

Reducing Youth Tobacco Use in North Carolina

Restricting the Sale of Flavored
Tobacco Products

Report by
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Executive Summary

In the 50 years since the landmark Surgeon General's Report that revealed the health hazards of tobacco, U.S. adult smoking rates dramatically declined from 43 percent in 1965 to 18 percent in 2014.¹ However, tobacco use remains the leading preventable cause of death in the United States, with over 480,000 deaths per year.² Furthermore, tobacco use contributes to over \$3.81 billion in annual health care costs in North Carolina alone. Despite a decline in cigarette smoking, there has been an uptick in the use of "other tobacco products" (OTPs) among youth in North Carolina and across the U.S. These OTPs, including e-cigarettes, little cigars or cigarillos, smokeless tobacco, and hookah, are available in a wide array of flavors and have the potential to hook a new generation on nicotine. By restricting the sale of these fruity and candy-like flavored OTPs, which have a clear appeal to young people, North Carolina can reduce the deadly impact of tobacco and control rising health care costs.

Introduction

While smoking rates have dramatically declined over the past several decades across the United States, tobacco use remains the number one preventable cause of death.³ Despite the well-known health risks of tobacco, which contains more than 19 recognized carcinogens, 1,200 Americans still die each day from tobacco use.^{4 5} Tobacco is one of the deadliest legal products sold today but continues to attract new users. If action is not taken, 5.6 million children who are alive today will die prematurely from smoking.⁶ Since 88 percent of daily smokers begin smoking prior to the age of 18, reducing youth consumption of tobacco products would significantly reduce the number of preventable deaths and the associated medical expenses.⁷

North Carolina, a state with a historically tobacco-fueled economy, has significantly reduced youth cigarette smoking rates but is now experiencing a resurgence of youth tobacco use. Between 2003 and 2013, the smoking rate among North Carolina high school students steadily decreased from 27.3 percent to only 13.5 percent.⁸ But North Carolina has one of the highest youth tobacco usage rates in the country, with about 3 in 10 high school students using tobacco products. The percentage of North Carolina high school students using tobacco increased from 25.8 percent in 2011 to 29.7 percent in 2013, according to the latest North Carolina Youth Tobacco Survey.⁹ This increase can be attributed to the rising popularity of "emerging tobacco products," also called "other tobacco products" (OTPs), among youth.¹⁰ OTPs consist of any type of non-cigarette tobacco product, including e-cigarettes, little cigars or cigarillos (LCCs), smokeless tobacco, and hookah.¹¹ More than 22 percent of North Carolina high school students reported using OTPs in 2013.¹² Facing few regulations from the U.S. Food and Drug Administration (FDA), many OTPs are thought to appeal to youth due to their novelty, wide variety of flavors, low prices, and colorful packaging.¹³

The rising popularity of OTPs represents a growing public health concern, as these non-cigarette tobacco products have the potential to hook new generations of North Carolinian children on nicotine.¹⁴ There are 562,500 children alive today in North Carolina who will become smokers or tobacco users. Of these children, 180,000 will die prematurely from tobacco use.¹⁵ Tobacco remains the leading preventable cause of death in the state and the nation, and more than 14,000 North Carolinians die each year from tobacco use.^{16 17}



In addition to the deadly toll of tobacco, North Carolina faces economic consequences from increased rates of tobacco use. The state spends only \$1.2 million a year on tobacco prevention efforts, one of the lowest amounts in the country, while annual tobacco-related health care spending in the state amounts to more than \$3.81 billion.^{18 19} Of these billions of dollars in tobacco-related health care spending in North Carolina, \$931.4 million is covered by the state Medicaid program, resulting in a state and federal tax burden of \$889 per household in North Carolina.^{20 21} In addition, tobacco-caused productivity losses in North Carolina total \$4.24 billion annually.²² Given all of these associated costs, there is a clear economic imperative for the state to implement stronger policies to prevent tobacco use.

Restrictions on the sale of flavored OTPs from other localities (New York City, Providence, Rhode Island, and Chicago) have survived legal challenges and set important precedents for tobacco control in other geographic areas.^{23 24} Using best practices from other U.S. cities and states, North Carolina could adopt its own policy restricting flavored OTP sales. By doing so, the state could set a national example for youth tobacco prevention and chronic disease control.

In this paper, I will provide an overview of the epidemiology of youth tobacco usage in the U.S. and North Carolina with a focus on non-cigarette tobacco products, in particular flavored OTPs. I will provide usage statistics for the main types of OTPs and the potential health risks of OTP usage. I will also highlight the main methods by which young people access tobacco despite legal restrictions prohibiting sales to minors. Then I will provide a background on the legal and policy landscape of tobacco control in the U.S., including key reforms resulting from the 2009 Family Smoking Prevention and Tobacco Control Act (FSPTCA). Finally, I will outline flavored OTP restriction policies that have been utilized in other U.S. states and cities and explore how these policies could be used as a basis for similar legislation in North Carolina.

Since federal legislation has provided few restrictions on OTPs, there is a need for state-level policy in North Carolina to curb growing tobacco use rates. In addition to curbing its own tobacco usage and health care costs, the state could encourage action in other states or at the federal level by restricting the sale of fruity and candy-like OTPs with a clear appeal to youth.

Rising Youth Usage of Non-Cigarette Tobacco Products

Across the U.S., cigarette smoking has steadily declined among school-age youth. However, non-cigarette tobacco products (OTPs) are gaining popularity among young people.²⁵ The most popular forms of OTPs are e-cigarettes, hookah, and cigars. All of these product types are available in a wide variety of flavors, including many kid-friendly fruit or candy-like options. Despite state and federal efforts to decrease tobacco sales to minors, young people can still obtain tobacco products relatively easily from other sources. There is also a pervasive belief that OTPs present few health risks; however, users of OTPs are still at risk for many forms of cancer as well as other detrimental effects.



Commonly Used Products, Flavors, and Disparities

In North Carolina, e-cigarette use by high school students increased by 352 percent from 2011 to 2013, according to the 2013 NC Youth Tobacco Survey.²⁶ Young OTP users in the state now outnumber young smokers, with almost 115,000 middle school and high school students using OTPs and only about 64,000 students smoking cigarettes.²⁷ Of the many types of OTPs, electronic cigarettes, hookah, and LCCs are most popular among young people, with electronic cigarettes being the most commonly used tobacco product among youth.²⁸

In particular, retail sales data has shown an increase in purchases of flavored OTPs.^{29 30} The 2014 National Youth Tobacco Survey found that of all American youth using tobacco products, 70 percent (3.26 million) were using at least one kind of flavored OTP.³¹ Youth tobacco users in the U.S. were most likely to use flavored e-cigarettes (1.58 million), followed by flavored hookah (1.02 million) and flavored cigars (0.91 million).³² Tobacco and menthol are the only “characterizing flavors” of cigarettes legal for sale under the 2009 U.S. Family Smoking Prevention and Tobacco Control Act (FSPTCA); however, these flavoring restrictions do not apply to any other tobacco products, including e-cigarettes.^{33 34} As seen in Figure 1 below, about 84.2 percent of brands offer fruit-flavored e-cigarette products, such as blueberry, coconut, and black cherry.³⁵ In addition, 79.9 percent of brands offer dessert or candy flavors.³⁶ Lastly, 77.5 percent of brands offer e-cigarettes in alcohol or drink-related flavors, such as piña colada, strawberry daiquiri, and mojito.³⁷ Given the rise of OTP usage among youth, it is clear this multitude of flavors is helping to sell an addictive product.³⁸

E-Cigarette Flavors Available Online, 2014

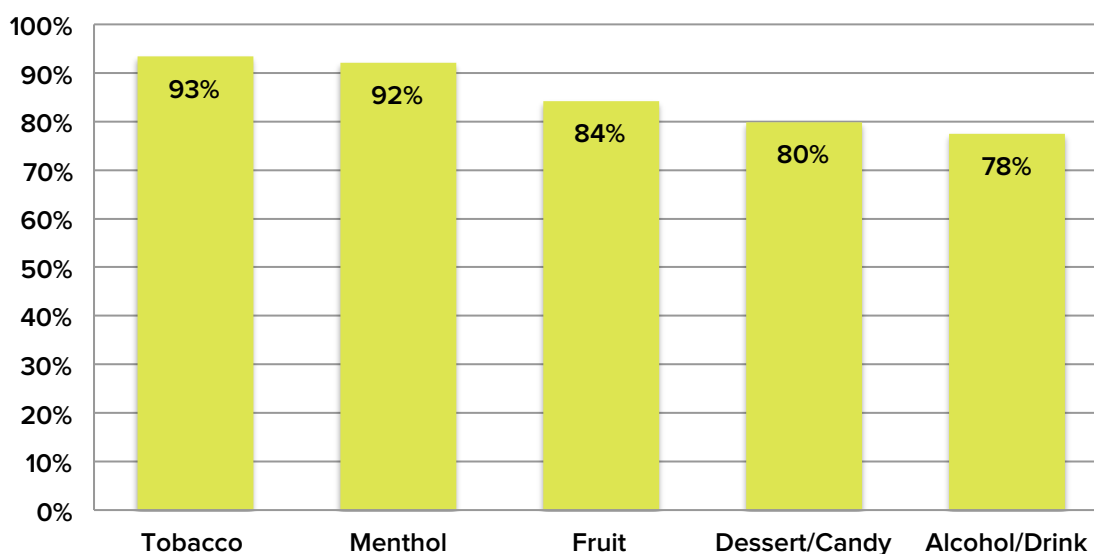


Figure 1: E-Cigarette Flavor Availability via the Internet, 2014. – Zhu, S. H., J. Y. Sun, E. Bonnevie, S. E. Cummins, A. Gamst, L. Yin and M. Lee. 2014. "Four Hundred and Sixty Brands of e-Cigarettes and Counting: Implications for Product Regulation." *Tobacco Control* 23 Suppl 3:iii3-9. doi: 10.1136/tobaccocontrol-2014-051670 [doi].

In addition to e-cigarettes, hookah and cigars (including LCCs) are increasingly popular among youth. As of 2014, 9.4 percent of U.S. high school students were using hookah, and 8.2 percent were

smoking cigars or LCCs. While e-cigarettes were the most popular tobacco product among all students, they were most used by white and Hispanic youth; among non-Hispanic Black youth, cigars were the most commonly used tobacco product.³⁹ Furthermore, 63.5 percent of youth cigar smokers reported using flavored cigars.⁴⁰ Flavorings can mask the harsh taste of tobacco and make these products more palatable to youth. Youth who smoked flavored cigars were much more likely to indicate that they had “no intention to quit” (59.7 percent), compared to youth who smoked non-flavored cigars (49.3 percent).⁴¹ Therefore, flavored OTPs (such as flavored cigars) may encourage youth to continue smoking or using tobacco products, which could contribute to lifelong addiction. This suggests the need for a comprehensive policy that limits flavorings on all OTPs—not just one product category—in order to reduce youth tobacco use and promote health equity.

Youth Access to Tobacco

The 2009 FSPTCA set the minimum legal sale age (MLSA) for tobacco products at 18 in every state, and North Carolina additionally requires an MLSA of 18 for e-cigarette purchases, which the FDA has not yet regulated. However, young people often find ways around these laws. Older teens are more likely to buy tobacco products directly from retailers, who may not verify their age at time of purchase despite legal requirements to do so.⁴² Minors are even more likely to purchase tobacco directly from a retailer when the clerk is also underage.⁴³ However, the vast majority of youth do not obtain tobacco products directly from retailers, which are subject to penalties for sales to minors. As seen in Figure 2, the National Survey on Drug Use and Health found that 63.3 percent of teenage tobacco users gave money to others to buy tobacco for them; 30.5 percent purchased tobacco from a friend, family member, or classmate; 62 percent “bummed” cigarettes or tobacco from others; 13.1 percent took tobacco from others without asking; and 0.8 percent stole tobacco from a store.⁴⁴ Since the majority of youth are not directly purchasing tobacco products, an MLSA by itself does not prevent youth tobacco use. Other restrictions, such as a ban on the sale of flavored OTPs, should be considered.

Methods of Youth Tobacco Access

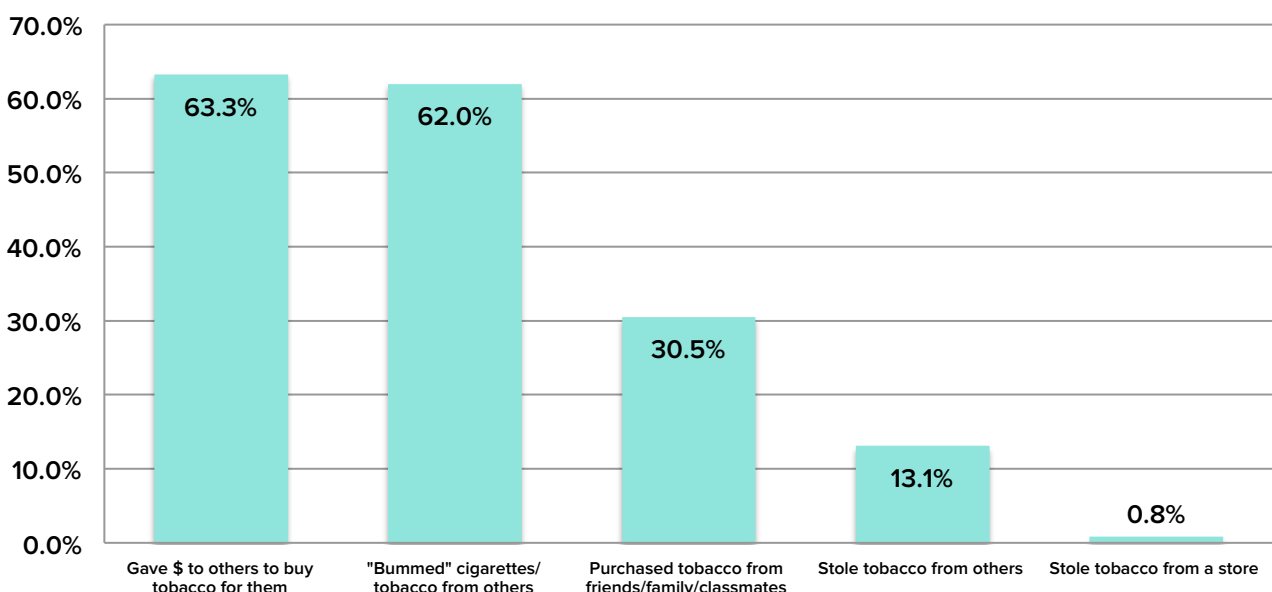


Figure 2: Methods of Youth Tobacco Access, National Survey on Drug Use and Health. – Substance Abuse & Mental Health Services Administration. 2004. “2003 National Survey on Drug Use and Health.” U.S. Department of Health and Human Services, Retrieved September 20, 2015. (<http://oas.samhsa.gov/NHSDA/2k3NSDUH/2k3results.htm#ch4>) and (<http://www.oas.samhsa.gov/nhsda.htm#NHSDAinfo>).

Health Risks of OTPs

With over 115,000 middle and high school students in North Carolina currently using non-cigarette tobacco products, there is a clear need for action to reduce the deadly burden of disease and prevent youth tobacco uptake.⁴⁵ Despite public perception that OTPs and flavored products are a safer alternative to cigarettes, all tobacco products are known to be “addictive and carry serious health risks,” according to the FDA.⁴⁶ Youth are particularly vulnerable to the addictive effects of nicotine and are more likely to become severely addicted than individuals who begin smoking at an older age.⁴⁷ Cigar smoking has been linked to increased risks for many cancers, including cancer of the lung, larynx, oral cavity, and esophagus.⁴⁸ In addition, hookah use is associated with “lung cancer, respiratory illness, and periodontal disease,” while smokeless tobacco contains over 28 carcinogens and carries a risk for oral cancers.^{49 50} Given the novelty of e-cigarettes, their long-term health effects are still largely unknown. However, researchers have found that e-cigarettes contain hazardous chemicals such as nicotine, flavorings, propylene glycol, glycerin, and possible carcinogens.⁵¹ In addition, e-cigarettes could introduce a new generation to the addictive effects of nicotine and promote use of other tobacco products.⁵²

The Policy and Legal Landscape of Tobacco Control

Under the FSPTCA, which was signed into law by President Obama, the FDA was granted the authority to regulate the “manufacturing, marketing, and sale of tobacco products.”⁵³ However, there is little legislation at the federal level addressing OTPs and no regulations on flavored OTPs. Fortunately, U.S. states and localities have the authority to enact their own tobacco control regulations in order to fill the gaps in federal legislation.

The goals of the FSPTCA were threefold: prevent Americans (especially youth) from starting tobacco use, encourage current users to quit, and reduce the harms of using tobacco products.⁵⁴ To achieve these outcomes, the FSPTCA aims to restrict tobacco marketing and sales to youth, improve tobacco product warning labels, and disclose tobacco product ingredients while also preserving state, local, and tribal tobacco control authority. Major provisions of the FSPTCA include, but are not limited to:⁵⁵

- Establishing a federal MLSA (minimum legal sale age) for tobacco products (does not include e-cigarettes)
- Banning vending machine sales of tobacco
- Ending tobacco corporation sponsorships of athletic, entertainment, social, or cultural events
- Requiring more visible health warning labels on smokeless tobacco products
- Giving the FDA the authority to regulate nicotine and ingredient levels in tobacco products



The FSPTCA has several shortcomings in its effort to comprehensively regulate tobacco products. First, the law initially only required the FDA to regulate cigarettes, roll-your-own tobacco, and smokeless tobacco, leaving out OTPs such as e-cigarettes, hookah, and cigars. The FSPTCA attempted to curb youth appeal of cigarettes by prohibiting the manufacture, marketing, and sale of flavored cigarettes (with exceptions for tobacco and menthol flavors) and by banning the sale of packs with fewer than 20 cigarettes; however, as noted previously, these restrictions only applied to cigarettes and left flavorings in OTPs untouched.⁵⁶ In order to regulate OTPs, the FDA must go through the formal rulemaking process to establish its authority related to such products. The agency finally issued a notice of intent to regulate all tobacco products on April 25, 2014; however, it is not known when it will move forward with any measures affecting OTPs, which products will be affected, or what regulations will be put in place.⁵⁷

Given this uncertainty and lack of federal regulation for flavored OTPs, it is important to note that the FSPTCA reserved some authority to the states and localities to determine more stringent tobacco control regulations for themselves.⁵⁸ Baltimore City Councilwoman Helen Holton explains why flavored tobacco products present a major public health and racial equity issue:

“Look at the more than 50 years of predatory marketing of the tobacco industry and the inequities they have been exercising in their marketing efforts targeted toward poor black and brown communities,” Holton said. “Look at the health disparities of Baltimore City. Look at the diseases and health ailments that are tobacco-related.”⁵⁹

A policy restricting the sale of flavored OTPs could help alleviate these disparities, as low-income and minority communities are subject to higher amounts of tobacco marketing and product placement and consequently have higher tobacco use rates.⁶⁰ The tobacco industry has targeted these populations with advertising, price promotions, and sponsorship in order to entice new smokers and tobacco users and sustain current users.^{61 62} Additionally, tobacco corporations spend more advertising dollars at retailers—also known as the “point of sale” or POS—than in any other venue, spending nearly \$23 million each day to market their products.⁶³ There is a higher density of tobacco retailers in communities with more black, Hispanic, or low-income residents, and with them comes greater amounts of tobacco marketing.^{64 65}

Evidence has shown that the presence of tobacco marketing at the POS can encourage smoking uptake and hinder quit attempts.^{66 67 68} Furthermore, price promotions at the POS greatly appeal to youth, and evidence shows higher youth smoking rates in communities with more tobacco retailers and advertising.^{69 70} When discussing tobacco use disparities, it is crucial to note how tobacco corporations target these marginalized groups, furthering the health inequities that we see today.

Several U.S. cities and states have implemented their own restrictions on the sale of flavored tobacco products. These policies could provide the foundation for legislation to restrict the sale of flavored OTPs in North Carolina.

Flavored OTP Restrictions in U.S. Cities and States

In 2009, the state of Maine was one of the first localities, and remains the only state, to pass a restriction on the sale of flavored tobacco products—namely, flavored cigars. Since then, the cities of New York, NY, Providence, RI, Chicago, IL, and Minneapolis, MN have all passed legislation banning the sales of flavored tobacco products, albeit to different degrees. While these policies have met resistance and legal challenges from tobacco corporations, appellate courts have upheld the bans in New York City, Providence, and Chicago; the ban in Minneapolis has yet to be challenged, as it was just recently passed in July 2015. The following section describes the policies put forth by Maine, New York City, Providence, Chicago, and Minneapolis to address youth tobacco use through flavored OTP sales restrictions.⁷¹

Maine (July 2009): Maine Revised Statutes, Title 22 § 1560-D: Flavored cigars

The state of Maine restricts the sale of flavored cigars in order to protect public health and prevent youth smoking uptake. The legislation bans the distribution and sale of any cigar with a “characterizing flavor,” which is defined as “a distinguishable taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink that is imparted to tobacco or tobacco smoke either prior to or during consumption.”⁷² The aroma or taste of tobacco is not included in the definition of a “characterizing flavor.” The only exception to this sales restriction is for premium cigars, which are unlikely to attract youth users due to their higher price tags. Premium cigars are often sold for close to \$10 each, while cheap or flavored cigars are usually sold for under \$1 each. Under this law, a premium cigar is defined as “a cigar that weighs more than 3 pounds per 1,000 cigars and is wrapped in whole tobacco leaf,” and flavored premium cigars can legally be sold and distributed.⁷³

New York, NY (October 2009): New York City Administrative Code: Title 17-713 to 718: Regulation of the sale of herbal cigarettes and flavored tobacco products

New York City’s 2009 legislation prohibits the sale of many types of flavored tobacco products, including “cigars, pipe tobacco, smokeless tobacco, dissolvable tobacco, snuff, shisha [used for hookah], blunts, and blunt wraps.”⁷⁴ It is important to note that NYC’s policy does not include e-cigarettes or their related e-liquid in the definition of a “tobacco product,” so they are exempt from this regulation. The law bans the sale of all tobacco products with a “characterizing flavor,” which means any “distinguishable taste or aroma.” However, the flavors of tobacco, menthol, mint, and wintergreen are all exempt from this sales restriction. Lastly, New York City provides an exemption for the sale of flavored tobacco products at tobacco bars and tobacco wholesalers. Tobacco bars must be adult-only establishments, and tobacco wholesalers can only sell flavored products to tobacco bars in NYC or entities located outside the city.⁷⁵

Providence, RI (January 2012): Providence Code of Ordinances, Sections 14-308 to 14-310

In 2012, Providence enacted a prohibition on the sale of all non-cigarette flavored tobacco products. Flavored tobacco varieties include, “but are not limited to: all fruit flavors, chocolate, vanilla, honey, candy, cocoa, herb, spice, dessert or alcoholic beverage.” Similar to the NYC legislation, Providence also included an exemption for OTPs with the flavors of menthol, mint, or wintergreen.⁷⁶

Providence’s flavored OTP sales ban included all tobacco product types included in the NYC legislation, but also included flavored e-cigarettes.⁷⁷ Furthermore, similar to NYC, Providence included an exemption allowing the sale of flavored OTPs at smoking and hookah bars only.⁷⁸

Chicago, IL (November 2013): Chicago Municipal Code Sec. 4-64-098: Flavored Tobacco Products

While other localities have banned the sales of flavored tobacco products at all retail locations (with some exceptions for adult-only facilities), Chicago’s policy takes a different approach, banning the sale of all flavored tobacco products, including menthol, at any location within 500 feet of Chicago city schools—including public, private, and parochial schools.⁷⁹ While not as comprehensive as the bans in the other cities mentioned, Chicago’s policy is clearly tailored to address the youth appeal and youth access issue that flavored tobacco products present.⁸⁰ In addition, Chicago tailored the legislation to address the public health concerns of its constituents. Community groups and advocates from the National African American Tobacco Prevention Network (NAATPN) were most concerned about menthol cigarettes, which disproportionately attract young and minority smokers.⁸¹ Chicago therefore became the first city to ban menthol-flavored tobacco products, including menthol cigarettes.⁸² In addition, the legislation prohibits the sale of flavored e-cigarette products due to their strong youth appeal.⁸³ While Chicago’s flavored tobacco sales restriction only affects retailers near schools, it is a promising effort to reduce youth tobacco appeal and decrease health disparities.

Minneapolis, MN (July 2015)

In July 2015, the City of Minneapolis passed legislation restricting the sale of flavored tobacco products, which went into effect on January 1, 2016. Most similar to the Providence law, the regulation in Minneapolis bans the sale of all flavored OTPs—including e-cigarettes and e-liquid — except for menthol, mint, and wintergreen.^{84 85} The Minneapolis legislation also creates an exemption allowing the sale of flavored OTPs only at tobacco shops with a minimum age of 18 to enter. With this regulation, the availability of flavored tobacco products will decrease from 420 stores to only 25 stores.⁸⁶ By making flavored products less visible and less accessible to youth, Minneapolis can promote healthier communities and prevent youth tobacco uptake.

Comparison of U.S. City/State Flavored OTP Sales Restrictions

	Includes e-cigarettes and their related products?	Includes menthol and mint-flavored products?	Exempts adult-only retailers or smoking bars?	Only affects retailers near youth-serving locations?
Maine		X		
New York, NY			X	
Providence, RI	X		X	
Chicago, IL	X	X		X
Minneapolis, MN	X		X	

Policy Options for North Carolina

North Carolina legislators should enact a statewide restriction on the sale of flavored tobacco products, including all flavored OTPs, in an effort to prevent youth tobacco usage and control rising health care costs. This policy should focus on the sale of these products—rather than their manufacture, distribution, or possession—in order to survive legal scrutiny. This legislation would need to be passed at the state level rather than the local level. In North Carolina, state law pre-empts cities and localities within the state from enacting any tobacco control policies that differ from state legislation. North Carolina is one of only seven states in the U.S. to preempt local action in all areas of tobacco control policy.⁸⁷

In order to comprehensively address youth usage of OTPs, the North Carolina policy should include language prohibiting the sale of any flavored “tobacco product,” “tobacco-derived product,” or “vapor product,” as defined in N.C. Gen. Stat. § 14-313(4) (2014). This statute prohibits the sale of tobacco, tobacco-derived, and vapor products (i.e. e-cigarettes) to anyone under the age of 18.⁸⁸ With this restriction in place, it would be illegal to sell flavored cigars, pipe tobacco, smokeless tobacco, dissolvable tobacco, snuff, shisha, blunts, blunt wraps, and e-cigarettes in North Carolina stores. However, in order to stave off potential lawsuits and preserve the legal rights of adults to access tobacco products, North Carolina should utilize a legal exemption for adult-only retailers and smoking bars, of which there are very few compared to the overall number of tobacco retailers. This policy is in line with the legislation passed in NYC, Providence, and Minneapolis to restrict youth tobacco appeal and access.

Enforcement of the North Carolina’s sales restriction on flavored OTPs could be conducted by the North Carolina Department of Public Safety’s Alcohol Law Enforcement (ALE) branch, which currently conducts compliance checks on tobacco sales to minors.⁸⁹ During the ALE’s monthly retail compliance checks on tobacco sales age verification, officers could also evaluate whether stores were adhering to the flavored OTP sales restrictions. Similar to the penalties for selling to minors, violators of the policy would be subject to fines and/or civil legal action. Creating a strong enforcement mechanism is key if this policy is to be successful.

While an ideal policy would ban the sale of all characterizing flavors in OTPs, including menthol, this proposed policy would exempt menthol from the ban in order to be consistent with the FSPTCA. In addition, the nation’s top seller of menthol cigarettes, R.J. Reynolds Tobacco Company (which produces the Newport brand), is based in North Carolina, and would likely lobby against any menthol restrictions. However, the inclusion of e-cigarettes in the policy fits with the way North Carolina and other states are treating these newly developed products. For example, North Carolina recently passed a child-resistant packaging mandate for e-cigarettes as well as a tax on e-cigarette products.^{90 91} This demonstrates that there is potential political will in the state legislature to enact further restrictions related to non-cigarette tobacco products.

Critics may point out other potential policy ideas to address the rising use of tobacco among North Carolina youth:

First, why not increase funding and resources for improved compliance checks on tobacco sales to minors at retailers? This would not be successful because, as noted earlier in the paper, the vast



majority of youth (82 percent) are obtaining their tobacco from sources other than directly purchasing at retailers.⁹² There are few enforceable policy options to combat youth acquisition of tobacco from older friends, family members, and peers.

Another potential policy solution might be to ban advertising for flavored OTPs on the exterior and interior of tobacco retailers. While this approach has the potential to reduce youth interest in flavored OTPs, it is legally unfeasible. Previous court cases have ruled in favor of tobacco corporations' right to advertise to consumers at the point of sale due to the First Amendment and its protections of commercial speech. Conversely, restrictions on the sales of tobacco products (rather than the advertising) have held up in court when clearly tailored to the societal interest of preventing and reducing tobacco use.

One potential political barrier to a policy restricting the sale of flavored OTPs is the potential loss of tax revenue for North Carolina. Currently, North Carolina is one of only a few U.S. states to tax e-cigarettes. However, this tax is a largely negligible \$0.05 per milliliter and is not comparable to taxes on conventional cigarettes, with the tax on a disposable e-cigarette (usually 0.5 mL) amounting to \$0.025 and the tax on a 10 mL bottle of e-liquid amounting to \$0.50.⁹³ Meanwhile, cigarettes in North Carolina are taxed at \$0.45 per pack, one of the lowest rates in the nation. North Carolina also taxes non-cigarette, non-e-cigarette tobacco products (i.e., cigars) at a rate of 12.8 percent of cost.⁹⁴ Most flavored cigars are sold at very low prices—often \$0.99 per pack—so taxing these products is not necessarily the most profitable option for the state. It is also important to note that tax losses might be outweighed by the enormous costs of tobacco-related health care in North Carolina, which totals \$931.4 million for the state Medicaid program alone.⁹⁵

Lastly, there could be some opposition from associations of convenience stores in the state, e-cigarette retailers, or other groups of tobacco retailers, which might criticize the policy for hurting small businesses and hampering economic development in lower-income communities. Even so, preventing youth tobacco use has the potential to bring great social benefits to North Carolina.

Conclusion

In summary, youth tobacco use rates are rising in North Carolina, with about 1 in 10 middle school students and 3 in 10 high school students currently using tobacco.⁹⁶ Despite its status as a historic tobacco state with some of the country's weakest tobacco control laws, North Carolina has the opportunity to improve the lives of youth for generations to come by enacting stronger tobacco prevention policies. In particular, young people are much more likely to use candy- and fruit-flavored tobacco products than adults.^{97 98} The FDA and U.S. Surgeon General have established that "flavored tobacco products are considered to be 'starter' products that help establish smoking habits that can lead to long-term addiction."^{99 100} Indeed, more than 60 percent of North Carolina youth tobacco users attempted to quit in the past 12 months.¹⁰¹ Due to the addictive nature of these products, it would be wise to prevent youth from using them in the first place.

Furthermore, there is an ethical imperative for North Carolina to prevent the marketing and sale of products that so clearly appeal to youth. If tobacco is truly meant for adult use only, then tobacco companies should not be allowed to sell products in kid-friendly flavors such as pineapple, cherry, and bubblegum. There is strong evidence that youth are more likely to begin using tobacco, and are



less likely to quit, when the products are flavored.¹⁰² In addition, not enough attention has been paid to non-cigarette tobacco products (OTPs) and their contribution to youth addiction. The 2009 FSPTCA delegated federal tobacco control authority to the FDA, but most of the regulations thus far have focused on cigarettes. Products such as cigars, cigarillos, e-cigarettes, hookah, and smokeless tobacco all present serious health risks yet have faced few federal regulations.

Tobacco use in the state of North Carolina results in billions of dollars of health care spending and productivity losses as well as a tax burden of \$889 per household in the state.¹⁰³ Given the lives that will be lost due to tobacco use, as well as these other exorbitant tobacco-related costs, North Carolina must implement legislation to restrict the sales of flavored tobacco products in order to protect the health of today's youth and generations to come.

Endnotes

¹ U.S. Department of Health and Human Services. 2014. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. doi: NBK179276 [bookaccession].

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⁷ Center for Public Health and Tobacco Policy. 2012. "The POS problem: factsheets describing the point of sale tobacco marketing problem and its impact on youth." Public Health Advocacy Institute at Northeastern University School of Law, Retrieved September 25, 2015. (<http://www.tobaccopolicycenter.org/documents/NY%20Fall%20trainings%20fact%20sheets.pdf>).

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