

Tobacco 21 and the State of Missouri

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This document was prepared for the purpose of helping to better understand model Tobacco 21 legislation and what is happening with tobacco age restriction laws in Missouri for public health organizations and government officials throughout the state.

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On December 20, 2019, President Trump signed legislation raising the minimum legal sales age for all tobacco and nicotine products to 21, without exception and effective immediately. The federal law puts penalties solely on the retailer (not the clerk or the purchaser) and suspends sales privileges for repeat violations.

As of September 30, 2021, 39 states have passed laws raising the age of sale for all tobacco products from 18 years of age to 21. Missouri has not aligned state law with federal standards preventing retailers from selling tobacco products to youth. Almost half of Missouri's population lives in a community that has a local Tobacco 21 law.

Minimum Legal Sales Age (MLSA) Laws

Age of sales laws are a part of [CDC's comprehensive tobacco control guidance](#) intended to protect youth from initiating tobacco products by restricting retailers from selling to underage individuals. The [Institute of Medicine](#) predicts that a Tobacco 21 policy would decrease smoking initiation among 15 – 17-year-olds by 25% and among 18 – 20-year-olds by 15%.

Cost of Tobacco

While the [U.S. average smoking rate](#) (15.5%) has dropped significantly, Missouri's adult smoking rate is still high (18.2%). Campaign for Tobacco-Free Kids reports the [toll of tobacco](#) to Missourians is higher than almost anywhere else in the nation:

- 11,000 residents die each year from tobacco in Missouri
- Missouri spends \$3.04 billion per year in annual health care costs directly caused by smoking
- Missouri spends \$644.3 million in tobacco related Medicaid costs alone
- The undue tax burden of tobacco is \$848/household annually for smoking caused government expenditures
- Each year, 2,200 kids become daily smokers in Missouri.

Missouri Tobacco Taxes

At less than 1/10th the national average of \$1.91 per pack for state cigarette tax, Missouri has the lowest tax in the nation at 17 cents per pack tax on cigarettes authorized by [Section 149.015, RSMo.](#) generating around [\\$75 million in revenue each year](#). All authorized tobacco tax combined (RSMo. Sections [66.340](#) STL County Tax; [149.035](#) Wholesalers Licensees Bonds; [149.160](#) Other Tobacco Products Tax; [196.1035](#) Master Settlement Non-compliance Penalty; [210.320](#) Jackson County Tax) generates around [\\$100 million annually](#). This amount does not offset a fraction of the cost in the state by tobacco related expenses. Section [407.926.3](#) RSMo. prohibits alternative nicotine products and vapor products from being regulated or taxed as a tobacco product, thus these products are excluded from generating tobacco tax revenue. Additionally, local jurisdictions are preempted from raising tax on tobacco products.

How Youth Access Laws Should Work

For youth to be protected by an age of access law, best practices health components are needed.

Retailer License for Nicotine and Tobacco Retailers: To equitably enforce age restriction

laws, and hold each retailer to the same standards, a retail license is needed for all nicotine and tobacco product retailers.

Missouri is one of only 12 states that does not license retailers at a state level. This makes it virtually impossible to ensure all retailers are held to equal standards, or to equitably enforce an age restriction law. It creates both an unfair advantage for retailers who are unidentified by the state, and an easy opportunity for illegal underage sales to occur.

Conducting Annual Compliance Checks: Each retailer should be checked a minimum of once annually to ensure compliance with the law by using an underage decoy to make a buy attempt.

The State of Missouri puts no direct financial resources into retailer compliance, and all funding for compliance checks and inspections currently come from the Food and Drug Administration (FDA) or through the Substance Abuse and Mental Health Services Administration (SAMHSA) Synar program. While the federal government does not require states to raise the age, they do tie both SAMHSA funding and the FDA contracted compliance checks to the sales age of tobacco at age 21. The Missouri Division of Liquor & Tobacco Control is contracted by the [FDA to conduct compliance checks](#) of retailers resulting in approximately 4,000 of the over 6,000 identified retailers being checked annually. Results of those checks found a violation rate of 12.9%, that almost 1 out of every 8 retailers were in violation of selling tobacco products to underage youth. The Department of Mental Health Division of Behavioral Health conducts the [annual Synar inspections](#), with a sampling

frame of less than 15% of retailers being checked for underage sales.

Penalize Retailers for Illegal Sales: The federal law places penalties for violations on the retailer for illegal sales to persons under age 21. However, in the state of Missouri, the penalty is not directly placed on the retailer, but rather on the low wage sales clerks and the youth.

When a violation is found through an FDA check conducted by state staff, all monetary fines on the retailer are collected by the FDA and no fine revenue stays within the state. Due to the state compliance protocol not aligning with that of the FDA, retailers found in violations by an FDA compliance check are not in violation of state law and sales clerks are not fined, regardless of whether or not the decoy is under 18 years of age.

Suspending or Revoking Sales Privileges for Repeat Violators: Age restriction policies work by stopping the fraction of rogue retailers who continue to violate the law on selling nicotine and tobacco products to underage persons.

Missouri has one of the highest rates in the country of FDA issued no-tobacco-sales-orders (retailers caught illegally selling 6 times in a 48-month period to an underage decoy buyer). There is no recent record of the State issuing sales prohibitions for any length of time, even when a retailer was found in repeat violation of federal checks by State staff. In the current statute, a retailer may be exempted from all penalties if they have a training program in place that informs sales clerks they cannot sell to minors.

Model Tobacco 21 Policy

[Model Tobacco 21 language](#) been created and supported by many of the major national public health organizations. Recommended components of MLSA policy are:

- 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
- 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.

What is Absent from Missouri Law of Model Policy?

- An inclusive definition of all tobacco products
Per [407.925](#) RSMo., the state separates out the definition of alternative nicotine products, tobacco products, and vapor products. Section [407.926.3](#) RSMo. prohibits alternative nicotine products and vapor products from being regulated or taxed as a tobacco product.
- Prohibited sales to any person under the age 21
Per [407.926](#) RSMo., the state sets the age at 18 for the sale of tobacco products, alternative nicotine products and vapor products.
- Require tobacco retailers to verify age of purchaser prior to sale

Per [407.929](#) RSMo., proof of age is only required from the prospective purchaser if “an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of eighteen”.

Furthermore, “reasonable reliance on the appearance of the purchaser is a defense to any action for a violation” and “no person can be found liable for more than one violation in a single day”

Per [407.931](#) RSMo., vending machines may be in locations that permit those under 18 to have access. Statute also allows for family members to give tobacco products to those under 18 on private property.

- Require tobacco retailers to post signage stating sales to person under age 21 are prohibited
Per [407.927](#) RSMo., the sign requirement is to be displayed at age 18, the current state age for tobacco. While the sign is required by state law, it conflicts with the federal age. This statute forces retailers to post both ages to comply with all laws: 18 (state) and age 21 (federal).
- Designate an enforcement agency and establish a clear enforcement protocol
Per [407.934](#) RSMo., state law is prescriptive on how a compliance check may be conducted. This prescription conflicts with federal compliance checks, therefore enforcement checks done by state staff for federal age of sale cannot be applied as a violation of state law.
- Create a tobacco retail licensing program to identify retailers
Per [407.934](#) RSMo., any person with a retail sales tax license shall be permitted to sell tobacco, alternative nicotine products or vapor products. No separate tobacco sales license is required for tobacco products.
- Dedicate funding to fully cover enforcement costs, either through licensing fees or as a provision in a state statute or local ordinance
Per Hancock amendment [MO Const art X §22](#) seeking full funding of an enforcement program may be in violation without a ballot vote. Currently, there is no license, therefore no fee to sell tobacco products. Hancock may allow for a nominal fee to be established with a tobacco license to help offset the cost of a licensing and enforcement program.
- 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
Per [407.933](#) RSMo., State law prescribes that the division of liquor control may conduct compliance checks, and state or local public health agencies are not granted the authority to do compliance of retailers. No compliance regime is identified in Missouri statute, only a prescribed way to conduct checks. No budget is allocated for conducting state compliance checks, and the division of liquor control reports no checks were conducted to enforce state law. With no state compliance checks, there is no reinspection of repeat violators. While many local jurisdictions are budgeting for and conducting compliance checks, these checks currently do not support enforcement of state law.

- 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
 - Per [407.931](#) RSMo., any person including the sales clerk shall be penalized for the sale of tobacco products \$25 for first offense, \$100 for second, and no greater than \$250 for each subsequent offense. The annual [Synar Report](#) completed by the state affirms that penalties are placed on the clerk, not the retailer. The owner is only issued a warning on the first violation within two years, a 24-hour sales prohibition for the second violation, a 48-hour sales prohibition for the third, and a 5-day prohibition on the fourth. No monetary fine is in place. If the owner states they have trained their employees not to sell to minors, the retailer is exempt from all penalties and no suspension of sales is issued.
 - Per [407.933](#) RSMo., penalties are placed on the underage youth for purchasing, attempting to purchase, or possessing tobacco products. [Purchase, use or possession laws](#) are not shown to be effective at reducing youth use of tobacco. The violation by an underage purchaser is an infraction, part of the criminal penalty structure in the state.
 - Per [407.926](#) RSMo., internet sales prohibition exists for tobacco, alternative nicotine and vapor products and penalties are at \$250 for first violation and \$500 for subsequent violations. No documented enforcement of this law by the State was found.

Who Opposes Model Tobacco 21 Laws

States started adopting Tobacco 21 laws in June of 2015, with Hawaii as the first state in the nation to enact a law. At that time, both tobacco industry interests and those with interests in protecting civil liberties (who believe that tobacco should be a product that individuals between the ages of 18 and 21 have access to) opposed the passing of laws.

With the passing of the federal law, a significantly lower portion of the general population oppose tobacco age restriction laws. General population support for Tobacco 21 has increased over the years and [polling](#) shows upwards of 73% support raising the age and making tobacco less accessible to youth.

Tobacco interests who are found to oppose model components of age restriction laws in states which have worked to pass Tobacco 21 include those who profit from the sale of tobacco. These include petroleum and convenience store associations, tobacco retailers such as alternative nicotine and vapor shops, and tobacco industry manufacturers (Altria, Reynolds American, etc.). In rare cases grocer associations have been in opposition, but that is typically found in states that pair their store associations (gas and grocery). Chambers of Commerce have been on both sides of the issue in states, more broadly they have remained neutral.

Tobacco 21 laws that have been supported by tobacco interests are found with inclusion of preemption language that restricts local authority to regulate tobacco products in some way or have weak enforcement/penalty structures.

Why Retain Local Control?

[Section 407.932 RSMo.](#) grants political subdivisions authority to make more stringent rules than the State. 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. Local control in Missouri allows for communities to offset the cost of compliance checks to the State, as many communities such as [Springfield](#) and [Joplin](#) already have model policies in place and are enforcing their law.

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 and reverse the work already in place. 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.”

Potential Obstacles to Passage?

Policy Obstacles: The tobacco industry has had significant financial influence in Missouri politics. The average Missouri state legislators receives \$1,071 per 2-year election cycle in political contributions from the tobacco industry or their affiliates (national average is \$516). Missouri is one of the few states without any statewide tobacco control public health laws in place. That said, Tobacco 21 has now become the most politically feasible law to pass.

Process Obstacles: The process is intragovernmental, with several government departments impacted by the change in the law, including the Department of Mental Health Services, Department of Public Safety and the Department of Health and Senior Services. The process will also be intergovernmental and will require coordination with local public health agencies. This includes both funding and enforcement collaborations. While these are not obstacles that are unique to this law alone, they are ones that will require time and willingness of the departments to work through. As such, delayed implementation of the law would be recommended.

Previous Legislation in Missouri on this issue?

Bills/Amendments filed by GA (include year filed & bill/amendment numbers)	List sponsors of bills/amendments from the first column	What happened to the bills/amendments listed in the first column?
SB 829 (2020), SB 124 (2021)	Hough	This bill including the provisions in model language recommended. SB 829 was referred to Seniors, Families and Children and received a Do Pass vote of 5-1 on 3/11/20. The bill was not scheduled for a floor hearing. SB 124 received a Do Pass Seniors, Families, Veterans & Military Affairs with a vote of 6-1-1 on 2/3/21. The bill included many model recommendations but did not receive a floor hearing.
SB 1085 (2020)	Rowden	This bill did not follow model recommendations and removed local control. The bill was referred to Seniors, Families and Children Committee on 5/1/20 and not heard by the committee.
HB 1730 (2020), HB 517 (2021)	Shaul	These bills did not follow model recommendations and removed local control. HB 1730 was assigned to General Laws but not heard by committee (2020). HB 517 was assigned and passed the Downsizing State Government Committee and was scheduled for a public hearing but the bill was not heard in the House (2021). HB 517 was offered as an amendment to several House bills heard by the House but not adopted.
HB 2159 (2020)	Unsicker	This bill included a ban on all flavored tobacco products in addition to moving the age to 21. The bill was not heard in committee and withdrawn. The bill did not include model language recommended.
HB 2614 (2020)	Lavender	This bill included a ban on all flavored tobacco products in addition to moving the age to 21. The bill was referred to Economic Development and not heard in committee. The bill did not include model language recommended
HB 868 (2021)	Nurrenbern	This bill included a ban on all flavored tobacco products in addition to moving the age to 21. The bill was referred to General Laws and not heard in committee. The bill did not include model language recommended.