Banning Flavors, Protecting Health: A Call to Strengthen Local Enforcement Efforts in Support of California's Flavored Tobacco Ban

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Abstract

California implemented SB 793 in 2022, banning the sale of most flavored tobacco products. This was then reinforced in 2023 with AB 935, which aimed to enhance the implementation and expand the definition of retail locations. This article examines the potential benefits of further localized regulatory flavor ban efforts, including health improvements for marginalized communities, youth, and the environment. Critics of the flavor ban argue that further regulation may lead to increased illegal and out-of-state sales, have negative economic effects on small businesses, and increase policing in certain communities. The article guides healthcare providers in educating their patients, communities, and policymakers about the harms associated with flavored tobacco. It advises providers to educate their patients about the risks of flavored products, engage in community education, and advocate for evidence-based policies to mitigate the impact of flavored tobacco products.

Background

In response to the growth of youth vaping over the last decade or so, Governor Gavin Newsom signed Senate Bill (SB) 793 in 2020, aiming to ban the sale of most flavored tobacco products throughout California. However, the tobacco industry initiated a referendum, causing a two-year delay in the law's enforcement and requiring voter to uphold the law. In 2022, voters passed Prop 31, affirming the prohibition of most flavored tobacco sales in the state. SB 793 specifically prohibits tobacco retailers, their agents, or employees from selling, offering for sale, or possessing with the intent to sell any flavored tobacco product, with exceptions for: 1) shisha/hookah tobacco sold in stores that only admit individuals over the age of 21; 2) handmade, premium cigars priced over $12; and 3) loose-leaf pipe tobacco.[1]

Assembly Bill (AB) 935 was passed in October 2023 to strengthen the enforcement of SB 793. This law not only prohibits the sale of flavored tobacco products to minors but also aligns penalties with those outlined in California's Stop Tobacco Access to Kids (STAKE) Act. Under AB 935, retailers found violating the flavor ban at least three times may have their state-issued tobacco retail license suspended or revoked by the state's licensing board. AB 935 also expands the definition of "retail location" to include vending machines, vehicles, mobile units, booths, stands, or concessions that sell tobacco products directly to the public.

Anti-Vaping Champions at UCLA, a community coalition dedicated to educating healthcare providers and public health professionals about the youth vaping epidemic in California, emphasizes the importance of additional local policies in support of the flavored tobacco ban. Policies at the local level are crucial to counteract the tobacco industry's efforts to circumvent existing federal and state laws and to advance California's Tobacco Endgame. We use the term Endgame to describe "initiatives designed to change/eliminate permanently the structural, political,

About Anti-Vaping Champions at UCLA: Anti-Vaping Champions, a project of the UCLA Health Division of Medicine-Pediatrics and Preventive Medicine, was formed as an initiative between UCLA and the California Department of Public Health following concerning trends in e-cigarette and vape use in recent years. Our team works toward three goals: making a statewide impact in the creation and adoption of vaping-related policies, testing improved processes in the clinical treatment of vaping and nicotine addiction, and developing cutting-edge educational curricula. Our shared mission is to decrease vaping and other harmful forms of nicotine and tobacco use through education and advocacy.

and social dynamics that sustain the commercial tobacco epidemic, in order to end it within a specific time."[2] California has previously stated its goal to eliminate the commercial tobacco epidemic for all population groups by 2035.

In this paper, we aim to: 1) investigate the advantages of imposing additional local flavor ban regulations, 2) identify further considerations for enacting more regulatory measures, and 3) support healthcare providers in educating their patients, communities, and policymakers about the dangers of flavored tobacco. By providing this overview, we hope to empower healthcare providers to act against the growing youth vaping epidemic through engagement with policy advocacy and education.

Potential Benefits

Reducing Health Disparities

Research indicates that vaping nicotine or other substances is associated with damage to the cardiovascular and respiratory systems. Compared to white smoking adults, racial/ethnic minority smoking adults face a 41% higher risk of developing multiple chronic conditions associated with smoking and spend twice as much of their annual medical costs on smoking (25% vs. 12%).[3] The higher prevalence and risk of smoking among communities of color, LGBTQ+, low-income, and rural communities is a direct result of decades of targeted marketing by the tobacco industry.

Tobacco products like menthol cigarettes, for instance, are widely used by Black Americans because of decades of targeted marketing by the tobacco industry. In 1950, only 5% of Black smokers used menthol cigarettes; by 2019, about 85% of non-Hispanic Black adult smokers preferred menthol.[4] Black Americans also accounted for 40% of the excessive deaths related to menthol cigarette smoking, despite making up only 12% of the US population.[5] Additional local policies that strengthen the flavored tobacco ban have the potential to reduce these disparities by limiting the tobacco industry's access to young people and other historically impacted groups.

Protecting Youth and Young Adult Health

Despite California's laws restricting the sale of tobacco products to minors, California retailers continue to sell to underage persons. One survey showed that Los Angeles County had the highest rate of underage sales (33.0%) in 2023, underscoring the need for further regulatory measures in support of the flavored tobacco ban in one jurisdiction alone. The 2023 California Youth Tobacco Survey found that a majority of middle and high school students who use tobacco also use flavored tobacco products (85.6%), with the highest usage among Black/African American (96%), Asian (94.4%), and LGBTQ+ (86.9%) students. Flavored tobacco use was highest for vapes (89.1%). The most common methods of obtaining vapes among those currently vaping were simply buying them (34.9%) or asking someone else to buy them (21.4%).[6]

Further localized regulation has the potential to positively impact the health of young people. Based on the California Youth Tobacco Survey data, the prevalence of current vape use among high school respondents decreased from 5.9% in 2022 to 5.6% in 2023, potentially coinciding with the implementation of SB 793. Although this decline aligns with a similar decrease in flavored vape and menthol cigarette sales, it may be some time before the effects of SB 793 and AB 935 can be thoroughly assessed.[7] However, throughout this time, the tobacco industry introduced and began propagating new "cooling" products, demonstrating their quick adaptability to circumvent regulations.

Supporting Environmental Sustainability

Local flavor ban regulations can have the potential to reduce the environmental impact of flavored tobacco products. Vapes contain non-recyclable materials and toxic chemicals that can cause environmental damage long after they are disposed of,[8] posing dangers to nature and human health. The Resource Conservation and Recovery Act (RCRA) defines both nicotine and lithium-ion batteries as hazardous waste, making their disposal subject to regulation by the State of California under the Environmental Protection Agency (EPA). Because nicotine is listed as an *acute* hazardous waste, e-liquids containing nicotine are also considered hazardous. Sales of disposable vapes increased 541.3% between 2019 and 2023, and today's vapes have nicotine levels similar to several cigarette packs. This in addition to the fact that nicotine strength has also increased 294% over the span of five years[9] demonstrates the need for local regulation to address these environmental impacts, as well as the ones we do not currently know about.

Additional Considerations

Impact of Legal Compliance and Enforcement

Despite the several drawbacks associated with vaping flavored tobacco products, there are many additional factors to consider. Historical evidence suggests that state-level bans may lead to the rise of black and gray markets, with higher tobacco excise tax rates correlating with increased cigarette smuggling. Critics contend that these ban-type policies incentivize criminal activity, bolster organized crime networks, and promote tax evasion.[10] However, based on results from the National Youth Tobacco Survey, youth vaping has dropped to its lowest level in a decade,[11] highlighting the positive impacts of these regulations on the health and

lives of young people and other historically targeted groups.

Economic Effects on Local Businesses

Another important consideration is the flavor ban's potential impact on small businesses, especially convenience stores, with estimated sale losses exceeding $23.7 billion throughout the state.[12] One Los Angeles-based smoke shop owner shared that 20% of his business's revenue comes from sales of vapes and flavored cigarettes and that he anticipates a monthly revenue loss of about $13,500 from a ban on these products.[13] Reports indicate that one month after the flavor ban took effect, statewide tax-paid cigarette sales fell by 17.3%, with 5.6 million fewer packs sold in January 2023 than January 2022, which is expected to reduce revenue by more than $300 million over the course of a year.[14]

Although small businesses may face revenue losses due to the ban, there are promising transitions for small businesses to change their supply to legal and healthy alternatives, allowing them to adapt to changing consumer demands. In addition, there are long-term public health benefits of reducing youth access to flavored tobacco products. Decreased youth use of tobacco products can lead to lower healthcare costs and a healthier workforce, ultimately benefiting the economy. Health care costs due to cigarette smoking alone also cost California $43.54 billion annually, including costs due lost productivity from illness and premature death,[15] revealing the detrimental impacts of these products on communities throughout the Golden State.

Law Enforcement and Community Relations

Critics of flavored tobacco regulations often express concern over the potential for increased policing in Black communities due to the bans. The tragic death of Eric Garner in 2014, who was apprehended by New York City police on suspicion of selling untaxed cigarettes, exemplifies these concerns. Eric Garner's mother wrote to Senate Majority Leader Chuck Schumer (D-NY), urging him to oppose the Biden administration's proposed menthol cigarette ban, citing fears of intensified negative encounters with law enforcement in communities of color.[16]

While these are valid concerns, the tobacco industry spreads misinformation to support this narrative, employing tactics to manipulate the legitimate concerns people have over police brutality and mass incarceration within the Black community and other communities of color. While discriminatory policing, excessive force, and systemic racism are critical issues that must continue to be addressed, the flavor ban targets the production and retail sale of flavored tobacco products, rather than individual consumers. It is a public health initiative aimed at addressing cigarettes as the root cause of preventable death and disease, not at the consumer experiencing an addiction.[17]

Public Health Policy Implementation Lessons

Drawing parallels with the failed Prohibition era, some critics—mostly through conservative or libertarian outlets—question the government's role in dictating personal choices, warn of the potential glamorization of smoking over vaping, and advocate for allowing adults to make their own decisions about the risks.[18] Although these regulations seem reminiscent of policies prohibiting alcohol use, decisions to use flavored tobacco products particularly among youth who are susceptible to products in their environment, are not entirely based on free will, without coercion. The tobacco industry has long employed targeted marketing strategies designed to appeal to youth, using appealing flavors, sleek packaging, and social media campaigns to make vaping seem attractive and less harmful. As a result, many young people are lured into nicotine addiction before they can fully understand the risks to their health, making this issue separate from that of Prohibition-era policies. Additionally, we now have decades of substantial evidence to illustrate the negative physical and mental health impacts of nicotine on young people, communities of color, and other historically targeted groups.

Recommendations for Providers

Anti-Vaping Champions at UCLA remains committed to supporting health care providers with opportunities to act against California's youth vaping epidemic. We identified the following opportunities for health care providers in their clinics and broader communities.

Clinical Education and Patient Care

Providers can start educating patients and their families about the dangers of flavored vaping products immediately. We recommend the following steps:

1. Begin screening for the use of tobacco and vaping products at age 11, following the guidance of the American Academy of Pediatrics.
2. Distribute culturally inclusive resources to all patients and their parents or guardians that detail the direct and secondhand effects of vaping.
3. Employ terminology that resonates with the youth in your community and ask specifically about vaping products.

Community Engagement and Outreach

Providers have the chance to educate the wider community, especially those affected by the tobacco

industry's targeted marketing campaigns. We suggest the following strategies for action:

1. Write an opinion editorial (op-ed) or a letter to the editor to initiate or respond to media commentary on the ongoing harm of flavored products to youth.
2. Create a coalition with fellow health care providers and public health experts to pinpoint educational opportunities.
3. Develop and present case studies at professional conferences and related gatherings to disseminate knowledge about treating substance use disorders.

Policy Advocacy and Leadership

Providers can contribute to advocacy at local, state, or federal levels by informing policymakers about the ongoing detrimental effects of the tobacco industry on marginalized groups. We recommend taking the following actions:

1. Educate your local and state representatives about the health consequences of vaping, especially among youth.
2. Establish or become part of an advocacy committee within your provider organization to address issues related to vaping prevention at local and state levels.
3. Contribute to larger conversations regarding the screening and referral structure in your hospital, clinic, or other affiliate institutions.

Conclusion

Health care providers are well-positioned to address the escalating issue of vaping among youth in California and nationwide. While several considerations remain to be addressed, it is evident that further flavor ban regulations offer substantial advantages for marginalized groups, youth, and the environment. We recommend that health care providers take on the responsibility of educating their patients, communities, and policymakers about the adverse effects of vaping on the health of young individuals and the broader community.

Credit Author Statement

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