

Lawmakers in Colorado will soon be considering a new bill that would ban the sale of all flavoured tobacco products. The aim of the new law would be to curb the consumption of e-cigarettes by youth, in a state that has seen adolescent use of flavoured vaping products surge in recent years.

The bill would prohibit the distribution of flavoured cigarettes, tobacco products, or nicotine products, and would amend the definition of cigarette, tobacco product, or nicotine product to include products containing synthetic nicotine. It represents one of the first bills at the state level to attempt to comprehensively regulate tobacco, nicotine and vaping products such as by closing the potential synthetic nicotine loophole.

The main sponsor of the upcoming legislation is state representative Kyle Mullica, a Democrat from suburban Denver who is also a licensed emergency room nurse.

“We know that it’s the most effective way to try to make sure kids aren’t addicted to tobacco products, to nicotine products,” Mullica told the Denver Post. “And so I think it’s an important thing that we need to be looking at, especially from a public health standpoint.”

A law already exists that makes it illegal for Colorado retailers to sell flavoured tobacco products to anyone under the age of 21. But compliance with this rule remains an issue. In the city of Denver, one undercover investigation by the Department of Public Health and Environment found that nearly one in five retailers were violating this prohibition and selling e-cigarettes and other tobacco products to minors.

Responding to a perceived crisis

In September, the Centers for Disease Control (CDC) and US Food and Drug Administration (FDA) issued a joint report revealing that as many as 2m middle and high school students in the US used e-cigarettes in 2021. Of the 2m, 85% expressed a preference for flavoured products, with fruit, mint, and sweets mentioned as the top choices. The 2m still represents a significant drop from the previous year where the figure was 3.6m, though this drop is potentially methodological rather than a result of policy.

Anti-tobacco policy lobbyists were worried by the high rate of youth vaping in the state compared to adult use. The Campaign for Tobacco-Free Kids pointed to data in the Colorado Behavioural Risk Factor Surveillance System for 2020 showing that, overall, 18+ adults (which includes 18-21 year olds not permitted to legally vape in the state) had a 4.9% current e-cigarette use rate.

This compares to 2019 data from the Colorado Healthy Kids Survey showing past 30 day use of e-cigarettes was overall at 25.9% among high school students (down slightly from 27% in 2017).

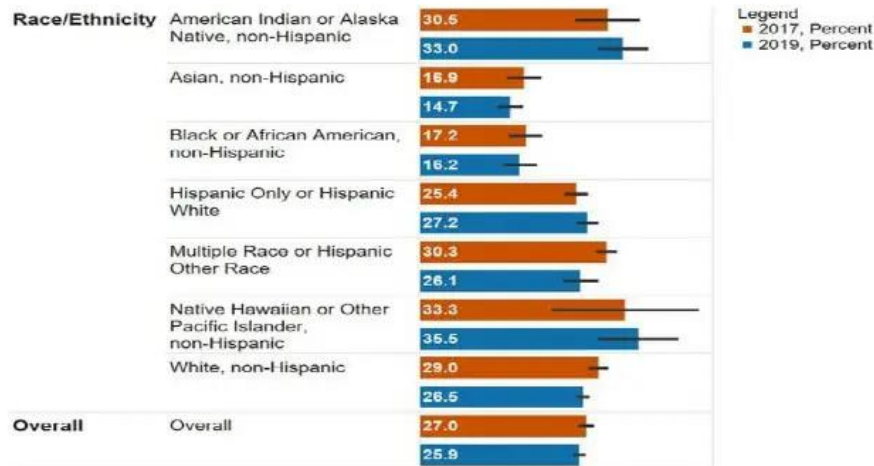
Adult Current E-cigarette Use by Demographics, Colorado, 2020

Age	18-24 years	15.2
	25-34 years	7.8
	35-44 years	4.7
	45-54 years	3.9
	55-64 years	1.9
	65+ years	0.1
Sex	Female	4.2
	Male	5.6
Race/Ethnicity	Black, non-Hispanic	5.6
	Hispanic	3.4
	Other, non-Hispanic	3.4
	White, non-Hispanic	5.3
LGB	Gay/Lesbian/Bisexual	12.2
	Heterosexual	3.4
Education	College grad	1.5
	High School or G.E.D	7.8
	Less than HS	4.2
	Some post-HS	7.1
SES	Low SES	4.2
	Not low SES	4.2
FPL	0-138% FPL	4.1
	139-250% FPL	3.3
	>250% FPL	3.8
STWYA	Non-STWYA	15.9
	STWYA	13.9
Poor Mental Health	No	4.1
	Yes	9.9
Overall	Overall	4.9

Data Source: CO Behavioral Risk Factor Surveillance System, 2020



Fact: 30 day use of e-cigarettes by race/ethnicity, High school students, 2017 and 2019



Data Source: CO Healthy Kids Colorado Survey, 2017, 2019



“When we look at Colorado data, we know it’s not the adults who are the end-users,” Jodi Radke, the regional director of the Campaign for Tobacco-Free Kids told ECigIntelligence. “Very few adults actually use vaping products. So our numbers don’t reflect high-use rates amongst adults and epidemic levels amongst our kids.”

A previous attempt to pass flavour-related legislation in 2020 stalled without the bill even making it to the floor for a vote. This renewed effort to ban flavoured tobacco across the state was sparked by another high-profile legislative failure, which happened in Colorado's largest city.

Just this past autumn, the Denver City Council passed a resolution that would have banned the sales of flavoured tobacco products within the Denver city limits. After vetoing the Council's resolution, mayor Michael Hancock said that while he also desired to reduce the nicotine use by youth in the city, the current pandemic had to be taken into consideration. Specifically, many convenience stores rely on revenue from flavoured tobacco products, and for many other retail stores it is their entire business model. He added that city-wide prohibition would be ineffective, since it would be easy for teens and others to obtain products from other nearby municipalities. He called on the legislature to take action at the state level, claiming a ban could only work if it covered all of Colorado.

Substantial repercussions for businesses

And now it appears they're ready to follow the mayor's advice – much to the consternation of businesses in Colorado that cater to the flavoured e-cigarette market.

Monica Vondruska, who owns two vape stores in the Denver area, is one of the leaders in the campaign to counter this type of legislation. She claims the passage of this new bill would cause her to close her businesses within 30 days, since 90% of her inventory is flavour related but aimed at serving the needs of the adult vaping community.

If the bill did lead to widespread closures among vaping retail establishments, the loss in revenue for the state and its citizens could also be substantial, the industry warned. A 2018 study by the Vaping Technology Association found that the vaping industry had created more than 2,800 new jobs in Colorado, while generating more than \$412m in overall economic activity and \$25m in tax revenues that year.

Vondruska also emphasised the negative effect such a ban could have on the health of legal-age users.

“Making things that are illegal for a certain age group more illegal for everyone doesn't really help that situation,” she said. “It just takes less harmful products away from adults that need them.”

Vondruska believes that vaping can help smokers who are trying to give up conventional cigarettes, and the CDC said that some research suggests the use of e-cigarettes does have value as a smoking cessation strategy – though it added that research is too limited to draw any definitive conclusions at this time.

Is prohibition really the best strategy?

If passed, it isn't clear how this new legislation might impact the development of the black market. This is where many underage tobacco users would undoubtedly get their vaping products, if that were the only option.

Presumably, illicit sellers could import their supplies from across state lines, instead of obtaining them locally. The current black market could certainly expand to fill extra demand once young users are no longer able to obtain flavoured tobacco products from locally owned vaping stores (either by purchasing them directly from retailers who don't comply with the rules, or by getting them from acquaintances who could buy such products legally). All of this would create an extra layer of criminality that police and prosecutors would be required to investigate, with all the added law enforcement costs that implies.

Some critics of flavoured tobacco prohibition state that more could be accomplished through the launching of new and beefed up education and prevention campaigns targeted at young users. In 2019, the state of Colorado diverted just 8% of its tobacco-related profits to such programmes, which suggests they aren't being funded well enough to fulfil their full potential.

Should this new bill eventually pass, it wouldn't become official unless signed into law by Colorado's governor. Speaking about the bill, a spokesperson for Democratic governor Jared Polis noted that "the governor has signed legislation providing local governments authority to regulate tobacco products and as a general philosophy prefers local control because local governments are closest to the people they represent".

This statement would seem to suggest the governor would not be a major supporter of a broad-based ban on an entire category of tobacco products and could perhaps veto such a bill. But until such a bill is actually passed, there is no way for certain to predict its final fate.