

Tobacco 21: Model Policy



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PREVENTING TOBACCO ADDICTION FOUNDATION



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Tobacco 21: Model Policy

Tobacco products kill half a million Americans each year. Youth access to tobacco products compounds this problem because young people exposed to nicotine are particularly likely to become lifelong users.

A strong tobacco minimum legal sales age (MLSA) 21 policy will:

- Define tobacco products to include current and future tobacco products, including e-cigarettes;
- Prohibit the sale of tobacco products to persons under the age of 21;
- Require the tobacco retailer or their employee to verify the age of the purchaser prior to the sale;
- Require tobacco retailers to post signs stating that sales to persons under the age of 21 are prohibited;
- Designate an enforcement agency and establish a clear enforcement protocol;
- Create a tobacco retail licensing program if the jurisdiction has the authority to do so under state law,
- Dedicate funding to fully cover enforcement costs, either through licensing fees or as a provision in a state statute or local ordinance;

- Provide authority for the state, county, or municipality to inspect tobacco retailers for compliance with MLSA 21 and a mandated minimum number of annual compliance checks for every tobacco retail establishment;
- Provide penalties focused on the tobacco retailer or licensee rather than the youth purchaser or non-management employee. This would mean eliminating Purchase, Use, and Possession (PUP) penalties where they exist in current tobacco sales laws or policies;
- Establish a civil penalty structure for violations rather than a criminal penalty structure to avoid unintended consequences that disproportionately impact marginalized communities and undermine the public health benefits of the policy, and
- Where state legislation is pursued, ensure that local jurisdictions have the authority to enact more stringent regulations for tobacco products than state or federal law. *(See the context box on preservation of local authority below at page 13)*

ADDRESSING MLSA THROUGH LICENSING

A tobacco retail license allows states and municipalities to comprehensively regulate all tobacco retailers, fund enforcement programs, and create a penalty structure that suspends or revokes a license for retailers that continue to violate a MLSA 21 policy. For jurisdictions that have the legal authority to enact a tobacco retail licensing program, additional provisions specific to licensing should be considered for adoption in the final policy, such as the following:

Each tobacco retailer engaging in the distribution of tobacco products, at each location in [state/county/municipality], shall secure, and display at all times, a tobacco retail sales license from the [Health Department/Issuing Authority] before engaging or continuing to engage in such business. No tobacco retailer may distribute tobacco products without a valid tobacco retail sales license.

The fee for a tobacco retail sales license shall be set and used to cover the administrative cost for licensing administration, education and training, retail inspections, and unannounced compliance checks. The tobacco retail sales license fee should not exceed the cost of the regulatory program authorized beyond this [statute/ordinance].

A tobacco retail sales license cannot be renewed if the tobacco retailer has outstanding fines pursuant to this [statute/ordinance].

No tobacco retail sales license shall be issued or renewed to a tobacco retail sales licensee unless the tobacco retailer signs a form stating that the tobacco retailer has read this [statute/ordinance] and has provided training to all employees on the sale of tobacco products. Such training shall include information that the sale of tobacco products to persons under 21 years of age is illegal, the types of identification legally acceptable for proof of age, and that sales to persons under 21 years of age shall subject the tobacco retailer to penalties.

Any business found to be selling tobacco products without a license shall be issued a No Sales Order for Tobacco Products and be ineligible to receive a tobacco retail license for a period of three (3) years.

Created by a consortium of national public health organizations, the following sample policy can assist states, counties, and municipalities that are considering raising the MLSA for tobacco products. The document provides detailed annotations in shadowed

boxes explaining the reasoning behind the policy language. These annotations are intended to be used only as a guide and would not typically be included in a final policy. Each jurisdiction should consider modifications that reflect its unique needs and situation. For state laws in particular, care will need to be exercised in how this model language is incorporated into existing laws on tobacco sales. Be sure to review your policy with an attorney familiar with the laws of your jurisdiction to ensure consistency with other laws in your jurisdiction, especially if you change terms or delete provisions. For city and county policies, you should also ensure that your community has adequate legal authority to adopt a tobacco MLSA 21 ordinance.

I. FINDINGS OF FACTS AND PURPOSE

- a. [State/county/municipality] recognizes that the use of tobacco products has devastating health and economic consequences.
- b. Commercial tobacco use is the foremost preventable cause of premature death in America.¹ It causes nearly half a million deaths annually² and has been responsible for 20.8 million premature deaths in the U.S. since the first Surgeon General's report on smoking in 1964.³
- c. Tobacco product use leads to more than \$300 billion in health care and lost worker productivity costs each year.⁴
- d. [State/county/municipality] further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and youth that begin using tobacco products are particularly likely to become lifelong users.
- e. Young brains are particularly susceptible to the addictive properties of nicotine.⁵ As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood.⁶
- f. An estimated 5.6 million of today's American youth aged 0 to 17 are projected to die prematurely from a commercial tobacco-related illness if prevalence rates do not change.⁷
- g. National data show that about 95 percent of adults who smoke begin smoking before they turn 21. The time between ages 18 to 20 is a critical period when many adults who smoke move from experimental smoking to regular, daily use.⁸
- h. Data from the National Youth Tobacco Survey demonstrates that youth use of e-cigarettes continues to increase. The overall use rate of e-cigarettes among youth continues to be higher than other forms of tobacco and has stymied previous progress in the reduction of the overall tobacco use rate for youth.⁹ Furthermore,

FINDINGS

The purpose of including findings in a tobacco MLSA 21 policy is to clearly identify the problems to be addressed with the policy. Findings provide guidance to the policy drafters and decision-makers, as well as readers of the policy. In addition, in the event of litigation, findings will provide courts with a record of the legislature's intent and rationale for the policy.

Common findings associated with a comprehensive tobacco MLSA policy will identify health concerns and other problems related to use and/or access to commercial tobacco.

Findings specific to your jurisdiction, such as use rates among local teens and young adults, will provide further rationale for your policy.

the popularity among youth of newer products, such as the brand JUUL, which currently dominates the market, is likely responsible for the significant increase of e-cigarette usage among high school students.¹⁰

- i. In 2015, the Institute of Medicine (now the National Academy of Medicine) concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence.¹¹
- j. The Institute of Medicine also predicted that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019, and would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.¹²
- k. A growing number of state and local jurisdictions have enacted minimum legal sales age 21 policies to further restrict access to commercial tobacco.¹³
- l. Three-quarters of adults support raising the minimum legal sales age for tobacco products to 21, including seven out of ten adults who smoke.¹⁴
- m. The financial impact of tobacco minimum legal sales age 21 policies on retailers is likely to be minimal. Minimum legal sales age 21 policies work gradually over time to reduce rates of smoking initiation and smoking prevalence. As a result, it is likely that there will be little short-term effect on tobacco sales revenue.

RETAIL IMPACT

Tobacco retailers may oppose a tobacco MLSA 21 policy out of concern that they may lose business. The above finding addresses that concern.

- n. Raising the minimum legal sales age of tobacco products is consistent with raising the legal drinking age to 21, which led to reduced alcohol use and dependence among youth, and contributed to the decline in drunk driving fatalities.¹⁵

LEGAL DRINKING AGE

Raising the legal drinking age to 21 has had significant public health benefits. Predictive modeling and early data indicates that raising the minimum legal sales age for tobacco MLSA to 21 would likely have similar health benefits.

- o. Local governments have used their authority to enact tobacco control policies to protect communities from tobacco-related harms and youth tobacco initiation.¹⁶

II. JURISDICTION

Pursuant to [provide applicable citation], this [statute/ordinance] applies throughout [describe geographic area subject to regulation].

JURISDICTION

Some policies include a description of where the regulations that follow will apply.

This type of provision can be particularly important when one type of local government (such as a county) has the authority to enforce its regulation within another unit of government (such as a city or village).

III. DEFINITIONS

DEFINITIONS

A comprehensive definitions section explains the language and wording used in a policy and also helps ensure the language is consistent throughout the entire document. A well-thought-out definitions section can help reduce ambiguity and confusion. For example, defining “tobacco products” is important so that those responsible for enforcing and complying with the policy know which products are regulated. This is critical because the tobacco industry is continually developing new ways to deliver nicotine to users.

As used in this [statute/ordinance]:

- a. **“Distribute”** or **“Distribution”** means to furnish, give, provide, sell, or to attempt to do so, whether gratuitously or for any type of compensation.
- b. **“Electronic smoking device”** means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

ELECTRONIC SMOKING DEVICES

Electronic smoking devices should be defined to create a clear, comprehensive definition of the range of electronic devices and their component parts that are intended to be defined as tobacco products covered by this policy’s MLSA.

- c. **“Person”** means any natural person.

PERSON

Although this model policy defines person to include only natural persons, many state statutes and municipal codes already contain a more expansive definition of person that applies to, for example, businesses and other legal entities. Consult an attorney who is familiar with the laws of your jurisdiction to ensure that the appropriate definition of person is applied to the provisions of this model policy.

- d. **“Purchaser”** means any person who obtains or attempts to obtain a tobacco product.
- e. **“Self-service display”** means any display from which customers may select a tobacco product without assistance from the tobacco retailer or the tobacco retailer’s agent or employee and without a direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer’s agent or employee. A vending machine is a form of self-service display.
- f. **“Tobacco product”** means: (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

TOBACCO PRODUCT

A strong tobacco control policy must contain a comprehensive “tobacco product” definition. Providing a comprehensive definition of “tobacco product” can aid in compliance and enforcement by clearly specifying what exactly is being prohibited

A comprehensive definition will cover all current, known tobacco products, which include not only cigarettes, cigars, and smokeless tobacco, but also products like pipes, rolling papers, electronic smoking devices, and other related devices. A strong definition will also be broad enough to capture future products.

- g. **“Tobacco retail establishment”** means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.
- h. **“Tobacco retailer”** means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the non-management employees of any tobacco retail establishment.

IV. MINIMUM LEGAL SALES AGE FOR TOBACCO PRODUCTS

The distribution of any tobacco product to a person under the age of 21 is prohibited.

V. AGE VERIFICATION

Before distributing any tobacco product, the tobacco retailer or the tobacco retailer's agent or employee shall verify that the purchaser is at least 21 years of age. Each tobacco retailer or tobacco retailer's agent or employee shall examine the purchaser's government-issued photographic identification. No such verification is required for a person over the age of 30. That a purchaser appeared to be 30 years of age or older shall not constitute a defense to a violation of this section.

AGE VERIFICATION

Federal regulations require tobacco retailers or their employees to check the identification of tobacco purchasers younger than 27 years old. 21 C.F.R. §§ 1140.14(a)(2) & (b)(2). However, state and local governments generally can adopt more restrictive tobacco regulations without being preempted by federal law. 21 U.S.C.A. § 387p.

Because this policy raises the MLSA for tobacco products, it is consistent to make a corresponding increase to the minimum carding age. Moreover, 30 years old is a simple, intuitive visual age line.

VI. SELF-SERVICE DISPLAYS

No tobacco retailer or their employee or agent shall sell or otherwise distribute tobacco products by or from a self-service display except in places where persons under the age of 21 are not permitted access at any time.

VII. SIGNAGE

No tobacco retailer shall sell, permit the sale of, or distribute tobacco products in [state/county/municipality] unless a notice is posted at any location where tobacco products are available for purchase. All notices must be posted in a manner conspicuous to both employees and consumers, unobstructed from view in their entirety, and within six feet of each register where tobacco products are available for purchase. The [state/county/municipality] shall provide this notice, which shall state "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES." The notice must be at least 14" by 11" and the words on the notice must be legibly printed in a high contrast red color with capitalized letters at least one inch high.

SIGNAGE

Requiring tobacco retailers to post a standardized notice raises awareness of the age restriction, both among tobacco retailers and the general public, and helps promote compliance.

If there is an existing signage requirement at the state level and a county or municipality raises the MLSA higher than the state MLSA, it may be preferable to mirror the state required signage. In that case, consider requiring that the signage:

1. Clearly indicate that the local government is raising the MLSA (e.g., “NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES, IN [local government jurisdiction]”).
2. Be posted adjacent to any state-mandated signage.

VIII. EDUCATION

The [Health Department/Issuing Authority] shall engage in a continuing public health education program to explain and clarify the purposes and requirements of this [statute/ordinance] to persons affected by it, and to guide tobacco retailers and their agents or employees in their compliance. The program may include publication of a brochure for affected tobacco retailers explaining the provisions of this [statute/ordinance] and signage mandated by this [statute/ordinance].

IX. ENFORCEMENT

The tobacco retailer shall be subject to at least two unannounced compliance checks per year. The [Health Department/Designated Authority] shall conduct compliance checks by engaging persons between the ages of 18 and 20 to enter the tobacco retail establishment to attempt to purchase tobacco products. Unannounced follow-up compliance checks of all non-compliant tobacco retailers are required within three months of any violation of this [statute/ordinance]. The results of all compliance checks shall be published by the [Health Department/Issuing Authority] at least annually and made available to the public upon request.

ENFORCEMENT¹⁷

An enforcement section empowers a state, county, or municipality to inspect tobacco retailers for compliance. It may be helpful to grant enforcement authority to multiple agencies, such as the health department and the local agency that enforces general business licensing laws.

In addition, the policy should specify the minimum number of compliance checks that must be undertaken each year. Local jurisdictions raising the MLSA to 21 may also include any state-mandated compliance checks as well as additional checks to effectively enforce the local MLSA 21 policy.

X. PENALTIES

- a. **Tobacco retailers.** Any tobacco retailer found to have violated this [statute/ordinance] shall be subject to: (1) For a first violation, a fine no less than \$500; (2) For a second violation within a 36 month period, a fine no less than \$750 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of seven days; (3) For a third violation within a 36 month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of 30 days; and (4) For a fourth and any subsequent violations within a 36 month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a period of three years.
- b. **Employees.** Any person found to have violated this [statute/ordinance] while acting as a non-management agent or employee of a tobacco retailer shall be subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community services.
- c. **Other persons.** Any person 21 years of age or older, besides a tobacco retailer or a tobacco retailer's agent or employee, who violates this [statute/ordinance] is subject to an administrative fine of \$50.

PENALTIES

A penalties section specifies the consequences for violations. The primary burden for sales to underage purchasers should fall on the retailer who is profiting from the sales of the product and not the purchaser or non-management employee. States and local governments often have the ability to impose criminal and/or civil penalties for violations of the policy. When determining the appropriate penalty structure, a jurisdiction should review its authority for assessing penalties for similar offenses.

Tobacco retailers are responsible for the actions of their agents and employees in regard to the distribution of tobacco products in the tobacco retail establishment. The distribution of any tobacco product by an agent or employee shall be considered an act of the tobacco retailer. To ensure that penalties are not unfairly imposed only on an employee, a jurisdiction could require that the tobacco retailer shall be fined or prosecuted if any person acting as an agent or employee of the tobacco retailer is found in violation of this policy.

To ensure that the impact of penalties on an employee do not impose a disproportionate burden, a jurisdiction could provide that the required activities (education, diversion, community service) may be completed "during hours when the person is not employed and is not attending school" (see, e.g., HI ST § 321-214). A jurisdiction could also provide that education/programs must be free to participants (see, e.g., Cal. Health & Safety Code § 11362.4) and that any education/programs be available online or in some other format to accommodate geographic access. A jurisdiction could also include modest monetary penalties in lieu of the alternative penalties to ensure that any penalties on employees are appropriate and proportional to the penalties on the tobacco retailer.

While retailer education is an important component of tobacco retail licensure and compliance, it is critical that such education programs do not deplete the funding provided through licensure and/or penalties, which must be preserved for effective administration and implementation of the policy to protect public health.

POSSESSION, USE, AND PURCHASE BY UNDERAGE PERSONS

An evidence-based, best practices tobacco MLSA 21 policy should focus penalties on the tobacco retailer who profits from the illegal sale rather than the youth who is likely addicted to the product. While prohibiting the possession, use, and purchase (PUP) of tobacco products by underage persons is a part of many existing MLSA policies, this model does not include restrictions on PUP by those under 21. To align with evidence-based best practices, state and local governments that currently penalize underage youth in PUP laws should repeal PUP penalties.

PUP laws may be unlikely to reduce youth smoking significantly. Also, they may undermine other conventional avenues of youth discipline, divert attention from more effective tobacco control strategies, and relieve the tobacco industry of responsibility for its marketing practices. Some communities are concerned that these provisions may be enforced inconsistently with respect to youth from certain racial and ethnic groups, resulting in their introduction into the criminal justice system.

Similarly, many prohibitions on the use of false identification to obtain tobacco products focus on criminalizing the behavior of youth rather than retailers. If such provisions are included, a community might consider including non-monetary, non-criminal consequences for youth who attempt to use false identification to purchase tobacco products, such as the following:

The city may establish non-criminal, non-monetary penalties for persons under the age of 21 who use a false ID to purchase tobacco products, including, but not limited to, education classes, diversion programs, and community services.

A jurisdiction could provide that the required activities (education, diversion, community service) may be completed “during hours when the person is not employed and is not attending school” (see, e.g., HI ST § 321-214). A jurisdiction could also provide that education/programs must be free to participants (see, e.g., Cal. Health & Safety Code § 11362.4) and that any education/programs be available online or in some other format to accommodate geographic access.

For a discussion of the merits of PUP laws, see Gary Giovino & Melanie Wakefield, Teen Penalties for Tobacco Possession, Use and Purchase: Evidence and Issues, 12 Tobacco Control 6 (2003), http://tobaccocontrol.bmj.com/content/12/suppl_1/i6.full.

- d. **Related violations.** A violation of any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products is also a violation of this [statute/ordinance]. In addition to any other penalty, a tobacco retailer who violates any provision of this [statute/ordinance] or any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products, shall be subject to penalties stated in this [statute/ordinance], including fines and a prohibition of the distribution of tobacco products.
- e. **Criminal Prosecution.** The [state/county/municipality] shall not initiate criminal proceedings against any person other than a tobacco retailer for any alleged violation of this [statute/ordinance].

XI. EXCEPTIONS AND DEFENSES

- a. The penalties in this [statute/ordinance] do not apply to a person younger than 21 years old who purchases or attempts to purchase tobacco products while under the direct supervision of [state/county/municipal] staff or their authorized appointees for training, education, research, or enforcement purposes.
- b. Nothing in this [statute/ordinance] prohibits an underage person from handling tobacco products in the course of lawful employment by a tobacco retailer.

CONSIDER ESTABLISHING A MINIMUM CLERK AGE

This exemption clarifies that underage employees can sell or otherwise handle tobacco products. Because a primary reason for adopting a tobacco MLSA 21 policy is to address social sources of tobacco products for youth, it may be preferable to omit this provision and establish a minimum clerk age of 21. At least one study demonstrates that illegal sales were 7.6 times more likely if the clerk appeared to be underage versus if the clerk appeared older.¹⁸ However, no studies have examined the effects of minimum clerk age provisions and establishing a minimum clerk age could create difficulty in communities with smaller pools of potential employees. If a jurisdiction was interested in establishing a minimum clerk age, such a provision could state:

Persons employed by a tobacco retailer must be at least 21 years of age to distribute tobacco products.

If the jurisdiction requires clerks to be age 21 or older, provision XI(b) should be deleted.

For further arguments in support of establishing a minimum clerk age of 21 to sell tobacco, see Joseph DiFranza & Mardia Coleman, *Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws*, 10 *Tobacco Control* 323 (2001).

- c. Nothing in this [statute/ordinance] prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- d. It shall be an affirmative defense to a violation of this [statute/ordinance] for a tobacco retailer or their agent or employee to have reasonably relied on proof of age as described by state law.

OTHER KINDS OF EXEMPTIONS

During the consideration of tobacco MLSA 21 policies, it is common to confront calls to exempt members of the military from the minimum legal sales age. This kind of exemption should be avoided to ensure that the health protections this policy can deliver are extended to members of the military. It is essential to ensure fairness in access to health protections. Additionally, tobacco use hinders military readiness.

Another common proposal is to “grandfather” in persons who are currently able to legally purchase tobacco products but who would not be under the policy change. This approach raises compliance and enforcement challenges and allows addiction to become further entrenched for the young adults who would be exempted.

XII. LIBERAL CONSTRUCTION

This [statute/ordinance] shall be liberally construed so as to further its purposes.

PRESERVATION OF LOCAL AUTHORITY

Local governments have a critical role to play in reducing the deadly toll of tobacco and preventing youth from ever picking up the habit in the first place. Unfortunately, as states consider Tobacco 21 legislation, the tobacco industry often attempts to insert legislative language to prevent policies from being adopted at the local level. Tobacco industry-sponsored legislation sometimes includes the specific term “preemption,” but the tobacco industry may also use alternative terminology, such as, “supersede,” “occupy the field,” “of statewide concern,” or “uniform and equitable application.”

Including an anti-preemption clause in state Tobacco 21 legislation makes it clear that the legislative intent is to preserve local authority to enact tobacco control protections that address local concerns and local health issues, and that are more stringent than state or federal law. This provision may be added to state legislation to preserve local authority to enact tobacco control regulations:

PRESERVATION OF LOCAL AUTHORITY

Nothing in state law shall be construed to limit a local jurisdiction from licensing tobacco retail establishments or regulating tobacco products more stringently than state law. Notwithstanding any other law to the contrary, a local jurisdiction may adopt and enforce ordinances and regulations related to tobacco retail establishments or tobacco products if the ordinance or regulation is at least as stringent as state law.

When using this model language in state legislation, this clause would be inserted before the “Severability Clause.” If this clause is included then a relevant finding could also be added to the “Findings of Fact and Purpose” section of the legislation, above, such as: “Public health and medical communities have concluded that preempting local tobacco control measures has far reaching, deleterious public health consequences.^{19,20,21} Many health authorities, including the U.S. Department of Health and Human Services, have prioritized restoring authority for local tobacco control policies as a way to better protect public health.”²²

The bottom line is: Tobacco 21 legislation should not introduce new tobacco control preemption, nor expand any existing tobacco control preemption, and can be used as an opportunity to assert local authority or repeal existing tobacco control preemption. For more information on preemption and the importance of local tobacco control laws, see the Public Health Law Center’s publications, [Preemption: the Biggest Challenge to Tobacco Control](#) and [Untangling the Preemption Doctrine in Tobacco Control](#), and ChangeLab Solutions’ web page [Understanding Preemption](#).

XIII. SEVERABILITY

If any provision of this [statute/ordinance], or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this [statute/ordinance] that can be given effect without the invalid provision or application. Each invalid provision or application of this [statute/ordinance] is severable.

SEVERABILITY CLAUSE

A severability clause improves the likelihood that even if some part of this policy is found invalid, the rest will stand.

XIV. EFFECTIVE DATE

This [statute/ordinance] shall take effect on [effective date].

EFFECTIVE DATE

A state, county, or municipality should select an effective date that will provide sufficient time to educate tobacco retailers and the public of these new restrictions.

ENDNOTES

- ¹ U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING - 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL, 659 (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.
- ² *Id.*
- ³ *Id.*
- ⁴ *Id.* at 679; see also Xin Xu et al., *Annual Healthcare Spending Attributable to Cigarette Smoking: An Update*, 48 AM. J. PREVENTATIVE MED. (2015).
- ⁵ U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 1.
- ⁶ Campaign for Tobacco Free Kids, *Tobacco Use Among Youth* (April 12, 2019) (citing PDAS, Nat'l Survey on Drug Use and Health, 2016 available at <https://pdas.samhsa.gov/#/survey/NSDUH-2016-DS0001>; David Hammond, *Smoking Behaviour Among Young Adults: Beyond Youth Prevention*, 14 TOBACCO CONTROL 181–5 (2005); Paula M. Lantz, *Smoking on the Rise Among Youth Adults: Implications for Research and Policy*, 12 TOBACCO CONTROL (Suppl. I) i66 – i70 (2003).
- ⁷ U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING - 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL, (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.
- ⁸ U.S. DEP'T OF HEALTH & HUM. SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2012), available at <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use>.
- ⁹ CTRS. FOR DISEASE CONTROL & PREVENTION, *Tobacco Use Among Middle and High School Students – United States, 2011 - 2018*, 68 MORBIDITY & MORTALITY WKLY. 157 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6806e1-H.pdf>.
- ¹⁰ CTRS. FOR DISEASE CONTROL & PREVENTION, *Sales of JUUL E-cigarettes Skyrocket, Posing Danger to Youth* (2018), <https://www.cdc.gov/media/releases/2018/p1002-e-Cigarettes-sales-danger-youth.html>.
- ¹¹ INST. OF MED., *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (2015), <http://iom.nationalacademies.org/Reports/2015/TobaccoMinimumAgeReport.aspx>.
- ¹² *Id.*
- ¹³ *Tobacco 21 Cities*, tobacco21.org (Apr. 2015), <http://tobacco21.org/state-by-state>; HAW. REV. STAT. § 709-908 (2015); CAL. BUS. & PROF. CODE § 22958(a)(2).
- ¹⁴ Brian A. King et al., *Attitudes Toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults*, 49 (4) AM. J. PREVENTATIVE MED. 583, 583 (2015).
- ¹⁵ William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, J. STUD. ALCOHOL DRUGS 108 (Supp. 17 2014).
- ¹⁶ Mathew C. Farrelly et al., *Taking Stock of Tobacco Control Program and Policy Science and Impact in the United States*, 1 J. ADDICT. BEHAV. THER. (2017); U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING - 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.
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