



New York Grade Card

Population Covered: 19,453,561

Tobacco 21 Since: November 13, 2019

TOBACCO
~~eighteen~~ twenty-one

The Preventing Tobacco Addiction Foundation evaluated all current statewide Tobacco 21 laws for their alignment with best practices that lead to effective prevention of youth initiation of tobacco and nicotine products.

ENFORCEMENT

GRADE: B

Designated Enforcement Agency

Best Practice: Health Department or Designated Agency

New York Enforcement: New York State Health Department is the designated enforcement agency

Age Verification

Best Practice: Before distributing any tobacco product, the tobacco retailer or the tobacco retailer's agent or employee shall verify that the purchaser is at least 21 years of age. Each tobacco retailer or tobacco retailer's agent or employee shall examine the purchaser's government-issued photographic identification if the purchaser appears to be under 30 years of age.

New York Enforcement: Required ID check for appearance age of under 25 only

Who is the Penalty Placed on?

Best Practice: The primary burden for sales to underage purchasers should fall on the retailer who is profiting from the sales of the product and not the purchaser or non-management employee.

New York Enforcement: Penalty placed on the retailer

Number of Compliance Checks

Best Practice: Provide authority for the state, county, or municipality to inspect tobacco retailers for compliance with MLSA 21 and a mandated minimum number of annual compliance checks. Model recommends two per year for every tobacco retail establishment.

New York Enforcement: New York conducts one compliance check per retailer per year

Compliance Checks Done With Underage Decoys Aged 18-20

Best Practice: The designated agency shall conduct compliance checks by engaging persons between the ages of 18 and 20 to enter the tobacco retail establishment to attempt to purchase tobacco products.

New York Enforcement: Age of decoy not specified

LICENSING

GRADE: A

Statewide Tobacco Retail License

Best Practice: A comprehensive tobacco retail license allows states and municipalities to regulate all tobacco retailers, fund enforcement programs, and create a penalty structure that suspends or revokes a license for retailers that continue to violate a MLSA 21 law.

New York Licensing: New York has multiple licenses covering all products

Tobacco Retail License Program Funds Enforcement

Best Practice: The fee for a tobacco retail sales license shall be set and used to cover the administrative cost for licensing administration, education and training, retail inspections, and unannounced compliance checks. The tobacco retail sales license fee should not exceed the cost of the regulatory program authorized beyond the statute/ordinance.

New York Licensing: New York's Tobacco Retail License fees partially fund the program

Tobacco Retail License Fee

Best Practice: An effective licensing system requires tobacco retailers to pay an annual license fee and allows it to be periodically adjusted. Fee must be adequate to cover License administration, education/training, and enforcement. An annual fee of lower than \$300 is generally inadequate to fund a licensing program.

New York Licensing: New York's Tobacco Retail License fee is \$300 for each (cigarette and e-cigarette license) and renews annually

PENALTIES

GRADE: A

Penalty Type

Best Practice: Establish a civil penalty structure for violations rather than a criminal penalty structure.

New York Penalties: Civil penalty structure

Violation Accrual Period

Best Practice: 36 months

New York Penalties: New York has a 36 month violation accrual period

Monetary Penalty and Suspension Structure

Best Practice: 1st violation = \$500

2nd violation = \$750 and (7) day suspension

3rd violation = \$1,000 and (30) day suspension

4th violation = \$1000 and (3) year suspension

New York Penalties: If the enforcement officer determines after a hearing that a violation of this article has occurred, he or she shall impose a civil penalty of a minimum of \$300 but not to exceed \$1,000 for a first violation, and a minimum of \$500, but not to exceed \$1,000 for each subsequent violation, unless a different penalty is otherwise provided in this article.

- Mandatory fines of up to \$2,500

- Surcharge of \$50 for each violation

- Mandatory suspensions ranging from 6 months to 1 year to permanent revocation based on a violation point system. A 3 points = 6-month suspension; each violation results in 2 points, so on 2nd violation there will be a suspension.

- Mandatory 1-year suspension for 4th violation

Does the Law Penalize Youth for Purchase, Use or Possession

Best Practice: An evidence-based, best practices tobacco MLSA 21 policy should focus penalties on the tobacco retailer who profits from the illegal sale rather than the youth who is likely addicted to the product. PUP laws may be unlikely to reduce youth smoking significantly.

New York Penalties: New York has no laws penalizing youth for purchase, use, or possession (PUP)

PREEMPTION

GRADE: A

Does Preemption exist, was it added, or expanded

Best Practice: Local governments have a critical role in reducing the deadly toll of tobacco by regulating sales and restricting youth access to these products to prevent use and addiction. Tobacco 21 legislation should not introduce new tobacco control preemption, nor expand existing tobacco control preemption, and instead should be used as an opportunity to assert local authority or repeal existing tobacco control preemption.

New York Preemption: No preemption exists

DEFINITIONS

GRADE: A

Definitions

Best Practice: A comprehensive definition will cover all current, known tobacco and nicotine products, which include not only cigarettes, cigars, and smokeless tobacco, but also products like pipes, rolling papers, electronic smoking devices, and other related devices. A strong definition will also be broad enough to capture future products.

New York Definitions: New York's Tobacco 21 law includes comprehensive definitions