



FLAVORED TOBACCO PRODUCTS ATTRACT KIDS

A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibited the sale of cigarettes with characterizing flavors other than menthol or tobacco, including candy and fruit flavors. However, this prohibition did not apply to other tobacco products. Continuing the long tradition of designing products that appeal explicitly to new users, in recent years, tobacco companies have significantly stepped up the introduction and marketing of flavored non-cigarette tobacco products, especially electronic cigarettes (e-cigarettes) and cigars. Flavored tobacco products are just as addictive as regular tobacco products. All tobacco products contain nicotine, the primary addictive chemical that makes it so hard to quit. These flavored products are undermining the nation's overall efforts to reduce youth tobacco use and putting a new generation of kids at risk of nicotine addiction and the serious health harms that result from tobacco use.

This issue is quite simple—it is about protecting our kids. The scientific evidence makes clear that flavored tobacco products have the greatest appeal to young, novice smokers. Tobacco companies are making and marketing deadly and addictive products that look and taste like a new line of flavors from a Ben and Jerry's ice cream store. Restricting the sale of flavored tobacco products will protect kids.

Flavored Tobacco Products are on the Rise. Tobacco products are now available in a wide assortment of flavors that seem like they belong in a candy store or ice cream parlor – like gummy bear, cotton candy, peanut butter cup, cookies 'n cream and pop rocks for e-cigarettes and chocolate, watermelon, lemonade and cherry dynamite for cigars. With their colorful packaging and sweet flavors, flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets.

- As of 2014, there were more than 7,700 unique e-cigarette flavors available online, with an average of more than 240 new flavors being added per month. Among more than 400 available brands, 84 percent offered fruit flavors and 80 percent offered candy and dessert flavors.¹
- Sales of flavored cigars have increased by nearly 50 percent since 2008, and flavored cigars made up more than half (52.1%) of the U.S. cigar market in 2015. Further, the number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.² The vice president of one distributor commented, “For a while it felt as if we were operating a Baskin-Robbins ice cream store” in reference to the variety of cigar flavors available – and, no doubt, an allusion to flavors that would appeal to kids.³
- While overall cigarette sales have been declining, the proportion of smokers using *menthol* cigarettes (the only remaining flavored cigarette) has been increasing.⁴

Flavored Products Appeal to Youth and Young Adults. Studies show that flavors play a major role in youth initiation and use of tobacco products. While there has been a steep drop in youth use of traditional cigarettes, overall youth use of any tobacco product has remained steady in recent years⁵ due to the popularity products that are predominantly flavored. Flavored tobacco products are overwhelmingly used by youth as a starter product.

- 81 percent of youth who have ever used tobacco products initiated with a flavored product, including 81 percent who have ever tried e-cigarettes and 65 percent who have ever tried cigars.⁶
- Seven out of ten current middle and high school tobacco users—a total of over 3.2 million youth—have used a flavored tobacco product in the past month.⁷
- At least two-thirds of youth tobacco users report using tobacco products “because they come in flavors I like.”⁸
- Over half (54%) of youth smokers use menthol cigarettes compared to only one-third (32%) of older adult smokers. Prevalence of menthol use is even higher among African Americans: 85 percent of all African-American smokers smoke menthol cigarettes and seven out of ten African-American youth smokers smoke menthol cigarettes.⁹

Flavored Tobacco Products are Intentionally Designed to Attract Kids. Although tobacco companies claim to be responding to adult tobacco users' demand for variety, flavored tobacco products play a key role in enticing new users—who are predominantly under 18—to a lifetime of addiction.

- Industry documents show that the tobacco companies have a long history of developing and marketing flavored tobacco products as “starter” products that attract kids.¹⁰
- Flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and easier for beginners to try the product and ultimately become addicted.¹¹ Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.¹²
- According to FDA’s Tobacco Product Scientific Advisory Committee (TPSAC), menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.¹³
- Flavors can create the false impression that a tobacco product is less harmful than it really is.¹⁴

States and Localities Should Restrict the Sale of Flavored Tobacco Products. States and localities can implement sales restrictions to address flavored tobacco products on the market and their appeal to youth.

- Courts have held that state and local governments can prohibit or restrict the sale of flavored tobacco products and have rejected the argument that a prohibition on the sale or distribution of flavored products raises First Amendment issues.¹⁵
- At least two states and over a dozen localities restrict sales of flavored tobacco products, although laws differ in their application to specific products and store types.

Restricting the sale of flavored tobacco products is an important step that will protect children from the unrelenting efforts of the tobacco industry to hook them to a deadly addiction.

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¹ Zhu, S-H, et al., “Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation,” *Tobacco Control*, 23(Suppl 3):iii3-iii9, 2014.

² Delnevo, CD, et al., “Changes in the mass-merchandise cigar market since the Tobacco Control Act,” *Tobacco Regulatory Science*, 3(2 Suppl 1): S8-S16, 2017. [In Press]

³ Niksic, M, “Flavored Smokes: Mmmmm...More Profits?” *Tobacco Retailer*, April 2007, http://tobacco-retailer.com/uploads/Features/2007/0407_flavored_smokes.asp.

⁴ Villanti, A., et al., “Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014,” *Tobacco Control*, published online October 20, 2016.

⁵ See e.g., CDC, “Youth Risk Behavior Surveillance—United States, 2015,” *MMWR*, 65(6), June 10, 2016.

http://www.cdc.gov/healthyyouth/data/yrbs/pdf/2015/ss6506_updated.pdf. CDC, “Tobacco Use Among Middle and High School Students — United States, 2011–2015,” *MMWR*, 65(14):361–367, April 14, 2016, <http://www.cdc.gov/mmwr/volumes/65/wr/pdfs/mm6514a1.pdf>.

⁶ Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12–17 Years, 2013–2014,” *Journal of the American Medical Association*, published online October 26, 2015.

⁷ Corey, CG, et al., “Flavored Tobacco Product Use Among Middle and High School Students—United States, 2014,” *MMWR*, 64(38):1066–1070, 2015.

⁸ Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12–17 Years, 2013–2014,” *Journal of the American Medical Association*, published online October 26, 2015.

⁹ Villanti, A, et al., “Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014,” *Tobacco Control*, published online October 20, 2016

¹⁰ Marketing Innovations, “Youth Cigarette - New Concepts,” Memo to Brown & Williamson, September 1972, Bates No. 170042014; R.J. Reynolds Tobacco Company, “Conference report #23,” June 5, 1974, Bates No. 500254578-4580; R.J. Reynolds Inter-office Memorandum, May 9, 1974, Bates No. 511244297-4298; R.M. Manko Associates report for Lorillard, Summary Report: New Flavors Focus Group Sessions, August, 1978, Bates No. 85093450-3480.

¹¹ HHS, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.

¹² FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes*, 2013.

¹³ TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011.

¹⁴ Kowitz, SD, et al., “Perceptions and experiences with flavored non-menthol tobacco products: a systematic review of qualitative studies,” *International Journal of Environmental Research and Public Health*, 14(4): 338, 2017.

¹⁵ National Association of Tobacco Outlets v. City of Providence, 731 F.3d 71 (1st Cir. 2013); U.S. Smokeless Tobacco Company v. FDA, 708 F.3d 428 (2d Cir. 2013).