

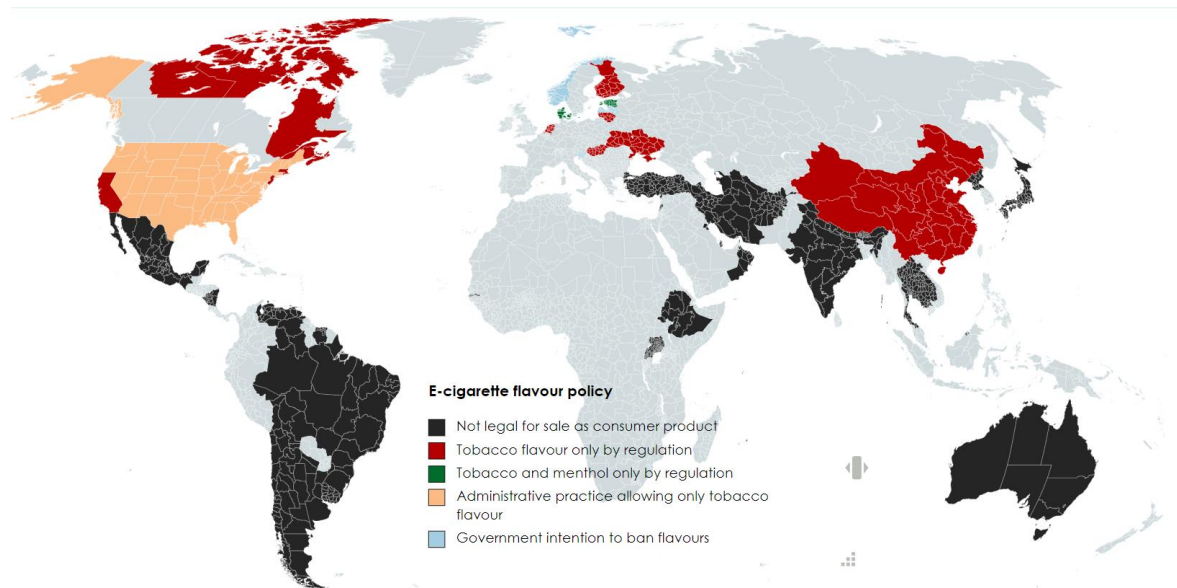
Restrictions on e-cigarette flavours

August 2023

Overview

Over 30 countries do not permit the sale of e-cigarettes as consumer products, and by extension do not permit the sale of flavoured e-cigarettes.¹ Among the countries which permit their sale, 6 have introduced national-level bans on flavours other than tobacco flavour (Finland, Hungary, Netherlands, Ukraine, Lithuania, China), two have banned flavours other than tobacco and menthol (Denmark and Estonia) and two (Canada and the United States) have sub-national restrictions in place. By administrative practice, the United States Food and Drug Administration has denied marketing orders to e-cigarettes with flavours other than tobacco, and has denied orders to some menthol-flavours. Several other countries have announced an intention to ban flavourings.

Figure 1: Global policies on e-cigarettes and e-liquid flavours



North America

Canada:

- On June 19, 2021, the federal government published proposed regulations to restrict flavourings and additives in vaping liquids.² There are 3 elements to the proposed regulations:
 - Restricting flavours in vaping products to tobacco, mint, menthol, and a combination of those flavours.
 - Prohibiting all sweeteners and sugars and most flavouring ingredients in vaping liquids
 - Prohibit vaping products from producing a “sensory attribute” that is different than the ones typical for tobacco, mint, or menthol.

Since August 2022, the response to these proposed regulations has been under review. The federal intention to finalize the regulation was called into question in March 2023, when the revised Departmental Plan was published which made no reference to this regulation.

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- Of Canada’s 13 provincial and territorial governments, 6 have adopted legislation or regulations to ban the sale of any e-cigarette liquid other than tobacco flavour. As shown in Table 1, these are: Nova Scotia, Prince Edward Island, New Brunswick, Northwest Territories, Nunavut and Quebec.
- Three Canadian provinces have adopted regulations to restrict the sale of flavoured vaping liquids to specialty vape shops where children are not permitted to enter. As shown in Table 1, these are (in order of implementation): British Columbia, Ontario and Saskatchewan.

United States

- The U.S. Food and Drug Administration has authority over the authorization of e-cigarette sales. Each manufacturer who wishes to sell e-cigarettes has been required to submit an application and to demonstrate that there is a public health benefit to allow the sale of these products. The U.S. federal policy on flavourings is in development, but is currently being administered as a ban on all flavours other than menthol and tobacco.
 - Prior to 2020, the FDA was not enforcing the prohibitions on selling e-cigarettes for which authorization had not been received.
 - In January 2020, the FDA notified that it would be enforcing against the sale of pre-filled cartridge-based e-cigarettes. Only those with tobacco or menthol flavours would be permitted. Flavourings for vaping liquids for other devices were not affected.
 - In June 2021, a U.S. Congress committee held hearings on FDA regulation of e-cigarettes, with representatives encouraging a ban on all flavours.³
 - Beginning in the autumn of 2021, the FDA began to issue market authorization orders, and marketing denial orders. All products authorized to date have been tobacco-flavoured.
 - The FDA has deferred most decisions on menthol-flavoured (with the exception of denying marketing permission to a few menthol brands). It has consistently denied market authorization to all non-menthol/non-tobacco other flavours.
 - Some e-cigarette manufacturers have successfully stayed the implementation of market denial orders, allowing products to remain on the market.
- Five U.S. States and D.C. have enacted bans on the sale of flavoured e-cigarettes, and 4 of these bans are in place.⁴ As shown in Table 1, restrictions are in place (in order of implementation) in: Massachusetts, New Jersey, New York, and Rhode Island. California’s 2020 legislation was deferred until confirmed by a referendum vote which took place in November 2022, and came into effect in December 2022.⁵
- Maryland bans the sale of flavored cartridge-based and disposable e-cigarettes other than menthol. Utah restricts the sale of flavored e-cigarettes (except mint/menthol) to adult-only retail tobacco specialty businesses and several cities have banned the sale of flavored tobacco products (including e-cigarettes).⁶

Other international

Europe

- The 2014 Tobacco Directive of the European Union requires countries to permit the sale of e-cigarettes but permits them to adopt domestic legislation to restrict certain marketing practices.⁷ As shown in Table 1, 7 European countries have adopted flavour restrictions on e-cigarettes. These are: Finland, Estonia, Hungary, Denmark, the Netherlands, the Ukraine and Lithuania. Governments in two other countries (Sweden and Iceland) had proposed legislation to ban flavourings, but these measures were defeated in the legislature in June 2022.^{8,9} Latvia's legislature gave second reading to a bill to prohibit all flavours but tobacco in October 2022.¹⁰ In February 2023, Slovenia's health minister proposed a legislated ban on all flavours but tobacco.¹¹ In April 2023, Norway released a national health strategy in which it stated an intention to require standardized packaging for e-cigarettes, flavour restrictions, ban on remote sales of e-cigarettes.¹²

Asia

- In April 2022, China adopted regulations on mandatory national standards for electronic cigarettes, which bans flavours other than tobacco on October 1, 2022.

Australasia

- **Australia** permits nicotine-containing e-cigarettes to be sold only under prescription. In May 2023 the Australian government announced that in addition to this requirement, flavourings would be banned in e-cigarettes, including those that did not have nicotine.^{13 14}

Table 1: Regulatory controls on e-cigarette flavourings

Country	Status	Description	Implementation date
Canada			
Federal law	Regulatory Proposal ¹⁵	All flavours other than tobacco, mint and menthol are prohibited.	
British Columbia	Regulation ¹⁶	Flavours other than tobacco can only be sold in age-restricted specialty vape stores	September 15, 2020
New Brunswick	Law ¹⁷	Only tobacco-flavour is permitted	Sep 1, 2021
Nova Scotia	Regulation ¹⁸	Only tobacco-flavour is permitted	April 1, 2020
Nunavut	Law ¹⁹	Only tobacco-flavour is permitted.	May 31, 2023
Northwest Territories	Regulation ²⁰	Only tobacco-flavour is permitted	March 25, 2022
Ontario	Regulation ²¹	Flavours other than tobacco, mint and menthol can only be sold in age-restricted specialty vape stores	July 1, 2020
Prince Edward Island	Regulation ²²	Only tobacco-flavour is permitted	March 1, 2021
Quebec	Regulation ²³	Only tobacco-flavour is permitted	October 31, 2023
Saskatchewan	Regulation ²⁴	Flavours other than tobacco, mint and menthol can only be sold in age-restricted specialty vape stores	September 1, 2021
United States			
Federal	Policy ²⁵	Flavours other than tobacco and menthol are banned in pre-filled cartridge-based e-cigarette systems	February 6, 2020
California	Law ^{26 27}	All flavours other than tobacco flavour are prohibited.	December 21, 2022 ²⁸
Massachusetts	Law ²⁹	All flavours other than tobacco flavour are prohibited (exception for on-site consumption at specialized bars)	November 27, 2019
New Jersey	Law ³⁰	All flavours other than tobacco flavour are prohibited	April 20, 2020
New York	Law ^{31 32}	All flavours other than tobacco flavour are prohibited	May 18, 2020
Rhode Island	Regulation ³³	All flavours other than tobacco flavour are prohibited	March 26, 2020
District of Columbia	Law ³⁴	All flavours other than tobacco flavour are prohibited. Implementation will occur after funding in budget	October 1, 2022
Utah	Law ³⁵	Flavours other than tobacco, mint and menthol can only be sold in age-restricted specialty vape stores	July 1, 2020
Europe			
Denmark	Law ³⁶	All flavours other than tobacco flavour or menthol are prohibited	April 1, 2022
Estonia	Law ^{37 38}	All flavours other than tobacco and menthol flavours are prohibited	July 2019, menthol added May 2020
Finland	Law ³⁹	All flavours other than tobacco flavour are prohibited	2016
Hungary	Regulation ⁴⁰	No flavours are permitted	May 2020
Latvia	Proposed law ⁴¹	No flavours are permitted	TBD
Lithuania	Legislation adopted ⁴²	All flavours other than tobacco flavour are prohibited	July 1, 2022
Netherlands	Decree ⁴³	All flavours other than tobacco flavour are prohibited	Jan 1, 2023 to October 1, 2023 (postponed to January 2024) ⁴⁴
Norway	Proposed law ⁴⁵	Extent of flavour restrictions not specified	TBD
Slovenia	Proposed law ⁴⁶	All flavours other than tobacco flavour are prohibited	TBD
Ukraine	Law ⁴⁷	All flavours other than tobacco flavour are prohibited	July 11 2023
Other			
China	Regulation ^{48 49}	All flavours other than tobacco flavour are prohibited	Oct 1, 2022 ⁵⁰
Australia	Proposed regulation ⁵¹	All flavours other than tobacco flavouring	TBD

References

- 1 Countries which ban the sale of e-cigarettes as consumer products include: Antigua and Barbuda, Argentina, Bhutan, Brazil, Brunei, Cambodia, Chile, Colombia, East Timor, Ethiopia, Gambia, India, Iran, Japan, Kuwait, Lebanon, Mauritius, Mexico, Nepal, Nicaragua, North Korea, Oman, Panama, Qatar, Seychelles, Singapore, Sri Lanka, Suriname, Syria, Thailand, Turkey, Turkmenistan, Uganda, Uruguay, and Venezuela. Despite these restrictions, sales are tolerated in some countries. Australia permits the sale under prescription but not as a consumer product.
- 2 Canada Gazette. Order Amending Schedules 2 and 3 to the Tobacco and Vaping Products Act (Flavours) (draft) and Standards for Vaping Products' Sensory Attributes Regulations (draft). <https://gazette.gc.ca/rp-pr/p1/2021/2021-06-19/html/index-eng.html>
- 3 Oversight Subcommittee on Economic and Consumer Policy
<https://oversight.house.gov/news/press-releases/oversight-subcommittee-to-hold-hearing-with-acting-fda-commissioner-on-the-youth>
- 4 See Public Health Law Center for more information. www.publichealthlawcenter.org
- 5 Ballotpedia. California Flavored Tobacco Products Ban Referendum (2022)
[https://ballotpedia.org/California_Flavored_Tobacco_Products_Ban_Referendum_\(2022\)#:~:text=The%20California%20Flavored%20Tobacco%20Products,sale%20of%20flavored%20tobacco%20products.](https://ballotpedia.org/California_Flavored_Tobacco_Products_Ban_Referendum_(2022)#:~:text=The%20California%20Flavored%20Tobacco%20Products,sale%20of%20flavored%20tobacco%20products.)
- 6 Campaign for Tobacco Free Kids. States & Localities that have restricted the sale of flavored dtobacco products.
<https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>
- 7 European Union. Tobacco Products Directive (2014/40/EU). https://ec.europa.eu/health/tobacco/docs/dir_201440_en.pdf
- 8 Stricter rules for new nicotine products. Social Affairs Committee report 2021/22: SoU31
https://www.riksdagen.se/sv/dokument-lagar/arende/betankande/hardare-regler-for-nya-nikotinprodukter_H901SoU31
- 9 Iceland. Althingi.is. Welfare Committee. Committee opinion with proposed amendment. June 15, 2022.
<https://www.althingi.is/altext/152/s/1318.html>
- 10 Latvia Draft Law 867/Lp13)
<https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/65C3E684E1C40BE4C22588D4004CB0DA?OpenDocument>
- 11 Slovenia. ZAKON O SPREMEMBAH IN DOPOLNITVAH ZAKONA O OMEJEVANJU UPORABE TOBAČNIH IN POVEZANIH IZDELKOV. ACT ON AMENDMENTS TO THE ACT ON RESTRICTING THE USE OF TOBACCO AND RELATED PRODUCTS
<https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=15189>
- 12 Norway. Folkehelsemeldinga Nasjonal strategi for utjamning av sosiale helseforskjellar
<https://www.regjeringen.no/contentassets/918eb71926fc44c8802fe3c2e0b9a75a/nn-no/pdfs/stm202220230015000dddpdfs.pdf>
- 13 Australia. Minister for Health and Aged Care – Speech – National Press Club – 2 May 2023
<https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/minister-for-health-and-aged-care-speech-national-press-club-2-may-2023?language=en>
- 14 Australia. National Tobacco Strategy 2023-2030
<https://www.health.gov.au/sites/default/files/2023-05/national-tobacco-strategy-2023-2030.pdf>
- 15 Canada Gazette. Order Amending Schedules 2 and 3 to the Tobacco and Vaping Products Act (Flavours) (draft) and Standards for Vaping Products' Sensory Attributes Regulations (draft)
<https://gazette.gc.ca/rp-pr/p1/2021/2021-06-19/html/index-eng.html>
- 16 E-Substances Regulation, British Columbia Order in Council 426. https://www.bclaws.ca/civix/document/id/oic/oic_cur/0426_2020#
- 17 New Brunswick. Bill 63, An Act to Amend the Tobacco and Electronic Cigarette Sales Act. [https://www.canlii.org/en/nb/laws/stat/snb-1993-c-t-6.1.html](https://www.canlii.org/en/nb/laws/stat/snb-1993-c-t-6.1/latest/snb-1993-c-t-6.1.html)
- 18 Nova Scotia Regulation 201/2019 amending Tobacco Access Regulations <https://novascotia.ca/just/regulations/rg2/2019/RG2-2019-12-20.pdf>
- 19 Nunavut Legislature. Bill 57. Tobacco and Smoking Act. <https://www.assembly.nu.ca/sites/default/files/Bill-57-Tobacco-and-Smoking-Act-EN.pdf>
- 20 Tobacco and Vapour Products Control Regulations, amendment. Northwest Territories Gazette.
https://www.justice.gov.nt.ca/en/files/northwest-territories-gazette/2022/02_2.pdf
- 21 Ontario Regulation 197/20 amending Regulation 268/18. <https://www.ontario.ca/laws/regulation/r20197>
- 22 Tobacco and Electronic Smoking Device Sales and Access Act Regulations Amendment, Prince Edward Island Order in Council EC2020-489. <https://www.princeedwardisland.ca/sites/default/files/publications/20200811truwww.pdf>
- 23 Quebec Gazette. April 19, 2023. Vol. 155, No. 16
https://www.publicationsduquebec.gouv.qc.ca/fileadmin/gazette/pdf_encrypte/lois_reglements/2023A/106216.pdf
- 24 Saskatchewan. Tobacco and Vapour Products Control Amendment Regulations, 2021. (Order in Council
<https://publications.saskatchewan.ca/#/products/112599>)
- 25 U.S. Food and Drug Administration. FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint. <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>
- 26 California. Health & Safety Code § 104559.5(b), (c) (2021).
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=104559.5.&lawCode=HSC
- 27 California state legislature. SB-793 Flavored tobacco products.
https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=2019202005B793
- 28 Public Health Law Center. Proposition 31 in California passed! Now what?
<https://www.publichealthlawcenter.org/commentary/221109/11/9/22-proposition-31-california-passed-now-what>

-
- 29 Commonwealth of Massachusetts. An act Modernizing Tobacco Control . <https://malegislature.gov/Bills/191/H4183>
- 30 New Jersey Statutes, Title 2A:170-51.12(1)(a) (2021). <http://njlaw.rutgers.edu/cgi-bin/njstats/showsect.cgi?section=2a%3A170-51.12&actn=getsect>
- 31 New York Public Health Law § 1399-mm-1(2) (2021). <https://legislation.nysenate.gov/pdf/bills/2019/S7506B>
- 32 New York State Government. Press release. September 17, 2019. Governor Cuomo Announces New York State Implements First-in-the-Nation Ban on Flavored E-Cigarettes. <https://www.governor.ny.gov/news/governor-cuomo-announces-new-york-state-implements-first-nation-ban-flavored-e-cigarettes>
- 33 Rhode Island. Licensing of Electronic Nicotine-Delivery System Distributors and Dealers (216-RICR-50-15-6). 216-50 R.I. Code R. § 15-6.10(A) (2021) <https://rules.sos.ri.gov/regulations/part/216-50-15-6>
- 34 D.C. Code § 7-1721.08(a)(1) (2022) [https://code.dccouncil.gov/us/dc/council/laws/24-25#%C2%A72\(h\)](https://code.dccouncil.gov/us/dc/council/laws/24-25#%C2%A72(h))
- 35 Utah Criminal Code, Chapter 10, Part 1, Section 113 (2021) https://le.utah.gov/xcode/Title76/Chapter10/76-10-S113.html?v=C76-10-S113_2020051220200701
- 36 Denmark. Lov om ændring af lov om forbud mod tobaksreklame m.v., lov om tobaksvarer m.v., lov om elektroniske cigaretter m.v. og forskellige andre love1)(Act amending the Act on the Prohibition of Tobacco Advertising, etc., the Act on Tobacco Products, etc., the Act on Electronic Cigarettes, etc. and various other acts) <https://www.retsinformation.dk/eli/lt/a/2020/2071>
- 37 Estonia. Riigi Teataja (2019). Tobacco Act. Available: <https://www.riigiteataja.ee/en/eli/ee/523052019008/consolide>
- 38 Estonia. Riigi Teataja (2020). Act Amending the Tobacco Act and the Alcohol, Tobacco, Fuel and Electricity Excise Duty Act.
- 39 Finland. Ministry of Social Affairs and Health (2016). Tobacco Act 549/2016 (Tupakkalaki 29.6.2016/549). Helsinki. <https://www.finlex.fi/en/laki/kaannokset/2016/en20160549>
- 40 39/2013. (II. 14.) Korm. rendeleta dohánytermékek előállításáról, forgalomba hozataláról és ellenőrzéséről, a kombinált figyelmzettetéséről, valamint az egészségvédelmi bírság alkalmazásának részletes szabályairól <https://njt.hu/jogszabaly/2013-39-20-22>
- 41 Latvia Draft Law 867/Lp13) <https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/65C3E684E1C40BE4C22588D4004CB0DA?OpenDocument>
- 42 Lietuvos Respublikos tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymo Nr. I-1143 9-2 straipsnio pakeitimo įstatymas. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/03e62b827a9311ecb2fe9975f8a9e52e>
- 43 Besluit van 21 november 2022, houdende de wijziging van het Tabaks- en rookwarenbesluit in verband met de regulering van smaken voor e-sigaretten <https://www.officielebekendmakingen.nl/stb-2022-463.pdf>
- Regeling van de Staatssecretaris van Volksgezondheid, Welzijn en Sport van 22 november 2022, kenmerk 3456548-1038502-WJZ, houdende wijziging van de Tabaks- en rookwarenregeling ter regulering van smaken voor e-sigaretten <https://zoek.officielebekendmakingen.nl/stcrt-2022-32367.pdf>
- 44 Netherlands. Letter from Minister of Health. 26 June 2023 <https://open.overheid.nl/documenten/787280ce-4f40-4b19-801b-c4dc5300c08e/file>
- 45 Norway. Storting. Prop. 125 L (2022–2023). <https://www.regjeringen.no/no/dokumenter/prop.-125-l-20222023/id2983063/?ch=1>
- Progress of bill at: <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=94633>
- 46 Slovenia. ZAKON O SPREMEMBAH IN DOPOLNITVAH ZAKONA O OMEJEVANJU UPORABE TOBAČNIH IN POVEZANIH IZDELKOV. ACT ON AMENDMENTS TO THE ACT ON RESTRICTING THE USE OF TOBACCO AND RELATED PRODUCTS <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=15189>
- 47 Law of Ukraine On Amendments to Certain Laws of Ukraine on Public Health Protection from Harmful Effects of Tobacco, approved by Parliament December 2021. <https://www.tobaccocontrolaws.org/files/live/Ukraine/Ukraine%20-%20Law%20No.%201978-IX%20of%202021.pdf>
- 48 China. State Tobacco Monopoly Administration Standard number: GB 41700-2022 <http://openstd.samr.gov.cn/bz/gb/newGbInfo?hcno=ABB028BCBF0391D0039E80FDAB8D3AF7>
- Previous notification at: 关于第二次征求《电子烟》强制性国家标准（二次征求意见稿）意见的通知。Notice on the second solicitation of opinions on the mandatory national standards for "electronic cigarettes" (second solicitation draft) https://www.samr.gov.cn/bzjss/zqyj/202203/t20220311_340347.html
- 49 China. New Draft National Standard. “4.3.1.1. 不应対未成年人产生诱导性，不应使产品特征风味呈现除烟草外的其他风味 / Minors should not be induced, and the characteristic flavor of the product should not present other flavors than tobacco.” <https://www.samr.gov.cn/bzjss/zqyj/202203/P020220311547163224057.pdf>
- 50 Sina News. 电子烟新规5月1日实施 影响几何？The new regulations on electronic cigarettes will be implemented on May 1, and the impact will be geometric. <https://news.sina.com.cn/c/2022-03-14/doc-imcwiwss5932292.shtml>
- 51 Australia. National Tobacco Strategy 2023-2030 <https://www.health.gov.au/sites/default/files/2023-05/national-tobacco-strategy-2023-2030.pdf>