
Can an old policy tool work for current tobacco control initiatives?

A State-Level Assessment of Tobacco Retail Licensing

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Main Points

- Background and Methods
- Results
- Next Steps

Overview

- Oregon is one of about 14 states without a state-level law that requires tobacco retail licensure (TRL)
- Need to assess the pros and cons of TRL for Oregon due to:
 - New opportunities afforded by the 2009 Family Smoking Prevention and Control Act (FSPCA)
 - Excessive marketing and promotion in the retail environment

What drives youth initiation?



Peer influence



Environment



Risk perceptions



Economics



Marketing

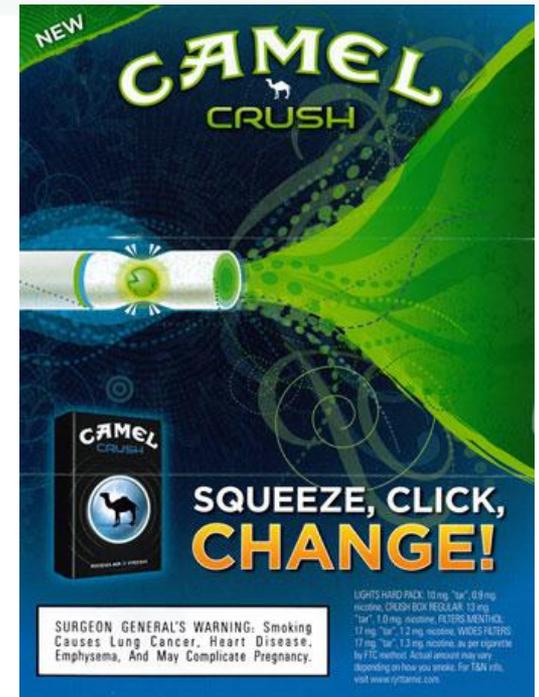
Economics

- Tobacco companies spend more than \$12.8 billion each year to promote their products (\$137 million in Oregon)
- Almost three-quarters is spent on price discounts (\$9.2 billion)



Tobacco marketing

- Ostensibly for adult smokers, but designed to appeal to youth
- Youth buy the most heavily advertised brands



In-store marketing



Event sponsorship



Methods

- Three assessment areas:
 - Oregon’s tobacco-related laws
 - Interviewed each responsible agency about the role that tobacco licensure might play in their work;
 - State-level tobacco retail licensing in surrounding states
 - Interviewed staff from Washington, California, Nevada, Idaho, Utah, Colorado, Arizona state programs;
 - Examined laws
 - Oregon’s local tobacco retail licensing laws
 - Interviewed staff from eight local jurisdictions
 - Examined local ordinances

State-level Interviews

- Conducted interviews of state-level tobacco retail licensure “stakeholders” from surrounding states
 - Health Department tobacco prevention programs
 - Departments of Revenue
 - Departments of Justice

Topics covered

- Purpose and content of licensure law
- Enforcement and penalties
- Coordination across agency stakeholders
- Support and opposition
- Preemption
- Retailer education
- FDA contracts

Purpose and content of tobacco retail licensure (TRL) laws

- State-level licensure laws have the potential to be the enforcement arm of a strong public health strategy
- Current laws vary widely in terms of features that would make them strong public health strategies

What features make a TRL law a strong public health strategy?

- Model ordinance work by ChangeLab Solutions group recommend that model ordinances:
 - Designate an enforcement agency but also make licensing enforceable by any agency;
 - Stipulate that violating any tobacco law is also a violation of the license;
 - Include graduated penalties that include each violation resulting in temporary revocation of privilege to sell;
 - Require an annual licensing fee that covers all program costs including administration and enforcement.

Other potential features of TRL laws

- Control location and density of retailers selling tobacco by declining to issue new licenses
- Violation of other state laws such as sales of drug paraphernalia also a license violation
- Address sampling, self-service, minimum pack size and sale of single cigars.

How do state-wide TRL laws compare?

- Some were created to prevent tax evasion – not related to youth access or any other tobacco control issues
- Most others are tied to youth access, but do not go farther to regulate other products or the environment
- Some do both– administered by state Dept. of Revenue, but licensure is tied to youth access violations
- Several contain preemption clauses that prevent local communities from creating strong public health oriented laws

State-level licensure laws: Enforcement

- Enforcement is usually tied to the purpose of the law, and is the responsibility of one agency
 - Some coordination between agencies, e.g., public health and revenue
 - No state allows enforcement by multiple agencies
- Several states do consider a violation of any tobacco law a violation of the license
- Most do include suspension or revocation, but rarely suspend or revoke a license
- Enforcement is not supported by licensure fees

State-level licensure laws: Penalties

- Most states have graduated penalty systems but first violation is often a warning letter
 - FDA is an example
- Look-back periods for the graduated penalty system varies, laws reviewed were only 1-2 years

Fees

- Fees vary and generally do not cover the costs of administration and enforcement.
 - Retail licenses varied from no-cost to about \$100
 - Annual to every three years
 - Fees can become an issue if there is local licensure also
- Higher fees are useful, but “a balancing act”

Other features of TRL

- No state law has attempted to control the number or location of tobacco retailers through zoning or allocation of licenses
 - Some legislation in CA has been attempted but not passed
- No law reviewed has considered non-tobacco laws (e.g. drug paraphernalia) as a violation of licensure
- All states do have laws with respect to vendor-assisted sales, minimum pack size, vending machines
- Some have addressed coupons and sampling.

Coordination across state agencies

- Taxes – Department of Revenue
- Youth Access
 - Public health (Synar)
 - Behavioral Services tied to SAMHSA block grant (Synar)
 - Department of Justice
 - Local and state law enforcement
 - Liquor control board

Coordination

- One interviewee remarked, “There’s not a lot of talking to each other... it’s a missed opportunity”
 - State-level communication that does occur tends to be informal
 - Agencies are underfunded and stretched
 - On-site inspections can be duplicative

Opposition and Support

- Frame as a fee, not a tax, to avoid triggering difficult legislative procedures
 - However, fees are still potential roadblock
 - Some states have no fee
- Try to create partnerships with retailers to encourage healthy retail environments, for food and alcohol as well, not just tobacco
- Frame as youth safety, involve youth coalitions
- Preemption has proven to be difficult for those states that have it

Retailer Education

- Integrated into some state TRL or youth access laws
- Sometimes integrated into penalties
- Proactive programs at local health department level or state level
- Considered important by many agency key informants
 - Distribute literature and information even if not required

FDA contracts

- Coordination is key
 - Can be an additional element to integrate into a coordinated communication and enforcement system

Conclusions

- Features of state-level TRL laws vary widely and generally fall short of model legislation
 - More could be done in the retail environment to address marketing to youth
- Coordination between agencies is key because of the statutory links between the stakeholders
 - Should be formalized if possible

Conclusions

- State-level laws with no preemption allow local communities to enact model legislation
 - Need to assure all people have some protection from tobacco promotion and sales in the retail environment
- Preemption has been problematic
- Data are important – both before and after passing policy
 - California Lung Association polling data on public attitudes toward features of local TRL ordinances

Thank you!

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