

# Regulating Vaping to Save Lives

## A Common Sense Approach



**New York State Vapor Association**

**[www.NYSVA.org](http://www.NYSVA.org)**

### **About NYSVA**

- ▶ Only NY State Trade Association representing 700+ independent vape shops, their 2600+ employees and hundreds of thousands of their customers.
- ▶ Registered and report regularly to the NYS Department of Ethics
- ▶ No funding from Big Tobacco or any large corporation such as Big Pharma
- ▶ Board of directors has educated researchers, legislators, government agencies and stakeholders for 10 years, locally, statewide, federally and internationally
- ▶ For more information, visit [www.nysva.org](http://www.nysva.org)

# Vapor Products

## The Reality of Eliminating Death and Disease from Tobacco Smoking

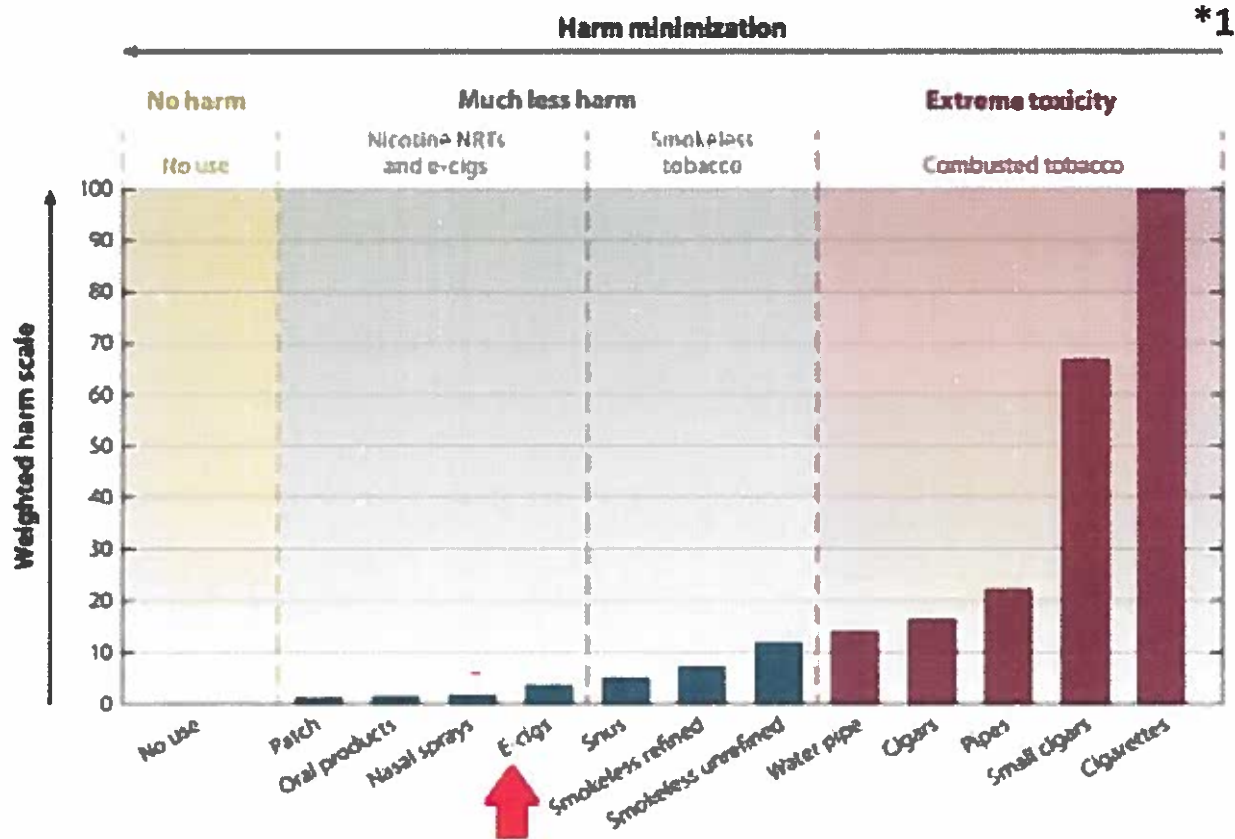
- ▶ **Vapor Products have the potential to disrupt the 120-year dominance of tobacco cigarettes and challenge the field on how the tobacco pandemic could be reversed if nicotine is decoupled from lethal inhaled tobacco smoke.**<sup>1</sup>
- ▶ **Discouraging harm minimization will impede the end of smoking rather than encourage smokers to switch to safer nicotine delivery products.**<sup>1</sup>
- ▶ **Studies suggest that daily users of e-cigarettes for a month or more are six times more likely to have quit smoking cigarettes two years later**<sup>2</sup>
- ▶ **E-cigarettes are more effective than NRT when used by smokers as an aid to quitting smoking**<sup>2,3</sup>
- ▶ **Among smokers, e-cigarette use is likely to lead to quit attempts that would not otherwise have happened, and in a proportion of these to successful cessation. In this way, e-cigarettes can act as a gateway from smoking.**<sup>4</sup>
- ▶ **There is conclusive evidence that completely substituting e-cigarettes for combustible tobacco cigarettes reduces users' exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes.**<sup>5</sup>

### Decoupling Nicotine from Inhaled Smoke for Harm Minimization

- ▶ **"People smoke for nicotine but they die from the tar." – Michael Russell**<sup>6</sup>
- ▶ **Most reviews of toxicological, clinical, and epidemiological evidence indicate that the chemicals found in e-cigarettes, when used as intended, are far fewer and well below levels seen in cigarette smoke**<sup>1</sup>
- ▶ **If smokers could be shifted from smoking to consuming clean nicotine (i.e., without smoke), many lives would be saved**<sup>1</sup>

### E-cigarettes and Smoking Cessation- UK

- ▶ **In the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK.**<sup>7</sup>
- ▶ ***"It would be tragic if thousands of smokers who could quit with the help of an e-cigarette are being put off due to false fears about safety,"*** - Prof John Newton, director of health improvement at PHE.
- ▶ ***"The false belief that vaping is as harmful as smoking could be preventing thousands of smokers from switching to e-cigarettes to help them quit."*** – Dr. Lion Shahab, University College London



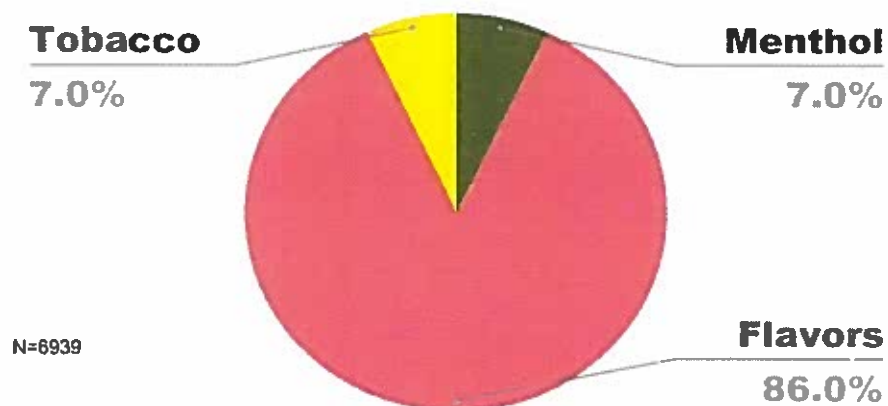
**1-month experiment, smoking vs. vaping**

View 2018 PHE Lab Experiment: [https://youtu.be/ZR\\_4PsYksfs](https://youtu.be/ZR_4PsYksfs)

## Flavors are Key to Successful Quitting

- ▶ Flavors are imperative to people's successful transition from combustible tobacco to vapor products <sup>8, 9, 10, 11, 12, 13, 14</sup>
- ▶ Former smokers want to distance themselves from tobacco and menthol flavors once they stop smoking. <sup>11, 12, 13, 15, 16, 17, 18, 19, 20</sup>
- ▶ Approximately **86%** of regular e-cigarette users report using a non-tobacco/menthol flavor. <sup>20</sup>

### Ecig Intelligence Survey 2017



94% of respondents were exclusive vapers who had switched from a pack-a-day or greater use of combustible tobacco\*

\* EcigIntelligence Survey 2017

### Flavors Help Avoid Relapse Triggers

- ▶ Once smokers switch to vapor products they do not want to be reminded of the taste of cigarettes and typically prefer flavors that are not tobacco or menthol.
- ▶ Once taste buds repair after decades of smoking, vapers are drawn to more pleasant flavors.
- ▶ After using flavors continuously for a few months time, a vaper's brain connects their use of nicotine with a good smelling/tasting flavor, and report the taste and smell of cigarettes are awful by comparison, thus reducing or eliminating the urge to smoke.

Due to a common phenomenon where taste buds become neutral to a flavor that is used over the long term, it is imperative to change flavors occasionally to maintain interest and abstinence from combustible tobacco and avoid temptation to relapse.

## Independent Vape Shop Market in NYS

- ▶ Independent Vape Shops = \$539.3M industry in NY (706 shops, 2600 employees)
- ▶ Flavors = \$384M market in New York
  - 89% of sales from E-liquid
  - 80% of that from flavored e-liquid
- ▶ 89% of respondents to survey were owners or presidents
- ▶ Small businesses:
  - 91.7% < \$1,000,000 sales per year
  - They own an average of 1.8 retail stores
  - They employ an average of 6.6 people (3.7 per store)
  - They pay an average of \$40,319 in payroll tax/year
  - They pay an average of \$50,626 in sales tax/year

Source: New York State Vapor Association, (2017) New York State Vapor Market Survey, March 2017

# Unintended Consequences of Vapor Tax and Flavor Bans

## Public Health Consequences

- ▶ **Encouraging a sin tax** on these products, often used in the state of New York, because they are less expensive than cigarettes and exponentially less harmful, **discourages smokers from switching to a less toxic product.**<sup>21,22, 23, 24</sup>
- ▶ PA lost approximately 50% of its shops in the first year after passing an onerous vapor tax (Source: PA Smoke Free Alternatives Trade Association (2017)). Many New York State vapor businesses will close which **limits adult access to products that keep them off cigarettes.** This will **increase smoking rates in NY.**
- ▶ Online sales thrive and **out of state businesses benefit.**
- ▶ **Dangerous Do-It-Yourself** (ingredients readily available, and puts undiluted nicotine in many homes)
- ▶ Illicit market creates **sales of unregulated products with no standards with NO ID required** for purchase.
- ▶ Protection of companies marketing and selling deadly tobacco products
- ▶ Protection of companies that do not profit from the prevention of tobacco related diseases -- only their treatment.

## Fiscal Implications

- ▶ Minimum loss of \$25M in Sales Tax
- ▶ Minimum loss of \$28M in Payroll Tax
- ▶ Immediate unemployment of approximately 2,000 individuals, and the financial consequences of each person (unemployment pay, defaults on mortgages/rents and debt, repossessed cars etc.)
- ▶ 500+ NYS storefronts empty
- ▶ Immediate closure or move of major e-liquid manufacturers and distributors to neighboring states
- ▶ Enforcement costs to prevent illicit sales.

## Legal Implications

- ▶ Use tax will lead to already marginalized communities (minorities, mentally ill, LGBTQ) who disproportionately smoke cigarettes, to be further discriminated against (i.e., stop and frisk)
- ▶ Unfair business climate due to the immediate closure of almost all vape shops when purchases move to neighboring states or online.
- ▶ An illicit Market will be created.
- ▶ Purchasing online to circumvent taxation

## The Underage Dilemma

**Teen smoking rates are increasing in municipalities where sales of vapor products are restricted**

- ▶ **“ENDS age purchasing restrictions are associated with an increase in adolescent cigarette use. There is causal evidence that ENDS age purchasing restrictions increased adolescent regular cigarette use by 0.8 percentage points.” They showed an 11.7 percent increase in teen cigarette use after states introduced new age restrictions for e-cigarettes between 2007 and 2013.<sup>25</sup>**
- ▶ **Underage Fake ID use is the highest on record in NY State in 2018.<sup>26</sup>** Technological advancements in creating fake IDs has made it very difficult to differentiate from real IDs scannable Barcodes showing legal age.
- ▶ **Of teens that vape, 73.8% indicated they receive vapor products from family and friends.<sup>27</sup>**
- ▶ **NYSVA has great concern for the 18-20 year old vapers who went back to smoking in Tobacco 21 municipalities—and the tens of thousands of 18-20 year olds who will go back to smoking in New York if T21 is enacted state wide. Illegal cigarettes are easy to get and ID is not required for purchase.**
- ▶ **56.8% of cigarette sales are black market sales in New York State—the highest in the nation.<sup>28</sup>**

## Our Suggested Solutions

- ▶ Licenses for all retailers selling vapor products (separate from tobacco licenses)
- ▶ Better control of fake IDs (i.e., ID scanners at point of sale)
- ▶ Age-verifying software for online sales
- ▶ Stricter fines and penalties for those selling to minors
- ▶ Only arms-length sale after loss of license
- ▶ Mandatory NYS-approved training for all employees selling vapor products
- ▶ No cartoons or child appealing packaging (defined by images of children's toys, children, cartoon or media characters such as superheroes); No use of flavor names or images that are trademarked/copyrighted
- ▶ Truthful teen and parental education

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