

**Testimony before the Arizona Senate Appropriations Committee
Regarding Local Regulation of Vapor Products**

**Lindsey Stroud, Director
Consumer Center
Taxpayers Protection Alliance
February 8, 2022**

Chairman Gowan, Vice-Chairman Leach, Members of the Committee:

Thank you for your time today to discuss the issue of promoting the health of Arizona adults through prohibition and taxation. My name is Lindsey Stroud and I am Director of the Taxpayers Protection Alliance's (TPA) Consumer Center. TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy. TPA's Consumer Center focuses on providing up-to-date information on adult access to goods including alcohol, tobacco and vapor products, as well as regulatory policies that affect adult access to other consumer products, including harm reduction, technology, innovation, antitrust and privacy.

Many supporters of localized control of age-restricted consumer products purport those local policies will reduce youth vapor product use. Existing data from youth surveys indicate that local policies have not reduced youth use and may have led to greater instances of vaping-related injuries in the fall of 2019. Rather than allowing localities to impose draconian regulatory policies that would essentially prohibit adult access in that particular town and incentivize a black market, state lawmakers should utilize existing tobacco monies to fund robust tobacco control programs to reduce you use of age-restricted products.

Effects of Local Tobacco/Vapor Regulation on Youth Use

Many proponents of localized authority over the regulation of both tobacco and vapor products claim that localities such as cities and counties are better equipped to reduce youth use of tobacco and vapor products. Despite this claim, in states with local flavor bans and taxes, youth use of vapor products increased.

As of November 30, 2018, six states including California, Illinois, Massachusetts, Minnesota, New York, and Rhode Island had localities which had restricted sales of flavored tobacco and/or vapor products.¹

Notably, Massachusetts was home to 136 localities that had passed flavor ban and despite these local regulations, statewide use of vapor products increased. In 2017, according to data from the Centers for Disease Control and Prevention's (CDC) Youth Risk Behavior Surveillance Survey (YRBSS), among high school students, 41.1 percent had ever tried e-cigarettes and 20.1 percent were current e-cigarette users. In 2019, despite the fact that nearly half of Massachusetts'

localities had restricted flavored tobacco and vapor sales, ever e-cigarette use had increased by 23.4 percent, to 50.7 percent of high school students and current use increased by 60.2 percent to 32.2 percent of high school students being current e-cigarette users.

Localities have also seen an increase in youth vapor product use despite local restrictions in place. Contra Cost County, California had banned the sale of flavor tobacco and vapor products in certain localities in the county and experienced an increased in youth vaping rates. While the 2015-16 California Youth Tobacco Survey (CYTS) included other localities including Marin, San Francisco, San Mateo and Solana, the 2017-2018 CYTS survey reported only on Contra Costa. In 2015-16, 8.3 percent of high school students in the various localities reported current use of electronic cigarettes and vaping devices.² In the 2017-18 CYST survey of solely Contra Costa County high school students, this number *increased* to 17.2 percent reporting current e-cigarette use.³

Tobacco and vapor product restrictions also create incentives for criminal enterprises to profit from illicit banned products, especially when one locality is imposing such restrictions while others are not.

For example, Cook County, Illinois (which includes the City of Chicago) is notorious for its excessive county (and city) excise tobacco tax. In fact, due combat the illicit cigarette market, Cook County has implemented the Cigarette Tax Reward Program, which offers monetary awards of up to \$250 to persons reporting those seeking to avoid paying cigarette taxes, including people who use unstamped or counterfeit packs or even stray cigarettes.⁴ It has been reported that Chicago police issue an estimated \$4 million worth of tobacco citations each year, however, only 15–20 percent are actually paid.⁵

In February 2020, WGN-TV followed Chicago’s Department of Business Affairs and Consumer Protection as agents “searched for illegal cigarettes in stores through” the city.⁶ In 2019, the department “issued \$838,000 worth of fines for illegal tobacco sales.” Agents told WGN-TV News that there is “a direct link between unstamped cigarettes and crime in [Chicago] neighborhoods.”

The black market is so lucrative that in 2016 city council hearing, Chicago Alderman Roderick Sawyer “said he knows one man who makes \$800 a day selling” loose cigarettes.⁷

Although localities mean well, allowing restrictive local policies that do not match surrounding localities or the rest of the state will not reduce youth use of age restricted products and will help create incentives for black markets.

Localized Flavor Bans Led to More Cases in Vaping-Related Lung Injuries

In the late summer and fall of 2019, the CDC and state health departments began to track a mysterious spat of vaping-related lung injuries. As seemingly as the outbreak began, it faded away, and the CDC quit monitoring cases in February 2020.

According to national data, there was a “sharp rise in symptoms or cases ... in August 2019, a peak in September 2019, and a gradual, but persistent decline since then.” As of February 18, 2020, the CDC had identified 2,807 cases of vaping-related lung injuries and 68 deaths.

Of the cases, CDC had data on 2,022 hospitalizations and found that 82 percent had used vapor products containing tetrahydrocannabinol (THC), with 33 percent reporting exclusive use of THC-vapor products. Of the patients who reported using THC and provided information on the source of their vapor product, 78 percent “reported acquiring products only from informal sources” these included family and/or friends, dealers, online resources and other sources.

The spat of vaping-related lung injuries offers unique insight in how state and local regulations can impact public health outbreaks related to illicit products.

For example, prior to the outbreak, seven states had localities that had restricted the sale of flavored vaping products including California, Colorado, Illinois, Massachusetts, Minnesota, New York and Rhode Island.

According to data from the CDC, 11 states reported 100 or more cases of vaping-related lung injuries; five of these states (Massachusetts, Minnesota, California, New York, and Illinois) were states with local flavor bans in effect. Of the 11 states reporting 1 to 9 cases of vaping-related lung injuries, only two had local flavor bans in effect (Colorado and Rhode Island).

Interestingly, localized flavor bans were also associated with a greater chance of a vaping-related death. Six of the seven states reported vaping-related deaths including three deaths in Minnesota, four in California and New York, and five deaths each in Illinois and Massachusetts.

(See Supplemental Graph 1.1)

Funding State Tobacco Control Programs Would Address Youth Use

Again, while addressing youth use of age-restricted products is laudable, the state is better equipped to use already existing tobacco monies to fund robust tobacco control programs including education, youth prevention and cessation. Unfortunately, the Grand Canyon State woefully underfunds such programs.

Between 2000 and 2020, Arizona collected an estimated \$5.9 billion in cigarette taxes.⁸ During the same 20-year period, the Grand Canyon State increased the tax rate on cigarettes twice. The last tax increase raised the rate by \$0.82, to \$2.00 per pack.

The increase did lead to an immediate 32.7 percent increase in cigarette tax revenue two years after the tax was imposed, but this has steadily declined in the long-term. Since 2008 cigarette tax revenue declined on average by 2.8 percent annually. In 2020, Arizona collected \$275.4 million in cigarette tax revenue, a 29.2 percent decrease from the \$388.9 million in cigarette tax revenue that was collected in 2008.

In the mid-1990s, Arizona sued tobacco companies to reimburse Medicaid for the costs of treating smoking-related health issues. And, in 1998 with 45 other states, the Grand Canyon State reached “the largest civil litigation settlement in U.S. history” through the Master Settlement Agreement (MSA).⁹

Under the MSA, states receive annual payments – in perpetuity – from the tobacco companies, while relinquishing future claims against the participating companies. Between 2000 and 2020, Arizona collected \$2.184 billion in MSA payments.¹⁰

Tobacco taxes and tobacco settlement payments are justified to help offset the costs of smoking, as well as prevent youth initiation. Like most states, Arizona spends very little of existing tobacco moneys on tobacco control programs – including education and prevention.

Between 2000 and 2020, Arizona allocated only \$456.2 million in state funds towards tobacco control programs.¹¹ This is 7.7 percent of what the state collected in cigarette taxes in the same 20-year time span and 21 percent of MSA payments. In total, in 20 years, Arizona allocated only 5.6 percent of what the state received in tobacco taxes and settlement payments towards tobacco education and prevention efforts. In essence, for every \$100 received in tobacco-related taxes and settlement payments, the state spent \$5.60 funding tobacco control programs.

(See Supplemental Graph 1.2)

Economic Impact of Vaping in Arizona

In 2021, according to the analysis by the Vapor Technology Association, the industry created 1,516 direct vaping-related jobs. These jobs generated more than \$59.7 million in wages.¹² Moreover, the industry has created hundreds of secondary jobs in the Grand Canyon State, bringing the total economic impact in 2021 to \$463 million. In the same year, Arizona received more than \$27 million in state taxes attributable to the vaping industry.

Unlike other states, Arizona’s vaping industry has not been as severely impacted by the efforts of anti-vaping organizations and policymakers, but it has not had tremendous growth. The number of employees has increased by only 5.8 percent, from 1,433 employees in 2018 to 1,516 in

2021.¹³ The overall economic impact of the vaping industry has increased by 11.5 percent from \$415.1 million in 2018 to \$463 million in 2021.

(See Supplemental Graph 1.3)

Arizona Retailers Do Good Job Not Selling to Minors

The U.S. Food and Drug Administration (FDA) regularly performs tobacco compliance checks in which the agency uses a minor to attempt to purchase tobacco products including cigars, cigarettes, e-cigarettes, and smokeless tobacco.¹⁴

From May 20, 2019, to December 29, 2021, FDA conducted 2,165 inspections in tobacco retailers located in the Grand Canyon State. Only 278, or 12.8 percent, resulted in the sales of tobacco products to minors.

Of the sales to minors, 120 (43.2 percent of violations and 5.5 percent of inspections) were sales of cigars, 100 (36 percent of violation and 4.6 percent of inspections) were sales of e-cigarettes and vape products, and 56 (20.1 percent of violations and 0.5 percent of inspections) were sales of cigarettes.

Of retailers with “vape” in their retail name, the FDA conducted inspections on 120 such retailers, including standalone vape shops and vape and tobacco stores. Of the inspections, 28 resulted in sales to minors, seven of which were sales of cigars. E-cigarette violations only made-up 17.5 percent of retail vape shop inspections, 7.5 percent of all retail violations and one percent of all inspections.

(See Supplemental Graph 1.4)

Youth Tobacco and Vaping Rates

The most recent data on youth tobacco and vapor product use in Arizona comes from the 2019 Youth Risk Behavior Survey.¹⁵ In 2019, 48.4 percent of Arizona high school students reported ever-trying e-cigarettes, 17.9 percent reported past 30-day use, and 5.7 percent reported using vapor products daily.

It is worthy to note that youth combustible cigarette use is at an all-time low. In 2019, 24.6 percent of Arizona high school students reported ever-trying combustible cigarettes, this is a 59.6 percent decrease from 60.9 percent in 2003. In 2019, 5.3 percent of Arizona high school students reported using a cigarette in the past 30 days, a 77.3 percent decrease from 2003, when 23.3 percent of high school students smoked cigarettes. Further, daily cigarette use has decreased by

93.8 percent from 7.4 percent of high school students reporting daily smoking in 2003 to 0.4 percent in 2019.

Moreover, nationally, the youth vaping rate continues to decline. In 2021, according to the National Youth Tobacco Survey (NYTS), an estimated 11.3 percent of high school students and 2.8 percent of middle school students reported having used a vapor product on a least one occasion in the month prior to the survey.¹⁶ Further, only 3.1 percent of high school students and less than one percent of middle schoolers reported daily e-cigarette use. The rate of decline is remarkable: among high school students, vaping rates have declined by 41.8 percent since 2020 and by 58.9 percent since 2019, when 27.5 percent reported using e-cigarettes.

E-Cigarette Product Emergence Associated with Significant Decline in Young Adult Smoking Rates

Electronic cigarettes and vapor products were first introduced to the U.S. in 2007 “and between 2009 and 2012, retail sales of e-cigarettes expanded to all major markets in the United States.”¹⁷ Moreover, between September 2014 and May 2020, e-cigarette sales in the U.S. increased by 122.2 percent.¹⁸

Examining data from the CDC’s BRFSS finds that e-cigarettes’ market emergence has coincided with a significant reduction in smoking rates among young adults.

In 1998, among current adult smokers, 10.7 percent were 18 to 24 years old. In 2008, this had increased by 25.2 percent to 13.4 percent of adult smokers in Arizona being between 18 to 24 years old.

In the years after e-cigarette’s market emergence in the early 2010s, smoking rates among current smokers aged 18 to 24 years decreased by 54 percent. Indeed, in 2011, among current smokers in Arizona, 19.3 percent were between 18 to 24 years old. In 2020, only 6.9 percent of current smokers were 18 to 24 years old.

Interestingly, e-cigarettes’ market emergence was associated with a larger decline in average annual percent decreases. Between 1998 and 2008, the percentage of current smokers aged 18 to 24 years old increased on average by 10.6 percent each year. Between 2011 and 2020, annual percentage decreases average at 3.7 percent.

Further, since 2016, when the U.S. surgeon general issued an alarm about youth e-cigarette use, smoking rates among adults aged 18 to 24 years in the Grand Canyon State have decreased by 23.3 percent, with an average annual decrease of 3.8 percent.

(See Supplemental Graph 1.5)

**Taxpayers Protection Alliance, 1101 14th Street, NW., Suite 1120, Washington, D.C. 20005
(202) 930-1716, www.protectingtaxpayers.org**

Conclusion & Summary Points:

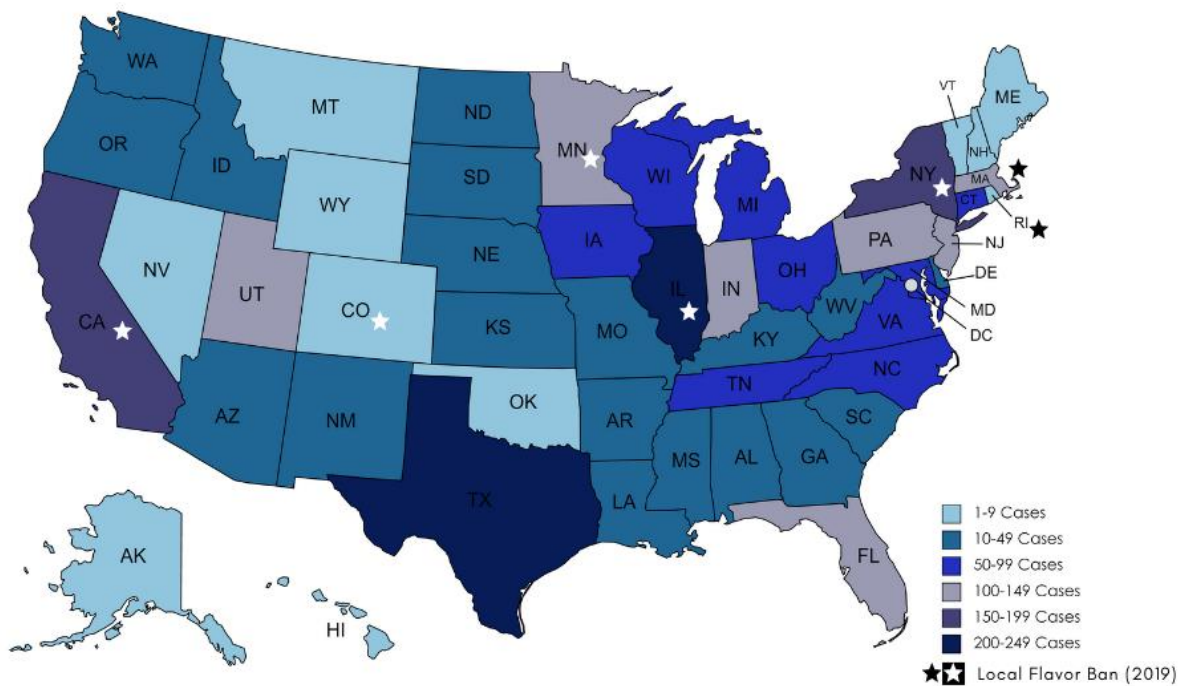
While addressing youth use of age-restricted products is laudable, localized regulatory authority over vapor products does not reduce youth use of vapor products. Centralized control from the state and adequate funding for robust tobacco control programs would help reduce youth use.

- Localized flavor bans have not reduced youth tobacco use. Despite several states implementing local flavored tobacco and vapor bans, youth vaping increased between 2017 and 2019
- Localized restrictions on consumer goods create incentives for black market actors to profit from illicit unregulated products.
- Unregulated products were overwhelmingly linked to the 2019 spat of vaping-related lung injuries. Interestingly, states with local flavor bans prior to the outbreak reported more cases of lung injuries.
- Robust funding from the state could help reduce youth use of age-restricted consumer goods, but unfortunately, Arizona continues to allocate very little of tobacco-related settlement payments and taxes on tobacco control programs, including education and prevention.
- In 2020, the Grand Canyon State collected \$275.4 million in state cigarette excise taxes and \$94.3 million in tobacco settlement payments yet allocated only \$17 million (4.6 percent) to tobacco control. In 20 years, for every \$100 the state received in tobacco-related payments, it spent \$5.60 funding tobacco control programs.
- Arizona's vaping industry generated \$463 million in economic activity in 2021 while generating 1,516 direct vaping-related jobs and contributed more than \$27 million in state taxes.
- The vaping industry has had minimal growth due to anti-vaping policies. The number of employees has only increased by 5.8 percent from 2018 and overall economic impact has increased by 11.5 percent from 2018's \$415.1 million.
- Arizona vapor product retailers do a good job in not selling to minors. Between 2019 and 2021, only 20 vape and tobacco shop retailers were issued orders from the FDA for selling to minors. This accounts for 17.5 percent of all vape shop retail inspections during the same time period, 7.5 percent of retail violations and one percent of all inspections.
- E-cigarettes' market emergence is associated with low young adult smoking rates. In 2020, among current smokers in Arizona, only 6.9 percent current smokers were 18 to 24 years old – a 54 percent decrease from 2011. Further, since 2016, smoking rates among young adults have decreased by 23.3 percent.

Supplemental Graphs

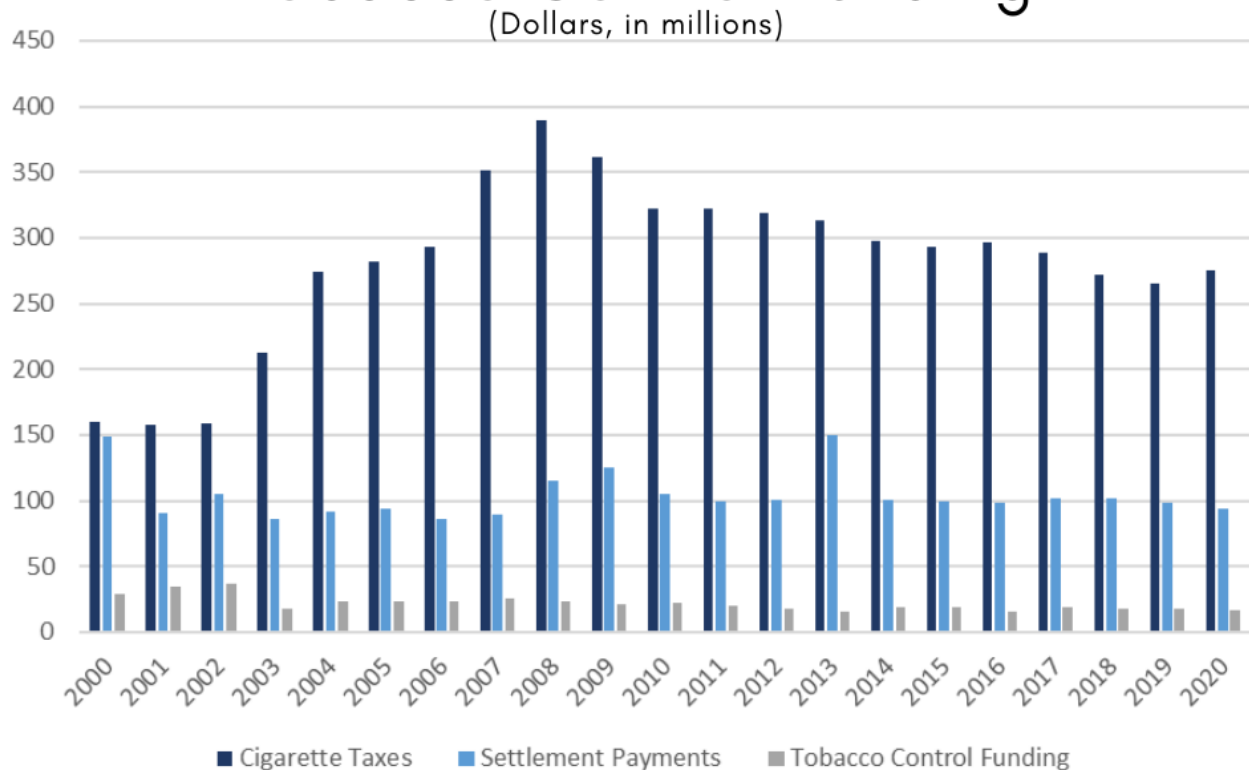
1.1 Vaping Lung Injuries by State and Localized Flavor Bans

Vaping-Related Lung Injuries



1.2 Tobacco Monies and Control Funding

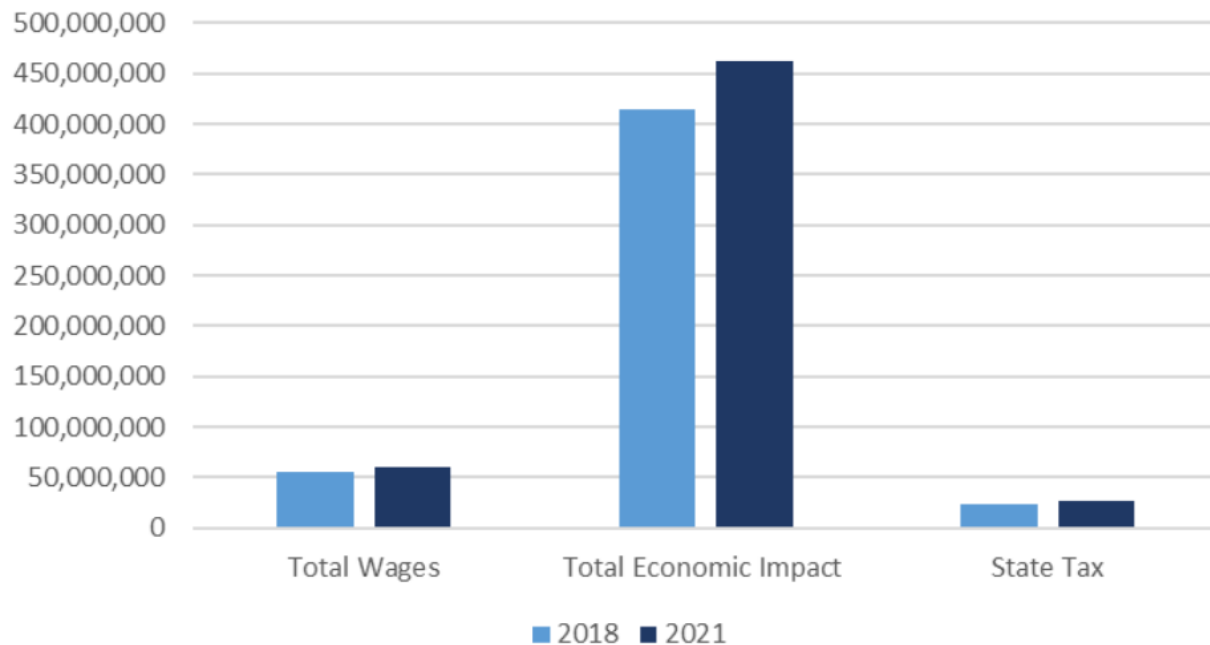
Cigarette Taxes, Settlement Payments, Tobacco Control Funding



1.3 Vape Shops Economic Impact

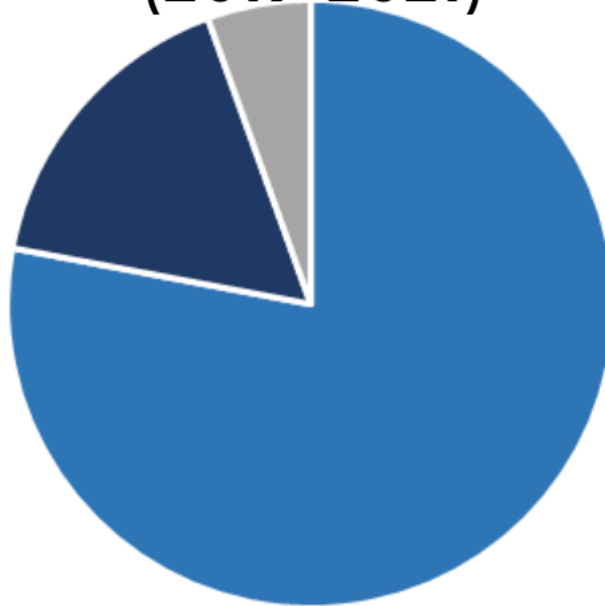
Vape Shop Economics

(Dollars, in millions)



1.4 Vape Shop Inspections

VAPE & TOBACCO RETAILERS FDA COMPLIANCE INSPECTIONS (2019-2021)



■ No Violations

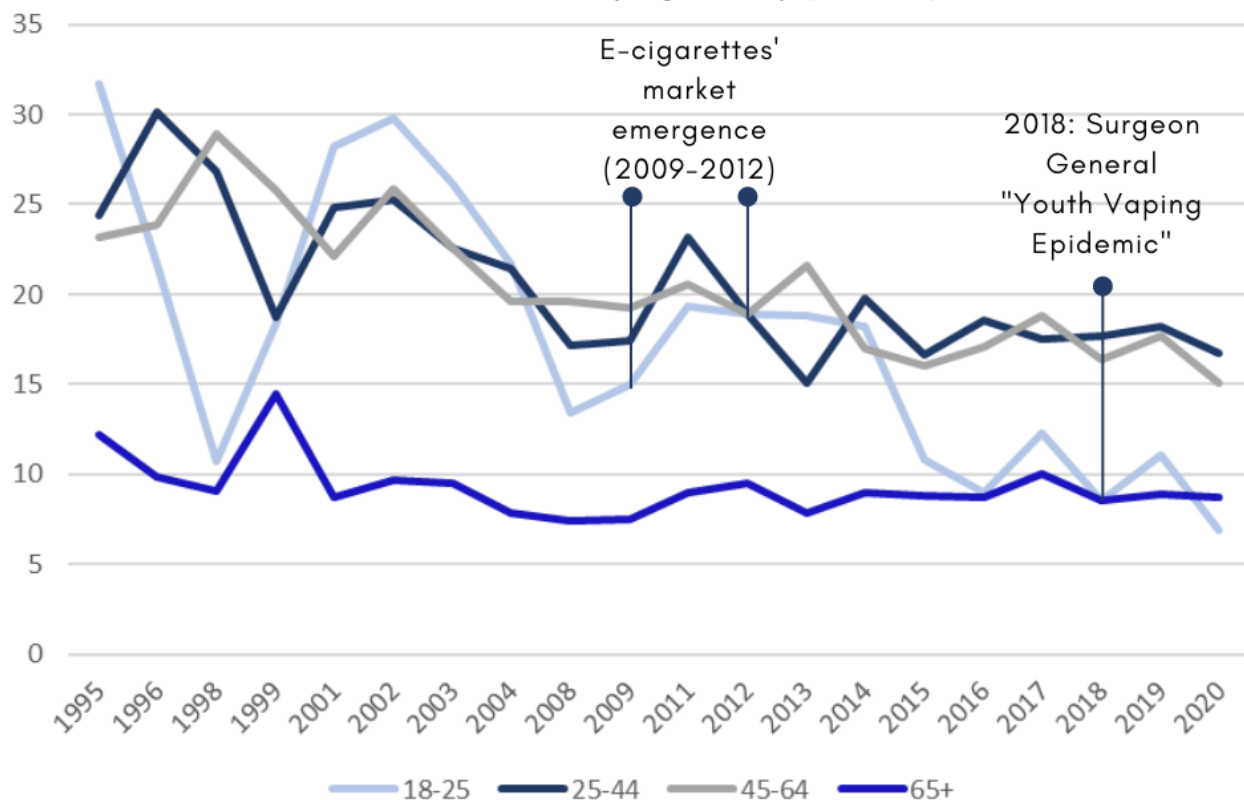
■ E-Cigarette Sales

■ Cigars & Cigarettes

1.5 Young Adult Smoking Rates

E-CIGARETTES EMERGENCE LED TO SIGNIFICANT DECREASE IN SMOKING RATES AMONG YOUNG ADULTS

Current Smokers by Age Group (Percent)



¹ Laura Bach, "States & Localities That Have Restricted the Sale of Flavored Tobacco Products," Campaign for Tobacco-Free Kids, November 30, 2018. Archived. <https://web.archive.org/web/20190107102745/https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>. Accessed February 5, 2022.

² Shu-Hon Zhu, Ph.D., *et al.*, "California Youth Tobacco Survey 2015-16: Results of the Statewide Student Survey, Grades 8, 10, and 12," Center for Research Intervention in Tobacco Control, University of California, San Diego, <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/CSTS%2015-16%20Report%20FINAL.pdf>.

³ Shu-Hong Zhu, Ph.D., *et al.*, "Results of the Statewide 2017-18 California Student Tobacco Survey," Center for Research Intervention in Tobacco Control, University of California, San

Diego, <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/2017-18CaliforniaStudentTobaccoSurveyBiennialReport.pdf>.

⁴ Cook County Department of Revenue, “Cook County – The Cigarette Tax Reward Program,” <https://apps.cookcountyil.gov/dor/index.php>.

⁵ “Cook County Cracking Down on Illegal Cigarette Sales,” CBS News Chicago, February 11, 2014, <https://chicago.cbslocal.com/2014/02/11/cook-county-cracking-down-on-illegal-cigarette-sales/>.

⁶ Lourdes Duarte, “Inside Chicago’s war on illegal cigarettes,” WGN News, February 19, 2020, <https://wgntv.com/news/wgn-investigates/inside-chicagos-war-on-illegal-cigarettes/>.

⁷ Chris Lentino, “New Cigarette Tax Will Lead to More Black Market Sales and Violence, Alderman Say,” Illinois Policy, February 9, 2016, <https://www.illinoispolicy.org/chicago-aldermen-revolt-against-mayor-on-increasing-citys-cigarette-tax/>.

⁸ Orzechowski and Walker, “The Tax Burden on Tobacco Historical Compilation Volume 55,” 2020. Print.

⁹ Tobacco Control Legal Consortium, “The Master Settlement Agreement: An Overview,” August 2015, p. 1, <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-msa-overview-2015.pdf>.

¹⁰ Campaign for Tobacco-Free Kids, “Actual Annual Tobacco Settlement Payments Received by the States, 1998 – 2021,” January 11, 2022, <https://www.tobaccofreekids.org/assets/factsheets/0365.pdf>.

¹¹ Campaign for Tobacco-Free Kids, “Appendix A: History of Spending for State Tobacco Prevention Programs,” 2021, <https://www.tobaccofreekids.org/assets/factsheets/0209.pdf>.

¹² Vapor Technology Association, “The Economic Impact of the Vapor Industry Arizona,” 2021, <https://vta.guerrillaeconomics.net/reports/20ebbd6b-cacd-4c72-8417-bd9ca9f1007c?>.

¹³ Vapor Technology Association, “The Economic Impact of the Vapor Industry Arizona,” 2018, <https://vta.guerrillaeconomics.net/reports/8c07329b-0926-4f52-ab3a-0657a485c917?>.

¹⁴ U.S. Food and Drug Administration, “Compliance Check Inspections of Tobacco Product Retailers,” December 21, 2021, https://www.accessdata.fda.gov/scripts/oce/inspections/oce_insp_searching.cfm. Accessed January 15, 2021.

¹⁵ Centers for Disease Control and Prevention, “High School YRBS 2019 Results,” 2019, <https://nccd.cdc.gov/Youthonline/App/Default.aspx>.

¹⁶ Eunice Park-Lee PhD. et al., “Notes from the Field: E-Cigarette Use Among Middle and High School Students – National Youth Tobacco Survey, United States, 2021,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, October 1, 2021, <https://www.cdc.gov/mmwr/volumes/70/wr/mm7039a4.htm>.

¹⁷ National Center for Chronic Disease Prevention and Health Promotion, “E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General,” 2016, <https://www.ncbi.nlm.nih.gov/books/NBK538679/>.

¹⁸ Fatma Romeh M. Ali, PhD., et al., “E-cigarette Unit Sales, by Product and Flavor Type – United States, 2014 – 2020,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, September 18, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6937e2.htm/>.