

## Communication from Public

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# We now have results for key laws advocates promised would 'protect' teenagers. They don't.

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Guest Commentary

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**By Mike Males**, *Special to CALmatters*

In 2016, fewer than 6% of California adolescents reported trying cigarettes, down from 10% in 2015, 13% in 2009, 15% in 2007, and 19% in 2003.



Why on earth did legislators feel the need to intervene in such a hugely positive youth trend?

For no apparent reason, they did. In 2016, California raised its "smoking age" from 18 to 21, with severe penalties for tobacco retailers and others who provide tobacco or e-cigarettes to persons under 21.

"Now we can know that our youth are less likely to be addicted to this horrible drug of tobacco," said bill sponsor, then Sen. Ed Hernandez, a Democrat from West Covina. A poorly-designed Institute of Medicine report predicted that raising the tobacco age to 21 would reduce teens' trying cigarettes by 12%.

Did that happen? No.

UCLA's Center for Health Policy Research's annual survey of 1,600 adolescents found 2017, the first full year the 21 smoking age was in effect, was the first since the survey began 15 years ago that teenagers' cigarette use failed to decline.

The biggest effect of the age-21 law may be to jeopardize the employment of adult teenagers in hundreds of thousands of jobs across the state that handle tobacco products, penalizing a young age group already suffering 30% unemployment and huge student debts.

The failure of the law to reduce smoking and teens' actual increase in "vaping" in 2017 in its first year, when such laws typically have their biggest effect, is troubling – if anyone cares.

After all, legislative and safety officials show no interest in repealing their 1998 teen driving law, despite disastrous results.

As with teen smoking prior to the age-21 law, teen driving fatalities had been falling sharply—by 50% from 1987 to 1997 to record low levels—under California's previous driving law.

Then, legislators decided to mess things up.

In 1998, lawmakers enacted a new “graduated driver license” law imposing costly, cumbersome bans and requirements on new drivers ages 16 and 17. Experts predicted big declines in deaths.

Again, experts were wrong. The graduated-licensing law quickly proved a calamity. Teen driving deaths halted their previous decline in 1998 and began a five-year increase.

The California Department of Transportation reported the law had no effect on younger teenagers and accompanied increased traffic deaths among older teenagers.

My 2005 Journal of Safety Research and follow-up studies found California’s teen-driving law was statistically associated with increased young-driver fatalities that persisted over time. A 2007 Journal of the American Medical Association paper, the best and largest national study, found teen driving laws associated with more deaths among older teens.

Long-term research associated California’s graduated driver licensing law with around 60 more traffic deaths per year among young people than occurred under the old licensing system.

In 2008, I presented the law’s bad results to the California Senate. None of the law’s advocates, including the California Highway Patrol, the California Automobile Association, and legislators, challenged my findings. They just didn’t seem to care.

Another pointless intervention was restricting persons age 18-20 from obtaining credit cards. Legislative hearings rang with claims of beer-happy kids going wild with plastic.

In fact, “credit cards are the least of millennials’ debt burden,” Credit Karma reports. The biggest young-age debt category by far: education loans, which have skyrocketed due to the failure of legislators themselves to fund higher education.

If lawmakers, agencies, and experts want to improve youthful safety, repeal the teen driving, smoking, and credit card measures, cut out worthless juvenile curfews, revisit the state’s antiquated drinking age of 21, and start dismantling measures that arbitrarily segregate and punish youths.

Despite high levels of youth poverty, disadvantage, and debt (the real correlates of teenagers’ ills), today’s young people have improved behaviors dramatically on their own across a variety of fronts. They deserve more freedoms, not repressions.

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*Mike Males is senior researcher for the Center on Juvenile and Criminal Justice, [email protected]. He wrote this commentary for CALmatters. Read his past commentaries [here](#), [here](#), [here](#), [here](#), and [here](#).*

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## The California Crusade Against Tobacco Flavors: From Foolish to Dangerous

*Ban on harm reduction products leaves only the most toxic options*

By Dr. Brad Rodu, May 3, 2019 6:31 am

HIGHLIGHT

OPINION



The FDA promotes a myth that teen 'vaping epidemic' is caused by unscrupulous manufacturers and retailers.

"Crusades typically start out by being admirable, proceed to being foolish, and end by being dangerous." Russell Baker used these words in a 1994 *New York Times* column describing the anti-tobacco crusade, noting that the holy war was entering the last stage. Now, 25 years later, California legislators are fighting their own crusade—against the so-called teen vaping "epidemic"—with a proposed ban on flavored tobacco products.

First, let's examine the "epidemic." Authorities generously define "current use" of any drug by children as at least once in the past month. The FDA, using this definition in a national survey, reported that vaping among American high school students increased substantially in 2018. The FDA was only telling part of the story; about half of those kids had vaped five or fewer days, the equivalent of trying products at a party. And **most frequent e-cigarette users are not virgins with respect to cigarette smoking; most of them have smoked in the past.**

**Drug use by underage children is a serious matter. That makes it entirely baffling that California legislators ignore higher rates of alcohol and marijuana use among high schoolers, facts that have been known for decades. These behaviors have nothing to do with flavors, but instead demonstrate that kids are attracted to adult behaviors and products.**

**The FDA promotes the myth that a teen vaping epidemic is caused by unscrupulous manufacturers and retailers. This isn't true, especially in California, where the violation rate in FDA inspections was only 4% in 2018, one of the lowest in the country (here and here).**

Since **retailers aren't the problem in California, a ban on flavored tobacco products isn't the solution.** This is harassment without reason. Even advocates of alcohol prohibition 100 years ago didn't try to ban flavors.

A flavor ban is supposed to stop kids from using nicotine, but is that a worthwhile objective? Nicotine, while addictive, is not the cause of any diseases associated with smoking. It is as **safe to consume as caffeine**, another addictive drug used daily by millions of adults and teens.

Because nicotine is so safe, prohibitionists fabricate hazards. One frequent claim is that nicotine can harm teenage brains. That may be a legitimate argument – for laboratory mice. If it was true for humans, then 40 million current smokers – and even more former smokers – who started as teens and smoked for decades would have demonstrable brain damage. There is no scientific evidence of such injury, nor to support the claim of youth brain risk. If California legislators want to protect children's brains, they should ban football, as there is unequivocal evidence linking concussion-producing sports activities to chronic traumatic encephalopathy (**here**, for example).

A flavor ban will not affect vapers who make their own vaping liquids. This segment of the market is already large and growing; a few examples can be found **here, here and here.** **A ban might cause the current retail market to fracture in two: one segment selling concentrated, unflavored nicotine liquids, and another selling flavors.** A high-tax jurisdiction like Chicago, where a prohibitively high per-milliliter tax is imposed on nicotine liquids, demonstrates what happens when the market is bifurcated. Vape shops there sell 30 ml bottles of zero-nicotine e-liquids (no tax) and small concentrated bottles of high-strength nicotine that are taxed. **Flavor bans will simply encourage consumers to purchase flavorless e-liquids, and then buy flavoring that is widely available in grocery stores and online, such as here and here.**

# Unintended Consequences

A flavor ban would create unintended consequences. Flavors would no longer be supplied by legitimate companies. Instead, do-it-yourselfers would be adding flavors with unknown chemistry to concentrated nicotine solutions. It is worth noting that the only known death attributable to vapor products in the U.S. resulted from a young child accidentally ingesting pure nicotine.

Politicians routinely ignore another basic economic fact: bans drive black markets. Economists and legal scholars use the terms “bootleggers” (black market retailers) and “Baptists” (legislators and other misguided do-gooders), calling them “unlikely allies from the tobacco wars [who] try to fight off a game-changer [e-cigarettes].”

Two years ago, California was already the sixth biggest cigarette black-market state. Legislators should not create a bootlegger paradise for flavored tobacco, when they haven’t even solved the bootleg marijuana problem. The legislature legalized cannabis in 2016, but retained high taxes; the black market is now worth \$3.7 billion, four times the legal market. The same rush to stigmatize vaping will doubtlessly create a black market in this category, as well.

The California crusade to ban flavors isn’t just foolish, it’s dangerous. With the exception of menthol, the ban will have the least impact on sales of cigarettes, the deadliest tobacco products. But it will remove from retail shelves many more smoke-free products – including e-cigarette liquids, dip, chew and snus. These products are vastly less hazardous than cigarettes. Imagine if alcohol opponents had only banned flavors during Prohibition. Beer, wine and other flavored spirits would have been eliminated, leaving only pure alcohol on retail shelves. That policy would have been an abject failure, as would any similar ban on flavored tobacco products.

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## Dr. Brad Rodu

For over twenty years, Dr. Brad Rodu has studied the science behind tobacco harm-reduction (THR) strategies. Dr. Rodu's research in comparative epidemiology established the scientific foundation for tobacco harm-reduction. Dr. Rodu earned his D.D.S. at Ohio State University and completed a residency in oral pathology at Emory University in Atlanta. He was the recipient of NCI and ACS fellowships during his tenure at the University of Alabama at Birmingham. In 2003, he served as an expert witness at a Congressional hearing on tobacco harm reduction, and has presented at numerous international forums, including one convened in London at the British Houses of Parliament. Learn more at his website [Tobacco Truth](#).

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