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Global Advisors on Smokefree Policy¹ ("GASP") is an educational technical assistance resource provider² regarding efforts to increase the age of sale for tobacco products and electronic smoking devices.³

This document lists jurisdictions that require the age of sale be 21 for tobacco and/or smoking devices ("ESDs"), as well as key points why jurisdictions enact such laws, that the industry targets ages below 21, and responses to industry claims that such policies hurt their business.

I. Jurisdictions banning the "SALE" of tobacco or cigarettes to persons under age 19 or 21:

U.S. States:

- **Alaska State** bans sale to person under age 19, 2007; included nicotine products in 2012
- **Healdsburg, California** bans sale to under age 21, includes ESDs, effective December 2014.
- **Island of Hawaii**
 - **Counties** ban sale to under age 21, includes ESDs, effective July 1, 2014, with a fine up to \$2,000. Exempts persons who reach age 18 before July 1, 2014
 - **Hawaii State** bans sale to under age 21, includes ESDs, effective January 1, 2016
- **Evanston, Illinois** bans sale to under age 21, effective 11/8/14
- **Massachusetts State municipalities:**
 - **See below (page 2) for Massachusetts State municipalities with under age 19 or 21 and ESD**
- **Columbia, Missouri** bans sale to under age 21, includes ESDs, effective December 15, 2014.
- **New Jersey State** bans sale, furnish or give to under age 19, approved January 2006; included ESDs in 2011
- **New Jersey State municipalities:**
 - **Bogota** bans sale, furnish or give to under age 21; includes ESDs, enacted 02/19/15
 - **East Rutherford** bans sale, furnish or give to under age 21; includes ESDs, enacted 05/19/15
 - **Englewood** bans sale, furnish or give to under age 21; includes ESDs, enacted 07/29/14
 - **Garfield** bans sale, furnish or give to under age 21; includes ESDs, enacted 04/14/15
 - **Highland Park** bans sale, furnish or give to under age 21; includes ESDs, enacted 04/14/15
 - **Princeton** bans sale, furnish or give to under age 21; includes ESDs, enacted 04/21/15
 - **Sayreville** bans sale, furnish or give to under age 21; includes ESDs, enacted 09/08/14
 - **Teaneck** bans sale, furnish or give to under age 21; includes ESDs, enacted 11/12/14
- **New York State municipalities:**
 - **New York City (5 boroughs)** bans sale to under age 21, signed 11/19/13; includes ESDs
 - **Suffolk County** bans sale to under age 21 (4/14/14 signed into law, took effect 1/1/2015), includes ESDs; amends 2005 law that banned sale to under age 19
 - **Onondaga County** bans sale to under age 19, 2009
 - **Nassau County** bans sale to under age 19, 2006
 - **Glen Clove** bans sale to those under age 19, includes ESDs, 2014
- **Utah State** bans sale to under age 19, 2010

International:

- **Ontario, Canada** bans sale or supply to persons under age 19, 1994
- **Dubai** bans sale to under age 21, includes ESDs, effective early 2014
- **Japan** bans sale to under age 20
- **Sri Lanka** bans sale to under age 21

Massachusetts' municipalities with 19 - 21 age of sale laws for tobacco and ESDs (as of 3/19/15):

- **Acton** - effective 1/1/15
- **Amherst** – effective 8/15/15
- **Andover**- effective 2/1/15
- **Arlington** – 3-year phase in starting with age 19, enacted May 2013, effective 7/1/15
- **Ashland** – includes tobacco and nicotine delivery products (comprehensive policy addresses other access points), effective 1/1/14
- **Belmont** – bans sale to under age 19, includes ESDs, 3-year age 21 phase in starting with age 19, enacted 2012, effective 1/1/14
- **Braintree** - effective 10/1/14
- **Bridgewater** - effective 1/1/15
- **Brimfield** - effective 9/1/14
- **Brookline** – enacted 2014, effective 6/1/15
- **Cambridge** - effective 6/1/15
- **Canton** – effective 1/1/14, repealed in 5 years if ineffective
- **Concord** - effective 11/1/14
- **Danvers** – effective 7/1/15
- **Dedham** - effective 1/1/14
- **Dover** –effective 1/18/14
- **Duxbury** – effective 2/1/15
- **Eastham** - effective 9/30/15
- **Foxboro** - effective 8/1/14
- **Framingham** - effective 7/1/15
- **Gill** - effective 9/1/15
- **Greenfield** – effective 7/1/15
- **Hatfield** – effective 1/1/15
- **Hudson** - effective 7/1/14
- **Hull** - effective 1/1/15
- **Kingston** - effective 6/12/15
- **Lanesborough** – effective 3/9/18
- **Lawrence** - effective 3/1/15
- **Leverette** - effective 4/1/15
- **Lexington** - effective 7/1/15
- **Lincoln** - effective 1/1/15
- **Malden** - effective 7/10/14
- **Marlborough** – effective 9/1/15
- **Marshfield** – effective 9/1/15
- **Medway** - effective 9/15/14
- **Melrose** - effective 7/1/14
- **Mendon** - effective 8/1/15
- **Milton** - effective 4/30/15
- **Montague** - effective 7/1/15
- **Newburyport** - bans sale of cigarettes and other tobacco products (not ESDs) to under age 19, effective 7/1/14
- **Needham** – effective 4/1/05
- **Newton** - effective 9/22/14
- **Northborough** - effective 7/1/05
- **Norwood** - effective 7/1/14
- **Reading** - effective 7/1/14
- **Salem** - effective 1/1/15
- **Saugus** - effective 1/1/15
- **Scituate** - effective 5/1/14
- **Sharon** –effective 5/19/13
- **Sherborn** – effective 6/1/14
- **Southborough** – effective 6/1/15
- **South Hadley** - effective 4/1/15
- **Stoneham** - effective 6/1/14
- **Wakefield** - effective 7/1/14
- **Waltham** - effective 3/1/15
- **Walpole** - effective 7/1/05
- **Watertown** - effective 3/1/16

- **Wayland** - effective 1/1/15
- **Wellesley** - effective 6/1/14
- **Westford** - effective 4/1/14
- **Westwood** – 2-year age 21 phase in starting with age 19, enacted February 2012, effective 9/1/13
- **Winchester** - effective 7/1/14
- **Yarmouth** - effective 7/1/14

II. Jurisdictions contemplating a ban on tobacco sales to persons under age 21:

- **California State** – Senate passed June 2, 2015. Await posting in Assembly. Does not include ESDs. http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0151-0200/sb_151_bill_20150129_introduced.html
- **New Jersey State** – S602 introduced on 1/14/14, passed NJ Senate on 6/30/14 (22-10); Assembly companion bill introduced and referred to Committee.
- **Washington, DC** – B20-0597 introduced on 11/5/13. Similar bill B21-0152 introduced on 4/1/15, under Council Review <http://www.myfoxdc.com/story/23878396/dc-to-introduce-bill-to-raise-smoking-age-to-21>
- **Vermont State** – H93 introduced on 1/29/2015

III. Jurisdictions banning the “PURCHASE” of tobacco or cigarettes by persons under age 19:

- **Alabama State** bans “purchase” of tobacco by persons under age 19, effective 2011

IV. Why communities raise the age to 21 to be sold tobacco and electronic smoking devices (ESDs)

90% of all tobacco users start before age 21. According to the U.S. Surgeon General, nearly half of adult smokers transition to regular, daily smoking before age 18; more than three-quarters transition to regular, daily smoking before they turn 21.⁴

Overall, one-third of all youth who become regular smokers before adulthood, will eventually die from smoking.⁵

The American Journal of Public Health reported that the cumulative risk of smoking initiation does not begin to plateau until age 22 years:

- Up to 80% of smokers begin smoking before age 18;
- The number of individuals aged 18 to 19 years in the early stages of smoking initiation is more than double that of established smokers aged 18 years.⁶

On March 12, 2015, the Institute of Medicine (IOM) published its report entitled, “Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products”. The report concluded that raising the minimum age for legal access to tobacco products to at least 21 years old will significantly reduce smoking rates. The IOM report concluded that if the United States raised the age of sale to 21, there would be approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019. The report also concluded that by increasing the age of sale, there would be a reduction in tobacco use initiation, particularly among adolescents 15 to 17 years of age, an improvement in the health of Americans across the lifespan, and the saving of lives.⁷ IOM is a nonprofit under the U.S. Congressional charter of the National Academy of Sciences. Once the IOM report was released, The American Cancer Society issued a press release in support of raising the age of tobacco sales to 21.⁸

On June 9, 2015, the American Medical Association (AMA) recently recommended that the age of selling tobacco and electronic smoking devices be increased to 21 years of age. Robert M. Wah, president of the AMA, said recently, “to help keep all tobacco products, including electronic cigarettes, out of the hands of young people, by urging laws to deter the sale of electronic cigarettes to anyone under the age of 21.”⁹ In 1985, the AMA voted in favor of a resolution to raise the age of tobacco sales to 21. (See Section V for more details).

Restricting access to such products can help reduce rates of smoking and initiating smoking amongst youth and young adults, lower health care costs and improved quality of life:

- In 2005, **Needham** passed its 21 age of tobacco sale ordinance. Within only five years, their high school teen smoking rate declined by 47% (2006 and 2010 health survey data).¹⁰
- In 2015, **Needham** released results from additional years of data collected from their surveys. Surveys of 16,000 high school students in Needham and 16 neighboring towns were conducted in 2006 and 2012. The survey compared trends in cigarette smoking and purchases between the towns. From 2006-2010, there was a decrease in 30-day smoking from 13% to 7% in Needham, vs. other towns had higher smoking rates of 15% down to 12%. The researchers concluded that raising the minimum sales age to 21 for tobacco led to a greater decline in youth smoking relative to towns that did not have a tobacco 21 ordinance. These findings support local community-level action to raise the tobacco sales age to 21.¹¹
- Raising the age of tobacco sales to 21 may reduce tobacco use by 55% for 15-17-year-olds, within 7 years.¹²
- If California raised its age of tobacco sales from 18 to 21, compared to a status quo simulation, it would lead to an estimated 82% reduction in teen smoking (ages 14-17), \$24 billion in health care cost savings to the State and its inhabitants over the next 50 years, and a gain in 1.47 million quality adjusted life years (QALYs).¹³

Raising the age of tobacco sales to 21 aligns with other age restrictions, such the need to be 21 to be served or buy alcohol. In the early 1980's the Federal Transportation Department raised the drinking age to 21. States that did not raise their drinking age to 21 would not receive federal transportation block grant funding.

See also the NYC Health Department's fact sheet on why tobacco 21 age of sale laws are important. In November 2013, NYC signed into law a ban on the sale of tobacco and ESDs to persons under age 21.¹⁴ Contact GASP for more information.

V. Tobacco industry targets 18-21 year old age group:

In 1985, the American Medical Association voted in favor of a resolution recommending the raising of the age of tobacco sales to 21 and to ban cigarette vending machine sales. One month later, tobacco industry giant **Philip Morris responded internally by publishing its "Sociopolitical Strategy"**¹⁵ that states its explicit contempt for the AMA's resolution, and reiterates its strategy to continue targeting 17-21 aged consumers:

- **"We intend to see the AMA's proposals die an unquiet death."**
- **"The most serious challenge we will face in this area [Market Restrictions] for the remainder of the decade is the American Medical Association's call for banning all cigarette promotional advertising, changing the legal age for cigarette purchases to 21, and ending vending machine sales."**
- **"Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) where we sell about 25 billion cigarettes and enjoy a 70% market share."**
- **"Moreover 66% of all smokers begin smoking at or before age 18, 8% begin before 21.... We regard the AMA's action as a seminal event analogous to the 1981 Hiram Study on the health-effects of "passive smoking". To confront this very serious threat, we have developed a multifaceted plan to mobilize the support of businesses, government officials and the general public: (1) Define the AMA's resolution in the public's mind as repugnant to the First Amendment and the U.S. tradition of free speech ... to draw public sympathy to our side of the issue."**

VI. Responses to industry claims that 21 age of sale laws have a negatively impact:

Disposable income previously spent on tobacco is now spent on other products at retail outlets.

No tobacco retailers have gone out of business in Needham, Massachusetts since it implemented its 2005 21 age of sale ordinance.¹⁶

The alcohol industry survived by adapting to the changing 21 age of sale requirement, despite the loss of sales to those younger than 21 years.¹⁷

Tobacco retailers are already required under federal rules to check the ID of anyone who appears to be younger than 27 years seeking to purchase tobacco; so an age-21 requirement would place no additional compliance burdens on their staff.¹⁸ The Age 27 recommendation was stated in a report issued by a Working Group of State Attorneys General entitled, *No Sale: Youth, Tobacco and Responsible Retailing. Developing Responsible Retail Sales Practices and Legislation to Reduce Illegal Tobacco Sales to Minors. Findings and Recommendations*. Baltimore, MD: State of Maryland, Office of the Attorney General, 1994.¹⁹

VII. United States Military policies help to reduce smoking, secondhand smoke exposure and access to tobacco on its properties, all of which align with raising the age of sale to 21.

For decades, the tobacco industry gave free cigarettes to military personnel, resulting in millions of service personnel becoming addicted to nicotine and smoking, which cost the United States in lost lives and high healthcare costs.

Smoking is now prohibited in Air Force recreation facilities, including its bowling alleys, beaches, parks, golf courses and basketball courts, under a new regulation announced in late March 2015. Smoking is also prohibited in vehicles on Air Force medical campuses, or when there's a child in the car under age 14. The instruction also prohibits tobacco use while in uniform for students in technical training, accession and graduate medical education programs.²⁰

In March 2014, U.S. Secretary of Defense Chuck Hagel supported a ban on the sale of tobacco, on all U.S. military bases and ships. He noted that smoking related health issues cost the U.S. Department of Defense more than \$1 billion per year.²¹

Since March 20, 2012, the U.S. Air Force bans the use of all tobacco products. The policy states: "Tobacco use damages personal health and detracts from unit mission readiness. Tobacco use by Airmen reflects poorly on professional image/appearance. Tobacco includes, but is not limited to, cigars, cigarettes, electronic-cigarettes (—e-cigarettes.), stem pipes, water pipes, hookahs, and smokeless products that are chewed, dipped, or sniffed."²²

Since December 10, 2010, the U.S. Navy bans smoking below decks on its submarines. The policy was initiated to protect the health of nonsmoking sailors. Electronic cigarettes are also not authorized for use. The U.S. Navy widely offers smoking cessation programs and nicotine replacement therapy that is widely available on the submarines.²³

In April 2014, five U.S. Senators wrote to the Secretary of the U. S. Navy, Secretary Ray Mabus, encouraging him to adopt a ban on the sale of tobacco products on bases and ships.²⁴

The U.S. Defense Department encourages all military personnel to quit tobacco by sponsoring its "U Can Quit 2" smoking cessation program for each branch of the military at <http://www.ucanquit2.org/>

Air Force Surgeon General, Lt. Gen. (Dr.) Charles B. Green, issued a memo alerting all Military Air Personnel about safety concerns regarding electronic cigarettes. The memo states that due to the nature, appearance, and safety concerns of electronic cigarettes, they are considered to be in the same category as tobacco products, the use of which is governed by Air Force Instruction 40-102, Tobacco Use in the Air Force.²⁵

VIII. No Preemption from New Jersey State Laws or Federal Law.

The New Jersey 19 Age of Sale law (NJSA 2A:170-51.4) requires 19 as the age of sale for tobacco and ESDs, and does NOT have a preemption clause. NJSA 2A:17-.51.2 has explicit language to allow towns to ban the sale of cigarettes via vending machines (Legislature codified the 1994 NJ Supreme Court decision).

<http://policy.mofcom.gov.cn/GlobalLaw/english/flaw!fetch.action?id=857803b0-12e6-40f4-8840-89857bc35ac5&pager.pageNo=1#new-jersey-title-2a-section-2a-170-2a-170-51-1>

The New Jersey Cigarette Tax Act's "no preemption" clause requires cigarette sellers to comply with all applicable laws. (NJSA 54:40a-1 et seq.) <http://law.onecle.com/new-jersey/54-taxation/40a-53.html>

The New Jersey Tobacco Wholesale Tax Act (NJSA 54:40b-1 et. seq.) does NOT contain any applicable preemption language. <http://law.onecle.com/new-jersey/54-taxation/40a-66.html>

The U.S. federal 2009 Family Smoking Prevention Act, FDA Rules, Guidelines allow for stronger state and local laws that restrict access to tobacco products:

"...[T]hese federal regulations do not affect state or local laws relating to access to tobacco products that are in addition to, or more stringent than, the federal access provisions. Therefore, a state could establish 19 years of age or older as the minimum age for purchasing tobacco products in that state. Some states and localities do, in fact, have more stringent age requirements."

<http://www.fda.gov/downloads/TobaccoProducts/GuidanceComplianceRegulatoryInformation/UCM248241.pdf>

Contact GASP for further details on specific New Jersey state tobacco age of sale laws.

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¹Global Advisors on Smokefree Policy (GASP) is a 40-year old nonprofit resource center, dedicated to promoting smokefree air and tobacco-free lives. GASP is funded by the New Jersey State Department of Health, private foundations and donations. www.njgasp.org

²Information in this document presented by the Tobacco Control Policy and Legal Resource Center of New Jersey GASP, which provides educational information, educational guidance and educational technical assistance on tobacco control topics. The information presented is not intended as, nor to be construed, or used as legal advice, and should not be used to replace the advice of your legal Counsel.

³Additional resources can be found at <http://tobacco21.org>

⁴Campaign for Tobacco-Free Kids' paper entitled, The Path to Tobacco Addiction Starts at Very Young Ages. <http://www.tobaccofreekids.org/research/factsheets/pdf/0127.pdf>; <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/sqr50-chap-13.pdf> ; D. Hammond, Smoking behaviour among young adults: beyond youth prevention *Tob Control* 2005;14:181-185 doi:10.1136/tc.2004.009621 <http://tobaccocontrol.bmj.com/content/14/3/181.long>

⁵HHS, *The Health Consequences of Smoking—50 Years of Progress, A Report of the Surgeon General*, 2014, <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>

⁶Am J. Public Health. 2007 August; 97(8): 1427-1433, doi: 10.2105/AJPH.2006.103945

⁷<http://www.iom.edu/Reports/2015/TobaccoMinimumAgeReport.aspx>

⁸March 12, 2015 ACSAN press release on IOM study: <http://www.acscan.org/content/media-center/iom-report-predicts-raising-age-to-purchase-tobacco-could-reduce-tobacco-initiation-among-next-generation/> "Raising the minimum legal age to purchase tobacco can be implemented as part of a comprehensive tobacco control strategy that includes proven ways to reduce death and suffering from tobacco-related illnesses... Any state or local legislative proposal that includes raising the minimum legal age for purchasing tobacco should include a plan for enforcement, as well as monitoring and analysis of the impact to add to the body of research supporting this intervention."

⁹Star-Ledger story: <http://www.njgasp.org/wp-content/uploads/2015/06/Star-Ledger-tobacco-21-Jacobs-earned-media-6-10-15.pdf>; AMA press release: <http://www.njgasp.org/wp-content/uploads/2015/06/AMA-Strengthens-Policy-on-Electronic-Cigarettes-to-Further-Protect-Youth.pdf>

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- ¹⁰ <http://www.njgasp.org/no-retail-impact-if-tobacco-sale-age-raised-to-21-as-per-american-journal-of-public-health/>
- ¹¹ <http://tobaccocontrol.bmj.com/content/early/2015/06/12/tobaccocontrol-2014-052207.1.abstract>; NY Times blog at http://well.blogs.nytimes.com/2015/06/17/to-cut-teen-smoking-raise-tobacco-sales-age/?_r=0; Boston Globe story at <http://www.bostonglobe.com/2015/06/17/smoking-among-needham-high-schoolers-plunged-after-legal-age-rose/k0KDLz110EWI7W7TxCtOXJ/story.html>
- ¹² Ahmad S, Billimek J. Limiting youth access to tobacco: comparing the long- term health impacts of increasing cigarette excise taxes and raising the legal smoking age to 21 in the United States. *Health Policy*. 2007;80(3):378-391. <http://tobacco21.org/wp-content/uploads/2014/08/Limiting-Youth-Access-to-Tobacco-Comparing-The-Long-Term-Health-Impacts-of-Increasing-Cigarette-Excise-Taxes-and-Raising-the-Legal-Smoking-Age-to-21.pdf>
- ¹³ Research from the University of California-Irvine's Department of Planning, Policy and Design. *Medical Decision Making*, May-June 2005, pp. 330-340. <http://tobacco21.org/wp-content/uploads/2014/08/the-cost-effectiveness-of-raising-the-legal-smoking-age-in-california.pdf>
- ¹⁴ <http://www.nyc.gov/html/doh/downloads/pdf/smoke/tobacco21.pdf>
- ¹⁵ Quotes from Philip Morris documents made public from the historic Master Settlement Agreement between State Attorneys General and the tobacco industry. Documents at <http://tobaccodocuments.org/landman/2043440040-0049.html>, Bates #s 2043440042, 2043440048-49.
- ¹⁶ <http://www.njgasp.org/no-retail-impact-if-tobacco-sale-age-raised-to-21-as-per-american-journal-of-public-health/>
- ¹⁷ <http://tobacco21.org/wp-content/uploads/2014/10/Retail-impact-of-raising-tobacco-sales-age-to-21-years.pdf>
- ¹⁸ <http://tobacco21.org/wp-content/uploads/2014/10/Retail-impact-of-raising-tobacco-sales-age-to-21-years.pdf>. Cites to
- ¹⁹ <http://www.fda.gov/downloads/TobaccoProducts/GuidanceComplianceRegulatoryInformation/UCM248241.pdf>, see Q&A #7. See also 2010 federal regulations, pg. 13230 which requires age verification for under age 27, to comply with minimum age of 18 for sales of cigarettes and smokeless tobacco at <http://www.gpo.gov/fdsys/pkg/FR-2010-03-19/pdf/2010-6087.pdf>
- ²⁰ <http://www.njgasp.org/new-rule-bans-smoking-in-air-force-recreation-areas/>
- ²¹ <http://www.njgasp.org/wp-content/uploads/2015/01/Stars-and-Stripes-Hagel-tobacco-sales-ban-3-31-14.pdf>
- ²² <http://www.njgasp.org/wp-content/uploads/2014/05/AFD-121220-020.pdf>
- ²³ <http://www.njgasp.org/legislation-litigation/nj-state-federal-tobacco-control-laws/#fedlaws>
- ²⁴ http://www.njgasp.org/wp-content/uploads/2014/06/NavyTimes_ban_tobacco_4-3-14.pdf
- ²⁵ <http://www.njgasp.org/legislation-litigation/nj-state-federal-tobacco-control-laws/#fedlaws>