

Tobacco 21 laws in the US: An assessment of the strength of state laws

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DISCLOSURES

- The authors do not have any conflicts of interest to declare
- This work was supported by JEC's professorship fund



Outline

- Background
- Methods
- Key findings



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- The background consists of a dark green field. On the left side, there is a large, semi-transparent shield-shaped graphic. Inside the shield, there are two main elements: a stylized flame at the top and a stylized globe at the bottom. The globe shows latitude and longitude lines. A horizontal light green band runs across the middle of the slide, containing the text.
- **BACKGROUND**

T21 policies are increasingly common in communities across the US



National T21 policy is in effect



Dr. Stephen M. Hahn
@SteveFDA

Follow

Today, @POTUS signed legislation to raise the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21.

7:45 PM - 20 Dec 2019

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Dr. Stephen M. Hahn @SteveFDA · 20 Dec 2019

This is a major step in protecting the next generation of children from becoming addicted to tobacco products. Tobacco products, including e-cigarettes, should never be marketed to, sold to, or used by kids.

46 5 54



Dr. Stephen M. Hahn @SteveFDA · 20 Dec 2019

We appreciate Congress and @POTUS' dedication to reducing the disease and death caused by tobacco use and preventing young people from ever becoming addicted to nicotine. More details will be forthcoming as we update our regulations to carry out this provision of law.

31 4 40

DECEMBER 16, 2019
RULES COMMITTEE PRINT 116-44
TEXT OF THE HOUSE AMENDMENT TO THE
SENATE AMENDMENT TO H.R. 1865
(Showing the text of the Further Consolidated Appropriations
Act, 2020)

At the end of the Senate amendment, add the following:

- SECTION 1. SHORT TITLE.
- This Act may be cited as the “Further Consolidated Appropriations Act, 2020”.

22 SEC. 605. **MINIMUM AGE OF SALE OF TOBACCO PRODUCTS.**
23 (a) IN GENERAL.—Section 906(d) of the Federal
24 Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)) is
25 amended—

December 16, 2019 (3:39 p.m.)

U:\2020\0\MNH\11863\PLT--44.xml

1493

- (1) in paragraph (3)(A)(ii), by striking “18 years” and inserting “21 years”; and
- (2) by adding at the end the following:
 - “(5) **MINIMUM AGE OF SALE.—It shall be unlawful for any retailer to sell a tobacco product to any person younger than 21 years of age.**”
- (b) REGULATIONS.—
 - (1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in

What does the National T21 policy cover?

- All tobacco products
- Applies to everyone under 21 years (no exemptions)
- Age verification: FDA expects retailers would verify the age of anyone under 27 years
- No sunset provision



IOM 2015 report findings

REPORT BRIEF | MARCH 2015



For more information visit www.iom.edu/TobaccoMinimumAge

Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products



Over the past 50 years, tobacco control in the United States has led to an estimated 8 million fewer premature deaths. However, tobacco use continues to significantly affect public health, and more than 40 million Americans still smoke.

In 2009, the Family Smoking Prevention and Tobacco Control Act granted the U.S. Food and Drug Administration (FDA) broad authorities over tobacco products, though it prohibited FDA from establishing a nationwide minimum age of legal access—an MLA for tobacco products—above 18 years of age. It also directed FDA to convene a panel of experts to conduct a study on the public health implications of raising the minimum age to purchase tobacco products. At FDA's request, the Institute of Medicine (IOM) convened a committee in 2013 for this purpose.

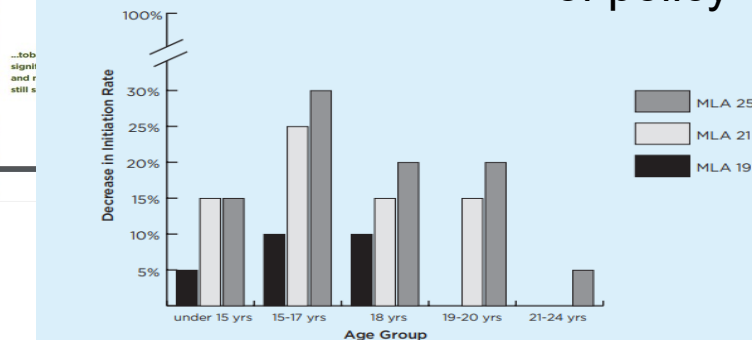
In the resulting report, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, the committee of experts reviews existing literature on tobacco use initiation, developmental biology and psychology, and tobacco policy and predicts the likely public health outcomes of raising the minimum age of legal access to purchase tobacco products. The committee also uses mathematical modeling to quantify these predictions. Of note, the report contains only conclusions regarding raising the MLA:

25%↓ smoking initiation

12%↓ overall smoking rates

16,000 preterm and low birth weight averted within first 5 years of policy

FIGURE: Committee Estimates Regarding Effects on Initiation Rate



NOTE: This figure was created using data from Table 7-2 in the report.

So what's in T21
laws besides
restricting sale to
21 or older?

Preemption

Penalties

Licensing

Signage

Enforcement

Exemptions

Compliance

Products covered

Age verification





- METHODS

Policy identification and retrieval

TOBACCO
~~eighteen~~ twenty-one
www.tobacco21.org

 Tobacco Watcher
www.tobaccowatcher.org



- State legislature websites



Data extraction

Products covered

Enforcement

Preemption

Age verification

Penalties

Signage

Licensing

Compliance
checks



Model T21 policy

- <https://tobacco21.org/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:

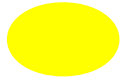
- Define tobacco products to include current and future tobacco products, including e-cigarettes;
- Prohibit the sale of tobacco products to persons under the age of 21;
- Require the tobacco retailer or their employee to verify the age of the purchaser prior to the sale;
- Require tobacco retailers 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 further down)



Color coding



Strong



Medium



Weak



Product covered; sale to minors <21

	Green (Gold standard)	Yellow (somewhat compliant)	Red (weak)
Definition	Includes current and future tobacco products	Does not include future tobacco products	Only applies to combustible tobacco
Sale to minors	Prohibits sale to minors under 21 years	Prohibits sale to minors and purchase by minors	Prohibits purchase by minors



Age verification; signage

	Green (Gold standard)	Yellow (somewhat compliant)	Red (weak)
Age verification	Requires age verification prior to sale		Does not require age verification prior to sale
Signage	Requires signage on the prohibition of sale to minors under 21 years		Does not require signage



Enforcement; licensing

	Green (Gold standard)	Yellow (somewhat compliant)	Red (weak)
Enforcement agency	Designates an enforcement agency and establishes a clear enforcement protocol	Designates an enforcement agency or enforcement protocol	Does not specify an enforcement agency or protocol
Retail licensing	Creates a retail licensing program/retail licensing system already in place		Does not create a retail licensing program/no retail licensing system in place



Enforcement; compliance checks

	Green (Gold standard)	Yellow (somewhat compliant)	Red (weak)
Funding for enforcement	Dedicates funding to fully cover enforcement costs, either through licensing fees or as a provision in a state statute or local ordinance		Does not list an enforcement funding source
Compliance checks	Provides authority for the state, county, or municipality to inspect tobacco retailers for compliance, and a mandated minimum number of annual compliance checks for every tobacco retail establishment	Requires compliance checks but does not stipulate a minimum number of annual checks	Does not require compliance checks



Penalties; preemption

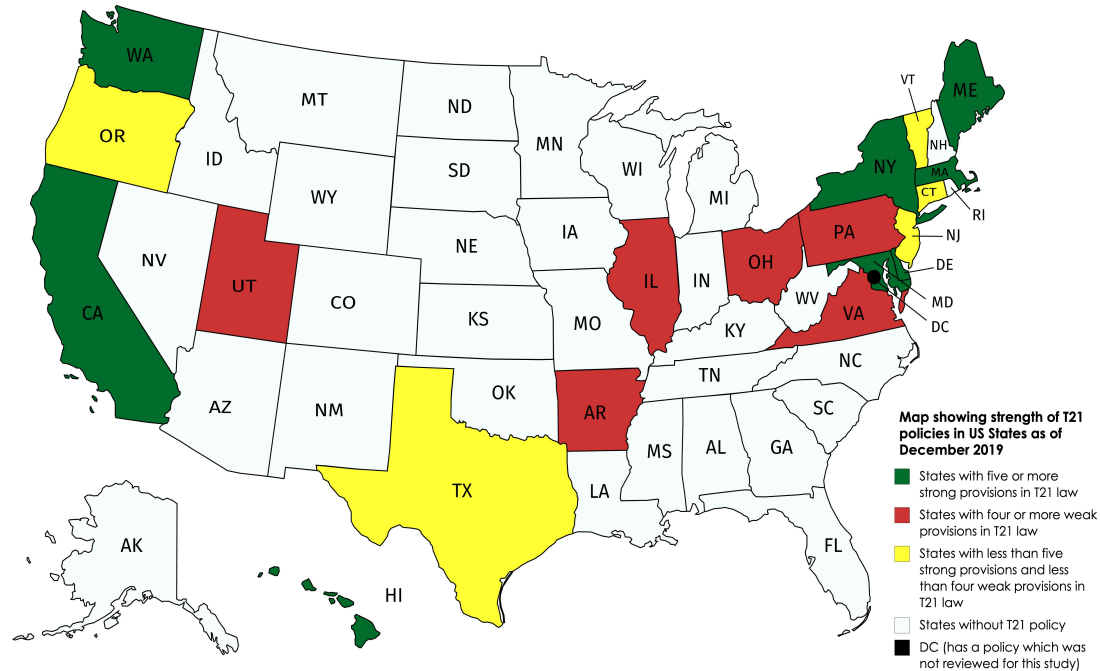
	Green (Gold standard)	Yellow (somewhat compliant)	Red (weak)
Penalties	Provides penalties focused on the tobacco retailer or licensee rather than the youth purchaser or non-management employee and establishes a civil penalty structure for violations rather than a criminal penalty structure	Provides a mix of criminal penalties focused on tobacco retailer and civil penalties on youth	Does not provide penalties, or provides only criminal penalties, or stipulates criminal penalties for youth
Preemption	Does not preempt development of stronger tobacco control policies at the local level		Preempts stronger local tobacco control policies





- KEY FINDINGS

Strength of US state T21 policies as of Dec 2019



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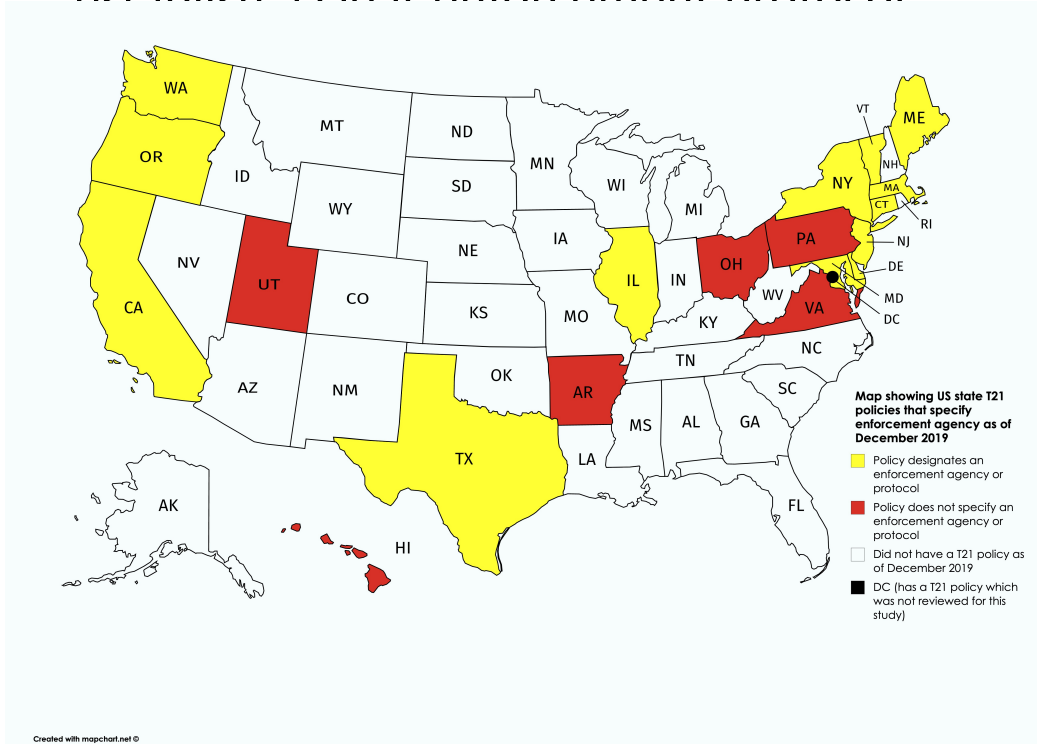
Strengths of policies

- Policies were generally strong in:
- Applying definition to include all tobacco products
- Retail licensing authority
- Signage
- No preemption



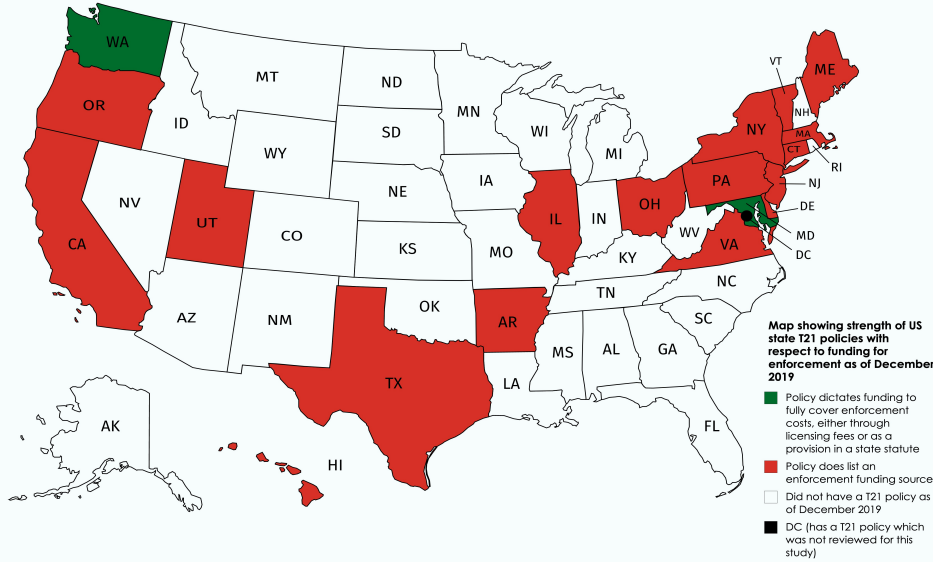
Weak areas: Enforcement agency

- **Best practice:** Policy should designate an enforcement agency and establish a clear enforcement protocol



Weak areas: Funding for enforcement

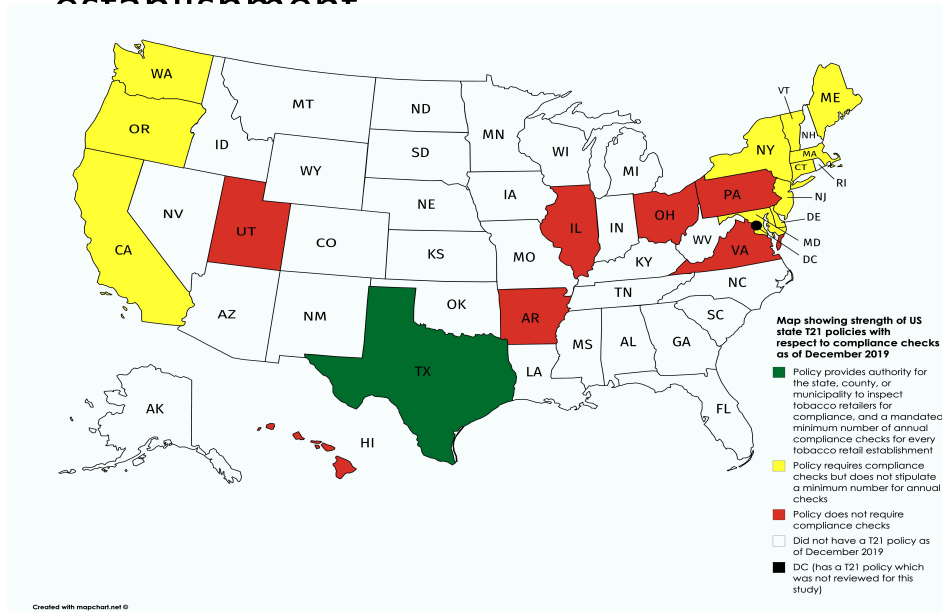
- **Best practice:** Policy should dedicate funding to fully cover enforcement costs, either through licensing fees or as a provision in a state statute or local ordinance



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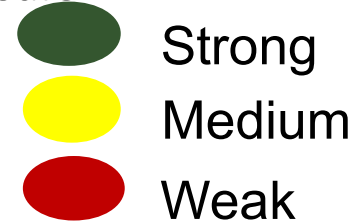
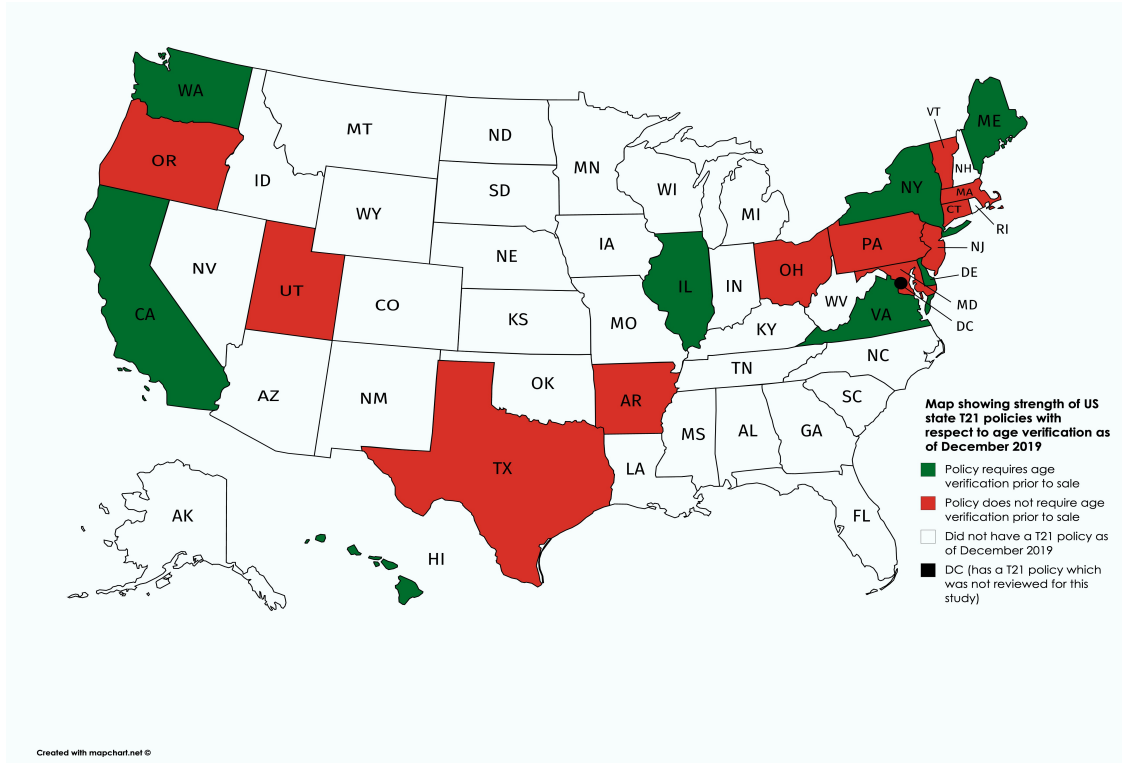
Weak areas: Compliance checks

- **Best practice:** Policy should provide authority for the state, county, or municipality to inspect tobacco retailers for compliance, and mandate a minimum number of annual compliance checks for every tobacco retail establishment



Weak areas: Age verification

- **Best practice:** Policy should require age verification prior to sale



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- The background is a dark green color. On the left side, there is a large, light green graphic. The top part of this graphic is a stylized flame with three distinct lobes. Below the flame is a stylized globe showing latitude and longitude lines. The globe is partially cut off by the bottom edge of the slide. A horizontal light green band runs across the middle of the slide, containing the text.
- Strengths and limitations

Strengths

- Examines in detail the policy domains of T21 policies across US states



Limitations

- Policies not reviewed with in-state experts or legal counsel
- Study may not have picked up parts of the policy that may have been addressed in earlier amendments/versions of the law or rules may have been implemented after the fact to address loopholes/deficiencies

• Does not use a validated policy analysis tool



Next steps

- Validate work with TC legal experts
- Identify factors that influence the strength of T21 policies
- Identify strategies to strengthen state T21



Discussion questions

