

YOUTH PURCHASE, USE, OR POSSESSION (PUP)

Commercial Tobacco Laws and Penalties



For decades, nicotine has been recognized as a highly addictive substance present in commercial tobacco¹ products, including those marketed to teens.

Because of the need to prevent youth initiation and reduce the overall health impact of tobacco product use, legislatures nationwide have established minimum age requirements for tobacco access. The federal Tobacco 21 law² and similar state laws hold retailers primarily responsible for selling tobacco products to individuals under 21, and impose penalties for violations on retailers.

However, many states and localities have also implemented laws targeting youth behavior related to tobacco and impose penalties for the purchase, use, or possession (or “PUP”) of tobacco products. These laws introduce civil infractions or even criminalize youth behavior that is largely driven by nicotine addiction. While reducing youth access to tobacco products remains crucial in combating the youth tobacco



epidemic, penalizing individuals for purchasing, possessing, or using these products is ineffective and counterproductive, and can undermine broader public health goals.

This fact sheet explores the unintended consequences of PUP laws and provides an overview of alternative policies for states and

localities that are seeking to promote public health goals and reduce and prevent youth tobacco use. For information about alternatives to PUP laws in K–12 school settings, see the Center’s fact sheet, *Student Commercial Tobacco Use in Schools: Alternative Measures*.

What are “PUP laws”?

Laws that penalize purchase, use, and possession, commonly referred to as “PUP laws,” seek to punish youth for buying, using, or having tobacco products if they are under 21 years old.

The Problem with PUP Laws

Below are several of the problems public health professionals have linked to PUP laws.

PUP laws can undermine tobacco prevention efforts

Tobacco 21 laws, which prohibit tobacco sales to individuals under 21, along with measures that reduce the widespread availability of tobacco products, are effective in decreasing the likelihood that youth will develop entrenched tobacco use habits.³ In contrast, the punitive approach of PUP laws, which have been in existence for decades, has not proven effective in achieving these goals. Instead, there is evidence that PUP laws may even undercut the success of more effective tobacco control efforts.⁴

PUP laws are counterproductive in combating nicotine addiction

The widespread availability of electronic cigarettes or “vapes,” containing concentrated nicotine e-liquids, has fueled a youth tobacco use epidemic, resulting in significant long-term public health repercussions. Nicotine, a highly addictive substance, alters the human brain in ways similar to heroin and cocaine.⁵ Its addictive properties are particularly pronounced during the period of active brain development, which lasts until age 25.⁶ Consequently, teenagers and young adults are highly susceptible to nicotine’s effects, increasing the risk of long-term addiction from early use of these products.

Despite the imposition of severe punitive measures, quitting nicotine is extremely challenging, especially for those who began to use tobacco at a young age. Effective management of nicotine addiction requires comprehensive cessation treatment, mentorship, support, and access to cessation therapy medication. However, PUP laws and penalties often hinder the delivery of such critical health care to those in greatest need. Fear of punishment prompts

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teens and young individuals to conceal their tobacco use, complicating timely detection and intervention efforts. In addition, fear of punitive measures may tamp down youth willingness to seek cessation support.

PUP laws shift focus from the industry and its targeted marketing

The tobacco industry skillfully uses imagery, language, free promotions, and other tactics to target teenagers and young adults and entice them into using its products. This predatory marketing singles out youth, racial and ethnic populations, members of the LGBTQ community, and other groups. Children and adolescents are routinely exposed to tobacco industry advertising.⁷ The prevalence of tobacco retailers in neighborhoods means that children and teens are more likely to encounter stores selling and displaying tobacco products and advertisements in their daily lives — on their way to school, the park, or playground.⁸ This constant exposure can lead young people to perceive tobacco products as socially acceptable, overestimate the prevalence of tobacco use among their peers, and underestimate the health risks associated with tobacco use — all of which increase the likelihood of product use.⁹

The industry's primary objective is to addict as many young people as possible, as this maximizes the number of lifetime consumers. With meticulous planning, the tobacco industry has engineered its addictive products to appeal to youth.¹⁰ Its marketing strategies specifically

target young people and communities of color.¹¹ PUP laws shift the focus away from the industry's predatory tactics and instead place the burden on ordinary individuals who have succumbed to these industry ploys.

For more information on the tobacco industry's predatory marketing practices, see the Center's *The Tobacco Industry & the Black Community: The Targeting of African Americans*.

PUP laws perpetuate inequities and contribute to high incarceration rates

PUP penalties can result in an increased likelihood of negative encounters with law enforcement and the establishment of a criminal record, alongside monetary fines and court or processing costs. These laws can also lead to the loss of essential privileges like access to a driver's license¹² or the imposition of compelled unpaid labor, such as mandated community service.

For example, Washington's PUP laws authorize enforcement officers to detain youth suspected of PUP violations until they provide identification with their name and date of birth.¹³ However, teenagers, particularly those below the minimum age to obtain identification, may not possess such documents. In Michigan, PUP violations are considered misdemeanor criminal offenses, subject to monetary penalties and probation, with the potential for additional charges.¹⁴ Even in states where PUP violations are not classified as criminal offenses, civil penalties can be substantial, with fines reaching up to \$250 per incident, especially after repeated violations.¹⁵

For instance, West Virginia imposes both monetary fines and lengthy community service obligations ranging from 16 to 24 hours per violation on youth under 18 years of age.¹⁶ In New Hampshire, youth face fines and up to 20 hours of mandatory community service for each offense,¹⁷ and in Michigan, a court can mandate between 16 and 48 hours of community service per violation.¹⁸

These penalties disproportionately impact youth from low socioeconomic backgrounds, affecting financial stability, safety, educational opportunities, and overall well-being. Moreover, disparities are exacerbated through heightened policing of Black and Brown youth. Studies have revealed that by 8th grade, there are stark differences in adverse police interactions for Black youth in various enforcement areas.¹⁹ Moreover, law enforcement is up to three times more likely to incarcerate LGBTQ individuals than those outside this community.²⁰ What's more, studies have shown that tobacco-related citations are disproportionately issued to Black and Hispanic youth.²¹

Police encounters at a young age can have long-term detrimental effects, particularly for Black and Brown youth. Negative interactions with law enforcement can lead to stigmatization and marginalization, hindering future employment, immigration status, access to social services,

and other determinants of health. Also, aggressive policing is also strongly linked to system avoidance, where individuals with frequent negative interactions with police avoid formal societal systems like educational, medical, and financial institutions.²² This avoidance can result in missed school, leading to a cascade of lower grades, truancy penalties, heightened stress, and diminished access to support systems. Such adverse outcomes are more likely to perpetuate tobacco use and can contribute to worsened public health outcomes – all of which is contrary to the intended goals of PUP laws.

Solutions

Currently, most states and the District of Columbia have some form of PUP law in their statutes, with only a few states choosing not to penalize youth for purchasing, using, or possessing tobacco products.²³ Below are some options to address this situation.

Repeal PUP laws and adopt anti-PUP provisions

Some states and localities have begun recognizing the drawbacks of PUP laws and have started to reduce the associated penalties. For instance, in 2020, the Minnesota legislature eliminated all criminal and monetary penalties for youth possession and purchase of commercial tobacco products.²⁴ Moreover, Minnesota removed misdemeanor penalties for persons under 21 who use false identification to purchase or attempt to purchase tobacco products, opting instead for alternative consequences such as tobacco-free education community service, and court diversion programs.²⁵ Following suit, more states took similar action in 2023.

For example, Washington state removed monetary penalties for PUP violations, though they remain classified as civil infractions subject to community service.²⁶ In addition, instead of mandating tobacco education program participation, the state now refers youth to smoking cessation programs at no cost.²⁷ Similarly, Oklahoma abolished PUP monetary penalties and driver's license revocation; however, youth purchase and possession of tobacco products remain classified as offenses requiring completion of a state-approved tobacco education or cessation program.

Such state efforts to mitigate the harshest aspects of PUP laws are positive steps, particularly if they facilitate access to effective cessation support programs. However, these legislative changes retain punitive elements and do not eliminate the potential for negative interactions with law enforcement or the creation of criminal or judicial records — factors that perpetuate disparate policing and other inequities, as mentioned previously. State legislatures can go further by completely eliminating PUP provisions from their statutes and adopting protective

language restricting localities within their borders from enacting PUP penalties. While local jurisdictions lack the authority to eliminate statutory PUP provisions or penalties, they can amend their ordinance codes to remove any local penalties previously imposed on youth for the purchase, use, and possession of tobacco products.

Enact laws that focus on results, not punishment

The most effective approach for reducing youth tobacco use and preventing initiation is to restrict the availability of tobacco products and imagery in environments frequented by children and young people. By decreasing accessibility, these products become less readily available to youth, thus reducing the likelihood of initiation and decreasing the frequency of tobacco use among those already using these products.

Tobacco 21 Laws

Federal law prohibits the sale of tobacco products to individuals under 21 years of age, including military members, without exceptions. However, some states retain older statutes establishing a lower minimum age for tobacco sales, typically at 18 years old. Despite federal supremacy over state law, these differing standards can lead to confusion among retailers, consumers, and the general public in states with lower age statutes regarding the legality of selling tobacco to individuals aged 18 to 20.²⁸ Implementing Tobacco 21 (T21) laws at the state and local levels alleviates this confusion and streamlines enforcement through familiar local structures. Also, enacting T21 laws at the local level ensures ongoing protection for youth in the jurisdiction, even if the federal minimum age were to be lowered.

Hold the industry accountable

T21 laws and broader commercial tobacco prevention measures should prioritize tobacco retailer enforcement efforts. Serving as the final link between the tobacco industry and consumers, tobacco retailers are best positioned to ensure compliance with T21 laws and can serve as valuable partners in this endeavor. However, when retailers fail to abide by these laws and allow tobacco product sales to youth, they should be the ones to bear the consequences. An effective allocation of enforcement resources through localized compliance monitoring can minimize the potential for uneven law enforcement application. Enforcement measures such as license suspension and non-criminal monetary penalties provide retailers with less of a financial incentive to sell tobacco products to underage individuals and may promote consistent age verification at the point of sale. Robust local retailer licensing regulations,



combined with adequately funded and regular compliance monitoring and enforcement efforts, can lead to lower tobacco product use among youth.²⁹

Reduce youth exposure to tobacco products and tobacco advertising

When communities have a high density of tobacco retailers, youth inevitably have greater access to tobacco products. A few ways to reduce youth exposure to these products and industry advertising are caps on retailer density and retailer proximity limitations.

Retailer density caps

Living in areas with numerous tobacco outlets increases the likelihood of youth initiating tobacco use at a young age.³⁰ Moreover, these high density areas are often situated in communities of color, exacerbating existing disparities in tobacco use rates.³¹ One effective way to combat youth exposure to these products is to limit the maximum number of retailers in a community — particularly in neighborhoods targeted by the industry. For instance, both San Francisco and New York City have implemented formulas to restrict retailer density in various districts.³² Following the adoption of these limits, San Francisco experienced substantial decline in tobacco retailers, particularly in areas with the highest retailer density.³³ Similarly, New York City witnessed an accelerated decline in tobacco retailers since implementing density limitations.³⁴

Retailer proximity limitations

Establishing proximity limits between tobacco retailers is a viable way to mitigate their proliferation in affected communities. By mandating a minimum distance between

tobacco outlets, clustering can be prevented, thus reducing the overall number of retailers within a jurisdiction.

These proximity limitations can also serve as an effective way to deter tobacco retailers from locating near areas frequented by youth, such as public schools. Research indicates that tobacco retailers often cluster in close proximity to such locations.³⁵ Requiring retailers to operate beyond walking distance from areas where youth congregate, including schools, parks, and recreational facilities, reduces youth access to tobacco products and, consequently, youth use.³⁶

The minimum distance required between retailers may vary depending on the local built environment and typical movement patterns of local youth. States can establish standardized minimum distances as a foundation, allowing localities to customize requirements to suit their community needs. Local jurisdictions can implement these density and distance regulations either through tobacco retail license mandates or zoning ordinances.

For instance, Adelanto, California, has enacted zoning regulations prohibiting tobacco retailers from operating within 1,000 feet of playgrounds, churches, public libraries, schools, or any childcare facilities.³⁷ Similarly, since 2016, the City of Chicago has barred the issuance of new tobacco retail licenses to establishments within 500 feet of secondary schools,³⁸ expanding this distance to 1,000 feet as of February 4, 2023.³⁹

For more on the distinctions between establishing tobacco control measures through zoning or licensing, please see the Center's [Using Licensing and Zoning to Regulate Tobacco Retailers](#).

Impose minimum price regulations to deter youth access

Establishing a minimum price for all tobacco products serves to increase their cost, rendering them less affordable and accessible to teenagers and young adults.⁴⁰ Adolescents and young people are particularly sensitive to price hikes in tobacco products compared to the general population. Studies indicate that for every dollar added to the price of a pack of cigarettes, there is a 24 percent reduction in the likelihood of teenagers becoming regular or established smokers.⁴¹

Several states and jurisdictions have already implemented price floors for tobacco product sales. For instance, Colorado mandates a minimum price of \$7 per pack of 20 cigarettes, set to increase to \$7.50 after July 2024.⁴² Additionally, some jurisdictions raise product prices through special taxation, particularly for products sold in non-standard quantities, like electronic cigarettes.

Maryland, for example, imposes a 12 excise tax on electronic smoking devices based on their retail price, with vaping liquid containers up to 5 ml taxed at 60 percent of the retail price.⁴³

In states granting broad local authority, certain cities have taken steps to impose their own taxes on tobacco products. For example, Anchorage, Alaska enforces an excise tax on cigarettes, alongside a 55 percent excise tax on “other tobacco products,” including e-cigarettes.⁴⁴

Invest in cessation

Youth who are already regular tobacco users need adequate access to effective cessation services. Quitting smoking not only improves physical health but also reduces depression, anxiety, and stress.⁴⁵ Also, investing in state and local cessation programs can yield direct savings in health care costs.

Tobacco quit-lines provide free cessation support and are available in all 50 states, Washington D.C., Puerto Rico, and Guam.⁴⁶ Services offered by quitlines vary by jurisdiction, with some states offering multiple types of counselling services and free cessation medications.⁴⁷ For instance, Alaska’s Tobacco Quitline provides cessation coaching via phone and online platforms, along with free FDA-approved over-the-counter nicotine replacement therapies such as patches, lozenges, and gum.⁴⁸ Other state quitlines may even furnish FDA-approved prescription cessation medications. For example, in Delaware, eligible individuals can obtain free FDA-approved cessation pill therapies and nasal sprays.⁴⁹ However, increased investment in these programs is necessary to ensure broader accessibility. For more information about cessation funding per state, see the [state rankings](#) provided by the American Lung Association.

Medicaid insurance coverage for cessation treatment can be a crucial resource for low-income youth in states that offer comprehensive coverage.⁵⁰ Twenty states to date have embraced comprehensive Medicaid coverage for all available cessation treatment options. Barriers in some plans, however, still hinder access to cessation treatment, such as co-pays, treatment duration limits, yearly coverage caps, or prior authorization requirements.⁵¹

Teenagers under 18 years of age face additional hurdles in accessing cessation treatment due to the lack of FDA approval for over-the-counter medications in this age group. However, the American Academy of Pediatrics regards these treatments as safer alternatives to continued tobacco use and advises pediatricians to consider their use in treating addicted teens.⁵²

Given that youth under 18 can only acquire nicotine replacement therapies with a doctor’s prescription, the importance of health insurance coverage becomes even more pronounced. Those lacking insurance coverage are likely unable to access these treatments, underscoring the need for expanded Medicaid coverage and state funding for tobacco cessation.

Increase consumer education

Enhancing consumer awareness of the dangers associated with commercial tobacco can significantly reduce tobacco use and prevent initiation. Educational initiatives that address both the health risks and environmental impacts of tobacco products may resonate with a generation deeply committed to sustainability and environmental protection. By explaining the environmental harms that occur throughout the lifecycle of tobacco products — from cultivation and deforestation to manufacturing emissions and waste — educational programs can inspire environmentally-conscious youth to abstain from tobacco use.

For further insights into hazardous waste classification for tobacco products and their environmental consequences, see the Center's fact sheet, *Tobacco Product Waste: Frequently Asked Questions*.

State law and legal considerations

State legislatures possess broad authority to impose restrictions on the sale of commercial tobacco products and regulate tobacco retailers. However, local jurisdictions within each state should seek legal guidance to ascertain whether they are granted authority by their state government to implement such policies. While some local regulations aimed at limiting access to tobacco products may be preempted by state law, others may be permissible. For more information on the commercial tobacco industry's efforts to curtail the authority of local governments in enacting tobacco control policies, see the Center's publication, *Untangling the Preemption Doctrine in Tobacco Control*.

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Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://keepitsacred.itcml.org>. When the word "tobacco" is used throughout this publication, a commercial context is implied and intended.
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