



Tobacco Retail Licensing: An Essential Tool to Reduce Youth Usage and Foster Health Equity

*A Guide to Best Practices in Tobacco Retail Licensing (TRL)
for your City, County or State*



- Tobacco products kill half a million Americans each year and virtually all smokers begin their lifelong nicotine addiction as teens.
- Tobacco Retail Licensing (TRL) reduces initiation to nicotine and tobacco through improved compliance with Minimum Legal Sales Age (MLSA) and other important tobacco sales regulations.¹
- TRL has become a vital regulatory tool that enables states and localities to monitor tobacco sales, fund compliance efforts, and create effective penalty and suspension structures for repeated violations.
- A TRL is not the same as a tobacco tax permit that many states already employ. A true tobacco retail license is tied to retailer compliance with all applicable sales, marketing, and display laws.
- By requiring a TRL, a municipality or state can also regulate location, density, and type(s) of tobacco retailers permitted to operate in their jurisdiction. TRL will also aide in implementing other provisions such as flavored product restrictions, prohibiting product discounts, creating tobacco-free pharmacies, and enforcing mail-order/internet delivery and point-of-sale restrictions.

Implementation of a Comprehensive Tobacco Retail License (TRL) law will:

- ✓ **Establish** a comprehensive list of all retailers of nicotine and tobacco products in the jurisdiction.
- ✓ **Fund** enforcement of tobacco sales regulations at no cost to the taxpayer.
- ✓ **Prevent** illegal sales of nicotine and tobacco products.
- ✓ **Provide** weight to current sales laws by imposing a threat of suspension for repeated violations.
- ✓ **Reduce** productivity loss, health insurance costs (including Medicaid), related illness and death.²
- ✓ **Advance** public health through prevention and substantially increase health equity.³



The Detailed Case for Tobacco Retail Licensing

TRL will reduce youth use and help reverse the youth e-cigarette epidemic.

In 2020, approximately one in five high school students and one in 20 middle school students currently used e-cigarettes. In 2019, by comparison, 27.5% of high school students (4.11 million) and 10.5% of middle school students (1.24 million) reported current e-cigarette use. Although these data reflect a decline in current e-cigarette use since 2019, **3.6 million U.S. youth still used e-cigarettes in 2020.**⁴ Manufacturers, through predatory marketing, slick product design, and kid-friendly flavors, have lured millions of teens into nicotine addiction.⁵

- **TRL** provides the enforcement infrastructure for “Tobacco 21 laws.” Age of sale restrictions only work if there is a credible threat of regular, unannounced compliance checks in every location, every year.⁶
- **TRL** enables enforcement of flavor bans and point-of-sale marketing restrictions.

TRL supports the Federal “Tobacco 21” law and supplements state enforcement.

Since December 2019 it is now a violation of federal law to sell nicotine or tobacco products to any person under age 21, without exception or exemption.⁷ As a condition of their Substance Abuse and Mental Health Services Administration (SAMHSA) block-grant funding, states must demonstrate that their retailers are compliant by remaining below a 20 percent retailer violation rate (RVR) on FDA compliance checks.⁸ However, FDA enforcement alone is inadequate and supplemental local enforcement is critical to being able to meet that threshold.

- **TRL** retailer lists provide an accurate survey base for compliance checks performed by FDA contractors.
- **TRL** violation statistics allow for focused enforcement in areas with higher than normal retailer violation rates.
- **TRL** funds local and statewide enforcement at no cost to the taxpayer if licensing fees are structured to cover all costs of administering the license.

TRL can reduce inequities created by tobacco industry practices. The U.S. has steadily expanded tobacco protections over the past several decades, but these protections (which most Americans now take for granted) are less likely to cover disadvantaged persons and communities-- including people on low incomes, people of color, and people who identify as lesbian, gay, bisexual, or transgender (LGBT)-- who are more likely to experience a range of health problems related to the use of tobacco. The tobacco industry promotes its products more within certain communities; as a result, rates of tobacco use and related health problems are much higher for these communities compared to the general population.



Further, those living in economically-disadvantaged neighborhoods are exposed to more tobacco retailers, more advertising, and steeper product discounts.^{6, 9}

This means we need to decrease the influence of the tobacco industry and put health for all persons over profit.

- **TRL** provides a complete list of all tobacco product sellers and can provide data about density and retailer type that may be overlaid with racial, ethnic, age-group and economic makeup data of the neighborhoods where tobacco retailers operate.
- **TRL** provides a regulatory structure at the state or local level to enact policies that effectively counter tobacco industry targeting of certain groups.

TRL levels the playing field for all business owners. Almost every state and many cities require a license to hunt, fish, keep a pet, operate a tattoo parlor, hair or nail salon, sell liquor, sell marijuana and more, but many still don't require a license to sell addictive and deadly tobacco products.¹⁰

- **TRL** provides meaningful steps toward suspension and revocation for rogue retailers who repeatedly violate sales laws.
- **TRL** sets a baseline standard around which all retailers must operate.



A Comprehensive Tobacco Retail License:

- ✓ Includes a comprehensive definition of “tobacco products” that includes cigarettes, cigars, smokeless tobacco, pipes, rolling papers, electronic smoking devices, related liquids and other related devices, written to capture all known and future products.¹¹
- ✓ Includes a *Findings of Fact and Purpose* section, which provides the evidentiary basis for the proposed policy and demonstrates the city or state’s reasoning for adopting specific provisions and defines all key terms that are used throughout the law.
- ✓ Stipulates that no person shall sell or offer to sell or distribute any tobacco product without having obtained a non-transferable License from the city, county, or state.
- ✓ Establishes penalties for selling or distributing tobacco products without a License.
- ✓ Requires that the License be renewed annually.
- ✓ Sets an annual License fee and allows it to be periodically adjusted. Fee must be adequate to cover License administration, education/training, and enforcement. *(Note: an annual fee of lower than \$300 is generally inadequate to fund a licensing program; many jurisdictions have fees that are much higher).*¹²
- ✓ Designates a civil enforcing agency to carry out License administration and enforcement.
- ✓ Establishes a civil (not criminal) penalty structure for violations, including graduated monetary fines and mandatory License suspension or revocation for repeated violations.¹³
- ✓ Ensures that penalties and fines are imposed on the tobacco retailer or licensee and not the youth purchaser or non-management employee.¹⁴
- ✓ Prohibits the issuing of a new License to a tobacco retail establishment that is less than 1,000 feet of any youth-oriented facility.¹⁵
- ✓ Prohibits the sale of tobacco products to persons under the age of 21 and states that any violation of local, state or federal law is a violation of the License.
- ✓ Restricts deliveries of internet/mail-order sales to licensed tobacco retailers.
- ✓ Requires verification of age with a government-issued photo ID for any purchaser appearing to be under the age of 30.¹⁶
- ✓ Mandates a minimum number of unannounced compliance checks be conducted for each licensed retailer every year. Recommend (2) compliance checks per retailer, per year.¹⁷
- ✓ Requires that all tobacco retailers post signs stating that sales to persons under the age of 21 are prohibited.
- ✓ Requires that retailers train their employees as a condition of receiving a License.



Sample Ordinances and Topics in Tobacco Retail Licensing

(Note: This document and the links below can also be found on <https://tobacco21.org/> under “Advocacy Materials”)

I. State-by-State Tobacco Retail Licensing Laws

University of Maryland – [50 State Survey](#)

Centers for Disease Control – [CDC STATE System Tobacco Legislation - Licensure](#)

II. The Basics of Tobacco Retail Licensing

ChangeLab Solutions – [Show Me Your License: TRL Playbook](#)

III. Calculating Tobacco Retail Licensing Fees

Public Health Law Center - [Point of Sales Licensing Fees](#)

ChangeLab Solutions - [Webinar - Calculating License Fees](#)

IV. Zoning to Address Location, Density and Proximity of Tobacco Retailers

Public Health Law Center - [Using Licensing and Zoning to Regulate Tobacco Retailers Location, Location, Location: Tobacco & E-Cig Point of Sale \(2019\)](#)

Campaign for Tobacco-Free Kids and ASPIRE – [30 City Study Tobacco Retailers](#)

ChangeLab Solutions - [Tobacco Retailer Density](#)

Counter Tools – [Disparities in Point of Sale Advertising and Retailer Density Proximity of Tobacco Retail Stores to Schools](#)

V. Health Inequities and Tobacco Retail Licensing

PEW Research Center - [Tobacco Retail Licensing Policy: A Health Equity Impact Assessment](#)

ChangeLab Solutions – [Place-Based Strategies to Advance Health and Equity](#)

VI. Sample TRL Ordinances

Public Health Law Center - [Sample Ordinance - Minnesota Cities](#)
[Sample Ordinance - Florida Counties](#)
[Sample Ordinance - California Comprehensive Tobacco Retail Licensing Ordinance \(2020\)](#)

ChangeLab Solutions - [Sample Ordinance California Comprehensive TRL with Plug-Ins](#)



Information and Resources

For information on components of a comprehensive tobacco retail license or assistance in creating or modifying a TRL program for your city, county or state, please access the following resources:

Preventing Tobacco Addiction Foundation/ Tobacco 21

5600 Dublin Road | Dublin, OH 43017

Website: <https://tobacco21.org/>

Public Health Law Center

875 Summit Avenue | Saint Paul, MN 55105

Website: <https://publichealthlawcenter.org/>

Tobacco Retail Licensing and Commercial Tobacco Topics:

<https://publichealthlawcenter.org/topics/commercial-tobacco-control>

ChangeLab Solutions

2201 Broadway #502 | Oakland, CA 94612

Website: <https://www.changelabsolutions.org/>

Tobacco Prevention and Tobacco Retail Licensing:

<https://www.changelabsolutions.org/tobacco-prevention>

Counter Tools

11312 US 15-501 North, Suite 107-144 | Chapel Hill, NC 27517

Website: <https://countertools.org/>

Tobacco Retail Licensing:

<https://countertools.org/?s=tobacco+retail+licensing>

Campaign for Tobacco-Free Kids

1400 I St NW #1200 | Washington, DC 20005

Website: <https://www.tobaccofreekids.org/>

Tobacco Products and Health Harms: Flavored Tobacco Products

<https://www.tobaccofreekids.org/fact-sheets/tobaccos-toll-health-harms-and-cost/tobacco-products-and-health-harms-flavored-tobacco-products>

**End Notes:**

¹ Tobacco Retail Licensing and Youth Product Use. *Pediatrics*. Astor RL, Urman R, Barrington-Trimis JL, et al. 2019;143(2):e20173536

^{2, 3, 9} Tobacco Retail Licensing Policy: A Health Equity Impact Assessment <https://www.pewtrusts.org/-/media/assets/external-sites/health-impact-project/upstream-2015-tobacco-licensing-report.pdf>

⁴ National Youth Tobacco Survey: E-cigarette Use Among Middle and High School Students, U.S., 2020. Centers for Disease Control, September 9, 2020 (early release). Teresa W. Wang, PhD; Linda J. Neff, PhD; Eunice Park-Lee, PhD; Chunfeng Ren, PhD; Karen A. Cullen, PhD; Brian A. King, PhD. https://www.cdc.gov/mmwr/volumes/69/wr/mm6937e1.htm?s_cid=mm6937e1_w

⁵ Flavored E-cigarettes Hook Kids – Campaign for Tobacco- Free Kids, Accessed July 15, 2020, <https://www.tobaccofreekids.org/assets/factsheets/0407.pdf>

⁶ Tobacco Retailer Density: Place-Based Strategies to Advance Health and Equity, Accessed July 22, 2020, http://changelabsolutions.org/sites/default/files/CLS-BG214-Tobacco_Retail_Density-Factsheet_FINAL_20190131.pdf

⁷ Federal Tobacco 21 FAQ. Accessed July 31, 2020, <https://tobacco21.org/federal-tobacco-21-faq/>

⁸ FDA/Synar: new guidelines for Federal Tobacco 21, accessed August 10, 2020, <https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf>

¹⁰ University of Maryland Francis King Carey School of Law Legal Resource Center for Public Health Policy – 50 State Survey of Tobacco Licensing Requirements, January 2020. Accessed August 10, 2020, <https://www.law.umaryland.edu/Programs-and-Impact/Public-Health-Law/>

^{11,13, 16, 17} Model Tobacco 21 Policy, July 2019. <https://tobacco21.org/tobacco-21-model-policy/>
See also Minnesota City Retail Tobacco Licensing Ordinance, Public Health Law Center, 2020. Accessed August 5, 2020 from <https://www.publichealthlawcenter.org/resources/minnesota-city-retail-tobacco-licensing-ordinance-2020>

¹² American Journal of Public Health Law & Ethics, September 2020, Vol. 110, No. 9. E-cigarette Tobacco Retail Licensing Laws: Variance Across US States as of January 1, 2020. Minal Patel, PhD, MPH, Emily M. Donovan, MPH, Siobhan N. Perks, MPH, Darlene Huang, JD, MPH, Lauren Czaplicki, PhD, Maham Akbar, MA, Stacey Gagosian, BA, and Barbara A. Schillo, PhD

¹⁴ PUP in Smoke, Why Youth Tobacco Possession and Use Penalties are Ineffective and Inequitable. ChangeLabs Solutions, https://www.changelabsolutions.org/sites/default/files/2019-05/PUPinSmoke_FINAL_2019-04-17.pdf

¹⁵ Banning Outdoor Tobacco Advertising Near Schools and Playgrounds, Douglas A. Luke, PhD, Kurt M. Ribisl, PhD, Carson Smith, BA, Amy A. Sorg, MPH, DOI:<https://doi.org/10.1016/j.amepre.2010.11.018>. American Journal of Preventive Medicine, [https://www.ajpmonline.org/article/S0749-3797\(10\)00737-3/fulltext](https://www.ajpmonline.org/article/S0749-3797(10)00737-3/fulltext)

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<https://www.6sft.com/the-urban-lens-documenting-gentrifications-toll-on-the-mom-and-pops-of-greenwich-village/>

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