

**Mission:**  
 To improve Kentucky's health by protecting Kentuckians from secondhand smoke and other tobacco emissions, and by reducing the high rate of smoking and tobacco use in the Commonwealth.

**Steering Committee:**  
 American Heart Association  
 American Stroke Association

American Lung Association

Baptist Health

Campaign for Tobacco-Free Kids

Foundation for a Healthy Kentucky

Humana

Kentucky Cancer Foundation

Kentucky Center for Smoke-free Policy

Kentucky Chamber of Commerce

Kentucky Council of Churches

Kentucky Equal Justice Center

Kentucky Health Collaborative

Kentucky Health Departments Association

Kentucky Hospital Association

Kentucky Medical Association

Kentucky Nurses Association

Kentucky School Boards Association

Kentucky Voices for Health

Kentucky Youth Advocates

Learn More:  
[www.smokefreetomorrow.org](http://www.smokefreetomorrow.org)

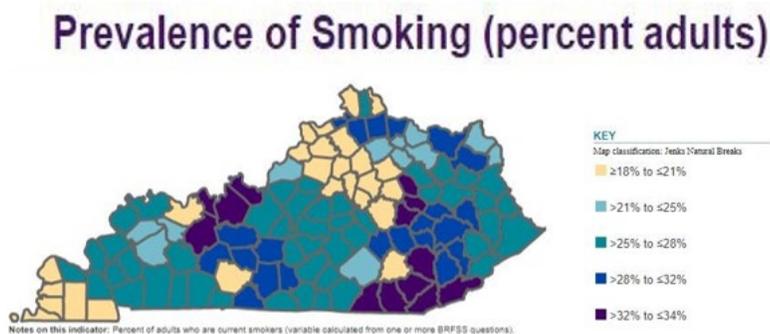


## Tobacco Marketing and Sales: Local Control to Improve Community Health

The Coalition for a Smoke-Free Tomorrow supports adopting a new state law to give county and city governments in Kentucky control to regulate the use, display, sale and distribution of tobacco products, including e-cigarettes. Currently, local control is prohibited by state law.

### Impact of Tobacco Use in Kentucky

Adult smoking rates for 2016-2018 in Kentucky range from 10 percent in Oldham County to 49 percent in Monroe County; the statewide rate is 24 percent<sup>i</sup>. Youth cigarette smoking has been declining, but that's not the case for e-cigarettes, which are the most popular tobacco product among youth both nationwide and in Kentucky; 26.1 percent of Kentucky high school students and 17.3 percent of the state's middle schoolers currently use e-cigarettes<sup>ii</sup>.



Every year in Kentucky, smoking directly causes 8,900 deaths and leads to more than \$1.9 billion in health care costs, including \$128 million due to secondhand smoke exposure<sup>iii</sup>. Nationwide, smoking causes one in five deaths – more than HIV, illegal drug use, alcohol use, motor vehicle injuries and firearm-related deaths combined<sup>iv</sup>. Secondhand smoke exposure causes another 49,000 nonsmoker deaths in the United States<sup>v</sup>.

### About Local Control

The U.S. Surgeon General's 2014 report on the health consequences of smoking described local tobacco control policies as the "catalyst for transitioning social norms around smoking throughout the country"<sup>vi</sup>.



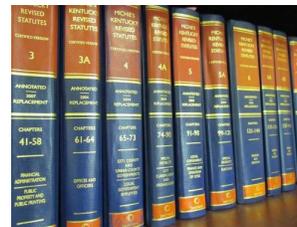
Local governments are uniquely positioned to meet the needs of the people who live in their communities. They see first-hand how effective tobacco control policy can evolve over time, and can respond more quickly to local needs, tailor ordinances to meet those needs and develop effective enforcement measures. These measures can serve as

laboratories for innovative approaches to addressing specific issues related to smoking, “vaping,” dipping and other types of tobacco use.

## Tobacco-Control and Preemption in Kentucky

Kentucky state law currently includes a limited number of tobacco-control measures:

- KRS 438.047: Prohibits tobacco billboards within 500 feet of school property.
- KRS 438.310: Sets the legal minimum age for purchasing tobacco products at 21.
- KRS 438.345: Prohibits the use of all tobacco products, alternative nicotine products, and vapor products on school property.



Kentucky city and county governments generally have broad powers under the state constitution to adopt ordinances to protect public health. That said, KRS 438.300 prohibits – or preempts – local jurisdictions from enacting tobacco-control measures regarding the use, display, sale, and distribution of tobacco products sold in the state<sup>vii</sup>. This language creates a ceiling, barring communities from passing stronger versions of virtually all measures to reduce tobacco use in the Commonwealth (communities CAN adopt indoor smoke-free laws).

## The Role of Big Tobacco in Reducing Local Control

Large tobacco manufacturers have strongly supported tobacco-control preemption measures in state laws to overturn existing local laws and prevent new and stronger measures from being enacted<sup>viii</sup> since at least 1985.

By 1996, 31 states including Kentucky had enacted state preemption measures.

*“While we’re not married to any particular form of pre-emption language, we’re dead serious about achieving pre-emption in all 50 states.”*

[Walls, T.]. CAC Presentation#4, draft 7/8/94. Philip Morris. July 8, 1994.

The tobacco manufacturing industry has lobbied for preemption through explicit legislative intent language (as is the case in Kentucky in KRS 438.300) and via comprehensive statutory language that implies preemption. The language can be included in tobacco-control bills or in completely unrelated legislation. In some states, the tobacco industry falsely argued that preemption language was necessary to avoid losing federal block grant funds, a move that led the U.S. Department of Health and Human Services to publish clarifying language rejecting the industry’s claim<sup>ix</sup>.

## The Solution

Kentucky should repeal 1996 statutory language<sup>x</sup> that preempts city and county governments from adopting regulations that govern how tobacco products are displayed, sold, distributed and used. This would enable communities to enact policy solutions to protect and improve local health more quickly than statewide laws can be enacted to address trends such as rapid growth in tobacco product use (for example, the epidemic in e-cigarette use by adolescents and teens) and external factors that exacerbate the harmful effects of smoking (such as the COVID-19 pandemic). Cities and counties could, for example, govern how tobacco products are displayed and advertised in local retail stores, require health warnings on displays, set standards for safe disposal of tobacco product devices and trash, restrict sampling, limit the types of tobacco products that can

be sold, determine how many tobacco retailers can operate in a given area, and allow buffer zones between tobacco retailers and schools or playgrounds.

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## A Simple Fix

Support a new state law to give county and city governments in Kentucky control to regulate the use, display, sale and distribution of tobacco and vapor products.

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<sup>i</sup> <http://www.kentuckyhealthfacts.org/data/topic/show.aspx?ind=6>

<sup>ii</sup> 2019 Youth Risk Behavior Survey, <https://education.ky.gov/districts/Documents/2019KYH%20Trend%20Report.pdf> and <https://education.ky.gov/districts/Documents/2019KYM%20Trend%20Report.pdf>

<sup>iii</sup> <https://www.cdc.gov/tobacco/about/osh/state-fact-sheets/kentucky/index.html> and <https://www.uky.edu/breathe/tobacco-policy/quick-facts-topic/smoke-free-and-legal-issues/legal-authority-regulate-smoking>

<sup>iv</sup> <https://www.cdc.gov/statesystem/factsheets/preemption/Preemption.html>

<sup>v</sup> <https://ukhealthcare.uky.edu/secondhand-smoke>

<sup>vi</sup> US Department of Health & Human Services. *The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA; 2014. URL: [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-anniversary/index.htm#report](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report).

<sup>vii</sup> KRS 438.300, <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=19104>

<sup>viii</sup> <https://www.cdc.gov/statesystem/factsheets/preemption/Preemption.html>

<sup>ix</sup> Ibid., page 7.

<sup>x</sup> KRS 438.300, <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=19104>