



# Show Me Your License

## The Basics of Tobacco Retailer Licensing



### Q: What is a tobacco retailer licensing (TRL) law?

**A:** A tobacco retailer license is a special license the government issues to businesses that sell tobacco products. State and local governments commonly use licensing to regulate certain kinds of businesses and professions, such as alcohol retailers, pharmacies, and restaurants.

Similar to other licensing schemes—such as driver’s licenses—TRL is aimed at ensuring that licensees are aware of eligibility requirements and performance standards. TRL also puts in place a system to address the problem when licensees fall short. If a business fails to meet the eligibility requirements or performance standards, its license can be suspended or revoked, prohibiting the business from selling tobacco until the license is reinstated. As with a license to sell alcohol products, obtaining the license is acknowledgment that selling tobacco products is a privilege, not a right.

### Q: Why is TRL good for my community?

**A:** Communities adopt TRL laws for many reasons—for example, to ensure comprehensive local enforcement of all tobacco laws that affect the retail environment. This and other points are discussed below.

#### **TRL is a comprehensive enforcement tool.**

Local governments can use TRL to enforce all tobacco-related laws that affect the retail outlet. For example, under state and/or federal law, it is illegal to sell tobacco to youth,\* display tobacco products via a self-service display, or sell single cigarettes, but each of these laws currently has a different enforcement mechanism. Furthermore, enforcement of these laws may not be a top priority for state or federal agencies. Under a strong TRL law, violation of these laws also constitutes a violation of the local tobacco retailer license. Because TRL can be enforced locally, local communities can use it to prioritize enforcement of state and federal laws even when state and federal authorities are unable to do so.

#### **TRL protects youth.**

TRL is an effective tool for reducing tobacco sales to youth because it helps ensure that retailers comply with existing laws that prohibit tobacco sales to youth. Research has shown that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example, a review of 33 California



\* Federal law prohibits the sale of tobacco products to individuals under the age of 18. However, many state and local governments have established higher minimum legal sales ages ranging from 19 to 21. For a list of local governments that have increased the minimum legal sales age to 21, see [www.tobaccofreekids.org/assets/content/what\\_we\\_do/state\\_local\\_issues/sales\\_21/states\\_localities\\_MLSA\\_21.pdf](http://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf). For a list of minimum legal sales ages in each state, see the American Lung Association’s State Legislated Actions on Tobacco Issues State Pages at [www.lungusa2.org/slati/states.php](http://www.lungusa2.org/slati/states.php).

communities with strong TRL laws overwhelmingly demonstrated a decline in each community's youth sales rate after the local government enacted the law, with an average decrease of 26%.<sup>1</sup> Similarly, a study of several Minnesota cities found that an increased licensing fee along with strict enforcement of youth access laws led to a decrease in the percentage of youth able to purchase tobacco from 39% to 5%.<sup>2</sup> TRL also can be used to prohibit or limit the sale of other tobacco products that appeal to youth, such as menthol cigarettes, flavored electronic smoking devices (like e-cigarettes), and flavored little cigars.

#### **TRL helps communities track tobacco sales.**

Through TRL, local government can maintain an inventory of all the businesses that are selling tobacco, including the different kinds of businesses that sell tobacco and where they are located relative to schools, youth-populated areas, and each other.

#### **TRL fees provide for self-financing enforcement.**

A key advantage of a TRL system is that the fee the business pays annually to keep its license can be used to fund implementation and enforcement of a TRL program, which allows for regular compliance checks of retailers.

#### **TRL can help communities improve health equity.**

One of the most promising potential uses of TRL is to reduce inequities in how tobacco products are marketed and sold in underserved communities. Research has found that the prices of tobacco products tend to be lower in neighborhoods of low socioeconomic status and African American neighborhoods.<sup>3</sup> Evidence shows that these same communities have higher rates of tobacco use and addiction, worse health outcomes, and increased health inequities.<sup>4</sup> Because the health problems associated with tobacco use fall disproportionately on underserved communities, policy interventions that affect consumption, price, or marketing also have a greater impact on these populations and have the potential to address these inequities.

#### **Q: It's already illegal for youth to buy tobacco products. Why do we also need to license retailers?**

**A:** All state governments, as well as the federal Family Smoking Prevention and Tobacco Control Act (often known as the Tobacco Control Act), prohibit the sale of tobacco products to youth.<sup>5</sup> However, under existing laws, youth purchase rates remain quite high. In 2014, nearly 10% of retail outlets illegally sold tobacco to minors.<sup>6</sup> A strong TRL law can help counter the tobacco industry's predatory practices that disproportionately target youth; facilitate comprehensive enforcement of federal, state, and local tobacco laws; and ensure that inspections and compliance checks occur in all the stores in the community.

#### **Q: My state already has a TRL requirement. Why would a local law benefit my community?**

**A:** Although nearly 40 states have TRL laws at the state level, most of these programs were created to ensure that retailers comply with the requirements of tax laws, such as selling tobacco products with a legitimate tax stamp, rather than to promote public health and advance equity.<sup>7</sup> Most state-level TRL laws are administered and enforced by a state department of revenue or taxation, and these agencies may not have the same public health priorities as a local community. By adopting a local TRL law, a jurisdiction can enforce local, state, and federal tobacco-related laws—all on the local level.

TRL gives local government the authority to intervene as needed, making enforcement more effective and more efficient. For instance, if there are reports of the convenience store near the high school selling cigarettes to youth, local officials can address the problem directly by conducting their own compliance check instead of waiting for a state enforcement operation to come to town. It is possible to create a state-level TRL law (or amend an existing state law) to accomplish the same things as a strong local TRL law, but to date, no state has done so.

### Q: Is a local TRL law legal?

**A:** Yes. A TRL law is a valid exercise of a local government's police power authority to protect the health, safety, and welfare of the community. However, some state laws prohibit or *preempt* local laws regulating the retail environment. To find out if a state has a preemption provision that would affect a local TRL law, consult with a local government attorney or a provider of state or national legal technical assistance. ChangeLab Solutions and the Tobacco Control Legal Consortium are legal organizations funded to provide technical assistance on retail issues pertaining to tobacco control nationwide.

In addition, several states are served by a legal technical assistance provider, funded to work directly with communities in those states. Collaboration with local city or county attorneys may also be necessary to ensure that a local government has the authority to implement TRL. If there is no state preemption, a local government will likely be able to adopt its own TRL law. Although the federal Tobacco Control Act regulates some tobacco products, it explicitly allows state and local governments to adopt laws that are stricter than the federal law.<sup>8</sup>

### Q: Is it fair to charge retailers a fee to sell a product that is legal? Couldn't it put small retailers out of business?

**A:** Tobacco is one of the only addictive and deadly products that does not require a government license and fee in order to be sold. In the case of alcohol, for instance, each state either requires retailers to have a license to sell alcohol products or allows sales only in state-run outlets. Such licenses can cost hundreds or thousands of dollars per year.<sup>9</sup>

In addition, retailers generate tremendous income from the sale of tobacco products. Cigarettes are the number one product sold at convenience stores, and in 2012, they generated average sales of \$622,248 per store.<sup>10</sup> Licenses and fees are required for a variety of activities, such as driving, hunting, and getting married. Businesses in industries such as personal or animal care, mental health, professional services, or food services also need to obtain licenses or permits before conducting business. A local licensing program is a way to ensure that sales of a deadly product are done lawfully.

### Q: In addition to preventing tobacco sales to youth, how can a community use a TRL system?

**A:** TRL can be used to enforce virtually any tobacco-related policy at retail outlets, including strategies to increase the price of tobacco products, to require a minimum pack size for little cigars, to restrict the sale of menthol cigarettes and other flavored tobacco products, and to regulate tobacco retailer location or density. ChangeLab Solutions has [model policy language](#) available on each of these topics.

### Q: Are tobacco control advocates collaborating with professionals who are working to increase access to healthy food and reduce access to alcohol in the retail environment?

**A:** Yes. For example, California's [Healthy Stores for a Healthy Community](#) campaign is a statewide collaboration of partners advocating healthy nutrition, prevention of tobacco use, and prevention of alcohol use, coordinated by the California Department of Public Health's Tobacco Control Program. The campaign focuses on the link between the store environment and community health. In 2016, counties throughout California conducted surveys at more than 7,000 stores that sold tobacco. The surveys included questions on the availability of and advertisements for tobacco, food and beverage, and alcohol products. This survey found that statewide, more stores sold fruit-flavored tobacco than real fruit; nearly 70% of stores had exterior advertisements for unhealthy products (alcohol, tobacco, or unhealthy food); 41% of stores sold sugary drinks at the checkout; and more than 69% of stores that sold alcohol also sold alcopops, which are sweet, often fruit-flavored alcoholic beverages that are particularly appealing to youth.<sup>11</sup>

### Q: How do I get started developing tobacco retailer licensing?

**A:** ChangeLab Solutions has developed the [Tobacco Retailer Licensing Playbook](#), an easy-to-use guide that outlines strategies to develop, implement, and enforce a comprehensive TRL policy. The playbook provides all the steps and considerations involved in building support for TRL, and it includes examples and key resources to help communities create a strong local policy that improves public health. [Contact](#) ChangeLab Solutions for technical assistance on implementing TRL in your community.

- <sup>1</sup> The American Lung Association in California Center for Tobacco Policy and Organizing. *Tobacco Retailer Licensing Is Effective*, 2013. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>.
- <sup>2</sup> Forster JL, Murray DM, Wolfson M, Blaine TM, Wagenaar AC, Hennrikus DJ. The effects of community policies to reduce youth access to tobacco. *American Journal of Public Health*. 1998;88(8):1193-8.
- <sup>3</sup> Cantrell J, Kreslake JM, Ganz O, et al. Marketing Little Cigars and Cigarillos: Advertising, Price, and Associations with Neighborhood Demographics. *American Journal of Public Health*. 2013;103(1):1902-9.  
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Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods. *Nicotine and Tobacco Research*. 2012;14(1):116-21.
- <sup>4</sup> Tobacco-Related Disparities. Centers for Disease Control and Prevention website. [www.cdc.gov/tobacco/disparities/index.htm](http://www.cdc.gov/tobacco/disparities/index.htm). Accessed February 20, 2018.
- <sup>5</sup> Family Smoking Prevention and Tobacco Control Act (Pub. Law 111-31, June 22, 2009); A summary of the retail provisions of this Act can be found at: US Food and Drug Administration. Family Smoking Prevention and Tobacco Control Act – An Overview. 2018. Available at: [www.fda.gov/tobaccoproducts/guidancecomplianceregulatoryinformation/ucm246129.htm](http://www.fda.gov/tobaccoproducts/guidancecomplianceregulatoryinformation/ucm246129.htm).
- <sup>6</sup> Substance Abuse and Mental Health Administration, Tobacco Sales to Youth, FFY 2014. Available at: <https://store.samhsa.gov/shin/content//SYNAR-15/SYNAR-15.pdf>.
- <sup>7</sup> More than 40 states require a tobacco retailer license for over-the-counter sales, vending machine sales, or both. State Tobacco Activities Tracking and Evaluation (STATE) System. 2018. Available at: [www.cdc.gov/STATESystem](http://www.cdc.gov/STATESystem). Most state tobacco retailer licensing laws are implemented and enforced by the state agency that enforces tax laws.
- <sup>8</sup> 21 U.S.C.A. § 387p(a)(1).
- <sup>9</sup> For example, \$500-\$1,000 in Indiana (Ind. Code. § 7.1-4.41-12(c)); \$624-\$1,820 in Florida (Fla. Stat. § 565.02(1)(a)-(f)); \$300-\$3,000 for two years in Delaware (Del. Code Ann. tit. 4 § 554).
- <sup>10</sup> The American Lung Association in California Center for Tobacco Policy and Organizing. *Cigarettes Generate Big Revenue for Convenience Stores: Analysis of 2013 State of the Industry Report*. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2016/10/Cigarettes-Generate-Big-Revenue-September-2013.pdf>.
- <sup>11</sup> California Department of Public Health, Healthy Stores for a Healthy Community. Available at: <http://healthystoreshealthycommunity.com/media-center/?campaign>.

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