

# TOBACCO 21

## Legislative Policy Analysis

### BACKGROUND

Tobacco use continues to be the [leading cause](#) of preventable death worldwide. Using nicotine at a young age also impacts brain development and increases the risk of developing addictive behaviors. One study found that people who started [smoking](#) cigarettes in college continued to smoke four years later, even if they intended to quit. In 2015, an Institute of Medicine committee report [concluded](#) that raising the minimum legal age for purchasing tobacco would reduce tobacco use initiation among 15- to 17-year-olds and improve the overall health of those in the United States.

From 2015 to 2017, five states, Washington, D.C., and Guam increased the minimum legal age for purchasing tobacco through Tobacco 21 laws. This brief examines how these jurisdictions took different approaches to structuring their Tobacco 21 laws, including differences in penalties, enforcement provisions, and age-related exemptions. It also discusses lessons learned and barriers to Tobacco 21 enactment and implementation.

### Summary

- **Penalties and Enforcement:** All of the Tobacco 21 jurisdictions can levy fines or penalties against vendors that sell tobacco to underage consumers. Most of the jurisdictions also impose penalties on individuals under the minimum age who possess or use tobacco products, including Hawaii, California, and Washington D.C. Policymakers in Oregon, however, chose not to penalize underage tobacco possession due to concerns that this measure would disproportionately harm racial and ethnic minorities, who tend to use tobacco products at higher rates. A community-funded policy assessment determined that if “minor in possession” penalties were excluded, the Tobacco 21 law would be less detrimental to African American youth. The Oregon Army National Guard also testified in favor of revising this enforcement provision. Instead of a fine or more formal punishment, Guam’s Tobacco 21 policy [mandates](#) a smoking cessation education program for individuals possessing tobacco underage.
- **Exemptions:** The three main exemption groups to the Tobacco 21 laws include: (1) members of the military, (2) grandfathering provisions for those who could purchase tobacco under the previous law, and (3) allowances for individuals who attempt to purchase tobacco products as part of a government-sponsored compliance check. Both California and Maine exempted military personnel from the Tobacco 21 laws to address the argument that individuals who choose to enlist should be able to buy legal products. Maine’s law also includes a grandfathering provision which phases in the restrictions over three years. This allows individuals who are 18 as of the effective date of the law to continue to legally purchase tobacco products. This can negate arguments that Tobacco 21 laws take a right or privilege away from individuals. Hawaii, New Jersey, and Oregon explicitly exempt those who are underage and purchase tobacco as part of state compliance efforts.

### Lessons Learned from Tobacco 21 Enactment and Implementation:

State tobacco control program managers identified several effective strategies for adopting and implementing Tobacco 21 policies, including bundling the policy within a larger package of tobacco-related bills, allowing community and other coalitions to champion advocacy efforts, and advanced planning for implementation.

- **Incorporating Tobacco 21 into Larger Packages:** Bundling Tobacco 21 policies into larger legislative vehicles, such as a suite of tobacco control bills or budget, can help place the policy within the context of a comprehensive tobacco control program. This approach can also foster a broader base of support for the measure and diffuse opposition, which may accelerate the legislative process.
- **Coalition-led Advocacy:** Coalitions often serve as champions for Tobacco 21 policies and can be invaluable in advancing legislation, highlighting the need for effective collaboration with those community groups to guide Tobacco 21 legislative efforts.
- **Preparation and Planning:** Due to the nature of the legislative process, the time between a bill's enactment and implementation can be short. California experienced this with its Tobacco 21 law being signed by the governor on May 4, 2016, with an effective date of June 9, 2016. As a result, it is important to rapidly develop and disseminate educational materials to retailers to ensure compliance—the sooner the better. Other health agencies echoed the need for education for both retailers and the public to clarify exemptions and the timeline for implementation.

### Barriers to Tobacco 21 Enactment and Implementation:

Although evidence supports Tobacco 21 as an effective public health intervention, fiscal and business impacts and concerns over individual freedom can create barriers to adoption and implementation.

- **Addressing the Fiscal Impact:** States often rely on tobacco taxes to [fund](#) a variety of programs like Medicaid and the Children's Health Insurance Program (CHIP), along with teacher organizations. While reducing smoking prevalence will ultimately reduce healthcare costs in the long-term, Tobacco 21 policies can lead to short-term [fiscal impacts](#). For example, New Jersey estimated that its Tobacco 21 law would [decrease state revenue](#) by between \$6-16 million dollars. Tobacco 21 implementation has been delayed in D.C. until additional revenue streams can be identified.
- **Addressing Individual Liberty Arguments:** Another argument against Tobacco 21 policies focuses on whether it is appropriate for the government to prohibit adults from purchasing legal products, and particularly whether it is appropriate for the government to restrict the ability of individuals who are between 18-21 to purchase these products at the time the policies become effective. Maine's governor [articulated](#) this concern in his veto message by asking why an age restriction at 21 was not extended to voting or military participation. While LePage's veto was overcome by the legislature, attempts were made during the 2018 legislative session to [repeal](#) the Tobacco 21 law.

As this summary illustrates, policymakers can structure Tobacco 21 laws in a variety of ways to address fiscal, social, and economic concerns, while communities and coalitions provide critical leadership and advocacy essential to moving Tobacco 21 bills through the legislative process. Effective collaboration with coalitions and advocacy groups and advanced planning are vital strategies for tobacco control program managers looking to advance Tobacco 21 policies. By preventing young adults from becoming smokers, Tobacco 21 policies have the potential to save millions of lives.