
Testimony: HB 3
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Chairman Davis and members of the committee, thank you for the opportunity to submit testimony on HB 3.

My name is Guy Bentley, and I'm the director of consumer freedom at the Reason Foundation, a 501(c)3 nonprofit think tank. My research focus is on the regulation and taxation of tobacco products.

HB 3's focus on the prohibition of flavored e-cigarettes to prevent and reverse youth vaping has largely been made obsolete by actions taken at the federal level. In December, the age of purchase for tobacco products was raised to 21. In January, the Food and Drug Administration (FDA) banned the sale of fruit and sweet flavored pod and cartridge-based e-cigarette products.

As of today, the age of purchase for tobacco products is equivalent to that of alcohol, and the e-cigarettes most used by youth have been banned. Furthermore, the Centers for Disease Control and Prevention (CDC) has released data showing flavors are not the leading reason why youth initiate vaping. According to the CDC, the primary reason was 'curiosity,' followed by 'friend or family member used them,' with 'they are available in flavors, such as mint, candy, fruit, or chocolate' coming a distant third.¹ These results largely reflect the reasons for youth use of other substances such as alcohol.²

Further restrictions on flavored products would, however, entail significant costs. The vaping industry is directly responsible for more than 1,000 jobs in Maryland, as well as hundreds of secondary jobs, contributing more than \$31 million in state taxes.³ These figures do not include sales in convenience stores. Prohibition of all flavored e-cigarette products would also remove access to a safer alternative to cigarettes. The scientific evidence from both the United States and European Union has proved beyond any reasonable doubt that e-cigarettes are safer than

¹ Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019. *MMWR Surveill Summ* 2019;68(No. SS-12):1–22. https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T6_down

² National Institute on Alcohol Abuse and Alcoholism. "Why Do Adolescents Drink, What Are The Risks, and How Can Underage Drinking Prevented?." *Alcohol Alert: Number 67*. January 2006. <https://pubs.niaaa.nih.gov/publications/AA67/AA67.htm>

³ Stroud, Lindsey. "Policy Tip Sheet: Tobacco Harm Reduction 101: Maryland." The Heartland Institute. January 12, 2020. <https://www.heartland.org/publications-resources/publications/policy-tip-sheet-tobacco-harm-reduction-101-maryland>

combustible cigarettes and are significantly more successful in helping smokers quit than traditional nicotine replacement therapies.⁴⁵⁶ The evidence also shows that flavors other than tobacco are the overwhelming choice of adults switching from smoking to vaping and are more effective in facilitating the transition to smoking cessation.

Prohibition of flavored e-cigarettes would not just fuel illicit markets and close businesses; it would slow the decline in adult smoking. A 2017 study by researchers from the Yale School of Public Health found “a ban on flavored e-cigarettes would drive smokers to combustible cigarettes, which have been found to be the more harmful way of getting nicotine.”⁷ The authors concluded that banning flavors “reduces the appeal of e-cigarettes to those who are seeking to quit (smoking); e-cigarettes have proven useful as a cessation device for these individuals, and we find that quitters have a preference for flavored e-cigarettes.”

When it comes to the prohibition of menthol cigarettes, again, the argument for a ban is out of date and not supported by the data. A recent study produced by myself and my Reason colleague Jacob Rich demonstrates that states with the largest volume of menthol cigarettes as a proportion of all cigarettes sold have the lowest youth smoking rates.⁸

While it’s true that the majority of African Americans who smoke, smoke menthol, African American adults smoke at the same rate as white adults and African American youth smoke cigarettes at a third the rate of white students. African American youth are the least likely of any ethnic group to smoke cigarettes. Youth smoking is already at a record low in Maryland and nationwide.

Furthermore, the latest survey data show that among the minority of youth that do smoke menthol cigarettes are no more popular than regular cigarettes. Prohibition would disproportionately discriminate against African American adult smokers and present a significant profit opportunity for black market sellers shifting the product from Virginia, which is the third-highest outbound smuggling state in the country. On public health grounds, there is no more reason to prohibit menthol cigarettes than non-menthol cigarettes. Any consideration of

⁴ Royal College of Physicians. “Nicotine without the smoke: Tobacco harm reduction.” London RCP, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

⁵ Stephens WE. “Comparing the cancer potencies of emissions from vapourised nicotine products including e-cigarettes with those of tobacco smoke.” *Tobacco Control* 2018;27:10-17. <https://tobaccocontrol.bmj.com/content/27/1/10>

⁶ Hajek, Peter et al. “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy.” *N Engl J Med* 2019; 380:629-637 <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>

⁷ Buckell J, Marti J, Sindelar JL. “Should flavours be banned in cigarettes and e-cigarettes? Evidence on adult smokers and recent quitters from a discrete choice experiment.” *Tobacco Control*. 2019;28:168-175. <https://tobaccocontrol.bmj.com/content/28/2/168.citation-tools>

⁸ Bentley, Guy, Rich, Jacob. “Does Menthol Cigarette Distribution Affect Child or Adult Cigarette Use?” Reason Foundation: Policy Study. January 30, 2020. <https://reason.org/policy-study/does-menthol-cigarette-distribution-affect-child-or-adult-cigarette-use/>

menthol prohibition should be made in the context of rapidly falling youth cigarette use, the lack of association between menthol use rates in states and youth smoking, and the costs of prohibition.

Thank you for your time.

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