

Kenya Mulls Raising Tobacco Use Age Limit To 21

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The Kenyan Wallstreet

September 23, 2026

Kenya could raise the minimum age for buying tobacco and nicotine products from 18 to 21, a proposal that has received broad support at National Assembly hearings on a bill seeking tighter controls on the sale, marketing, taxation and manufacture of cigarettes, vapes, and nicotine pouches.

- The age increase is one of the areas of relative agreement among stakeholders appearing before the National Assembly Departmental Committee on Health in Machakos, as Parliament considers legislation that would reshape the rules governing the tobacco and emerging nicotine-products market.
- The Tobacco Control (Amendment) Bill, 2024, sponsored by Nominated Senator Catherine Mumma, proposes amendments to the Tobacco Control Act, 2007, including a new statutory framework for electronic cigarettes and nicotine pouches.
- The Senate passed the bill with amendments in March this year and it is now undergoing consideration by the National Assembly.

“There has been a lot of concurrence among the stakeholders on issues such as increasing the age of consent to purchase nicotine products from 18 to 21. We are happy as a Committee because this will give us less work when we start considering the submissions,” said the committee’s chairperson Dr. James Nyikal.

The age restriction sits within a much broader attempt to tighten access to nicotine products, including newer products that have developed outside the detailed regulatory framework historically applied to conventional tobacco. The bill proposes a 100-metre restriction on sales outlets located near premises primarily serving people under 18.

It would also prohibit products or packaging designed to resemble sweets, toys or cartoons, provisions aimed at preventing tobacco and nicotine products from being presented in forms likely to attract children.

Online sales of tobacco products, nicotine pouches and electronic nicotine delivery systems would be prohibited.

Vapes and E-cigarettes

For the newer nicotine market, the proposed legislation would establish some of the most detailed product rules yet contemplated in Kenya. Electronic nicotine delivery systems would

be subject to limits on nicotine concentration and container sizes. Nicotine liquid would be capped at 20 milligrams per millilitre, refill containers at 10 millilitres, and cartridges or tanks at two millilitres. Nicotine pouches would be limited to 20 milligrams per pouch.

Manufacturers and importers would also need pre-market approval before introducing such products. Applications would have to be submitted at least six months before a product is launched, while the Kenya Bureau of Standards (KEBS) would test samples submitted as part of the approval process. Existing products would receive a transition period in which their manufacturers or importers would have to seek approval.

For the vaping market, characterising flavours including fruit, candy, menthol and spice, would be prohibited, along with additives that imply health benefits, provide energy or stimulation, increase addictiveness, or make inhalation easier.

It also proposes excluding tobacco manufacturing, repackaging, processing and importation from duty-free zones.

Advertising Rules

The Bill would also extend the advertising prohibition to online and digital platforms including social media and video-sharing services. Influencer and brand-ambassador marketing would be expressly covered, while online sales of tobacco products, nicotine pouches and electronic nicotine delivery systems would be prohibited altogether. Hawking and mobile vending of tobacco products would also be prohibited.

The combined effect would be to constrain several of the channels through which nicotine businesses reach customers. Retailers would face tighter rules on location and customer age, while manufacturers and importers would face additional requirements before products could enter the market.

NSE-listed firm British American Tobacco (BAT) Kenya, consumer groups, tobacco farmers, and hospitality associations are also scheduled to make submissions.

The bill proposes health warnings covering 75% of the front and back display areas of tobacco-product packaging, with warnings in English and Kiswahili. It also proposes changing the prescribed warning presentation and increasing the specified physical dimensions of warnings.

The proposed amendments would also prevent the Cabinet Secretary from exempting products or persons from prescribed packaging and health-warning requirements, removing a potential route for discretionary waivers.

Tobacco Control

The Bill would simultaneously change the institutional machinery overseeing tobacco control. It proposes abolishing the existing Tobacco Control Board and replacing it with a Tobacco Control Advisory Committee. People with employment, agency, ownership or direct or indirect financial interests in the tobacco industry would be barred from serving on the proposed committee, while failure to disclose such an interest would constitute an offence carrying a fine of up to KSh1 million or five years' imprisonment.

The most severe proposed penalty would apply to the use of single-use plastics in tobacco products, their packaging or disposable electronic nicotine products.

The Bill would also give the Cabinet Secretary for Finance a specific mandate to introduce tax measures covering unprocessed tobacco and tobacco products and periodically review tax rates against inflation and public-health objectives. It would also prohibit tax-free sales and imports of tobacco products. It also proposes excluding tobacco manufacturing, repackaging, processing and importation from duty-free zones.

The proposed law would also introduce a new compensatory contribution from licensed tobacco manufacturers and importers to the Tobacco Control Fund. The amount would be determined by the proposed Tobacco Control Advisory Committee rather than being specified in the Bill. The fund could also finance treatment of chronic illnesses attributed to tobacco use such as cancer.

Penalties

Meanwhile, dealing in unapproved electronic nicotine products or nicotine pouches could attract a fine of up to KSh1 million or 5% of gross turnover, whichever is higher, together with a possible two-year prison term. Other proposed penalties include up to KSh500,000 or three years' imprisonment for prohibited online sales, up to KSh3 million or three years for dealing in tobacco products without registration, and up to KSh1 million for breaches involving prescribed packaging and health warnings.

The most severe proposed penalty would apply to the use of single-use plastics in tobacco products, their packaging or disposable electronic nicotine products. A breach could attract a fine of up to KSh10 million or five years' imprisonment, or both.

Among those supporting the proposed amendments at the Machakos hearing were the National Cancer Institute of Kenya, National Council of Churches of Kenya (NCCK), the Council of Governors, the National Treasury, and the Kenya Law Reform Commission.

Further submissions are expected from the State Department for Internal Security and National Administration, Kenya Revenue Authority (KRA), Kenya Bureau of Standards (KEBS), State Department for Micro, Small and Medium Enterprises, Anti-Counterfeit Authority and business organisations including the Kenya Private Sector Alliance (KEPSA), Kenya Association of Manufacturers (KAM), and Kenya National Chamber of Commerce and Industry.

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