



**Memo:** House Human Services Committee  
**From:** Jill Sudhoff-Guerin, Vermont Medical Society Communications and Policy Manager  
**Date:** April 10, 2019  
**Re:** S.86, Grandfathering and Youth Penalty Fines Not a Deterrent

On behalf of the Vermont Medical Society (VMS), the American Academy of Pediatrics Vermont Chapter (AAPVT) and the Vermont Academy of Family Physicians (VTAFP) we would like to express our support for the Senate-passed version of S.86, the bill to raise the minimum legal age of sale of tobacco products, including e-cigarettes, to 21. Thank you for the opportunity to address the Committee's questions regarding whether a grandfathering clause helps addicted young adults and whether youth penalty and possession fines are a deterrent to using tobacco products.

### **Grandfathering**

The VMS, AAPVT and the VTAFP do not support a grandfathering clause as we believe this will only serve to delay the public benefit of Tobacco 21 legislation for another three years. Vermont's youth cannot wait that long. Vermont has reached a plateau with its youth cigarette smoking rates. Further, along with the rest of the country, Vermont is currently facing an e-cigarette crisis the Surgeon General is calling an epidemic. The e-cigarette Juul came on the market in 2015 – a little over three years ago – and now nationally, 20 percent of high-schoolers are vaping, while 12 percent of Vermont high schoolers currently report using an e-cigarette. Paired with the use of other tobacco products, roughly one quarter of Vermont's youth are using some kind of tobacco product.

When we reached out to our members they said they do not support grandfathering for these specific reasons:

- It does not encourage current 18 year-olds to quit; instead they now have three more years to intensify their addictions and become adult smokers,
- It does not reduce the social source of tobacco products for middle-schoolers and younger high school students, and
- It makes enforcing the sale age much more difficult for the retailer.

*Dr. Rebecca Bell, the UVMC Pediatric Intensivist, who testified on this bill this session said, "We would encourage young people to contact their pediatricians to help with quitting. The longer the exposure to nicotine, the more difficult it will be to quit. Allowing "grandfathering" will be complicated and still present the problem of 18 year-olds selling to 14 year-olds. The grandfathering period will allow for more young people to be exposed and addicted to the product."*

*Dr. Andrea Villanti, a Tobacco Prevention Research Specialist at the UVM-led Vermont Center on Behavior and Health, said, "Getting young people to quit tobacco use as early as possible provides the greatest health benefit. Additionally, while grandfather provisions might seem feasible, they pose enforcement challenges not present with a universal 21 law and minimize the law's immediate public health benefits.<sup>i</sup> We have not grandfathered in tobacco taxes or other tobacco-related policies, but as with implementation of all tobacco control policies, we need to highlight cessation assistance to help young smokers quit with the introduction of Tobacco21. This can be accomplished using existing Vermont state quit resources (802 Quits) and through coordinated outreach to schools and community organizations who work with youth to ensure access to these resources."*

In terms of enforcement we also reached out to *Skyler Genest, Director of the Office of Compliance and Enforcement at the Department of Liquor and Lottery* who said, "It is my opinion that any grandfathering clause to this proposed legislation will make it more difficult to adequately train clerks uniformly across the state. It would prove difficult at best to ensure widespread training of this significant change in law. Moreover, we have metrics on our failed compliance checks as they are now, that a large percentage of clerks who in fact sell to our employed minors, do so even after checking the legitimate under age IDs of our minors. Having an additional date to calculate to ensure if a minor is "grandfathered" or not is again, problematic."

### **Youth Penalty and Possession Fines**

We oppose targeting and penalizing young people with higher possession, use and purchasing (PUP) penalties, as youth are largely the victims, unfairly targeted by the deceptive marketing practices of the tobacco industry. Penalizing kids is not an evidence-based strategy to reduce youth tobacco use and can particularly backfire with those who are addicted and dissuade youth from seeking cessation services. According to a 2005 study published in the Journal of Drug Education, even with these penalties in place, youth indicate that they continue to have easy access to tobacco, often by means of social sources.<sup>ii</sup> Rather than increasing PUP fines, the onus should be on regulating the behavior of the tobacco industry and the retailers selling these products.

*Dr Villanti* said, "Raising the fines on the youth possessing or trying to purchase these products is not an effective strategy to reduce tobacco use in young people. Such laws inappropriately shift the blame for underage tobacco use from the tobacco industry and retailers, to young people. PUP laws also present enforcement challenges."<sup>iii</sup>

*Skylar Genest, the enforcement officer at DLL* said, "They are in fact kids. They are going to make ill-informed decisions, and in the case of vaping products, they are encouraged to do so by the unethical marketing practices of the industry. I cannot from my perspective provide any evidence-based reasoning for the increase in penalties."

### **Raising the Age of the Tobacco Seller**

We do not have a formal position on the question of whether the age of the tobacco seller should be raised. A 2001 study in Massachusetts found that when underage purchasers attempted to buy

cigarettes from underage sellers their success went up dramatically, compared to a seller of legal age to purchase tobacco products.<sup>iv</sup>

# Tobacco 21

## State by State



VERMONT ACADEMY OF  
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Vermont Chapter

Vermont  
Medical  
Society



<sup>ii</sup> <https://publichealthlawcenter.org/sites/default/files/resources/phlc-Tobacco-21-Tips-Tools-2016.pdf>

<sup>ii</sup> Jason LA<sup>1</sup>, Pokorny SB, Muldowney K, Velez M, Youth tobacco sales-to-minors and possession-use-purchase laws: a public health controversy. *J Drug Educ.* 2005;35(4):275-90.

<sup>iii</sup> <https://www.tobaccofreekids.org/assets/factsheets/0074.pdf>

<sup>iv</sup> <https://www.ncbi.nlm.nih.gov/pubmed/11544386>