

TOBACCO RETAILING

A scan of available regulatory approaches

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INTRODUCTION

Of all the occupations that are touched by the use of tobacco products – from tobacco farming, manufacturing, advertising, epidemiology, cancer treatment or undertaking – the one the smoker is in most frequent contact with is retailing. Most smokers visit a retail store a few times a week to buy cigarettes and other household goods, providing a hundred or more moments of contact over a year. By contrast, smokers visit their family physician only once a year on average.¹

The relationship between the retailer and the smoker is one that is defined by two sets of opposing forces. On one side are the efforts of the tobacco industry to generate sales and to use the retailer as a point of persuasion with smokers. On other side are the rules set by public health authorities to restrict the forms that the industry's efforts can take.

Navigating the space between these two forces is the retailer, whose livelihood depends on selling goods (including tobacco) and for whom the economic incentives are currently aligned with making as many tobacco sales as possible. There are no rules against tobacco companies spending money to influence retailer behaviour and there are virtually no economic incentives for retailers to work towards public health goals.

Tobacco companies invest heavily in their relationship with retailers and continue to adapt their retail marketing strategies to work in the “dark market” environments of Canada, Australia and other jurisdictions where overt and visible tobacco promotions have been almost entirely removed. In Canada the companies have designed new structures and programs to increase their influence with retailers: eliminating wholesale distribution to establish more control over local ordering and pricing, implementing preferential pricing to reward compliant retailers, and establishing loyalty programs and other incentives to reward retailers who sell more cigarettes or who promote certain tobacco products.² All of these activities are legal – few have provoked a public health response.

If retailing is a blind spot in Canada's tobacco control programs, it is one we share with many other countries. Many national tobacco control strategies follow international standards, such as the Framework Convention on Tobacco Control, the Bloomberg-funded MPOWER measures, or the European Union Directive. None of these offer a model for tobacco retail management. This is in contrast with international guidance on comparable health concerns like alcohol, where the World Health Organization recommends a range of supply-controls, like minimum pricing, government retail monopolies and retail licensing.³

To address this weakness, many in the tobacco control community are looking at the retail environment as an area where public health controls could more effectively be established and where industry controls could be weakened.

This paper aims to bring together information on controls on tobacco retailing that have been implemented in developed countries. It also looks at controls adopted for other harmful consumable goods sold in Canada. The intent is to accelerate discussion in Canada and elsewhere on ways to better align the retailing of tobacco products with public health goals.

1 Statistics Canada. Canadian Community Health Survey 2013-2014. Public Use Micro File.

2 Physicians for a Smoke-Free Canada. Loyalty programs and other incentives for retailers to sell cigarettes: an exploratory research project. August 2016.

3 World Health Organization. Global strategy to reduce the harmful use of alcohol

Observations

This scoping exercise has identified the following considerations for Canadian efforts to reform tobacco retailing:

- **The density of tobacco retailers in Canada is among the lowest in the world.**
This has largely been achieved by reducing the locations where tobacco products can be sold rather than restricting the number of licenses that can be issued.
- **Tobacco retail licensing is not managed by Canadian governments as a health strategy**
Almost without exception, where retail licenses are required in Canada they are issued and controlled by finance ministries. Experiences in other jurisdictions and/or with other products show that retail licensing of tobacco and vaping product sales could be used much more effectively to achieve public health purposes. Examples of regulatory measures include:
 - Impose a high licence fee to increase prices and further reduce the number of outlets
 - Use the proceeds from the licence fees to defray the costs of tobacco and vaping control
 - Require adult-only, vaping-only and tobacco-only stores
 - Require that products not be on visible display
 - Require health warning signs in retail stores
 - Restrict or ban online retailing
 - Restrict advertising in retail locations
 - Require training for retailers so that they can competently offer basic health advice and direct customers to smoking and vaping cessation services
 - Allow only trained personnel to dispense tobacco and vaping products
- **Many retail restrictions imposed in Canada on cannabis and/or alcohol distribution are not yet applied to tobacco.** These include:
 - Requirements that products be sold in specialty stores
 - Requirements that products be sold in age-restricted stores
 - Public controls over wholesaling
 - Standardized pricing at the wholesale or retail level
- **Tobacco and vaping product manufacturers have too much control over retailers in Canada.** This is not the case in other jurisdictions. Canadian governments at all levels should work together to reform tobacco and vaping retailing so that retailing serves public health purposes, not corporate profit-making purposes. Here are some suggestions based on experience elsewhere and/or experience with other products.
 - Prohibit contracts between retailer and suppliers of tobacco and vaping products
 - Establish wholesale monopolies with public health purposes. Give them the authority to direct and incentivise retailers to achieve public health goals. Similar systems exist for cannabis distribution in several province, although their public health protection mandates are weak

Table 1: Available retail interventions⁴

Measure	Precedent
Licensing and license fees	
Mandatory licensing / registration	Most Canadian provinces, Scotland, Ireland, etc.
Licenses issued by health authorities (not tax authorities)	A few Canadian jurisdictions, Finland
License fees greater than a nominal amount	Several jurisdictions (i.e. Ottawa, France)
License fees linked to regulatory costs	Finland, some Canadian cities
License fees intended to support tobacco control programming	Lethbridge
License approval required from health authorities	Iceland
Community consultation before issuance of license	Many Canadian provinces (alcohol)
Financial incentives for retailers who stop selling tobacco	France
Restricted number of licenses/retail density	France, San Francisco
Restrictions on locations	
Restriction on number of outlets	France, Hungary, San Francisco, others (tobacco)
Product-restrictive outlets (most other goods not for sale)	Austria, Hungary (tobacco)
Product-exclusive outlets (other goods not for sale)	Most Canadian provinces (alcohol, cannabis)
Prohibiting Sales Near Youth-Populated Areas (near schools)	(phase in- Philadelphia)
Retailing banned in health care settings	All Canadian provinces
E-retailing banned	Quebec
Retailing banned in colleges and universities	Most Canadian provinces
Bans on sale in pharmacies	Most Canadian provinces, some U.S. cities, Europe
Ban on tobacco retail sales	Beverly Hills
Conditions of license	
Government approved training of retailers	France (mandatory), Newfoundland (voluntary)
Limits on hours of day that it can be open	Many Canadian provinces (alcohol)
Licenses to individuals only, not businesses	France, Austria, Italy, Spain
Mandatory signage (quitlines, health information, sales to minors)	Many Canadian provinces
Availability of quit smoking materials at retail	Estonia
Price controls (standardized pricing for all brands)	France, Brazil, Japan require brands be sold at same price in all stores
Other	
Age-restrictions to enter store	Canada (cannabis and vaping), Hungary (tobacco)
Customer required to have contact with health professional	Prescription medicines
Ban on manufacturers' incentives to retailers	Quebec (partial), France, New Zealand, Ethiopia
Vertical integration between retailer and manufacturers banned, including through government-managed wholesaling	France (tobacco), Iceland (tobacco)
Sales data provided electronically to government	Quebec (restaurants); B.C., Alta., Sask (First Nation tax-free tobacco)
Retailer payment based on performance objectives other than volume sales	Canada (Post Office)
Programs to help retailers diversify to other goods	France
Ban on contracts between manufacturers and retailers	Some restrictions in European monopolies
Litter abatement fee recovered through retailer licence	San Francisco
Retailers incentivized to encourage smokers to quit	
Ban on visits to retailers by tobacco manufacturers sales representatives	

⁴ See fuller description of measure in each geography for sources.

PART 1:

A) TOBACCO RETAILING IN CANADA.

FEDERAL AND PROVINCIAL REGULATIONS AFFECTING TOBACCO RETAIL PRACTICES

The taxing and health regulation of tobacco products falls in the jurisdictional authority shared by Canadian provinces and by the federal government. The federal government has the authority to use its criminal law powers to protect health and safety, and the provincial power over property and civil rights gives provincial governments authority over businesses or professions within the provinces.⁵

As a result, tobacco control laws are found in 14 jurisdictions (10 provincial, 3 territorial and 1 federal). These are complementary approaches, with occasionally overlapping provisions. The Quebec *Tobacco Control Act*, for example, regulates the minimum size of federal health warnings. The federal government has a minimum age for sales, which is set at a higher age in several provinces. Both federal and provincial tobacco laws have banned the sale of flavoured or menthol tobacco products, with somewhat different applications.

One area within the traditional provincial sphere of influence is retail licensing. Although the federal *Tobacco and Vaping Products Act* anticipates retail regulation, it is largely under provincial laws that retail conditions are set. Municipal governments, which act under the authority of provincial law, have some powers to set additional measures, such as the issuance of business licenses and the charging of fees for them.

Federal pricing policies

One area of federal jurisdiction which impacts retailing is competition law. Until 2009, the *Competition Act* banned manufacturers from discriminating between retailers with respect to price and availability of product. Changes to that law which implemented the recommendations of a federal Competition Policy Review Panel to make discriminatory pricing strategy a practice which could be reviewed by the Competition Tribunal, but no longer a criminal offence.⁶ The 2009 budget implemented these changes,⁷ and the Competition Tribunal ruled that subsequent pricing practices of tobacco manufacturers (charging some retailers more than others for the same product) were acceptable under law.⁸

Federal requirements of tobacco retailers

The federal *Tobacco and Vaping Products Act* includes requirements that retailers post signs regarding sales-to-minors provisions and gives the federal government the authority (never exercised) to regulate the way that tobacco products are displayed. It expressly authorizes retailers to post signs that indicate the availability and price of products but bans the display of advertisements at retail.⁹

There are no federal requirements, either under health or tax law, for licensing of tobacco retailers. The Federal *Excise Act* licenses manufacturers and raw leaf dealers.¹⁰

5 Government of Canada. Privy Council Office. The Constitutional Distribution of Legislative Powers. <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=federal&doc=legis-eng.htm#2>

6 Competition Policy Review Panel. *Compete to Win*. Final Report. 2008. [https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/vwapj/Compete_to_Win.pdf/\\$FILE/Compete_to_Win.pdf](https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/vwapj/Compete_to_Win.pdf/$FILE/Compete_to_Win.pdf)

7 Government of Canada, Budget Implementation Act (S.C. 2009, c. 2), Ottawa, 2009

8 Canadian Competition Tribunal. , "Safa Enterprises Inc. v. Imperial Tobacco Canada Limited,," 2013 Comp. Trib. 19. CT-2013-007.

9 Tobacco and Vaping Products Act, s. 30, 9, 33, 22. <http://laws-lois.justice.gc.ca/PDF/T-11.5.pdf>

10 Excise Act, 2001, SC 2002, c 22. <http://canlii.ca/t/7vx9>

Provincial and territorial requirements of retailers who sell tobacco products

Each of Canada's provinces and territories has adopted legislation to regulate the sale of tobacco products, with significant differences in the scope and detail to these approaches.

- **Bans on sales to minors**

The federal law, which applies where provincial laws have not been set, sets the minimum age at 18. Six jurisdictions have set the minimum age at 19. Prince Edward Island raised the minimum age to 21 in November 2019, with the measures coming into effect in March 2020.¹¹

- **Bans on displays at retail.**

Provincial governments augmented federal restrictions on tobacco promotions by banning the display of tobacco products at retail outlets. The first of these bans was adopted by Saskatchewan in 2002 (implemented in 2005), and the last was in Newfoundland in 2010.¹²

- **Signage at retail**

Each province and territory requires the posting of signage at retail, and constrains the use of price signage. These restrictions vary from province to province. In Ontario, for example, the brand names cannot be displayed, although they can in the neighbouring province of Quebec.

- **Restrictions on places where cigarettes may be sold.**

Each province and territory has banned the sale of tobacco products in certain types of locations, although there is considerable variation in the choice and description of these venues. All but one has banned the sale in pharmacies. The venues where tobacco products may not be sold are identified in the table 3.

- **Manufacturer-retailer promotions**

Most tobacco laws in Canada do not include advertisements or promotions directed at retailers in the general prohibitions against tobacco marketing. Tobacco companies are permitted to place ads in retail trade publications, to host events for retailers and to otherwise promote their brands. One province, Quebec, recently (2015) prohibited "rebates, gratuities or any other form of benefit related to the sale or the retail price of a tobacco product to operators of tobacco retail outlets, including their employees."¹³

- **Reporting requirements**

The Smoke-Free Ontario act obliges wholesalers and distributors to submit reports to the Minister if required by regulation.¹⁴ There are currently no reporting requirements.

- **Retailer training**

Mandatory retailer training is required of retailers in Nunavut,¹⁵ is provided for by Alberta legislation (but not yet in force)¹⁶ and on-line training is offered in Newfoundland.¹⁷ Newfoundland offers training for tobacco retailers and their employees through its SKILLSpass portal.¹⁸

11 Prince Edward Island. Bill 112. An Act to Amend the Tobacco and Electronic Smoking Device Sales and Access Act. 2019

12 Ontario Tobacco Research Unit. Retail display of tobacco products. Monitoring Update. 2010.

13 Quebec. Tobacco Control Act. <http://canlii.ca/t/xd6>

14 Ontario. Smoke-Free Ontario Act. S. 8.

15 Nunavut. Tobacco Control Act. 5(2).

16 Alberta. Tobacco and Smoking Reductions Act. 9.

17 Newfoundland. Provincial SkillsPass NL Training Portal.

18 Government of Newfoundland and Labrador. <https://myskillspass.com/client/msp/servicen/>

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Municipal requirements of retailers

The power of municipalities to control local commerce vary from province to province. In most provinces, for example, municipalities had the authority to ban smoking in bars and restaurants even if provincial smoke-free laws were not in place. This was not the case in Quebec.

Some municipalities have implemented requirements for tobacco retailers to be licensed and to pay licence fees, as discussed below. None are known to have imposed limits on the number of retailers or on the locations of retailers.

Provincial and municipal licensing of tobacco retailers

Some of Canada's 13 provinces and territories require that retailers be licensed, but such permits are issued by the finance ministries for tax-collecting purposes and are not, generally speaking, linked to any specific health objective. Only two provinces charge fees for these licenses, and these are only nominal charges (\$50 per year or less). Even when licenses are issued by finance ministries, they can in some cases be suspended or cancelled for breach of tobacco control regulations, such as sales to minors.¹⁹ In other cases retailers can be prohibited from selling tobacco for repeated infractions of tobacco control laws, even if the license is not cancelled.²⁰

About 20 municipalities charge tobacco retailers an annual license fee, usually as part of a schedule of fees for businesses for which the municipality incurs inspection costs. Some municipalities have linked these fees or permits to health objectives. The City of Lloydminster (which straddles the border between Alberta and Saskatchewan) has among the highest annual retail license fees: \$1,100 for retailers who sell flavoured tobacco products and \$750 who only sell non-flavoured tobacco. The by law specifies that "Funds collected from this fee will be used to support local agencies with tobacco reduction strategies."²¹

Provincial requirements on tax-free sales to First Nations

Provincial cigarette taxes are not applied on the sale of tobacco products to qualified Indigenous Canadians. Specific controls on First Nations and On-Reserve retailers are imposed by some provincial tax ministries:

- The government of Saskatchewan requires retailers to submit their sales electronically using point of sale recording systems and imposes limits on the amount that can be purchased by one individual (equal to one carton per week).²²
- British Columbia requires that each sale to an eligible tax-exempt purchaser is logged, including with the individual's name and the quantity purchased and submit these forms to government.²³
- Alberta requires vendors of tax-exempt tobacco to provide weekly reports using electronic point of sale system (AITE Direct).²⁴

19 Health Canada. Toolkit for Responsible Tobacco Retailers. British Columbia. 2011.

20 See, for example, Quebec Tobacco Act, s. 59.

21 Lloydminster. Bylaw 11-2018.

22 Government of Saskatchewan. Fuel and Tobacco Tax Refund Program. March 2013.

23 Government of British Columbia. Making Tax-Exempt Tobacco Sales.

24 Alberta Tax and Revenue Administration. Information Circular AITE-3R8. February 2019

Table 2: Minimum age for sale, date of implementation of ban on retail display of tobacco products.

Province	Minimum Age	Display Ban	Legislation
Federal ²⁵	18		<i>Tobacco and Vaping Products Act</i>
British Columbia ²⁶	19	2008	<i>Tobacco and Vapour Products Control Act and regulation.</i>
Alberta ²⁷	N/A	2008	<i>Tobacco and Smoking Reduction Act.</i>
Saskatchewan ²⁸	18	2005	<i>The Tobacco and Vapour Products Control Act</i>
Manitoba ²⁹	18	2005	<i>The Smoking and Vapour Products Control Act</i>
Ontario ³⁰	19	2008	<i>Smoke-Free Ontario Act</i>
Quebec ³¹	18	2008	<i>Tobacco Control Act</i>
New Brunswick ³²	19	2009	<i>Tobacco and Electronic Cigarette Sales Act</i>
Nova Scotia ³³	19	2007	<i>Tobacco Access Act</i>
Prince Edward Island ³⁴	21	2006	<i>Tobacco and Electronic Smoking Device Sales</i>
Newfoundland and Labrador ³⁵	19	2010	<i>Tobacco and Vapour Products Control Act,</i>
Yukon ³⁶	N/A	2009	<i>Tobacco and Vaping Products Control and Regulation Act</i>
Northwest Territories ³⁷	18	2006	<i>Tobacco Control Act</i>
Nunavut ³⁸	19	2004	<i>Tobacco Control Act</i>

Table 3: Selected restrictions on places where cigarettes and vaping products may be sold in Canada.

	FED	BC	AB	SK	MB	ON	QU	NB	NS	PEI	NL	NWT	YK	NU
Vending machines	R			R	XV	XV	XV	R	XV	XV	R			
Pharmacies			XV	XV	XV	XV	XV	X	XV	XV	XV	XV	XV	
Bars & restaurants							XV		XV					
Casinos and gambling							A		XV					
Kiosks							XV							
Temporary outdoor (festivals)							XV		XV		XV			
Hospitals & Healthcare		XV	XV	XV	XV	XV	XV		XV	XV	XV	XV		X
Childcare settings						XV	XV				XV			X
Residential care				XV		XV			XV	XV	XV			X
College & University		XV	XV			XV	XV		XV	XV	XV			
Schools				XV		XV	XV		XV	XV	XV	XV		
Sports or Recreation Facilities		RV					XV		XV	XV	XV			
Theatre/Cinema				XV			XV		XV	XV	XV	XV		
Government-owned buildings		XV		XV		XV			XV	XV	XV			
Amusement park				XV					XV	XV	XV			
Library, art gallery, museum									XV		XV			
Community halls									XV					
E-commerce							XV							

R = restricted (i.e. to places where young people do not have access)

X = tobacco product sales banned; V = Vaping product sales banned.

A = Quebec law bans tobacco sales “within premises where sports, recreational, cultural or artistic activities are presented”. This is interpreted as including casinos and bingo halls

25 Canada. Tobacco and Vaping Products Act (S.C. 1997, c. 13)

26 British Columbia. Tobacco and Vapour Products Control Act, RSBC 1996, c 451; Tobacco and Vapour Products Control Regulation.

27 Alberta. Tobacco and Smoking Reduction Act, SA 2005, c T-3.8.

28 Saskatchewan. The Tobacco Control Act, SS 2001, c T-14.1.

29 Manitoba. The Smoking and Vapour Products Control Act.

30 Ontario. Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Sched. 3

31 Quebec. Tobacco Control Act, CQLR c L-6.2

32 New Brunswick. Tobacco and Electronic Cigarette Sales Act, SNB 1993, c T-6.1.

33 Nova Scotia. Tobacco Access Act, SNS 1993, c 14.

34 Prince Edward Island. Tobacco and Electronic Smoking Device Sales, RSPEI 1988, c T-3.1.

35 Newfoundland and Labrador. Tobacco and Vapour Products Control Act, SNL 1993, c T-4.1.

36 Yukon. Tobacco and Vaping Products Control and Regulation Act. (Draft bill)

37 Northwest Territories. Tobacco Control Act, SNWT 2006, c 9.

38 Nunavut. Tobacco Control Act, SNU 2003, c 13

Table 4: Provincial licensing requirements for tobacco and nicotine

Province	Tobacco	Nicotine
British Columbia	Tobacco retailers are required to have a Tobacco Retail Authorization. (TRA). It can be suspended or cancelled for infractions under the <i>Tax Act</i> or the <i>Tobacco and Vapour Products Control Act</i> . ³⁹	Retailers must effectively be registered with government to sell vaping products. They must provide 6 months notice before starting to sell nicotine products and must file annual reports. ⁴⁰
Alberta	“Alberta retailers are generally not required to register or be licensed with the Government of Alberta to sell tobacco, unless they are located on a reserve or are a duty-free shop.” ⁴¹ Municipalities may require business licenses and several have done so. ⁴² The City of Edmonton notifies Health Canada when a permit for Tobacco Sales has been issued. ⁴³	No requirements
Saskatchewan	No specific retail licence required by the province.	In April 2020, Saskatchewan’s budget included a tax on vapour products, which requires retailers to have a Vapour Product Tax License. ⁴⁴
Manitoba	Tobacco retail dealer’s permits issued under authority of <i>Tobacco Tax Act</i> . ⁴⁵	Conditions set for qualifying as a specialty vapour product shop, but no license required. ⁴⁶
Ontario	Tobacco Retail Dealer’s Permit is required under the <i>Tobacco Tax Act</i> . ⁴⁷ There is no cost to the retailer. Specialist tobacco shops must be registered with the local board of health. ⁴⁸	Specialty tobacconists and specialty vape shops are required by the Smoke-Free Ontario Act to be registered with the local public health unit. ⁴⁹
Quebec	Tobacco retailers must be registered with the tax authorities, in the same manner as other businesses. ⁵⁰	Nicotine vendors must register with the Health Ministry. ⁵¹
New Brunswick	New Brunswick tobacco retail licenses are issued under the authority of the <i>Tobacco Tax Act</i> , expire each year and are location specific. ⁵² The initial fee is \$100, the renewal fee is \$50.	No requirements.
Nova Scotia	Retail Vendor’s Permits are issued by the provincial tax commission. The permit expires after 3 years unless renewed. The fee for the 3 year license is \$124.60. ⁵³	In 2020, Nova Scotia implemented requirements for vapour product retailers to be licensed. The cost is the same as for tobacco. ⁵⁴
Prince Edward Island	A Tobacco Retail Vendor’s License is issued by the finance ministry, but requires prior inspection of signage and approval from the health ministry. ⁵⁵	No requirements

39 British Columbia. Tobacco Tax Act Regulation, BC Reg 66/2002, section 6
40 British Columbia. Notice of Intent to Sell E-Substances and Reporting Requirements
41 Alberta. Tobacco tax. Accessed October 10, 2019.
42 These include the two largest cities, Edmonton and Calgary.
43 City of Edmonton. Bylaw 13138. 2019.
44 Saskatchewan. Budget 2021-2022.
45 Manitoba. Tobacco Tax Act. S. 4(1).
46 Manitoba. Guide to laws for the sale and use of electronic cigarettes.
47 Ontario Ministry of Finance. Basic Rules for Tobacco Retail Dealers. <https://www.fin.gov.on.ca/en/tax/tt/basicrules.html>
48 Ontario. Guidelines for registration as a tobacconist
49 Ontario Ministry of Health and Wellness. Rules for selling tobacco and vapour products. <https://www.ontario.ca/page/rules-selling-tobacco-and-vapour-products>
50 Quebec. Registration – Tobacco Tax
51 Quebec. Tobacco Control Act, CQLR c L-6.2
52 New Brunswick. Application for a Retailer’ License.
53 Retail Vendor’s Permit (Tobacco Retailer) <https://novascotia.ca/sns/paal/tax/paal053.asp>
54 Nova Scotia. Vaping Products Retail Vendor’s Permit
55 PEI Application for a Tobacco Retail Vendor’s License

Province	Tobacco	Nicotine
Newfoundland-Labrador	Tobacco Licenses are issued under the <i>Tobacco and Vapour Products Control Act</i> . ⁵⁶	In 2020, Newfoundland introduced requirements for vapour product retailers to be licensed by tax authorities. ⁵⁷

Table 5: Tobacco retail licensing fees set by Canadian municipalities, 2021

Jurisdiction	Category	Tobacco	Vaping	Initial fee	Annual Renewal
Alberta					
Calgary ⁵⁸	Tobacco retailer	●		277	\$192
Edmonton ⁵⁹	Tobacco sales	●		\$406	\$496
St. Albert ⁶⁰	Tobacco licences	●			\$714
Lloydminster ⁶¹	Tobacco retailer	●			\$775
Saskatchewan					
Saskatoon ⁶²	Commercial	●		\$125	\$85
Regina ⁶³	Residential Business Licence	●		\$112.50	\$225
Ontario⁶⁴					
Brampton	Tobacco Sales	●			\$228
Burlington ⁶⁵	Sale of tobacco	●			\$193.80
Chatham-Kent ⁶⁶	Tobacco shop	●		\$241	\$156
Cornwall ⁶⁷	Tobacco vendor	●			\$40
Hamilton ⁶⁸	Tobacco and electronic cigarette retailers	●	●	\$818	\$746
Kingston	Tobacco sales	●			\$283
London	Electronic cigarette and tobacco retail business	●	●		\$277
Markham	Tobacco sales	●			\$391
Mississauga	Tobacco sales	●		\$311	\$225
North Bay ⁶⁹	Tobacco sales	●			\$50
Oakville ⁷⁰	Tobacco/electronic cigarette retailer licence	●	●	\$191	\$191
Ottawa	Tobacco vendor license	●			\$928
Richmond Hill	Tobacco shop	●			\$297 ⁷¹
Sudbury ⁷²	Retail sales of cigars, cigarettes and tobacco	●		\$440	\$150
Toronto ⁷³	Stores that sell tobacco or vaping products	●	●	\$658.44	\$321.47
Vaughan ⁷⁴	Tobacco	●		\$389.35	\$267.35
Waterloo ^{75 76}	Tobacconist	●			\$172
Windsor ⁷⁷	Tobacconist	●		\$232	\$191

56 Tobacco and Vapour Products Control Act.

57 Newfoundland and Labrador. Vapour Products Tax

58 Calgary. 2019 Business Licence Fee Schedule.

59 Edmonton Bylaws 13138.

60 St. Albert. Tobacco Licences.

61 Lloydminster. Bylaw 37-2020. The fee is \$1100 if flavoured tobacco products are sold.

62 Saskatoon. Commercial Business Licence.

63 Regina. Business Licence Categories and Fees.

64 Unless specified otherwise, information on Ontario cities is taken from the following briefing note dated September 2019: City of Oshawa. Licensing of Tobacco Retailers. D-2200

65 City of Burlington. Business Licence. Amount charged for convenience stores that did not sell tobacco is \$188.70.

66 Chatham-Kent. Tobacco Shop.

67 Cornwall. Business Licences.

68 Hamilton's fees are the total of processing, licensing, health inspection, zoning verification and e-cigarette health fee.

69 <https://www.cityofnorthbay.ca/media/1907/application-tobacco-sales-licence.pdf?v=636010001800000000>

70 Oakville. Press release. Oakville stores selling vaping products will need a licence come March 1, 2021

71 Canadian Cancer Society. Overview summary of Federal/Provincial/Territorial Tobacco Control Legislation. 2018.

72 Sudbury. Bylaw 2004-350.

73 Toronto City Council adopted this measure on October 29, 2019.

74 Vaughan. Tobacco

75 Waterloo. Business licensing by-law.

76 Waterloo. Fees and Charges

77 Windsor. Tobacconist.

THE NUMBER OF TOBACCO RETAILERS IN CANADA

There are no official statistics on the number of retail outlets where Canadians can purchase tobacco products, and the only provinces known to have periodically made the number of registered retailers available to researchers are Ontario and Quebec. Health Canada currently estimates that there are “30,000 to 35,000 points of sale for tobacco products across Canada” but does not provide the basis of this estimate.⁷⁸

The tobacco trade has provided (unverified) statistics on the number of retailers, and private estimates made by the companies in previous years have been made public as a result of litigation. These industry estimates suggest that the number has fallen dramatically in recent decades:

- In filings submitted to the Ontario Superior Court, the companies reported as follows: “approximately 28,000 retailers” (JTI)⁷⁹, “approximately 26,825 retailers and 184 wholesalers” (ITL) of which 9,236 stores are in Ontario.⁸⁰
- The Canadian Convenience Store Association Annual “Facts and Figure Report” said there were 26,519 convenience stores in 2016.⁸¹
- In a web-page mounted in 2015, Canada’s leading tobacco manufacturer reported that it provided its products to 29,000 retail outlets.⁸²
- In 2006, prior to the ban on sale of tobacco products in bars and restaurants in Quebec, Rothmans, Benson and Hedges estimated that the number of outlets in Canada was 33,000⁸³
- Six years earlier, in 2000, in an official court document, Imperial Tobacco claimed that “Imperial’s tobacco products are sold in nearly 40,000 retail outlets throughout Canada.”⁸⁴
- In a 1976 internal document, the Canadian Tobacco Manufacturer’s Council reported 90,000 retail establishments as well as 40,000 cigarette vending machines for a total of 130,000 retail outlets.⁸⁵

Based on these estimates, the density of tobacco retailing has fallen from 383 outlets per 100,000 people in 1976, to 130 outlets per 100,000 Canadians in 2000 to 75 outlets per 100,000 people in 2019.⁸⁶

As dramatic as these numbers are, they are plausible within the lived context of the past 40 years. Until this century, cigarettes were sold in an extensive system of services - restaurants, bars, barber shops, bowling alleys, hotels, movie theatres, snack trucks, department stores, corner stores and other retail outlets. Today, they have virtually disappeared from all hospitality venues and from all retail outlets other than convenience stores, grocery stores, and gasoline stations.

Statistics Canada’s estimate of the number of businesses operating in Canada is reasonably consistent with ITL’s claims of 26,825 tobacco retailers outlets. The number of retailers with employees of the type which

78 Health Canada. Annual Report on Compliance and Enforcement Activities. 2016-2017

79 JTIM. Factum of the Applicant. March 8, 2019.

80 Imperial Tobacco Application Record. Affidavit of Eric Thauvette. March 12, 2019

81 Canadian Convenience Store Association. 2018 Canada’s Convenience and Fuel Retail Channel Annual Facts & Figures Report.

82 Imperial Tobacco Canada Ltd. Who we are. Accessed 2015.

83 Rothmans. Annual Information Form. 2006.

84 Imperial Tobacco. Re-Examined Declaration. 2000 July

85 Canadian Tobacco Manufacturers’ Council. Local Action Blueprint. 1976

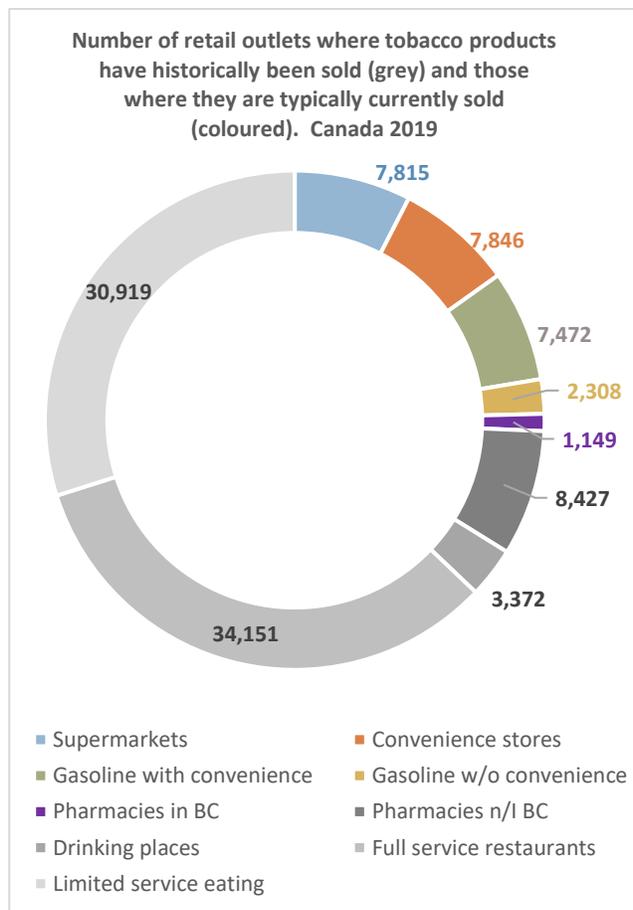
86 Canadians population estimates, Statistics Canada, CANSIM 051-0001. Population in 1976=23,44,808; in 2000 = 30,685,730, in 2019 = 37,589,262.

continue to sell cigarettes (grocery and convenience stores, gas stations, pharmacies in British Columbia) totals 26,590.⁸⁷ If cigarettes were still sold in all pharmacies, bars and restaurants, as they were in the early 1990s, there would be almost 4.3 times as many outlets as Imperial Tobacco currently says there are (103,509 instead of 26,825).

While industry estimates will be based on the number of retail customers they sell to (which has been made more certain with the current system of direct-to-store delivery), government estimates are based on the number of registered or licensed retailers.

The quality of industry and government estimates and their usefulness for assessing retailer density is an issue requiring attention. It is possible for retailers to maintain a licence and be included in government registries, even though they have stopped selling tobacco products. (A licensing system that attaches a notable cost to the registration may encourage retailers to relinquish licences that were held even though cigarettes were no longer being sold, giving the appearance of a greater reduction in the number of retailers than has actually occurred.) It is possible that retailers are operating without being registered, or that their registration was not properly recorded. One recent study “ground truthed” government estimates against personal observations in a sampled region, finding that 98% of those on the list sold tobacco products and that 88% of those who sold tobacco products were on the list (the remainder were in “recently built developments” and the study was conducted with data that pre-dated the field work).⁸⁸

The number of tobacco retailers reported for the province of Ontario has fallen by more than a third (from 14,000 to 9,200) between 2006 and 2019.⁸⁹ Ottawa, which has one of the highest tobacco retail licence fees in Canada (currently \$909 per year⁹⁰), saw a somewhat larger drop (from 669 stores in 2008 to 404 in 2019).⁹¹ In the first 5 years of Quebec’s ban on selling tobacco products in bars and restaurants, the number of tobacco retailers fell by more than half (from 19,500 to 7,500).⁹²



87 Table 33-10-0214-01 Canadian Business Counts, with employees, June 2019

88 Chaiton, M. et al. Tobacco retail availability and risk of relapse among smokers who make a quit attempt: a population-based cohort study. *Tobacco Control*. 2017

89 Ontario Tobacco Research Unit, 2016 Strategy Monitoring Report citing data from the Ontario Tobacco Inspection System.

90 City of Ottawa. Tobacco Vendor Licence. <https://ottawa.ca/en/business/business-assistance-and-growth/permits-licences-and-applications-laws-and-garbage/business-licences#tobacco-vendor-licence>

91 Data provided by the City of Ottawa, Public Health Unit.

92 Institut national de santé publique du Québec. Rapport sur la mise en œuvre de la Loi sur le tabac 2005-2010 : constats, interrogations et éléments de réflexion

Table 6: Estimates of retailer density in Canadian jurisdictions, various years

Region	Year	Population ^{93 94}	Number of tobacco retailers	Tobacco Outlets per 100,000 pop.
Canada ^{95 96 97 98}	1976	23,449,808	90,000	384
	2000	30,685,730	40,000	130
	2006	32,571,174	33,000	101
	2015	35,848,610	29,000	81
	2019	37,589,262	26,825	71
Quebec ⁹⁹	2003	7,485,491	19,500	261
	2008	7,761,504	7,500	97
Ontario ^{100 101 102 103 104}	2006	12,661,566	14,000	111
	2011	13,263,544	11,361	85
	2013	13,556,229	11,581	85
	2014	13,685,171	10,620	78
	2015	13,797,038	10,004	73
	2016	13,982,984	9,925	70
	2017	14,072,615	9,725	69
	2018	14,318,545	9,510	66
	2019	14,566,547	9,236	63
	*Ottawa ¹⁰⁵	2001	774,072	1,250
2011		883,391	618	70
2016		934,243	439	47
2019		1,006,210	404	40
*Toronto ¹⁰⁶	2019	2,956,024	1,699	57
Alberta				
*Edmonton ^{107 108}	2019	972,223	575	59
*Calgary ^{109 110}	2019	1,244,900	907	72
Nova Scotia ¹¹¹	2019	971,395	1,080	111
British Columbia ¹¹²	2019	5,071,336	4,487	88

93 Unless stated differently, population estimates are from Statistics Canada. Cansim Tables 17-10-0078-01; Cansim Table 051-0001; Catalogue no. 91-214-X; Table 17-10-0135-01

94 Census results and estimates as presented by the City of Ottawa. <https://ottawa.ca/en/city-hall/get-know-your-city/statistics-and-economic-profile/statistics/current-population-and-household-estimates>

95 Imperial Tobacco. Re-Examined Declaration. 2000 July 5.

96 Imperial Tobacco Canada Ltd. Who we are, op. cit.

97 Rothmans. Annual Information Form. 2006.

98 Imperial Tobacco Application Record. Affidavit of Eric Thauvette. March 12, 2019

99 Rapport sur la mise en œuvre de la Loi sur le tabac 2005-2010 : constats, interrogations et éléments de réflexion

100 Ontario Tobacco Research Unit, 2016 Strategy Monitoring Report citing data from the Ontario Tobacco Inspection System.

101 Chaiton, Michael et al. Tobacco Retail Outlets and Vulnerable Populations in Ontario. Int. J. Environ. Res. Public Health. 2013.

102 Imperial Tobacco Application Record. Affidavit of Eric Thauvette. March 12, 2019

103 Ontario Tobacco Research Unit. 2018 Monitoring Report: Pro-Tobacco Influences

104 Public Health Ontario. Ontario Tobacco Monitoring Report 2018 <https://www.publichealthontario.ca/-/media/documents/tobacco-report-2018.pdf?la=en>

105 Number of tobacco retailers provided by the City of Ottawa, Public Health Unit.

106 Unique addresses with active licences for tobacco retail from City of Toronto, Open Data.

107 Population estimate from City of Edmonton. Population History. Municipal Census

108 Number of Tobacco Licences in Edmonton from City of Edmonton, Business Licences Open Data

109 Population estimate from City of Calgary. Calgary and Region Economic Outlook 2019 – 2024

110 Number of Tobacco retailer licences in Calgary from City of Calgary. Business Licenses. Open Data

111 Personal correspondence, Nova Scotia Ministry of Health. October 2019.

112 Personal correspondence, B.C. Ministry of Finance. October 2019.

Tobacco control regulations may have contributed to this decrease in intensity by pushing or nudging tobacco retailers out of this line of business.

- *An increase in the number of places where cigarettes may not be sold by law*
All but one Canadian province has banned the sale of cigarettes in pharmacies and many have designated other spaces where tobacco may not be sold, as shown earlier. These bans were introduced between 1994 and 2016.¹¹³
- *An increase in the number of places where cigarettes may not be smoked.*
All Canadian provinces have banned tobacco smoking in public places, including bars, restaurants.¹¹⁴ There is no longer the expectation that proprietors of these establishments sell cigarettes as a convenience to their customers, and most appear to have ceased doing so.

Nonetheless, the sale of tobacco products remains ubiquitous in Ontario, especially so in neighbourhoods with high levels of deprivation. More than half (65%) of tobacco retailers were found to be located within 500 meters of a school.¹¹⁵

Other factors may also have contributed to a reduced market for tobacco products in legally operating retail stores. In addition to the formal retail market, there is a large and relatively undocumented informal market for tobacco products in Canada. In Ontario and Quebec, tobacco products (mostly cigarettes) are produced on a few indigenous territories in and sold through “smoke-shacks” and other distribution channels that do not involve storefronts.¹¹⁶ Some health researchers do not support the view that the contraband market has increased over the past decade, estimating that the illicit market for tobacco products in 2016 was about 10% of the total market.¹¹⁷

Comparison of retail density

Despite the steady decrease in tobacco retailer density in Canada, there are many more tobacco outlets than there are for other distribution services in Canada.

Table 7: Number of Canadian retail distribution outlets^{118 119 120 121}

Retail service	Year	Number of outlets	Density per 100,000 population ¹²²
Tobacco retailers	2018	26,825	72
Gas Stations	2019	9,780	26
Pharmacies	2019	9,576	26
Post Offices	2018	6,100	16
Bank branches	2017	5,907	16
Beer, wine and liquor stores	2019	4,189	11
Pet supply stores	2019	2,068	6
Cannabis stores	2019	230 (May 2019)	< 1

113 Physicians for a Smoke Free Canada. Tobacco-Free Pharmacies.http://www.smoke-free.ca/pdf_1/pharmacy-background.pdf

114 Statistics Canada. Smoking ban legislation in Canadian provinces and municipal bylaws in selected cities

115 Chaiton, Michael et al. Tobacco Retail Outlets and Vulnerable Populations in Ontario. *Int. J. Environ. Res. Public Health*. 2013.

116 Leuprecht, C. Smoking Gun: Strategic containment of contraband tobacco and cigarette trafficking in Canada.

117 Guindon, E. et al. Levels and trends in cigarette contraband in Canada. *Tobacco Control*. July 2016.

118 Statistics Canada. Table 33-10-0214-01 Canadian Business Counts, with employees, June 2019

119 Canada Post. Annual Report, 2018.

120 Canadian Bankers Association. Statistics.

121 Imperial Tobacco Application Record. Affidavit of Eric Thauvette. March 12, 2019

122 Statistics Canada. Table 17-10-0005-01. Estimated population for 2019 = 37.6 million; 2018 = 37 million; 2017 = 36.5 million.

Density by population and physical size of community

The density of a population within a geographic area may influence the number of retailers that are required to service a given population. The circumstances of people living in a central metropolitan area may not be the same as for those living in remote or rural communities, for example.

We are not aware of any detailed estimates of the number of tobacco retailers by community size, but data on convenience store presence may be used to compare the density of outlets by community size. The Canadian Convenience Store Association made available information for 2016 on the presence of retailers in Metropolitan (cities over 100,000 people), urban (1,000 to 99,000 people and density of at least 400 residents per square kilometer) and rural (other populations). This information is shown in Table 8, and the density and proportion of convenience stores in each community size is shown in Table 9.

Table 8: Number of convenience stores and residents by community size and province

Jurisdiction	Convenience Stores ¹²³				Population ¹²⁴			
	Metropolitan	Urban	Rural	Total	Metropolitan	Urban	Rural	Total
Territories				115		70,247	43,357	113,604
BC	936	811	1,026	2,773	2,873,755	1,142,524	631,776	4,648,055
AB	1,115	799	754	2,668	2,300,299	1,099,074	667,802	4,067,175
SK	258	153	769	1,180	459,812	273,692	364,848	1,098,352
MB	430	133	416	979	711,925	223,304	343,136	1,278,365
ON	5,263	1,595	2,051	8,909	9,152,207	2,438,306	1,857,981	13,448,494
QC	2,296	1,609	2,802	6,707	4,836,549	1,736,506	1,591,306	8,164,361
NB	74	200	584	858	108,620	266,342	372,139	747,101
NS	118	261	612	991	316,701	213,268	393,629	923,598
PEI	0	85	109	194		64,409	78,498	142,907
NL	117	70	964	1,151	178,427	123,301	217,988	519,716
Total	10,607	5,716	10,196	26,519	20,938,295	7,638,060	6,575,373	35,151,728

Table 9: Density of convenience stores by community size and province

	Density per 100,000 population				Density per square kilometre			
	Metropolitan	Urban	Rural	Total	Metropolitan	Urban	Rural	Total
BC	33	71	162	60	0.7	0.7	n/a	n/a
AB	48	73	113	66	1.0	0.8	n/a	n/a
SK	56	56	211	107	1.1	0.7	n/a	n/a
MB	60	60	121	77	1.3	0.6	n/a	n/a
ON	58	65	110	66	1.4	0.7	n/a	n/a
QC	47	93	176	82	1.1	1.0	n/a	n/a
NB	68	75	157	115	0.7	0.5	n/a	n/a
NS	37	122	155	107	0.5	0.8	n/a	n/a
PEI		132	139	136		1.2	n/a	n/a
NL	66	57	442	221	0.7	0.4	n/a	n/a
Total	51	75	155	75	1.1	0.8	n/a	n/a

123 Canadian Convenience Store Association. Canada's Convenience and Fuel Retail Channel. Annual Facts and Figures Report. 2017.

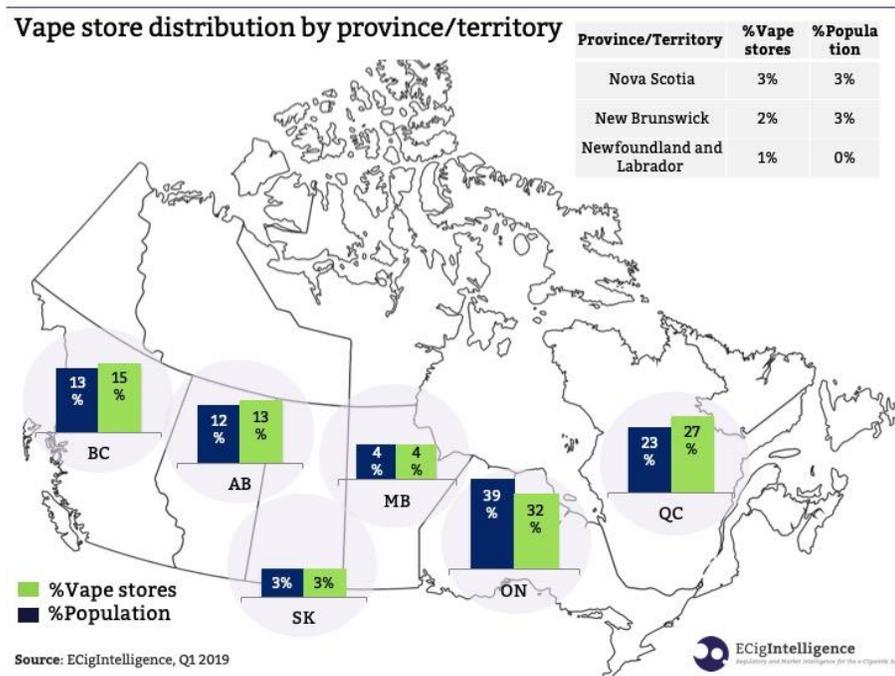
124 Statistics Canada. Population and Dwelling Count Highlight Tables, 2016 Census

B) E-CIGARETTES AND VAPING NICOTINE

Until May 2018, it was illegal to sell vaping products which contain nicotine in Canada. Despite this prohibition, specialized vape shops had appeared in most Canadian cities. Although these stores were not selling products legal for sale, many may have been businesses lawfully registered under provincial or municipal regulation.

- In 2016, the Canadian Vaping Association estimated that the number of stores exceeded 500.¹²⁵
- In 2019, following the legalization of e-cigarettes, the market research agency EcigIntelligence estimated that there were 1,100 brick and mortar vape shops, with about 300 in Quebec and 350 in Ontario.¹²⁶ By this point, these products were also available in convenience stores, while continuing to be available in specialty vape shops. Many provinces which banned displays of vaping products in convenience stores, permitted them in specialty vape shops.
- Industry sources report that “Alberta has over 130 specialty vape retailers in the small business sector.”¹²⁷
- Quebec’s Institut national pour la santé publique du Quebec reported that in early 2019 there were 299 specialty vape stores in that province, or 3.5 such stores for 100,000 people.¹²⁸

Figure: Ecigintelligence estimates of the distribution of 1,100 vape stores in Canada, June 2019



125 Globe and Mail. Vaping businesses worried about new regulations. June 7, 2016.

126 EcigIntelligence.com. Graphic: Canada vape store distribution by province/territory, March 2019.

127 Vaping Industry Trade Association. Press release. The Vaping Industry Trade Association (VITA) supports the Alberta Government’s review of the provincial Tobacco and Smoking Reduction Act. October 3, 2019.

128 Bergeron, P. et al. Accessibilité géographique aux commerces spécialisés en produits de vapotage autour des établissements d’enseignement secondaire et collégial du Québec. INSPQ. 2019.

Licensing and registration of specialty vape shops

As identified in Table 4, positive licensing systems for vape shops are not in place across Canada, although there are some requirements for registration. In all provinces, vaping products can be sold in any retail outlet, although some products (flavours, higher nicotine) are restricted to specialty stores in some provinces. As presented in Table 5, some municipalities jurisdictions do require registration or licensing of vape stores.

Age-restrictions of specialty vape shops

Provinces which permit specialty vape shops to display advertising and/or products require that no minors be permitted in these stores. Illustrations of signage on specialty tobacco and vaping stores is shown in the figure below and comparisons with restrictions on other retail venues are shown in Table 10.

Figure:-restriction signage on vaping and tobacco stores



*Kamloops, British Columbia
November 2019*

*Victoria, British Columbia
November 2019*

*Ottawa, Ontario
November 2019.*

Table 10: Age restrictions on access to retail outlets

Province	Convenience and other stores	Specialty tobacco or vaping shops	Cannabis stores
British Columbia	No age-restrictions on non-specialty stores selling tobacco or vaping products, although these stores may not sell flavoured vaping products.	Persons under 19 may not enter specialty tobacco shops which display or promote products or which sell flavoured vaping liquids. ¹²⁹	Persons under 19 years of age may not enter cannabis stores. ¹³⁰
Alberta	No age-restrictions on non-specialty stores selling tobacco or vaping products.	No provincial age restrictions	Persons under 18 years of age may not enter cannabis stores. ¹³¹
Saskatchewan	No age-restrictions on non-specialty stores selling tobacco or vaping products.	Persons under 18 may not enter specialty tobacco shops which display or promote products. ¹³²	Persons under 18 years of age may not enter cannabis stores. ¹³³
Manitoba	No age-restrictions on non-specialty stores selling tobacco or vaping products.	Persons under 18 may not enter specialty tobacco shops which display or promote products. ¹³⁴	Persons under 18 years of age may not enter an age-restricted licensed cannabis store. They are permitted in controlled-access licensed cannabis stores (where product may not be displayed). ¹³⁵
Ontario	No age-restrictions on non-specialty stores selling tobacco or vaping products. These stores may not sell flavoured or higher-concentration nicotine liquids	Persons under 19 may not enter specialty tobacco shops which display or promote products. ¹³⁶	Persons under 19 years of age may not enter a cannabis retail store, and those who look under 25 must provide ID. ¹³⁷
Quebec	No age-restrictions on non-specialty stores selling tobacco or vaping products	Nicotine vendors must register with the Health Ministry. ¹³⁸	Those under 21 may not enter a cannabis store. ¹³⁹
New Brunswick	No age-restrictions on non-specialty stores selling tobacco or vaping products	Persons under 19 may not enter specialty tobacco shops which display or promote products. ¹⁴⁰	Those under 19 may not enter cannabis stores. ¹⁴¹
Nova Scotia	No age-restrictions on non-specialty stores selling tobacco or vaping products.	Persons under 19 may not enter tobacconist or e-cigarette specialty store. ¹⁴²	Those under 19 may not enter the cannabis section of the provincial liquor stores. ¹⁴³

129 British Columbia. Tobacco and Vapour Products.

130 British Columbia Cannabis Control and Licensing Act (CCLA), s. 70(1)

131 Government of Alberta. An Act to Control and Regulate Cannabis. S. 90.03(1)

132 Saskatchewan. Act to amend the Tobacco Control Act was given Royal Assent in December 2019. Government announced that it will be proclaimed into force “in the spring”.

133 Saskatchewan. Cannabis Control Act, s. 2-4.

134 Manitoba. Guide to laws for the sale and use of electronic cigarettes.

135 Manitoba. The Liquor, Gaming and Cannabis Control Act 101.4(3)

136 Ontario Ministry of Health and Wellness. Rules for selling tobacco and vapour products. <https://www.ontario.ca/page/rules-selling-tobacco-and-vapour-products>

137 Ontario. Regulation 468/18. S. 20(1)

138 Quebec. Tobacco Control Act, CQLR c L-6.2

139 Quebec. Cannabis Regulation Act. S. 34 (Until December 31, 2019 the restriction was for minors under 18)

140 New Brunswick. Tobacco and Electronic Cigarette Sales Act S. 6.6

141 New Brunswick. Cannabis Control Act. S. 6

142 Nova Scotia. Tobacco Access Regulations. Schedule A.

143 Nova Scotia. Nova Scotia Liquor Control. <https://cannabis.mynslc.com/skins/Cannabis/pages/VerifyAge.aspx>

Province	Convenience and other stores	Specialty tobacco or vaping shops	Cannabis stores
Prince Edward Island	Tobacco products may be sold in stores to which minors have access. ¹⁴⁴ Restrictions on selling vaping products in these stores is pending.	Persons under 21 may not enter specialty tobacco shops which display or promote products. ¹⁴⁵	Those under 19 may not enter cannabis stores. ¹⁴⁶
Newfoundland-Labrador	No age-restrictions on non-specialty stores selling tobacco or vaping products.	Persons under 19 may not enter specialty vapour products shops. ¹⁴⁷	Those under 19 may not enter cannabis stores ¹⁴⁸

C) RETAIL CONTROLS ON OTHER POTENTIALLY HARMFUL PRODUCTS

Tobacco products are not the only addictive and harmful product legally sold in Canada. Generally speaking, Canadian jurisdictions have chosen to take a product-specific approach to problem substance use (tobacco, alcohol, cannabis, cocaine, etc), and have not sought to establish a coherent public law approach to these goods.¹⁴⁹

Alcohol

Canadian governments remain heavily involved in the distribution and retail of alcohol. The purchase of alcohol in Canada can only be made through licensed retailers or licensed hospitality venues. Each province has authority over the licensing systems, and the rules vary considerably from one province to another.¹⁵⁰

Retail policies for alcohol include measures not yet in place for tobacco in Canada, such as minimum pricing laws in some parts of the country,¹⁵¹ government monopolies in many provinces, and a moratorium on new liquor licences for private outlets in British Columbia.¹⁵² At least one province has launched an e-commerce portal for alcohol.¹⁵³

Alcohol outlet density, if bars and restaurants are included, is greater than for tobacco retailers. In Ontario, for example, there were almost twice as many licensed alcohol outlets as registered tobacco outlets in 2014-2015 (19,388 vs. 10,000).^{154 155} Density of liquor stores (not including beer or wine sales outlets) is considerably lower than for tobacco, with around 3,000 liquor stores across the country. Even with this relatively small number 90% of Canadians live within 10 kilometers of a liquor store, one quarter population lives closer than 5 km from a liquor store and the average distance is 5.4 kilometers.¹⁵⁶

144 PEI Application for a Tobacco Retail Vendor’s Licence
145 Prince Edward Island. Tobacco and Electronic Smoking Device Sales, RSPEI 1988, c T-3.1. s 5.1 (2). In November 2019, the legislature amended the law so that vaping products could only be sold in specialty tobacconist shops. This comes into effect on March 27, 2020.
146 Prince Edward Island. Cannabis Management Corporation Regulations, s. 7
147 Newfoundland and Labrador. Tobacco and Vapour Products Control Act. S. 4.6
148 Newfoundland and Labrador. Control and Sale of Cannabis Act. S. 66
149 For a discussion of ways to do this, see Health Officers Council of British Columbia. Public Health Perspectives for Regulating Psychoactive Substances.
150 Information is available at the Canadian Association of Liquor Jurisdictions.
151 Thompson, K et al. Minimum alcohol pricing policies in practice: A critical examination of implementation in Canada. Journal of Public Health Policy. 2017.
152 Giesbrecht, N. et al. Pricing of alcohol in Canada: A comparison of provincial policies and harm-reduction opportunities Drug and Alcohol Review. 2015
153 LCBO. LCBO launches e-commerce sight. July 26, 2016.
154 Alcohol and Gaming Commission of Ontario. 2014-2015 Annual Report
155 Ontario Tobacco Research Unit, 2016 Strategy Monitoring Report citing data from the Ontario Tobacco Inspection System
156 Statistics Canada. Cannabis legalization: why proximity matters. October 23, 2018.

All provinces and territories in maintain government monopolies on wholesale distribution of alcohol, which is conducted through licensed wholesalers. In all but one province (Alberta) the government is the major retailer of alcohol in the province. Most provinces maintain full government retail monopolies on “hard liquor”, and many allow private distributors to sell wine and beer. None of the alcohol retail systems are managed by Ministries of Health: they report either to the ministry of finance, economic development or gaming authorities.¹⁵⁷

In previous decades, government liquor stores did not engage in overt product promotions, as are now common. Generally speaking, there is no price promotion between liquor outlets in provinces where private alcohol retailing is not permitted although there is significant price dispersion between brands or types of alcohol products.

Cannabis

The sale of recreational cannabis was made legal in Canada in the fall of 2018. Each province has regulated the wholesale and retail trade, adopting different approaches, as reflected in the table below, and municipalities and Indigenous governments may impose additional restrictions.¹⁵⁸ Several dozen Ontario municipalities, for example, passed resolutions opting out of having licensed cannabis retailers in their jurisdictions.¹⁵⁹

A review of the retail market 6 months after legalization found that in addition to on-line retailing, there were 260 street-level cannabis retail stores present, of which 181 were privately-run stores, 55 were government-run stores and 24 stores were in the hybrid government-private retail system.¹⁶⁰ Three months later, in July 2019, the number of stores had increased to 407,¹⁶¹ and the number is expected to grow. The Ontario government has expanded the number of potential retail outlets, reducing restrictions on producers to participate in retailing and permitting the sale of cannabis-related merchandise.¹⁶²

Provincial laws and federal laws impose additional restrictions on the manner in which cannabis products can be sold. These are summarized in Table 12 below.



Government liquor store, Manitoba, 1957¹



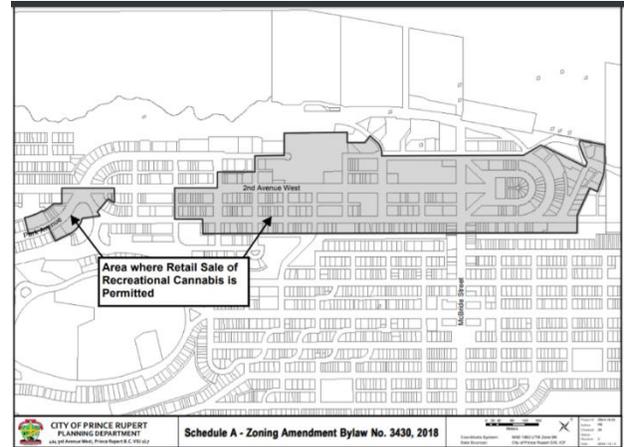
Government Liquor Store, Ontario 2015

1

157 Canadian Centre for Substance Abuse. Analysis of Beverage Alcohol Sales in Canada Alcohol Price Policy Series. 2012
 158 Myran, DT et al. Access to cannabis retail stores across Canada 6 months following legalization: a descriptive study. CMAJ Open. July-September 2019.
 159 Alcohol and Gaming Commission of Ontario. List of Ontario municipalities prohibiting or allowing cannabis retail stores. Accessed December 2019.
 160 Myran, DT et al. Access to cannabis retail stores across Canada 6 months following legalization: a descriptive study. CMAJ Open. July-September 2019.
 161 Statistics Canada. Analysis in Brief. The Retail Cannabis Market in Canada: A Portrait of the First Year. December 2019.
 162 Government of Ontario. Ontario Opening Cannabis Retail Market Province helping build safe and convenient retail system to combat illegal market. December 12, 2019.

Municipal restrictions on Cannabis retailing.

A number of Canadian cities have adopted bylaws specific to cannabis retailers. Saskatoon, for example, has imposed requirements on size, parking spaces, location near schools and public facilities, and density restrictions.¹⁶³ Prince Rupert has set zoning boundaries for areas where cannabis sales are permitted (see figure below).¹⁶⁴



Cannabis retail licence fees:

Provinces which permit private-sector retailers take different approaches to retail licence fees:

- British Columbia charges an application fee of \$7,500, with an annual licensing fee of \$1,500 and a bi-annual security screening renewal fee.¹⁶⁵
- Ontario charges a license fee of \$6,000 for a 2-year term, with a \$2,000 fee for two-year renewal. Retail store authorization fee is \$4,000. Managers are also required to be licensed, with a fee of \$750.¹⁶⁶
- Alberta charges a \$400 non-refundable application fee with an additional \$700 annual licence fee. A deposit of \$3,000 is required for background checks and due diligence (unused amounts are refunded).¹⁶⁷ The City of Calgary charges a \$625 fee for planning approval.¹⁶⁸
- Manitoba charges an application fee of \$500 is charged, with an annual licence fee of \$1,000.¹⁶⁹ Manitoba also charges retailers a wholesale mark-up (\$0.75/gram), a 9% mark-up, as well as Social Responsibility Fee on annual revenues.¹⁷⁰
- Saskatchewan collects a selection process fee of \$1,000, plus a permit application fee of \$2,000 and an annual permit fee of \$3,000 for retail stores located within cities and \$1,500 for others.¹⁷¹

Municipalities also levy retail licence fees on cannabis outlets.

- Saskatoon levies a \$20,000 initial licence fee, with an annual renewal fee of \$10,000 for cannabis retailers.¹⁷²

163 Saskatoon Zoning Bylaw NO. 8770.

164 City of Prince Rupert. Zoning Amendment Bylaw No. 3430, 2018.

165 British Columbia. Cannabis Licensing Fees.

166 Ontario. Alcohol and Gaming Commission of Ontario. Cannabis Retail Regulation Guide. Fees and Payment.

167 Alberta. Dispensary Laws and Regulations for Alberta Retailers.

168 City of Calgary. Cannabis store -business guide.

169 Manitoba. Liquor and Gaming Control Act. Licensing and Appeals Regulation

170 Manitoba. Cannabis Retailer Social Responsibility Fee and Wholesale Mark-ups

171 Saskatchewan. The Cannabis Control (Saskatchewan) regulations.

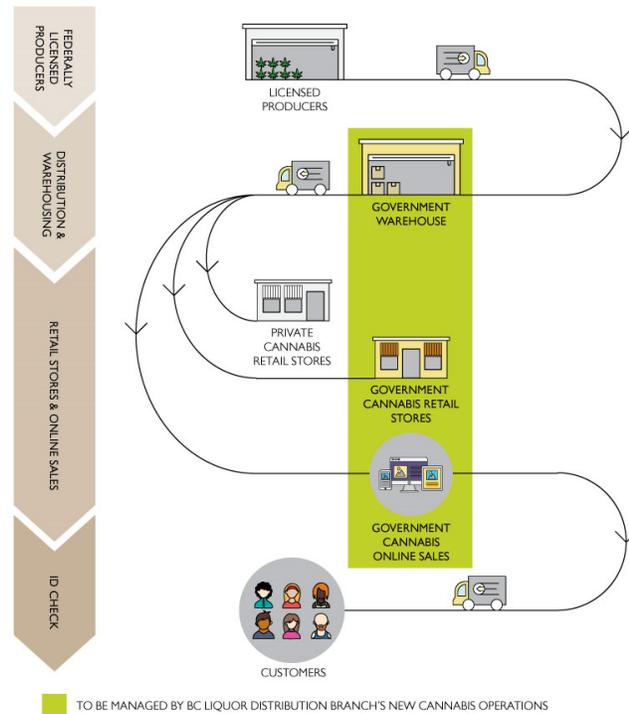
172 Saskatoon. Bylaw No. 9525.

Cannabis wholesale distribution

In 5 provinces, cannabis wholesaling and retailing is managed by government-owned agencies (see Table 11 below). Of the 5 provinces which allow private-sector retailing, 3 manage the wholesale distribution:

- The government-owned Ontario Cannabis Store is the only wholesaler of legal recreational cannabis in Ontario.¹⁷³ This structure is opposed by cannabis producers.¹⁷⁴
- In British Columbia, wholesale distribution is exclusive to a branch of the BC Liquor Distribution Branch.¹⁷⁵

By contrast, Newfoundland and Labrador, Alberta and Saskatchewan permit competition among private sector wholesale distributors.



Record-keeping responsibilities.

As a method to reduce illegal sales, the federal Cannabis Tracking System Order¹⁷⁶ requires retailers that are licensed by provincial governments to provide the provincial licensing authority with monthly reports on sales. These are administered by provincial licensing authorities.

173 Ontario Cannabis Store. About Us.

174 Safayeni, D. The province is on the right track, but it can't afford to wait four years to get 1,000 stores, and its retailers need a direct line to producers. Policy Options. December 29, 2019.

175 British Columbia. Liquor Distribution Branch. Suppliers.

176 Cannabis Tracking System Order: SOR/2019-202

Table 11: Select provisions of cannabis retailing laws and regulations

	NL ¹⁷⁷	PEI ¹⁷⁸	NS ¹⁷⁹	NB ¹⁸⁰	QC ¹⁸¹	ON ¹⁸²	MB ¹⁸³	Sask ¹⁸⁴	AB ¹⁸⁵	BC ¹⁸⁶
Health Ministry involved in regulatory oversight	No	No	No	Yes	Yes	No	No	No	No	No
Health goals identified in legislation governing retailers	No	Yes	Yes	Yes	Yes	No	No	No	No	No
Stores run by:	P	G	G	G	G	P	P	P	P	M
Restrictions on locations	Yes	Adm	Adm	Adm	Yes	Yes	Yes	Yes	Yes	Yes
Wholesale monopolies	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Cannabis-only stores *	Some	Adm	No	Adm	Yes	Yes	Reg	Yes	Reg	Yes
Children banned from stores	Yes	Adm	No**	Yes	Yes	Yes	Some	Yes	Yes	Yes
Mandatory training for retailers	No	Yes	Adm	Adm	Yes	Yes	Yes	Yes	Yes	Yes
Restrictions on incentives for retailers	No	Adm	Adm	Yes	Yes	Yes	Yes	No	Yes	Yes
Power to control retail price	Yes	Adm	Reg	Adm	Yes	Yes	No	No	Yes	Yes
Reporting requirements	Yes	Adm	Adm	Adm	Adm	Yes	Yes	Yes	Yes	Yes

G – Government-run stores; M- Mixture of government-run and privately-run stores, P – privately run stores

Reg: Regulatory power; ADM: Administrative capacity to implement .

** Stores are permitted to sell limited range of other products, such as cannabis accessories, non-alcoholic beverages and products that display cannabis brand elements;*

*** In Nova Scotia and Manitoba, children are banned from the part of the store where cannabis is sold.*

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- 177 Newfoundland. Cannabis Control Act. Amended.
Newfoundland. Cannabis Control Regulations.
Newfoundland. Cannabis Licensing and Operations Regulations.
- 178 Prince Edward Island. Cannabis Management Corporation Act.
Prince Edward Island. Cannabis Management Corporation Regulations.
Prince Edward Island. Cannabis Control Act, SNS 2018, c 3 <https://www.canlii.org/en/ns/laws/stat/sns-2018-c-3/latest/sns-2018-c-3.pdf>
Prince Edward Island. Cannabis Control Regulations
PEI Cannabis. Frequently Asked Questions.
- 179 Nova Scotia. Cannabis Control Act, SNS 2018, c 3
Nova Scotia Liquor Corporation. Frequently Asked Questions.
- 180 New Brunswick. Cannabis Control Act, 2018.
- 181 Quebec. Cannabis Regulation Act.
- 182 Ontario Cannabis Licence Act, 2018, S.O. 2018, c. 12, Sched. 2.
Ontario. Cannabis Licence Act. Regulations. 468/18.
- 183 Manitoba. The Liquor, Gaming and Cannabis Control Act
Manitoba. Liquor, Gaming and Cannabis Regulation.
- 184 Saskatchewan. The Cannabis Control Act.
Saskatchewan. The Cannabis Control Regulations.
- 185 Alberta. Gaming, Liquor and Cannabis Act, RSA 2000, c G-1
Alberta. Gaming, Liquor and Cannabis Regulation, Alta Reg 143/1996
- 186 British Columbia. Cannabis Distribution Act.
British Columbia. Cannabis Licensing.
British Columbia. Cannabis Retail Store Terms and Conditions.

Table 12: Provincial controls on cannabis retail outlets, May 2019.¹⁸⁷

Jurisdiction	Retail model in April 2019	Hours of operation†	Proximity to schools
British Columbia	Government: via BC Cannabis Stores, a division of BC Liquor Distribution Branch Private: via licensed retailers approved through BC Liquor and Cannabis Regulation Branch	0900–2300	None identified in legislation
Alberta	Private: via licensed cannabis retailers approved through Alberta Gaming, Liquor and Cannabis	1000–0200	100 m from a school
Saskatchewan	Private: via licensed cannabis retailers approved through Saskatchewan Liquor and Gaming Authority	0800–0300 except Dec. 31 and Jan. 1 (0800–0330)	None identified in legislation
Manitoba	Private: via licensed cannabis retailers approved through Liquor, Gaming and Cannabis Authority of Manitoba	0800–0000 except Nov. 11 (1300–0000)	None identified in legislation
Ontario	Private: via licensed cannabis retailers approved by Alcohol and Gaming Commission of Ontario	0900–2300	150 m from a school or a private school
Quebec	Government: via Société Québécoise du cannabis, a subsidiary of the Société des alcools du Québec	None identified in legislation	250 m from preschool, elementary, secondary schools, except Montréal (150 m)
New Brunswick	Government: via Cannabis NB	None identified in legislation	None identified in legislation
Nova Scotia	Government: via Nova Scotia Liquor Corporation	None identified in legislation	None identified in legislation
Prince Edward Island	Government: via Prince Edward Island Cannabis Management Corporation	0900–2300 except Sunday (1200–1700)	None identified in legislation, but reported as “each location is a respectful distance from schools”
Newfoundland and Labrador	Private: via licensed cannabis retailers approved through Newfoundland and Labrador Liquor Corporation	0900–0200	No license where the premise will cause inconvenience to a place of worship, school or hospital
Yukon Territory	Government: via Yukon Liquor Corporation Private: via licensed retailers approved through Yukon Liquor Corporation	0900–0200	150 m from each part of a building that is an elementary or secondary school
Northwest Territories	Government: via Northwest Territories Liquor and Cannabis Commission	None identified in legislation	None identified in legislation
Nunavut	No retail stores open as of May 17, 2019	Maximum of 12 h during any 24-h period	None identified in legislation

187 Combined Table 1 and 2 from : Myran, DT et al. Access to cannabis retail stores across Canada 6 months following legalization: a descriptive study. CMAJ Open. July-September 2019.

Restaurants

In addition to food-safety regulations, permits to serve alcohol and other business licensing requirements, some provinces have introduced oversight on the business operations of restaurants. In response to concerns about tax avoidance, the Quebec government introduced a mandatory billing (receipting) program for all restaurants, bars and catering events. This requires restaurants to provide a receipt with each sale, and to have their cash registers electronically linked via a “sales recording module” with a government server. The price of the unit is \$1,160,¹⁸⁸ and the program was implemented with a budget of \$55 million.¹⁸⁹ Recording devices are implemented in some Canadian retail venues by private data collectors, such as Nielsen Scantrack¹⁹⁰ and IRI Aztec basketview.¹⁹¹ As mentioned above, they are also required by First Nation and On Reserve vendors of tax-free tobacco in Saskatchewan.



One model of a sales recording module required by all restaurateurs in Quebec

Pharmacies

The federal government controls what drugs can be manufactured or sold in Canada. Therapeutic medicines, medical devices, vitamins, and cosmetics are reviewed by the federal health ministry before permitted for sale. The review and licensing requirements for products differ in response to the level of risk associated with their use. Federal law also controls who can make, label, import, distribute or wholesale these products. There is a federal price review system to ensure that prices are not “excessive”.¹⁹²

Provincial governments are responsible for the licensing of pharmacists. The systems in place vary somewhat between provinces, but some, like Ontario, and use both legislative and spending power to influence the price of drugs and the services available at pharmacies.¹⁹³ Internet offerings for prescription drugs are commonplace, although the sale is banned in all provinces unless based in licensed pharmacy with a street address.¹⁹⁴

Postal services

Canada Post is the national postal service and remains the country’s primary postal operator. It is a crown corporation which operates a mixed system of 3,700 corporate-owned outlets and 2,500 dealer-managed (franchise) outlets. It provides universal service, providing some subsidy for service in rural and remote areas. Canada Post was the sole authorized distributor of medical marijuana, which was recognized by the Task Force on Marijuana legalization and Regulation as providing “reliable, low-cost delivery to all parts of the country in a discrete manner that does not encourage increased usage.”¹⁹⁵ Canada Post, in compliance with

188 Revenue Quebec. Mandatory Billing in the Restaurant Sector.

189 Richard Ainsworth and Urs. Hengartner. Quebec’s Sales Recording Module (SRM): Fighting the Zapper, Phantomware and Tax Fraud with Technology.

190 Nielsen Canada. Consumer panel and retail measurement.

191 IRI Aztec.

192 McMillanLLP. Health Law in Canada.

193 André Picard. Ontario's backroom deals make for drug-policy chaos. Globe and Mail. May 26, 2010.

194 National Association of Pharmacy Regulatory Authorities.

195 Task force for the Canada Post Corporation Review. Canada Post in the digital age. 2016

federal law, puts restrictions on its carriage of alcohol, tobacco, vaping and cannabis products.¹⁹⁶ ¹⁹⁷ Canada Post controls the location of all outlets and imposes strict performance conditions on franchisees.¹⁹⁸

Table 13: Summary of retail controls in place in Canada

	Tobacco	Alcohol	Vaping Nicotine	Medical Cannabis	Recreational Cannabis	Restaurant	Prescription Drugs
Pre-market licensing of producers by tax authorities	Yes	Yes	No	No	No	No	No
Pre-market licensing of producers by health authorities	No	No	No	Yes	Yes	Yes	Yes
Retailers licensed by tax authorities	Sometimes	Yes	Sometimes	No	Sometimes	Sometimes	No
Retailers licensed by health authorities	Sometimes	No	Sometimes	Yes	Sometimes	Yes	Yes
Product-specific licence required for retailers	Sometimes	Yes	Sometimes	Yes	Yes	Yes	Yes
Authorization required for purchaser	No	No	No	Yes	No	No	Yes
Sales banned in some categories of venues	Yes	Yes	Sometimes	Yes	Yes	No	Yes
Health-related training requirements for vendors	Sometimes	Yes	No	No	Sometimes	No	Yes
Bricks and mortar grey market tolerated¹⁹⁹	Yes	No	No	Sometimes	Rarely	Yes	No
Government operated stores	No	Sometimes	No	No	Sometimes	No	No
Promotion restricted at point of sale	Yes	Yes	Yes	n/a	Yes	No	Yes
Health-related information required at retail	Sometimes	No	No	No	Sometimes	No	Yes
E-commerce authorized	Sometimes	Sometimes	Sometimes	Yes	Sometimes	Yes	Sometimes
Government monitoring of retailer sales	Yes	Sometimes	Yes	Yes	Sometimes	Sometimes	Sometimes
Public health monitoring of retailer sales	Yes	No	Yes	Yes	Sometimes	No	No

196 Canada Post. Non-Mailable Matter. January 1, 2020.

197 Canada Post. Sending and Receiving cannabis.

198 Personal communication with local postal franchisee. April 2017.

199 Toleration of grey market is defined as retail venues which operate openly (i.e. with signed storefronts) in some communities, including smoke-shacks on native reserves.

PART 2: TOBACCO RETAIL STRUCTURES IN OTHER COUNTRIES.

A) EUROPE

Some aspects of tobacco control in the European Union are governed by the EU Directive, which was last updated in 2014.²⁰⁰ Other than measures related to cross-border sales, the directive leaves to national governments decisions on whether or not (or how) to license tobacco retailers. The influence of the EU directive is also felt in some of the countries which are not members of the European Union but which have adopted EU-style legislation, i.e. Norway. Although the EU is a free trade area, the European Court of Justice has rejected challenges which would have forced countries to relinquish retail and distribution monopolies for tobacco.²⁰¹

The EU Directive addresses tobacco retailing only in connection with measures to address cross-border sales. In all other respects, the manner of retailing is left to the discretion of each national government. The exclusion of tobacco from the WTO commitments of several EU countries with respect to trade in retail and wholesale distribution is reflective, perhaps, of the desire of European Countries to maintain their own tobacco retailing systems.²⁰² Among these are a variety of regulatory approaches.

State Monopolies

A number of European countries used to hold monopolies for the production and sale of tobacco products in western Europe, including Austria (Austria Tabak), Spain (Tabacalera), France (Seita), Italy (ETI), and Sweden. A number of Eastern European countries, before market liberalization, also maintained a closed tobacco economy managed by the state. In the last quarter of the 20th century these monopolies were gradually opened up for competition and eventually absorbed by multinational tobacco companies.

Austria

In Austria tobacco kiosks are called Trafikanten, and tobacco shops are tabak trafik. They operate under the authority of the *Tobacco Monopoly Act* of 1996²⁰³ and are administered through the Monopolverwaltung GmbH.²⁰⁴ In 2018 there were about 5,500 licensed tobacco outlets (not including vending machines),²⁰⁵ of which 2,400 sell only tobacco and 3,100 are outlets that also sell other products. The population of Austria is about 8.86 million, giving a tobacco retail density of about 62 outlets per 100,000 population.



Tobacco licences have traditionally been issued with consideration of social objectives, and they are now preferentially given to those who suffer from some form of physical disability.²⁰⁶ These licence holders must be European citizens. The locations must be approved and mandatory training is required. Tobacconists are restricted in the other types of goods they can sell and are not allowed to have other business dealings in

200 Directive 2014/40/EU of the European Parliament and of the Council.

201 Judgment of the Court of 14 December 1995. Criminal proceedings against Giorgio Domingo Banchemo. Reference for a preliminary ruling: Pretura circondariale di Genova - Italy.

202 World Trade Organization. Council for Trade in Services. Distribution Services. Background note by the secretariat. S/C/37. 1998

203 The law and regulations are available at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005006>

204 Monopolverwaltung GMBH.

205 Monopolverwaltung GMBH. 2018 activities report.

206 Monopolverwaltung GMBH. 2015 activities report. Op. cit.

tobacco, or receive promotional discounts from manufacturers or distributors. The retail markup is set by the Tobacco Monopoly Law (53% of wholesale price, not including tax), and is reflected in an official price list.



France

Tobacconists in France are officially called 'débitants', but are commonly known as 'buralistes', so named because they operate the 'bureau du tabac'.

Buralistes operate under a monopoly retail licence system which is established under the authority of French tax law,²⁰⁷ and administered by the French revenue ministry (Directorate-General of Customs and Indirect Taxes/Douane et droits indirects).²⁰⁸

Buraliste licences are issued for a three-year (renewable) term. There are a number of long-standing conditions on who may hold a licence: they may not be issued to commercial corporations, but only to individual natural persons who are European citizens. An individual may only hold a licence for one location, and this location must be approved by government.

Manufacturers are forbidden from offering incentives to retailers to promote or sell cigarettes.²⁰⁹

The licence fee is set annually as a percentage of revenues over a base amount. In 2019 the fee was set at 19.92%.²¹⁰ France has a "one price policy" for each tobacco product:²¹¹ the retailer mark-up is set at 9% and the retail price for each brand is published by government.²¹² ²¹³ Buralistes are eligible for an end-of-service payment if they relinquish their licence under certain conditions,²¹⁴ and are offered incentives for diversifying their business.²¹⁵

Typically, a buraliste operates a small bar (bar-tabac) or a news-stand which is also a source for stamps, local licences or other government forms. There are currently around 24,500 buralistes²¹⁶ serving a population of 66.9 million. Over one half (55.5%) operate as bar-tabac, serving both alcohol and selling tobacco. Slightly



207 Government of France. Code general des impôts.

208 Government of France. Douanes et droits indirects. Devenir débitant de tabac.

209 France. Tax Code, Article 283

210 Government of France. Code general des impôts. Article 568. .

211 Government of France. National Smoking Reduction Program 2014-2019.

212 Government of France. Service-Public-française

213 See, for example. Government of France. Arrêté du 5 mai 2017 modifiant l'arrêté du 24 juin 2016 portant homologation des prix de vente au détail des tabacs manufacturés en France, à l'exclusion des départements d'outre-mer

214 Government of France Décret n° 2017-977 du 10 mai 2017 relatif aux indemnités de fin d'activité en faveur des débitants de tabac

215 Government of France. Le Portail de l'Economie, des Finances, de l'Action et des Comptes publics. Buralistes, diversifiez votre activité et obtenez des primes!

216 Confédération des Buralistes.

less than one half (41%) are situated in communities with fewer than 3,500 residents.²¹⁷ There are no vending machines or other sources to legally purchase tobacco in France. The retail density, at 36 per 100,000 population, is believed to be the lowest in Europe.

In recent years, France has adopted a series of measures to reform tobacco retailing and the *buraliste* system. Some of these measures are designed to better align retail practice with health goals. These include banning promotional signs at retail, requiring all *buralistes* to receive initial training and refresher courses on health aspects of tobacco regulations, and increasing enforcement of sales to minors laws.²¹⁸ Other measures are designed to reduce the economic dependence of these retailers on tobacco sales. Among these are the use of these outlets as the basis for an informal electronic payment system, “*compte nickel*.”^{219 220}

From a public health perspective, the *Buraliste* system is not considered to be successful. The system has been administered by the tax authorities with little or no input from health authorities, and the *licences* have frequently, loudly and often successfully opposed tobacco control measures.²²¹

The conflict between the historic role of the *buralistes* in support of tobacco sales and tobacco control objectives was recently identified by both the French Ministry of Health and the French Auditor General (Cour des comptes). In its 2016 Annual Report on tobacco control, the ministry raised concerns about the inconsistency of *buraliste* behaviour and government health goals: “The *buraliste*’s trade is in a state of upheaval and its role is now questioned ... As an agent of government, it is important that they serve the people by selling products and services that are useful to society.”²²² In its 2017 report, the Cour des comptes echoed the view.

With regard to tobacco retailing, the central objective of current public policy favours public health. Recent policy decisions seek to reduce tobacco consumption. At the same time, various programs of support for tobacco retailers are being developed and implemented by the Customs Authority or the Ministry of the Economy and Finance, in close collaboration with the tobacco retailers’ association (*Confédération des buralistes*) that co-manages some of the programs. The Ministry of Health is absent from these processes.

This lack of cohesion in public policy results in inappropriate support to the tobacco retailing profession. The system needs to be completely rebuilt.²²³

The subsequent iteration of the French tobacco control strategy identifies activities to strengthen the public health component of *Buraliste* training (mostly focused on sales to minors and smoke-free environments) and to participate in the annual transformation of 2,000 retailers away from tobacco sales.²²⁴

The French revenue ministry hosts an open data portal (<https://www.douane.gouv.fr/la-douane/opendata/categories/tabacs-manufactures>) on which the official price list, addresses of *buralistes* and sales data are available for download.

217 Buralistes.fr. Les Chiffres clés.

218 Buralistes.fr. La formation des *buralistes*.

219 <https://compte-nickel.fr/>

220 Government of France. National Smoking Reduction Program 2014-2019. Annual Report 2016.

221 For example: French tobaccoists dump four tonnes of carrots on street in cigarette protest. July 22, 2015.

222 “Le métier de *buraliste* est actuellement en plein bouleversement et son rôle est désormais interrogé au travers des problématiques liées au développement des territoires. En tant que préposé de l’administration, il importe qu’il rende service aux populations, en vendant des produits et des services utiles à la société.”

223 Government of France. Cour des comptes. Rapport public annuel 2017. (Unofficial translation)

224 Government of France. Programme national de lutte contre le tabac. 2018-2022.

Hungary

Hungary re-established state control on tobacco retailing in 2013, requiring that retail licences be administered through the state-owned company, ND Nemzeti Dohánykereskedelmi Nonprofit Zrt, “ND Zrt.” The move was criticized by some,²²⁵ yet recognized as progress by the World Health Organization.²²⁶

The new licences were issued after a tendering process, during which Licencees were asked to demonstrate how access to young people would be prevented (such as prohibiting entry to those under 18). (The law was successfully challenged in European law by a former tobacconist, and the government was required to pay 21,000 euros in compensation).²²⁷

Conditions of licence included having a separate entrance, without being visible from the outside and offering a limited selection of non-tobacco goods (gambling games, alcoholic drinks, energy drinks, coffee, mineral water, soft drinks, newspapers and magazines).²²⁸ Locations must be approved, and density is considered before a licence is issued. Children may not enter the stores.

Vending machines are banned. Although about 42,000 tobacco retailers had previously been operating, licences were issued to about 5,500 national tobacco shops and 500 “substitutes” in small communities, and roughly 6,000 were in operation in 2018.^{229 230} With a population of 10 million, the tobacco retailer density was about 60 outlets per 100,000 population. Retailers are obliged to receive annual training through e-learning organized by a regulator.²³¹ In 2020, it was reported that the law had been changed to reduce the threshold for new licensees to one store per 4,000 from 3,000.²³²

Since 2018, these stores have also had a monopoly on the sale of e-cigarettes.²³³ The monopoly maintains a web-site for licensed retailers, on which additional information can be found.

Italy

In Italy, tobacconists (tabacchi) are licensed by a branch of the Italian Finance Ministry (Amministrazione autonoma dei monopoli di Stato, AAMS)²³⁴ and operate under the Law of 26 Ottobre 1995, no. 504.²³⁵ Two categories of licenses are issued (tobacco shops and special outlets), with differing conditions for issuance,



225 Financial times. Hungary’s Tobacco Scandal. July 1, 2013.

226 Budapest Business Journal. WHO awards Orbán in fight against “tobacco industry tactics”. October 2013.

227 European Court of Human Rights. Case of Vekony v. Hungary. Application No. 65681/13.

228 Timbros Institute. Points of Sale of tobacco Products. Synthesis of scientific and practice based knowledge on the impact of reducing the number of points of sale and restrictions on tobacco product displays. 2014.

229 CEDT. Confederation Européenes des Détaillants en Tabac. Hungarian Tobacconists.

230 ND Nemzeti Dohánykereskedelmi. A magyarországi dohánykereskedelem. 2018.

231 CEDT. Confederation Européenes des Détaillants en Tabac. Hungarian Tobacconists.

232 Vaporproductstax.com. Blog. January 1, 2020. Hungary lowers its excise tax on e-cigarettes.

233 ND Nemzeti Dohánykereskedelmi. January 1. 2020. 1/2020. Information on legislative changes and upcoming deadlines

234 Government of Italy. Agenzia della dogane e dei monopoli.

235 D.lgs. 26 ottobre 1995, n.504

Other legislation available at: <http://www.fire-italia.org/prova/wp-content/uploads/2015/04/testo-unico-accise.pdf>
https://www.agenziadoganemonopoli.gov.it/portale/monopoli/tabacchi/normativa/norm_nazionale/sigarette

but in both cases only natural persons who are European citizens may be licence holders. The retail markup (10%) is set by the government,²³⁶ and is reflected in an official price list.²³⁷

There are density restrictions for tobacco shops which vary depending on the size of the communities (in cities with more than 100,000 people, the shops must be at least 200 metres apart). Vending machines are permitted in Italy, with electronic cards used as proof of age.²³⁸

There are 54,700 tabacchi, with an additional 9,900 outlets (not including vending machines),²³⁹ serving a population of 60.6 million. The retail density is 105 outlets per 100,000 population.



Spain

In Spain, tobacconists (estanco) are licensed by the Comisionado para el Mercado de Tabacos on behalf of the Ministry of Finance and Public Administration²⁴⁰ under the authority of a 1998 law²⁴¹ and subsequent regulations.^{242,243} Three-year licences are issued after public tender or auction and are renewable. Annual licence fees depend on the population and turnover.²⁴⁴ The locations must be approved, and density and proximity to educational centres is a consideration. The minimum distance between licence-holders is 150 m.²⁴⁵

There are three categories of licence holders (press kiosks, bars and restaurants and hotels). Licences are restricted to natural persons who are European citizens, and who live in the community. Licencees may not have another line of business and may not have any business relationship with other tobacco dealings. Retailers are prohibited from promoting certain brands to customers. The retail markup is set by the government (9% on cigarettes) and is reflected in an official price list.²⁴⁶



236 Ministry of Economy and Finance. D. Dirett 22-22-2005. Breakdown of retail prices of cigarettes from January 1, 2006

237 AAMS. Tariffario aggiornato all'8 marzo 2017.

238 Timmbros Institute, op. cit. f

239 CEDT. Confederation Européennes des Détaillants en Tabac. Italian tobacconists.

240 Comissionada para al Mercado de Tabacos. <https://cmtabacos.sede.gob.es/>

241 Ley 13/1998, de 4 de mayo, de Ordenación del Mercado de Tabacos y Normativa Tributaria.

242 Ministerio de Hacienda. Mercado de tabacos.

243 Libre Mercado. El estanco, un monopolio en peligro de extinción. January 1, 2014

244 Government of Spain. Canon concessional de expendedudrias.

245 Valiente, et al. Regulating the local availability of tobacco retailing in Madrid, Spain: a GIS study to evaluate compliance. Tobacco Control. July, 2018.

246 Lista Precios.

There are an estimated 13,500 estancos as well 134,900 other retail outlets,²⁴⁷ in addition to an estimated 150,000 vending machines.²⁴⁸ With a population of about 46.7 million people, the density of tobacco retailers is about 317 outlets per 100,000 population, exclusive of vending machines.

Notable developments in other European countries.

Czech Republic

In 2015, when revising its tobacco control laws to bring them into line with the EU Directive, the Czech government considered the option of limiting the sale of tobacco products “to specialised outlets whose operation would be subject to a permit (licence) and persons under 18 years of age would be prohibited from entering these outlets as is the case e.g. in Hungary.” It rejected this operation as “the impact ...on the business environment would be too severe and would likely be unfeasible in the short term.”²⁴⁹ Instead it adopted restrictions on the types of venues where cigarettes could be sold, and banned them in schools and other places where young people were present.²⁵⁰

Estonia

A WHO-Joint National Capacity Implementation review of tobacco control in Estonia in 2011 called for a licensing system that could be used for “limiting hours and or days of sale; restricting the location, density and types of outlets; mandating seller training and licensing; and implementing seller liability, including loss of licence following breaches of licensing conditions.”²⁵¹

Although the law that was subsequently passed did not adopt a licensing system, it did impose restrictions on retail, including bans on sales in pharmacies, hospitals, schools, or several categories of youth-oriented places and Bans on vending machines, street level sales. In addition, it imposed on retailers the “obligation of undertaking to cooperate”, by which retailers are required to receive and display publications from government and non-governmental organizations that promote non-smoking.²⁵²

Finland

Since 2008, retailers in Finland have required a specific licence to sell tobacco product under the authority of its *Tobacco Act*.^{253 254} In 2016 the law was revised to permit the municipalities which issue these licences to charge fees to offset the costs of monitoring compliance with the law – the fees. The maximum fee is EUR 500 (or EUR 1000 if nicotine products are also sold), and can be assessed on the point of sale, i.e. per cash register. Licences may not be issued in certain areas (areas where children are present or schools). The state licensing body, Valvira, is responsible for the administration of this licensing system and for maintaining a register of licensed retailers.²⁵⁵ Finnish media report that some retailers are paying EUR 12,000 per year for retail licences.²⁵⁶

247 Nomisma. The European tobacco sector. An analysis of the socio-economic footprint. June 2012

248 Euroweekly. Spain hit by first-ever cigarette machine strike. April 2016.

249 Czech Republic. Regulatory Impact Statement. 20150727.

250 Czech Republic. Act No. 379/2005 on measures to protect against damage caused by tobacco products, alcohol and other addictive substances, and amending related laws (as amended)

251 WHO. Joint national capacity assessment of tobacco control policies in Estonia. 2011

252 Estonia. Tobacco Act

253 Finland. Tobacco Act (549/2016). .

254 Finland. Ministry of Social Affairs and Health. Questions and answers on the new Tobacco Act.

255 Finland. Valvira. National Supervisory Authority for Welfare and Health.

256 Finland. Lansivayla. January 1, 2017. Valvontamaksut nousevat tuhansiin euroihin – "Jos tupakoitsijat eivät ostaisi ruokaa, tupakanmyynti kannattaisi lopettaa kokonaan"(Surveillance fees rise to thousands of euros - "If smokers would not buy food, tobacco sales should be stopped altogether").

Valvira reports that although the number of licences was stable between 2008 and 2016, it has fallen by “around 1,500.” With the current number of retailers around 8,700 in 2017²⁵⁷ and 7,250 in October 2018,^{258,259} the reduction was about 15% in the first year of the fee, with continued decrease. A public register of retail licences and wholesale notifications is maintained.²⁶⁰

Retailers must appoint one person to be responsible for plan to self-monitor compliance with the regulations, and a formal self-monitoring plan is required of each retailer. This plan must address training of new employees, age verification methods, etc.²⁶¹

Gibraltar

Gibraltar requires the licensing of tobacco retailers.²⁶² The issuance of new licences is discouraged.²⁶³

Iceland

Iceland maintains state control of tobacco wholesaling, distribution of tobacco to retailers is done through the State Alcohol and Tobacco Company of Iceland, also known as Vinbudin.²⁶⁴ Regulations direct the agency Vinbudin in its selection of products for distribution.²⁶⁵ The wholesale price list is publicly available.²⁶⁶

Icelandic law provides for retail licensing from the regional board of health and allows local authorities to collect fees for such permits.²⁶⁷

For retail sale of tobacco, a special permit is required from the board of health of the relevant region. For operation of a specialist tobacco shop, a special permit is also required from the board of health of the relevant region. A specialist tobacco shop shall be especially distinguished. A permit under this article shall be granted for a term of four years and will only be granted to individuals or businesses who/which fulfill the general requirements of legislation on commercial employment.

Local authorities are permitted to collect a fee for permits and for monitoring the activities of permit-holders, on receipt of recommendations from boards of health. Such fees shall be in accord with the *Health and Pollution Control Act*.

The Minister may, in consultation with the Minister for the Environment, issue regulations (Reg. 325/2007) stating further provisions on the granting of permits under this article, inter alia the fittings of specialist tobacco shops, how such shops are to be distinguished, and how tobacco and tobacco trademarks may be placed at retail outlets and in specialist shops.

257 Personal communications with Ms. Reeta Honkanen, Valvira. May 2017

258 Timberlake, D et al. Strategies and barriers to achieving the goal of Finland’s tobacco endgame. Tobacco Control. May 2019.

259 Olliila, E. See you in court: obstacles to enforcing the ban on electronic cigarette flavours and marketing in Finland. Tobacco Control. October 2019.

260 Finland. Valvira. Tobacco. Sales.

261 Valvira. <https://tupakkarekisteri.valvira.fi/>

262 Gibraltar. Tobacco Act, 1997.

263 Gibraltar Panorama. Ministerial direction on the issue of tobacco business licences.

264 Iceland. Act on Trade in Alcohol and Tobacco. 2011.

265 Vinbudin. Regulations concerning the purchase, product selection, wholesale and delivery of tobacco products and trade terms with suppliers. 2008.

266 Vinbudin, to order tobacco: <https://tobak.vinbudin.is/innskraning>

267 Iceland. Tobacco Control Act. 2011

Ireland

Since 2009, Irish law has banned the advertising or display of tobacco products by retailers and have required retailers to register with National Register of Tobacco Retailers.^{268 269} The fee required to register is €50 per registrant. In 2018, the Health Services Executive reported that there were 13,195 retail outlets, of which the largest proportion were licensed premises.²⁷⁰ With Ireland's population of about 4.8 million, there are 273 tobacco outlets (including bars, etc) and about 123 store-front retailers selling cigarettes per 100,000 population.

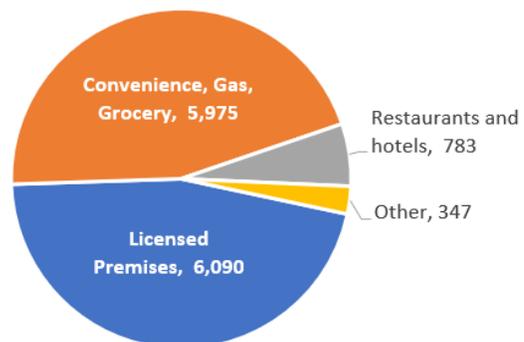


Figure: Number of registered tobacco retailers, Ireland 2018

In 2014, the Irish Ministry of Health issued a discussion paper which propose replacing the register with a licensing system.²⁷¹ The proposal was strongly opposed by retailers,²⁷² but in 2019 the Minister of Health received approval to draft legislation to “introduce a licensing system for the sale of (a) tobacco products and (b) nicotine inhaling products to include an annual fee per premise for the sale of such, in such a manner as may be determined by the Minister.”²⁷³ Irish law prohibits price discounting, and also retailer incentive programs.²⁷⁴

Lithuania

Lithuanian law requires the licensing of tobacco manufacturers, wholesalers and retailers, with retail licences issued by municipalities.²⁷⁵ Licenses are not permitted in certain venues (pharmacies, internet cafés, educational establishments, etc.)

Netherlands

In early 2020, the Netherlands legislature adopted a motion aimed at significantly reducing the number of retail outlets, with the goal of restricting sales to tobacco only age-restricted stores.²⁷⁶

Norway

Tobacco retail licensing has been proposed, studied and endorsed by health experts for over a decade in Norway, yet was not specified included in the most recent strategy or legislation.^{277 278} Among those calling for a retail licensing system were the Norwegian Institute for Alcohol and Drug Research (2002),²⁷⁹ and a WHO-organized National Capacity Implementation review (2010).²⁸⁰

268 Ireland. National Register of Tobacco Retailers.

269 Ireland. Health Services Executive. Tobacco Control

270 Ireland. Health Services Executive. State of Tobacco Control in Ireland. 2018.

271 Public consultation on legislation in relation to the sale of tobacco products and non-medicinal nicotine delivery systems

272 Shelflife. Department of Health's public consultation on sale of tobacco and e-cigarettes 'flawed', CSNA. January 2015.

273 Ireland Ministry of Health. Press Release. Minister for Health welcomes Government approval to draft a Public Health (Tobacco and Nicotine Inhaling Products) Bill. October 2019.

274 Public Health (Tobacco) Control of Sales Promotion (Regulations 2013).

275 Republic of Lithuania. Law on tobacco, tobacco products and associated products, Article 11

276 Netherlands Legislature. Legislation 35321. Wijziging van de Tabaks- en rookwarenwet ter uitbreiding van het rookverbod. (Amendments to the Tobacco Act). www.tweedekamer.nl/downloads/document?id=1b3a6c7a-203d-4ef0-8243-659ecd4c5527&title=32321%2C%20eindtekst.doc

277 Norway. A tobacco-free future. National Strategy for tobacco control 2013-2016.

278 Norway Law amending the Tobacco Control Act

279 Philip Morris v. Norway. 10-041388TVI-OTIR/02. Oslo District Court. September 2012.

280 WHO. National Capacity Assessment for Tobacco Control – Norway. 2010

Features and process: The licensing system should consider: limiting hours and or days of sale; restricting the location, density and types of outlets; mandatory seller training and licensing; and seller liability, including loss of licence following breaches of licensing conditions. ...

Principle: This policy is based on a central concern to send an unambiguous public signal that the government regards tobacco as an exceptionally harmful product, deserving of restrictions on retail sale at least comparable to those that apply to prescribed pharmaceuticals in most countries and to alcohol products in Norway.

In June 2017, Norway adopted regulations requiring retail outlets to be registered, and authorizing municipalities to set fees to cover their inspection costs.^{281 282} After January 1, 2019, regulators were authorized to charge an annual fee of NOK 4,580 (CAD 659) for retail outlets and NOK 1,220 (CAD 175) for temporary outlets.²⁸³

Slovenia

Slovenia passed its new tobacco control law in January 2017. Among its provisions are requirements that Vendors be licensed by the Health Ministry. These licences, issued on a 5 year renewable term, are linked to a specific location. The Ministry can reject applications, and the licences can be withdrawn or suspended for activities which break other provisions of the tobacco control law.^{284 285} Slovenia makes public a list of authorized licence holders.²⁸⁶

Sweden

Sweden revised its tobacco laws in 2018 and introduced compulsory licensing for retailers and wholesalers. Sales permits are issued by the municipality, which has the responsibility and authority to review the suitability of the application and to assess a licence fee.²⁸⁷

United Kingdom

The retail environment for tobacco products in the United Kingdom is similar to that in Canada: a display ban is in effect (phased in between 2012 and 2015)²⁸⁸ and the sector is adjusting to a plain packaging environment. As in Canada, U.K. retailers have access to dedicated retailer websites, which they are incentivized to use²⁸⁹ and which facilitate access to other incentives.^{290 291} The terms and conditions of JTI's reward website suggest that rewards include cash and gift cards.²⁹²

The United Kingdom has devolved some authorities to governments in Scotland, Northern Ireland and Wales, and in the first two tobacco retailers are required to register.

281 Lov om endringer i tobakksskadeloven, strålevernloven og helseberedskapsloven (registrerings- og tilsynsordning for salg av tobakksvarer mv.).

282 Forskrift om registrering av og tilsyn med salg av tobakksvarer. FOR 2017-09-21

283 Forskrift om endring i forskrift om registrering av og tilsyn med salg av tobakksvarer mv

284 Slovenia. The law on restricting the use of tobacco and related products.

285 Government of Slovenia. Smoking and Tobacco.

286 Slovenia. Seznam izdanih dovoljenj za prodajo tobaka tobacnih in povezanih izdelkov 11.9.2019

287 Sveriges Kommuner och Landsting. Swedens Municipalities and Town Councils. Circular. New law on tobacco and similar products. June 26, 2019

288 Spanopoulos. D. Retail Price and Point of Sale Display of Tobacco in the UK: A Descriptive Study of Small Retailers. PlosOne, 2012.

289 www.JTladvance.co.uk ; jtirewards.com; Talking Retail. "JTI announces retailer giveaway". September 2, 2015.

290 Talking Retail. "JTI launches Silk Cut limited edition packs. 23 July 2015.

291 Imperial Tobacco ignite (www.imperial-ignite.co.uk, now blocked from access) in 2016 identified the use of "points", "rewards catalogue" and "prepaid cards".

292 Japan Tobacco.

- Retailers in **Northern Ireland** were required to be registered by April 6, 2016. There is no cost to registration.²⁹³
- A retail registration for tobacco was implemented in **Scotland** in 2011 and extended to nicotine vapour products in 2016 (deadline to register was 2017). There is no cost to register.^{294 295} The register was evaluated by Cancer Research UK in 2017.²⁹⁶ The Scottish Tobacco Control Action Plan of 2018 included a commitment to “Considering legislating to introduce conditions for registration or licensing of retail.”²⁹⁷
- The **Welsh** government passed legislation in July 2017 to require a registry of tobacco and nicotine product retailers. The bill gives government the power to set fees for registration.²⁹⁸
- In 2016, the **United Kingdom Revenue and Customs ministry** released a consultation paper that considered retail registration as part of initiatives to address illicit trade.²⁹⁹ A summary of responses was made public in November 2017. The government’s position articulated in that response was that retailer licensing was not justified as an anti-illicit trade measure.³⁰⁰ The U.K. Ministry of Health does not include any licensing provisions in its 2017-2022 Tobacco Control Plan.³⁰¹

There are an estimated 10,000 tobacco retailers in Scotland,³⁰² representing about 185 retailers for every 100,000 population. In 2012 there were 56,000 reported in England, representing about 100 tobacco outlets for every 100,000 people.³⁰³

293 Tobacco Retailers Act (Northern Ireland) 2014 - Retailers Guidance.

294 Tobacco and Primary Medical Services (Scotland) Act 2010 .

295 The Sale of Tobacco (Register of Tobacco Retailers) Regulations 2010

296 ScotCen and Cancer Research UK. Evaluating the Scottish Tobacco Retail Register. 2017

297 Scottish Government. Raising Scotland’s Tobacco-free Generation. 2018.

298 Public Health (Wales) Act, 2017

299 Her Majesty’s Revenue & Customs. Tobacco Illicit Trade Protocol – licensing of equipment and the supply chain.

300 HM Revenue and Customs. Tobacco Illicit Trade Protocol – licensing of equipment and the supply chain. Summary of Responses – licensing (or equivalent) of the supply chain

301 United Kingdom Department of Health and Social Care. Tobacco Control Plan Delivery Plan 2017 - 2022

302 NHS Scotland. Rapid evidence review: What is the causal link between tobacco outlet density and smoking prevalence?

303 Timbros Institute. Points of Sale of tobacco Products. Synthesis of scientific and practice-based knowledge on the impact of reducing the number of points of sale and restrictions on tobacco product displays. 2014.

Table 9: Tobacco retail density in Europe, 2012³⁰⁴

Country	Population in 2017 ³⁰⁵	Tobacco-nists	Total (Tobacconists and other outlets)	Number of vending machines ³⁰⁶	Vending machine market share	Total with vending machine	Outlets per 100,000 – not incl. vending	Outlets per 100,000 incl. vending machines
Austria	8,169,929	2,761	6,987	6,000	6.5%	12,987	86	159
Belgium	11,007,020	3,422	11,907	12,300 ³⁰⁷	9%	24,207	108	220
Bulgaria	7,621,337	1,372	22,036	banned		22,036	289	289
Cyprus	803,147	137	3,114	banned		3,114	388	388
Czech	10,674,947	8,519	63,088	4,000	3%	67,088	591	628
Denmark	5,368,854	65	9,494			9,494	177	177
Estonia	1,294,236	420	3,450	banned		3,450	267	267
Finland	5,410,233	447	9,098	banned		9,098	168	168
France	66,966,000	27,398	27,398	banned		27,398	41	41
Germany	81,799,600	28,450	92,350	380,000	12%	472,350	113	577
Greece	11,606,813	9,160	33,782	banned		33,782	291	291
Hungary	10,075,034	7,000	7,000	banned		7,000	69	69
Iceland	320,060		475	banned		475	148	148
Ireland	4,581,269		10,500	restricted		10,500	229	229
Italy	60,665,625	56,071	69,572	13,850	7%	83,422	115	138
Latvia	1,973,127	817	5,511	banned		5,511	279	279
Lithuania	2,881,020	986	8,967	banned		8,967	311	311
Luxemburg	512,000		1,594	900	1.5%	2,494	311	487
Malta	397,499	36	1,004	2,400	65%	3,404	253	856
Netherlands	17,119,300	2,000	8,400	16,400	10%	24,800	49	145
Norway	5,033,675	1,156	7,608	banned		7,608	151	151
Poland	38,625,478	20,724	140,000	banned		140,000	362	362
Portugal	10,617,999	4,450	23,500	61,000	50%	84,500	221	796
Romania	19,043,767	3,130	81,814	banned		81,814	430	430
Slovak Republic	5,422,366	640	20,890	banned		20,890	385	385
Slovenia	2,048,847	144	3,599	banned		3,599	176	176
Spain	46,777,373	13,505	148,399	175,000	42.5%	323,399	317	691
Sweden	9,515,744	1,500	10,699	restricted		10,699	112	112
United Kingdom	65,110,000		95,770	banned		95,770	147	147

304 Unless otherwise identified, data is from:

Nomisma. The European tobacco sector. An analysis of the socio-economic footprint. June 2012

305 Wikipedia. Area and population of European countries. https://en.wikipedia.org/wiki/Area_and_population_of_European_countries

306 Data on countries identified as having banned vending machines or restricted from youth access or promotion are taken from Implementation Database of the Framework Convention on Tobacco Control. <http://apps.who.int/ftc/implementation/database/>

307 In 2019, Belgium introduced legislation to restrict vending machines. TRIS EU Notification 2019/216/B (Belgium)

B) THE UNITED STATES

Tobacco retail reform has been a subject of active research and policy development in the United States. The following information has been taken from reviews by health organizations which focus their activities on tobacco retail reform.^{308 309 310 311}

Nowhere in the United States is there a “dark market” for tobacco products, where the display of tobacco products are not permitted for sale, and where promotions are not visible at retail. Tobacco retail conditions are set by state and local governments.

The estimated number of tobacco retailers in the United States (375,000) for a population of 3.24 million people suggests an overall density of 115 retailers for 100,000 people.^{312 313} The concentration of retailers has been found to be more intense in areas which are home to more poor people, more African Americans, or other disadvantaged groups. Geo-mapping of retailers has been completed in many U.S. municipalities.

Tobacco retail reform has been a subject of active research and policy development in the United States. There have been more than 100 studies on tobacco retailer density in the United States, and sustained monitoring of the retail environment at a level unknown in other countries.

Policy priorities identified as consensus goals include increasing licence fees, restricting sales in youth locales, minimum legal sales age for e-cigarettes and bans on self-service display bans for e-cigarettes and other tobacco products. Ending sales in pharmacies is encouraged as a voluntary measure for large pharmacy retailers, and is in place as a regulatory measure in several municipalities in Massachusetts and California. Measures that are implemented in Canada, Australia and elsewhere (such as prohibitions on product displays and other advertising restrictions) are considered to be not feasible by many U.S. tobacco control analysts.³¹⁴

A predominant feature of U.S. health proposals is to focus on measures that can be adopted by and implemented by local governments, such as zoning laws. Non-tax pricing controls (such as prohibiting price discounting) are also proposed as municipal-level reforms for U.S. cities. There are constitutional limits on local regulation, as shown by New York’s defeat in requiring mandatory posting of graphic health warning messages.

Municipal regulations

Reducing density

- San Francisco adopted a Tobacco Retail Density Policy³¹⁵ with the goal of reducing the number of tobacco sales by about half to 495 (from about 1000).³¹⁶ With a population of about 870,000, the pre-implementation density was 121 retailers per 100,000, and the goal (presuming no population growth), will be 60 per 100,000 people. San Francisco also imposes a litter abatement levy of \$1.00 per package.³¹⁷

308 State and Community Tobacco Control Research. Advancing Science and Policy in the Retail Environment (ASPiRE). Point-of-Sale Report to the Nation. Realizing the Power of States and Communities to Change the Tobacco Retail and Policy Landscape. 2016

309 ChangelabSolutions.org. Point of Sale Playbook. 2016

310 Tobacco Control Legal Consortium. Point of Sale Strategies. A Tobacco Control Guide. 2014

311 CounterTobacco.org

312 State and Community Tobacco Control Research. Point of Sale Report to the Nation. 2016.

313 Golden, S e tal. County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012. Preventive Medicine. 2019.

314 See Point of sale strategies ranked by legal feasibility.

Tobacco Control Legal Consortium. Point of Sale Strategies. A Tobacco Control Guide. 2014, p. 28

315 City of San Francisco. Ordinance No. 259-14. <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0259-14.pdf>.

316 Reducing Tobacco Retail Density in San Francisco: A Case Study

317 San Francisco Treasurer. Cigarette Litter Abatement Fee

In addition to providing revenue, this also provides information on neighbourhood level sales of tobacco products.

- Other California municipalities have limited tobacco retailers to 1 per 2,000 residents (Sonoma County) or 1 to 4,000 for specialty tobacco retailers (Oroville). This is the equivalent of 50 and 25 per 100,000 people.³¹⁸
- Philadelphia adopted measures, effective in January 2017, to reduce retail density to 1 retailer per 1,000 people and to prohibit new tobacco retail outlets within 500 feet (150 meters) of a primary or secondary school.³¹⁹ The goal is equivalent to a retailer density of 100 outlets per 100,000 people.
- New York City adopted a series of retail-related measures in August 2018 which included a cap on the number of tobacco retailers and reducing this number through attrition to 50% of the current number in each electoral district.^{320 321} The City estimates there are 8,300 current licensees for a population of 8.54 million, giving a density of 97 retailers for 100,000 population. ³²²
- California communities which require a minimum distance between tobacco retailers include Palo Alto (500 feet), Huntington Park (200 feet), Benton county (1,000 feet).³²³

Limiting proximity to children’s places

- The Cities of Bishop (California) and Renville County (Minnesota) prohibit tobacco retailers from operating within 1,000 feet of schools, playgrounds, houses of worship and other youth-oriented facilities.³²⁴

Prohibiting sales in certain venues

- In Canada all but one province has banned the sale of tobacco products in pharmacies and all have banned sales in health institutions. In the United States, such restrictions are more commonly included in municipal licensing bylaws. ³²⁵

Prohibiting tobacco sales.

- In June 2019 Beverley Hills, California, approved an ordinance to prohibit the sale of tobacco products in the city, starting January 1, 2021.³²⁶ (The sale of flavoured tobacco was already forbidden.) ³²⁷

Pricing

Some municipalities have included “floor prices” in their retailer licensing systems:

318 Change Lab Solutions. Tobacco Retailer Density. 2019
319 City of Philadelphia. Department of Public Health. Regulation Relating to Tobacco Retailing.
320 New York City Press Release. Mayor de Blasio Signs Sweeping Legislation to Curb Smoking, Tobacco Usage.
321 New York City law INT 147-2017. A Local Law to amend the administrative code of the city of New York, in relation to expanding the retail dealer licence to include retailers of tobacco products and setting caps on retail dealer licences, and to repeal subdivision c of section 17-702, relating to the definition of cigarette license.
322 New York City Planning. Current and Projected Populations.
323 Change Lab Solutions. Tobacco Retailer Density. 2019
324 Change Lab Solutions. Tobacco Retailer Density. 2019
325 Change Lab Solutions. Tobacco Retailer Density. 2019
326 City of Beverley Hills. Ordinance 19-0-2783.
327 City of Beverley Hills. Ordinance 18-0-2758.

- **Sonoma County** (California) adopted a tobacco retailer licensing ordinance in 2016 that set a minimum price of \$7 for cigarettes for retailers in unincorporated areas of the county. Other California counties followed suit in 2017 and 2018.³²⁸
- **New York City** prohibits tobacco retailers from redeeming coupons, multi-pack deals or other price reduction promotions, and also sets a minimum pack size and price for little cigars.³²⁹

Transparency

- **New York State** makes public the list of active tobacco retailers. In 2019 there were 18,219 retailers and an estimated population of 19.54 million, giving a retail density of about 93 retailers for 100,000³³⁰

Table 14: Retail tobacco policies monitored by ASPiRE³³¹

Policy Domains	Measure (shaded indicates already in place in most Canadian jurisdictions)
Licensing & Density	<ul style="list-style-type: none"> • establish or increase licensing fees • limit or cap total number of licences in a specific area • prohibit tobacco sales in youth locales • restrict retailers from operating within a certain distance of other retailers • restrict retailers in certain zones (e.g., residential zones) • prohibit tobacco sales in certain types of retailers (e.g., pharmacies) • limit number of hours or days for sales
Advertising	<ul style="list-style-type: none"> • limit the times (of day) when advertising is permitted • limit placement of ads at certain store locations (e.g., near youth locales) • limit placement of ads inside stores (e.g., near cash registers) • limit placement of outdoor ads • ban certain manners of advertising (e.g., outdoor sandwich board-style ads) • establish content-neutral advertising restrictions (e.g., 15% of window space)
Non-tax Price Increases	<ul style="list-style-type: none"> • establish cigarette minimum price laws • ban price discounting (e.g., specials, multipack options) • ban redemption of coupons • ban distribution of coupons • require disclosure of manufacturer incentives for retailers (i.e., sunshine law) • establish mitigation fees (e.g., for litter clean up, to cover cessation services)
Product Placement	<ul style="list-style-type: none"> • ban product displays (i.e., require products to be stored out of view) • ban self-service displays for OTPs • restrict the number of products that can be displayed (e.g., one sample of each) • limit times during which product displays are visible (e.g., after school hours)
Health Warnings	<ul style="list-style-type: none"> • require posting of graphic health warnings at POS • require posting of quitline information at POS
Miscellaneous	<ul style="list-style-type: none"> • ban flavored OTPs (e.g., cigarillos, little cigars) • require minimum pack size for OTPs (e.g., no single or two-pack cigarillos) • raise the Minimum Legal Sales Age (MLSA) for tobacco products (e.g., from 18 to 21)
E-cigarettes	<ul style="list-style-type: none"> • establish MLSA for e-cigarettes • limit where e-cigarettes can be sold (e.g., near youth locales, at certain retailers) • ban self-service displays for e-cigarettes • establish tax on e-cigarettes • require licensing for e-cigarette retailers

328 Change Lab Solutions. Floor Pricing: Sonoma County Leads on Tobacco Control.

329 Truth Initiative. Tobacco use in New York 2019.

330 New York State. Health Data. Active Retail Tobacco Vendors. <https://health.data.ny.gov/Health/Active-Retail-Tobacco-Vendors/9ma3-vsuk/data>

331 State and Community Tobacco Control Research. ASPiRE. Point-of-Sale Report to the Nation. Realizing the Power of States and Communities to Change the Tobacco Retail and Policy Landscape. 2016

C) SELECTED RETAIL INTERVENTIONS AND RETAIL LICENSING REQUIREMENTS IN OTHER COUNTRIES

Argentina

Argentina's Products made from tobacco can only be sold and distributed in duly authorized shops. "Places for sale, exhibition, distribution and promotion of any kind of tobacco products intended for the public must have specific authorization for retail sale of tobacco products."³³²

Australia

As in Canada, retailers are licensed by sub-national governments. Five of the 8 Australian states require tobacco retailers to be licensed, with annual licence fees from \$0 to AUD \$519.³³³ Estimates of the number of tobacco retailers in Australia vary. One estimate was 35,000 retailers in 2004, down from an estimated 40,000 in 1997/1998.³³⁴ Other estimates are as high as 52,000 in 2002.³³⁵ In 2014, there were 13,400 tobacco retail outlets registered in New South Wales,³³⁶ with an estimate of 10,000 in 2019.³³⁷ (With an estimated population of 8 million, this represents 125 tobacco retailers in NSW per 100,000 people).

Brunei Darussalam

In 2007, Brunei Darussalam adopted a regulation requiring licensing of importers, wholesalers and retailers.³³⁸ The regulation prohibits sales of tobacco products by persons who are not holders of a retail licence. Separate licences are required for each outlet, for a fee of BND300. Since 2010, licences were not issued for retail shops in government buildings, markets, stalls, petro stations and within 1 km of a school.³³⁹ Tobacco manufacturers are prohibited from offering incentives "in exchange for the promotion of a tobacco product".³⁴⁰ There are reports that the legal market for cigarettes has been replaced with an informal market.³⁴¹

Ethiopia

Ethiopia's Tobacco Control Directive (2015) requires distributors to have a special licence issued by the Ethiopian Food, Medicine and Healthcare Administration and Control Authority.³⁴² The Directive also prohibits incentives issued by retailers to customers or by manufacturers to retailers. "payments or other contributions to any person who sale tobacco product to encourage or induce them to sell products, including retail incentive programs like rewards to tobacco product sellers for achieving certain sales volumes."

Fiji

Fiji requires annual registration of wholesaler, distributors and retailers, including a separate registration for each retail location, and a separate registration process for sellers of local tobacco (suki). Registration fees

332 Argentina. Law No. 26.687. Decree 602/2013.

333 Tobacco in Australia. Facts & Issues. Chapter 11.9 Retail Promotion and Access.

334 Siggins Miller. Consultancy services to inform the development of a Post Implementation Review of the tobacco plain packaging measure.

335 Allen Consulting Group. Licensing of Tobacco Retailers and Wholesalers. December 2002.

336 New South Wales. NSW Taskforce on Tobacco Retailing. Final report and recommendations.

337 Cancer Council New South Wales. Addressing the over-supply of tobacco: How tobacco retail reform is essential to drive smoking rates down further , 2019

338 Tobacco Order, 2005. Tobacco (Licensing of Importers, Wholesalers and Retailers) Regulations, 2007.

339 South East Asia Tobacco Control Alliance (SEATCA). Tobacco Tax Program. Brunei. Updated May 2013.

340 Brunei Darussalam. Tobacco Order 2005.

341 Reddit. Cigarettes in Brunei.

342 Ethiopian Food, Medicine and Healthcare Administration and Control Authority. Tobacco Control Directive, section 6

ranged from \$5.0 to \$25 per year. Registrations can be revoked following non-compliance with regulations.³⁴³ It was reported in 2012 that 5,000 vendors had been registered,³⁴⁴ giving a retail density of about 568 per 100,000.

Guam

Guam requires that tobacco retailers be licensed by the revenue and taxation department, with an annual fee of \$40.³⁴⁵

Korea

Korean law bans manufacturers offering retailers money or other considerations in return for promoting tobacco sales.³⁴⁶ Retailers are required to be registered with their municipality, and the registration can be denied under certain circumstances, such as failure to comply with the law or where it is “deemed inappropriate for the business of selling tobacco”. Retailers must conform with a registered selling price for each brand.³⁴⁷

Maldives

Tobacco sellers in the Maldives are obliged to have a licence issued by the Ministry of Health.³⁴⁸

New Zealand

New Zealand currently has no licensing programs for tobacco retailing, nor does it restrict where tobacco can be sold. There are an estimated 6,057 tobacco retailers, suggesting a retail density of 126 per 100,000 population.³⁴⁹ Manufacturers are prohibited from offering retailer incentive programs. (“No person may offer, to any retailer, any gift or cash rebate, or the right to participate in any contest, lottery, or game, as an inducement or reward in relation to— (i) the purchase or sale of tobacco products by that retailer; or (ii) the advertising of tobacco products inside that retailer’s place of business; or (iii) the location of tobacco products in a particular part of that retailer’s place of business.”)³⁵⁰

Palau

Palau requires the licensing of retailers, with an annual fee of \$50.00.³⁵¹ Retail distribution by mail order or internet sales, within sports or educational facilities, or in ways where the consumer can handle the product before sales is prohibited. The minimum age for sale is 21.

Thailand

In April 2017, the Thai government published a new *Tobacco Products Control Act*, which was implemented in July 2017. Among its provisions were several restrictions on tobacco retailing, such as prohibiting sales to persons under 20 years of age, bans on vending machines, electronic sales, display of “reduction of tobacco product place”, give-away of other items with tobacco sale, etc.³⁵² The law also includes in the prohibited

343 Tobacco Control Regulations, 2012

344 FijiSun Online. 5000 Tobacco, Suki Sellers Get Legal. June 28, 2012.

345 An act to Repeal and Reenact Chapter 6 of Title 11 Guam Code. 2006.

346 Republic of Korea report on FCTC Implementation

347 Republic of Korea. Tobacco Business Act.

348 Maldives Tobacco Control Act 2010

349 Robertson, L. et al. Estimating the effects of a potential policy to restrict tobacco retail availability in New Zealand. Tobacco Control. 2018.

350 New Zealand. Smoke-free Environments Act 1990 (Public Act 1990 No. 108) (as amended), s. 28(2)

351 Palau National Code, Title 11 as amended by law RPPL No. 9-6
And as amended by law RPPL No. 8-27

352 Thai Government Gazette Vol. 134, Par 39 Kor. Tobacco Products Control Act B.E. 2560 (2017).

acts “to sell tobacco products outside the places stated in the Tobacco Sales Licence”, although a licensing system was reported as not being in place earlier in 2017.³⁵³

Vietnam

Tobacco retailers are licensed by the Vietnamese Trade Ministry³⁵⁴

Table 15: Tobacco retail density in Select South East Asian Countries³⁵⁵

Country	population ³⁵⁶	Tobacco Retailers	Street Vendors	Licence required ³⁵⁷	Licence Fee (USD/year)	Outlets per 100,000 *
Indonesia	258,802,000	2,500,000	Yes			966
Malaysia	39,751,602	80,000				201
Philippines	102,904,637	694,821	Yes			675
Singapore	5,591,000	5,335		Yes	\$288	95
Thailand	68,981,000	570,000		Yes	\$1	826
Vietnam	92,637,200	120,000	Yes. 70,000+	Yes	\$4 - \$9	129

* Excluding street vendors

353 Mary Assunta. Introduce Licensing for tobacco retailers. Malaysia New Straits Times. February 22, 2017

354 Vietnam. Decree No. 119/200/ND-CP of July 18, 200 on tobacco production and trade.

355 South East Asia Tobacco Control Alliance. Industry Intensifies advertising at point of sale: a case for pack display ban.

356 Wikipedia. Southeast Asia.

357 South East Asia Tobacco Control Alliance. Industry Intensifies advertising at point of sale: a case for pack display ban.

Table 16: Selected restrictions on retailer incentive programs³⁵⁸

Jurisdiction	Measure
Explicit bans on retailer incentive programs	
Argentina	Ban on advertising extends to retailer incentive programs. ³⁵⁹ Prohibition on <i>"the use of direct or indirect incentives to stimulate the purchase or consumption of tobacco products or to promote such products."</i>
Brunei Darussalam	Ban on retailer incentives. ³⁶⁰ <i>Prohibits "any contract, agreement, undertaking or understanding" to "promote a tobacco product . . . in exchange for any sponsorship, gift, prize, reward, scholarship or like benefit."</i>
Canada (Quebec)	Ban on certain retailer incentives. ³⁶¹ <i>21.1. A manufacturer or distributor of tobacco products is prohibited from offering rebates, gratuities or any other form of benefit related to the sale or the retail price of a tobacco product to operators of tobacco retail outlets, including their employees..</i>
Ethiopia	Ban on retailer incentives. ³⁶² Prohibits .. <i>"payments or other contributions to any person who sale tobacco product to encourage or induce them to sell products, including retail incentive programs like rewards to tobacco product sellers for achieving certain sales volumes."</i>
France	Ban on any form of payment from manufacturers to retailers other than the percentage mark-up approved by law. ³⁶³ <i>"Les débitants ne peuvent recevoir pour la commercialisation des tabacs manufacturés et la publicité concernant ces produits, aucun avantage, direct ou indirect, autre que la remise prévue au 3° du I de l'article 570 du code général des impôts"</i>
Gambia	Ban on retailer incentives. ³⁶⁴ <i>"payments or other contributions to retailers to encourage or induce them to sell tobacco products, including retailer incentive programmes, such as rewards to retailers for achieving certain sales volumes" and "payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or particular manufacturer's product in a retail outlet or at a venue or an event."</i>
New Zealand	Ban on retailer incentives. ³⁶⁵ <i>"No person may ... offer, to any retailer, any gift or cash rebate, or the right to participate in any contest, lottery, or game, as an inducement or reward in relation to— (i) the purchase or sale of tobacco products by that retailer; or the advertising of tobacco products inside that retailer's place of business; or (iii) the location of tobacco products in a particular part of that retailer's place of business. "</i>
Turkey	Bans on retailer incentives. ³⁶⁶ <i>"Tobacco companies are strictly prohibited from distributing their tobacco products to distributors or consumers free of charge or as incentives, gifts, samples or supportive aid." "Campaigns promoting or encouraging the use of tobacco products are banned."</i>
Implicit bans on retailer incentive programs	
Spain	Ban on promotion, with specific exceptions that do not include retail campaigns. ³⁶⁷
Uruguay	Ban on promotions that is applied to retailer incentives. ³⁶⁸ Prohibition on <i>"the use of direct or indirect incentives that promote the purchase of tobacco products by the public . . ."</i>

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358 This section relies on information provided by the Campaign for Tobacco Free Kids.

359 Argentina. Decree 602/2013. Law No. 26.687.

360 Brunei Darussalam. Tobacco Order, 2005, Art. 8.

361 Quebec. Tobacco Control Act, s. 21.1

362 Ethiopian Food, Medicine and Healthcare Administration and Control Authority. Tobacco Control Directive, section 12

363 France. Code general des impôts, Annexe 2, Article 283.

364 Gambia. Tobacco Control Act, 2016., Schedule II

365 New Zealand. Smoke-free Environments Act 1990 (Public Act 1990 No. 108) (as amended), s. 28(2)

366 Turkey. The Law on Prevention and Control of Hazards of Tobacco Products (Law No. 4207, title as amended) Arts. 3(1), (4); 16(2).

367 Spain. Law 28/2005 on health measures regarding smoking and its sales regulation, supply, use and advertising of tobacco products (as amended by Law 42/2010) Art. 9.

368 Uruguay. Decree No. 284/008 on Regulations under Law No. 18.256