



The American Vaping Association

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RE: HB 2563, increasing the minimum age to purchase or possess cigarettes and tobacco products from 18 to 21; prohibiting cigarette vending machines and flavored vaping products.

Chairman Barker and members of the House Federal and State Affairs Committee:

On behalf of the American Vaping Association, a nonprofit organization that advocates for policies that encourage adult smokers who are unwilling or unable to quit smoking to switch to reduced risk nicotine products, I am writing to urge the committee to reject HB 2563 unless the ban on flavored vaping products is removed from the bill.

While we support raising the age to purchase tobacco and nicotine products to 21, banning flavors in vaping products will fail public health. With nearly 400,000 adults still smoking combustible cigarettes in Kansas, public health will not be served by preventing adult smokers from accessing less harmful alternatives to traditional combustible cigarettes.

I. Legal Nicotine Vaping Products Are Far Safer than Smoking & Did Not Cause “Vaping-Related” Illnesses

- The National Academy of Sciences, an independent research organization that provides scientific advice to the U.S. government, concluded in their report on vaping that the evidence indicates vaping is “likely much less harmful” than smoking cigarettes.¹
- Despite mass public confusion, the evidence is now clear that legal and FDA-regulated nicotine vaping products were not the cause of so-called “vaping-related” illnesses that made headlines throughout the fall of 2019. The CDC and researchers from multiple states have concluded that illicit THC vaping products containing vitamin E acetate are strongly linked to illnesses and deaths.
- Vitamin E acetate has never been detected in a nicotine vaping product.
- The Wall Street Journal recently reported that the CDC is no longer warning adult smokers not to use nicotine vaping products. Instead, the agency is strongly warning against using illicit THC vaping products purchased off the street.

II. The Importance of Flavors to Adults has been Demonstrated

- A study using data from the FDA’s multi-year, population-level PATH study found that among adults aged 25 or older, those using candy or sweet vaping flavors were twice as likely to be trying to quit

¹ “National Academy of Sciences Releases Report on Public Health Consequences of E-Cigarettes.” *American College of Radiology*. <<https://www.acc.org/latest-in-cardiology/articles/2018/01/26/14/14/national-academy-of-sciences-releases-report-on-public-health-consequences-of-e-cigarettes>>

combustible tobacco. Moreover, among ex-smokers who reported that e-cigarettes helped with their smoking cessation, more respondents used fruit flavors than any other flavor type.²

- Researchers from the Yale School of Public Health and other institutions conducted an FDA-funded study of 2,031 adult smokers and recent quitters. The study concluded that banning flavors in vaping products would result in increases in smoking.³
- A self-selected survey of 69,223 vapers from the United States found that among the 81.3% of respondents who were former smokers, just 7.7% and 12.8% of these exclusive vapers used tobacco or menthol flavors, respectively. Ex-smokers and dual users overwhelmingly preferred flavors categorized as fruit, dessert, or sweet.⁴

III. FDA's New Flavor Policy Addresses the Products with Highest Youth Usage Rates

- A new enforcement policy by the Food & Drug Administration goes into effect today that temporarily forbids the sale of closed system (non-refillable) pod- and cartridge-based products like JUUL, Vuse, and NJOY in flavors other than tobacco or menthol.
- These products will only be able to come back to the market if the FDA determines, through a multimillion-dollar premarket tobacco application (PMTA) process, that each individual product is "appropriate for the protection of public health."
- Unlike closed system pods and cartridges, the e-liquid products used in refillable vaping devices and sold by Kansas vape shops were not included in the Trump Administration's temporary ban because a significantly smaller percentage of youth use them compared to closed system products.
- We are committed to working with the Trump Administration and Health & Human Services to ensure that responsibly marketed flavored products remain on the market for adults to use.

We share the goal of decreasing youth vaping and Kansas' vape businesses and individual vapers want to be a part of the solution, but punishing adults by making it harder for them to quit smoking is not the answer. Kansas pass a strong Tobacco 21 law and vigorously enforce it, but the Legislature should be very careful before it enacts policies that will have long-lasting impacts on small businesses and adult voters in the state.

Sincerely,



Gregory Conley, J.D., M.B.A.
President, American Vaping Association

² S. Someji, *et al.* "Flavor Preference Among Adolescent, Young Adult, and Adult E-Cigarette Users: Findings From Wave 2 of the Population Assessment of Tobacco and Health Study." Poster SYM7D. Presented at SRNT 2018.

³ John Buckell, Joachim Marti, and Jody L. Sindelar, "Should Flavors Be Banned in E-Cigarettes? Evidence on Adult Smokers and Recent Quitters from a Discrete Choice Experiment." National Bureau of Economic Research. September 2017. <http://www.nber.org/papers/w23865.pdf>.

⁴ Jim McDonald. "Farsalinos Survey Shows Vapers Prefer Fruit and Dessert Flavors." Vaping360. August 13, 2018. <https://vaping360.com/vape-news/69440/farsalinos-survey-shows-vapers-prefer-fruit-and-dessert-flavors/>