



## Policy Brief: California Policies Regulating the Sale of Flavored Tobacco Products

February 2023

### Introduction

California cities and counties have led the way in adopting policies that regulate the sale of flavored tobacco products, and California municipalities were the first in the U.S. to end the sale of all flavored tobacco products—including menthol cigarettes—at all retailers. As of January 2023, 138 California municipalities have adopted local laws that regulate the sale of flavored tobacco products to some extent.

In August 2020, the California legislature adopted [SB793](#) to end the sale of flavored tobacco products with a few exemptions. Once SB793 was signed into law, tobacco companies began working to overturn this public health legislation, and enough signatures were gathered to put the issue on the November 2022 ballot as [Proposition 31](#). California voters chose to uphold SB793 with Proposition 31 receiving [63.4% of the vote](#).

Laws regulating the sale of flavored tobacco products are part of a policy continuum of local and state tobacco control measures that reduce tobacco use and exposure in order to create healthier environments for all Californians. Best practices in the policy continuum include reducing secondhand smoke exposure by requiring all indoor workplaces, public places, and multi-unit housing to be smokefree, on which California is ahead of the curve at both the local and state levels. Best practices in the policy continuum extend to the adoption of local and state [laws that regulate the tobacco retail sales environment](#) in order to reduce the access to and availability of tobacco products through a [spectrum of policy provisions](#). A key retail sales policy provision is regulating the sale of flavored tobacco products, including ending the sale of all flavored tobacco products.

### Need for Flavored Tobacco Laws

Despite years of health progress in California, tobacco use and exposure is still the leading cause of preventable death and disease, and California is still the largest cigarette market in the U.S. Ending the sale of flavored tobacco is part of broader efforts to lower tobacco-related disease burdens and rising healthcare costs through better prevention policies and programs.

Industry documents show that tobacco companies intentionally designed flavored products to appeal to young people.<sup>i</sup> Flavors are the key to attracting youth and young adults to tobacco products, including vaping products, menthol cigarettes, little cigars and cigarillos, and shisha/hookah. Menthol in particular makes it easier to inhale nicotine.<sup>ii</sup>

The purpose of local and state policies that end the sale of flavored tobacco products is to reduce access to these products that are specifically designed to entice young people to start on a lifetime of nicotine addiction, to limit the negative public health consequences of tobacco use, and to reduce the impact of targeted tobacco industry marketing—especially of menthol cigarettes and flavored vaping products—to communities of color, youth and young adults, the LGBTQ+ community, and low-income communities.<sup>iii</sup>

Research shows that the tobacco industry more heavily targets and markets menthol tobacco products to African Americans,<sup>iv</sup> and 85% of African American adult smokers in 2019 used menthol cigarettes, compared to 48% of Hispanic adults and 30% of non-Hispanic White adults.<sup>v</sup>

Likewise, youth and young adults are intentionally targeted by the tobacco industry with flavored tobacco products. Nearly 8 in 10 youth who reported using tobacco products in 2021 used flavored products, including menthol cigarettes and flavored vaping products.<sup>vi</sup> In California, 91.6% of high school students who use tobacco products use a flavored product, and 96.2% of California high school students who vape use a flavored product.<sup>vii</sup> The best way to prevent tobacco-related illness and death in our communities is to keep youth and other vulnerable populations from starting to smoke in the first place.

Researchers found that Massachusetts' 2020 law ending the sale of all flavored tobacco products led to a decrease in the sale of both menthol cigarettes and all cigarettes.<sup>viii</sup> Research also found that San Francisco's law ending the sale of all flavored tobacco products nearly eliminated the sale of flavored tobacco products and led to a reduction in the sale of all tobacco products at retailers.<sup>ix</sup> Local flavored tobacco policies in Massachusetts led to a decrease in adolescent use of cigarettes and e-cigarettes.<sup>x</sup>

To best protect public health and address health inequities in our communities, municipalities with the strongest tobacco control protections have adopted laws that include comprehensive policy provisions to reduce secondhand smoke exposure across indoor environments and to regulate the retail sale of tobacco products, including ending the sale of all flavored tobacco products.

The policy data reflected in this brief comes from the [Matrix of Policies Regulating the Sale of Flavored Tobacco Products in California \(January 2023\)](#) and the [List of California Municipalities Regulating the Sale of Flavored Tobacco Products \(January 2023\)](#). The data in these two documents is based on several sources: data in the Policy and Evaluation Tracking System (PETS) database, which is current through the end of March 2021, data in the ANR Foundation's [U.S. Tobacco Control Laws Database](#)<sup>©</sup> that contains additional California policy data based on analysis by policy surveillance staff, and data on policies tracked by policy surveillance staff. PETS is the policy surveillance database of tobacco control policies in local jurisdictions in California. Flavored tobacco is one of the four local policy topic areas tracked in the PETS database. The population data in this brief is from the U.S. Census Bureau 2016-2020 American Community Survey 5-Year Estimates.

### **Current Status of Local Laws**

As of January 2023, [138 California jurisdictions](#) in 28 counties, representing 31 Local Lead Agencies, have adopted local laws that regulate the sale of flavored tobacco products to some extent. These 138 jurisdictions cover 18,282,973 Californians, or 46.5% of the state population.

The best practice for flavored tobacco policies is to enact a law that prohibits the sale of all flavors (including menthol) of all types of tobacco products at all venues. Likewise, the best practice is for jurisdictions to adopt flavored tobacco regulations within the framework of requiring all retailers to obtain a [local tobacco retailing license](#).

Of the 138 California jurisdictions that regulate the sale of flavored tobacco products, the [policies in 112 of the jurisdictions](#) have been analyzed by ANR Foundation staff. Of those 112 jurisdictions, 67 of them (59.8%) have

adopted policies that meet the best practice standard of prohibiting the sale of all flavors (including menthol) of all types of tobacco products at all venues.

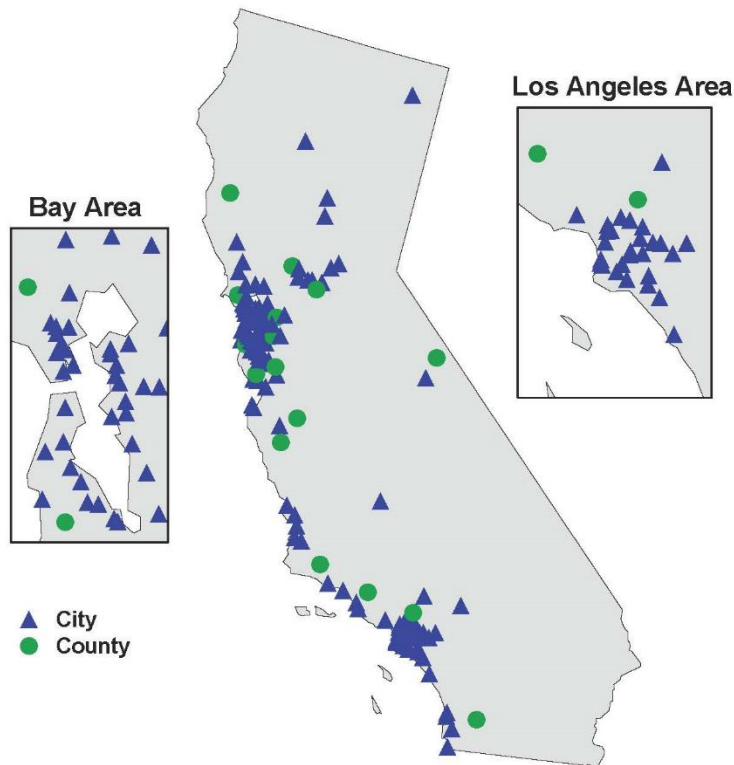
Of the 112 jurisdictions, 81 jurisdictions (72.3%) prohibit the sale of menthol cigarettes in all venues, and 90 jurisdictions (80.4%) prohibit the sale of menthol cigarettes regardless of any other exemptions.

### Geographic Characteristics of Local Laws

The 138 jurisdictions with flavored tobacco policies are located in 28 counties and represent 31 LLAs, with the number of jurisdictions per LLA in parentheses: Alameda (11), Butte (2), Contra Costa (12), Kern (1), Los Angeles (22), Marin (11), Mendocino (1), Modoc (1), Mono (2), Monterey (4), Napa (1), Orange (4), Placer (2), Sacramento (3), San Benito (1), San Bernardino (1), San Diego (6), San Francisco (1), San Luis Obispo (3), San Mateo (12), Santa Barbara (5), Santa Clara (9), Santa Cruz (5), Shasta (1), Solano (1), Sonoma (5), Ventura (3), Yolo (5). The three jurisdictions that have their own LLAs also adopted flavors laws: Berkeley, Long Beach, and Pasadena.

Three counties have achieved the distinction of having all jurisdictions adopt flavored tobacco laws: Mono County (2 of 2), Santa Cruz County (5 of 5), and Yolo County (5 of 5). Additionally, San Benito County adopted a law that covers its two incorporated jurisdictions, Hollister and San Juan Bautista, and San Francisco adopted a law as a combined city and county jurisdiction. Two counties have adopted flavored tobacco laws in 75% - 99% of their jurisdictions: Alameda (79%) and Marin (92%). Six counties have adopted flavored tobacco laws in 50% - 74% of their jurisdictions: Contra Costa (60%), Modoc (50%), San Mateo (57%), Santa Barbara (56%), Santa Clara (56%), and Sonoma (50%).

**California Jurisdictions with Policies Regulating the Sale of Flavored Tobacco Products**



These 138 jurisdictions can also be looked at across 11 CTCP Geographic Regions:

**Bay Area (58):** Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Solano

**Central Coast (10):** Monterey, San Benito, Santa Cruz

**Central Valley (1):** Kern

**Gold Country (12):** Mono, Placer, Sacramento, Yolo

**High Country (1):** Modoc

**Los Angeles (24):** Los Angeles

**North Coast (7):** Mendocino, Napa, Sonoma

**North Valley (3):** Butte, Shasta

**South Coast (10):** Orange, San Diego

**Tri-County (11):** San Luis Obispo, Santa Barbara, Ventura

**Tri-County South (1):** San Bernardino

Municipalities in the Bay Area have led the way on policy adoption, with the region accounting for 42% of all municipalities that have enacted flavored tobacco policies. Los Angeles follows, with 17% of the municipalities that have enacted flavors policies. Notably, policies have been adopted in all 11 of the CTCP Geographic Regions.

### **State Law Overview**

The California legislature adopted SB793 in August 2020 to extend the restriction on flavored tobacco sales throughout the state. The provisions of SB793 end the sale of most flavored tobacco products in California, with [three product exemptions](#):

- flavored shisha tobacco products sold by a hookah tobacco retailer
- premium cigars sold in cigar lounges for onsite consumption
- loose leaf tobacco or premium cigars

The law otherwise prohibits the sale of all flavors of [all tobacco products](#) at all retailers, including menthol cigarettes, vaping products whether they contain nicotine or other vaporized liquids, little cigars and cigarillos, and noncombustible tobacco products like chew and snuff.

The implementation of SB793 was suspended leading up to the November 2022 vote on Proposition 31. This delay was forced by the tobacco industry's effort to overturn the law to protect their profits. During the 22 months that implementation of the flavors law was delayed, the tobacco industry stood to generate \$1.1 billion in revenue from menthol cigarette sales alone in California.<sup>xi</sup> The industry's effort was denied when voters approved Proposition 31.

R.J. Reynolds immediately filed an injunction to [block implementation](#) of SB793, but the Supreme Court [denied](#) its emergency application on December 12, 2022, and SB793 was implemented on December 21. During the legal challenges, California continued [planning for implementation](#), including retailer education and cessation support resources.

The industry opposition to SB793 mirrored opposition efforts to local California flavored tobacco laws in the preceding years, starting with the multi-million dollar effort to overturn the flavored tobacco law adopted by San Francisco in June 2017.<sup>xii</sup> Tobacco and vaping companies know that local and statewide laws that restrict or end the sale of flavored tobacco products will reduce tobacco sales and hurt their bottom line, so they spend millions of dollars trying to weaken, prevent, and overturn these laws to protect their profits.

### Comparison of Local Laws to SB793

California's SB793 includes important flavored tobacco sales regulations, but it does include [three product-type exemptions](#) that are not included in many stronger best practice local laws. In addition to jurisdictions that have laws without exemptions, there are jurisdictions whose laws include similar product exemptions to SB793, as well as jurisdictions whose laws contain one or more policy provisions that are weaker than the provisions in SB793. Since policies in some jurisdictions have more than one type of exemption, the numbers are not mutually exclusive.

#### Stronger than state law:

- **67** municipalities have adopted laws that **meet the best practice standard** of prohibiting the sale of all flavors of all tobacco products at all venues without exemption.
- **9** municipalities prohibit the sale of all flavors of all tobacco products at all venues except there is an **exemption for flavored vaping products (ESDs) that do not contain nicotine**.

#### Similar to state law:

- **6** municipalities prohibit the sale of flavored tobacco products except there is an **exemption for one or more types of flavored tobacco leaf products**. These laws are similar to the state law because they contain one or more of the three product exemptions in SB793.

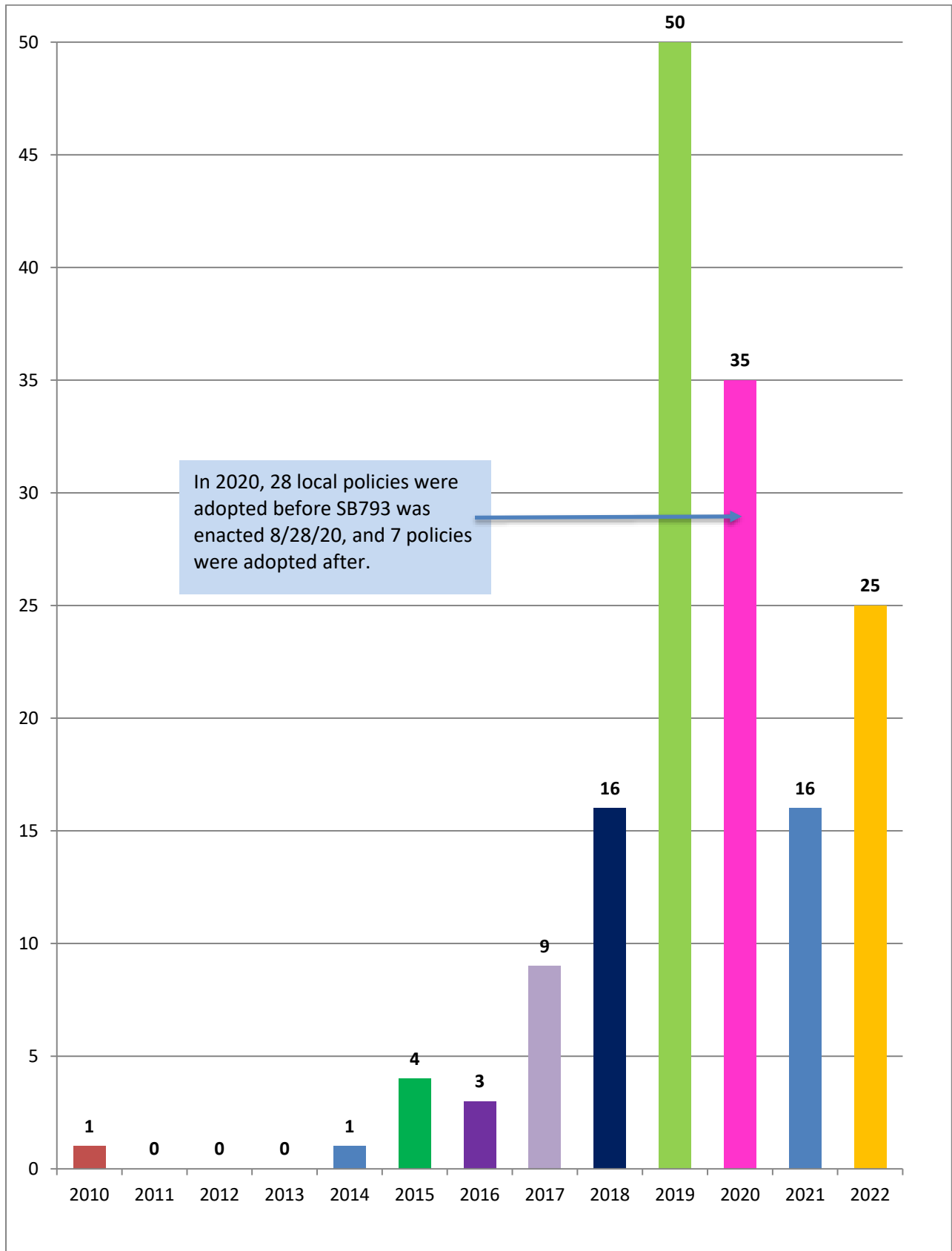
#### Weaker than state law:

- **8** municipalities prohibit the sale of most flavored tobacco products except there is an **exemption that allows sales at adult-only/specialty retailers**.
- **28** municipalities **exempt some or all menthol products**, regardless of other exemptions.
- **4** municipalities **exempt flavored ESDs** that have been authorized for sale under the **FDA's premarket review process**.
- **7** municipalities **only prohibit the sale of some or all flavored vaping products** and do not restrict the sale of other types of flavored tobacco products.

### Timing of Local Laws

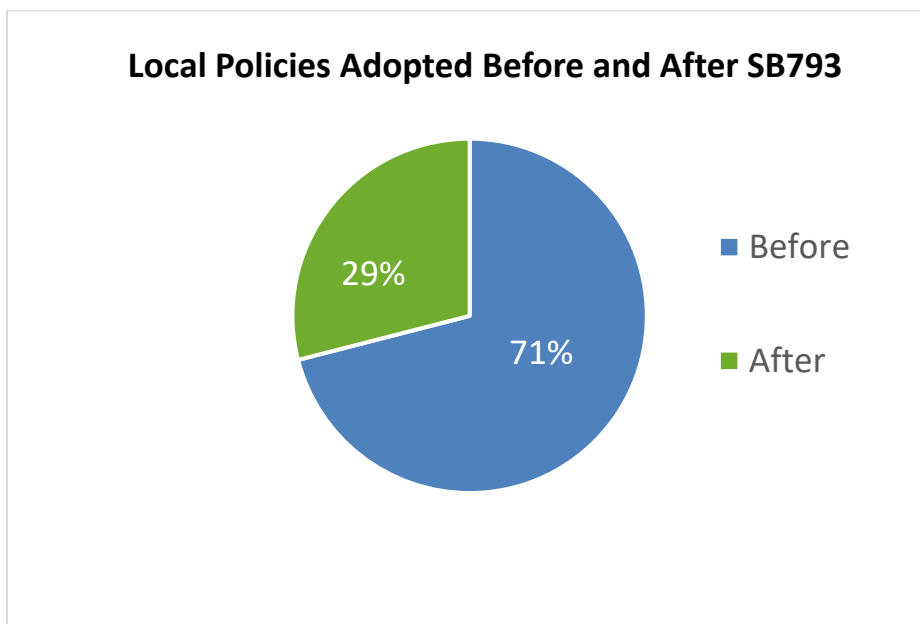
As with all types of tobacco control policy progress, local leads the way. The adoption of strong laws regulating the sale of flavored tobacco products paved the way for the California legislature to adopt SB793 to extend the retail sales regulations statewide. Starting in 2010 with Santa Clara County, 138 municipalities have enacted 160 policies to regulate the sale of flavored tobacco products, as multiple jurisdictions have adopted more than one policy on the issue, especially municipalities that started out with partial laws and came back to remove exemptions and strengthen protections in subsequent policies. One jurisdiction, Delano, enacted a policy in 2019

to end the sale of flavored tobacco products, then enacted a policy in early 2020 to exempt menthol cigarettes, and then repealed the flavored tobacco provisions later in 2020.



In response to the tobacco industry’s effort to overturn SB793, which prevented the law from going into effect in the 22 months leading up to the Proposition 31 vote in November 2022, California tobacco control partners created an intentional education and advocacy effort to support the adoption of local flavored tobacco laws throughout California.

- 98 out of 138 municipalities (71%) adopted policies to regulate the sale of flavored tobacco products before SB793 was adopted in August 2020.
- 40 municipalities (29%) adopted policies to regulate the sale of flavored tobacco products after SB793 was adopted in August 2020. One jurisdiction, Delano, adopted a policy to repeal its prior flavors policies after SB793 was adopted.



### Future

California continues to be an innovator in tobacco control policies. Ending the sale of all flavored tobacco products in all retailers in 67 California municipalities—and regulating the sale of flavored tobacco products to some extent in an additional 71 municipalities—is a significant achievement in tobacco control, both in California and across the U.S. Likewise, California is only the second state after Massachusetts to adopt a law ending the sale of most flavored tobacco products, including menthol cigarettes and flavored vaping products.

The 138 California municipalities that regulate the sale of flavored tobacco products are likely to be joined by additional municipalities that choose to adopt local regulations even after SB793 is implemented statewide. Municipalities may be motivated to adopt policies that provide stronger local regulations than the exemptions permitted in SB793 that will continue allowing the sale of flavored shisha tobacco, loose leaf tobacco, and premium cigars.

While much work remains to be done to protect Californians from the health harms created by tobacco use and exposure, the local and state actions to end the sale of flavored tobacco products will help protect youth and communities from the constant targeting by tobacco companies, who have everything to gain from addicting young people to a lifetime of tobacco use.

ANR Foundation will create a document to provide additional information on which local flavored tobacco policies are stronger than, similar to, and weaker than SB793 to assist with local and statewide education, advocacy, and evaluation efforts. The depth of data available on local policies will increase over time as ANR Foundation policy surveillance staff complete Phase 2 long-form analysis on additional jurisdictions. This additional data will provide further insight on the strength and weaknesses of local policies in relation to SB793, including whether local laws specifically include or exempt flavored shisha tobacco, loose leaf tobacco, and premium cigars.

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<sup>i</sup> Marketing Innovations, "Youth Cigarette - New Concepts," Memo to Brown & Williamson, September 1972, Bates No. 170042014; R.J. Reynolds Tobacco Company, "Conference report #23," June 5, 1974, Bates No. 500254578-4580; R.J. Reynolds Inter-office Memorandum, May 9, 1974, Bates No. 511244297-4298.

<sup>ii</sup> Kreslake JM, Wayne GF, Alpert HR, et al. "[Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults.](#)" Am J Public Health 2008; 98:1685–92.doi:10.2105/AJPH.2007.125542.

<sup>iii</sup> UnDo Tobacco, <https://www.undo.org/tobacco-industry-damage>.

<sup>iv</sup> U.S. Food and Drug Administration. "[Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes](#)," 2013.

<sup>v</sup> Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. Substance Abuse & Mental Health Data Archive. [National Survey on Drug Use and Health, 2019](#).

<sup>vi</sup> Gentzke AS, Wang TW, Cornelius M, et al. "[Tobacco Product Use and Associated Factors Among Middle and High School Students – National Youth Tobacco Survey, United States, 2021.](#)" MMWR Surveillance Summaries. 2021;71(5):1-29.

<sup>vii</sup> Zhu S, Braden K, Zhuang Y, et al. "[Results of the Statewide 2019-20 California Student Tobacco Survey.](#)" San Diego: Center for Research and Intervention in Tobacco Control (CRITC), University of California San Diego; 2021.

<sup>viii</sup> Asare S, et al. "[Association of Cigarette Sales with Comprehensive Menthol Flavor Ban in Massachusetts](#)," JAMA Internal Medicine. February 2022.

<sup>ix</sup> Gammon DG, et al. "[Implementation of a comprehensive flavoured tobacco product sales restriction and retail tobacco sales](#)," Tobacco Control 31(e2): e104-e110, December 2022.

<sup>x</sup> Hawkins SS, et al. "[Flavoured tobacco product restrictions in Massachusetts associated with reductions in adolescent cigarette and e-cigarette use](#)," Tobacco Control 31(4): 576-579, July 2022.

<sup>xi</sup> Campaign for Tobacco-Free Kids, "Big Tobacco Referendum Built on Lies is Desperate Attempt to Keep Hooking Kids with Candy-Flavored Tobacco," November 24, 2020. [https://www.tobaccofreekids.org/press-releases/2020\\_11\\_24\\_flavorhookkids-california](https://www.tobaccofreekids.org/press-releases/2020_11_24_flavorhookkids-california).

<sup>xii</sup> Y. Tony Yang & Stanton Glantz, "[San Francisco Voters End the Sale of Flavored Tobacco Products Despite Strong Industry Opposition](#)," 169 Annals of Internal Med. 708, 708 (2018).