States Consider Menthol Cigarette Bans as Feds Delay Action

About 80% of Black smokers use menthol cigarettes, which are more addictive.

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It was just after sunset, and the evening traffic was buzzing on Highway 50 as 24-year-old Elijah Kinlaw popped into his local Walgreens in Clermont, Florida, to pick up some smokes. He had just finished a long day working at a local roofing company, and he was still wearing his neon green work T-shirt and a red beanie.

After his shifts, Kinlaw typically smokes to wind down. His cigarette of choice: a cooling, minty Newport.

Kinlaw, who started smoking at 19, wants to just “breathe and take one day at a time” instead of relying on cigarettes, but quitting isn’t easy. He’s tried twice and plans to try again.

“Eventually, it catches up to you,” said Kinlaw, one of the disproportionate number of Black smokers who prefer menthol cigarettes. “It’s not good for you. It’s not a high. It doesn’t feel good.”

Menthol cigarettes can be more addictive than regular cigarettes because the menthol masks the harsh burn, making the smoke easier to inhale. Black people smoke at similar rates to white people overall, but most Black smokers — more than 80% — smoke menthol cigarettes, and they are more likely to die of smoking-related disease, according to the federal Centers for Disease Control and Prevention.

For years, public health experts have advocated for higher sales taxes on menthol cigarettes or even an outright ban. In 2021, the federal Food and Drug Administration announced a proposal to prohibit the sale of menthol cigarettes, a move that could prevent up to 650,000 deaths nationwide over several decades, according to research cited by the agency.

But following heavy lobbying — and perhaps fearing the loss of Black votes in an election year — President Joe Biden in December delayed the final decision on a ban. The administration hopes to announce a decision next month.

The delay has drawn fierce criticism from public health organizations. Meanwhile, some states are acting on their own.

Small-shop owners fear bans will hurt their businesses, and some Black leaders say they worry about more policing in their communities.

Massachusetts in 2020 became the first state to ban the sale of all flavored tobacco products, including menthol cigarettes. California enacted a similar ban in 2022. This year, bills that would empower state officials to ban the sale of menthol along with all other flavored tobacco products have been introduced in at least four states (Hawaii, New York, Vermont and Washington). Last year, bills were introduced in at least 10 states.

In addition, more than 190 cities and counties across at least eight states have restricted the sale of menthol cigarettes, according to the Campaign for Tobacco-Free Kids.

Other minority groups also disproportionately smoke menthols: In 2020, 51% of Hispanic adult smokers reported using menthol cigarettes, compared with 35% of non-Hispanic white adult smokers, according to the CDC. Research has shown that female smokers and those who are Asian, Native Hawaiian, Alaska Native, LGBT, or who have mental health conditions also are more likely to smoke menthols.

Kinlaw said he's in favor of a ban. "We've got to take precaution," he said.

Industry influence

But the tobacco industry has long marketed menthol cigarettes to Black communities. The marketing of Kool and Newport brand menthol cigarettes to Black people began gaining ground in the 1950s, and included focused advertising and corporate sponsorships of events popular in Black communities, such as jazz concerts. One 2013 study of Black middle- and high-school students in California found they were three times more likely than non-Black students to recognize cigarette ads featuring Newport as opposed to Marlboro.

To shed light on that fact and to call for change, dozens of people last month took part in a funeral march in Washington, D.C., held by the African American Tobacco Control Leadership Council. Rather than marking a single death, the marchers — led by trumpet players and people carrying a casket reminiscent of a cigarette pack — were demanding the demise of menthol cigarettes.

Phillip Gardiner, a behavioral scientist and expert on racial health disparities who co-chairs the council, said multiple presidential administrations "have dragged their feet" on the issue.

"Instead of burying African Americans, let's bury menthol," said Gardiner, whose own father died from smoking-related disease at 65.

In nearby Maryland, state law prohibits the sale of flavored e-cigarettes but there is an exemption for menthol-flavored products. Only one other state, Utah, has a similar law. A Maryland bill that would have banned the sale of all flavored tobacco products failed last year.

Maryland Democratic state Sen. Joanne Claybon Benson represents the Washington suburb of Prince George's County, which is majority Black. Her husband died from lung cancer complications when he was only 59.

"I can personally tell you the story of how harmful menthol cigarettes can be to an individual, an individual of color," said Benson, her voice tinged with frustration. Benson doesn't smoke, but she was exposed to secondhand smoke from her husband and is a cancer survivor. "We don't want smoking, period, of any kind in our community."

An analysis published last week in the Oxford University Press journal Nicotine & Tobacco Research found that bans on the sale of menthol cigarettes can help smokers quit entirely. Researchers examined local bans in the United States, Canada and the European Union, and found that a quarter of menthol smokers quit smoking after a ban was enacted.

Sarah Mills, an assistant public health professor at the University of North Carolina at Chapel Hill and a lead author of the study, said policymakers considering bans should be aware of the tobacco industry's "long history of providing funding to different groups and of using front groups" to oppose them.

> The history of menthol cigarettes is part of the history of the slow strangulation of Black people.
> –Keith Wailoo, medical historian, Princeton University

Princeton University professor Keith Wailoo, a medical historian and author of the book "Pushing Cool: Big Tobacco, Racial Marketing, and the Untold Story of the Menthol Cigarette," said tobacco's disproportionate harm to Black people cannot be disentangled from the money Big Tobacco has spent in Black communities.

"If you want to understand how menthol both started and built a foothold, you have to understand the way in which the industry developed tentacles from the street corner level, by identifying influencers and then funding politicians who would defend their rights to advertise, to supporting civil rights organizations," Wailoo said in an interview.

"The history of menthol cigarettes is part of the history of the slow strangulation of Black people."

Pushback on bans

But some opponents of bans wonder why legislators are singling out menthol cigarettes and other flavored tobacco products while allowing the sale of other dangerous items. Beatriz Rodriguez,

who owns the Dat Hoot Smoke Shop in Apopka, Florida, said the proposed federal ban would harm her business.

“As a small-business owner, obviously that would hurt me,” Rodriguez said. “It would upset me because there’s so many other things that are way more dangerous. Tobacco kills — but it’s like, OK, alcohol kills, prescription pills kill.”

Other critics argue a menthol ban would lead to over-policing of Black communities. In New York, for example, Black, Puerto Rican, Hispanic and Asian Legislative Caucus Chair Michaelle Solages, a Democratic assemblymember, has been an outspoken opponent.

“We are very cautious about enforcement on the average New Yorker,” Solages said in an interview, adding she worries about “over-enforcement in marginalized, underserved communities of color.”

But the FDA has made it clear that any ban would target the retail sale of menthol cigarettes and not the people who use them. “Importantly, the FDA cannot and will not enforce against individual consumers for possession or use of menthol cigarettes or flavored cigars,” a news release on the proposed rule states.

Gardiner and Wailoo said people who warn of increased policing are echoing arguments that the tobacco industry has made. He said the industry often tries to “tap into anxieties and concerns” about police violence or aggressive policing that already exist.

Meanwhile, other public health experts say increasing taxes on menthol cigarettes — a strategy that has been used to reduce overall smoking — won’t pack nearly the same punch as a ban.

“You’re taxing people who have been targeted by companies,” said Ruqaiijah Yearby, a health law professor at the Moritz College of Law at Ohio State University. “You’re not actually getting at the people who have caused the harm — which are the cigarette companies.”

Yearby also criticized state laws that tie the hands of local officials who want to crack down on tobacco use. Republican lawmakers in Ohio recently blocked cities and counties from passing their own tobacco control ordinances. The American Lung Association says that 39 states have such laws.

Florida, where Kinlaw is trying to quit smoking and Rodriguez worries about her smoke shop, is one of them.

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