

March 20, 2023

RE: HB 3090 Prohibits distributing, selling, attempting to sell or allowing to be sold flavored inhalant delivery system product or flavored tobacco product
Position: OPPOSE

Dear Distinguished Members of the House Committee on Behavioral Health and Health Care,

I am a retired police lieutenant and the executive director of the Law Enforcement Action Partnership (LEAP), a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak out about best law enforcement practices. LEAP's mission is to unite and mobilize the voice of law enforcement in support of drug policy and criminal justice reforms that will make communities safer by focusing law enforcement resources on the greatest threats to public safety, promoting alternatives to arrest and incarceration, addressing the root causes of crime, and working toward healing police-community relations.

I am writing to you today because of the proposed flavored tobacco ban now being considered in Oregon. I know the toll on policing that menthol bans have taken elsewhere, and I want to urge you not to go down the same path. I suspect that, like I do, all members of the committee want to reduce the prevalence of smoking, a deadly habit that takes the lives of nearly a million Americans each year. This is a worthy cause deserving our attention, but prohibiting menthol and other flavors does not end their sale; it creates an underground market.

Bans on flavored tobacco put police in the position of dealing with yet another public health problem we cannot fix at the expense of our ability to fight crime. Prohibition impacts a safe and legal supply but does not end the demand for a product. Even if law enforcement focuses on businesses that violate tobacco laws — and not individual sellers — we know that police still end up interacting with individuals over tobacco violations. These interactions destroy police-community trust and make our difficult jobs that much harder. People who do not trust us do not report crimes, even when they themselves are the victim. People are more than mistrusting: they are afraid. What this says about our laws is that we must think deliberately about what we ask the police to enforce. Police should only be sent to enforce laws that make our neighborhoods safer places to live, and tobacco bans do not make us safer.

Incidents of violence between the police and citizens that are related to illegal cigarettes or tobacco have already occurred in the United States in communities of color. A tobacco ban in Oregon will disproportionately affect communities of color, just as the rest of the drug war already has. The Centers for Disease Control and Prevention (CDC) states that 1 in 7 (around 14%) of non-Hispanic Black adults' smoke cigarettes and, as of 2019, approximately 85% of non-Hispanic Black adults who smoked used menthol cigarettes.

The evidence for this everywhere: Eric Garner was allegedly selling loose cigarettes when he was choked and killed by a police officer. In 2020, there was an incident in [Rancho Cordova](#) where a police officer used excessive force on a 14 year old during a tobacco product investigation. And in June 2021, police officers tackled, kicked, and tasered teens when enforcing a vaping ban on a boardwalk in [Maryland](#). LEAP understands that these are not isolated incidents but rather examples of the further challenges facing policing in America. Prohibiting — and consequently criminalizing — the sale of menthol cigarettes will only make it worse. Instead of a ban, Oregon should prioritize public education on the health risks of tobacco use. Much of the coverage of tobacco control has centered on the problem of youth use and the impact on their health. However, vaping rates among middle-schoolers and high schoolers significantly declined in 2021, as they have been over the past few years.

Additionally, the flavor bans that have been instituted in countless towns, cities, and states throughout the country are poor policy: A study published in [JAMA Pediatrics](#), for example, has suggested that a flavor ban in San Francisco actually increased smoking rates among high-schoolers when compared to other school districts throughout the country. Another study, published in [Nicotine & Tobacco Research](#) in July 2021, showed that if "vape product sales were restricted to tobacco flavors," one-third of US vapers aged 18 to 34 said that they would switch to smoking. And perhaps even more elucidating, a study that also appeared in [Nicotine & Tobacco Research](#) suggested that teens who vape would probably

be smoking cigarettes instead if vapes had never become available. These three peer-reviewed articles support the thesis that bans, at the very least, do not achieve their politically desired outcomes. Furthermore, the [surgeon general](#) in 2020 stated there is not enough evidence to claim a ban on menthol cigarettes is an effective way to encourage cessation.

Other states have enacted bans and not seen the hoped for results. [Massachusetts](#) passed a statewide ban on flavored tobacco products in 2020, and cigarette purchases subsequently declined in-state while increasing substantially in bordering states. There's no evidence that banning flavored tobacco has reduced smoking in [Massachusetts](#), but there is plenty of evidence showing that people still found a way to get flavored tobacco products regardless of the law, shuttling millions in tax revenue out of the area. Recently Massachusetts lawmakers announced that they are considering a repeal of the ban on menthol cigarettes and flavored tobacco.

This ban would keep us on the wrong side of history as we once again put reactionary, unscientific policies ahead of reason, strategy, and community safety. Reducing smoking requires a public health approach: honest educational campaigns about the risks; access to harm reduction resources; access to smoking cessation tools; and curbing predatory advertising that targets youth, Black smokers, low-income communities, and other vulnerable populations.

As one of many stakeholders, the police have a crucial role in designing policy that mitigates harmful criminal justice interventions on their constituencies. To that end, we strongly encourage this committee to reject HB 3090, a prohibition of flavored tobacco products as such a prohibition will foster the establishment of illegal cigarette markets, contribute to already elevated levels of violence in our communities, further exacerbate the division and distrust that exists between our communities—especially our communities of color—and policing in America, and have little to no effect on the health of residents.

Please reject this bill and instead focus on expanding anti-smoking education, and prevention and cessation resources for those who need it most. Thank you for your time.

Respectfully,

Diane Goldstein
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