



Innovative Local Policy Options

Effective tobacco control policies implemented at the local level in jurisdictions outside of Maryland have been successful in reducing youth access to and use of tobacco products. Local jurisdictions in Maryland are unable to implement these due to the *Altadis* decision.

Tobacco Flavor Bans:

Flavored tobacco products are especially popular among middle and high school students¹ and are specifically marketed to young people and minority populations.² In one year alone, the number of middle school and high school children that used tobacco products, primary e-cigarettes, rose from 3.6 million in 2018, to 5.4 million in 2019.³ Of the youth who have used tobacco products, 81% state that they initiated the use with a flavored product, with at least 67% stating they use tobacco products “because they come in flavors I like.”⁴ In response, many local jurisdictions (and some states) have passed legislation that either bans the sale of flavored tobacco products entirely, bans the sale of flavored electronic smoking devices, or bans the sale of flavored products near schools. Some include restrictions on the sale of menthol flavors.

¹ Centers for Disease Control and Prevention, *Flavored Tobacco Product Use Among Middle and High School Students – United States, 2014-2018*, CDC (Oct. 4, 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6839a2.htm>.

² FDA News Release, *FDA Warns Manufacturers and Retailers to Remove Certain E-cigarette Products Targeted to Youth from the Market* (April 27, 2020), <https://www.fda.gov/news-events/press-announcements/fda-warns-manufacturers-and-retailers-remove-certain-e-cigarette-products-targeted-youth-market#:~:text=The%20FDA%20continues%20to%20monitor,sold%20to%2C%20or%20used%20by.>

³ Centers for Disease Control, *Smoking and Tobacco Use*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited May 7, 2020).

⁴ Campaign for Tobacco-Free Kids, *Flavored Tobacco Products Attract Kids: Brief Overview of Key Issues*, <https://www.tobaccofreekids.org/assets/factsheets/0399.pdf> (last visited May 7, 2020).

More than 260 localities nationwide have passed restrictions on the sale of flavored tobacco products, often leading to a statewide restriction. In California, approximately 70 localities have passed flavor bans. Other states likewise boast local provisions: Colorado, Illinois, Minnesota, and Pennsylvania. Local flavored restrictions led to passage of statewide restrictions in Massachusetts, New Jersey, New York, and Rhode Island.⁵

Tobacco 21:

“Tobacco 21” began as a local policy option that quickly gained national traction. Needham, Massachusetts, the first town to enact a Tobacco 21 law in 2005, experienced a 48% decrease in smoking by high-schoolers, which exceeded by three-fold the decreases experienced in the surrounding towns.⁶ Local jurisdictions in Maryland were frustrated by their inability to pass a local Tobacco 21 law and had to wait until the statewide law was passed in 2019, nearly 15 years after Needham’s law.

A report published in the National Academy of Sciences projected a 25% drop in smoking initiation by high school students if the country enacted a Tobacco 21 law.⁷ On December 20, 2019, the federal government ultimately passed “Tobacco 21.” At that time, over 55% of the U.S. population was already covered by a Tobacco 21 policy. Specifically, 24 states and at least 550 localities had already passed this law. In the local jurisdictions and states that passed tobacco 21 laws prior to the federal legislation, smoking rates, tobacco use initiation, and adolescent use declined.⁸

Product Bans:

Product bans refer to laws that restrict or prohibit whether certain tobacco products may be sold. Interestingly, although Congress has the authority to prohibit the sale of tobacco and vape products, the FDA is somewhat limited in the steps it can take. The Tobacco Control Act gives the FDA authority to regulate tobacco products, but it also precludes the Agency from taking certain actions, including banning certain classes of products. It does not, however, prevent states or local governments from doing so.

In 2019, the city council for Beverly Hills, California enacted an ordinance, effective January 1, 2021, which banned the sale of all tobacco products, with few exceptions. The ban includes, but is not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, smokeless tobacco, and electronic cigarettes.

Another innovative law passed in Contra County, California in 2019 when the county limited a retailer’s ability to sell vape products not yet approved by the FDA.⁹ Technically, the FDA has yet to approve the sale of any vape product currently on the market. In 2016, the FDA finalized a rule which deemed all tobacco products,

⁵ Campaign for Tobacco-Free Kids, *States & Localities That Have Restricted the Sale of Flavored Tobacco Products*, <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf> (last visited May 7, 2020).

⁶ <https://tobacco21.org/tobacco-21-fact-sheet/>

⁷ <https://tobacco21.org/tobacco-21-fact-sheet/>

⁸ *Id.*

⁹ Contra County Code, [Title 4, §445-6.014 \(2019\)](#).

including vape products, as subject to its authority. Among other things, the rule requires the manufacturers of all vape products to obtain authorization from the FDA to sell these by submitting a premarket tobacco product application (PMTA). While the FDA has agreed to exercise enforcement discretion and permit these products to remain on the market pending the review process, nothing prevents states or local governments from banning them entirely.

Some local governments in Maryland have expressed interest in banning the sale of some tobacco products, such as vape products. Although *Altadis* does not apply directly to vape products, a Maryland court, relying on the reasoning in *Altadis*, could find that locals are preempted from passing vape product sale and distribution laws.