

TOBACCO  
~~eighteen~~ **twenty-one**



**Megan Boelter, JD, MPH**  
**Western Region Director**  
**Preventing Tobacco Addiction Foundation**

**New Mexico Tobacco Revenue Oversight Committee**  
**Meeting #4**  
**November 18, 2024**

TOBACCO  
RETAIL



LICENSE TO PROTECT

PREVENTING TOBACCO ADDICTION FOUNDATION

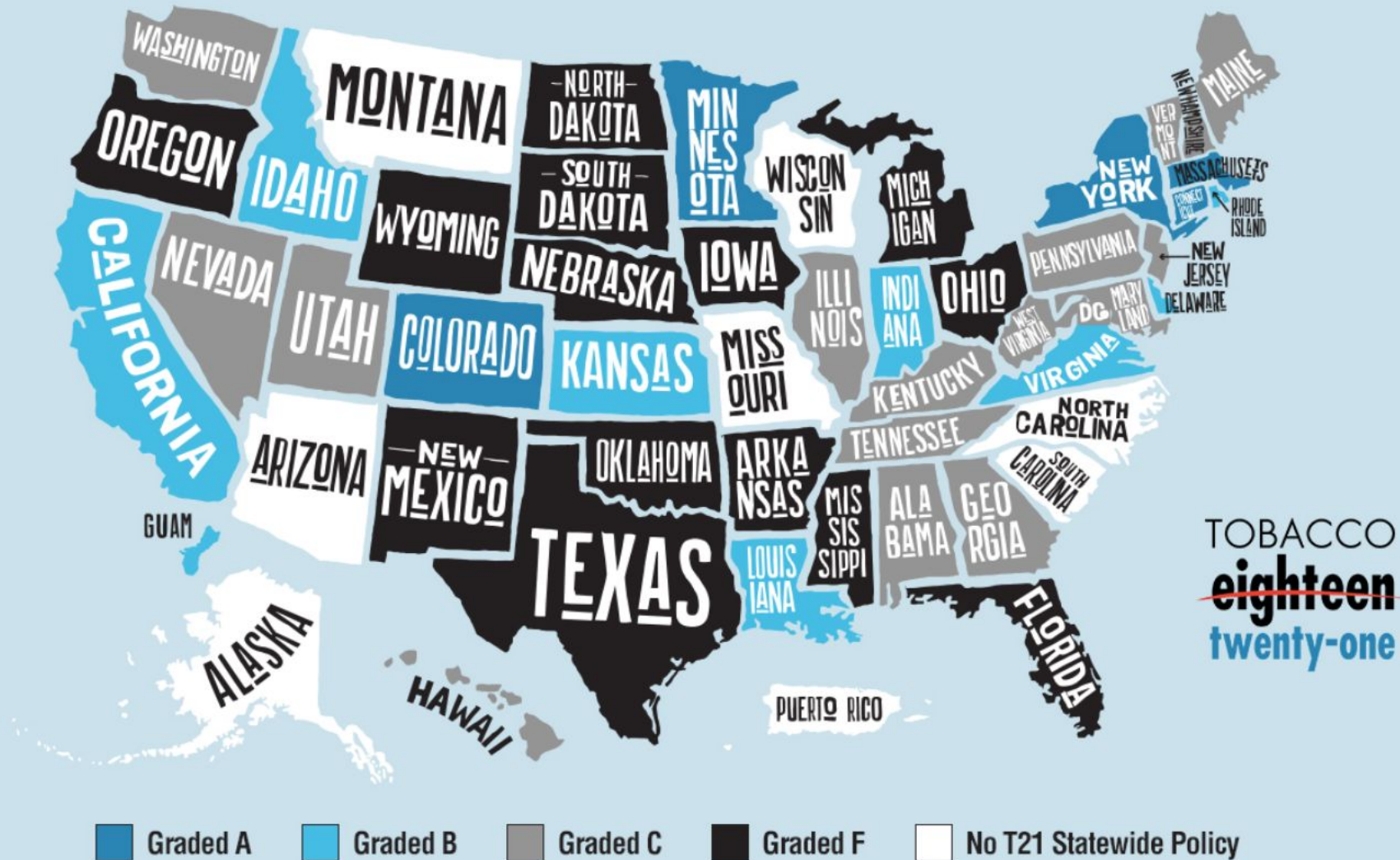
# Preventing Tobacco Addiction Foundation / Tobacco 21

**Mission:** To reduce the health and economic impact of tobacco use and nicotine addiction through education, advocacy, and policy change.

Raise the minimum legal sales age (MLSA) to 21 – in conjunction with **Tobacco Retail Licensing** - for strong compliance/enforcement provisions to effectively reduce youth access to and use of tobacco products.

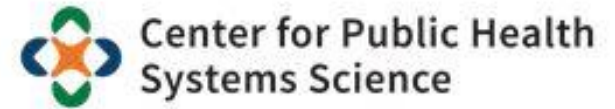
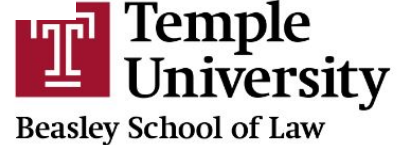
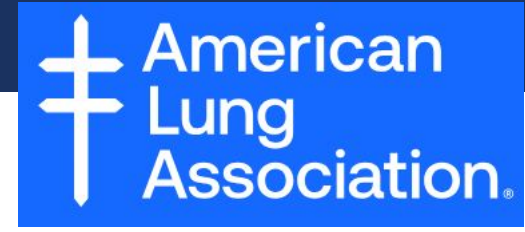
TOBACCO  
~~eighteen~~ **twenty-one**

# Tobacco 21: The Law of the Land

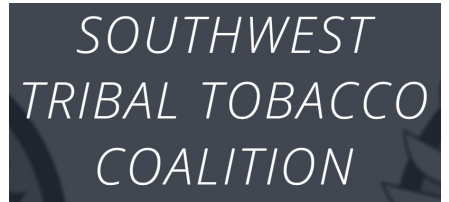


The Preventing Tobacco Addiction Foundation graded all the statewide Tobacco 21 Laws.

# PARTNERS, SOURCES, RESOURCES



Brown School



# Social Determinants of Health



**Law is a social determinant of health.**

# TOBACCO LEGISLATION

- 1. Introduction / Terms**
- 2. NM Tobacco Retail Point of Sale Info and Policies**
- 3. Tobacco Legislation Trends 2025**
  - State E-cigarette Registries; Tobacco Tax Policy; Flavored Tobacco**
- 4. Emerging Policy Challenges**
- 5. Q & A**

PTAF acknowledges that traditional tobacco is used for sacred and ceremonial purposes by Indigenous Communities. The content in this presentation applies to the regulation of commercial tobacco.

# POLICY DEFINITIONS

## Minimum Legal Sale Age (MLSA)

## Underage Sales vs Unauthorized/Illegal/Illicit Products

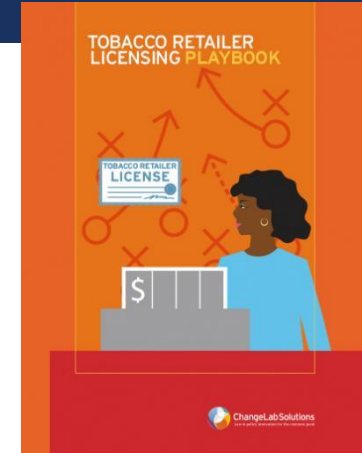
## Tobacco Retail License (TRL)<sup>1</sup>

**Tobacco Retailer:** ANY retailer that sells tobacco/nicotine, convenience stores, smoke shops, vape shops, pharmacies, chain stores, others. (Variations on “retailer”/tobacco shops/% sales/%retail space)

**Retail Violation Rate (RVR):** The percentage of retailers within a state (or data set) that sell tobacco products to those under the age of 21.

## Pre-Market Tobacco Application (PMTA)



## Preemption: (Negative AND Positive Impacts)



<sup>1</sup> PTAF acknowledges the use of traditional tobacco among Indigenous Communities. This presentation addresses regulation of commercial tobacco.



# POLICIES

	 <p><b>Sales to Minors (T21)</b> <b>Minimum Legal Sales Age</b></p>	 <p><b>Unauthorized/Illegal/Illicit Products</b></p>
	<b>No sale to minors; ID Verification</b>	<b>Products not legal for sale*</b>
<b>Federal (USA)</b>	<ul style="list-style-type: none"> <li>• MLSA = T21;</li> <li>• ID verification ≤30 yrs;</li> <li>• Vending machines 21+ facilities</li> </ul>	<ul style="list-style-type: none"> <li>• FDA EVALUATES AND AUTHORIZES tobacco product for sale.</li> <li>• 34 e-cigs with Marketing Granted Orders (MGOs)</li> </ul>
<b>State</b>	<ul style="list-style-type: none"> <li>• Variable MLSA: T18; T19; T21</li> <li>• Different ID verification laws</li> </ul>	<ul style="list-style-type: none"> <li>• States CANNOT AUTHORIZE products for sale</li> <li>• States can REGULATE SALES (tax, marketing, type)</li> </ul>
<b>Local</b>	<ul style="list-style-type: none"> <li>• Variable MLSA: T18; T19; T21*</li> <li>• Different ID verification laws*</li> </ul>	<ul style="list-style-type: none"> <li>• Cities CANNOT AUTHORIZE products for sale</li> <li>• Cities can REGULATE SALES (tax, marketing, type)*</li> </ul>



# Tobacco 21: The Law of the Land

**August 2024 FDA ISSUED FINAL T21 RULE**



**1. ID Verification Requirements for anyone appearing under the age of 30**

**2. Vending machines are restricted to 21+ businesses**



# TOBACCO RETAIL ENFORCEMENT



SYNAR



1. Tobacco and E-cigarette  
Retailer Permits

State retailer inspections

Substance Block  
Treatment Grant  
Retailer Violation Rate  
(RVR)  
MUST be  $\leq$  20%

FDA Compliance Program:  
(1) T21 Inspections; Sales to Minors  
(2) Illegal /Unauthorized Tobacco  
Products  
(3) Advertising & labeling  
enforcement

2. License Suspension /  
Revocation

Administers SYNAR survey  
Tests retailer compliance  
(RVR)



New Mexico Human Services Department  
Behavioral Health Services Division  
Office of Substance Abuse Prevention

# NM Tobacco Products Act (TPA) Tobacco Retail License Provisions:



- New Mexico MLSA T21 (Sec. 61-37-3A)
- Requires license for the manufacture, distribution or retail sale of tobacco products.
- Requires ID Verification for Proof of Age

Tobacco Retail Licenses shall not be issued if:

- A license revoked by another state;
- The location of license within 300 feet of a school (after 07/01/20).
- The location of the license would result in a violation of a zoning **or other ordinance** of a governing body in which the proposed location would exist.

# NM Tobacco Products Act SALES TO MINORS Penalties:

## **SALES TO MINORS: [15.8.6.9 NMAC – N, 1/1/2021]**

- 1<sup>st</sup> violation: \$1,000 fine;
- 2<sup>nd</sup> violation: \$4,000 fine; 7 day suspension
- 3<sup>rd</sup> violation: \$7,000 fine; 30 day suspension
- 4<sup>th</sup> violation: Permanent License Revocation



## **ALL OTHER VIOLATIONS INVOLVING MINORS: [15.8.6.10 NMAC – N, 1/1/2021]**

- 1<sup>st</sup> violation: \$1,000 fine;
- 2<sup>nd</sup> violation: \$2,000 fine; 1 day suspension
- 3<sup>rd</sup> violation: \$5,000 fine; 7 day suspension
- 4<sup>th</sup> violation: \$10,000 fine; 14 day suspension

# What Activities are Grounds for a Citation?

Unlicensed Sale by Non-licensees

Unlicensed Sale by License

Sales to Minors

Failure to Verify Age

Minors in Age-Controlled Locations

Sales of Tobacco Products not in Original Sealed Package

Sale of Tobacco Products not in Child-Resistant Packaging

Sale of Tobacco Products Knowingly Attractive to Minors

Providing Free Samples

# NM Tobacco Products Act (TPA) 'Products Attractive to Minors'

A manufacturer shall not produce and a distributor or retailer shall not sell tobacco products that are knowingly attractive to minors.

**Definitions:**... "knowingly attractive to minors" means packaging or labeling that contains:

- (1) a cartoon-like character that mimics characters primarily aimed at entertaining minors;
- (2) an imitation or mimicry of trademarks or trade dress of products that are or have been primarily marketed toward minors; or
- (3) a symbol or celebrity image that is primarily used to market products to minors.

## **\*ENFORCEMENT CHALLENGES**



SYNAR

PROGRAM

PROHIBITING THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS TO PEOPLE UNDER 21

TOBACCO

21

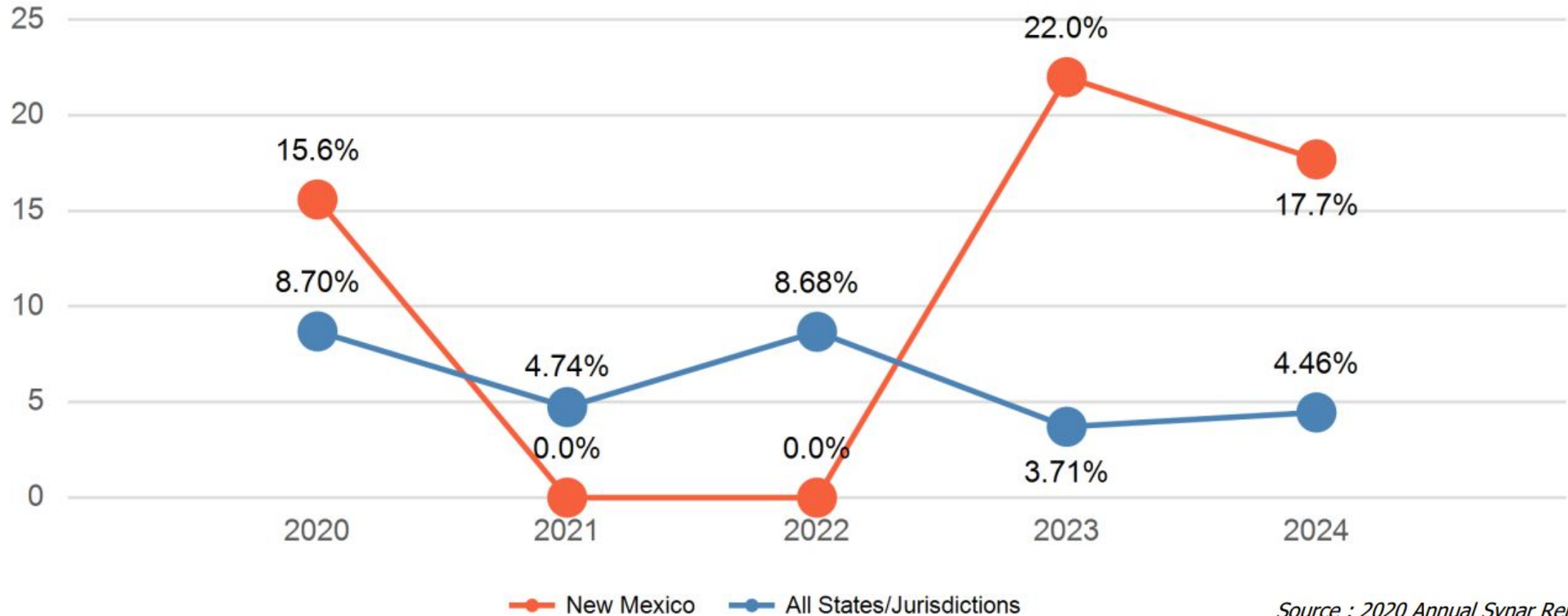




# Synar Reported Retailer Violation Rate

NM Report Years: 2020 - 2024

### Weighted Retailer Violation Rate (RVR)



Legend:  
~ Non-Finalized Data, i.e., there are open revision requests for the source data.

Source : 2020 Annual Synar Report  
2021 Annual Synar Report  
2022 Annual Synar Report  
2023 Annual Synar Report  
2024 Annual Synar Report



# 2023 NM SAMHSA Grant Funds

## Summary - New Mexico

### Non-Discretionary Funding

Substance Use Prevention and Treatment Block Grant	\$10,381,561
Community Mental Health Services Block Grant	\$6,561,480
Projects for Assistance in Transition from Homelessness (PATH)	\$300,000
Protection and Advocacy for Individuals with Mental Illness (PAIMI)	\$727,500
Subtotal of Non-Discretionary Funding	\$17,970,541

Potential loss  $\leq 10\%$  of SATBG

If Synar RVR > 20%  
Potential loss:  
Over \$1M  
(2023)



# NM Synar Report Comments FY2024

**Limited resources for activities to support enforcement and compliance with youth and young adult tobacco access laws.**

- NM does not specifically include e-cigarettes in Synar inspections, only **cigarettes**.
- Most popular products among youth are e-cigarettes.
- Revised inspection protocols should include e-cigarettes/vapes/liquids/pouches.
- Additional state general funds are needed to contract NM DPS/SIU to conduct e-cig inspections.
- *“The state’s Synar program has been and continues to be underfunded which presents challenges with complying with the Synar regulation.”*





# NM TOBACCO PRODUCTS ACT

PREEMPTION LANGUAGE:





## TPA PREEMPTION LANGUAGE Requires Clarification

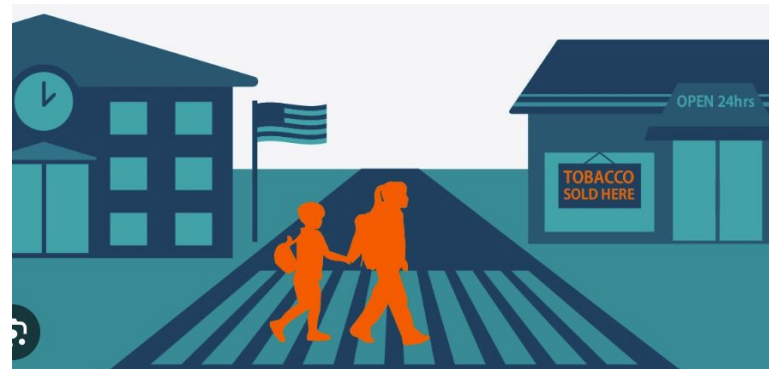
(§61-37-24 )

When a municipality ....adopts an ordinance...pertaining to the sales of tobacco products, the ordinance, ...***shall be consistent with*** the provisions of the Tobacco Products Act. (§61-37-24 )

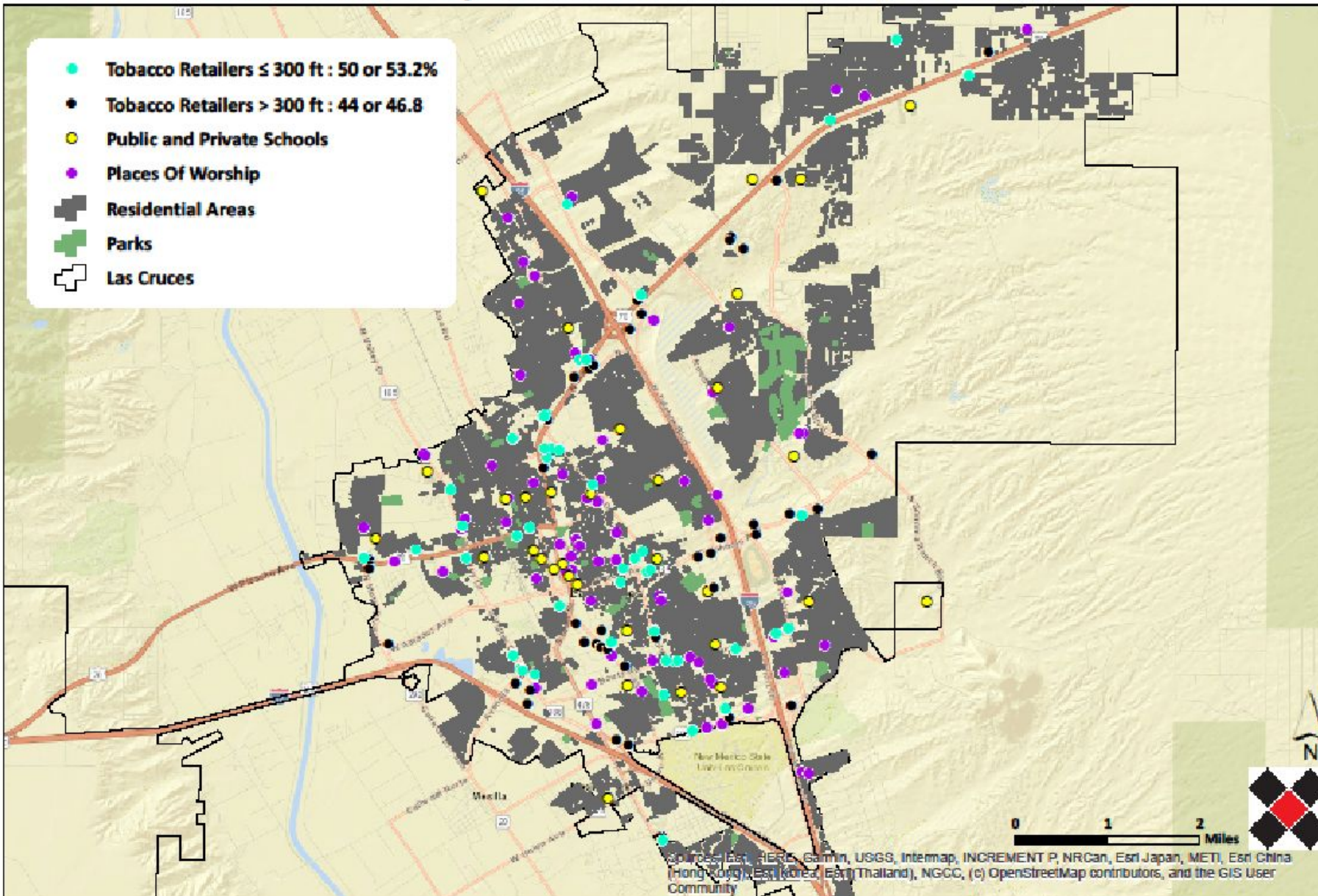
(§61-37-4)

A license shall not be issued, retained, transferred or renewed if:

1. the location for the license or license transfer is **within three hundred feet of a school**; (07/01/2020)
2. the location for the license would result in a violation of a zoning or other ordinance of a governing body in which the proposed location would exist



# Proximity of Tobacco Retailers to Residential Housing, Schools, Places of Worship, and Parks within the City Limits of Las Cruces, New Mexico





# 2020 SUPPORT FOR TPA REVISION

## (Ambiguous Preemption Language)

- The New Mexico Municipal League
- City Council of Albuquerque
- City Council of Las Cruces
- City Council of Santa Fe
- City of Las Vegas
- City of Espanola
- Bernalillo County Commission
- Albuquerque Public Schools Board of Education
- Rio Arriba County Commission
- Greater Albuquerque Medical Association (GAMA)
- New Mexico Chronic Disease Prevention Council (CDPC)
- Evolvement
- Health Equity Alliance for LGBTQ+
- New Mexicans (HEAL+ NM)
- Southwest Tribal Tobacco Coalition
- New Mexico Public Health Association
- New Mexico Pharmacist Association
- New Mexico Hospital Association
- American Heart Association
- American Cancer Society Cancer Action Network
- American Lung Association





# TOBACCO LEGISLATION TRENDS



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**BACKGROUND:  
THE PRE-MARKET TOBACCO PRODUCT APPLICATION  
(PMTA) PROCESS**





**U.S. FOOD & DRUG  
ADMINISTRATION**

# E-Cigarettes Authorized by the FDA


As of July 2024, these are the only e-cigarettes authorized to be sold in the U.S.



Manufacturer	Product Name	
 Logic Technology Development LLC	Logic Regular Cartridge/Capsule Package	Logic Pro Capsule Tank System (1)
	Logic Vapeleaf Cartridge/Capsule Package	Logic Pro Capsule Tank System (2)
	Logic Vapeleaf Tobacco Vapor System	Logic Power Tobacco e-Liquid Package
	Logic Pro Tobacco e-Liquid Package	Logic Power Rechargeable Kit
 NJOY LLC	NJOY DAILY Rich Tobacco 4.5%	NJOY ACE POD Classic Tobacco 2.4%
	NJOY DAILY EXTRA Rich Tobacco 6%	NJOY ACE POD Classic Tobacco 5%
	NJOY DAILY EXTRA Menthol 6%	NJOY ACE POD Rich Tobacco 5%
	NJOY DAILY Menthol 4.5%	NJOY ACE POD Menthol 2.4%
	NJOY ACE Device	NJOY ACE POD Menthol 5%

**34 FDA Authorized E-cigarette Products**

**3 Manufacturers**

Manufacturer	Product Name	Product Name
 R.J. Reynolds Vapor Company	Vuse Vibe Power Unit (1)	Vuse Replacement Cartridge Original 4.8% G2
	Vuse Vibe Tank Original 3.0%	Vuse Alto Power Unit
	Vuse Vibe Power Unit (2)	Vuse Alto Pod Golden Tobacco 5%
	Vuse Ciro Power Unit (1)	Vuse Alto Pod Rich Tobacco 5%
	Vuse Ciro Cartridge Original 1.5%	Vuse Alto Pod Golden Tobacco 2.4%
	Vuse Ciro Power Unit (2)	Vuse Alto Pod Rich Tobacco 2.4%
	Vuse Solo Power Unit	Vuse Alto Pod Golden Tobacco 1.8%
	Vuse Replacement Cartridge Original 4.8% G1	Vuse Alto Pod Rich Tobacco 1.8%

For the most up-to-date list of authorized e-cigarettes, visit the [Searchable Tobacco Products Database](#).

While these products are authorized to be sold in the U.S., it does not mean these products are safe nor are they "FDA approved." All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn't start.



# E-CIGARETTE PRODUCT DIRECTORY (OR REGISTRY)

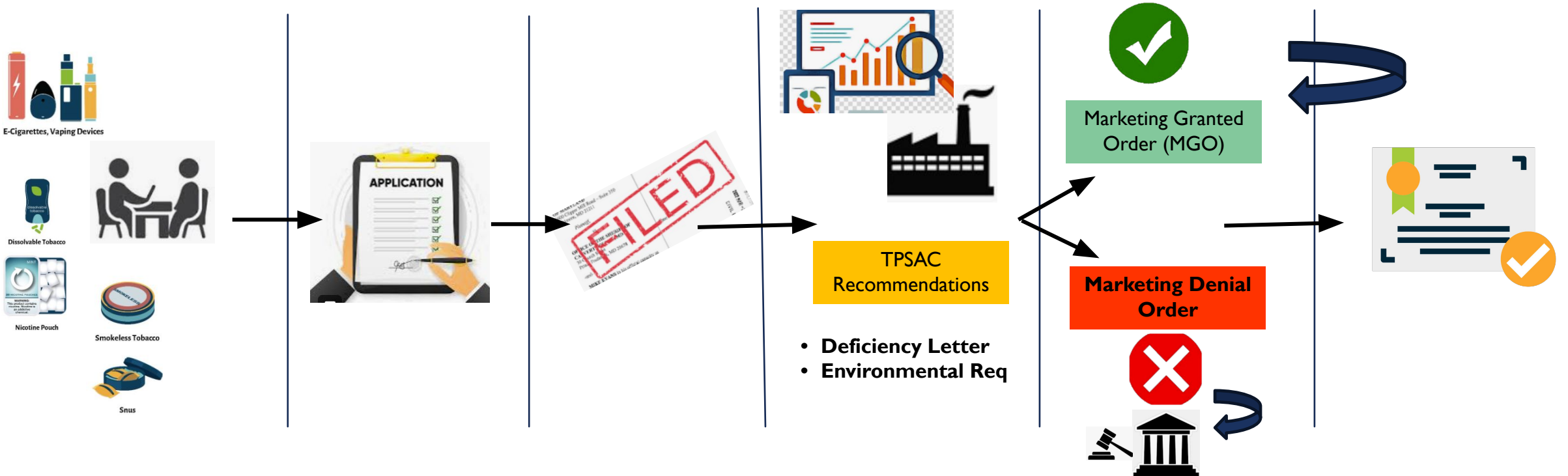


- A. E-cigarette Directory Legislation.
- B. List of e-cigarettes / vape products created by a state.
  - Manufacturer or product fee to get on list.
- C. To list a product, a manufacturer must certify that a Pre-Market Tobacco Product Application (PMTA) has been submitted to the FDA\*.
- D. Manufacturer must show that the product:
  - i. Marketing GRANTED Order (MGO), or
  - ii. Remains under FDA review – e.g. within PMTA process, or
  - iii. Marketing DENIAL Order (MDO) & court challenge/injunction.



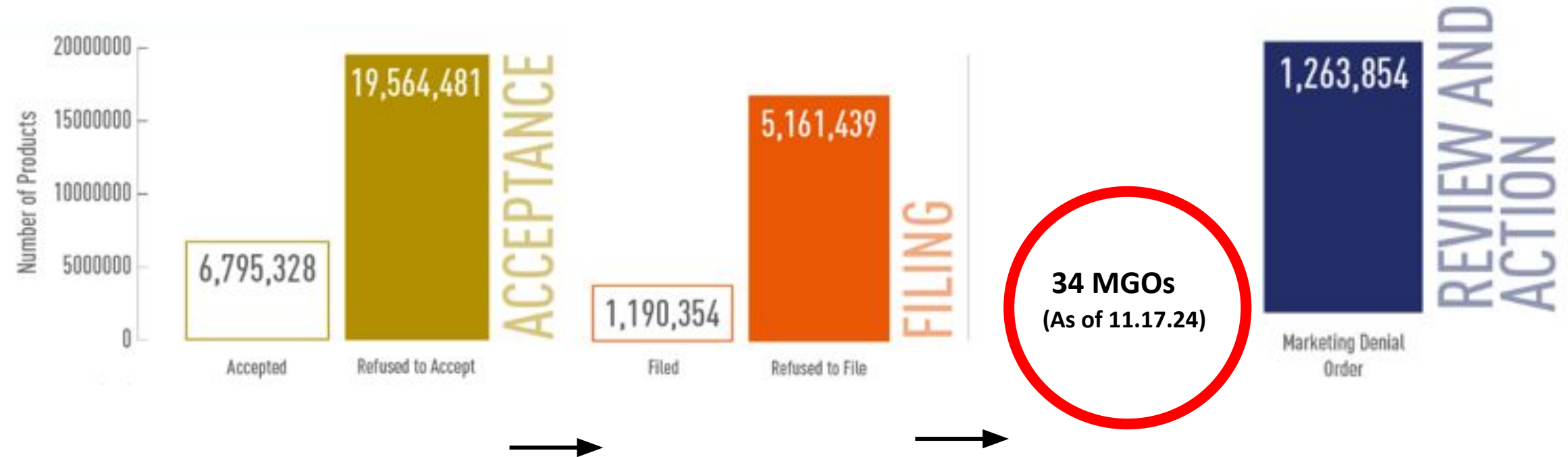
E. Foreign Manufacturer – Identify Agent

# Pre-Market Tobacco Product Application (PMTA)



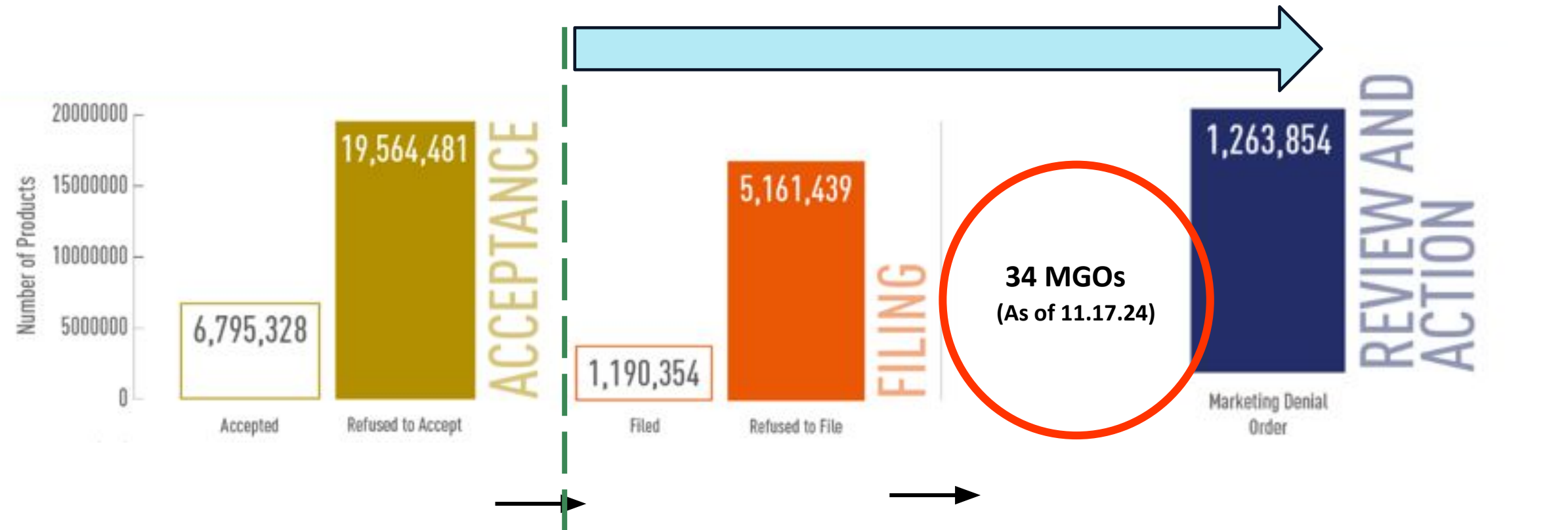
# FY 21-24 Progress

## Premarket Tobacco Product Application



# FY 21-24 Progress

## Premarket Tobacco Product Application

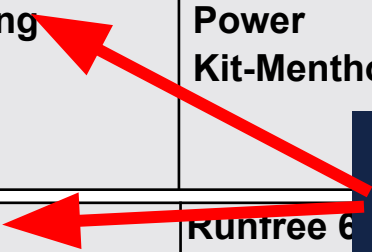
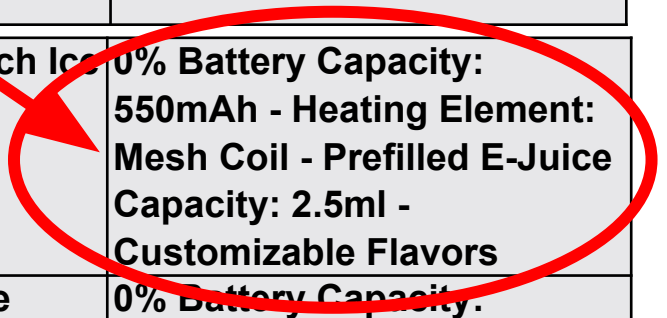
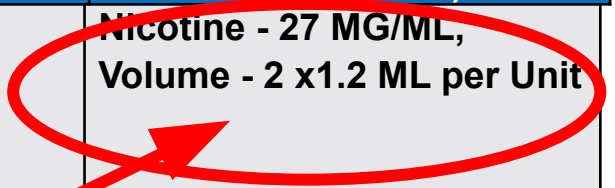


# Oklahoma Vapor Product Manufacturers and Registration

## 63.1-229.35

Manufacturer	FDA Authorization	Product Name	Packaging Type	Packaging Size	Characterizing Flavor	Additional Properties (Amount of Nicotine, Volume, etc.)
Logic Technology Development LLC	24-Mar-20	Power Kit-Tobacco	Box/Closed System	75 Units per Case	Tobacco	Nicotine - 27 MG/ML, Volume - 2 x1.2 ML per Unit
Logic Technology Development LLC	Pending	Power Kit-Menthol	Box/Closed System	75 Units per Case	Menthol	Nicotine - 27 MG/ML, Volume - 2 x1.2 ML per Unit
Shenzhen Runfree Technology Co., Ltd.	YES	Runfree 600 PUFFS RF003	units	13kg	Apple Peach Ice	0% Battery Capacity: 550mAh - Heating Element: Mesh Coil - Prefilled E-Juice Capacity: 2.5ml - Customizable Flavors
Shenzhen Runfree Technology Co., Ltd.	YES	Runfree 600 PUFFS RF003	Ind. sealed & packaged in boxes of 10 units	1 carton of 400 pieces: 55.8cm x 29cm x 28cm / 13kg	Banana Ice	0% Battery Capacity: 550mAh - Heating Element: Mesh Coil - Prefilled E-Juice Capacity: 2.5ml - Customizable Flavors

- Inconsistent Product Descriptions
- Difficult to vet PMTA status
- Difficult for enforcement officer to distinguish product





# REGISTRY ENFORCEMENT ?

Which vape is on the list?  
What volume?  
Which iteration?

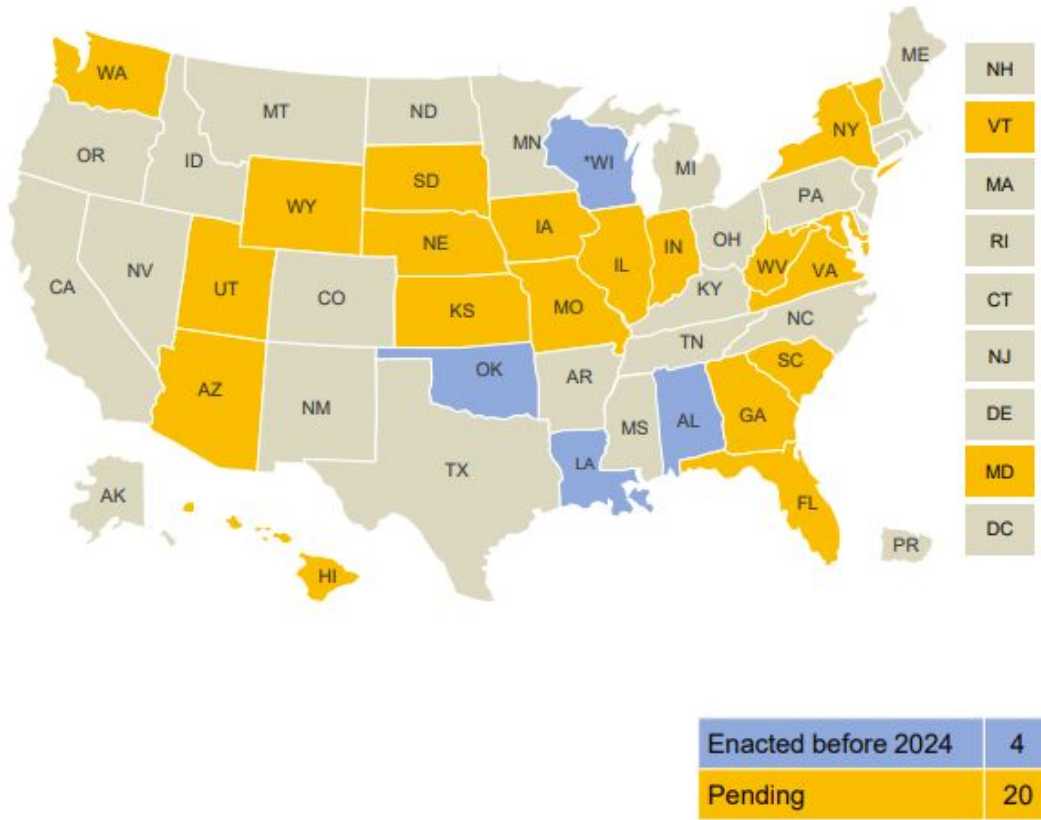


# DOR FISCAL NOTE

## KANSAS HB 2801 VAPOR PRODUCT DIRECTORY (FAILED)

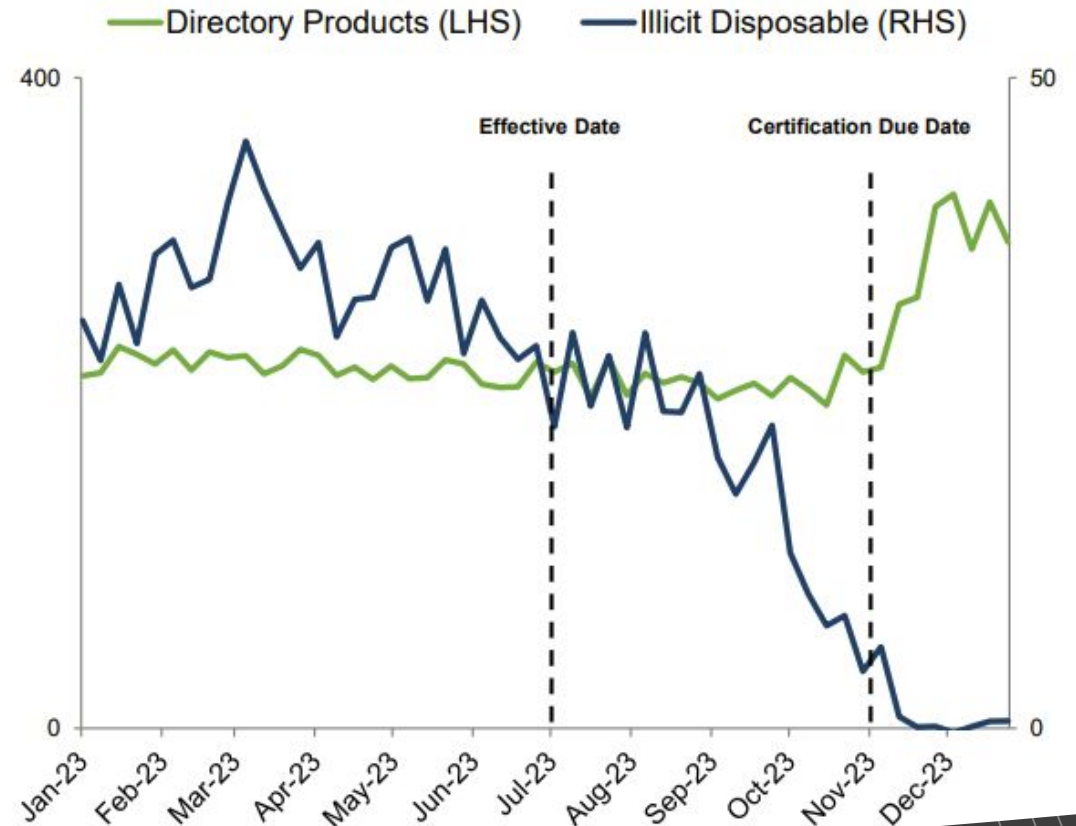
Estimated State Fiscal Effect			
	FY 2024	FY 2025	FY 2026
<b>Expenditures</b>			
State General Fund	--	\$598,210	\$598,210
Fee Fund(s)	--	--	--
Federal Fund	--	--	--
Total Expenditures	--	\$598,210	\$598,210
<b>Revenues</b>			
State General Fund	--	--	--
Fee Fund(s)	--	\$5,750	\$2,300
Federal Fund	--	--	--
Total Revenues	--	--	--
FTE Positions	--	8.00	8.00

## States With Enacted or Pending Directory Bills



## Louisiana E-Vapor Shipment Volume Example

(Units in Thousands)



# INDUSTRY CLAIMS

OPINION | Guest Column

Kathryn Starkey

# *Protect Florida's kids from illegal, disposable Chinese vapes*

As community leaders, parents and concerned citizens, we must adopt an all-hands-on-deck approach to safeguard our youngest and most vulnerable population from these illegal products.



*Kathryn Starkey is Pasco County commissioner for District 3.*



**PROTECT OUR  
CHILDREN:  
STOP ILLEGAL SALE  
OF VAPES FROM CHINA**



...

The vast majority of the vaping products sold today are manufactured in China,

...

...

**What's worse: China is targeting American children.**

...

It's time to reverse this dangerous trend, stop China, and protect American kids.

Learn More At: [StopChineseVapes.com](https://www.stopchinesevapes.com)



# News From The States

Part of States Newsroom

**NEVADA** | *Commentary*

## Law-abiding retailers demand action on illegal vape market

**ECONOMY** | Jun 24, 2024 | 8:00 am ET | By Peter Krueger

SHARE   



**Peter Krueger, State executive, Nevada Petroleum Marketers and Convenience Store Association**

# State E-Cigarette/Vapor Product Directory Legislation 2023-2024

## Existing (4 states)

- Alabama
- Louisiana
- Oklahoma
- Wisconsin (03/01/23)

## Introduced, Failed

- Arizona
- Colorado (New leg)
- Georgia
- Hawaii
- Illinois
- Indiana
- Kansas
- Louisiana (Updates)
- Maryland
- Mississippi
- Missouri
- New York (Filed 04.09.24)
- Oklahoma (Updates)
- South Carolina
- South Dakota
- Wyoming

## Passed (7 states)

- Florida
- Iowa (HF2677)
- Kentucky
- Nebraska
- North Carolina
- Utah
- Virginia

# Searchable Tobacco Products Database

Search the Database 

Search Company, Product Name, STN, MRTTP, Additional Information

Category

Select options

Sub-Category

Select options

Submission Type - Marketing Authority

Select options

Date of Action From

mm/dd/yyyy



Date of Action To

mm/dd/yyyy



Search 

Reset 

Company	Product Name	Category	Sub-Category	Submission Type - Marketing Authority	Date of Action	Order Letter	Decision Summary	Environmental Assessment	FONSI	STN	Associated MRTTP	Additional Information
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June 10, 2024

## Justice Department and FDA Announce Federal Multi-Agency Task Force to Curb the Distribution and Sale of Illegal E-Cigarettes



**U.S. Marshals Service**



**FEDERAL TRADE COMMISSION**





# ADVOCACY: WHAT TO KNOW & RECOMMENDATIONS





- E-cigarette product registry bills are not a substitute for T21 Enforcement or Tobacco Retail Licensing (TRL). **Strong state/local enforcement is key!**
- These laws are being used to circumvent the FDA process.
- **OPENS THE MARKET FOR BIG 3 MANUFACTURERS AT THE STATE'S AND COMMUNITY HEALTH EXPENSE**
  - NOTE:
    - Cigarette Manufacturer Directories created for MSA purposes.
    - CA AB-3218 Unflavored Tobacco List is different leg

# EMERGING CHALLENGES...



## Nicotine Pouches

- Mint, fruit, and drink flavors
- Various nicotine strengths

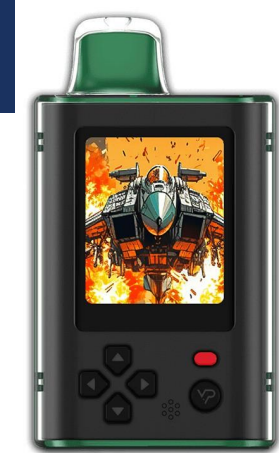


## Heated Tobacco Products

- IQOS.
- Marketing Authorization
- \*\*Non-combusted” Cigarettes

### Unsubstantiated claims

- Reduced exposure
- false claim not “tobacco product”
- harm reduction



## Smart Vapes

- No Marketing Order
- Several flavors
- Video games - vape to continue playing (encourages consumption)
- Connectivity to phones



# FLAVORED TOBACCO SALES RESTRICTIONS:



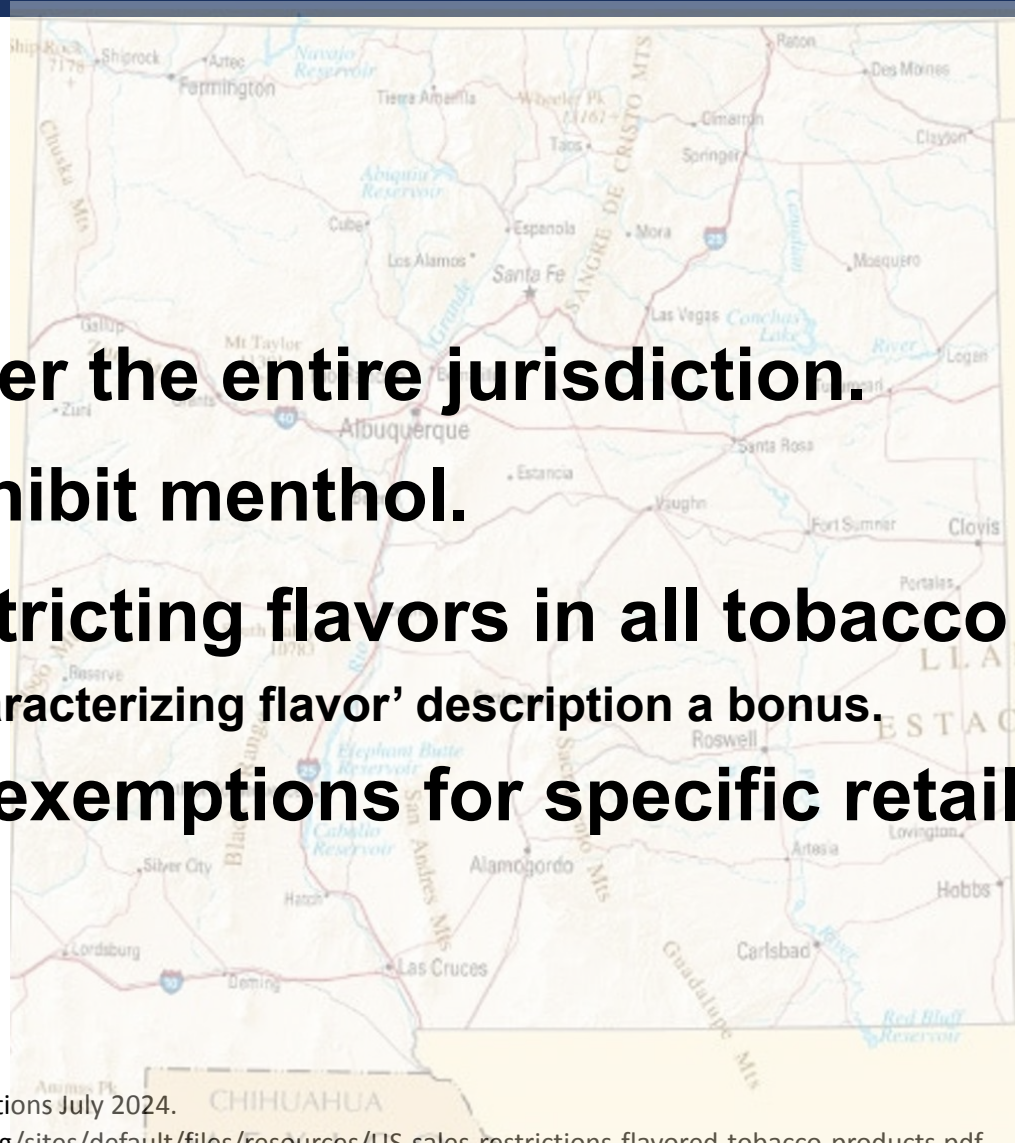


# FLAVORED TOBACCO PRODUCTS

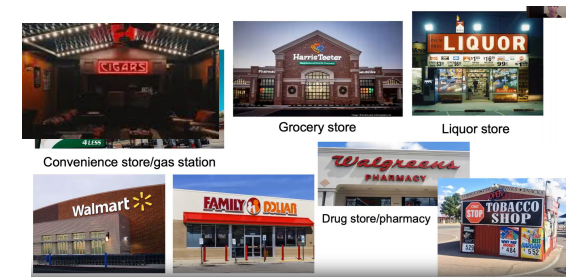
- Flavored tobacco products are addicting new generations
- Pose health risks for both youth and adult users
- Industry targets communities with marketing and sales tactics
- Almost 400 localities and states have passed flavored tobacco ordinances



# Model Flavored Tobacco Restriction Policy



- **Cover the entire jurisdiction.**
- **Prohibit menthol.**
- **Restricting flavors in all tobacco products.**
  - ◆ “Characterizing flavor’ description a bonus.
- **No exemptions for specific retailers.**



# **RED FLAGS:**

**PRODUCT EXEMPTIONS**

**NO ENFORCEMENT  
PROVISIONS**

**PREEMPTION**





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# Thank You

[megan.boelter@tobacco21.org](mailto:megan.boelter@tobacco21.org)



# QUESTIONS



# TOBACCO TAX POLICY:



# TOBACCO TAX POLICY:

- States with the greatest tobacco tax increases see the largest declines in smoking rates.
- Excise taxes have the greatest impact on smoking rates among those 18 to 24.
- Taxation of tobacco is not correlated with a decline in the density of convenience stores or consumer spending.
- Parity among different tobacco products is gold standard.
- Tobacco excise taxes can reduce tobacco-related health disparities among people with limited incomes, pregnant persons, and among racial and ethnic populations.
- “Regressive tax” : industry messaging targeting consumers from specific communities.

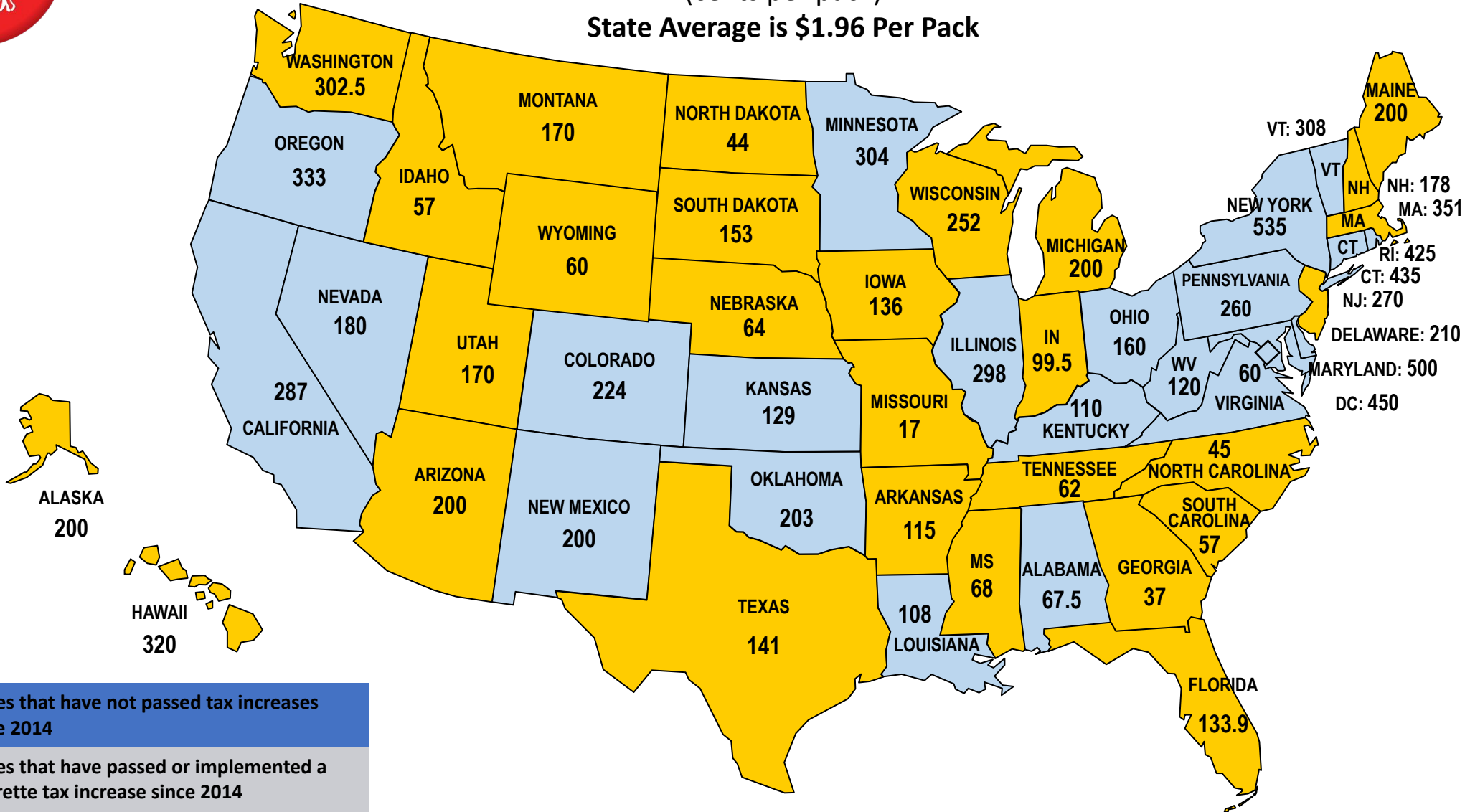




# Cigarette Excise Tax Rates

(cents per pack)

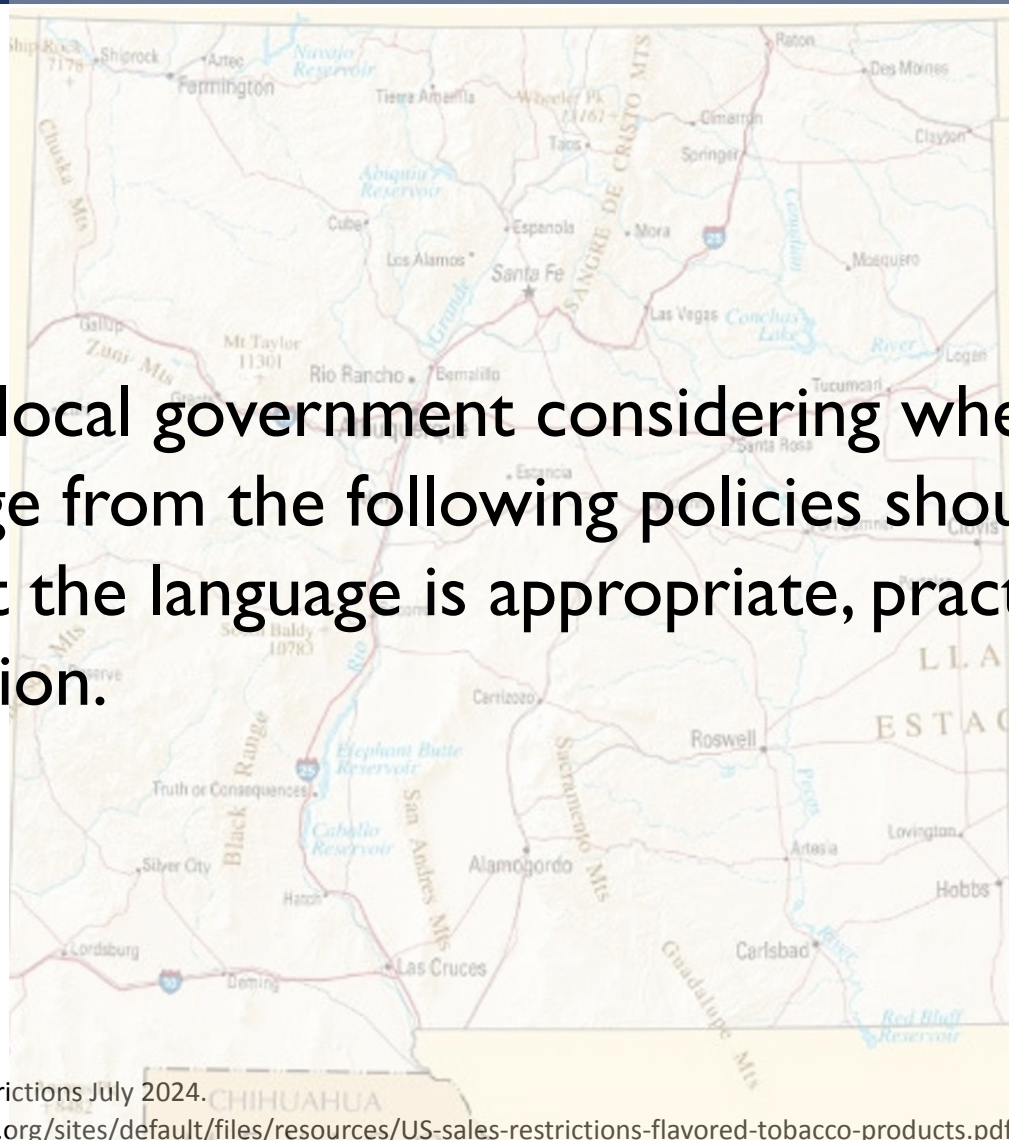
State Average is \$1.96 Per Pack



States that have not passed tax increases since 2014

States that have passed or implemented a cigarette tax increase since 2014

# Model Tobacco Flavor Restriction Policy



A state or local government considering whether to adapt any language from the following policies should take care to ensure that the language is appropriate, practical, and legal for its jurisdiction.

