

# Tobacco 21 and Retail Permitting: The Need for Deliberate Action

## To prevent tobacco product sales to youth, North Carolina needs to raise the age of purchase to 21 and implement a retailer permitting system.

- North Carolina needs to raise the age to purchase tobacco products to 21 to match federal law and prevent youth use of tobacco products.
- The vast majority of states have a tobacco retailer permitting system, allowing them to know who is selling tobacco products. You can't monitor what you don't know.
- A permitting system would generate fees for a self-sustaining system, giving the NC Alcohol Law Enforcement Division (ALE) the capacity to conduct inspections of all tobacco retailers and the ABC Commission the capacity to enforce tobacco retail sales laws.

## It's important to prevent the sale of tobacco products to people under 21.

- Adolescents and young adults are especially susceptible to the effects of nicotine—the highly addictive chemical compound found in tobacco—because their brains are still developing.<sup>1</sup>
- Approximately 95% of adults who smoke started doing so before they turned 21.<sup>2</sup> Many smokers transition from experimental use to regular, daily use between the ages of 18 to 21.<sup>3</sup>
- In 2019, Congress increased the federal minimum legal sales age of all tobacco products, including e-cigarettes, from 18 to 21. While a majority of states (39 states<sup>4</sup> as of November 2021) have increased their minimum tobacco sales age to 21 to match federal law, North Carolina's minimum sales age remains 18.
- North Carolina should raise its tobacco sales age to 21 to prevent confusion among retailers and customers and ensure that people under 21 are not able to purchase tobacco products.

## North Carolina has experienced an alarming increase in the use of tobacco products by young people in the past decade—especially e-cigarettes, which are mostly acquired from retailers.

- The North Carolina Youth Tobacco Survey shows that tobacco use among youth has increased in the past decade, with especially alarming trends in the use of e-cigarettes.<sup>5</sup> From 2011 to 2019, North Carolina saw more than a five-fold increase in e-cigarette use among middle schoolers and more than a ten-fold increase among high schoolers.<sup>6</sup>
- Most NC young people who use e-cigarettes get them from retail locations like convenience stores, grocery stores, and vape shops.<sup>7</sup>
- NC young people who get e-cigarettes from friends primarily get them from friends who are under 21.<sup>8</sup>

## **North Carolina is at risk of losing millions of federal dollars for substance use disorder treatment if it does not effectively prevent underage sales of tobacco products.**

- Federal law requires states to annually inspect a random sample of tobacco retailers to determine what percentage are selling to minors. Under the Synar amendment, if the percentage of underage sales in the survey goes above 20%, the state may be forced to forfeit millions of dollars in federal Substance Abuse Prevention and Treatment block grant monies that fund prevention, treatment, and recovery initiatives, such as efforts to address the opioid epidemic.<sup>9</sup>
- In 2019, North Carolina actually exceeded the 20% threshold with a violation rate of 20.8% but was not penalized because it was within the statistical margin of error. This violation rate, however, sounded the alarm that North Carolina needs to focus on reducing sales to minors.

## **There is an uneven playing field among tobacco retailers, as some are inspected by ALE and some are not—making it easier for uninspected retailers to engage in illegal practices.**

- There is limited ability to know where tobacco products are being sold in North Carolina. Only a small subset of tobacco retailers in North Carolina are required to be licensed by the Department of Revenue.<sup>10</sup> We can't make sure tobacco retailers are obeying the law if we don't know they exist.
- In addition to selling tobacco to youth, violations that have been found at tobacco retail sites include: operating gambling machines, buying large quantities of cigarettes to sell across state lines, selling counterfeit products, counterfeit labeling of marijuana for sale as CBD, selling fake urine for evasion of drug detection, and selling drug paraphernalia and illicit and prescription drugs.<sup>11</sup>
- Even though ALE is authorized to enforce tobacco sales laws, it is not authorized to conduct inspections of tobacco retailers. ALE is thus not routinely entering tobacco retail stores, unless the store also sells alcohol or lottery tickets (for which permits are required by law). Because ALE has no inspection authority related to tobacco retailers, bad actors can continue to operate under the radar.
- Even when ALE is alerted to bad practices on the part of tobacco retailers, it has limited investigatory tools at its disposal, in contrast to its authority to investigate alcohol retailers.

- Tobacco retail permitting and inspections would prevent non-compliant retailers from getting away with their illegal practices, thus protecting law-abiding retail competitors.

## **Licensing or permitting of tobacco product retailers is an effective means to reduce sales to youth.**

- North Carolina is one of only 10 states in the country that do not require tobacco retailers to obtain a license or permit.<sup>12,13,14</sup>
- Tobacco retailer licensing and permitting programs are beneficial because they:
  - ♦ Allow the state to know where tobacco products are being sold;
  - ♦ Allow the state to inspect for responsible retail practices; and
  - ♦ Provide a mechanism for enforcing the law when violations are detected.<sup>15</sup>
- The U.S. Surgeon General and the National Academy of Medicine have identified the licensing of tobacco retailers as an evidence-based measure to reduce sales to youth.<sup>16,17</sup>
- A tobacco licensing law that provides a funding mechanism for compliance checks and enforcement can result in large reductions in youth use of cigarettes and e-cigarettes.<sup>18</sup>

## **The North Carolina ABC Commission is well situated to oversee permitting of tobacco retailers.**

- The NC Alcoholic Beverage Control (ABC) Commission issues permits to all businesses that sell alcoholic beverages.<sup>19</sup> The ABC Commission can levy fines or suspend or revoke the permit of businesses that violate alcohol sales laws.<sup>20</sup>
- Repeat offenses by alcohol permit holders are low. In FY20, the ABC Commission received violation reports for approximately four percent of all active permit holders, but received a second violation report for only approximately 0.4 percent of active permit holders.<sup>21</sup>
- The ABC Commission helps permit holders comply with relevant laws and rules. It offers no-cost training classes to educate permittees on important topics, such as preventing sales to underage and intoxicated persons and detecting fake IDs.<sup>22</sup>
- The ABC Commission has the technical knowledge and already has much of the necessary infrastructure in place to establish a tobacco retailer permitting system.
- The ABC Commission could significantly streamline the tobacco retailer permit application process for businesses that already have an alcohol sales permit.
- ALE could work hand-in-hand with the ABC Commission to enforce laws against underage sales of tobacco products in an administrative fashion, just as it does for alcohol.

1. Raising the Tobacco Age to 21, CAMPAIGN FOR TOBACCO-FREE KIDS, <https://www.tobaccofreekids.org/what-we-do/us/sale-age-21> (last updated Jan. 9, 2020).
2. Id.
3. Id.
4. Preventing Tobacco Addiction Foundation, Tobacco 21, (2021), <https://tobacco21.org/>.
5. North Carolina Cross-Sectional, Online Survey Summary Tables. 2021: 1-104, Ctr. for Disease Control (last viewed Oct. 10, 2021).
6. Id.
7. North Carolina Cross-Sectional, Online Survey Summary Tables. 2021: 1-104, Ctr. for Disease Control (last viewed Oct. 10, 2021).
8. U.S. Dept of Health and Hum. Serv., The National Academy of Medicine, Ending the Tobacco Problem: A Blueprint for the Nation (Richard J. Bonnie et al. eds., 2007).
9. Revision to SAMHSA Guidance on Tobacco Regulation, Substance Abuse and Mental Health Services Administration (June 12, 2020), <https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf>.
10. N.C. Gen. Stat. § 105-113.36 (2019).
11. N.C. Alcohol Law Enforcement Division.
12. State Tobacco Activities Tracking and Evaluation (STATE) System Licensure Fact Sheet, Ctr. For Disease Control (last reviewed: May 18, 2021), [https://www.cdc.gov/statesystem/factsheets/licensure/Licensure.html#anchor\\_1562854161](https://www.cdc.gov/statesystem/factsheets/licensure/Licensure.html#anchor_1562854161).
13. Oregon's tobacco retail licensing requirement begins on January 1, 2022. Senate Bill 587 - Tobacco Retail Licensing, Or Dept of Revenue (Jan.1, 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/4994>.
14. CO. Legis. Assemb. HB20-1001. Reg. Sess. (2020) <https://leg.colorado.gov/bills/hb20-1001>.
15. Ian McLaughlin, License to Kill: Tobacco Retailer Licensing as an Effective Enforcement Tool, Tobacco Control Legal Consortium (Apr. 2010), <https://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>.
16. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, U.S. Dept of Health and Hum. Serv. (2014), [https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf\\_NBK99237.pdf](https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf).
17. Id.
18. Roe L. Astor, et al., Tobacco Retail Licensing and Youth Product Use, Pediatrics (Jan. 7, 2019), <https://pediatrics.aappublications.org/content/pediatrics/143/2/e20173536.full.pdf>.
19. Annual Synar Report 2020, N.C. Dept of Health & Hum Serv. (Nov. 11, 2010), <https://www.ncdhhs.gov/media/12523/download?attachment%20https://portal.abc.nc.gov/Web%20Documents/Sections/Media%20Resources/Annual%20Reports/2020%20Annual%20Report.pdf>.
20. Report on Retail Sale of Spirits, N.C. Alcoholic Beverage Control Commission (Dec. 1, 2018), [https://www.nabca.org/sites/default/files/assets/files/NorthCarolina\\_1.pdf](https://www.nabca.org/sites/default/files/assets/files/NorthCarolina_1.pdf).
21. 2020 Annual Report, N.C. Alcoholic Beverage Control Commission (last updated June, 30 2020), <https://portal.abc.nc.gov/Web%20Documents/Sections/Media%20Resources/Annual%20Reports/2020%20Annual%20Report.pdf>.
22. Report on Retail Sale of Spirits, North Carolina Alcoholic Beverage Control Commission (Dec. 1, 2018), <https://www.ncdhhs.gov/media/12523/download?attachment%20https://portal.abc.nc.gov/Web%20Documents/Sections/Media%20Resources/Annual%20Reports/2020%20Annual%20Report.pdf>.

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