

Tobacco Retail Licensing Reduces Tobacco Sales to Minors: Six Arguments for Enforcement

A comprehensive retail tobacco licensing program is neither a punishment for retailers nor a duplication of programs established at other levels of government. Rather, as outlined below, local tobacco retail licensing programs that include retailer fees high enough to pay for enforcement, have been shown to be the most effective policy at reducing illegal sales by merchants. The following Six arguments explain why licensing programs are useless without a strong enforcement component.

1. Licensure Programs With Enforcement Reduce Tobacco Sales to Minors

It has been well established in numerous studies since the 1980's that active enforcement of state and local tobacco sales to minors laws reduces the percentage of retailers who illegally sell tobacco to minors.^{1,2,3,4,5,6,7} As the following examples indicate, local tobacco retail licensing programs with on-going enforcement reduces youth access to tobacco.

- A study of several Minnesota cities found that an increased licensing fee together with strict enforcement of youth access laws decreased the number of youth able to purchase tobacco from 39.8% to 4.9%.⁸
- An additional study in Minnesota demonstrated that communities with comprehensive youth access laws, including a license, reduced their youth smoking prevalence. The seven communities with comprehensive local youth access ordinances including a licensing program that included at least 2 unannounced compliance checks, had a statistically significant lower rate of youth smoking prevalence than the control communities. Most importantly, these communities demonstrated a reduction in perceived availability of cigarettes by youth from commercial sources.⁸
- Woodridge, Illinois, a city that has carefully monitored its licensing ordinance, which includes quarterly stings, has found it extremely effective in reducing tobacco sales to minors. Merchant sales to minors in Woodridge decreased from a baseline of 70% of retailers before the adoption of the ordinance to less than 5% in the year and a half after enactment.⁹

In contrast, research has shown that merely educating storeowners and clerks about illegal tobacco sales does not reduce tobacco sale to children over time. Studies also show that the tobacco industry's own "WE Card" merchant education and signage program does not decrease tobacco sales to minors.¹⁰

2. Our Community Can't Rely on State and Federal Programs

There are laws on the books that make it illegal to sell tobacco to minors (PENAL CODE 308(a) and the STAKE Act). However, because of the lack of enforcement retailers continue to sell tobacco products to children. These laws have little effect because local police and sheriff Departments cannot be expected to run an enforcement program without funding. Clearly, this is not sustainable. The State's enforcement program is also under funded. The STAKE program only conducts approximately 2,500 compliance checks a year. That means that the state checks just about 3 percent of the estimated 80,000 tobacco retailers in California each year. Yet, enforcement has shown to be the most significant factor in changing retailer behavior.

The recently enacted state tobacco licensing program (AB 71) did not improve the situation. The primary purpose of the state's tobacco license is to address cigarette smuggling. According to Victor V. Day, Principal Compliance Supervisor with the State Board of Equalization, "The

purpose of these enforcement activities [under AB 71] is to target tobacco retailers involved in the illegal sales of tobacco products that result in the loss of taxes paid to the State Board of Equalization. ***None of the monies from this one time license is used to conduct youth decoy tobacco stings in counties throughout the State of California (emphasis added).***"

Beyond the lack of funding, which would be enough to make the program ineffectual, penalties established under AB 71 are so weak that there is little to no risk of retailers losing their license for violating tobacco control laws. The state's program would not suspend a retailer's license until that retailer has been not just cited but also convicted of selling to minors four times in one year. It takes eight convictions in two years before a license is revoked. These conviction rates are unrealistic considering that since 1995 the STAKE program has not fined the same retailer more than three times, due to a lack of sufficient funding to do inspections.

At the federal level, although there has been some discussion regarding the FDA and the licensing of tobacco retailers, they do not have jurisdiction at this time and there is no reason to believe that they may gain this authority any time soon.

3. Public Health Officials Agree: Enforcement of Tobacco licensing is Necessary and Works

As the following quotes indicate, public health officials generally agree that licensing programs with a fee set high enough to pay for a comprehensive enforcement program is one of the best ways to keep retailers from selling tobacco to youth.

From the U.S. Centers for Disease Control and Prevention's (CDC) "Best Practices in Tobacco Control" report:

"Access laws should be actively enforced at the local, State and Federal levels through unannounced compliance checks in which minors attempt to purchase tobacco product. For tobacco control laws and regulations to be adequately enforced, universal licensure of tobacco outlet sources is necessary. . . . Fees from licensing of tobacco vendors can be used to fund enforcement activities and to develop and maintain active, large scale programs."

A copy of this report may be obtained at the following Web site:

http://www.cdc.gov/tobacco/research_data/stat_nat_data/bestprac-execsummay.htm

From the nonpartisan Congressional Research Service in a report to Congress:

"Studies indicate that retailer compliance is higher when there is active enforcement of youth access laws (i.e., unannounced compliance checks, and penalties for retailers caught selling to minors). Studies conducted in California and New York reported that enforcement led to significant reductions in sales to minors whereas education alone decreased sales only somewhat." *A copy of this report may be obtained at the following web site:*

<http://www.ncseonline.org/NLE/CRSreports/Agriculture/ag-72.cfm?&CFID=12716867&CFTOKEN=9177452>

From the journal, *Preventive Medicine*

A study by Joseph R. DiFranza, M.D., et al., published in the journal *Preventive Medicine*, Vol. 32, 2001, suggests that strong enforcement measures are, indeed, cost effective. The study found that enforcement programs capable of producing a 5 percent reduction in adolescent smoking at a cost of no more than \$250 per tobacco vendor could save 10 times as many lives as equally funded programs for early detection of breast or colorectal cancers.

A copy of this article may be obtained at the following web site:

<http://www.ingenta.com/isis/searching/Availability/ingenta:jsessionid=4e46pl11k48su.circus?pub=infobike://ap/pm/2001/00000033/00000003/art00926&targetId=1097170547519>

4. Fees for Enforcement Programs Do Not Punish Retailers

It is commonplace for governments to establish licensing programs to regulate businesses and to protect the public through enforcement. These programs and the related fees are not established as a way to punish businesses, but rather as a way to regulate an industry and to ensure that unscrupulous businesses do not give the entire industry a bad name. The only

businesses punished are those that break the law. Licensing programs nearly always include a fee on the regulated industry and in the case of tobacco licensing, the retailer who sells tobacco products.

Some examples of other licensing programs in California, and their related fees include:

- Stores that sale beer, wine and sprits for consumption off premises: original fee \$12,000 – Annual renewal fee \$446.
- State Gambling Incense - \$500 application fee. Annual fee based on the number of tables in the facility.
- Pharmacy - \$400 application - \$250 annual fee
- Produce Dealers - \$100-\$500 annual fee.
- Furniture and bedding retailer - \$240 biennially
- Retail Water Facility License - \$325.80 – adjusted annually
- Guide Dog School License - \$250 application – annual fee based on expenditures.

Licensing makes sense where government has an interest in ensuring that businesses comply with the law and it makes sense in the case of tobacco because keeping retailers from selling tobacco to children is crucial if we want to prevent future generations from suffering a lifetime of addiction to one of the world's most deadly products.

5. Funding Enforcement With an Annual Fee will Reduce Illegal Tobacco Sales to Children and is Good Public Policy

Good public policy requires sufficient funding to a program so that it may achieve its stated goals. Trying to fund an enforcement program through “penalty licensing” (only requiring retailers that violate the law to obtain a license), high fines or funds appropriated from other sources that may disappear after a year or two of funding, does not allow for a sustainable program with regular enforcement.

In fact, many communities that originally established programs without annual fees, such as Contra Costa County and the City of Los Angeles, are now going back and passing substantial annual fees to ensure that their enforcement programs are active and sustainable.

Establishing annual fees is also good public policy because it sends tobacco retailers the message that the community is serious about local and state tobacco retailer laws and there are serious consequences for those in violation. Tobacco retailers must take their responsibility seriously and our community must hold them accountable.

6. We Can't Afford Not to Fund Enforcement

Keeping tobacco out of the hands of children is a responsibility of local stores and shops that sell tobacco. Children in our community are buying cigarettes from retailers now, and it's time for our elected leadership to enact a tough local tobacco licensing policy that funds ongoing local enforcement of tobacco retailer laws to help prevent future generations from getting addicted to tobacco and suffering from tobacco-related disease.

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2. Altman DG, Whellis AY, McFarlane M, et al. The relationship between tobacco access and use among adolescents: a four-community study. *Social Science Medicine* 1999; 48:759-775.
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7. Gemson DH, Moats HL, Watkins BX, et al. Laying down the law: reducing illegal tobacco sales to minors in central Harlem. *American Journal of Public Health* 1998; 88:936-939.
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