

Prohibition on the Sale of Flavored Tobacco Products

Background

- A prohibition on flavored tobacco products prevents a retailer from selling any tobacco product that has a “characterizing flavor” which includes a taste or aroma of various flavors including a fruit flavor, chocolate, vanilla, honey, wine, coffee, and other flavors. Usually, a flavor ban exempts tobacco products with the taste or aroma of tobacco, menthol, mint or wintergreen. A flavored tobacco sales ban encompasses flavored cigars, flavored chewing tobacco and moist snuff, and flavored pipe tobacco.
- Generally, a violation of a flavored tobacco ban law results in a fine assessed to the retailer and, for subsequent violations, may also involve the suspension or revocation of the retailer’s license to sell cigarettes and tobacco products.

Arguments in Favor of Not Banning the Sale of Flavored Tobacco Products

- A flavored tobacco ban disrupts the free marketplace by interfering with normal transactions between legitimate, responsible retailers and adult consumers desiring to purchase legal tobacco products. Adults will simply turn to ordering flavored tobacco products over the Internet or traveling a short distance to another town, city or neighboring state that does not have a flavored ban law to purchase their favorite tobacco products.
- By adults seeking out other sources for their flavored tobacco products, the purpose of a flavored tobacco ban, namely reducing tobacco usage, is undermined since flavored tobacco products are readily available on-line or in adjacent cities and states.
- A reduction in sales of legal flavored tobacco products may also result in retailers laying off employees due to sales declines. This places an unnecessary and undue economic burden on retailers by government dictating what products can be sold in the local marketplace.
- The First Amendment to the U.S. Constitution protects free speech, including commercial speech such as product advertising and labeling. A ban on the sale of flavored tobacco products violates the First Amendment because manufacturers and retailers cannot exercise their right to describe the taste or aroma of tobacco products through product packaging and adult consumers are denied the ability to receive information on flavored tobacco products.
- The federal “Family Smoking Prevention and Tobacco Control Act” enacted in 2009 banned the sale of certain flavored cigarettes, and also precluded local and state governments from adopting a tobacco product standard that is different from or in addition to the federal law. Since a local or state ban on the sale of other flavored tobacco products goes beyond the scope of the 2009 federal law, a local or state government is not allowed to adopt such a law.
- The Food and Drug Administration’s Center for Tobacco Products recently issued new regulations on cigars, pipe tobacco and e-cigarettes and did not extend the flavor ban on cigarettes to these other tobacco products.

