



# E-CIGARETTES AND FLAVORED TOBACCO PRODUCTS

## STOPPING A NEW EPIDEMIC



### LEGISLATIVE OVERVIEW SERIES: 2022 PUBLIC HEALTH SPOTLIGHT

#### INTRODUCTION

Tobacco use in all forms is associated with severe COVID-19 outcomes.<sup>1</sup> During the COVID-19 pandemic, tobacco use increased among smokers.<sup>2</sup> Although some smokers increased their tobacco use due to pandemic-related stress, other smokers were motivated to quit by the increased COVID-19 risk.<sup>3</sup>

#### HARMFUL NICOTINE PRODUCTS

Electronic cigarettes (e-cigarettes) are devices that heat a liquid that may contain flavors and/or nicotine to create a vapor or aerosol that is then inhaled. Use of these devices—commonly referred to as “vaping”—has become exceedingly popular despite the documented health risks. Most e-cigarettes contain nicotine, which is highly addictive, harmful to adolescent brain development, a health danger for pregnant people, and toxic to fetuses. E-cigarette aerosol can also contain cancer-causing chemicals, heavy metals (e.g., lead), and volatile organic compounds. Evidence shows that even e-cigarettes without nicotine are harmful to the lungs.

In 2021, FDA issued final rules for premarket review of new tobacco products, including e-cigarette products. Under these rules, FDA authorized the marketing of an e-cigarette product for the first time, finding that the potential benefits of tobacco-flavored e-cigarettes product helping adult users of combustible cigarettes

to quit outweighed the risk of youth vaping. Additionally, FDA announced that it will ban all flavors of combustible tobacco, including menthol, in 2021. After the rulemaking process has concluded and is enforced, the proposed menthol ban is anticipated to significantly reduce youth smoking and address health disparities experienced by communities of color and LGBTQ+ individuals.

#### LEGISLATIVE TRENDS

##### FLAVORED PRODUCTS

Regulating the sale of flavored vaping products is known to reduce youth e-cigarette use. Five states (California, Massachusetts, New Jersey, New York, and Rhode Island) prohibited the sale of flavored e-cigarettes prior to 2021. The California law has yet to be enforced due to a pending veto referendum, and California voters will vote whether to keep the flavored tobacco ban during the November 2022 election. In 2021, at least 12 states and Washington, D.C. considered flavor bans on tobacco products, with Washington, D.C. passing a flavor ban this year to become the sixth jurisdiction to do so.

##### E-LIQUID STANDARDS

The concentration of nicotine varies widely across e-liquid products, with higher concentrations of nicotine increasing the risk of addiction. In 2021, Utah passed SB 1003 directing the Utah Department of Health to promulgate an agency rule establishing the nicotine content requirements for e-liquids sold in the state. An agency rulemaking effective Sept. 9, 2021, limits nicotine concentration for e-liquids sold in Utah to less than 3% by weight per container, not to exceed 36 mg/ml.

E-liquids that contain ingredients such as Vitamin E acetate have been linked to electronic-cigarette, or vaping, product use-associated lung injury (EVALI). Three states (Illinois, Michigan, and New York) considered bills limiting the sale of e-liquid products with Vitamin E acetate in 2021. Illinois enacted SB 512, prohibiting the sale of e-liquids with Vitamin E acetate, polyethylene glycol (PEG), or medium chain triglycerides (MCT oil) in the state.

#### BY THE NUMBERS E-CIGARETTES<sup>4</sup>

More than **1.7 MILLION (11.3%)** high school students reported current e-cigarette use in 2021.

Among students currently using e-cigarettes, **86% PREFER** flavored products.

## TOBACCO PRICE INCREASES

State taxes on tobacco products is a fact-based method of reducing overall tobacco use. States can regulate e-cigarette prices by applying a percentage price increase based on the sale price, pricing e-cigarettes and vapor products at the same rates as combustible cigarettes, and imposing a per milliliter (ml) price increase on liquid nicotine or consumable material. In 2021, 11 states considered pricing strategies on e-cigarettes or vapor products with only California enacting a bill (SB 395) to increase prices by imposing 12.5% sales tax on the purchase of an e-cigarette.

## LOOKING AHEAD

ASTHO expects states to continue adopting laws aimed at reducing youth access to e-cigarettes. In addition to laws aimed at flavored products, regulating e-liquid contents, and point of sale limitations other state actions may include:

- Enhancing enforcement of existing laws that prohibit selling tobacco products to individuals under 21 and/or raising the state/territorial minimum age of sale to 21.
- Additionally, states may consider amending purchase, use, or possession (PUP) Tobacco 21 laws and instead prohibit the sale of tobacco products to underaged consumers by brick-and-mortar retailers and online vendors.
- Incorporating e-cigarettes in the definition of tobacco products to make enforcement consistent and so they are included in existing evidence-based policies, such as clean indoor air laws.
- Regulating e-liquid nicotine concentration.
- Repealing laws that hinder public health by pre-empting local jurisdictions for passing and enforcing tobacco laws that differ from the state law.

## CLEARING THE AIR

23 states, territories, and commonwealths and 990 municipalities have expanded smoke-free air laws to prohibit e-cigarette use.

(source: American nonsmokers' rights foundation)



## AGE OF SALE

In December 2019, the federal government increased the minimum age to purchase tobacco products from 18 to 21. As of July 2021, 39 states and three territories have raised their age of sale for tobacco products to 21.

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