



FLAVORS ON TRIAL

A Look at the Legal Status of Flavored Commercial Tobacco Regulation in Minnesota and Beyond



Q: What is the current state of flavored tobacco regulations across Minnesota?

A: In Minnesota, 30 local jurisdictions have implemented restrictions on flavored tobacco. These ordinances are all actively enforced, and there have been no successful legal challenges against the bans on flavored tobacco.

Q: What has been the outcome of legal challenges to flavored tobacco bans in Minnesota?

A: Of the 30 local ordinances, there have been four legal cases.

- In *Arden Hills Tobacco Shop v. City of Arden Hills* (2019), the parties reached a compromise delaying the implementation of the ban, which eventually took effect in 2020.
- In *R.J. Reynolds v. City of Edina* (2020), both the U.S. District Court and U.S. 8th Circuit Court of Appeals rejected the company's preemption and constitutional claims, reinforcing the city's local authority to prohibit the sale of flavored tobacco products. Edina's law remains in effect.
- In *Prior Lake Tobacco v. City of Prior Lake* (2021), the court dismissed the lawsuit, finding that the retailer failed to state a valid claim, and the ordinance remains in effect.
- In *Northland Vapor Company v. City of Moorhead* (2022), the parties agreed to delay implementing the ban for six months and the ordinance has been fully in effect since 2022.

In short, flavored tobacco bans have repeatedly survived legal challenges, underscoring their legal basis and reinforcing the state's authority on such laws.

Q: Have flavored tobacco bans withstood legal challenges nationwide?

A: Yes, flavored tobacco bans have withstood legal challenges across the United States.

Massachusetts was the first state to implement a statewide flavors ban in 2020. The tobacco industry sued to block the law but it was ultimately upheld by the Massachusetts Supreme Judicial Court in 2021.

California followed with its own statewide ban that took effect in 2023. In *R.J. Reynolds v. Bonta*, the tobacco industry challenged the law but a state appeals court rejected the lawsuit in 2023, finding that the state's interest in public health, especially as it relates to youth, outweighed concerns about infringing on commercial speech. Ultimately, the U.S. Supreme Court refused to hear an appeal from tobacco companies challenging California's statewide ban on flavored tobacco products, upholding the law as a valid use of the state's authority to legislate matters of public health.

Moreover, at the local level, over 350 U.S. municipalities have enacted their own restrictions on flavored tobacco and those ordinances have withstood judicial scrutiny. For example, a challenge to New York City's flavored tobacco policy was dismissed in 2022.

Evidence shows that when crafted carefully and with strong public health justifications, flavored tobacco restrictions have proven defensible against legal arguments based on issues like preemption and free speech. As the health impact of flavored products has become clearer, courts have granted governments broad authority to regulate them.

Q: Didn't Minnesota already take care of this problem by successfully suing Juul?

A: No. As part of the settlement, Juul agreed to not sell flavored tobacco products in Minnesota. See Consent Decree. However, many more flavored products have flooded the marketplace, which is why legislation to eliminate the sale of flavored tobacco is still needed.

Q: What is the bottom line regarding flavored tobacco bans and legal challenges?

A: Flavored tobacco bans have consistently been found to be a valid exercise of state and local power to protect public health, as demonstrated by legal precedent.

Q: What are the legal arguments and how have the courts typically responded?

A: Courts have generally responded to the legal arguments against policies eliminating the sale of flavored tobacco by balancing the interests of public health against the rights and interests of the tobacco industry and retailers. Here's how courts have typically addressed each type of challenge:

1. **Preemption:** Courts have often found that local or state governments have the authority to enact public health regulations that are more stringent than federal regulations, provided they do not conflict with federal law. This means that unless a state or federal law explicitly prohibits local governments from banning flavored tobacco products, such bans are generally upheld.
2. **Violation of the Commerce Clause:** Courts have typically ruled that local and state governments have the power to regulate commercial activity within their jurisdictions, especially when such regulation is for the protection of public health. As long as the regulation does not discriminate against or excessively burden interstate commerce, it is likely to be upheld.
3. **First Amendment Challenges:** When it comes to restricting the marketing and promotion of flavored tobacco products, courts have often found that the government's interest in protecting public health, particularly among minors, outweighs the tobacco industry's free speech rights. Regulations that are narrowly tailored to achieve a legitimate public health goal have been upheld.
4. **Equal Protection Clause Violations:** Courts have generally rejected claims that flavored tobacco bans arbitrarily discriminate between different types of tobacco products or businesses. They have recognized the government's legitimate interest in targeting products that are particularly appealing to minors and thus pose a significant public health risk.

5. **Vagueness and Overbreadth:** Courts have typically required that laws and regulations be clear enough for individuals and businesses to understand what is prohibited. Bans that clearly define what constitutes a “flavored” tobacco product and are narrowly focused on the public health goal of reducing youth tobacco use have been upheld.
6. **Due Process Violations:** Courts have found that governments have broad authority to regulate commercial activities for the sake of public health and welfare. As long as there is a rational basis for the regulation and it is not arbitrary or capricious, it is likely to be upheld.
7. **Takings Clause Violations:** Courts have generally ruled that regulatory actions, such as banning the sale of certain products for public health reasons, do not constitute a taking of property without just compensation under the Fifth Amendment. The government’s power to regulate for the public welfare is considered a legitimate use of its authority.

Overall, courts have shown a willingness to uphold flavored tobacco bans when they are justified by strong public health interests and are designed in a way that respects constitutional rights and principles.

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