

## ***Tobacco 21 in Kansas: Local Efforts to Regulate Age of Smokers and Vapers***

Tobacco 21 — or T21 — is a rapidly expanding, grassroots policy approach to youth tobacco use prevention that raises the minimum age of legal access (MLA) to purchase tobacco products from age 18 to 21. Tobacco 21 policies now affect more than 100 million Americans across 425 cities and counties in 25 different states, Washington, D.C., and Guam. Six states — Hawaii, California, New Jersey, Maine, Oregon and Virginia — have statewide T21 policies. Kansas does not have a statewide policy, but 24 localities have passed T21 policies. On February 27, 2019, a conversation about T21 was held at the Kansas Health Institute (KHI) among key constituents in Kansas.

### **E-Cigarettes: Health Effects, Regulation and Use**

Jennifer Church with the Kansas Department of Health and Environment opened the event with comments about the increasing use of e-cigarettes by youth in recent years. JUUL, an e-cigarette device launched in 2015 that resembles a USB drive, has become increasingly popular among teens and young adults as it can be used discreetly. It also has high nicotine content and comes in flavors such as mint, mango and fruit. According to the 2017 Youth Risk Behavior Survey (YRBS) in Kansas, one in three Kansas high school students have tried e-cigarettes, and one in 10 are regular users. Hina Shah of KHI described the variety of approaches taken by states to regulate e-cigarettes, including redefining tobacco, expanding smoke-free air laws, and imposing taxes on e-cigarettes and/or liquid nicotine. Other states have enacted retail licensing requirements and product packaging standards.

### **Practical and Policy Considerations for T21 Laws**

Mark Meaney with the Public Health Law Center provided a keynote address focusing on practical considerations for T21 laws. Meaney described the regulatory authority (the Tobacco Control Act of 2009) supporting T21 laws, the evidence-base for the policies and the relationship between T21 policies and the emerging e-cigarette public health epidemic. While the policymaking authority is with the states on this issue, Meaney also discussed the principles of pre-emption and home rule that authorize localities to adopt public



*“We’ve seen a remarkable increase in use (of e-cigarette products), and unfortunately, we’re expecting to see this continue to increase as we rephrase survey questions (to ask about JUUL and new products like Suorin).”*

– Keynote speaker Mark Meaney, J.D., M.A.,  
Lead Senior Staff Attorney  
at the Public Health Law Center

Find our full report on Tobacco 21 from September 2018 and our two issue brief series on e-cigarettes from March 2019 at [www.khi.org](http://www.khi.org).

health measures. He also spoke about the ongoing litigation related to the T21 ordinance enacted in the City of Topeka in 2018. A district court has ruled the ordinance cannot be enforced.

### **Grassroots Movement in Kansas**

From Finney to Wyandotte counties, 24 localities across the state have adopted T21 policies. Attendees heard about the youth-led efforts to pass T21 in Garden City, Holcomb and Finney County from Donna Gerstner with Live Well Finney County. Scott Hall with the Greater Kansas City Chamber of Commerce described the work in the Kansas City metropolitan area as part of the larger “Healthy KC Initiative.” Other speakers praised the work by the Greater KC Chamber as a unique and innovative demonstration of leadership, as chambers of commerce typically have not been a convening body for T21 policies around the country. From Iola, Lisse Regehr with Thrive Allen County spoke about lessons learned from her experience with T21 and emphasized the importance



*Donna Gerstner, with Live Well Finney County, speaks about Garden City High School students who held a presentation during the Great American Smoke Out.*



*Lisse Regehr, left, deputy director of outreach and advocacy at Thrive Allen County, speaks during a panel discussion as Ken Davis and Donna Gerstner listen.*

of enforcement and retailer support. Ken Davis, a city councilmember in Mission, described the T21 discussion in his community as the council is split evenly on the issue. Lastly, Tara Nolen with the Kansas Academy of Family Physicians and the Tobacco Free Wichita Coalition detailed the alternative tobacco-use prevention policies that have been prioritized in Wichita, including the local retail enforcement and licensing structure that is recognized as a model for other communities.

## Enforcement & Retailer Perspective

Throughout the day, speakers highlighted effective enforcement as the key component of a successful T21 policy. Tom Palace, executive director of the Petroleum Marketers and Convenience Store Association of Kansas, asked attendees to consider the business implications of T21 and emphasized the value of consistent policies, particularly in border areas. Mende Barnett with the Kansas Department for Aging and Disability Services discussed youth access policy enforcement under the Synar program enacted in 1992 by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (P.L. 102-321). The Food and Drug Administration (FDA) also contracts with states (and localities) to assist with compliance check inspections in tobacco retail outlets under the Tobacco Control Act (P.L. 111-31). Rebecca Garza with the Unified Government of Wyandotte County and Kansas City, Kansas, Public Health

Department discussed the importance of collaboration on compliance and enforcement between localities and the state. She also highlighted lessons learned from an enforcement study conducted in Kansas City, Kansas, following the implementation of its Tobacco 21 policy. Another key topic within the enforcement panel discussion was the role of purchase, use and/or possession (PUP) laws related to youth use of tobacco products. While retailers believe youth should bear the legal penalty for this violation, others found PUP laws tough to enforce and potentially discriminatory and noted there is limited evidence of their effectiveness.

## Looking Ahead

Dr. Ed Ellerbeck with the University of Kansas Medical Center closed the day with thoughts on the status of T21 in Kansas and key next steps. "We've got an epidemic of e-cigarettes, and that is causing direct harm to the brain, the lungs and addiction," he said. Ellerbeck recognized the effectiveness of complementary strategies such as minimum product pricing, taxation, flavor restrictions, retailer licensing and penalties for strong enforcement. He also noted the need for additional information to help inform ongoing local tobacco policy discussions that could be acquired by modifying survey questions to get good data on use, particularly on emerging products. Ellerbeck said more discussion was needed among regulatory entities to gain lessons learned on key enforcement components, such as tobacco licensing mechanisms, inspection strategies and penalties.

### KANSAS HEALTH INSTITUTE

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