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Federal and State Affairs

E-7 Tobacco 21

On December 20, 2019, the President signed 2019 HR 1865 into law, a bill containing provisions that raised the federal minimum age for tobacco product sales from 18 to 21. This policy change is commonly known as “Tobacco 21.” The bill amended section 906(d) of the Federal Food, Drug, and Cosmetic Act by including a new section 906(d)(5), which applies to all “covered tobacco products” including cigarettes, smokeless tobacco, hookah tobacco, cigars, pipe tobacco, and electronic nicotine delivery systems (ENDS). The new law prohibits the sale of such products to adolescents under the age of 21, thus reducing adolescents access to tobacco products.

Federal Policy

In October 2009, the federal Food and Drug Administration (FDA) prohibited “characterizing flavors,” like fruit flavors contained in cigarettes, under the authority granted by the Family Smoking Prevention and Tobacco Control Act (Act). The Act also allows the FDA to issue regulations deeming other products that meet the statutory definition of “tobacco product” to be subject to the Act.

In May 2016, the FDA published a final rule that deemed ENDS products to be a “tobacco product” subject to the Act.

The new tobacco provisions of 2019 HR 1865 amend prior regulation pertaining to the manufacturing and advertising of tobacco, package warnings, and the Synar Amendment. The Synar Amendment requires states to be in compliance with the federal tobacco minimum purchase age law as a condition of each states’ receipt of Substance Abuse Prevention and Treatment Block Grant (SABG) funding.

With this change in law, the federal government sought to prioritize enforcement against youth access to not only traditional tobacco products, but also ENDS products that appeal to children, such as certain flavored tobacco products like mint and fruit flavors or flavors other than menthol or tobacco. The 2016 U.S. Surgeon General report concluded that youth use of ENDS products is a major public health concern and associated with the use of other tobacco products (https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/index.htm). On January 2, 2020, the FDA released

a policy statement on flavored cartridge-based electronic cigarettes (e-cigarettes) (<https://www.fda.gov/media/133880/download>).

Synar Amendment

Under 42 U.S.C. 300x-26, to receive SABG funding, states are required to annually conduct random inspections to ensure that retailers do not sell tobacco to individuals under age 21; annually report such findings to the federal government; and comply with reporting and enforcement requirements within the three-year grace period before funds are withheld, upon the discretion of the Secretary of Health and Human Services (Secretary). If states do not demonstrate the compliance rate determined by the Secretary, they risk losing up to 10.0 percent of their SABG money. Additionally, penalties for noncompliance include civil penalties between \$300 and \$12,000, depending on the number of violations, warning letters, and “No-Tobacco-Sale Orders” to retailers who remain out of compliance. The Substance Abuse and Mental Health Services Administration’s Synar webpage outlines the procedures for compliance with the Synar Amendment.

Kansas Tobacco Laws

Currently, there is no state law that increases the tobacco use, sale, or consumption age from 18 to 21. However, many local municipalities like Wyandotte County, Finney County, Douglas County, Shawnee County, Johnson County, Leavenworth County, Labette County, and Allen County had adopted Tobacco 21 ordinances prior to federal measures.

Unlawful Acts

KSA 79-3321 describes the following as unlawful:

- The sale, furnishing, or distribution of tobacco and consumable materials like cigarettes, e-cigarettes, or tobacco products to persons under 18 years of age;

- The purchase or attempt to purchase these products by a person under 18 years of age; and
- The sale of tobacco and consumable materials through a vending machine in an establishment open to minors.

Indoor Clean Air Act

KSA 2019 Supp. 21-6109 to KSA 2019 Supp. 21-6116 prohibits the use of tobacco products in public places except on gaming floors of Lottery and Racetrack facilities.

Likewise, the use of tobacco products in school buildings is also prohibited by KSA 72-6285.

Penalties

Penalties for selling or furnishing tobacco and consumable materials to a person under 18 years of age are:

- A class B misdemeanor, punishable by a minimum fine of \$200 (KSA 79-3322(c) (1)); and
- An additional \$1,000 penalty by the Department of Revenue (KSA 79-3391(a)).

2020 HB 2563

HB 2563 (2020) was introduced by the House Committee on Federal and State Affairs. The bill would have increased the minimum age to purchase or possess cigarettes and tobacco products from 18 to 21 and prohibited cigarette vending machines and flavored vaping products in Kansas. Like the federal law, the bill would have prohibited the sale of flavored tobacco products, with an exception for tobacco and menthol flavors. Under the bill, self-service displays would have been prohibited. Sales of tobacco products would only have been allowed in indoor, enclosed areas where those under 21 may not be present.

The bill would have also amended the Kansas Cigarette and Tobacco Products Act, the Indoor Clean Air Act, law concerning student health, and criminal statutes related to the use and possession

of cigarettes, e-cigarettes, consumable material, alternative nicotine products, and tobacco products by persons under age 21. The bill would have also removed the gaming floor exception to the Indoor Clean Air Act, which would have banned smoking in those locations. Additionally, the definition of “smoking” would have been amended to include the use of e-cigarettes. Selling, furnishing, and distribution of tobacco to a minor, or individual under age 21, would have been classified a class B misdemeanor penalty.

The bill was passed out of the House Committee, but was not considered by the full House Committee of the Whole.

Other States’ Tobacco 21 Laws

Prior to the new federal law raising the tobacco purchase age to 21, 19 states, the District of Columbia, and over 540 localities had implemented their own Tobacco 21 laws with varying exemptions, levels of enforcement, and penalties. States like Maryland, Pennsylvania, and Texas exempted active duty military personnel from the tobacco age restriction, while Vermont, Connecticut, and Ohio maintained purchase, use, and possession provisions.

Since enactment of the federal Tobacco 21 provisions, 33 states have passed legislation to reflect the age increase. Legislation was passed before enactment of the federal law in 19 states, and 14 states passed legislation after enactment of the federal law.

For more information, please contact:

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