On May 16, 2020, Governor Tim Walz signed Minnesota’s Tobacco 21 bill, HF 331, Minnesota Session Laws, Regular Session, Ch. 88 – HF 331 (2020), raising the minimum legal sales age (MLSA) from 18 to 21.

This legislation also includes important updates and reforms to Minnesota’s commercial tobacco retailer licensing laws and youth access laws that will improve state and local regulation and enforcement. The new law reflects years of effort by communities, local public health professionals, and advocates to advance public health. This FAQ document is designed to help communities understand these changes.
Q: How does this legislation change regulation of commercial tobacco in Minnesota?

A: Effective August 1, 2020, the legislation:

- Raises the minimum legal sales age for commercial tobacco products to 21;
- Increases retailer penalties for furnishing or selling to persons under 21;
- Eliminates criminal penalties for underage possession, use, or purchase (PUP) violations, allowing only non-monetary, civil penalties for underage use of false identification to purchase or attempt to purchase;
- Updates compliance check protocols to require decoys to be between 17 and 20 years of age;
- Narrows the adult-only store exceptions for self-service and sampling, allowing these activities only in stores that prohibit entry by anyone under the age of 21, have an entrance directly to the outside, and derive at least 90 percent of gross revenue from licensed products;
- Requires retailers to check photo identification to verify the age of anyone under 30;
- Requires MLSA signage at every licensed retail location; and
- Updates the definition of electronic delivery devices, providing broader coverage than federal law.

Q: What are the key changes that every local community should know about?

A: The main points to understand are that, effective August 1, 2020:

- All local licensing authorities must enforce the Minnesota MLSA and other changes to state laws.
- State law no longer criminally penalizes PUP by underage persons. Civil, non-monetary penalties are allowed for underage use of false identification for purchases or attempted purchases. Federal law has never penalized underage PUP. Therefore, any local prosecution of an underage person for these activities no longer aligns with state or federal law.
- Compliance check decoys must now be 17 to 20 years old, instead of 15 to 17.
• The definition of electronic delivery devices will now include natural or synthetic nicotine and non-nicotine e-liquids.

• Retailer penalties for sales to underage persons and other violations will increase to a minimum of $300 for a 1st violation, $600 for a 2nd violation within 36 months, and $1,000 for a 3rd or subsequent violation within 36 months. Upon the 3rd or subsequent violation within 36 months of the first violation, a suspension of the retailer’s license of at least seven days will be required and the retailer’s license may be revoked.

• Self-service and sampling are allowed only in tobacco product shops that prohibit any person under the age of 21 to enter or be present, have an entrance directly to the outside, and derive at least 90 percent of gross revenue from sales of licensed products.¹

**Q: What commercial tobacco products are covered by the new law?**

**A:** No one in Minnesota can sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices to anyone under the age of 21. The definition of electronic delivery devices has been updated to include natural and synthetic formulations of nicotine or other substances.

**Q: If my community passed a Tobacco 21 law before the passage of the state law, are any changes needed?**

**A:** Every community must, at a minimum, abide by the new state law requirements. We strongly recommend that all communities review their current licensing ordinances and regulatory practices, consider updating policy provisions that are inconsistent with state law, and take steps to ensure that all licensing and enforcement practices will conform with the state law by August 1, 2020.

**Q: What should my community do if it has not yet passed a Tobacco 21 law? Do we have to change our local ordinance by August 1, 2020?**

**A:** No. Although local licensing authorities must comply with and enforce the new Tobacco 21 MLSA by this date, state law does not require them to amend their current ordinances to do so. If a jurisdiction’s current ordinance is less restrictive than the new changes to state law, it must
enforce the state provisions. State licensing and underage access laws allow local authorities to adopt more stringent regulations to further protect public health. An existing ordinance may create confusion if it conflicts with state law. An updated local law will help ensure retailer compliance and provide clarity for enforcement. A community may also want to adopt additional commercial tobacco policies to align with public health best practices and further protect community health.

**Q:** What about penalties for those under the age of 21?

**A:** In alignment with best practices and promotion of equity, PUP penalties have been removed from state law; however, a person under 21 who uses false identification to purchase or attempt to purchase commercial tobacco products may face court-ordered civil, non-monetary alternative penalties such as community service.2

**Q:** Who is responsible for conducting compliance checks under the state law?

**A:** State law continues to require a local licensing authority to conduct at least one unannounced compliance check per calendar year at each licensed location.

**Q:** Does the Minnesota Tobacco 21 law apply to Tribal lands?

**A:** Because Tribal reservations are sovereign territories, they are not subject to most state laws, including this one. Tribal reservations are required to comply with the federal Tobacco 21 law, however. As a result, retailers on Tribal lands may only sell commercial tobacco products to persons aged 21 or older.

**Q:** How does the Minnesota Tobacco 21 law intersect with the federal law enacted in 2019?

**A:** Since December 20, 2019, the federal MLSA has been age 21 in all U.S. states and territories, and in all Tribal jurisdictions. The Food and Drug Administration (FDA) is responsible for enforcing the federal law and conducts compliance checks for that purpose. In Minnesota, FDA compliance checks are conducted under a contract with DHS.3
Q: Will new retailer signs, window clings, and other resources be made available?

A: The Minnesota Department of Health (MDH) will work with its tobacco technical assistance providers, like the Association for Nonsmokers-Minnesota, to provide signs and window clings. MDH will also post a PDF online for retailers and public health workers to print and distribute.4

Q: Is help available if our community wants to review or update its ordinance?

A: Please contact your local public health department or the Public Health Law Center for assistance. The Public Health Law Center provides free legal technical assistance to help communities amend or adopt commercial tobacco control ordinances.

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota, and made possible with funding from the Minnesota Department of Health. The Center provides information and legal technical assistance on issues related to public health and does not provide legal representation or advice. This document should not be considered legal advice.

Endnotes

1 Communities that have clean indoor air and/or flavored products ordinances should review language to ensure compliance with the new state MLSA.

2 Please see discussion of PUP penalties in the Public Health Law Center’s model policies for MN cities and counties.

3 Click here for information on the federal Tobacco 21 law and what it means for Tribal, state, and local governments.

4 The FDA’s This is Our Watch webpage also provides resources for retailers, including age calculator clocks.