



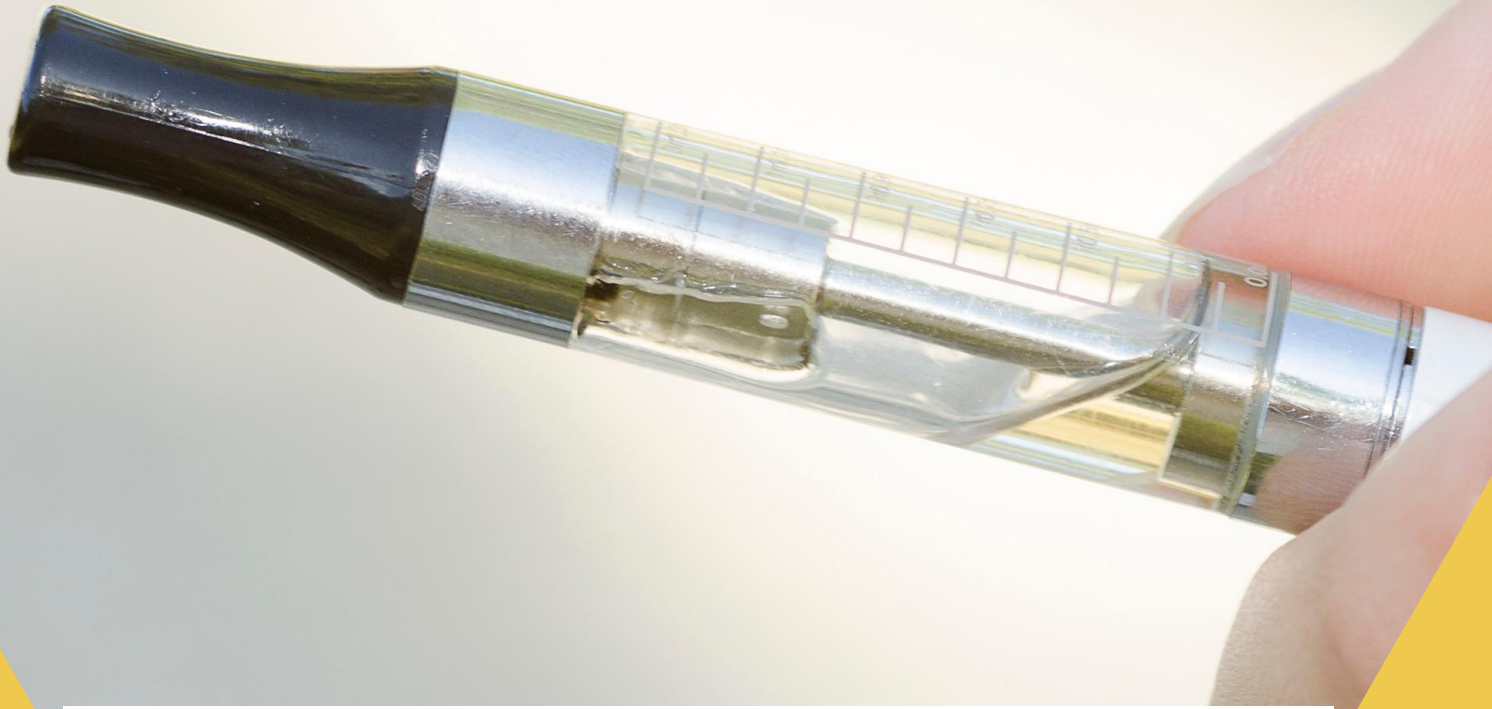
WHY VAPE FLAVORS MATTER

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EXECUTIVE SUMMARY

Vaping devices offer adult smokers the opportunity to consume nicotine using a liquid heated by a vaporizer, paired with various flavors to offer a better taste to users. Because of the growth in popularity of these vaping devices and the flavors that are inherent to their use, in this paper, we focus on why these flavors are essential to giving reasonable and less harmful alternatives to smokers looking to quit. We evaluate and demonstrate the efficacy of flavors for smoking cessation, and forecast the negative externalities that will arise should jurisdictions implement vaping flavor bans. Given the importance of flavor availability, we estimate that flavor bans will ultimately drive consumers to other legal jurisdictions, push them towards the black market, or back to traditional cigarettes. Given that forecast, we urge legislators against the implementation of vaping flavor bans.

VAPING AS TOBACCO HARM REDUCTION

The World Health Organization estimates there are 1.1 billion active tobacco smokers across the globe. For several decades, both governmental and non-governmental agencies have used various tools of public health to stem this tide, including education, taxes, age-restrictions, bans on advertising, and more, including promoting various patches, gums, and therapies to deliver nicotine in an alternative form less harmful to hopeful former smokers. Unfortunately, many of these alternatives have not proven to be entirely successful, especially when compared to the efficacy of vaping.

One of the more innovative approaches that have been shown to be effective is vaping, which reduces the harms posed by smoking by reducing or removing the combustion of tobacco altogether. This market-led revolution has produced innovations such as snus, a moist, smokeless tobacco left under the lip, heat-not-burn devices, and vaping devices, electronic cigarettes, or Electronic Nicotine Delivery Systems (ENDS). As a result of these alternatives, countries such as the U.S., Canada, Australia, and the United Kingdom are recording their lowest-ever levels of daily smokers. The rate of U.S. smokers has declined from 21% of the population in 2005 to 14% in 2018.

The landmark report on vaping's potential to save lives was commissioned by Public Health England in 2015, providing evidence that vaping is 95% less harmful than combustible tobacco and has thus become a recommended means of quitting for smokers in the United Kingdom. Both Health Canada and New Zealand's Ministry of Health also recommend vaping to smokers looking to quit. A 2017 study from the University of California using U.S. Census data found that vaping had contributed to a "significant" increase in smoking cessation, and similarly recommends positive public health communications on vaping.

"Electronic cigarettes have an unparalleled potential to reduce the public-health impact of smoking, by allowing smokers to replace the habit and nicotine of smoking without the toxic effects of combustion." - Dr. Jed Rose, Director of the Duke Center for Smoking Cessation at Duke University Medical Center

In short, innovation in vaping has achieved in a very short period of time what public health authorities have only hoped to accomplish in a far greater span: fewer people using combustible tobacco.

SUMMARY OF FLAVOR BANS

With an ever-growing number of vapers worldwide, entrepreneurs such as vape shop owners and liquid producers have expanded their selections of flavored liquids to meet the demand. The effort to limit those flavors by legislation has thus far taken place in the U.S, though additional flavor bans are being considered in EU states such as the Netherlands.

In a number of jurisdictions, namely U.S. states, officials have enacted various bans and restrictions on flavors used in vaping liquids, both in open tank systems with large batteries (which produce large vapor clouds) and vape devices using single-use pods (usually sold at convenience stores).

Proponents of flavor restrictions have attempted to justify bans on two counts. First, on the appeal to youth. As vaping devices have grown more popular among adult smokers, there has been a demonstrated increase in the number of teens who are experimenting with these devices. In 2018, the U.S. Surgeon General Jerome Adams declared youth e-cigarette and vaping use an “epidemic”. The 2019 National Youth Tobacco Survey recorded that 27.5% of high school students have tried vaping at least once in the last 30 days, mostly flavored pod devices. Though only adults 18 years old and older could legally purchase tobacco and vaping products (prior to 2020)*, youth have been able to access vaping devices either through the black market or via legal-aged family and friends. Because teen survey respondents stated a preference for flavored products, regulators have used this as a justification for blanket flavor bans for adult users.

The second justification was the 2019 national outbreak of e-cigarette, or vaping, product use-associated lung injury (EVALI). As explored in another publication by the Consumer Choice Center, **Myth and Facts on Vaping**, this increase in lung illnesses was directly caused by the use of illegal cannabis vape cartridges that had been topped with Vitamin E Acetate, rather than regulated nicotine vaping liquids and cartridges available for retail sale.

In response to the increase in lung injuries, parts of the United States such as Michigan, Massachusetts, New York, Rhode Island, Washington, Montana, and Oregon, and a number of cities throughout California passed emergency bans on all flavored vaping products. Many, if not most, were eventually overturned by state courts for being unconstitutional.

**In 2020, the Federal Government of the United States increased the minimum purchase age to 21*

From that point forward, select state legislatures, health officials, and governors have used both the youth vaping trend and the EVALI injuries to lay out their case for why adult vapers should be deprived of flavored vaping products.

In February 2020, the Trump administration and the Food and Drug Administration issued a new ban on all vaping flavors found in disposable pods, except for tobacco and menthol.

These regulations stand in stark contrast to an August 2020 study in the journal Addiction that finally found that states with higher rates of legal vaporizer use actually reported lower rates of vape lung injury, providing yet more proof that illegal and unregulated products, not legal nicotine vaping, was the culprit in the EVALI outbreak.

At present, there are active vaping flavor bans (that exempt tobacco and menthol) in the U.S. states of New York, New Jersey, Massachusetts, Rhode Island, and the city of San Francisco, which still bans all vaping products. Additionally, what was once an American trend, has spread internationally with New Zealand enacting their own partial vaping flavor ban.

WHY FLAVORS MATTER

According to research on vapers in Canada and the U.S, a majority of vapers use non-tobacco flavored vape products as their personal preference. Consumers generally prefer flavors over tobacco flavored vaping products because of their taste, but also because tobacco flavors remind consumers of conventional cigarettes. Of those surveyed, who are considered regular users, 63.1% use non-tobacco flavored products (fruit, mint, candy). These adults found vaping more satisfying (compared with smoking) than vapers using tobacco flavor. Among dual users (those who smoke and vape), those using fruit or candy flavors were more likely than tobacco flavor users to vape in order to quit smoking. The authors of this study conclude that:

“Limiting access to flavors may therefore reduce the appeal of e-cigarettes among adults who are trying to quit smoking or stay quit.”

In addition to that, a nationally representative longitudinal study of over 17,000 Americans, over a five year period, showed that adults who used flavored vaping products were more likely to quit smoking cigarettes when compared to vapers who consumed tobacco flavored vaping products. When comparing the two groups, those who use flavors and those who use tobacco flavors, vapers that used flavors were 2.3 times more likely to quit smoking than those vaping tobacco flavored products.

The authors of this study, health researchers at Yale University, concluded their study with the following:

“Although proponents of flavor bans have claimed that tobacco-flavored e-cigarettes are adequate to help individuals who smoke, these results call for evidence to support that claim before it is acted on.”

There are a variety of reasons why flavors matter for adults who vape. It seems incredibly short-sighted for governments to ban something that has made a difference in saving lives. Banning vape flavors significantly limits the usefulness of vaping as a tobacco harm reduction tool, and will ultimately lead to more adults going back to smoking combustible tobacco. That is a huge net negative for public health.

TESTIMONY:

Why Flavors Matter, Vapers' Perspective



Dale Roberts @dale__Roberts · Aug 19, 2020

Vaping helped my quit smoking, started of as a dual user cutting out my smoking at home, then work till I finally only vaped. Having the right flavours was the key, I don't think I would have been successful in quitting if only tobacco or menthol were the only options.



Esther Alexandra @Aunty1976 · Aug 23, 2020

After over 20 years of smoking and several unsuccessful attempts to quit with gums, patches and cold turkey, i discovered vaping. I love fruit, vanilla-waffle, cinnamon cookie, Apple pie flavors and many more. I never wanted to smoke again! #vapingsaveslives



Vicki McKenna @VickiMcKenna · Aug 20, 2020

I didn't want something that tried to taste like a cigarette, because the real thing tasted better to me. When I was able to use non-tobacco flavors, it made all the difference. I quit smoking using e-cigs in October of 2010 and never looked back...#vaping #harmreduction



Marie C. Smith @kingauth · Aug 21, 2020

After smoking for 40 + years and trying all the traditional harm reduction i tried vaping with cookie crumble vape juice and quit and did not look back now i have the energy to chase the greatgrandsons and now i know i will live to see them grow up it is awsome



THE CONSEQUENCES OF FLAVOR BANS

Realistically, a ban on vape flavors will produce one of three outcomes, all of which are a net negative for society-at-large. Those negative externalities are:

1. Vapers simply buy flavored products from other legal jurisdictions
2. Vapers purchase flavored products from the illegal market
3. Vapers go back to smoking

1. Crossing Borders

In many instances, consumers will respond to a flavor ban by purchasing their preferred flavored products in jurisdictions where they are legal, across state or national borders, and bringing them home. This is especially true for populations located nearby alternative jurisdictions and with open travel (US states, the EU).

For example, the U.S state of Massachusetts recently banned all tobacco and vaping flavored products. As a result of the ban, consumers en masse purchased those products in the nearby states of New Hampshire and Rhode Island (which do not have similar bans). The size of that consumer shift was considerable. New Hampshire's flavored product sales jumped as high as 150%, generating an additional \$9 million more in tax revenue when compared to the previous year (before the Massachusetts ban). Rhode Island's flavored product sales jumped as high as 157% generating \$5.7 million in additional tax revenue.

It is reasonable to assume that consumers in similarly situated jurisdictions will respond by simply purchasing those prohibited products in legal jurisdictions.

2. Buying Illegally

As prohibition always does, a ban on flavored vaping products creates an incentive for some to continue to offer those products illegally. While this might sound far-fetched to some, investigations in the states of New York, New Jersey, and Massachusetts have already shown that a booming black market has emerged in response to flavor bans. Massachusetts authorities have publicly stated that the state's flavor ban will inflate the size of their illicit tobacco market, which is more than \$10 billion.

In New York, it has been well established that some individuals have started to create their own home-made nicotine flavors, and have made a lucrative living off selling them illegally (in the same way other illicit substances are sold). Another example is a legal storefront mixing flavored products at home, and then delivering those products to the homes of long-time clients. With three delivery routes a week, this storefront owner earns an additional \$2,000/week in revenue. This same black market trend is evident in Australia, where the government has put severe restrictions on access to vaping products.

A move from the legal market to the black market is a societal issue for several reasons. The first is that these illegal products are not regulated for quality control, and thus put consumers at risk for tainted products, as was revealed during the EVALI scare in 2019. The second issue is that these illegal sales are made outside of the state's tax regime, which means that the state loses revenue it otherwise would have acquired if these products weren't illegal.

It is reasonable to assume that black markets will emerge for flavored vaping products in jurisdictions that decide to ban flavors.

3. A Return To Smoking

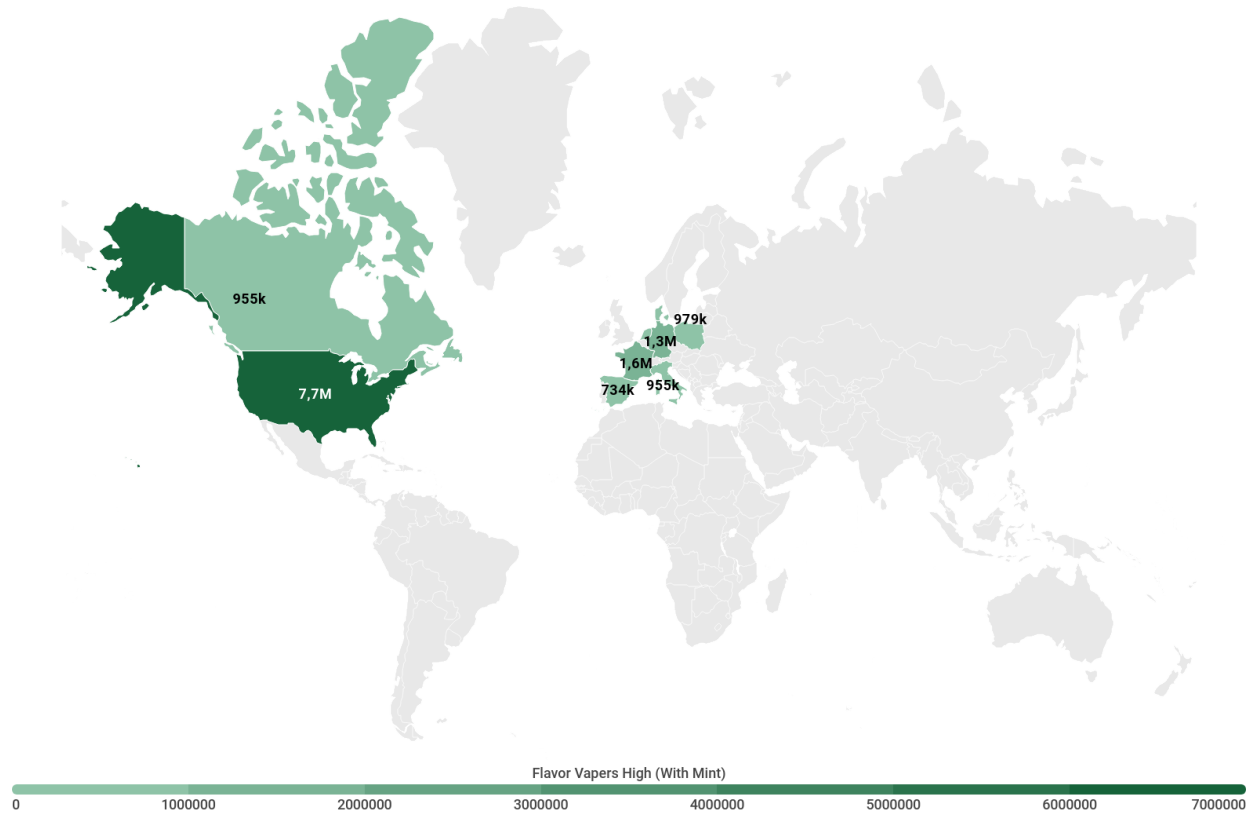
Based on consumer usage patterns (29.4% fruit flavor, 13.5% candy), it can be assumed that approximately 42.9% of a country's vapers will be directly impacted by vaping flavor bans. If the ban includes mint /menthol, that percentage rises to 63.1%. Based on research on the effectiveness of flavors for smoking cessation, it is reasonable to assume that many of those impacted vapers will ultimately end up going back to traditional cigarettes if they can not find flavored products in other legal jurisdictions, or for sale in the illegal market. That assumption is based on satisfaction surveys of consumers, and the fact that access to flavor increases the likelihood of quitting smoking by 230%.

For example, the Netherlands is currently considering a ban on flavored vaping products. The Netherlands currently has a vaping prevalence of between 1-2.99% of its adult population. With a total adult population of 13.8 million, the country has between 138,000 and 412,620 vapers. Based on consumer behavior patterns, it can be estimated that between 87,078 and 260,363 vapers currently use flavored vape products*.

**If the Netherlands flavor ban includes Mint and Menthol. If the ban creates an exemption for Mint and Menthol then the totals would be lower. The range of vapers using flavored products targeted by a ban would be between 59,202 and 177,013*

A RETURN TO SMOKING:

Estimated number of new smokers if flavor bans include Mint and Menthol




Based on the projections in Figure A (chart), a full ban on vaping flavors in the U.S has the potential to drive 7.7 million vapers back to smoking. If these vapers-turned-smokers were a US city, they would be the second-largest city in the U.S. 7.7 million additional smokers would equal more than the total populations of LA and Chicago combined.

 A full ban on flavors in the United States


U.S. VAPERS DRIVEN BACK TO SMOKING	NEW YORK CITY POPULATION	LOS ANGELES POPULATION	CHICAGO POPULATION	HOUSTON POPULATION
7,700,000	8,300,000	3,900,000	2,700,000	2,300,000

 A full ban on flavors in the Netherlands


NL VAPERS DRIVEN BACK TO SMOKING	AMSTERDAM CITY POPULATION	ROTTERDAM POPULATION	UTRECHT POPULATION	EINDHOVEN POPULATION
260,000	741,000	598,000	290,000	209,000

 A full ban on flavors in Germany

DE VAPERS DRIVEN BACK TO SMOKING	BERLIN POPULATION	HAMBURG POPULATION	MUNICH POPULATION	COLOGNE POPULATION
1,309,000	3,770,000	1,899,000	1,470,000	1,060,000

 A full ban on flavors in Canada

CA VAPERS DRIVEN BACK TO SMOKING	TORONTO POPULATION	MONTREAL POPULATION	OTTAWA POPULATION	QUEBEC CITY POPULATION
955,000	5,400,000	3,500,000	989,000	705,000

 A full ban on flavors in France

FR VAPERS DRIVEN BACK TO SMOKING	PARIS POPULATION	MARSEILLE POPULATION	LYON POPULATION	TOULOUSE POPULATION
1,600,000	2,100,000	862,000	513,000	705,000

CONCLUSION

Upon further review, it is clear that flavored vaping products are instrumental in aiding adult smokers in their quest to quit smoking cigarettes. It is our opinion that legislation on vaping flavors must take this fact into account, and we urge legislators against the widespread implementation of such bans. As has been demonstrated, we know that flavor bans reignite the problems of prohibition, which is a net negative for society, both in terms of criminal activity and consumer safety. We also know that banning flavors runs the very serious risk of nudging vapers back to smoking cigarettes.

While youth access to vaping products is a serious problem, and one that needs to be addressed, it would be misguided to ban vaping flavors to attempt to accomplish the goal of eliminating youth use. Banning flavors would disproportionately harm smokers who are trying to quit, which runs against the goals of public health agencies. Rather than enact heavy-handed bans, and recreate prohibition, it would be best if legislators focused more narrowly on youth access at the point of sale. For example, legislators could enact rules that more strictly prohibit youth access, penalizing those who violate these laws with stricter penalties. It would be reasonable for health authorities to revoke business licenses for businesses caught selling to minors on repeated occasions. Once penalties are set, and business owners have their livelihood at stake, it is unlikely that those store owners will run the risk of selling to minors.



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