agreement in Texas. In addition, legal fees that were specified in the settlement agreements for each state are excluded.

\*Mississippi received \$170 million, Florida \$550 million, and Texas \$725 million of the \$10 billion up-front payment made by the tobacco companies specified in the June 20, 1997, proposed national settlement. The annual payments to the states are based on a percentage of the amounts in the proposed national settlement. These payments will be increased annually by 3 percent or the Consumer Price Index, whichever is greater for the period of 25 years, and will continue in perpetuity. In addition, Mississippi received from tobacco companies about \$62 million for the tobacco prevention and control pilot program.

Source: Tobacco settlement agreements of Mississippi, Florida, and Texas; Memorandum of Understanding between the Attorney General for the state of Texas and the Texas legislature; and Tobacco: Issues Surrounding a National Tobacco Settlement (GAO/RCED-98-110, Apr. 15, 1998).

STATES' IMPLEMENTATION OF THE TOBACCO SETTLEMENT AGREEMENT

Mississippi	Florida	Texas
<b>Parties deciding how the funds should be spent</b>		
State legislature decides, with input from the Attorney General, state Department of Health, and the medical community including the American Heart and Lung Associations	State legislature decides, with input from the Governor, the state Department of Health, and numerous state health organizations, advocacy groups, and the public	State legislature decides, with input from the state Department of Public Health and other health-related organizations such as the Texas Medical Association and American Cancer Society
<b>State plans for funding activities<sup>a</sup></b>		
<p>Tobacco prevention and control pilot program: "Partnership for a Healthy Mississippi" (\$62 million)</p> <p>Aimed at reducing the use of tobacco among youth</p> <p>Community-based outreach efforts include</p> <ul style="list-style-type: none"> <li>•Placing nurses in schools with the greatest need for health screenings, and anti-tobacco, alcohol, and drug education</li> <li>•Having State Cooperative Extension Service conduct outreach efforts in rural areas on anti-tobacco education</li> <li>•Enforcing smoking laws directed at retail establishments</li> </ul>	<p>Florida Tobacco Pilot Program (\$200 million)</p> <p>Aimed at reducing the use of tobacco among youth</p> <ul style="list-style-type: none"> <li>•Media campaigns to promote messages urging youth to live tobacco-free</li> <li>•Education and training directed at students pre-K-12</li> <li>•Community-based tobacco prevention programs to establish a statewide network to counter industry marketing efforts targeted at youth, especially minority youth</li> <li>•Enforcement for placing agents in retail locations to deter youth from purchasing tobacco products and training store employees on tobacco compliance laws</li> <li>•Evaluation and research for obtaining baseline data on the prevalence of tobacco use among youth, monitoring changes in tobacco use, and evaluating the results of the pilot program</li> </ul>	<p>Tobacco prevention and control pilot program (\$200 million)</p> <p>Aimed at supporting smoking cessation programs, enforcing juvenile smoking laws, launching counter-marketing efforts directed toward youth, and implementing general anti-tobacco education programs<sup>b</sup></p>
<b>Funds received as of March 31, 1998</b>		
<ul style="list-style-type: none"> <li>•\$170 million held in escrow</li> <li>•\$62 million for the pilot program</li> </ul>	<ul style="list-style-type: none"> <li>•\$750 million held in escrow</li> <li>•\$123 million authorized: \$100 million for CHIP and other health-related services, and \$23 million for the pilot program</li> </ul>	\$278 million held in escrow
<b>Funds spent on activities as of March 31, 1998</b>		
None	\$15 million authorized	None

<sup>a</sup>These activities supplement the tobacco prevention and control activities that were ongoing in the three states before the settlement agreements.

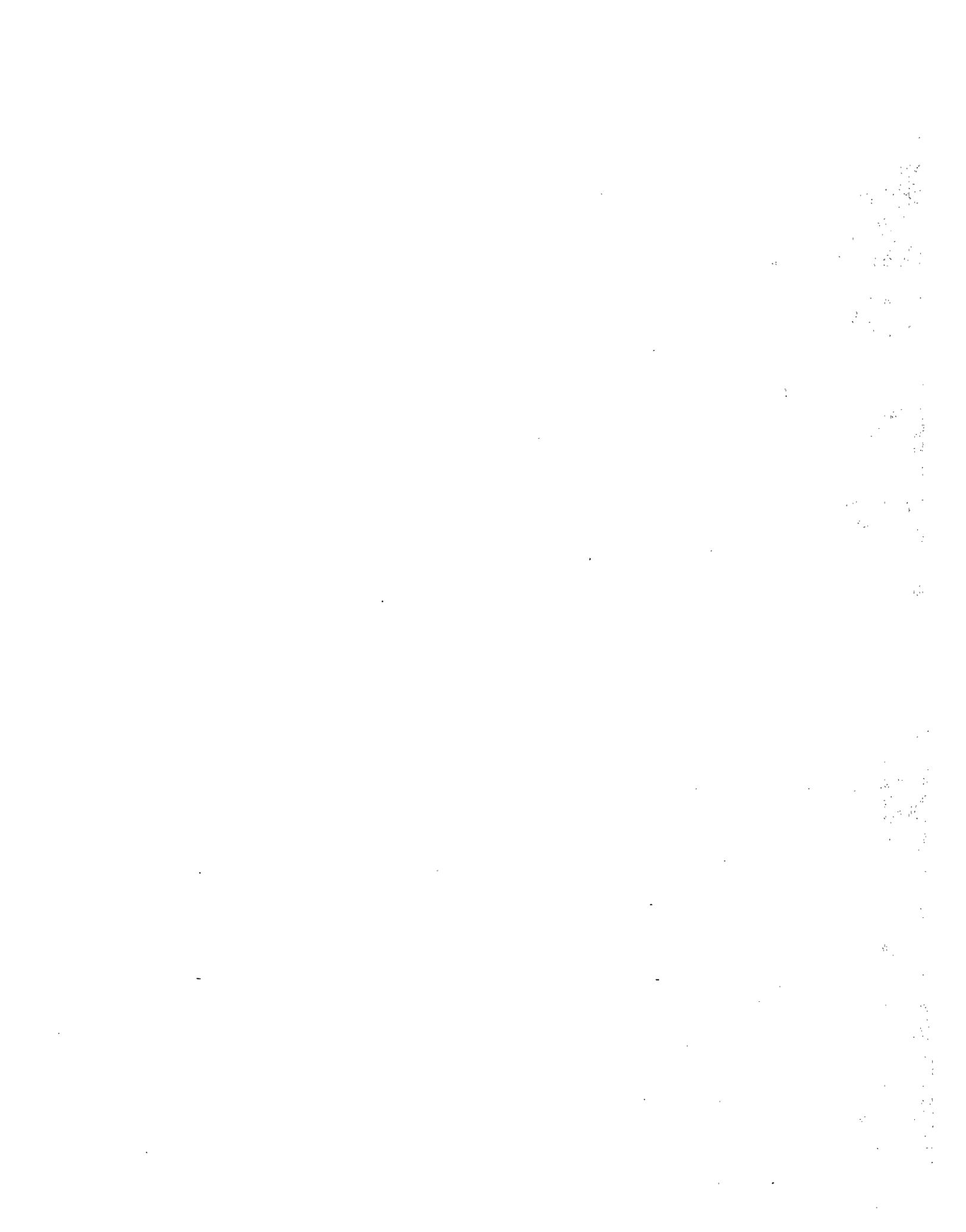
<sup>b</sup>Senate Bill 55, approved by the Texas legislature in 1995, serves as a major existing tobacco prevention and control initiative. A key element of the bill requires minors who are caught purchasing or possessing tobacco products to attend a tobacco awareness program or perform community service. Failure to comply can result in suspension of the minor's driving license. (Effective Jan. 1998.)

Source: Interviews and documents obtained from Mississippi, Florida, and Texas state officials.

TOBACCO PREVENTION AND CONTROL PROGRAMS IN OTHER SELECTED STATES

California	Massachusetts	Oregon
<b>Agency/office responsible for tobacco prevention and control efforts</b>		
Department of Health Services: •Chronic Disease Control Branch/Tobacco Control Section	Department of Public Health: •Bureau of Family and Community Health/Tobacco Control Program	Oregon Health Division: •Tobacco Prevention and Education Program
<b>Goals/objectives</b>		
Reduce by 75 percent tobacco use by 1999:  •Counter efforts of tobacco industry and others to promote tobacco use •Protect Californians from secondhand smoke •Eliminate retail and social sources of tobacco for children and teens •Emphasize the addictive nature of tobacco •Provide youth with tobacco-control-related knowledge and skills through school-based activities	Curtail tobacco-related health risks for the public:  •Persuade and help adult smokers to quit •Prevent and reduce the use of tobacco among youth •Protect nonsmokers from exposure to environmental tobacco smoke	Decrease tobacco use and its impact on the health and economic well-being of Oregonians:  •Decrease youth access to tobacco •Create tobacco-free environment •Decrease advertising and promotion of tobacco •Provide linkages to cessation resources
<b>Tobacco prevention and control program funding, components, and description (1997)</b>		
Total funding: \$101.4 million  Local lead agency program:  •Supports community-based tobacco use prevention efforts in all local health departments  Competitive grants program:  •Supports statewide, regional, and local tobacco use prevention and cessation projects, including a clearinghouse and multilingual helpline for smokers	Total funding: \$35.6 million  Community-based initiatives:  •Support boards of health that enact and enforce anti-tobacco laws, cessation programs, youth tobacco education and leadership programs, populations-at-risk programs, coalitions, and prevention centers  Statewide initiatives on tobacco control:  •Smoker's quitline and tobacco-free work site initiative  •Education clearinghouse, smoking cessation projects, education and training initiative	Total funding: \$8.5 million  Local coalition and community-based activities:  •Award grants to local health departments or a designated lead agency to coordinate and fund community prevention and educational activities through coalitions  Statewide and regional projects on tobacco prevention:  •Programs serving special populations, including Native American tribes—quitter's hotline, local training, conferences, and technical assistance

California	Massachusetts	Oregon
<p>Anti-tobacco media campaign:</p> <ul style="list-style-type: none"> <li>•Statewide anti-tobacco multimedia advertising and public relations. Media technical assistance to community tobacco control projects.</li> </ul> <p>Enforcement:</p> <ul style="list-style-type: none"> <li>•Enforce laws prohibiting the sale or furnishing of tobacco products to minors</li> </ul> <p>Data analysis and evaluation program:</p> <ul style="list-style-type: none"> <li>•Measures effectiveness of intervention strategies</li> </ul>	<p>Media education campaign:</p> <ul style="list-style-type: none"> <li>•Advertisements and grassroots education, promotion and community relations efforts</li> </ul> <p>School health:</p> <ul style="list-style-type: none"> <li>•Tobacco education, prevention, and cessation activities incorporated into school health services. Tobacco prevention and cessation delivered through school-based health centers in elementary, middle, and high schools</li> </ul> <p>Enforcement:</p> <ul style="list-style-type: none"> <li>•Enforce laws against selling tobacco products to minors</li> </ul> <p>Research and evaluation:</p> <ul style="list-style-type: none"> <li>•Research on tobacco use attitudes, current trends, consumption rates, public awareness, and the health and economic impact of tobacco use over time.</li> </ul>	<p>Statewide public awareness and education campaign:</p> <ul style="list-style-type: none"> <li>•Multimedia messages about the dangers of tobacco use and secondhand smoke, as well as prevention and cessation programs</li> </ul> <p>Comprehensive, school-based prevention programs:</p> <ul style="list-style-type: none"> <li>•Grants awarded to school districts for comprehensive tobacco control and prevention programs</li> </ul> <p>Program development, implementation, and evaluation:</p> <ul style="list-style-type: none"> <li>•Evaluation of program effectiveness.</li> </ul>
<b>Source of funding</b>		
Excise tax on cigarettes (initiated 1988)	Excise tax on tobacco products (initiated 1992)	Excise tax on tobacco products (initiated 1997)



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