



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity and respect • www.ag.state.mn.us

Minnesota's *JUUL* Litigation & Settlement

Assistant Attorney General Adam Welle
Assistant Attorney General Eric Maloney



Tobacco Litigation

- 1994: Minnesota and Blue Cross Blue Shield files landmark lawsuit against several major tobacco manufacturers, including Phillip Morris and RJ Reynolds:
 - From the complaint: “[These] defendants have known for decades from their own internal studies that their products are deadly and addictive. Instead of disclosing this knowledge, these defendants intentionally chose to engage in a unified campaign of deceit and misrepresentation. . . . The defendants' collective conduct has resulted in an unprecedented impact on the public health, in both human and economic terms.”
 - Counts:
 - Antitrust Violations: Conspiracy to Unreasonably Restrain Trade & Commerce, Minn. Stat 325D.51 (1994), and Minnesota Antitrust Law, Minn. Stat. 325D.52
 - Consumer Fraud: Minnesota Consumer Fraud Act, Minn. Stat. 325F.69; Unlawful Trade Practices Act, Minn. Stat. 325D.13; Uniform Deceptive Trade Practices Act, Minn. Stat. 325D.44; False Statement in Advertising Act, Minn. Stat. 325F.67
 - Negligence: Undertaking of Special Duty
 - Unjust Enrichment & Conspiracy



Tobacco Litigation



- Mike Ciresi, lead attorney for State of Minnesota:

Our lawsuit was not about taking cigarettes off the market, because that's within the province of the government. And that's not going to happen. If they had a legal product, they had to sell it legally. And our position was that they were selling it illegally and that they were targeting children and they were manipulating the nicotine, which is the addictive part of cigarette smoking. So we grounded our case on that theory, and that's what we stuck to all the way through and it was a long and arduous task.

- Cathy Wurzer & Julia Franz, *Minnesota's Landmark Tobacco Settlement is 20 Years Old*, MINNESOTA PUBLIC RADIO (May 8, 2018).



Tobacco Litigation

- **1994-1998:** 40 other states sue tobacco companies
- **1997:** Mississippi is first state to settle litigation against the tobacco companies
- **May 1998:** Minnesota settles its landmark case against Big Tobacco after 15 weeks of trial
 - Settlement reached right before jury was about to begin deliberations
 - Injunctive prohibitions on misrepresentations and targeting underage tobacco users
 - Tobacco companies agree to make annual payments to general fund, one-time payments for endowments related to prevention/cessation programs, and court-administered payments to fund creation of Clearway Minnesota (calculated at \$6.5B in total payments)
 - Tobacco company documents are made public and put into archive
- **Nov. 1998:** Tobacco Master Settlement Agreement with 46 states





Federal Tobacco Regulation

- **1996:** FDA issued rule to prevent and reduce tobacco use by children by prohibiting non-face-to-face sales, prohibiting advertising near schools and playgrounds, and other marketing restrictions
 - Tobacco companies sued to block the rule – and prevail.
 - *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000) (holding that Food Drug & Cosmetic Act did not give the FDA authority to regulate tobacco products as drugs or devices)
- **2010:** Congress passes Family Smoking Prevention and Tobacco Control Act (FSPTC Act)
 - Gives FDA explicit authority to regulate tobacco products
 - Creates the Center for Tobacco Products (CTP) as branch of the FDA
 - Flavored tobacco products banned (not menthol)
 - Gave FDA power to “deem” any new product containing nicotine from tobacco as a tobacco product



JUUL History

- **2004:** Adam Bowen and James Monsees meet at Stanford University and partner to create an e-cigarette company – which eventually becomes JUUL.

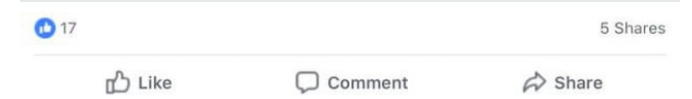
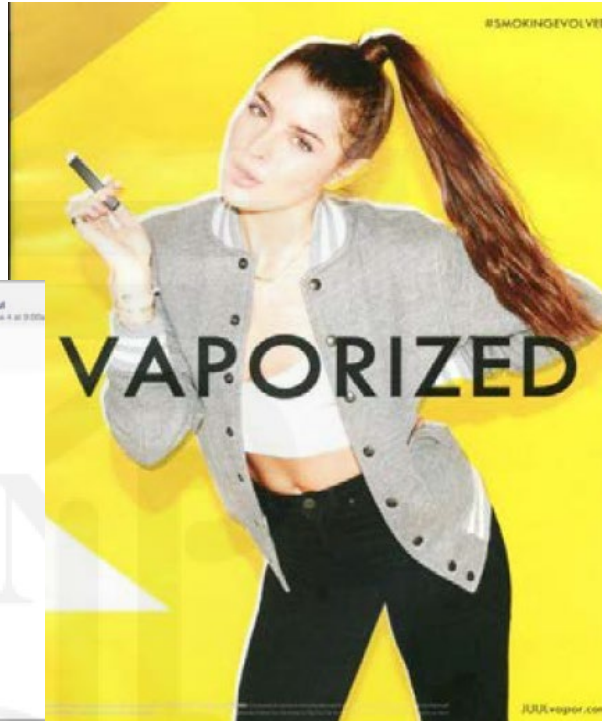
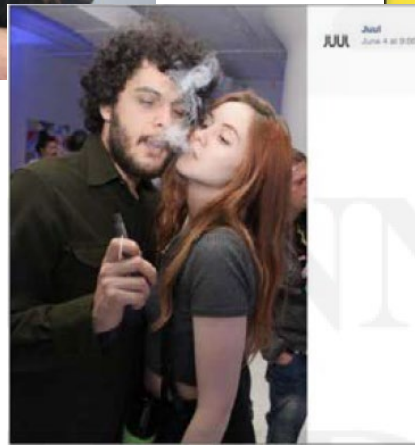
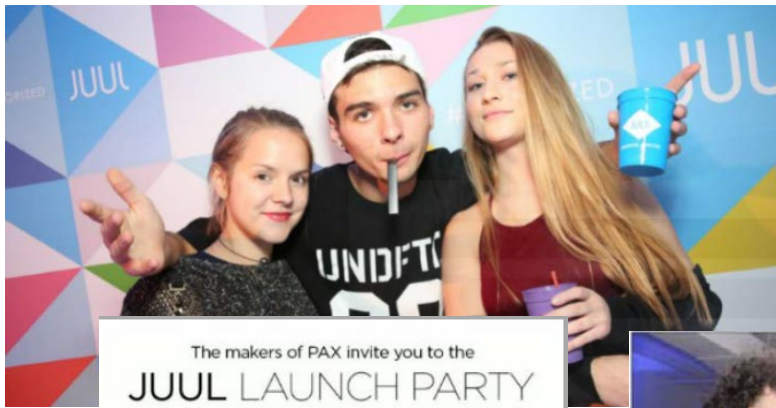


- **2011:** FDA announces plan to regulate e-cigarettes as tobacco products
- **2014:** FDA releases proposed deeming regulations for vaping products
 - Requiring manufacturers to submit premarket tobacco applications (PMTAs) for all existing products within 2 years after rule became final
 - PMTAs must be supported with research showing e-cigarette product benefited public health
- **2015:** Substantial increase in use of e-cigarettes
- **2016:** Deeming Rule takes effect
 - Gives until Aug. 2018 for products to sell before submission of PMTA; later postponed to 2022



JUUL Litigation History

- **2015:** JUUL launches w/ parties and social media influencer campaign





JUUL Litigation History



- **2015:** JUUL launches with four flavors (tobacco, mint, crème brûlée, fruit medley)
 - JUUL later adds menthol, mango, and cucumber flavors
- JUUL used a high nicotine content and “nicotine salts” to better simulate cigarettes
- But instead of designing the product to look like a cigarette, JUUL chose a trendier, tech-focused design, similar to an Apple iPhone

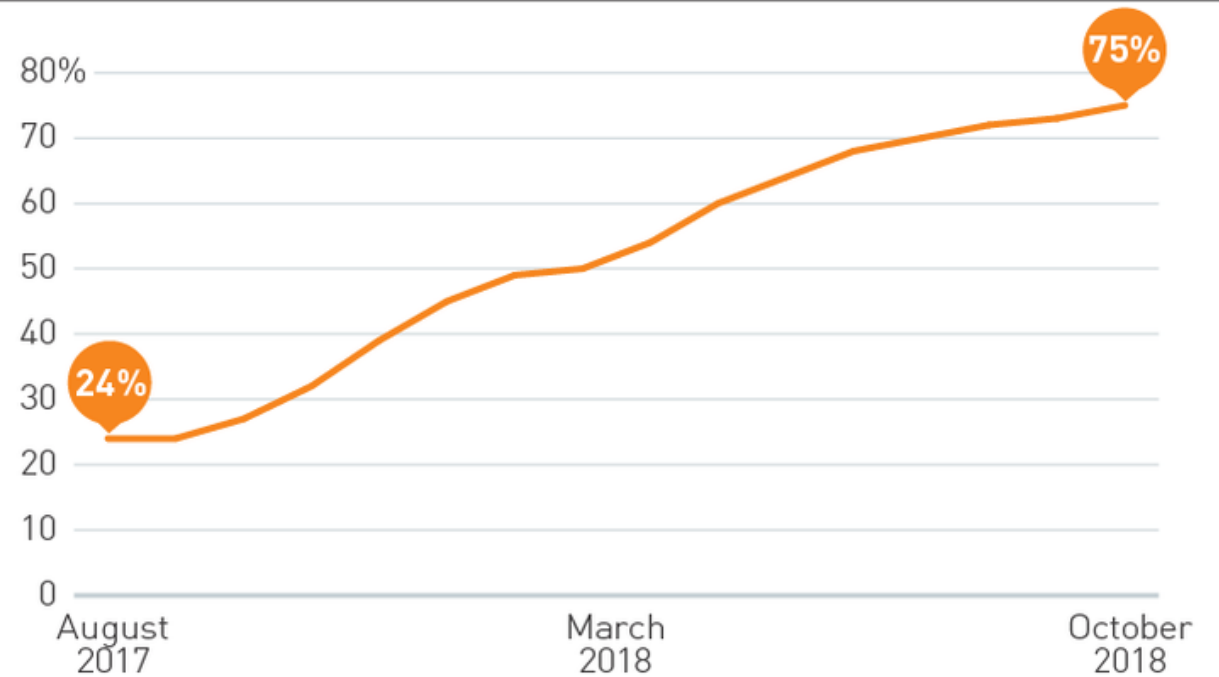




JUUL Litigation History

- 2017-2018: Youth vaping sharply increases, w/ JUUL leading the market
 - **JUUL corners 75% of vaping market by 2019; most popular brand for youth**
 - 2017 MDH survey reveals that 90% of students in MN encountered promotions for e-cigarettes in last 30 days; e-cigarette use jumped 50%; 1/5 of students were using e-cigarettes
 - JUUL begins talks with Altria (Philip Morris) for potential acquisition/partnership
- Attorneys general begin investigating JUUL in 2018

JUUL sales as a percentage of all e-cigarette sales



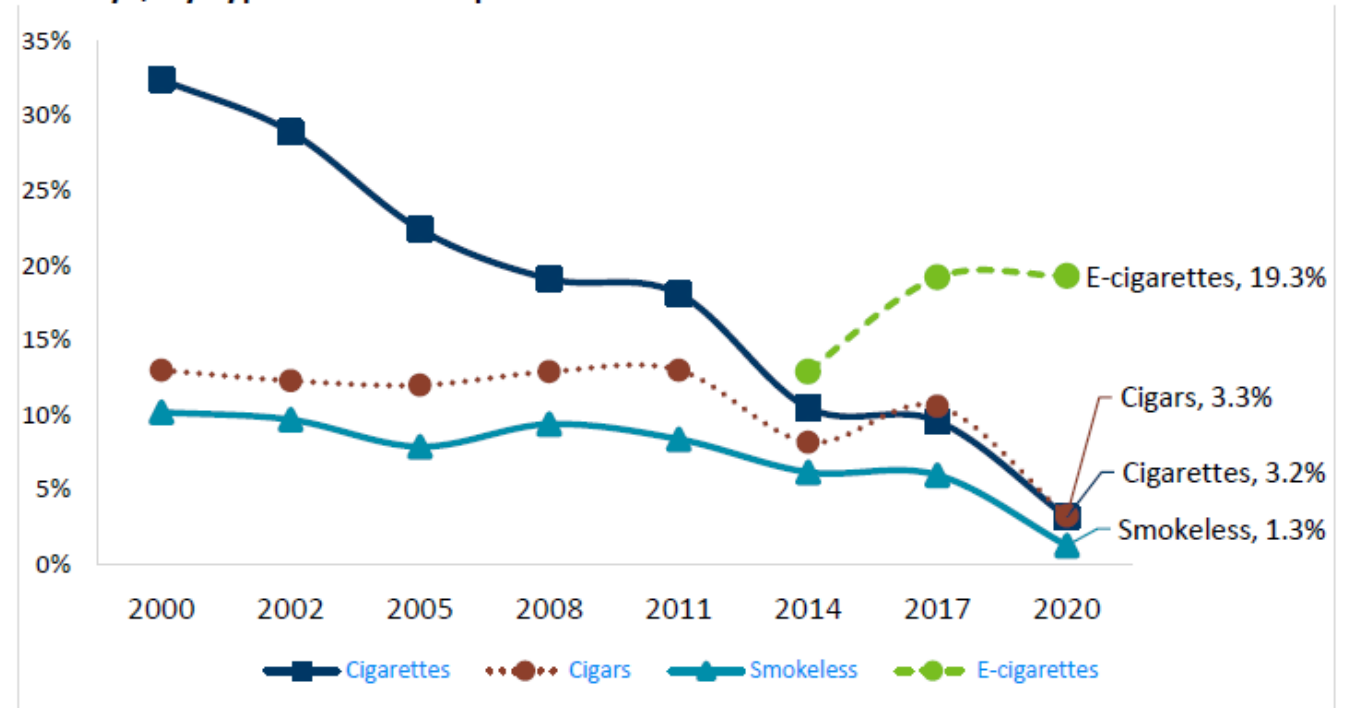
Source: Nielson: Tobacco "All Channel" Data. August 2017-October 2018



JUUL Litigation History

- **Sept. 2018:** FDA Commissioner declares that JUUL being used by youth at “disturbing rates” and threatens to remove flavors from market; JUUL responds by pulling flavors but keeping mint and menthol
- **Oct. 2018 :** Altria CEO tells FDA that “pod-based” and flavored vape products driving youth use; pulls existing products and flavors
- **Oct. 2018:** MDH survey shows that **19.3% of high school students had recently used e-cigarettes**
- **Dec. 2018:** Surgeon General declares youth vaping epidemic
- **Dec. 2018:** Altria acquires **35% stake in JUUL for \$12.8B** and enters services agreement to promote sales

Figure 5. Percent of high school students who used a tobacco product in the past 30 days, by type of tobacco product: 2000-2020.



Source: Minnesota Youth Tobacco Survey, 2000-2020.

* Questions about e-cigarettes were added to the MYTS for the first time in 2014.



JUUL Litigation History

- **2019:**
 - FDA issues warning letter to JUUL re: youth marketing
 - Attorney General appoints special attorneys Robins Kaplan LLP and Zimmerman Reed LLP to represent state in investigations and potential litigation regarding vaping
 - 12 states filed lawsuits in 2019-20 against JUUL (**including Minnesota in Dec. 2019**)
 - C.D. Cal. consolidates individual and federal class action lawsuits in MDL proceedings, including personal injury cases, consumer/purchaser cases, government entity cases (e.g., school districts), and tribal entities
- **2020**
 - **Dec. 2020:** Minnesota adds Altria as defendant, alleging civil conspiracy and aiding/abetting for role in JUUL sales



JUUL Litigation History

- **State of Minnesota's claims against JUUL and Altria:**
 - **Counts I-IV: Violations of Minnesota Consumer Fraud Statutes (325F.67, 325D.44, 325D.13, 325F.69)**
 - Defendants misled and deceived consumers into believing that products were appropriate for youth and young non-smokers and misled consumers regarding nicotine content and safety of JUUL products
 - **Count V: Public Nuisance**
 - Defendants' deceptive marketing and targeting of youth substantially contributed to the public health epidemic of youth vaping
 - **Count VI: Negligence**
 - Defendants failed to communicate harmfulness and highly addictive quality of products and violated MN's prohibition on tobacco sales to minors
 - **Count VII: Unjust Enrichment**
 - Defendants unfairly obtained profits and revenues from sales caused by wrongful conduct
 - State unfairly required to expend resources to address harms caused by Defendants' conduct



JUUL Litigation History

As MN litigation continues, others settle:

- **June 2021:** NC AG settles and obtains marketing restrictions, document disclosure, and \$40M in payments to state
- **Apr. 2022:** WA AG settles and obtains marketing restrictions and \$22.5M
- **June 2022:** FDA administratively denies JUUL's PMTA, but administratively stays order pending further scientific review
- **Sept. 2022:** JUUL settles investigations with 34 states and territories for \$438.5M (over 6-10 year period), marketing restrictions
- **Dec. 2022:** PA AG settles and obtains marketing restrictions and \$38M in payments
- **Dec. 2022:** MDL cases settle for \$1.7B
- **April 11, 2023 (during MN trial):** CA, NY, IL, CO, MA, NM, and DC settle litigation for \$462M



JUUL Litigation History

- **Trial begins on March 27, 2023:**

- 3/27-28: Jury selection
- 3/28: Opening statement by Attorney General Ellison and Tara Sutton of Robins Kaplan LLP
- 3/28-4/11: Plaintiff's Case: Dr. Kurt Ribisl (marketing expert), Murray Garnick (Altria general counsel), Laura Oliven Silberfarb (MDH tobacco program lead); Dr. Anne Griffiths (pediatric pulmonologist), Danette Seboe (Duluth East principal), Dr. Richard Hurt (addiction expert), Scott Dunlap (former JUUL CEO), Dr. Melissa Harrell (nicotine and "gateway effect" expert), Nicholas Pritzker (former JUUL board member), Dr. Frank Chaloupka (health economist), Christopher Olin (former JUUL marketing contractor)
- 4/11-4/14: Defendants' Case: Adam Bowen (JUUL co-founder), James Monsees (JUUL co-founder), Dr. Erik Augustson (JUUL science analyst), Dr. Laurentius Marais (marketing expert), Michael Parrish (JUUL operations director), Collin Frazier (FDA/DHS official), Dr. Jack Henningfield (nicotine expert)
- 4/17: Parties announce confidential settlement term sheet; jury dismissed and case stayed pending final consent judgment
- 5/17: Deadline to enter public consent judgment





Notable Issues & Rulings Related to Tobacco Marketing and Vaping



Notable Issues/Rulings: *State v. JUUL*

- **Public Nuisance**

- AGO alleged that JUUL’s misleading/negligent marketing and sales of dangerous products interfered with public rights and caused public harm
- JUUL and Altria moved to dismiss, asserting that (1) criminal nuisance (§ 609.74) is only method to enforce nuisance law, (2) abatement of nuisance only allowed for “property”-based harm
- 6/21/21 Order on Motions to Dismiss: (1) AG is authorized to civilly enforce section 609.74 via section 8.31 (authorizing civil enforcement of statutes concerning unlawful business, commerce, or trade) and (2) court’s equitable remedial powers may include abatement in form of monetary payment
- JUUL & Altria moved for summary judgment based on similar arguments for “narrow reading” of public nuisance and that AG’s claims were “product liability” claims; 3/14/23 Order held:

Although no Minnesota case is precisely on point, the Court finds that Minnesota precedent establishes a more expansive range for public nuisance claims than the narrow range defined in other states by the courts relied upon by Defendants, such as the decisions in Oklahoma and Alaska. The Court therefore finds that the State has set forth sufficient evidence to create a genuine issue of material fact to proceed on its claim that the alleged contributions of JUUL and the Altria Defendants to the increase in youth vaping in Minnesota constitute a public nuisance.



Notable Issues/Rulings: *State v. JUUL*

- **Negligence**

- AGO alleged that JUUL’s marketing breached duty of care and caused damages to State in the form of medical expenses and lost investment in tobacco control
- JUUL & Altria moved to dismiss, asserting no duty of care to State in conducting marketing and that damages/harm is “too attenuated”; 6/21/21 Order held that harm to State as alleged was foreseeable
- JUUL & Altria moved for summary judgment, arguing it cannot be liable for lost investment and that State expenses incurred via agencies are unavailable because agencies are third parties; 3/14/2023 Order held:

[T]he State has brought this case on behalf of the people of Minnesota. Any funds it collects will be on the people’s behalf and not on behalf of any particular state agency. Therefore, the Court finds nothing inconsistent between the State’s position in the discovery process, in which various state agencies were separately represented as non-parties, and the State’s attempt to recover damages for lost tobacco control funds and healthcare costs that rightfully belong to the people of Minnesota.
- Court also rejected SJ arguments about causation/speculative damages



Notable Issues/Rulings: *State v. JUUL*

- **Comparative Fault/Equitable Defenses Asserted Against the State**

- JUUL & Altria asserted various legal and equitable defenses that blamed the State of Minnesota for increased vaping rates and sought to prevent/limit remedies against JUUL
- State moved for summary judgment on affirmative defenses; Court granted in part and denied in part
- Court rejected argument that MTCA applies to prevent affirmative defenses against the State and rejected that separation of powers prevent defenses on summary judgment:

The State’s concerns regarding the factfinder’s evaluation of decisions made by the governor and the legislature and the inherent separation of powers issues are valid concerns. However, the Court also must ensure basic fairness when a private defendant is brought into court by the government. ... The Court is unwilling to bar Defendants categorically from raising the defense of failure to mitigate damages.... In denying summary judgment, however, the Court is not ruling that the issue necessarily will be submitted to the jury.

- Court granted motion as to equitable defenses: “[A] failure to properly fund tobacco mitigation efforts with funds directed to the State’s general fund under a settlement agreement, where the agreement placed no restraints on the use of such funds, does not rise to the level of unconscionability required to maintain a defense of unclean hands.”



Coda: *State v. JUUL* Settlement

- Consent Judgment filed May 17, 2023

STATE OF MINNESOTA
COUNTY OF HENNEPIN

STATE OF MINNESOTA, by its Attorney General,
Keith Ellison,

Plaintiff,

vs.

JUUL LABS, INC., a Delaware Corporation
f/k/a PAX LABS, INC., f/k/a PLOOM PRODUCTS,
INC., ALTRIA GROUP, INC. f/k/a PHILIP
MORRIS COMPANIES, INC.; PHILIP MORRIS
USA INC. f/k/a PHILIP MORRIS INC.; ALTRIA
CLIENT SERVICES LLC; ALTRIA GROUP
DISTRIBUTION COMPANY; ALTRIA
ENTERPRISES LLC,

Defendants.

Plaintiff State of Minnesota (the “State” or “Minnesota”), by its Attorney General, Keith Ellison (the “Attorney General”), filed a Complaint against JUUL Labs, Inc. (“JUUL”) on December 4, 2019, in the above-captioned matter. The State filed its First Amended Complaint against JUUL and Altria Group, Inc., Philip Morris USA Inc., Altria Client Services LLC, Altria Group Distribution Company, and Altria Enterprises LLC (collectively “Altria” and, together

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Other Civil

Court File No. 27-CV-19-19888
Hon. Laurie J. Miller

CONSENT JUDGMENT





Coda: *State v. JUUL* Settlement Terms

- Consent Judgment filed May 17, 2023
 - JUUL Injunctive Relief:
 - JUUL cannot market or sell to children and young adults, including use of models under the age of 35, advertising on apparel, entertainment, and social media platforms, and the sale of flavored products;
 - Restricts JUUL's ability to sponsor events and use outdoor advertising in MN;
 - Prevents JUUL from distributing product samples;
 - Requires that JUUL accurately disclose nicotine content of products;
 - Directs how JUUL products may be sold in-store and limiting online sales; &
 - Creates a retailer compliance program for MN stores to ensure sales w/ proper age verification
 - Altria injunctive relief:
 - For any vaping company owned or subject to Altria control, must restrict and prevent youth marketing
 - Allows MN to enforce any restrictions imposed by FDA on marketing



Coda: *State v. JUUL* Settlement Terms

- Consent Judgment filed May 17, 2023:
 - Document Disclosure
 - Documents produced in litigation must be made available in document depository available to public
 - Minnesota settlement is first case to secure document disclosure related to JUUL from Altria
 - Depository administered by academic institution
 - JUUL and Altria must pay for maintenance of document depository
 - Transcripts and exhibits from trial also included
 - Exempts privileged information, trade secrets, confidential personal information



Coda: *State v. JUUL* Settlement Terms

- Consent Judgment filed May 17, 2023
 - Monetary Payment: \$60.5 Million over 8-year period
 - Frontloaded payments:
 - \$22.75M within 30 days of consent judgment
 - \$12.75M by March 1, 2024
 - 60% of funds will be received within one year
 - Additional Payments:
 - \$3.75M in 2025, 2026, 2027, 2028, 2029, 2030
 - \$2.5M upon marketing order approval by FDA
 - Payments include portion for attorneys' fees and costs
 - Approximately \$8.6M in costs, \$8.9M in fees
 - Fees based on 2019 "special attorney appointment" subject to legislative oversight



Coda: SF2520/HF2422

- HF 2422 introduced by Rep. Keaohly Vang Her; SF2520 introduced by Sen. Kelly Morrison
- Devotes proceeds from JUUL litigation to “tobacco use prevention account” administered by MDH
- Folded into health omnibus bill SF2998/HF2930
- AG Ellison submitted letters in support of legislation

Subd. 3. Appropriations from tobacco use prevention account. (a) Each fiscal year, the amount of money in the tobacco use prevention account is appropriated to the commissioner of health for:

(1) tobacco and electronic delivery device use prevention and cessation projects consistent with the duties specified in section 144.392;

(2) a public information program under section 144.393;

(3) the development of health promotion and health education materials about tobacco and electronic delivery device use prevention and cessation;

(4) tobacco and electronic delivery device use prevention activities under section 144.396; and

(5) statewide tobacco cessation services under section 144.397.

(b) In activities funded under this subdivision, the commissioner of health must:

(1) prioritize preventing persons under the age of 21 from using commercial tobacco, electronic delivery devices, tobacco-related devices, and nicotine delivery products;

(2) promote racial and health equity; and

(3) use strategies that are evidence-based or based on promising practices.



Additional Regulations Affecting Vaping

2019: Federal law raises minimum age for purchase of tobacco products to 21

2020: Minnesota becomes 25th state to adopt T21 restriction

2020: FDA bans flavored vape products, leaving menthol and tobacco flavors on the market, but excluded disposable products

April 2022: Congress passed, and President signed, law clarifying that synthetic nicotine products are regulated like tobacco-derived nicotine products

March 2023: FDA proposed new rules and guidances related to synthetic nicotine products



Questions?

- **For more information or questions about the litigation and issues, contact:**
 - Deputy Attorney General James Canaday
 - Assistant Attorney General Adam Welle
 - Assistant Attorney General Eric Maloney
 - Division Manager Jason Pleggenkuhle
 - Laura Sayles, Government Affairs Director