



Tobacco 21

OVERVIEW

Tobacco use continues to be a significant public health concern and one of the leading causes of preventable death in the US. Though we have made some great strides, 23% of high school and middle school students reported current tobacco use in 2019, including e-cigarettes.¹ The US Surgeon General estimates that nearly 6 million children will die prematurely in adulthood if current trends continue.² Further, in 2018, an estimated 1.8 million people smoked cigarettes for the first time including 517,100 youth.³ Approximately 1,600 youth initiate cigarette use each day and nearly 90% of cigarette smokers first try smoking by age 18.^{2,3} The increasing popularity of e-cigarettes has posed an increased threat to youth exposure to tobacco products. In 2019, 27.5% of high school students and 10.5% of middle schools reported use of e-cigarettes.⁴ According to the National Youth Tobacco Survey, up to 75% of youth who tried to buy tobacco products reported that they were not refused sale.⁵

Because of the addictive nature of nicotine, experimentation or initiation of tobacco use among youth and young adults are particularly troubling. This is a critical period for growth and development, during which the brain may be especially susceptible and sensitive to the effects of nicotine.² Effective implementation of the minimum legal sale age (MLSA) for tobacco products to 21 will reduce our youth's access to, and use of, tobacco products.

TOBACCO KILLING OUR FUTURE

Tobacco has deadly consequences for our youth:

- Early signs of heart disease and stroke are found in young people who smoke.²
- If current smoking rates continue, 5.6 million of today's Americans younger than 18 years of age are expected to die prematurely from a smoking-related illness. This represents about one in every 13 Americans aged 17 years or younger who are alive today.²
- Total economic costs of smoking are more than \$300 billion per year including nearly \$170 billion in direct medical care for adults and \$156 billion in lost productivity.⁶

CURRENT LANDSCAPE

In December 2019, federal legislation was signed that amended the Federal, Drug, and Cosmetic Act to raise the federal minimum legal sales age (MLSA) of tobacco products from 18 to 21 years. Effective immediately, it is now illegal for all retailers and establishments to sell any tobacco product to anyone under the age of 21. Additionally, legislation amended the Public Health Service Act Synar Amendment to eliminate the need for states, territories, and tribal jurisdictions to pass MLSA laws and continue enforcement at age 21. To assist states with implementation, \$18.5 million was appropriated per year through Fiscal Year 2024 that will be available through a grant process.

WHERE ARE WE NOW

Despite progress with the passage of Federal Tobacco 21 law, states should still work to fill the gaps that the law does not cover. Currently, federal law does not address youth access laws and penalties. States and localities should look to examine their existing youth penalties and enforcement mechanisms such as tobacco retail licensure programs, and Purchase Use and Possession (PUP) penalties.

Youth access laws are effective at reducing youth smoking prevalence when properly enforced.⁷ Laws should address strict enforcement of sales restriction to minors and shift the blame from youth to retailers. Penalizing kids is not an effective strategy for reducing youth tobacco use and can be counterproductive for youth seeking to quit tobacco products.⁸ PUP laws place blame on youth rather than the tobacco industry and retailers, while further stigmatizing youth smokers and exacerbating existing disparities. One study found that African American and Hispanic youth had higher rates of citations in comparison to White youth.⁹

TOBACCO INDUSTRY RESPONSE

Although the tobacco industry, including e-cigarette manufacturers, has voiced their support of the raising MLSA in recent years much of their support undermines the tobacco endgame. Often their support is a tactic used to divert attention away from their efforts to addict more people to their products. Tobacco companies can benefit from gaps in the Federal Tobacco 21 law by creating carve outs

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for certain products and pre-empting other effective tobacco control policies. It is important for states and localities to further strengthen tobacco access laws and address the gaps in Federal Tobacco 21 law in order to protect our youth.

THE ASSOCIATION ADVOCATES

Implementation of Federal Tobacco 21 law was a progressive step to eliminating youth initiation of tobacco products. To further support the implementation of the new federal law, the American Heart Association recommends that states, localities, and other jurisdictions assess the following:

- Enforcement mechanisms in place that account for existing disparities among youth and minority communities.
- Penalties for sales that hold the retailer responsible, not the purchaser.
- Criminal and monetary penalties not being levied on the underage purchaser.
- Penalties on retailers that sell tobacco products without a license.

¹ Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019. *MMWR Surveill Summ* 2019;68(No. SS-12):1–22. DOI: <http://dx.doi.org/10.15585/mmwr.ss6812a1external icon>

² U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

³ Substance Abuse and Mental Health Services Administration. (2019). *Key substance use and mental health indicators in the United States: Results from the 2018 National Survey on Drug Use and Health* (HHS Publication No. PEP19-5068, NSDUH Series H-54). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>

⁴ Cullen KA, Gentzke AS, Sawdey MD, et al. e-Cigarette Use Among Youth in the United States, 2019. *JAMA*. 2019;322(21):2095–2103. doi:10.1001/jama.2019.18387

⁵ Liu, ST, et al., "Youth Access to Tobacco Products in the United States, 2016–2018," *Tobacco Regulatory Science*, 5(6): 491–501, 2019.

⁶ U.S. Department of Health and Human Services. *Smoking Cessation. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2020.

⁷ DiFranza, JR, "Which interventions against the sale of tobacco to minors can be expected to reduce smoking?" *Tobacco Control*, doi:10.1136/tobaccocontrol-2011-050145

⁸ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tob Control*. 2003;12 Suppl 1(Suppl 1):i6–i13. doi:10.1136/tc.12.suppl_1.i6

⁹ Gottlieb, N. H., A. Loukas, M. Corrao, A. McAlister, C. Snell, Huang, PP. Minors' tobacco possession law violations and intentions to smoke: Implications for tobacco control. 2004. *Tobacco control* 13(3): 237–243.