

## Unauthorized & Unstoppable: Why Vape Regulation Is Failing.

Despite widespread knowledge of their addictive potential and link to serious health concerns, vapes—especially flavored, disposable ones—remain easily accessible. Sleekly designed and available in a variety of flavors, these devices appeal especially to teens—so much so that over a quarter (27.5%) of high school students reported using e-cigarettes (Truth Initiative, 2024). Yet what many of these teen consumers don't realize is that most of these products are not FDA-authorized and illegal to sell in New York City.

**Figure 1**



Note. Image from FDA warning stores to stop selling fruity disposable e-cigarettes, by PBS NewsHour, June 22, 2023.

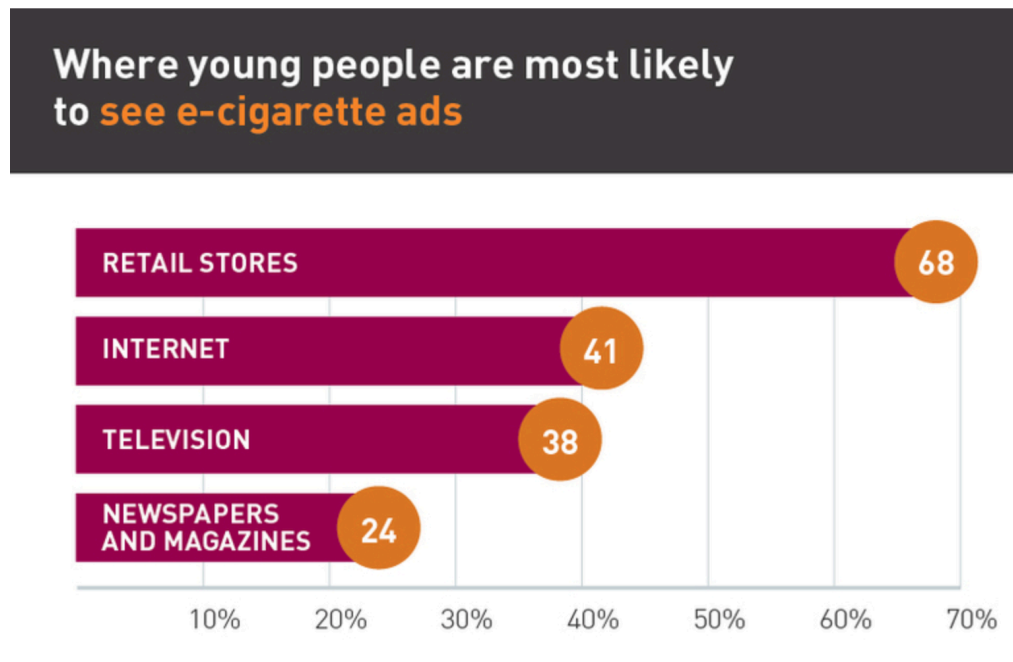
<https://www.pbs.org/newshour/health/fda-warns-stores-to-stop-selling-fruity-disposable-e-cigarettes>

As of 2024, the U.S. Food and Drug Administration (FDA) has authorized only 34 e-cigarette products for legal sale, all of which are tobacco-flavored and have been found by the FDA to meet the statutory public health standard (FDA, 2024). Popular vape brands like Elf Bar, Breeze, and Lost Mary are not on this list, meaning their sale violates federal law (FDA, 2023). And yet, these unauthorized products dominate vape shop displays. Given this, one might reasonably ask: if these products are unauthorized, why are they still so easy to buy? The answer lies in a complex web of factors that have allowed the sale of unauthorized vapes to flourish.

The primary issue is scale. While the FDA holds the authority to regulate tobacco products, its ability to enforce these regulations is consistently outpaced by the rapid adaptability of the vaping industry. Under current law, all tobacco products—including e-cigarettes—must undergo a premarket review by the FDA to determine whether they are appropriate for the protection of public health (FDA, 2023). However, this review is very long and thus enforcing this requirement has proven exceptionally difficult in a market saturated with foreign manufacturers, counterfeiters, and online sellers who can swiftly rebrand or repackage products to sidestep regulation and return to market (Perrone, 2023). For instance, after the FDA banned Elf Bar, the company quickly resurfaced as “EB Design,” maintaining nearly identical packaging and flavors (FDA, 2023). The internet adds yet another layer of complexity to the vaping crisis: traditional outlets such as TV promote vapes and digital media such as YouTube and social media glamorize vaping. Such widespread content on the internet normalizes e-cigarette use, portraying it as trendy, harmless, and even fashionable (Truth Initiative, 2024). As a result, the

once underground market for e-cigarettes is no longer hidden; it has become the main market itself.

**Figure 2**



Note. Graph from E-cigarettes: Facts, stats and regulations, by Truth Initiative, October 16, 2024. <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>

Additionally, you might be wondering: if flavored vapes are illegal, why hasn't the government taken stronger action against these products? The reality is more complicated. Distinguishing between authorized and unauthorized vapes requires cross-referencing with the FDA's official product list—a time-consuming and specialized task beyond the capacity of most local law enforcement (FDA, 2024). As a result, many vape shops continue operating even after receiving FDA warnings. To make matters more complicated, brands can quickly rebrand and relaunch under new names, making constant surveillance virtually impossible for already overburdened police departments (Perrone, 2023). Moreover, the financial scale of the vaping

industry makes enforcement harder. The vaping industry is a multibillion-dollar market, valued at “USD 28.17 billion in 2023” and projected to grow at a staggering compound annual growth rate of “30.6% from 2023 to 2030” (Grand View Research, 2024). This means that, at this pace, the vape market is expected to exceed a staggering amount of USD 180 billion by the end of the decade. An outright ban could not only have significant economic repercussions but also could lead to political pushback from business owners, lobbyists, and even consumers who view vaping as a harm-reduction tool. All of this makes enforcing a crackdown on vapes far more challenging than it may seem.

Another factor sustaining the unauthorized vape market is widespread consumer confusion. According to public health organizations, many people—particularly teens and young adults—assume that if a product is being sold in a physical store or online, it must be FDA-approved (Truth Initiative, 2024). This misunderstanding creates a dangerous false sense of safety. Most people are unaware that FDA authorization is a rigorous, multi-year process that very few vaping products have successfully completed. Vaping companies exploit this confusion by using ambiguous marketing terms like “FDA registered,” which imply approval without actually having it (Truth Initiative, 2024). Without clear warning labels or a centralized way for consumers to verify product status, the public remains largely in the dark about what they're inhaling.

The continued prevalence of unauthorized vapes in the market reveals a dangerous disconnect between regulation, enforcement, and public perception. Without addressing these issues, vapes will continue to thrive: sold everywhere, mistaken for legal, and beyond the reach of the very systems designed to regulate them.

## References

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