



# UNITED STATES VAPING INDEX

A CONSUMER-FRIENDLY REGULATORY  
APPROACH TO VAPING PRODUCTS

Which American States are the best for  
Vaping?

By David Clement and Yaël Ossowski

# OVERVIEW

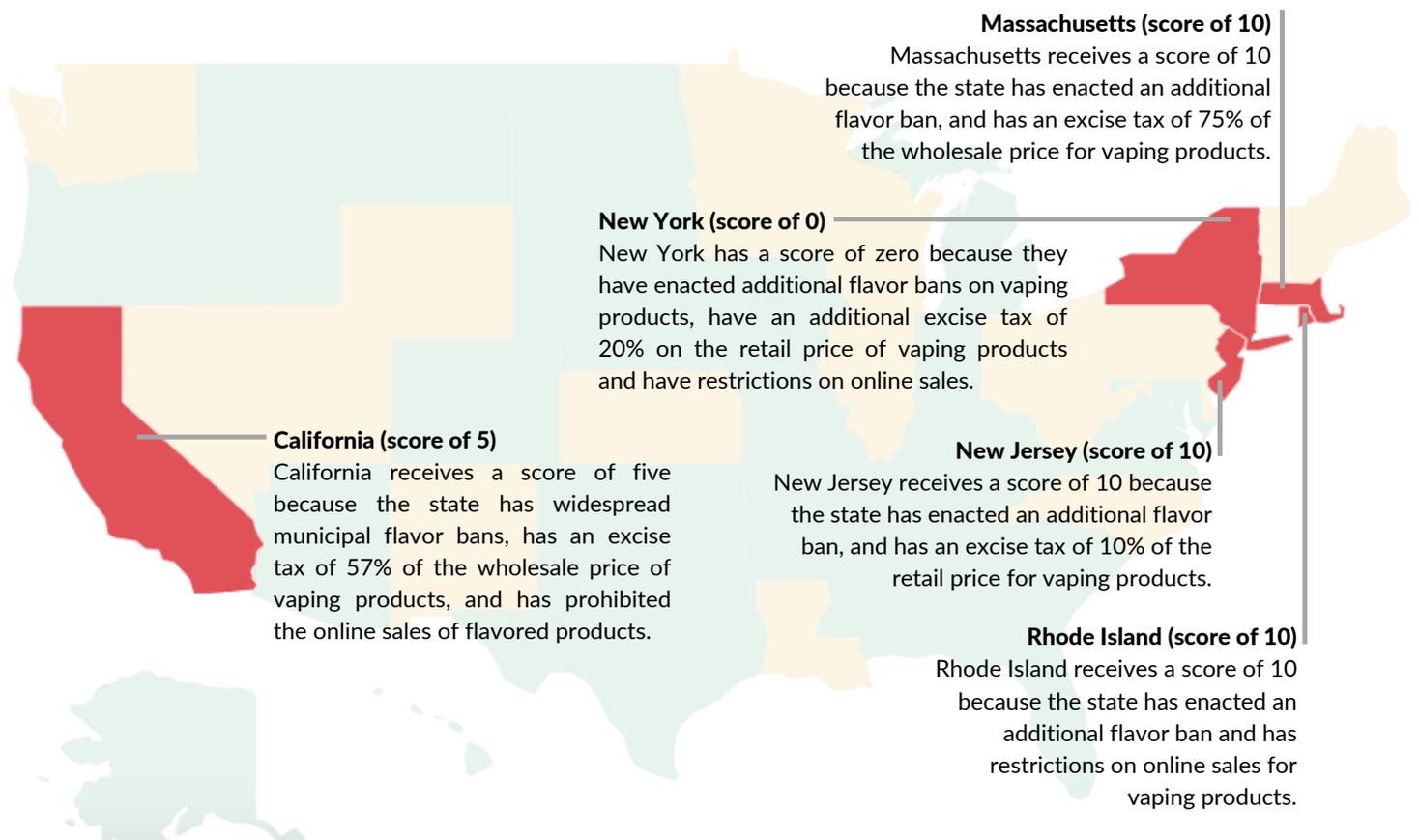
The Consumer Choice Center's US Vaping Index categorizes and ranks each state based on its consumer-friendly regulatory approach to vaping products.

To rank each state, we created a uniquely weighted scoring system that analyzes additional flavor restrictions, taxes, and the ability to sell vaping products online.

Regulations are assessed based on how stringent they are in addition to existing regulations promulgated by the Food and Drug Administration.

States that received between 0 and 10 points received an "F" grade, between 11 and 20 points is "C", and states with points between 21 and 30 received an "A" grade.

The five worst states according to the US Vaping Index are:





# ANALYSIS

Since 2009, the Food and Drug Administration has had regulatory authority over all tobacco products. Because e-cigarettes and vaping devices have been included in that category, rather unfairly, these regulations forced firms that produce vaping products to undergo a complex Premarket Tobacco Product Application process that provides scientific proof that these products are beneficial to public health.

The deadline for these applications was September 9, 2020, after lawsuits and uncertainty delayed it by several years. This oversight role of the FDA, including various Trump Administration rules on flavor restrictions for pod-based devices, has severely restricted further innovation in the field of vaping technology as an alternative for smokers. This year, the Trump Administration restricted all pod-based devices to only menthol and tobacco flavors.

At focus here is the state regulation of vaping, as it plays a big part in their availability to adult consumers who want to switch away from combustible tobacco. The 2020 Consumer Choice Center US Vaping Index ranks each state according to its level of regulation on additional flavor restrictions, taxes, and the ability to buy and sell vaping products online.

## **FLAVOR RESTRICTIONS**

With flavor restrictions that go beyond federal bans, states are reducing options and the desirability of vaping products for adult smokers looking to switch. This is harmful not only to the nascent vaping industry mostly made up of independent shops, but for every potential consumer who would like a less harmful alternative to traditional tobacco.

As our previous research ([Why Flavors Matter](#)) has indicated, smokers looking to quit are drawn to flavored vaping products because of their customizable taste, but also because tobacco flavors remind consumers of conventional cigarettes. Recent [research](#) conducted in both the United States and Canada has found that 63.1% of regular vapers use non-tobacco flavored products (fruit, mint, candy). These adults found vaping more satisfying (compared with smoking) than vapers using tobacco flavor. If states have additional flavor restrictions, that reduces the options for adults who want an alternative to smoking.

## **TAXES**

The next category used in our index is taxation. States levy taxes on vaping products according to formulas that take either nicotine levels, prices, or sizes into account. In states with higher taxes on vaping products, the average price of any vape device and its liquids is more expensive than states without additional taxes. In states with the lowest ranking, taxes on vaping are higher than they are for traditional tobacco products like cigarettes and cigars. That is not only antithetical to public health, but it demonstrates a lack of information on the part of state legislators.

We awarded higher points to states that had low taxation for vaping products, keeping prices reasonable for responsible adult consumers who are switching away from smoking.

## **ONLINE SALES**

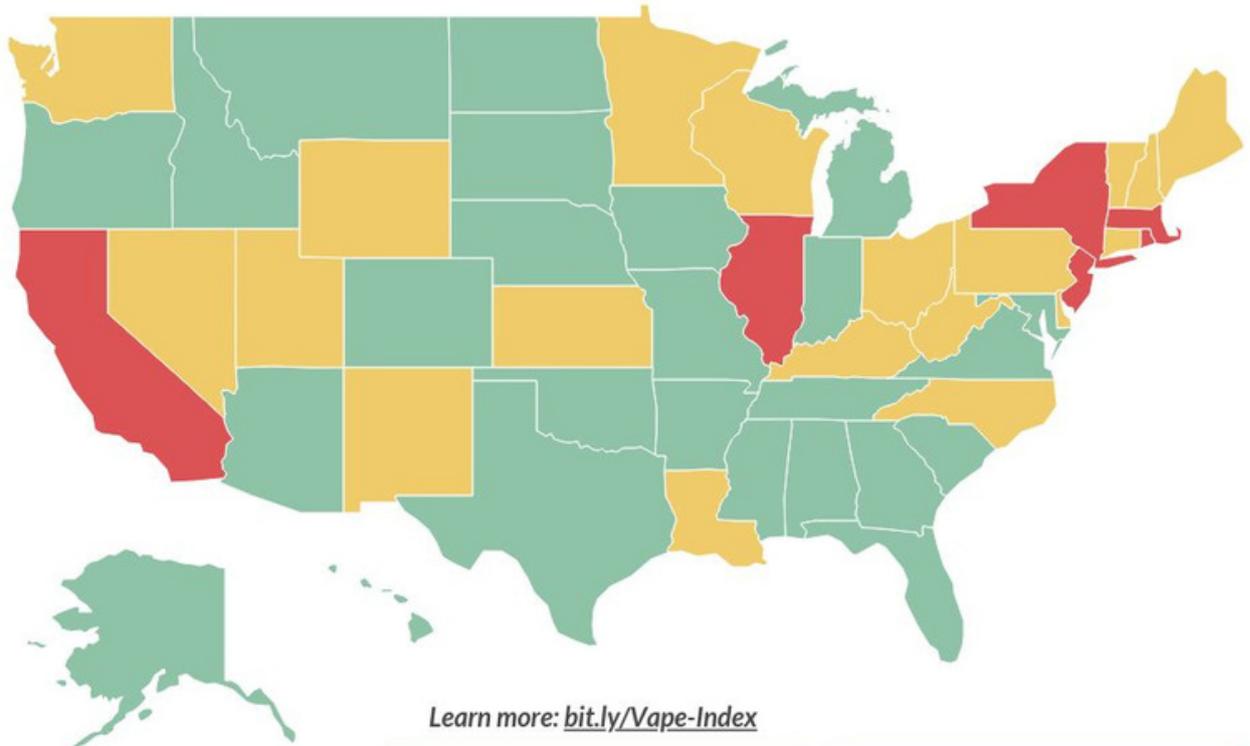
The ability to buy vaping products online is a necessary tool for adult consumers who prefer custom devices, liquids, and more that they cannot find in their local communities. Using age-restricted websites to procure these products helps consumers to more conveniently and easily order what they need directly to their home. While it empowers vapers, it also helps grow independent businesses that can stock and ship products to send directly to consumers. These online marketplaces also comply with tax and age-restriction laws, ensuring the rules are followed in compliance with both state and federal authorities.

States that ban online sales of vaping products are pushing online sales to the black market, which endangers consumers and removing governmental regulation of these transactions altogether. The states that do not allow online sales are therefore given a poor score for consumer-friendly vaping regulations.



# UNITED STATES VAPING INDEX

Level of State vaping regulations on flavors, taxes, and online sales



## A Grade: Score 21 - 30 points

FLORIDA / MICHIGAN / MONTANA / OREGON / ALABAMA / ALASKA / ARIZONA  
ARKANSAS / COLORADO / GEORGIA / HAWAII / IDAHO / INDIANA / IOWA  
MARYLAND / MISSISSIPPI / MISSOURI / NEBRASKA / NORTH DAKOTA  
OKLAHOMA / SOUTH CAROLINA / SOUTH DAKOTA / TENNESSEE / TEXAS / VIRGINIA

## C Grade: Score 11 - 20 points

CONNECTICUT / UTAH / WASHINGTON / DELAWARE / DC / KANSAS / KENTUCKY  
LOUISIANA / MAINE / MINNESOTA / NEVADA / NEW HAMPSHIRE  
NEW MEXICO / NORTH CAROLINA / OHIO / PENNSYLVANIA / VERMONT  
WEST VIRGINIA / WISCONSIN / WYOMING

## F Grade: Score 0 - 10 points

NEW YORK / CALIFORNIA / ILLINOIS / MASSACHUSETTS / NEW JERSEY  
RHODE ISLAND

# METHODOLOGY



Does a US state have additional restrictions on flavors beyond the legislation created by the federal government? This category looks at if individual states have enacted additional flavor bans on top of the federal government's restrictions. If a state does not have additional restrictions, they are awarded 10 points. If a state had a ban, but that ban was then struck down by the courts, or by the governor, they are awarded 5 points. If a state has an additional flavor ban, they are given 0 points.



Does a US state have additional excise taxation on vaping products, beyond applicable sales taxes? This category looks at if individual states have enacted additional excise taxes on vaping products beyond sales taxes. These taxes include taxes on the wholesale price, the retail price, and the price per milliliter. If a state has no additional taxation, it is given 10 points. If a state does have an excise tax, it is given 0 points.



Does a US state have restrictions prohibiting the online sale of vaping products to adults? This category examines whether states allow the online retail of vaping products. States that outright ban online sales are given 0 points, and states with certain flavor restrictions on vaping products purchased online are given 5 points. 10 points are awarded to states that have no restrictions for vape sales online.

# CONCLUSION

The regulation of vaping products in the United States is both convoluted and fractured. Laws are in effect by both the federal government and your state government. If you live in a state like New York, your options for acquiring flavored vaping products are now severely restricted by law, whereas a state like Colorado has more permissive regulation that allows adults the ability to choose less harmful alternatives to smoking. This leads to serious inequities between states in the drive to encourage better public health when it comes to harm reduction.

By ranking each state by their level of consumer-friendly regulations on vaping, we provide a stark picture of the states that are encouraging innovation and public health by creating a better environment for vaping products and those that are providing harm to consumers by not embracing vaping in the slightest. If state lawmakers want to increase the options available to former smokers, they should look to the states that have gotten in right in this index by allowing vape flavors, keeping taxation moderate or low, and allowing online sales to adult consumers.

For more information on harm reduction and the innovative role of vaping in better protecting public health, please visit the [research page](#) of the Consumer Choice Center.



## **About the Consumer Choice Center:**

The Consumer Choice Center is the consumer advocacy group supporting lifestyle freedom, innovation, privacy, science, and consumer choice. The main policy areas we focus on are digital, mobility, lifestyle & consumer goods, and health & science. The CCC represents consumers in over 100 countries across the globe. We monitor closely regulatory trends in Washington, Brasilia, Lima, Brussels, Geneva, and other hotspots of regulation and inform and activate consumers to fight for #ConsumerChoice.

# ABOUT THE AUTHORS



## **Yaël Ossowski**

Yaël Ossowski is an international consumer choice activist and writer. He's currently deputy director for the Consumer Choice Center.

Since 2010, he has worked as a journalist and grassroots organizer with activists around the world. He was previously Watchdog.org's Florida Bureau Chief, chief Spanish translator, and national investigative reporter from 2012-2015.

He is also a contributor to Metropole Magazine in Vienna. Yaël has worked as a multimedia journalist globally, writing for outlets such as The Washington Examiner, The Huffington Post, South African Business Day, L'AGEFI, The Charlotte Observer, The Philadelphia Inquirer, Arizona Capitol Times, Detroit News, Miami Herald, Human Events, Reason Magazine, American Spectator, The Gaston Gazette, FoxNews.com, and more. He is a member of the Society of Professional Journalists.

He studied at Concordia University in Montréal, the University of Vienna, and received a Master's Degree in Philosophy, Politics, Economics (PPE) at the CEVRO Institute in Prague. Born in Québec and raised in North Carolina, he splits his time between Austria and North Carolina. You can follow his written work on [Yael.ca](http://Yael.ca).

## **David Clement**

David Clement is the North American Affairs Manager for the Consumer Choice Center and is based out of Oakville, Ontario.

David holds a BA in Political Science and an MA in International Relations from Wilfrid Laurier University. Previously, David was the Research Assistant to the Canada Research Chair in International Human Rights. David has been regularly featured on the CBC, Global News, The Toronto Star and various other major Canadian news outlets.





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