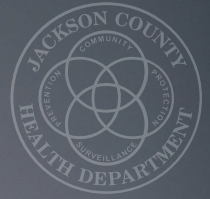


**POLICY BRIEF**



**JACKSON  
COUNTY**  
HEALTH  
DEPARTMENT

**DIVISION  
OF HEALTH  
PROMOTION**

JANUARY 2020

LOCAL AND  
STATE POLICIES TO  
**REDUCE YOUTH VAPING**

# BACKGROUND

In late summer of 2019, the real dangers of e-cigarettes finally surfaced as cases of vaping-related lung injuries spread across the country and over 50 people died. This public health crisis followed the rise of Juul - an e-cigarette company that controls 50 percent of the vaping market and is now being investigated by the Food and Drug Administration (FDA) for illegally marketing their products as safer than tobacco, and for targeting youth. (1)

E-cigarettes were invented to help adult smokers quit smoking and to reduce nicotine consumption, however, manufacturers, such as Juul, have



made these products more appealing to youth by pushing youth-oriented advertisements on social media and by producing e-liquid flavors such as mango and creme brulee. (1)

To heed the FDA's warnings regarding their marketing practices, Juul stopped distributing flavored e-cigarettes (not including mint or menthol) to retailers in the fall of 2018, but many young people were already hooked and other e-cigarette companies such as NJOY and Vuse filled the void. (1)

One of the more troubling pieces of this health crisis is that there have been no regulations during the entire span of the manufacture, distribution, or marketing of e-cigarettes. (1) Consequently, the government has been playing catch up to control the overwhelming success of e-cigarettes, now thought to have caused severe illness for thousands of people - mostly teenagers.

The federal government recently responded to the crisis in two ways. First, in December of 2019, Congress approved a spending bill which included raising the minimum legal purchasing age of tobacco and e-cigarettes to 21 nationwide. This law is a step in the right direction, however, states and localities are still waiting to hear about how it should be enforced.

Second, under direction from the Trump Administration, the FDA enacted a new policy banning the sale of some flavored e-cigarette products. (2)

The FDA's new policy centers on types of e-cigarettes and their delivery of e-liquid. Flavored e-cigarette pods,

**Note:** Eastern Jackson County (EJC) refers to the parts of Jackson County that fall outside of Kansas City, MO, city limits.

## THIS BRIEF COVERS

- Number of youth and adults that use e-cigarettes / tobacco products
- Local and Missouri state e-cigarette/tobacco policies
- Model policies for youth prevention

excluding those that contain menthol and tobacco e-liquid, must be removed from the market while flavored e-liquids that fill open tank e-cigarettes can still be sold in fruit, candy, mint, and menthol.

This determination was made based on the notion that open tank systems are rarely used by youth, however, research suggests that open tank products Suorin and Smok are most popular after JUUL pods. (3) We also have evidence that young people use open tank systems to vape THC, which the CDC identified as one of the main contributors to the outbreak of lung injuries. (4)

With flavored e-liquids still on the market, it is more than likely that youth will continue to vape with open tank systems. And, as discussed later in the brief, menthol has become one of, if not the, most popular flavor among youth. Therefore, restricting the sale of fruit and candy flavored

# E-CIGARETTE USE

e-cigarette pods, while keeping menthol, does little to deter young people from vaping.

Recent action taken by the federal government regarding e-cigarettes does not go far enough. State and local governments can pass laws today that would more effectively combat the use of these harmful products by youth and maintain public health.

Missouri has some of the least restrictive e-cigarette and tobacco policies in the country to date. The following brief explains the prominence of e-cigarette and tobacco use among the population and what policies could be enacted at the state and local level to truly make a difference in the lives of Missourians.



## YOUTH

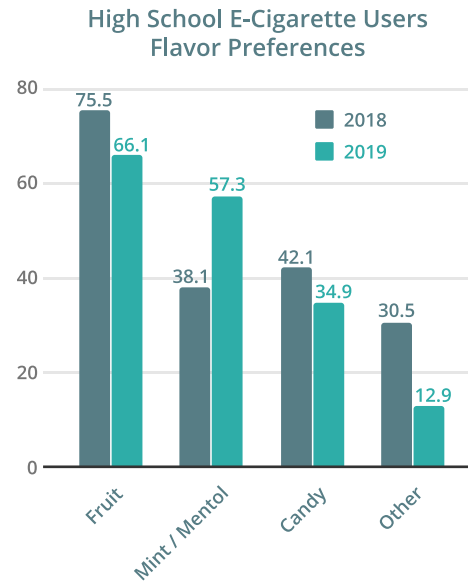
While national e-cigarette use among high schoolers started to decline from 2015 to 2016, the number of high schoolers who reported using e-cigarettes at least once in the past 30 days increased a staggering 78% from 2017 to 2018. In 2018, 20.8% of high schoolers reported current use of e-cigarettes, and of those current users, 27.7% reported use on at least 20 of the past 30 days. (5)

Data from the 2019 National Youth Tobacco Survey show the number of high school students reporting current e-cigarette use increased again to 27.5%. Additionally, in 2018, the majority (75.5%) of students were using fruit flavored e-cigarettes.

In 2019, the number of students using fruit, candy, or any flavor other than mint or menthol decreased, while the number using mint or menthol flavors increased by nearly 13% (see Graph 1). (3) This could be a result of Juul pulling their candy and fruit flavors from the market in 2018.

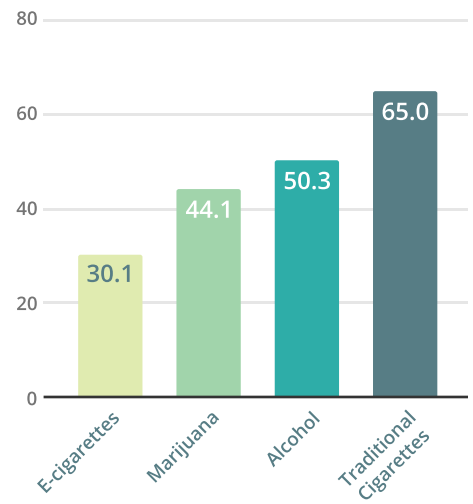
In Missouri, 15.3% of students in grades six through 12 reported current use of e-cigarettes in 2018. Compared to other substances, Missouri students were less likely to think using e-cigarettes had a “great risk” of harm (Graph 2). It is also worth noting that in 2017, 9.2% of Missouri high schoolers reported smoking cigarettes at least once in the past 30 days. This is higher than the national average of 8.8%. (6)

Graph 1:



Graph 2:

Percent of Missouri students who think substance has a “great risk” or harm

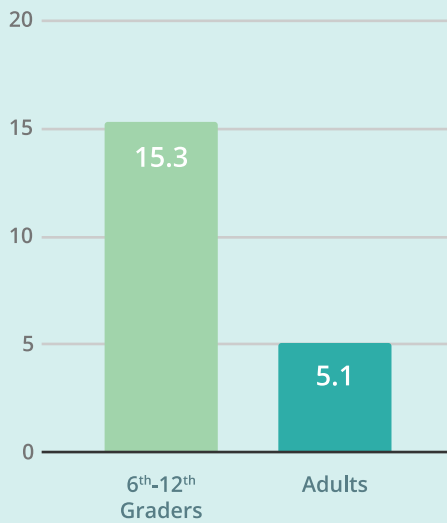


**60%**  
of Jackson County students who use e-cigarettes say they got the e-cigarette from a friend.



In Jackson County specifically, 11.8% of 6-12th grade students reported current e-cigarette use, up from 8.1% in 2016. Out of all substances included on the survey (including alcohol, marijuana, and traditional cigarettes), e-cigarettes had the highest usage reported in both Jackson County and Missouri as a whole. Additionally, 44% of Jackson County students thought e-cigarettes were “very easy” or “sort of easy” to access. Of the students who answered “yes” to any e-cigarette use, nearly 60% said “a friend gives or sells them to me.” (6)

Percent of Missouri Students vs. Missouri Adults Using E-Cigarettes



## ADULTS

Nationally, 14.7% of adults reported currently using e-cigarettes in 2018. Nearly 60% of adults (ages 25 and over) who use e-cigarettes also report current use of traditional cigarettes. However, 40% of young adult e-cigarette users (ages 18-25) never smoked before trying e-cigarettes. (8)

In Missouri, around 20.8% of adults (18+) smoked cigarettes, and 5.1% used e-cigarettes in 2017. (6)



# CURRENT POLICIES

## TIMELINE OF TOBACCO AND E-CIGARETTE POLICIES IN EJC

- 3/1/2016**  
City of Independence adopts Tobacco 21
- 7/1/2016**  
City of Grandview adopts Tobacco 21
- 12/1/2016**  
City of Lee's Summit adopts Tobacco 21
- 1/1/2017**  
Jackson County adopts Tobacco 21, covers all unincorporated portions of the county
- 4/1/2018**  
City of Oak Grove adopts Tobacco 21
- 9/16/2019**  
City of Blue Springs rejects Tobacco 21

**Tobacco 21 is a nationwide campaign that works at the local level to raise the tobacco sales age from 18 to 21 years of age. E-cigarettes are included in Tobacco 21 policies.**

*EJC's largest cities that have not raised the legal age to 21 to buy tobacco and e-cigarettes are Blue Springs, Grain Valley, and Raytown.*

## NATIONAL

The federal government regulates tobacco products through the Family Smoking Prevention and Tobacco Control Act - effective June 22, 2009. The federal government recently enacted a nationwide tobacco 21 law, however, this policy has yet to be implemented to its fullest extent throughout the country. That is why states can pass their own Tobacco 21 laws to ensure state and local enforcement.

In 2016, a new rule by the FDA established e-cigarettes as “new tobacco products” meaning that the agency gained authority to regulate all electronic nicotine delivery systems (ENDs) - including e-cigarettes.

Since that time, the FDA has allowed e-cigarette companies to sell their products unabated until May of 2020, when these companies will be required to prove that their products do not pose a threat to public health. This could mean that some of the products under the current ban would be reintroduced to the market. (9).

## STATE AND LOCAL

Currently, states and localities regulate e-cigarette use through clean indoor air policies, minimum legal sale age (MLSA) laws, taxes, and retail sales licensing.

As of October 2019: (10)

**21 states** include e-cigarettes in their definition of “tobacco product.”

**15 states**, the District of Columbia, and the U.S. Virgin Islands tax e-cigarettes and/or liquid nicotine

**29 states (including Missouri)** have laws on product packaging of e-cigarettes



**25 states**, the District of Columbia, and the U.S. Virgin Islands have laws requiring a retail license for sale of e-cigarettes.

**20 states**, the District of Columbia, Puerto Rico, and 861 localities have expanded their smoke-free air laws to also prohibit e-cigarette use in places where cigarette smoking is prohibited, such as restaurants, bars, and worksites.

**18 states**, the District of Columbia, Guam, and an additional 500+ localities have raised their minimum age of legal access (MLA) for sale of tobacco products, including cigarettes, to persons age 21 and older.

In Missouri, **10 localities** have amended their Clean Indoor Air Ordinances to include e-cigarettes: Branson, Clinton, Columbia, Creve Coeur, Farmington, Gainesville, Kansas City, Lee's Summit, St. Joseph, and Washington. (11)

There are **19 localities** that have adopted Tobacco 21 ordinances: Columbia, Crestwood, Des Peres, Excelsior Springs, Gladstone, Grandview, Independence, Jackson County (unincorporated), Jefferson City, Kansas City, Lee's Summit, Liberty, Parkville, Peculiar, Raymore, Springfield, St. Louis City, St. Louis County, and Smithville. (12)

# MODEL POLICIES

In the early 1990s, the number of laws prohibiting the possession, use, and purchase of tobacco products by minors increased throughout the U.S. These laws, also known as PUP laws, can be problematic as they do little to deter youth from smoking and disproportionately affect certain groups - namely youth of color. (13)

Generally, PUP laws are not enforced consistently or in every locality, making them less reliable as means to control illicit tobacco/e-cigarette use. In addition, research suggests that PUP laws may actually increase youth smoking rates as those who wish to be seen as adults actively seek out and engage in “adult-like” deviant behavior.

PUP laws have also proven to be inequitable as they affect youth of color, LGBT youth, youth with disabilities, and young men more than others. This is due to the fact that the tobacco



industry has purposefully targeted these groups through advertising and placement of retailers.

A more effective and equitable approach are policies that focus on tobacco retailers. The following provisions are fundamental to policies that work to place responsibility on the retailer rather than the consumer. (13)

## **TOBACCO / E-CIGARETTE RETAILER LICENSING**

With proper funding and enforcement, tobacco retailer licensing (TRL) policies can be more effective than PUP laws.

### **A retail license policy:**

- Requires all retailers to obtain a license to sell tobacco and e-cigarette products
- Enforces penalties if a retailer sells tobacco to underage youth or violates any law related to tobacco sales
- Helps to document the location of retailers, thus, allowing for compliance checks, and the means to eliminate the number of retailers through zoning restrictions

## **FLAVOR BANS**

There are variations of local policies that can restrict the sale of flavored tobacco/e-cigarette products. In current city and county ordinances: flavors may be prohibited generally or within certain buffer zones, menthol and/or mint may or may not be included, flavors may be restricted for both tobacco and e-cigarettes (as opposed to just tobacco), and exemptions may or may not be provided for certain retailers (14).

### **A flavor ban is most effective if it:**

- Involves all tobacco and e-cigarette products (including e-liquids)
- Includes menthol and mint





## **LIMITS ON ADVERTISING AND PRODUCT PLACEMENT**

Going against Big Tobacco's advertising may seem like a daunting task, but local governments do have the power to reduce youth's exposure to ads and products by limiting point-of-sale (POS) marketing within retail locations. (15)

### **These types of policies work by:**

- Limiting the amount of window signage of any kind
- Restricting the placement of products by keeping them out of consumer view

## **CESSATION PROGRAMS**

Of the \$27.2 billion to be paid to the states by the major tobacco companies in 2020, only 2.7 percent, \$739.7 million, will be spent on programs to prevent youth from smoking or to help smokers quit (16). For Missouri, the state will spend just about \$171,582 of its \$262.1 million state tobacco revenue on tobacco prevention programs (17). This puts Missouri at 50th in the country for meeting the recommended amount of funding needed (\$72.9 million) for tobacco prevention programs according to the CDC. Conversely, the tobacco industry will spend about \$355.4 million on marketing tobacco products in the state.

### **Cessation programs work and are most effective when they are:**

- Well-funded
- Tailored to their audiences - i.e. adult vs. youth specific
- Free of charge to constituents

## WORKS CITED

1. Ducharme, J. (2019, September 19). TIME. Retrieved from <https://time.com/5680988/juul-vaping-health-crisis/>
2. FDA. (2020, January 2). FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint. Retrieved from [https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children?utm\\_source=CTPPartnerTwitter&utm\\_medium=social&utm\\_campaign=ctp-regulation](https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children?utm_source=CTPPartnerTwitter&utm_medium=social&utm_campaign=ctp-regulation)
3. Cullen K. A., Gentzke A. S., Sawdey MD, et al. *E-cigarette Use Among Youth in the United States*, 2019. JAMA. 2019.
4. CDC. (2020, January 9). Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products. Retrieved from [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)
5. Cullen, K. A., Ambrose, B. K., Gentzke, A. S., Apelberg, B. J., Jamal, A., & King, B. A. (2018, November 16). Morbidity and Mortality Weekly Report: Notes from the Field. Retrieved from <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6745a5-H.pdf>
6. Truth Initiative. (2019, June 28). Tobacco use in Missouri 2019. Retrieved from <https://truthinitiative.org/research-resources/smoking-region/tobacco-use-missouri-2019>
7. Missouri Department of Mental Health. (n.d.). Missouri Behavioral Health Data. Retrieved from <https://seow.dmh.mo.gov/DetailSearch.aspx>
8. Truth Initiative. (2019b, November 11). E-cigarettes: Facts, stats and regulations. Retrieved from <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>
9. Goodnough, A., Haberman, M., & Kaplan, S. (2020, January 3). With Partial Flavor Ban, Trump Splits the Difference on Vaping. Retrieved from <https://www.nytimes.com/2020/01/02/health/flavor-ban-e-cigarettes.html>
10. Public Health Law Center. (n.d.). E-Cigarette Regulations - Missouri. Retrieved from <https://www.publichealthlawcenter.org/resources/us-e-cigarette-regulations-50-state-review/mo>
11. American Nonsmokers' Rights Foundation. (2019, October 1). States and Municipalities with Laws Regulating Use of Electronic Cigarettes. Retrieved from <http://no-smoke.org/wp-content/uploads/pdf/ecigslaws.pdf>
12. Campaign for Tobacco-Free Kids. (2019, December). States and localities that have raised the minimum legal sale age for tobacco products to 21. Retrieved from [https://www.tobaccofreekids.org/assets/content/what\\_we\\_do/state\\_local\\_issues/sales\\_21/states\\_localities\\_MLSA\\_21.pdf](https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf)
13. Change Lab Solutions. (2019). PUP in Smoke Why Youth Tobacco Possession and Use Penalties Are Ineffective and Inequitable. Retrieved from [https://www.changelabsolutions.org/sites/default/files/2019-05/PUPinSmoke\\_FINAL\\_2019-04-17.pdf](https://www.changelabsolutions.org/sites/default/files/2019-05/PUPinSmoke_FINAL_2019-04-17.pdf)
14. Public Health Law Center. (2019, June). U.S. sales restrictions on flavored tobacco products. Retrieved from <https://www.publichealthlawcenter.org/sites/default/files/resources/US-Sales-Restrictions-Flavored-Tobacco-Products-2019.pdf>
15. Counter Tools. (n.d.). Restricting Tobacco Advertising – Counter Tobacco. Retrieved from <https://countertobacco.org/policy/restricting-tobacco-advertising-and-promotions/>
16. Campaign for Tobacco-Free Kids. (2019b, December 19). Broken Promises to Our Children. Retrieved from <https://www.tobaccofreekids.org/what-we-do/us/statereport>
17. Campaign for Tobacco-Free Kids. (2019c, December 18). Missouri. Retrieved from <https://www.tobaccofreekids.org/what-we-do/us/statereport/missouri>

