



EAST-CENTRAL DISTRICT Health Department

a nebraska *health+* center



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FOR IMMEDIATE RELEASE

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[Columbus, NE] – The recent changes to the legal smoking age in Nebraska have caused confusion as two new age-limit laws have gone into place at nearly the same time, one at the state level and one at the federal level. East Central District Health Department has received several calls on this issue from local retailers and citizens in the health district, so we wanted to offer some clarification on this confusing topic.

On May 30th, 2019, the Nebraska Legislature raised the legal smoking age from 18 to 19 with the passage of Nebraska Revised Statute 28-1418. The law took effect on January 1st, 2020. On December 20th, a provision raising the federal legal smoking age from 18 to 21 (HR 1865) was signed into law as part of a comprehensive spending package. Both bills applied to all tobacco and e-cigarette products.

Raising the minimum sale age for tobacco products is an effective strategy for reducing tobacco use amongst youth. Among high school students in Nebraska, 7.4% smoke and 9.4% use e-cigarette products. About 600 kids become daily smokers in the state every year. At the time of this writing, about 38,000 Nebraska youth will die prematurely from smoking. Further, 27.1% of all cancer deaths in Nebraska are attributable to smoking.

The Federal Tobacco 21 provision had originally granted the US Food and Drug Administration up to 9 months to amend its regulations. The FDA has since declared that, "It is now illegal for a retailer to sell any tobacco product—including cigarettes, cigars and e-cigarettes—to anyone under 21," indicating that the regulations were changed almost immediately. To further add to the confusion, Nebraska Attorney General, Doug Peterson, released a signed statement on Tuesday, December 31st, stating that law enforcement agencies in Nebraska will not enforce the federal law.

The Supremacy Clause of the US Constitution ensures that federal laws take precedence over state and local laws and statutes. It is possible that state laws can be more restrictive, but they cannot be less restrictive. For



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example, the federal minimum wage is \$7.25, while the Nebraska minimum wage is \$9.00. This means that employers in Nebraska cannot pay less than \$9.00, because this rate is still in compliance with the federal law.

Regarding the legal tobacco purchasing age, the federal age of 21 is the law of the land. This means that local retailers must comply with federal law and Federal Drug Administration regulations regardless of state statutes. Compliance of the federal law is tracked through the FDA database and compliance checks are performed to the federal standard by state departments receiving federal funding and third-party agencies contracted through the FDA.

The dangers from the use of tobacco products and e-cigarettes are becoming better known every day. Despite the initial confusion during the rollout, the federal Tobacco 21 Act is an important piece of legislation that will benefit the youth of Nebraska for decades to come.

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