

Tobacco Retailer Licensing



Retail Availability of Tobacco Products Impacts Tobacco Use and Health

In order to effectively reduce tobacco use, it is important to understand the impact of the retail availability of tobacco products. The presence of tobacco retailers can undermine a community's ability to establish tobacco-free social norms by increasing accessibility to tobacco products including e-cigarettes and increasing exposure to tobacco industry point of sale advertising, marketing and promotions. Proximity to tobacco retailers is associated with higher smoking ratesⁱ and can reduce the success of those trying to quit.^{ii,iii} Over 90% of all tobacco companies' marketing budget is spent at the point of sale.^{iv} And for good reason as the presence of point of sale advertising increases the risk of youth taking up smoking,^{v,vi} encourages impulse purchases of tobacco products, cues cravings and undermines quit attempts.^{vii,viii,ix}

Research has found that stores where youth are more likely to shop contain up to twice as much shelf space dedicated to the three brands most popular among youth.^x Tobacco retailers are more common in neighborhoods that are more racially diverse and lower income and in communities at higher risk for adverse health outcomes fueling disparities in tobacco use and tobacco related health effects.^{xi,xii,xiii}

Why Tobacco Retailer Licensing?

Tobacco retailer licensing is a policy tool that enables state and local governments to regulate businesses that sell tobacco products, including e-cigarettes, to ensure they comply with tobacco control laws, to reduce tobacco-related health disparities, and to combat the public health problems that tobacco use causes.^{xiv} Strong tobacco retail licensing requirements can help enforce laws designed to reduce illegal tobacco sales to youth and young adults.^{xv} Tobacco retail licensing allows state and local governments to track the number of tobacco retailers over time as well as where they are located.

Benefits of Tobacco Retailer Licensing

- Requiring tobacco retailers to pay an annual fee to obtain a license creates a sustainable enforcement infrastructure
- Knowing where tobacco retailers are located eases enforcement to ensure tobacco retailers are complying with all applicable tobacco control laws including sales to youth

Under a strong licensing law, the state, city, or county requires all sellers of any tobacco products including e-cigarettes to obtain a license. Tobacco retail license laws should include an annual licensing fee which generates revenue that can be used to fund inspections and enforcement of tobacco-related laws.^{xvi} Funding enforcement is one of the best ways to ensure compliance with tobacco control laws, making it important that licensing fees are sufficient to cover administration and enforcement costs.^{xvii}

Laws that include license suspension or revocation for retailers that repeatedly violate tobacco control laws such as selling tobacco to youth or young adults increase the likelihood that retailers will adhere to tobacco regulations.^{xviii}

Tobacco Retail Licensing: Current Landscape

Most states require at least some tobacco retail licensing. At least 38 states and the District of Columbia require retailers that sell cigarettes to obtain a license or permit from the state or locality where they do business.^{xix} At least 35 states require a retail license to sell other tobacco products with at least 27 states requiring a retail license to sell e-cigarettes.^{xx}

ACS CAN Recommendations for Tobacco Retailer Licensing Laws

ACS CAN advocates for the advancement of equitable enforcement practices related to the sale and distribution of all tobacco products. In order to effectively ensure tobacco retailers are complying with all tobacco control laws, ACS CAN recommends the following provisions:

- All retailers are required to apply for a license and pay an annual fee to sell any tobacco products including e-cigarettes.
- The annual fee is high enough to fund administration and enforcement of tobacco control laws. Any revenues from tobacco control laws, should be used to support public health objectives and advance health equity.
- The law specifies the government entity responsible for administering and enforcing the law, and how licensees will be monitored and how enforcement will be conducted including inspections and compliance checks. As tobacco control laws regulating the sale and distribution of tobacco products, are first and foremost public health measures, enforcement should be vested in public health or other non-police officials (e.g. civil code enforcement officers). Physical force against people suspected or guilty of violating commercial tobacco control laws should not be allowed.
- The law provides authority for the state, county, or municipality to inspect tobacco retailers for compliance with tobacco control laws and mandates a minimum of one annual compliance checks for every tobacco retail establishment.
- Systematic, evidence-based research should be conducted on the implementation and enforcement of commercial tobacco control laws with a particular focus on how implementation and enforcement practices affect underserved populations in urban, suburban, and rural communities such as youth, persons of color, persons with low-incomes, persons who identify as LGBTQ+, and persons with disabilities.
- The licensing entity maintains a publicly available list of licensed tobacco retailers with addresses, types of tobacco products sold and history of any violation of tobacco control laws.
- The licensing entity collects enforcement data to evaluate the effectiveness of tobacco control laws in reducing tobacco sales.
- The primary burden for sales to underage youth should fall on the retailer who is profiting from the sales of the product and not the non-management employee. Business owners should be held accountable for violations committed by their employees.
- A civil penalty schedule should be established for licensees that are found in violation of tobacco control laws including selling to underage youth. For every violation that occurs, the penalties for each violation should include graduated fines for retailers coupled with like license suspension leading to license revocation.
- A provision that states any violation of any federal, state, or local tobacco laws constitutes a violation of the tobacco retail licensing law and the retailer is subject to the appropriate penalties including fines, license suspension and revocation.
- A definition of tobacco products that includes all tobacco products including e-cigarettes or at least regulates all tobacco products in the same manner and does not create new categories of products which exempt certain products from other tobacco control laws.
- A cap on the number of retailer licenses in a geographic area (example - there can be no more than 15 retailers per district) and relative to the population size (example - there can be no more than one retailer per 1000 residents).
- Require a minimum distance between licensed retailers (example – retailers cannot locate within 1,000 feet of an existing retailer).
- Retailers cannot locate near youth focused areas (example – retailers cannot locate within 1,000 feet of schools or playgrounds).

- Pharmacies cannot be licensed tobacco retailers.
- Retailers cannot sell tobacco products to anyone under the age of 21.
- Retailers cannot sell any flavored tobacco products including but not limited to menthol cigarettes, flavored cigars, flavored hookah, flavored smokeless tobacco, and flavored e-cigarettes.

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ⁱⁱ Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315–320. doi:10.2105/AJPH.2010.191676

ⁱⁱⁱ Chaiton MO, Mecredy G, Cohen J. Tobacco retail availability and risk of relapse among smokers who make a quit attempt: a population-based cohort study *Tobacco Control* 2018;**27**:163-169.

^{iv} U.S. Fed. Trade Comm’n, Federal Trade Commission Cigarette Report for 2016 (2018), https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_for_2016_0.pdf.

^v Melanie Wakefield, Daniella Germain, Sarah Durkin, Lisa Henriksen, An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays, *Health Education Research*, Volume 21, Issue 3, July 2006, Pages 338–347, <https://doi.org/10.1093/her/cyl005>

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^{vii} Wakefield, M. , Germain, D. and Henriksen, L. (2008), The effect of retail cigarette pack displays on impulse purchase. *Addiction*, 103: 322-328. doi:[10.1111/j.1360-0443.2007.02062.x](https://doi.org/10.1111/j.1360-0443.2007.02062.x)

^{viii} Carter OBJ, Mills BW, Donovan RJ

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^{ix} Siahpush M, Shaikh RA, Cummings KM, et al

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^x Henriksen L, Feighery EC, Schleicher NC, et al Reaching youth at the point of sale: cigarette marketing is more prevalent in stores where adolescents shop frequently *Tobacco Control* 2004;**13**:315-318.

^{xi} Novak SP, Reardon SF, Raudenbush SW, Buka SL. Retail tobacco outlet density and youth cigarette smoking: a propensity-modeling approach. *Am J Public Health*. 2006;96(4):670–676. doi:10.2105/AJPH.2004.061622

^{xii} D. Yu, N.A. Peterson, M.A. Sheffer, R.J. Reid, J.E. Schnieder, Tobacco outlet density and demographics: Analysing the relationships with a spatial regression approach, *Public Health*, Volume 124, Issue 7, 2010, Pages 412-416, ISSN 0033-3506, <https://doi.org/10.1016/j.puhe.2010.03.024>. (<http://www.sciencedirect.com/science/article/pii/S0033350610001137>)

^{xiii} Lee JGL, Sun DL, Schleicher NM, et al Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study *J Epidemiol Community Health* 2017;**71**:487-492.

^{xiv} Change Lab Solutions. *Tobacco Retailer Licensing: An Effective Tool for Public Health*. June 2018. Available at: http://changelabsolutions.org/sites/default/files/TobaccoRetailerLicensing-AnEffectiveToolforPublicHealth_FINAL_20180630_0.pdf

^{xv} Ibid.

^{xvi} Ibid.

^{xvii} Change Lab Solutions. *Tobacco Retailer Licensing: An Effective Tool for Public Health*. June 2018. Available at: http://changelabsolutions.org/sites/default/files/TobaccoRetailerLicensing-AnEffectiveToolforPublicHealth_FINAL_20180630_0.pdf

^{xviii} Countertobacco.org. *Licensing, Zoning, and Retailer Density*. Available at: <https://countertobacco.org/policy/licensing-and-zoning/>

^{xix} American Lung Association. State Legislated Actions on Tobacco Issues. Available at: <https://www.lung.org/policy-advocacy/tobacco/slati/states>

^{xx} Ibid.