



The American Vaping Association

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RE: HB 732, taxing electronic smoking devices and increasing taxes on cigarettes and OTP

Chairwoman Kaiser and members of the House Ways & Means 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 732, which would impose a new 86% wholesale tax on all vaping product liquids, devices, and components, as well as raise the existing tax on smoke-free products like snus, which has been designated by the Food & Drug Administration as a tobacco harm reduction product.

With nearly 600,000 adults still smoking combustible cigarettes in Maryland, a new tax on vaping products will not benefit public health. Instead, the result will be more smoking of combustible cigarettes, a slower decline in cigarette sales, the closing of small businesses, and increased use of potentially dangerous products purchased off the street.

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.
- 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.
- 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. New Excise Taxes are Not Justifiable and Will Harm Smokers and Small Businesses

- It is not just a guess that taxes on vaping products lead less adults to quit smoking. A recent study published by the National Bureau of Economic Research estimated that if Minnesota’s existing 95% wholesale tax on vaping products was enacted nationwide, it would result in 1.8 million fewer smokers quitting over the next decade.

- Many Maryland small businesses would close as a result of this tax, as tax rates in Delaware (5 cents per mL), Pennsylvania (40% of wholesale), and Virginia (6.6 cents per mL in Gov. Northam's proposed budget) are significantly lower.
- Excessive taxation of vaping products has immediate and long-lasting negative impacts on small businesses. In Pennsylvania, a 40% wholesale tax (less than half the tax proposed in this bill) was estimated by numerous media outlets to have closed over 125 small businesses.

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

- A new enforcement policy by the Food & Drug Administration is now in effect 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 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." We expect marketing authorizations to be issued in the next year.
- Unlike closed system pods and cartridges, the e-liquid products used in refillable vaping devices and sold by Minnesota 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.
- Alex Azar, the Secretary of Health & Human Services, has committed to streamlining the FDA application process for open system products primarily sold in vape shops.

We share the goal of decreasing youth vaping and Maryland vape businesses and individual vapers want to be a part of the solution, but punishing adults for wanting to quit smoking is not the answer. Maryland should vigorously enforce its existing Tobacco 21 law, 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