Minimum Ages of Legal Access for Tobacco in the United States From 1863 to 2015

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In the United States, state laws establish a minimum age of legal access (MLA) for tobacco. These laws first appeared in the 1880s, and by 1920, between 14 and 22 states had MLAs of 21 years. After 1920, tobacco industry lobbying eroded them to between 16 and 18 years. By the 1980s, the tobacco industry viewed restoration of higher MLAs as a critical business threat. The industry’s political advocacy reflects its assessment that recruiting youth smokers is critical to its survival.

The increasing evidence on tobacco addiction suggests that restoring MLAs to 21 years would reduce smoking initiation and prevalence, particularly among those younger than 18 years. (Am J Public Health. Published online ahead of print May 19, 2016: e1–e8. doi:10.2105/AJPH.2016.303172)

RESULTS

By the late 1600s, there was widespread public awareness that those who used tobacco found it difficult to quit. In the 1700s, European studies reported that pipe smoking caused lip and throat cancers. The Bonsack cigarette-making machine, which reduced the cost of cigarette production, was patented in 1881. States began restricting the sale of tobacco to minors fearing that cigarettes, which could be sold individually and had become cheap, were uniquely appealing to children (see the box on page e2). Tobacco dealers should take notice that the law has gone into effect and that they are now liable to prosecution for selling tobacco under any circumstances to minors.

The belief by New York legislators that the Women’s Christian Temperance Union would help enforce cigarette laws was justified. The organization, best known for its efforts to pass the 18th Amendment to the Constitution banning alcohol sales, also opposed tobacco and gambling. With affiliated groups, it advocated laws that restricted the sale and use of cigarettes. By 1890, their efforts, combined with general distress over...
children smoking, led 26 states and territories to ban sale or use of cigarettes by minors, variously defined from those younger than 14 to 24 years.\textsuperscript{18–20}

In the early 20th century, concerns about lax enforcement led to increasingly strict laws. The \textit{Los Angeles Times} wrote in 1900 that, there is scarcely a tobacconist in Los Angeles who does not violate [the statute prohibiting tobacco sales to those younger than 16 years] at least a dozen times a day, as it is notorious that youths of tender years form a large proportion of the great army of cigarette smokers.\textsuperscript{21}

The \textit{Times} continued to write regularly on the use of tobacco by minors,\textsuperscript{22–24} reporting in 1908 that cigarette tobacco is very popular . . . it is not uncommon, it is said, to see a child not more than five years old smoking contentedly.\textsuperscript{25}

California increased its MLA for tobacco from 16 to 18 years in 1911. Reporting on the legislation, the \textit{Times} stated that radical changes were made, and dealers who have been making sales to youths upon the order of their parents or guardians, or upon the prescription of practicing physicians, may as well consign these orders to the scrap heap. . . . These orders may be genuine, and again the chances are good that many of them are spurious. In any event, the new law removes the temptation of procuring bogus orders.\textsuperscript{26}

Between 1895 and 1921, 15 states banned the sale of cigarettes entirely.\textsuperscript{19} Although these statutes were repealed by 1927, restrictions on sales to minors remained and were steadily expanded.\textsuperscript{19} Until the 1940s, increasing numbers of states regulated the sale of cigarettes to minors and steadily increased their MLAs (Figure 1; states with bans were classified as having an MLA of at least 21 years). In 1920, when Oregon voters enacted a constitutional amendment banning tobacco altogether, South Carolina had banned smoking in restaurants, and 14 states had passed laws that prohibited the sale and advertisement of cigarettes.\textsuperscript{27} By the end of 1920, all but 2 states had enacted some kind of age limit on
cigarette sales, and at least 14 had set an age limit of 21 years, with 8 more states limiting tobacco sales to “minors” without defining the term.

Cigarette manufacturers, at that time dominated by American Tobacco, developed extensive lobbying efforts against these new laws.11 Between 1890 and its court-ordered breakup in 1911, American Tobacco filed lawsuits challenging legislation that banned the sale of cigarettes, as well as recruited allies from the railroad industry, newspapers, and retailers to lobby on its behalf against license fees and tobacco bans.11 A historian of the Progressive Era noted in her book Cigarette Wars that the company had a reputation for attempting to bribe state legislators:

Yet another alleged attempt at bribery virtually forced the Indiana legislature to prohibit cigarette sales

The momentum to regulate tobacco faded after the United States entered World War I. Although Congress sought to ban tobacco in the military in 1917 on the grounds that it threatened the welfare of American troops, tobacco industry groups blocked the legislation by using organized letter-writing campaigns and press releases claiming that tobacco was an “absolute necessity” and that withholding it from soldiers would be “barbarous.”11 By 1918, the War Department included tobacco in soldiers’ daily rations, making the US government the world’s largest tobacco buyer.11 By the end of World War I, cigarette smoking had become widespread and socially accepted, even as medical evidence linking smoking to lung cancer was growing. In 1939, the longstanding holdouts of Ohio and Rhode Island set MLAs (of 18 and 16 years, respectively).

Reducing MLAs in the 1950s and 1960s

States chose different age limits when they first passed laws restricting the sale and use of tobacco and changed their MLAs over time. Illinois, for example, dropped its MLA from 18 to 16 years in 1920 then raised it to 18 years in 1964. By contrast, Iowa raised its MLA from 16 to 21 years in 1934 then reduced it to 18 years in 1964. Throughout the 1950s and 1960s, legislators in multiple states repeatedly attempted to lower the minimum age of legal access to tobacco to 18 or 16 years, in some cases successfully. In 1953 and 1955, Maryland and Oregon temporarily repealed their prohibitions on selling cigarettes to minors. Between 1954 and 1963, 10 states lowered the age of access from 21 to 18 years (and 19 years in Utah).28–35 In the late 19th and early 20th century, higher age limits were viewed as a means of ensuring better enforcement; 50 years later, the press reported that lowered age limits were proposed as a means of ensuring “stricter enforcement.”36,37

In the 1950s, tobacco companies were openly marketing to children. In 1952, a California tobacco industry lobbyist, V. W. Miller, wrote RJ Reynolds suggesting that the company develop branded signs claiming that cigarettes were not sold to minors at the point of sale as a form of advertising in response to California laws prohibiting sales to those younger than 18 years.38 The company rejected this proposal to avoid “antagonizing” youngsters who would “sooner or later become . . . customers.”39

Tobacco companies also began devoting increasing resources

Note. The age at which minors in the United States could purchase cigarettes declined over the course of the 20th century; state minimum ages of legal access have remained at 18 or 19 years since 1993, although a minimum age of legal access of 21 years was enacted in Hawaii in 2015.

FIGURE 1—State Minimum Ages of Legal Access to Tobacco: United States, 1920–1993
Beginning in 1953, Philip Morris arranged to have candy cigarettes distributed to children through its “Johnny Jr. Operation.”41 RJ Reynolds hosted tours of cigarette factories for school groups and scout troops with the expectation that the attendees would leave with a good image of the company.42–44 In a 1956 national sales meeting, American Tobacco representatives noted that, although college sales representatives were less productive than other employees, the company’s sampling programs at college campuses were an “excellent investment.”45 A 1961 marketing plan for Lorillard’s Spring cigarettes stated that those aged 15 to 24 years were the product’s “new market.”46 In 1962, students were recruited to represent tobacco companies and distribute samples on college campuses.47 Until 1963, multiple college newspapers were supported by revenues from cigarette advertisements and donations from the Tobacco Institute.48,49 All these programs explicitly targeted those younger than 21 years despite the fact that 5 states still had a minimum age of legal access for tobacco products of 21 years and 4 had ambiguous laws referring to “minor.”50

By the mid-1960s, several states were reconsidering the decisions to lower their MLAs. A 1963 paper by an American Cancer Society researcher in the Journal of Chronic Diseases noted that 18 years is the minimum age at which a substantial proportion of adults feel that a youngster might be permitted to choose his own course about smoking.51

Efforts to change MLAs were mentioned without comment in tobacco industry lobbyist reports tracking state legislative activity in 1959 and 1963.52,53 In 1963, attempts to raise the age of access back to 21 years in Massachusetts and Oregon failed at the same time that efforts to decrease the age of access from 21 years to 18 or 19 years were pending in Kansas, Michigan, Utah, Tennessee, and Washington.7,35,31,52 In 1960s and 1970s, 4 states—Colorado, Kentucky, Ohio, and Wisconsin—temporarily repealed their MLA laws. These changes in state laws suggested that minimum ages could be lowered but not permanently eliminated. A 1968 public relations study for Philip Morris surveyed business leaders, theologians, academics, and newspaper editors in part to identify the lowest minimum age of legal access that would be politically feasible. Most respondents believed that 18 years was the youngest, although the survey proposed that respondents consider ages as low as 14 years.53 The study also polled a broader cross-section of respondents; of these, a majority (69%) of both smokers and nonsmokers feel that some minimum age limit for purchasing cigarettes should be strictly enforced.54,55

By 1969, an American Tobacco state legislative activities report mentioned that he industry “did not oppose” laws proposed to prohibit sales to minors younger than 18 years.54 However, industry lobbyists actively opposed proposals to restore the minimum age to 21 years, as well as any proposed legislation that would prohibit distribution of free cigarette samples to minors.54 The tobacco industry viewed state minimum ages of legal access to tobacco as onerous. A 1969 summary report on state legislation prepared by an American Tobacco lobbyist states that, moreover, because smoking initiation occurs at a young age and people smoke less as they age, recruitment of new, young smokers was the company’s highest priority.55 The report noted that “attitudes point to a reduction in peer pressure to smoke and continuing erosion in start rates for young adults.”56

In 1971, a list of state minimum age laws compiled by the Tobacco Institute noted that, in the last seven years, five States lowered the age at which the prohibition of sales to minors applies, usually in a context of ensuring stricter enforcement. Prior to that, six States had lowered the statutory age below which sales are prohibited from 21 to 18 or to 15.57,58

Tobacco Industry Resistance in the 1980s and 1990s

In the 1980s, the American Medical Association (AMA) and US Department of Health and Human Services viewed tobacco promotions targeting youths and the resulting youth tobacco use as an increasingly serious public health problem.55,56 In 1985, the AMA proposed new national restrictions on tobacco marketing, including increasing the national MLA to 21 years and banning vending machine sales.57,58 Tobacco companies viewed these proposals as a critical business threat. The 1986 Philip Morris 5-year corporate strategic plan noted in its “sociopolitical” section that “These [AMA] resolutions strike at the core of PM–USA’s business.”59,60 The company was concerned that the combination of health concerns, tax increases, and decreasing social acceptability made tobacco use less appealing;
To address this, the Tobacco Institute noted that enforcement of minimum age as a critical issue. A 1990 Tobacco Institute memo stated that enforcement of minimum age was crucial for states that attempted to increase the minimum age above 18 years. Tobacco Institute lobbyists continued to monitor states that attempted to increase the minimum age above 18 years on a weekly, monthly, and quarterly basis. Despite the industry’s own records, which showed that the age of access had been 21 years in many states, industry representatives argued in radio programs and in press releases that any increase in MLAs was historically unprecedented.

In 1992, Congress enacted the Synar Amendment in an effort to ensure that all states restricted the age of access to a minimum of 18 years by tying the receipt of Substance Abuse Prevention and Treatment Block Grant awards to enforcement of such laws. By 1993, all states had changed their MLAs to 18 or 19 years.

A Tobacco Institute 1998 public statement on age limits, which proposed industry-written legislation to states to permanently set MLAs to 18 years, conflated historical misrepresentation with claims that young adults were desperate to begin smoking:

The 18-year-old minimum sales age is appropriate and should not be changed. Eighteen-year-olds are deemed mature enough to serve in the military, to enter into contracts and to marry; and 18 typically is the age at which young people leave home for college. . . . Proposals to raise the minimum sales age simply do not address any “youth” issue—unless one adopts a new definition of “youths” to suit the occasion... It is therefore difficult to see what purpose would served [sic] by raising the minimum sales age for tobacco. The main effect of doing so may simply be to drive 18–20 year-olds to find other means of obtaining tobacco, legal or illegal. . . . The 21-year-old minimum sales age for alcohol is an exception to the general rule that 18 is the age at which young people are treated as adults in our society [emphasis in original].

The Tobacco Institute claimed that there was sufficient justification to retain a lower age limit indefinitely:

Under legislation passed by Congress in 1992, moreover, the states are encouraged to have in effect laws prohibiting the sale or distribution of tobacco products to persons under 18, and the FDA, in its tobacco rule, established 18 as the national minimum sales age [emphasis in original].

In 1998 the Tobacco Institute continued to lobby in states that proposed to “increase smoking age to 21,” which at that point included Illinois, Indiana, Michigan, New York, Ohio, and Wisconsin, placing these states on its “problem” list. Lobbying reports written for Philip Morris between 1996 and 1999 explained that industry representatives were “proactively” opposing efforts to increase state MLAs as new proposals were drafted. By that time, many outside the industry no longer realized that MLAs had once been 21 years or more in many states.

Resurrecting Higher MLAs in the 21st Century

Efforts to increase MLAs gained traction in the 21st century. In 2005, the board of health in Needham, Massachusetts, raised its MLA to 21 years with little media attention. Evidence showing that smoking rates in Needham had declined by 50% in the wake of the change led other Massachusetts localities to pass similar laws. Between 2012 and 2015, 93 localities in 7 states increased their MLAs from 18 to 21 years. These increases were opposed by Philip Morris and Lorillard, which actively lobbied against an effort to increase the MLA in Colorado, and against local proposals in Massachusetts, arguing that states and localities should wait for congressional or FDA action despite the fact that FDA is prohibited from increasing the MLA above 18 years.

DISCUSSION

Although MLAs greater than 18 or 19 years have been largely forgotten, they have extensive historical precedent. Restricting the sale and use of tobacco for individuals younger than 21 years was common throughout the late 19th and early 20th centuries in the United States. During those years, higher MLAs were also
viewed, with justification, as a means of improving enforcement of tobacco control laws.

Concern about smoking of cigarettes by youths, which in the late 19th century was observed in children aged as young as 5 years, triggered the first regulation of tobacco.20 In the Progressive Era, from the 1890s to the 1920s, laws restricting cigarette use mirrored laws restricting alcohol use, and 15 states banned the sale or possession of tobacco entirely. These laws were later overturned by courts (Washington state in 1893) or state legislatures (during the post–World War I smoking boom).11 Cigarette MLAs, however, remained and expanded to other states. Unlike alcohol MLAs, tobacco MLAs declined throughout the 20th century because of aggressive tobacco industry lobbying. In 1992, the tobacco industry successfully used the federal government’s attempt to set a minimum MLA of 18 years through the Synar Amendment to get states to treat 18 years as the maximum age restriction.

The tobacco industry has made extensive efforts to maintain low MLAs for tobacco, arguing that proposals to increase MLAs are likely to face significant political opposition. In actuality, statutes increasing MLAs reflect broad public support.85 As the industry has known since at least the 1960s, raising tobacco MLAs would reduce tobacco use. Efforts in the 21st century to raise tobacco MLAs reflect increasing understanding of the process by which individuals become addicted to tobacco. Almost 90% of smokers begin using tobacco before the age of 21 years,60,86 and these years are associated with the transition from experimental or occasional smoking to daily smoking.82,87-88 Furthermore, young adult smokers aged 18 to 20 years often provide cigarettes to younger friends and family members.89 A 2015 Institute of Medicine report noted that an increase in tobacco MLAs to 21 years would reduce adult smoking prevalence by 12%, and an increase to 25 years would decrease prevalence by 16%, as well as reduce tobacco use by those aged 15 to 17 years.2

Our study has limitations. The Truth Tobacco Documents Library is not comprehensive, and is particularly limited between 1880 and 1920. Newspaper archives from this period are also incomplete. In multiple states, there was no record of how lawmakers defined the term “minor” at the time that laws were passed.

Throughout most of the 20th century, the tobacco industry aggressively encouraged and defended lowered MLAs for tobacco. This political advocacy reflects the tobacco industry’s assessment that recruiting youth smokers is critical to its economic survival. This assessment and the increasing body of evidence on tobacco addiction among young adults suggest that restoring MLAs to 21 years would reduce smoking initiation and prevalence, particularly in youths younger than 18 years.

CONTRIBUTORS
D.E. Apollonio conducted the documents search and drafted the article. Both authors conceptualized and designed the article, interpreted the results, reviewed and revised the article in preparation for publication, and read and approved the final article.

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