

**Testimony before the Minnesota House Commerce Finance and Policy Committee
Regarding Banning Flavored Tobacco and Vapor Products
Lindsey Stroud, Director, Senior Fellow
Taxpayers Protection Alliance
March 25, 2024**

Chairman Stephenson, Vice Chairwoman Kotyza-Witthuhn, and Members of the Committee:

Thank you for your time today to discuss taxing and regulating vapor products in Minnesota. My name is Lindsey Stroud and I'm a Senior Fellow at the Taxpayers Protection Alliance (TPA). 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.

While efforts to reduce youth use of age-restricted products is laudable, flawed policies including banning flavors in tobacco and vapor products ignores record lows in youth tobacco use and recent (and continued declines) in youth vapor use. Moreover, it unfairly punishes adults who rely on e-cigarettes to both quit smoking and remain smoke-free.

Key Points:

- In 2022, 59,618 Minnesota adults (6.7 percent) were currently using e-cigarettes. This is an 8.1 percent increase from 2021 and represents 4,638 additional adults vaping.
- In 2022, of adults currently using e-cigarettes, nearly half (47.2 percent) were between 25 and 44 years old.
- Among Minnesota adults aged 25 years or older who were using e-cigarettes in 2022, nearly half (47 percent) were formerly smoking while 34 percent were currently smoking.
- Youth tobacco and vapor product use has decreased significantly in recent years.
- Between 2017 and 2020, the percent of Minnesota high schoolers who were currently smoking decreased by 32 percent.
- Between 2017 and 2020, the percent of Minnesota high schoolers who were currently vaping decreased by 12.1 percent
- Between 2015 and 2021, the percent of Minnesota middle schoolers who reported ever and current use of e-cigarettes decrease by 26.3 percent.
- Nationally, youth use of both traditional tobacco products and vapor products, continues to decline.
- In 2023, 1.9 percent of U.S. high school students reported current combustible cigarette use, while 1.1 percent of middle schoolers reported currently smoking.
- In 2023, 10 percent of U.S. high school students reported current e-cigarette use, while 5.6 percent of U.S. middle schoolers were currently vaping.
- Since at least 2017, Minnesota students are not citing flavors as a main reason for e-cigarette use.

- In 2020, only 26.1 percent of Minnesota high school students reported using e-cigarettes because of flavors. Conversely, the most cited reason (by 50.2 percent of students) was being “curious about them,” followed by 46.7 percent who cited using them to get a high and/or buzz, 38.7 percent who cited friends and/or family member, and 36.3 percent who had used them to “manage stress or anxiety.”
- In 2020, only 22.3 percent of Minnesota middle school students reported using e-cigarettes because of flavors. Alternatively, the most cited reason (by 49.6 percent of students) was being “curious about them,” followed by 38.9 percent who cited using them because a friend and/or family member, 37.1 percent who cited using them to “manage stress or anxiety,” and 24 percent who had used them to get a high and/or buzz.
- Nationally, only 13.2 percent of U.S. middle and high school students who were currently vaping in 2021 cited flavors as a reason for using e-cigarettes. Comparatively, 43.5 percent cited using e-cigarettes to get a buzz, 43.2 percent had used them because they were feeling anxious, depressed, and/or stressed, and 27.6 percent had used them because a friend and/or family member had.
- Minnesota youth are facing a mental health crisis, which is reflected in why youth are using e-cigarettes.
- In 2022, among Minnesota students, nearly two-thirds (61.3 percent) reported feeling little interest and/or pleasure in doing things the two weeks prior. Nearly half (48.7 percent) reported feeling down, depressed, or hopeless over the two weeks prior.
- Nearly one-fourth (24.7 percent) reported having considered attempting suicide in the year prior, while 23 percent had reported harming themselves in the previous year.
- Flavors play an important role in adult use of e-cigarettes. A 2018 survey of nearly 70,000 U.S. adult vapers found that 83.2 percent and 72.3 percent of participants reported vaping fruit and dessert flavors, respectively.
- A 2019 user survey found that tobacco flavor was used by less than five percent of adults.
- Minnesota retailers do a good job in not selling e-cigarette products to youth and minors.
- Between 2018 and 2023, sales of e-cigarette products to minors made up only 3.1 percent of compliance check inspections, and 28.9 percent of products cited for violations.
- The small vapor industry is already in decline and flavor bans and exorbitant taxes will shutter small businesses in the Gopher State.
- Between 2018 and 2023, the economic impact of small vapor in Minnesota decreased by 9.1 percent and represents an economic loss of more than \$32.4 million.
- In 2023, small vapor’s total economic impact was estimated to be nearly \$321.9 million.
- Minnesota should allocate more of existing tobacco monies towards tobacco control programs including cessation, education, and prevention efforts.
- Minnesota collected an estimated \$621.9 million in tobacco-related monies in 2022, yet the state allocated only \$11.7 million in state funding towards tobacco control programs, which was a 5.6 percent decrease in funding from 2021’s levels.
- In 2022, for every \$1 the Gopher State received in tobacco monies, it spent only \$0.02 on tobacco control efforts.

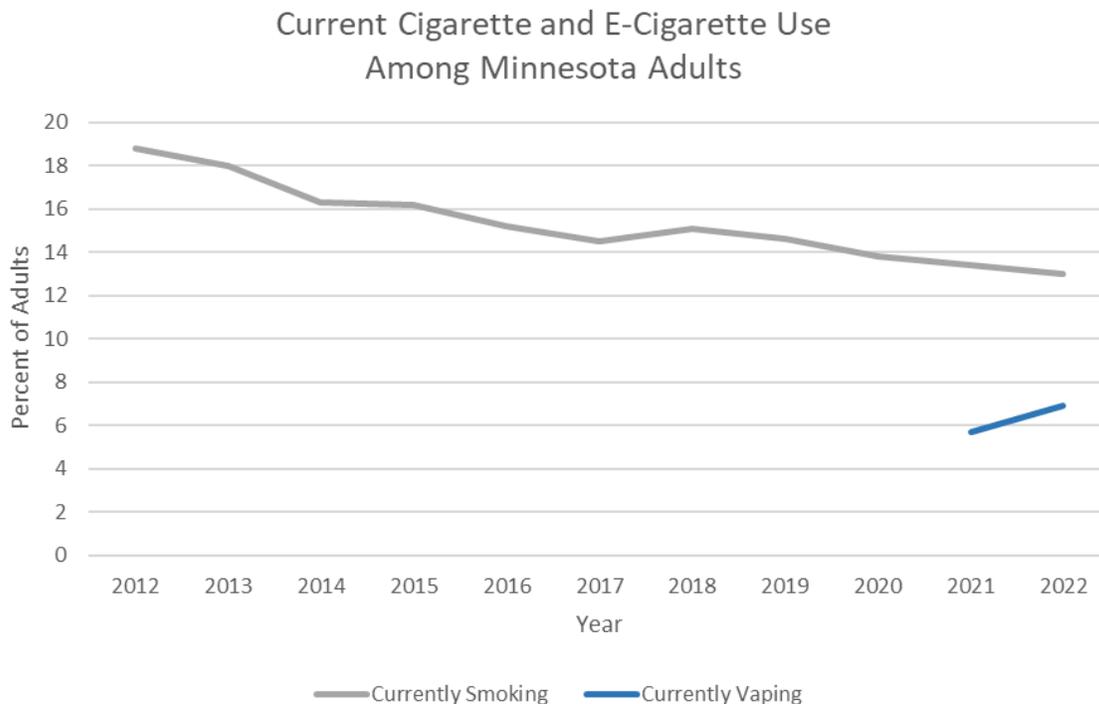
Minnesota Adults Need Access To Safer Alternatives to Cigarettes

In 2022, according to the Centers for Disease Control and Prevention (CDC), an estimated 574,993 adults (or 13 percent of Minnesotans) were currently smoking.¹ This is a three percent decrease from 2021 when 13.4 percent reported current cigarette use. There were 13,243 fewer adults smoking in 2022 compared to 2021.

In 2022, an estimated 305,189 Minnesota adults (or 6.9 percent) were currently using e-cigarettes. This is a 21.1 percent increase from 2021 when 5.7 percent reported current e-cigarette use. There were an estimated 54,969 additional adults vaping in 2022 compared to 2021.

In a CDC analysis of 1,767 Minnesota adults who were currently smoking in 2022, the average number of years smoked was 33.3 years, with a total of 56,168 years smoked among all adults, and totaling more than 410 million cigarettes smoked. Further, 13.8 percent of Minnesota adults who were smoking in 2022 were also currently using e-cigarettes.

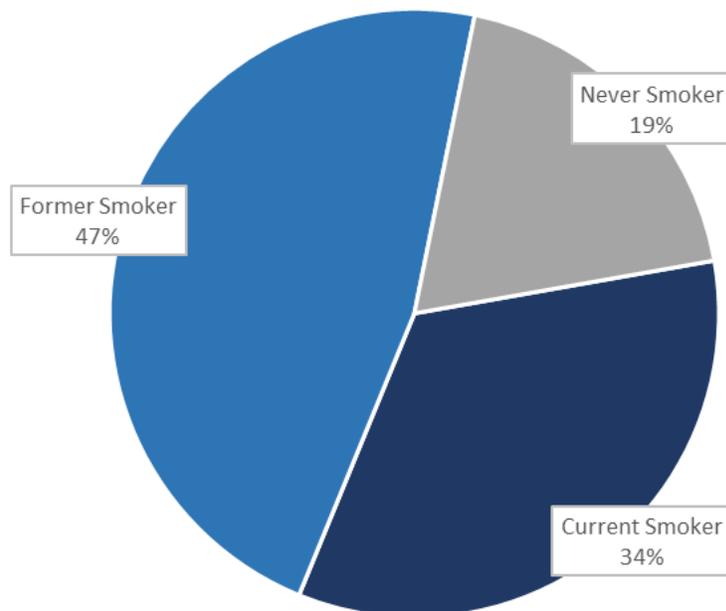
In 2022, an estimated 305,189 Minnesota adults (or 6.9 percent) were currently using e-cigarettes. This is a 21.1 percent increase from 2021 when 5.7 percent reported current e-cigarette use. There were an estimated 54,969 additional adults vaping in 2022 compared to 2021.



In an analysis of 583 Minnesota adults aged 25 years or older who were currently vaping in 2022:

- 47 percent were formerly smoking
- 34 percent were currently smoking
- 19 percent had never smoked

Smoking Status Among Adult E-Cigarette Users
Minnesota 2022



In an analysis of 454 Minnesota adults aged 25 years or older who were currently using e-cigarettes in 2022, the average number of years smoked was 22.2 years. While the total was alarming – 10,017 years of smoking, which would amount to more than 73.1 million cigarettes smoked (figuring for a pack-per-day habit).

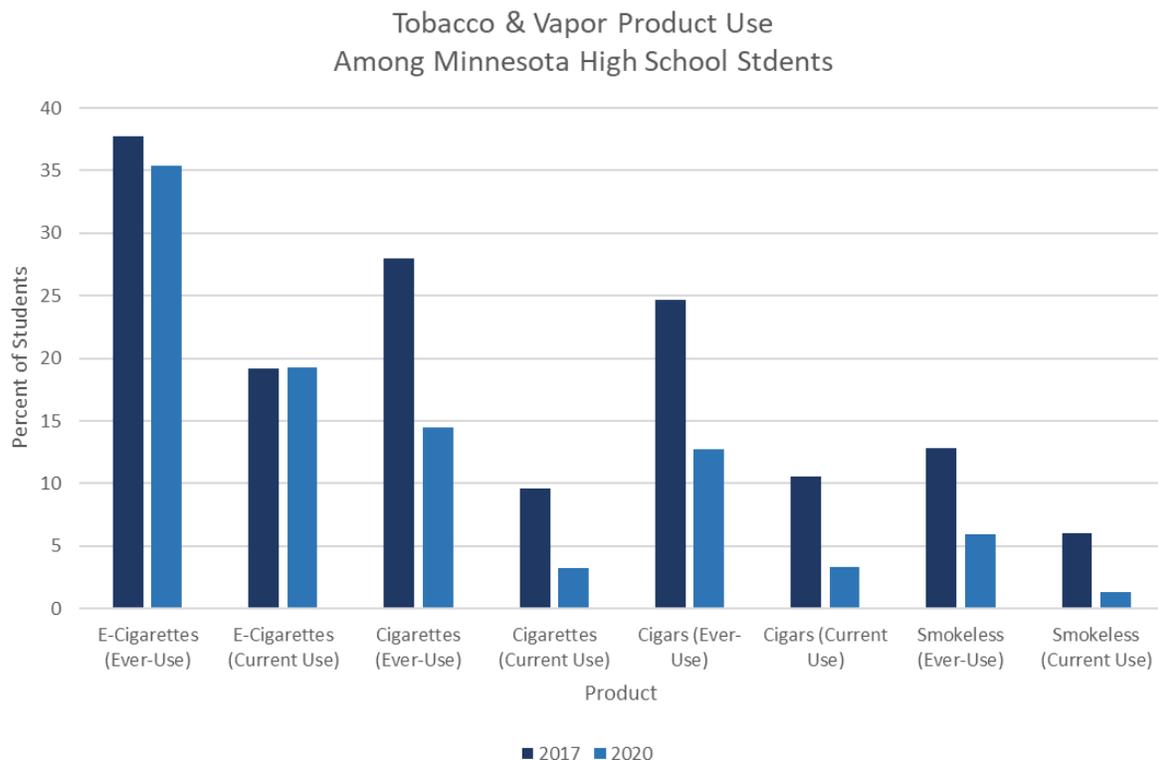
Further, restricting the sale of flavored e-cigarette products could lead adults back to smoking. In an analysis of 274 Minnesota adults who were currently using e-cigarettes in 2022 and had formerly smoked, the average number of years smoke-free was 2.6 years.

Youth Tobacco and Vapor Product Use at Record Lows in Minnesota

While lawmakers can be lauded for working to prevent youth use of age-restricted products, they should be aware that existing policies have helped to decrease youth use of vapor products in recent years. Further, use of traditional tobacco products is at record lows – and should be celebrated.

In 2020 (according to the Minnesota Youth Tobacco Survey), among high school students in the Gopher State:²

- 35.4 percent had ever tried an e-cigarette
- 19.3 percent were currently using e-cigarettes (defined as having the product on at least one occasion in the 30 days prior)
- 14.5 percent had ever tried a combustible cigarette
- 12.7 percent had ever tried a cigar
- 5.9 percent had ever tried smokeless tobacco products
- 3.3 percent were currently using cigars
- 3.2 percent were currently smoking combustible cigarettes
- 1.3 percent were currently using smokeless tobacco products.



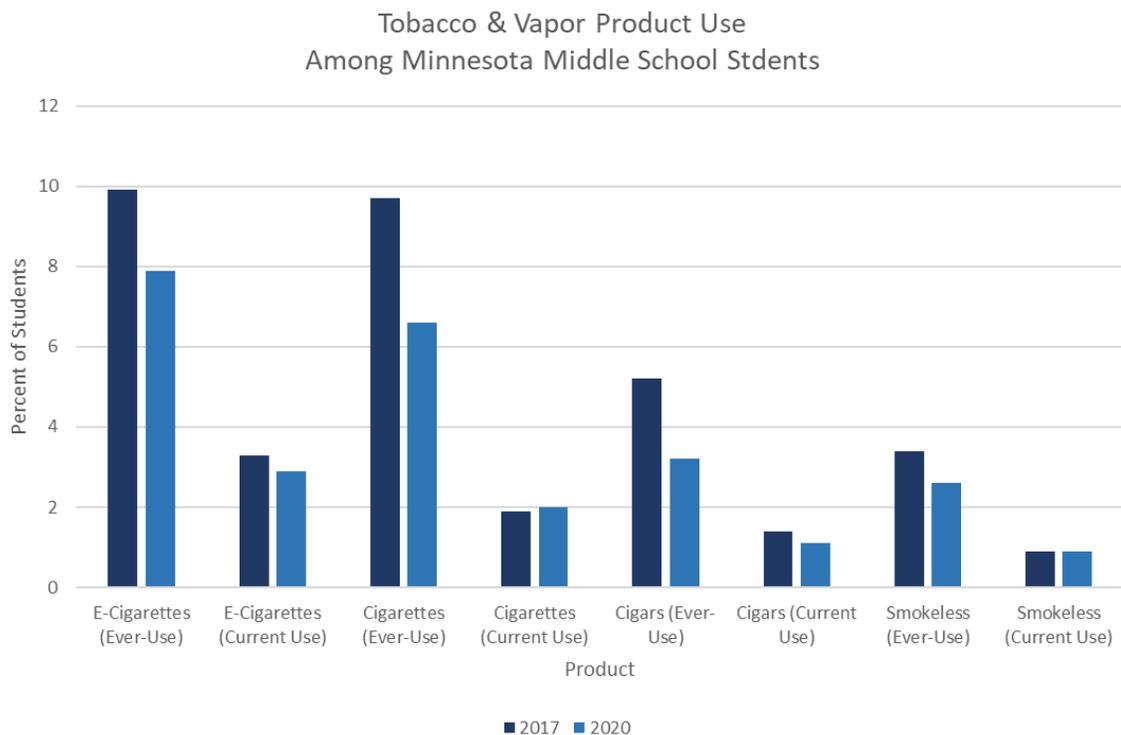
Youth use of tobacco and vapor products has decreased. Between 2017 and 2020, among Minnesota high school students:

- Current use of smokeless tobacco products decreased by 78.3 percent
- Current use of cigars decreased by 68.9 percent
- Current use of combustible cigarette decreased by 66.7 percent
- Ever use of smokeless tobacco products decreased by 53.9 percent

- Ever use of cigars decreased by 48.5 percent
- Ever use of combustible cigarettes decreased by 48.2 percent
- Ever use of e-cigarettes decreased by 6.1 percent
- Current use of e-cigarettes increased slightly by only 0.5 percent

Among middle school students in the Gopher State in 2020:

- 9.9 percent had ever tried an e-cigarette
- 9.3 percent had ever tried a combustible cigarette
- 5.2 percent had ever tried a cigar
- 3.4 percent had ever tried a smokeless tobacco product
- 3.3 percent were currently using e-cigarettes
- 1.9 percent were currently smoking combustible cigarettes
- 1.4 percent were currently using cigars
- 0.9 percent were currently using smokeless tobacco products



Youth use of tobacco and vapor products has decreased. Between 2017 and 2020, among Minnesota middle school students:

- Ever use of cigars decreased by 38.5 percent
- Ever use of combustible cigarettes decreased by 32 percent

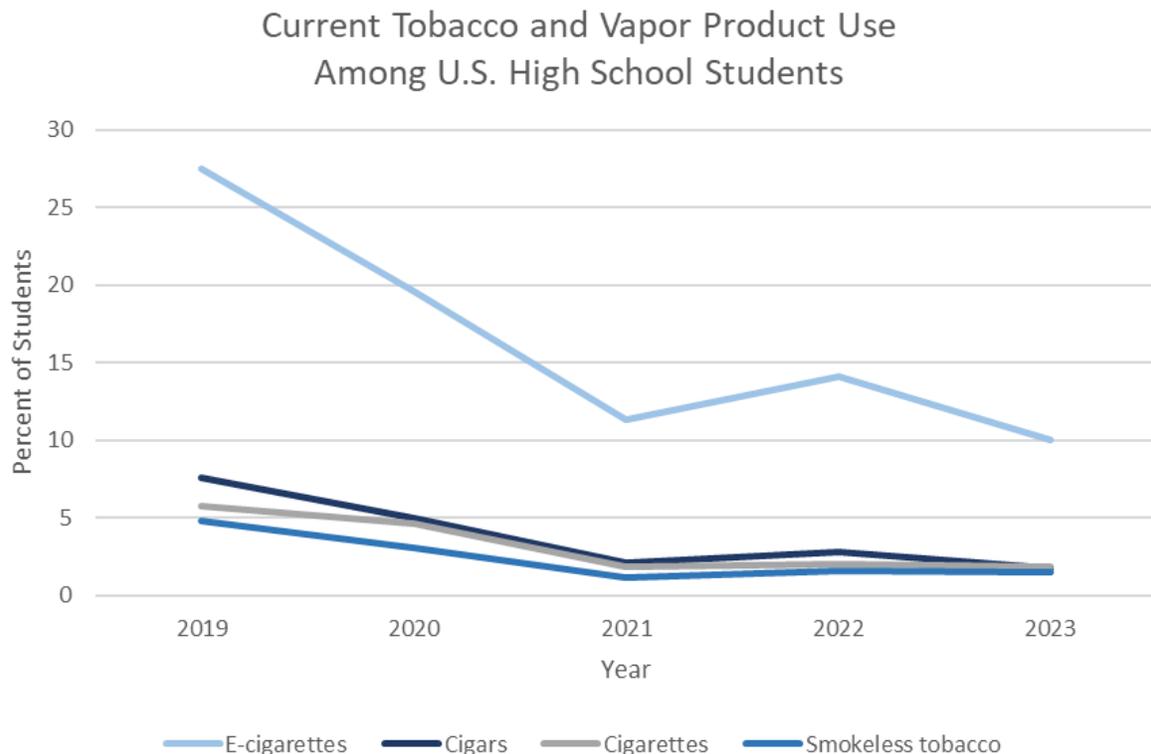
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- Ever use of smokeless tobacco products decreased by 23.5 percent
- Current use of cigars decreased by 21.4 percent
- Ever use of e-cigarettes decreased by 6.1 percent
- Current use of e-cigarettes decreased by 12.1 percent
- Current use of smokeless tobacco products remained unchanged
- Current use of combustible cigarettes increased slightly by 5.3 percent

Nationally, Youth Tobacco and Vapor Product Use Continues to Decline

In 2023, according to the CDC’s National Youth Tobacco Survey, among U.S. high school students:³

- 10 percent were currently using e-cigarettes
- 1.9 percent were currently using combustible cigarettes
- 1.8 percent were currently using cigars
- 1.5 percent were currently using smokeless tobacco products

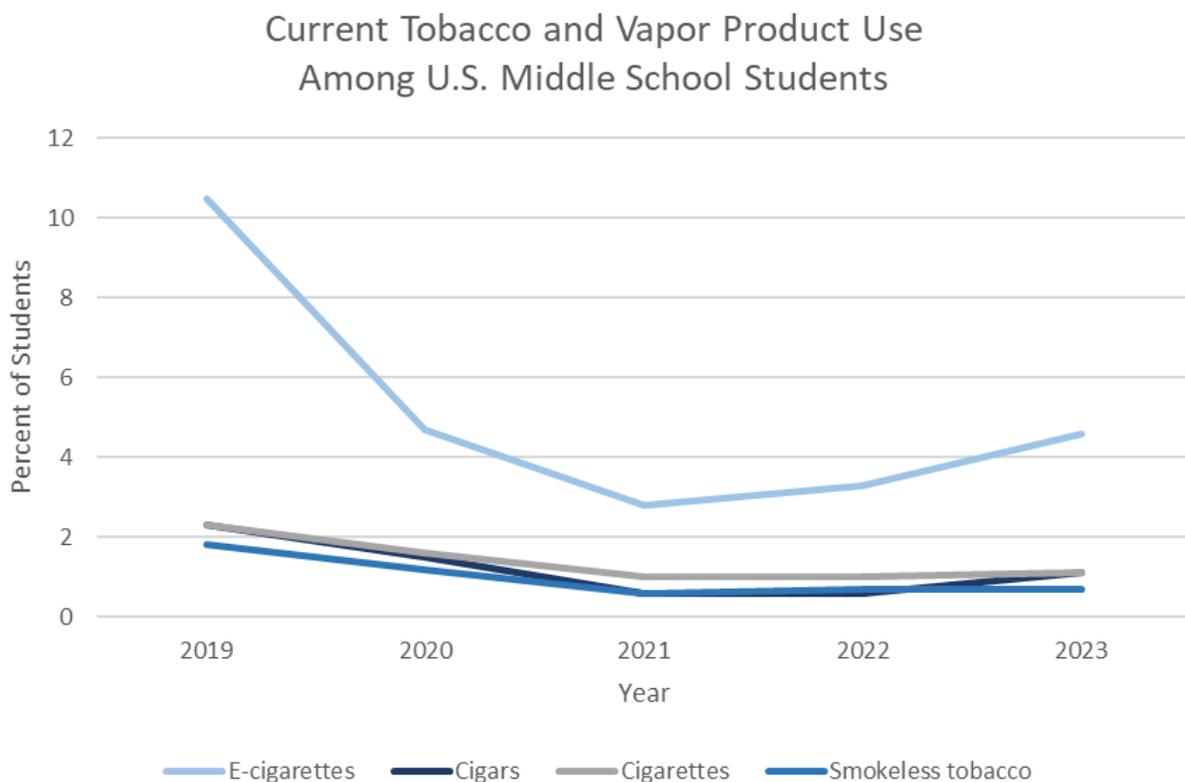


Vaping peaked among U.S. high school students in 2019 when 27.5 percent were currently vaping. Between 2019 and 2023, current e-cigarette use among U.S. high schoolers decreased by

63.6 percent. Further, these decreases have continued. Between 2022 and 2023, current e-cigarette use among U.S. high school students decreased by 29.1 percent.

Among U.S. middle school students:

- 5.6 percent were currently using e-cigarettes
- 1.1 percent were currently using combustible cigarettes
- 1.1 percent were currently using cigars
- 0.7 percent were currently using smokeless tobacco products



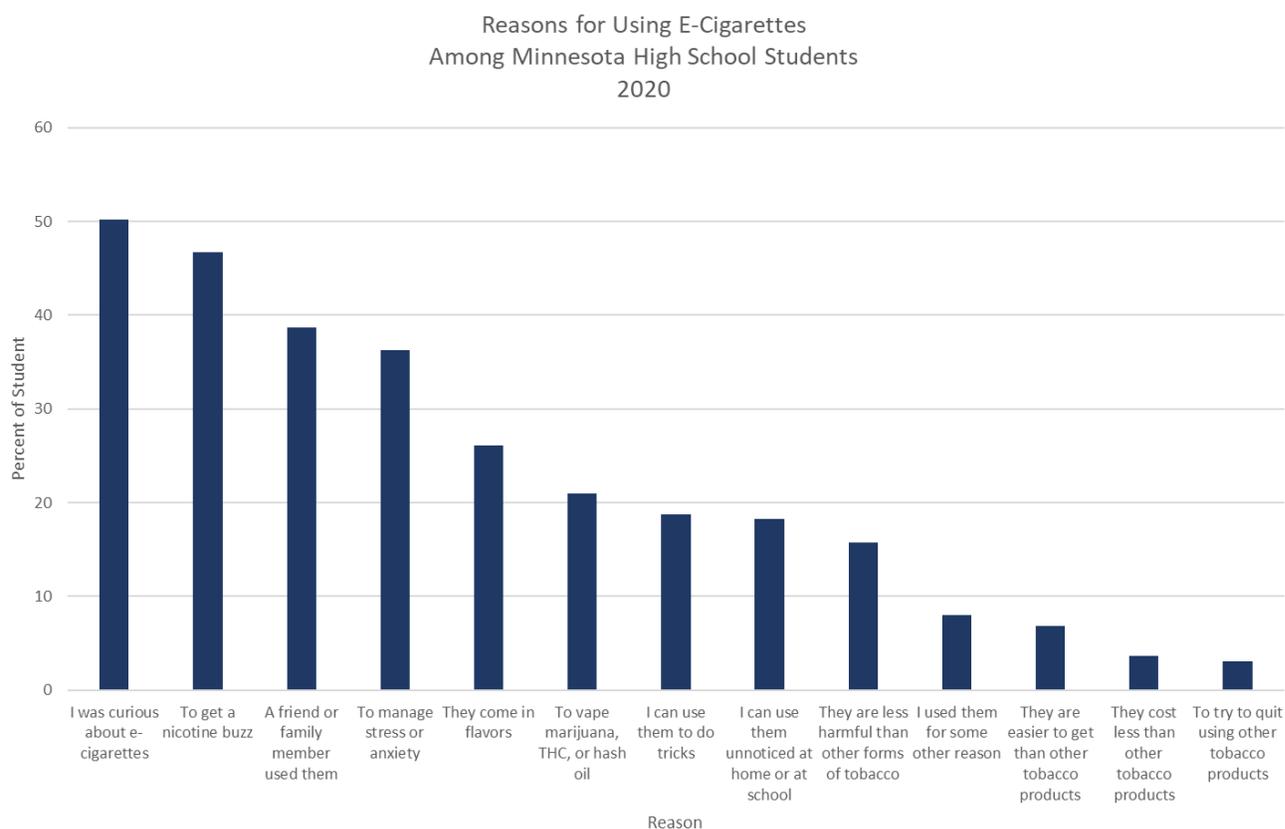
Vaping peaked among U.S. middle school students in 2019 when 10.5 percent were currently vaping. Between 2019 and 2023, current e-cigarette use among U.S. middle schoolers decreased by 56.2 percent.

Minnesota (and U.S.) Youth Are Not Citing Flavors As Reason For E-Cigarette Use

Despite alarmism, flavors are not the main driver of youth e-cigarette use, and are in fact, essential in both assisting adults to transition away from combustible cigarettes, as well as remain smoke-free.

According to the Minnesota Youth Tobacco Survey, among Minnesota high schoolers who had ever tried an e-cigarette, in 2020:⁴

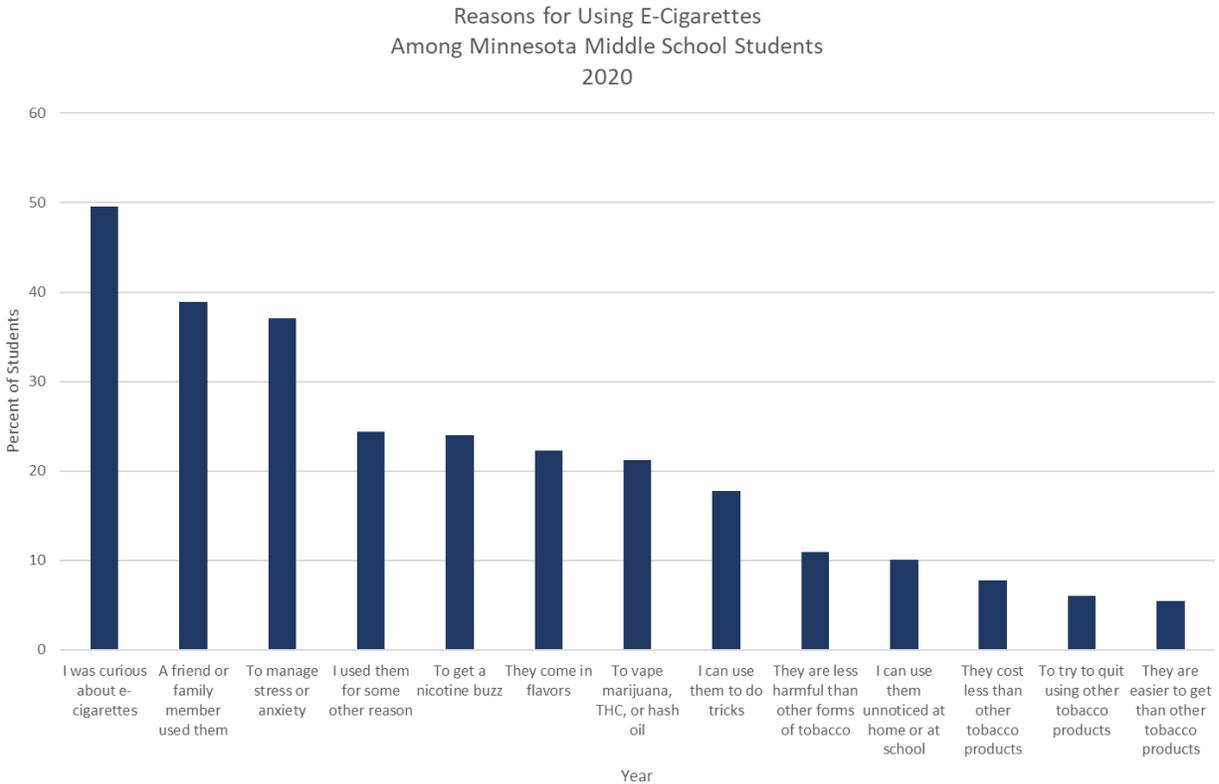
- 50.2 percent had used e-cigarettes because they were “curious about them”
- 46.7 percent reported using them to get a high and/or buzz
- 38.7 percent had used e-cigarettes because a friend and/or family member had used them
- 36.3 percent had used them to “manage stress or anxiety”
- 26.1 percent had used them because of flavors
- 21 percent had used them to vape other substances, including THC



Among Minnesota middle schoolers who had ever tried an e-cigarette, in 2020:

- 49.6 percent had used e-cigarettes because they were “curious about them”
- 38.9 percent had used e-cigarettes because a friend and/or family member had used them
- 37.1 percent had used them to “manage stress or anxiety”
- 24.4 percent cited “other”
- 24 percent reported using them to get a high and/or buzz
- 22.3 percent cited using them because of flavors

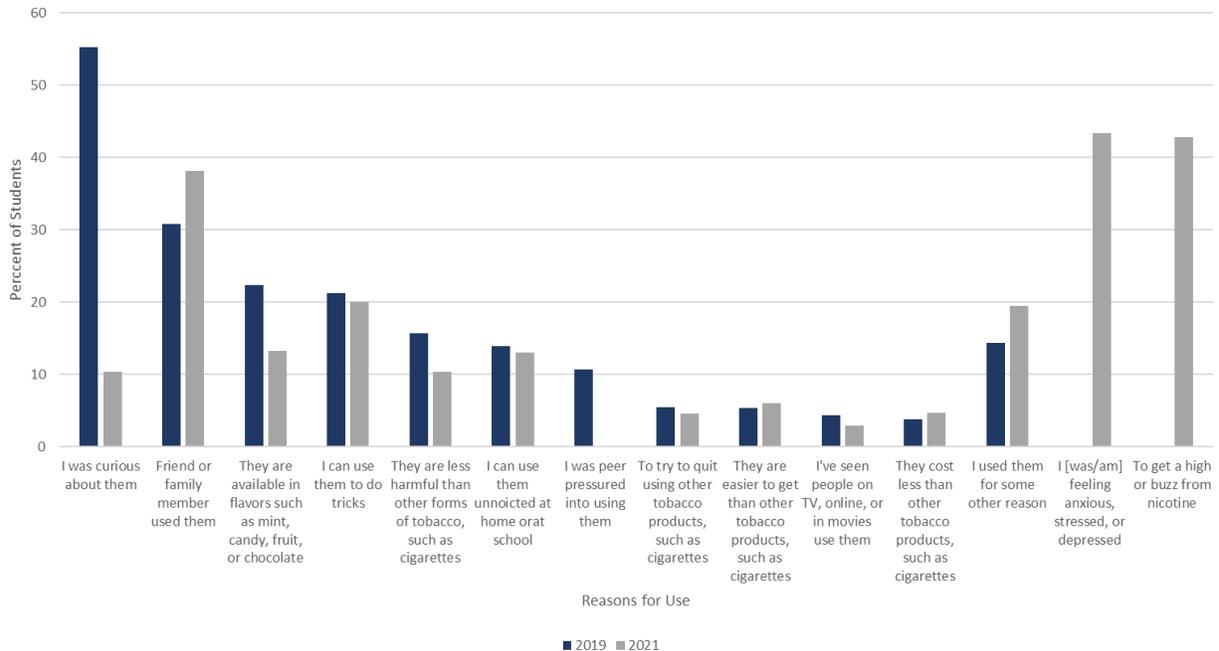
- 21 percent had used them to vape other substances, including THC



Nationally, youth are not using e-cigarettes because of flavors. In 2021, according to the National Youth Tobacco Survey, among U.S. middle and high school students who were currently using e-cigarettes in 2021:⁵

- 43.5 percent reported using them to get a high and/or buzz
- 43.2 percent had used them because they were feeling anxious, stressed and/or depressed
- 27.6 percent reported using them because a friend and/or family member had used them
- 19 percent reported “other”
- 13.2 percent reported using them because of flavors
- 10.3 percent reported using them because they were less harmful than other tobacco products

Reasons for Using E-Cigarettes
Among U.S. Middle & High School Students



Lawmakers Should Focus on Youth Mental Health Crisis

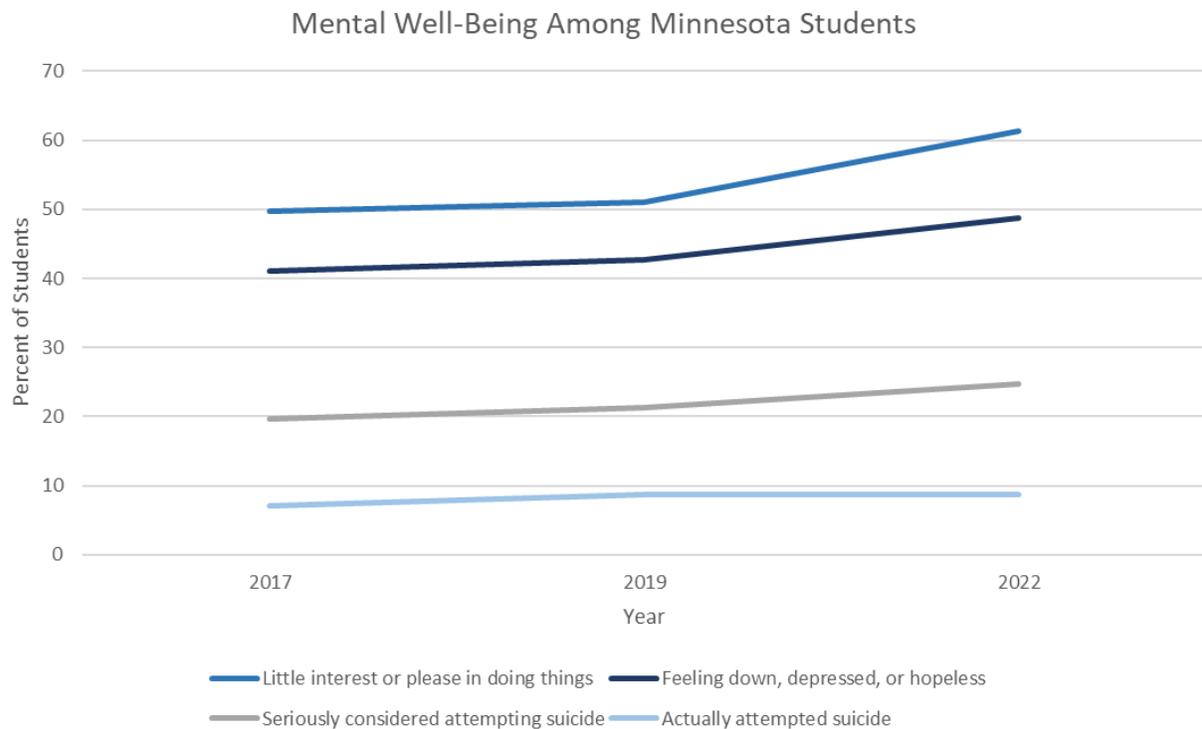
If lawmakers truly want to reduce youth e-cigarette use, they should focus on ways to improve mental health among youth. According to the Minnesota Student Survey, in 2022, among Minnesota students in the 8th, 9th, and 11th grades:⁶

- 61.3 percent reported feeling little interest and/or pleasure in doing things over the past two weeks
- 48.7 percent reported feeling down, depressed, or hopeless over the two weeks prior
- 24.7 percent reported having considered attempting suicide in the year prior
- 23 percent reported purposefully self-harming themselves in the year prior
- 8.7 percent reported having attempted suicide in the year prior

Unfortunately, these behaviors are increasing among Minnesota students. Between 2019 and 2022, among Minnesota students in the 8th, 9th, and 11th grades:

- The percentage of youth who reported self-harm increased by 32.7 percent
- The percentage of youth who reported feeling little interests and/or pleasure in doing things over the past two weeks in increased by 20.3 percent
- The percentage of youth reporting feeling down, depressed, or hopeless increased by 14.1 percent
- The percentage of youth reporting suicide attempts remained unchanged

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Flavors Play Important Role in Adult E-Cigarette Use

But for adults, flavors provide a unique benefit, and are used in traditional tobacco cessation products including gums. And numerous surveys and studies of adults using e-cigarettes find flavors play an essential role in tobacco harm reduction.

A 2018 survey of nearly 70,000 American adult vapers “found flavors play a vital role in the use of electronic cigarettes and vaping devices.”⁷ In fact, 83.2 percent and 72.3 percent of survey respondents reported vaping fruit and dessert flavors, respectively. Most respondents indicated restricting flavors would make vaping “less enjoyable.”

Analysis of EcigIntelligence’s 2019 user survey found that fruits, sweets and candy, and desserts and bakery flavors “are among the most preferred flavors across all age groups.”⁸ Use of tobacco flavor was preferred by less than 5 percent of those who vape. If legal sales were restricted to tobacco flavor only, 69 percent of respondents said they would try to acquire their flavors from alternative methods and 25 percent stated that they would be willing to drive over 100 miles to obtain supply. This illustrates that flavors are important to the appeal of vaping over smoking and that proposals to ban flavored vaping products are more an attempt at prohibition by stealth than a serious public health measure.

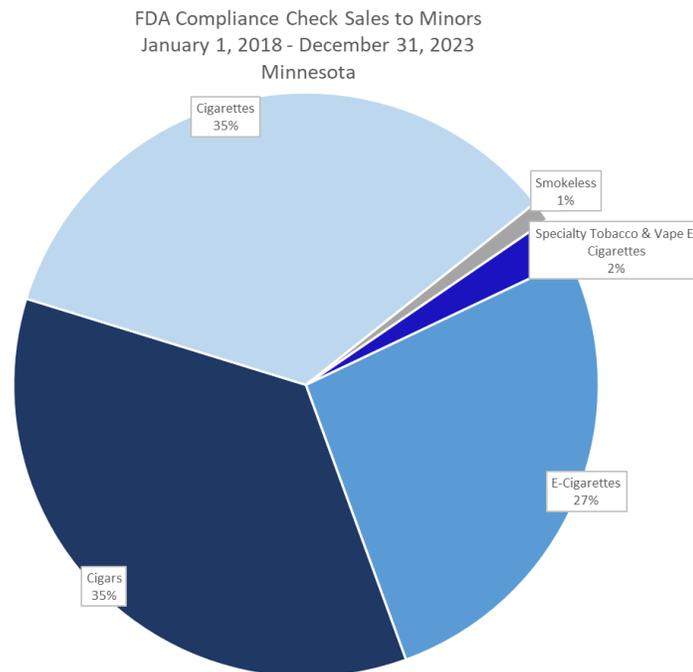
A 2020 study found an association between flavors and smoking cessation. In a cohort study of more than 17,900 participants, the authors found that “adults who began vaping nontobacco-flavored e-cigarettes were more likely to quit smoking than those who vaped tobacco flavors.”⁹

Retailers and Specialty Tobacco and Vape Shops Already Do Good Job In Preventing Underage Sales

The U.S. Food and Drug Administration (FDA) routinely sends underaged persons into tobacco and vapor product retailers in attempts to purchase tobacco and vape products. Between January 1, 2018 and December 31, 2023, the FDA conducted 18,999 inspections for Minnesota retailers, which resulted in 2,054 violations (i.e., sales to minors), or a 10.8 percent failure rate. These violations included the following sales to minors:

- 722 cigar purchases
- 706 cigarette purchases
- 593 e-cigarette purchase
- 23 smokeless tobacco product purchases
- Four oral nicotine product purchases
- Three cigarette tobacco purchases
- Three hookah purchases

E-cigarette violations made up only 3.1 percent of all inspections, and 28.9 percent of all violations.



Of the inspections, FDA conducted approximately 510 inspections on retailers in the state which had “vap” or “smok” in the retail establishment’s name. Of those, 90 resulted in violations, which was a 0.5 percent failure rate to total inspections and a 4.4 percent failure rate among all violations.

Of the specialty tobacco and vape shops who were inspected by the FDA, 51 were cited with violations for selling e-cigarettes to minors. Vape and smoke shops made up only 8.6 percent of retailers who were cited for selling e-cigarettes to minors in Minnesota between January 2018 and December 2023.

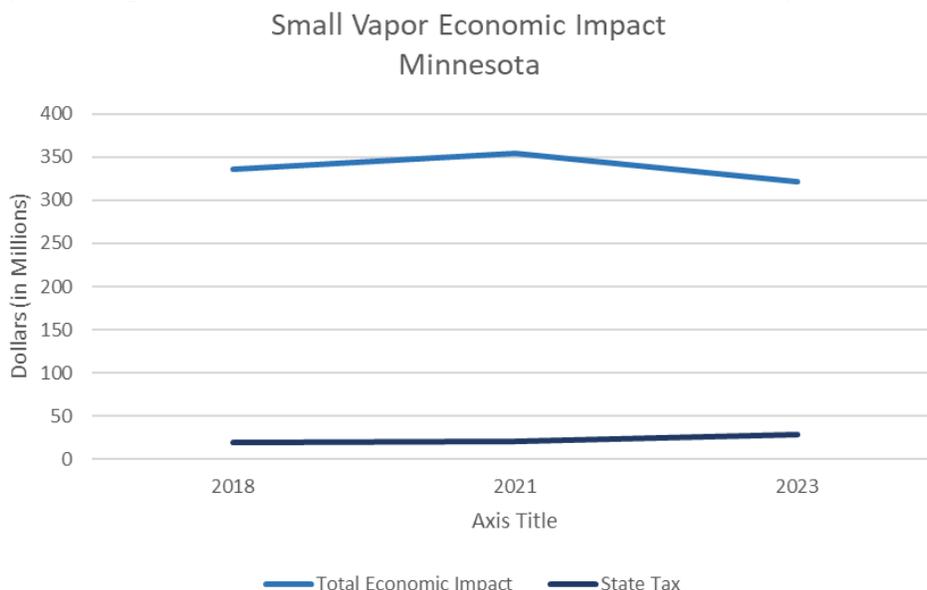
Retailers in the Gopher State are doing a good job in not selling e-cigarette products to youth and minors. This legislation ignores this and unfairly punishes responsible business owners.

Legislation Will Shutter Small Business in the Gopher State

Moreover, this bill will shutter small vapor in Minnesota – and wipe out the economic benefits vaping provides to the state.

In 2023, according to the Vapor Technology Association (VTA), the vapor industry provided more than \$105.3 million in wages related to vaping jobs.¹⁰ In 2023, the vape industry provided more than \$28.4 million in state taxes to Minnesota. In fact, VTA estimates vapes total economic impact to the state in 2023 to be nearly \$321.9 million. Should this legislation pass, all of that would be eliminated.

It should be noted that small vapor is already suffering in the Gopher State. In fact, the total economic impact of Minnesota’s small vaping industry decreased by 9.1 percent between 2021 and 2023, representing a loss of more than \$32.4 million in economic output.



Proposal Will Stunt Tobacco Harm Reduction Options for Adults

In the United Kingdom, public health agencies including the UK Royal College of Physicians (RCP) and Public Health England (PHE) promote the use of e-cigarettes for adults who smoke and are unable to simply quit cigarettes. RCP states that e-cigarettes are unlikely to exceed 5 percent of the risks from smoking.¹¹ PHE has found that “vaping poses a small fraction of the risks of smoking.”¹² Last year, the UK government gave away 1 million free e-cigarette products in a campaign to reduce smoking rates.

The New Zealand Ministry of Health has declared that “vaping products are much less harmful than smoking ... [and that people who smoke] switching to vaping products are highly likely to reduce the risks to their health and those around them.”¹³

Backwards proposals such as vapor product directories which restrict and limit access to safer nicotine products disregards the developments made in reducing the tobacco burden.

Minnesota Should Dedicate More Of Existing Tobacco Monies on Tobacco Control Programs

Each year, states receive billions of dollars borne out of the lungs of persons who smoke. This revenue includes excise cigarette taxes and settlement payments. Yet, each year, states spend miniscule amounts of tobacco-related monies on programs to help adults quit smoking and prevent youth use.

In 2022, the Gopher State collected \$429.3 million in state excise tax revenue from combustible cigarettes.¹⁴ This was an 18.2 percent decrease from 2021’s \$525.1 million, or \$95.8 million less. Between 2002 and 2022, Minnesota collected more than \$8.4 billion in cigarette taxes.

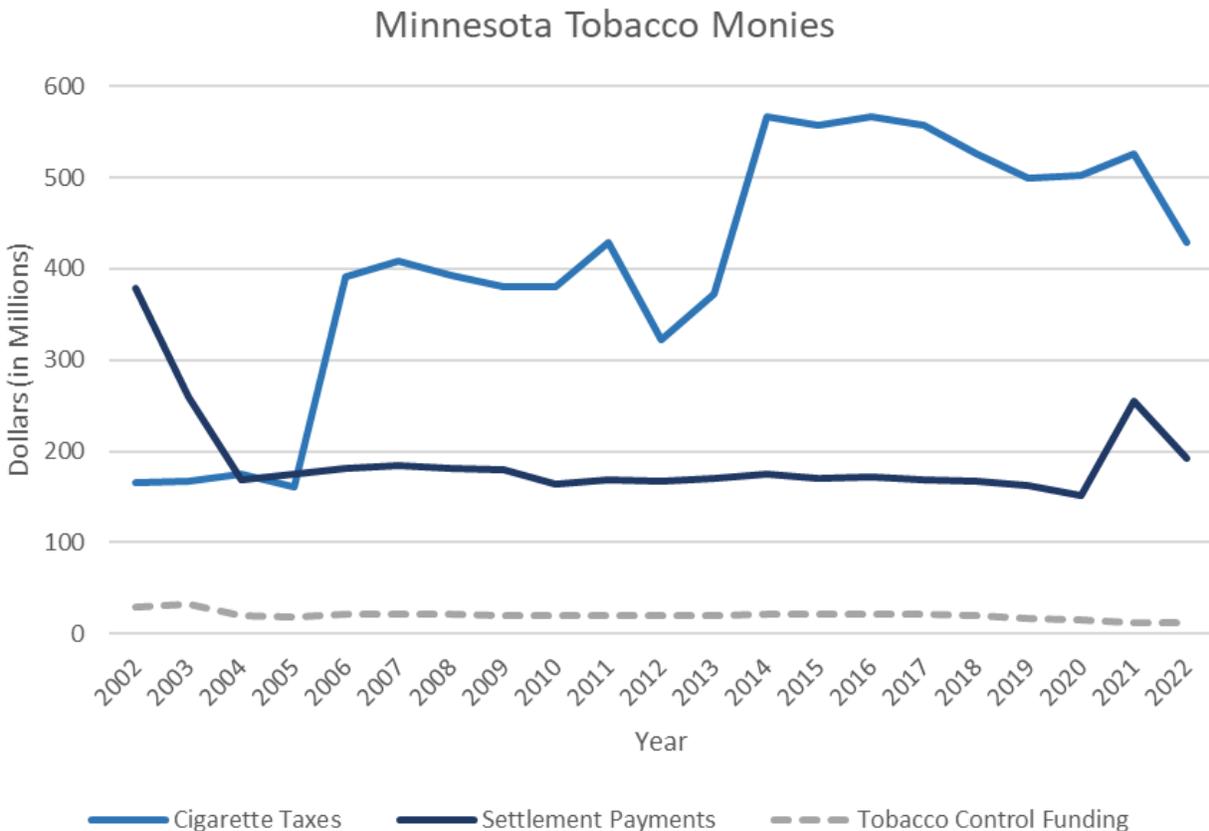
Since 2000, Minnesota has collected annual payments from tobacco manufacturers based on the percentage of cigarettes and tobacco products sold in the state in that year. Minnesota collected \$192.6 million in settlement payments in 2022, a 24.2 percent decrease from 2021’s \$254.2 million, or \$61.6 million less. Since 2002, the Gopher State collected more than \$3.9 billion in tobacco settlement payments.

While Minnesota collected an estimated \$621.9 million in tobacco-related monies in 2022, the state allocated only \$11.7 million in state funding towards tobacco control programs, including cessation, education, and youth prevention efforts, which was a 5.6 percent decrease in funding from 2021’s \$12.4 million, or \$700,000 less. This amounts to 2.7 percent of taxes and 6.1 percent of settlement payments. In 2022, for every \$1 the state received in tobacco monies, it spent only \$0.02 on tobacco control efforts.

To put it in further perspective, in 2022, an estimated 574,992 Minnesotan adults were smoking. The same year, the state collected \$429.3 million in state cigarette excise taxes, yet only spent

\$11.7 million on tobacco control programs. Essentially, Minnesota received at least \$747 from each adult smoking in 2022, yet spent only \$20.35 on tobacco control programs for each adult who was smoking that year.

Simply, if lawmakers want to help further reduce youth and adult tobacco and vapor product use, they ought to invest more into existing programs including education and prevention efforts.



Conclusion

With youth vaping having consistently declined in recent years, and youth use of traditional tobacco products at record lows, it is not necessary for Minnesota policymakers to prohibit flavors in tobacco and vapor products. Not only do flavor bans ignore dramatic declines, they fail to impact the real reasons why youth use e-cigarettes. Moreover, such legislation ignores the hundreds of thousands of Minnesota adults who rely on flavored tobacco harm reduction products to remain smoke-free.

- ¹ Lindsey Stroud, “Tobacco & Vaping 101: Minnesota,” *Taxpayers Protection Alliance*, Jan. 18, 2024, <https://www.protectingtaxpayers.org/analysis/tobacco-vaping-101-Minnesota-4/>.
- ² Minnesota Department of Health, “Youth Tobacco Survey frequency table, 2020,” *Minnesota Youth Tobacco Survey*, May 25, 2023, <https://www.health.state.mn.us/data/mchs/surveys/tobacco/docs/2020MYTSfreqs.xlsx>. Accessed Mar. 2, 2024.
- ³ Jan Birdsey MPH, *et al.*, “Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, Nov. 3, 2023, <https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm>.
- ⁴ Minnesota Department of Health, *supra* note 2.
- ⁵ Andrea S. Gentzke, PhD *et al.*, “Tobacco Product Use and Associated Factors Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021,” Mar. 11, 2022, <https://www.cdc.gov/mmwr/volumes/71/ss/ss7105a1.htm>.
- ⁶ Minnesota Department of Education, “Minnesota Student Survey,” 2022, <https://education.mn.gov/mde/dse/health/mss/>. Accessed Mar. 2, 2024.
- ⁷ Konstantinos Farsalinos, “Submitting to the FDA the findings of the largest ever survey on e-cigarette flavors use by US vapers,” E-Cigarette Research, August 11, 2008, <http://www.ecigarette-research.org/research/index.php/whats-new/2018-2/266-us-flav>.
- ⁸ Consumer Advocates for Smoke-free Alternatives Association, “ECigintelligence User Survey 2019,” August 25, 2020, <https://casaa.org/ecigintelligence-user-survey-2019/>.
- ⁹ Abigail S. Friedman and SiQing Xu, “Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation,” *JAMA*, June 5, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7275248/>.
- ¹⁰ Vapor Technology Association, “The Economic Impact of the Vapor Industry 2021 – Minnesota,” 2023, <https://vta.guerrillaeconomics.net/reports/871983df-11f2-47c5-8d07-608c2c8964c7?>.
- ¹¹ Royal College of Physicians, “E-cigarettes and non-combustible inhaled tobacco products,” Sept. 2017, <https://www.rcgp.org.uk/representing-you/policy-areas/e-cigarettes#:~:text=Public%20Health%20England%20and%20the,from%20conventional%20smoking13%2C14..>
- ¹² Public Health England, “Nicotine vaping in England: 2022 evidence update main findings,” Sept. 29, 2022, <https://www.gov.uk/government/publications/nicotine-vaping-in-england-2022-evidence-update/nicotine-vaping-in-england-2022-evidence-update-main-findings>.
- ¹³ New Zealand Ministry of Health, “Position statement on vaping,” Sept. 3, 2020, <https://web.archive.org/web/20230214002612/https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/vaping-smokefree-environments-and-regulated-products/position-statement-vaping>.
- ¹⁴ Lindsey Stroud, *supra* note 1.

Tobacco & Vaping 101:

Minnesota 2024

Lawmakers are often bombarded with misinformation on the products used by adults in their state. This annual analysis provides up-to-date data on the adults who use cigarettes and e-cigarette products in the Gopher State. This information also includes data on youth use, impacts of e-cigarettes and analyses of existing tobacco monies.

Key Points:

- Among all adults earning \$25,000 or less in 2022, 28.5 percent were currently smoking compared to only 8.7 percent of adults earning \$50,000 or more.
- Among all smoking adults in Minnesota in 2022, 73.7 percent were White, 9.8 percent were Black, 6.1 percent were Multiracial (non-Hispanic), 4.4 percent were Hispanic, 3. Percent were American Indian/Alaska Native, and 2.9 percent were Asian.
- In 2022, 305,189 Minnesota adults (6.9 percent) were currently using e-cigarettes. This a 21.1 percent increase from 2021 and represents 54,969 additional adults vaping.
- Among all vaping adults in Minnesota in 2022, 36.7 percent were 18 to 24 years old, 47.2 percent were 25 to 44 years old, 13.4 percent were 45 to 64 years old and 2.7 percent were 65 years or older.
- In 2021, for every one U.S. high school student who was smoking, more than 63 adults were currently using cigarettes.
- In 2021, for every one U.S. high school student who was vaping, more than six adults were currently using e-cigarettes.
- The introduction of e-cigarettes has not led to increases in cigarette smoking, but rather, correlates with significant declines in smoking rates among young adults.
- Between 2018 and 2022, smoking rates among Minnesota adults aged 18 to 24 years old decreased by 42.1 percent.
- Cigarette excise taxes in Minnesota disproportionately impact low income and low educated persons, while failing to significantly reduce smoking rates among that class.
- The percentage of Minnesota adults earning \$25,000 or less that were smoking increased by five percent between 2017 and 2022, while the percent of adults earning \$50,000 or more that were smoking decreased by 11.8 percent during the same period.
- Among Minnesota adults who did not graduate high school, smoking rates increased by seven percent, and rates among adults with a college degree decreased by 13.6 percent.
- Minnesota woefully underfunds programs to prevent youth use of tobacco and/or vapor products and help adults quit smoking, while simultaneously receiving millions of dollars from the pockets of the adults who smoke. In 2022, for every \$1 the state received in tobacco monies, it spent \$0.02 on tobacco control efforts.

Tobacco & Vaping 101:

Minnesota 2024

Adult Combustible Cigarette and E-Cigarette Use

In 2022, according to data from the annual Behavioral Risk Factor Surveillance System survey, conducted by the Centers for Disease Control and Prevention, an estimated 574,993 adults (or 13 percent of Minnesotans) were currently smoking. This is a three percent decrease from 2021 when 13.4 percent reported current cigarette use. There were 13,243 fewer adults smoking in 2022 compared to 2021.

In 2022 (among all Minnesota adults), 8.1 percent of 18- to 24-year-olds, 15.9 percent of 25–44-year-olds, 15.1 percent of 45–64-year-olds, and 8.5 percent of adults aged 65 years or older were currently smoking combustible cigarettes.

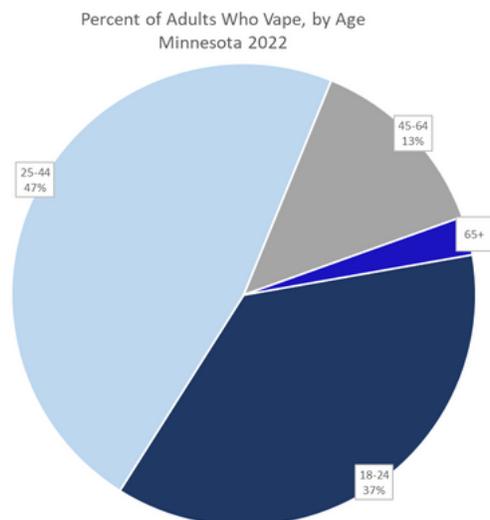
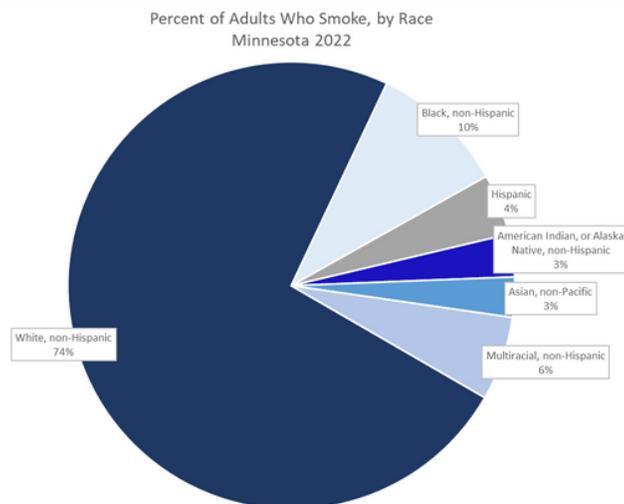
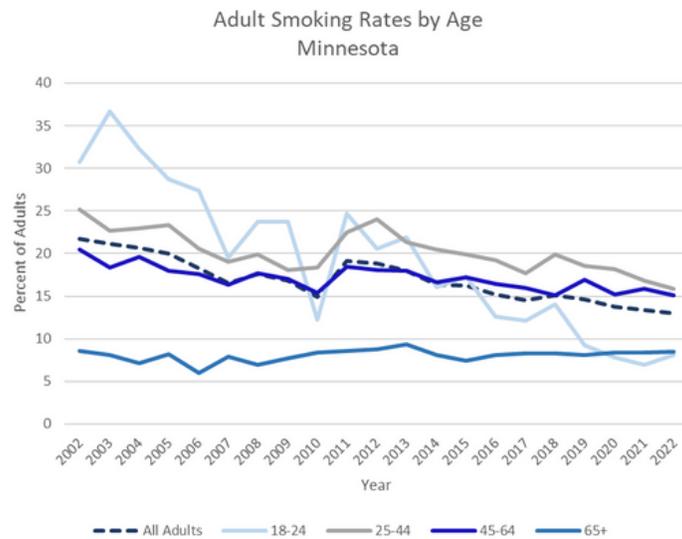
Among all adults earning \$25,000 annually or less in 2022, more than one-fourth (28.5 percent) reported currently smoking, compared to only 8.7 percent of adults who earned \$50,000 or more per year.

In Minnesota, American Indian/Alaska Native adults reported smoking at a greater percentage of their identified race at 44.1 percent. This is compared to 27 percent of Multiracial (non-Hispanic) adults, 18.7 percent of Black adults, 12.1 percent of White adults, 11 percent of Hispanic adults, and 7.2 percent of Asian adults.

Yet, White adults made up a significantly larger percentage of Minnesota’s total adult smoking population. In 2022, White adults accounted for 73.7 percent of Minnesota’s current smoking population, compared to American Indian/Alaska Native adults, who made up only 3.1 percent. Black adults made up 9.8 percent, Multiracial (non-Hispanic) adults made up 6.1 percent, Hispanic adults made up 4.4 percent and Asian adults accounted for 2.9 percent of Minnesota’s adult smoking population in 2022.

In 2022, an estimated 305,189 Minnesota adults (or 6.9 percent) were currently using e-cigarettes. This is a 21.1 percent increase from 2021 when 5.7 percent reported current e-cigarette use. There were an estimated 54,969 additional adults vaping in 2022 compared to 2021.

Among Minnesota adults currently using e-cigarettes in 2022, 36.7 percent were 18 to 24 years old, 47.2 percent were 25 to 44 years old, 13.4 percent were 45 to 64 years old and 2.7 percent of current e-cigarette users in Minnesota in 2022 were 65 years or older. Among adult e-cigarette users in Minnesota in 2022, 63.3 percent were 25 years or older.



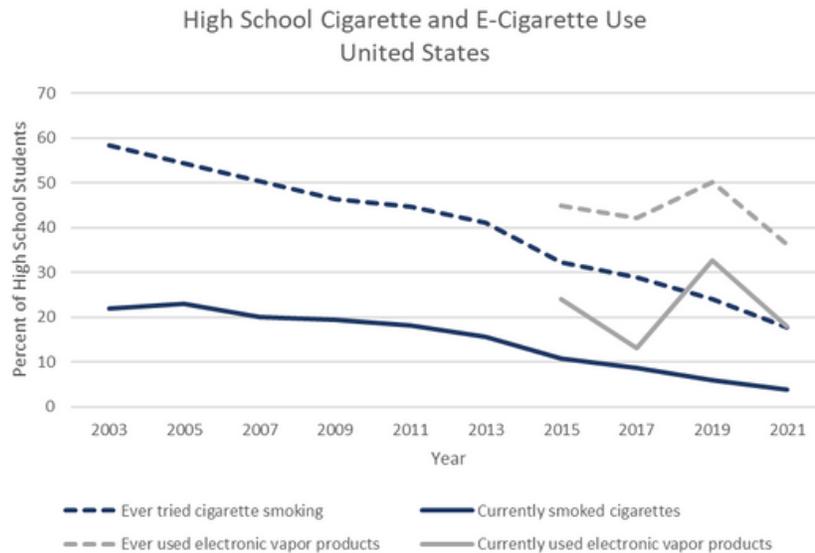
Tobacco & Vaping 101:

Minnesota 2024

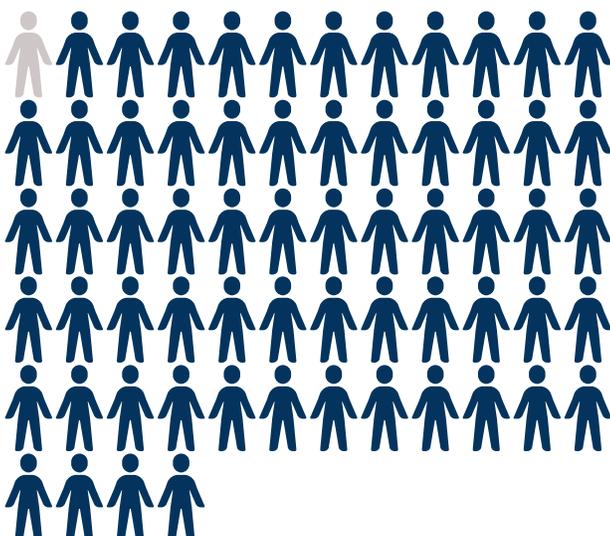
Youth Combustible Cigarette and E-Cigarette Use

Minnesota did not participate in the CDC's 2021 Youth Risk Behavior Survey. But youth smoking rates are at historic lows in the United States. In 2021, 17.8 percent of U.S. high school students reported ever trying combustible cigarettes, while 3.9 percent reported currently smoking, or having used the product on at least one occasion in the 30 days prior. In 2021, approximately 586,474 U.S. high school students were smoking, compared to an estimated 37.3 million U.S. adults aged 18 and over who were currently smoking. For every one high schooler smoking in 2021 in the United States, more than 63 adults were currently smoking.

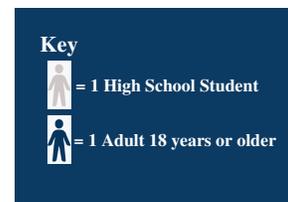
Youth vaping peaked in the U.S. in 2019 when more than half (50.1 percent) of U.S. high school students reported having ever used an e-cigarette and nearly one-third (32.7 percent) reported current use. Between 2019 and 2021, lifetime e-cigarette use among U.S. high schoolers declined by 27.7 percent to 36.2 percent of students. Current use decreased by 45 percent to 18 percent of U.S. high school students. In 2021, approximately 2.8 million U.S. high school students were vaping, compared to 17.4 million U.S. adults aged 18 and over who were currently vaping. For every one high schooler vaping in 2021 in the United States, more than six adults were using e-cigarettes.



Youth to Adult Smoking Ratio United States 2021



Youth to Adult Vaping Ratio United States 2021



Tobacco & Vaping 101: Minnesota 2024

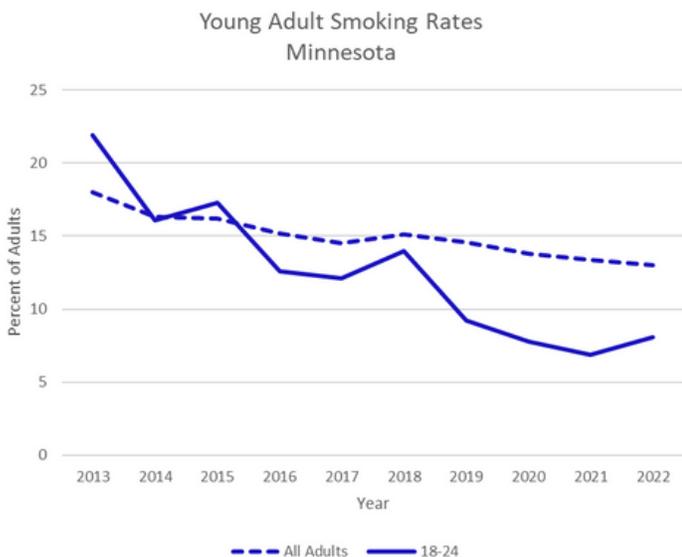
Young Adult Cigarette Use

The introduction of e-cigarettes has not led to increases in young adult cigarette smoking, but rather, correlates with significant declines.

In 2012, e-cigarettes were available in every major U.S. market. That same year, 20.6 percent of Minnesotans aged 18 to 24 years old were currently smoking. In 2018, public health purported a so-called “youth vaping epidemic,” and 14 percent of young adults in the Gopher State were smoking. Between 2012 and 2018, young adult smoking rates declined by 32 percent. Further, since 2018, young adult smoking rates have decreased another 42.1 percent, with average annual declines of 10.9 percent.

In 2016 (among 18- to 24-year-olds), 12.6 percent and 9.5 percent were currently using combustible cigarettes and e-cigarettes, respectively. Between 2016 and 2022, current cigarette use among young adults decreased by 35.7 percent while vapor product use increased by 126.3 percent.

Given the epic lows in young adult smoking rates, lawmakers must refrain from policies that restrict access to alternatives to smoking.

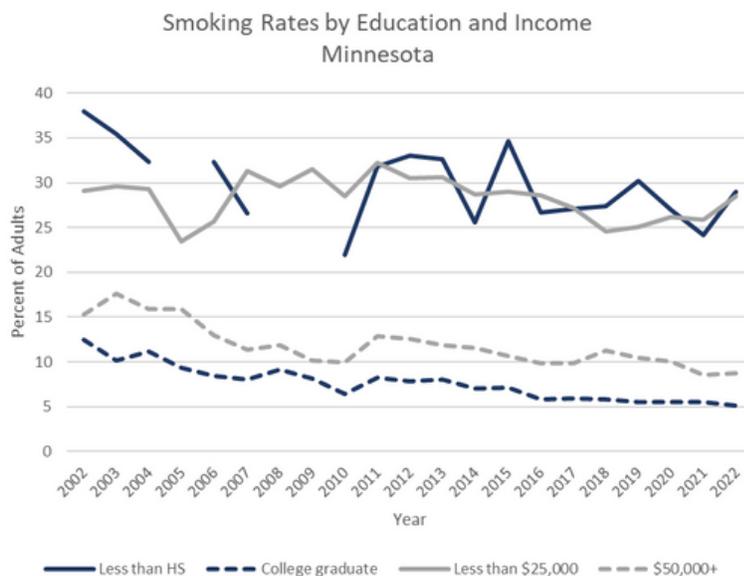


Effects of Cigarette Excise Taxes

Minnesota last increased its state cigarette excise tax in 2017 from \$3.00 to \$3.04-per-pack. Lawmakers often justify excise taxes on cigarettes to deter persons from using combustible cigarettes. These taxes not only disproportionately harm lower income and lower educated adults, the taxes also fail to significantly reduce smoking rates among those persons.

The percent of Minnesota adults earning \$25,000 or less that were smoking increased by five percent between 2017 and 2022, while the percent of adults earning \$50,000 or more that were smoking decreased by 11.8 percent during the same period. Among Minnesotans who did not graduate high school, smoking rates increased by seven percent, and rates among adults with a college degree decreased by 13.6 percent.

Lawmakers should refrain from enacting further increases in cigarette taxes given their disproportionate effect on low-income and low-educated persons, while failing to reduce smoking rates.



Tobacco & Vaping 101: Minnesota 2024

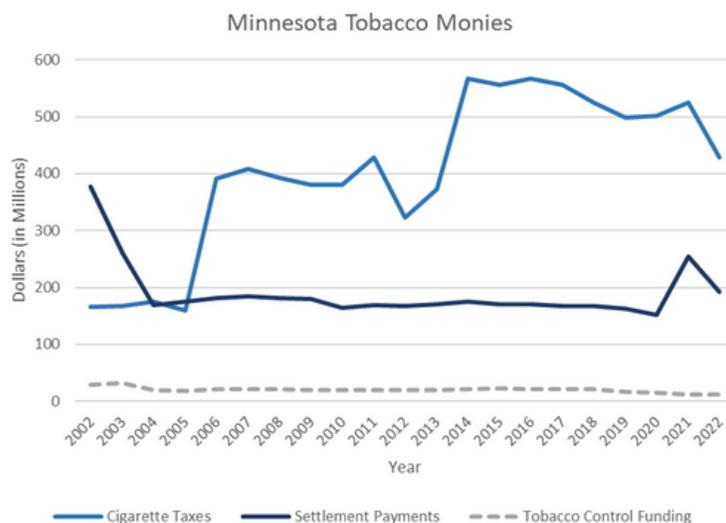
Tobacco Monies

Each year, states receive billions of dollars borne out of the lungs of persons who smoke. This revenue includes excise cigarette taxes and settlement payments. Yet, each year, states spend miniscule amounts of tobacco-related monies on programs to help adults quit smoking and prevent youth use.

In 2022, the Gopher State collected \$429.3 million in state excise tax revenue from combustible cigarettes. This was an 18.2 percent decrease from 2021's \$525.1 million, or \$95.8 million less. Between 2002 and 2022, Minnesota collected more than \$8.4 billion in cigarette taxes.

Since 2000, Minnesota has collected annual payments from tobacco manufacturers based on the percentage of cigarettes and tobacco products sold in the state in that year. Minnesota collected \$192.6 million in settlement payments in 2022, a 24.2 percent decrease from 2021's \$254.2 million, or \$61.6 million less. Since 2002, the Gopher State collected more than \$3.9 billion in tobacco settlement payments.

While Minnesota collected an estimated \$621.9 million in tobacco-related monies in 2022, the state allocated only \$11.7 million in state funding towards tobacco control programs, including cessation, education, and youth prevention efforts, which was a 5.6 percent decrease in funding from 2021's \$12.4 million, or \$700,000 less. This amounts to 2.7 percent of taxes and 6.1 percent of settlement payments. In 2022, for every \$1 the state received in tobacco monies, it spent only \$0.02 on tobacco control efforts.



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2. Data on race and age was compiled using population data from the Annie E. Casey Foundation (<https://datacenter.kidscount.org/>) and Demographic data from the CDC to cross reference the racial population. Then, data from Smoking and Race, and E-Cigarettes and Age, was used to determine the percent of adults who were smoking in 2022.
3. Data on youth tobacco and vapor product use comes from the CDC's Youth Risk Behavior Survey, accessed in November, 2023. https://www.cdc.gov/tobacco/data_statistics/surveys/nyts/index.htm.
4. Data on tax information comes from Orzechowski and Walker, "The Tax Burden on Tobacco Historical Compilation Volume 57, 2022. Print.
5. Data on tobacco settlement payments is from Campaign for Tobacco-Free Kids, "Actual Annual Tobacco Settlement Payments Received by the States, 1998-2022." Accessed November, 2023. <https://www.tobaccofreekids.org/assets/factsheets/0365.pdf>.
6. Data on tobacco control funding is from Campaign for Tobacco-Free Kids, "Appendix A: A History of Spending for State Tobacco Prevention Programs," Accessed November, 2023. <https://www.tobaccofreekids.org/assets/factsheets/0209.pdf>.

Tobacco Harm Reduction 101

The Role of Flavors

A vitally important aspect of vaping is that, in addition to having a fraction of the risk of smoking combustible tobacco, the act of vaping is more pleasing for adults. Flavors are essential to help transition adults away from smoking and help them remain smoke-free.

Flavors are appealing to adults in a wide variety of consumer goods, and it is no different with vaping. Importantly, flavored vapes create a disassociation between smoking and vaping which is instrumental in preventing relapse for former smokers who found it difficult to quit by other means. While some vapers stick to a tobacco flavor, the vast majority do not.

A wide choice of devices, nicotine strengths, and flavored liquids are integral to the success of vaping as an alternative to smoking because it enables individuals to tailor the vaping experience to suit their particular needs.

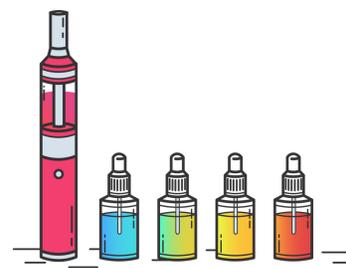
Flavors are also important in distinguishing combustible tobacco from vaping. There is no comparison between an attractive fruit flavor and the flavor of burned tobacco. Vaping is effectively a means of denormalizing tobacco and normalizing the use of a far safer alternative.

Research

A 2018 survey of nearly 70,000 American adult vapers “found flavors play a vital role in the use of electronic cigarettes and vaping devices.”[i] In fact, 83.2 percent and 72.3 percent of survey respondents reported vaping fruit and dessert flavors, respectively. Most respondents indicated restricting flavors would make vaping “less enjoyable.”

Analysis of EcigIntelligence’s 2019 user survey found that fruits, sweets and candy, and desserts and bakery flavors “are among the most preferred flavors across all age groups.”[ii] Use of tobacco flavor was preferred by less than 5 percent of those who vape. In the event that legal sales were restricted to tobacco flavor only, 69 percent of respondents said they would try to acquire their flavors from alternative methods and 25 percent stated that they would be willing to drive over 100 miles to obtain supply. This illustrates that flavors are important to the appeal of vaping over smoking and that proposals to ban flavored vaping products are more an attempt at prohibition by stealth than a serious public health measure.

A 2020 study found an association between flavors and smoking cessation. In a cohort study of more than 17,900 participants, the authors found that “adults who began vaping nontobacco-flavored e-cigarettes were more likely to quit smoking than those who vaped tobacco flavors.”[iii]



**TAXPAYERS
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ALLIANCE**

Tobacco Harm Reduction 101

Restricting Vape Flavors Perpetuates Smoking

Many lawmakers are being convinced into proposing a ban on vape flavors in the mistaken belief that they are the only driver of youth vaping. It seems to have been forgotten that youth experimentation with much more harmful combustible tobacco was at very high levels in the past when there was only tobacco flavor to offer.

Since vaping is a substitute for smoking in those who want to use nicotine, restricting vaping increases the appeal of combustible tobacco.

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. [i]

More alarmingly, a 2021 Yale University study found that “San Francisco’s ban on flavored tobacco product sales was associated with increased smoking among minor high school students” and that “reducing access to flavored electronic nicotine delivery systems may motivate youths who would otherwise vape to substitute smoking.”[ii] Further, there is a correlation between state flavored e-cigarette bans and increases in young adult smoking rates.[iii]

This should not come as a surprise because of the substitution effect of competing nicotine delivery products. Nicotine use has been prevalent for many hundreds of years, restricting less harmful nicotine-containing products effectively protects sales of harmful, combustible cigarettes.

A variety of vape flavors are beneficial to public health for several reasons:

- They provide intense competition for the cigarette trade by presenting an attraction that combustible tobacco cannot match.
- Flavors provide a more appealing alternative to smoking and lead to population level reduced harm from nicotine use if uptake and initiation of vaping instead of smoking is widespread.
- Most people who smoke do so as a result of peer pressure, whether as adolescents or adults.
- Flavors help more people to enjoy vaping instead of smoking and therefore optimize the chance that future nicotine users will be more likely to initiate with a vape than with a combustible cigarette.

Lawmakers should recognize the crucial role that flavors play in reducing combustible tobacco use and put forth policies that inform consumers of the wide variety of less harmful products on the market.

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- [2] Consumer Advocates for Smoke-free Alternatives Association, “ECigintelligence User Survey 2019,” August 25, 2020, <https://casaa.org/ecigintelligence-user-survey-2019/>.
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Tobacco Harm Reduction 101

Flavors Are Not Main Reason for Youth E-Cigarette Use

In 2019, many lawmakers sought to address the increase in youth e-cigarette use by enacting various policy proposals, including banning non-tobacco flavors in e-cigarette products. According to e-cigarette opponents, flavors are designed to only attract youth and have no value in tobacco harm reduction.

While addressing youth use of any age-restricted product is laudable, numerous state and national surveys indicate that flavors are not the most commonly cited reason for e-cigarette use among youth. Rather than enacting draconian bans, lawmakers should focus on the underlying reasons for youth e-cigarette use.

State Survey Data

The Centers for Disease Control and Prevention (CDC) conducts the Youth Risk Behavior Survey (YRBS) which examines various youth data points, including tobacco and vaping use. While data is limited, some states have sought to examine why youth are using e-cigarettes.

In 2019 in aggregate analysis of four state surveys (Connecticut[i], Montana[ii], Rhode Island[iii], and Virginia[iv]), among all high school students, 59.6 percent reported having never used an e-cigarette. Of the remaining students, 18 percent cited using e-cigarettes for “some other reason,” 12.1 percent reported using them because a family member and/or friend had, and only 5.2 percent reported using e-cigarettes because they were “available in flavors.”

In one 2019 state survey (Vermont) of high school students that were current e-cigarette users, 51 percent reported using e-cigarettes for some “other reason,” 17 percent had used them because family and/or friends, and only 10 percent reported current e-cigarette use because of flavors.[v]

National Survey Data

The Centers for Disease Control and Prevention annually conducts the National Youth Tobacco Survey (NYTS), which measures “tobacco-related behaviors, attitudes, beliefs, and exposure to pro- and anti-tobacco influences.”[vi] Since 2016, the NYTS has examined why youth have tried and/or are using e-cigarettes.

In 2016, among middle and high school students that had ever used an e-cigarette, 39 percent reported using them because a “friend or family member used them,” 31 percent cited “other,” and 31 percent reported using them because they “are available in flavors such as mint, candy, fruit, or chocolate.”[vii]

In 2019, among middle school and high school students that were current e-cigarette users, 55.3 percent reported vaping because they were “curious about them,” 30.8 percent cited using them because a “friend or family member used them,” and only 22.4 percent cited using e-cigarettes because of flavors.[viii]

The NYTS went further in 2021 and offered additional reasons for e-cigarette use than prior surveys. [ix] The results are interesting and indicative of a different trend in youth substance youth, including issues of anxiety and/or depression.

Tobacco Harm Reduction 101

For example, in 2021, among middle and high school students that were current e-cigarette users, 43.4 percent reported using them because they were “feeling anxious, stressed, or depressed,” 42.8 percent had used e-cigarettes to get a “buzz from nicotine,” 28.3 percent had used them because a friend had used them, and only 13.2 percent reported using e-cigarettes because of flavors.

Among middle and high school students that had ever used e-cigarettes, 57.8 percent reported trying them because of a friend, 47.6 percent cited curiosity as a reason for use, 25.1 percent reported trying them because they were “feeling anxious, stressed, or depressed,” 23.3 percent had tried them to get a “buzz from nicotine,” and only 13.5 percent had reported trying e-cigarettes because they are available in “flavors, such as menthol, candy, fruit, or chocolate.”

As policymakers seek to reduce youth use of age-restricted products, it is imperative that they understand the reasons why youth are using such products, including e-cigarettes. State and national data indicate that flavors is often cited as the third reason for youth e-cigarette use, and other factors are contributing to their use that will not be impacted by misguided policies such as flavor bans.

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Minnesota Attorney General Keith Ellison
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March 24, 2024

Representative Zach Stephenson
Chair, Commerce Finance and Policy
Committee
State Office Building
St. Paul, MN 55155

Representative Tim O'Driscoll
Ranking Minority Member, Commerce
Finance and Policy Committee
State Office Building
St. Paul, MN 55155

Re: House File 2177

Dear Representative Stephenson, Representative O'Driscoll, and committee members:

Pursuant to my duty under section 8.32 of the Minnesota Statutes to recommend statutory changes to protect consumers, I write to support House File 2177. This important legislation is necessary to protect consumers, particularly Minnesota's youth and other vulnerable populations, from the harmful effects of flavored tobacco and e-cigarette products.

I. Background

Minnesota has been a tobacco regulation leader for many years. In one of the most consequential pieces of litigation in the 20th century, my predecessor, Attorney General Skip Humphrey, sued the tobacco industry in 1994 for, among other things, conducting a longstanding campaign to get Minnesota's youth hooked on cigarettes. Attorney General Humphrey took Big Tobacco to trial and secured a monumental \$6.5 billion settlement with the industry.

More than 20 years after this landmark litigation, my Office sued Juul Labs and Altria, the reincarnation of Big Tobacco defendant Philip Morris, for following in Big Tobacco's footsteps by marketing their e-cigarette products to young Minnesotans. One of Juul's insidious tactics was using flavors like menthol, mango, cucumber, crème brûlée and fruit medley to attract young Minnesotans to use e-cigarettes. After a three-week trial in March 2023, my Office secured a \$60.5 million settlement, with the money dedicated to the Department of Health to fund youth tobacco use cessation, prevention, and education efforts.

But litigation alone cannot solve this public health problem. Youth use of e-cigarettes, also known as electronic nicotine delivery systems ("ENDS"), remains troublingly high. Youth use is fueled largely by the increasing popularity of flavored disposable ENDS that flooded the market following a decline in the use of pod-based ENDS products like Juul. Data shows that nationwide, over 2.2 million high school and middle school students used fruit, candy, or dessert flavored ENDS; nearly 1.4 million used disposable products.¹

¹ Fatma Romeh M. Ali et al., *E-cigarette Unit Sales by Product and Flavor Type, and Top-Selling Brands, United States, 2020-2022*, 72 Morbidity and Mortality Weekly Report 672, 672 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7225a1-H.pdf>.

The data is clear that kids in Minnesota prefer tobacco products with flavors. Nearly 4 in 5 Minnesota high school and middle school students report that their first tobacco product was flavored.² Of Minnesota students that are tobacco users, more than 80% used a flavored tobacco product in the last 30 days.³ The numbers are even more staggering for e-cigarettes, as researchers found that 87.1% of student ENDS users were using flavored e-cigarettes.⁴

These problems are not limited to flavors in ENDS devices. The only currently-allowed⁵ flavor in combustible cigarettes—menthol—remains popular as well. Research shows that menthol products are more appealing to youth and to people who have never smoked.⁶ Due to the tobacco industry’s long and relentless campaign of targeted marketing, youth, women, LGBTQ+ individuals, low-income persons, and racial and ethnic minorities are more likely than other groups to start smoking and become addicted to tobacco.⁷

For instance, of the portion of Minnesota students that smoke cigarettes, 32.8% of them use menthol cigarettes.⁸ This is higher than the roughly 27% share of adult smokers that use menthol cigarettes. These deadly products also disproportionately harm Black Americans. Researchers found that approximately 81% of non-Hispanic Black adults who currently smoked cigarettes used menthol cigarettes, compared to just 34% of non-Hispanic White adults.⁹ Studies also show that over 93% of Black smokers began cigarette use with menthol cigarettes.¹⁰

² Minnesota Department of Health, *Teens and Tobacco in Minnesota: Highlights from the 2020 Youth Tobacco Survey*, at 9 (Feb. 23, 2021), available at <https://www.health.state.mn.us/communities/tobacco/data/docs/2020mytsreport.pdf>.

³ *Id.*

⁴ *Id.*

⁵ The Food and Drug Administration has proposed a federal ban on menthol cigarettes that is currently under review at the White House Office of Management and Budget. In January 2024, I joined 20 other state attorneys general in urging the White House to quickly finalize this rule. <https://oag.ca.gov/system/files/attachments/press-docs/1.16.2024%20Multi-State%20Letter%20to%20White%20House%20OMB%20re%20Menthol%20Ban.pdf>

⁶ Centers for Disease Control and Prevention, *Menthol Tobacco Products* (Aug. 23, 2023), https://www.cdc.gov/tobacco/basic_information/menthol/index.html.

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⁸ Minnesota Department of Health, *Teens and Tobacco in Minnesota: Highlights from the 2020 Youth Tobacco Survey*, at 10 (Feb. 23, 2021), available at <https://www.health.state.mn.us/communities/tobacco/data/docs/2020mytsreport.pdf>.

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II. HF 2177

House File 2177 proposes a straightforward, commonsense solution to this problem: prohibiting the sale of flavored tobacco products, including e-cigarettes and menthol cigarettes, by retailers in Minnesota. The bill bans the sale of tobacco products that “impart[] a taste or smell, other than the taste or smell of tobacco,” and provides that offenders are subject to administrative penalties as well as potential enforcement action by the Department of Revenue or the Attorney General’s Office.

I strongly support this legislation. Research shows that flavor bans like this bill are effective in reducing tobacco product sales and mitigating youth use.¹¹ Minnesota should continue its tradition of being on the cutting edge of public health policy and prevent its youth and vulnerable populations from being unfairly exploited by tobacco companies looking to profit from addiction.

Finally, to assuage some community concerns, I can commit that the Attorney General’s Office cannot, and would not, seek to enforce prohibitions on flavored tobacco against individuals who purchase, possess, or use flavored tobacco. **This proposed bill does not outlaw individual purchase, possession, or use of flavored tobacco.** Instead, the bill directs goes upstream to prohibit retailers and distributors from selling and distributing these products in Minnesota.

I strongly encourage your committee to advance this important bill. I thank you for allowing me to provide my recommendations. If you have any questions or would like additional information, my team and I would be happy to help in any way that we can.

Sincerely,



KEITH ELLISON
Attorney General

¹¹ Fatma Romeh M. Ali et al., *E-cigarette Unit Sales by Product and Flavor Type, and Top-Selling Brands, United States, 2020-2022*, 72 *Morbidity and Mortality Weekly Report* 672, 675 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7225a1-H.pdf>.

March 24, 2024

Representative Zack Stephenson
449 State Office Building
St. Paul, MN 55155

RE: HF2177 (Cha) – prohibiting the sale of flavored tobacco & nicotine products

Dear Chair Stephenson and members of the committee,

On behalf of Allina Health, I am writing to express our strong support for HF2177 (Cha) which would prohibit the sale of flavored tobacco products in Minnesota.

Allina Health is a fully integrated health system with 11 hospital campuses, 65 primary care clinics, and 14 urgent care centers across the Twin Cities, central and southern Minnesota and western Wisconsin. We are a longtime supporter of policies in support of tobacco cessation as it aligns with our mission to serve our communities by providing exceptional care, as we prevent illness, restore health and provide comfort to all who entrust us with their care.

There is well established data on the harmful impacts of tobacco products. For many in our communities, these products are addictive, harmful, and readily available. When companies add attractive or tempting flavors to these products, they only make them more appealing to our youth. In the 2022 Minnesota Student Survey, it was found that over 75 percent of Minnesota's 8th and 11th graders who use tobacco consume flavored products. Early tobacco use can potentially lead to a lifetime of nicotine and tobacco use, and the health consequences that follow.

The best way to combat the negative economic and health impacts of tobacco use is to never start. At Allina Health, we see first-hand the negative impact that tobacco use has on the health of Minnesotans. Smoking alone costs Minnesota more than \$824 for every child and adult in the state in excess health care costs. What may be the most agonizing aspect of treating patients with tobacco-caused complications is knowing that so many are 100 percent preventable.

We want to thank Representative Cha for bringing this bill forward to protect our youth and our state from the harmful impacts of flavored nicotine and tobacco products. We urge the committee to support this important legislation.

Sincerely,

Kristen McHenry
Director, Public Affairs
Allina Health



March 22, 2024

House Commerce Finance and Policy Committee
RE: HF2177

Dear Chair Stephenson and Committee Members:

The Association for Nonsmokers-Minnesota (ANSR) is a nonprofit organization dedicated to reducing the human and economic costs of commercial tobacco, nicotine and other drug use in Minnesota. ANSR has supported strong public policies that protect Minnesotans from tobacco industry targeting and reduce commercial tobacco-related health disparities for over 50 years.

Our organization supports HF2177, which would end the sale of all flavored commercial tobacco products in Minnesota, including menthol cigarettes, flavored cigars, e-cigarettes, hookah and smokeless tobacco. Removing these flavored products from the market will save the state and taxpayers money, prevent youth initiation and protect those that the tobacco industry heavily targets, including youth, low-income communities, Black and Indigenous people and 2SLGBTQIA+ folks.

Smoking costs Minnesota over \$9.4 billion each year—a combination of \$4.7 billion in excess healthcare costs and \$4.7 billion in lost productivity related to illness, disability and premature death. That amounts to each and every Minnesotan annually paying \$824 to cover excess healthcare costs due to smoking. To put these staggering numbers into perspective, \$9.4 billion is enough to fund one year of education for every student enrolled in a public elementary or middle school in Minnesota or over 188,000 jobs at \$50,000 per year.

The total becomes even higher after factoring in the additional costs related to vaping, chewing and other commercial tobacco use. The majority of Minnesotan youth who use commercial tobacco use e-cigarettes, and more than 80% of those youth started with a flavored product. The tobacco industry lures them into a lifetime of addiction with fruit, candy and mint flavors.

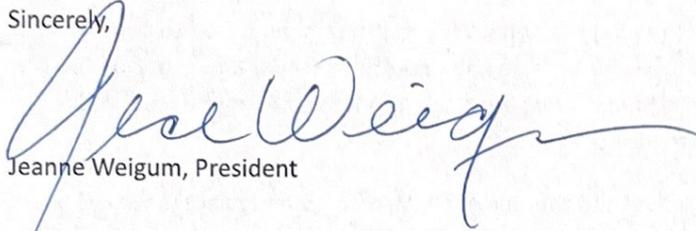
A 2023 statewide poll found that nearly two-thirds of Minnesotans prioritize the health of Minnesotan youth above tobacco industry business concerns. A majority (66%) believe it is more important to protect kids from using flavored products than it is to protect small businesses by allowing them to sell flavored tobacco products.

Some have suggested that limiting the sale of flavored products to age-restricted stores instead of completely removing these products from the shelves is a reasonable compromise. It is not. ANSR collaborates with many cities to do their annual compliance checks and these supposedly age-restricted stores sell to minors at about the same rate as other stores. Just because they are a tobacco store does not mean they are particularly committed to complying with state laws and city ordinances. FDA compliance checks have also found that many of the tobacco stores they check violate the law. Further, both Saint Paul and Minneapolis experienced a proliferation of these tobacco-only stores, and the industry sought inventive ways to get around ordinance compliance. Jane Prince, former Saint Paul council member wrote, "Once we allowed the adult-only exemption it was hard to eliminate it. Instead, we have repeatedly come back to the ordinance to try to reign in this industry. We have set a license cap

and recently reduced that cap. We have created a new class of license to better regulate tobacco stores, we have increased our penalty structure. Our inspections teams continue to find violations even though we have done a thorough training program for our vendors...If we had this to do over again, I believe we would have completely banned the sale of flavored tobacco products in our city. It would have saved a vast amount of council and staff time. And I have no doubt that it would have saved lives."

The longer we wait, the longer the tobacco industry has to addict new customers. We urge you to put Minnesotans' economic and physical wellbeing above tobacco industry greed by supporting HF2177.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeanne Weigum", with a long horizontal flourish extending to the right.

Jeanne Weigum, President

Association for Nonsmokers-Minnesota | www.ansrmn.org | 651.646.3005



ADVOCATES FOR
BETTER HEALTH

March 25th, 2024

Chair Zack Stephenson
Room 10
State Office Building
St Paul, MN 55155

RE: HF2177

Dear Chair Stephenson and Committee Members,

My name is Etienne Djevi, and I am an Infectious Disease physician and President of Advocates for Better Health (ABH). ABH is an organization dedicated to creating a healthy, equitable and thriving state by engaging physicians, students and healthcare providers in community-driven public health initiatives. As a doctor who specializes in Internal Medicine and Infectious Disease, I am writing to encourage you to support ending the sale of deadly flavored commercial tobacco products in Minnesota.

Despite recent decreases in smoking, the healthcare costs in Minnesota attributed to the tobacco industry remain significant. Annually, smoking is responsible for \$9 billion in excess healthcare costs and lost productivity in our state. In addition to the staggering economic impact associated with tobacco, smoking also takes the lives of 6,500 Minnesotans every year.

It's important to note that not all Minnesotans bear this burden equally; low-income individuals experience significantly higher rates of smoking and smoking-related health issues, and people with a mental illness or substance use disorders smoke at rates almost double that of the general population. Additionally, the disproportionate impact to Black, American Indians and LGBTQ+ communities cannot be ignored. Nearly one in four Black Minnesotan adults smoke and 85% of them use menthol tobacco. That is not a coincidence. For decades, tobacco companies have channeled menthol tobacco products into Black communities, causing premature death and disease. In Minnesota, smoking rates among American Indians are at epidemic levels (59 percent), and 42 percent of urban American Indian people who smoke use menthol cigarettes. It's clear the tobacco industry does not care about the health or economic vitality of our communities.

Big Tobacco's loss of profits cannot be compared to the staggering costs in both healthcare expenses and loss of life caused by their lethal products and exploitative tactics. Please stand up for the health and future prosperity of all Minnesotans by combatting Big Tobacco and eliminate the sale of all flavored commercial tobacco products.

Sincerely,

A handwritten signature in black ink, appearing to read 'Etienne Djevi', is written over a light grey rectangular background.

M. Etienne Djevi, MD
Board President
Advocates for Better Health

Advocates for Better Health
2355 Fairview Avenue #139 Roseville, MN 55113 | 612-623-2885
www.abhmn.org

March 25, 2024

RE: HF2177 Tobacco; sale or offer for sale of flavored tobacco, nicotine, or lobelia products prohibited

Position: OPPOSE

Dear Distinguished Chair Stephenson and Members of the Commerce Committee,

I am a retired police lieutenant and the executive director of the Law Enforcement Action Partnership (LEAP), a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak out about best law enforcement practices. LEAP's mission is to unite and mobilize the voice of law enforcement in support of drug policy and criminal justice reforms that will make communities safer by focusing law enforcement resources on the greatest threats to public safety, promoting alternatives to arrest and incarceration, addressing the root causes of crime, and working toward healing police-community relations.

I am writing to you today because of the proposed flavored tobacco ban now being considered in Minnesota. I know the toll on policing that menthol bans have taken elsewhere, and I want to urge you not to go down the same path. 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 a million Americans each year. This is a worthy cause deserving our attention, but prohibiting menthol and other flavors does not end their sale; it creates an underground market.

Bans on flavored tobacco put police in the position of dealing with yet another public health problem we cannot fix at the expense of our ability to fight crime. Prohibition impacts a safe and legal supply but does not end the demand for a product. Even if law enforcement focuses on businesses that violate tobacco laws — and not individual sellers — we know that police still end up interacting with individuals over tobacco violations. These interactions destroy police-community trust and make our difficult jobs that much harder. People who do not trust us do not report crimes, even when they themselves are the victim. People are more than mistrusting; they are afraid. What this says about our laws is that we must think deliberately about what we ask the police to enforce. Police should only be sent to enforce laws that make our neighborhoods safer places to live, and tobacco bans do not make us safer.

Incidents of violence between the police and citizens that are related to illegal cigarettes or tobacco have already occurred in the United States in communities of color. A tobacco ban in Minnesota will disproportionately affect communities of color, just as the rest of the drug war already has. The Centers for Disease Control and Prevention (CDC) states that 1 in 7 (around 14%) of non-Hispanic Black adults' smoke cigarettes and, as of 2019, approximately 85% of non-Hispanic Black adults who smoked used menthol cigarettes.

The evidence for this everywhere: Eric Garner was allegedly selling loose cigarettes when he was choked and killed by a police officer. In 2020, there was an incident in [Rancho Cordova](#) where a police officer used excessive force on a 14 year old during a tobacco product investigation. And in June 2021, police officers tackled, kicked, and tasered teens when enforcing a vaping ban on a boardwalk in [Maryland](#). LEAP understands that these are not isolated incidents but rather examples of the further challenges facing policing in America. Prohibiting — and consequently criminalizing — the sale of menthol cigarettes will only make it worse.

Instead of a ban, Minnesota should prioritize public education on the health risks of tobacco use. Much of the coverage of tobacco control has centered on the problem of youth use and the impact on their health. However, vaping rates among middle-schoolers and high schoolers [declined](#) according to the CDC.

Additionally, the flavor bans that have been instituted in countless towns, cities, and states throughout the country are poor policy: A study published in [JAMA Pediatrics](#), for example, has suggested that a flavor ban in San Francisco actually increased smoking rates among high-schoolers when compared to other school districts throughout the country. Another study, published in [Nicotine & Tobacco Research](#) in July 2021, showed that if “vape product sales were restricted to tobacco flavors,” one-third of US vapers aged 18 to 34 said that they would switch to smoking. And perhaps even more elucidating, a study that also appeared in [Nicotine & Tobacco Research](#) suggested that teens who vape would probably be smoking cigarettes instead if vapes had never become available. These three peer-reviewed articles support the thesis that bans, at the very least, do not achieve their politically desired outcomes. Furthermore, the [surgeon general](#) in 2020 stated there is not enough evidence to claim a ban on menthol cigarettes is an effective way to encourage cessation.

Other states have enacted bans and not seen the hoped for results. [Massachusetts](#) passed a statewide ban on flavored tobacco products in 2020, and cigarette purchases subsequently declined in-state while increasing substantially in bordering states. There’s no evidence that banning flavored tobacco has reduced smoking in Massachusetts, but there is plenty of evidence showing that people still found a way to get flavored tobacco products regardless of the law, shuttling millions in tax revenue out of the area. Recently Massachusetts lawmakers announced that they are considering a repeal of the ban on menthol cigarettes and flavored tobacco.

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

As one of many stakeholders, the police have a crucial role in designing policy that mitigates harmful criminal justice interventions on their constituencies. To that end, we strongly encourage this committee to **reject HF2177**, a prohibition of flavored tobacco products as such a prohibition will foster the establishment of illegal cigarette markets, contribute to already elevated levels of violence in our communities, further exacerbate the division and distrust that exists between our communities—especially our communities of color—and policing in America, and have little to no effect on the health of residents.

Please reject this bill and instead focus on expanding anti-smoking education, and prevention and cessation resources for those who need it most. Thank you for your time.

Respectfully,

Diane M Goldstein

Diane Goldstein
Lieutenant Diane M. Goldstein (Ret.)
Executive Director
(725) 724-1037 c



March 6, 2024

Chair Zack Stephenson
449 State Office Building
Saint Paul, MN 55155

Dear Chair Stephenson and Members of the House Commerce Finance & Policy Committee:

OutFront Minnesota writes in support of HF 2177 (Cha) which prohibits the sale of all flavored tobacco products. OutFront Minnesota, founded in 1987, is the state's largest LGBTQ+ advocacy organization that has sought to build power within Minnesota's LGBTQ+ communities and address inequities through intersectional organizing, advocacy, education, and direct support services. We believe that this legislation is important to bringing comprehensive, modern, and inclusive public health policy to Minnesota.

Today, we offer our support for HF 2177 which would prohibit sale of all flavored tobacco products, particularly menthol cigarettes, flavored cigars, e-cigarettes, hookah, and smokeless tobacco. These products use predatory messaging and consumer pricing to target youth and young adults, particularly BIPOC and LGBTQ+ communities. According to the Centers for Disease Control and Prevention, LGBTQ+ adults have a higher rate of smoking than heterosexual adults at 15.3%, and 35.5% transgender adults smoke cigarettes.¹

Price is the most effective tool in reducing smoking in adults and preventing youth from starting. Studies have shown that increasing the price of tobacco products decrease tobacco use, especially among youth and low-income smokers, and help current users quit smoking.

Ending the sale of all commercial flavored tobacco products, including menthol cigarettes, flavored cigars, e-cigarettes, hookah, and smokeless tobacco will improve the health of Black communities, LGBTQIA2S+ individuals, American Indians, and young people.²³ Currently, Minnesota communities are leading the way. 25% of Minnesotans are covered by a local ordinance that restricts or prohibits the sale of flavored tobacco products.⁴

OutFront Minnesota seeks to support and empower *all* individuals in becoming their best and healthiest selves. The passage HF 2177 will advance those goals; and support the health of

¹ <https://www.cdc.gov/tobacco/campaign/tips/groups/lgbt.html>

² Gardiner PS. The African Americanization of menthol cigarette use in the United States. *Nicotine Tob Res.* 2004.

³ Delnevo CD et al. Banning menthol cigarettes: A social justice issue long overdue. *Nicotine Tob Res.* 2020.

⁴ Association for Nonsmokers-Minnesota: <https://www.ansrmn.org/issues-resources/flavored-tobacco/>, updated January 2023.



residents, families, and our communities. OutFront Minnesota respectfully urges your support for HF 2177.

Sincerely,

Karlton A. Laster
Director, Policy & Organizing

FAR LESS HARMFUL FLAVORED E-CIGARETTES REDUCE CIGARETTE USE AND ARE CRITICAL TO HELPING COMBUSTIBLE SMOKERS QUIT

FACT: E-Cigarettes Pose Far Less Health Risks than Combustible Cigarettes.

- A 2018 National Academies of Sciences (NAS) comprehensive review of over 800 research and scientific papers commissioned by FDA that examined e-cigarettes and their health impacts found “**substantial evidence** that except for nicotine, under typical conditions of use, exposure to potentially toxic substances from e-cigarettes is significantly lower compared with combustible cigarettes.”¹
- NAS concluded that the “evidence about harm reduction suggests that across a range of studies and outcomes, **e-cigarettes pose less risk” to an individual than cigarettes.**²

FACT: Converting Smokers to E-Cigarette Users Saves Lives

- Studies published in 2021 and 2022 predicted that converting smokers to e-cigarette products would **avoid 1.8 million American deaths** and **save 38.9 million life years** by 2060,³ and substantially reverse mortality risks.⁴
- A January 2024 presentation shows that e-cigarettes are well on their way to achieving this prediction: they have already **saved 1.66 million life years between 2007 and 2019.**⁵
- These conclusions dovetail with those from an October 2023 study that found between 2010 and 2022, the lower cigarette smoking rates linked to e-cigarette products **saved 113,000 lives, preserved \$137 billion in gross domestic product** and **saved \$39 billion in healthcare costs.**⁶

FACT: Restricting Flavored E-Cigarettes Will Increase Consumption of Deadly Combustible Cigarettes

- A recent FDA-funded study by Yale researchers found that banning flavored e-cigarette products resulted in an increased use of 15 cigarettes (3/4 of a pack) for every banned 0.7mL flavored cartridge.⁷

¹ National Academies of Sciences, *Public Health Consequences of E-Cigarettes*, NAT'L ACADEMIES PRESS, at Preface (2018), at 18, <https://tinyurl.com/3k2tua82> (emphasis in original).

² NAS at 11.

³ Levy, *et al.*, Public Health Implications of Vaping in the USA: the Smoking and Vaping Simulation Model, POPUL. HEALTH METRICS, (Apr. 17, 2021).

⁴ Thomson, B., *et al.*, Association Between Smoking, Smoking Cessation, and Mortality by Race, Ethnicity, and Sex Among US Adults, JAMA NETWORK OPEN, 2022;5(10) (Oct. 24, 2022).

⁵ Pesko, *et al.*, *Pharmaceutical Drug Regulation and Mortality: The Peculiar Case of E-cigarettes*, Tobacco Online Policy Seminar (Jan. 5, 2024).

⁶ Shapiro, *et al.*, *The Major Benefits and Modest Risks of Nicotine Vaping Products*, Center for Black Equity 5 (Oct. 2023).

⁷ Friedman, A., *et al.*, *E-cigarette Flavor Restrictions' Effects on Tobacco Product Sales* (Sept. 26, 2023). See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4586701.

- That study analyzed five years of combustible cigarette sales data from 7 states and 375 localities that banned flavored e-cigarette products.
- The study concluded that “any public health benefits of reducing [e-cigarette] use via flavor restrictions may be offset by public health costs from increased cigarette sales.”⁸

FACT: Research from the University of Minnesota Supports the Critical Role of Flavors In Promoting Smoking Cessation

- A 2022 study funded by the National Institutes of Health and conducted by experts at the University of Minnesota confirmed the important role of flavored e-cigarette products in supporting adult smoking cessation.⁹
- The University of Minnesota researchers conducted an extensive scientific literature review from 2007 to 2020, including clinical studies.
- Results from 104 of those studies suggested that access to a variety of non-tobacco flavors is likely to be associated with higher e-cigarette use levels and appeal for cigarette smokers, and that flavor variety “might facilitate complete substitution for cigarettes.”¹⁰
- The researchers warned: “[r]egulation of . . . flavors aimed at decreasing naïve uptake may inadvertently decrease uptake and complete switching among smokers, reducing the harm reduction potential of e-cigarettes. FDA must consider the evidence-based effects of regulating flavors as to the population as a whole, including smokers.”¹¹

FACT: Youth E-Cigarette Use Is Rapidly Declining

- According to the CDC’s 2023 National Youth Tobacco Survey, use of e-cigarettes even once in the last 30-days was 7.7% among 6th-12th graders—down from 20.0% in 2019.¹²

CONCLUSION: Banning Flavored E-Cigarettes Will Prevent Existing Smokers from Quitting at the Expense of Thousands of Lives, Hundreds of Millions of Dollars in Economic Productivity, and Untold Millions More in Additional Healthcare Costs

⁸ *Id.*

⁹Gades, et al., *The Role of Nicotine and Flavor in the Abuse Potential and Appeal of Electronic Cigarettes for Adult Current and Former Cigarette and Electronic Cigarette Users: A Systematic Review*, NICOTINE AND TOBACCO RESEARCH 2022:1332-1343.

¹⁰ *Id.* at 1332, 1339.

¹¹ *Id.* at 1332; see also, e.g., Lin Li, Ph.D., et al., *How Does the Use of Flavored Nicotine Vaping Products Relate to Progression Toward Quitting Smoking? Findings From the 2016 and 2018 ITC 4CV Surveys*, NICOTINE AND TOBACCO RESEARCH 2021:1490-1497, at 1490-91, 1494 (survey of concurrent (or dual) users of cigarettes and ENDS finding that the greatest success in quitting occurred among adult smokers using sweet-flavored ENDS (13.8%) relative to tobacco flavored ENDS (9.6%)).

¹² CDC, Morbidity and Mortality Weekly Report, *Tobacco Product Use Among U.S. Middle and high School Students—National Youth Tobacco Survey, 2023* (Nov. 3, 2023), https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?s_cid=mm7244a1_w.



Flavored products play an important role in tobacco harm reduction

There are more than [30 million](#) smokers in the United States. Almost [500,000](#) Americans die of smoking-related diseases each year. Since the Food and Drug Administration (FDA) was tasked with regulating tobacco products in 2009, a host of safer nicotine alternatives to cigarettes have entered the market. The FDA has sought to incorporate these products as part of a harm reduction strategy where smokers who are unwilling or unable to quit cigarettes through traditional methods can switch to safer forms of nicotine consumption.

The FDA recognizes a “continuum of risk” when it comes to nicotine products, with cigarettes being the most dangerous and products like e-cigarettes and oral nicotine being far less dangerous. To be sold in the United States, these nicotine products must apply to the FDA and be found to provide a net benefit to public health. The FDA has already authorized several such products, including e-cigarettes, snus, and heated tobacco products, and products in flavors like menthol, mint, and wintergreen.

Flavors and adult preferences

- Most smokers who switch to safer nicotine alternatives [use](#) flavored products, a study *Nicotine & Tobacco Research* finds. The FDA [authorizes](#) several of these products as appropriate for the protection of public health because they are safer than cigarettes, help smokers quit, and don’t increase youth use of nicotine.
- Another study in *Nicotine & Tobacco Research* shows that smokers who switch to e-cigarettes are likelier to quit smoking [successfully](#) when using a flavored product.
- According to [modeling](#) cited by the FDA, almost half of the benefits of a policy banning menthol cigarettes would come from menthol smokers switching to safer nicotine products, like e-cigarettes, with menthol flavoring.
- Survey [data](#) published in *Addictive Behaviors* shows that if flavored e-cigarette products were banned, 28 percent of vapers say they would still buy them on the black market. Almost 20 percent say if their preferred flavors were prohibited, they’d switch back to smoking cigarettes, which is significantly more dangerous than vaping.

Youth vaping and unintended consequences of flavor bans

- While youth tobacco use is always of deep concern, fortunately, youth smoking is at a generational low of 1.6 percent, in the United States, according to the Centers for Disease Control and Prevention, and youth vaping has fallen by more than 50 percent since its [peak](#) in 2019 to [below](#) 10 percent in 2022.
- According to the CDC, the primary [reasons](#) young people say they vape is peer influence, curiosity, and stress—not flavors.
- Banning flavored nicotine products can produce unintended consequences. Yale University’s Abigail Friedman found that after San Francisco banned flavored products, the [odds](#) of San Francisco area youth smoking doubled.
- The Massachusetts Multi-Agency Illegal Tobacco Task Force claims the state’s flavored tobacco ban has created the need for harsher [criminal penalties](#) to deter the growing illicit market. The state also lost [\\$125 million](#) in revenue in the first year of the ban, according to the Tax Foundation.

Takeaway: To maximize the benefits to public health, legislators should refrain from policies that decrease interest in safer alternatives to cigarettes by restricting flavors.

Guy Bentley, director of consumer freedom (guy.bentley@reason.org)

Good evening to all assembled,

My name is David Daniels III, I am a retired Bridgeport Police Lieutenant , a city of Bridgeport resident and a bit of a community activist, I would like to thank you for this opportunity to speak on the proposed legislation To consider a ban on all flavored vaping & Menthol products.

Let me emphatically state, I do not Vape, Smoke or utilize any Tobacco based products, I also believe that we should discourage our children from consuming such products for health reasons.

I do however have a problem with methanol being included in a ban on flavored products such as cigarettes , in that over time I believe that such a ban would have unintended consequences for adults mainly Black and Brown people that have openly and legally partaken in for at least a hundred years, I understand that this proposed legislation is aimed at the sellers, but the laws of supply and demand could also evolve into a look into the people that process and utilize them if the desired affect cannot be realized, negatively adding to tedious relationship between cops and community , more over The people that consume these products will not stop wanting them or buying them, they will merely travel to other cities or states and secure them anyway and this action could spawn an illicit market to fill

that niche and that market will not have the same quality control and safety measures that our federally regulated tobacco companies already have in place.

This is a short-term solution to a long term problem that may ultimately lead to more problems down the road , I hope that you'll reconsider this action.

Thank you again for your time and attention again I hope that you will reconsider a menthol ban at this time.

Thanks in advance.



March 21, 2024

Dear Legislative Leaders:

We, the undersigned current and former mayors, city council members, and county commissioners across Minnesota, are writing to kindly urge you to support the bill to end the sale of all commercial flavored tobacco products, including menthol cigarettes, flavored cigars, e-cigarettes, hookah, and smokeless tobacco in Minnesota (SF2123/ HF2177).

We believe that broader policy coverage leads to a more significant impact to prevent youth addiction, advance racial and health equity, and create a healthier future for everyone in our state.

The following bullet points highlight some key reasons this policy is needed:

Preventing youth addiction:

- In Minnesota, one in seven 11th graders uses e-cigarettes, and 88 percent of those students use flavored e-cigarettes.¹ Nationally, 85% of youth e-cigarette users report using flavored products.²
- The tobacco industry deliberately uses flavors to attract the next generation of tobacco users.³
- E-cigarettes are available in a wide variety of kid-friendly flavors like cotton candy, gummy bear, mint, menthol, and cookie dough.
- E-cigarettes contain high levels of nicotine which harms adolescent brain development and primes youth for addiction.⁴ More than 70 percent of youth e-cigarette users in Minnesota are showing signs of nicotine dependence.⁵
- Cigars come in hundreds of kid-friendly flavors, like Banana Smash and Chocolate Brownie. Cigars are the second most popular tobacco product among youth and are especially popular among Black youth.⁶
- Nearly half of youth who have tried smoking started with menthol cigarettes.⁷ Menthol cools and numbs the throat and reduces irritation, making it easier for kids to start smoking.⁸

Advancing racial and health equity:

- The commercial tobacco industry targets youth, Black, LGBTIQ+, Indigenous communities, and other historically under-resourced communities with menthol tobacco.^{9,10}
- As a result of years of targeted marketing, 85% of Black people who smoke use menthol cigarettes compared to 29 percent of white smokers.¹¹
- Smoking continues to contribute to racial disparities in mortality and life expectancy.¹²

Creating a healthier future:

- Ending the sale of all flavored tobacco products will reduce tobacco use and improve the health of groups targeted by the commercial tobacco industry.¹³
- Fewer people smoking and using nicotine means a decrease in related health issues, reducing the burden on local healthcare resources.
- Reduced healthcare costs and increased productivity can have positive economic effects on local businesses and the community at large.
- There are currently five states and more than 360 localities with flavor bans. At least 170 of those localities restrict the sale of menthol cigarettes. As of early 2023, at least 10 states (Connecticut, Hawaii, Indiana, Maryland, New Mexico, New York, Oregon, Texas, Vermont, and Washington) introduced legislation that would limit the sale of flavored tobacco and nicotine products.¹⁴
- More than twenty-five percent of Minnesotans are covered by a local ordinance that restricts or prohibits the sale of flavored and/or menthol tobacco products.¹⁵
- Minnesota's proposal to end flavored commercial tobacco sales has strong bipartisan support.



- In a 2023 statewide poll, 62 percent of Minnesotans expressed support for the proposal to end the sale of all flavored tobacco products, with high levels of support across various demographics and regions.¹⁶
- The federal government (FDA) has proposed rules that would remove flavored menthol cigarettes and flavored cigars from the marketplace but excludes flavored e-cigarettes and other flavored tobacco products.¹⁷ Although the proposed rule is under final review, a final rule would likely face years of delays from the tobacco industry.¹⁸ Minnesota should act now to improve health.

We sincerely encourage your support for this bill, as its passage promises to enhance health outcomes, diminish disparities, and decrease healthcare costs—ultimately fostering a healthier and more equitable Minnesota for all.

Sincerely,

Graeme Allen, New Brighton City Council Member
Thomas Andries, Lyon County Commissioner
Joe Atkins, Dakota County Commissioner
Paul Bakken, Eagan City Council Member
Paul Baudhuin, St. Louis Park City Council Member
Amy Brendmoen, St. Paul City Council Member (former)
Sue Budd, St. Louis Park City Council Member
Jason Chavez, Minneapolis City Council Member
Charlene Christenson, Hubbard County Commissioner
Brenda Dietrich, Inver Grove Heights Mayor
Tim Elness, Sartell City Council Member
Jeanne Ennen, Stevens County Commissioner
Larry P. Fonnest, Golden Valley City Council Member (former)
Debbie Goettel, Hennepin County Commissioner
Marion Greene, Hennepin County Commissioner
Laurie Halverson, Dakota County Commissioner
Gary Hansen, Eagan City Council Member
Shep Harris, Golden Valley Mayor (former)
Chris Hollingsworth, Pipestone County Commissioner
Candice Jaenisch, Chippewa County Commissioner
Rachel James, Columbia Heights City Council Member
Sharon Kelly, Lauderdale City Council Member
Emily Koski, Minneapolis City Council Member
Denise La Mere-Anderson, Golden Valley City Council Member

Mitch Lentz, Fillmore County Commissioner
Stephanie Levine, Mendota Heights Mayor
Scott Lund, Fridley Mayor
DeAnne Malterer, Waseca County Commissioner
Tamara McGehee, Roseville City Council Member (former)
Teresa Miller, Little Canada City Council Member
Susan Morris, Isanti County Commissioner
Rebecca Noecker, Saint Paul City Council Member
Joel Paper, Mendota Heights City Council Member
Gary Peterson, Carlton County Commissioner
Mark Piepho, Blue Earth County Commissioner
Roger Pohlman, Jackson County Commissioner
Sarah Pratt, Aitkin County Commissioner
Duane Pulford, Lauderdale City Council Member
Jerry Rapp, Douglas County Commissioner
Margaret Rog, St. Louis Park City Council Member
Beth Schlangen, Benton County Commissioner
Justice Spriggs, MD, Columbia Heights City Council Member
Julie Strahan, Roseville City Council Member
Vance Stuehbenberg, Blue Earth County Commissioner
Mike Supina, Eagan City Council Member
Kara Terry, Brainerd City Council Member
LaTrisha Vetaw, Minneapolis City Council Member

[1] Minnesota Department of Health. 2022 Minnesota Student Survey.
[2] Park-Lee E, Ren C, Cooper M, Cornelius M, Jamal A, Cullen KA. Tobacco Product Use Among Middle and High School Students — United States, 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:1429–1435. DOI: <http://dx.doi.org/10.15585/mmwr.mm7145a1>
[3] Ritchy AP (RJR Tobacco). Apple Wine Cigarette Project. 1972. <http://legacy.library.ucsf.edu/tid/buq49d00/pdf>.
[4] Jackler RK et al. Nicotine arms race: JUUL and the high-nicotine product market. *Tob Control*. 2019.
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[7] Cohn AM, Rose SW, D'Silva J, Villanti AC. Menthol Smoking Patterns and Smoking Perceptions Among Youth: Findings From the Population Assessment of Tobacco and Health Study. *Am J Prev Med*. 2019 Apr;56(4):e107–e116. doi: 10.1016/j.amepre.2018.11.027. PMID: 30898227; PMCID: PMC7453836.
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[11] Delnevo CD et al. Banning menthol cigarettes: A social justice issue long overdue. *Nicotine Tob Res*. 2020.
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[13] Delnevo et al. (2020)
[14] <https://www.astho.org/communications/blog/recent-federal-state-actions-limit-flavored-tobacco-products/#:~:text=State%20Bans%20on%20Tobacco%20Flavors,360%20to%20calities%20with%20flavor%20bans>.
[15] <https://www.ansrnmn.org/issues-resources/flavored-tobacco/>, updated January 2023.
[16] The Morris Leatherman Company. Statewide Tobacco Survey, January 18–February 2, 2023.
[17] FDA news release. FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death, April 28, 2022.
[18] <https://www.reginfo.gov/public/do/eoDetails?rid=341268>



March 21, 2024

Dear Legislative Leaders:

We, the undersigned principals, superintendents, and school leaders from across Minnesota, are writing to kindly urge you to support the bill to end the sale of all commercial flavored tobacco products, including menthol cigarettes, flavored cigars, e-cigarettes, hookah, and smokeless tobacco in Minnesota (SF2123/HF2177). This bill addresses critical issues that are of paramount importance to our school districts and countless others across Minnesota. We've seen a dramatic increase in the number of youth vaping nicotine over the last several years.

While we work hard to equip students with knowledge about tobacco harms, education and information about the damaging health effects are only one piece of the puzzle. Public policy is a key aspect of preventing young people from starting down the path of addiction and subsequent tobacco-related disease. The best chance we have to decrease the burden that tobacco-related diseases place on Minnesotans is to pass laws that will help stop kids from getting hooked on nicotine in the first place.

Preventing youth addiction:

- In Minnesota, one in seven 11th graders uses e-cigarettes, and 88 percent of those students use flavored e-cigarettes.¹ Nationally, 85% of youth e-cigarette users report using flavored products.²
- The tobacco industry deliberately uses flavors to attract the next generation of tobacco users.³
- E-cigarettes are available in a wide variety of kid-friendly flavors like cotton candy, gummy bear, mint, menthol, and cookie dough.
- E-cigarettes contain high levels of nicotine which harms adolescent brain development and primes youth for addiction.⁴ More than 70 percent of youth e-cigarette users in Minnesota are showing signs of nicotine dependence.⁵
- Cigars come in hundreds of kid-friendly flavors, like Banana Smash and Chocolate Brownie. Cigars are the second most popular tobacco product among youth and are especially popular among Black youth.⁶
- Nearly half of youth who have tried smoking started with menthol cigarettes.⁷ Menthol cools and numbs the throat and reduces irritation, making it easier for kids to start smoking.⁸

Advancing racial and health equity:

- The commercial tobacco industry targets youth, Black, LGBTIQ+, Indigenous communities, and other historically under-resourced communities with menthol tobacco.^{9,10}
- As a result of years of targeted marketing, 85% of Black people who smoke use menthol cigarettes compared to 29 percent of white smokers.¹¹
- Smoking continues to contribute to racial disparities in mortality and life expectancy.¹²

Creating a healthier future:

- Ending the sale of all flavored tobacco products will reduce tobacco use and improve the health of groups targeted by the commercial tobacco industry.¹³
- Fewer people smoking and using nicotine means a decrease in related health issues, reducing the burden on local healthcare resources.
- Reduced healthcare costs and increased productivity can have positive economic effects on local businesses and the community at large.
- There are currently five states and more than 360 localities with flavor bans. At least 170 of those localities restrict the sale of menthol cigarettes. As of early 2023, at least 10 states (Connecticut, Hawaii, Indiana, Maryland, New Mexico, New York, Oregon, Texas, Vermont, and Washington) introduced legislation that would limit the sale of flavored tobacco and nicotine products.¹⁴
- More than twenty-five percent of Minnesotans are covered by a local ordinance that restricts or prohibits the sale of flavored and/or menthol tobacco products.¹⁵
- Minnesota's proposal to end flavored commercial tobacco sales has strong bipartisan support.



- In a 2023 statewide poll, 62 percent of Minnesotans expressed support for the proposal to end the sale of all flavored tobacco products, with high levels of support across various demographics and regions.¹⁶
- The federal government (FDA) has proposed rules that would remove flavored menthol cigarettes and flavored cigars from the marketplace but excludes flavored e-cigarettes and other flavored tobacco products.¹⁷ Although the proposed rule is under final review, a final rule would likely face years of delays from the tobacco industry.¹⁸ Minnesota should act now to improve health.

We sincerely encourage your support for this bill, as its passage promises to enhance health outcomes, diminish disparities, and decrease healthcare costs—ultimately fostering a healthier and more equitable Minnesota for all.

Sincerely,

Suleiman Ahmed, Minnesota Math and Science Academy
Claud Allaire, FIT Academy
Lisa Anderson, District 2170
Scott A. Arcand, White Bear Lake Area Schools
Jessica Arens, Wabasha Kellogg School District
Carrie Barth, White Bear Lake Area Schools
Mymique Baxter, Kato Public Charter School - 4066
Jose Becerra-Cardenas, Roseville Area Schools
Beth Beebe, Bloomington Public Schools
Beth Behnke, Roseville Area Schools
Aidan Beisang, Mounds View School District
Heather Berge, Anoka Hennepin School District
Eric Bjurman, Foley Public Schools
Don Bosch, White Bear Lake Area Schools
Jason Carver, Community of Peace Academy
Alexander Miguel Cervantes, SPPS
Jonathan Clark, Pine River-Backus Schools
Lisa DeMars, Aitkin School District
Christopher Dennis, Mounds View School District
Nicole Desjarlait, Red Lake Schools
Theresa Diekmann, Big Stone County
Julie Domogalla, East Central Schools
Cooper Donovan, Mounds View School District
Matthew Drugg, Simley High School
Julee Ellefsen, White Bear Lake Area Schools
Brittney Ender, Wabasha-Kellogg ISD 811
Greta Evans-Becker, Robbinsdale Area Schools
Gregory Ewing, Red Rock Central Schools
Alan R. Fitterer, Tri-City United School District ISD 2905
Cindy Flicek, Tri-City United School District ISD 2905
Laura Freer, Roseville Area Schools
Jennifer Funk, White Bear Lake Area Schools
Sarah Gabardi, Hibbing School District
Karen Gabler, Edina Public School
James M. Gillach, Chisago Lakes ISD 2144
Kelsey Gronhovd, White Bear Lake Area Schools
Deb Hallin, Mora ISD 322
Mike Hamernick, Northern Lights Community School
Erica Harmsen, TrekNorth Jr. and Sr. High School
Joan Hartman, Mounds View School District
Kristin Heinz, Mounds View School District
Dakota Helmbrecht, Mora Public Schools
Jim Henrickson, Aitkin High School ISD 1

Hannah Hensley, White Bear Lake Area Schools
Rachel Hilyar, Elk River Area ISD 728
Mary Hobday, St. Paul Public Schools
Kelly Hoeft, ISD 2071
Jerome Huselid, Clinton Graceville Beardsley
Bradley Jensen, Hinckley-Finlayson ISD
David Jensen, Rochester Catholic Schools
Nicholas Johnson, Sauk Rapids-Rice Public Schools
Tanya Johnson, Floodwood School District
Bill Kehoe, Morris Area Public Schools
Jake Klingner, Inver Grove Heights Schools
Carr S. Kpanyor Jr., Friendship Academy of the Arts
Shayne Kusler, Sartell-St. Stephen
Thomas R. Lee, Sartell-St. Stephen
Nicki Linsten-Lodge, Pine River-Backus Schools
Jenny Loeck, Roseville Area Schools
Monica Ann Mann, Lionsgate Academy
Jill Martens, Nicollet Public School
Sarah Mittelstadt, Southern Plains
David Nathanson, White Bear Lake Area Schools
Anne Oelke, Ely Public Schools
Michelle Okeson, Detroit Lakes Public School
Colleen O'Neil, Mounds View School District
Colin Peters, Washington Technology Magnet School
Cathryn Peterson, White Bear Lake Area Schools
Dr. Polly Reikowski, Eagan High School
Benjamin Joseph Samuelson, Roseville Area Schools
Michael Schroeder, Roseville Area Schools
Melissa Sonnek, Roseville Area Schools
Billie Jo Steen, Moose Lake
Rebecca Suttan, Roseville Area Schools
Joanna Trudgeon, White Bear Lake Area Schools
Crystal Tucker, Northeast Metro 916
Steve Wagner, Sauk Rapids-Rice Public Schools
Jessica Wales, Brainerd Public Schools
Joe Ward, Proctor Public School
Jennifer Westlund, Ely Public Schools
Maura Weyandt, Roseville Area Schools
Melissa Wickert, White Bear Lake Area Schools
Dr. Jennifer Wilson, Roseville Area Schools
Mark Winter, Rock Ridge Public Schools
Sam Woitalewicz, Westbrook Walnut Grove



Citations:

- [1] Minnesota Department of Health. 2022 Minnesota Student Survey.
- [2] Park-Lee E, Ren C, Cooper M, Cornelius M, Jamal A, Cullen KA. Tobacco Product Use Among Middle and High School Students — United States, 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:1429–1435. DOI: <http://dx.doi.org/10.15585/mmwr.mm7145a1>
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- [5] Minnesota Department of Health. 2022 Minnesota Student Survey.
- [6] Park-Lee E, Ren C, Cooper M, Cornelius M, Jamal A, Cullen KA. Tobacco Product Use Among Middle and High School Students — United States, 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:1429–1435. DOI: <http://dx.doi.org/10.15585/mmwr.mm7145a1>.
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- [8] Ahijevych K, Garrett BE. The role of menthol in cigarettes as a reinforcer of smoking behavior. *Nicotine Tob Res*. 2010;12(suppl 2):S110–S116. 10.1093/ntr/ntq203.
- [9] Gardiner PS. The African Americanization of menthol cigarette use in the United States. *Nicotine Tob Res*. 2004.
- [10] Stevens P et al. An analysis of tobacco industry marketing to lesbian, gay, bisexual, and transgender (LGBT) populations: Strategies for mainstream tobacco control and prevention. *Health Promot Pract*. 2004.
- [11] Delnevo CD et al. Banning menthol cigarettes: A social justice issue long overdue. *Nicotine Tob Res*. 2020.
- [12] Rostron BL, Lynn BCD, Chang CM, Ren C, Salazar E, Ambrose BK. The contribution of smoking-attributable mortality to differences in mortality and life expectancy among US African-American and white adults, 2000-2019. *Demogr Res*. 2022 May 12;46:905-918. doi: 10.4054/demres.2022.46.31. PMID: 35645610; PMCID: PMC9134211.
- [13] Delnevo et al. (2020)
- [14] <https://www.astho.org/communications/blog/recent-federal-state-actions-limit-flavored-tobacco-products/#~:text=State%20Bans%20on%20Tobacco%20Flavors.360%20localities%20with%20flavor%20bans>.
- [15] <https://www.ansrmn.org/issues-resources/flavored-tobacco/>, updated January 2023.
- [16] The Morris Leatherman Company: *Statewide Tobacco Survey, January 18-February 2, 2023*.
- [17] FDA news release. *FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death, April 28, 2022*.
- [18] <https://www.reginfo.gov/public/do/eoDetails?rrid=341268>



March 22, 2024

To: Commerce, Finance and Policy 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 HF2177, misguided legislation which seeks to restrict access to lifesaving reduced risk tobacco alternatives such as flavored electronic, menthol cigarettes, and nicotine pouches 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 Minnesota, and lead to a clear increase in tobacco-related mortality.**

Studies have repeatedly shown that flavors in vapor products, which HF2177 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 unflavored 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%. National Youth Tobacco Survey results have shown [no increase in nicotine dependency](#) among youths since flavored products entered the market.

The bill would also ban menthol cigarettes. Menthol cigarettes are no more harmful than non-menthol cigarettes as there is no [difference](#) in chemical composition, quit rates, or likelihood of developing lung cancer. Additionally, cigarette bans promote a black market for the products. People will just cross lines to buy what they want. Multi-million-dollar crime syndicates, that **also engage in human trafficking and money laundering, flood the black market with unsafe products that produce revenue used to fund terrorism. For this reason, the US State Department has explicitly called tobacco smuggling a "threat to national security"**.

HF2177 also seeks to ban nicotine pouches. These pouches are one of the safest ways to consume nicotine. Approximately a million adults in American already use nicotine pouches to quit smoking deadly cigarettes. **The FDA has already [authorized](#) the similar product, snus, which are a valuable aid to quit smoking.** They put users at a lower risk of mouth cancer, heart disease, lung cancer, stroke, emphysema, and chronic bronchitis.

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Snus are used mostly in Sweden where they have the [lowest rate of lung cancer in the developed](#) world use to the popularity of Swedish snus.

For the reasons outlined above, in the interests of improving public health, protecting the Minnesota economy, and preventing the spread of smuggling cartels, we urge you to **vote against HF2177**.

Sincerely,

Grover Norquist
President
Americans for Tax Reform

March 12th, 2024

RE: HF 2177

Dear Chair Stephenson and Committee Members:

The undersigned Hmong Health advocates and community leaders write in support of HF 2177, a bill to end the sale of all flavored commercial tobacco products in Minnesota, including menthol cigarettes, flavored cigars, e-cigarettes, hookah and smokeless tobacco. Taking these flavored products off of shelves will improve Minnesotans' health, prevent youth initiation and protect those that the tobacco industry heavily targets, including youth, low-income communities, Black and Indigenous people and 2SLGBTQIA+ folks.

The Hmong community has not been as relentlessly targeted by the tobacco industry as some other communities of color, but our children have fallen victim to “cool” flavors and marketing and promotions from the very clever and financially-driven tobacco industry. Flavored vapes have stolen the health of many of our young people, and it is time to stop an industry that is willing to do anything to make a profit. Vapes and cigarettes contain nicotine, a powerfully addictive drug. It doesn't take many hits for a young person's brain to start to crave more nicotine. With some vapes containing 5,000 or even 10,000 puffs, it is easy to see how so many young people get hooked.

As leaders in our community, we see it as our obligation to stand up and speak for your young people and take actions that will provide real protections for them. We hope you will stand with us, speak for us and strongly support this important bill.

Thank you,

Hmong Health Care
Professionals Coalition



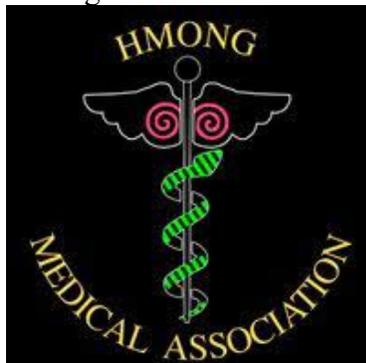
Hmong Public Health
Association



Hmong 18 Clan Council



Hmong Medical Association





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March 25, 2024

Commerce Finance and Policy Committee
449 State Office Building
St. Paul, MN 55155

Chair Stephenson and Members of the Committee:

The Minnesota Council of Health Plans, the trade association for Minnesota's nonprofit health plans (Blue Cross and Blue Shield of Minnesota, HealthPartners, Medica, Sanford Health Plan of Minnesota, and UCare), is appreciative of the opportunity to express our support for HF 2177, which would end the sale of all flavored tobacco products in Minnesota.

The Council is proud to stand alongside the multitude of other members of the Minnesotans for a Smoke-Free Generation coalition in supporting this important step forward in protecting Minnesotans, especially children and adolescents, against the harmful impacts of nicotine and other chemicals associated with smoking or vaping.

The Council is grateful to Representative Cha, as well as the many bill co-authors, for championing this effort and to the committee for your careful consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Lucas Nesse".

Lucas Nesse
President and CEO



March 24, 2024

Minnesota House Committee on Commerce Finance and Policy

Testimony in **OPPOSITION to H.F. 2177**

The Cigar Association of America (CAA) is the leading national trade organization representing the interests of cigar manufacturers, importers, distributors, and major suppliers of the industry. CAA members manufacture a significant share of the large, premium, little, and filtered cigars sold in the United States. Its members also include internet retailers of cigars, as well as leaf, and other suppliers to the cigar industry.

CAA submits this testimony in opposition to H.F. 2177 (the “Proposed Flavor Ban”).¹ Put simply, there is no legal, factual, or scientific basis to prohibit the sale of flavored cigars and pipe tobacco. Doing so would be detrimental to Minnesota businesses and deprive adult cigar and pipe tobacco consumers of their right to a legal product.

The Proposed Flavor Ban seeks the same sweeping action -- banning flavors and removing adult consumers’ ability to choose -- across nearly all categories of tobacco products. Such draconian measures, however, are simply not justified for cigars or pipe tobacco, as there is no youth epidemic of use of or access to these products. CAA estimates that flavored cigars represent up to 47% of the cigar market, and nearly all pipe tobacco can be considered flavored based simply on the process used to manufacture the product. Passage of the Proposed Flavor Ban would be a deeply flawed decision, causing great financial harm to Minnesota businesses selling these products.

Critically, extending the Proposed Flavor Ban to cigars and pipe tobacco is not supported by scientific data. Surveys conducted or funded by government agencies all show that youth usage of cigars, *including flavored cigars*, is at historic lows, and youth usage of pipe tobacco is nearly unmeasurable. In fact, youth usage of cigars, including flavored cigars, is at an all-time low both in Minnesota and nationwide.

In Minnesota, the most recent survey data available from 2020 showed that youth usage of cigars was at 3.3% down from 10.6% in 2017.² While updated data is not available for Minnesota, nationwide there have been steep declines in youth usage of cigars since 2020. The National Youth Tobacco Survey tells us that in 2023, youth usage of cigars was at 1.85%

¹ CAA submits these comments solely to address the impropriety of the Proposed Flavor Ban as applied to cigar and pipe tobacco products. CAA does not address herein the propriety of the Proposed Flavor Ban as it would apply to other categories of tobacco products.

²<https://www.health.state.mn.us/communities/tobacco/data/docs/2020mytsreport.pdf> at 12.



and in 2021, youth usage of flavored cigars was at 0.83%.³ In contrast, the 2020 Minnesota Youth Tobacco Survey reported that in 2020, 193% of Minnesota high school students reported current e-cigarette / vapor products use while 18.2% of Minnesota high school students reported vaping marijuana.⁴

Evidence from other localities demonstrates that if a flavor ban is enacted, consumers will purchase products from out of state or through illicit markets. More importantly, it shows that flavor bans can increase youth *cigarette* smoking rates. A study done after a flavor ban was instituted in San Francisco, CA found that “Difference-in-differences analyses found that San Francisco’s flavor ban was associated with more than doubled odds of recent smoking among underage high school students relative to concurrent changes in other districts (adjusted odds ratio, 2.24 [95% CI, 1.42-3.53]; P = .001.”⁵

The Proposed Flavor Ban does nothing but restrict the choices of adult tobacco consumers, damage Minnesota businesses, and encourage unregulated illicit market sales. Flavored cigars and pipe tobacco are sold through licensed businesses that are vigilant at age verifying purchases of such products. Imposing a prohibition on the legal sale of these products will do nothing but drive adult consumers to purchase these products (i) through an untaxed illicit market; or (ii) in neighboring states.

We have seen this exact situation in Massachusetts after a flavor ban was enacted there in 2020. The data shows that the flavor ban has done little to alter consumer consumption behavior – other than to force Massachusetts consumers to purchase flavored tobacco products in other states.⁶ The Tax Foundation stated this upon analyzing the impact of the Massachusetts flavor ban:

The end result of the ban, in fact, is that Massachusetts is stuck with the societal costs associated with consumption, while the revenue from taxing flavored tobacco products is being raised in neighboring states. In fact, the flavor ban has been far from successful, as sales in both New Hampshire and Rhode Island experienced double-digit growth—almost making up for the entire decrease in Massachusetts.⁷

³ See Consilium Sciences, “Evaluation of Flavored Cigar Products as they Relate to Questions of Public Health – Supplement #2 to October 2020 Report” (2022), Appendix Tables 1. (on file with author and available in CAA’s publicly filed document with the Office of Management and Budget relating to FDA’s Proposed Product Standard on Characterizing Flavors in Cigars).

⁴ See *supra* note 2 at 14-15.

⁵ Abigail Friedman, *A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California*, *JAMA Pediatrics* 175:8; 863-865 (2021).

⁶ Bosen, U. Massachusetts Flavored Tobacco Ban: No Impact on New England Sales. Tax Foundation (Feb. 3, 2022) <https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study/>

⁷ *Id.*





Enacting the Proposed Flavor Ban would do nothing but substantially decrease Minnesota tax revenues. Minnesota tobacco product excise taxes were in excess of \$230 million dollars in fiscal year 2021.⁸ This figure does not also account for the corresponding sales tax revenue collected from the sales of these products. The Proposed Flavor Ban would eliminate a large amount of this revenue, and in the case of cigars potentially up to 47% of the market. In short, H.F. 2177 is a solution in search of a problem.

Thank you for the opportunity to present this testimony. For the foregoing reasons, the Cigar Association of America is OPPOSED to H.F. 2177

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Brian J. Fojtik", is written over a faint, large watermark of a cigar.

Brian J. Fojtik
Senior Vice President for Government Relations
Cigar Association of America, Inc.

⁸ <https://www.natocentral.org/uploads/economic-reports/US%20Pages%20MSA.pdf>



Testimony before the Minnesota House Finance Committee
Banning Flavored Tobacco and Vapor Products - Opposition to HF 2177
Kim Murray, Tobacco Treatment Specialist
March 25, 2024

Chairman Stephenson and Members of the Committee:

Thank you for the opportunity to submit testimony today in opposition to HF2177. My name is Kim Murray. I live in Brainerd, MN. I am a Tobacco Treatment Specialist who received my training from Rutgers University. I specialize in guiding and counseling people who smoke and have been unable to stop smoking using traditional smoking cessation methods.

Combustible tobacco is the most lethal legal consumer product in the United States. Today, like every day, 1300 of our fellow Americans will die from smoking-related causes. That adds up to almost half a million Americans who die prematurely per year.¹

The people I help on their quit-smoking journey have usually tried and failed to quit smoking many times. They went the medicinal route and tried nicotine replacement therapies like patches, gums, and lozenges. Many have also tried prescription medications that help some people stop smoking. That fact is an essential part of today's discussion. Quitting smoking is hard, and we have yet to discover the one-size-fits-all solution to helping people stop smoking. While these products do help some people stop smoking, they don't help all of them.

We can tell people to try these FDA-approved methods to quit smoking over and over, but what are we saying to those who can not quit this way? It feels like we are saying to them, "Quit our way or die." Our fellow Minnesotans and all Americans deserve better than that. They deserve our best efforts to make various options available to them so they can find the tool that helps them become smoke-free.

Some people who support bills like HF 2177 will push back against the discussion in favor of vapor products being available to help people stop smoking. They will point out that these are not FDA-approved smoking cessation devices. While that is true, because they are a consumer product, not a medically authorized product, it doesn't take away from their effectiveness to help people who smoke switch to this much safer alternative. Studies have shown that vapor products are more effective at helping people stop smoking than FDA-approved nicotine replacement products.²

¹ *Current cigarette smoking among adults in the United States*. Centers for Disease Control and Prevention. (2023, May 4).
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm

² *Latest Cochrane review finds high certainty evidence that nicotine e-cigarettes are more effective than traditional nicotine-replacement therapy (NRT) in helping people quit smoking*. Latest Cochrane Review finds high certainty evidence that nicotine e-cigarettes are more effective than traditional nicotine-replacement therapy (NRT) in helping people quit smoking. (2022, November 17).
<https://www.cochrane.org/news/latest-cochrane-review-finds-high-certainty-evidence-nicotine-e-cigarettes-are-more-effective>

We have many organizations on the national, state, and local levels offering advice to people on how to quit smoking. Many of them, like the Mayo Clinic³, offer suggestions that are not FDA-approved for smoking cessation. Those suggestions include eating candy or carrots, chewing gum, calling a quit line, or sucking through a straw to help them quit smoking. The Centers for Disease Control has recommended bird watching⁴ to help people beat their cravings as part of their quit-smoking strategy.

The critical question still remains: do flavored nicotine products help adults stop smoking? If we look at the oft-suggested FDA-approved products⁵, the resounding answer is YES! None of those products come in a tobacco flavor because it was found that people who smoke prefer the flavors and don't want to be tempted by a flavor that reminds them of smoking.



There is substantial evidence⁶ that flavored vapor products help more people stop smoking than tobacco-flavored products. There is also evidence showing that the banning of flavors drives some people back to smoking.

It is a public health gain to have these products available to Minnesotans who want to quit smoking.

Thank you
Kim Murray
mns smokefree@gmail.com

³ Mayo Foundation for Medical Education and Research. (2022, May 28). *10 Ways to Resist Tobacco Cravings*. Mayo Clinic. <https://www.mayoclinic.org/healthy-lifestyle/quit-smoking/in-depth/nicotine-craving/art-20045454>

⁴ Kleykamp, Dr. A. (2022, January 15). *Tobacco harm reduction is for the birds, according to the CDC*. Filter. <https://filtermag.org/tobacco-harm-reduction-birds-cdc/>

⁵ *Stanford University - Ad collections*. SRITA. (n.d.). <https://tobacco.stanford.edu/antismoking/cessation-products/nicorette/>

⁶ *Ends flavors*. ENDS Flavors - Safer nicotine wiki. (n.d.). https://safernicotine.wiki/mediawiki/index.php/ENDS_Flavors

NATIONAL ASSOCIATION OF TOBACCO OUTLETS, INC.

March 22, 2024

To: Chair Zack Stephenson
Members of the House Commerce, Finance and Policy Committee

From: David Spross, NATO Executive Director

The National Association of Tobacco Outlets (NATO) is a national trade association that represents numerous retail store members across Minnesota. NATO and its Minnesota member stores urge you to oppose HF2177, which would ban the sale of all flavored tobacco products, including menthol cigarettes, mint and wintergreen smokeless tobacco, flavored cigars, pipe tobacco, flavored oral nicotine products, and flavored electronic cigarettes. There are many reasons to oppose this bill:

- **Minnesota should allow sales of products with marketing approval orders from the FDA.** The FDA allows marketing of certain products, including e-cigarettes, if it determines, after a rigorous, scientific process, the product reduces harm and the risk of disease to individual users and benefits the health of the entire population, that is, the product is “appropriate for the protection of the public health.” Although the FDA has rejected applications for millions of products to date, it has also given marketing approval to 45 products, some of which are menthol, mint, or wintergreen flavored. Applications for over 50,000 products are pending, and the FDA anticipates completing its review for those products by June 30, 2024. The FDA may find more flavored products “appropriate for the protection of the public health.” HF2177 would ban these products that benefit public health. Products granted FDA marketing approval should be allowed.
- **Flavored product bans move products from the regulated retail environment into the illicit market.** An illicit market already exists; its participants do not care if they sell to minors. The CDC has found that about 90% of youth obtain tobacco products, including vapor products, outside legitimate retail channels. Indeed, there are reported instances of illicit vapor products being laced with fentanyl, endangering those who used them. Banning flavored products from legitimate, responsible Minnesota retailers will drive sales of these products to this illicit market, hurting Minnesota retailers and exposing consumers, including youth and young adults, to the criminal market.
- **Historically low underage tobacco use does not justify banning flavored tobacco.** According to the 2022 Minnesota Student Survey of 11th graders, 96% had not smoked even one cigarette in the past 30 days; of those who had smoked, only 1% said they had smoked as often as 9 days in the month, and 0% reported smoking 10 or more days in the month. Of the same group of 11th graders, 98% did not use any cigars, cigarillos, or little cigars, and 99% did not use smokeless tobacco. With this historically low youth use of traditional tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco product that adults who are 21 and older choose to purchase.
- **Minnesota could learn from Massachusetts’s and California’s experiences with flavor bans.** Minnesota can learn from the experiences of the two states that have already adopted broad bans on flavored tobacco products. Massachusetts did so in 2020. During the first 12-months after the ban took effect, the Commonwealth reported a reduction of \$127 million in cigarette and tobacco excise taxes. Minnesota could expect similar reductions in cigarette tax revenue. Massachusetts also established a tobacco task force to address smuggling issues. Its February 28, 2024, report states:

[T]he smuggling of untaxed tobacco and ENDS products remains a challenge. Field personnel are *routinely encountering or seizing untaxed menthol cigarettes, originally purchased in other states, and flavored ENDS products and cigars purchased from unlicensed distributors operating both within and outside the Commonwealth*. Without providing too much detail about the processes and methods of Task Force enforcement strategies, *smugglers are developing more sophisticated smuggling operations to counter the Task Force's targeted investigations*.

[Emphasis added.]

Similarly, when California banned flavored products, the state experienced a decline in tobacco tax collections of 13% year-over-year in the first quarter the ban went into effect. A study of discarded packs of cigarettes from public trash cans in cities around the state in the first six months of the ban found that over one-fourth of menthol cigarettes were from outside the U.S., including from Mexico and China. Another quarter were from domestic products of unknown origin, a tactic known to be used by smugglers. Another 6.5% of packs, mostly for menthol cigarettes, were from other states. Some of these products are trafficked by Mexican cartels, putting adult consumers and underage users into contact with criminal enterprises.

- **Economic Impact on Retailers Would Force Layoffs and Stores to Close.** Minnesota retailers selling tobacco and vapor products include tobacco-only stores, with virtually all revenue from tobacco sales, and convenience stores, with approximately 36% of in-store revenue from tobacco. Losing hundreds of flavored products may force tobacco-only stores to close and make the convenience store business model untenable, causing layoffs or closures, and cause non-tobacco product prices to rise to compensate for lost revenue in those stores that do not close.
- **The Legislation Contains an Unfair and Vague Prohibition Retailers Can Neither Effectively Implement or Control.** Subdivision 3 creates a presumption that a tobacco product is flavored if *anyone* in the marketing chain, not just the retailer, either (1) publicly states that it has a taste or smell other than tobacco or (2) “uses text, images, or coloring on the label or packaging” of the product “to explicitly or implicitly indicate” that the product “imparts a taste or smell other than the taste or smell of tobacco.” This is unfair to retailers in two ways. First, section (1) prohibits retailers from selling a product that someone else may have made a statement about, unbeknownst to the retailer. Second, it prohibits retailers from selling products that have “text, images or colorings on the label or packaging” that “implicitly” indicate the product has a non-tobacco flavor. It is simply impossible for a retailer to have any idea what the state considers “text, images or coloring” that “implicitly” indicates a non-tobacco flavor. Retailers should not be required to be aware of every communication made by anyone in the distribution chain, nor to read minds to determine what is banned and what is not under this vague provision.

FOR IMMEDIATE RELEASE

March 2, 2023



Media contact:
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NEW REPORT ILLUSTRATES FAILURE OF COMMONWEALTH'S FLAVORED TOBACCO BAN

Illegal Cigarette Seizures Skyrocket as Usage Rates Remain Unchanged

Tax Revenue Plummets While Illicit Market Thrives

STOUGHTON, Mass. – Contraband cigarette seizures in Massachusetts soared in 2022 with little impact on smoking trends, while sales revenue dropped by \$7 million, most of which was the result of the state's failed ban on menthol cigarettes and flavored tobacco, a new report finds.

The Commonwealth's Illegal Tobacco Task Force released its Annual Report today that includes stunning new data that highlights the growing and largely unaddressed problems that have been created by the state's flavored tobacco ban, which took effect in 2020. The Massachusetts ban on flavored tobacco products resulted in a menthol cigarette excise tax revenue loss of nearly **\$127 million** to the Commonwealth in the 12-months following the ban. Nearly 90% of those sales shifted out of state, primarily to bordering New Hampshire and Rhode Island. The new report illustrates that the revenue loss has continued unabated, while the illegal market for the banned products has increased exponentially.

"Massachusetts' failed tobacco policies have robbed the state of millions in vital tax dollars for prevention and education while having little to no impact on smoking trends," said Peter Brennan, executive director of the New England Convenience Store and Energy Marketers Association. "Both organized criminals and petty smugglers are reaping millions from this newly-created illicit market

while the state is being forced to spend more and more on enforcement, with no long-term plan in place.”

Moving tobacco products out of the heavily regulated retail sales environment has been counterproductive. The ITTF report found that contraband cigarette seizures by a joint task force made up of state police and the Department of Revenue’s Criminal Investigations Bureau and Miscellaneous Excise Bureau skyrocketed from just 5,377 in 2021 to 18,483 in 2022. State police reported seizures soaring from just 40 packs in 2021 to more than 1,900 last year.

In addition, seizures of illicit smokeless tobacco, which was also banned along with menthol, were up 800 percent in 2022. Menthol cigarettes and cigars made up the largest category of illicit tobacco seizures, the report states.

The report points specifically to cases involving menthol cigarettes smuggled from New Hampshire, including a May 2022 case in which state police arrested a Boston man and confiscated more than 400 packs of menthol cigarettes with New Hampshire tax stamps. In another case in June 2022, state police charged a Swansea man with trafficking contraband menthol cigarettes from New Hampshire. In September, the Attorney General’s office indicted a New Hampshire man for tax evasion, money laundering and violating the flavor ban and charged a Newburyport man with tax evasion in connection with a contraband tobacco case. The report notes other cases involving smuggling tobacco from Connecticut and Pennsylvania.

Contraband cigarette trafficking is exploding, especially in states with high tobacco taxes, or with tobacco bans in place. The profit margin for criminals is high for bootleg cigarettes and the risk is low as criminal penalties are minor. Massachusetts authorities are ill-equipped to deal with another illicit market product that criminals are increasingly using to fund organized crime rackets.

In addition to surging costs of enforcement, the Massachusetts flavor ban has increased health care costs while decreasing funding for prevention, education and awareness efforts, all of which receive funding from sales tax revenue. The American Lung Association recently [gave Massachusetts an “F”](#) on its annual report card for anti-smoking efforts, finding that the state spent just 12 percent of the recommended \$70 million budget for awareness, advocacy and education. Adult smoking, meanwhile, declined by just .5 percent, according to the report.

“The ITTF Report makes startlingly clear that our concerns at the time the ban was enacted were well-founded and have come to fruition. The illicit tobacco market is thriving, there has been, at best, a negligible impact on smoking habits, and the state must now deal with rapidly escalating enforcement costs and the same public health impact with less revenue” Brennan said. “The fact is, the solution to curbing youth smoking and reducing adult smoking is to keep these products on the shelves of licensed retailers who check IDs and remit tax revenue that can be used to fund anti-smoking efforts.”

“The illicit market grows every day, denying the state crucial tax dollars and fueling violence and criminal activity” Brennan added. “It’s beyond time for Massachusetts to re-evaluate its failed tobacco policies, while other states pursuing bans should read this report as a warning.”

Read the full report [here](#).

To speak with Peter Brennan, please contact Dave Wedge at davidmwedge@gmail.com or 617-799-0537.

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NATIONAL LATINO OFFICERS ASSOCIATION
60-01 169TH STREET | FRESH MEADOWS, NY 11365

MEMORANDUM

Date: March 24, 2024
To: Minnesota Commerce, Finance, and Policy Committee
From: Sylvia T. Miranda / Executive Director
Ray Ramos / Director of Veterans and Retired Law Enforcement Affairs
Re: Opposition to HF2177

The National Latino Officers Association (NLOA) stands as a steadfast advocate, aiming to bridge the gap between law enforcement officers and the communities we serve, particularly focusing on issues adversely affecting Latino and Black communities. Today, we respectfully request that you do not pass HF2177 because of the unintended consequences that our communities of color, veterans, and law enforcement personnel will suffer if this bill were to pass. Let us explore those consequences:

Unintended Consequences: Illicit Market Concerns

The health concerns associated with smoking are undeniable, but we argue that bans are not the solution. As a law enforcement organization, we recognize that substance prohibition tends to criminalize addiction, leading to unintended consequences. The proposed menthol ban, targeting the manufacturing and sale of menthol tobacco products, may inadvertently give rise to a lucrative black market. Criminal organizations exploit the demand for prohibited items, engaging in illegal production, importation, distribution, and sale.

Examining case studies such as New York and Massachusetts reveals the potential pitfalls. In New York, over 60% of the cigarettes consumed are untaxed by the state costing the state more than a billion dollars a year in foregone revenue. These illicit cigarettes are smuggled into the markets from neighboring states that have a much lower tobacco taxation rate and from abroad, mostly from China. Massachusetts, after banning menthol-flavored cigarettes in 2020, witnessed legal sales decline, but illicit trade flourished as the majority of the packs could be traced back to new purchases in neighboring states. In both cases, this well-established underground market indicates the resilience of trafficking in illicit products, unaffected by legal restrictions.

Another form of trafficking illicit cigarettes is through the United States Postal Service. Mail trafficking via mail is so rampant that New York and four other states (California, Connecticut, Illinois, and Pennsylvania) settled a lawsuit with the United States Postal Service regarding their lax policies on the enforcement of the 2020 Prevent All Cigarette Trafficking law involving the illegal international mailing of cigarettes. The plaintiffs stated that tens of thousands of cigarette packages sent from other countries made it through the postal system for delivery. This is evidence that trafficking has no limits regarding finding creative ways to supply the demand for illicit products. The existent well-established underground market can readily be an entry point to accommodate and supply the demand for menthol cigarettes.

Unintended Consequences: Increased Law Enforcement Focus on the Illicit Market in Communities of Color

Prohibiting menthol cigarettes will lead to an increase in smuggling activities and the emergence of an illicit market. Smugglers will exploit the ban to offer menthol cigarettes through illicit channels. The allure of high profits in the illicit trade of banned products will attract organized crime and gangs, further increasing the likelihood of law enforcement interactions.

Because studies have shown that menthol cigarettes are disproportionately consumed by people of color, including Latino and Black communities, banning menthol will inadvertently lead to the over-policing of minority communities. The ban will not effectively stop the production or purchase of menthol cigarettes. Instead, it will create a parallel scenario where addicts, unable to access menthol cigarettes, turn to illicit and unregulated channels. Engaging in the purchase and use of banned products places individuals at risk of being involved in criminal activities, inadvertently leading to increased law enforcement interactions.

Law enforcement agencies may find themselves compelled to focus on enforcing the prohibition; they are not responsible for addressing the root cause of smoking addiction. This shift in focus from addiction as a health issue to prohibition as a legal matter can contribute to the criminalization of individuals struggling with addiction.

Unintended Consequences: Criminalization of Addiction and Increased Law Enforcement Interaction

As retired and active members of the United States Armed Forces and law enforcement agencies, we deserve the respect of this administration when it comes to our health, which means not only our physical but mental health as well. We do not believe that these concerns are being considered when it comes to the proposed menthol cigarette ban. A menthol cigarette ban without a medical model will not help addicts wean off smoking.

The National Latino Officers Association works with law enforcement agencies to restore trust, transparency, and communication within the Latino and Black

communities. This ban will place a halt to that and create unsafe confrontations between law enforcement and the communities they have been sworn to protect.

A menthol cigarette ban is counterproductive to harm reduction efforts, potentially pushing users toward more harmful alternatives. We advocate for a medical model approach, emphasizing public health education, smoking cessation programs, and harm reduction strategies. This approach empowers individuals to make informed choices about their health and avoids stigmatizing those struggling with addiction.

Moreover, menthol bans, seemingly aimed at health and wellness, raise concerns of racial bias. Banning only menthol cigarettes, predominantly consumed by people of color, while exempting non-menthol cigarettes consumed mostly by Whites, mirrors historical racial disparities in legislation. The proposed ban raises questions about the replacement of public healthcare funding, which relies on tobacco tax revenue.

We question the necessity of a forced ban when smoking rates in the U.S. have reached an all-time low. Rather than prohibition, we advocate for increased funding for tobacco addiction education, treatment, and counseling services.

In closing, we urge you to place your efforts and energy into developing a more comprehensive approach to smoking cessation and tobacco harm reduction. It is through thoughtful reflection and inclusive policymaking that we can address the complex challenges associated with tobacco use in our communities.



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March 24, 2024

MN Commerce Finance and Policy Committee
Attn: Simon Brown

Ref: Opposition to HF2177

Dear Mr. Brown,

Members of the MN Commerce Finance and Policy Committee will soon consider legislation which is being directed towards what may only be viewed as a mephitic approach to issues as they relate to youthful use of e-cigarettes, vaping, and the prohibition of sales of menthol-flavored tobacco products.

We stress the concept that these proposed legislative acts would, in fact, be antithetical to healthy, robust and productive relationships between law enforcement and those they are sworn to protect as these new laws would presumably provide law enforcement officers with the authority, indeed the responsibility, to stop, interrogate and arrest persons on suspicion of selling or being in possession of untaxed cigarettes.

These pretextual police encounters with members of communities of color, where approximately eighty percent (80%) of all African American smokers prefer menthol-flavored cigarettes, has already showed its face in these communities, with no presumed levels of accountability other than to say that they are investigating the source of a proscribed product.

And these stops have taken their toll on communities of color, several with tragic consequences. As examples, I offer the shooting of Michael Brown in Ferguson, MO, when he was suspected of stealing flavored cigars; the death of George Floyd in Minneapolis, MN after he was apprehended for allegedly presenting a counterfeit bill for the purchase of a pack of cigarettes; the arrest and beating of a 14-year old Black teen in Rancho Cordova, CA for possessing a swisher cigar; the tasing of four teens in Ocean City, MD for violation of a vaping ban. And we must not forget the deadly result of law enforcement interaction with Eric Garner in New York for exactly what these laws would prohibit-the illicit sale and possession of untaxed cigarettes.

None of these legislative efforts appear to have considered the obvious detrimental impact on communities of color, where the preferred cigarette is menthol. They as well seem to have totally disregarded the strong recommendations of the 2009 Federal Tobacco Control Act in reaching out to subject matter experts when developing the actual language of their legislation. To date, there has been no known input from law enforcement experts, and specifically none from members of any of the nearly thirty organizations representing collectively more than 10,000 African American and Latino criminal justice practitioners in the Northern United States who are infinitely aware of the devastating impact of adverse law enforcement interaction in communities of color.

We strongly urge members of the committee to reconsider this proposal and the obvious consequences it will have on a community that is now, again, being adversely targeted.

The **National Association of Black Law Enforcement Officers, Inc. (NABLEO)**, a 501.(c).(3) non-profit, is a premier national organization representing the interests and concerns of more than 10,000 African American, Latino and other criminal justice practitioners of color serving in law enforcement, corrections, and investigative agencies throughout the United States, and the communities in which they serve.

Respectfully,

A handwritten signature in black ink that reads "Charles P. Wilson". The signature is written in a cursive, flowing style with a large loop at the end of the name.

Lieut. Charles P. Wilson (Ret.)

Chairman, **NABLEO**

Minnesota
House Commerce Finance Policy Committee
Testimony: H.F. 2177
Guy Bentley, Director of Consumer Freedom, Reason Foundation
March 25, 2024

Chair Stephenson and members of the committee,

Thank you for the opportunity to submit testimony on the proposed ban of flavored tobacco products.

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 measure to limit tobacco use, especially among youth, is to be applauded. However, the track record of such prohibitions should raise significant concern that the proposed ban would promote further inequalities in the criminal justice system, simply push sales and tax revenue to other jurisdictions, and increase the illicit tobacco trade while failing to improve public health.

Case Study: Massachusetts

Massachusetts' ban on flavored tobacco products went into effect in June 2020. My colleague Jacob Rich, based out of the Center for Evidence-Based Care Research at the Cleveland Clinic, analyzed the ban's impact by comparing cigarette sales in Massachusetts before and after the ban was implemented. He found a net increase in cigarette sales of 7.2 million packs within Massachusetts and its bordering states in the twelve months to June 2021 compared to sales in the twelve months to June 2020.¹

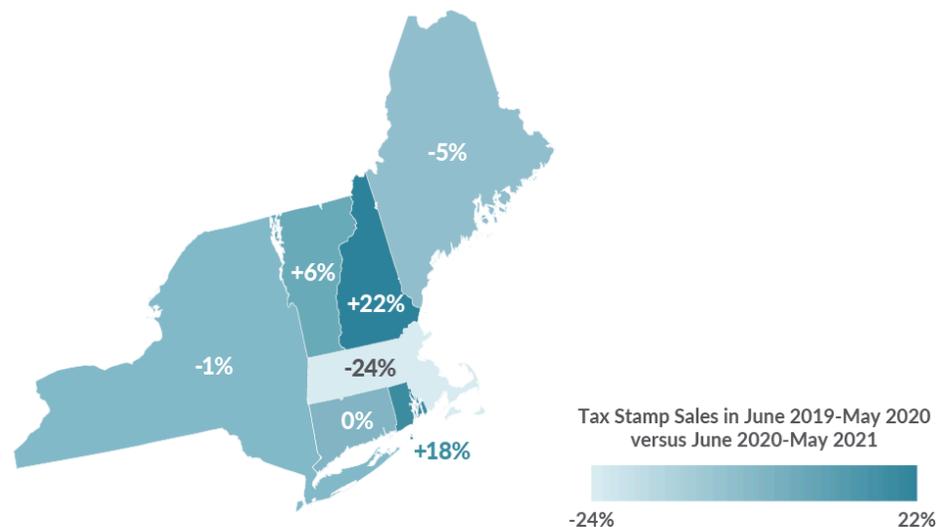
Massachusetts also saw a 15.6 million pack increase in non-menthol cigarette sales in 2021, likely due to consumers switching products after the flavored tobacco ban's implementation. Additionally, with consumers turning to neighboring states and black markets, according to the

¹ Jacob Rich. "Estimates of Cross-Border Menthol Cigarette Sales Following the Comprehensive Tobacco Flavor Ban in Massachusetts." MedRxiv. April 27, 2022.
<https://www.medrxiv.org/content/10.1101/2022.04.24.22274236v1>

Tax Foundation, Massachusetts lost \$125 million in tobacco tax revenue in its 2021 fiscal year.² The 2023 Massachusetts Multi-Agency Illegal Tobacco Task Force claims the state's flavored tobacco ban has created the need for harsher criminal penalties to help law enforcement deter the growing illicit market.³

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.

TAX FOUNDATION

@TaxFoundation

Food and Drug Administration Review and Tobacco Harm Reduction

The Food and Drug Administration (FDA) recognizes there is a “continuum of risk” when it comes to tobacco products, with cigarettes being the most dangerous and alternatives such as e-cigarettes, smokeless tobacco, nicotine pouches, and heated tobacco products being less dangerous.⁴ As such, when FDA authorizes a new tobacco product for sale, it must be evaluated

² 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/>

³ Commonwealth of Massachusetts. “Annual Report of Multi-Agency Illegal Tobacco Task Force.” February 28, 2023. <https://www.mass.gov/doc/task-force-fy23-annual-report/download>

⁴ U.S. Food and Drug Administration. “FDA Authorizes Modified Risk Tobacco Products.” May 2020.

as to whether it is “appropriate for the protection of public health,” meaning the product must provide a net benefit to public health.

H.F. 2177 would ban the sale of several products that the FDA has deemed to be net beneficial to public health and authorized for sale. For example, Swedish Match’s General Snus Wintergreen Portion White Large, General Nordic Mint Portion White Large - 12ct, General Mint Portion White Large, and General Dry Mint Portion Original Mini have also obtained Modified Risk Grant Orders from FDA. These orders allow Swedish Match to inform the public about the benefits of switching from cigarettes to these reduced-risk products. According to the FDA, the claim “Using General Snus instead of cigarettes puts you at a lower risk of mouth cancer, heart disease, lung cancer, stroke, emphysema, and chronic bronchitis” is scientifically accurate.⁵

If Minnesota chooses to ban these products, it will ban products that reduce the harm and risk of tobacco-related diseases.

While prohibiting e-cigarette flavors other than tobacco may seem an attractive solution to reduce youth vaping, policymakers should recognize that, according to the 2022 National Youth Tobacco Survey (NYTS) by the Centers for Disease Control and Prevention (CDC), 86 percent of high schoolers are not using e-cigarettes at all and 98 percent are not smoking combustible cigarettes. Data released by the CDC also shows flavors are not the leading reason why youth initiate vaping. According to the CDC, the primary reason why young people say they start vaping is curiosity, followed by peer influence or family members. Availability in flavors, such as mint, candy, fruit, or chocolate, comes as a very distant third in the survey.⁶

Research suggests banning flavored tobacco products may also induce perverse outcomes contrary to the promotion of public health. A study of 375 localities and seven states, including Rhode Island, that ban flavored e-cigarettes found that for every pod not sold because of the flavor ban, an additional 12 cigarettes were sold.⁷ 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 flavored tobacco ban was enacted, San Francisco area youth were twice as likely to smoke compared to young people in similar

⁵ U.S. Food and Drug Administration. “Scientific Review of Modified Risk Tobacco Application (MRTPA) Under Section 911 (d) of the FD&C Act - Technical Project Lead.”
<https://www.fda.gov/media/131923/download>

⁶ 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

⁷ Friedman, Abigail and Liber, Alex C. and Crippen, Alyssa and Pesko, Michael. “E-cigarette Flavor Restrictions’ Effects on Tobacco Product Sales.” SSRN. January, 2024.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4586701

jurisdictions that had not enacted tobacco flavor bans.⁸ “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,” found Friedman.

According to a 2020 study by Yale School of Public Health researchers, e-cigarette flavors are positively associated with smoking cessation outcomes for adults but not associated with increased youth smoking.⁹ The prestigious Cochrane Review concluded e-cigarettes are more effective than traditional nicotine replacement therapies in helping smokers quit smoking cigarettes.¹⁰ Prohibition of flavored alternatives to traditional cigarettes, especially those already authorized by the FDA, risks worsening public health by driving consumers to smoke while also fueling illicit markets and hurting local economies by forcing the closure of Minnesota vape shops.

The proposed ban on all flavored alternatives to cigarettes carries potential negative consequences for the health of Minnesota’s citizens. It would also hurt the state’s economy.

Thank you for your time.

Guy Bentley, Director of Consumer Freedom, Reason Foundation
guy.bentley@reason.org

⁸ 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>

⁹ 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>

¹⁰ Cochrane Review. “Updated Cochrane Review shows electronic cigarettes can help people quit smoking.” November 17, 2022.

<https://www.cochrane.org/news/latest-cochrane-review-finds-high-certainty-evidence-nicotine-e-cigarettes-are-more-effective>



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March 25, 2024

Chair Stephenson and Members of the House Commerce Finance and Policy Committee:

On behalf of our respective Minnesota members, we are writing about HF 2177, which would ban the sale of all flavored tobacco products, including menthol cigarettes, mint and wintergreen smokeless tobacco, flavored cigars, pipe tobacco, flavored oral nicotine products, and flavored electronic cigarettes. From a retail perspective, there are important issues that the Legislature needs to understand about the current non-use of tobacco by underage individuals, the public's lack of support for a menthol cigarette ban, the Food and Drug Administration's regulatory action on flavored tobacco products, and the unintended consequences to Minnesota, its residents, and retailers if the sale of flavored tobacco products is prohibited.

Historically low underage tobacco use does not justify banning flavored tobacco

According to the recently released 2022 Minnesota Student Survey of 11th graders, 96% had not smoked even one cigarette in the past 30 days; of those who had smoked, only 1% said they had smoked as often as 9 days in the month, and 0% reported smoking 10 or more days in the month. Of the same group of 11th graders, 98% did not use any cigars, cigarillos, or little cigars, and 99% did not use smokeless tobacco. With this historically low youth use of traditional tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco product that adults who are twenty-one and older choose to purchase.

A majority of the public does not support a menthol cigarette ban

A Gallup poll published in August of 2022 found that cigarette smoking was at an historic low of 11% of the adult population and that only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. Banning cigarettes is simply not a priority of the public, while the poll found that Americans are more concerned with the impact of marijuana use than cigarettes.

FDA is pursuing menthol cigarette and flavored cigar bans

On April 28, 2022, the U.S. Food and Drug Administration issued proposed regulations that would ban the sale of menthol cigarettes and all flavored cigars. While we have concerns with this action, if enacted, these federal regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and even more brands of flavored cigars from the marketplace.

FDA occupying the field of regulations and prohibitions on flavored tobacco products

In 2009, a new federal law known as the Tobacco Control Act authorized the FDA to regulate tobacco products. The agency's authority includes approving or denying applications for tobacco products, restricting the retail sale of tobacco products, regulating the marketing of tobacco, and ensuring compliance with the federal law prohibiting the sale of tobacco to underage individuals.

Over the past couple of years, and in addition to the pending regulations that would ban the sale of menthol cigarettes and flavored cigars, the FDA has enacted or is currently proposing significant regulations.

With all these past, current, and pending regulatory and prohibitory actions being taken by the FDA, the agency is occupying the field of tobacco product regulation nationwide, which means that the Minnesota legislature should consider allowing the FDA to continue to regulate flavored tobacco products on a national basis to avoid serious unintended consequences.

Massachusetts experience demonstrates that Minnesota revenue losses will be significant

On June 1, 2020, a menthol cigarette and flavored tobacco ban law went into effect across the Commonwealth of Massachusetts. According to the New England Convenience Store and Energy Marketers Association, the ban resulted in a total excise tax revenue loss of nearly \$127 million to in the twelve months following enactment of the ban and, at the same time, provided a revenue boon to surrounding states.

Then, when changing the focus to the sale of menthol cigarettes during the first twelve months after the ban went into effect, menthol cigarette sales in Massachusetts went to zero, but menthol cigarette sales increased in New Hampshire by 78.5%, in Rhode Island by 42.5%, in Vermont by 10.5%, and in Connecticut by 4.1%. Moreover, sales increases continued in the 13-24 months after the Massachusetts ban went into effect with New Hampshire menthol cigarette sales remaining 52.3% higher than the year before the ban, Rhode Island 27.3% higher, and Vermont 3.4% higher.

This empirical data from Massachusetts should give lawmakers pause because Minnesotans will cross the state's borders to purchase their preferred tobacco products in neighboring states.

An illicit market will increase exponentially in Minnesota

Illicit markets for tobacco products already exist across the country, especially in those cities and counties that assess high tobacco taxes or have banned the sale of flavored tobacco products. Banning the sale of menthol cigarettes and flavored tobacco products by legitimate retailers will create even more incentive for criminals to supply these products in Minnesota to anyone of any age who has cash. This increase in illegal tobacco smuggling will necessitate a higher level of law enforcement intervention, putting further pressure on strained police resources.

Massachusetts has experienced first-hand an expansive illicit market in flavored tobacco sales. According to the Annual Report of the Massachusetts Multi-Agency Illegal Tobacco Task Force issued on February 28, 2023, contraband cigarette seizures by the task force made up of state police and the Department of Revenue's Criminal Investigations Bureau skyrocketed from just 5,377 in 2021

to 18,483 in 2022. In addition, the report goes onto quantify that seizures of illicit flavored smokeless tobacco products were up 800% in 2022. This same kind of illegal cigarette and tobacco smuggling can be expected to occur in Minnesota if a statewide flavored tobacco product ban is enacted into law.

Increase in non-tobacco product prices

The average convenience store business model relies on cigarette and tobacco sales for approximately one-third of all in-store sales. Since a flavored tobacco product ban would eliminate hundreds of tobacco products from store shelves, retailers will be forced to raise prices on non-tobacco products to replace the lost sales due to a flavor ban. In this period of inflation that the country is experiencing, higher prices on other products, including gasoline and food products, will exacerbate the financial challenges being faced by many families.

Moreover, Minnesota's retailers will find it very difficult to compete with retailers in neighboring states or with illicit sellers who do not care to whom they sell illicit tobacco products. Employee layoffs and even store closures are real possibilities in the face of significant sales declines.

Retailers share your goal

Retailers in Minnesota share everyone's interest in keeping tobacco and electronic cigarettes out of the hands of people under 21 years old. Why would Minnesota lawmakers want to harm the state's responsible, licensed, legitimate retailers and force their adult customers to drive to other states or to buy flavored tobacco products from illicit sellers?

We trust that you will give serious consideration to all the facts and information contained in this letter to make an informed decision on whether to proceed with HF 2177. Thank you for your time and willingness to hear from us on behalf of our Minnesota members.

Tim Gross
Fueling Minnesota

Tony Chesak
Minnesota Licensed Beverage Association

Lance Klatt
Minnesota Service Station and
Convenience Store Association

Jamie Pfuhl
Minnesota Grocers Association

Bruce Nustad
Minnesota Retailers Association

My name is Sally Phelps, I own Ohm Premier Vaping in Ramsey, MN along with my son Nick and my husband AJ. We opened our small family business in 2016, and we have over 4,000 adult customers in our database. We are NOT Big Tobacco, and we do NOT sell to underaged youth. We have been given a Responsible Tobacco Retailer certificate many times by the Ramsey Police Department. In the 8 years we have been in business, we have never failed a sting. We ID everyone.

A few weeks ago, I heard the Vice President Kamala Harris say the following in a speech in Wisconsin about abortion:

“Freedom, I believe, is fundamental to the promise of America — freedom of speech, freedom of worship, freedom of assembly, the freedom to vote. In America, freedom is not to be given. It is not to be bestowed. It is ours by right-- by right. And that includes the freedom to make decisions about one’s own body — not the government telling you what to do.”

So, are we to believe that this freedom only pertains to abortion rights? And does this freedom not affect youth? Because I would think that making the decision to end a life would!

When an adult uses a tobacco product or a vapor product, are they not expressing their freedom to choose for themselves what they do with their own body? Do we really need Minnesota to be such a “Nanny State” that we tell adults what flavor of product they can enjoy?

We just legalized Marijuana in Minnesota, so why are we so bothered by an adult vaping a strawberry flavored vape, or smoking a menthol cigarette? Do you honestly believe that underaged people will not get a hold of marijuana products because they are not meant for them? You are deluding yourself if you do.

I have a few employees, I pay them well, above average for a vape shop. If flavors were banned, my shop would be forced to close, and they would lose their jobs. The state would lose the tax revenue from our sales, and we would no longer have our livelihood. Many lives would be adversely affected by this ban. However, it would not stop people from vaping a flavored liquid. It would only create an underground for flavored vapor products, making them unsafe and untaxed. Many people would start ordering flavorings online and mixing them at home, rather than buying a safe product that was made in a clean room and tested for quality and consistency.

This ban would hurt the people they were intended for more than it helps the underage people they were not intended for. Please consider these points when making your decisions.

In conclusion, tobacco products and vapor products are adult products, they are not meant for underage people, and to help to combat them from getting them the legal age to purchase these products was raised to 21. Rather than listening to a group of kids who are not supposed to be using these products in the first place, why not do a little research and visit a vape shop. Talk to the customers coming and going about what they are using, and why they are using it. Then you would get a true picture of the people who your decisions would be affecting.



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Memorandum

Date: March 22, 2024

To: Members of the House Commerce Committee

From: Adam Hoffer, PhD, Director of Excise Taxation, Tax Foundation

Subject: Comments on House Bill 2177 Regarding a Ban on the Sale of Flavored Tobacco

Several U.S. states and localities have banned the sale of flavored tobacco products, including Massachusetts, California, and the District of Columbia. Nationwide, non-tobacco flavored cigarettes make up about a third of the total market. In Minnesota, flavored cigarettes comprise roughly 27 percent of all cigarette sales.

A ban on flavored tobacco would disrupt Minnesota's tobacco market and significantly decrease the state's tax revenue. We estimate that a menthol ban would reduce revenue by \$91.5 million per year through a combination of decreased excise and sales tax collections and Master Settlement Agreement payments.¹

The flavor bans in Massachusetts and California have been costly. Massachusetts saw a \$125 million decline in revenue the first year of its flavor ban. And in the first month after California's flavor ban, cigarette tax revenue decline by roughly 17.3 percent. The annualized revenue decline will likely exceed \$300 million, surpassing the state's revenue loss estimates by more than 37 percent.²

Identifying the cause of the decline in legal purchases following the flavor ban is paramount to determining the effects of the policy. Menthol smokers may have quit smoking after no longer being able to purchase their preferred products or they may be continuing to smoke by buying products across state borders or products that have been smuggled into the state.

In the year following the Massachusetts flavored cigarette ban, roughly 90 percent of the decline in state cigarette sales simply shifted to neighboring states. The 24 percent decline

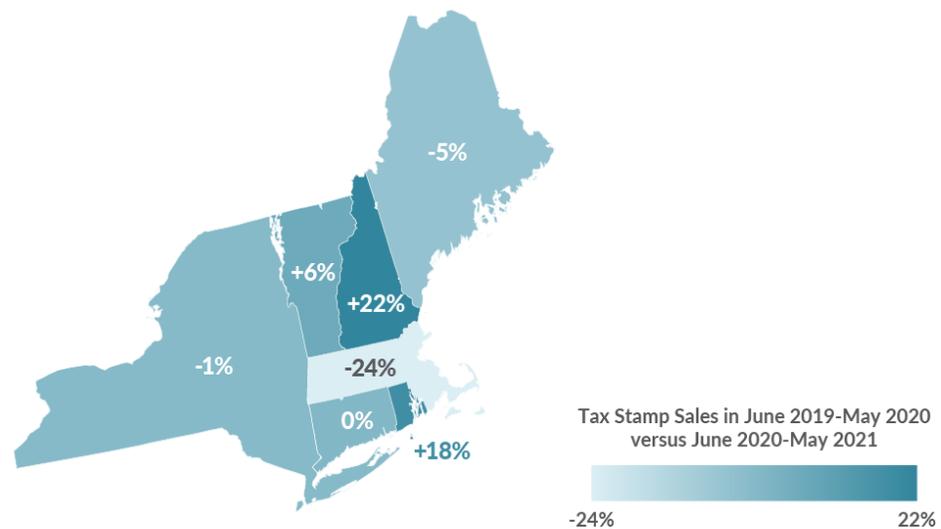
¹ Ulrik Boesen, "Federal Menthol Cigarette Ban May Cost Governments \$6.6 Billion," Tax Foundation, Mar. 2, 2022, <https://taxfoundation.org/federal-menthol-cigarette-ban/>.

² Adam Hoffer, "California Flavored Tobacco Ban May Cost More than \$300 Million in First Year," Tax Foundation, Feb. 24, 2023, <https://taxfoundation.org/california-flavored-tobacco-ban-revenue/>.

in Massachusetts sales was offset almost entirely by a 22 percent increase in sales in New Hampshire and an 18 percent increase in sales in Rhode Island.

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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Minnesota already has the fifth highest smuggling rate in the country, with roughly a third of cigarettes consumed in Minnesota purchased in other states.³ It is also surrounded by low-tax states, meaning a ban on the sale of flavored tobacco products would likely skyrocket the state's smuggling rate and illicit cigarette market to all-time highs.

Legislatures are charged with the difficult task of striking the right balance among reducing the harm caused by smoking, raising enough revenue to fund smoking cessation and other public health programs, and maintaining a legal, well-regulated marketplace where participants can safely transact. As you consider these matters, we are happy to be a resource and would be delighted to provide you with more research on this topic.

³ Adam Hoffer, "Cigarette Taxes and Cigarette Smuggling by State, 2021." December 5, 2023. <https://taxfoundation.org/data/all/state/cigarette-taxes-cigarette-smuggling-2023/>.



3.22.24

RE: HF 2177

Dear Chair Stephenson and Members of the Commerce Finance and Policy Committee,

On behalf of the Dakota County Vape Waste Team, we are writing to express our support for HF 2177, the bill to end the sale of all commercial flavored tobacco products, including menthol cigarettes, flavored cigars, e-cigarettes, hookah, and smokeless tobacco.

The Dakota County Vape Waste Team is a student group that focuses on the environmental consequences of vaping through research and education. Many people who vape, including our peers, are often unaware of the environmental consequences. Last year, we created and disseminated a survey to Dakota County area high school students with the goal of understanding perceptions surrounding the environmental impact of e-cigarettes/vaping devices, disposal knowledge, and disposal practices. We collected responses from 421 students at 13 Dakota County area high schools. Our findings revealed that around 35% of students were unaware that vapes are harmful to the environment, signaling a need for education in this area. It was also found that 55% of respondents would ignore a vape device found on the ground, and 38% would throw them in a household trash. The environmental harms of vapes begin when they are improperly disposed of. Lithium-ion batteries in vapes that are improperly disposed of can pollute water, soil, and air. Our goal is to minimize these harmful environmental impacts by collecting data and educating people around Minnesota of the dangers.

The disposal of vaping (e-cigarette) devices puts a significant financial burden on counties. In Dakota County, the expense associated with disposing of a 5-gallon bucket with household waste containing e-cigarette devices cost \$141.40 per bucket to dispose of. As of February 6, Dakota County had amassed 10 such buckets, resulting in a total disposal cost of \$1,414.00. Calculating the disposal costs per bucket reveals an estimated expense of \$28.57 per pound of vape waste and \$2.85 per individual vaping device. Along with the cost of disposing products, the risk of fire that is posed by e-cigarette devices comes with a significant cost. In Clay County, a fire caused by discarded lithium-ion batteries cost the county \$800,000 in damages.

Endorsing HF 2177 acknowledges the significant, negative impact flavored tobacco products have on the public health, environmental health, and the financial well-being of our state. Your support is crucial. Thank you for your consideration.

Sincerely,
Nabiha Kashif, Nick Zylstra, Norah Brusco, Mekdelawit Tesfaye

Dakota County Vape Waste Team