

Testimony in Support of Senate Bill 233 (2020)

Business Regulation – Flavored Tobacco Products – Prohibition
Before the Finance Committee: February 13, 2020

Senate Bill 233, cross-filed with House Bill 3, is an emergency measure that prohibits the manufacturing, shipping, importing, or selling into or within the State *any* flavored tobacco product. Tobacco products subject to the flavor ban include, but are not limited to: cigarettes, cigars, chewing tobacco, snuff, electronic smoking devices, and vape liquid. A tobacco product is flavored if it contains any taste or smells that an ordinary consumer could distinguish from tobacco. Menthol flavored tobacco products, including menthol cigarettes, are included in the prohibition. A person who violates these cigarette license requirements will be guilty of a misdemeanor and subject to a fine of \$1,000 or imprisonment not exceeding 30 days, or both. They may also be subject to license suspension, revocation, or non-renewal.

Data on Youth Use of Flavored Cigars and Smokeless Tobacco Products

According to the FDA's Population Assessment of Tobacco and Health, nearly 80% of youth tobacco users aged 12-17 reported that the *first* tobacco product they ever used was a flavored product.¹ Yet, as tobacco users increase in age, their preference for flavored products continually *decreases*.² Prohibiting flavored products is therefore critical to reducing youth uptake of tobacco, which will reduce tobacco use in that generation as adults. Although the focus today tends to be on e-cigarettes, flavored cigars and smokeless tobacco products are an easy gateway to youth nicotine addiction and accompanying negative health impacts.

Cigars and smokeless tobacco products come in a wide variety of sweet-tasting flavors, including but not limited to: Dutch Masters Chocolate, Timber Wolf Apple, White Owl White Peach, Skoal Wintergreen, Swisher Sweet Twisted Berry, Copenhagen Smooth Mint, Dutch Masters Honey Fusion, and Swisher Sweet Banana Smash. These flavored tobacco products often feature the same chemical flavorings and sweeteners found in popular candies, which contributes to youth susceptibility.³ In cigars and cigarillos, this flavor is found within the filler of the cigar and extra sweetener is added to the wrappers and mouth tips.⁴ This flavor reduces the harsh taste and smell of tobacco, and in conjunction with the cheap price, makes cigars more

¹ FDA. "Menthol and Other Flavors in Tobacco Products." 2020. Available at <https://www.fda.gov/tobacco-products/products-ingredients-components/menthol-and-other-flavors-tobacco-products>. Accessed 1-25-20.

² Truth Initiative. 2018. Available at <https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth-Flavors-Fact-Sheet.pdf>. Accessed 1-26-20.

³ Chaffee BW, Urata J, Couch ET, et al. "Perceived Flavored Smokeless Tobacco Ease-of-Use and Youth Susceptibility." *Tobacco Regulatory Science*. 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5539957/>. Accessed 1-25-20.

⁴ Lawyer GR, Jackson M, Prinz M, et al. "Classification of flavours in cigarillos and little cigars..." *Public Library of Science*. 2019. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6905550/#pone.0226066.ref005>. Accessed 1-24-2020.

appealing to youth. In smokeless tobacco products, the flavor is strategically added to reduce the ‘bite’ and unpleasant lip and gum irritation, and to increase youth initiation.⁵ Studies also show that tobacco products with flavored packaging are perceived as more appealing and less harmful, and that flavored users display lower intentions of quitting than non-flavored users.⁶

These flavors are wildly effective in garnering youth attention. In 2017, 9% of high school students in Maryland (49, 851 students) reported they had smoked a cigar at least once in the past 30 days.⁷ Given that nearly 85% of youth aged 12-17 who use cigar products use flavored cigar products, Maryland youth are predominantly choosing flavored cigars.⁸ Moreover, flavored cigarillos pose a unique problem of their own. Flavored cigar sales have increased by 50% since 2008 with inexpensive flavored cigarillos accounting for much of this growth.⁹ A study from the *Journal of Nicotine and Tobacco Research* revealed that young adults often use flavored cigarillos for marijuana blunt-making because the flavors make the blunt-making and marijuana smoking experience more pleasant. Therefore, flavored cigar products are not only dangerous for their potential to attract young users, but also for their ability to make marijuana smoking more palatable to youth.¹⁰

Similarly, flavored smokeless tobacco products appeal to younger populations. According to the CDC, smokeless tobacco accounts for 4.8% of tobacco product use in student users.¹¹ Smokeless tobacco use is especially prevalent among adolescent males with 11.9% of U.S. high school boys reporting monthly use.¹² In Maryland, 49,966 students (3.2% of female students and 8.3% of male students) reported using smokeless tobacco at least once in the past 30 days in 2017.¹³ Flavor plays a key role in this data. More than two-thirds of youth using smokeless tobacco products say they did so “because they come in flavors I like.”¹⁴ Also, nearly

⁵ Kostygina G, Ling PM. “Tobacco industry use of flavourings to promote smokeless tobacco products.” *Tobacco Control* 2016. Available at https://tobaccocontrol.bmj.com/content/25/Suppl_2/ii40. Accessed 1-25-20.

⁶ Huang L, Baker H, Meernik C, et al. “Impact of non-menthol flavours in tobacco products on perceptions and use among youth, young adults, and adults: a systematic review.” *Tobacco Control*. 2016. Available at <https://tobaccocontrol.bmj.com/content/26/6/709.full>. Accessed 1-25-20.

⁷ CDC, “High School YRBS- Maryland 2017.” Available at <https://nccd.cdc.gov/youthonline/App/Results.aspx?LID=MD>. Accessed 1-28-20.

⁸ Harrell MB, Loukas A, Jackson CD, et al. “Flavored Tobacco Product Use Among Youth and Young Adults: What if Flavors Didn’t Exist,” *Tobacco Regulatory Science*. 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5536860/>. Accessed 1-24-20.

⁹ 2017. Available at <https://countertobacco.org/resources-tools/evidence-summaries/flavored-tobacco-products/>. Accessed 1-25-20.

¹⁰ Giovenco DP, Miller Lo EJ, Lewis MJ, et al. “They’re Pretty Much Made for Blunts.” *Nicotine Tobacco Research* 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5896518/>. Accessed 1-25-20.

¹¹ *Id.*

¹² Chaffee, Urata, Couch, and Gansky. Perceived Flavored Smokeless Tobacco Ease-of-Use and Youth Susceptibility. *Tob. Regul. Sci.* 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5539957/>. Accessed 1-25-20.

¹³ CDC, “High School YRBS- Maryland 2017.” Available at <https://nccd.cdc.gov/youthonline/App/Results.aspx?LID=MD>. Accessed 1-28-20.

¹⁴ “Smokeless Tobacco and Kids.” 2019. Available at <https://www.tobaccofreekids.org/assets/factsheets/0003.pdf>. Accessed 1-26-20.

70% of youth who had ever used smokeless tobacco reported that the first smokeless tobacco product they used was flavored.¹⁵ A recent study looked at the association between adolescent perceptions of flavored smokeless products and their willingness to initiate use. The results indicated that flavored smokeless tobacco was perceived by adolescent participants as “easier to use” than unflavored smokeless tobacco; this association made these adolescents more susceptible to initiation.¹⁶ Therefore, if flavored products are not available, youth may be less inclined to try it at all given the perceived harsher taste.

Health Consequences Associated with the Lack of Regulation of Flavored Cigars and Smokeless Tobacco

Although cigars and smokeless tobacco products pose nearly the same health risks as cigarettes, these products (and their many flavors) remain less regulated than cigarettes.¹⁷ Federal law has prohibited flavored cigarettes since 2009, and although the FDA has had the authority to ban other flavored tobacco products since then, the FDA has taken *no action* with regard to other flavored tobacco products.¹⁸ New York City, however, prohibited the sale of flavored tobacco products in 2013 (excluding e-cigarettes and minty/menthol flavors) and their flavored tobacco product sales decrease by 87%.¹⁹ Massachusetts also recently banned flavored tobacco products in December 2019. The law entitled, “An Act Modernizing Tobacco Control” bans retailers from selling *any* flavored tobacco product and permits the sale and consumption of flavored vaping products only within licensed smoking bars.²⁰ Given that the health risks of using other flavored products are severe, Maryland should follow New York City’s and Massachusetts’ example and step in to fill this regulatory gap.

Generally, cigar smoking is associated with cancers of the lungs, esophagus, larynx, and oral cavity.²¹ Flavored cigar products pose additional risks. Inhalation of a common flavoring chemical, diacetyl has been linked to “popcorn lung disease,” a form of irreversible damage to lung tissue.²² Moreover, the use of flavored cigars may “lead to regular use and potentially

¹⁵ *Id.*

¹⁶ Chaffee, Urata, Couch, and Gansky. Perceived Flavored Smokeless Tobacco Ease-of-Use and Youth Susceptibility. *Tob. Regul. Sci.* 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5539957/>. Accessed 1-25-20.

¹⁷ Giovenco DP, Miller Lo EJ, Lewis MJ, et al. “They’re Pretty Much Made for Blunts.” *Nicotine Tobacco Research* 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5896518/>. Accessed 1-25-20.

¹⁸ Truth Initiative. 2018. Available at <https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth-Flavors-Fact-Sheet.pdf>. Accessed 1-26-20.

¹⁹ Truth Initiative. 2018. Available at <https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth-Flavors-Fact-Sheet.pdf>. Accessed 1-26-20. NYC Admin. Code. §17-715.

²⁰ Massachusetts 2019 Tobacco Control Law. Available at <https://www.mass.gov/guides/2019-tobacco-control-law#-new-tobacco-control-law->. Accessed 2-3-20.

²¹ CDC. “Smoking & Tobacco Use- Cigars.” Available at https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/cigars/index.htm. Accessed 1-25-20.

²² Lawyer GR, Jackson M, Prinz M, et al. “Classification of flavours in cigarillos and little cigars...” *Public Library of Science*. 2019. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6905550/#pone.0226066.ref005>. Accessed 1-24-2020.

create lifetime-addicted smokers who might not otherwise choose to smoke, including female smokers.”²³ Smokeless tobacco is also linked to many health problems. Smokeless tobacco is associated with cancers of the mouth, esophagus, and pancreas.²⁴ In addition to these general risks, flavored smokeless tobacco products may increase youth initiation and early addiction to tobacco products. Young adult users more often associate flavored smokeless tobacco with fewer health risks, and this false perception makes young adults more willing to try these equally dangerous flavored products.²⁵

Senate Bill 233 Will Curtail Youth Tobacco Use by Eliminating the Allure of Flavors

Eliminating the sale of flavored tobacco products will help decrease the onset and prevalence of tobacco use among young people. Studies show that tobacco use often begins in adolescence or young adulthood, especially if those products are flavored.²⁶ This lends credence to the notion that if flavorings were removed from tobacco products, youth would be less drawn to tobacco products initially, and thus less likely to use these products later in life. According to a 2017 study, 84% of youth and 76% of young adult users of flavored tobacco products reported that they would no longer use the product if it were not flavored.²⁷ For youth aged 12-17, 80% would not use cigar products if they were not flavored.²⁸ Nearly 60% of young adults aged 18-29 would not use smokeless tobacco products anymore if they were not flavored.²⁹

Research shows that the availability of flavors makes youth more likely to initiate use of tobacco products.³⁰ Prohibiting flavored cigars and smokeless tobacco in the State is a common-sense measure to reduce the chances of youth initiation, use, and addiction—and that can be the start of a tobacco-free generation.

This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.

²³ Hinds III, J, Li X, and Pasch K, et al. “Flavored Cigars Appeal to Younger, Female, and Racial/Ethnic Minority College Students,” *Nicotine and Tobacco Research*. 2018. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5896537/>. Accessed 1-24-20.

²⁴ CDC. “Smokeless Tobacco: Health Effects.” Available at https://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/health_effects/index.htm. Accessed 1-25-20.

²⁵ Chaffee BW, Urata J, Couch ET, et al. “Perceived Flavored Smokeless Tobacco Ease-of-Use and Youth Susceptibility.” *Tobacco Regulatory Science*. 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5539957/>. Accessed 1-25-20.

²⁶ Harrell MB, Loukas A, Jackson CD, et al. “Flavored Tobacco Product Use Among Youth and Young Adults: What if Flavors Didn’t Exist,” *Tobacco Regulatory Science*. 2017. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5536860/>. Accessed 1-26-20.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Public Health Law Clinic
University of Maryland Carey School of Law
500 West Baltimore Street
Baltimore, MD 21201
publichealth@law.umaryland.edu; (410)706-0842