







COUNTERPRODUCTIVE: YOUTH PUP LAWS UNINTENDED CONSEQUENCES AND ALTERNATIVE APPROACHES

THE PUBLIC HEALTH LAW CENTER



LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
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based on work for First Nations Health Authority at Gathering Wisdom VI Drawing
CHANGE

Image credit: Sam Bradd <https://drawingchange.com/gathering-wisdom-visuals-for-a-healthy-future/>

EQUALITY:

Everyone gets the same – regardless if it's needed or right for them.



EQUITY:

Everyone gets what they need – understanding the barriers, circumstances, and conditions.



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RESPECTING TRADITIONAL TOBACCO



Tobacco traditions have been passed down for generations. Tobacco plants are considered a sacred medicine for many Indigenous people.

<https://keepitsacred.itcmi.org/>

WHAT ARE PUP LAWS?

- Penalize youth for purchasing, using, or possessing tobacco products
- Stated goal is to prevent youth tobacco use
- Stated goal \neq actual impact
- Not the same as minimum age of sales laws



ROOT CAUSES OF THE PROBLEM: ADDICTIVE PRODUCTS DESIGNED TO APPEAL TO YOUTH



Esco Bar:
2500 puffs (6 ml x 50 mg)
= 15 packs of cigarettes



Loon Pluto
Bar: 2500+Puffs (8.5 ml
x 60 mg)
**= 25.5 packs of
cigarettes**



Loon JuiceBox:
4000+Puffs (14 ml x 50
mg)
**= 35 packs of
cigarettes**

Photo Credit (L) ANSR, Product screenshots from theloonmn.com (M. R)

ROOT CAUSES OF THE PROBLEM: MARKETING AND PRODUCT ACCESS/EXPOSURE

- Nicotine is highly addictive, particularly to youth
- High nicotine concentration in e-liquids
- Predatory targeting of and marketing of youth
- \$9 billion/year spent on marketing, vast majority in the retail environment
- 90% of youth report exposure to cigarette, 80% to e-cigarette ads



Photo Credit: Counter Tools

WHAT ARE THE PUP PENALTIES

- Punitive process:
 - Criminal charges, often misdemeanors
 - Civil infractions
- Creates a record of punitive judicial system involvement
- Fines and court costs create financial stress
- Community service
- Potential immigration consequences



COUNTERPRODUCTIVE: PUP PERPETUATES INEQUITIES

- Increased encounters with law enforcement
- Increased likelihood of future negative interaction with the judicial system
- Disproportionate impact on low-income and minority youth
- Aggressive policing for low level offenses
- Long-term effects on education and well-being
- Creates resentment towards policy that is unfair and discriminatorily applied



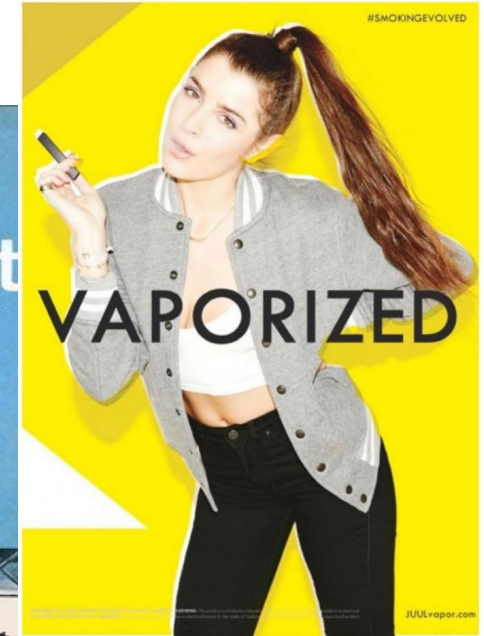
COUNTERPRODUCTIVE: UNDERMINING PREVENTION EFFORTS

- PUP laws can detract from successful tobacco control measures
- Ignores that nicotine dependency is an involuntary physiological phenomenon
- Cessation requires support; PUP removes what little support may be
- Increases stigma and decreases confidence needed to seek help
- Does nothing to decrease access/exposure to tobacco products



EXONERATES INDUSTRY MARKETING

- PUP laws shift focus away from industry accountability and place all the burden on the youth it targeted
- Allows industry to continue predatory tactics



SOLUTIONS OVERVIEW

- Repeal PUP laws/adopt anti-PUP provisions
- Focus on results-driven policies that hold the industry accountable
 - Enforce federal minimum age of sales laws, enact local ones
 - Restrict the sale of products designed to attract youth
- Reduce youth access to products and exposure to marketing
 - Retailer density and proximity limitations
 - Minimum price for price-sensitive population
- Invest in cessation programs
- Increase consumer education



UPHOLDING OF STATE REGULATORY AUTHORITY IN TOBACCO CONTROL

- R.J. Reynolds v. Bonta (2022) –
 - The 9th Circuit Court of Appeals upheld CA’s statewide flavored tobacco product sales ban.
- R.J. Reynolds v. City of Edina (2020) –
 - The 8th Circuit Court of Appeals held that the federal Tobacco Control Act did not preempt state or local authority to regulate tobacco product sales, including flavored sales bans.
- National Association of Tobacco Outlets v. City of New York (2014)
 - U.S. District Court for the Southern District of New York held the city had the authority to prohibit coupon use and discounts for tobacco products.
- National Association of Tobacco Outlets v. City of Providence (2013)
 - The 1st Circuit Court of Appeals upheld the city’s authority to prohibit the redemption of coupons and to prohibit the sale of flavored tobacco products.

REPEAL PUP LAWS

- In 2020, Minnesota eliminated most criminal and monetary penalties for youth; alternatives include education and community service
- Washington removed monetary penalties for PUP; still subject to civil infraction/community service
- Oklahoma abolished PUP monetary penalties and drivers license revocation

LOCAL: LOOK AT YOUR CODE GENERAL
PENALTY PROVISIONS



HOLD THE INDUSTRY ACCOUNTABLE INSTEAD

- Strengthen enforcement of existing minimum age of sales laws
- Enact stronger minimum age of sales requirements (i.e. decoy checks, require ID for all customers)
- Minimum age of clerks of tobacco retailers



Altria



PHILIP MORRIS
INTERNATIONAL

PRODUCT SALES RESTRICTIONS

- Prohibit the sale of attractive products
 - Flavored products
 - Disposable e-cigarettes
 - All e-cigarettes
 - Nicotine pouches
- Comprehensive sales restrictions

<https://www.publichealthlawcenter.org/sites/default/files/resources/US-sales-restrictions-flavored-tobacco-products.pdf>



REDUCING YOUTH EXPOSURE

- Retailer Density and Proximity Limits:
 - Caps on numbers of retailers
 - Proximity limits around schools and other areas frequented by youth
 - Proximity limits between retailers
- Aspire Center's interactive density maps:
<https://aspirecenter.org/tobacco-swamps/>



Source: California Dept. of Tax and Fee Administration,
[CA Cigarette & Tobacco Product Licensees](#)

MINIMUM PRICE REGULATIONS

- Minimum Price Regulations
 - Increase cost to deter youth access.
 - Price floors, minimum size, weight based and ad valorem taxes
 - Prohibit coupon redemption
 - Prohibit discounts, multi-pack discounts
- Tax increases/tax all products



INVESTING IN CESSATION

- Cessation Programs:
 - Increase funding for state and local programs
 - Expand Medicaid coverage for cessation treatment
- Form partnerships with support groups
- [ALA's Not On Tobacco \(N-O-T for Me Online\) self-guided program](#)
- <https://www.acpm.org/initiatives/tobacco-cessation/tobacco-cessation-resources/>

Tobacco Dependence Treatment Resources for Youth

QUITPLAN SERVICES

Free quitting services available to all Minnesotans. QUITPLAN Services offers a variety of options to help people quit:

- QUITPLAN Helpline (telephone counseling) – All ages
- Printed Quit Guide – All ages
- Email program – Age 13 or older
- Use of quitplan.com – Intended for those aged 14 and above
- Text program – Age 18 or older
- Nicotine replacement therapy – Age 18 or older

To register online at www.quitplan.com, users must be at least 13 years old. Anyone can call 888-354-PLAN (7526) to register at any time.

TEEN.SMOKEFREE.GOV

Smokefree Teen helps teens stop using tobacco by providing information grounded in scientific evidence and offering free tools that meet teens where they are - on their mobile phones.

- Text messaging program
- quitSTART mobile app
- LiveHelp online chat

HEALTH PLANS

- Call the number on the back of your insurance card to see what is available
- Each health plan will have their own options, youth and parents should check with their health plan

ex TEXTING PROGRAMS

- BECOMEANEX.ORG
- Text QUIT to 202-804-9884
- Teens 13-18 who vape receive text message-only support
- THISISQUITTING.COM
- Text QUIT to 706-222-QUIT
- Free This is Quitting App available 

ENHANCING CONSUMER EDUCATION

- Raise awareness about health and environmental impacts of tobacco
- Appeal to youth's environmental concerns
- Tobacco product waste
 - Nicotine is a listed acute hazardous waste
 - Facilities largely not equipped to handle
 - Disposal usually means incineration = more toxic emissions
- Deforestation and manufacturer emissions



WHAT IS THE ULTIMATE POLICY GOAL?

- Prevent youth initiation of commercial tobacco use
- Facilitate cessation of commercial tobacco use by youth
- Prevent nicotine dependency development over people's lifetimes
- Facilitate adherence to smoke-free policies
- Reduce tobacco product waste



Source: UC Berkeley – California Management Review

MORE RESOURCES ON PUP



YOUTH &
COMMERCIAL
TOBACCO

April 2024



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 tobacco 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

www.publichealthlawcenter.org

<https://publichealthlawcenter.org/sites/default/files/resources/Anti-Youth-PUP-Laws.pdf>



Through licensing and related regulations, local governments (cities and counties) have the opportunity to broadly regulate the sale of commercial tobacco¹ and related devices and products (such as electronic cigarettes) in the retail environment. This fact sheet provides an overview of penalties for youth purchase, use, or possession of tobacco products. It is one in a series of resources providing Minnesota-specific information on local tobacco retail licensing and point-of-sale policy options.

Background

Historically, many retail licensing and other "youth access" laws have included penalties for underage people who purchase, use, or possess (or attempt to purchase, use, or possess) tobacco products. There is no evidence demonstrating that these laws are effective in reducing youth initiation, use of, or addiction to tobacco products.²

Raising further concern, the tobacco industry heavily lobbied for PUP penalties as a way to divert enforcement attention and resources away from the retailers who sell to underage persons and toward youth, many of whom may already be addicted. For example, Juul Labs

has hired scores of lobbyists around the country and provided draft Tobacco 21 legislation in several states that include harsh penalties against youth and young adults for PUP.³ In some cases, the penalties in these draft bills are more punitive for young people than they are for licensed retailers. Closer to home, Minnesota data shows that youth are more likely to be cited for violating youth access laws than are retailers. A 2020 Minnesota Annual Synar Report on youth access enforcement found that underage persons were cited 4.6 times and assessed fines 2.2 times more often than owners and clerks.⁴

As described below, there are many public health, health equity, and social justice reasons for not including PUP penalties in licensing laws.

<https://www.publichealthlawcenter.org/sites/default/files/resources/Youth-Purchase-Use-Possession-Penalties.pdf>

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MODEL FOR K-12 SCHOOLS: COMMERCIAL TOBACCO-FREE POLICY



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November 2019
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COMMERCIAL TOBACCO-FREE K-12 SCHOOL MODEL POLICY

Questions & Answers



The use or promotion of commercial tobacco products¹ on school grounds and at off-campus school-sponsored events is detrimental to the health and safety of students, staff, and visitors.

Under federal law, smoking is prohibited in any kindergarten, elementary, or secondary school or library serving children under the age of 18 years if federal funds are used in the school.² Many states also have laws that restrict commercial tobacco use, including electronic cigarettes, in public K-12 schools.³ However, federal law and many state laws do not cover outdoor school grounds.



[Commercial-Tobacco-Free-K-12-School-Model-Policy-Q-and-A-2019.pdf](#)



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COMMERCIAL TOBACCO-FREE K-12 SCHOOL MODEL POLICY



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[Commercial-Tobacco-Free-K-12-School-Model-Policy-2019.pdf](#)



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STUDENT COMMERCIAL TOBACCO USE IN SCHOOLS

Alternative Measures



School policies regulating the use and possession of commercial tobacco products,¹ including electronic delivery devices (e.g., e-cigarettes, vaping devices, JUUL, Suorin), often contain punitive measures for student violations.

This publication provides sample language and ideas for evidence-based solutions and information as to why these alternative measures may be more effective than suspension and expulsion at addressing student tobacco use and nicotine addiction as part of a school's Commercial Tobacco-Free Policy.



The sample language for alternative measures in this publication is part of the Public Health Law Center's comprehensive [Commercial Tobacco-Free K-12 School Model Policy](#).

[Student-Commercial-Tobacco-Use-in-Schools-Alternative-Measures-2019.pdf](#)

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QUESTIONS & DISCUSSION



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