

**Elizabeth Dunn**

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**From:** Matt Rodriguez  
**Sent:** Tuesday, December 4, 2018 6:50 PM  
**To:** Reina Schwartz; Charles Ching; Ron Raman; Elizabeth Dunn  
**Cc:** Lynn Tracy Nerland  
**Subject:** New State Legislation on Flavored Tobacco Ban

Folks:

The State Senate introduced two (2) new Flavored Tobacco Ban bills yesterday. See below.

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## State Lawmakers Introduce Bill to Ban Sales of Flavored E-Cigarettes and All Other Flavored Tobacco Products to Combat Use by Youths | Also Introduce Bill to Set Stricter Rules for Age Verification in Sales of Tobacco Products Online and by Mail



December 03, 2018  
*Updated from original November 29 announcement as noted below.*

For Immediate Release – [Office of State Senator Jerry Hill](#) – Monday, December 3, 2018

### **State Lawmakers Introduce Bill to Ban Sales of Flavored E-Cigarettes and All Other Flavored Tobacco Products to Combat Use by Youths**

### **Legislators Also Introduce Bill to Set Stricter Rules for Age Verification in Sales of Tobacco Products Online and by Mail**

SACRAMENTO – Led by Senator Jerry Hill, nearly 20 state lawmakers introduced a bill today to prohibit sales of flavored tobacco products – including flavored electronic cigarettes and menthol cigarettes – in retail stores and vending machines to halt an upswing in nicotine consumption by youths.

Joined by more than a dozen legislators, Senator Hill, D-San Mateo and Santa Clara Counties, also introduced a bill to impose stricter age verification requirements for tobacco products of all kinds that are sold online or by mail, phone or fax.

**Senate Bills 38 and 39**, are prompted by new federal figures showing a sharp rise in e-cigarette use by youths, a jump in use of the flavored e-cigarettes by high school students, and an increase in underage use of tobacco products overall.

Senator Hill introduced [SB 38](#), the bill to ban flavored tobacco products, with Senators [Steve Glazer, D-Orinda](#), [Mike McGuire, D-North Coast/North Bay](#), and [Anthony Portantino, D-Cañada Flintridge](#), who are joint authors of the bill,

and Assemblymembers [Kevin McCarty, D-Sacramento](#), and [Jim Wood, D-Santa Rosa](#), who are principal coauthors. The other coauthors of the bill are Senators [Ben Allen, D-Santa Monica](#), [Jim Beall, D-San Jose](#), [Connie M. Leyva, D-Chino](#), [Nancy Skinner, D-Berkeley](#), and [Scott Wiener, D-San Francisco](#), and Assemblymembers [Marc Berman, D-Palo Alto](#), [Richard Bloom, D-Santa Monica](#), [Cristina Garcia, D-Bell Gardens](#), [Al Muratsuchi, D-Torrance](#), [Patrick O'Donnell, D-Long Beach](#), [Mark Stone, D-Monterey Bay](#), and [Phil Ting, D-San Francisco](#).

Senators Glazer and Portantino are joint authors and Assemblymember McCarty is a principal coauthor of Senator Hill's [SB 39](#), which would tighten age verification requirements in online, mail, phone and fax sales of tobacco products. Joining as coauthors are Senators Allen, Beall, Leyva, Skinner, [Bob Wieckowski, D-Fremont](#), and Wiener and Assemblymembers Berman, Bloom, C. Garcia, Ting and Wood.

"I am grateful for the early support of so many colleagues for this legislation," said Senator Hill. "We must stop the appalling epidemic of e-cigarette use by youths. Enticed by fruit, candy and other appealing flavors, high school and middle school students throughout the U.S. are vaping in record numbers. The surge has reversed the decline in underage use of all tobacco products."

"Flavored e-cigarettes are luring young people into a nicotine addiction that can lead to a lifetime of harmful health effects," said Senator Glazer. "This needs to stop before we get another generation hooked on nicotine and tobacco."

"One of the mayors in my district recently asked me to help stem the vaping crisis, and as a dad of a teenage daughter I am very pleased to join my colleague Jerry Hill on this important public health effort," said Senator Portantino.

"Flavored tobacco products are extremely appealing to our youth, but we know these products are addicting and can negatively impact brain development during crucial years," said Assemblymember McCarty. "California must set new standards to protect our youth."

### Soaring E-Cigarette Use by Youths

Citing an alarming rise in e-cigarette use among youths, the U.S. Food and Drug Administration and the U.S. Centers for Disease Control and Prevention [released a report](#) on November 15 showing that more than 3.6 million middle and high school students are using e-cigarettes – that's 1.5 million more than in 2017 and almost 13 times the number of students who were using e-cigarettes in 2011.

The stunning growth between 2017 and 2018 amounted to a 78 percent increase in e-cigarette use by high school students and a 48 percent increase by middle school students, according to the report. By 2018, 1 in 5 high school students were using e-cigarettes and 1 in 20 middle school students were doing the same. The year-over-year spike in e-cigarette use also drove up use of tobacco products overall to almost 4.9 million students in 2018, erasing what had been a decline.

"(T)he use of any form of tobacco product among youths, including e-cigarettes, is unsafe," [the report said](#). "The Surgeon General has concluded that e-cigarette use among youths and young adults is of public health concern; exposure to nicotine during adolescence can cause addiction and can harm the developing adolescent brain."

The [California Department of Public Health warns](#) that the danger posed by e-cigarettes is not limited to their nicotine content. E-cigarette aerosol contains at least 10 chemicals on California's Proposition 65 list of substances known to cause cancer, birth defects or other reproductive harm, including acetaldehyde, benzene, cadmium, formaldehyde, isoprene, lead, nickel, nicotine, n-nitrosornicotine and toluene.

### Study after Study Shows Flavored Tobacco Products Turn Youths into Users

FDA Commissioner Scott Gottlieb and authors of the federal report pointed to flavored products as the cause for increased e-cigarette use, noting that 68 percent of the e-cigarette users in high school consumed flavored products in 2018, up from 61 percent in 2017. [Other federal research](#) has consistently shown that the majority of youths and young adults say flavors are the primary reason for their use of a tobacco product, and 80 percent of young people who have ever used tobacco say they started with a flavored tobacco product.

In March, the [Campaign for Tobacco-Free Kids](#) urged the FDA to ban all flavored tobacco products, saying that an abundance of evidence clearly identifies them as the lure for youngsters and teens to become tobacco users.

This fall, the FDA proposed a plan to ban menthol cigarettes and flavored cigars and said it is considering restrictions on the sales of e-cigarettes in retail stores, but such proposals would have to undergo the regulatory process and could take years to become a reality.

Although the FDA has also called upon e-cigarette companies to act voluntarily in response to the recent federal report, “specific prohibitions and restrictions need to have the full force of the law behind them,” said Senator Hill. “In California, we can and should put that law on the books as soon as possible.”

#### Leading Health Groups Voice Support

The [American Heart Association](#), the [American Lung Association in California](#), and the [Campaign for Tobacco-Free Kids](#) were among the leading health organizations voicing support for legislation to prohibit sales of flavored tobacco products.

“Menthol, candy and fruit flavored tobacco products are a key part of the tobacco industry’s strategy to bait youth into becoming tomorrow’s addicts, and we cannot waste time addressing the skyrocketing use of e-cigarettes among California’s youth,” said [American Cancer Society Cancer Action Network](#) Senior Government Relations Director Tim Gibbs. “Make no mistake—the industry shamelessly tries to maximize profits while its customers suffer death and disease, and local taxpayers continue to foot the bill for tobacco-related illnesses.”

“The [African American Tobacco Control Leadership Council](#) is heartened at the progressive leadership shown by Senator Jerry Hill and the other lawmakers coauthoring this legislation,” said AATCLC Founding Member and Co-Chair Carol McGruder. “The proposed bill to prohibit the sales of menthol cigarettes and all other flavored tobacco products, including flavored e-cigarettes, will ensure California’s children are protected from a lifetime addiction to these deadly products.”

#### The Proposed Solution for California

Under SB 38, retail stores and vending machines in California would be prohibited from selling flavored tobacco products. The legislation uses existing law to define the items encompassed by the term “tobacco product.”

Under [California Health Safety Code 104495 \(a\) \(8\) \(A\)](#), “tobacco product” means any of the following:

- i. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other mean, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
- ii. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
- iii. Any component, part, or accessory of a tobacco product whether or not sold separately.

Violators of SB 38 would face civil penalties ranging from \$400 to \$600 for the first incident to \$5,000 to \$6,000 for a fifth violation in a five-year period.

SB 39 would require sellers and distributors of tobacco products online or by mail, phone or fax to verify that California buyers are 21 or older before the sale is complete. In addition, the legislation would require the shipped package of goods to be conspicuously labeled: “CONTAINS TOBACCO PRODUCTS: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY.” The products are not to be delivered to a post office box and the required signature is to be obtained before the delivery is complete.

Violations of SB 39 by sellers or distributors would result in civil penalties, ranging from \$1,000 to \$2,000 for the first incident to \$10,000 for a fifth violation within a five-year period. Postal carriers and other delivery people, who must collect the signature but are not required to card the signatory, would not be held liable for a sales violation. The law makes the age verification requirements for non-bricks-and-mortar sales of tobacco products similar to the law covering such sales of alcoholic beverages.

“By banning retail sales of flavored tobacco products and setting stringent age verification requirements for online sales of tobacco products, we can prevent a new generation from becoming addicted to nicotine,” Senator Hill said.

As the mayor of San Mateo, Jerry Hill championed reduction of second-hand smoke and led the way in revising a local smoking ordinance thereby banning smoking in enclosed work areas, restaurants and bars in 1994. Similar statewide prohibitions contained in [Assembly Bill 13](#) began taking effect the [following year](#) with state smoking restrictions in bars and taverns phased in by 1998.

Twenty-six California cities, towns and counties have restricted flavored tobacco products, according to the [Center for Tobacco Policy and Organizing](#) of the American Lung Association in California. The majority are in the greater Bay Area. They include Marin County, Saratoga, Half Moon Bay, Portola Valley, Richmond, Sausalito, San Mateo

County, San Francisco, Windsor, Cloverdale, Fairfax, San Leandro, Palo Alto, Oakland, Contra Costa County, Los Gatos, Novato, Santa Clara County, El Cerrito, Berkeley, Sonoma and Hayward.

The legislation introduced today creates a threshold for restrictions and prohibitions regarding tobacco product sales. The bills do not prevent local jurisdictions from taking further steps.

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#### Bill Text

Senate Bill 38:

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB38](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB38)

Senate Bill 39:

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB39](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB39)

The text for the bills will be posted within 24 hours at:

<http://leginfo.legislature.ca.gov/>

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More Resources:

Centers for Disease Control Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018:

[https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s\\_cid=mm6745a5\\_w](https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s_cid=mm6745a5_w)

2018 National Youth Tobacco Survey Chart:

<https://www.fda.gov/downloads/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/UCM625955.pdf>

FDA News Release on 2018 NYTS Figures:

<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625917.htm>

Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014):

<https://www.ncbi.nlm.nih.gov/pubmed/28318902>

Statement from Campaign for Tobacco-Free Kids:

[https://www.tobaccofreekids.org/press-releases/2018\\_03\\_20\\_menthol](https://www.tobaccofreekids.org/press-releases/2018_03_20_menthol)

Statement from FDA Commissioner Scott Gottlieb:

<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>

The Center for Tobacco Policy and Organizing of the American Lung Association in California:

<https://center4tobaccopolicy.org/wp-content/uploads/2018/11/Matrix-of-Local-Ordinances-Restricting-Flavored-Tobacco-2018-11-14.pdf>

California Department of Public Health: Health Advisory on E-Cigarette Toxicity:

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/Media/NewsAndPressReleases/EcigHealthAdvisory01282015.pdf>

California Department of Public Health: Infographic on Flavored Tobacco:

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/Policy/FlavoredTobaccoAndMenthol/FinalFlavoredTobaccoInfographic.pdf>

*Updated release on December 3, 2018, announces proposals are now two bills, instead of one; lists growing number coauthors; includes bill text as pdfs. Updated December 4 to substitute database links for bill pdfs. Original release posted November 29, 2018, to announce plans for legislation.*

Sincerely,

*Matt*

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