



# POLICY PRIORITY: RESTRICTING FLAVORED TOBACCO PRODUCTS AND E-CIGARETTES



## POLICY RECOMMENDATION



- **Prohibit the sale of all flavored tobacco products.** A comprehensive prohibition on the sale of all flavored tobacco products provides a significant public health benefit which counters the tobacco industry’s marketing tactics and reduces tobacco use, especially among vulnerable populations.<sup>1</sup>
- **A comprehensive model policy** should include all flavored tobacco, nicotine, and e-cigarette products (including e-liquids). This policy should also prohibit menthol and mint.
- **Delay (e.g., 6 months) between bill passed and the effective date**, providing tobacco retailers time to sell their existing inventory of flavored tobacco and providing government time to plan for implementation and enforcement.
- **Do not prohibit or penalize the purchase, use, or possession** of flavored tobacco products. Only tobacco retailers that sell flavored tobacco products should be subject to penalty.
- **Promote health equity** by prohibiting the sale of flavored tobacco/nicotine products including menthol. Menthol cigarettes and other flavored tobacco products pose a significant threat to health, especially for populations targeted by the tobacco industry, such as youth, low-income, LGBTQ, and communities of color. These groups disproportionately bear the burden of tobacco-related harms.<sup>2</sup>

## A BRIEF HISTORY OF TOBACCO

- **1920s** Tobacco companies began adding menthol to cigarettes to make them appear less harsh and more appealing to new and current users. Flavors such as menthol make it easier to start commercial tobacco, and harder to quit.<sup>3</sup>
- **Late 1990s** The Master Settlement demonstrated the tobacco industry’s long history of marketed misinformation about health harms of tobacco use and nicotine addiction to target specific populations such as youth, individuals with low income, LGBTQ, and communities of color.<sup>4,5</sup>
- **2006-2007** E-cigarettes entered the U.S. marketplace.<sup>6</sup>
- **2014** E-cigarettes skyrocketed in popularity among youth.<sup>7</sup>
- **2018** The U.S. Food and Drug Administration and the U.S. Surgeon General declared an “epidemic” of youth e-cigarette use. Evidence shows that minors are especially attracted to flavored e-cigarette products.<sup>9</sup>

- Scientific evidence demonstrates that flavored tobacco products have the greatest appeal to youth and play a major role in initiation of tobacco/nicotine product use.<sup>10</sup>
- Flavored cigarettes remain on the market, as do many other flavored tobacco products, such as e-cigarettes (vapes), cigars, smokeless tobacco, hookah tobacco (“shisha”), little cigars, pouches, and dissolvable tobacco products (e.g., strips and orbs), as well as flavored component parts (e.g., blunt wraps).
- E-liquids for electronic cigarettes/vapes come in more than 15,500 different flavors.<sup>11</sup>

On September 22, 2009, the **Family Smoking Prevention and Tobacco Control Act (TCA)** gave the FDA authority over tobacco products including prohibiting cigarettes with specific characterizing flavors, other than menthol.<sup>12</sup> As of January 2024, only 23 tobacco flavored e-cigarettes are authorized for sale in the United States, all other flavored e-cigarettes may not be legally marketed or sold in the U.S.<sup>13</sup>

In Nevada, preemption prevents local authorities from passing laws that differ from or are stricter than the state law. **Currently, Nevada has no additional restrictions on tobacco flavoring beyond federal regulations.**

Nevada was awarded \$14.5 million of as part of a multi-state action against e-cigarette maker Juul Labs. The investigation revealed JUUL intentionally marketed to youth and manipulated the chemical composition of the product to make the vapor less harsh on the throats of “young and inexperienced” users.<sup>14</sup>



## THE TOLL OF TOBACCO (2021 NV YRBS AND 2023 NYTS)



**NEVADA**

- High school students who have ever used vapor products: **36.6%**
- High school students who used vapor products in the last 30 days: **17.5%**.<sup>18</sup>
- **10%** of Nevada high school students tried e-cigarettes before the age of 13.<sup>17</sup>
- Middle school students who have ever used vapor products: **12.8%**.<sup>17</sup>
- Middle school students who used vapor products in the last 30 days: **5.4%**.<sup>17</sup>



**USA**

- **2.8 million** U.S. high school and middle school students currently use tobacco and nicotine products.<sup>19</sup>
- **22.2%** of U.S. high school and middle school students report having ever used any tobacco products.<sup>18</sup>
- In 2023, nearly **9 in 10 (86.9%)** youth (**grades 6-12**) who reported using tobacco products used flavored varieties.<sup>18</sup>
- **More than 4,300 kids (under 18)** try e-cigarettes for the first time each day.<sup>20</sup>
- In the U.S. **nearly 8 out of 10** adolescent e-cigarette consumers use a flavored product, with fruit, candy/desserts/other sweets, mint, and menthol reported as the most popular flavors.<sup>21</sup>
- Nearly **82%** percent of all African Americans who smoke use menthol cigarettes.<sup>22</sup>

1. Policy Options for Restricting Sales of Menthol Cigarettes and Other Flavored Tobacco Products For local governments in California & across the country. <https://www.changelabsolutions.org/product/policy-options-restricting-sales-menthol-cigarettes-and-other-flavored-tobacco-products>
2. Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion; Menthol Smoking and Related Health Disparities. [https://www.cdc.gov/tobacco/basic\\_information/menthol/related-health-disparities.html#print](https://www.cdc.gov/tobacco/basic_information/menthol/related-health-disparities.html#print); (Last reviewed Nov 2, 2023) See also: <https://stateline.org/2024/02/29/states-consider-menthol-cigarette-bans-as-feds-delay-action/?eType=EmailBlastContent&eid=e0c875c2-0b6e-4632-99e1-abc8af6b15ba>
3. U.S. Food and Drug Administration. Scientific Review of the Effects of Menthol in Cigarettes on Tobacco Addiction: 1980–2021. 2022. <https://www.fda.gov/media/157642/download>.
4. <https://www.publichealthlawcenter.org/sites/default/files/resources/MSA-Overview-2019.pdf>; See also Stevens P, Carlson LM, Hinman JM. An analysis of tobacco industry marketing to lesbian, gay, bisexual, and transgender (LGBT) populations: strategies for mainstream tobacco control and prevention. *Health Promot Pract.* 2004 Jul;5(3 Suppl):129S–134S. doi: 10.1177/1524839904264617. PMID: 15231106.
5. Chau C, Muoneke M, Zeng A, Chang M, Chang E, Bahk JR, Ramakrishnan A. Advertising Created & Continues to Drive the Menthol Tobacco Market: Methods Used by the Industry to Target Youth, Women, & Black Americans. *SRITA Research Paper.* 10/04/22. <https://stanfordmedicine.app.box.com/s/0dydu6qzbsumpdwoarbkzbi7q62no98b>
6. FTC, E-Cigarette Report for 2015–2018, March 2022, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/E-Cigarette-Report-2015-2018.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/E-Cigarette-Report-2015-2018.pdf) [data for top 6 manufacturers only].
7. FTC, E-Cigarette Report for 2015–2018, March 2022, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/E-Cigarette-Report-2015-2018.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/E-Cigarette-Report-2015-2018.pdf) [data for top 6 manufacturers only].
8. <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generalsadvisory-on-e-cigarette-use-among-youth-2018.pdf>
9. Chaffee, B. W., Couch, E. T., Wilkinson, M. L., Donaldson, C. D., Cheng, N. F., Ameli, N., Zhang, X., & Gansky, S. A. (2023). Flavors increase adolescents' willingness to try nicotine and cannabis vape products. *Drug and Alcohol Dependence*, 246, 109834. <https://doi.org/10.1016/j.drugalcdep.2023.109834>
10. Campaign for Tobacco-Free Kids Fact Sheet: Flavored E-cigarettes Hook Kids (11/28/23). <https://assets.tobaccofreekids.org/factsheets/0407.pdf>
11. Campaign for Tobacco-Free Kids Fact Sheet: Electronic Cigarettes: An Overview of Key Issues (11/28/23) <https://assets.tobaccofreekids.org/factsheets/0379.pdf>; Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013–2014 to 2016–2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5869180/>
12. <https://www.tobaccofreekids.org/us-resources>
13. U.S. Food and Drug Administration Premarket Tobacco Product Marketing Granted Orders. <https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders>; See also FDA Authorized E-Cigarette Products [https://digitalmedia.hhs.gov/tobacco/print\\_materials/CTP-250?locale=en](https://digitalmedia.hhs.gov/tobacco/print_materials/CTP-250?locale=en)
14. State of Nevada v. Juul Labs, Inc. Case No. A–22–862112–B. Consent Judgement. <https://www.publichealthlawcenter.org/sites/default/files/inline-files/JUUL-Settlement-NV.pdf>; <https://www.ktnv.com/news/nevada-gets-nearly-14-5m-in-multi-state-juul-labs-settlement>
15. NRS § 370.521(7) (2023)
16. NRS § 370.521(3) (2023)
17. NRS § 370.415(6)–(7) (2023)
18. 2021 Nevada High School Youth Risk Behavior State Report. <https://scholarworks.unr.edu/bitstream/handle/11714/8328/2021%20Nevada%20High%20School%20YRBS%20State%20Report%20FINAL.pdf?sequence=1&isAllowed=y> [Results of the 2023 NVYRBS have yet to be published.]
19. Birdsey J, Cornelius M, Jamal A, et al. Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023. *MMWR Morb Mortal Wkly Rep* 2023;72:1173–1182. DOI: <http://dx.doi.org/10.15585/mmwr.mm7244a1>. (Any tobacco product use includes past-month use of e-cigarettes, cigarettes, cigars, smokeless tobacco, hookahs, pipe tobacco, bidis, or heated tobacco products.)
20. Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, Results from the 2022 National Survey on Drug Use and Health, NSDUH: Detailed Tables, Table 4.10A, <https://www.samhsa.gov/data/report/2022-nsduh-detailed-tables>.
21. NYTS 2023.
22. Goodwin RD, Ganz O, Weinberger AH, Smith PH, Wyka K, Delnevo CD. Menthol Cigarette Use Among Adults Who Smoke Cigarettes, 2008–2020: Rapid Growth and Widening Inequities in the United States. *Nicotine Tob Res.* Mar 22 2023;25(4):692–698. doi:10.1093/ntr/ntac214

## Policy Briefs

- <http://tobaccofree-ri.org/PolicyBrief-TCLC-Guide.pdf> (last updated Oct 2014)
- <http://tobaccofree-ri.org/PolicyBrief-FlavorTrap.pdf> (March 15, 2017)