

Statewide Tobacco Retail Licensing: Old Youth Access Policy or New Tobacco Control Policy? The Oregon Assessment

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Introduction

Tobacco and the Retail Environment

The retail store is where most tobacco is bought, sold, advertised, and promoted. Tobacco control advocates, policymakers and regulators all have a stake in what happens in the retail environment. Public health advocates are concerned about sales to minors as well as the many ways that tobacco is made accessible and attractive at the point-of-sale, and tax regulators are concerned about compliance with tax laws.

Meanwhile, the tobacco industry continues to develop ways to make tobacco attractive, especially to youth and young adults. Older industry advertising strategies included billboard and transit advertising, and the use of cartoon characters to promote tobacco products. As a result of the Tobacco Master Settlement Agreement, these methods (billboards, e.g.) are no longer permitted. However, advertising and promotion in the retail environment and at the point-of-sale have continued relatively unabated. In 1996, tobacco companies spent about \$5 billion on advertising and promotion; that figure rose to over \$9.9 billion in 2008. A total of 85% of the industry's promotion budget is directed toward the point-of-sale.¹ Promotion budgets primarily are used for price discounts and coupons for consumers, and payments to retailers for displaying and advertising tobacco products in prominent locations.

This creates a retail environment that makes it easy for youth to access tobacco, discouraging for people wanting to quit tobacco, and, counters public health efforts to denormalize tobacco. Youth and young adults are very likely to be exposed to point-of-sale advertising in convenience stores because these stores are often located near schools, parks, and places where young people hang out. Convenience stores are a place where students purchase food and beverages before and after school, and are a place of employment for youth and young adults. We also know that point-of-sale tobacco promotion increases the likelihood that adolescents will initiate tobacco use.² In addition, the emergence of new tobacco products marketed at retail stores creates issues for both public health advocates who are concerned about their addictive nature, and regulators, who must decide how and if these products are taxed or otherwise monitored.

¹ Federal Trade Commission. *Cigarette Report for 2007 and 2008*. Washington: GPO, 2011. <http://www.ftc.gov/os/2011/07/110729cigaretterepreport.pdf>. Published July 29, 2011. Accessed October 15, 2012.

² Paynter J, Edwards R. The impact of tobacco promotion at the point-of-sale: A systematic review. *Journal of Nicotine and Tobacco Research* 2009 Jan;11(1):25-35.

Tobacco retail licensure: A potential policy solution to address issues in the retail environment?

The tobacco laws that address the retail environment have become more important than ever. Many of the current laws address access and promotion of products to minors, but these laws could be better enforced and even expanded. ***One of the ways in which tobacco control laws can be enforced is through the issuance of a tobacco retail license (TRL) that is revocable in the event of violations of any federal, state, or local tobacco control laws.***

Currently, many licensure statutes at the state level are not comprehensive public health interventions. Although many do have provisions that suspend or revoke the license if sales to minors occur, licensure is often not connected to other tobacco laws such as prohibition of self-service displays or sale of single cigarettes. In some cases, licensure exists primarily to provide a current list of all tobacco retailers in the state, and is used by Departments of Revenue to facilitate compliance with tax laws.

The passage of the Family Smoking Prevention and Control Act (Tobacco Control Act) in 2009 shifted the tobacco control policy climate, and has the potential to put tobacco retail licensure in a new light. The legislation places many restrictions on tobacco manufacturers and retailers such as prohibiting the sale of flavored cigarettes (except for menthol), requiring face-to-face sales, minimum cigarette pack sizes, and requiring the industry to disclose tobacco product constituents.³ But most importantly for tobacco control advocates and policymakers, the Tobacco Control Act states that local and state regulations related to prohibiting the sale or advertising of tobacco products to individuals of any age are specifically not preempted. Some examples suggested by the Tobacco Control Legal Consortium of ways states could expand their authority beyond the FDA law include:⁴

- States could expand the law's requirements that retail ads be limited to black-and-white text to cigar and other tobacco products;
- States could further restrict the display of "power walls" (the only presentation of cigarette brand logos permitted in retail outlets under the new law);
- States could limit the number and size of tobacco ads at retail outlets;
- States could require that tobacco products and ads be kept at a minimum distance from cash registers in order to reduce impulse purchasing by smokers trying to quit.

³ U.S. Food and Drug Administration. *Overview of the Family Smoking Prevention and Tobacco Control Act: Consumer fact Sheet*.
<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm246129.htm>. Updated August 29, 2012. Accessed October 15, 2012.

⁴ Tobacco Control Legal Consortium. *Federal Regulation of Tobacco: Impact on State and Local Authority*.
<http://publichealthlawcenter.org/sites/default/files/resources/tclc-fda-impact.pdf>. Published July 2009. Accessed October 15, 2012.

It is important to remember that although states have expanded powers to regulate the location, color, size, number and placement of cigarette advertisements, they cannot regulate content. However, even with the expanded power of states to address many aspects of tobacco marketing in the retail environment, the industry is legally challenging many of these new efforts. For state and local jurisdictions without licensure, or with weak licensing systems, adding or enhancing tobacco retail licensure may be a helpful action to strengthen the tobacco enforcement infrastructure by setting up a tobacco retail system that can support expanded tobacco control activities when politically feasible and further strengthen the enforcement of current federal, state, and local tobacco related laws.

The Oregon Assessment

As noted, Oregon does not require retailers to obtain a state-level license in order to sell tobacco. Given the new policy environment afforded by the Tobacco Control Act, the Oregon Tobacco Prevention and Education Program decided to conduct an assessment of the tobacco control landscape specifically in regard to tobacco retail licensing. The purpose of the assessment is to understand if tobacco retail licensure is the best option in Oregon for the enforcement of:

- Existing laws relevant to the retail environment; and
- New laws that might be introduced post-FSPTCA designed to change the tobacco retail environment.

To better understand the landscape a three-part assessment was completed. There were three objectives:

- First, to describe the policy landscape in Oregon by reviewing all tobacco-related statutes in the state, and speaking with agency personnel responsible for enforcing those laws;
- Second, to review tobacco retail licensure ordinances from all of Oregon's local jurisdictions with licensure, and speak with key informants from those jurisdictions;
- Third, to review tobacco licensure laws from five of Oregon's surrounding states, and speak with key informants from those states.

Listed below, are descriptions of the characteristics of the laws or ordinances in the various jurisdictions. Also provided is a summary of the comments and perspectives of the key informants interviewed regarding how licensure is working or might work in their locale, and their perceptions of the advantages and disadvantages of such laws. This assessment was approached from the perspective of how TRL might work as a public health strategy, but also noted are opinions of non-public health stakeholders.

PART ONE: Oregon State-Level Laws and Responsible Agencies

The evaluation team first reviewed all Oregon statutes to obtain an overview of the tobacco-related laws in the state⁵. All agencies involved in the enforcement of tobacco laws were identified and the legislation and agency enforcement responsibilities were summarized and used to develop an interview guide.

A key informant was interviewed from each agency about their current responsibilities in administering and enforcing current tobacco laws and regulations, how tobacco retail licensing might affect their work, and their opinion of the value of inter-agency communication and coordination with respect to tobacco control. Agency interviews also covered potential coordination with the Tobacco Control Act. A total of six interviews were conducted between January and March 2012.

Agencies interviewed included:

- Oregon State Police
- Oregon Health Authority Addictions and Mental Health Division
- Oregon Liquor Control Commission
- Oregon Department of Revenue
- Oregon Department of Justice

Each of these agencies is a member of the Tobacco Enforcement Inter-Agency Work Group, a committee convened to promote communication and collaboration between agencies involved in the enforcement of tobacco laws in Oregon.

Oregon tobacco legislation relevant to the retail environment

Oregon has laws that:

- prohibit vending machines to be located in places where minors are allowed;
- prohibit distribution of free tobacco products to persons under 18, and free smokeless tobacco products to persons under 21;
- prohibit purchase or possession of tobacco by minors;
- require retailers to post a notice informing the public that selling tobacco to minors is prohibited;
- prohibit sales of tobacco to minors; and
- require vendor-assisted sales unless store is off limits to minors;

⁵ Tobacco Prevention and Education Program. *Oregon Tobacco Facts & Laws*. Portland, Oregon: Oregon Department of Human Services, Oregon Public Health Division. <http://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/Documents/tobfacts.pdf>. Published January 2011. Accessed October 15, 2012.

- require tobacco distributors to obtain a license;
- regulate tobacco sales through mail order or the internet;
- prohibit the sale of unpackaged cigarettes;
- require a state excise tax to be paid on cigarettes and other tobacco products; and
- regulate matters related to the Master Settlement Agreement.

Responsibilities for enforcement of these laws are distributed across a number of agencies: the Department of Revenue, the Department of Justice, the Oregon Health Authority, Division of Addictions and Mental Health and the Public Health Division, Oregon State Police, and local law enforcement. Figure 1 below gives an overview of Oregon’s laws relevant to tobacco sales and distribution and identifies the agency responsible for each.

Figure 1: Oregon state laws relevant to tobacco/ alcohol sales, clean indoor air, and agency responsible for enforcement



Law Category:	Tobacco Taxes, Payment, Distribution	Access to Tobacco and Youth Possession	Tobacco and Cigarette-Related Product Regulation	Indoor Clean Air Act Enforcement
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In the following section, the responsibilities of each agency are described in great detail and an outline of their enforcement system is provided. During interviews with each agency respondent, insights about advantages and disadvantages of state-level tobacco retail licensing for Oregon were captured.

Oregon Department of Revenue

Responsibilities

The Department of Revenue (DOR) is responsible for enforcing the Oregon laws related to tobacco tax collections and tax evasion. They also license tobacco distributors.

Enforcement

DOR has six full-time-equivalent positions for tobacco enforcement—two analysts, an auditor, two inspectors, and a manager. They coordinate with the Attorney General’s office when necessary, and work closely with other staff in the department. The two inspectors are expected to cover the entire state. DOR inspections focus on tobacco retailers. Inspections include checking for the presence of tax stamps on cigarettes, verifying records of other tobacco products, and looking at whether or not a retailer is selling single cigarettes because single cigarettes have no proof of a tax stamp and are considered contraband.

The inspectors conduct an average of three or four retail checks per day, and have to travel statewide. Inspectors are based in Salem. Although the inspector staff used to be large enough to conduct checks in each retail store, reduced staff capacity makes this no longer possible.

If an inspector finds a violation they seize the product and issue a letter. The central DOR office then follows up with a fine. Penalties are graduated with fines increasing after each violation. However, some DOR staff believes that the penalty system is not effective because inspectors cannot reach all stores or conduct follow-up visits. Retailers know it is unlikely they will be visited again, so they have little motivation to change behavior after a violation. Retailers also alert each other if they know inspectors are in the area.

Distributor licensing system

Distributor licenses are free in Oregon and are issued only once. Distributors are required to submit quarterly reports. The administrative load can be significant because if a particular distributor has presented problems in the past, a DOR employee is required to follow up. Auditors rather than inspectors are responsible for distributor compliance, as infractions involve not complying with tax payments. If inspectors detect suspicious activity at the retail level they inform auditors.

Coordination and communication with other agencies

DOR has not been allowed (by statute) to share information with any agency unless that agency is a taxing authority. This has been a problem because many tobacco distributors operate across states. If DOR encounters a problem with one, they are prevented from discussing the issue with a non-taxing authority in another state. However, there is a new disclosure law under consideration that would allow communication to occur with non-taxing authorities.

Pros and cons of TRL

Retail licensing would facilitate the work of the DOR because it would create a current list of all retailers selling tobacco in the state. The small number of staff (two inspectors) and the large geographic area of the state make the department's inspection responsibilities difficult. Thus, the Department has been supportive of the concept of licensure for a number of years because having such a list would improve the efficiency of its work.

However, participants noted that the initial cost of setting up a licensing system would be substantial because of the number of retailers in the state, and they viewed charging fees as awkward in view of the free license for distributors. They have tried to institute fees for distributors, but were unsuccessful.

If a retail licensing system were housed in the DOR, there would need to be a substantial increase in staff, resources and infrastructure. Their data access system for inspections would need to be upgraded.

These respondents felt that information-sharing and collaboration was very important while planning and implementing a tobacco retail licensing system.

Oregon Department of Justice

Responsibilities

The Department of Justice (DOJ) is responsible for enforcing laws related to the Master Settlement Agreement (MSA), which says that tobacco manufacturers whose cigarettes are sold in Oregon must either become a participating manufacturer or submit specified funds to a separate escrow account. Tobacco manufacturers must file certification applications with the Attorney General (AG) relating to the compliance with the MSA regulations. When the tobacco manufacturer is certified, they are listed in a directory available for public inspection, and only listed brands can be stamped, sold, possessed, or imported into Oregon. A parallel set of rules exists for smokeless tobacco. Internet and mail order sales are also regulated by the DOJ.

Enforcement

The DOJ engages in substantial contact with manufacturers related to these laws. Staff check applications for certification and monitor manufacturers to verify they are in compliance with appropriate regulations and not selling tobacco outside the regulations. Graduated penalties are prescribed by statute for those manufacturers who elected to make deposits into escrow but neglected to do so. Civil penalties can be imposed on sales of brands not listed in the directory, and prohibition of sales can be imposed along with distributor license suspension. A parallel set of penalties exists for smokeless tobacco.

Enforcement staff consists of one attorney, an investigator, and a paralegal. Other attorneys from the wider section are called upon as needed.

Coordination and communication with other agencies

There is a statute that allows DOJ to share information with DOR and they do so freely. If retail licensing were established in Oregon, this respondent thought that both DOR and Public Health would need to closely collaborate.

Pros and cons of TRL

This respondent expressed that TRL would facilitate the work of the DOJ. It was noted that the distinction between distributors and retailers is sometimes unclear, and a licensing law would help clarify the entity.

Also, it was noted that TRL can help regulate the marketing of emerging products. This respondent mentioned roll-your-own machines as an example of a new industry strategy that could be addressed by assuring that TRL language is flexible enough to regulate these types of introductions. At the time of this interview, businesses that owned roll-your-own machines were not considered manufacturers. In 2012, federal legislation was signed into law requiring owners of these machines to register as a manufacturer. This essentially eliminated the use and proliferation of these machines.

Addictions and Mental Health Division of the Oregon Health Authority

Responsibilities

The Addictions and Mental Health Division (AMH) has had responsibility for the reporting requirements of the Synar Amendment (the Public Health Service Act (42 U.S.C. 300x-26). The Synar Amendment, passed in 1996, requires states to enact and enforce laws prohibiting sales of tobacco products to minors, conduct annual random, unannounced checks of all tobacco outlets to estimate tobacco retailer compliance rates, and to report these rates in their annual Substance Abuse Prevention and Treatment (SAPT) block grant. Each state is required to keep its violation rate below 20% or it risks losing a portion of the SAPT Award, or may be required to infuse new state funds into its tobacco enforcement program.

In Oregon, the random inspections requirement is carried out by retired troopers of the Oregon State Police (OSP), hired by AMH. Synar inspections do not include citations for non-compliance. However, OSP now has implemented their enforcement program (statutorily required) using retired troopers, who are inspecting as many tobacco outlets as possible. Included in these inspections is a "targeted" inspection of all retailers that were non-compliant in the Synar inspections. All those found non-compliant during the OSP enforcement inspections are cited.

Coordination and communication with other agencies

This respondent thought that lack of coordination and communication can result in failed policy efforts. Licensure was proposed twice in previous years and was not successful. Cross-agency collaboration occurs early in the process to assure that all stakeholders are "speaking the same language." It is clear that for some agencies (AMH included) the first priority from a licensure law would be the advantage of having a list enumerating all tobacco retailers in the state.

However, public health has wider-ranging interests in such a policy, and it is important to generate some degree of support for the public health agenda from other stakeholders.

Pros and Cons of TRL

Enforcement for all tobacco laws: The respondent felt that TRL could be a useful mechanism to enforce all tobacco related laws in Oregon. Local law enforcement is responsible for enforcing many of the state tobacco laws (see Fig. 1), but fail to do so in some circumstances, either because of lack of resources or other priorities. Also, the Synar compliance check program may give the false impression to local law enforcement that tobacco compliance checks are being carried out and that there is no need to do more.

Strong deterrent for noncompliance with youth sales laws: TRL is needed as a deterrent against noncompliance. Compliance rates need to be in the 90% range in order to have a substantial effect on youth smoking, and Oregon rates have only been lower than 15% four times. Statewide licensure would help compliance because currently, some retailers may see fines from other tobacco violations as “the cost of doing business.” They are aware that compliance checks are carried out on only a sample of retailers, and that it is the clerk, not the owner who is fined in the event of a sale. A graduated penalty system that includes license suspension, such as those used by the FDA and the Oregon Liquor Control Commission would send a strong message to retailers that compliance is critical.

Additional features

In addition, TRL in the current policy climate ushered in by the Tobacco Control Act would make it possible to include additional stipulations in a TRL law. The opportunity to use licensure to expand the scope of regulations opens the door to a new policy environment.

Preemption

There was concern that a state licensing law that contained preemption would weaken such a law considerably.

Fees and enforcement

This participant noted that a fee structure to cover the cost of enforcement would be a necessary feature of TRL. In some local communities, licensing has been instituted but its fees are nominal and not sufficient for enforcement. This should be avoided for both state and local tobacco retail licensing laws.

It was also noted that currently, the enforcement of many state and local tobacco laws lies with local law enforcement. The advantage of using local law enforcement lies in the ability to coordinate with local tobacco control resources, and tailor enforcement and retail educational efforts to the community. A state level TRL could give the locals additional resources to conduct more effective enforcement by taking away the privilege to sell tobacco, rather than only have fines that are considered a cost of doing business. On the other hand, the participant noted, removing TRL enforcement from the many agencies represented by local law enforcement and housing it within one agency could be more efficient and would provide consistent protocols.

The disadvantage of the single agency approach lies in assuring that the agency has the infrastructure to reach all areas of the state, and is able to mount and sustain a strong program.

Oregon State Police

Responsibilities

The Oregon State Police (OSP) are responsible for enforcing laws designed to discourage the use of tobacco products by minors. According to recent legislation, the OSP is directed to establish a program employing retired state police for this purpose. Legislation directs the OSP to consult with the Oregon Health Authority to maximize qualifications for federal funding to enforce such laws, including funds available through the Synar amendment, and other funds as well (potentially funds from the FDA for enforcement of the TOBACCO CONTROL ACT).

Enforcement

This new program was established through an inter-governmental agreement and will consist of three employees.

Coordination and communication with other agencies

There is a history of collaboration with staff from AMH as the two agencies have worked together on Synar amendment procedures in the past. Close collaboration is expected as this new program moves forward.

Pros and cons of TRL

The respondent thought that TRL might meet with considerable opposition, as it could be perceived as another tax, not a control measure. Licensure would confer an advantage to agencies by providing a complete list of retailers, which would facilitate the work of OSP, DOR and others. Licensure would also provide a clearer picture of the magnitude of the compliance problem. However, licensure would only contribute to control if suspension were built into the law and utilized.

Oregon Liquor Control Commission (OLCC)

Also interviewed were personnel from the one agency not directly involved with tobacco laws in the state, the OLCC. OLCC has extensive experience with alcohol enforcement practices, they have statewide reach, comprehensive penalty structures, and a stable staffing and training infrastructure. OLCC offers a valuable model for the use of TRL as an enforcement mechanism for tobacco control laws.

Organization, licensing, training and enforcement

OLCC consists of a five-member commission, comprised of an industry representative and representatives from four congressional districts. The Public Safety Program of the commission has responsibility for alcohol server education and training, licensing, and enforcement.

OLCC licenses distributors and retailers of alcoholic beverages, as well as servers. Liquor licenses are generally \$400-\$500 annually for retail sellers. OLCC issues 27,000 server permits a year in Oregon, at a cost of \$23 each. Permits are valid for five years. Oregon has had a mandated server education program since 1997. Classes are online and in-person, and are offered through a vendor contracted by OLCC.

The OLCC has a system of district inspectors operating in six regions of the state. Inspectors routinely contact all licensees in their designated region. In addition, inspectors carry out random or targeted minor decoy operations. There is also a complaint-driven aspect of enforcement.

Penalties are graduated and organized into a matrix that cross-classifies categories of infractions with number of violations.⁶ Specific penalties are imposed for a wide variety of aspects of the liquor control laws: rules for licensure, prohibitions of sales to minors, hours of operation, types of advertising including rules for rebate coupons, and penalties for other types of behavior, such as unlawful drug activity on licensed premises.

The OLCC budget is allocated by the legislature. Licensure fees do not cover the entire agency budget. Increases in the license fees have been proposed during past legislative sessions, however were opposed by the alcohol industry and not instituted.

Potential for enforcement of the Tobacco Control Act

The OLCC has a well-developed enforcement infrastructure, good training protocols, and experience working with retailers and employees. In this context, OLCC was considered an appropriate candidate to work with the Food and Drug Administration (FDA) to enforce the Tobacco Control Act. In Oregon, however, the OLCC has statutory authority only over alcohol, unlike some states, such as Washington, where the liquor control board is able to work with the FDA to enforce the Tobacco Control Act. The matter was raised in the 2012 Oregon legislative session, but authority to enforce state tobacco laws (such as sales to minors) was not granted to OLCC, and remains with law enforcement.⁷

Opinions on Barriers and Challenges to TRL

In the opinion of the key informant from OLCC, implementation of TRL would be straightforward, especially if it were integrated within the OLCC. Many establishments that sell alcoholic beverages also sell tobacco, and application processes for both licenses could be made parallel, thus streamlining the process. OLCC's experience with training (for inspectors, retailers and clerks) and its decentralized infrastructure consisting of six regions provides a useful model for the implementation of TRL.

⁶ Oregon Administrative Rules, chapter 845, division 6, rule 0500.
http://www.oregon.gov/olcc/docs/administrative_process/006_0500_7_exhibit_1_penaltyschedule.pdf. Effective May 1, 2009. Accessed October 15, 2012.

⁷ Relating to the use of retired state police officers to enforce laws concerning tobacco products; appropriating money; and declaring an emergency, House Bill 4172, 76th Oregon Legislative Assembly. (2012).

Part One Summary

- Respondents from the agencies with responsibilities to enforce tobacco-related laws had somewhat differing points of view about the value of TRL. Many respondents thought that the existence of an up-to-date list of tobacco retailers would greatly facilitate their work. Others had a greater interest in the potential of TRL to be the enforcement mechanism for existing and potentially new tobacco-related laws that address the retail environment.
- All respondents thought that the existence of the Tobacco Enforcement Inter-Agency Work Group was valuable. They recognized that new policy must address the needs of all stakeholders involved in the enforcement of tobacco control laws, or it would not be successful.
- Potential barriers mentioned by respondents included:
 - Licensure being perceived as an additional tax;
 - Difficulties in administering and enforcing a licensure program with slim resources;
 - The existence of preemption would weaken a state-level licensure law considerably.
- Overall, stakeholders thought that licensure, if constructed carefully, could benefit their work.

PART TWO: Tobacco Retail Licensing in Local Jurisdictions in Oregon

A small number of local communities in Oregon have enacted tobacco retail licensing (TRL) ordinances. To establish a context for consideration of statewide TRL in Oregon, we felt it was important to understand how licensure in these local Oregon communities was established, and how licensure currently works. This component of the assessment also provided an opportunity to gather information on the advantages and disadvantages of state-level TRL from the perspective of local tobacco control stakeholders.

There are nine jurisdictions in Oregon that have enacted ordinances that require retailers to obtain a license to sell tobacco: Ashland, Benton County (and within Benton County, Corvallis and Philomath), Central Point, Eugene, Salem, Silverton, and Springfield. The assessment team examined each ordinance for the purpose and content of the ordinance, the license fees, penalty structures, and monitoring and enforcement. After examining the ordinances, the Tobacco Prevention and Education Program coordinator (TPEP) in each county participated in an informational interview. The TPEP coordinator either spoke about the local TRL programs or referred us to the issuing agency of the local program. The tobacco retail license issuing agency was typically the business or finance department of the local city government.

The interview guide covered a general overview and history of the ordinance, the monitoring and enforcement activities, training for new tobacco retailers, and barriers or challenges for implementation. Additionally, each participant was asked about their recommendations or thoughts about a state law requiring tobacco retail licensure. A total of six interviews were conducted between July and August of 2012, covering all of the jurisdictions.

Purpose and content of local ordinances

There are several reasons that a local jurisdiction might require retailers to obtain a license to sell tobacco. Especially in the absence of state licensing, the jurisdiction might want to have licensure as an additional tool for enforcing existing state laws that regulate tobacco use (Oregon has laws that prohibit sales to minors, require vendor-assisted sales, establish minimum pack size, among others (see additional information in Part Three)). Or, a jurisdiction might plan to enact additional, more stringent regulations than the existing state laws, if not prevented through preemption. Regardless of the reason, conceptualizing licensure as an enforcement mechanism is the key element that makes TRL useful. An important outcome of the interviews was to get a picture of how Oregon's local ordinances fit within the larger picture of enforcement of tobacco laws.

Ordinances in the nine jurisdictions were passed in the late 1990s or early 2000s. Most respondents had no historical knowledge about their TRL ordinance. When asked about the

purpose of TRL in their community, some stated that the purpose was to know who was selling tobacco in the community. One stated that the purpose was to keep tobacco out of the hands of minors. In one location respondents stated that the ordinance had not been implemented since its creation; the Health Department in that jurisdiction first heard about the TRL ordinance when a business owner contacted them wanting to know where and how to obtain a license. They are currently working toward activating the ordinance.

Only two ordinances link licensure to compliance with any city, county, state, or federal law applicable to tobacco products (and one of those addresses tobacco stores⁸ only). Most link licensure only with sales to minors and vendor-assisted sales. The Ashland ordinance has explicit introductory language describing the health risks of tobacco use, citing smoking prevalence figures for youth and stating that most youth initiate smoking by age 18. Nevertheless, the regulation does not attempt to link licensure with any other tobacco-related restrictions. We have outlined the major characteristics of the nine ordinances in Appendix 1.

Fees

Fees ranged from \$10 annually to a \$73.50 initial fee and \$47.25 renewal. The number of tobacco retailers estimated by respondents ranged from 9 to 123. One respondent estimated that it costs \$85 for one youth decoy compliance check per year. Since it is estimated that at least two checks should be done annually at each licensed establishment to keep compliance rates at 80%,⁹ no municipality has a fee high enough to cover this cost or any additional costs that might be incurred in the program administration.

Administration, Monitoring, and Enforcement

Most tobacco retail licenses in Oregon communities are issued by the local business office. Six of the nine jurisdictions (Benton County, Corvallis, Eugene, Philomath, Salem, Silverton, and Springfield) do not require businesses to have a business license in addition to the tobacco license. For some jurisdictions with TRL, the lack of a regular business license posed a challenge. Stores may be required to have a license to sell tobacco, but if they are not required to register their businesses locally, the local government does not have any way of identifying them. Some jurisdictions address this issue by using liquor licenses as a means of identifying businesses that need a tobacco license, as in many local areas, the same office issues each type of license.

⁸ Defined as establishments whose sales of tobacco products meets or exceed 90% of the gross receipts of the establishment.

⁹ Canadian Cancer Society. *A critical Analysis of Youth Access Laws*. http://www.cqct.qc.ca/Documents_docs/DOCU_2003/MEMO-02-09-00-CCS-CriticalAnalysisYouthAccesslaws_en.pdf. Published September 2002. Accessed October 15, 2012.

Only one-third of ordinances specifically identify a monitoring agency in the municipal code. When a business has violated a tobacco law linked to TRL, most ordinances hold the license holder responsible for the infraction and allow the accused a hearing if they would like to appeal. However, regardless of whether or not TRL is used as an enforcement mechanism for all laws or only a few, most sites have not been conducting any formal monitoring of licensed stores.

There were varied reasons for why inspections were not being conducted. Some stated that they lacked the capacity or resources to monitor TRL. A few places did state that their office was not regulatory in nature, but instead was complaint-driven, as a reason for not monitoring. One city which has not done any monitoring or enforcement of TRL stated that if they received a complaint, they would mail a citation with no fine attached. Another stated that monitoring was not done because their community was not large and did not have many stores or businesses, thus, monitoring was not necessary. Another mentioned that local law enforcement had not received training in youth decoy operations.

As noted, fees are low, and are inadequate to cover the administrative costs of monitoring the ordinance. To address this issue, one county jurisdiction (Lane County) is giving a grant to the city of Eugene to conduct enforcement and compliance checking.

In addition to challenges around staffing, capacity, some ordinances did not specify who would do the enforcement, and one respondent mentioned that while their ordinance has been around for a while “no one felt like they were responsible for it.” With no funding, staffing, and in some cases, specified agency, it was not surprising that licensure was not being monitored or enforced in many locations.

Penalty structures

Lack of enforcement of any law is often a resource issue. However, even if adequate resources for enforcement are available, the effectiveness of a law remains dependent on penalty structures. Penalties need to be strong enough to avoid the perception that they are merely “the cost of doing business.”

Many of the local ordinances we examined have a standard, graduated penalty structure (see Appendix 1). In this structure a monetary fine is imposed on the first violation of the local law (but not of other federal or state laws). License suspension is not introduced until the second violation. The “look-back” period is two years, i.e. repeat violations only incur greater penalties if they occur within that period.

The city of Eugene has a unique structure specifically for violations of the sales to minor’s regulation. It considers: 1) the effort made by the responsible person in taking all feasible steps or procedures necessary to correct or prevent the violation, 2) the frequency of prior violations, 3) the cause of the violation, and 4) the knowledge of the responsible person regarding tobacco

regulations. Each of these factors is measured on a scale of 1, 3, or 5, and is then summed and multiplied by \$10 to calculate the penalty imposed per day, up to a maximum of \$2000. The language in this regulation is exemplary, as it describes to retailers the types of changes they can make in the environment to discourage sales to minors, such as posting signage at the door and register, using scanners, calculators and “Born by Today” signs for clerks, as well as providing staff training. Eugene is the one jurisdiction in which a license has been revoked from an offending retailer.

The majority of ordinances also have mandatory penalties, while Eugene has an additional civil penalty for those who violate the sales to minor law. Salem, Silverton, and Springfield’s penalties are discretionary.

These penalty structures, although graduated, have fairly short look back periods, and do not impose license suspension until the second violation. However, the second violation in a two-year period does impose a 45-day license suspension, which is a significant time period for the loss of the privilege of selling tobacco. If enforcement efforts were increased, and suspension were accompanied by additional stipulations, such as removal of product from shelves (not specified in current ordinance language), these penalty structures could be useful in the efforts to regulate the retail environment.

Retailer training

In most jurisdictions, no specific training is attached to licensure. In general, the TRL application contains information about the ordinance or directs the applicant toward web-based information. One local participant said that they offered no training as they assumed that the retailer was receiving training from elsewhere.

Only Benton County offers regular training attached to a tobacco license. Training is for alcohol and tobacco retailers, and is offered twice a year as part of local alcohol and tobacco control efforts. The partnership coordinating the training includes representatives from law enforcement, bar owners, liquor store owners, the local OLCC officer, and the fire department. Linn County has now started a similar training modeled after Benton County’s training. Topics covered in the training include checking identification, laws specific to the sale and consumption of tobacco and alcohol, and tips for recognizing someone who is intoxicated. Those who participate get free black-lights for checking IDs.

The city of Eugene also requires licensees to be responsible for implementing tobacco regulations training for employees at the commencement of their employment and annually thereafter. All licensees are supposed to maintain records of all training programs which have been implemented, and must provide the city access to the records upon request.

Opinions on statewide licensure

The majority of the sites felt that state licensure would be beneficial, and many felt like it made the most sense, instead of having “random communities with their own ordinances.” Creating a system which was similar to liquor retail licensing was recommended. Many had routine contact with their regional Oregon Liquor Control Commission (OLCC) representative, who provided them with a list of alcohol retailers. If structured similarly, they felt that it would be easier to monitor and enforce, especially in places where there was not a requirement for a general business license. A few respondents were concerned about the enforcement of a state tobacco retail license, primarily because current capacity and resources are very low for public health in general. Specific recommendations for state retail licensure were that the state law needs to be strong (i.e. tie together other federal and state laws and be renewed every year), have a fee, and be strongly enforced.

How do Oregon’s local ordinances compare to a model TRL ordinance?

ChangeLab Solutions, a policy research, planning, and public health law organization, has created a Model Tobacco Licensing Ordinance¹⁰ which includes provisions they identify as essential, and offer other policy options (called “plug-ins”) for local communities to consider. Table 1 below compares the ordinances from the nine jurisdictions to the essential model policy provisions. Two essential provisions include the requirement of annual, nontransferable licenses for all tobacco retailers with annual fees that fully covers all program costs, (i.e. administration and enforcement); and violation of any tobacco law is also a violation of the license. As noted, of the nine Oregon municipalities with tobacco retail licensure, none of the fees are adequate to cover all costs. Only two local ordinances state that violating any tobacco law is a violation of the license, and one of those only requires tobacco stores to have a license, not all tobacco retailers. Transferability is also not addressed in many of Oregon’s local ordinances.

Other essential provisions are that the administration and enforcement of the licensing program be specifically outlined in the ordinance; as previously mentioned, very few localities are clear who should be enforcing TRL in their community. Overall, local municipalities are facing large capacity and funding challenges to fully implement a tobacco retail licensing program.

¹⁰ ChangeLab Solutions. *Model ordinance checklist: Tobacco Retail Licensing*. California: California Department of Public Health. <http://changelabsolutions.org/publications/model-ordinance-checklist-tobacco-retailer-licensing>. Published December 2011. Accessed August 10, 2012.

Table 1: How does Model Ordinance mandatory characteristics compare to characteristics of local ordinances assessed?	
Policy options in Model Ordinance	How did local ordinances compare?
All tobacco product retailers must obtain a nontransferable license	All retailers required to obtain licensure except in one jurisdiction. Transferability not uniformly addressed
All retailers must pay an <i>annual</i> licensing fee that <i>fully covers all program costs</i> , including administration and enforcement	Ashland- annual,
Violating <i>any</i> tobacco law is also a violation of the license	None except Silverton, but Silverton only licenses tobacco stores.
Identification of agency responsible for administration (who issues the license)	All
Identification of agency responsible for enforcement (but also enforceable by <i>any</i> agency)	Many do not identify enforcement agency, none is enforceable by any agency
Each violation results in a <i>temporary</i> revocation of the privilege to sell tobacco products (and paraphernalia if applicable) for a specified number of days for up to 4 violations	None

Part Two Summary

- Most local Oregon TRL ordinances address sales to minors and are not perceived as an additional mechanism for a wider enforcement effort of tobacco control laws.
 - Potential reasons for this include:
 - Limited resources;
 - Limited communication between law enforcement, public health, and city or county business offices.
- All of the local ordinances have limitations when compared to a model ordinance, specifically with respect to fees adequate to cover administration. However, some had strong characteristics, such as provisions for retailer education, and language regarding non-transferability of the license.
- None of the local ordinances has attempted to address other characteristics of the retail environment such as the time, place, or manner of tobacco advertising, or the regulation of other types of tobacco products, such as flavored cigars.
 - Potential reasons for this include:
 - All of the TRL ordinances examined were enacted before the Tobacco Control Act, and before the appearance on the market of new tobacco products.
 - Regulation of the retail environment is one of the newer strategies in local tobacco control.
- State licensure was appealing to almost all local respondents. For the rest, they had not thought about or had any opinion of a state tobacco retail license. Respondents felt that it could make their jobs easier, but made several recommendations:
 - A state TRL state law should be strong (i.e., include as many “model ordinance” provisions as possible);
 - Licensure should be structured to ensure sufficient local capacity and funding to administer, monitor, and enforce the law.

PART THREE: Description of state-level tobacco retail licensure laws from five of Oregon’s neighboring states (California, Idaho, Nevada, Utah and Washington)

Oregon’s Tobacco Prevention and Education Program was also interested in the experience of surrounding states with respect to tobacco retail licensure (TRL). Tobacco program staff from five states with TRL laws were interviewed (California, Idaho, Nevada, Utah, and Washington). When referred, personnel from either the Department of Revenue or the Department of Justice were also interviewed. A representative from the Washington State Liquor Control Board was also interviewed, because that agency contracts with the Federal Food and Drug Administration to enforce the Tobacco Control Act. Interview topics included:

- Content and purpose of TRL law;
- Licensure fees;
- Enforcement and penalty structures;
- Support and resistance to licensure;
- Coordination between agencies;
- Retailer education;
- State-level TRL versus local ordinances, and the issue of preemption

Content and purpose of laws

State-level tobacco retail licensing (TRL) has the potential to be the enforcement arm of a strong public health strategy. However, the state-level TRL laws in the five states interviewed varied in their purpose and content. One explanation for this is that states have a wide range of statutory responsibilities with regard to tobacco. Every state collects tobacco excise tax revenue from manufacturers and must assure that retailers are complying with tax laws. Also, each state has laws in place that prohibit tobacco sales to minors, and many have additional laws that prohibit practices such as self-service displays of tobacco products, sales of single cigarettes, and restrictions on sampling. Administration and enforcement of these two most common “domains” of state-level tobacco regulation often lie within different government agencies and departments.

Often, the requirement that tobacco retailers be licensed by the state is initiated and designed to enforce one or the other of these main areas of tobacco regulation. In the extreme case, licensure laws designed to only deter tax evasion do not consider violation of any public health related tobacco law grounds for licensure suspension. In other cases, violation of tax laws and laws against sales to minors (but not other laws such as prohibition of self-service displays) are grounds for license suspension. In a third category are the TRL laws assessed that appear to be designed to address public health. Those laws consider the violation of any state law (including violations of tax law) as grounds for suspension and thus tended to be more comprehensive.

Described below in greater detail is the content and purpose of different states' licensure laws. Laws are grouped into three types: 1) those where licensure is issued by a state Department of Revenue, with no connections to other tobacco laws; 2) those where licensure is issued by Department of Revenue, but where there is connection to sales to minors laws; and 3) those where licensure is issued by Public Health authorities. Included in Appendix 2 is a summary of characteristics of each state law.

Licensure issued by a state Department of Revenue with no connection to other tobacco laws

In California, the state-level tobacco retail licensure law is designed only to address tax collection and prevent tax evasion. Separate statutes exist that address sales to minors and other tobacco laws. California Penal Section Code 308 imposes penalties for sales to minors and requires age-of-sale warning signs. The Stop Tobacco Access to Kids Enforcement (STAKE) Act additionally allows the Health Department to use youth decoys in on-site inspections, prohibits self-service displays of tobacco products and paraphernalia and sales of individual cigarettes. The law also restricts storefront advertising, tobacco samples or coupons, and billboards within 1000 feet of schools (as per the Master Settlement Agreement). Detailed information is available from a publication entitled Administrative Enforcement Roadmap.¹¹

Penalties for violation of California tobacco tax laws are clearly stated in the legislation. As enacted, the licensing law also contains a provision requiring the Board of Equalization to take action against a license for violations under the STAKE Act and Penal Code 308 regarding sales to minors. However, the law also contained "trigger" language making the requirement operative only if the Annual Youth Tobacco Purchase survey results documented a noncompliance rate of 13% or more. In 2012 new legislation (effective in 2013) removed the "trigger" language, and requires the Board of Equalization, upon notification by the California Department of Health, to suspend or revoke a license for a third, fourth, or fifth violation of the STAKE Act.

The state of Nevada also licenses retailers under their revenue and taxations statutes for the purposes of regulating tax collections. As in California, other laws are in place that prohibit sales to minors in retail establishments or through the internet, prohibit sale of open packages or single cigarettes, regulate vending machines and require vendor-assisted sales in most settings, and describe procedures for random unannounced inspections to be conducted by the Attorney General's office. Licensure is not revocable for any violations except those under tax law.

¹¹ChangeLab Solutions. *Administrative Enforcement Roadmap*. California: California Department of Public Health. <http://changelabsolutions.org/publications/administrative-enforcement-roadmap>. Published June 2004. Accessed October 15, 2012.

Licensure issued by Department of Revenue, with connection to sales to minors laws

Utah also licenses retailers for the sale of cigarettes, but not other tobacco products, under the Cigarette and Tobacco Tax and Licensing Act. Separate laws are in place against selling or providing tobacco, electronic cigarettes or clove cigarettes to underage persons (younger than 19), against underage persons using tobacco in any place of business, and against possession of tobacco, or electronic cigarettes by an underage person. In addition, there are laws against self-service displays of tobacco products or electronic cigarettes, and strict regulations of retail tobacco specialty businesses (smoke shops) are in place. However, only illegal sales to minors constitute grounds for licensure suspension or revocation.

Washington State also has a licensure law that was issued by the state Department of Revenue. In addition, Washington has tobacco control laws that address the common regulatory areas of possession and/or sales to minors, regulation of vending machines and requirements of vendor-assisted sales, as well as prohibition of sales of opened cigarette packages or single cigarettes. In addition, Washington also requires tobacco-related coupons to be redeemed in a retail store in a face-to-face transaction, and requires a tobacco sampling license for distribution of samples of tobacco.

The Washington licensing law is unique among those assessed because authority for the enforcement of both the tobacco tax and public health laws lies with the state Liquor Control Board. The Board may suspend or revoke licensure for violations of either type of law.

Licensure issued by Public Health Authorities with connection to all state or local tobacco laws

Idaho's licensure law is issued under the Health and Safety Statutes, and clearly states the legislative intent is to prevent youth access to tobacco products and to "promote the general health and welfare of Idaho's young people." Besides laws to regulate sales of tobacco to minors, Idaho statutes also require vendor-assisted sales, prohibit vending machines and sale of single cigarettes or opened packages. License holders are also not allowed to make a delivery sale of tobacco product to a minor. In addition, procedures for random and unannounced inspections are clearly prescribed. In Idaho, licensure can be suspended for failure to comply with "any current state or local law, rule, or regulation regarding the sale or distribution of tobacco products." This includes failure to comply with tobacco tax regulations.

Licensure Fees

Retail licensure fees range from \$0 (Idaho and Nevada) to between \$20 and \$100. California has a one-time fee, while most others (except Utah) require annual renewal. Wholesale licenses in states that have them tended have higher fees.

No state generates adequate resources from licensure fees to cover the cost of program administration and enforcement. In California, the one-time fee generated a startup fund that is supplemented on an ongoing basis by tobacco tax revenues. By statute, any state program that benefits from tobacco tax revenues must contribute proportionately to the deficit in the licensing program. In other states programs must be supported by other sources of revenue.

Respondents from all states pointed out the importance of fee structures that are adequate to cover enforcement. In addition, annual license renewal is important to keep lists of retailers up-to-date in states with no centralized business license system.

Respondents also pointed out that the lack of a fee can reduce resistance to licensure among retailers. One respondent pointed out that adequate fees are needed but that the situation becomes “a balancing act.” Idaho, one state with a no-fee licensure program reduces costs by issuing permits through a web-based system. However, since all retailers in the state are required by statute to be checked for youth access violation at least once annually, other revenue must be allocated for enforcement.

Enforcement

The structure of the enforcement systems across the different states were highly variable, with different agencies being involved to different degrees. In general, Departments of Revenue conduct their own enforcement activities with regard to taxation, whether or not retail licensure is built into their penalty structures. For the remaining tobacco laws, enforcement is generally the obligation of local law authorities, the Attorney General’s office (or local district attorneys), and at times, the Health Department or the Liquor Control Board. In Utah, however, a compliance officer appointed by the Board of Education may enforce the law against youth possession.

In California, the Board of Equalization (equivalent to the Department of Revenue in other states), conducts enforcement activities regarding taxation (and licensure). Local law enforcement and the Food and Drug Branch of the California Department of Health Services enforce the sales to minors law (STAKE act), laws prohibiting self-service displays, minimum pack size, and laws regulating sampling and the sale of bidis may be enforced by the Attorney General, a district attorney, county counsel or a city attorney.

In other states, the picture is similar, with enforcement duties often shared across multiple agencies. The exception is Washington State, where the state Liquor Control Board is empowered through inter-agency agreements to enforce all sales and distribution of tobacco products. This includes statutes related to revenue collections, sales to minors, vending machines, coupons, and sampling. Local law enforcement may also conduct compliance checks.

Respondents from all states were unanimous in noting issues with enforcement. In general, the problems lay in the following areas:

Unfunded or underfunded responsibilities

“The locals are doing their own inspections, and they aren’t cross-checked with Synar, state, or federal inspections. This makes for poor efficiency, with four different inspections being carried out.”

Agencies are stretched thin, and many have experienced budget reductions in previous years. Field inspections are expensive especially in large states where extensive rural areas must be covered with few staff. For this reason, many respondents noted that at the very least, tobacco retail licensure could generate a current and complete list of retailers so that field work could be made more efficient.

Assignment of enforcement to multiple agencies creating a lack of coordination and communication

Most states have separate teams for the enforcement of different types of laws (revenue versus sales to minors), creating missed opportunities for coordination and synergy. Several respondents mentioned that placing the responsibility for enforcement of tobacco laws with local law enforcement can create problems. Local legal authorities are understaffed and may not be in a position to rank tobacco regulation as a top priority for their work. Also, the retailer compliance checks that are carried out under the Synar amendment are sometimes done by state-level entities such as the Public Health or Behavioral Health agencies. Even if done in partnership with local authorities, the practice may give the impression that no other enforcement is needed.

Penalty Structures

Penalty structures for violation of state anti-tobacco laws vary in severity and enforcement mechanisms. TRL can be used effectively as an enforcement mechanism for tobacco laws, because it grants the right to sell tobacco and can be used to prohibit the sale of tobacco if a retailer violates any federal, state, or local tobacco control law. However, as noted above, the purpose and content of licensure laws, and how they are placed within the legal system generally determines how effective they are in assuring compliance with tobacco laws, and whether the cost of licensing is worthwhile.

For example, in California and Nevada, licensure is strictly related to revenue collections and only violations of tax law can endanger licensure. From a public health point of view, licensure is considered irrelevant, because even though other strong anti-tobacco laws exist in the state, they must be enforced under a separate penalty structure that does not include license revocation or suspension. On the other hand, some of the states that we assessed have penalty structures in place that use licensure broadly. For example, licensure in Idaho and Washington can be used to enforce all tobacco laws.

For licensure to act as the enforcement arm of a public health strategy it is clear that license suspension must be included in the legal penalties. However, unless the penalty structure is written in a way that is quickly graduated and includes long look-back periods, suspension may never be invoked. For example, both Idaho and Washington include license suspension for the violation of any tobacco law. However, in Idaho, civil penalties are only listed for sales to minors. These violations incur a fine at the first violation, but the look back period is only 2 years and the penalty amounts are low (see Appendix 2). Several respondents pointed out that low fines can be considered the “cost of doing business,” and that when look back periods are short and compliance checks are not frequent, it is very unlikely that that a retailer will accrue sufficient violations to experience licensure suspension. Washington State does have a

On combining multiple issues to gain support for TRL:

It's really important to find out what tobacco issues matter to a community. In one community where there Tobacco Retail Licensure had been proposed several times and failed, a new ordinance was introduced that incorporated a prohibition on drug paraphernalia (meth pipes) at mini-marts. TRL was then seen as necessary for law enforcement to do its job.

graduated penalty system that prescribes higher fines for each type of violation for both retailers and their staff, such as a clerk. Although this is a structure that could facilitate the accrual of violations, the look back period is also short (only two years), lowering the likelihood that suspension will occur.

Coordination between agencies

Respondents all agreed that increased coordination and communication among all agencies involved in the enforcement of tobacco laws is key. No state has a formal inter-agency committee dedicated to this purpose, and only Washington State has inter-agency agreements that allow one agency (the Liquor Control Board) to enforce tobacco-related laws.

Several reasons for lack of coordination among state agencies were mentioned. First each agency is obligated to fulfill its particular mission, and officials may be unaware of other stakeholder roles in the larger enforcement picture. Second, as mentioned, agencies are understaffed and underfunded. In some states, state agency offices are geographically separated, making communication more difficult.

Nevertheless, agency staff were generally supportive of each others' missions and responsibilities. One respondent mentioned that he, as a staff member of the Department of Revenue, often helped educate retailers about laws regarding the sales to minors even though his agency cannot expend resources on enforcing those laws.

The passage of the 2009 Tobacco Control Act adds another aspect to coordination and communication.

“Communication could be improved between tobacco control advocates and agencies conducting FDA or Synar inspections. There was a state law passed here that requires specific signage for tobacco risks in pregnancy, and we weren't aware of it...”

The FDA awards enforcement contracts to a variety of state agencies—in Washington for example, the Liquor Control Board conducts FDA enforcement checks, while in Utah and Idaho, Public Health Departments hold those contracts. The FDA does encourage coordination, but only under specific guidelines, creating a situation that requires clear role definitions.

One benefit of federal-state coordination mentioned by one respondent was that records of violations of the Tobacco Control Act could be made available to local law enforcement to take into consideration when deciding upon penalties. This practice could strengthen local penalty structures if a system were in place where the information could be easily accessed.

“I’d like to do annual conference calls with all the retailers for problem-solving but there’s not enough staff. I do an awful lot of listening.... It helps to frame the issue in terms of adolescent health and safety rather than a violation.”

Support and Resistance to TRL

As with any tobacco control law there will be challenges and opportunities for states to either update their TRL laws, or to establish a new TRL law. Respondents shared their experience with support and resistance to TRL.

Many respondents suggested that TRL is seen as “another tax” and as “unfriendly to business.” In one state, any proposal for a new tax triggers a requirement for a supermajority. It is therefore important to carefully consider how the cost of a license is framed. One solution proposed was to ensure that the entire cost of the license is dedicated to enforcement and could therefore be defined as a fee rather than a tax.

All respondents emphasized the importance of messaging TRL to policymakers as a youth safety issue. One respondent encouraged the involvement of youth and youth coalitions to give personal testimony to policymakers about their opinions about tobacco. In another state, the Parent-Teachers Association became the champion for the issue, and was very effective at presenting the issue in terms of children’s health. However, it was also strongly noted that these laws need to be established with a broader focus in mind. TRL, correctly used, will also support adults who are attempting to quit smoking, and can play a strong role in changing social norms toward tobacco.

Retailer Education

Some respondents mentioned how important it is for state agencies to start forming partnerships with retailers. They mentioned two distinct advantages. First, educating retailers on the content of tobacco laws is easier if communication is well-established. To this end, the Idaho State Health Department, for example, distributes a monthly newsletter to all retailers in the state. Second, partnerships with retailers are needed in order to create healthier retail environments, not just in regard to tobacco but also for alcohol, sugar-sweetened beverages,

and other foods of minimal nutritional value. In California (and in other places nationwide) Healthy Corner Stores Initiatives work with corner stores to encourage the availability of healthier items.

In many states, information and training materials are on the website or available through other training tools. Idaho makes available separate training materials for owners, managers and clerks. Also, Idaho statute provides a training form in which each tobacco control law is specified. Retailers and staff sign a statement that they understand each law, and these training records are taken into account for possible mitigation of penalties. Staff implementing Idaho's TRL consider this as an incentive for retailers to carry out training for managers and staff.

On relying on local ordinances alone:

"Sometimes a gesture in the directions of tobacco control is considered "job done." For example, a city council may sign off on a menthol resolution and then say, "That's enough, no need for tobacco retail licensing." Strong local policies can blunt the perception of need for a strong statewide policy."

State-level TRL versus local ordinances, and the issue of preemption

The existence of preemption or the prohibition of local jurisdictions from enacting any laws more stringent than those at the state level varied among the states we assessed. In Washington the state statute (RCW 70.155.13) states "No political subdivision may: 1) impose fees or license requirements on retail businesses for possessing or selling cigarettes or tobacco products, other than general business taxes or license fees not primarily levied on tobacco products; or 2) regulate or prohibit activities covered by RCW 70.155.020 through 70.155.080..."

This approach is the most limiting of local control, because it includes both issuance of a license (the enforcement strategy) as well as the restriction of local governments from passing the same or stronger laws as other tobacco-related state-level laws, such as sales to minors, location of vending machines, and laws against single cigarettes.

Other preemption statutes only limit the ability of local jurisdictions to license retailers, and do not specifically disallow local governments from passing stronger local tobacco control ordinances or regulations. The Idaho statute states: "Nothing in this chapter shall be construed to prohibit local units of government from passing ordinances which are more stringent than the provisions of this chapter. Provided however, local units of government shall not have the power to require a permit or license for the sale or distribution of tobacco products." (Idaho Statute 39-5713).

California and Nevada have no preemption language in their tobacco control or licensing statutes. In California in particular, approximately 100 local jurisdictions have passed local ordinances, and many are models for licensure policy.

Many key respondents expressed the opinion that a strong state-level licensure law that did not include preemption, and allowed local jurisdictions to enact more stringent regulations was the most advantageous policy environment for tobacco control. They felt that it was important for communities to be able to experiment with licensure and other types of tobacco control policies that fit their communities best, and to find out what types of administration and enforcement mechanisms work best.

Unfortunately no state assessed has this kind of TRL in place. The choice for tobacco control advocates and policymakers has been to determine which option is preferable in the prevailing environment—a weak state law with no preemption that allows local jurisdictions to “push the envelope” or a strong state law with preemption.

Although some respondents were encouraged to see considerable momentum at the local level, they thought there were some disadvantages to relying on local ordinances to address tobacco control in the retail environment. As mentioned, a weak state law leaves many communities uncovered, and these may be communities where sales rates and youth use are particularly high. Another problem lies in the danger that a community will pass an ordinance addressing only a narrow aspect of tobacco control and be unmotivated to pursue a more comprehensive set of regulations. A statewide law also provides simplicity, because there is only one licensing fee and set of regulations to follow.

Comparison of a model TRL ordinance to the state laws we assessed

The preceding discussion has addressed a number of characteristics and themes that arose in discussions with respondents about the state-level tobacco licensing laws in Oregon’s neighboring states. Many of the issues raised have been addressed through work done by ChangeLab Solutions¹⁰ which has produced model policy guidelines for TRL, as we noted in the previous section on local ordinances in Oregon. The model ordinance work was done for policy-making occurring at the local level, but many of the characteristics are transferable to the state level. Below we list the characteristics of tobacco retail licensing model ordinance considered mandatory and compare them to the characteristics of the state laws we assessed. The complete package of policy options developed by ChangeLab includes many more than those listed below and are available from their website.

Table 2: How does Model Ordinance mandatory characteristics compare to characteristics of state laws assessed?	
Policy options in Model Ordinance	How did state license laws compare?
All tobacco product retailers must obtain a nontransferable license	Comparable, but language regarding non-transferability is often absent
All retailers must pay an <i>annual</i> licensing fee that <i>fully covers all program costs</i> , including administration and enforcement	All states except one require annual renewal but fees do not cover program costs
Violating <i>any</i> tobacco law is also a violation of the license	Only Washington state
Identification of agency responsible for administration (who issues the license)	Comparable
Identification of agency responsible for enforcement (but also enforceable by <i>any</i> agency)	No state law allows enforcement by any agency
Each violation results in a <i>temporary</i> revocation of the privilege to sell tobacco products (and paraphernalia if applicable) for a specified number of days for up to 4 violations	No state law stipulates temporary revocation starting at first violation

Part Three Summary

- The purpose and content of state-level tobacco retail licensing (TRL) laws varied considerably across the states assessed.
 - Some states have TRL designed for revenue collection purposes only and have no connection to other tobacco control laws, such as those prohibiting sales to minors;
 - Some states have statutes designed for revenue collection purposes but do consider violations of sales to minors laws as grounds for license suspension or revocation;
 - Others are inclusive and consider the violation of any tobacco control law as grounds for license suspension or revocation
- As was the case with the local ordinances reviewed, no state TRL (or other tobacco law) has attempted to address other characteristics of the retail environment such as the time, place, or manner of tobacco advertising, or the regulation of other types of tobacco products, such as flavored cigars.
 - Potential reasons for this include:
 - All of the laws examined were enacted prior to the Tobacco Control Act, and before the appearance on the market of new tobacco products.
 - Regulation of the retail environment is one of the newer strategies in local tobacco control.
- Several states have preemption clauses in their statutory language, prohibiting local jurisdictions from enacting more stringent local ordinances. Respondents from states with preemption found it unfortunate that local communities did not have the opportunity to experiment with a TRL law that might be a better fit for their community.
- In many states, little enforcement of any tobacco law was occurring, except for compliance checks related to the Synar amendment. Penalties structures varied widely.
- No state had adequate fees in place to cover the enforcement of tobacco laws connected to licensure though some states had specific plans to cover resource shortfalls for their TRL program.
- All states reported some lack of coordination and communication between agencies. All thought an increase in communication would be beneficial to their work.
- Several states noted that good partnerships with retailers improve compliance with tobacco regulations.
- Framing TRL and other tobacco laws as a youth health and safety issue was seen as the most effective way to gain community-wide support. Several mentioned that the participation of youth coalitions was particularly helpful.
- In general, TRL was being under-utilized as an enforcement mechanism of a strong set of tobacco control laws. Better utilization would require better funding and better inter-agency communication and coordination.

Discussion and Recommendations

Tobacco Retail Licensing (TRL) is an important component of a comprehensive set of tobacco control laws. However, it must be conceptualized as the enforcement mechanism of these laws, rather than a freestanding regulation. To be most effective, TRL must meet the needs of all of the various stakeholders who have statutory obligations with respect to tobacco control and be seen by all as accessible tool for enforcement.

In Oregon local jurisdictions, and at the state level in Oregon's neighboring states, TRL is not currently being used in such a way. Licensure is sometimes related most closely to the collection of tobacco tax revenues, and most often is related mainly to compliance with youth access laws. It is rare that licensure can be suspended for the violation of other tobacco laws.

This is somewhat ironic because of the lack of strong evidence connecting youth smoking prevalence with compliance with sales to minors laws. There has been wide discussion in the tobacco control literature about this issue because it is well-known that youth who are experimenting with tobacco obtain much of it through social sources or a small number of noncompliant vendors. Some authors¹² have postulated a threshold of 90% compliance in order to have a sizeable impact on youth smoking.

Nevertheless, there is much that can be done in the retail environment to prevent youth smoking, support tobacco users who want to quit, and change the social context in our communities. TRL can be a useful tool for achieving those goals. Youth are exposed to intense advertising at the retail level, and the 2009 Tobacco Control Act states specifically that states are not preempted from regulating the time, place and manner of the sale and promotion of tobacco products. TRL could be the enforcement mechanism of new laws that address the intense cigarette advertising at the point-of-sale, and the emergence and promotion of new tobacco products specifically aimed at youth.

However, for TRL to act as such a mechanism it must carry fees that can support enforcement activities (or enforcement must be supported with other resources). Enforcement efforts should be coordinated, to prevent duplication and inefficiency, and could include retailer education about the harms of tobacco.

Much more research needs to be done on how licensing can communicate the fact that retailers are selling a toxic and dangerous product, and that the privilege to sell this highly profitable product can and will be revoked in the face of noncompliance with any tobacco law. Also, research needs to be done on the possibilities of combining enforcement with educational efforts to reinforce the notion that tobacco is highly addictive and dangerous, and the importance of not contributing to addiction of young people.

¹² Levy DT, Chaloupka F, Slater S. Expert opinions on optimal enforcement of minimum purchase age laws for tobacco. *J Public Health Management Practice*; 2000: 107-114.

TRL is only one component of the interface of public health and the retail store environment. Further work needs to be done on how public health advocates working in tobacco, alcohol and obesity prevention can work collectively to improve the retail environment. A healthy retail outlet will reduce exposure and aggressive marketing of tobacco, alcohol and sugary beverages, and will increase access and promotion of healthful food and beverage options.

Appendix 1: Oregon Local Tobacco Retail License Ordinances

Section A: Matrix of Tobacco Retail License Codes

	Benton County	City of Corvallis	City of Philomath
Local Code¹	Benton County Code, Chapter 17 ‘Sale of Tobacco’	Corvallis Municipal Code, Chapter 8.10 ‘Tobacco Retail Licenses’	Philomath Municipal Code, Chapter 5.30 ‘Sale of Tobacco Products’
Effective Date	October 24, 1997	January 1, 1998	May 24, 2000
General Business License	No	No	No
Number of Retailers	9	36	9
Prohibit retailers from violating any federal, state or local tobacco control laws	No, sales to minors and vendor assisted sales only.	No, sales to minors and vendor assisted sales only.	No, sales to minors and vendor assisted sales only.
Issuing Agency	Sheriff Administration, Leroy Fenn Approved by Sheriff’s Office	City of Corvallis, Finance Department, Tony Krieg Approved by City Policy	City of Philomath, Recorder, Ruth Post Approved by City Policy
Fee²	\$35 or \$41 if it accompanies an OLCC license fee ³	\$35 or \$41 if it accompanies an OLCC license	\$35
Monitoring Agency	Sheriff and Health Department – monitoring does not occur.	Police conduct youth decoy checks every couple of years to monitor sales to minors. Monitoring does not occur for vendor assisted sales.	No agency is identified in code - monitoring does not occur.
Responsible for Violation	License Holder Clerks can be cited and fined up to \$500 under OR law	License Holder Clerks can be cited and fined up to \$500 under OR law	License Holder Clerks can be cited and fined up to \$500 under OR law
Hearing officer/body	Hearing Officer designated by the Board of Commissioners.	Hearing Officer appointed by the City Manager.	City Council
Type of initial hearing	Written hearing request to the Health Administrator and in person hearing.	Written or in person hearing request to the City Manager, and in person hearing.	In person hearing with the City Council.
Discretionary vs. mandatory penalties⁴	Mandatory	Mandatory	Mandatory
Penalty Schedule [See Section B]	A. For violating any provision.	A. For violating any provision.	A. For violating any provision.
Licensure applicable to all retailers?	Yes	Yes	Yes
License transferable?	No	No	No
Renewal schedule	Annual	Annual	Annual

	City of Ashland	City of Central Point	City of Eugene
Local Code	Ashland Municipal Code, Chapter 6.42 'Regulate Vendors of Tobacco Products'	Central Point Code, Chapter 8.10 'Tobacco Retail Licenses'	City of Eugene Administrative Order, No. 53-01-03-F and Retail License Administrative Rule R-3.515 'Adopting Tobacco Products' City Code Chapter 3 [3.500 – 3.515] 'Tobacco Retail Licensure'
Effective Date	November 7, 2001	July 1, 2000	March 9, 2001
General Business License	Yes	Yes	No
Number of Retailers	24	10	123
Prohibit retailers from violating any federal, state or local tobacco control laws	No, sales to minors and vendor assisted sales only.	No, sales to minors and vendor assisted sales only.	Yes, all licenses must comply with all city, county, state, and federal laws and regulations that are applicable to the sale and distribution of tobacco products.
Issuing Agency	City of Ashland, Administration, Judy Taus Approved by City Council	City of Central Point, Finance Department, Clarice Johnson Approved by City Council	City of Eugene, Business and Economic Development Office, Jimi Parker Approved by City Council
Fee²	\$40 initial, \$20 renewal	\$10	\$55 initial, \$35 renewal, \$15 late fee
Monitoring Agency	No agency is identified in code- monitoring does not occur.	No agency is identified in code – monitoring does not occur.	No agency is identified, but the Business License Office does enforcement, which is complaint-driven. Monitoring does not occur.
Responsible for Violation	License Holder Clerks can be cited and fined up to \$500 under OR law	License Holder Clerks can be cited and fined up to \$500 under OR law	License Holder Clerks can be cited and fined up to \$500 under OR law
Hearing officer/body	Not mentioned	Hearing Officer appointed by City Administrator.	Hearing Officer appointed by City Manager.
Type of initial hearing	Not mentioned	Written or in person hearing request to city administrator, and in person hearing.	Written hearing request within 15 days to City Manager, and in person hearing.
Discretionary vs. mandatory penalties⁴	Mandatory	Mandatory	Mandatory
Penalty Schedule [See Section B]	A. For violating any provision.	A. For violating any provision.	A. For violation of not having a valid license. B. For violation of sales to minors.
Licensure applicable to all retailers?	Yes	Yes	Yes
License transferable?	No	No	No
Renewal schedule	Annual	Annual	Annual

	City of Salem	City of Silverton	City of Springfield
Local Code	City of Salem, Chapter 30 'Business and Occupation Licenses' Chapter 39 'Tobacco Retail Licenses'	Silverton Municipal Code, Chapter 5.16 'Regulation of Tobacco Products' Chapter 5.20 'Regulation of Tobacco Stores' ⁵	Springfield Municipal Code, 5.300 'Sale and Distribution of Tobacco and Tobacco Products to Minors
Effective Date	2002	2000	February 4, 2002
General Business License	No	Yes	No
Number of Retailers	Not active	Not active	43
Prohibit retailers from violating any federal, state or local tobacco control laws	No, sales to minors and vendor assisted sales only.	Yes, if determined that a permitted tobacco store violates city or county ordinances or state or federal laws, the city manager can revoke the permit.	No, sales to minors and vendor assisted sales only.
Issuing Agency	Not active Approved by City Council	City of Silverton, Business Services Department, Not active Approved by City Council	City of Springfield, Business Services Department, Sophia Seban Approved by City Council
Fee²	\$25 application fee, \$45 renewal	\$10	\$73.50 initially, \$47.25 renewal
Monitoring Agency	No agency is identified in code—the program is inactive. City of Salem and Marion County Health Department are working on reinstating the program.	No agency is identified in code—the program is inactive. It is likely Business Services Department would do enforcement if it were activated.	Lane County Public Health or Oregon State Police
Responsible for Violation	License Holder Clerks can be cited and fined up to \$500 under OR law	License Holder Clerks can be cited and fined up to \$500 under OR law	Store Clerk Clerks can be cited and fined up to \$250
Hearing officer/body	Municipal Court	Not specified	Municipal Court
Type of initial hearing	In person hearing with the Municipal Court.	Written hearing request to the city council, and in person hearing.	Written hearing request to the city council, and in person hearing.
Discretionary vs. mandatory penalties⁴	Discretionary	Discretionary	Discretionary
Penalty Schedule [See Section B]	Not stated	C. For a tobacco store violation D. For a vendor-assisted sales violation	E.
Licensure applicable to all retailers?	Yes	No	Yes
License transferable?	No	Not stated	Not stated
Renewal schedule	Annual	Not stated	Annual

Section B: Penalties

- A. Standard Penalties for violation of TRL are:
- 1st violation: \$200 and letter of penalties for further violations
 - 2nd violation in 2 year period: \$350, 45 day suspension
 - 3rd violation or more in 2 year period: \$500, revocation with the ability to reapply after 6 months.
 - Failure to pay fine within 30 days results in suspension of license until fine is paid.
 - Selling tobacco without a license: \$500 fine for each day violation occurs.
- B. Eugene has a civil penalty formula for those in violation of sales to minor laws. City management calculates the dollar amount of the assessment per day by multiplying the amount of the BASE by \$10. The maximum assessment for a violation per day is \$2000. BASE is the sum of "E"+"P"+"C"+"K", which are measured on a scale of 1, 3, or 5
- "E" is the effort made by the responsible person in taking all feasible steps or procedures necessary or appropriate to correct or prevent the violation
 - "P" is the frequency of prior violations of ordinances, rules, orders, or permits
 - "C" is whether the cause of the violation was an unavoidable accident or caused by others
 - "K" is the knowledge the responsible person has of city, state, and federal requirements related to tobacco product sales
- C. Penalty is revocation or suspension of permit for indeterminate amount of time
- D. Penalty is a fine not to exceed \$2,500, except in cases where a different punishment is prescribed by any ordinance. Each day's violation shall constitute a separate offense.
- E. Fine of up to \$1000 will be levied against the store clerk who completed the illegal sale. Notice of the violation shall be sent to the tobacco products retail license holder.

¹ All websites accessed in October 2012.

² Although there is a large range of fees for local licenses (nominal to as high as \$1,500), a typical fee range for "strong" license systems is approximately \$150 to \$400 annually to fund enforcement.

³ Ordinance contains language that states that fees shall be sufficient to fund administration, implementation and enforcement.

⁴ A discretionary penalty leaves the hearing officer room to exercise discretion in determining the number of days of a suspension. In a mandatory penalty schedule, as first or repeat violation automatically triggers a suspension for a fixed number of days.

⁵ "Tobacco store" is defined as any establishment whose sales of tobacco products meet or exceed 90% of the gross receipts of the establishment, and whose premises are not open to persons under 18 years of age. In Silverton, only tobacco stores are mandated to have a tobacco retailer's license.

Appendix 2: State Tobacco Retail License Laws: California, Idaho, Nevada, Utah, Washington

	California	Idaho
State Law¹	California Code-Division 8.6 [22970 – 22991] , California Cigarette and Tobacco Products Licensing Act of 2003 Sale to minors: Penal Code 308(a) STAKE Act, Business and Professions Code, Section 22950-22963	Idaho Statutes, Title 39 Health and Safety, Chapter 57 , ‘Prevention of Minors’ Access to Tobacco Idaho Administrative Code 16.06.14 , ‘Rules Governing the Prevention of Minors’ Access to Tobacco Products’
Preemption	No	Yes
General Business License	Yes	Businesses need to register with Dept of Labor, State Tax Commission, and Industrial Commission
Number of Retailers	~40,000 ²	1,841 ³
Prohibit retailers from violating any state tobacco control laws	No, and no license suspension for sales to minors.	No, sales to minors and vendor assisted sales only.
Issuing Agency	Board of Equalization	Department of Health and Welfare
Fee⁴	\$100 one-time fee	Free
Monitoring Agency	Board of Equalization and local law enforcement officers.	Dept of Health and Welfare
Civil vs. Criminal Citation	For not having a license: both civil and criminal citations possible, both subject to civil penalties	Civil
Penalty Schedule [See Section B]	Noncompliance with license requirement: fine up to \$5000, imprisonment for 1 year, or both. Failure to post license: up to \$500. Sales to minors: misdemeanor or civil action punishable by criminal fines ranging from \$200 to \$1000. Extra penalties under STAKE Act for sales to minors: \$200-\$6000. For not posting STAKE Act age-of-sale warning sign: \$50-\$500. Owner pays fine even if employee made the sale.	Sale to minors: 1 st violation: \$100 fine to retailer 2 nd violation: \$200, but waived if owner can show training program was in place 3 rd violation (in 2 yrs): \$200 and license suspension for 7 days. If violation was same employee, \$400. 4 th violation (in 2 yrs): \$400 and permit revoked, not less than 30 days

	Nevada	Utah
State Law	NAC Chapter 370 , 'Tobacco: Licenses and Taxes' NRS Chapter 370 , 'Supervision of Manufacturers and Wholesale Dealers' NRS Chapter 202.2493- 2497 , 'Youth access'	Utah Law Title 10 Chapter 8 , 'Regulation of tobacco businesses' Utah Law Title 26 Chapter 42 and Title 77, Chapter 39 'Sales to minors' Utah Law Title 59 Chapter 14 , 'Cigarette and tobacco tax'
Preemption	No	Yes
General Business License	Yes	No
Number of Retailers	Unknown	1600-1700
Prohibit retailers from violating any state tobacco control laws	No, sales to minors only.	No, sales to minors only.
Issuing Agency	Department of Taxation	State Tax Commission
Fee⁴	Free	\$30 initial, \$20 renewal (after 3 yrs); but may need to file a >\$500 bond with commission
Monitoring Agency	Department of Taxation—2 investigators (1 north region, 1 south region)	State or local public health
Civil vs. Criminal Citation	Civil	Civil and Criminal
Penalty Schedule [See Section B]	For sale to minors: Fine of up to \$500 and civil penalty of up to \$500.	Sale without license: class B misdemeanor Sale to minors (26-42-103) – Enforcement agency (public health) can fine the retailer: 1 st violation: <\$300 fine 2 nd violation (in 1 yr): <\$750 3 rd violation: <\$1000 Upon 3 rd violation, enforcement agency notifies commission and suspends license <30 days Upon 4 th violation, revokes.

	Washington
State Law	Revised Code of Washington (RCW) 70.155 and 26.28.020 , 'Access to Minors' Washington Administrative Code (WAC) 314-10 , 'Sale and distribution of tobacco products' RCW 82.24 , 'Tax on cigarettes' and RCW 82.26 , 'Tax on Tobacco products'
Preemption	Yes
General Business License	Yes
Number of Retailers	~6500
Prohibit retailers from violating any state tobacco control laws	Yes
Issuing Agency	Liquor Control Board and Master Licensing System
Fee⁴	\$93
Monitoring Agency	Liquor Control Board
Civil vs. Criminal Citation	Civil
Penalty Schedule [See Section B]	All are 2 year look back unless otherwise noted: Sales to minors or neglecting to post a sign: 1 st violation: \$100 fine to retailer 2 nd violation: \$300 3 rd violation: \$1000 and license suspension for 6 months 4 th violation: \$1500 and suspension for 12 months 5 th violation: Revocation of the license with no possibility of reinstatement for five years. Vending Machines: \$100 for each day of the violation (to retailer) Sale of cigarettes outside of original unopened package: Same penalty structure as sales to minors Non-retailers (clerks) may also be fined for violations of these tobacco laws.

¹ All websites accessed in October 2012.

² McDaniel P, Malone R. Why California retailers stop selling tobacco products, and what their customers and employees think about it when they do: case studies. BMC Public Health 2011, 11:848.

³ Prevent the Sale: Newsletter for Idaho tobacco retailers. Volume 11, Number 2. Feb 2012. Accessed at: <http://www.preventthesale.com/idaho/2012%20Edition02%20-%20Tobacco%20Warning%20Labels.pdf>

⁴ Although there is a large range of fees for local licenses (nominal to as high as \$1,500), a typical fee range for "strong" license systems is approximately \$150 to \$400 annually to fund enforcement.

