



PROTECTING YOUTH FROM COMMERCIAL TOBACCO: THE BALL IS IN YOUR COURT

**For the workshop portion of the session, please access your
local ordinance at this link: bit.ly/TRLordinances**



THE PUBLIC HEALTH LAW CENTER



WHAT IS LEGAL TECHNICAL ASSISTANCE?

- ✓ Legal Research
- ✓ Policy Development, Implementation, Defense
- ✓ Publications
- ✓ Trainings
- ✗ Direct Representation
- ✗ Lobby

The MN Commercial Tobacco Control Team



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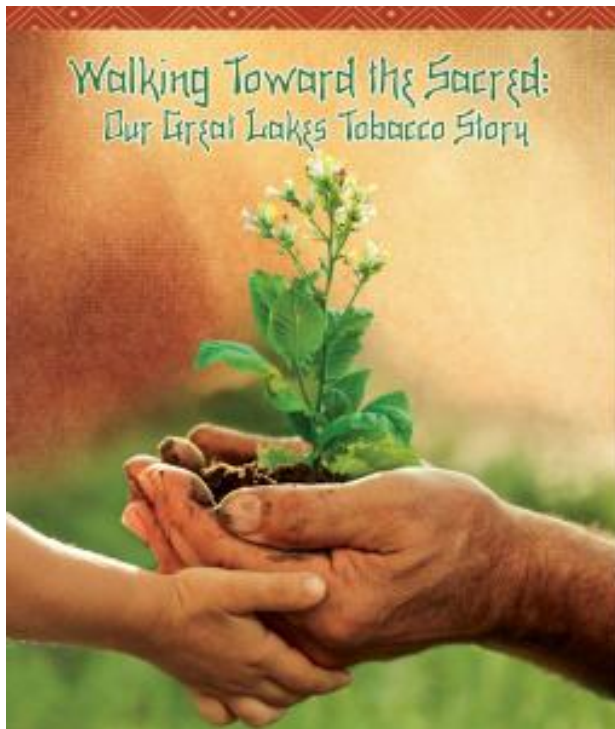


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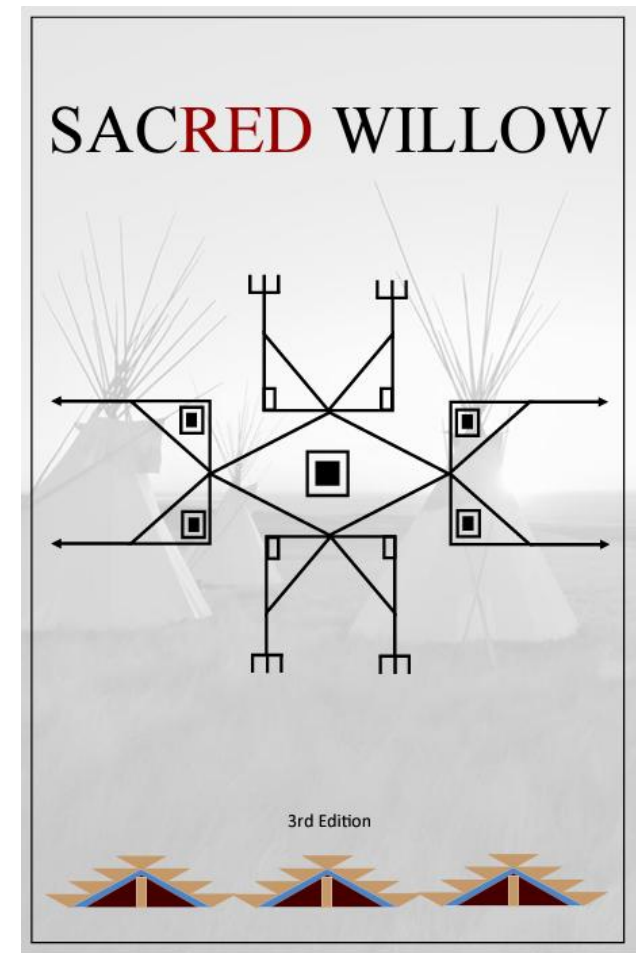
COMMERCIAL TOBACCO IS NOT TRADITIONAL TOBACCO



[Resource: Walking Toward the Sacred](#)



Top: Red Willow, Sacred Willow Publication.
Bottom: *Nicotiana rustica*, Solanaceae, Mapacho, flower.
Botanical Garden KIT, Karlsruhe, Germany. Wikimedia Commons.



[Resource: Sacred Willow](#)

AGENDA

- **Youth Tobacco and Nicotine Use is Still a Problem**
- **Overview of State and Local Regulation**
- **PHLC Tobacco Retail License Model Policy Overview and Rationale**
 - **Foundational Policies**
 - **Foundational-Plus+**
 - **Advanced Policies**
- **Hands-on Review of Your Tobacco Retail Licensing Ordinance and Action Plan**



YOUTH TOBACCO AND NICOTINE USE IS STILL A PROBLEM

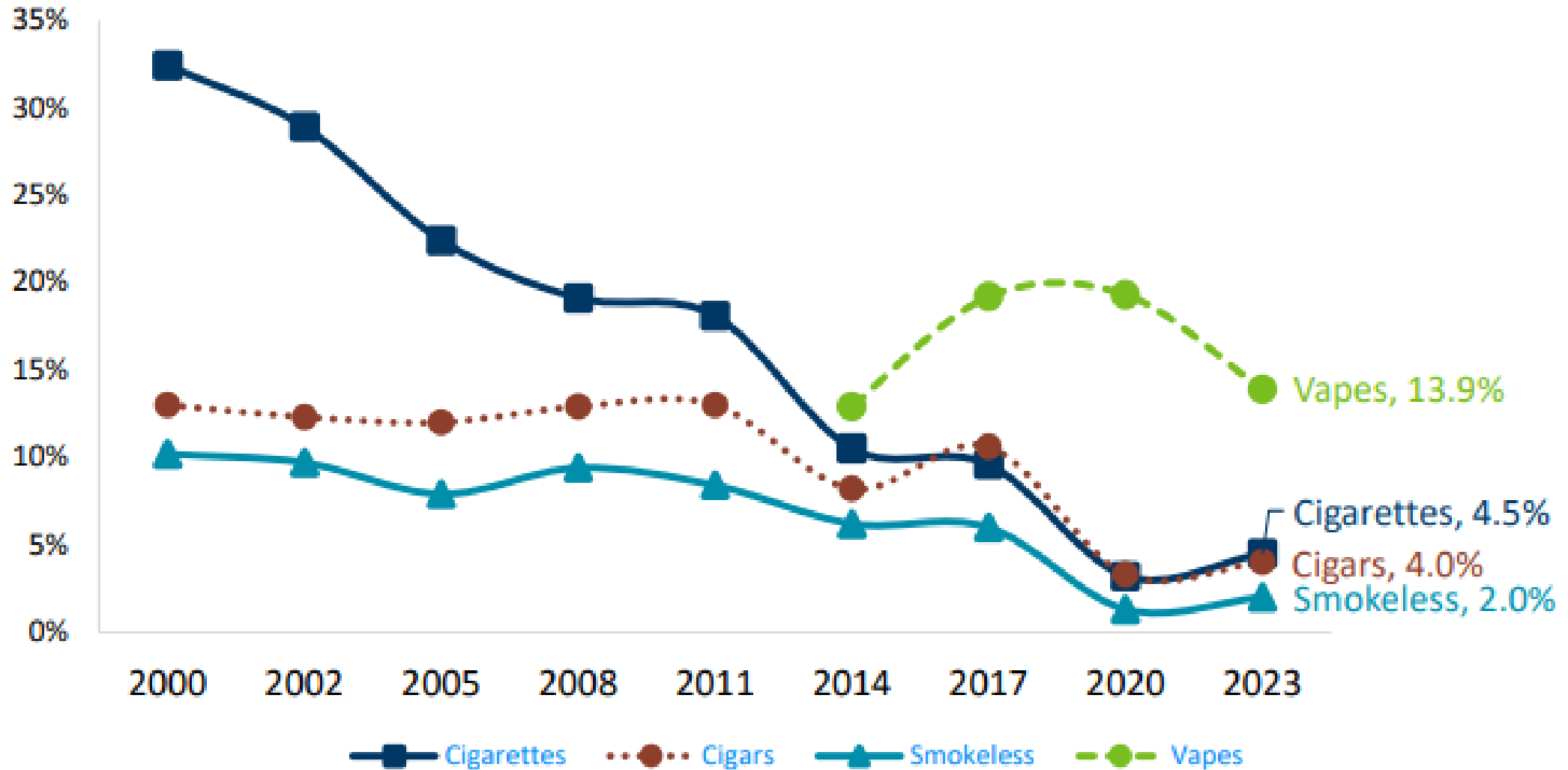


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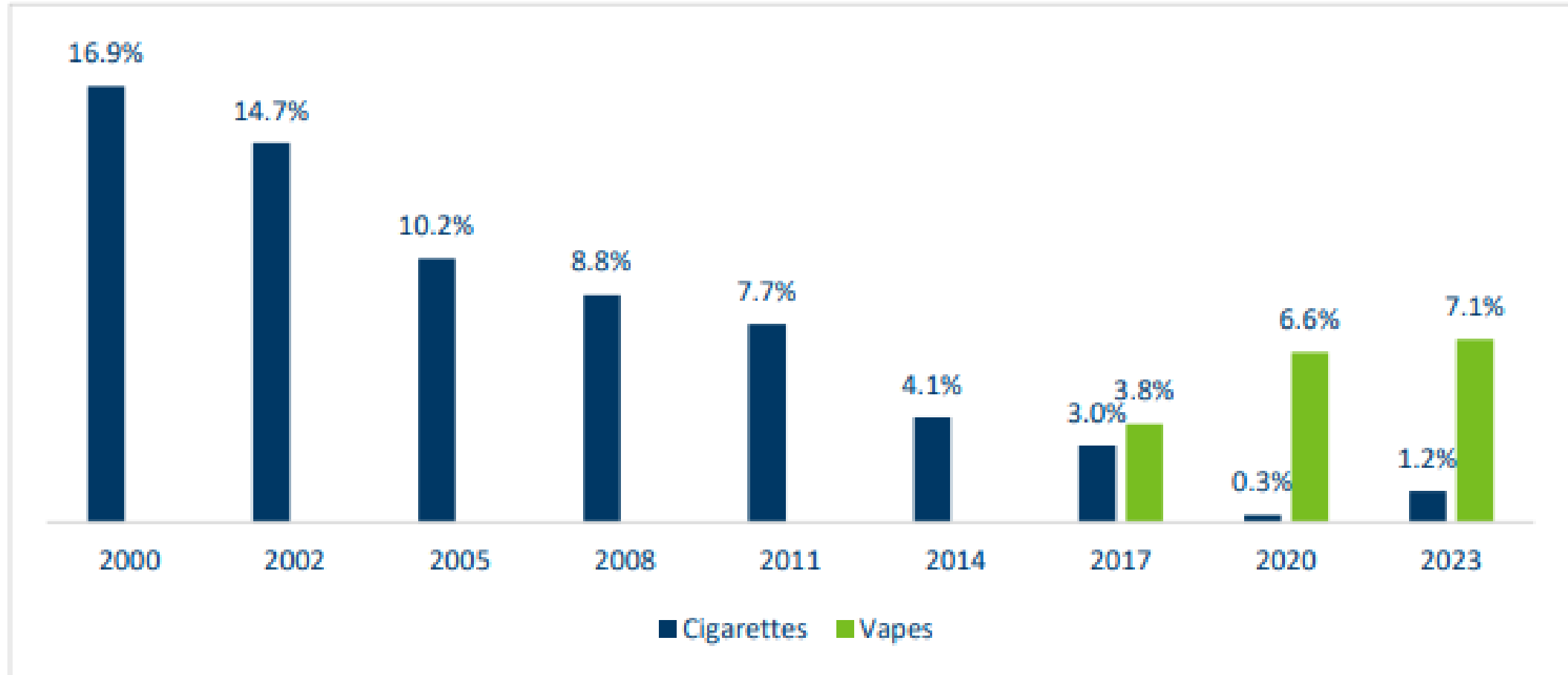
PERCENT OF HIGH SCHOOL STUDENTS WHO USED A TOBACCO PRODUCT IN THE PAST 30 DAYS, BY TYPE OF TOBACCO PRODUCT: 2000-2023



Source: Minnesota Youth Tobacco Survey, 2000-2023.

* Questions about e-cigarettes were added to the MYTS for the first time in 2014.

PERCENT OF HIGH SCHOOL STUDENTS WHO REPORTED FREQUENT USE OF CIGARETTES OR VAPES—A SIGN OF NICOTINE DEPENDENCE, 2000-2023



Source: Minnesota Youth Tobacco Survey, 2000-2023. Denominator: high school students (grades 9-12). Note: days vaped was added to MYTS in 2017.

FLAVORED PRODUCTS



Photo Credit: Association for Nonsmokers - Minnesota



Among retailers assessed in Minnesota		
	9 in 10	sold flavored commercial tobacco
	9 in 10	sold menthol cigarettes
	Half	sold e-cigarettes in more than 10 flavors
	4 in 5	sold single cigarillos
	Half	sold commercial tobacco at discount prices

How the tobacco industry targets communities

- Using fruit, candy, menthol, and other flavors, as well as eye-catching packaging, to attract new users.
- Marketing products on social media and through influencers and event sponsorships
- Designing products with extreme concentrations of nicotine, which is highly addictive and can harm brain development and mental health as teens grow.
- Selling products near places youth frequent, like convenience stores, schools, community centers, libraries, and parks.
- Promoting products in ways that are easily visible to children, like on store countertops and within three feet of the floor and near candy displays.
- Keeping prices low by offering coupons, buy-one-get-one deals, and other discounts.



OVERVIEW OF STATE AND LOCAL REGULATION



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STATE REGULATION: MINN. STAT. CHAPTER 461

Office of the Revisor of Statutes

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[2023 Minnesota Statutes](#) > [LOCAL GOVERNMENT POLICE POWERS](#) > Chapter 461

2023 Minnesota Statutes

CHAPTER 461. REGULATING SALES OF TOBACCO; TOBACCO-RELATED AND ELECTRONIC DELIVERY DEVICES; AND NICOTINE AND LOBELIA PRODUCTS

Section	Headnote
461.12	MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.
461.13	CIGARETTE LICENSE FEES, APPORTIONMENT.
461.14	[Repealed, 1982 c 572 s 3]
461.15	BLIND PERSONS NOT TO PAY CIGARETTE LICENSES.
461.17	MANUFACTURERS TO REPORT ON CERTAIN SUBSTANCES.
461.18	BAN ON SELF-SERVICE SALES; EXCEPTIONS.
461.19	EFFECT ON LOCAL ORDINANCE; NOTICE.
461.20	SALE OF ELECTRONIC DELIVERY DEVICE; PACKAGING.
461.21	KIOSK SALES PROHIBITED.
461.22	AGE VERIFICATION AND SIGNAGE REQUIRED.

MINNESOTA LAW REQUIRES LOCAL LICENSURE

461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.

Subdivision 1. **Authorization.** A town board or the governing body of a home rule charter or statutory city **may** license and regulate the retail sale of tobacco, tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and nicotine and lobelia delivery products as described in section 609.6855, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board **shall** license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in unorganized territory of the county except on the State Fairgrounds and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. The State Agricultural Society shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products are not required to obtain a second license for the same location under the licensing ordinance of the county.

LOCAL AUTHORITY TO GO BEYOND STATE LAW

- **State Law**
 - Cities and counties may enact more restrictive laws

461. 19 EFFECT ON LOCAL ORDINANCE; NOTICE.

Sections [461.12](#) to [461.18](#) do not preempt a local ordinance that provides for a more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section [461.12](#) or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section [461.12](#). The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.



MODEL POLICY OVERVIEW AND RATIONALE: FOUNDATIONAL POLICIES

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LOCAL REGULATION: MODEL TOBACCO RETAIL LICENSING ORDINANCES

MINNESOTA COUNTY TOBACCO RETAIL LICENSING

Model Ordinance



Through licensing and related regulations, Minnesota counties have the opportunity to address the sale of commercial* tobacco and related devices and products in the retail environment.

This model ordinance includes all the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes several additional provisions a county may choose to adopt to further advance public health. A county planning to adopt this model ordinance, in whole or in part, should first review it with a county attorney to determine suitability for



County Model Ordinance

MINNESOTA CITY TOBACCO RETAIL LICENSING ORDINANCE



Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of commercial* tobacco and related devices and products in the retail environment.

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City Model Ordinance

MODEL ORDINANCE BASICS: KEY COMPONENTS

- Comprehensive Framework
 - Findings/Purpose
 - Definitions
 - Licensing provisions
 - Violations and penalties
 - Severability
 - Effective date
- Focus on minimizing the risk of litigation
- Oriented to promote public health policies and advance equity

Section 1. Findings of Fact and Purpose.

Section 2. Applicability and Jurisdiction.

Section 3. Definitions.

Section 4. License.

Section 5. Fees.

Section 6. Basis for Denial of License.

Section 7. Prohibited Sales.

Section 8. Responsibility.

Section 9. Compliance Checks and Inspections.

Section 10. Exceptions and Defenses.

Section 11. Violations and Penalties.

Section 12. Severability.

Section 13. Effective Date.

NOTABLE MINNESOTA STATE LAW TRL FOUNDATIONAL REQUIREMENTS

- Comprehensive definitions of products covered, including synthetic nicotine products—with exception for FDA cessation products (Minn. Stat. §§ [609.685](#) & [609.6855](#))
- Child-resistant packaging for liquid used in electronic delivery devices (Minn. Stat. § [461.20](#))
- Prohibit sales from moveable place of business (Minn. Stat. § [461.21](#))
- Prohibit self-service display – exception allowed for tobacco shops (Minn. Stat. § [461.18](#) subd. 1)
- Prohibit vending machines – exception for 21+ establishments (Minn. Stat. § [461.18](#) subd. 2)
- Minimum legal sales age of 21 and related provisions ([Minn. Stat. § 461.22](#))
 - Age verification
 - Signage
- At least one compliance check per year for underage sales. (Minn. Stat. § [461.12](#) subd. 5)
- Minimum retailer penalties: minimum fines; 7-day license suspension; lookback period of 36 months (Minn. Stat. § [461.12](#) subd. 2)
- False ID—requires non-monetary, civil alternative penalties (Minn. Stat. § [609.685](#) subd. 2)



MODEL POLICY OVERVIEW AND RATIONALE: FOUNDATIONAL-PLUS+

MODEL ORDINANCE FOUNDATIONAL PLUS+: STATE/FEDERAL LAW, BUT STRONGER PUBLIC HEALTH FOCUSED LANGUAGE

- Prohibit all smoking at retail establishments
- Prohibit all samples
- Prohibit all vending sales
- Prohibit self-service sales
- Prohibit sales of “loosies” that is defined to include all licensed products

MODEL ORDINANCE FOUNDATIONAL-PLUS: STATE/FEDERAL LAW, BUT STRONGER PUBLIC HEALTH FOCUSED LANGUAGE

- Require multiple compliance checks
- Stronger penalties for licensees
 - higher fines, longer look-back period, longer suspension, and license revocation
- Focus enforcement on the retailers:
 - Repeal state permissive fine up to \$50 for employees of the ordinance OR require employees to attend instructional program
 - Repeal the penalty for furnishing or procurement for underage
 - Repeal penalty for use of false ID to purchase
 - Repeal PUP Penalties—underage purchase/use/possession to align with state law

ENFORCEMENT BEST PRACTICES: AVOID PURCHASE, USE, POSSESSION PENALTIES

- PUP enforcement can result in discriminatory enforcement
- PUP fines can be more difficult to afford
- PUP citations can lead to other consequences



See Public Health Law Center, [Youth Purchase, Use, or Possession \(PUP\): Commercial Tobacco Laws and Penalties](#)



MODEL POLICY OVERVIEW AND RATIONALE: ADVANCED POLICIES



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ADVANCED POLICIES: PUBLIC HEALTH BEST PRACTICES

- Require instructional program for licensees and their employees
- Minimum clerk age
- Minimum legal age of 21 to hold a license
- Prohibit delivery sales



ADVANCED POLICIES: PUBLIC HEALTH BEST PRACTICES

- Prohibit sales of flavored products
- Prohibit sales of imitation products
- Prohibit price discounts and coupon redemption
- Set minimum prices and package sizes



Photo credit: ANSR-MN

ADVANCED POLICIES: PUBLIC HEALTH BEST PRACTICES

- Limit the number of licenses issued for retailers (capping)
 - Reduce number through attrition
 - Cap at zero
- Set proximity restrictions
 - Limit Proximity to Other Retailers
 - Limit Proximity to Youth-Oriented Facilities
 - Limit Proximity to Residential Zones
- Pharmacy sales restriction





HANDS-ON REVIEW OF YOUR TOBACCO RETAIL LICENSING ORDINANCE AND ACTION PLAN

FOUNDATIONAL POLICIES: DEFINITIONS OF EDD AND NICOTINE OR LOBELIA DELIVERY PRODUCTS

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or **any other substance, whether natural or synthetic**, intended for human consumption through the inhalation of aerosol or vapor from the product. ELECTRONIC DELIVERY DEVICE includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. ELECTRONIC DELIVERY DEVICE includes any component part of a product, whether or not marketed or sold separately. ELECTRONIC DELIVERY DEVICE does not include any nicotine cessation product that has been approved by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

FOUNDATIONAL POLICIES: DEFINITIONS OF EDD AND NICOTINE OR LOBELIA DELIVERY PRODUCTS

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia, **whether natural or synthetic**, intended for human consumption, or any part of such a product, that is not tobacco, or an electronic delivery device as defined in this section. NICOTINE OR LOBELIA DELIVERY PRODUCT does not include any nicotine cessation product that has been approved by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

FOUNDATIONAL POLICIES:

TOBACCO 21 AND RELATED PROVISIONS

Legal age. No person will sell any licensed product to any person under the age of 21.

(1) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

(2) Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be always posted prominently and in plain view at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the county, must be posted in a manner that is clearly visible to anyone who is, or is considering, making a purchase.

FOUNDATIONAL POLICIES: SELF-SERVICE DISPLAYS AND VENDING SALES

Section []. Prohibited Sales.

A) In general. No person will sell or offer to sell any licensed product:

- (1) **By means of any type of vending machine.**
- (2) **By means of self-service display.** All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public.

FOUNDATIONAL POLICIES: COMPLIANCE CHECKS

Section []. Compliance Checks and Inspections.

- A. All licensed premises must be open to inspection by authorized county officials or their designees during regular business hours.
- B. From time to time, but at least [twice] per year, the county will conduct compliance checks to ensure compliance with all provisions of this ordinance.
- C. In accordance with state law, the county will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

FOUNDATIONAL POLICIES: MINIMUM RETAILER PENALTIES

Licensees. Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of [\$300] for a first violation; [\$600] for a second offense at the same licensed premises within a 36-month period; and [\$1,000] for a third or subsequent offense at the same location within a 36-month period from the first violation. Upon the third violation, the license will be suspended for a period of not less than [7] consecutive days and may be revoked. Upon a fourth violation within a 36-month period from the first violation, the license will be revoked.

REMINDER: REPEAL PURCHASE, USE, POSSESSION PENALTIES

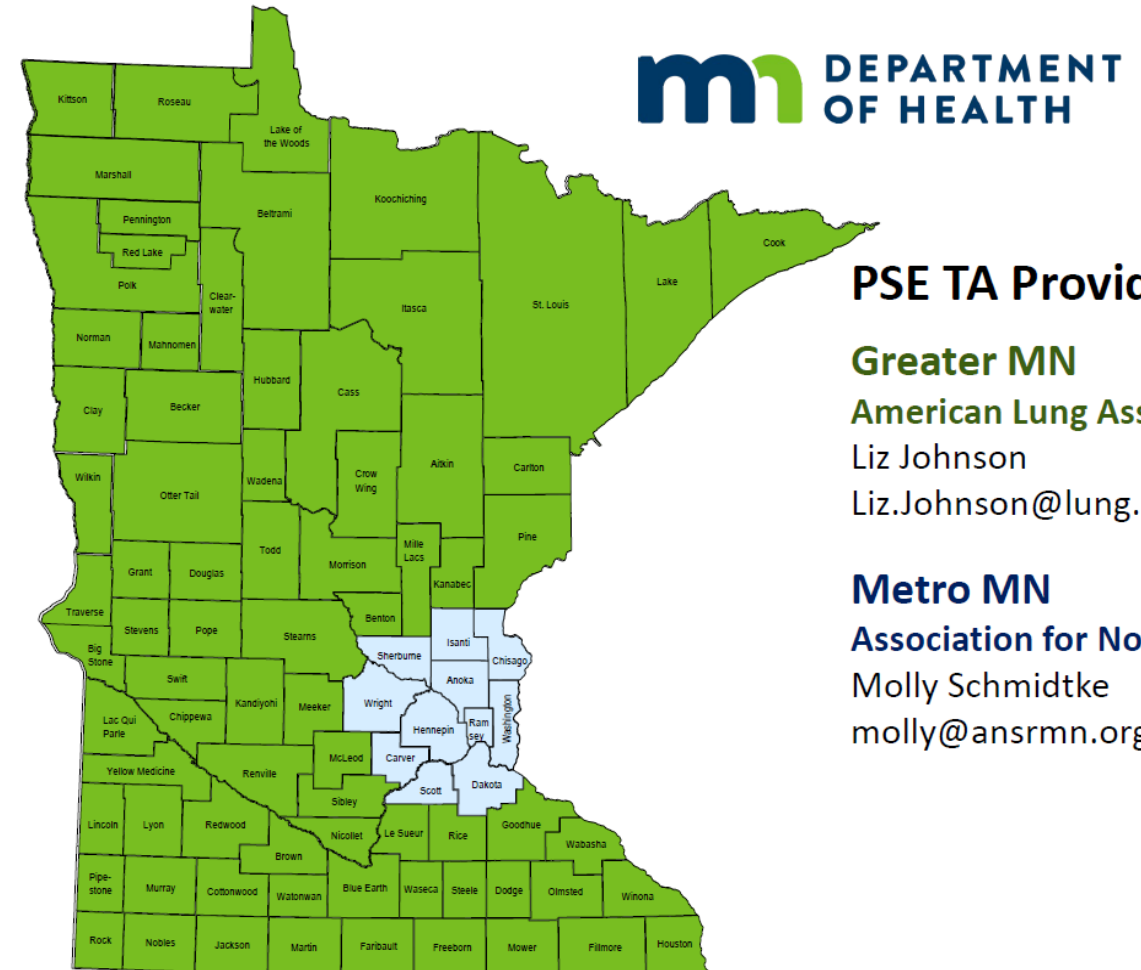
- PUP enforcement can result in discriminatory enforcement
- PUP fines can be more difficult to afford
- PUP citations can lead to other consequences



See Public Health Law Center, [Youth Purchase, Use, or Possession \(PUP\): Commercial Tobacco Laws and Penalties](#)

DEVELOP AN ACTION PLAN FOR YOUR COMMUNITY

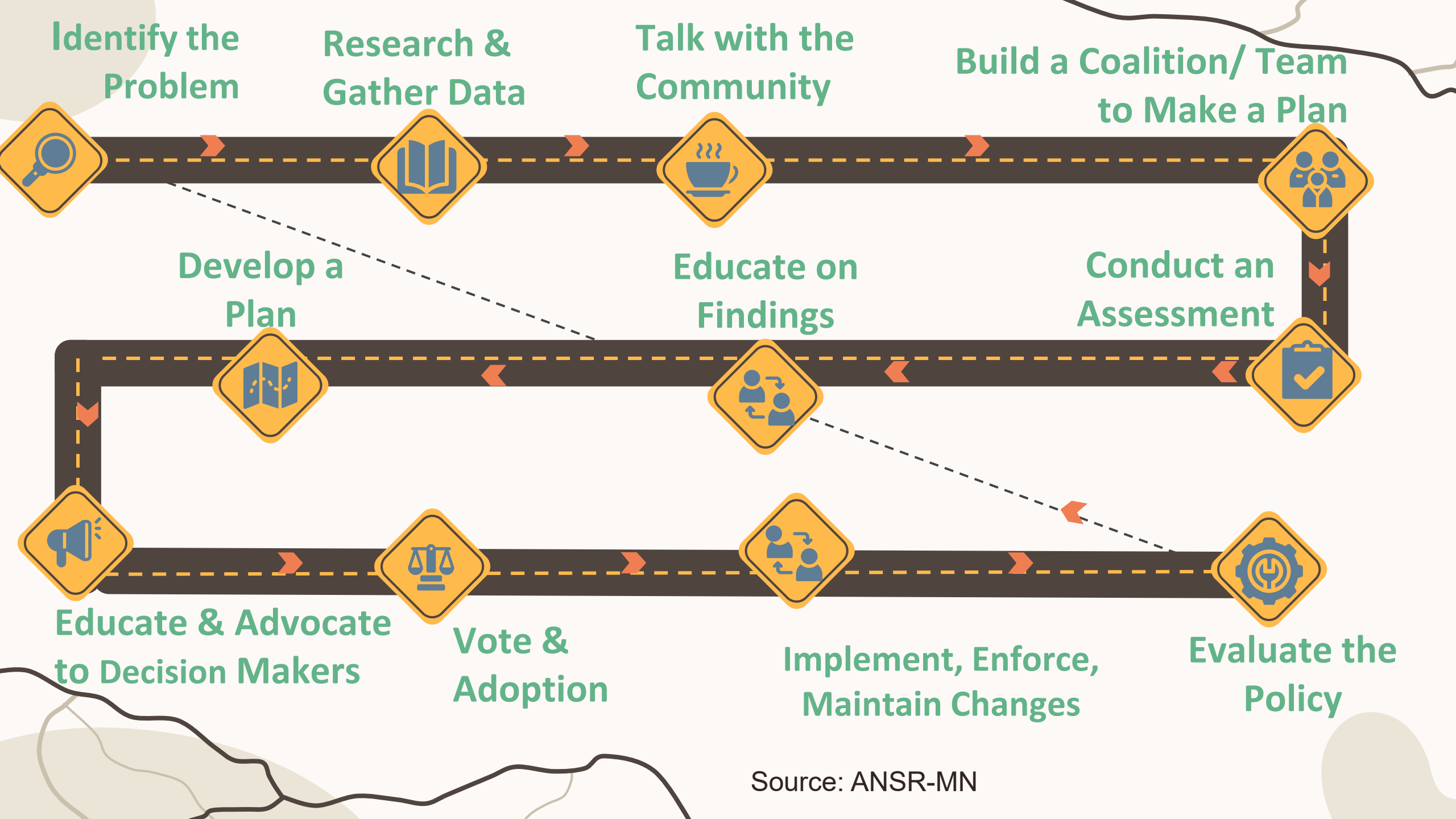
- Coordinate with your local public health office and/or SHIP grantee ([Local Contacts](#))
- Access Technical Assistance from ALA or ANSR-MN to help plan, including gathering information to present to policymakers, identifying the interested community members, and possibly building a coalition.
- Access Technical Assistance from PHLC to help review or draft the policy based on community goals.



PSE TA Providers:

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Metro MN
Association for Nonsmokers
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Source: ANSR-MN

RESOURCES:

- [PHLC's Minnesota Commercial Tobacco Webpage](#)
- [Overview Of Commercial Tobacco Retail Licensing Enforcement Best Practices & Inspections Checklist For Minnesota Communities](#)
- [Minnesota Tobacco Point-Of-Sale Policy Toolkit](#)
 - ☐ [Coupons and Other Price Discounting Policy Options](#)
 - ☐ [Youth Purchase, Use, or Possession Penalties \(PUP\)](#)
 - ☐ [Regulating the Location, Density and Type of Tobacco Retailers](#)
 - ☐ [Commercial Retail Tobacco Licensing Ordinances: Procedural Requirements](#)
 - ☐ [Setting a Minimum Price and Package Size for Cigars](#)
 - ☐ [Compliance and Local Enforcement Programs](#)
 - ☐ [Establishing a Minimum Clerk Age](#)
 - ☐ [Retail License Fees](#)
 - ☐ [Violations and Penalties](#)
 - ☐ [Policy Options to Address Commercial Tobacco Product Samples and Sampling](#)
 - ☐ [Online and Other Delivery Sales of Commercial Tobacco Products](#)

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