

Testimony before the Maryland House Economic Matters Committee  
Hearing On HB0134, Business Regulation - Flavored Tobacco Products - Prohibition  
OPPOSED

February 10, 20

Jeff Stier  
Senior Fellow  
Consumer Choice Center  
41 W. 96th St., #1B  
New York, NY 10025

Chairperson and Members of the Committee:

Thank you for the opportunity to share my reasons for opposing HB0134

I share your concerns about youth vaping and recognize the legislature's obligation to take rational steps to minimize underage vaping.

However, a ban on the sale of flavored tobacco products will not achieve the goal of the legislation, which is to prevent underage vaping. Further, evidence suggests that a ban on the sale of flavored e-cigarettes to adults will:

**Endanger youth by creating an illicit market in flavored e-cigarettes;**

**Harm Maryland's budget without a countervailing public health benefit;**

**Make it more difficult for adult smokers to quit smoking with the use of lower-risk E-cigarettes;**

The Centers for Disease Control and Prevention sought to find out whether flavors play a role in causing youth to experiment with e-cigarettes. The results of the 2018 Youth Risk Behavior Survey were clear. Students throughout the country, including in Maryland, did not cite flavors as their main reason for trying the products. In fact, only 3.2% of Maryland high school students attributed the availability of flavors as their main reason for vaping.

Now I must point out the obvious. As of October 1, 2019 It has been illegal for anyone under 21 to purchase tobacco or e-cigarettes in the state. The Maryland Department of Health webpage points out that "This includes sales of all electronic smoking devices—e-cigarettes, vapes, pod devices such as JUUL®, e-liquids, and component parts and accessories."

So a ban on the sale of flavored e-cigarettes does not change the law with regard to sales to youth. It only prohibits legal sales to adults.

So by banning the sale of flavors, you are left only with the unintended consequences of a ban, with absolutely no benefits, since the sales to minors that you are trying to prevent through a ban are already banned.

As we all know too well, prohibition is ineffective and always leads to illicit markets.

In his testimony before the Senate on the companion to this legislation, Maryland AG Brian Frosh cited the 2019 EVALI outbreak as a reason to ban flavored nicotine e-cigarettes.

His testimony was sadly ironic. EVALI was the result of bad actors in the illicit market for THC vapes. In this unregulated illicit market, bad actors were able to cut their products with vitamin E acetate, which causes severe lung illness when inhaled. EVALI had absolutely nothing to do with nicotine e-cigarettes.

We can learn from the EVALI outbreak. But the lesson is not to ban flavored e-cigarettes and create an illicit market for this now highly regulated product. The lesson is exactly the opposite.

EVALI reminds us that illicit markets always lead to more dangerous illicit products- such as the THC vape products that caused the EVALI outbreak- and that some kids will use these products. The policy answer to EVALI is to take steps to reduce youth vaping without unintentionally launching a new illicit market of even more dangerous products.

## **TAXES:**

Massachusetts's recent ban on flavored tobacco products is highly instructive. According to Jonathan Shaer, Executive Director of the New England Convenience Store & Energy Marketers Association, "All anyone needs to do is look at the excise tax stamp numbers from June through November to understand how ineffective and ridiculous this ban is. Rhode Island and New Hampshire have combined to sell 18.9 million more stamps than they did over the same period in 2019 while Massachusetts has sold 17.7 million fewer. He points out that the ban caused cross-state purchases, not a decrease in tobacco use.

Please be on notice that this legislation will send millions of dollars of tax revenue across state lines. Perhaps that's a trade-off you'd be willing to make if the measure would be effective at stopping youth vaping. But both common sense and the evidence from MA shows that it will not.

## **ADULT SMOKERS:**

This committee cannot ignore the fact that cigarette smoking is addictive and that many adult smokers in Maryland have quit smoking and moved to a far less harmful way of consuming nicotine— vaping. Even the FDA has acknowledged that adult nicotine users have testified that flavors play a critical role in their ability to not only quit smoking, but to maintain their cessation.

By banning the sale of e-cigarette flavors to adult former smokers, you will unintentionally be giving smokers another reason to consume nicotine in its most dangerous way, through the combustible cigarette. It is possible to take action to protect children from e-cigarettes without throwing adult smokers under the bus. This legislation is not the way to do it.

Stepping up enforcement, as well as effective education can achieve the reductions in youth vaping that we would all like to see, without these myriad unintended harmful consequences.