



Q&A ABOUT NEW MEXICO'S TOBACCO RETAIL LICENSE LAW

On March 4th, 2020, the Tobacco Products Act which contains statewide Tobacco Retail Licensing was signed into law. Here is what it means for **retailers**. The law will go into effect **January 1, 2021**.

What is a Tobacco Retail License and how does it work?

A tobacco retail license means that tobacco retailers in New Mexico apply for a license and upon approval, are legally able to sell tobacco products in New Mexico.

Who is considered a Tobacco Retailer?

A person, whether located within or outside of New Mexico, that sells tobacco products at a tobacco retailer location to a consumer in New Mexico; provided that the sale is not for resale.

What are considered Tobacco Products?

Products made or derived from tobacco or nicotine intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including cigars, cigarettes, chewing tobacco, pipe tobacco, snuff, e-cigarettes or electronic nicotine delivery systems (ENDS).

When does the law become effective and how do I get a license?

This law becomes effective January 1, 2021. Beginning that day, the division (Alcoholic Beverage Control Division of the Regulation and Licensing Department) shall grant or deny an application for a license after the complete application is submitted.

Is there a fee to attain/maintain a license and how long is it effective?

Yes, the **initial license application fee**, which is **nonrefundable**, is **not to exceed \$750 per location**. The license **renewal application fee is not to exceed \$400 per location**. The license is effective for one year and must be renewed annually.

If I am denied a license, what can I do?

If a complete application is **denied**, the division shall state the reasons for the denial. The applicant may reapply within **30 days** after the denial date and will not be charged for a reapplication made within that period.

If I have multiple retail stores, do I need a license for each location?

Yes. **Each tobacco retail location in New Mexico is required to have a retail license.**

What can I do in regard to license transfers?

A license shall not be transferred from the licensee to another person. However, if the information submitted in an application for a license or for a license renewal changes, the licensee shall notify the division within ten business days of the change. The **transfer of a license from one location to another may be approved by the division**, provided that the licensee **submit an application for license location transfer** for review.

Are there restrictions on where my tobacco retail store can be?

Yes. A license shall not be issued, retained, transferred or renewed if the license location would result in a **violation of a zoning or other ordinance of a governing body** in which the proposed location would exist or if the license or license transfer is **within 300 feet of a school (This second restriction applies unless the location has lawfully sold tobacco products prior to July 1, 2020).**

Are there restrictions on Self-Service/Vending Machines?

Yes. A retailer shall not use a self-service display for tobacco products **except** for the sales and display of cigars in age-controlled locations where minors are not permitted.

Are there additional compliance checks? If so, who is in charge?

Yes. The division, the department of public safety and appropriate law enforcement authorities in each county and municipality **may conduct random, unannounced inspections** of tobacco retail stores.

What will happen if I am cited for a license violation?

The division may **suspend or revoke a license or impose a fine not to exceed \$10,000**, or any combination thereof, if the division finds that the licensee, an employee of the licensee or a contractor acting on behalf of the licensee has violated a provision of the Tobacco Products Act. Upon a **fourth violation for the sale of a tobacco product to a minor** occurring at the same location **within three years** of the first such violation, the retailer license for that location shall be **permanently revoked**.

Are there hearings for fines, license suspension or revocation?

Yes, the licensee is entitled to a hearing, open to the public, held in the county the licensee is located. Subpoenas will be issued and enforced that include the evidence required to be produced, time and place of the hearing, nature of the inquiry or investigation and consequences of failure to obey the subpoena.

What forms of identification are accepted and how old is a Minor?

Identification that contains a person's picture issued by a federal, state, county, municipal, tribal or foreign government. A Minor is anyone under 21 years of age.

How does the new law impact NM Indian reservations/tribal lands?

As sovereign nations, federally recognized Indian tribal governments and reservations are not regulated by New Mexico's Tobacco Products Act. However, they must abide by the federal policy.

Does recent federal Tobacco 21 legislation impact New Mexico?

Yes. The federal minimum age of sale of tobacco and nicotine products, including cigarettes, cigars and e-cigarettes, is now 21 years which makes it illegal to sell any tobacco product to anyone under 21 throughout the country, **including New Mexico**.

Is there anything to know about federal Tobacco 21?

Yes, there is. They include the fact that;

- There are no exemptions for sales to members of the military who are under 21 years of age
- The federal law does not phase in age restrictions (i.e., there is no "grandfathering") of those who are currently 18, 19 or 20
- The **law does apply** to tribal lands, given that federal and tribal laws apply to members of the tribe

Is there now a federal flavor ban?

On February 6th, 2020, federal regulation went into effect that prohibits the sale of flavored, other than menthol or tobacco flavored, cartridge-based (closed system) electronic nicotine delivery systems (ENDS).

Are there exemptions to the new minimum age law?

NO.

- There are no exemptions for sales to members of the military who are under 21 years of age
- The law does not phase in age restrictions (i.e., there is no "grandfathering") of those who are currently 18, 19 or 20
- The federal law does apply to tribal lands, given that federal and tribal laws apply to members of the tribe

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