



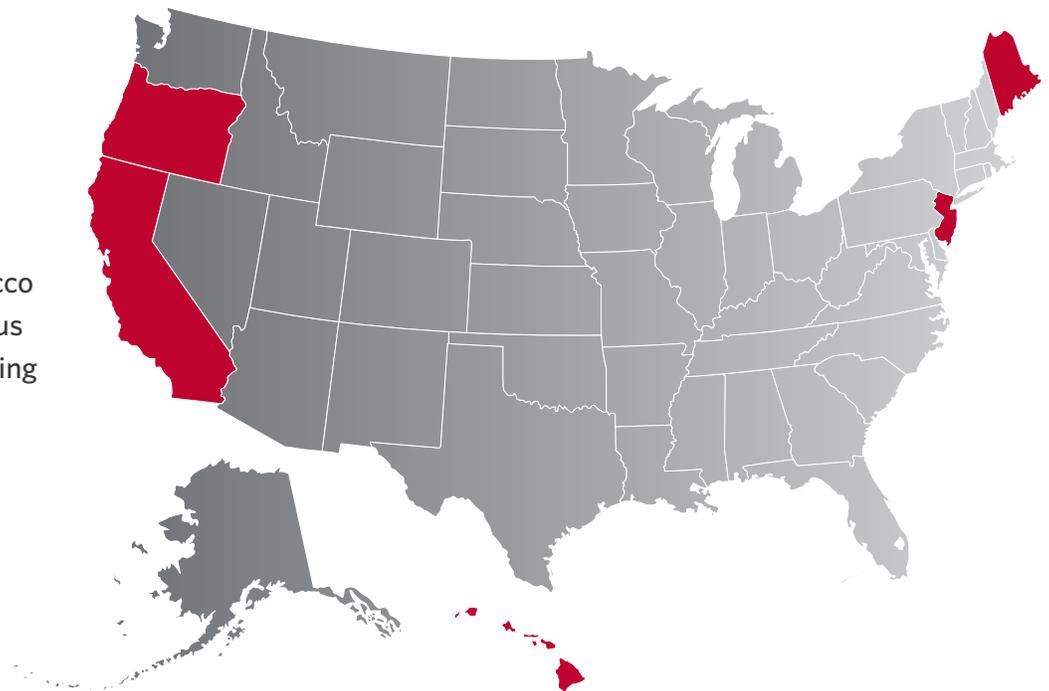
# TOBACCO 21 POLICIES IN KANSAS



## Why Tobacco 21?

Raising the minimum legal sales age (MLSA) for tobacco products to 21 has numerous public health benefits. Raising the age can:

- Help delay smoking initiation among youth;
- Reduce access to tobacco products, particularly among high school-aged youth;
- Simplify ID checks for retailers; and
- Increase the length and quality of life among populations.



## National Landscape

As of early 2018, five states have raised the age to purchase tobacco products to 21 (California, Hawaii, Maine, New Jersey, and Oregon), along with 300 cities and counties.

Source: <https://tobacco21.org>

## Kansas Landscape

**As of March 2018, 20 jurisdictions in Kansas have adopted tobacco 21 policies:**

- |                               |                            |                                  |
|-------------------------------|----------------------------|----------------------------------|
| 1. 11/19/15: Wyandotte County | 8. 7/1/16: Lansing         | 15. 1/1/17: Merriam              |
| 2. 2/2/16: Olathe             | 9. 8/1/16: Overland Park   | 16. 7/1/17: Garden City          |
| 3. 3/22/16: Prairie Village   | 10. 8/23/16: Mission Hills | 17. 7/1/17: Johnson County       |
| 4. 6/1/16: Iola               | 11. 8/23/16: Westwood      | 18. 8/10/17: Shawnee County      |
| 5. 6/28/16: Westwood Hills    | 12. 9/1/16: Leavenworth    | 19. 12/5/17: Topeka (LITIGATION) |
| 6. 7/1/16: Bonner Springs     | 13. 11/21/16: Roeland      | 20. <u>4/2/18: Parsons</u>       |
| 7. 7/1/16: Lenexa             | 14. 1/1/17: Leawood        |                                  |

Source: <https://tobacco21.org>

## How It's Done in Kansas

Many cities in Kansas use provisions from the Uniform Public Offense Code for Kansas Cities for their youth access policies. Cities generally modify these provisions to create tobacco 21 policies. Garden City's policy is fairly typical:

### **Section 5.7. Selling, Giving or Furnishing Cigarettes, Electronic Cigarettes, or Tobacco Products to a Person Under 21 Years of Age.**

(a) It shall be unlawful for any person to:

- (1) Sell, furnish or distribute cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age; or
- (2) Buy any cigarettes, electronic cigarettes, or tobacco products for any person under 21 years of age.

Source: [Garden City Code of Ordinances](#), Section 62-2(i)(a)

Many cities also have a provision that prohibits the possession, use, and purchase (“PUP”) of tobacco products by those under 18 or 21. PUP laws have been criticized as being ineffective in reducing underage tobacco use. Some public health advocates have also argued that these laws have the following unintended negative consequences:

- They divert focus and energy from addressing irresponsible retailers and tobacco industry behavior;
- They are difficult to enforce;
- They can hinder enforcement efforts of minimum legal sales age laws by prohibiting the use of underage buyers in compliance check operations; and
- They can open the door to selective enforcement against young persons of color.

## Drafting Your Policy

When drafting your policy, keep the following considerations in mind:

- **Focus on sales rather than purchases.** For reasons mentioned above, PUP laws are subject to criticism on several grounds. If a PUP law seems likely, consider alternative penalties for violators, such as community service or substance abuse education.
- **Limit exemptions.** Some exemptions do serve valuable purposes, such as exceptions for bona fide cessation products and for youth who work as decoys for compliance checks. However, exemptions can undermine the purpose of a law and complicate enforcement. For example, exemptions are sometimes proposed for military personnel or to “grandfather” in people aged 18 to 20 at the time the law passes. These exemptions serve no public health purpose, complicate enforcement, and may make a policy more susceptible to a legal challenge. The city of Parsons included such exemptions in its policy.
- **Consider related policies.** Drafting an effective tobacco 21 policy is not as simple as replacing the phrase “age 18” with “age 21.” You will want to check other laws that set age limits, such as alcohol laws, to ensure terms are not used inconsistently across laws. Terms such as “minors” and “youth” may be defined differently across policies.
- **Consider implementation.** Some provisions can help with implementation of a tobacco 21 policy. Retailers should be educated on the provisions of any new law, and signage should be provided to notify customers of the new policy. Providing cessation materials, particularly to people aged 18 to 20, can also help ensure a smoother transition.

## Default Law in Kansas

If no tobacco 21 policy is in place, Kansas law sets the minimum legal sales age for tobacco products at 18. The law covers cigarettes, electronic cigarettes and tobacco products, and includes provisions prohibiting the sale to, purchase by, or possession of any of these products. KANSAS STAT. Sec. 79-3321, parts (l) through (n).

## Topeka Litigation

On March 22, 2018, Judge Franklin R. Theis of the Shawnee County District Court held that the City of Topeka exceeded its authority when it adopted a tobacco 21 policy, and enjoined the city from enforcing the policy.\* Judge Theis held that the city policy conflicts with the state law, which sets the MLSA at 18. The Topeka City Council voted to appeal this decision. The city's viewpoint is consistent with the view expressed by the Kansas Attorney General in an opinion of December 28, 2017. The decision has not prevented other jurisdictions from adopting their own tobacco 21 policy.\*\*

## Other Policies

Tobacco 21 policies are not the only effective policies that can be considered. Other policies to limit the harms caused by tobacco could include:

- Point-of-sale restrictions, such as restrictions on the self-service of tobacco products;
- Non-tax price restrictions, such as restrictions on the redemption of coupons that artificially lower the price of tobacco products;
- Limiting tobacco sales to adult-only establishments;
- Sales restrictions, such as restrictions on the sale of tobacco products with a menthol or other flavor; or
- Restrictions on the density or number of tobacco retailers.

\* *Dwagfys Manufacturing Inc. d/b/a The Vapebar Topeka and Puffs 'n' Stuff, LLC vs. City of Topeka*, Shawnee County District Court, Case Number 2018-CV-000035.

\*\* See, e.g., *Jamie Willey, Shaw Wants to Push Forward with Tobacco-21*, PARSONSSUN.COM, Mar. 29, 2018, [http://www.parsonssun.com/news/article\\_eb79fdae-33b2-11e8-be57-6f49259191f1.html](http://www.parsonssun.com/news/article_eb79fdae-33b2-11e8-be57-6f49259191f1.html).



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## Additional Resources

The Public Health Law Center has several resources that might be useful as you contemplate a tobacco 21 policy in your community. These include:

- [Tobacco 21: Tips and Tools](#). A fact sheet intended to serve as a starting point for organizations interested in implementing tobacco 21 policies.
- [Tobacco 21: Sample Policy](#). A sample policy to assist counties and municipalities that are considering a measure to raise the minimum legal sales age for tobacco products
- [Tobacco 21: Sample Resolution](#)
- [Web Page on Sales Restrictions](#)
- [Kansas Attorney General Opinion](#)

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