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# Committee Report

**CONSENT CALENDAR**

**March 3, 2020**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Health, Human Services and Elderly  
Affairs to which was referred HB 1628-FN,**

**AN ACT increasing the age for vaping. Having  
considered the same, report the same with the following  
resolution: RESOLVED, that it is INEXPEDIENT TO  
LEGISLATE.**

**Rep. Walter Stapleton**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Health, Human Services and Elderly Affairs</b>
Bill Number:	<b>HB 1628-FN</b>
Title:	<b>increasing the age for vaping.</b>
Date:	<b>March 3, 2020</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### STATEMENT OF INTENT

This bill is in conflict with federal law which in 2019 raised the minimum age from 18 to 21 nationwide for the sales of all tobacco products. The bill only raised the age to 19 for the sale of tobacco products. In the committee hearing, there was testimony that a bill coming to us from the Senate had more review and stakeholder participation to produce better legislation.

Vote 20-0.

Rep. Walter Stapleton  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Health, Human Services and Elderly Affairs

**HB 1628-FN**, increasing the age for vaping. **INEXPEDIENT TO LEGISLATE.**

Rep. Walter Stapleton for Health, Human Services and Elderly Affairs. This bill is in conflict with federal law which in 2019 raised the minimum age from 18 to 21 nationwide for the sales of all tobacco products. The bill only raised the age to 19 for the sale of tobacco products. In the committee hearing, there was testimony that a bill coming to us from the Senate had more review and stakeholder participation to produce better legislation. **Vote 20-0.**

Original: House Clerk  
Cc: Committee Bill File

HB 1628 Increasing the age for sales and possession of vaping products ITL 19-0 Consent

This bill is in conflict with federal law which in 2019 raised the minimum age from 18 to 21 nationwide for the sales of all tobacco products, as the bill only raised the age to 19 for the sale of tobacco products. In the committee hearing, there was testimony that a bill coming to us from the Senate had more review and stakeholder participation, to produce better legislation.

Walter Stapleton

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# Voting Sheets

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HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on HB 1628-FN

**BILL TITLE:** increasing the age for vaping.

**DATE:** March 3, 2020

**LOB ROOM:** 205

**MOTIONS:** INEXPEDIENT TO LEGISLATE

Moved by Rep. Stapleton

Seconded by Rep. Marsh

Vote: 20-0

CONSENT CALENDAR: YES

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Susan Ticehurst, Clerk

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on HB 1628-FN

BILL TITLE: increasing the age for vaping.

DATE: 3-3-20

LOB ROOM: 205

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MOTION: (Please check one box)

OTP       ITL       Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2nd year)      (if offered)

Moved by Rep. Stapleton      Seconded by Rep. Marsh      Vote: 20-0

MOTION: (Please check one box)

OTP       OTP/A       ITL       Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2nd year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

MOTION: (Please check one box)

OTP       OTP/A       ITL       Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2nd year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

MOTION: (Please check one box)

OTP       OTP/A       ITL       Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2nd year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

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CONSENT CALENDAR:  YES       NO

Minority Report?  Yes       No      If yes, author, Rep: \_\_\_\_\_      Motion \_\_\_\_\_

Respectfully submitted: Susan Ticehurst  
Rep Susan Ticehurst, Clerk





2020 SESSION

Health, Human Services and Elderly Affairs

Bill #: HB 1628 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 3-3-20

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Weber, Lucy M. Chairman	✓		
<del>Campion, Polly Kent Vice Chairman</del> <i>Mangi Pudi, Latha</i>	✓		
Mackay, James R.	✓		
Snow, Kendall A.	✓		
Freitas, Mary C.	✓		
Ticehurst, Susan J. Clerk	✓		
Knirk, Jerry L.	✓		
Salloway, Jeffrey C.	✓		
Cannon, Gerri D.	✓		
Nutter-Upham, Frances E.	✓		
Osborne, Richard G.	✓		
Schapiro, Joe	✓		
Woods, Gary L.	✓		
McMahon, Charles E.	✓		
Nelson, Bill G.	✓		
Guthrie, Joseph A.			
Fothergill, John J.			
Marsh, William M.	✓		
Pearson, Mark A.	✓		
Acton, Dennis F.	✓		
DeClercq, Edward	✓		
Stapleton, Walter A.	✓		
<b>TOTAL VOTE:</b>	<b>20</b>	<b>0</b>	

# Sub-Committee Actions

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

**SUBCOMMITTEE WORK SESSION** on HB 1628-FN

**BILL TITLE:** increasing the age for vaping.

**DATE:** February 18, 2020

**Subcommittee Members:** Reps. Weber, Campion, Freitas, Knirk, Salloway, R. Osborne, Woods, McMahon, M. Pearson and Stapleton

**Comments and Recommendations:**

**MOTIONS:** INEXPEDIENT TO LEGISLATE

Moved by Rep. Rep. Stapleton                      Seconded by Rep. Rep. McMahon                      Vote: 10-0

Respectfully submitted,

Rep. Polly Campion  
Subcommittee Clerk

**SUBCOMMITTEE WORK SESSION** on HB 1628-FN

**BILL TITLE:** increasing the age for vaping.

**DATE:** 2/18/2020

**Subcommittee Members:** Reps. Weber, Campion, Freitas, Knirk, Salloway, R. Osborne, Woods, McMahon, Nelson, M. Pearson, DeClercq and Stapleton

**Comments and Recommendations:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MOTIONS:** OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)  
(Please circle one)

Moved by Rep. Stapleton Seconded by Rep. McMahon AM Vote: 10/0

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

**MOTIONS:** OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)  
(Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

Respectfully submitted,

Rep. Polly K. Campion  
Subcommittee Chairman/Clerk



2020 SESSION

Health, Human Services and Elderly Affairs

Bill #: HB 1628 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 2/18/2020

Members Division II	YEAS	Nays	NV
Weber, Lucy M. Chairman	✓		
Campion, Polly Kent Vice Chairman	✓		
McMahon, Charles E.	✓		
Nelson, Bill G.			
Pearson, Mark A.	✓		
Knirk, Jerry L.	✓		
Freitas, Mary C.	✓		
Osborne, Richard G.	✓		
Woods, Gary L.	✓		
DeClercq, Edward			
Salloway, Jeffrey C.	✓		
Stapleton, Walter A.	✓		
<b>TOTAL VOTE:</b>	<b>10</b>	<b>0</b>	

# Hearing Minutes

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON HB 1628-FN

**BILL TITLE:** increasing the age for vaping.

**DATE:** January 23, 2020

**LOB ROOM:** 205 **Time Public Hearing Called to Order:** 1:00 PM

**Time Adjourned:** 1:23 PM

**Committee Members:** Reps. Weber, Campion, Ticehurst, Snow, Freitas, Knirk, Salloway, Cannon, Nutter-Upham, R. Osborne, Schapiro, Woods, McMahon, Nelson, Guthrie, Marsh, M. Pearson, Acton and Stapleton

**Bill Sponsors:**  
Rep. Horn

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Horn – Introduced the bill -**

Introduced the bill, which increases the age for vaping. The concern is the impact on brain chemistry. Little is understood how these chemicals effect the brain in youth. The primary function of vaping has been smoking cessation, however other methods are available for those under 18.

**Question:** Rep. Woods: Do federal regulations that are coming out have an effect on this?

**Answer:** An executive order has been signed, however there may be difficulty in enforcing it due to interstate commerce laws.

**Question:** Rep. Knirk: Should the language on page 3, line 2 mirror the language used in the rest of the bill?

**Answer:** Existing law allows someone who is not yet 18 to work in the manufacture of tobacco products.

**Question:** Rep. Knirk: Would you object to banning free samples for any age?

**Answer:** The primary concern is calling attention to the scientific evidence and not to legislate on lifestyle choices.

**Question:** Rep. Mark Pearson: Will this pass constitutional muster?

**Answer:** OLS has vetted the bill.

**Question:** Rep. Pearson: would you consider a severability statement so if one section was deemed to be unconstitutional the rest could be enforced?

**Answer:** It is in the hands of the committee, but I would not favor severability unless the constitutional question can be clarified.

**Question:** Rep. Nelson: What is the age that vaping products can be bought now?

**Answer:** It depends on the product and the community.

**Mike Rollo, American Cancer Society Action Network - Opposes –**

On December 20, 2019 the president signed an act that raised the age for purchasing tobacco to 21. Vaping is included. This would cause confusion. The network favors SB 248. It does not want to see one age for combustible products and another for electronic products. If this is based on science, it should include all tobacco products.

**Question:** Rep. Marsh: If the age was changed to 21, would you support the legislation?

**Answer:** Yes.

**Question:** Rep. Salloway: Vaping is a delivery system and tobacco is a plant with a drug that is used often in vaping systems. Several regulations ban tobacco products but not vaping. This bill restricts the availability of the delivery system. Is that correct?

**Answer:** No. The delivery system is considered to be a tobacco product by the FDA. State law says something different.

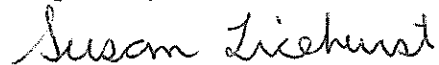
**\*1 Kate Frey, New Futures –**

We support the concept of keeping vaping products out of the hands of kids. We support increasing the age of all tobacco products to 21. State law passed in the budget increased the age to 19. Federal law does not force the state to raise the limit but requires the state to enforce the federal law. All the state can do is inform the federal government. New Futures prefers SB248, which attempts to align the state and federal laws.

**Question:** Rep. Knirk inquires.

**Answer:** Liquor enforcement is deputized under the FDA but all they can do is pass the information on to FDA. They cannot issue a summons. They will lose block grants if they don't enforce.

Respectfully submitted,



Rep. Susan Ticehurst, Clerk





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# Testimony

House Committee on Health, Human Services & Elderly Affairs  
Public Hearing on HB 1628

Bill Title:	Increasing the age for vaping.		
Date:	1/23/20		
Room:	205	Time Public Hearing Called to Order:	1:00
		Time Adjourned:	1:23

Committee Members Present:

X	Schapiro
X	Cannon
X	Stapleton
X	Nutter-Upham
X	Marsh
X	Salloway
	Fothergill
X	Freitas
X	Snow
	Mackay
X	Ticehurst
X	Weber

X	Guthrie
X	Osborne
X	Acton
X	Woods
X	Pearson
X	Knirk
	DeClercq
X	Nelson
X	McMahon
X	Campion

Testimony

\* Use asterisk if written testimony and/or amendments are submitted.

*	Attachment #	Name	Testimony:
		Rep. Horn	Introduced the bill, which increases the age for vaping. The concern is the impact on brain chemistry. Little is understood how these chemicals effect the brain in youth. The primary function of vaping has been smoking cessation, however other methods are available for those under 18. Rep. Woods: Do federal regulations that are coming out have an effect on this?

			<p>Answer: An executive order has been signed, however there may be difficulty in enforcing it due to interstate commerce laws. Rep. Knirk: Should the language on page 3, line 2 mirror the language used in the rest of the bill? Answer: Existing law allows someone who is not yet 18 to work in the manufacture of tobacco products. Rep. Knirk: Would you object to banning free samples for any age? Answer: The primary concern is calling attention to the scientific evidence and not to legislate on lifestyle choices. Rep. Mark Pearson: Will this pass constitutional muster? Answer: OLS has vetted the bill. Rep. Pearson: would you consider a severability statement so if one section was deemed to be unconstitutional the rest could be enforced? Answer: It is in the hands of the committee but I would not favor severability unless the constitutional question can be clarified. Rep. Nelson: What is the age that vaping products can be bought now? Answer: It depends on the product and the community.</p>
		<p>Mike Rollo, American Cancer Society Action Network</p>	<p>Opposes the bill. On December 20, 2019 the president signed an act that raised the age for purchasing tobacco to 21. Vaping is included. This would cause confusion. The network favors SB 248. It does not want to see one age for combustible products and another for electronic products. If this is based on science it should include all tobacco products. Rep. Marsh: If the age was changed to 21, would you support the legislation? Answer: Yes. Rep. Salloway: Vaping is a delivery system and tobacco is a plant with a drug that is used often in vaping systems. Several regulations ban tobacco products but not vaping. This bill restricts the availability of the delivery system. Is that correct? Answer: No. The</p>

			delivery system is considered to be a tobacco product by the FDA. State law says something different.
*	#1	Kate Frey, New Futures	We support the concept of keeping vaping products out of the hands of kids. We support increasing the age of all tobacco products to 21. State law passed in the budget increased the age to 19. Federal law does not force the state to raise the limit but requires the state to enforce the federal law. All the state can do is inform the federal government. New Futures prefers SB248, which attempts to align the state and federal laws. Rep. Knirk inquires. Answer: Liquor enforcement is deputized under the FDA but all they can do is pass the information on to FDA. They cannot issue a summons. They will lose block grants if they don't enforce.

Hearing recessed at

Respectfully submitted,

Rep. Susan Ticehurst, Clerk

# TOBACCO ~~eighteen~~ twenty-one

## FEDERAL TOBACCO 21: THE LAW OF LAND

In December 2019, Congress passed a \$1.37 trillion spending bill that included a provision to raise the minimum legal sales age for all tobacco products from 18 to 21 nationwide. Upon the President’s signature on December 20, 2019, the age change became effective immediately.

*The Preventing Tobacco Addiction Foundation/Tobacco 21 is gratified that this common-sense prevention policy is in place at the federal level; however, there is continued opportunity to help strengthen enforcement on a local, state, and national level. Highlights and FAQs are below:*

- It is now a violation of federal law for any retailer to sell any nicotine or tobacco products to anyone under the age of 21.
- FDA will oversee enforcement of the minimum legal sales age at 21. (Due to the dramatic increase in e-cigarette use by middle and high school age youth since 2016, there is an opportunity to strengthen local and state level enforcement measures around all tobacco and nicotine products to supplement the FDA’s national efforts.)
- There are no exemptions for sales to members of the military who are under 21.
- The law does not phase-in age restrictions (i.e., there is no “grandfathering”) of those who are currently 18, 19 or 20.
- The law does not preempt cities, counties or states from passing and enforcing their own age restriction laws and does not preempt Tobacco 21 laws already in place in cities, counties and states, except that no military or grandfathering exemptions are granted.
- The law penalizes retailers for selling tobacco products to youth, not those attempting to purchase, although many states and cities retain purchase, use and possession (PUP) laws.
- The law does not require that states pass laws to raise their sales age to 21, but it does require states to demonstrate that their retailers are complying with the law. If not, the state eventually risks losing some portion of their federal substance abuse grant funding.
- This law does not address flavored tobacco or nicotine products in any way, although on January 2, 2020, the FDA issued an enforcement policy on unauthorized flavored cartridge based e-cigarettes: <https://www.fda.gov/media/133880/download>

## Federal Tobacco 21 Law FAQ

### 1. What was the Tobacco 21 landscape prior to the Federal Legislation?

Over 540 local jurisdictions and 19 states had passed a Tobacco 21 law.

### 2. Where can I find the Federal Tobacco 21 Legislation?

The bill is available at the link provided below and the Tobacco 21 provisions begin on page 1492:

<https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-RCP116-44.PDF>

### 3. What does the Federal Tobacco 21 bill do?

- Amends the Federal, Drug, and Cosmetic Act 906(d) to include a new subsection, 906(d)(5), which states: “Minimum Age of Sale -- It shall be unlawful for any retailer to sell a tobacco product to any person younger than 21 years of age.”

**Note: This amendment makes it clear that the retailer is responsible, rather than the sales clerk or youth purchaser.**

- Amends Federal, Drug and Cosmetic Act 906(d)(3)(ii) to restrict the FDA from establishing a minimum legal sales age above age 21.
- FDA will continue to enforce the minimum legal sales age. The law does not increase fines/penalties for violations.
- Amends the Public Health Services Act Sec. 1926 (42 U.S.C. 300x-26) (the Synar Amendment) with respect to grant monies, enforcement, implementation, and compliance rates (discussed more in depth in Question 5).
- Enables the Secretary of Health and Human Services to promulgate regulations for tobacco product sales to increase the minimum age of sale from 18 to 21 and update the ID verification age from 27 to 30.
- The law provides grant funding to the states to assist in obtaining retailer compliance, but federal funds are meant to “supplement” state-funded tobacco control efforts not “supplant” state funding to that effect.
- Health and Human Services will provide technical assistance to the states.
- No exemptions or phase in were included, including no military exemption or grandfathering of age groups.
- The law does not preempt states or localities from passing their own age restriction laws.
- Congress appropriated \$18.5 million in grant money available to support states in their transition, with a sunset period until September, 2024.

**NOTE: This summary does not include every change to current law based on the Tobacco 21 provisions of the spending bill but rather serves as an overview. The bill language in full can be found in the link in Answer 2 (above).**

#### **4. When is Federal Tobacco 21 effective?**

The age change became effective immediately, according to the Food and Drug Administration: *“On December 20, 2019, the President signed legislation to amend the Federal Food, Drug, and Cosmetic Act, and raise the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21. FDA will provide additional details on this issue as they become available.”*

**Retailers can visit the FDA website for guidance:**

<https://www.fda.gov/tobacco-products/compliance-enforcement-training/retail-sales-tobacco-products>

NOTE: The legislation enables the Secretary of Health and Human Services to promulgate rules to carry out the new law no later than 180 days after the date of enactment of the Act. The Secretary is required to publish the final rule to update the regulations under Chapter 9 of the Federal Food, Drug, and Cosmetic Act to carry out the amendments, to update all references to persons under 18, and to update the relevant age verification requirements to require age verification for individuals under the age of 30. This final rule will take effect no later than 90 days after the date on which the final rule is published.

#### **5. What is ‘Synar’ and how does the Federal bill amend Synar?**

The original Synar Amendment, named for the Oklahoma Senator who introduced the amendment, required, among other things, states to adopt state laws setting the tobacco sale age at 18 in order to receive their Substance Abuse Prevention and Treatment Block (SAPTB) grant money. However, that part of the Synar amendment was repealed in the new legislation, and states are not required to pass their own laws to update their tobacco sales age to 21. States will still need to demonstrate compliance with the federal age of 21 as a condition of the grant. Specifically, under 42 U.S.C. 300x-26, a funding agreement for the SAPTB under Section 1921 requires the states involved to (1) annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21, and (2) report such findings to the federal government annually. If states do not demonstrate a compliance rate determined by the Secretary, they risk losing up to 10% of their SAPTB monies.

The new law grants a 3-year grace period following enactment to come into compliance with the reporting and enforcement requirements before the Secretary may withhold any funds, with a further 2-year period for Secretary to exercise discretion in enforcement.

#### **6. Does the Federal Tobacco 21 law include a Military Exemption?**

No. The Federal Tobacco 21 law does not exempt anyone from the age requirement. It is now illegal for retailers to sell tobacco product to anyone under the age of 21.

#### **7. What does this mean for states and localities that have a military exemption in their Tobacco 21 laws? Does this Federal law overturn all military exemptions that are currently in effect?**

The Federal Tobacco 21 law does not exempt anyone or group from the age restriction requirements. States and cities that exempt members of the military from their Tobacco 21 laws are in violation of federal law. In other words, because the federal law does not have a military exemption, all such sales to persons under 21, regardless of military status, are illegal.



**8. Can a law exempting the military from the new age of sale of 21 be enacted before the federal law starts to be enforced?**

No. The federal law became effective when it was signed by President Trump. The law does not have a military exemption. Therefore, sales to any persons under the age of 21, including military personnel, are illegal. ***States cannot authorize something that is illegal under federal law.***

**9. Does the Federal Tobacco 21 law include a phase-in period?**

No. Per the FDA website, the law is effective immediately and it is illegal for a retailer to sell tobacco products to persons under the age of 21.

**10. Is there more to be done? Should my state/city continue to pass Tobacco 21 laws independently?**

Yes, absolutely! In many states and cities, outdated and uninformed youth access laws remain on the books. Many of these laws were written and lobbied for by the tobacco industry. These antiquated laws consistently place penalties on youth rather than the retailer who profits from sales, and many lack real enforcement mechanisms or penalties that deter bad behaviors. Even with a federal Tobacco 21 law, there is much work that needs to be done around age restriction laws at a state and local level.

The federal Tobacco 21 law does not preempt states and localities from adopting their own Tobacco 21 laws. In fact, changes to the Synar Amendment require states, as a condition of their grant funding, to demonstrate compliance with the federal age of 21. Specifically, under 42 U.S.C. 300x-26, a funding agreement for the SAPTB under Section 1921 requires the states involved to (1) annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21, and (2) report such findings to the federal government annually. If states do not demonstrate a compliance rate determined by the Secretary, they risk losing up to 10% of their SAPTB monies. ***Therefore, the federal law inherently encourages state and local action.*** Moreover, state and local enforcement will help improve the effectiveness of a Tobacco 21 law.

States and localities should continue passing policies at the local and state level to make their age restriction laws align with federal law. Effective sales regulations also include requiring a tobacco retail license, mandating a minimum number of compliance checks, and updating their penalty structure to incentivize compliance.

***Again, states and cities are not preempted from passing or enforcing their own Tobacco 21 laws. Therefore, in locations that already have Tobacco 21, we recommend continued enforcement. In locations that do not have a Tobacco 21 law, we recommend updating laws and enforcing the new age.***

**11. What are the penalties for youth who are caught trying to purchase or those who are using tobacco products?**

The federal law does not place any penalties for youth who are caught attempting to purchase, purchasing, or using tobacco products. However, state and local laws often place a penalty on youth for such activity. We recommend you monitor your local and state laws for these provisions.

If your jurisdiction does place a penalty on the youth for purchase, use, or possession of tobacco products, we recommend that the jurisdiction update its laws to align with federal standards that place the penalties on the retailers, not the youth purchaser.

## 12. What are the penalties for selling to those under 21?

The FDA enforces the minimum legal sales age contracting with the states or a third party to conduct compliance checks at retail locations. Maximum penalties for violating regulations issued under Section 906(d) of the Food, Drug, and Cosmetic Act, including the restrictions on the sale and distribution of covered tobacco products in 21 CFR part 1140, are set forth at Section 103(q)(2) of the Tobacco Control Act and have since been adjusted for inflation. The penalty structure is available at:

<https://www.fda.gov/tobacco-products/compliance-enforcement-training/ctp-compliance-enforcement>

The first time a retailer with an approved training program violates the regulations issued under Section 906(d) of the FD&C Act, FDA will send the retailer a Warning Letter. The maximum civil money penalty amounts for such retailers range from \$292 (for a second violation within a 12-month period) to \$11,698 (for a sixth or each subsequent violation at the same retail location within a 48-month period).<sup>i</sup>

The FDA may also pursue a *No-Tobacco-Sale Order* (NTSO) against retailers that have a total of five or more repeated violations of certain restrictions within 36 months. Retailers are prohibited from selling regulated tobacco products at the specified location during the period of the NTSO.<sup>ii</sup> Per guidance from the FDA, “Repeated violations” is defined to mean “at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation.”<sup>iii</sup> In addition, states and localities may have their own age restriction enforcement mechanism. These programs vary by state and we recommend you research your own jurisdiction to learn about your state or locality’s age restriction enforcement program.

## 13. Did flavored e-cigarettes become illegal with this new law?

No. This legislation does not prohibit or restrict the sale of flavored products. **On January 2, 2020, the FDA issued an enforcement policy on unauthorized flavored cartridge based e-cigarettes:** <https://www.fda.gov/media/133880/download>

**Note:** Prior to this legislation and under the authority granted by the Family Smoking Prevention and Tobacco Control Act, the FDA prohibited cigarettes from containing any “characterizing flavor,” including candy, fruit, and alcohol flavors. This regulation was not impacted by the new legislation. Please consult your state and local laws as some jurisdictions have prohibited the sale of (or further restricted) flavored tobacco products.

**Disclaimer:** *The information presented is not legal representation or advice, is not to be acted on as such, may not be current and is subject to change. This information is for educational purposes only. If you require legal advice or a legal opinion, we encourage you to consult with legal counsel.*

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<sup>i</sup> The Civil Money Penalty amounts listed in this guidance reflect the amounts listed in the statute. FDA is required to update these amounts annually to reflect inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410, 104 Stat. 890 (1990) (codified as amended at 28 U.S.C. 2461 note 2(a)), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, November 2, 2015). For the most up-to-date amounts, please see 45 CFR §102.3 or the CTP website at: <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm232109.htm>

<sup>ii</sup> Products, Center for Tobacco. “Tobacco Compliance & Enforcement.” *U.S. Food and Drug Administration*, FDA, <https://www.fda.gov/tobacco-products/compliance-enforcement-training/ctp-compliance-enforcement>.

<sup>iii</sup> Department of Health and Human Services, Food and Drug Administration Center For Tobacco Products, “Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (Revised), Guidance for Industry.” Published Dec. 2016, available at <https://www.fda.gov/media/80888/download>, FDA understands this to mean that there is a “repeated violation” if: There are at least five violations of requirements issued under Section 906(d) of the FD&C Act at a particular outlet; Each of the five violations represents the second or subsequent violation of a particular requirement; and Each of the five violations occurs within 36 months.



# Bill as Introduced

# **Fiscal Note**

HB 1628-FN - AS INTRODUCED

2020 SESSION

20-2053

01/10

HOUSE BILL

***1628-FN***

AN ACT

increasing the age for vaping.

SPONSORS:

Rep. Horn, Merr. 2

COMMITTEE:

Health, Human Services and Elderly Affairs

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ANALYSIS

This bill increases the age for sales and possession of vaping products.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT                    increasing the age for vaping.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            1 New Paragraph; Access to and Use of Tobacco Products; Definitions. Amend RSA 126-K:2 by  
2 inserting after paragraph IV the following new paragraph:

3            IV-a. "Minimum age" means 19 years of age for cigarettes and other tobacco products and 21  
4 years of age for e-cigarettes, e-liquids and other vaping products.

5            2 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-K:1 to read as follows:

6            126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from  
7 the possibility of addiction, disability, and death resulting from the use of tobacco products by  
8 ensuring that tobacco products will not be supplied to persons under the ~~[age of 19]~~ *minimum age*.

9            3 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory  
10 paragraph of RSA 126-K:3, I to read as follows:

11            I. For the purposes of this chapter, any person responsible for monitoring sales from a  
12 tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or liquid  
13 nicotine which vending machine or other sale is to be made to any person who does not appear to be  
14 at least ~~[19 years of]~~ *the minimum* age, shall require the purchaser to furnish any of the following  
15 documentation that such person is ~~[19 years of]~~ *the minimum* age or over:

16            4 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III to  
17 read as follows:

18            III. The establishment of all of the following facts by a person responsible for monitoring  
19 sales from a vending machine or a person or sampler making a sale or distribution of tobacco  
20 products, e-cigarettes, or liquid nicotine to a person under ~~[19 years of]~~ *the minimum* age shall  
21 constitute prima facie evidence of innocence and a defense to any prosecution for such sale:

22            (a) That the person falsely represented in writing and supported by some official  
23 documents that the person was ~~[19 years of]~~ *the minimum* age or older;

24            (b) That the appearance of the person was such that an ordinary and prudent person  
25 would believe such person to be ~~[at least 19 years of]~~ *the minimum* age or older; and

26            (c) That the sale was made in good faith relying on such written representation and  
27 appearance in the reasonable belief that the person was actually ~~[19 years of]~~ *the minimum* age or  
28 over.

29            5 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading and  
30 paragraph I of RSA 126-K:4 to read as follows:

1 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or Liquid Nicotine to Persons  
2 Who Have Not Attained [~~19 Years of~~] *the Minimum* Age Prohibited.

3 I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or  
4 furnished tobacco products, e-cigarettes, or liquid nicotine to a person who has not attained [~~19 years~~  
5 ~~of~~] *the minimum* age. The prohibition established by this paragraph shall not be deemed to  
6 prohibit persons who have not attained [~~19 years of~~] *the minimum* age employed by any  
7 manufacturer, wholesaler, sub-jobber, vending machine operator, sampler, or retailer from  
8 performing the necessary handling of tobacco products, e-cigarettes, or liquid nicotine during the  
9 duration of their employment.

10 6 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a to read as  
11 follows:

12 126-K:4-a Rolling Papers.

13 I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this  
14 paragraph shall be civil infractions punishable by administrative action of the commission against  
15 the licensee. The fines for violations of this paragraph shall not exceed \$250 for the first offense,  
16 \$500 for the second offense, and \$750 for the third and subsequent offenses.

17 II. No person under [~~19 years of~~] *the minimum* age *for tobacco products* shall purchase,  
18 possess, or use any rolling paper. Any person who violates this section shall be guilty of a violation  
19 and shall be punished by a fine not to exceed \$100 for each offense.

20 7 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126-K:5, I and  
21 II to read as follows:

22 I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes,  
23 or liquid nicotine in a public place or to a person who has not attained [~~19 years of~~] *the minimum*  
24 age. This prohibition shall not apply to sampling:

25 (a) In an area to which minors are denied access.

26 (b) In a store to which a retailer's license has been issued.

27 (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport  
28 facilities in areas to which minors are denied access.

29 II. The commission shall adopt rules, pursuant to RSA 541-A, concerning the distribution of  
30 free samples of tobacco products, e-cigarettes, or liquid nicotine to prevent their distribution to  
31 persons who have not attained [~~19 years of~~] *the minimum* age.

32 8 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products, E-Cigarettes,  
33 or Liquid Nicotine. Amend RSA 126-K:6 to read as follows:

34 126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or Liquid Nicotine by Persons  
35 Who Have Not Attained [~~19 Years of~~] *the Minimum* Age.

36 I. No person under [~~19 years of~~] *the minimum* age shall purchase, attempt to purchase,  
37 possess, or use any tobacco product, e-cigarette, or liquid nicotine.



1           II. The prohibition on possession of tobacco products, e-cigarettes, or liquid nicotine shall not  
2 be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending  
3 machine operator, sampler, or retailer from performing the necessary handling of tobacco products,  
4 e-cigarettes, or liquid nicotine during the duration of their employment.

5           III. A person who has not attained [~~19 years of~~] *the minimum* age shall not misrepresent  
6 his or her age for the purpose of purchasing tobacco products.

7           IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who  
8 violates this section shall not be considered a delinquent or a child in need of services.

9           V. Any person who has not attained [~~19 years of~~] *the minimum* age who violates this  
10 section may be guilty of a violation and shall be punished by a fine not to exceed \$100 for each  
11 offense or shall be required to complete up to 20 hours of community service for each offense, or both.  
12 Where available, punishment may also include participation in an education program.

13           9 Access to and Use of Tobacco Products; Special Provisions. Amend RSA 126-K:8, I(a) to read  
14 as follows:

15           I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or liquid nicotine to  
16 a person who has not attained [~~19 years of~~] *the minimum* age who has a note from an adult  
17 requesting such sale, gift, or delivery. Tobacco products, e-cigarettes, or liquid nicotine shall only be  
18 delivered to a person who provides an identification as enumerated in RSA 126-K:3 establishing that  
19 the person has attained [~~19 years of~~] *the minimum* age.

20           10 Delinquent Children; Limitations of Authority Conferred. Amend RSA 169-B:32 to read as  
21 follows:

22           169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to  
23 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an  
24 aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title  
25 XIII, a law relating to fireworks under RSA 160-B or RSA 160-C, any town or municipal ordinance  
26 which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be  
27 construed as applying to any minor charged with the violation of any law relating to the possession,  
28 sale, or distribution of tobacco products *or e-cigarettes* to or by a person under [~~19 years of~~] *the*  
29 *minimum age under RSA 126-K*. However, if incarceration takes place at any stage in proceedings  
30 on such violations, incarceration shall be only in a juvenile facility certified by the commissioner of  
31 the department of health and human services.

32           11 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to  
33 read as follows:

34           169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to  
35 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an  
36 aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title  
37 XIII, or a law relating to fireworks under RSA 160-B or RSA 160-C, and shall not be construed as

1 applying to any minor charged with the violation of any law relating to the possession, sale, or  
2 distribution of tobacco products *or e-cigarettes* to or by a person under [~~10 years of~~] *the minimum*  
3 *age under RSA 126-K.*

4 12 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

5 III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign  
6 which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco  
7 products *to persons under age 19* or e-cigarettes to persons under age [~~19~~] **21**. Warning: violators  
8 of these provisions may be subject to a fine."

9 13 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

10 (c) Does not allow any person under the *minimum* age [~~of 19~~] *under RSA 126-K* on the  
11 premises unless accompanied by a parent, legal guardian, or adult spouse.

12 14 Effective Date. This act shall take effect January 1, 2021.

HB 1628-FN- FISCAL NOTE  
AS INTRODUCED

AN ACT increasing the age for vaping.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General Fund	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Liquor

**METHODOLOGY:**

This bill increases the age for sales and possession of vaping products. The Department of Revenue Administration indicates, by increasing the age from 19 to 21 years of age, the bill would reduce the sale of e-cigarettes and tobacco tax revenue. The Department assumes there could also be a reduction in business taxes. Any reduction in tax revenue to the State is indeterminable because the Department will not have data on tobacco tax revenue from e-cigarettes until after January 1, 2020 when the tax will begin to be imposed. The Department cannot estimate the percentage of e-cigarette sales to nineteen and twenty year old individuals.

The Liquor Commission indicates it would need to revise its tobacco education programs to provide tobacco retailers with information on the law changes and instructions on how to categorize and differentiate between the tobacco products they sell. The Division of Enforcement, Licensing and Education carries out tobacco compliance checks in support of the enforcement of RSA 126-K concerning youth access to tobacco products. Due to the separate minimum ages that would result from this bill, the Commission would need to conduct separate compliance efforts for traditional tobacco products, and for e-cigarettes. The Commission estimates there are approximately 1,283 licensed tobacco retailers who would be impacted by the bill. The Commission does not have information on the number of "vape shops" and is in the process of carrying out the new provisions of HB4 from the 2019 Session regarding electronic cigarettes, which subject these businesses to licensure. The Commission estimates it will cost roughly \$10,000 to redesign and print signs for the existing retail tobacco licensees and approximately \$2,500 to print and distribute signs to new licensees. The Commission is not able

to calculate the cost to distribute the signs to the 1,283 existing tobacco retailers. In addition, the Commission is unable to calculate the cost to carry out the separate compliance checks based upon the minimum age change in the bill.

**AGENCIES CONTACTED:**

Department of Revenue Administration and Liquor Commission