



FLAVORED TOBACCO SALES RESTRICTIONS BENEFIT PUBLIC HEALTH: RESPONSES TO MISLEADING NATO/SWEDISH MATCH ARGUMENTS

Public health efforts to protect youth from the tobacco industry in the point-of-sale environment are gaining momentum nationwide. The tobacco industry is organizing to oppose these efforts. For example, the National Association of Tobacco Outlets (NATO) and cigar and smokeless tobacco company Swedish Match recently launched a website for retailers with misleading arguments and information on the impact of local ordinances targeting the point of sale. The website is called Tobacco Ordinances – Take Another Look (TOTAL) and addresses policies related to price, flavored products, legal minimum sale age of 21, and others.

Tobacco companies know that restrictions on the flavored tobacco products favored by youth will help deter youth from smoking. Since the industry needs to recruit new smokers to keep the tobacco business profitable, it is desperate to protect its ability to attract youth at the point of sale, regardless of the impact on the health and welfare of young people.

Cigarettes with specific characterizing flavors were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act (TCA) that gave the U.S. Food and Drug Administration (FDA) authority over tobacco products.¹ However, continuing the long tradition of designing products that appeal explicitly to new users, tobacco companies in recent years have significantly stepped up the introduction and marketing of flavored other tobacco products (OTPs), particularly smokeless tobacco, cigars, and now e-cigarettes. 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.

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.

The industry's arguments do not withstand scrutiny. Below, we provide responses to each of its false claims.

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 primarily lure new users, particularly kids, to a lifetime of addiction. Flavored tobacco products are pervasive and are marketed and sold in a variety of kid-friendly flavors, such as candy, fruit and chocolate. 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.

- Internal tobacco industry documents prove that tobacco companies have intentionally used flavorings to reduce the harshness of their products and make them more appealing to new users, almost all of whom are under age 18.²
- The *same* flavor chemicals used in sweet-flavored cigars and smokeless tobacco products are also used in popular candy and drink products such as LifeSavers, Jolly Ranchers, and Kool-Aid.³
- Flavors increase the number of people, particularly kids, who use tobacco, become addicted and die a premature death as a result.⁴

Flavored Tobacco Products are Popular Among Kids, Not Adults. Flavored tobacco products are overwhelmingly used by youth as a starter product, and that preference declines with age.

- Eight out of ten 12-17 year olds who have ever used a tobacco product initiated tobacco use with a flavored product.⁵
- At least two-thirds of youth report using tobacco products “because they come in flavors I like.”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

Flavored Tobacco Product Sales Restrictions are a Legally Defensible, Effective Strategy for Reducing Youth Tobacco Use. States and localities have a clear, legal authority to restrict the sale of flavored tobacco products to reduce tobacco use and its harms to its citizens. At least two states and half a dozen localities restrict sales of flavored tobacco products, although laws differ in their application to specific products and store types.

- The TCA specifically preserves the right of states to impose “requirements relating to the sale. . . of tobacco products for individuals of any age.” Restrictions on the sale of products are *not* product standards and they are not preempted by the TCA.
- 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.⁸

Flavored Tobacco Product Sales Restrictions Won't Hurt Retailers. Since flavored tobacco products are most popular among kids, there's no evidence to indicate that flavored tobacco product prohibitions will hurt retailers.

- Sales restrictions on flavored tobacco products do not constitute a ban on these products. These products will still continue to be available to adult customers, but will be appropriately limited to locations where kids are much less likely and less able to access them.
- Money spent on tobacco products in retail stores does not disappear when users quit or cutback, but simply shifts to consumer spending on other products or services.
- Consumer demands are changing and stores need to adapt. A 2015 report commissioned by the National Association of Convenience Stores emphasized growth in healthy options in convenience stores and stated, “C-stores must understand that solely catering to their declining core audience [those purchasing cigarettes, beer, hot dogs, etc.] is not a growth strategy.”⁹

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.

¹ See U.S. Food and Drug Administration's (FDA) Flavored Tobacco webpage at

<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/FlavoredTobacco/default.htm>.

² 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.

³ Brown, JE, et al., “Candy Flavorings in Tobacco,” *New England Journal of Medicine*, DOI: 10.1056/NEJMc1403015, May 7, 2014, <http://www.nejm.org/doi/full/10.1056/NEJMc1403015>.

⁴ 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.

⁵ 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.

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,” *Morbidity and Mortality Weekly Report* 64(38):1066-1070, 2015.

⁸ 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).

⁹ Cardello, H & French, S, “Health & Wellness Trends and Strategies for the Convenience Store Sector,” Hudson Institute, October 2015, <http://www.nacsonline.com/YourBusiness/Refresh/Documents/Grow-BFY-Sales.pdf>.