



Durbin, Murray, Markey, and colleagues keep pressure on FDA to go further in combating youth tobacco use

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WASHINGTON – U.S. Senator Dick Durbin, along with Senators Patty Murray (D-WA), Ed Markey (D-MA), and 18 of their colleagues, sent a letter to Dr. Scott Gottlieb, Commissioner of the Food and Drug Administration (FDA), urging him to act quickly to implement agency plans to ban flavored cigars and menthol cigarettes and follow FDA’s [recent efforts](#) to address rising youth e-cigarette use with additional steps including ending marketing of all tobacco products to youth and removing from market all flavored tobacco products that have not undergone a thorough FDA review that shows they benefit public health.

“It is well past time to end the marketing of products that so clearly impact the health of our youth, and we urge the agency to act quickly to make good on its commitment to take them off the market once and for all. It is clear flavored tobacco products are leading to a new generation of youth becoming addicted to nicotine, and we have repeatedly urged the FDA to act swiftly and strongly to end the scourge of youth tobacco use. While the agency’s planned actions on menthol cigarettes and flavored cigars would generate substantial public health improvements, we remain concerned the new steps do not go far enough, especially with regard to e-cigarettes. We therefore urge FDA to move quickly to not only ban flavored cigars and menthol cigarettes, but also to end the marketing of all tobacco products to youth and remove all flavored tobacco products, including e-cigarettes, from the market until or unless they have undergone a thorough FDA review that shows they are of benefit to the public health,” wrote the Senators.

The letter follows FDA’s recent announcement of new steps to fight rising youth tobacco use and new data showing the urgency of the problem. According to data from the [2018 National Youth Tobacco Survey \(NYTS\)](#), e-cigarette use increased sharply among high school students in recent years, jumping from 1.5 percent in 2011 to 20.8

percent in 2018. As of 2018, one-in-five high school students and one-in-20 middle school students use e-cigarettes.

The letter was also signed by Senators Sheldon Whitehouse (D-RI), Richard Blumenthal (D-CT), Elizabeth Warren (D-MA), Maggie Hassan (D-NH), Jack Reed (D-RI), Ron Wyden (D-OR), Chris Coons (D-DE), Sherrod Brown (D-OH), Jeff Merkley (D-OR), Kirsten Gillibrand (D-NY), Tina Smith (D-MN), Jeanne Shaheen (D-NH), Catherine Cortez Masto (D-NV), Amy Klobuchar (D-MN), Dianne Feinstein (D-CA), Tom Udall (NM), Kamala Harris (D-CA), and Brian Schatz (D-HI).

This year, Durbin and Senator Lisa Murkowski (R-AK) [introduced](#) bipartisan legislation to crack down on kid-friendly flavorings in highly-addictive e-cigarettes and cigars. The bipartisan *Stopping Appealing Flavors in E-Cigarettes for Kids (SAFE Kids) Act* would place strong restrictions on e-cigarette flavorings and ban cigar flavorings altogether, and much of FDA's recent announcement makes changes Durbin and Murkowski proposed in their bill.

In October, Durbin and Murkowski [urged](#) the FDA to immediately ban kid-friendly e-cigarette flavorings and restrict online sales of the addictive nicotine products.

Full text of the letter is available [here](#) and below:

The Honorable Scott Gottlieb, M.D.
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear Dr. Gottlieb,

We write in response to your November 15, 2018 announcement on steps the Food and Drug Administration (FDA) is taking to combat youth tobacco use. We appreciate the steps FDA announced to reduce youth access to some flavored e-cigarettes, but we urge the agency to take additional, stronger steps to prevent and reduce e-cigarette use among youth. We also applaud the decision to pursue a ban on flavored cigars and menthol cigarettes, products that we know disproportionately impact youth, and urge FDA to act swiftly to undergo and complete a rulemaking process to remove these products from the market.

The evidence is clear that flavored e-cigarettes are having a dramatic and harmful impact on our youth. The recent rise in the use of e-cigarette products has reversed years of progress made by youth smoking prevention efforts. New findings from the Centers

for Disease Control and Prevention's (CDC) and FDA's National Youth Tobacco Survey (NYTS) showed that the number of current e-cigarette users increased a staggering 78 percent among high school students and 48 percent among middle school students between 2017 and 2018. In 2018, 3.6 million middle and high school students are considered users of e-cigarette products, and one in five high school students reported using an e-cigarette product in the past 30 days. Of high school e-cigarette users, nearly 68 percent use flavored products. And the number of high school students who use e-cigarettes regularly (e.g., 20 or more times a month) is growing, raising concerns that more youth are becoming addicted to nicotine.

The November 15 announcement outlined steps FDA intends to take to limit the sale of most flavored e-cigarettes to age-restricted retail settings and websites with "heightened" age verification practices and combat the marketing of e-cigarettes to kids. This announcement comes more than a year after FDA delayed key compliance deadlines for e-cigarettes, cigars, hookah, and pipe tobacco, including for products that contain kid-appealing flavors and are actively marketed to children. While we are glad you acknowledge that changes must be made to counter the epidemic of youth e-cigarette use, we are concerned that the recently announced steps are insufficient to turn the tide on the extreme increase in youth use of e-cigarettes or the impacts of the agency's previous delays. In particular, we are concerned that by excluding mint and menthol products – which are used by more than half of youth e-cigarette users – the updated policy overlooks two popular flavors used by youth. We are also concerned by the lack of detail regarding the age restrictions that physical and online retailers will be required to follow and FDA's plan for assessing whether these requirements are truly preventing youth from accessing the restricted products.

We are encouraged by FDA's decision to seek a ban on menthol cigarettes and flavored cigars; it is an important step that has the potential to save countless lives and protect youth across the country. These products clearly appeal to youth – more than half of youth smokers ages 12 to 17 smoke menthol cigarettes. As indicated in the November 15 statement, menthol flavoring "serves to mask some of the unattractive features of smoking that might otherwise discourage a child from smoking." Similarly, flavored cigars present a grave threat to young people. Data from 2014 indicate that, of middle and high school students who smoked cigars, 63.5 percent smoked flavored products. It is well past time to end the marketing of products that so clearly impact the health of our youth, and we urge the agency to act quickly to make good on its commitment to take them off the market once and for all.

It is clear flavored tobacco products are leading to a new generation of youth becoming addicted to nicotine, and we have repeatedly urged the FDA to act swiftly and strongly to end the scourge of youth tobacco use. While the agency's planned actions on menthol

cigarettes and flavored cigars would generate substantial public health improvements, we remain concerned the new steps do not go far enough, especially with regard to e-cigarettes. We therefore urge FDA to move quickly to not only ban flavored cigars and menthol cigarettes, but also to end the marketing of all tobacco products to youth and remove all flavored tobacco products, including e-cigarettes, from the market until or unless they have undergone a thorough FDA review that shows they are of benefit to the public health.

We know we all share the goal of keeping our nation's children safe and healthy, and we look forward to working with you to end youth tobacco use.