

**Testimony before the Colorado House Committee on Finance
Regarding Banning the Sale of Flavored Tobacco and Vapor Products**

**Lindsey Stroud, Director
Consumer Center
Taxpayers Protection Alliance
April 4, 2022**

Chairwoman Bird, Vice-Chair Snyder, Members of the Committee:

Thank you for your time today to discuss the issue of banning flavored sales of tobacco and vapor products. My name is Lindsey Stroud, and I am Director of The Taxpayers Protection Alliance's (TPA) Consumer Center. TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy. TPA's Consumer Center focuses on providing up-to-date information on adult access to goods including alcohol, tobacco and vapor products, as well as regulatory policies that affect adult access to other consumer products, including harm reduction, technology, innovation, antitrust and privacy.

Introduction and Summary Points:

Per the *Legislative Declaration*, this proposal is an effort to address youth use of tobacco and vapor products. While such efforts are laudable, policymakers should refrain from excessive prohibition when addressing such issues. Rather than punish adult former smokers, Colorado lawmakers ought to fund robust tobacco control programs, including education and prevention.

Despite alarmism, electronic cigarettes are effective tobacco cessation products that have helped thousands of Coloradan adults quit combustible cigarettes and flavors are essential in this use. Although youth use of vapor products is concerning, lawmakers must refrain from alarmist efforts that would restrict access to flavors. Rather than prohibition, lawmakers ought to invest already-existing tobacco monies to fund robust tobacco control programs including cessation efforts, education, and youth prevention campaigns.

- Among current high school e-cigarette users, flavors are not the most commonly-cited reason for use.
- In 2019, among current high school e-cigarette users in Colorado, only 18.4 percent reported using e-cigarettes because of flavors. Conversely, 45.5 percent reported using e-cigarettes because friends or family members used them.
- This is similar to other state youth surveys on tobacco and vapor product use that overwhelmingly cite "friends/family" and "curiosity" as reasons for e-cigarette use.
- Combustible cigarette use among Coloradan high schoolers are at record lows. In 2019, 5.3 percent reported current use of cigarettes, a 71.7 percent decrease from 2005.



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Derbyshire, England, LEAP UK

Date: April 4, 2022

Re: HB22-1064 - Prohibit Flavored Tobacco Regulate Synthetic Nicotine

Position: OPPOSE

To: Colorado House Finance Committee

Distinguished Committee Members,

Thank you for the opportunity to submit testimony. I am writing on behalf of myself as a retired police officer and as the executive director for the Law Enforcement Action Partnership (LEAP). My colleagues and I at LEAP oppose flavored tobacco bans because they have a negative impact on public health and safety.

LEAP is a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience to endorse evidence-based public safety policies. Our mission is to make communities safer by focusing law enforcement resources on the most serious priorities, addressing the root causes of crime, and healing police-community relations.

I suspect that, like I do, all members of the committee want to reduce the prevalence of smoking, a deadly habit that takes the lives of nearly half a million Americans each year. This is a worthy cause deserving our attention, but banning flavored products is not the correct approach.

I spent my career in California, and some of our jurisdictions have already experimented with these bans. San Francisco's 2018 flavored vape ban already appears to be pushing teens to use conventional cigarettes. A 2021 study by the Yale School of Public Health found [students' odds of smoking cigarettes doubled after the implementation of the ban](#), even when adjusting for demographic factors and other tobacco policies.

Massachusetts' statewide flavored tobacco ban also did not result in less smoking, but it did promote the growth of an underground market wherein residents traveled to nearby states for flavored products and brought them

back to Massachusetts [to sell illegally](#). Massachusetts tax revenue [plummeted](#) while nearby states absorbed the loss. As there is no similar ban in the states near Colorado, it could face the same illicit sales and loss of tax revenue.

The legacy of conflict between law enforcement and communities in our country has come to a critical breaking point. The murders of George Floyd, Breonna Taylor, and many others at the hands of police has forced a national conversation around the proper role of police in society. Banning flavored tobacco products, including menthol, is just one more avenue through which well-intentioned policy has disastrous consequences for communities that already experience the most conflict with police: low-income communities and communities of color. We do not need this ban now, or ever.

We can already see the results of tasking law enforcement with policing illegal cigarette markets. In New York City, Eric Garner, a father of six, was choked to death by police while being arrested for selling loose cigarettes. In Rancho Cordova, California, an unarmed 14-year-old boy was taken down, straddled, and punched by an officer after purchasing tobacco illegally from an adult on the street. Regardless of good intentions on the part of most officers, these situations will continue to occur as long as police are still being called upon to address public health issues like tobacco use.

The proposed statute includes a ban on menthol cigarettes, [the preferred tobacco choice](#) among Black smokers. It's easy to predict how such a ban will play out: Just like the War on Drugs has failed to eliminate demand by criminalizing some drugs, menthol will continue to be bought and sold. But this ban will create a new class of "criminal," primarily comprised of Black smokers (because we're not criminalizing the tobacco choices of white smokers), and create more opportunities for negative interactions between police and people of color. This type of low-level enforcement of ineffectual policies makes communities of color fear and resent police.

Police bear the brunt of public backlash when policies go wrong because we are the officials in charge of enforcing those policies. When the law itself is wrong, we still have to respond. And we get blamed for the outcome, whether it was our fault or not. It is our responsibility to do the right thing, but when we are tasked with doing the wrong things over and over again, people see police as the problem, not the solution.

When police need tips and witnesses, we need to be able to talk to people in our communities. If they do not trust us, they won't call for help, even when they themselves are the victim of a crime. This makes our work nearly impossible. Right now, too many people fear and distrust us more than they believe we can help solve crime.

It is a sad reality that demoralizes and disheartens us. I put on my uniform every day with the goal of serving and protecting others, and I have to put in extra work to rebuild broken bridges caused by senseless policies — like prohibitions of drugs — just so that people will speak to me.

This ban would keep us on the wrong side of history as we once again put unscientific policies ahead of community safety. Reducing smoking requires a public health approach: building honest educational campaigns about the risks; ensuring access to harm reduction resources and smoking cessation tools; and curbing predatory advertising that target youth, Black smokers, low-income communities, and other vulnerable populations.

We know the public health approach works. We know bans don't. Don't let Colorado follow San Francisco and Massachusetts in becoming another cautionary tale of lessons we should have learned so many times in the past.

Lt. Diane Goldstein (Ret.)

Executive Director

The Law Enforcement Action Partnership



3/29/2022

To: Colorado House Health and Insurance Committee
From: Americans for Tax Reform

Dear Representative,

On behalf of Americans for Tax Reform (ATR), a non-profit organization which advocates in the interests of taxpayers and consumers throughout the United States, I urge you to reject HB 1064, misguided legislation which seeks to restrict access to lifesaving reduced risk tobacco alternatives such as electronic cigarettes through flavor bans proven critical to the process of helping adults quit smoking. **The evidence clearly demonstrates that if enacted, this bill would have a disastrous impact upon not only businesses, but public health throughout the State, and lead to a clear increase in tobacco-related mortality.**

ATR further submits that in addition to the public health disaster that reducing access to reduced risk tobacco alternatives will unleash, these proposals would also have devastating consequences on businesses, at a time when they can afford it least. **It would kill thousands of jobs and would cost business owners their livelihood. Colorado's total economic cost would be devastating.**

Studies have repeatedly shown that flavors, which HB 1064 would prohibit, are critical to helping adult smokers make the switch to vaping. Adults who use flavored vapor products are **43% more likely to quit smoking** than an adult who uses un-flavored products, according to a recent [study](#) from ten of the world's top experts in cancer prevention and public health.

Further, bans on flavored vaping products are shown to cause increased youth cigarette smoking. A [study](#) from Dr. Abigail Friedman at the Yale School of Public Health found that **when San Francisco imposed a flavor ban in 2018, youth smoking doubled.** Before San Francisco's flavor ban, the city had lower youth smoking rates than comparable counties like New York and Los Angeles. **After the flavor ban, San Francisco's youth smoking rate rose to 6.2% while comparable districts had an average rate of 2.8%.**

Additionally, Value in Health Journal - a [publication](#) from the Professional Society for Health Economics and Outcomes Research – found that e-cigarette flavor bans directly lead to increased sale and use of traditional cigarettes. In all cases where reduced-risk tobacco alternatives are banned or restricted, progress made in the fight to lower smoking rates is reversed. Existing data proves that the proposals being discussed will have a deleterious effect on public health.

Contrary to the claims of anti-vaping advocates, flavors play no role in youth uptake of vaping. Academic studies have found that teenage non-smokers “willingness to try plain versus flavored varieties did not differ” and a mere 5% of vapers aged 14-23 reported it was flavors that drew them to e-cigarettes. National Youth Tobacco Survey results have shown [no increase in nicotine dependency](#) among youths since flavored products entered the market.

Along with the flavor bans imposed on reduced risk tobacco alternatives, HB 1064 extends flavor prohibition to menthol cigarettes and other conventional tobacco products. Like bans

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on flavors in reduced risk tobacco alternatives, these would also come with significant negative consequences for the state, with no evidence whatsoever that they have any effect in reducing smoking rates. To the contrary, real-world evidence from Massachusetts demonstrates that such bans are counterproductive and come at significant cost.

Since Massachusetts implemented a ban on all flavored tobacco products in the middle of 2020, cross-border purchases and the creation of a booming black market have more than made up a decline in sales in the Commonwealth. In the first six months since the ban was enacted, Massachusetts retailers have sold 17.7 million fewer cigarette packets compared to the same six months in the prior year, while neighboring Rhode Island and New Hampshire have combined to sell 18.9 million more as Massachusetts residents stocked up across state lines. The loss to the state, already amid a fiscal crisis brought on by the Covid-19 pandemic, has thus far been a [staggering \\$73,008,000](#).

Colorado's financial woes will extend further than that. This sweeping ban will raise questions as to how to fill in revenue gaps it will create on the state's balance sheet. Governor Polis has already expressed concern that it will cut funding to Colorado's programs to provide early education to low-income communities. Tobacco taxes in Colorado are directly used to fund said programs. Minorities in the state already lag behind their ethnic counterparts in crucial parts of education, and HB 1570 would deny opportunities which early education provides.

While the states of Rhode Island and New Hampshire have been some of the biggest beneficiaries of Massachusetts' ban, collecting close to \$50 million in additional revenue, criminal syndicates have also benefited. Contrary to popular belief that tobacco smuggling is a victimless crime consisting of someone purchasing a few extra cartons across state lines, most tobacco smuggling is run by multi-million-dollar organized crime syndicates. **These networks, who also engage in human trafficking & money laundering, have also been used to fund terrorist and the US State Department has explicitly called tobacco smuggling a “[threat to national security](#)”.**

Paradoxically these bans may therefore increase youth smoking in the state: By definition, criminals and smugglers are unlikely to obey laws and would not follow rigorous age-verification requirements mandated at reputable outlets.

Prohibitions on menthol-flavored cigarettes will disproportionately impact minority populations and communities of color. Banning menthol cigarettes will also significantly increase the policing of minority communities and lead to a rise in negative interactions between law enforcement and people of color. This proposal prioritizes criminalization over harm reduction and public health and will ensure that people of color will disproportionately suffer from the enforcement of HB 1064.

The recent amendments to this bill should further worry civil rights activists. One such amendment proposes that all sold vapor products include tracking numbers, so that retailers can be more easily punished for selling those products to youths. However, this will directly lead to a higher volume of confrontations between young people and the police, which will disproportionately affect low-income and minority communities.

Civil liberty organizations such as the American Civil Liberties Union (ACLU), the Law Enforcement Action Partnership, and the Drug Policy Alliance are all [opposed](#) to bans on menthol and other flavored tobacco products for these same reasons. Further, law enforcement officials [overwhelmingly](#) oppose a menthol ban because it will spur smuggling, counterfeit cigarettes, and increase organized crime.

About E-Cigarettes and Vapor Products:

- Traditional combustible tobacco remains one of the leading preventable causes of death in Colorado. **The negative health effects of combustible tobacco come from the chemicals produced in the combustion process, not the nicotine.** While highly addictive, nicotine is a relatively benign substance like caffeine and nicotine use “does not result in clinically significant short- or long-term harms”.
- Nicotine replacement therapies such as nicotine patches and gums have helped smokers quit for decades. In recent years, advancements in technology have created a more effective alternative: **vapor products and e-cigarettes. These products deliver nicotine through water vapor, mimicking the habitual nature of smoking while removing the deadly carcinogens that exist in traditional cigarettes.**
- The [CDC](#) has found that only 3.1% of youths use e-cigarettes daily, disproving the myth of an ongoing “youth vaping epidemic.”

Benefits of E-Cigarettes and Vapor Products:

- Vapor products have been [proven to be at least 95% safer](#) than combustible cigarettes. A comprehensive analysis of nicotine product harm estimates that e-cigarettes expose users to just 4% of the harm of combustible cigarettes.
- E-cigarettes are also more than [twice as effective](#) at helping smokers quit than traditional nicotine replacement therapies. **According to one [study](#), a smoker attempting to quit with an e-cigarette has an estimated 323% higher chance of achieving complete cessation** compared to someone using a traditional nicotine replacement therapy like nicotine-containing patches, gum, or mouth spray.
- Vaping has been endorsed by over 100 of the world’s leading [public health organizations](#) as safer than smoking and an effective way to help smokers quit.
- When e-cigarettes entered the market in 2003, the U.S. adult cigarette smoking rate was 21.6%. **Due to increased access to vaping, the U.S. adult smoking [rate](#) has plummeted to 13.7% as of 2018.**
- A new [analysis](#) this year by Public Health England demonstrated just how effective vaping is in helping people quit smoking, noting that in just one year, over 50,000 British smokers, who would have continued smoking otherwise, quit smoking

with vaping.

- Value in Health Journal [found](#) that legislative actions banning flavored electronic cigarettes are **directly correlated** with increased traditional cigarette sales
- A University of Glasgow study showed that e-cigarettes particularly [help disadvantaged](#) persons quit smoking. Another new study demonstrated that high-strength electronic nicotine products are [particularly helpful](#) for smokers with mental health issues quit smoking, like people with schizophrenia who smoke at rates more than three times the national average. Some 40% of participants had stopped smoking traditional cigarettes by the end of 12 weeks and researchers observed an overall, sustained 50% reduction in smoking or complete smoking abstinence in 92.5% of participants at the end of 12 weeks. **XXX will have a tremendously negative impact on public health and would fail to decrease socioeconomic disparities by reducing adult access to products shown to improve public health.**
- A large-scale [analysis](#) from Georgetown University Medical Center estimates that 6.6 million American lives can be saved if a majority of cigarette smokers switched to vaping. **This would save more than 100,000 lives in Colorado.**

For the reasons outlined above, in the interests of public health, protecting the Coloradan economy, and the spread of smuggling cartels, we call upon you to **accept the science and vote against HB 1064**. Thousands of lives depend upon it.

Sincerely,

Tim Andrews
Director of Consumer Issues
Americans for Tax Reform

**Colorado Flavored Tobacco Ban:
Unnecessary, Costly, and Dangerous to Public Health**

David R. Hancox, CIA, CGFM (Ret.)

I. Introduction

My name is David Hancox, and I am the former Director of State Audits in the Office of the New York State Comptroller. I also was Director of State Expenditures in that Office. In total, I had 37 years of service with the State of New York. I am a retired Certified Internal Auditor and Certified Government Financial Manager. I've also written and taught extensively on a wide array of issues focused on government performance auditing, which relates to an assessment of planning, implementing, and managing government programs and policies, such as the ban on flavored tobacco products proposed in House Bill 22-1064.

At the outset, a few points are in order. First, R. J. Reynolds Tobacco Company has compensated me for my time in preparing these comments, but second, the opinions expressed are my own. Third, I am not a user of tobacco products, I am not an advocate for using tobacco, and I believe smokers of traditional cigarettes should quit. That said, I would expect that my analytic approach is similar to what your State Auditor, Ms. Kerri L. Hunter, CPA, CFE, and her staff might do in preparing for a performance audit on the implementation of the legislation before you now.

An outright ban on the sale of all flavored tobacco products will be detrimental to your State and its residents. There will be a fiscal impact on the State budget and programs and an impact on small businesses. But such a ban also severely limits the ability of your State's residents to access tobacco products determined by the FDA to protect public health. And, along with the predictable, harmful consequences arising from a ban on commonly used products, a flavored tobacco ban simply will not decrease smoking rates in Colorado.

The proposed flavor ban will:

- *Cost the State millions of dollars in revenue*, much of which will flow to neighboring states or to illicit gangs.
- *Fuel the State's illicit tobacco and vaping markets*, allowing criminal and even terrorist organizations to fill demand created if these otherwise legal products are outlawed in Colorado.
- *Limit Colorado citizens' access to tobacco and nicotine products that the FDA has determined will further public health interests.*

The proposed ban's hypothetical benefits do not outweigh its adverse consequences.

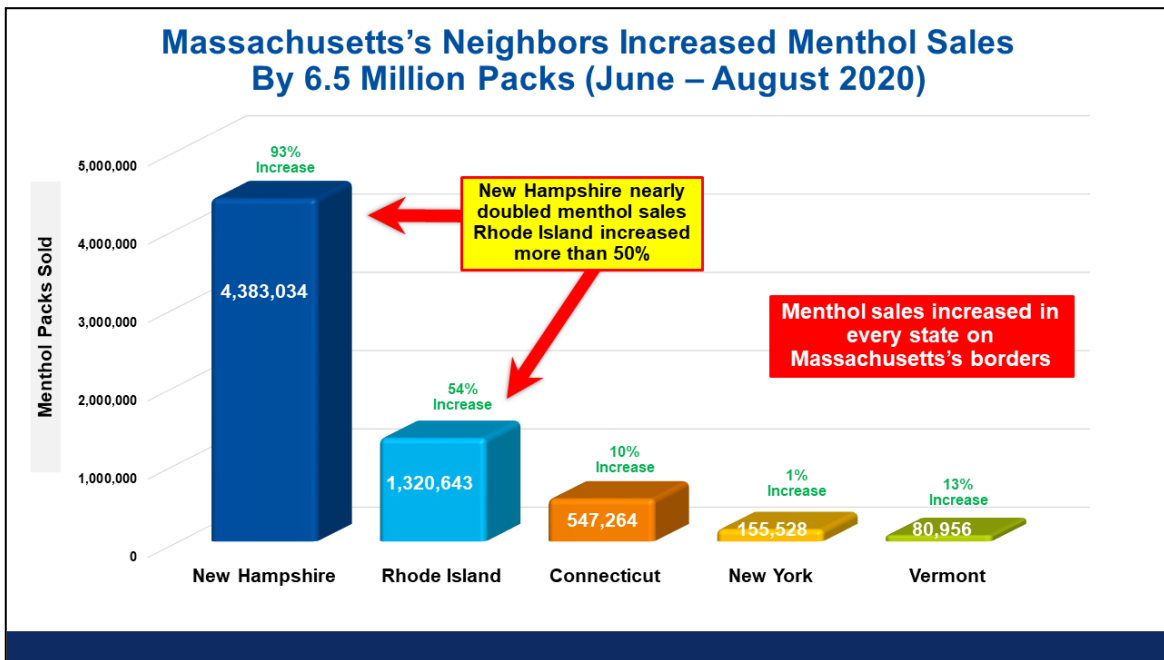
This legislation puts Coloradans at risk from a variety of consequences known to arise from bans and prohibitions on consumer products.

II. The Proposed Ban Will Cost the State Millions of Dollars

The proposed ban will result in a loss of more than \$128 million in tobacco excise and sales taxes annually and a reduction to your annual Tobacco Master Settlement Agreement funds of over \$31 million. And the evidence is strong that that loss in revenue will not be accompanied by any acceleration in the decrease in tobacco use Colorado has been experiencing for more than a decade. An expectation that flavored tobacco users will quit using these products altogether is unreasonable and not supported by data from other jurisdictions that have implemented similar bans.

(a) A Flavored Tobacco Ban Will Force Sales to Neighboring States

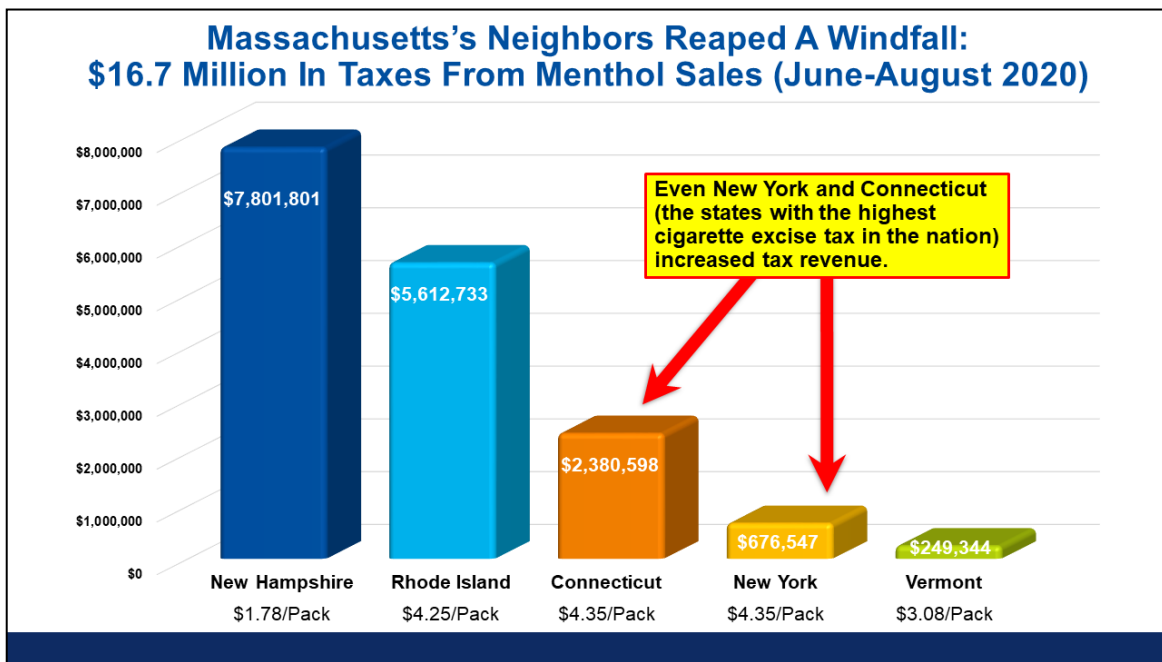
Massachusetts became the first state to ban flavored tobacco products statewide in 2020. That ban revealed that menthol cigarette sales in Massachusetts’s neighboring states consumed roughly 70 percent of the lost Massachusetts market, while the remaining 30 percent menthol cigarette sales converted to in-state, non-flavored sales. Massachusetts retailers lost out on the sales of nearly 10 million packs of menthol cigarettes from June to August of 2020, while sales of menthol cigarettes in its neighboring states increased more than 20 percent – by about 6.5 million packs total.



The graph above illustrates the most striking example. In New Hampshire (Massachusetts’s neighboring state with the lowest cigarette excise tax), sales of menthol cigarettes nearly doubled over sales in the same period in 2019. In fact, sales of menthol cigarettes increased in *every* state on Massachusetts’s borders – even those with significantly higher excise taxes on cigarettes, such as New York and Connecticut.

(b) Neighboring States Will Reap a Tax Revenue Windfall

As Colorado’s coffers shrink as a result of the ban, your neighbors will benefit. Again, Massachusetts presents a cautionary tale. That state lost more than \$25 million in sales and excise tax revenue on menthol cigarette sales alone in less than three months after enactment of the ban. In the same period, Massachusetts’s neighbors generated \$16.7 million in increased taxes on the sale of these product. In fact, at a November 2020 meeting of a New Hampshire legislative committee it was reported that that state’s tobacco tax revenues were 22.2% ahead of the prior year. It was not lost on New Hampshire’s legislators that the increase was largely driven by Massachusetts’s flavor ban.¹



It is reasonably foreseeable that a ban in Colorado that is even more restrictive (Massachusetts still permits the sale of flavored tobacco and vape products for use at adults-only

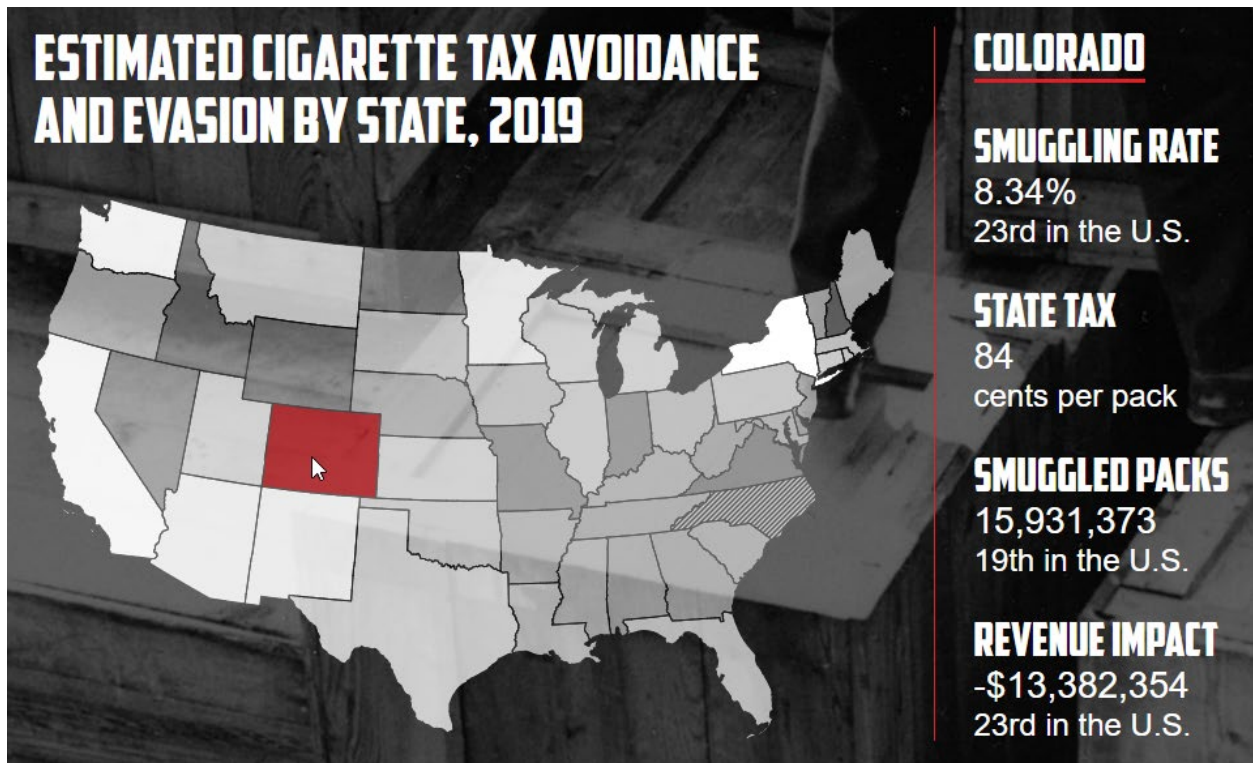
¹ [http://www.gencourt.state.nh.us/LBA/Revenues/FY20-21/November 2020/DRA FY21 Revenue Estimate HWM 11 17 20.pdf](http://www.gencourt.state.nh.us/LBA/Revenues/FY20-21/November%2020/DRA%20FY21%20Revenue%20Estimate%20HWM%2011%2017%2020.pdf), at p. 5.

smoke shops) will exact a toll on the State's finances. Colorado stands to lose nearly *\$10.6 million monthly* in sales and excise taxes on flavored tobacco products. Such a financial hit will cause programs, including the State Education Fund, preschool program funds, and even smoking cessation programs to seek funds from other government revenues, as cited in the fiscal notes to this bill. The loss of tax revenue resulting from a ban on flavored tobacco products without objective evidence that the proposed ban will achieve its stated goals is not worth the economic hardship the State will face.

III. The Proposed Ban Will Fuel Black Market Sales

While Colorado has a low cigarette smuggling rate today,² a ban on flavored products opens the door wide to an already well-established illicit tobacco trade that exists in the United States. With a ban on flavored tobacco products, you can expect a big increase in smuggling.

² <https://www.mackinac.org/smokes>: About 8 percent of cigarettes consumed in Colorado are smuggled into the State, avoiding Colorado's excise and sales taxes.



New York, my home state, is first in the nation when it comes to cigarette smuggling because of its restrictive tobacco laws. This has caused increased law enforcement efforts to focus on this now illegal activity, in turn, raising troubling and complicated issues. The most egregious example, of course, happened in the summer of 2014, when Eric Garner was confronted by law enforcement for selling “loosies” – individual, untaxed cigarettes – in New York City and was killed by a police officer.

Increasing illicit sales of banned tobacco products means increased opportunity for interactions with law enforcement. This issue is particularly acute in the African-American community, as studies show nearly 85 percent of adult, African-American smokers prefer menthol cigarettes.³

³ 2018 National Household Survey on Drug Use and Health, SAMHSA (based on 18+).

And vaping products are not immune from black marketeers, either. As you know, in 2019, the country was confronted with a large number of persons who died or experienced severe illnesses associated with vaping illicit THC products, primarily products adulterated with Vitamin E acetate.⁴ That crisis demonstrated that for illegal vaping products there was already a robust market. The black markets for cigarettes and for illegal, unregulated, and dangerous vaping products are already thriving. A prohibition on the sale of these otherwise legal and regulated products will undoubtedly add fuel to these markets' dangerous fire.

Combatting this foreseeable and potentially dangerous increase in smuggling activity will require a significant increase in funds dedicated to law enforcement efforts to control or stem the influx of illegal activity crashing over your borders. Again, Massachusetts provides a clear example. Its Illegal Tobacco Task Force said in its 2022 Annual Report:

- law enforcement costs increased,
- more law enforcement officers were hired, and
- more space was needed to store seized illegal products.

The real beneficiaries of prohibition are the sophisticated criminal networks that specialize in trafficking contraband. Tobacco traffickers are an insidious problem and create unintended consequences that ultimately harm innocent people. As reported by the ATF:

Current investigations have identified several instances of terrorist groups forming alliances with tobacco traffickers to generate monies used to support their organization and activities. Diversion schemes often generate tremendous cash profits that are then laundered to disguise the origin of the money and to further unlawful schemes. Criminal organizations also use these profits to fund other criminal activities such as smuggling illegal immigrants and trafficking narcotics, firearms, and stolen property.⁵

⁴ https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

⁵ <https://www.atf.gov/file/58866/download>, page 5

The black markets for cigarettes and other tobacco products are already thriving. Traffickers will view the ban on menthol cigarettes as a sign that Colorado is open for business.

IV. The Proposed Ban Limits Access to Products Determined by the FDA to Protect Public Health

An all-out ban on flavored tobacco products blindly forecloses Colorado citizens' access to tobacco products determined by the FDA to be "appropriate for the protection of public health."⁶ Of the more than a dozen tobacco products approved by the FDA for marketing as modified-risk tobacco products ("MRTP"), fully half are *flavored* (either mint or menthol) products.⁷ Along with modified-risk designation, the agency is currently assessing thousands of pre-market tobacco applications ("PMTA") for "new" tobacco products,⁸ including e-cigarette and other vapor products. The MRTP and PMTA processes reflect the FDA's recognition that true, effective tobacco harm reduction requires making available tobacco products that are less risky to current tobacco users than traditional combustible cigarettes.⁹ The FDA has denied marketing authorization to millions of flavored vapor products, thereby eliminating these products from the marketplace. However, FDA has reserved ruling on the menthol e-liquids currently sold with the two e-cigarettes that have received marketing authorization, pending further review of the use of menthol e-cigarettes to help adults smokers move away from combustible cigarettes.

⁶ <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-product-marketing-orders>

⁷ <https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-tobacco-products>

⁸ <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-product-marketing-orders>

⁹ <https://www.fda.gov/tobacco-products/about-center-tobacco-products-ctp/mitch-zeller>

FDA's Regulatory Framework Acknowledges the Continuum of Risk

Tobacco harm reduction hinges on the availability of less risky products for smokers



Mitch Zeller
Director,
FDA Center for
Tobacco Products

“The Food and Drug Administration (FDA) is shaping its comprehensive tobacco regulation plan [. . .] based on this recognition that nicotine makes tobacco products addictive—but that nicotine does not directly cause smokers’ cancer, lung disease, and heart disease.”

“To truly protect the public, the FDA’s approach must take into account the continuum of risk for nicotine-containing products.”

“FDA will pursue a regulatory framework that focuses on nicotine and supports innovation to promote harm reduction. This framework will recognize that the core problem of nicotine lies not in the drug itself but in the risk associated with the delivery mechanism.”

<https://www.fda.gov/tobacco-products/about-center-tobacco-products-ctp/mitch-zeller>

An MRTP application must demonstrate to federal regulators that a specific product (not a class of products, such as “smokeless tobacco” or “e-cigarettes”) “will or is expected to benefit the health of the population as a whole.”¹⁰ And the PMTA process ensures that only those new and innovative tobacco-based products that are “appropriate for the protection of the public health” can be sold.¹¹ In considering either an MRTP or PMTA, the FDA determines the risks and benefits of the product to the population as a whole, *including both users and non-users of tobacco products*.¹² This includes an assessment not only of whether current tobacco users will be more likely to switch to the new product, but also whether the new product might entice non-tobacco users to begin using tobacco products (with the goal to ensure they will not).

In fact, retailers in your State currently sell several flavored tobacco products approved by the FDA for marketing as modified-risk tobacco products that would be removed from their

¹⁰ <https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-tobacco-products>

¹¹ <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-product-marketing-orders>

¹² *Id.*

shelves upon enactment of the proposed ban. In October 2019, the FDA granted Swedish Match USA, Inc., the very first MRTP approvals for eight of its snus products – fully half of them *flavored* snus products. These eight products became the first authorized by the FDA for marketing to consumers as tobacco products that present less risk than both traditional combustible cigarettes and traditional chewed or smokeless tobacco.¹³ More than a dozen products now have received authorization for marketing as modified risk tobacco products. More than half of them are menthol products.

In its Order granting approval of Modified Risk Tobacco Products, the FDA states:¹⁴

“Based on our review of your MRTPA, we determined that the proposed modified risk tobacco product, as described in your application and specified in Appendix A, as actually used by consumers, has satisfied the requirements of section 911(g)(2)(A) and (B), including that **it is appropriate to promote the public health and is expected to benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.**”

(Emphasis added)

Alongside the MRTP process, the PMTA process is an effective, responsible way for tobacco product manufacturers to market innovative tobacco-based products that align with public health priorities. Incongruously, the proposed flavor ban would deny Colorado’s current smokers the opportunity to purchase and even to switch to these products. Just as the FDA already has granted MRTP marketing status to some more traditional tobacco products, the likelihood is high

¹³ <https://www.fda.gov/news-events/press-announcements/fda-grants-first-ever-modified-risk-orders-eight-smokeless-tobacco-products>

¹⁴ <https://www.fda.gov/media/156825/download>

that the agency will approve some of these innovative products for the same reason. Why would Colorado want to limit its residents' ability to purchase and use those products?

Without an exception for MRTP-approved and PMTA-approved products, the proposed flavor ban will halt in your State the marketing and sale of products determined to benefit public health. The result will be to make it difficult, if not impossible, to market and even to introduce these products to Colorado citizens who use traditional tobacco products today. Denying your State's adult tobacco product users the benefits of the FDA's consideration of the science on tobacco harm reduction simply is not in their best interests. This may be the most significant negative of the proposed ban on flavored tobacco products.

V. Conclusion

History has taught that consumers resent and ultimately circumvent laws and regulations that restrict their ability to access goods they are accustomed to legally purchasing and using, whether the government's intent is to improve public health or otherwise. High taxes, excessive regulations, and outright bans on goods generally and historically drive consumers to turn to alternative – not always legal – new sources to supply the goods they are accustomed to using. In Colorado, there is no evidence that the result of a flavored tobacco product ban will be any different from the history of the prohibition of other goods. And the proposed ban actively limits traditional tobacco product users from accessing innovative, alternative products the FDA has determined to be beneficial to public health as a whole.

Colorado House Finance Committee
Testimony: HB22-1064
Guy Bentley, Director of Consumer Freedom, Reason Foundation
April 4, 2022

Chair Bird and members of the committee,

Thank you for allowing me the opportunity to submit testimony on HB22-1064.

My name is Guy Bentley, and I am the director of consumer freedom at the Reason Foundation, a 501(c)3 nonprofit think tank. The consumer freedom project analyzes and promotes policy solutions that improve public health while avoiding unintended consequences and protecting consumer choice.

The intention behind this bill to limit tobacco use, especially among youth, is to be applauded. However, the evidence on the success of such prohibitions should raise significant concern that the ban will promote further inequalities in the criminal justice system, push sales and tax revenue to other states, increase the illicit tobacco trade, and fail to improve public health in Colorado.

Case Studies: Massachusetts, Canadian Provinces, and the European Union

Massachusetts' ban on flavored tobacco products went into effect in June of 2020. The Reason Foundation has conducted a yet-to-be-published preliminary analysis of the ban's impact which compared cigarette sales in Massachusetts the year prior to the ban and the year following the ban's implementation. We found that there was a net increase in cigarette sales of 7.2 million packs within Massachusetts and across its bordering states.

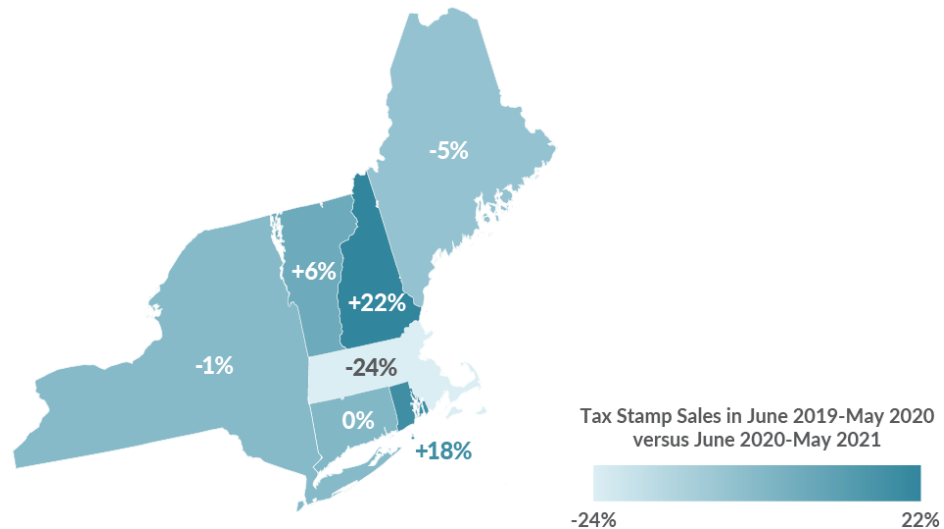
These figures underestimate cross-border trade because they do not also account for lost sales of flavored e-cigarettes, smokeless tobacco, or cigars. Massachusetts also saw a 15.6 million pack increase in non-menthol cigarette sales as consumers switched brands. According to the Tax Foundation, Massachusetts lost \$125 million in tobacco revenue for the fiscal year 2021.¹

¹ Ulrik Boesen. "Massachusetts Flavored Tobacco Ban: No Impact on New England Sales." Tax Foundation. February 3, 2022.

<https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study/>

Tobacco Flavor Bans Move Sales to Neighboring States

Tax Stamp Sales in June 2019-May 2020 versus June 2020-May 2021



Source: Orzechowski & Walker Survey of State Departments of Revenue; Author's calculations.

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Furthermore, according to a study published by the *Journal of Law and Economics*, Canadian provinces' menthol prohibition significantly increased non-menthol cigarette smoking among youths, resulting in no overall net change in youth smoking.² As for adult smokers, provincial menthol bans simply shifted smokers' cigarette purchases away from grocery stores and gas stations.

The world's largest experiment in menthol prohibition is the European Union, which includes 27 countries and a population of 447 million people. The EU ban became effective in May of 2020. Prior to the ban Poland had the largest menthol cigarette market in the EU, making up 28 percent of total sales. An analysis funded by the Norwegian Cancer Society in partnership with the Polish Ministry of Health found there was no statistically significant decline in cigarette sales.³ These results are important not just because they demonstrate an immediate economic impact on jurisdictions that introduce prohibition but, thanks to cross-border trade and the

² Christopher Carpenter, Hai V. Nguyen. "Intended and Unintended Effects of Banning Menthol Cigarettes." *The Journal of Law and Economics*. August 2021. <https://www.journals.uchicago.edu/doi/abs/10.1086/713978>

³ Liber, Alex C. and Stoklosa, Michal J. and Levy, David and Sánchez-Romero, Luz María and Cadham, Christopher J. and Pesko, Michael. "A Bite-Style Model to Evaluate Poland's Menthol Cigarette Ban." Available at SSRN: <https://ssrn.com/abstract=3946277>

substitution of non-menthol cigarettes, any health benefits are severely limited. In other words, the loss in tax revenue is unlikely to be made up by lower healthcare costs.

Public Health and Disparate Impacts

Advocates for the prohibition of menthol cigarettes correctly observe that a disproportionate number of Black smokers choose menthol products. In Colorado, some hope the ban will dramatically reduce the state's smoking rate. While these populations are more likely to use a menthol product while White smokers are more likely to use a non-menthol product, smoking prevalence is, in fact, lower among Black youth and adults.

Black non-Hispanic youth are less likely to smoke than their White peers.⁴ In Colorado, 4.3 percent of White high schoolers smoked in 2019.⁵ For Black Colorado high schoolers, the numbers were so low as to not be statistically significant. These data conform to Reason Foundation's study published in 2020 showing that states with higher menthol cigarette use tend to have lower, not higher, youth smoking rates.⁶ From a public health standpoint, as Black adults and youth smoke at lower rates than non-Hispanic Whites, it's hard to ascertain why non-menthol cigarettes, which are equally dangerous, will not be subjected to prohibition and menthol products will be.

Because menthol cigarettes are overwhelmingly the choice of minority smokers, prohibition will necessarily lead to a concentration of the illicit tobacco market in minority communities. The American Civil Liberties Union and other civil rights groups warn prohibition could disproportionately impact people of color, trigger criminal penalties, and prioritize criminalization over public health and harm reduction.⁷ The National Organization of Black Law Enforcement Executives (NOBLE), Grand Council of Guardians (GCGNY), National Association of Black Law Enforcement Officers (NABLEO), and Law Enforcement Action Partnership (LEAP) have argued that prohibitions of all kinds disproportionately affect communities of color, and this is especially the case when it comes to banning menthol cigarettes.⁸

⁴ Gentzke AS, Wang TW, Jamal A, et al. Tobacco Product Use Among Middle and High School Students — United States, 2020. <https://www.cdc.gov/mmwr/volumes/69/wr/mm6950a1.htm>

⁵ Centers for Disease Control and Prevention. "High School Youth Risk Behavior Survey: Colorado Results." 2019. <https://nccd.cdc.gov/youthonline/app/Results.aspx?LID=CO>

⁶ Guy Bentley and Jacob Rich. "Does Menthol Cigarette Distribution Affect Child or Adult Cigarette Use?." Reason Foundation. January 30, 2020.

<https://reason.org/policy-study/does-menthol-cigarette-distribution-affect-child-or-adult-cigarette-use/>

⁷ American Civil Liberties Union. "Coalition Concerns with Blanket Prohibition on Menthol and Other Flavored Tobacco within H.R. 2339, Reversing the Youth Tobacco Epidemic Act."

<https://www.aclu.org/letter/coalition-letter-criminal-justice-concerns-hr-2339-reversing-youth-tobacco-epidemic-act>

⁸ Franklin, Neil. "Ban on Menthol Cigarettes Would Have Unintended Consequences." *City Limits*. December 2, 2019.

Food and Drug Administration Review and Tobacco Harm Reduction

Last year, the Food and Drug Administration authorized an e-cigarette as “appropriate for the protection of public health” for the first time. The FDA is also currently reviewing e-cigarette product applications that contain reams of data on safety, efficacy, and potential threats to youth. If the FDA finds that any product is a net harm to public health, it will be removed from the market. But if the product is deemed to be net beneficial, it will be authorized for sale as appropriate for the protection of public health.

If Colorado chooses to ban these products prior to the FDA concluding its review, it would limit consumer access to products the FDA may deem as a positive for public health. According to a survey conducted by the International Tobacco Control Policy Evaluation Project, 57 percent of vapers said they would continue vaping if flavors were banned and half said they would find a way to get their preferred flavor. Of most concern was the finding that close to one in five vapers said they would stop vaping and smoke instead.⁹

While prohibiting e-cigarette flavors other than tobacco may seem an attractive solution to the problem of youth vaping, policymakers should recognize that, according to the 2021 National Youth Tobacco Survey (NYTS), 89 percent of high schoolers are not using e-cigarettes at all and 95 percent are not using them frequently. Youth vaping has also fallen to its lowest point in seven years.¹⁰ Data released by the Centers for Disease Control and Prevention (CDC) shows flavors are not the leading reason why youth initiate vaping. According to the CDC, the primary reason youth initiate vaping is curiosity, followed by use by a friend or family member. Availability in flavors, such as mint, candy, fruit, or chocolate comes as a very distant third.¹¹ Banning flavored tobacco products may also induce perverse outcomes contrary to the promotion of public health among adolescents.

<https://citylimits.org/2019/12/02/opinion-ban-on-menthol-cigarettes-would-have-unintended-consequences/>

⁹ Gravely, Shannon et al. “Responses to potential nicotine vaping product flavor restrictions among regular vapers using non-tobacco flavors: Findings from the 2020 ITC Smoking and Vaping Survey in Canada, England and the United States.” *Addictive Behaviors*. Volume 125. February 2022.

<https://www.sciencedirect.com/science/article/pii/S0306460321003373?via%3Dihub>

¹⁰ Park-Lee E, Ren C, Sawdey MD, et al. Notes from the Field: E-Cigarette Use Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021.

https://www.cdc.gov/mmwr/volumes/70/wr/mm7039a4.htm?s_cid=mm7039a4_w

¹¹ Wang TW, Gentzke AS, Creamer MR, et al. “Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019.” *MMWR Surveill Summ* 2019;68(No. SS-12):1–22. https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T6_down

In 2018, San Francisco banned the sale of all flavored tobacco products, including e-cigarettes with flavors other than tobacco. Yale University’s Abigail Friedman found that after the ban was enacted, San Francisco area youth had double the odds of smoking compared to similar jurisdictions with no tobacco flavor ban.¹² “While neither smoking cigarettes nor vaping nicotine are safe per se, the bulk of current evidence indicates substantially greater harms from smoking, which is responsible for nearly one in five adult deaths annually. Even if it is well-intentioned, a law that increases youth smoking could pose a threat to public health,” said Friedman.

According to a 2020 study by researchers at Yale School of Public Health, the use of e-cigarette flavors is positively associated with smoking cessation outcomes for adults but not associated with increased youth smoking.¹³ The prestigious Cochrane Review concluded e-cigarettes are more effective than traditional nicotine replacement therapies for helping smokers quit.¹⁴ Prohibition of flavored e-cigarettes, which are overwhelmingly the choice of adult vapers, risks fueling illicit markets, forcing the closure of Colorado vape shops, and driving vapers back to smoking.

Thank you for your time. I would be happy to answer any questions.

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¹² Friedman AS. “A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California.” *JAMA Pediatr*. Published online May 24, 2021. doi:10.1001/jamapediatrics.2021.0922

<https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248>

¹³ Abigail S. Friedman, PhD; SiQing Xu, BS. “Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation.” *JAMA*. June 5, 2020.

<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2766787>

¹⁴ Cochrane Review. “Updated Cochrane Review shows electronic cigarettes can help people quit smoking.” October 14, 2020.

<https://www.cochrane.org/news/updated-cochrane-review-shows-electronic-cigarettes-can-help-people-quit-smoking>

BANNING MENTHOL CIGARETTES AND FLAVORED TOBACCO:
MAKING THE WAY FOR DISPARATE POLICE CONTACT WITH OUR MOST
VULNERABLE COMMUNITIES

House Bill 22-1064

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Past-National Chairwoman, National Black Police Association
Founder, The Black Police Experience
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I am a former police captain, a social advocate, a professor of criminal justice, and the mother, sister, and aunt of young Black men. A vast amount of my time is spent pondering, studying, and remarking on police reform issues both nationally and abroad. Many of these are issues that cause a disparate impact when members of the Black community are involved in police encounters. Through these lenses, I register my objection to House Bill 22-1064.

In 2009, the Family Smoking Prevention and Control Act gave the Food and Drug Administration (FDA) the authority to regulate tobacco products. FDA research found that the use of menthol cigarettes impacts people of color, as it tends to be their choice of cigarette. The idea of banning menthol cigarettes to stem smoking in the Black community gained traction. Unfortunately, public policy experts did not adequately weigh the disparate impact the ban would have on communities of color by increasing police encounters. In 28 years in law enforcement, I observed how even the best-intentioned laws seemed to impact disadvantaged communities the most. From the Supreme Court's support of pretextual stops to the racial inequities in crack cocaine sentencing, our communities of color are being adversely affected, and its citizens amassing arrests, criminal records, and jail time for minor offenses. This stresses community financial and mental health resources, and places families on a downward spiral difficult to recover from.

Police officers are retiring in record numbers in the country due to discontent, feeling overworked, and low morale. They do not need another well-meaning but ineffective law on the books to add to the list of tasks police officers must handle each day. In addition, dealing with minor cases concerning illegal cigarettes lends itself to a slow-down in courts due to bureaucracy, and adds to already monumental prison overcrowding of those convicted. If district attorneys refuse to prosecute these minor cases to ease their movement through the court system, that will also lead to more police discontent, as officers see one case after another being dismissed.

Colorado's 2020 policing reform legislation is some of the most progressive state policing reform law in the country and appropriately so, as incidents such as the deaths of George Floyd

and Elijah McClain highlights the need for comprehensive laws that will hold law enforcement accountable for criminal and unethical actions. Indeed, the decriminalization of marijuana has not stopped unethical police contact in this country, and a flavored tobacco ban will not stop unethical police contact either. We do not need more tragic incidents created through the over-policing of a group of people.

For instance, in 2021 in Ocean City, Maryland, several Black teens were arrested for vaping in an unauthorized area on the beach's boardwalk. The arrest led to an outcry from the community and local politicians, and a lawsuit from the family of the teens, for the excessive use of force by the officers involved. This was for a minor violation of vaping. No one should endure a violent stop by police for "smoking while black" for vaping, or just because an adult prefers a menthol cigarette or flavored cigar.

Colorado is already dealing with an increasing illegal trade due to the legalization of cannabis, and retailers in Colorado have joined the argument that flavor bans will ease the path to an underground economy that will sell to minors and increase youth cigarette use, causing even more work for the police, and potential disparate police encounters with youth as well. Instead, retailers advocate for methods such as increasing the age to 21 to purchase tobacco products, and stiffening penalties for stores that sell to minors.

Massachusetts tried a flavor and menthol ban on smoking products in 2019. It has not yielded the results desired. Lawmakers recently introduced legislation to have the menthol ban in Massachusetts reversed, after they found that those products were being illegally trafficked from out of state instead of being sold by licensed retailers in-state, who were losing revenue. There has also been no regional reduction in menthol cigarette consumption.

Finally, we know from history that prohibition in this country has never worked. It did not work with the proscription of alcohol in the 1920's, and the gradual legalization of marijuana across the country holds that prohibition has not worked with marijuana either. Outlawing a subset of a product that is used by choice by adults is unlikely to work with flavored and menthol tobacco products. Black people will continue to use a product that has been deemed illegal, while all other subsets of tobacco will continue to be legal to use, resulting in a disparate impact by an unjust criminal justice system, under the guise of public health advocacy.

I ask that House Bill 22-1064—which would create a ban on the sale of all flavored tobacco and nicotine products including menthol cigarettes—be abandoned, and that the approach to the problem of smoking in the Black community be backed by sound public health policy, community education, harm reduction, and sufficient resources. Tobacco use concerns should be addressed in a humane, responsible, and educated way, designed to empower communities, not to criminalize them for making a choice that others take for granted.

House Finance

04/04/2022 01:30 PM

HB22-1064 Prohibit Flavored Tobacco Regul Synthetic Nicotine

Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
<p>Holly Robb</p> <p>Against</p> <p>Maverik, Inc</p>	<p>My name is Holly Robb, and I am the Director of Government Relations for Maverik, Inc, a convenience store that has over 400 stores in eleven western states; currently we have 34 stores in Colorado and we employ 465 Colorado residents.</p> <p>Maverik takes the health and safety of our customers very seriously and as a responsible retail seller we aggressively work to be part of the solution to keep controlled substances out of the hands of minors. We actively work to prevent the sale of cigarettes and vape-related products to minors in all our stores.</p> <p>Maverik has an aggressive in-store training program that our sales employees complete and must pass with 85% or higher before operating a cash register. One of the areas this training focuses on is age-verification and the importance of preventing the sale of controlled substances to minors. All Maverik stores have I.D. scanners attached to the register, which means a sale of any cigarette or vape-related product cannot be processed until the customer's I.D. is validated by the scanner or employee. We regularly monitor our employees' sales practices, and we adhere to strict disciplinary action for any sales associate that violates our sales policy.</p> <p>I am testifying today in opposition to HB22-1064. If this bill were to pass, we would lose a significant amount of money which would harm our business and our employees. In addition it may impact our future development in the state of Colorado and in doing so jeopardize future job growth in the state.</p> <p>This bill is harmful to businesses and I would encourage you to oppose HB22- 1064.</p>

<p>Tori Roberts</p> <p>Against</p> <p>Stinker Stores Inc.</p>	<p>Subject: Oppose House Bill 1064</p> <p>I work at a retail store that is located in your legislative district. Our store sells tobacco products and I have very serious concerns with HB1064, which bans the sale of flavored tobacco products.</p> <p>Losing the ability to sell flavored tobacco products would result in a significant loss of tobacco sales which would lead to job losses and even eventually store closures. This is not an exaggeration, but a very probable outcome and I am concerned that I would lose my job.</p> <p>At the same time, the state will incur a significant loss of both excise tax and sales tax revenue because flavored tobacco products would no longer be sold. Moreover, the legislation would also promote an illicit market in all flavored tobacco products. Criminals are not concerned about who buys their illegal products, opening the door to more ready access to smuggled tobacco products.</p> <p>Please consider the economic damage that banning flavored tobacco products will have on family-owned retail stores and employees' jobs and oppose HB1064. Thank you for your time.</p> <p>Sincerely,</p> <p>Tori Roberts</p>
<p>Chris Everson</p> <p>Against</p> <p>Circle K Inc.</p>	<p>Good afternoon, thank you for taking the time to hear some concerns that will be outlined for you that not only do I have but for over 1600 employees we employ in the state of Colorado.</p> <ul style="list-style-type: none"> • We have expanded our store locations with 2 this year and plans for 10 more new builds this will increase employment in what is already difficult times with inflation • We pride ourselves in giving back to the community – and I encourage you to visit our stores we are proud to say Circle K has donated over 450k to the Boulder Wildlife fund

	<ul style="list-style-type: none"> • This bill impacts our ability to hire by taking away a revenue stream that we, as every retailer, highly monitors as no one condones use under the age of 21 o The FDA has already regulated and banned almost 7 million flavored ECIGS o We are seeing record inflation of over 7.5% and by passing this you are willing to force the 184 stores we own in CO to increase prices to maintain the loss of what you are taking away. The only thing you will accomplish is moving flavored volume to our neighboring states <ul style="list-style-type: none"> • Let’s go through the facts on how legislation such as this impacts the area that I have personally seen o In 2020 when I was in Portland Oregon the state passed a \$2.00 per pack increase and the counties of Multnomah and Washington lost 15 million cartons to the state of Washington o In 2018 when I was in Wisconsin the impact of a flavor ban in the twin cities and Duluth did not change the flavored volume in the area but moved it into the cities of Superior and Hudson WI <ul style="list-style-type: none"> • these are just 2 examples of what your decision can impact <p>As you read testimonies and hear them today on the impact of this bill, we trust you to put the needs of CO above any personal agenda or agenda of a group, please keep the employment and the revenue this generates in our state. I hope what you take from this conversation is – the needs of Colorado are more important than an agenda to stick it to big tobacco. Your actions today impact taxable revenue used for roads and schools. Your actions impact our ability to hire, your actions impact our ability to continue to strive for community success by giving back. I implore you to not allow this taxable revenue to go to our neighboring states by punishing your retailers in Colorado.</p> <p>Let’s fight this battle together, I am happy to continue the conversation to support tougher restrictions and penalties in an effort to not penalize the retailers who are law abiding.</p>
<p>Manpreet Singh</p>	<p>Good morning mr/mrs chairperson and members of committee,</p>

<p>Against Self</p>	<p>Thank you so much for your time , my name is Manpreet Singh I am 7-eleven franchise and small business owner in the city of Thornton and brighton .I have owned my business for going on 10 years and employees a staff of 25 people across 4 store locations, I donate to several local charities around Colorado and have been part of may community.</p> <p>I am here today to ask you to support your local business and vote no on HB22-1064.</p> <p>Some of the reasons as to why you should oppose this bill are :</p> <p>Banning the sale of flavored traditional tobacco products could shift sales of f those products from law-abiding retailers To potentially illegal sources who do not check ID.</p> <p>The COVID pandemic has caused financial hardship for retailers who have worked hard to remain open to serve their communities.we were recognized as essential business. If Retailers are forced to stop selling hundred of flavored tobacco product, then customers will simply drive to stores in neighboring states or purchase preferred products online, that cost lost jobs.</p> <p>As a retailer we have our internal sales associate training program is smoother based and all employees complete the age-restricted sales trading prior to being allowed to work on the pos , the must pass Thea test 100%.</p> <p>7-eleven takes these issues very seriously and has practices on n place to prohibit youth access to age-restricted products.</p> <p>We are now being asked to ban the products which were the entire reason and justification for the last five years Worth of regulations.</p> <p>Moreover,this ban would undermine public health by pushing the sales of these products to the illegal market where criminals don't care about checking IDs. And it could increase policing tensions.</p>
<p>Gursewak Singh Against 7-Eleven</p>	<p>Good afternoon, Madam Chair, and members of the committee,</p> <p>Thank you for your time today. Gursewak singh. I am a 7-Eleven franchisee and small business owner in the City of Denver. I have owned my business for going on 2 years and employ a staff of 12 loyal people. I participate in several community charity events including funding for homeless shelters and youth programs for low-income households. My 2 kids attend school at Henderson Public Schools and participate in many community events.</p>

	<p>I am here today to ask you to support your local businesses and vote no on HB22-1064.</p> <p>Some of the reasons as to why you should oppose this bill are:</p> <p>I share the same goal of the proponents of the ban</p> <ul style="list-style-type: none">- to keep ALL age-restricted products out of the hands of youth. But there is a better way for both parties affected. 7-Eleven takes these issues very seriously and has practices in place to prohibit youth access to age-restricted products. <p>The timing on this issue couldn't be at a worse time for our communities, state, and nation. Record inflation unseen since the early 1980's, workforce and supply shortages, skyrocketing gas, fuel, and food prices are hitting everyone and we're feeling the pain. Banning flavored products will take away my revenue stream, and I'd be forced to raise prices elsewhere just to stay open and serving my customers every day.</p> <p>In the past two years, the COVID pandemic has nearly destroyed our business. Retail sales of gasoline, food products, beverages and tobacco products have declined significantly due to several restrictive COVID orders. A ban on the sale of flavored tobacco products will increase the sales decline further leading to employee layoffs and store closures.</p> <p>For these reasons, I respectfully ask you to vote no on HB22-1064</p> <p>Thank you for your time.</p>
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- Nationally, current vapor product use among high school students has declined by 41.8 percent since 2020 and by 58.9 percent since 2019 when 27.5 percent reported using e-cigarettes on at least one occasion in the 30 days prior to the survey.
- Colorado spends very little of existing tobacco monies on tobacco control programs.
- In 2020, the Centennial State collected \$140 million in state cigarette excise taxes and \$82.4 million in tobacco settlement payments, yet allocated only \$21.4 million (9.6 percent) to tobacco control. In 20 years, for every \$100 the state received in tobacco-related payments, it spent \$8.20 funding tobacco control programs.
- Colorado tobacco and vapor product retailers do a good job in not selling to minors. Between 2011 and 2021, the FDA issued only 2,406 violations to Colorado tobacco product retailers, which was only 8.1 percent of all FDA inspections. Further, only 16.2 percent of violations resulted in sales of e-cigarettes to minors.
- The vapor industry has been an economic boon to Colorado, generating \$366.7 million in economic activity in 2021 while generating 1,125 direct vaping-related jobs and contributed more than \$23 million in state taxes.
- E-cigarettes' market emergence is associated with low young adult smoking rates. In 2020, among current smokers in Colorado, only 15.8 percent current smokers were 18 to 24 years old – a 49.4 percent decrease from 2010. Further, since 2016, smoking rates among young adults have decreased by 49 percent.
- Policymakers should be wary of the effects of flavor bans as localized flavor bans have led to an increase in youth combustible cigarette use. In 2018, San Francisco, Calif., banned the sale of flavored e-cigarettes. In fact, in 2019, 18.6 percent of San Francisco high school students reported ever trying e-cigarettes – an 11.4 percent increase from 2017's rate of 16.7 percent.

Youth Use of Tobacco and Vapor Products is Declining

The legislation seeks to address youth tobacco and vapor product use and is attempting to protect children “from dangerous products like cigarettes, tobacco products, and nicotine products.”

While addressing youth use of any age-restricted product is laudable, the legislation fails to take in consideration that youth use of combustible cigarettes and other tobacco products is at record lows. Moreover, vaping rates have increasingly decreased among youth since 2019.

Unfortunately, the legislation is relying on statistics from 2019, and state-specific data from the 2021 Healthy Kids Colorado Survey (HKCS) and the Centers for Disease Control and Prevention's Youth Risk Behavior Survey (YRBS), will not be published until later this year.¹

In 2019, according to the 2019 HKCS, among high school students, 45.9 percent reported ever using a vapor product and 25.9 percent reported current use, defined as using a vapor product on at least one occasion in the 30 days prior to the survey. While ever-use of vapor products increased by 3.8 percent from 44.2 percent in 2017, current use decreased by 4.1 percent from 27 percent of high school students being defined as current vapers in 2017.

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The proposed legislation taxes note of the 2019 HKCS youth e-cigarette use, but ignores current combustible cigarette use among Colorado teens, which is at record lows.

In 2019, according to the YRBS, 5.3 percent of Colorado high school students reported using combustible cigarettes in the 30-days prior to the survey.² This is a 71.7 percent decrease from 18.7 percent in 2005. Further, daily cigarette use has decreased by 75.6 percent from 4.5 percent of high school students reporting daily smoking in 2005 to 1.1 percent in 2019.

(See Supplemental Graphs 1.1)

Further, while the legislation utilizes a 2020 CDC report on e-cigarette use among middle school and high school students, yet ignores more recent studies which have found vapor use has declined between 2020 and 2020.

In 2021, according to the National Youth Tobacco Survey, an estimated 11.3 percent of high school students and 2.8 percent of middle school students reported having used a vapor product on a least one occasion in the month prior to the survey.³ Further, only 3.1 percent of high school students and less than one percent of middle schoolers reported daily e-cigarette use. The rate of decline is remarkable: among high school students, vaping rates have declined by 41.8 percent since 2020 and by 58.9 percent since 2019, when 27.5 percent reported using e-cigarettes.

(See Supplemental Graph 1.2)

Like Other State Surveys, Flavors Are Not Driving Reason for Colorado Youth E-Cigarette Use

If lawmakers want to address youth use of vapor products, they should understand the reasoning why youth use such products. According to numerous state-level youth surveys, including Colorado's HKCS, flavors are not the number one reason why youth use e-cigarettes and vapor products.

According to the 2019 HKCS, among high school students that were current e-cigarette users, nearly half (45.5 percent) reported using such products because a friend and/or family member had used them. Conversely, only 18.4 percent responded they had used e-cigarettes because of flavors.

(See Supplemental Graph 1.3)

This is similar to findings in other state youth surveys. In 2019, among all Connecticut high school students, 5.2 percent reported using e-cigarettes because of "flavors," 18.2 percent cited "other," and 12.9 percent reported using e-cigarettes because of friends and/or family.⁴

In 2017, among Hawaiian high school students that had ever used e-cigarettes, 26.4 percent cited flavors as a reason for e-cigarette use, compared to 38.9 percent that reported "other."⁵

Among highschoolers in Maryland that used e-cigarettes, when asked about the “main reason” for using e-cigarettes only 3.2 percent responded “flavors.”⁶ Conversely, 13 percent reported because “friend/family used them,” 11.7 percent reported “other,” and 3.8 percent reported using e-cigarettes because they were less harmful than other tobacco products.

In 2019, among all Montana high school students, only 7 percent reported using vapor products because of flavors, compared to 13.5 percent that reported using e-cigarettes because of “friend or family member used them.”⁷ Further, 25.9 percent of Montana high school students reported using vapor products for “some other reason.”

In 2019, among all students, only 4.5 percent of Rhode Island high school students claimed to have used e-cigarettes because they were available in flavors, while 12.5 cited the influence of a friend and/or family member who used them and 15.9 percent reported using e-cigarettes “for some other reason.”⁸

In 2019, among high school students that were current e-cigarette users, only 10 percent of Vermont youth that used e-cigarettes cited flavors as a primary reason for using e-cigarettes, while 17 percent of Vermont high school students reported using e-cigarettes because their family and/or friends used them.⁹

In 2019, among all Virginia high school students, only 3.9 percent reported using e-cigarettes because of flavors, 12.1 used for some other reason, and 9.6 used them because of friends and/or family members.¹⁰

(See Supplemental Graph 1.4)

Vapor Product Emergence Correlates to Significant Declines in Young Adult Smoking Rates

Electronic cigarettes and vapor products were first introduced to the U.S. in 2007 “and between 2009 and 2012, retail sales of e-cigarettes expanded to all major markets in the United States.”¹¹ Moreover, between September 2014 and May 2020, e-cigarette sales in the U.S. increased by 122.2 percent.¹²

Examining data from the CDC’s Behavioral Risk Factor Surveillance Survey (BRFSS) finds that e-cigarettes’ market emergence has coincided with a significant reduction in smoking rates among young adults.

In 1998, among current adult smokers, 30.1 percent were 18 to 24 years old. In 2008, this had decreased by 25.9 percent to 22.3 percent of adult smokers in Colorado being between 18 to 24 years old.

In the years after e-cigarette's market emergence in the early 2010s, smoking rates among current smokers aged 18 to 24 years decreased by 49.4 percent. Indeed, in 2010, among current smokers in Colorado, 15.8 percent were between 18 to 24 years old. In 2020, only eight percent of current smokers were 18 to 24 years old.

Interestingly, e-cigarettes' market emergence was associated with a larger decline in average annual percent decreases. Between 1998 and 2008, the percentage of current smokers aged 18 to 24 years old decreased on average by 1.2 percent each year. Between 2010 and 2020, annual percentage decreases average at four percent.

Further, since 2016, when the U.S. surgeon general issued an alarm about youth e-cigarette use, smoking rates among adults aged 18 to 24 years in the Centennial State have decreased by 49 percent, with an average annual decrease of 14.4 percent.

(See Supplemental Graph 1.5)

Adult Vaping Rates

Despite providing annual data on cigarette and smokeless tobacco use, the CDC's BRFSS only reports on adult e-cigarette use for 2016 and 2017.

In 2017, according to the BRFSS, 5.3 percent of Colorado adults were current e-cigarette users. Similar to income status among smokers, lower income persons are more likely to use vapor products. In 2017, among current adult e-cigarette users, 16.2 percent reported household incomes of \$24,999 or less per year. Conversely, only 4.1 percent reported earning \$50,000 a year or more.

Economic Impact of Vaping in Colorado

In 2021, according to the analysis by the Vapor Technology Association, the industry created 1,125 direct vaping-related jobs in Colorado. These jobs generated more than \$48.4 million in wages.¹³ Moreover, the industry has created hundreds of secondary jobs in the Centennial State, bringing the total economic impact in 2021 to \$366.7 million. In the same year, Colorado received more than \$23 million in state taxes attributable to the vaping industry.

Unfortunately, efforts by anti-vaping organizations and policymakers have negatively impacted vape shops in the Centennial State. The number of employees in the vaping industry has decreased by 13.7 percent from 1,303 in 2018 to 1,125 in 2021, representing a loss of \$11.6 million in wages.¹⁴ Further, state tax collections in 2020 were down 10.8 percent from 2018's level of \$25.8 million. Overall, the economic output from the vaping industry in Colorado was reduced from \$413 million in 2018 to \$366.7 million in 2021, a 11.2 percent decrease.

(See Supplemental Graph 1.6)

Robust Tobacco Control Funding – Not Bans – to Address Youth Tobacco and Vapor Product Use

Between 2000 and 2020, Colorado collected an estimated \$2.9 billion in cigarette taxes.¹⁵ During the same 20-year period, the Centennial State increased the tax rate on cigarettes twice. The last tax increase raised the rate by \$0.64, to \$0.84 per pack.

The increase did lead to an immediate 79.2 percent increase in cigarette tax revenue the year after the tax was imposed, but this has steadily declined in the long-term. Since 2007 cigarette tax revenue declined on average by 2.7 percent annually. In 2020, Colorado collected \$140 million in cigarette tax revenue, a 32.1 percent decrease from the \$206.1 million in cigarette tax revenue that was collected in 2006.

In the mid-1990s, Colorado sued tobacco companies to reimburse Medicaid for the costs of treating smoking-related health issues. And, in 1998 with 45 other states, the Centennial State reached “the largest civil litigation settlement in U.S. history” through the Master Settlement Agreement (MSA).¹⁶

Under the MSA, states receive annual payments – in perpetuity – from the tobacco companies, while relinquishing future claims against the participating companies. Between 2000 and 2020, Colorado collected \$1.966 billion in MSA payments.¹⁷

Tobacco taxes and tobacco settlement payments are justified to help offset the costs of smoking, as well as prevent youth initiation. Like most states, Colorado spends very little of existing tobacco moneys on tobacco control programs – including education and prevention.

Between 2000 and 2020, Colorado allocated only \$403 million in state funds towards tobacco control programs.¹⁸ This is 13.7 percent of what the state collected in cigarette taxes in the same 20-year time span and 20.5 percent of MSA payments. In total, in 20 years, Colorado allocated only 8.2 percent of what the state received in tobacco taxes and settlement payments towards tobacco education and prevention efforts. In essence, for every \$100 received in tobacco-related taxes and settlement payments, the state spent \$8.20 funding tobacco control programs.

If lawmakers truly care about youth use of age-restricted products, especially tobacco products, they ought to invest more funding in robust tobacco control programs. In 2020, Colorado dedicated only \$21.4 million in state funding to such programs, that amounts to just \$17.12 per person under the age of 18.

(See Supplemental Graph 1.7)

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Colorado Retailers Do Good Job Not Selling to Minors

The U.S. Food and Drug Administration (FDA) regularly performs tobacco compliance checks in which the agency uses a minor to attempt to purchase tobacco products including cigars, cigarettes, e-cigarettes, and smokeless tobacco.¹⁹

From January 2011 to December 2021, FDA conducted 29,651 inspections in tobacco retailers located in the Centennial State. Only 2,406, or 8.1 percent, resulted in the sales of tobacco products to minors.

Of these, 1,557 (64.7 percent of violations and 5.3 percent of inspections) were sales of cigarettes, 390 (16.2 percent of violations and 1.3 percent of inspections) were sales of e-cigarettes and vapor products, 243 (10.1 percent of violations and 0.8 percent of inspections) were sales of smokeless tobacco products, and 192 (eight percent of violations and 0.6 percent of inspections) were sales of cigars.

Of retailers with “vape” in their retail name, the FDA conducted inspections on 107 such retailers, including standalone vape shops and vape and tobacco stores. Of the inspections, 18 resulted in sales to minors. E-cigarette violations made-up 16.8 percent of retail vape shop inspections, 4.6 percent of all e-cigarette violations in the state, 0.7 percent of all retail violations and 0.06 percent of all inspections.

(See Supplemental Graphs 1.8)

Flavor Bans Lead to Increased Combustible Cigarette Use

Flavor bans have had little effect on reducing youth e-cigarette use and may lead to increased combustible cigarette rates, as evidenced in San Francisco, California.²⁰

In April 2018, a ban on the sale of flavored e-cigarettes and vapor products went into effect in San Francisco and in January, 2020, the city implemented a full ban on any electronic vapor product. Unfortunately, these measures have failed to lower youth tobacco and vapor product use.

Data from an analysis of the 2019 Youth Risk Behavior Survey show that 16 percent of San Francisco high school students had used a vapor product on at least one occasion in 2019 – a 125 percent increase from 2017 when 7.1 percent of San Francisco high school students reported using an e-cigarette.²¹ Daily use more than doubled, from 0.7 percent of high school students in 2017, to 1.9 percent of San Francisco high school students reporting using an e-cigarette or vapor product every day in 2019.

Worse, despite nearly a decade of significant declines, youth use of combustible cigarettes seems to be on the rise in Frisco. In 2009, 35.6 percent of San Francisco high school students reported

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ever trying combustible cigarettes. This figure continued to decline to 16.7 percent in 2017. In 2019, the declining trend reversed and 18.6 percent of high school students reported ever trying a combustible cigarette. Similarly, current cigarette use increased from 4.7 percent of San Francisco high school students in 2017 to 6.5 percent in 2019.

An April 2020 study in *Addictive Behavior Reports* examined the impact of San Francisco's flavor ban on young adults by surveying a sample of San Francisco residents aged 18 to 34 years.²² Although the ban did have an effect in decreasing vaping rates, the authors noted "a significant increase in cigarette smoking" among participants aged 18 to 24 years old.

(See Supplemental Graph 1.7)

Other municipal flavor bans have also had no effect on youth e-cigarette use.²³ For example, Santa Clara County, California, banned flavored tobacco products to age-restricted stores in 2014. Despite this, youth e-cigarette use *increased*. In the 2015-16 California Youth Tobacco Survey (CYTS), 7.5 percent of Santa Clara high school students reported current use of e-cigarettes. In the 2017-18 CYTS, this *increased* to 10.7 percent.

Further, studies have found that banning flavors in e-cigarettes leads to subsequent combustible cigarette use. A 2018 study published in *Tobacco Control* found that banning flavored "e-cigarettes alone would likely increase the choice of cigarettes in smokers."²⁴ A July, 2021 survey in *Nicotine & Tobacco Research* found that one-third (33.2 percent) of survey respondents would "likely switch to [combustible] cigarettes" if flavors were banned in e-cigarettes.²⁵

In August 2021, an article in *American Journal of Public Health (AJPH)* co-authored by 15 past presidents of the Society for Research on Nicotine and Tobacco (SRNT). This prime academic global organization involved with nicotine and tobacco evidence-based research warned that: "Because both youth and adult smokers find e-cigarette flavors attractive, banning all (or most) flavors risks reducing smokers' use of e-cigarettes to quit smoking at the same time that it reduces youth vaping."²⁶

Health Effects of Electronic Cigarettes and Vapor Products

Despite recent media reports, e-cigarettes are significantly less harmful than combustible cigarettes. Public health statements on the harms of e-cigarettes include:

Public Health England (PHE): In 2015, a landmark report relying on 185 studies and produced by PHE (a leading health agency in the United Kingdom), found "that using [e-cigarettes are] around 95% safer than smoking," and that their use "could help in reducing smoking related disease, death and health inequalities."²⁷ In 2018, the agency reiterated their findings, finding vaping to be "at least 95% less harmful than smoking."²⁸

As recent as February 2021, PHE provided the latest update to their ongoing report on the effects of vapor products in adults in the UK. The authors found that in the UK, e-

cigarettes were the “most popular aid used by people to quit smoking [and] ... vaping is positively associated with quitting smoking successfully.”²⁹

The Royal College of Physicians (RCP): In 2016, RCP found the use of e-cigarettes and vaping devices “unlikely to exceed 5% of the risk of harm from smoking tobacco.”³⁰ RCP is another United Kingdom-based public health organization, and the same group which was the first to highlight the link between smoking and lung cancer, and other tobacco related diseases, in 1962.

The National Academies of Sciences, Engineering, and Medicine: In January 2018, the academy noted “using current generation e-cigarettes is less harmful than smoking.”³¹

Cochrane Review: Researchers at the Tobacco Addiction Group analyzed studies that examined the effects of e-cigarettes in helping smokers quit. The researchers found 61 studies that had over 16,700 adults that had smoked. The studies compared the instances of quitting smoking using e-cigarettes to other nicotine replacements including nicotine replacement therapy, nicotine-free e-cigarettes, behavioral support and others. Of the available evidence, the authors found that more people “probably stop smoking for at least six months using nicotine e-cigarettes than using nicotine replacement therapy ... or nicotine-free e-cigarettes.” The authors also found that e-cigarette “may help more people to stop smoking than no support or [behavioral] support only.”³²

Society for Research on Nicotine and Tobacco (SRNT): An article in August 2021 co-authored by 15 past presidents of the SRNT reported that “Many scientists have concluded that vaping is likely substantially less dangerous than smoking”. Furthermore, they found that “A growing body of evidence indicates that vaping can foster smoking cessation” and warned “Studies have found that policies intended to restrict e-cigarette use may have unintentionally increased cigarette smoking”.³³

Menthol Bans Have Little Effect on Smoking Rates, Lead to Black Markets, Lost Revenue and Will Create Racial Tension

Beyond e-cigarettes, policymakers’ fears about the role of menthol and flavorings in cigarettes and cigars are overblown and banning these products will likely lead to black markets.

Data from the National Health Interview Survey (NHIS) finds nearly a third of all American adult smokers smoke menthol cigarettes. In a 2015 NHIS survey, “of the 36.5 million American adult smokers, about 10.7 million reported that they smoked menthol cigarettes,” and white menthol smokers “far outnumbered” the black and African American menthol smokers.³⁴

Although lawmakers believe banning menthol cigarettes will deter persons from smoking those, such a ban will likely lead to black markets. A 2012 study featured in the journal *Addiction*

found a quarter of menthol smokers surveyed indicated they would find a way to purchase, even illegally, menthol cigarettes should a menthol ban go into place.³⁵ Further, there is little evidence that smokers would actually quit under a menthol ban. A 2015 study in *Nicotine & Tobacco Research* found only 28 percent of menthol smokers would give up cigarettes if menthol cigarettes were banned.³⁶

Moreover, there is no evidence to suggest that menthol cigarettes lead to youth tobacco use. Analysts at the Reason Foundation examined youth tobacco rates and menthol cigarette sales.³⁷ The authors of the 2020 report found that states “with more menthol cigarette consumption relative to all cigarettes have *lower* rates of child smoking.” Indeed, the only “predictive relationship” is between child and adult smoking rates, finding that “states with higher rates of adult use cause higher rates of youth use.”

Lawmakers should take note that menthol sales bans will strain minority communities. Although white Americans smoke more menthol cigarettes than black or African Americans, “black smokers [are] 10-11 times more likely to smoke” menthol cigarettes than white smokers.³⁸

Given African Americans’ preference for menthol cigarettes, a ban on menthol cigarettes would force police to further scrutinize African Americans and likely lead to unintended consequences.

A 2015 analysis from the National Research Council examined characteristics in the illicit tobacco market.³⁹ The researchers found that although lower income persons were less likely to travel to purchase lower-taxed cigarettes, “having a higher share of non-white households was associated with a lower probability of finding a local tax stamp” and “neighborhoods with higher proportions of minorities are more likely to have formal or informal networks that allow circumvention of the cigarette taxes.”

Lawmakers in Colorado should reexamine the case of Eric Garner, a man killed in 2014 while being arrested for selling single cigarettes in the city. In a 2019 letter to the New York City council, Garner’s mother, as well as Trayvon Martin’s mother, implored officials to “pay very close attention to the unintended consequences of a ban on menthol cigarettes and what it would mean for communities of color.”⁴⁰ Both mothers noted that a menthol ban would “create a whole new market for loosies and re-introduce another version of stop and frisk in black, financially challenged communities.”

Conclusion & Summary Points

Despite alarmism, electronic cigarettes are effective tobacco cessation products that have helped thousands of Coloradan adults quit combustible cigarettes and flavors are essential in this use. Although youth use of vapor products is concerning, lawmakers must refrain from alarmist

efforts that would restrict access to flavors. Rather than prohibition, lawmakers ought to invest already-existing tobacco monies to fund robust tobacco control programs including cessation efforts, education, and youth prevention campaigns.

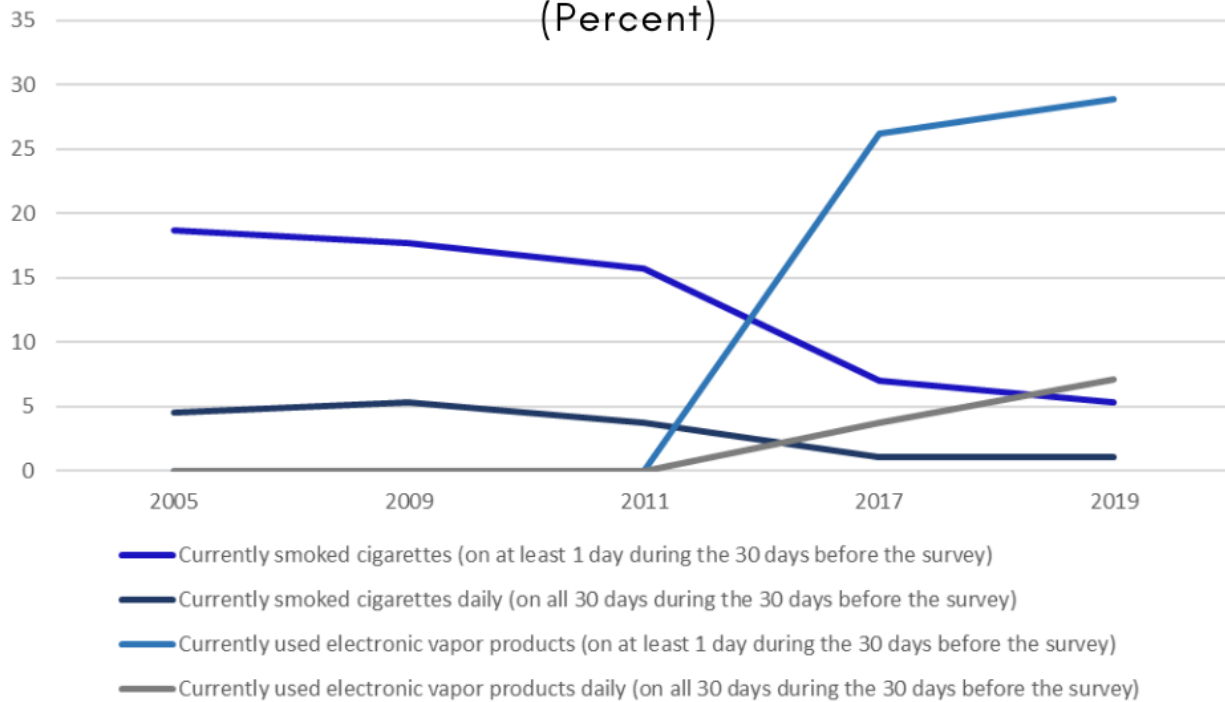
- Among current high school e-cigarette users, flavors are not the most commonly-cited reason for use.
- In 2019, among current high school e-cigarette users in Colorado, only 18.4 percent reported using e-cigarettes because of flavors. Conversely, 45.5 percent reported using e-cigarettes because friends or family members used them.
- This is similar to other state youth surveys on tobacco and vapor product use that overwhelmingly cite “friends/family” and “curiosity” as reasons for e-cigarette use.
- Combustible cigarette use among Coloradan high schoolers are at record lows. In 2019, 5.3 percent reported current use of cigarettes, a 71.7 percent decrease from 2005.
- Nationally, current vapor product use among high school students has declined by 41.8 percent since 2020 and by 58.9 percent since 2019 when 27.5 percent reported using e-cigarettes on at least one occasion in the 30 days prior to the survey.
- Colorado spends very little of existing tobacco monies on tobacco control programs.
- In 2020, the Centennial State collected \$140 million in state cigarette excise taxes and \$82.4 million in tobacco settlement payments, yet allocated only \$21.4 million (9.6 percent) to tobacco control. In 20 years, for every \$100 the state received in tobacco-related payments, it spent \$8.20 funding tobacco control programs.
- Colorado tobacco and vapor product retailers do a good job in not selling to minors. Between 2011 and 2021, the FDA issued only 2,406 violations to Colorado tobacco product retailers, which was only 8.1 percent of all FDA inspections. Further, only 16.2 percent of violations resulted in sales of e-cigarettes to minors.
- The vapor industry has been an economic boon to Colorado, generating \$366.7 million in economic activity in 2021 while generating 1,125 direct vaping-related jobs and contributing more than \$23 million in state taxes.
- E-cigarettes’ market emergence is associated with low young adult smoking rates. In 2020, among current smokers in Colorado, only 15.8 percent current smokers were 18 to 24 years old – a 49.4 percent decrease from 2010. Further, since 2016, smoking rates among young adults have decreased by 49 percent.
- Localized flavor bans have led to an increase in youth combustible cigarette use. In 2018, San Francisco, Calif., banned the sale of flavored e-cigarettes. In fact, in 2019, 18.6 percent of San Francisco high school students reported ever trying e-cigarettes – an 11.4 percent increase from 2017’s rate of 16.7 percent.

Supplemental Graphs

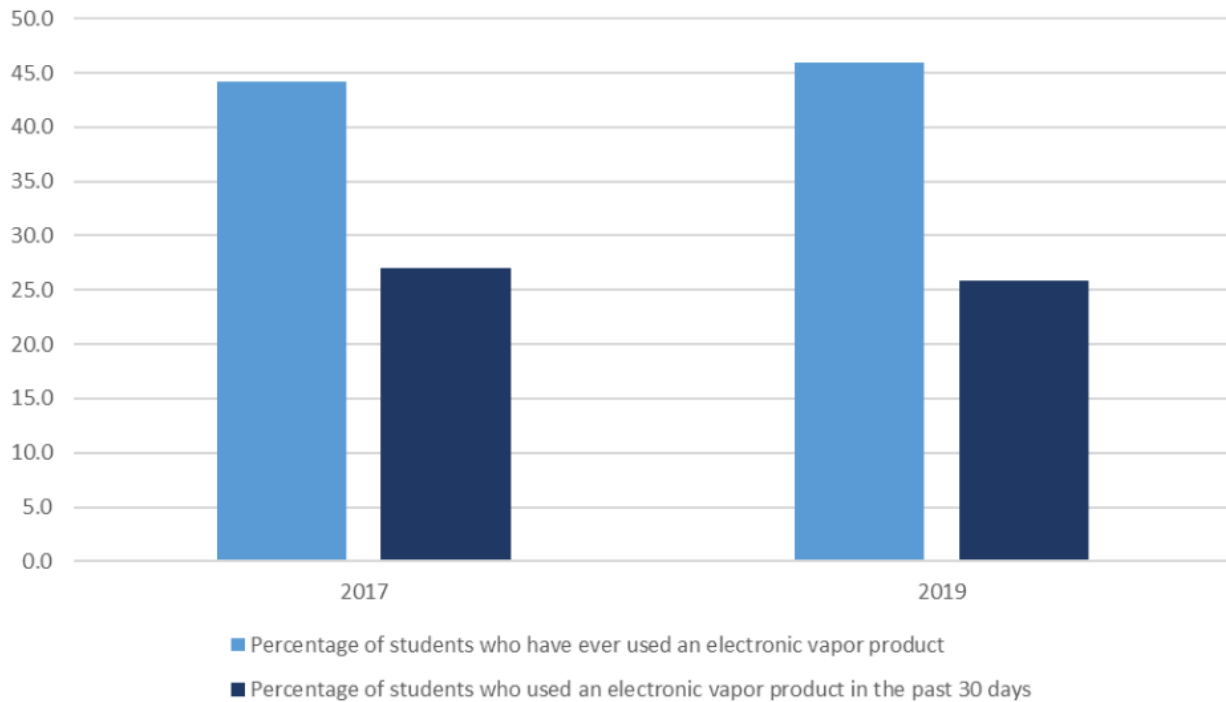
1.1 Colorado Tobacco and Vapor Use, High School Students

Colorado HS Student Tobacco and Vapor Use

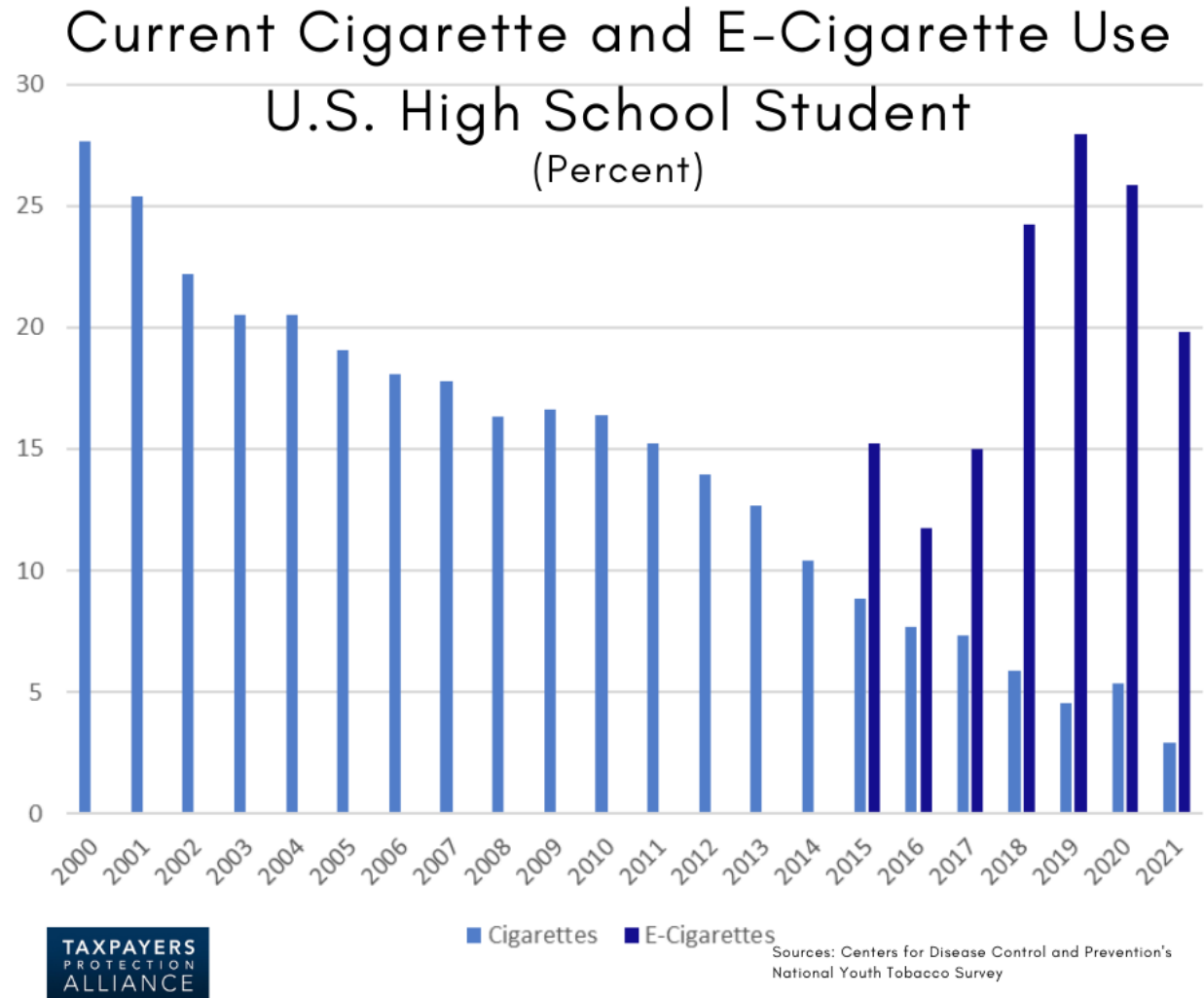
(Percent)



Colorado HS Student Vapor Use (Percent)

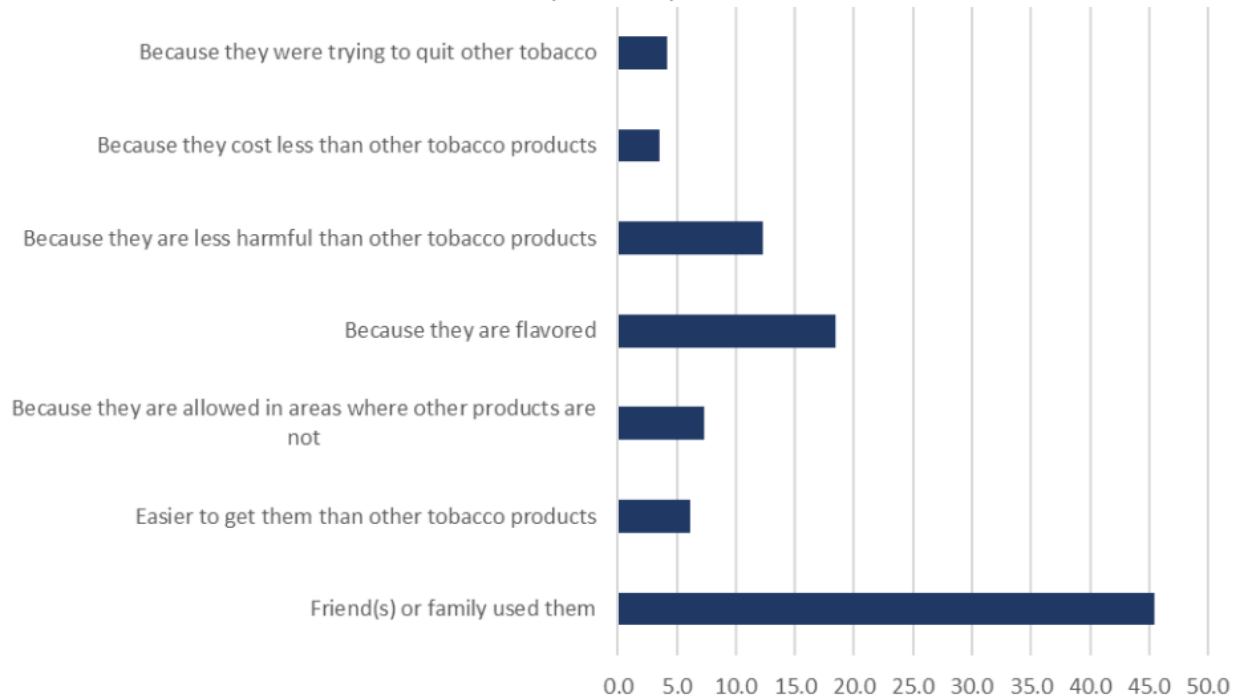


1.2 National Youth Tobacco and Vapor Use



1.3 Reasons for E-Cigarette Use, Colorado High School Students

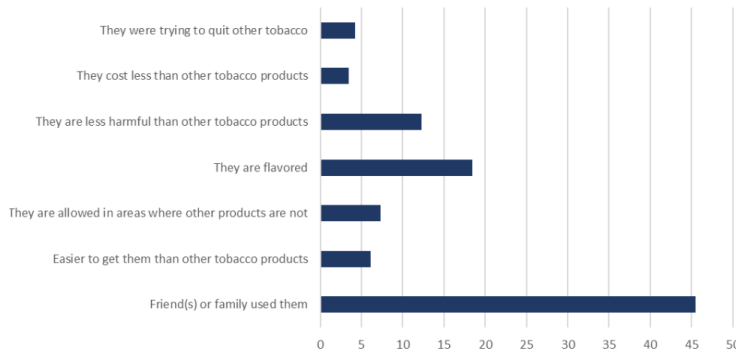
Reasons for E-Cigarette Use, HS Students (Percent)



1.4 Reasons for E-Cigarette Use, State Surveys

REASONS FOR E-CIG USE

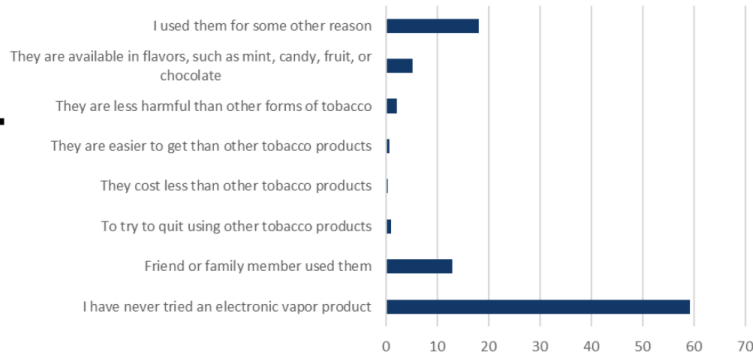
Among HS students who have used vapor products, the percentage who used them because



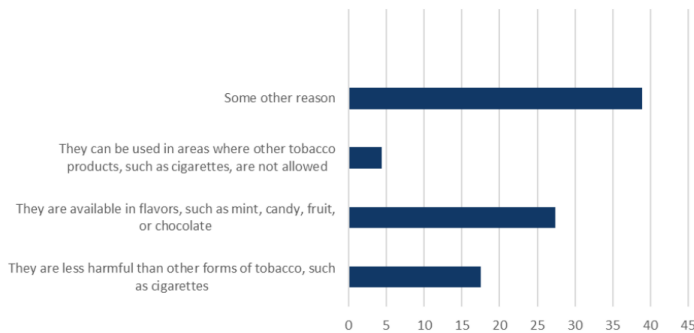
2019
COLORADO
Healthy Kids Colorado Survey
(Percentage of High School Students)

What is the main reason you have used electronic vapor products?

2019
CONNECTICUT
Youth Risk Behavior Survey
(Percentage of High School Students)



Reasons for e-cigarette use (among ever e-cigarette users, choose all that apply):

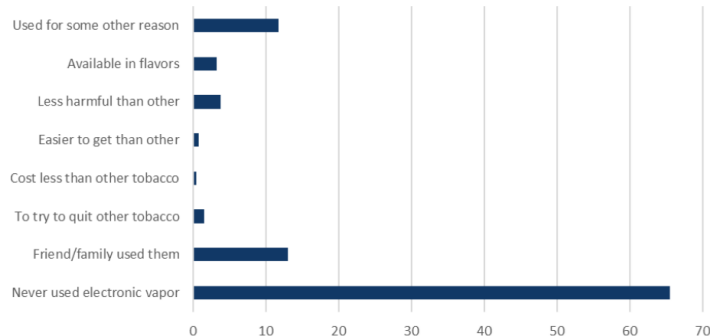
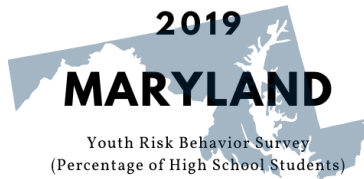


2017
HAWAII
Hawai'i Youth Tobacco Survey
(Percentage of High School Students)

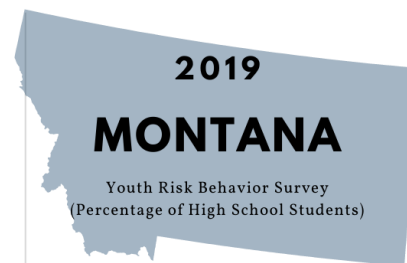
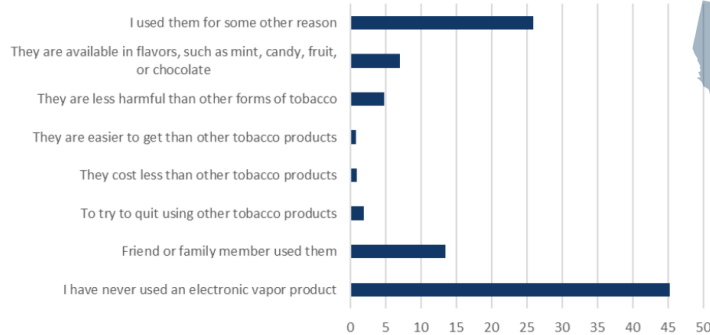
Source: World Health Organization

REASONS FOR E-CIG USE

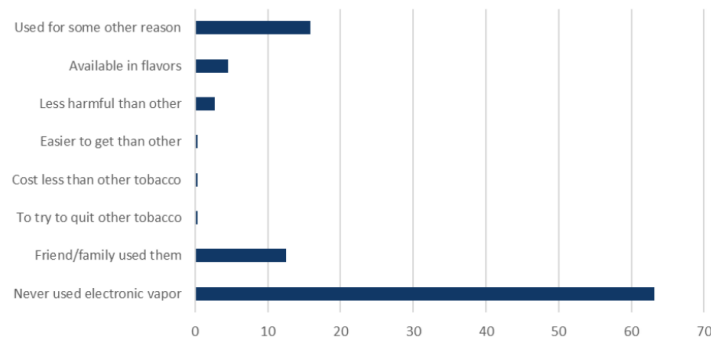
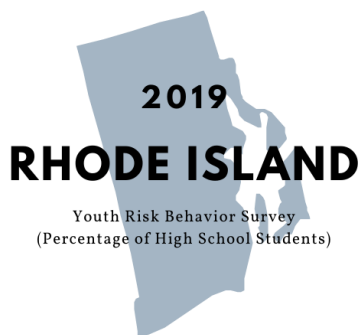
What is the main reason you have used electronic vapor products?



What is the main reason you have used electronic vapor products? (Select only one response.)

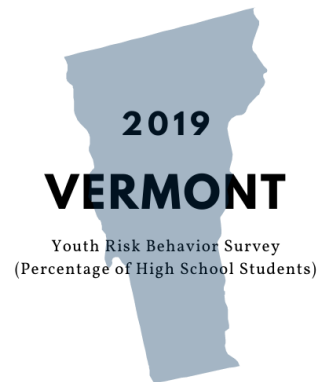
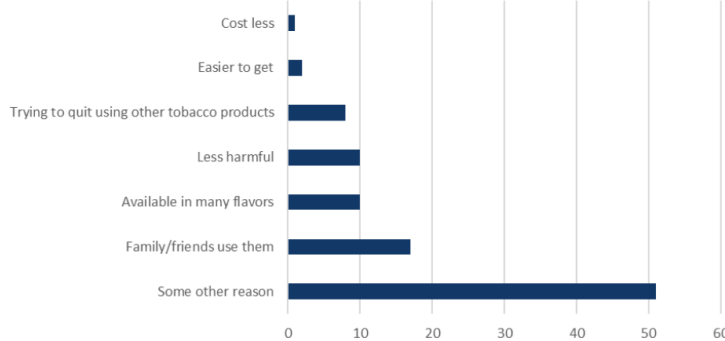


What is the main reason you have used electronic vapor products?

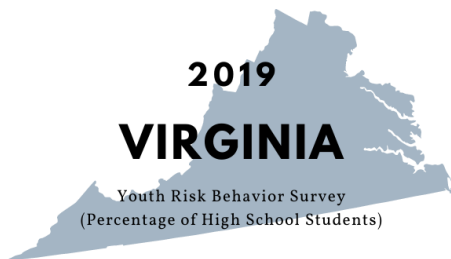
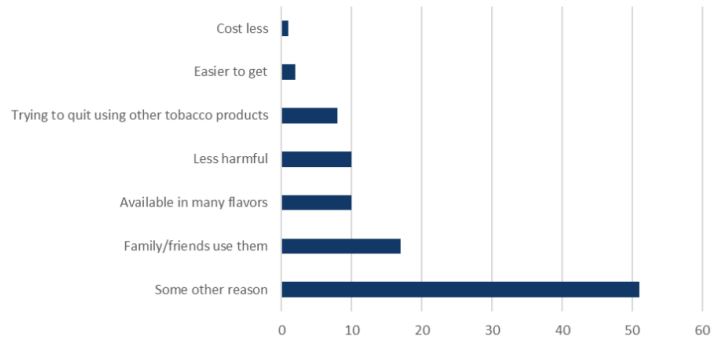


REASONS FOR E-CIG USE

Primary Reason for Using Electronic Vapor Products (Among Current Users)



Primary Reason for Using Electronic Vapor Products (Among Current Users)



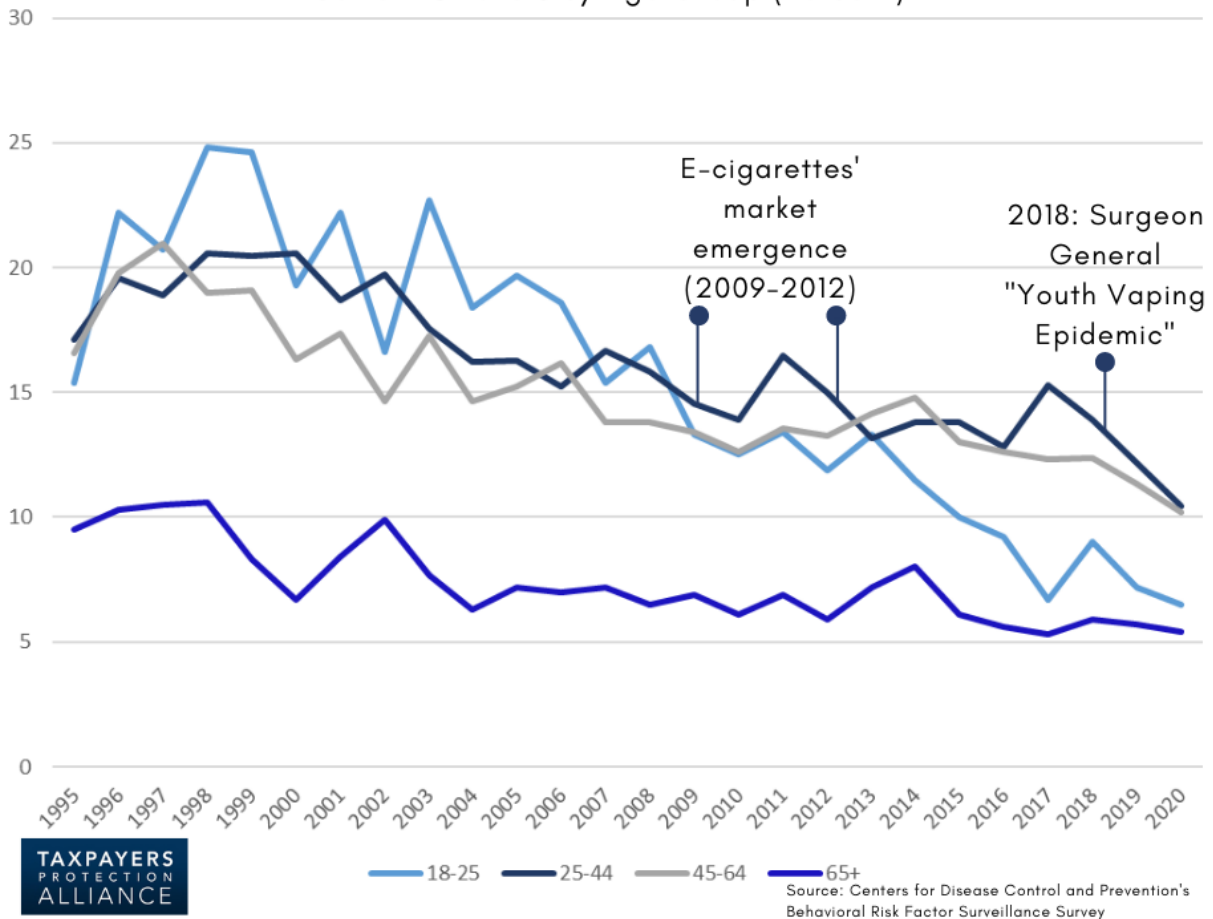
SOURCES:

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1.5 Young Adult Smoking Rates and E-Cigarettes

E-CIGARETTES EMERGENCE LED TO SIGNIFICANT DECREASE IN SMOKING RATES AMONG YOUNG ADULTS

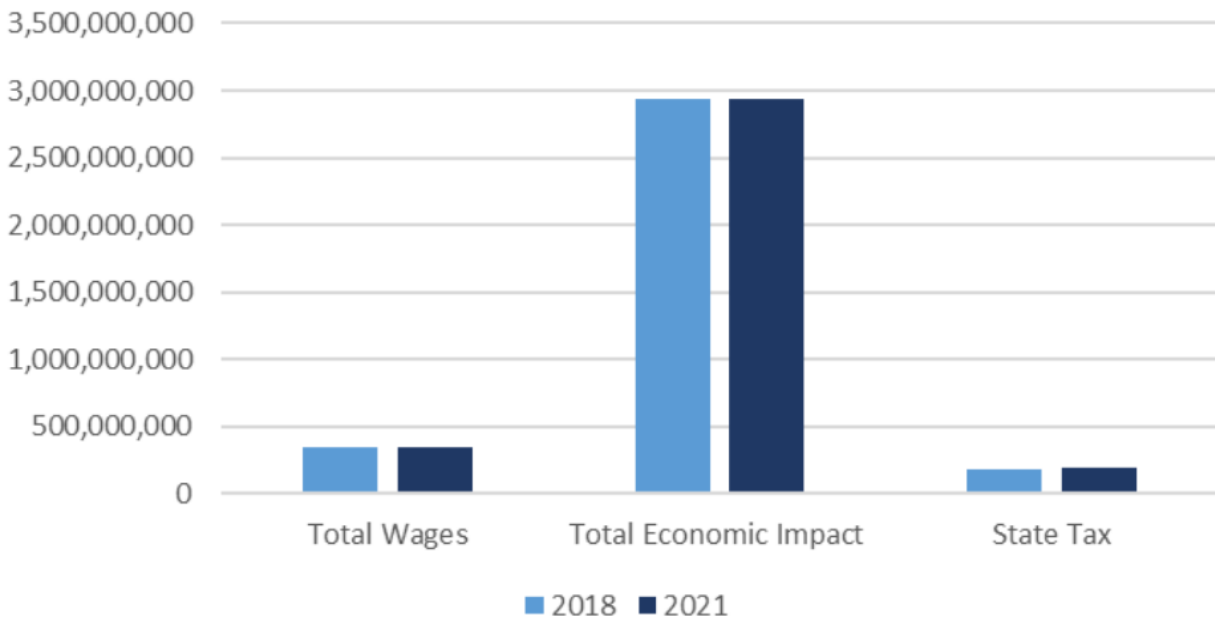
Current Smokers by Age Group (Percent)



1.6 Economic Impact of Vaping, Colorado

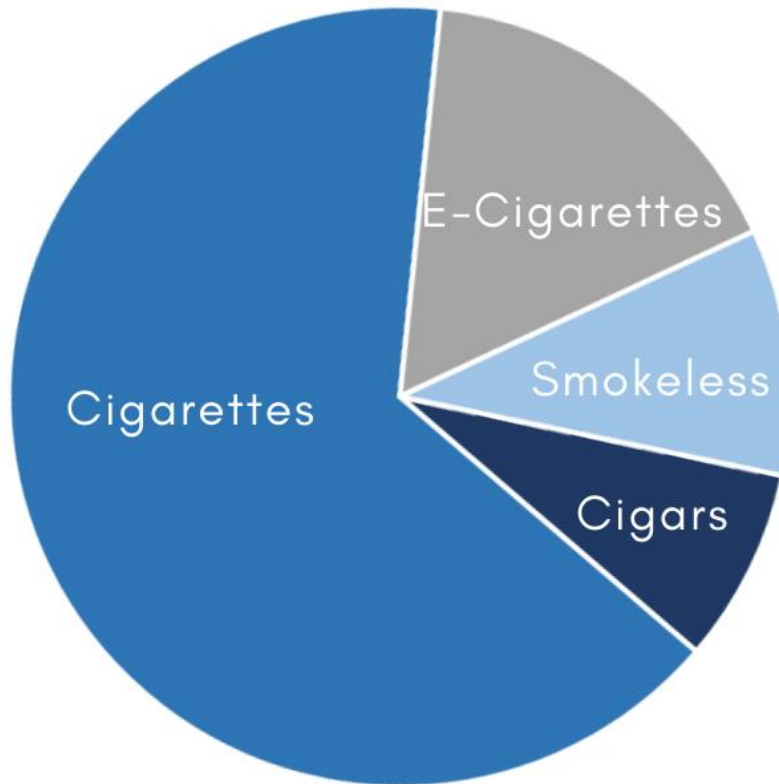
Vape Shop Economics

(Dollars, in millions)



1.7 FDA Compliance Checks

**TOBACCO & VAPE RETAILERS FDA COMPLIANCE
INSPECTIONS VIOLATIONS
2011-2021**

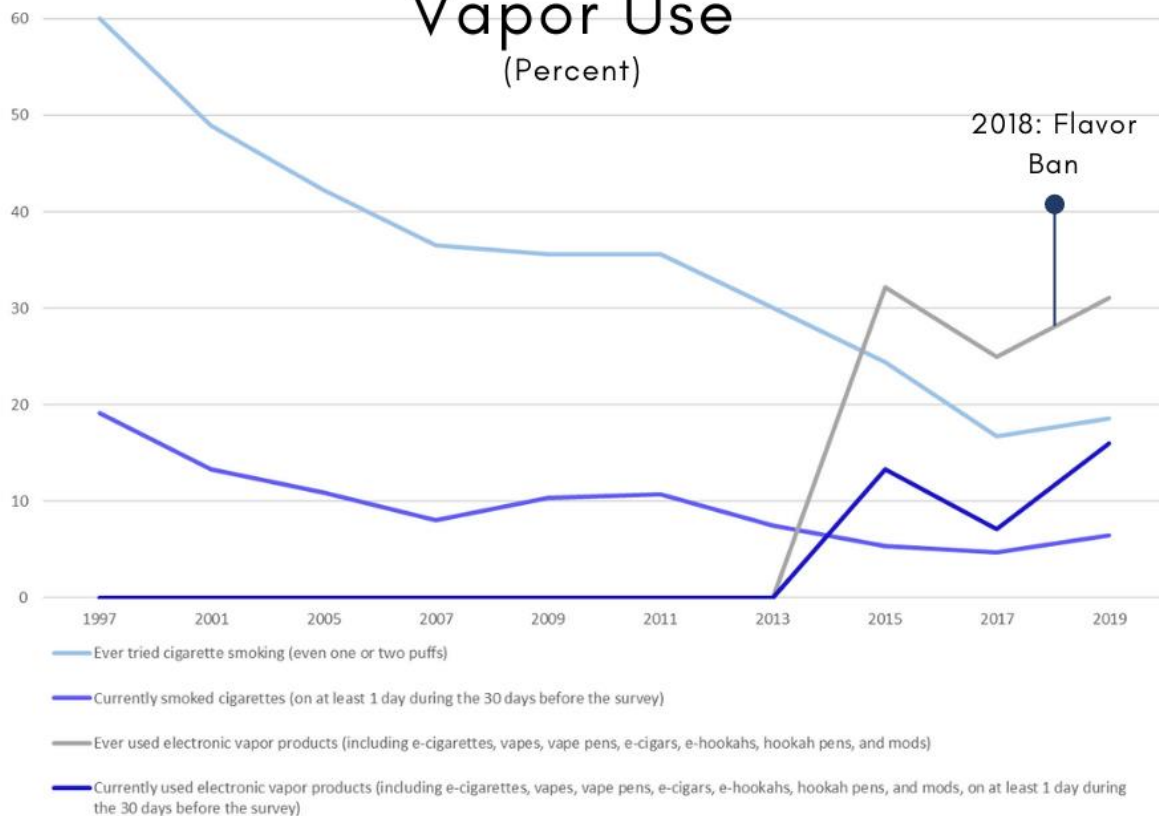


**"VAPE" IN RETAIL NAME
FDA COMPLIANCE INSPECTIONS
2016-2021**



1.8 San Francisco Youth Tobacco Use & Flavor Ban Effects

San Francisco HS Student Tobacco & Vapor Use (Percent)



¹ Colorado Department of Public Health and Environment, "Healthy Kids Colorado Survey data tables and reports," 2019, <https://cdphe.colorado.gov/healthy-kids-colorado-survey-data-tables-and-reports>.

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- ⁶ Maryland Department of Public Health, “Maryland High School Survey Detail Tables – Weighted Data,” 2018 *Youth Risk Behavior Survey*, 2018, <https://phpa.health.maryland.gov/ccdpc/Reports/Documents/2018%20YRBS%20YTS%20Reports/Maryland/2018MDH%20Detail%20Tables.pdf>.
- ⁷ Montana Office of Public Instruction, “2019 Montana Youth Risk Behavior Survey High School Results,” 2019, http://opi.mt.gov/Portals/182/Page%20Files/YRBS/2019YRBS/2019_MT_YRBS_FullReport.pdf?ver=2019-08-23-083248-820.
- ⁸ State of Rhode Island Department of Health, “Rhode Island High School Survey Detail Tables – Weighted Data,” 2019 *Youth Risk Behavior Survey Results*, 2019, <https://health.ri.gov/materialbyothers/yrbs/2019HighSchoolDetailTables.pdf>.
- ⁹ Vermont Department of Health, “2019 Vermont Youth Risk Behavior Survey Statewide Results,” March, 2020, https://www.healthvermont.gov/sites/default/files/documents/pdf/CHS_YRBS_statewide_report.pdf.
- ¹⁰ Virginia Department of Health, “Virginia High School Survey Detail Tables – Weighted Data,” 2019 *Youth Risk Behavior Survey Results*, 2019, <https://www.vdh.virginia.gov/content/uploads/sites/69/2020/06/2019VAH-Detail-Tables.pdf>.
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