



## Raising the Minimum Legal Sale Age for Tobacco and Related Products

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.<sup>1</sup> For more details about these policy considerations, please contact the Consortium.

### Background

All states in the U.S. have laws prohibiting retailers from selling tobacco products to minors. In most states, the minimum legal sale age (MLSA) for tobacco products is 18, but a few states have raised it to 19. Recently, several state legislatures have considered bills that would raise the MLSA to 21, but none have passed as of yet.<sup>2</sup> Locally, a growing number of communities have raised the MLSA to 21—including New York City, which in November 2013 became the first major city in the U.S. to raise its tobacco sales age to 21.<sup>3</sup>



Available data indicate that an increase in the MLSA may delay smoking initiation among youth. This leads to lower smoking prevalence rates, saving millions of dollars in health care costs as well as significantly increasing not just the length, but also the quality of life, across populations. However, as discussed below, these types of laws have been controversial, particularly when they go beyond prohibiting illegal sales by retailers and impose penalties on underage persons for possession, use, or purchase of tobacco and related products.<sup>4</sup>

In 1992, Congress passed a law (known as the Synar Amendment<sup>5</sup>) which conditioned state eligibility for substance abuse prevention and treatment block grants on the state setting its MLSA for tobacco products no lower than 18 years old. Later that decade, the U.S. Food and Drug Administration (FDA) issued a regulation that established a federal MLSA of 18 years old and required state and local governments to request a waiver to increase the MLSA in their jurisdictions. However, the FDA regulation was invalidated by the U.S. Supreme Court's decision *FDA v. Brown & Williamson Tobacco Corp.*<sup>6</sup> In that case, the Court held that the FDA did not have authority to regulate tobacco products. In 2009, Congress passed the Family Smoking Prevention and Tobacco Control Act,<sup>7</sup> which expressly gave the FDA authority to regulate tobacco products while also delineating the areas where states retained

their authority to regulate these products. This 2009 law actually *prohibits* the FDA from establishing a MLSA higher than 18 years old.<sup>8</sup> However, it also requires the FDA to convene an expert panel to study the public health implications of raising the MLSA and report its findings to Congress by 2014.<sup>9</sup> Regardless of these current limitations on the FDA, state and local governments continue to have authority to increase the MLSA for tobacco products.

This guide provides information for state and local policymakers, advocates, and others who are considering raising the MLSA for tobacco and related products as a tobacco control strategy.

### Policy Benefits

- **Raising the MLSA would likely lower overall tobacco use rates by reducing and delaying the onset of tobacco use:** Increasing the MLSA for tobacco and related products could promote tobacco control efforts by helping to reduce the number of young people who start using tobacco, as well as by delaying the potential onset of tobacco use by many youth and young adults. Delaying the onset of tobacco use is associated with several long-term health benefits. Not only does it reduce the number of life-years available for tobacco use (and of course, the longer a person uses tobacco, the higher the risk of developing severe health consequences), but delays in onset are also associated with a higher probability of successful cessation efforts later.<sup>10</sup> Raising the MLSA also has been linked to reduced smoking prevalence rates, especially among older youth. For example, recent studies of England's experience when it raised the MLSA for cigarettes from 16 to 18 years of age in late 2007 have shown that this increase was associated with rapid and significant drops in smoking prevalence among 16 and 17 year olds regardless of socioeconomic status, even though *smoking by* (as opposed to *sales to*) this age group was not made illegal.<sup>11</sup>
- **Reducing youth access and usage in particular:** High school-aged youth are an important group, which has experienced relatively small declines in tobacco use rates during the past decade.<sup>12</sup> Based on studies showing the effectiveness of youth access laws when they are enforced,<sup>13</sup> increasing the MLSA is likely to be particularly effective in reducing tobacco usage among high school-aged youth by reducing their access to tobacco products. Studies have indicated that older underage youth (i.e., those who are closer to age 18) are more likely to succeed in buying tobacco in stores.<sup>14</sup> Further, high school friends and peers of legal age are an important social source of tobacco for underage youth.<sup>15</sup> Increasing the MLSA would not only make it more difficult for older youth to buy tobacco, but would reduce the likelihood that a high school student will be of legal age and able to buy tobacco products for other students or underage friends.<sup>16</sup>
- **Offering an alternative to a tax increase:** While tobacco control strategies such as smoke-free laws and tax-induced price increases have proven highly effective, increasing the MLSA could be a complementary strategy, and in some cases, may be more politically viable while achieving comparable results.

- **Simplifying ID checks for retailers:** Finally, an administrative benefit of increasing the MLSA to 21 years old is that it could facilitate compliance efforts in some jurisdictions. State drivers' licenses typically indicate that a driver is under the age of 21 in some way (using format, colors, photo placement, etc.); some jurisdictions also require an indication that the driver may be under 18 years old. In these jurisdictions, making the MLSA for tobacco and alcohol the same could simplify ID checks for retailers.

### Policy Considerations

- **Looking at the bigger public policy picture:** Proposals to increase the MLSA for tobacco have generated mixed reactions among public health advocates, particularly because in almost every state, such laws are linked with laws that penalize underage youth for purchase, use, or possession of tobacco products (PUP laws).<sup>17</sup> Underage PUP laws have been criticized as not being effective in reducing underage tobacco use.<sup>18</sup> Advocates also have argued that they divert focus and energy from addressing irresponsible retailers and tobacco industry behavior, are difficult to enforce, and can hinder enforcement efforts of MLSA laws by prohibiting use of underage buyers in compliance check operations.<sup>19</sup> Some underage PUP laws also have been used to preempt local tobacco control authority.<sup>20</sup> Thus, advocates have at times expressed doubts that efforts to increase age limits are a good use of limited resources when other measures—such as tax increases, smoke-free laws, and promoting better enforcement of existing tobacco control laws—have proven track records and focus on industry responsibility for marketing an addictive and disease-causing product.<sup>21</sup> While these are important considerations to bear in mind, a developing body of research indicates that raising the MLSA could be a useful tobacco control policy option in certain circumstances. Thus, it continues to be one of several reasonable alternatives in the tobacco control tool box.
- **Understanding the larger legal framework:** A comprehensive understanding of the state or local network of tobacco control laws also is important—age restrictions could be implicated in a number of areas, including MLSA provisions, separate PUP provisions, provisions restricting the age of sales clerks who can handle tobacco sales, or provisions applying to where vending machines can be located, to name a few. In addition, in some states, the age restriction may be tied to the state's age-of-majority law. Thus, an understanding of all these laws and how they may relate to each other is necessary.
- **Increasing the legal age for sales as opposed to purchases:** For the states with both MLSA and underage PUP laws, one way to address concerns raised by PUP laws would be to increase the age only for legal *sales*, while leaving the legal *possession* or *use* age at 18. A potential benefit of this approach is that it could help in the transition for those tobacco users who would be made newly underage but nonetheless are addicted—while they could no longer legally buy tobacco products, at least they would not be subject to civil and/or criminal liability for doing so or for using or possessing tobacco products. On the other hand, it could raise concerns about fairness and equal protection if young teenagers (i.e., under 18 years old) are subject

to sanctions for purchasing, using, or possessing tobacco products, but not young adults (i.e., ages 18-20 years old).<sup>22</sup> The equal protection arguments are further explained below.

- **Determining how much to increase the MLSA:** At least seven jurisdictions in the U.S. (four states<sup>23</sup> and three counties<sup>24</sup>) set the minimum legal age limit for tobacco purchases or sales at 19 years old. Several local governments in states such as Massachusetts, New York, and most recently Hawaii, have set the minimum sale age at 21.<sup>25</sup> Increasing the MLSA to age 21 would delay or reduce tobacco usage to the greatest extent, and could have the greatest effect in reducing underage access to tobacco through the social source of legal-age peers.
- **Allowing exemptions:** Two New York counties that have raised their MLSA to 19 years of age exempt sales to members of the U.S. military who are 18 years old.<sup>26</sup> This kind of exemption does not make sense from a public health perspective, although it may have political appeal.
- **Restricting the age of sales clerks:** As explained above, friends or peers who work in stores that sell tobacco products are a key social source of tobacco for underage youth.<sup>27</sup> Thus, to maximize the public health benefits of increasing the MLSA, the legal minimum age for sales clerks handling tobacco products could also be set or increased. However, this may raise concerns among convenience store owners because they often hire teenagers and young adults to staff their store. Also, such a policy might limit employment opportunities for youth in rural areas, where fewer jobs for young people are available.
- **Implementation considerations:** Increasing the MLSA would also raise the problem of addicted users who would become underage as a result of the change in the MLSA. Of course, this concern would be resolved within three years or less, depending on whether the MLSA was increased to 19, 20, or 21 years of age. One way to address these concerns would be to require notices about the MLSA posted in the store to include information about how users can obtain help with cessation efforts. Another approach could be to exempt from the new law those who are 18 and over at the time the law goes into effect, but who would otherwise be underage under the new law—in other words, to “grandfather” in those who were of legal age to buy or use tobacco, but would be made underage by increasing the MLSA.

### Possible Legal Challenges

While laws that increase the MLSA for tobacco products might encounter challenges brought on other grounds, the more likely challenges would be based on preemption or equal protection grounds.

- **Preemption:** Preemption in legal terms occurs when a higher level of government (e.g., federal or state) eliminates or limits the authority of a lower level of government (e.g., state or local) to regulate a certain issue. Preemption has important implications for

public health issues because of the vital role of state and local authorities in this area.<sup>29</sup> Many of the lessons learned about preemption come from the field of tobacco control. One tobacco industry strategy has been to push for the inclusion of language in state youth access laws that could preempt local government authority to pass smoke-free and other tobacco control laws.<sup>30</sup> The Centers for Disease Control and Prevention have identified 22 states with youth access laws that include preemptive language relating to local authority over sales of tobacco products.<sup>31</sup> Thus, particularly for local jurisdictions, it would be important to assess whether another state tobacco control law might limit local authority to increase the MLSA, and if so, what the scope of those limitations might be (e.g., does the state law only limit local authority to pass tobacco control laws with criminal sanctions, but local governments can pass laws that only impose civil sanctions).<sup>32</sup> Additionally, it would be important to assess whether a state’s age-of-majority law might impliedly preempt an effort to raise the MLSA for tobacco products. Such an argument seems unlikely to prevail, but each situation would depend on the state law’s language and how the law has been interpreted by courts.<sup>33</sup>

- Equal Protection:** The concept of equal protection comes from the U.S. Constitution and is included in many state constitutions as well. It embodies the principle that similarly-situated people are entitled to equal treatment by the law—so that if the law treats one person differently from another, there must be a fair and logical basis for the differential treatment.<sup>34</sup> Typically, laws relating to age limits are treated with great deference by courts—as long as these laws are rationally related to a legitimate government interest, they are usually upheld.<sup>35</sup> Thus, equal protection challenges to state laws increasing the MLSA for alcohol purchases or consumption, for example, have not been successful.<sup>36</sup> Similarly, laws increasing the MLSA for tobacco products likely would be upheld, given the government’s legitimate interest in protecting public health and preventing youth access to tobacco products, and the research indicating that delaying onset of tobacco use among young people has both immediate and long-term public health and safety benefits.

### Select Legislation and Policies

Below are examples from some jurisdictions that have set the minimum legal age for the sale and/or purchase of tobacco products at 19 or 21 years of age. A state or local government considering whether to adapt any language from the following policies should take care to ensure that the language is appropriate, practical, and legal for its jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. We have included these examples simply to illustrate how various jurisdictions have regulated the minimum legal age for sale and/or purchase of tobacco and related products.

Jurisdiction	Ordinance/Statute	Excerpts from text of law
Hawaii County, HI	Chap. 14 of Hawai’i County Code 1985 (Bill No. 135)	<b>Section 14-__.</b> Prohibition; verification of age; penalties.  (a) It is unlawful for any person to distribute a

tobacco product to any person under twenty-one years of age, with the exception of any person who is eighteen years of age or older before or on June 30, 2014, and at such time could be a lawful recipient of a tobacco product.

- (b) A person who distributes tobacco products shall verify proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be less than twenty-seven years of age.
- (c) Any person who violates this section shall be subject to a fine of \$500 for the first offense. Any subsequent offenses shall subject the person to a fine of not less than \$500 nor more than \$2,000.

**Suffolk  
County, NY**

Regulatory Local Laws ch. 792

**§792-3 (A)(2) Prohibitions; posting of sign; proof-of-age**

Sale of tobacco products or herbal cigarettes in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through a valid driver's license or nondriver's identification card issued by the Commissioner of Motor Vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or a valid passport issued by the United States government or any other country, or an identification card issued by the Armed Forces of the United States, that the individual is at least 21 years of age. Such identification need not be required of any individual who reasonably appears to be at least 27 years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product or herbal cigarettes to an individual under 21 years of age.

**§792-9 Sales restrictions**

No person shall sell or offer for sale e-cigarettes or liquid nicotine within the County of Suffolk to persons under 21 years of age.

<http://legis.suffolkcountyny.gov/Resos2014/i1039-14.pdf>

<b>Brookline, MA</b>	Article 8.83 Tobacco Control (2013)	<p><b>§ 8.23.5 Sales to Minors</b> – No person, firm, corporation, establishment, or agency shall sell tobacco products to a minor.</p> <p>§ 8.23.2(d). Minor – A person under nineteen years of age.</p>
<b>Dover, MA</b>	Smoking: Sale of Tobacco and Nicotine Delivery Products	<p><b>§ 220-6 Retail sale of tobacco products.</b></p> <p>B. No person shall sell tobacco products or nicotine delivery products to any person under the age of 21 years or, not being his/her parent or guardian, give tobacco products or nicotine delivery products to any person under the age of 21.</p> <p><a href="http://ecode360.com/10428043">http://ecode360.com/10428043</a></p>
<b>New York City, NY</b>	Local Laws No. 094 (Nov. 19, 2013)	<p><b>§ 17-706 Sale of cigarettes, tobacco products, or electronic cigarettes to minors and young adults prohibited.</b></p> <p>a. Any person operating a place of business wherein cigarettes, tobacco products, or electronic cigarettes are sold or offered for sale is prohibited from selling such cigarettes, tobacco products, or electronic cigarettes to individuals under twenty-one years of age. Sale of cigarettes, tobacco products, or electronic cigarettes in such places, shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of cigarettes, tobacco products, or electronic cigarettes to an individual under twenty-one years of age.</p>
<b>New Jersey</b>	N.J. Stat. Ann. § 2A:170-51.4	<p><b>Sale, distribution of tobacco, electronic smoking device to persons under age 19; prohibited; civil penalties.</b></p> <p>1. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, distribute</p>

for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person under 19 years of age:

- (1) any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco; or
- (2) any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any cartridge or other component of the device or related product.

### Other Helpful Resources

The Tobacco Control Legal Consortium has a [collection of publications](#) explaining the federal Family Smoking Prevention and Tobacco Control Act of 2009, including its [impact on state and local tobacco control authority](#). The Preventing Tobacco Addiction Foundation supports increasing the MLSA for tobacco and related products to 21 years old. Its website (<http://www.tobacco21.org>) has additional information, including model legislation. In 1998, the Tobacco Control Resource Center, one of the legal centers affiliated with the Tobacco Control Legal Consortium, wrote a [working paper](#) analyzing a federal proposal that would have increased the MLSA for tobacco products to 21 years old in all states. This paper explains the research and many of the arguments in favor of increasing the MLSA. The CDC has a [fact sheet](#) on youth and tobacco use, with links to other resources and data about youth tobacco access and use. The [Campaign for Tobacco-Free Kids](#) also has created fact sheets with data about [how young smokers obtain cigarettes](#) and information on [policy issues relating to laws that penalize underage users](#).

### Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at [publichealthlaw@wmitchell.edu](mailto:publichealthlaw@wmitchell.edu) with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

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### Notes

<sup>1</sup> The information contained in this document is not intended to constitute or replace legal advice.

<sup>2</sup> See, e.g., H.R. 125-447, 1<sup>st</sup> Sess. (Me. 2011), available at <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0447&item=1&snum=125>. (This

link does not work) Other state legislatures to consider raising the legal minimum age for purchasing tobacco products to 21 include New Jersey, New York, Texas, Utah, and Washington D.C. *See, e.g.*, Lee Davidson, *Lawmakers Seek to Raise Smoking Age to 21*, SALT LAKE TRIB., Nov. 26, 2013, <http://www.sltrib.com/sltrib/politics/56930258-90/age-among-health-limit.html.csp>; and *More States Consider Raising Minimum Age for Tobacco Sales*, CONVENIENCE STORE NEWS, May 17, 2013, <http://www.csnews.com/top-story-tobacco-more-states-consider-raising-minimum-age-for-tobacco-sales-63672.html>.

<sup>3</sup> New York City, N.Y., Local Laws No. 94-2013 (Nov. 19, 2013), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=664290&GUID=4223E26A-7F3F-4B7D-9E3A-0E3F7B850155&Options=ID|Text|&Search=minimum+legal+smoking+age>. *See infra* note 26.

<sup>4</sup> *See, e.g.*, Gary Giovino & Melanie Wakefield, *Teen Penalties for Tobacco Possession, Use and Purchase: Evidence and Issues*, 12 TOBACCO CONTROL 6 (2003).

<sup>5</sup> 42 U.S.C. § 300x-26 (2011), with implementing regulations found at 45 C.F.R. § 96.130 (2001).

<sup>6</sup> *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000). (Case names should not be italicized in Blue Book format.)

<sup>7</sup> Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (June 22, 2009) (codified as amended in scattered sections of 5 U.S.C., 15 U.S.C., and 21 U.S.C.), *available at* <http://www.publichealthlawcenter.org/sites/default/files/resources/fda-tobacco-regulation-final-bill.pdf>.

<sup>8</sup> 21 U.S.C. § 387f (d)(3)(A)(ii) (2011).

<sup>9</sup> Pub. L. No 111-31, Div. A § 104 (not codified in the U.S. Code).

<sup>10</sup> *See* Tammy Tengs et al., *The Public Health Impact of Changes in Smoking Behavior: Results From the Tobacco Policy Model*, 39 MED. CARE 1131 (Oct. 2001); Sadik Khuder et al., *Age at Smoking Onset and Its Effect on Smoking Cessation*, 24 ADDICT. BEHAV. 673 (Sept.-Oct.1999); and Jiajian Chen & Wayne Millar, *Age of Smoking Initiation: Implications for Quitting*, 9 HEALTH REP. 39 (Spring 1998).

<sup>11</sup> Christopher Millett et al., *Increasing the Age for the Legal Purchase of Tobacco in England: Impacts on Socio-Economic Disparities in Youth Smoking*, 66 THORAX 862 (Oct. 2011); and Jennifer Fidler & Robert West, *Changes in Smoking Prevalence in 16-17-Year-Old versus Older Adults Following a Rise in Legal Age of Sale: Findings From an English Population Study*, 105 ADDICTION 1984 (Nov. 2010).

<sup>12</sup> Press Release, Nat'l Inst. of Health, *Cigarettes and Alcohol Use at Historic Low Among Teens*, (Dec. 14, 2011) (discussing 2011 Monitoring the Future survey results), *available at* [https://www.drugabuse.gov/sites/default/files/nr121411\\_0.pdf](https://www.drugabuse.gov/sites/default/files/nr121411_0.pdf).

<sup>13</sup> See, e.g., Joseph DiFranza et al., *Enforcement of Underage Sales Laws as a Predictor of Daily Smoking Among Adolescents - A National Study*, 9 BMC PUB. HEALTH, <http://www.biomedcentral.com/content/pdf/1471-2458-9-107.pdf> (April 17, 2009).

<sup>14</sup> See, e.g., Joseph DiFranza et al., *Youth Access to Tobacco: The Effects of Age, Gender, Vending Machine Locks, and "It's The Law" Programs*, 86 AM. J. PUB. HEALTH 221 (Feb. 1996).

<sup>15</sup> Joseph DiFranza & Mardia Coleman, *Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws*, 10 TOBACCO CONTROL 323, 327 (Dec. 2001). One unpublished survey of minor-aged high school students found that 90% of the adults who purchased tobacco products for them were less than 21 years old. *Id.* See also LORNA SCHMIDT, CAMPAIGN FOR TOBACCO-FREE KIDS, *WHERE DO YOUTH GET THEIR CIGARETTES?* (January, 2013), <http://www.tobaccofreekids.org/research/factsheets/pdf/0073.pdf>.

<sup>16</sup> DiFranza & Coleman, *supra* note 15.

<sup>17</sup> According to the American Lung Association, 42 states and the District of Columbia have laws that prohibit the purchase or attempted purchase of tobacco products by minors. American Lung Association, *2010 State Legislated Actions on Tobacco Issues Overview Data* (2013): <http://www.lungusa2.org/slati/slatiOverview.php>. In 1994, the Institute of Medicine issued a report that recommended that the MLSA for tobacco products be set at 18 years of age, and not higher. *GROWING UP TOBACCO-FREE: PREVENTING NICOTINE ADDICTION IN CHILDREN AND YOUTHS* 223-24 (Barbara S. Lynch & Richard J. Bonnie eds., Inst. of Medicine 1994).

<sup>18</sup> See, e.g., Giovino & Wakefield, *supra* note 4. *But see* Leonard A. Jason et al., *A Randomized Trial Evaluating Tobacco Possession-Use-Purchase Laws in the USA*, 67 SOC. SCIENCE & MED. 1700 (2008) (indicating that enforcement of underage PUP laws may be effective in reducing youth smoking rates).

<sup>19</sup> See, e.g., JESSICA GUILFOYLE, CAMPAIGN FOR TOBACCO FREE KIDS, *PENALIZING KIDS FOR BUYING, POSSESSING, OR SMOKING CIGARETTES* (June 2011), <http://www.tobaccofreekids.org/research/factsheets/pdf/0074.pdf>.

<sup>20</sup> ROBIN HOBART, AM. MED. ASS'N, *PREEMPTION: TAKING THE LOCAL OUT OF TOBACCO CONTROL* (2003), available at [http://www.wmdesigngroup.com/staging/smokeless/downloads/1\\_1\\_1.pdf](http://www.wmdesigngroup.com/staging/smokeless/downloads/1_1_1.pdf).<sup>21</sup> See, e.g., Susan Haigh, *Lawmakers Consider Raising Smoking Age from 18 to 21*, BOSTON.COM, Mar. 5, 2007, [http://www.boston.com/news/local/connecticut/articles/2007/03/05/lawmakers\\_consider\\_raising\\_smoking\\_age\\_from\\_18\\_to\\_21/](http://www.boston.com/news/local/connecticut/articles/2007/03/05/lawmakers_consider_raising_smoking_age_from_18_to_21/); and John Ritter, *California Considers Raising Smoking Age*, USATODAY.COM, Mar. 3, 2002, <http://www.usatoday.com/news/nation/2002/03/04/smoking.htm>.

<sup>22</sup> See *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158 (Wyo. 1992) (invalidating state law which imposed driver's license suspension penalty on teen drivers 18 years old and younger who are convicted of unrelated alcohol or drug offenses, but which did not impose same penalty on underage 19 and 20 year-olds); *but see Allam v. State*, 830 P.2d 435 (Alaska Ct. App. 1992) (noting that law which criminally penalized 18 year olds, but not those 19 and over, for possessing small amounts of marijuana was not irrational because "many 18-year-olds attend high school and regularly associate with students under the age of 18 years. . . [and thus] if 18-year-olds were allowed to possess and use

marijuana, they would share the drug with other younger students or would at least frequently expose those younger students to drug use”).

<sup>23</sup> The states are: Alabama (Ala. Code § 28-11-13 (2011)); Alaska (Alaska Stat. §§ 11.76.100 & 11.76.105 (2011)); New Jersey (N.J. Stat. Ann. § 2A:170-51.4 (2011)), and Utah (Utah Code Ann. §§ 76-10-104 et seq. & 76-10-105 (2011)).

<sup>24</sup> The counties are in New York: Nassau (Nassau County, N.Y., Local Law No. 5-2006 (Apr. 26, 2006)); Onondaga (Onondaga County, N.Y., Local Law No. 2-2009 (Jan. 12, 2009)); and Suffolk counties (see table, *infra*).

<sup>25</sup> See, e.g., Nancy Cook Lauer, *County Raises Tobacco Sale Age to 21*, HAWAII TRIB. HERALD, Nov. 21, 2013, <http://hawaii-tribune-herald.com/sections/news/local-news/county-raises-tobacco-sale-age-21.html>; and Michele Morgan Bolton, *Tobacco Buying Age Now Set at 21: Arlington Planning to Follow in 3 Years*, BOSTON.COM, May 18, 2013, <http://www.boston.com/news/local/massachusetts/2013/05/18/dover-fourth-community-tobacco-state-raise-smoking-arlington-dover-puts-will-purchase-tobacco-head-dover-tobacco-age-now-dover-raises/QpQh35x4rODF92KYaLMBSK/story.html>.

<sup>26</sup> Onondaga County, N.Y., Local Law No. 2-2009 (Jan. 12, 2009); Nassau County, N.Y., Local Law No. 5-2006 (Apr. 26, 2006).

<sup>27</sup> DiFranza & Coleman, *supra* note 15.

<sup>29</sup> The Public Health Law Center’s website (<http://publichealthlawcenter.org/topics/other-public-health-law/preemption-public-health>) has more information about preemption as well as resources for understanding how it works and how it can impact public health policy development.

<sup>30</sup> In the early and mid-1990s, tobacco industry lobbyists actively fostered a mistaken belief that the Synar Amendment and its regulations required broad preemptive clauses be included in state youth-access laws. HOBART, *supra* note 21, at 7. At least 22 states have laws that preempt local authority over access to tobacco products, according to a 2011 study by the Centers for Disease Control and Prevention (CDC). CDC, U.S. Dep’t of Health and Human Services, *State Preemption of Local Tobacco Control Policies Restricting Smoking, Advertising, and Youth Access -- United States, 2000-2010*, 60 MORBIDITY & MORTALITY WEEKLY REP. 1124 (August 26, 2011), available at <http://www.cdc.gov/mmwr/pdf/wk/mm6033.pdf>.

<sup>31</sup> CDC, State Tobacco Activities Tracking and Evaluation (STATE) System, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6033a2.htm> ). See, e.g., *U.S. Oil, Inc. v. City of Fond du Lac*, 544 N.W.2d 589 (Wis. Ct. App. 1996).

<sup>32</sup> See, e.g., *Prime Gas, Inc. v. City of Sacramento*, 184 Cal.App.4th 697 (Cal. Ct. App. 2010).

<sup>33</sup> See, e.g., *Burnett v. San Francisco Police Dep’t*, 36 Cal.App.4th 1177, 1182-1185 (Cal. Ct. App. 1995) (rejecting argument that California’s age of majority law expressly or impliedly preempted city ordinance restricting access to cabarets to people 21 years old and up); and *Allam v. Alaska*, 830 P.2d 435, 438 (Alaska Ct. App. 1992) (noting that “[t]here is no legal requirement that the same age of majority apply to all activities and circumstances”).

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<sup>34</sup> See, e.g., *City of Cleburne v. Cleburne Living Ctr*, 473 U.S. 432 (U.S. 1985).

<sup>35</sup> See, e.g., *Gregory v. Ashcroft*, 501 U.S. 452 (U.S. 1991) (holding that Missouri constitutional provision requiring most state judges to retire by age of 70 did not violate Equal Protection); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307 (U.S. 1976) (upholding state law requiring uniformed police officers to retire at age 50); *Stiles v. Blunt*, 912 F.2d 260 (8th Cir. 1990) (upholding Missouri's minimum age requirement of 24 years old for state legislators); *Manuel v. State*, 692 So. 2d 320, 340 (La. 1996) (reversing original decision on rehearing) (upholding state law raising minimum drinking age to 21); and *Maine v. Dube*, 409 A.2d 1102 (Me. 1979) (upholding state regulation requiring drivers of common and interstate carriers to be at least 21).

<sup>36</sup> *Gabree v. King*, 614 F.2d 1 (1st Cir. 1980) (upholding Massachusetts law that increased minimum drinking age to 20); *Felix v. Milliken*, 463 F. Supp. 1360 (E.D. Mich. 1978) (upholding Michigan constitutional amendment raising minimum drinking age to 21). Some state courts have interpreted their state constitution's equal protection provisions to require a less deferential standard of review for statutory age limits, but even then, such laws have been upheld. See, e.g., *Manuel v. State*, *supra* note 35.