



Episode Details:

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Description: In this episode, we interview Katherine Ungar, Executive Director of the [Preventing Tobacco Addiction Foundation](#). Learn about how interest in policies raising the minimum legal sales age to 21 (or "[Tobacco 21](#)" policies) has grown in the US, what makes a strong Tobacco 21 policy, and pitfalls to avoid. We discuss the federal Tobacco 21 bills that have been introduced in Congress and how Tobacco 21 fits into the larger tobacco control picture.

Transcription:

Mollie Mayfield You're listening to the Counter Tobacco Podcast. [Music]

Mollie Mayfield I'm Mollie Mayfield, Managing Editor of CounterTobacco.org and your host for today's episode. Today we're talking with Katherine Ungar, the Executive Director of the Preventing Tobacco Addiction Foundation. Katherine joined the Preventing Tobacco Addiction Foundation in 2018. She holds a law degree from the Ohio State University Moritz College of Law where she graduated in the top of her class. During law school, Katherine worked as a public health law research assistant focused on tobacco control issues. Following graduation, she worked as an associate in a litigation department of Ice Miller LLP. Katherine is involved at advocating for Tobacco 21 and retail licensing ordinances in multiple communities across the nation. She is passionate about influencing public health policy to improve health outcomes in our communities. In her free time, she loves to travel and explore the outdoors. Well, do you want to start off by telling us a little bit about the Preventing Tobacco Addiction Foundation and the work that you all do?

Katherine Ungar Sure. So the Preventing Tobacco Addiction Foundation actually was founded in 1996, so we've been around for a long time. I was not there when it was founded but our president, Dr. Rob Crane, started the organization and started advocating for Tobacco 21 before it kind of had the momentum that it has now. We advocate, educate our resource for and work with community members at the local level to adopt [inaudible] and adopt tobacco control initiatives. And primarily our focus is on Tobacco 21, and as we'll talk about, I think, during this podcast, Tobacco 21, while it sounds very simple actually entails a lot of other components, so you're really kind of changing the structure of the laws around youth access for tobacco.

Mollie Mayfield Yeah. So thinking about that history, so as of today, we have, I think, 14 states and over 475 cities that have adopted or enacted rather-- signed something into law for raising the age to 21. It seems like the policy has really just caught on fire in the past



few years. Can you talk a little bit about how we got to where we are today with the surge of interest in Tobacco 21 policies?

Katherine Ungar

Yeah. Definitely. So I will say there are two other states kind of in the pipeline to add to that number - we're awaiting the governor's signature in New York and potentially Texas - so more to come on that. I think the numbers will only continue to grow, but as you mentioned, I think in the last year, really, we've seen this policy explode, and I think that is a result of maybe two or three things. I think, first of all, this policy really moved at the local level. It moved quickly. I think it's a policy people can understand and it engages community around it because obviously tobacco is the leading preventable cause of death in the United States, and so this isn't an issue that went away. So there's kind of that idea but then there's also the youth vaping epidemic that happened, you know, last year, this year. It's happening as we speak right now which people are realizing we got to do something. And again, I think at local level this policy is something that is easy for councilmembers to understand and advocate for. And the question is can they and will they do it the right way? So we'll talk about that. And so then I think why we're seeing it at the state level is we had other states pass it last year but also when we have local communities kind of spreading this policy really quickly that's when the states kind of grab onto these ideas. That's why preemption is such a threat to public health because we see a lot of local innovation at the local level. And what happens at the local level in public health often times will bubble up to the state level.

Mollie Mayfield

For anyone unfamiliar with the term, preemption is when the authority of one level of government is limited by a higher level of government. For example, some state laws may say that city and county-level governments within the state cannot pass stronger or stringent laws than what the state requires on that issue. So if a state is preempted on age of sale and has a statewide minimum age at 18, cities and counties within a state can't raise the age to 21 on their own. It has to be done at the state level. There are lots of nuances in the way that this can work, but that's the basic idea. To learn more about preemption, visit countertobacco.org/preemption.

Katherine Ungar

And that's fine if the state wants to be the floor of that policy, but we don't want it to be the ceiling. We don't want to tell local governments what they can and can't do because they are situated to protect the public health. So I think it's really just the vaping epidemic, but also, that this policy has moved so quickly at the local level around the country where it can.

Mollie Mayfield

Absolutely. So thinking about what the right way to do this is, can you talk a little bit about what that is? And, kind of, if states and localities are interested in passing their own Tobacco 21 policy, what kinds of things should they include to make sure that it's a strong policy?

Katherine Ungar

Yeah, of course. So let me first just give a little shout out to the national partners who we all kind of came together and worked to create a model policy so that there would be this document that's accessible to anyone, to any community member listening, any council member. Whoever's thinking about this policy should feel free to access and it is on our website Tobacco21.org, the Tobacco 21 Model Policy which includes the components that I will now talk about. And I'm not sure if it's on the Counter Tools website, but maybe we can [crosstalk].



Mollie Mayfield

It's on CounterTobacco.org.

Katherine Ungar

Okay. Great. So you can access it from many avenues, but I suggest you do if you're considering Tobacco 21. But some of the components, just to touch on it, I'll put it in two categories. There are some components that get inserted and make the policy weaker. So for example, a military exemption or a phase in or adding preemption, and that would, kind of, only happen at the state level. But then there are components that need to be changed to ensure that this policy is enforced adequately. So for Tobacco 21, it's really important that we know who is selling the product, right? So when we are enforcing a minimum sales age, we need to figure out, who are the retailers? Where do they get these products from? And there are many locations. There are some states that have no way of tracking who their retailers are. So when you talk about enforcing a minimum legal sales age, youth access at the retailer, right, point of sale - if you don't know who's selling the product, it's very hard to then enforce that kind of policy. So to achieve that enforcement, it's important that we have a tobacco retail license or tobacco retail permit and this is something that can be done at the local level in some jurisdictions, if you're legally allowed to do that, and at the state level. And so, for example, you know, there are some states, Virginia, I was just speaking in South Carolina, where they don't have any kind of license for tracking who's selling at the retail. So they might have wholesaler or distributor, but not at the retailer. So first it's important to get, who are your retailers? Know who they are. Then once you know who your retailers are it's important to do compliance checks, realistic compliance checks, where you go in using an underage youth to attempt to buy the product. And so that way if they do sell, then they are penalized, whatever that might look like. And along those lines, to incentivize compliance, we want to make sure that the penalties are adequate to really incentivize that kind of compliance. And what we've seen, I believe it was in Oregon, where they had some compliance checks done. And there was one retailer-- and I'm going to forget the name, but I can get it to you after this podcast. But there was one retailer who kind of took it upon themselves to do a lot of internal compliance checks. So they wanted to make sure they were complying with the law, so they internally had their own people go in and check each other. So that's kind of a best-case scenario, but that is what we're trying to do here is create a culture of compliance through these kind of realistic compliance checks.

Mollie Mayfield

The retailer in reference here is Plaid Pantry, a convenience store chain in Oregon and Washington states. The store not only conducts their own undercover sting inspections, they do extensive employee trainings, checking in on every new clerk twice within their first 90 days on the job, according to a May news story from KGW8 in Portland. Plaid Pantry also rewards employees for passing inspections with cash bonuses. According to the Oregon Health Authority, out of 177 state tobacco compliance inspections since 2015, Plaid Pantry had only five violations. That's a 3% violation rate, and that's compared to 7-Eleven's record of 41 violations out of 265 inspections - a 15% violation rate.

Mollie Mayfield

I think one of the things that I love about the tobacco retailer licensing solution as a way to implement Tobacco 21 is that then if states or localities are worried about funding for those compliance checks, they can set the fee that retailers have to pay



each year at a level that would cover the cost of the administration and enforcement and include those compliance checks.

Katherine Ungar

Absolutely. Absolutely, and we are seeing-- I mean, as Tobacco 21 has evolved in this way, we have seen a lot of communities grasp that TRL, tobacco retail licensing scheme, to help them with implementation of their Tobacco 21 laws. And along that line, I mean, that also allows for those kind of rogue retailers who refuse to comply. It allows the city or state or whoever is kind of the county to revoke selling privileges, so to suspend that license for a certain amount of days or to take that license away for a year, or however they decide is right for them. But that's kind of what would allow the cities to really have that leverage. We know the industry will pay to play all day, so a \$300 fine is not going to be as good of an incentive as, "You're going to not be able to sell tobacco products for two months," or whatever it may be.

Mollie Mayfield

So speaking of the industries, we've had a couple of big tobacco companies, Altria and Juul, who now also-- Altria is now invested in Juul as well-- come out publicly in support of Tobacco 21 policies. I'd imagine that their reasons might be a little bit different than some public health reasons. What's your take on that?

Katherine Ungar

Yeah, so I think as this policy has exploded, if you will, in the last year, I think this is a policy they've realized-- they've lost control of it, but in that same sense, now they've gained control of it, right? So they realized it was going to go, and it's going to go quickly. It was going, and it was going quickly. I think their engagement has probably made it go even faster. And they've realized that because there are so many components to Tobacco 21 - it's really not just crossing out 18 and putting 21 - they can get a lot of things that are good for them kind of snuck into these bills. And we've seen that happen in Arizona, in Florida, and these are bills that have not passed, but still bills that we've seen arise. And so when I talked about in the beginning, this idea of preemption, that's what we're really kind of afraid of, and what we're seeing. It's kind of a negotiation if you will. It's like, "Okay, we're going to give you Tobacco 21, but now we want to preempt local movement around marketing, around flavors", or what have you, whatever it might be. Or they might make sure there's no enforcement because we know a lot of the states aren't enforcing like they maybe should. So things like that, where I think they're trying to keep a lot at a minimum...I mean, you know, that's my take on it. I think they are worried about other tobacco control policies, and so pre-empting local movement on that is a good thing for them, but, you know, not fact.

Mollie Mayfield

Sure. And so we've also seen some bills introduced at the federal level. Do you want to talk about some of those?

Katherine Ungar

Yeah, for sure. So there are a bunch of tobacco control bills that have kind of been introduced at the federal level. I have really kind of been following the ones that deal with Tobacco 21. And there's one that kind of deals with a bunch of issues. But so I think we have the Schatz Bill, so that is raising the age to 21. That's done kind of at the federal level through the Smoking-- Family Smoking and Prevention Act of 2009. And then we have McConnell's recently introduced bill, which it is similar in that it does raise that federal age, but it will also update what is called the Synar Amendment. And so just for a little bit of history. Going back into 1992, we had the Synar Amendment, and the Synar Amendment



required the states to get certain block grant funding from the Substance Abuse Mental Health Services Act to create a minimum sales age of 18 at the state level. And so that's why we see a lot of states who have either 18 or 19 as their minimum legal sales age, because in order to get that money, kind of like the alcohol tied to the highway funding, in order to get that money, they had to pass the law. So McConnell feels different than Schatz Bill because it brings in that Synar Amendment. And what it will do is it's going to require the states, by 2022, depending on when your legislative session is, to update your state youth access laws. So whatever it might be, 18 or 19, to 21 to receive that funding. And so I think there's two ways of looking at that, that's kind of good on one hand because then you are-- it's kind of the-- what our President likes to call the boots and suspenders approach because now you have this SAMHSA funding, or sorry, the Synar funds going to enforcement at 21. But on the other hand, it kind of leaves open the door for the industry to engage at the state level and again, it kind of introduced that preemption. I mean, we fight it, but they are powerful at the state level, they are in the back rooms, and they have those relationships. So we're worried that that could then open the door to further and future preemption.

Mollie Mayfield

Absolutely. It sounds like if that bill passes, it'll be really important for states to know some of those best practices that are embedded within that model policy.

Katherine Ungar

Definitely. Definitely. And there's also the Pallone Bill, Shalala Pallone Bill, which actually addresses a lot of tobacco control issues. It deals with internet sales access, the flavor issue that we're all facing, and it would ban certain flavors first in an amount of time unless they can prove that it really is helping with cessation and a whole bunch of other things. I can pull it up really quickly but I think that's a bill that we find to be very comprehensive, and then it's addressing a lot of the different elements of youth access because we know that kids are enticed by the flavors. We know that they can get it online. So this bill is very comprehensive in that it's addressing a lot of those issues. But going back to kind of all three of those bills, what we don't see in any of those, what we'd like to see if we could have it our way would be just a stepped-up enforcement from the FDA. So right now, for example, a no-sale order issued by the FDA is something that's possible, but is rarely done. And it's only done after kind of five violations of selling to underaged. And we just know that's really hard to do. We'd like to see that kind of happen sooner to incentivize compliance. And there's also an interesting-- in The Family Smoking Prevention Act, they have two different kind of fines structures, if you will, for selling to underage. One is for if the retailer implements this training program. And one is kind of if they don't. And it's the training program kind of created by the FDA. But what we think and what we know-- and again, some of the stuff is a little bit hard to understand, but there is no training program. So the FDA is using that step-down fine without actually having that training program issued or being conducted in these retailers. So maybe going after that little higher fine amount would incentivize more compliance. And we know that they're not getting to every retailer. And so some retailers aren't seeing a compliance check at all in an entire year. So we'd really like to see in these bills some more enforcement around youth access.

Mollie Mayfield



- Katherine Ungar: Absolutely. And it sounds like, too, that for-- of course, we want to see that at the federal level. And then in addition, if localities, cities, counties, and then also states pass their own laws, then they can also make sure that there is an additional presence, that retailers are getting visited at least once per year.
- Mollie Mayfield: Yes. That would be it. Yes. Yes. Yes.
- Katherine Ungar: Okay. So how do you see Tobacco 21 fitting within the larger tobacco control landscape?
- Mollie Mayfield: Yeah. I see it as it's not the solution. I don't think we've ever said this is the solution. But this is a part of the puzzle. And I think it's a complicated puzzle. There's a lot of pieces. And there are some things we know like tax. We know tax works with tobacco. So it's a very-- I think it's an important part, right, because we do have some-- I mean, the IOM reports predict decreases in youth initiation. And I think, especially with the vaping epidemic, we know that we want to stop that initiation because it is so addictive, and we want to stop it early. 95% of adult smokers begin before the age of 21. So I think 21 can be an important policy when we talk about youth initiation and prevention. But it's, again, a small piece of the puzzle. I think we're going to have to look at the flavor. I think the flavors are something that's kind of new. I mean, obviously there's the menthol issue, but now we see creme brulee and mint and vanilla. I mean you name it, and there's a flavored e-cigarette out there. I think I was at a presentation, and there was like fried chicken and waffles or fresh cinnamon bun. So that's going to be definitely a tobacco control priority to eliminate those kind of enticing flavors, for sure.
- Katherine Ungar: Absolutely, yeah. But it is exciting how much momentum we're seeing. Maybe work on Tobacco 21 policies will help encourage some work on some additional policies as well to help complete that puzzle.
- Mollie Mayfield: Yeah. And I mean, and that's, again why-- and I know I've said it three times, but I think that's my goal for this podcast really, just to let people know-- I mean, that's why preemption is such a threat to public health because, again, those flavor bans or flavor restrictions—you know, there's kind of two: there's flavor bans where you can't sell certain flavors or flavor restrictions where you're limited to a specialty store or something like that, right, so only 21 and up can go in that store. I mean, those things, we're terrified, we don't want to see preempted at the state level. We want to make sure local governments have control and can regulate in that space.
- Katherine Ungar: Absolutely. Let's see. Is there anything else that you think folks should know as they are learning more about Tobacco 21 policies?
- Mollie Mayfield: I just think that it's a great way to get engaged in your local community. There are some states that unfortunately are preempted from doing Tobacco 21 at the local level. But if you live in a state where you're not, I encourage you to get engaged and work with your health department, your city council to think about, consider, or maybe adopt some Tobacco 21 or flavor, or whatever it might be, because I think this issue isn't going away. It might only, unfortunately, be increasing as we see these numbers - 3.6 million kids kind of addicted to these nicotine products. So I think that what I've seen with Tobacco 21 in my work is it's just a very invigorating policy at the community and local level. But then at the state level, it's a policy that is very



complex and can get easily diluted by industry engagement. So I think just be vigilant if you're at the state level, and it's important to really stop and kind of read the law. There's a lot of components to it. It's not just crossing out 18 and inserting 21.

Mollie Mayfield

Absolutely. Well, thank you so much for your time today, Katherine, and for sharing your wisdom with everyone who's interested in making some progress on this issue.

Katherine Ungar

Yeah. Of course. And if you need anything else or anyone wants to reach out, our website is available and our contact info is on that. So thank you.

Mollie Mayfield

Absolutely. And I'll remind folks again that that model policy that you mentioned, too, is available on the Tobacco21.org website and also on CounterTobacco.org.

Katherine Ungar

Great. Thank you so much.