

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Stephen Woolery, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> <b>Restrictions on Flavored Tobacco Products</b></p>	<p><i>No.</i> 2024-DLE-18</p>	<p><i>Contact for information:</i> Division of Public Rights Tobacco Unit <a href="mailto:tobacco@doj.ca.gov">tobacco@doj.ca.gov</a></p>
	<p><i>Date:</i> 12/20/2024</p>	

## TO: AGENCIES WITH AUTHORITY TO ENFORCE TOBACCO LAWS

Assembly Bill 3218 has recently been signed into law, amending California’s flavored tobacco ban with some provisions of the law going into effect January 1, 2025. This bulletin discusses modifications of the flavored tobacco ban that may impact products for sale on or after January 1, 2025. The Attorney General has also issued several notices of determination on individual products, including those mentioned in this bulletin, available at <https://oag.ca.gov/tobacco/flavorban>.

### Cooling Products

Assembly Bill 3218 modifies the definition of “[c]haracterizing flavor” to clarify that the flavored tobacco ban applies to products that provide a “cooling sensation,” even if the product otherwise includes no characterizing flavor.<sup>1</sup> Tobacco- or unflavored- nicotine products marketed as “chill,” “ice,” or “cool” products likely fall within the category of sensory cooling products expressly prohibited under the revised definition of “flavored tobacco product.”<sup>2</sup> This includes the popular “Zyn Chill” oral nicotine pouches, as well as other tobacco products marketed as providing a non-mint cooling sensation during use.

### Nicotine Analogs

Assembly Bill 3218 expanded the definition of “tobacco products” to include nicotine analogs.<sup>3</sup> Products covered by this definition likely include packaging that states the product is “nicotine free” or “not subject to FDA regulation” and purports to provide a nicotine-like experience. Such products include Spree Bar, Panchama e-liquids, and Hippotine pouches.<sup>4</sup>

### Non-Nicotine E-Cigarettes

The definition of tobacco products covered under California’s flavor ban includes any “electronic device that

<sup>1</sup> Health & Saf. Code, § 104559.5, subd. (a)(1) (effective January 1, 2025).

<sup>2</sup> See Health & Saf. Code, § 104559.5, subd. (b)(2).

<sup>3</sup> Health & Saf. Code, § 104559.5, subd. (a)(11) [defining “nicotine” to include “nicotine analogs”], (a)(17) [defining “tobacco product” to include “nicotine,” as defined in the statutory scheme] (effective January 1, 2025).

<sup>4</sup> Some of these products are also tobacco products because they are “electronic device[s] that deliver[] . . . other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.” Health & Safety Code, § 104559.5, subd. (a)(17)(A)(ii) (effective January 1, 2025).

delivers nicotine *or other vaporized liquids* to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.”<sup>5</sup> Subject to limited exemptions for certain nicotine replacement and cannabis products,<sup>6</sup> flavored e-cigarettes, regardless of the type of liquid they vaporize, and including those that contain vitamins, violate California’s flavor ban law.

## Clear Products

Since California’s flavor ban passed, several flavored e-cigarette products have been marketed as “clear” flavored.

California’s flavor ban law establishes a rebuttable presumption that a tobacco product is flavored where its manufacturer or agent “has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.”<sup>7</sup> Clear products that contain statements or images communicating that they are flavored are prohibited under the flavor ban. For example, the following clear products contain images of mint leaves, and are therefore presumptively flavored: 1) EBCreate BC5000 Clear, 2) EBCreate TE6000 Clear, 3) Oxbar G8000 Clear, 4) Uwell Caliburn Bar S18000 Clear, 5) Uwell Viscore C30000 Clear, 6) Uwell Prime BG12000 Clear, and 7) Binaries SE6000 Clear. Several other clear products have manufacturer statements on their websites that communicate a characterizing flavor: 1) Tyson 2.0 Heavyweight Clear, 2) Tyson 2.0 Iron Mike Clear, 3) Tyson 2.0 Round 2 Clear, 4) SWFT Mod Clear, 5) Dummy Classic Clear, and 6) HQD Cuvie Slick Clear. The enumeration of these products is not intended to suggest an exhaustive list.

## Flavor Enhancers

Under California’s flavor ban law, the retail sale of flavor enhancers continues to be prohibited.<sup>8</sup> A flavor enhancer is “a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.”<sup>9</sup> This means that OCB flavor cards and NKD flavor liquids, and other products such as drops or sheets that are sold alongside tobacco products and marketed to add flavor to tobacco products are prohibited.

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<sup>5</sup> Health & Saf. Code, § 104559.5, subd. (a)(17)(A)(ii) (effective January 1, 2025) (emphasis added).

<sup>6</sup> Health & Saf. Code, § 104559.5, subd. (a)(17)(B) (effective January 1, 2025) (“tobacco product” does not include: (i) a nicotine replacement product approved by the United States Food and Drug Administration, or (ii) cannabis or a cannabis product, as those terms are defined in Section 26001 of the Business and Professions Code. Cannabis or a cannabis product that includes an ingredient, substance, chemical, or compound that contains or is made or derived from tobacco or nicotine is a “tobacco product” under this section.)

<sup>7</sup> Health & Saf. Code, § 104559.5, subd. (b)(2).

<sup>8</sup> Health & Saf. Code, § 104559.5, subd. (b)(1).

<sup>9</sup> Health & Saf. Code, § 104559.5, subd. (a)(18) (effective January 1, 2025).