

Tobacco and Nicotine Products: The Unwavering Public Health Crisis



Legislative Overview Series: 2024 Public Health Spotlight

Introduction

According to CDC, tobacco use [remains](#) the leading cause of preventable disease, disability, and death in the United States. It is estimated that approximately [1,600 U.S. youths](#) smoke their first cigarette every day.

Nicotine is a highly addictive chemical compound found in combustible tobacco products, electronic cigarettes (e-cigarettes), smokeless tobacco, and other nicotine products (e.g., nicotine pouches) that is harmful to adolescent brain development, a health danger for pregnant people, and toxic to fetuses. Between February 2020 and June 2023, sales for flavored disposable e-cigarettes, including menthol flavored products, [rose as much as 200%](#). In response, state and territorial legislatures enacted laws to reduce youth access to these products and to reduce tobacco-related death and disease.

Legislative Trends

Flavored Products

E-cigarette products, policies, and behavior patterns have been rapidly evolving over the past decade. At the federal level, FDA's enforcement against unauthorized flavored cartridge e-cigarettes has led consumers [to shift](#) to other flavored disposable e-cigarettes, or menthol-flavored pod systems ([products with prefilled or refillable "pod" cartridges](#)). Meanwhile, the FDA recently filed proposed rules that would ban the sale of [menthol cigarettes](#) and [flavored cigars](#) after the rules are finalized.

Along with federal activities, states continue to enact [legislation](#) aimed at limiting flavored tobacco products. California's 2022 Proposition 31, which restricted sales of [flavored e-cigarettes](#), [reduced unit sales by over 35%](#) (representing roughly 281,000 units) throughout the first two quarters of 2023. This past session, California enacted [AB 935](#), which updates the current flavor tobacco ban to allow enforcement by civil penalties.

Ohio passed [HB 33](#), which prohibits local communities from banning flavored tobacco. However, Ohio's governor [vetoed](#) this portion of the bill, citing the importance of local government flavor bans while the administration works toward its preferred policy approach of a statewide flavor ban. At least 25 states introduced, but did not pass, legislation aimed at restricting flavored tobacco. For example, Pennsylvania's [HB 1161](#) would have prohibited the sale of "flavored tobacco products," providing exceptions for hookah or shisha, loose-leaf, and premium cigars. Maine's bill [SP 496](#) would have prohibited the sale of flavored tobacco products, including menthol and products that offer "a cooling or numbing sensation." New Jersey introduced [S 299](#) to add menthol, mint, wintergreen, and clove to the list of currently prohibited flavors.

Similarly, Vermont's bill [S 18](#) would expand the state's prohibited flavors to include any distinguishable taste or aroma other than tobacco, including menthol. Further, Vermont's bill would prohibit the sale of any flavored tobacco product, flavored e-liquid, or flavored tobacco substitute. Finally, after Hawaii's flavored e-cigarette ban was [vetoed by the governor](#) in 2022, the state legislature introduced several bills, including [HB 551](#), [HB 1076](#), and [SB 942](#) all seeking to prohibit the sale of flavored tobacco products and the mislabeling of e-liquids as "nicotine free." Both Hawaii and Vermont's bills will carry forward into the next session.

Price Strategies

Increasing prices on e-cigarettes and nicotine products through excise, general sales, and uses taxes is an [evidence-based method](#) of reducing overall tobacco use. [As of 2019](#), all 50 states and Washington, D.C. utilize an excise tax, 14 states enforce a use tax, and Minnesota and Washington, D.C. have additional state sales tax on tobacco or nicotine products.





In 2023, at least 24 states considered—and 10 passed—legislation related to pricing strategies for tobacco or nicotine products. Montana’s [SB 122](#) and Virginia’s [SB 992](#) established new taxes on cigars. Louisiana and Hawaii passed legislation aimed at amending the current excise tax for tobacco products. Louisiana’s [HB 635](#) increased the excise tax on vapor products and e-cigarettes to partially fund tobacco enforcement. Hawaii’s [SB 975](#) imposes an excise tax on each electronic smoking device or e-liquid and requires new retail tobacco permits specifying if the place of business sells electronic smoking devices, e-liquid, or both. Colorado’s [HB 23-1015](#) defines “remote retail sales” in regard to cigars or pipe tobacco for purposes of establishing the regulation and taxation of the sales. North Carolina’s [SB 174](#) establishes a new “vapor products license” for all wholesale or retail dealers selling vapor products and redefines current licenses as “other tobacco products” for tobacco and nicotine products other than vapor products.

Smoke Free Environment

Clean air and smoke-free environments are essential to reducing exposure to [secondhand smoke](#), which causes disease and premature death among those who do not smoke. In 2023, at least 20 states considered bills related to smoke-free environments. Of those, eight states (Alabama, California, Delaware, Georgia, Illinois, New York, North Dakota, and South Carolina) enacted legislation.

Three bills enacted this year in California, Delaware, and Illinois enhance smoke-free policies. Delaware’s [HB 118](#) prohibits smoking while a minor is in a vehicle. California’s [SB 626](#) eliminates the exemption to its smoke-free workplace law that allowed smoking in up to 20% of hotel and motel rooms. Illinois’ [HB 1540](#) amended the Smoke Free Illinois Act, providing a new definition for “electronic cigarette” as well as “smoke or smoking” that includes electronic cigarettes in areas where smoking is prohibited.

Looking Ahead

ASTHO expects states and territories to continue to adopt laws and policies aimed at reducing youth access to tobacco and nicotine products. In addition to laws related to flavored products, pricing strategies, and smoke-free environments, states and territories may consider actions to:

- Raise the state or territorial minimum age of sale for tobacco and nicotine products to 21, aligning with the federal minimum age of sale for tobacco.
- Repeal state preemption provisions to allow local communities to establish restrictions for tobacco and nicotine products.
- Broaden the definition for tobacco and non-tobacco products to include synthetic nicotine.
- Implement state retail licensing programs for tobacco and nicotine products and create a penalty structure for retail violations.
- Modernize language (such as “tobacco products”) and remove outdated sections within state law.

In 2023, 44 states introduced legislation aimed at reducing the use of tobacco and nicotine products, and 20 of those successfully enacted them into law.

In 2023, 10 states enacted legislation aimed at updating taxes or licensure for tobacco and nicotine products.

Learn more at www.astho.org

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