

Restrictions on e-cigarette flavours

July 2021

Overview

Over 30 countries do not permit the sale of e-cigarettes, and by extension do not permit the sale of flavoured e-cigarettes. Among the countries which permit their sale, 5 have introduced national-level bans on flavours (other than tobacco flavour) and two (Canada and the United States) have sub-national restrictions in place.¹

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 the promotion of 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.

The restrictions are unlikely to be in place before mid to late 2022: following a 75-day comment period on the proposed regulations, the comments must be reviewed, and the regulations finalized before they are published in the Canada Gazette. The government has indicated that it will allow a 6-month implementation period.

- Of Canada’s 13 provincial and territorial governments, 4 have banned the sale of any e-cigarette liquid other than tobacco flavour. As shown in Table 1, these are (in order of implementation): Nova Scotia, Prince Edward Island, New Brunswick and Nunavut.
- 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 not yet authorized the sale of e-cigarettes, but has adopted a policy of not enforcing a ban on their sale until September 9, 2021. 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 thus not yet fully developed.
 - In January 2020, the FDA notified that it would be enforcing against the sale of cartridge-based e-cigarettes. Only those with tobacco or menthol flavours would be permitted. Flavourings for vaping liquids for other devices were not affected.³
 - In June 2021, a U.S. Congress committee held hearings on FDA regulation of e-cigarettes, with representatives encouraging a ban on all flavours.⁴

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- Five U.S. States have enacted bans on the sale of flavoured e-cigarettes, and 4 of these bans are in place.⁵ As shown in Table 1, restrictions are in place (in order of implementation) in: Massachusetts, New Jersey, New York, and Rhode Island. California's legislation is suspended pending a referendum vote scheduled for XXXX.
- One State (Utah) restricts the sale of flavored e-cigarettes (except mint/menthol) to adult-only retail tobacco specialty businesses.

European Union

- 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.⁶ As shown in Table 1, 5 EU member states have adopted flavour restrictions on e-cigarettes. These are (in order of implementation): Finland, Estonia, Hungary, Denmark, and the Netherlands. Lithuania introduced draft legislation in June 2020.

Table 1: Regulatory controls on e-cigarette flavourings

Country	Status	Description	Implementation date
Canada	Regulatory Proposal ⁷	All flavours other than tobacco, mint and menthol are prohibited.	
British Columbia	Regulation ⁸	Flavours other than tobacco can only be sold in age-restricted specialty vape stores	September 15, 2020
New Brunswick	Law ⁹	Only tobacco-flavour is permitted	Sep 1, 2021
Nova Scotia	Law ¹⁰	Only tobacco-flavour is permitted	April 1, 2020
Nunavut	Law ¹¹	Only tobacco-flavour is permitted	TBD
Ontario	Regulation ¹²	Flavours other than tobacco and menthol can only be sold in age-restricted specialty vape stores	July 1, 2020
Prince Edward Island	Regulation ¹³	Only tobacco-flavour is permitted	March 1, 2021
Saskatchewan	Regulation ¹⁴	Flavours other than tobacco and menthol can only be sold in age-restricted specialty vape stores	September 1, 2021
United States	Policy ¹⁵	Flavours other than tobacco and menthol are banned in cartridge-based e-cigarette systems.	February 6, 2020
Massachusetts	Law ^{16 17} Law ¹⁹	All flavours other than tobacco flavour are prohibited	TBD ¹⁸
New Jersey	Law ²⁰	All flavours other than tobacco flavour are prohibited (exception for on-site consumption at specialized bars)	November 27, 2019
New York	Law ^{21 22}	All flavours other than tobacco flavour are prohibited	April 20, 2020
Rhode Island	Regulation ²³	All flavours other than tobacco flavour are prohibited	May 18, 2020
Utah	Law ²⁴	Flavours other than tobacco, mint and menthol can only be sold in age-restricted specialty vape stores	March 26, 2020 July 1, 2020
European Union			
Denmark	Law ²⁵	All flavours other than tobacco flavour are prohibited	April 1, 2022
Estonia	Law ^{26 27}	All flavours other than tobacco and menthol flavours are prohibited	July 2019, rev. May 2020
Finland	Law ²⁸	All flavours other than tobacco flavour are prohibited	2016
Hungary	Regulation ²⁹	All flavours other than tobacco flavour are prohibited	May 2020
Lithuania	Proposed law ³⁰	All flavours other than tobacco flavour are prohibited	
Netherlands	Law ³¹	All flavours other than tobacco flavour are prohibited	July 1, 2022

References

- 1 Countries which ban e-cigarette sales include: Antigua and Barbuda, Argentina, Australia, Bhutan, Brazil, Brunei, Cambodia, 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.
- 2 Canada Gazette. Order Amending Schedules 2 and 3 to the Tobacco and Vaping Products Act (Flavours) and Standards for Vaping Products' Sensory Attributes Regulations
<https://gazette.gc.ca/rp-pr/p1/2021/2021-06-19/html/index-eng.html>
- 3 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>
- 4 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>
- 5 See Public Health Law Center for more information. www.publichealthlawcenter.org
- 6 European Union. Tobacco Products Directive (2014/40/EU)
https://ec.europa.eu/health/tobacco/docs/dir_201440_en.pdf
- 7 Canada Gazette. Order Amending Schedules 2 and 3 to the Tobacco and Vaping Products Act (Flavours) and Standards for Vaping Products' Sensory Attributes Regulations
<https://gazette.gc.ca/rp-pr/p1/2021/2021-06-19/html/index-eng.html>
- 8 British Columbia Order in Council 426. https://www.bclaws.ca/civix/document/id/oic/oic_cur/0426_2020#
- 9 Bill 63, An Act to Amend the Tobacco and Electronic Cigarette Sales Act. <https://www.gnb.ca/legis/bill/FILE/60/1/Bill-63-e.htm>
- 10 Nova Scotia Legislature. Bill 233. <https://nslslegislature.ca/legislative-business/bills-statutes/bills/assembly-63-session-2/bill-233>
- 11 Nunavut Legislature. Bill 57. Tobacco and Smoking Act. <https://www.assembly.nu.ca/sites/default/files/Bill-57-Tobacco-and-Smoking-Act-EN.pdf>
- 12 Ontario Regulation 197/20 amending Regulation 268/18. <https://www.ontario.ca/laws/regulation/r20197>
- 13 Prince Edward Island Order in Council EC2020-489.
<https://www.princeedwardisland.ca/sites/default/files/publications/20200811truwww.pdf>
- 14 Saskatchewan. Tobacco and Vapour Products Control Amendment Regulations, 2021. (Order in Council
<https://publications.saskatchewan.ca/#/products/112599>)
- 15 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>
- 16 California. Health & Safety Code § 104559.5(b), (c) (2021)
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=104559.5.&lawCode=HSC
- 17 California state legislature. SB-793 Flavored tobacco products.
https://leginfo.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200SB793
- 18 Los Angeles Times. California Flavored Tobacco ban blocked. <https://www.latimes.com/california/story/2021-01-22/california-flavored-tobacco-ban-blocked-2022-ballot-referendum-qualifies>
- 19 Commonwealth of Massachusetts. An act Modernizing Tobacco Control . <https://malegislature.gov/Bills/191/H4183>
- 20 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>
- 21 New York Public Health Law § 1399-mm-1(2) (2021)
<https://legislation.nysenate.gov/pdf/bills/2019/S7506B>
- 22 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>
- 23 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>

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- 24 Utah Criminal Code Code, Chapter 10, Part 1, Section 113 (2021)
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 - 25 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/lta/2020/2071>
 - 26 Estonia. Riigi Teataja (2019). Tobacco Act. Available: <https://www.riigiteataja.ee/en/eli/ee/523052019008/consolide>
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