

FLAVORED TOBACCO BANS IN NEW YORK STATE

Fact vs. Fiction



A ban on the sale of all flavored commercial tobacco products,¹ including menthol cigarettes, will advance public health, reduce health inequities, and save lives, especially among groups with high rates of flavored tobacco use.

Despite overwhelming evidence to support these policies, disinformation abounds. This fact sheet answers commonly asked questions to reveal the truth about the positive health and equity impact of flavored tobacco bans.



Q: Why ban flavored tobacco products? Isn't it just a personal choice to use them?

A: No. The tobacco industry spends billions of dollars to develop and market tobacco products designed to addict consumers for profit.² For instance, the tobacco industry spends over \$162.6 million *annually* to market its products in New York State alone.³ The industry entices youth with flavors to get them hooked — 80 percent of youth who have tried tobacco start with a flavored product, and more than half of youth who smoke use menthol cigarettes.⁴ Nicotine is just as difficult to quit as substances like heroin, if not more so.⁵ Menthol in particular makes combustible cigarettes less harsh, so people are more easily addicted and have a harder time quitting.⁶ In 2020, more than half of adults surveyed in New York City preferred to smoke menthol cigarettes.⁷

Q: Do flavor bans actually work?

A: Yes. Comprehensive flavor bans on tobacco products in the U.S. and Canada have been successful in reducing smoking rates and saving lives.⁸ Studies have shown that flavor bans, supported by reduced advertising/marketing, countermarketing education campaigns, and high levels of enforcement, lead to a decrease in youth tobacco use and initiation.⁹ Further, if people do not start smoking by the age of 25, they are unlikely to become smokers at all.¹⁰ Recent models simulating a nationwide menthol ban have estimated a 35.7 percent decrease in all types of cigarette use by Black adults within five years of being implemented.¹¹ A 2023 study estimated that prohibiting the sale of menthol cigarettes in New York State would prevent 7,800 premature smoking-caused deaths and save nearly \$283 million in long-term health care costs.¹²

Q: Won't flavor bans fuel a rampant illicit trade market?

A: No. Fueled by profit, the *tobacco industry* spreads this myth by pointing to industry-funded data that is neither transparent nor scientifically valid.¹³ In reality, several large jurisdictions have adopted flavored tobacco sales prohibitions without the feared increase in illicit sales.¹⁴ For example, studies from Canada on that nation's flavor bans (including menthol) found that bans have not created a surge in illegal sales of menthol or non-menthol cigarettes.¹⁵ Plus, surveys show that large percentages of menthol smokers would choose to quit smoking altogether if menthol cigarettes could no longer be bought legally.¹⁶



Q: Does banning menthol unfairly target communities of color?

A: No, for decades the tobacco industry has unfairly targeted communities of color with menthol products. The industry is notorious for appropriating Black culture, saturating urban neighborhoods with coupons and cheap prices, and sponsoring publications, cultural events, educational institutions, and civic leaders.¹⁷ The industry buys political influence (directly and indirectly) and spreads misinformation for profit.¹⁸ It co-opts racial justice talking points and recruits prominent civil rights leaders to amplify its message.¹⁹ These shameful tactics exploit existing structural and economic inequities for industry profit.²⁰

Also, communities of color have higher rates of use of menthol tobacco products than White populations.²¹ This has resulted in a disproportionate number of tobacco-related diseases in these communities, including cancer, heart disease, stroke, COPD, and emphysema, which only exacerbates existing health disparities.²²

Q: Why is there such a big focus on menthol over other flavors?

A: Congress already removed all flavors from cigarettes — *except* menthol — in 2009. Comprehensive flavor sales bans would simply help close this longstanding, inequitable gap in public health policy.²³ Data from 2020 showed that in New York City 89 percent of Black and 68 percent of Latino/a adults who smoked used menthol cigarettes compared with 32 percent of White adults.²⁴ Removing all flavored tobacco products from the market will help combat inequities deliberately caused by Big Tobacco.²⁵ A recent study reveals that if menthol cigarettes were banned on a federal level, the gap between Black and White lung cancer deaths would close within five years.²⁶

Q: Will flavor bans criminalize communities of color, especially African Americans?

A: No. Systemic racism and the over-policing of communities of color are real, disturbing societal issues that must be addressed.²⁷ Yet, the tobacco industry exploits this historical and current day trauma to protect its profits.²⁸ In truth, well-crafted comprehensive flavor ban policies focus on the *sale* of flavored commercial tobacco products, not the individual purchase, use or possession of such products.²⁹ According to the Americans for Nonsmokers' Rights Foundation and other national groups that track the enforcement of menthol/flavor bans, there are no records of flavor bans resulting in the increased criminalization of communities of color, especially African Americans, in the approximate 100 U.S. municipalities that have adopted menthol/flavor bans.³⁰

Q: Shouldn't we fund education and cessation efforts instead of banning the sale of flavored products?

A: To fully address the problem, *both* measures are necessary and can be done simultaneously. Well-funded, accessible, culturally competent cessation programs³¹ serve an important role in reducing inequities and supporting individuals in their quit journey. Individuals in New York State can get a free starter kit by calling the New York State Smokers' Quitline (1-866-NYQUITS; 866-697-8487; text (616) 309-4688). But treatment and cessation are more effective when a combination of approaches is used.³² This includes limiting or prohibiting access to tobacco products to discourage people from using or initiating use of tobacco and reducing and/or eliminating tobacco use marketing and internet sales.³³

Q: Do state and local governments even have the power to ban flavored products?

A: Yes. Federal law clearly gives state and local governments authority to regulate the sale of tobacco products.³⁴ New York State law also empowers local governments to pass laws to protect the health and well-being of their communities. This would include banning the sale of deadly flavored tobacco products.³⁵ What's more, New Yorkers believe in passing these important public health measures. In a recent survey of New York State residents, most residents surveyed said they support banning menthol cigarettes.³⁶

Contact us for assistance! If you're working on New York State commercial tobacco control issues and need assistance, contact the Public Health Law Center at (651) 290-7506 or phlc.nys@mitchellhamline.edu.

Contact us for assistance! This fact sheet was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center acknowledges the support of Kenneth Ray of the Center for Black Health and Equity in the preparation of an earlier version of this document for New York State Department of Health. The Center acknowledges the support of Kenneth Ray of the Center for Black Health and Equity in the preparation of this document. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice.

Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.KeepItSacred.itcmi.org>. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.
- 2 CENTER FOR BLACK HEALTH & EQUITY, *Health Justice in Tobacco Control*, https://www.savingblacklives.org/_files/ugd/29e3b2_6b08d979ab1e4e249f720f1ddd81182c.pdf.
- 3 CAMPAIGN FOR TOBACCO FREE KIDS, *The Toll of Tobacco in New York* (2023), https://www.tobaccofreekids.org/problem/toll-us/new_york.
- 4 TOBACCO FREE NYS, *Flavored Tobacco Products Attract & Addict Our Youth*, <https://tobaccofreenys.org/wp-content/uploads/2023/12/TOB18796-Legislative-Education-Day-Leave-Behind.pdf>.
- 5 John Moxham, *Nicotine Addiction*, 320 *BMJ* 391-2 (2000), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1117526/#:~:text=Nicotine%20is%20as%20addictive%20as,year%2C%20only%20%25%20succeed.>

- 6 Press Release, New York State Dep't. of Health, *New York State Department of Health Warns about Tobacco Industry's Tactics of Using Menthol Flavoring to Target and Addict Black and LGBTQIA+ Communities and Kids* (Mar. 7, 2023), https://www.health.ny.gov/press/releases/2023/2023-03-07_menthol_flavoring.htm; see also Stacey J. Anderson, *Menthol Cigarettes and Smoking Cessation Behaviour: A Review of Tobacco Industry Documents*, 20 TOBACCO CONTROL ii49-ii56 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3088444>.
- 7 New York City, *Addressing New York City's Smoking Inequities*, 20 NYC VITAL SIGNS 1-4 (2022), <https://www.nyc.gov/assets/doh/downloads/pdf/survey/tobacco-inequities-2022.pdf>.
- 8 Public Health Law Center, *Accelerating Endgame Policies: Debunking the Industry's Illicit Trade Arguments* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/Accelerating-Endgame-Policies-Debunking-Industry-Illicit-Trade-Arguments.pdf>.
- 9 Public Health Law Center, *San Francisco's Flavored Tobacco Products Policy: Case Study* (2022). <https://www.publichealthlawcenter.org/sites/default/files/resources/Menthol-Case-Studies-San-Francisco.pdf>; *Massachusetts' Flavored Tobacco Products Policy: Case Study* (2022), <https://www.publichealthlawcenter.org/sites/default/files/resources/Menthol-Case-Studies-Massachusetts.pdf>; *Chicago's Flavored Tobacco Products Policy: Case Study* (2022). <https://www.publichealthlawcenter.org/sites/default/files/resources/Menthol-Case-Studies-Chicago.pdf>; see also Christopher J. Cadham et al., *The Actual and Anticipated Effects of a Menthol Cigarette Ban: A Scoping Review*, 20 BMC PUB. HEALTH 1055 (2020), <https://pubmed.ncbi.nlm.nih.gov/32641026>.
- 10 Corinne G. Husten, *Smoking Cessation in Young Adults*, 97 AM. J. PUB. HEALTH 1354-6 (2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1931456>.
- 11 See Mona Issabakhsh et al, *Public Health Impact of a U.S. Menthol Cigarette Ban on the Non-Hispanic Black Population: A Simulation Study*, 33 TOBACCO CONTROL 126-30 (2024), <https://tobaccocontrol.bmj.com/content/tobaccocontrol/33/1/126.full.pdf>; see also Jamal T. Jones et al., *Smoking Cessation Prevalence by Menthol Cigarette Use and Select Demographics Among Adults in the United States, TUS-CPS, 2003–2019*, 36 PREVENTIVE MEDICINE Reports 1-10 (2023), <https://www.sciencedirect.com/science/article/pii/S2211335523003315>.
- 12 Public Health Law Center, *New York State & Flavored Tobacco: Leveraging Local Policy Power* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/NYS-Flavored-Tobacco-Brief.pdf>.
- 13 Michael Stoklosa, *No Surge in Illicit Cigarettes After Implementation of Menthol Ban in Nova Scotia*, 28 TOBACCO CONTROL 702-4 (2018), <https://pubmed.ncbi.nlm.nih.gov/30309981>.
- 14 See *Accelerating Endgame Policies*, *supra* note 8.
- 15 Janet Chung-Hall et al., *Illicit Cigarette Purchasing after Implementation of Menthol Cigarette Bans in Canada: Findings from the 2016–2018 ITC Four Country Smoking and Vaping Surveys*, TOBACCO CONTROL 1-3 (2023), <https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2023/01/06/tc-2022-057697.full.pdf>.
- 16 See *Accelerating Endgame Policies*, *supra* note 8.
- 17 See TRUTH INITIATIVE, *Menthol: Facts, Stats and Regulations* (2024), <https://truthinitiative.org/research-resources/traditional-tobacco-products/menthol-facts-stats-and-regulations>; see *Health Justice in Tobacco Control*, *supra* note 2.
- 18 Public Health Law Center, *The Tobacco Industry and the Black Community: The Targeting of African Americans* (2021), <https://www.publichealthlawcenter.org/sites/default/files/resources/Tobacco-Industry-Targeting.pdf>.
- 19 See *Menthol: Facts, Stats and Regulations*, *supra* note 16; Kathryn Heley et al., *Targeted Tobacco Marketing in 2020: The Case of #BlackLivesMatter*, TOBACCO CONTROL 1-4 (2021), https://www.savingblacklives.org/_files/ugd/29e3b2_58ce4c98fd764af49d13d96c65cdfc21.pdf.
- 20 See *Addressing New York City's Smoking Inequities*, *supra* note 7.

- 21 Ctrs. for Disease Control & Prevention, *Menthol Smoking and Related Health Disparities* (2023), https://www.cdc.gov/tobacco/basic_information/menthol/related-health-disparities.html.
- 22 *Id.*
- 23 See *New York State & Flavored Tobacco, Leveraging Local Policy Power*, *supra* note 12.
- 24 See *Addressing New York City's Smoking Inequities*, *supra* note 7.
- 25 See *Health Justice in Tobacco Control*, *supra* note 2.
- 26 Olivia Angelino et al., *How New Tobacco Control Laws Could Help Close the Racial Gap on U.S. Cancer*, COUNCIL ON FOREIGN RELATIONS (Feb. 1, 2023), <https://www.cfr.org/article/how-new-tobacco-control-laws-could-help-close-racial-gap-us-cancer>.
- 27 See *Health Justice in Tobacco Control*, *supra* note 2.
- 28 *Id.*
- 29 *Id.*; see CENTER FOR BLACK HEALTH & EQUITY, *Tobacco Control Enforcement for Racial Equity: Decriminalizing Commercial Tobacco Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control* (2021), https://www.centerforblackhealth.org/_files/ugd/d3f0ee_42089ef47f8a498a91f08073adce2d4f.pdf; see also *New York State & Flavored Tobacco: Leveraging Local Policy Power*, *supra* note 12.
- 30 See, e.g., Americans for Nonsmokers Rights Foundation, *Municipalities Prohibiting the Sale of Flavored Tobacco Products* (2024), <https://no-smoke.org/wp-content/uploads/pdf/flavored-tobacco-product-sales.pdf>; see also Public Health Law Center, *U.S. Sales Restrictions of Flavored Tobacco Products* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/US-sales-restrictions-flavored-tobacco-products.pdf>.
- 31 See, e.g., the “Lighting Up” campaign launched in 2023 specifically for treatment among Asian New Yorkers, complete with language-specific quitlines (e.g., Chinese (800-838-8917), Korean (800-556-5564) or Vietnamese (800-778-8440); New York City, *New Yorkers Can Get Free Help to Double Their Chances of Quitting for Good!* (2023), <https://www.nyc.gov/site/doh/about/press/pr2023/free-help-to-quit-smoking-media-campaign.page>.
- 32 See *Addressing New York City's Smoking Inequities*, *supra* note 7.
- 33 *Id.*
- 34 See *New York State & Flavored Tobacco, Leveraging Local Policy Power*, *supra* note 12.
- 35 Public Health Law Center, *Legal Theories Used to Challenge Flavored Tobacco Sales Policies* (2023), https://www.publichealthlawcenter.org/sites/default/files/resources/Flavored_Tobacco-Litigation-NY.pdf.
- 36 Press Release, New York State Dep't of Health, *New York State Department of Health Warns about Tobacco Industry's Tactics of Using Menthol Flavoring to Target and Addict Black and LGBTQIA+ Communities and Kids* (Mar. 7, 2023), https://www.health.ny.gov/press/releases/2023/2023-03-07_menthol_flavoring.htm.