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New York State Vapor Association Inc. Joint Health and Mental Hygiene Hearing

January 29, 2020

Testimony Submitted by Cheryl Richter, Executive Director

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Senators, Assemblymembers and Administrators, thank you for letting us speak today. I'm Cheryl Richter the executive director of the New York State Vapor Association. The vast majority of our members are the mom and pop shop owners who started their businesses because they quit smoking with vaping and they wanted to bring this life-saving technology to other smokers. We represent the 700 independent vape shops, their almost 3000 employees, their hundreds of thousands of consumers who rely on these products to keep them from smoking, and the small business owners that supply them. We take no funding from Big Tobacco, Big Pharma, or any other large corporation.

A **flavor ban** would ban the sale of 95%¹ of the e-liquids preferred by adult consumers and sold by registered NYS Vapor Product Retailers, **eliminate a life saving industry, decimate hundreds of small businesses, increase unemployment** and add flavored nicotine to an **untaxed**, already flourishing **underground tobacco market, without age verification.**

NY's vapor products market is a Billion dollar industry². It won't just go away because you deem it should. Rather a flavor ban would force regulated, legal, age-restricted products to a black market overnight.

Current State and Federal Laws/Regulations

Before you hand this market over to street dealers, I'd like to explain the regulations that are new, but already in place:

Last year NY passed a few laws that went into effect less than 2 months ago.

- With last year's Budget Bill³, licenses are required for all retailers selling vapor products, separate from tobacco licenses; Fines were raised and penalties are stricter for those who sell to minors, these are steeper than any other industry including tobacco and liquor. (the new "3-strikes you're out rule" was raised to a \$5000 fine the first time; a \$10,000 fine and possible 6-month license suspension the second time; and a \$15,000 or more fine and loss of vapor license). Our members suggested these fines to prevent future sales violations by eliminating bad players. The fear of these fines will also discourage shops that brought on

vaper products for ancillary sales, such as pizza places. However, you cannot suspend a license for a year on the first age compliance failure as is suggested in this bill. One new employee could cost a responsible business owner their livelihood.

- Only arms-length sale of business after loss of license, which we recommended to eliminate repeat offenders.
- 20% retail tax collected upon purchase by the consumer on e-liquid containing or not containing nicotine (funds to go towards enforcement and education to minors)
- Tobacco 21 State-wide was enacted 11/13/20.⁴ When 73.8%⁵ of teens report getting vapor products from social sources (friends and family) state-wide T21 will help curb straw purchases by their 18 year old friends who resell them in schools. As *Catherine Cholakis, Acting NYS Supreme Court Justice, and judge for the industry lawsuit said in her decision "As noted earlier, only a few days ago the minimum age of persons to whom vaping products may legally be sold increased in New York from 18 to 21. The Legislature could opt to await the passage of some period of time to gauge whether this legislation is sufficient in itself to stem the increase in vaping among teenagers."⁶*
- Inclusion of vaping and e-cigarette education to minors⁷ in State Tobacco Prevention Program.

Federal Regulations of E-Cigarettes

- National Tobacco 21⁸ (effective 12/10/2019)
- Next week, the FDA will begin enforcing the removal from the market of all flavored pod/cartridge-based e-cigarettes⁹ other than tobacco or menthol, which they determined to be the preferred products of youth because of the extremely high nicotine content that cause a nic-buzz the kids like. In addition, next Thursday they will prioritize enforcement against all other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; and any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.
- Additional Federal requirements that have been in effect for years include: Tamper/Child resistant packaging and flow-restricted bottles; warnings on labels including nicotine is addictive, the manufacturer's address, percentage of nicotine by volume, and all ingredients¹⁰. Plus, all label images and ingredients¹¹ are now uploaded to the FDA's FURL system to ensure that if an ingredient is found harmful it can be recalled.
- The PMTA (pre-market tobacco application) Process goes into effect in 4 months.¹² E-liquid and hardware manufacturers have until this May to submit their copious lab results and physiological studies. Many manufacturers have been working with the FDA on these applications for years.

The attempt of the NYS DOH to create, in effect, their own PMTA process is redundant and will cost the state of New York billions of dollars and years to get right. Whole buildings have been built at the FDA complex in Maryland and thousands have been hired to handle the process. The process has been in the works for years. We believe that the DOH will have that

information, provided federally, before they could even start their own process. We also believe that their approval of products to market is pre-emptive and the state runs the risk of interstate commerce violations. Instead, the DOH could obtain the applications of market-approved manufacturers.

The opponents of e-cigarettes for harm reduction tell you that adults will just switch to tobacco flavored. Why would any adult choose to use a tobacco flavor when that is their relapse trigger? Flavors are the key to their success. As Judge Cholakis said in her court decision, *"There is no evidence in the record to support the inference that once flavored e-liquids are banned, the consumers of vaping products will simply switch to tobacco, menthol or flavorless e-liquid..."*⁶ By the way, there's no proof that minors would or wouldn't either.

So what are the consumer choices after a flavor Ban? They can:

- Buy on the Street creating an immediate rise of the illicit market with no product regulations, no manufacturing standards, no IDing, no licensing, no taxes. Fifty percent of vapers surveys indicated they would resort to the black market to get their flavors if banned.¹³
- Buy online, skirting tax and age verification.
- Dangerous Do-It-Yourself E-liquid which is very easy to make and very easy to get it wrong. E-liquid ingredients are readily available in supermarkets where consumers can get ingredients that are unsafe to inhale, like McCormick's peppermint oil, and DIYing puts undiluted nicotine in many homes. See diyordievaping.com for instructions. There is only one death related to nicotine and it happened here in NY when a couple was diyng, and they left a bottle of undiluted liquid nicotine open and their toddler drank it. More reason why e-liquid needs to continue to be made in ISO labs.
- Consumers will return to smoking. And we know that's happening because our customers have started to return to our shops and tell us that the lung illnesses, incorrectly reported, scared them from vaping. After the last few months of smoking again, they feel the health ramifications of smoking once again. The CDC recognized this hazard as well and now has this statement on their front page: ***"E-cigarettes have the potential to benefit adult smokers who are not pregnant if used as a complete substitute for regular cigarettes and other smoked tobacco products."***¹⁴

Economic consequences of a flavor ban

56.8% of cigarette sales are black market sales in New York State, the highest in the nation due to price.¹⁵ If flavors are unavailable, at the least, 50% of flavor sales will be black market¹³.

No vape shop would be able to survive a ban. Independent Vape Shops alone are a \$540 million¹⁶ industry in NY. The closing of all those shops represent a loss of \$183 million in revenue, from \$200 million to \$17 million from the new 20% retail tax and sales tax collected currently collected. This is much more than the projected fiscal implication in the bill estimating of the loss of \$25 million in Fiscal Year 2021 and \$33 million in Fiscal Year 2022.

A ban will force the closure of 700¹⁶ independent vape shops, and an estimated 4,400² layoffs of employees with retail, wholesale, e-liquid and component manufacturing jobs. Implications are as follows:

- Bankruptcies will be declared
- Movement out of state
- Leases broken
- Defaults on business loans, mortgages, cars, equipment, etc.

Of the 11,024 FDA stings in NY in 2018, there were 756 failures. 52% were c-stores, 42% were groceries and delis, 3% were tobacco shops and 2% were vape shops. The failure rate of C-stores was 4X that of vape shops. 4.6% vs. 1.8%.^{17, 18}

As a solution to the surety of an immediate black market, we suggest the "Liquor Store Model" as an amendment to a flavor ban, by simply adding, "exemptions for state licensed vapor retailers that are age-restricted for 21 and above. We do not believe that a store that sells candy and soda needs to sell flavored vapor products. These are adult products, and adult vapers need them to avoid relapse. However, importantly, we believe that wherever cigarettes are sold, an adult should have the right to switch to a harm reduction product spontaneously, so allow tobacco and menthol to stay next to the cigarettes but put them behind or under the counter. Prohibit in-store displays, unless in age-restricted shops. Prohibit posters in windows so general traffic can't see them. The FDA will remove flavored high-nicotine pod systems sold mostly in c-stores and gas stations next week anyway.

Additional comments on Budget Bill:

- Prohibition on vapor products from being shipped to anyone in the state other than a registered vapor products dealer unnecessarily puts a hardship on vapers in rural areas or no nearby shops retail stores with no way to get the product that they depend on to save their lives. Online age verification and signature on delivery would solve this problem without prohibition and even more deception by black market dealers.
- Clarification that the Department has the authority to promulgate regulations that prohibit or restrict the sale or distribution carrier oils; - nicotine e-liquid is water soluble so does not apply. This should be a requirement for THC cart manufacturers.
- Prohibition of the display of tobacco products or electronic cigarettes within stores; should exempt vape shops since they are age restricted

NYSVA's Suggested Regulations to Curb Youth Access

- **State-approved training for all employees selling vapor products.** E-cigarettes are vastly different than combustible tobacco products. Employees need education on their specific federal and state regulations, appropriate IDing techniques, understanding of nicotine levels, spotting counterfeits, and how to effectively communicate with smokers

- **Physical ID scanners at every point of sale.** Fake IDs are cheap and readily accessible to minors from China, coming in through packaging of shoes, electronics, etc. High quality technology is needed to prevent the sale unless age is verified
- **Age verification software for all online sales** to verify name, age and address
- **Marketing and packaging restrictions:** (No cartoon images of food, animals, children; no animated or non-animated media characters such as superheroes; no IP/trade mark/dress infringement)
- **Restrict tobacco and e-cigarette signage** on store-fronts near schools.
- **Restrict Access:** Allow flavored e-liquid sales in age-restricted retail locations only (as with hard liquor). Allow menthol and tobacco sales where deadly cigarettes are readily available to enable "accidental quitting."
- **Nicotine Cap:** No more than 3.6% nicotine by volume to be sold in the state. Lowering nicotine contents will be less addictive and will not cause the nicotine "buzz," which is what is attractive to minors.
- **Legal Consequences** for minors using or possessing tobacco or e-cigarettes.
- **Steep Penalties** for adults who sell or give them to minors to prevent straw purchases, including employees who sell vapor products.

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Testimony for Joint Budget Hearing
Vaping Regulation
Spike Babaian, Technical Analysis Director
January 29, 2020



My name is Spike Babaian. I am the Technical Analysis Director for NYS Vapor Association. I have been researching vapor products for nearly 11 years and published the first paper in the US on vapor toxicity in 2011.¹ Over the years I have consulted on many other research studies. I have never received funding or compensation from Tobacco or Pharmaceutical Companies.

FDA², CDC³, and our NYS DOH⁴ have confirmed that using illegal THC cartridges contaminated with Vitamin E Acetate is the cause of EVALI and the recent lung illnesses and deaths.

I am here to present today because I feel strongly that in all areas, **regulations should be based on science and data.** We presented with our testimony a packet of data with statistics and supporting studies.⁶ An emailed copy of this testimony and the packet allows you to click on the links. I would like to go over a few of the most pertinent statistics.

- ▶ Many studies show flavors in vapor products are imperative to successful transition from deadly tobacco.^{7, 8, 9, 10, 11, 12, 13}
- ▶ 95% of vapor products sold to adults in vape shops are NOT tobacco flavored.²⁰ Banning flavors shuts down every shop in NYS.
- ▶ Adults prefer flavors that do not remind them of cigarettes and don't tempt them to go back to smoking.^{10, 11, 12, 14, 15, 16, 17, 18, 19}
- ▶ Data shows 92% of former smokers use non-tobacco flavors.²⁰
- ▶ 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.²¹
- ▶ E-cigarettes are nearly twice as effective as FDA approved NRTs when used by smokers as an aid to quitting smoking²²
- ▶ Smokers quit smoking faster from 2014-2018 as vapor products increased in popularity.²³
- ▶ CDC along with many public health experts including the National Academies of Sciences, Engineering and Medicine agree that lives would be saved if smokers continued to switch entirely to vapor products.^{24, 25, 26, 26a}
- ▶ CDC confirms "E-cigarettes have the potential to benefit adult smokers who are not pregnant if used as a complete substitute for regular cigarettes and other smoked tobacco products."^{26a}
- ▶ CDC suggests "Adult smokers who are not pregnant and who want to try quitting by using e-cigarettes should completely switch to e-cigarettes and eliminate all use of cigarettes, cigars, and other burned tobacco products. Completely switching is the only way to fully reduce smoking-related health risks. Smoking even a few cigarettes per day is still harmful to health."^{26a}

▶ CDC states “E-cigarette aerosol generally contains fewer harmful chemicals than the smoke from burned tobacco products.”^{26a}

▶ One study showed smoking cessation rates are twice as high for vape shop customers and internet customers as for retail customers purchasing at non-specialty stores.²⁷

▶ “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.”²⁸

The biggest mistake being made in the process to regulate vapor products is that they are being compared to using nothing. Studies show these products are being used 99% of the time as a replacement for smoking deadly combustible tobacco products.^{29, 30}

Although we agree there has been an increase in both adult and youth use of vapor products, we see a concurrent reduction in smoking rates, to the lowest rates of all time. Studies suggest a significant part of this reduction is most likely a result of substituting combustible tobacco products for vapor products. Whether or not they are approved for smoking cessation, an abundance of data shows this is how they are being used and much research suggests they are effective for this purpose.^{21, 22, 23, 31, 32}

You may have heard that vaping is a gateway to smoking cigarettes. Vaping has been around for more than a decade in this country, yet smoking rates among youth and adults continue to fall. If the data we provided showing that vaping is a gateway AWAY from smoking³³ is not sufficient, let common sense convince you. One cannot state that youth vaping has been increasing by leaps and bounds and smoking is at the lowest rate ever³⁰ and consequently state that use of vapor products leads to smoking. This contradicts the very notion of good sense.

Public health experts suggest that currently available studies do not support the idea that nicotine vapor products deform adolescent brains.³⁴ While studies have been done on mice with vapor³⁵ and on humans with combustible cigarettes³⁶, experts state these studies are not relatable to the effect of nicotine vapor products on human adolescent brains.³⁴ Ask yourself why doctors would recommend nicotine replacement therapies (even allowing extended use) for youth and young adults whose brains would be deformed by the nicotine. These same doctors take an oath to do no harm. If that is not sufficient, let's go back to common sense. We all know a number of people who used nicotine regularly in some form before the age of 25. Do any of those adults we know have deformed brains?

Common sense says if we can sell flavored alcohol, CBD, THC and other adult products then we must be doing something wrong with vapor products. We don't place defacto bans on life saving products just because they are being misused. We regulate sales to prevent misuse.

The majority of youth use is experimentation.^{38, 39} And much of it is THC use and has nothing to do with nicotine products.⁴⁹ Evidence shows the CDC is intentionally hiding from the public the extent of the youth marijuana vaping problem.⁴⁹

An analysis of NYTS data does not support this youth "epidemic" of nicotine vapor products. Data "does not support" concerns that declines in youth tobacco addiction stand to be reversed after years of progress. Among current e-cigarette users who had never tried tobacco products, responses consistently pointed to minimal dependence." In addition, CDC admits the NYTS vaping "epidemic" numbers include THC vaping.⁴⁴

The budget also asks for lengthy, intensive, cost prohibitive studies to determine contaminants and byproducts in e-liquid. The regulation of tobacco products is the responsibility of the FDA and is due May of 2020. The state can simply communicate with FDA for Vapor Product ingredient listings and byproduct/contaminant information.

NYS Budget -

"Governor Cuomo has taken unprecedented steps to ensure the health and safety of all New Yorkers by combatting the use of harmful [emphasis added] tobacco and nicotine products. The Budget prohibits...."⁵⁰

- sale or distribution of e-cigarettes or vapor products that have a characterizing flavor
- sale of tobacco products, including e-cigarettes, in all pharmacies
- restricts the delivery of e-liquid products only to NYS-licensed vapor retailers
- requires manufacturers of vapor products to disclose to the DOH Commissioner and the public, information regarding the ingredients, by-products, or contaminants in vapor products
- bans coupons and manufacturer discounts and displays in shops
- increases penalties for illegally selling tobacco products to minors

"This comprehensive tobacco control policy action will prevent death and disease, as well as save the State billions of dollars associated with the astronomical cost of health care for tobacco-related illnesses."⁵⁰

This is a huge contradiction to what public health experts say about e-cigarettes who attribute vapor products to saving millions of lives.⁵² The state has not provided any evidence that there is harm from nicotine use by adult smokers.

Those supporting a flavor ban will tell you that 81% of youth are vaping for the flavors. This number is from 2013-2014 PATH data. This question does NOT ask about candy or fruit or menthol or ANY flavor specifically... They asked if the youth used it because it "comes in flavors I like". The question would include tobacco flavor. In fact it includes all flavors. If they didn't like the flavor they would not use it. So what flavor it was is sort of irrelevant.. they only asked if they used it because they like the way it tastes. That question is irrelevant to a flavor ban. Unless they make them all taste BAD intentionally this would not change. ⁴⁶

77.7% of youth⁴⁷ reported that flavors were not a reason for initiation according to 2019 NYTS data. Strong increase in youth vapor product use began in 2017/2018 with the growth in the popularity of high level, "salt nicotine" based pod^{47,48} systems, with more than DOUBLE the nicotine¹² concentration previously available.

Regulations that severely restrict or ban access to vapor products will be devastating to the public health of New Yorkers. It is imperative to recognize the unintended consequences of our

actions. Hundreds of thousands of lives are at risk. 1300 people will die today due to smoking related illness. We have an unprecedented opportunity to reduce that number significantly. I am pleading with you not to throw that opportunity away. **Please proceed with caution as we cannot undo the fatal damage that would result from passing these bans.**

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- 40 - <https://www.heartland.org/publications-resources/publications/research--commentary-flavor-bans-do-not-reduce-youth-e-cigarette-use>
- 41 - <https://tobaccocontrol.bmj.com/content/26/1/78.full>
- 42 - Tax Foundation 2015 - <https://taxfoundation.org/cigarette-tax-cigarette-smuggling-2015>
- 43 - <https://www.crainsnewyork.com/markets/big-bust-smuggling-ring-unlikely-stem-flow-illegal-smokes>
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- 47 - NYTS Data 2019 <https://jamanetwork.com/journals/jama/article-abstract/2755265>
- 48 - FDA Vapor Product Guidance 2020 <https://www.fda.gov/media/133880/download>
- 49 - <http://tobaccoanalysis.blogspot.com/2020/01/cdc-is-concealing-and-suppressing.html>
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- 52 - ScienceMag.Org <https://science.sciencemag.org/content/366/6471/1318.summary>



New York State
VAPOR ASSOCIATION
 TRUTH > LIFE > New York JOBS
 Representing the TRUTH about VAPING

Guide to Regulating Vaping in NY WITHOUT CREATING A BILLION DOLLAR UNDERGROUND MARKET OVERNIGHT

"Restricting access and appeal among less harmful vaping products out of an abundance of caution while leaving deadly combustible products on the market does not protect public health."

EVIDENCE, ALARM, AND THE DEBATE OVER E-CIGARETTES, SCIENCEMAG.ORG, PUBLIC HEALTH DEBARS AND DOCTORS FROM NYU, COLUMBIA, OHIO STATE, AND EMORY UNIVERSITIES
<https://science.sciencemag.org/content/366/6471/1318.summary>

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1

The \$1 Billion Dollar¹ E-cigarette Market in New York Will Immediately Move Underground.

"There is no evidence in the record to support the inference that once flavored e-liquids are banned, the consumers of vaping products will simply switch to tobacco, menthol or flavorless e-liquid..."

Catherine Cholakis,
 Acting NYS Supreme Court
 Justice, 1/13/20

Consumer Choices After a Flavor Ban:

- Buy on the Street – Immediate rise of illicit market (no FDA regulation, no industry standards, no IDing, no licensing, no taxes)
- Buy online (skirting tax)
- Dangerous Do-It-Yourself (Ingredients readily available, and puts undiluted nicotine in many homes, consumers adding ingredients that are unsafe to inhale.) See diyordievaping.com to see instructions.
- Return to smoking

VTA, "The Economic Impact of the Vapor Industry NEW YORK," 2019.
<https://www.vaporassociation.org/wp-content/uploads/2017/11/2019-01-01-VTA-Report.pdf>

2

Consumer Risks of a Flavor Ban

- Purchasing from inscrutable street dealers
- Inhaling dangerous unknown substances (as happened with tainted THC)
- Reversal of 10 years of safety standards and industry general manufacturing standards based on scientific research
- Use of products that are not regulated by the FDA or NYS
- Protection of companies marketing and selling deadly combustible cigarettes
- Protection of companies that profit from the treatment, not prevention of tobacco related diseases
- Protection of Big Pharma's new vape products

3

Black Market THC Cartridges the Cause of Sudden Lung Illnesses

"National and state data from patient reports and product sample testing suggest tetrahydrocannabinol (THC)-containing e-cigarette, or vaping, products, particularly from informal sources like friends, family, or in-person or online dealers, are linked to most EVALI cases and play a major role in the outbreak."

- CDC statement, 1/19/20

Commercially marketed, regulated e-cigarettes have not caused a single case of lung illness (EVALI)¹. NYSDOH², CDC³, and FDA⁴ have confirmed illicit market THC is the cause of pulmonary issues which came to light last fall.

1. <https://www.ny.gov/newsroom/vaping-and-lung-illness-1907931>
 2. <https://www.ny.gov/newsroom/ny-sdoh-warns-against-use-of-black-market-e-cigarettes-1907931>
 3. <https://www.cdc.gov/e-cigarettes/evali/2019-01-19-evali-statement.html>
 4. <https://www.fda.gov/oc/2019-01-19-fda-consumers-warned-to-stop-using-thc-products-10472019>

4

The Underage Dilemma

- 77.7% of youth¹ reported that flavors were not a reason for initiation according to 2018 NYTS data. Strong increases in youth use began in 2017/2018 with the growth in the popularity of high level, "soft nicotine" flavored pod² systems, with more than 80% of the nicotine³ concentration previously available.
 - 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.⁴ They showed an 11.7 percent increase in teen cigarette use after states introduced new age restrictions for e-cigs rates between 2007 and 2013.⁵
 - Underage Fake ID use is the highest on record in NY State in 2017. Technological advancements in creating fake IDs has made it very difficult to differentiate from real IDs scannable barcodes showing legal age.
 - Fears of a gateway to smoking are unfounded. In 18-24 year olds, exclusive smoking prevalence has dropped in half from 2014-2018, from 13.3% to 6.1%, as did dual use.⁶
 - Social networks largest problem. Of teens that vape, 73.8% indicated they receive vapor products from family and friends⁷
 - 36.8% of cigarette sales are black market sales in New York State, the highest in the nation due to price.⁸
 - If flavors are unavailable, 100% of flavor sales will be black market.
1. JAMA, E-Cigarette Use Among Youth in the US, 2018, <https://doi.org/10.1001/jama.2018.11111>
2. FDA ENDS Priority Guidance, 2020, <https://www.fda.gov/oc/2020/01/2020-01-20-fda-environmental-impact-statement>
3. The influence of electronic cigarette age purchasing restrictions on adolescent tobacco and marijuana use, *World Journal of Medical Science*
4. CDC's National Youth Tobacco Survey https://www.cdc.gov/tobacco/data_trends/surveys/nyts/index.html
5. 2018 National Youth Tobacco Survey, https://www.cdc.gov/tobacco/data_trends/surveys/nyts/index.html
6. Tax Foundation, 2018 <https://taxfoundation.org/crime-tax-vapor-smuggling>

5

Economic Consequences of an E-Liquid Flavor Ban

- Independent Vape Shops are a \$539.3M¹ Industry In NY
- Flavors = 93% of sales or more than half a billion¹ Market In New York
- 4,416² layoffs of employees in retail, wholesale, e-liquid and component manufacturing jobs
- Closure of 700¹ independent vape shops
 - Bankruptcies declared
 - Movement out of state
 - Leases broken
 - Defaults on business loans, mortgages, cars, equipment, etc.

1. Market Survey of Independent Vape Shop Owners, New York State Vapor Association, Inc., March 2017
 2. VTA, Economic Impact of the Vapor Industry in NY, 2018, <https://www.vtany.org/wp-content/uploads/2018/07/VTA-Economic-Impact-Report-1-6-18-17.pdf>

6

New York Laws Governing E-Cigarettes (all of which enacted within the last 90 days)

- Enacted with Governor's Budget Bill 4/3/19
- Licenses for all retailers selling vapor products, separate from tobacco licenses
 - Stricter fines and penalties for those selling to minors Fines steeper than any other industry including tobacco and liquor. (new "3-strikes you're out rule": 1. \$5,000 fine, 2. \$10,000 fine and possible 6-month license suspension, 3. \$15,000 fine and loss of license).
 - Only arms-length sale of business after loss of license
 - 20% retail tax collected upon purchase by the consumer on e-liquid containing or not containing nicotine (funds to go towards enforcement and education to minors)
 - Tobacco 71 State-wide 73.8% of teens report getting vapor products from social sources (friends and family) according to 2018 National Youth Tobacco Survey. Will curb high school students crossing county borders to buy.
 - Inclusion of vaping and e-cigarette education to minors in State Tobacco Prevention Program.

7

Federal Regulations of E-Cigarettes

- National Tobacco 21¹ (effective 12/10/2019)
- FDA prioritizes removal from the market of all flavored pod/cartridge-based e-cigarettes²
- Any flavored, cartridge-based ENDS product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; and
- Any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.

As of 2/6/20, this effectively bans the sale of pre-filled, high-nicotine flavored pods (other than tobacco or menthol), which the FDA determined to be the preferred products of youth.

Additional FDA regulations include requirements of manufacturers: Tamper/Child resistant packaging, nicotine warnings on labels, all e-liquid ingredients (2016) and all labels (2017) on file with the FDA; no new vapor products after 2016 without pre-market authorization; lab production requirements.

1. FDA Guidance: <https://www.fda.gov/oc/2019/12/10/2019-12-10-fda-environmental-impact-statement>
2. FDA Guidance, January 2020, <https://www.fda.gov/oc/2020/01/2020-01-20-fda-environmental-impact-statement>

8

NYSVA's Suggested Regulations

[Click here for regulatory language](#)

- **Mandatory state-approved training for all employees selling vapor products.** E-cigarettes are vastly different than combustible tobacco products. Employees need education on their specific federal and state regulations, appropriate IDing techniques, understanding of nicotine levels, spotting counterfeits, and how to effectively communicate with smokers
- **Mandatory physical ID scanners at every point of sale.** Fake IDs are cheap and readily accessible to minors from China, coming in through packaging of shoes, electronics, etc. High quality technology is needed to prevent the sale unless age is verified
- **Age verification software for all online sales** to verify name, age and address
- **Marketing and packaging restrictions:** (No cartoon images of food, animals, children, no animated or non-animated media characters such as superheroes; no IP/trade mark/dress infringement)
- **Restrict tobacco and e-cigarette signage on store-fronts near schools.**

9

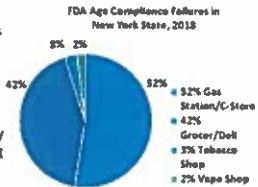
NYSVA's Suggested Regulations

Restrict Access: Allow flavored e-liquid sales in age-restricted retail locations only (as with hard liquor). Allow menthol and tobacco sales where deadly cigarettes are readily available to enable "accidental quitting."

Nicotine Cap: No more than 3.6% nicotine by volume to be sold in the state. Lowering nicotine contents will be less addictive and will not cause the nicotine "buzz," which is what is attractive to minors.

Legal Consequences for minors using or possessing tobacco or e-cigarettes.

Steep Penalties for adults who sell or give them to minors to prevent straw purchases, including employees who sell vapor products.



Of 11,024 age compliance checks conducted by the FDA in 2018 in New York, there were 756 sales to minors. Of those that failed, only 2% were vape shops.

FDA Age Compliance Enforcement in NY State, 2018

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Nicotine Vapor Products- The Goal of Eliminating Death from Smoking

- Vapor Products have the potential to disrupt the 120-year dominance of the cigarette and challenge the field on how the tobacco pandemic could be reversed if nicotine is decoupled from lethal inhaled smoke.¹
- Delays in harm minimization may impede the end of smoking rather than encourage smokers to switch to safer nicotine delivery products.¹
- 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 later²
- E-cigarettes are **twice as effective as NRTs** when used by smokers as an aid to quitting smoking³
- E-cigarettes and quitting smoking - 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.**⁴

1. Harm Minimization and Tobacco Control: Reframing Societal Views of Nicotine Use to Rapidly Save Lives, Abrams et al., College of Global Public Health, New York University, New York, NY 2020, <https://www.globe.columbia.edu/sites/default/files/2020-07/0819>

2. Baverel L, Karpman S. 2020. A longitudinal study of electronic cigarette use among a population-based sample of adult smokers: association with smoking cessation and motivation to quit. *Nicotine Tob. Res.* 17(12):1311-1318. <https://doi.org/10.1093/ntr/niaa233>

3. Mann, P. et al. 2018. A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy. *N Engl J Med.* <https://doi.org/10.1056/NEJMoa1801405>

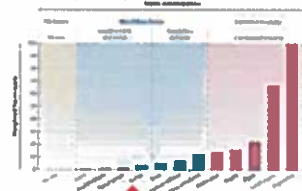
4. RCP. 2016. *Phys 1* 2016. *Nicotine Without Smoke: Tobacco Harm Reduction.* London: RCP. <http://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-130822> (accessed 10/10/2020)

11

Decoupling Nicotine from Inhaled Smoke for Harm Minimization

- "People smoke for nicotine but they die from the tar." - Michael Russell¹
- 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 smoke²

FDA's Continuum of Harm



- If smokers could be shifted from smoking to consuming clean nicotine (i.e., without smoke), **many lives would be saved!**

1. Russell MA. 1976. Low-tar medium-nicotine cigarettes: a new approach to safer smoking. *BMJ* 1(610): 11-13.

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Chart: Matt DL, Phillips JL, Baljour G, Curran HV, Deckroff M, et al. 2014. Estimating the harms of nicotine-containing products using the HCBDA approach. *PLoS One* 9(12): e112776.

12

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!

"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.



1-month experiment, smoking vs. vaping
View 2018 PHE Lab Experiment:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/735493/phe_lab_experiment_2018.pdf

"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

Just as PHE in the UK, Boards of Health in the US should encourage and subsidize vaping for smokers.

1. RCP (R. Coll. Phys.). 2016. *Microbe Without Smoke: Tobacco Harm Reduction*. London: RCP. https://www.rcpublishing.com/~/media/Books/Books/WithoutSmoke/WithoutSmoke_TobaccoHarmReduction_0116.pdf

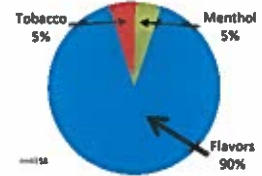
13

Flavors are Key to Successful Quitting

E-Cig Intelligence US Vape Consumer Survey 2018

Flavors are imperative to people's successful transition from combustible tobacco to vapor products ^{1, 2, 3, 4, 5, 6, 7}

Former smokers want to distance themselves from tobacco and menthol flavors once they stop smoking. ^{4, 5, 6, 8, 9, 10, 11, 12, 13}



92% of respondents were exclusive vapers who had switched from a pack-a-day or greater use of combustible tobacco*
* E-Cig Intelligence Survey 2018, March 2019

Approximately 90% of regular e-cigarette users report using a non-tobacco flavor. ¹³

See insert on next page

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Citations – Flavors

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3. Feraheen, E. F., O. Kamegna, D. Tolosa, S. S. Prasad, A. Sanyal, and V. Vaidya. 2015. Impact of Flavor Variability on Electronic Cigarette Use Experience: An Internet Survey. *International Journal of Behavioral Research and Public Health* 12(11):7174-7183. <https://doi.org/10.3390/ijbr12117174>
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About NYSVA

- Only NY State Trade Association representing 700+ independent vape shops, their 2700+ employees, their small business suppliers and hundreds of thousands of their customers.
- Registered and report regularly to the NYS Dept. of Ethics
- No funding from Big Tobacco, Big Pharma or any large corporation
- 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



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