



# COMMERCIAL TOBACCO-FREE K-12 SCHOOL MODEL POLICY

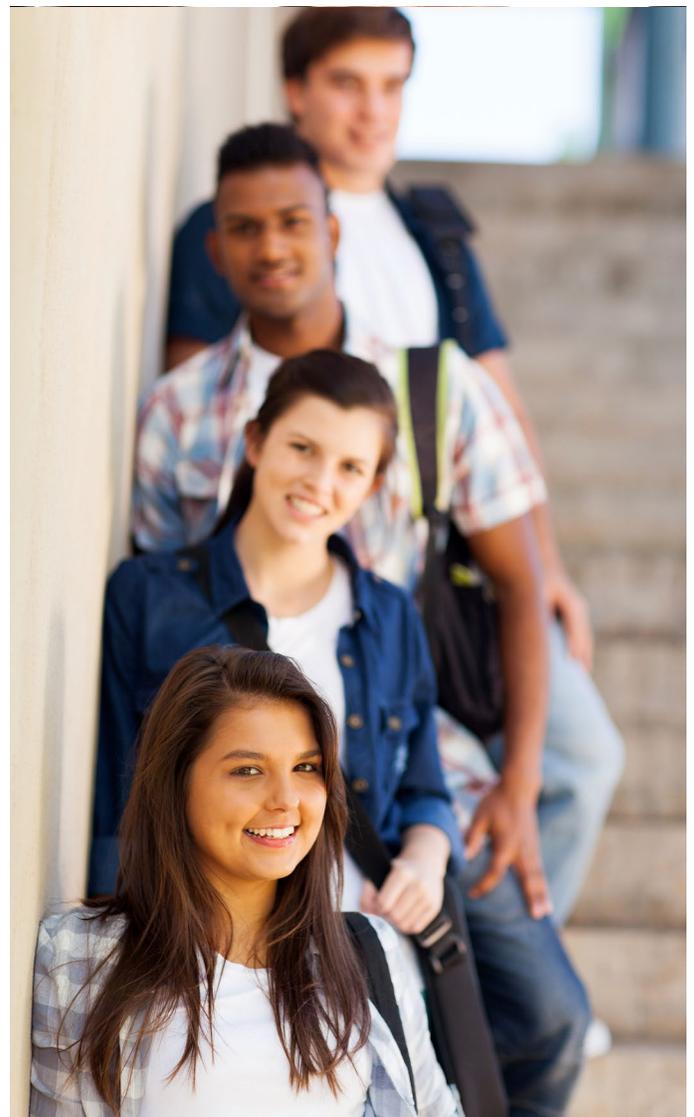
## Minnesota-Specific



The use or promotion of commercial tobacco products<sup>1</sup> on school grounds and at off-campus school-sponsored events is detrimental to the health and safety of students, staff, and visitors.

Under federal law, smoking is prohibited in any kindergarten, elementary, or secondary school or library serving children under the age of 18 years if federal funds are used in the school.<sup>2</sup> Minnesota state law also prohibits smoking, vaping, chewing, or otherwise ingesting tobacco or tobacco products in public K-12 schools, including all school facilities, whether owned, rented or leased, and in all vehicles that a school district owns, leases, rents, contracts for or controls.<sup>3</sup> However, neither state nor federal law covers outdoor school grounds.

To promote an environment free of commercial tobacco in primary and secondary schools throughout Minnesota, the Public Health Law



Center has prepared a comprehensive model policy that school districts and schools may adopt. The policy:

- Provides a definition of commercial tobacco products to include current and future tobacco products;
- Prohibits the following items on campus (inside and outside buildings) and at off-campus, school-sponsored events:
  - Tobacco products and tobacco-related devices, including electronic cigarettes,
  - Imitation tobacco products (such as candy cigarettes), and
  - Lighters;
- Prohibits accepting any donations or curriculum from any tobacco-related industry;
- Prohibits any promotion of tobacco products, including electronic cigarette products; and
- Includes effective and holistic enforcement options for student violations beyond suspension and expulsion.

Two documents reflect this policy: (1) *Minnesota K-12 Schools, Commercial Tobacco-Free: Model Policy* and (2) *Minnesota K-12 Schools, Commercial Tobacco-Free: Model Policy Questions & Answers*.

## Free Legal Technical Assistance

As with all policy drafting, this K-12 Model Policy is only to be used as a guide. Each school district or school may consider modifications that reflect local needs, resources, and situations. You should review your policy with a legal technical assistance provider to ensure internal consistency, especially if you change terms or delete provisions.

The Public Health Law Center may be able to review the draft of your school or school district's commercial tobacco-free policy. The Center also offers trainings on drafting effective policies. Please check our website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org) for more information about policy drafting and other model policies and resources. To request assistance, e-mail [publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu).

## Minnesota K-12 Schools, Commercial Tobacco-Free: Model Policy

### I. Findings

- (A) Commercial<sup>4</sup> tobacco use is the single most preventable cause of death in the United States.<sup>5</sup>
- (B) In Minnesota, smoking causes 6,300 deaths annually and is responsible for nearly \$3.2 billion in excess medical care costs.<sup>6</sup>
- (C) Nicotine is found in all commercial tobacco products, including electronic delivery devices.<sup>7</sup> Exposure to nicotine during adolescence and young adulthood can cause addiction and harm the developing brain.<sup>8</sup>
- (D) The use of commercial tobacco products by children in the United States is a pediatric disease of considerable proportions that results in new generations of nicotine-dependent children and adults.<sup>9</sup>
- (E) For the first time in nearly two decades, overall youth commercial tobacco use increased in Minnesota — rising to 26.4 percent in 2017. This increase was driven by the use of electronic delivery devices (also known as e-cigarettes, vapes, Juul), which rose nearly 50 percent over the last 5 years.<sup>10</sup>
- (F) Children are exposed to tailored, targeted, substantial, and unavoidable tobacco industry marketing and advertising that leads young people to (1) hold favorable beliefs about, (2) overestimate the prevalence and undermine the health harms of, and (3) become more likely to begin to use commercial tobacco.<sup>11</sup>
- (G) Electronic delivery devices create and increase nicotine addiction among young people. In 2018, the U.S. Surgeon General declared use of electronic delivery devices as an epidemic among young people.<sup>12</sup> Using these products may also encourage youth to try other combustible tobacco products that are known to cause disease and lead to premature death.
- (H) Imitation tobacco products, such as candy cigarettes and smokeless chew, may lead youth to use commercial tobacco by desensitizing them to the dangers of tobacco and by advancing the idea that commercial tobacco use is socially acceptable.<sup>13</sup>
- (I) Evidence has shown anti-tobacco use campaigns sponsored by the tobacco industry (including electronic delivery device manufacturers and retailers) do not prevent youth from using commercial tobacco products and may encourage youth to smoke and create positive associations with the tobacco industry.<sup>14</sup>

## II. Purpose

- (A) [ The [ district name ] Board of Education ] / [ school name ] recognizes that the use of commercial tobacco products, including electronic delivery devices, is a health, safety, and environmental hazard for students, staff, visitors, and school facilities. The board is acutely aware of the serious health risks associated with the use of commercial tobacco products, including electronic delivery devices, to users and non-users. The [ board/school ] believes that the use or promotion of commercial tobacco products, including electronic delivery devices, on school grounds and at off-campus school-sponsored events is detrimental to the health and safety of students, staff, and visitors.
- (B) The [ board/school ] also believes accepting gifts or materials from the tobacco industry will send an inconsistent message to students, staff, and visitors.
- (C) The [ board/school ] acknowledges that adult staff and visitors serve as role models for students. The board embraces its obligation to promote positive role models in schools and to provide an environment for learning and working that is safe, healthy, and free from unwanted smoke or aerosol and other commercial tobacco use for the students, staff, and visitors.

THEREFORE, the [ board/school ] adopts the following commercial tobacco-free policy:

## III. Definitions

- (A) **“Administrator”** means any person who has disciplinary and managerial authority to enforce school policies in [ district/school name ], including but not limited to principals, vice-principals, and office personnel.
- (B) **“Any time”** means 24 hours a day, seven days a week, 365 days a year.
- (C) **“Electronic delivery device”** means any product containing or delivering nicotine, 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, Juul, Suorin, 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, including but not limited to e-liquids, e-juice, cartridges, or pods.
- (D) **“Imitation tobacco product”** means any edible non-tobacco product designed to resemble a tobacco product, or any non-edible non-tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. “Imitation tobacco product”

includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, pouches containing flavored substances packaged similar to snus, and shredded beef jerky in containers resembling snuff tins.

- (E) **“Lighter”** means a mechanical or electrical device typically used for lighting tobacco products.
- (F) **“Off-campus, school-sponsored event”** means any event sponsored by the school or school district that is not on school property, including but not limited to, sporting events, day camps, field trips, dances, or theatrical productions.
- (G) **“Parent/Guardian”** means any person that has legal guardian status over a student enrolled in [ district/school name ].
- (H) **“School”** means [ name of school/any public nursery, day care center, child care facility, Head Start program, kindergarten, elementary, secondary school, alternative learning center or adult education center ] operated under the control of [ district name ].
- (I) **“School property”** means all facilities and property, including land, whether owned, rented, or leased by [ district/school name ], and all vehicles owned, leased, rented, contracted for, or controlled by [ district/school name ] used for transporting students, staff, or visitors.
- (J) **“Signage”** means signs declaring that all [ district/school name ] school property is tobacco-free.
- (K) **“Smoking”** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. “Smoking” also includes carrying or using an activated electronic delivery device.
- (L) **“Staff”** means any person employed by [ district/school name ] as full or part-time, or any position contracted for or otherwise employed, with direct or indirect monetary wages or compensation paid by [ district/school name ], or anyone working on a volunteer basis. This term includes, but is not limited to, faculty, service personnel, volunteers, chaperones, student teachers, adult classroom or student aides, and other adults working for [ district/school name ].
- (M) **“Student”** means any person enrolled in [ district/school name ]’s educational system.

- (N) **“Tobacco industry”** means manufacturers, distributors or wholesalers of tobacco products or tobacco-related devices (e.g., Juul, Altria). This includes parent companies and subsidiaries.
- (O) **“Tobacco industry brand”** means any corporate name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indication of product identification identical or similar to those used for any brand of tobacco product, company, or manufacturer of tobacco products.
- (P) **“Tobacco product”** means any product containing, made, or derived from tobacco or that contains nicotine, whether synthetic or natural, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including but not limited to: cigarettes; electronic delivery devices; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco.
- (Q) **“Tobacco products shop”** means a retail establishment that derives more than 90 percent of its gross revenue from the sale of tobacco products, as defined in this policy.
- (R) **“Tobacco-related devices”** means ashtrays, rolling papers, wraps, or pipes for smoking and any components, parts, or accessories of electronic delivery devices.
- (S) **“Visitor”** means any person subject to this policy that is not a student, staff, or administrator as defined above.

#### IV. General Statement of Policy

- (A) [ district/school name ] students are prohibited from possessing, using, consuming, displaying, promoting, or selling any tobacco products, tobacco-related devices, imitation tobacco products, or lighters at any time on school property or at any off-campus, school-sponsored event.
- (B) Administrators, staff, or visitors of [ district/school name ] are prohibited from using, consuming, displaying, activating, promoting, or selling any tobacco products, tobacco-related devices, imitation tobacco products, or lighters at any time on school property or at any off-campus, school-sponsored events. This includes products or paraphernalia displaying tobacco industry brands.

- (C) It shall be a violation of this policy for [ district/school name ] to solicit or accept any contributions, gifts, money, curricula, or materials from the tobacco industry or from any tobacco products shop. This includes, but is not limited to, donations, monies for sponsorship, advertising, alleged educational materials, promotions, loans, scholarships, or support for equipment, uniforms, and sports and/or training facilities. It shall also be a violation of this policy to participate in any type of service funded by the tobacco industry while in the scope of employment for [ district/school name ].
- (D) It shall be a violation of this policy for any person to promote, or for [ district/school name ] to promote or allow promotion of tobacco products, tobacco-related devices, or imitation tobacco products on the school property or at off-campus, school-sponsored events. This includes promotion of these products via gear, technology accessories, bags, clothing, any personal articles, signs, structures, vehicles, flyers or any other materials.
- (E) [ district/school name ] shall act to enforce this policy and to take appropriate action against any student, staff, administrator, or visitor who is found to have violated this policy.
- (F) Instruction to discourage the use of tobacco products shall be included in the education provided for all students. Staff responsible for teaching tobacco use prevention shall have adequate training and participate in ongoing professional development activities to effectively deliver the education program as planned. The curriculum for this instruction will not be paid for or developed by the tobacco industry or its subsidiaries.

## V. Exceptions

- (A) It shall not be a violation of this policy for a person to possess or provide tobacco or tobacco-related devices to any other person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice. It shall not be a violation of this policy to use tobacco, tobacco-related devices, imitation tobacco products, or lighters as part of an educational experience related to indigenous tobacco practices that has been approved by administrators.
- (B) It shall not be a violation of this policy for tobacco products, tobacco-related devices, imitation tobacco products, or lighters to be included in an instructional or work-related activity in [ district/school name ] school buildings if the activity is conducted by a staff member or an approved visitor and the activity does not include smoking, chewing, or otherwise ingesting the product.
- (C) It shall not be a violation of this policy for non-students 18 years and older to use or possess a product that has been approved by the U.S. Food and Drug Administration

for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

## VI. Opportunities for Cessation Programs

- (A) Administrators shall consult with the local public health department or other appropriate health and allied community-based organizations to provide students, staff, and administrators with information and access to support systems, programs, and services to encourage them to abstain from the use of tobacco products.
- (B) Administrators shall identify and offer evidence-based programs and services for staff that use tobacco products to support them in complying with this policy.

## VII. Enforcement

The success of this policy depends upon the thoughtfulness, consideration, and cooperation of the whole [ district/school name ] community. All individuals on school premises, including students, staff, administrators, and visitors are responsible for adhering to and enforcing this policy. Members of the [ district/school name ] community are encouraged to communicate this policy with courtesy and diplomacy. Any person acting in violation of this policy will be informed or reminded of the policy and asked to comply.

### (A) Students

- (1) The first violation shall result in confiscation of tobacco products, tobacco-related devices, imitation tobacco products, or lighters; notification of parents and/or guardians; and at least one of the following:
  - (i) A student meeting and individual student assessment with a chemical health educator or designated staff to discuss commercial tobacco use and the school policy.
  - (ii) Student participation in a tobacco education program.
  - (iii) Provision of information to student about available cessation programs and resources.
- (2) The second violation shall result in confiscation of tobacco products, tobacco-related devices, imitation tobacco products, or lighters; notification of parents and/or guardians; the provision of information to the student about available cessation programs; and at least one of the following:
  - (i) A student meeting and individual student assessment with a chemical health educator or designated staff with parents and/or guardians to discuss commercial tobacco use and school policy.

(ii) Student participation in a tobacco education program.

(3) The third and any subsequent violation shall result in confiscation of tobacco products, tobacco-related devices, imitation tobacco products, or lighters; notification of parents and/or guardians; the provision of information to the student about available cessation programs; student participation in a tobacco education program; and at least one of the following:

(i) A student meeting and individual student assessment with a chemical health educator or designated staff with parents and/or guardians to discuss commercial tobacco use and school policy.

(ii) Educational community service.

(B) Staff

(1) The first violation of this policy shall result in a verbal warning to the staff member and an offer of a referral to cessation services.

(2) The second violation shall result in a written warning to the staff member with a copy placed in the staff member's district personnel file, and an offer of referral to cessation services.

(3) The third violation shall be considered insubordination and shall be dealt with accordingly based on established policies and procedures for suspension and/or dismissal of staff.

(C) Visitors

(1) Visitors observed violating this policy shall be asked to comply with [ district/school name ]'s tobacco-free policy.

(2) If a visitor fails to comply with the request, this policy violation may be referred to the building principal or other available school district supervisory personnel. The supervisor shall decide on further action that may include a directive that the visitor leave school property and forfeit any fee charged for admission to a school-sponsored event.

(3) Repeated violations may result in a recommendation that the superintendent prohibit the individual from entering [ district/school name ]'s property for a specified period of time.

## VIII. Dissemination of Policy

- (A) Appropriate signage shall be posted throughout the district at building entrances and other highly visible locations on all school buildings, building entrances, vehicles, vehicular entrances to school grounds, and all indoor and outdoor athletic facilities indicating that [ district/school name ] requires an environment free of commercial tobacco.
- (B) The school shall notify students and parents/guardians of this policy through student handbooks and orientations.
- (C) The district shall provide notice of this policy in staff handbooks, through orientations and employee or staff trainings, and when offering employment.
- (D) The school or district shall make reminder announcements of its commercial tobacco-free policy at school events at appropriate intervals throughout the events, when possible.

## IX. Program Evaluation

- (A) The tobacco-free policy shall be assessed by the school district or its designee evaluator at regular intervals, but at least once a year, to determine whether policies, policy enforcement, communication, education, staff training, and cessation programs are effective. Policies and programs shall be updated and revised accordingly.

## X. Effective Date

- (A) This policy shall take effect in full on [ insert date ].

## Statutes on Tobacco Use in Schools

20 U.S.C. § 6083(a)

Minn. Stat. § 144.4165.

Minn. Stat. § 120A.05, subds. 9, 11, 13.

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The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.

## Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit: <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 20 U.S.C. § 6083(a).
- 3 MINN. STAT. § 144.4165.
- 4 Traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, except for the indigenous practice provision, a commercial context is implied and intended.
- 5 U.S. DEP’T OF HEALTH AND HUMAN SERVICES. THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-anniversary/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm).
- 6 Minn. Dep’t of Health, *Minnesota Tobacco Profile* (2018), <https://www.health.state.mn.us/communities/tobacco/data/docs/profiles/minnesota.pdf>; Minn. Dep’t of Health, *Statistical and Technical Notes for State and County Tobacco Profiles* (2018).
- 7 U.S. DEP’T HEALTH & HUMAN SERVICES, E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_sgr\\_full\\_report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf).
- 8 U.S. DEP’T HEALTH & HUMAN SERVICES, E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL — EXECUTIVE SUMMARY (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Exec\\_Summ\\_508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf).
- 9 U.S. DEP’T OF HEALTH AND HUMAN SERVICES, THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-anniversary/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm); U.S. DEP’T OF HEALTH AND HUMAN SERVICES, PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2012), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm).
- 10 Minn. Dep’t of Health, *Teens and Tobacco in Minnesota: Highlights from the 2017 Minnesota Youth Tobacco Survey* (2018), [https://www.health.state.mn.us/data/mchs/surveys/tobacco/teen\\_tobacco17.pdf](https://www.health.state.mn.us/data/mchs/surveys/tobacco/teen_tobacco17.pdf).
- 11 Joseph R. DiFranza et al., *Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality*, 117 PEDIATRICS e1237 (2006), <http://pediatrics.aappublications.org/cgi/reprint/117/6/e1237>.
- 12 U.S. DEP’T OF HEALTH AND HUMAN SERVICES. SURGEON GENERAL’S ADVISORY ON E-CIGARETTE USE AMONG YOUTH (2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.
- 13 Jonathan D. Klein & Steve St. Clair, *Do Candy Cigarettes Encourage Young People to Smoke?*, 321 BRIT. MED. J. 362 (2000), <http://www.bmj.com/cgi/content/full/321/7257/362>.
- 14 National Cancer Institute, Tobacco Control Monograph No. 19: *The Role of the Media in Promoting and Reducing Tobacco Use* (2008), [https://cancercontrol.cancer.gov/brp/tcrb/monographs/19/m19\\_complete.pdf](https://cancercontrol.cancer.gov/brp/tcrb/monographs/19/m19_complete.pdf); Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, AM. J. PUBLIC HEALTH 92 (2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447480/pdf/0920901.pdf>.