

Welcome!

Presentations and Discussion Will Be Best Viewed in **Speaker Mode**

- * 10:10 AM - Tobacco Free Florida Point-of-Sale Overview, Brittany Chatman, Bureau of Tobacco Free Florida
- * 10:25 AM - Limiting Youth Access with Tobacco Retail License in Your Community, Dr. Barry Hummel, QuitDoc Foundation
- * 11:10 AM – Lessons Learned and Panel Discussion
- * 12:10 PM – Break Out Sessions
- * 12:20 PM – Closing Remarks

Point-of-Sale Overview

* Brittany Chatman Bureau of Tobacco Free Florida

Brittany Chatman serves as the Statewide Tobacco Policy Manager for the Point of Sale policy area for Bureau of Tobacco Free Florida. Prior to joining Tobacco Free Florida at the statewide level, Brittany worked on various Tobacco Free Florida grant initiatives locally and regionally. Her areas of focus included flavored tobacco policies, school-based policies, point of sale policies, local tobacco free partnerships, and tobacco cessation. Currently, Brittany manages the program activities that focus on counteracting tobacco product marketing at the retail point of sale, of which the main focus of these program activities will be local Tobacco Retail Licensing (TRL).



Limiting Youth Access in Your Community with a Tobacco Retail License

Barry Hummel, Jr., MD, FAAP

QuitDoc Foundation

bhummel@quitdoc.com



Federal Regulation of Tobacco

- * *Family Smoking Prevention and Tobacco Control Act* signed into law June 22, 2009
- * The original law specifically regulated:



Cigarettes

Roll-Your-Own

Smokeless

- * The original law also gave FDA the authority to identify and regulate additional tobacco products.

Federal Regulation of Tobacco

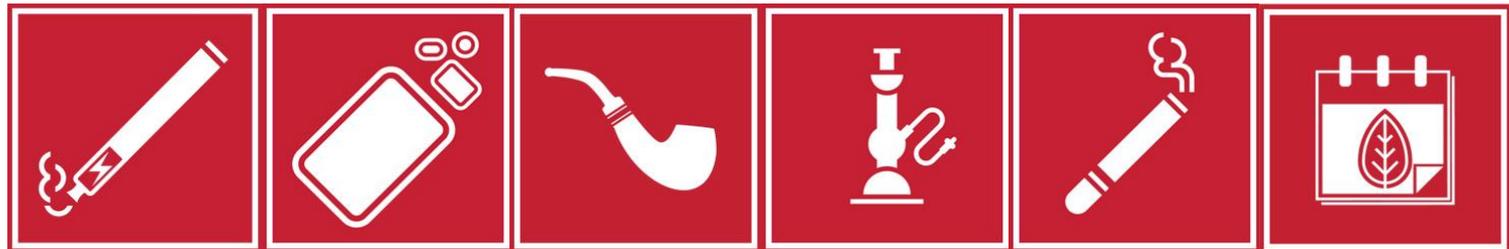
- * The law is very clear: FDA legislation regulates products and packaging and preempts tougher Tobacco Product Standards by states and local governments.
- * The law is very clear: FDA legislation DOES NOT preempt states and local communities from restricting *Time, Place, and Manner* of sales and tobacco marketing.

Federal Regulation of Tobacco

- * September 22, 2009: Sale of flavored cigarettes (with the exception of menthol) banned in the United States.
- * June 22, 2010: New smokeless tobacco regulations are implemented.
 - * Required larger warning labels on packaging and advertisements; and
 - * Restricted distributions of free samples of all smokeless tobacco products except from a “qualified adult-only facility”.

Federal Regulation of Tobacco

- * April 2014: FDA proposed deeming other tobacco products, including e-cigarettes, for further regulations.
- * On May 5, 2016, FDA's Center for Tobacco Products (CTP) finalized rules to regulate:



E-Cigarettes

Dissolvables

Pipe Tobacco

Hookah

Cigars

Future Products

Federal Regulation of Tobacco

- * New FDA rules took effect August 8, 2016, including
 - * Review new tobacco products not yet on the market.
 - * Help prevent misleading claims by tobacco product manufacturers.
 - * Evaluate the ingredients of tobacco products and how they are made.
 - * Communicate the potential risks of tobacco products (warning labels begin in 2018)

Federal Regulation of Tobacco

- * Recently, the FDA also started taking aggressive action against companies marketing flavored vaping products that appear to be targeting underage kids and teens.



E-liquid



Food product

Federal Regulation of Tobacco

- * Recently, the FDA also started taking aggressive action against companies marketing flavored vaping products that appear to be targeting underage kids and teens.
- * Summer 2018: FDA and the Federal Trade Commission (FTC) issued warning letters to companies that misleadingly labeled or advertised nicotine-containing e-liquids as kid friendly food products such as juice boxes, candies, and cookies; many of these products were subsequently pulled from the market.
- * More warnings were issued in November 2018.

Federal Regulation of Tobacco

- * Recently, the FDA also started taking aggressive action against companies marketing flavored vaping products that appear to be targeting underage kids and teens.
- * January 2020 : The Food and Drug Administration (FDA) announced that it will take action to remove most unauthorized flavored e-cigarette cartridges from the market.
- * This would apply to mint, fruit, and dessert flavors, but not menthol or tobacco-flavored products.
- * Also, it would apply only to flavored cartridges, not open tank systems or disposable products.

Federal Regulation of Tobacco



Federal Regulation of Tobacco

- * On December 20, 2019, during budget reconciliation, Congress included legislation to amend the Federal Food, Drug, and Cosmetic Act, and raise the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal **NATIONALLY** for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21.
- * This is federal legislation that can only be enforced by federal (national) agencies (FDA compliance checks)

Federal Regulation of Tobacco

- * “This is Our Watch”
 - * The FDA has created free program materials, including a mix of educational pieces for owners, managers, and clerks, as well as a variety of point-of-purchase tools to inform customers of the law and emphasize the retailer’s role.
 - * Poster
 - * Register stickers
 - * Regulation flyers
 - * Age verification calendar
 - * Register signage
 - * Instruction booklet

Federal Regulation of Tobacco

CUSTOMER-FACING



We care about
our community.
**NO LOOSIES
SOLD HERE.**

See FDA's website www.fda.gov/tobacco
for a full list of federal requirements for the sale of tobacco products.

THIS IS
OUR
WATCH
WE'LL WATCH YOUR PURCHASES



RETAILER-FACING



We follow the law.
**NO LOOSIES
SOLD HERE.**

See FDA's website www.fda.gov/tobacco
for a full list of federal requirements that may apply to you.

CTP-115

THIS IS
OUR
WATCH
WE'LL WATCH YOUR PURCHASES



Federal Regulation of Tobacco



Federal Regulation of Tobacco

- * March 4, 2019 FDA announced compliance data.
- * Violation Rates Between 35-44 Percent of All Inspected Stores
 - Marathon, Exxon, Sunoco, BP, Citgo, Mobil
- * Violation Rates Between 25-34 Percent of All Inspected Stores
 - Shell, Chevron, Casey's General Stores, 7-Eleven
- * Violation Rates Between 15-24 Percent of All Inspected Stores
 - Family Dollar, Kroger, Walgreens (22%), Circle K, Wal-Mart

Florida Regulation of Tobacco

- * **F.S. Chapter 569 – Tobacco Products**
 - * This chapter provides the statewide rules for tobacco sales and use in Florida.
 - * Authorizes permits to sell tobacco (F.S. 569.003)
 - * “Permits shall be issued annually, upon payment of the annual permit fee prescribed by the division.”
 - * “The division shall fix the fee in an amount sufficient to meet the costs incurred by it in carrying out its permitting, enforcement, and administrative responsibilities under this chapter, but the fee may not exceed \$50.”
 - * This statute does not appear to pre-empt local governments from issuing their own retail tobacco licenses.

Florida Regulation of Tobacco

- * **F.S. Chapter 569 – Tobacco Products**
 - * This chapter provides the statewide rules for tobacco sales and use in Florida.
 - * Authorizes permits to sell tobacco (F.S. 569.003)
 - * Restricts free samples (F.S. 569.0075)
 - * “The gift of sample tobacco products to any person under the age of 18 by an entity licensed or permitted under the provisions of chapter 210 or this chapter...”

Florida Regulation of Tobacco

- * **F.S. Chapter 569 – Tobacco Products**
 - * This chapter provides the statewide rules for tobacco sales and use in Florida.
 - * Authorizes permits to sell tobacco (F.S. 569.003)
 - * Restricts free samples (F.S. 569.0075)
 - * Restricts the sale of tobacco products to 18 years of age and older (F.S. 569.101)
 - * “It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any tobacco product.”
 - * First violation is a second degree misdemeanor; subsequent violations are first degree misdemeanors.

Florida Regulation of Tobacco

- * **F.S. Chapter 569 – Tobacco Products**
 - * Restricts the purchase and possession of tobacco by persons under 18 years of age (F.S. 569.11)
 - * “It is unlawful for any person under 18 years of age to knowingly possess any tobacco product.”
 - * “It is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product...”

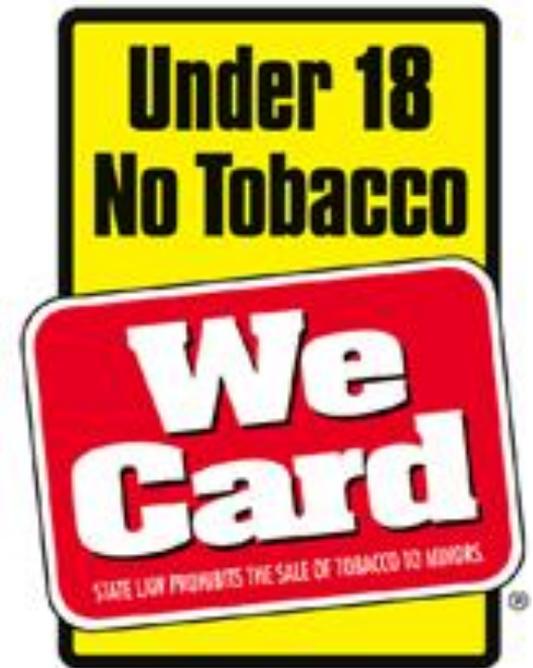
Florida Regulation of Tobacco

- * **F.S. Chapter 569 – Tobacco Products**
 - * Restricts the purchase and possession of tobacco by persons under 18 years of age (F.S. 569.11)
 - * “For a first violation, 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available;”
 - * “For a second violation within 12 weeks of the first violation, a \$25 fine; or”
 - * “For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or **suspend or revoke the person’s driver license or driving privilege...**”

Florida Regulation of Tobacco

- * **F.S. Chapter 569 – Tobacco Products**
 - * Provides for required signage by retailers (569.14)
 - * “A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:”

“THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.”



Florida Regulation of Tobacco

- * **F.S. Chapter 877 – Miscellaneous Crimes**
 - * 877.112 - Nicotine products and nicotine dispensing devices
 - * Florida restricted the sale of e-cigarettes to persons under the age of 18 in 2014, before the new FDA rules were issued.
 - * However, Florida went out of its way to avoid calling the products tobacco products at that time, creating this separate subsection to regulate “nicotine dispensing devices” and “nicotine products”.

Florida Regulation of Tobacco

- * F.S. Chapter 877 – Miscellaneous Crimes
 - * “**Nicotine dispensing device** means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.”

Florida Regulation of Tobacco

- * F.S. Chapter 877 – Miscellaneous Crimes
 - * “**Nicotine product** means any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means, but does not include
 - * Tobacco product, as defined in s. [569.002](#);
 - * Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act; or
 - * Product that contains incidental nicotine.”

Florida Regulation of Tobacco

- * **F.S. Chapter 877 – Miscellaneous Crimes**
 - * F.S. 877.112 then created a duplicate set of rules regarding
 - * Prohibitions on sales to minors
 - * Prohibition of gifting samples to minors
 - * Prohibitions of possession of nicotine products or nicotine dispensing devices by minors
 - * Specific requirements for signs stating: THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.
 - * The penalties outlined in F.S. 877.112 are identical to those for traditional tobacco products; however the law does NOT require e-cigarette vendors to obtain a retail license!

Florida Regulation of Tobacco

- * So, here is the problem that we face in Florida:
 - * Federal law is 21 and it is enforced by federal agencies
 - * Federal law makes it illegal for tobacco retailers to sell tobacco to anyone under age 21 nationally, including Florida.
 - * Florida Statutes still list the age for tobacco sales and purchases as 18; therefore, state agencies (Sheriffs, Florida ABT) can only enforce age 18!
 - * It sure would be nice if the Florida statutes lined up with federal law, wouldn't it?

Florida Regulation of Tobacco

- * 2020 Florida Legislative Session
 - * SB 810 - Use of Tobacco Products and Nicotine Products
 - * Would have made Florida law consistent with Federal law
 - * Increased the age to 21
 - * Reclassified liquid nicotine/ecigs/vaping devices as tobacco
 - * Would finally require a state Tobacco Retail License for free-standing vape shops (free of charge!)
 - * Banned the sale of flavored products currently banned by FDA
 - * Passed Florida House and Senate with bipartisan support
 - * Supported by FL Attorney General Ashley Moody
 - * Vetoed by Governor DeSantis in September 2020

The Need For Local Enforcement



33 STATES

Have raised their tobacco sales
age to 21



218,000,000

Population covered by tobacco
21 laws



555+

States, cities and counties have
raised the age

The Need For Local Enforcement

- * In the absence of state leadership in Florida, it falls to local counties, cities, and municipalities to create specific and enforceable rules to reduce access to tobacco products for those under the age of 21.
- * Current federal law allows (enables) local governments to regulate the “time”, “place”, and “manner” of tobacco sales and marketing; nothing in current Florida law preempts local governments from creating these regulations.
- * The single best approach is to create a local Tobacco Retail License.

Tobacco Retail Licenses (TRL)

- * TRL policies give local communities the ability to dictate the most appropriate way to sell all nicotine products in their neighborhoods.
 - * TRL can be used to codify age 21 locally.
 - * TRL can be used to expand the definition of tobacco to match federal law.
 - * TRL can be used to reduce the location and density of tobacco retailers.
 - * TRL can be used to limit point-of-sale advertising and tobacco product placement as a condition of the license.
 - * TRL can be used to restrict the sale of flavored tobacco.
 - * Most importantly, TRL improves enforcement of the rules!

Tobacco Retail Licenses (TRL)

* Key elements of an effective TRL Policy

- * ALL tobacco retailers are required to obtain a license and renew the license annually.
- * The annual licensing fees should cover the cost of enforcing the ordinance (“revenue neutral”).
- * There should be significant consequences through both fines and penalties (suspension of license, revocation of license).
 - * Please note that the fines should be stronger for the retailer breaking the law than for the underage minor attempting to make the purchase!
- * Stipulation that any violation of local, state, or federal law signifies a violation of the local law.
 - * For example, if a retailer fails an FDA compliance check, that retailer should be penalized under local law as well!

Components of a TRL Ordinance

- * Purpose and Findings

- * A Purpose and Findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies.

- * Definitions

- * Gives communities to clarify terminology (“compliance checks”, “flavored product”, “loosies”, “movable place of business”, “nicotine dispensing device”, “nicotine product”, “self-service display”, “tobacco product”, “vending machine”, “youth-oriented facility”, etc)

Components of a TRL Ordinance

- * **Licensing Fees**
 - * Fees provide revenue for the administration and enforcement of the ordinance and for retailer and community education.
 - * Periodic review and adjustment of licensing fees will ensure that they are sufficient to cover all administration, implementation, and enforcement costs, including compliance checks.

Components of a TRL Ordinance

- * **Compliance Checks**

- * All licensed premises must be open to inspection by law enforcement or other authorized city/county officials during regular business hours.
- * From time to time, but at least [twice] per year, the city/county will conduct compliance checks.
- * The city/county will conduct at least one compliance check that involves underage minors entering licensed premises to attempt to purchase licensed products.

Components of a TRL Ordinance

* Violations and Penalties

- * At its core, a licensing ordinance is intended to regulate the behavior of licensees.
- * Penalizing underage persons (PUP) detracts from the focus of the licensing code and siphons enforcement resources away from the licensees to young consumers, many of whom are addicted to nicotine.
- * There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth smoking.
- * Historically, PUP laws were lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth.

Components of a TRL Ordinance

- * **Violations and Penalties**
 - * **Penalties should include:**
 - * Substantial fine, with increases for repeated violations.
 - * Suspension of license with increases in length for repeated violations.
 - * Loss of license for a certain number of violations over time.
 - * No matter how large the fine is for violations, retailers will simply pay it as a “cost of doing business”; the real financial penalty comes from the loss of revenue from a suspended or revoked license.

Components of a TRL Ordinance

- * At a minimum, the licensing ordinance should mirror current FDA rules on tobacco:
 - * Age of sale is 21
 - * No self-service sales
 - * No vending machine sales
 - * Ban on flavored products that are banned by the FDA
 - * No “loosies”
 - * No free samples of tobacco products / nicotine products
 - * Age verification with government issued ID
 - * Signage regarding age of sale

Components of a TRL Ordinance

- * “Plug in” Optional Policies
 - * Communities can add additional policies to their license structure to help reduce youth tobacco use.
 - * Proximity restrictions near schools, other youth venues (parks, playgrounds).
 - * Licensing cap to reduce retailer density
 - * No product discounts (or minimum pricing); this can include coupons!
 - * Prohibitions on sales at pharmacies.
 - * Additional bans on the sale of flavored products.



Questions & Answers

Barry Hummel, Jr., MD, FAAP
QuitDoc Foundation
bhummel@quitdoc.com

