



## Idaho Grade Card

Population Covered: 1,754,000

Tobacco 21 Since: July 1, 2022

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

**Idaho Enforcement:** The Idaho Department of Health and Welfare (DHW), the Idaho Attorney General, and law enforcement agencies are responsible for enforcement.

#### 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.

**Idaho Enforcement:** Identification check is required for a purchaser under the age of 21 under the state code.

\*The administrative code provides an exception that does not require age verification if the buyer is known by the seller/clerk to be 21 years or older.

#### 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.

**Idaho Enforcement:** Penalty placed on "permittee" [retailer] and the "seller" [sales clerk].

#### 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.

**Idaho Enforcement:** Compliance checks are random with a mandated minimum of one unannounced check per year for every permittee/retailer. In addition, DHW must conduct random unannounced inspections equal to the number of permittees multiplied by the violation percentage rate reported for the previous year multiplied by a factor of ten. Ex: #permittees x 0.0386 (2021 RVR) x 10

#### 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.

**Idaho Enforcement:** Compliance checks are conducted with decoys that are younger than 21, but no minimum age specified. Inspections for "minor-exempt permittees" do not include minors in the inspection process.

### LICENSING

GRADE: B

#### 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.

**Idaho Licensing:** Comprehensive License. Idaho statewide licensing program issues "permits" which cover both "tobacco products" and "electronic smoking devices."

#### 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.

**Idaho Licensing:** Partially funded by fines, NOT permit fee. Idaho does NOT collect a fee for a tobacco retail permit. Thus, the permit program only PARTIALLY funds enforcement using any fines collected for violations of the permit provisions. Fines are low so they are not significant portion of total enforcement funding.

## 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.

**Idaho Licensing:** Idaho does not require a fee for issuance of a tobacco retail permit. Retailers are required to apply for a retail permit each year.

## PENALTIES

GRADE: C

### Penalty Type

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

**Idaho Penalties:** Civil penalties are imposed on permittees/retailers.

### Violation Accrual Period

**Best Practice:** 36 months

**Idaho Penalties:** Idaho has a 24 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

**Idaho Penalties:**

1st Violation = Permittee/retailer receives written notice describing penalties for further violations.

2nd Violation = \$200 fine and written notice describing penalties for future violations.

– NO FINE if permittee has training program in place and has form signed by seller/clerk stating employee understands law.

– Retailer also receives written notice describing penalties for future violations.

3rd Violation = \$200 fine and permit MAY be suspended from 1-7days.

-Training/employment practices are mitigating factors in determining permit suspension.

-If permit suspended, all products must be removed from public areas during suspension period.

-If same seller/clerk involved in prior violation, permittee/retailer receives \$400.

4th+ Violation = \$400 fine and permit revocation for MINIMUM of 30 days.

– All products must be removed from public areas during revocation period.

### 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.

**Idaho Penalties:** Purchase, Use, and Possession (PUP) penalties apply to youth under the age of 21 in the state of Idaho.

## PREEMPTION

GRADE: F

### 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.

**Idaho Preemption:** Preemption on local retail licensing existed prior to 2022. Preemption on local regulation, marketing, or sale of tobacco products or e-cigarettes. Preemption on local taxation/fee on tobacco products or electronic smoking devices.

## 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.

**Idaho Preemption:** Idaho's Tobacco 21 law includes a comprehensive definition for "tobacco product or electronic smoking device" based on model policy.