You’ll Have to Wait a Little Bit Longer: Practical Support and Policy Considerations for Tobacco 21 Laws

Public Health Law Center Webinar

May 31, 2016

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Tobacco Control Legal Consortium

Attorneys supporting tobacco control policy change.
The Public Health Law Center
Introductions

Scott M. Kelly
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Tobacco Control Legal Consortium at the Public Health Law Center
Introductions

Beverly J. May
Regional Advocacy Director for Western Region & Project Manager for Raising Age of Tobacco Purchase to 21 Campaign for Tobacco Free Kids
Introductions

Kerry Malloy Snyder
Assistant Director
Public Health and Tobacco Policy Center
Tobacco 21 Movement
Webinar Overview

• Tobacco 21 Movement
  • Rationale & Messaging
  • Compliance & Enforcement
• Implementation Approaches
• Legal Considerations & Challenges
• Questions
Increasing the Tobacco Sale Age to 21

An emerging policy strategy to reduce youth tobacco use

Beverly J. May, MPA

Director of Development and Advocacy
Why Raise The Age?  
Most Smokers Start Before Age 21

- 95% of adult smokers begin smoking before they turn 21
- Many smokers transition to regular use during the ages of 18-21
- Nationally, 18-20 year olds are twice as likely as 16-17 year olds to be current smokers

“Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) where we sell about 25 billion cigarettes and enjoy a 70 percent market share.”

—Philip Morris report, January 21, 1986
Why Raise The Age?

**Nicotine Is Addictive**

- Nicotine is addictive, and adolescents and young adults are more susceptible to its effects because they are still going through critical periods of growth and development.

- Symptoms of dependence—withdrawal, tolerance—can occur after just minimal exposure to nicotine.

- As a result of nicotine addiction, about 3 out of 4 teen smokers end up smoking into adulthood, even if they intend to quit after a few years.
Why Raise The Age?

Older Kids Are A Source of Cigarettes

• Two-thirds of 10th grade students and nearly half of 8th grade students say it’s easy to get cigarettes

• Older youth smokers (18-19 years) are a major supplier of cigarettes for younger kids who rely on friends and classmates to buy them

• More 18-19 year olds in high school means younger kids have daily contact with students who can legally purchase tobacco

• Retailer violation rate is low (9.6%) – kids are getting cigarettes from other sources
Why Raise The Age?
Tobacco Companies Target Young Adults

Point of Sale

Social media

Internships

Parties & Bar Nights

Magazine Ads
Key Messages

• Tobacco kills more than 480,000 Americans each year. Virtually all of them started using tobacco before age 21.

• Since tobacco is so harmful, we should do everything we can to prevent tobacco use among young people. Increasing the legal sale age of tobacco products will help reduce smoking and save lives.

• Tobacco companies target kids and young adults because they know that’s when most users become addicted. Increasing the sale age will help counter tobacco company efforts to target young adults at a critical time when many move from experimenting with tobacco to regular smoking.
What Is the Science Base On Tobacco 21?

- The Institute of Medicine released a national report in 2015.

- Data predict substantial improvements in public health.

- Specific impacts over the long run:
  - reduce the smoking rate by 12 percent
  - reduce smoking-related deaths by 10 percent

  - 223,000 fewer premature deaths
  - 50,000 fewer deaths from lung cancer
  - 4.2 million fewer years of life lost
Benefits of Increasing the Sale Age

• Delay the age when people first use tobacco and reduce risk of becoming a regular smoker

• Help keep tobacco out of schools

• Younger adolescents would have a harder time passing themselves off as 21 year olds

• Simplify ID checks for retailers

Reduce smoking and save lives
Enforcement of Tobacco 21 Is Critical to Impact

Enforcement elements to consider in the drafting phase:

- Review current laws to identify weaknesses
- Focus on the seller
- Designate an enforcement agency & funding for 21 (vs 18)
- Require a specified number of enforcement checks
- Consider the role of licensing in enforcement
- Require appropriate signage
- Provide for retailer education
The Military and Tobacco Prevention

- The minimum age of military service does not equal readiness to enlist in a lifetime of nicotine addiction. Tobacco use is not a right or a privilege; it is an addictive and deadly activity.

- Tobacco is bad for military preparedness. The military recognizes the negative impact of tobacco on troop readiness and soldiers’ health and has actively taken steps to reduce tobacco use.

- The Department of Defense and each of the armed services has a stated goal of a tobacco-free military.
TOBACCO IMPAIRS reaction time and judgment. IT STANDS IN THE WAY OF A MARINE’S NUMBER ONE PRIORITY: TO BE IN TOP PHYSICAL AND MENTAL SHAPE – combat ready.

— General Robert Magnus
Assistant Commandant of the Marine Corps

QUIT TOBACCO. make everyone proud
www.ucanquit2.org
Will Tobacco 21 Hurt the Economy and Retailers?

• Little short-term effect on tobacco sales revenue is expected because:
  ✓ Tobacco consumption by 18-20 year olds is a very small share of total consumption in a state
  ✓ Reductions in smoking initiation and smoking prevalence will be small initially and will grow over time

• Money spent on tobacco in retail stores will not disappear from the economy

• Reduced tobacco use reduces health care costs
Resources

Fact sheets on:

- Increasing the sale age to 21
- Marketing to kids
- Harms of tobacco use
- Toll of tobacco use (e.g. smoking rates)

Talking points

Policy analysis

http://www.tobaccofreekids.org/what_we_do/state_local/sales_21
California Adopts Tobacco 21

- On May 4, 2016, California’s Governor Brown signed bills to:
  - raise the tobacco sale age to 21 for all tobacco products
  - define e-cigarettes as tobacco products so they are included under Tobacco 21 law.

- Tobacco 21 law exempts active duty military
- Tobacco 21 goes into effect June 9, 2016
Raising the Bar

Tobacco 21 policy implementation approaches

Kerry Malloy Snyder, JD
May 31, 2016
Disclaimer

This presentation provides educational information and is not to be construed as a legal opinion or as a substitute for obtaining legal advice from an attorney. Additionally, nothing in this presentation is intended to reflect a view on specific legislation.

The Public Health and Tobacco Policy Center does not provide legal representation.
Objectives

Implementation Considerations

• Scope
  • Products
  • Sales v. Purchase Restrictions

• Method
  • Retail Licensing
  • Stand-alone
  • Board of Health Regulations
Scope of Tobacco 21 Policy

Products

• Cigarettes
• Other Tobacco Products
• Electronic Nicotine Delivery Devices
  • Nicotine-free devices
Scope of Tobacco 21 Policy

Products

• Cigarettes
• Other Tobacco Products
• Electronic Nicotine Delivery Devices
  • Nicotine-free devices

Exempt

• Cessation treatment/devices
Scope of Tobacco 21 Policy

Sales vs. Purchase

- Retail/Sales restriction
  - Focus on retailer behavior
- Consumer purchase/possession restriction
  - *E.g.*, Hawaii prohibits both sales to and purchase of tobacco products by persons under age 21; violators of purchase restriction subject to fines of up to $50 and/or community service. (Haw. Rev. Stat. § 709-908 (3)-(4))
Method of Implementation

Considerations

- What is the existing regulatory/legal landscape?
- How will the jurisdiction ensure compliance?
- What is a meaningful enforcement mechanism?
Approach: Retail Licensing

Benefits

• Helps identify who is selling in community

• Built-in enforcement mechanism (suspension/revocation)

• Comprehensively include other tobacco control interventions

• Funding source for administration and enforcement (license fees)
Approach: Retail Licensing

Example: New York, NY

“Any person operating a place of business wherein cigarettes, tobacco products, liquid nicotine, or electronic cigarettes are sold or offered for sale is prohibited from selling such [products] to individuals under twenty-one years of age.”


“[For the second and subsequent violations] within a three-year period, any person who engages in business as a retail dealer shall be subject to the mandatory revocation of his or her cigarette license for such place of business.”

New York, NY Admin. Code 17-710(5)
Approach: Stand-alone Policy

Features

- Not tied to retail license
- Includes monetary penalties (or other) for violation

114TH CONGRESS 1ST SESSION

S. 2100

To prohibit the sale or distribution of tobacco products to individuals under the age of 21.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2015

Mr. SCHATZ (for himself, Mr. DUKASIN, Mr. BROWN, Mr. MARKEY, Mrs. BOXER, Mr. KERRY, Ms. WASSERN, Ms. HIRANO, Mr. KLUMENHAL, and Mr. WHITEHOUSE) introduced the following bill, which was read twice and referred to the Committee on Commerce, Science, and Transportation.

A BILL

To prohibit the sale or distribution of tobacco products to individuals under the age of 21.

Be it enacted by the Senate and House of Representa-
Example: Hawaii

“Effective January 1, 2016, it shall be unlawful to sell or furnish a tobacco product in any shape or form or an electronic smoking device to a person under twenty-one years of age.”

Hawaii Rev. Stat. § 709-908(1)
Approach: Public Health Regulation

Process

- Administrative vs. legislative process

Authority

- Separation of powers
Example: Boston, MA

“No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to sell or distribute a tobacco product to a person under twenty-one (21) years of age.”

Method of Implementation

Considerations

- Clearly identify enforcing agency
- Identify consistent/adequate funding source
- Provide for meaningful compliance checks (e.g., decoy purchases) and signage
- Establish meaningful penalties for violations (e.g., suspension/revocation of license, high fines)
Contact us

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Tobacco 21 Laws: Legal Considerations & Challenges
Authority
Preemption

A higher level of government:
• Eliminates/reduces the authority of a “lower” level of government
• Concerning a particular subject/area
Dillon’s Rule

Local Governments:
- Creatures of the state
- Limited authority

Disputes must be resolved against the local government
Express Preemption

This chapter *preempts political subdivisions* from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores . . .
Implied Preemption
Express Authority

A statutory or home rule city or county has the authority to adopt more stringent regulations within its jurisdiction.
Savings Clause

... do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products.
Local Powers

The council shall have power to provide for . . . the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient.

Home Rule
Justification

Equal Protection:

• Similarly situated people entitled to equal treatment under the law

• Must be a fair and logical basis for the differences
Compliance & Consequences
Scope

- Sale (Distribution)
- Purchase/Attempted purchase
- Use
- Possession
- Types of products covered
Exemptions?

- Cessation products
- Participants in compliance checks
- Retail employees
- “Grandfathering” the “underage”
Minimum Clerk Age
Additional Retail Opportunities

- Licensing
- Samples & Sampling
- Advertising Regulations
- Minimum Price Laws
- Minimum Pack Laws
- Flavored Restrictions
- Increased Penalties
- Price Discounts
- Higher License Fees
- Self-Service Restrictions
- Mandatory Training
- Licensing Caps
- Density Restrictions
- Proximity
- Zoning – Land Use Regulations
Upcoming Webinar

News from the Front:
State and Local Regulation of E-Cigarettes – Legislation and Advocacy

Tuesday, July 26, 2016
12:00 PM Central

More Information at www.publichealthlawcenter.org
Questions
Upcoming Webinar

News from the Front:
State and Local Regulation of E-Cigarettes – Legislation and Advocacy

Tuesday, July 26, 2016
12:00 PM Central

More Information at www.publichealthlawcenter.org
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