

S.24 Menthol Bill

Testimony: Senate Health and Welfare Committee

March 11, 2021

SENATE COMMITTEE ON HEALTH AND WELFARE

- Sen. [Virginia "Ginny" Lyons](#), Chair
- Sen. [Ruth Hardy](#), Vice Chair
- Sen. [Ann Cummings](#)
- Sen. [Cheryl Hooker](#)
- Sen. [Joshua Terenzini](#), Clerk

Dear Vermont Senate Health and Welfare Committee:

We come to your committee to discuss the Menthol Bill S.29. As members of the BIPOC Health Justice Committee in Windham County*, we have been tracking the increasing disparities in Vermont's COVID cases. The COVID pandemic educates us all about ongoing race and ethnicity disparities. The Center for Black Health, NAACP and American Medical Association in February 2021 report on the impact of menthol: "Black Americans are being disproportionately impacted by COVID-19, and the Centers for Disease Control and Prevention has found that smoking increases the risk for severe illness from COVID-19. Smoking is also a major cause of underlying conditions like heart disease and diabetes that disproportionately impact Black Americans and make them more vulnerable to the COVID-19 pandemic."

<https://www.tobaccofreekids.org/what-we-do/industry-watch/menthol-report>

It is of utmost importance to include menthol in a ban on flavored tobacco products. As stated in the bill, nationally 85% of Black adult smokers choose menthol products; 7 out of 10 Black youth who smoke also choose menthol. In Vermont, the 2019 Youth Risk Behavior Survey reports students of color are significantly more likely than white, non-Hispanic students to smoke cigarettes: 47% students of color smoked cigarettes on 20+ days compared to 24% for white smokers; 32% students of color smoked at least half a pack a day compared to 8% white smokers. The way in which tobacco companies target Black people is greatly concerning. In the Black Lives, Black Lungs video produced by the Truth Initiative – Inspiring Lives Free from Smoking, Vaping and Nicotine <https://www.youtube.com/watch?v=Eeg5BNx--uQ> we learn that the tobacco industry strategically markets and perniciously targets its deadly products in underserved communities. Frequently Black leaders and community organizations accept money from cigarette companies. In response at their 2016 national convention, the NAACP supported a resolution to restrict menthol sales.

As you review this bill, we ask that you examine better ways to enforce the reduction of menthol smoking in our communities. We are haunted by the encounters Eric Garner and George Floyd had with police that related to tobacco use, and are determined that legislation to eliminate the sale of menthol tobacco products do not result in increased policing of and decreased safety for marginalized communities.

Here are our recommendations:

Hold Business and Industry Accountable Rather than holding individuals, especially youth, accountable, we support holding business and industry accountable for violations. Large scale violations require criminal investigations. We know that online sales of flavored tobacco products aside from menthol products are technically already illegal. In reality, the most popular flavors, including all the candy flavored products like Puff Bar remain for sale online. There are two major types of online sellers:

- Major companies, who continue to sell their wares unimpeded despite the supposed FDA ban. For example, PuffBars continue to sell their products online and have done so with no age verification.
- Individuals who are running a business to purchase wholesale and then resell, including to minors. We have learned from Building a Positive Community staff one way the underage supply chain has worked: minors either buy directly from online sites or purchase from other minors. A few minors are major redistributors to other minors. At Leland and Gray High School in Townshend, one student recently came in to school with 60 flavored vape products in their backpack. They have enormous financial incentives to continue their business. Financial penalties and criminal investigation are required in these situations.

We recommend that financial penalties for tobacco sales as outlined in section 1007.a be applied to the commercial sales entities and business owners rather than the clerks at these establishments. Education and training should be provided to clerks and salespeople who violate regulations related to the sale for tobacco products.

Avoid Suspension or Expulsion In schools, restorative justice principles should guide responses to student violations as an alternative to “appropriate referrals to law enforcement authorities”. Student violations should not result in physical force, suspension or expulsion. We recommend eliminating the youth purchase, use, and possession penalties from this bill. We recommend removing the civil penalties from sections 1005.2.b and 1005.2.c of the proposed bill and that the language in § 140 be changed from referring people who violate the use of menthol products on school grounds or at school sponsored functions to law enforcement to referring these people to appropriate education and non-law enforcement resources.

Non-police Enforcement For individuals who violate menthol tobacco regulations, shift enforcement authority to public health and restorative justice entities who are vested to develop free and culturally appropriate cessation education, counselling and circles of support. As the capacity of the Department of Health and other non-police entities is increased, dedicated attention can be given to restorative approaches to help the students who are coming to school with large quantities for resale. Once again, the Center for Black Health and

Equity has been a resource regarding enforcement issues:
<https://centerforblackhealth.org/tobacco-control-racial-equity-event/>.

Build Capacity Redirect tobacco taxes to support public health and community restorative justice entities.

Broader Representation of Populations Impacted We are glad to see that the Vermont Department of Health has already established a Substance Misuse Prevention Oversight and Advisory Council. In recent years, the Youth Risk Behavior Survey reports significant increases in tobacco use, especially with menthol, among BIPOC and LGBTQ+ youth. We therefore recommend representation from the BIPOC and LGBTQ communities on the Council.

In closing, we ask our legislators and tobacco and control partners to examine how this bill might contribute to systemic racism and discrimination. Might this bill have two competing goals which are diametrically opposed? On the one hand, it supports saving lives and, on the other hand, it criminalizes tobacco use by fining young people for tobacco possession. We recommend a significant investment in public health education and restorative justice approaches and restricting law enforcement to business and industry prosecutions. We must not only work to eliminate the sale of mentholated tobacco products but also address inequities in the enforcement of commercial tobacco control laws and policies.

Thank you for considering these comments and recommendations as you review S.24.

Sincerely, Members of the BIPOC Health Justice Committee:
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* The BIPOC Health Justice Committee is a sub-committee of the Community Equity Collaborative of the Brattleboro Area. The committee membership is drawn from the NAACP, the Community Equity Collaborative (CEC), Brattleboro Memorial Hospital, the Vermont Department of Health, the United Way of Windham County and the Vermont Racial Equity Task Force. This committee began in June 2020 to gain a more accurate and comprehensive picture of how COVID-19 has impacted our Vermont community members of color in Windham County and statewide. Our long-term work is to develop strategies for reducing the health disparities experienced by our BIPOC community.

