

ALA_MD Flavors Testimony - SB 259_2-16-23.pdf

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Position: FAV



American Lung Association Testimony Senate Bill 259
Finance Committee
February 16, 2023
Support

Chair Griffith, Co-Chair Klausmeier and Members of the Committee:

Thank you for the opportunity to provide comments on Senate Bill 259, Flavored Tobacco Products Prohibition sponsored by the Senator Lam. The American Lung Association strongly supports this bill with no amendments as an integral way to address the youth tobacco epidemic and encourage current smokers to make a quit attempt.

The American Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease, through research, education and advocacy. The work of the American Lung Association is focused on four strategic imperatives: to defeat lung cancer; to improve the air we breathe; to reduce the burden of lung disease on individuals and their families; and to eliminate tobacco use and tobacco-related diseases.

In new data from the [2022 National Tobacco Youth Survey](#), e-cigarette use among high school and middle school students continue to show epidemic levels. The data shows that more than 2.55 million middle and high school students reported that they had used e-cigarettes in the last 30 days, and nearly 85% of them are using flavored products, including 26.6% using menthol and 29.4% using mint-flavored e-cigarettes. The data also underscores how addicted youth are to these products, 42.3% of youth who use e-cigarettes are vaping regularly (20 or more of the past 30 days), and 27.6% are vaping daily. In Maryland, 23% of high school students report using an electronic smoking device in the last 30 days and 27.4% report using any kind of tobacco product. The tobacco industry has continued to target youth users with marketing of flavored products which have made them appealing for youth users to initiate tobacco use, with many youth not realizing that these products contain nicotine and then struggling with a lifetime of addiction.

The Lung Association is encouraging states to look at evidence-based policy measures to address this epidemic, including the measure before you which would remove all flavored tobacco products from the market. It is critical that all flavored products are included in any legislation as if you leave one product on the market youth may just switch to that product. Any legislative measure must include all flavors and all products, which include but are not limited to e-cigarettes, menthol cigarettes, hookah, cigars and smokeless products.

While much attention has been focused on how e-cigarettes are now attracting and addicting Maryland residents, many other flavored tobacco products have been on the market for decades. The tobacco industry has a long history of targeting communities of color, LGBTQ communities and communities of low socioeconomic status with the sale of menthol cigarettes and flavored cigarillos.

Flavors are a marketing weapon the tobacco manufacturers use to target youth and young people and hook them for a lifetime of addiction. Adding flavors to tobacco products can improve the ease of use of a product by masking the harsh taste of tobacco, facilitating nicotine uptake, and increasing a product's overall appeal. Candy, fruit, mint, and menthol flavorings in tobacco products are a promotional tool to lure new, young users, and these products are aggressively marketed with creative campaigns by tobacco companies. Products with flavors like cherry, grape, cotton candy, and gummy bear are clearly not aimed at established, adult tobacco users and years of tobacco industry documents confirm the intended use of flavors to target youth. Furthermore, youth report flavors are a leading reason they use tobacco products and they also perceive flavored products as less harmful. The data shows us that more than 95% of smokers start before they are 21. Passage of comprehensive tobacco control legislation would be a tremendous victory for Maryland's kids and families and will protect them from tobacco addiction and other health risks associated with the use of tobacco products.

Removing all flavored tobacco products would be a critical component to a comprehensive strategy to reduce tobacco use and prevent initiation and lifelong addiction. Ensuring that all flavored tobacco products are included in any policy measure will benefit Maryland communities of color, LGBTQ communities, and communities of lower socioeconomic status by reducing tobacco use and saving lives. We urge you to make sure no communities are left behind.

As with the passage of Tobacco 21 and increases to the tobacco tax rate during previous sessions of the General Assembly, these measures are all pieces of the puzzle to address the youth tobacco epidemic in a comprehensive way, as tobacco control policy cannot be done in isolation. The Lung Association believes that in light of the federal government's unwillingness to act swiftly, it is up to states like Maryland to take action and move forward comprehensive policy approaches to address this epidemic.

The Lung Association thanks the Maryland General Assembly for their continued commitment to the health and wellbeing of the residents of Maryland and the desire to protect Maryland youth from a lifelong tobacco and nicotine addiction. With action on this bill Maryland is making a commitment to having the first generation of never smokers. The Lung Association strongly supports Senate Bill 259 as drafted with no amendments and encourages swift action to move the bill out of committee and passage by the General Assembly.

Sincerely,

A handwritten signature in black ink that reads "Aleks Casper". The signature is written in a cursive, flowing style.

Aleks Casper
Director of Advocacy, Maryland
202-719-2810
aleks.casper@lung.org

ACS CAN - 2023 SB 259 FAV - Flavored Tobacco Ban -

Uploaded by: Ann Ciekot

Position: FAV



February 16, 2023

TO: The Honorable Melony Griffith, Chair
The Honorable Katherine Klausmeier, Vice Chair
Members of the Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401

FROM: John Hctor, Managing Director, Advocacy
American Cancer Society Cancer Action Network
555 11th St. NW, Suite 300
Washington, DC 20004
john.hctor@cancer.org
(614) 787-0457 (cell)

SUBJECT: SB 259 Business Regulation—Flavored Tobacco Products—Prohibition

POSITION: SUPPORT

The American Cancer Society Cancer Action Network (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. On behalf of our constituents, many of whom have been personally affected by cancer, we stand in strong support of **SB 2 B59 Business Regulation—Flavored Tobacco Products—Prohibition**.

Data from the 2019 National Youth Tobacco Survey show youth use of e-cigarettes in high schools skyrocketed, with a 135% increase over the past two years. Survey results also show that 27.5% of high school students used e-cigarettes in the last 30 days.¹ Nearly 64% used mint or menthol flavored e-cigarettes, only 2% less than fruit flavored products and significantly more than candy flavors.² Research also shows that 97 percent of current youth e-cigarette users used a flavored product in the past month, and 70 percent cite flavors as a key reason for their use.

In Maryland, 18.2% of adults use any tobacco product, including 12.5% who use cigarettes.³ While 5.0% of Maryland high school students smoke cigarettes, 6.0% smoke cigars, 4.6% use smokeless tobacco, and 23% use electronic smoking devices.⁴ We know that most current smokers were enticed to begin this deadly addiction as youth, and most report beginning with a flavor.

¹ Office of the Commissioner, "Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products," U.S. Food and Drug Administration (FDA, September 11, 2019), <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>.

² Office of the Commissioner, "Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products," U.S. Food and Drug Administration (FDA, September 11, 2019), <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>.

³ Maryland Department of Health, BRFSS 2018. Unpublished. Local Health Department Tobacco Control Meeting, November 21, 2019.

⁴ Maryland Department of Health, YRBS/YTS 2019. Unpublished. Local Health Department Tobacco Control Meeting, November 21, 2019.

As a result of targeted marketing, while the use of traditional cigarettes have declined, the sale of menthol cigarettes have steadily increased, especially among young people and new smokers. Menthol makes it easier to start smoking by masking the harshness of tobacco smoke. As a result, over half of youth smokers use menthol cigarettes; among African American youth smokers, seven out of ten use menthol cigarettes. In addition, there are now over 250 different cigar flavors, and cigars surpass cigarettes in popularity among high school boys nationwide.

In addition to youth, African American, LatinX, and LGBTQ communities have been heavily targeted with menthol cigarette marketing. Quitting menthol cigarettes is particularly difficult, so those who initiate with menthol are more likely to become addicted and less likely to quit. Leaving menthol cigarettes in our communities is a matter of social justice and leaves those already most impacted by health disparities vulnerable to the aggressive marketing of the tobacco industry.

The 2020 Surgeon General *Smoking Cessation: A Report of the Surgeon General* released on January 23, 2020 noted that an “endgame” strategy that could further bolster tobacco cessation would be to **restrict the sale of flavored tobacco products, including menthol.**⁵

Cities across the country have already acted to prohibit the sale of all flavored tobacco products. Over 80 localities in California, Colorado, Minnesota, Massachusetts and New York, and the State of Massachusetts have done so. And many other communities and states are currently considering similar proposals. months and years. It’s now Maryland’s turn!

I strongly urge you to protect youth from all flavored tobacco products, including flavored cigars, menthol cigarettes, hookah, and smokeless tobacco and vote “favorably” for this legislation.

Thank you.

Sincerely, John Hocter
Managing Director, Advocacy
American Cancer Society Cancer Action Network

⁵

U.S Department of Health and Human Services (HHS). *Smoking Cessation: A Report of the Surgeon General- Executive Summary*. Rockville, MD. U. S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General; 2020. Available at <https://www.hhs.gov/sites/default/files/2020-cessation-sgr-executive-summary.pdf>.

Testimony in Support of SB 259.pdf

Uploaded by: Ashleigh Pagano

Position: FAV

Written Testimony in Support of Senate Bill 259

Business Regulation – Flavored Tobacco Products – Prohibition
Before the Finance Committee: February 16, 2023

Introduction

Senate Bill 259 prohibits the sale and distribution of flavored tobacco products into or within Maryland. Flavored tobacco products include those with the smell or taste of menthol, and the ban applies to both traditional tobacco products, like cigarettes and chewing tobacco, and electronic smoking devices. A licensee who violates SB 259 is guilty of a misdemeanor, and subject to a fine up to \$1,000, imprisonment up to 30 days, or both.

The purpose of this testimony is to explain that: (1) Federal law does not restrict Maryland’s ability to adopt a flavored tobacco product ban because the Family Smoking Prevention and Tobacco Control Act (“TCA”) permits states to enact sales restrictions; (2) Maryland should not rely on the U.S. Food and Drug Administration (“FDA”) to adopt a timely, complete product flavored tobacco ban; and (3) Maryland counties are preempted from enacting their own laws to restrict the sale and distribution of flavored tobacco products due to the Court’s opinion in *Altadis U.S.A., Inc. v. Prince George's County*, 431 Md. 307 (2013), so counties must rely on this body to take action. I urge the Committee to support SB 259 for these reasons.

States are not preempted from adopting flavored tobacco product bans.

States have historically regulated tobacco through their police powers to protect the general welfare and safety of the public. When Congress passed the TCA in 2009, Congress preserved the states’ role in regulating tobacco by incorporating a three-clause preemption scheme: preservation, preemption, and savings. The preservation clause protects a state’s ability to enact laws that prohibit the sale and distribution of tobacco products. The savings clause reinforces the preservation clause, expressly exempting tobacco sale and distribution laws from federal regulation.

Laws that establish tobacco products standards, labeling, and manufacturing standards are preempted by the TCA and consequently fall within the FDA’s exclusive authority. Flavored tobacco product bans do not establish manufacturing, labeling, or product standards that are preempted under the TCA. Instead, flavored tobacco product bans are sales restrictions because they restrict whether or where a product may be sold in a state or county. By that definition, SB 259 is a sales restriction because it does not instruct manufacturers to change the character of a product. The bill only prohibits the sale of flavored tobacco products within Maryland.

Courts have upheld flavored tobacco product bans because they are sales restrictions protected under the TCA’s preservation and savings clause. In *U.S. Smokeless Tobacco Mfg. Co.*

LLC v. City of New York, the U.S. Court of Appeals for the Second Circuit upheld a New York City ordinance banning the sale of any flavored tobacco product (excluding menthol) except in tobacco bars because the ordinance restricts where the product can be sold but does not require the physical makeup of the tobacco products to be changed. Moreover, in *R.J. Reynolds v. Los Angeles County*, the U.S. Court of Appeals for the Ninth Circuit upheld a Los Angeles County ordinance banning the sale of any flavored tobacco product – including electronic smoking devices – because the ordinance prohibits the sale of the product within the county but does not require the nature of the product to change. These cases demonstrate that courts will uphold flavored tobacco bans under the TCA because they are sales restrictions.

SB 259 fills a gap in the FDA’s proposed regulation of flavored tobacco, and it enacts a sales restriction that localities in Maryland are unable to adopt.

The Committee should vote in favor of SB 259 because it is critical for the regulation of flavored tobacco products in Maryland. The FDA cannot be relied upon to comprehensively address menthol and other characterizing flavors because the proposed federal regulation of flavored tobacco products does not apply to electronic smoking devices. Moreover, localities throughout Maryland fear they are unable to adopt flavored tobacco product bans because of the *Altadis* case. SB 259 serves as the only means by which Marylanders can see a flavored tobacco ban come into fruition.

A. The FDA cannot be relied upon to comprehensively prohibit the use of menthol and other flavors in tobacco products.

Congress enacted the TCA to give the FDA the authority to regulate the manufacture, distribution, and marketing of tobacco products. It also prohibits the sale of flavored cigarettes, but the ban does not extend to menthol. In addition to the law’s substantive provisions, the TCA established the Tobacco Products Scientific Advisory Committee (“TPSAC”) to evaluate health and safety concerns relating to tobacco products. In 2011, the TPSAC found that menthol cigarettes have an adverse effect on public health. However, the FDA did not take timely action. Various public health groups filed a citizen’s petition in 2013 asking the FDA to prohibit menthol in cigarettes, yet the FDA did nothing.

In 2016, the FDA enacted the Deeming Rule which extends the Agency’s regulatory coverage to electronic smoking devices, cigars, and other tobacco products. The Deeming Rule does not include any flavored tobacco product restrictions.

Finally, in June of 2020, after taking no action on menthol or responding to the citizen’s petition, two leading public health groups sued the FDA for their inaction on addressing menthol in cigarettes. In 2021, the FDA informed the public health groups that it would respond to the citizen’s petition. The FDA responded in 2022, announcing that it would propose a new rule to ban menthol in cigarettes, and menthol and other characterizing flavors in cigars. However, the proposal fails to account for electronic smoking devices or other tobacco products under a flavor ban. The proposed rule will also not have legal effect for several years.

Maryland should not rely on the FDA's proposed rule because it fails to comprehensively restrict the sale of flavored tobacco and it take years to become effective. SB 259 imposes a sales restriction upon electronic smoking devices and other tobacco products, closing a gap that would be left open by the FDA and ensuring that all forms of flavored tobacco are prohibited in Maryland.

B. The *Altadis* decision preemptes counties in Maryland from adopting their own flavored tobacco bans.

Counties in Maryland do not have their own flavored tobacco product bans because of the *Altadis* decision. In *Altadis*, the Maryland Supreme Court ruled a county ordinance banning the sale of unpackaged cigars was preempted by state law. The Court reasoned that, since the General Assembly had already passed extensive packaging and sale laws, the legislature did not intend to leave any authority to counties to regulate in this area.

It remains unclear whether the Court will extend the *Altadis* decision to preempt local laws relating to the sale and distribution of all tobacco products. Because of this uncertainty, many local jurisdictions have not adopted flavor bans out of fear of legal challenges. Thus, SB 259 is critical because jurisdictions that wish to ban flavored tobacco products must rely on the state to do so.

It is also important to note that Maryland would not be the first state to ban the sale of flavored tobacco products. Massachusetts banned the sale of any menthol and flavored tobacco product in 2020, while states like New York, New Jersey, and Rhode Island banned the sale of menthol and flavored electronic cigarettes in 2020. Over 300 local jurisdictions throughout the United States have adopted flavored tobacco bans, and Washington, D.C. recently prohibited the sale and distribution of flavored tobacco products and electronic smoking devices.

Conclusion

Federal law does not prevent Maryland from adopting a ban that prohibits the sale and distribution of menthol and flavored tobacco products. This is because SB 259 is a sales restriction not preempted by the TCA, and courts have routinely upheld flavored tobacco bans around the country. Because the law is not preempted, SB 259 serves as an opportunity for the General Assembly to prohibit the sale of flavored tobacco products excluded from the scope of the FDA's 2022 proposed rule. Additionally, the *Altadis* decision has prevented local jurisdictions in Maryland from adopting their own flavored tobacco bans and local jurisdictions must rely on the State to take action since they may not have the authority to do so. For these reasons, the Committee should vote in favor of SB 259.

This testimony is submitted by Ashleigh Pagano, student attorney, and Professor Kathi Hoke, 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.

SB259_FAV_MarylandPIRG.pdf

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Position: FAV

Maryland PIRG

Matthew Wellington, Maryland PIRG, Public Health Campaigns Director
SB259 Flavored Tobacco Products - Prohibition-Finance Committee
Finance
February 16, 2023
FAVORABLE

Maryland PIRG is a state based, small donor funded public interest advocacy organization with grassroots members across the state. We work to find common ground around common sense solutions that will help ensure a healthier, safer, more secure future. That includes a long history of supporting concrete solutions to reduce tobacco use.

Maryland PIRG urges you to support SB259 to protect kids from tobacco addiction by taking all flavored tobacco products off the market.

The tobacco industry has evolved over time to create new, highly addictive products, but one thing hasn't changed--flavored tobacco products hook kids. **A government study found that [81% of youth](#) who have ever used tobacco started with a flavored product, and most tobacco users start young.**[1]

Flavored products helped fuel the e-cigarette epidemic among youth:

- E-cigarettes have been the [most commonly used tobacco product](#) among middle and high school students in the United States since 2014.[2]
- According to the Centers for Disease Control and Prevention, [more than 1 in 4 \(27.4%\)](#) high school youth in Maryland reported current use of a tobacco product in 2019. [3] That's an increase from [21.6% in 2016](#). [4]
- According to the Food and Drug Administration, [70%](#) of youth e-cigarette users say they use the products because they come in appealing flavors.[5]
- The Surgeon General [concluded in a 2016 report](#) that, "E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults." [6]

All flavored products are a problem:

All flavored tobacco products pose a threat to youth because they can lure them into a life-time of tobacco addiction. S.B.259 would help reduce overall youth tobacco use by taking all flavored products off the market, not just a select few.

- Although e-cigarettes are the most widely used tobacco product among Maryland high schoolers, 6% smoke cigars, 5% smoke cigarettes, and 4.6% use smokeless tobacco.[7]
- Menthol flavoring lessens the harshness of smoking tobacco, which makes it easier for young people to start smoking cigarettes. According to the Food and

Drug Administration, [youth smokers](#) are more likely to use menthol cigarettes than any other age group.

- In 2013-2014, [73.8%](#) of youth cigar smokers reported that they smoked cigars “because they come in flavors I like” (PATH Wave 1, 2013-2014).[8]

Nicotine is harmful to kids’ health:

E-cigarettes almost always contain nicotine, an addictive drug that can harm adolescent [brain development](#) and affect young peoples’ learning, memory and attention.[9]

- Nicotine use in adolescents can also contribute to mood disorders and increase their risk of future addiction to other dangerous substances.[10]
- Some [evidence](#) also suggests that young e-cigarette users may be more likely to smoke combustible cigarettes in the future. [11]

The benefit, if any, to the smokers who claim to be using flavored e-cigarettes as a way to quit smoking combustible cigarettes simply doesn’t outweigh the public health risk these products pose to young people in Maryland. **Moreover, [no e-cigarette company](#) has received FDA authorization to market their e-cigarette products as a safe and effective way to quit smoking.**[12]

The federal government has failed to fully address the youth e-cigarette epidemic, and it’s moving too slowly to take other youth friendly products like menthol cigarettes off the market. It’s critical that Maryland lawmakers act now to end the sale of all flavored tobacco products.

According to the Centers for Disease Control and Prevention, the rapid rise in e-cigarette use among young people has [erased past progress](#) in reducing overall youth tobacco use. Maryland lawmakers should end the sale of all flavored tobacco products. Otherwise, thousands more kids could face a future tainted by tobacco addiction.

We respectfully request a favorable report.

Notes:

[1] Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014,” *Journal of the American Medical Association (JAMA)*, published online 26 October 2015.

[2] Gentzke AS, et al. “Vital Signs: Tobacco Product Use Among Middle and High School Students – United States, 2011–2018,” [MMWR Morbidity and Mortality Weekly Report](#) (MMWR) Rep 2019; 68:157–164. DOI:

[3] The Centers for Disease Control and Prevention, *Extinguishing the Tobacco Epidemic in Maryland*

[4] Maryland Department of Health, *Youth Risk Behavior Survey & Youth Tobacco Survey 2016*.

[5] FDA, *Guidance for Industry: Modifications to Compliance Policy for Certain Deemed Tobacco Products*, 14 March 2019.

[6] HHS, “E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General”. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

[7] Maryland Department of Health, Preliminary data from the Youth Risk Behavior Survey & Youth Tobacco Survey 2018-2019.

[8] See note 1.

[9] Office of the Surgeon General, “Know the Risks: E-cigarettes and Young People,” accessed 22 April 2019; See note 6 for additional information.

[10] Ibid.

[11] CDC, *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults*, accessed online 2 February, 2020.

[12] FDA, *Fact or Fiction: What to Know About Smoking Cessation and Medications*, accessed online 2 February, 2020.

[13] FDA, *Guidance for Industry: Enforcement Priorities for Electronic Nicotine Delivery System (ENDS) and Other Deemed Products on the Market Without Premarket Authorization*, January 2020.

Support American Heart Association SB 259 Flavors.

Uploaded by: Laura Hale

Position: FAV



February 16th, 2023

Testimony of Laura Hale
American Heart Association

Favorable—SB 259 Business Regulation - Flavored Tobacco Products - Prohibition

Dear Chair Griffith, Vice Chair Klausmeier and Member of the Finance Committee,

Thank you for the opportunity to speak before you today. My name is Laura Hale and I am the Director of Government Relations for the American Heart Association. The American Heart Association offers our strong support for SB 259.

Keeping Maryland healthy is a drive of the American Heart Association and something that each of you has worked tirelessly to do. Despite the efforts that have been made, the tobacco industry continues to work to addict Maryland's youth to their deadly products: from menthol cigarettes to candy flavored e-cigarettes to everything in between. But today, you have an opportunity to take away one of the things that entice youth to these products: flavors.

Flavors make the addictive nicotine go down easier in these products. 80 percent of teens who use tobacco products started with a flavored product like mint, menthol, or berry¹. Youth are using products such as electronic smoking devices (ESDs), cigarettes, cigars and chewing tobacco². The flavorings in all of these products are appealing to youth and are the reason many initiate use³. By removing the flavored products from the market, youth will no longer be interested in starting to use these products. We will be able to create a generation of never-smokers.

When addressing this issue, it is important to remember the variety of products on the market and not only look at ESDs. The tobacco industry continues to create and market new products to hook Maryland's children. They need new smokers to support their business model. By addicting the next generation to tobacco, they are creating more of a tax burden on Marylanders with the increase in cost for Medicaid as well as the human cost of lives lost each year⁴. If nothing changes, 92,000 kids alive today in Maryland will die prematurely due to tobacco use⁵.

Sales of flavored tobacco products must end in Maryland. The health of our kids can't wait. To protect the health of all Marylanders, Maryland must end the sale of all flavored tobacco products, including ESDs, menthol cigarettes, chewing tobacco, and flavored cigars.

¹ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," Journal of the American Medical Association (JAMA), published online 26 October 2015.

² <https://www.tobaccofreekids.org/problem/toll-us/maryland>

³ https://www.globaltobaccocontrol.org/sites/default/files/state_of_the_evidence_-_flavor_ban_or_restriction_0.pdf

⁴ <https://www.tobaccofreekids.org/problem/toll-us/maryland>

⁵ <https://www.tobaccofreekids.org/problem/toll-us/maryland>

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Position: FAV

MARYLAND STATE ADVISORY COUNCIL ON HEALTH AND WELLNESS

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Pamela Williams, M.H.A.

Pamela Xenakis, R.D.

February 16, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 259 - Business Regulation - Flavored Tobacco Products - Prohibition

Dear Chair Griffith and Committee Members:

The Maryland State Advisory Council on Health and Wellness (the Council) is submitting this letter of support for Senate Bill 259 (SB 259), titled: “Business Regulation – Flavored Tobacco Products – Prohibition.” SB 259 prohibits businesses licensed to manufacture, sell, buy, and store tobacco products from manufacturing, shipping, importing, or selling flavored tobacco products, which include cigarettes, electronic smoking devices (ESDs), and other tobacco products. SB 259 also prohibits the sale of such flavored products in vending machines. The Council extends its support for SB 259, as it seeks to promote health and prevent disease by ending the sale of flavored tobacco products.

With over 15,500 types available, flavored ESDs are a driving force behind the youth vaping epidemic, which has significantly impacted young people in Maryland. Nationally, 14.1 percent of high school students reported past 30 day ESD use.¹ One in four Maryland high school students reported current ESD use during the 2018-2019 school year, a 73 percent increase from 2016-2017.² However, we assume that more recent data will show an ESD use prevalence closer to the national prevalence. Of these students, 97 percent reported using flavors other than tobacco.² The 2021 Maryland Youth Pandemic Behavior Survey showed a similar trend, with 94.4 percent of students reporting using a flavor other than tobacco in their ESD products.³ Many youth report being unaware that most ESDs contain nicotine, even those that are candy- or fruit-flavored, which can have especially negative health consequences for young people. Because brain development is ongoing until roughly age 25, the effects of nicotine consumed during adolescence and early adulthood are more harmful than later in life. Such effects can include acute nicotine addiction, reduced impulse control,

deficits in attention and cognition, mood disorders, and a predisposition for use of other addictive substances.⁴

¹ U.S. Food and Drug Administration (2022). Results from the Annual National Youth Tobacco Survey. Accessed 27 January 2023 at [https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey#:~:text=2022%20Findings%20on%20Youth%20E%2DCigarette%20Use,-In%20October%202022&text=In%202022%2C%20about%201%20in,\(past%2030%2Dday\).&text=14.1%25%20\(2.14%20million\)%20of,reported%20current%20e%2Dcigarette%20use](https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey#:~:text=2022%20Findings%20on%20Youth%20E%2DCigarette%20Use,-In%20October%202022&text=In%202022%2C%20about%201%20in,(past%2030%2Dday).&text=14.1%25%20(2.14%20million)%20of,reported%20current%20e%2Dcigarette%20use)

² 2018-2019 Maryland Youth Risk Behavior Survey/Youth Tobacco Survey (YRBS/YTS), unpublished data, retrieved 2 January 2020.

³ 2021 Maryland Youth Pandemic Behavior Survey (YPBS-21) Detailed Report. Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control. October 2021. <https://health.maryland.gov/phpa/ohpetup/Documents/2021%20Youth%20Pandemic%20Behavior%20Survey%20Detailed%20Report.pdf>

⁴ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016 Accessed 17 January 2023 at https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_508.pdf

The Council agrees with the following statements as they relate to the passage of SB 259:

- Following the 2009 federal ban on flavored cigarettes (except menthol), the likelihood of youth initiating any form of tobacco use dropped six percent, demonstrating the impact flavor bans can have.⁵
- Flavored tobacco products are not marketed and sold uniformly across the U.S., as marketing for menthol products as well as little cigars/cigarillos is more prevalent in low-income and African American neighborhoods.⁶
- Flavored tobacco products, particularly menthol cigarettes, are used at disproportionately higher rates by racial and ethnic minorities, individuals of lower socioeconomic-status, teen smokers, and individuals who identify as LGBTQ, leading to health disparities among vulnerable populations.^{7,8}
- Flavors such as menthol can make quitting tobacco products more difficult.⁹
- Despite research that supports their equal potential for harm, flavored tobacco products are widely seen as less dangerous than non-flavored. A study on the effects of exposure to flavored and non-flavored cigar smoke on lung tissue showed comparable levels of toxicity and cell death.¹⁰
- Many compounds used to flavor ESDs have not been determined safe for consumption when heated and inhaled. In fact, many flavors that have been tested revealed damaging effects, including toxic effects on the lungs and changes in inflammatory responses.^{11,12}
- People who use flavored ESDs are more likely to report greater satisfaction and self-perceived addiction than users of non-flavored ESDs.¹³

The Council respectfully urges this Committee to approve SB 259 as a critical public health measure to reverse alarming trends in youth tobacco use driven by widespread availability of flavored ESDs and other tobacco products. SB 259 merits consideration and approval as it seeks to ban the sale of all flavored tobacco products, including mint and menthol: two flavors that have been previously exempted from bans. Prohibiting the sale of all flavors will make these products less attractive and help prevent youth from initiating tobacco use, saving lives and improving the health of Marylanders.

Sincerely,



Jessica Kiel, M.S., R.D., Chair, State Advisory Council on Health and Wellness

⁵ Courtemanche CJ et al., Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. [Am J Prev Med. 2017 May; 52\(5\): e139–e146.](#) doi: [10.1016/j.amepre.2016.11.019.](#)

⁶ Lee JGL., A systematic review of neighborhood disparities in point-of-sale tobacco marketing. Sept 2015 Amer J Pub Health 105 e8_e18. [https://www.ncbi.nlm.nih.gov/pubmed/26180986.](#)

⁷ Fallin A et al., Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. American Journal of Preventive Medicine. 2015;48(1):93-97 [https://www.ncbi.nlm.nih.gov/pubmed/25245795.](#)

⁸ Lawrence, D et al. National patterns and correlates of mentholated cigarette use in the United States. Addiction. 2010 Dec;105 Suppl 1:13-31. doi: 10.1111/j.1360-0443.2010.03203.x. [https://pubmed.ncbi.nlm.nih.gov/21059133/](#)

⁹ Levy, DT et al., Quit attempts and quit rates among menthol and nonmenthol smokers in the United States. Am J Public Health, 2011. 101(7): pg 1241-7. [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3110228/.](#)

¹⁰ Ghosh A et al., Flavored little cigar smoke induces cytotoxicity and apoptosis in airway epithelia. Cell Death Discov. 2017; 3: 17019. Published online 2017 Apr 24. doi: [10.1038/cddiscovery.2017.19.](#)

¹¹ Higham A et al., Electronic cigarette exposure triggers neutrophil inflammatory responses. Respir Res 17: 56 (2016). [https://www.ncbi.nlm.nih.gov/pubmed/27184092.](#)

¹² Fetterman JL et al., Flavorings in Tobacco Products Induce Endothelial Cell Dysfunction Arteriosclerosis, Thrombosis and Vascular Biology 7 Jul 2018 [https://doi.org/10.1161/ATVBAHA.118.311156.](#)

¹³ Landry RL et al. The role of flavors in vaping initiation and satisfaction among U.S. adults. Addict Behav. 2019 Dec;99:106077. doi: [10.1016/j.addbeh.2019.106077.](#)

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Uploaded by: Maryland State of

Position: FAV



February 16, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 259 - Business Regulation – Flavored Tobacco Products – Prohibition – Letter of Support

Dear Chair Griffith and Committee Members:

The Maryland State Council on Cancer Control (the Council) is submitting this letter of support for Senate Bill 259 (SB 259), titled: “Flavored Tobacco Products - Prohibition.” SB 259 is an emergency bill that seeks to prohibit businesses currently licensed to manufacture, sell, buy, and store tobacco products from manufacturing, shipping, importing, or selling any flavored tobacco products. Noted products include cigarettes, other tobacco products, and electronic smoking devices (ESDs). Flavored tobacco products include tobacco products with a taste or smell of fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, a candy, a dessert, an alcoholic beverage, an herb, or a spice.

The Council supports SB 259 and recognizes it as an important public health initiative. The bill would aid in advancing the Council’s mission to reduce and control cancer incidence, mortality, and morbidity statewide. Flavoring in tobacco products, including ESDs, little cigars/cigarillos, hookah, and smokeless tobacco, makes these products attractive to youth and promotes initiation. Additionally, many youth falsely believe flavored tobacco products are less harmful than unflavored products and/or that flavored products do not contain nicotine.^{1,2} The widespread availability of flavored tobacco products has desensitized youth to their severe potential for harm. By eliminating all flavored tobacco products, including candy and fruit-flavors as well as mint and menthol, SB 259 will help to reduce the number of young people who initiate tobacco use, thereby preventing future tobacco-related cancers.

The Council supports the following statements as they relate to the passage of SB 259:

- All tobacco products, including ESDs, are unsafe for youth and carry health risks.
- ESDs emit an aerosol that contains small droplets of liquid nicotine and chemicals, which have been linked to DNA damage and pre-cancerous changes in animal studies.³
- Youth ESD users may be more likely to become conventional cigarette smokers, exposing them to the carcinogens and chemicals found in cigarettes.⁴

¹ Ghosh A et al. Flavored little cigar smoke induces cytotoxicity and apoptosis in airway epithelia. *Cell Death Discov.* 2017; 3: 17019. Published online 2017 Apr 24. doi: [10.1038/eddiscovery.2017.19](https://doi.org/10.1038/eddiscovery.2017.19).

² Willett JG, Bennett M, Hair EC, et al Recognition, use and perceptions of JUUL among youth and young adults *Tobacco Control* 2019;28:115-116. <http://dx.doi.org/10.1136/tobaccocontrol-2018-054273>.

³ Tang MS et al. Electronic-cigarette smoke induces lung adenocarcinoma and bladder urothelial hyperplasia in mice. *Proc Natl Acad Sci U S A.* 2019 Oct 22;116(43):21727-21731. doi: 10.1073/pnas.1911321116.

⁴ Barrington-Trimis 2016 E-Cigarettes and Future Cigarette Use *Pediatrics.* 138(1) Accessed 15 February 2019 at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4925085/>.

- Most combustible tobacco products (cigars and cigarillos) contain the same toxic chemicals as cigarettes. Smokeless tobacco use is linked to an increase in oral cancers.
- The 2020 U.S. Surgeon General’s Report states that quitting smoking reduces the risk of 12 different types of cancers, as well as reduces the risk of death among those with cancer and cancer survivors.⁵
- Flavored tobacco products, specifically menthol, as well as little cigars/cigarillos are marketed and sold disproportionately, and are more prevalent in low-income and African American neighborhoods.⁶
- Despite lower smoking rates, African Americans die from lung and bronchus cancers at similar rates to Whites. This health disparity is thought to result from high menthol cigarette use in African Americans communities.⁷
- Flavors such as menthol can make quitting tobacco products more difficult.⁸ Flavor bans that exempt mint and menthol are expected to further increase youth use of these products.^{9,10}
- Delaying the age when youth and young adults initiate tobacco use can reduce the risk that they transition to regular or daily tobacco use, and can increase chances for regular users to quit successfully.¹¹

For the aforementioned reasons, the Council urges this Committee to vote favorably on SB 259. This comprehensive approach will make tobacco products less attractive and help prevent young people from initiating tobacco use, thereby reducing cancer and saving lives.

Sincerely,



Kevin Cullen, MD, Chair, Maryland State Council on Cancer Control

⁵ U.S. Department of Health and Human Services. *Smoking Cessation: A Report of the Surgeon General—Executive Summary*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2020. <https://www.hhs.gov/sites/default/files/2020-cessation-sgr-executive-summary.pdf>.

⁶ Lee JGL A Systematic Review of Neighborhood Disparities in Point-of-Sale Tobacco Marketing. Sept 2015 Amer J Pub Health 105 e8_e18. <https://www.ncbi.nlm.nih.gov/pubmed/26180986>.

⁷ Tobacco Products Scientific Advisory Committee. (2011). “Menthol cigarettes and public health: review of the scientific evidence and recommendations.” US Food and Drug Administration.

⁸ Leventhal AM, Miech R, Barrington-Trimis J, Johnston LD, O’Malley PM, Patrick ME. Flavors of e-Cigarettes Used by Youths in the United States. *JAMA*. 2019;322(21):2132–2134. doi:<https://doi.org/10.1001/jama.2019.17968>.

⁹ Institute for Global Tobacco Control. State of the Evidence: Flavored Tobacco Product Bans or Restrictions. January 2020. Available at: <https://www.globaltobaccocontrol.org/en/resources/policies-banning-or-restricting-flavors-tobacco-products>.

¹⁰ Levy, DT et al. Quit attempts and quit rates among menthol and nonmenthol smokers in the United States. *Am J Public Health*, 2011. 101(7): pg 1241-7. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3110228/>.

¹¹ Klein H et al. 2013 Initial Smoking Experiences and Current Smoking Behaviors and Perceptions among Current Smokers, Accessed 15 February 2018 at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4008393/>.

SB 259 LOS 2023 Leg NAPNAP (1).pdf

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Position: FAV



National Association of
Pediatric Nurse PractitionersSM
MD: CHESAPEAKE

Support: SB 259 Business Regulation- Flavored Tobacco Products- Prohibition

2/12/2023

Maryland Senate
Finance Committee
3 East
Miller Senate Building
Annapolis, Maryland 21401

Dear Honorable Chair, Vice-Chair and Members of the Committee:

On behalf of the pediatric nurse practitioners (PNPs) and fellow pediatric-focused advanced practice registered nurses (APRNs) of the National Association of Pediatric Nurse Practitioners (NAPNP) Chesapeake Chapter, I am writing to express our support of **SB 259 Business Regulation- Flavored Tobacco Products- Prohibition**.

Artificial and natural flavors are added to nicotine to improve flavor and taste by reducing the harshness, bitterness, and astringency. Research has shown that sweet-tasting flavors are particularly appealing to youth and young adults (FDA, 2019). Menthol cools and numbs the throat and reduces the harshness of tobacco smoke, making menthol cigarettes more appealing for kids who are starting to smoke. Over half of youth smokers use menthol cigarettes. A comprehensive FDA scientific analysis, issued in 2013, concluded that menthol cigarettes 1) increase smoking initiation and progression to regular smoking among youth and young adults; 2) increase nicotine dependence (addiction); and 3) reduce success in quitting smoking.

According to the latest data from the 2022 National Youth Tobacco Survey, 14.1% of high school students and 3.3% of middle school students – over 2.5 million kids altogether – were current e-cigarette users. Kids aren't just experimenting with e-cigarettes. Many are using these products most days or every day, a sure sign they're becoming addicted. Over 46% of high school e-cigarette users are vaping at least 20 days a month and 30% are daily users. In total, 700,000 middle and high school students are vaping every single day.

Flavored products are driving this epidemic. In fact, 85% of youth e-cigarette users use flavored products. In the past few years, kids have shifted dramatically to disposable and menthol e-cigarettes, two categories of products that were left on the market under current federal restrictions. These shifts show that the only way to end this crisis is to eliminate all flavored e-cigarettes.

In addition, acute nicotine exposure can be toxic. Children and adults have been poisoned by swallowing, breathing, or absorbing liquid through their skin or eyes. The ability to flavor nicotine also increases these risks.



National Association of
Pediatric Nurse PractitionersSM
MD: CHESAPEAKE

Five states — Massachusetts, California, New Jersey, New York, and Rhode Island — have thus far enacted statewide flavored tobacco and vape product bans. In addition over 360 localities have passed restrictions on the sale of flavored tobacco products. Ending the sale of all flavored tobacco products — including flavored e-cigarettes, menthol cigarettes and flavored cigars — is critical to stopping the youth e-cigarette epidemic and creating the first tobacco-free generation.

For these reasons the Maryland Chesapeake Chapter of NAPNAP extends their support to **SB 259 Business Regulation- Flavored Tobacco Products- Prohibition and requests a favorable report.**

The pediatric advanced practice nurses of your state are grateful to you for your attention to these crucial issues. The members of Chesapeake Chapter of the National Association of Pediatric Nurse Practitioners are committed to improving the health and advocating for Maryland's pediatric patients. If we can be of any further assistance, or if you have any questions, please do not hesitate to contact Lindsay J. Ward, the Chesapeake Chapter President at 410-507-3642 or lindsayjward@hotmail.com.

Sincerely,

Lindsay J. Ward CRNP, RN, IBCLC, MSN, BSN
Certified Registered Nurse Practitioner- Pediatric Primary Care
International Board-Certified Lactation Consultant
National Association of Pediatric Nurse Practitioners (NAPNAP)
Chesapeake Chapter President

Evgenia Ogordova

Evgenia Ogordova-DNP
National Association of Pediatric Nurse Practitioners (NAPNAP)
Chesapeake Chapter Legislative Chair

CTFK MD Senate Written testimony 2-16-23.pdf

Uploaded by: Meghan Kissell

Position: FAV



Written Testimony in support of SB 259 to the Senate Finance Committee

February 15, 2023

Submitted by Meghan Kissell, Regional Advocacy Director, Campaign for Tobacco-Free Kids

The Campaign for Tobacco-Free Kids submits these written comments in support of SB 259: Business Regulation - Flavored Tobacco Products - Prohibition. The Campaign for Tobacco-Free Kids is the nation's largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco, help smokers quit and protect everyone from secondhand smoke.

For decades, the tobacco industry has been using flavored products to hook kids into a lifetime of addiction. First with menthol cigarettes, then with flavored chew and cigars, and now most recently with a bewildering variety of flavored e-cigarettes. Over 15,000 flavors¹ have been introduced to the marketplace in the last 10 years and the impact on youth addiction has been both clear and devastating.

These products are available in a wide assortment of flavors – like gummy bear, cotton candy, peanut butter cup, cookies 'n cream and pop rocks for e-cigarettes and chocolate, watermelon, lemonade and cherry dynamite for cigars. Tobacco companies are making and marketing deadly and addictive products that look and taste like a new line of flavors from a Ben and Jerry's ice cream store.

Flavors hook kids by improving the taste and reducing the harshness of tobacco products, making them more appealing and easier for beginners to try the product and ultimately become addicted. Menthol is especially effective at doing this, as it cools and numbs the throat, reducing the harshness of cigarette smoke. Although it has been used historically in combustible cigarettes, cigars and smokeless tobacco products; menthol is now one of the most popular e-cigarette flavors as well as being the cigarette that 41% of high school smokers use.²

Ninety-five percent of all tobacco users start their addictions before they turn 21,³ and 80% of kids who have ever used tobacco started with a flavored product.⁴ Research has proven that the two factors that are most likely to determine whether kids get addicted to tobacco are price and the availability of flavors. If tobacco is cheap, and flavors are available, kids are more likely to start smoking or vaping. The continued availability of flavored tobacco products puts all of our kids at risk.

¹ Hsu, G, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.

² Gentzke, A, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—National Youth Tobacco Survey, United States, 2021," *MMWR* 71(5): 1-29, March 10, 2022, <https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf>.

³ See Table 2-8 in Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, Washington, DC: The National Academies Press, 2015, <http://iom.nationalacademies.org/Reports/2015/TobaccoMinimumAgeReport.aspx>

⁴ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.

This bill, which would ban the sale of all flavored tobacco products in Maryland, would have a dramatic impact on reducing tobacco among youth, and would help curb the long-term illness, disease and death caused by tobacco addiction across the state. Maryland has long been a national leader in its commitment to reducing the death and disease from tobacco use, so it is heartening to see that you continue to take thoughtful, evidenced-based steps to reduce the number of kids who start using tobacco and help tobacco users quit. Even though Maryland has made great strides in reducing tobacco use, tobacco use remains the number one preventable cause of premature death and disease in Maryland and the nation, killing over 7,500 residents every year.⁵

Recognizing the public health burden of flavored tobacco products, and the failure of the federal government to step in decisively, cities and states around the country are taking action. In November 2019, Massachusetts became the first state to restrict the sale of all flavored tobacco products. This was soon followed by prohibitions on the sale of flavored e-cigarettes in New Jersey, New York and Rhode Island, and in November 2023, California voters supported a prohibition on the sale of most flavored tobacco products, including menthol cigarettes. Passage of SB 259 is the best way for Maryland to join this trend of putting the lives and health of future generations first and finally putting an end to the cycle of addiction that the tobacco industry, and their flavored tobacco products, have perpetrated for far too long.

Menthol Cigarettes Increase Youth Tobacco Use

While e-cigarette use justifiably gets a lot of attention, no other flavored product contributes more to the death and disease caused by tobacco use than menthol cigarettes. The scientific evidence leaves no doubt that menthol cigarettes increase the number of people, particularly kids who try smoking, become addicted and die a premature death as a result. Banning menthol cigarettes addresses both a critical public health issue and a matter of social justice.

Tobacco companies have long known that menthol cigarettes reduce the harshness of their products and make them easier to use by new users, almost all of whom are under age 18.⁶ Menthol imparts a cooling and soothing sensation, masking the harshness of tobacco and making it easier for beginner smokers and kids to tolerate smoking. The FDA's Tobacco Products Scientific Advisory Committee (TPSAC) concluded that menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking. Further, they found that people who initiate smoking using menthol cigarettes are more likely to become addicted and become long-term daily smokers.⁷

Flavors hook kids and no flavor hooks more kids than menthol cigarettes. They are the single greatest entryway to cigarette smoking. Just like other flavored tobacco products, youth smokers are more likely to use menthol cigarettes than any other age group:

- Half (50.1%) of youth who have ever tried smoking initiated with menthol flavored cigarettes.⁸
- Half (49.8%) of all current high school smokers use menthol cigarettes.⁹

⁵ National: U.S. Department of Health and Human Services (HHS), "The Health Consequences of Smoking – 50 Years of Progress A Report of the Surgeon General 2014. State: Centers for Disease Control and Prevention (CDC), *Best Practices for Comprehensive Tobacco Control Programs—2014*, http://www.cdc.gov/tobacco/stateandcommunity/best_practices/.

⁶ HHS, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.

⁷ TPSAC, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011, <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.

⁸ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.

⁹ Wang, TW, et al., "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR* 68(12), December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.

Menthol Cigarettes Have a Devastating Impact on the Health of African Americans and Are a Major Cause of Tobacco-Related Health Disparities

The continued availability of menthol cigarettes threatens the progress Maryland has made in reducing adult smoking, particularly among African Americans. Prevalence of menthol use is highest among African Americans – 85% of all African-American smokers smoke menthol cigarettes, compared to 29% of Whites.¹⁰ The reason that such a high percentage of African-Americans who smoke use menthol cigarettes is the direct result of a conscious and deliberate decision made decades ago by the tobacco industry to target the African-American community. The net result has contributed to African Americans suffering unfairly and disproportionately from tobacco related diseases. Maryland is in a position to reduce tobacco caused disparities in this community by enacting legislation that bans the sale of menthol cigarettes. Opponents of banning menthol cigarettes like to talk about possible unintended consequences, but the undeniable consequences from menthol smoking are higher rates of death and disease, with a disproportionate impact among African Americans.

Both TPSAC's and FDA's own scientific analyses conclude that menthol cigarettes are associated with increased nicotine dependence and reduced success in smoking cessation.¹¹ The impact is greatest for African Americans, who predominantly smoke menthol cigarettes. African Americans generally have higher levels of nicotine dependence as a consequence of their preference for mentholated cigarettes.¹² While research shows that African American smokers are highly motivated to quit smoking and are more likely than White smokers to have made a quit attempt and used counseling services in the previous year, they are less likely than White smokers to successfully quit smoking.¹³ Data from the 2015 National Health Interview Survey show that, among smokers who made a quit attempt in the past year, only 4.9% of African Americans remained abstinent after 6 months, compared to 7.1% of Whites.¹⁴

Smoking kills 45,000 African American each year.¹⁵ Lung cancer is the second most common cancer in both African-American men and women, but it kills more African Americans than any other type of cancer.¹⁶ While the gap has been narrowing, from 2011-2016 the average incidence rate of lung and bronchial cancers was still 15% higher in African-American men compared to white men and the average

¹⁰ Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016

¹¹ TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011 <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>

¹² FDA, "Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes," <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>, 2013;

Tobacco Products Scientific Advisory Committee, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011, <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.; Alexander, LA, et al., "Why we must continue to investigate menthol's role in the African American smoking paradox," *Nicotine & Tobacco Research*, 18(S1): S91-S101, 2016;

¹³ See e.g., CDC, "Quitting Smoking Among Adults—United States, 2000-2015," *MMWR*, 65(52): 1457-1464, January 6, 2017, <https://www.cdc.gov/mmwr/volumes/65/wr/pdfs/mm6552a1.pdf>. Royce, J, et al., "Smoking cessation factors among African Americans and Whites: COMMIT Research Group," *American Journal of Public Health* 83(2):220-6, February 1993.

<https://www.fda.gov/advisoryCommittees/CommitteesMeetingMaterials/tobaccoproductsScientificAdvisoryCommittee/default.htm>

¹⁴ CDC, "Quitting Smoking Among Adults—United States, 2000-2015," *MMWR*, 65(52): 1457-1464, January 6, 2017, <https://www.cdc.gov/mmwr/volumes/65/wr/pdfs/mm6552a1.pdf>.

¹⁵ US Department of Health and Human Services (HHS), "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998, http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf.

¹⁶ American Cancer Society, "Cancer Facts & Figures for African Americans, 2016-2018," 2016, <http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-047403.pdf>.

death rate was 18% higher in African-American men compared to white men.¹⁷ If current smoking rates persist, an estimated 1.6 million black Americans alive today under the age of 18 will become regular smokers, and about 500,000 will die prematurely from a tobacco-related disease.¹⁸ In 2011, TPSAC estimated that by 2020, 4,700 excess deaths in the African American community will be attributable to menthol in cigarettes, and over 460,000 African Americans will have started smoking because of menthol in cigarettes.^{xvii}

In addition to the documented disparity in menthol cigarette use among African Americans, new research shows that use of menthol cigarettes is also disproportionately high among Hispanic smokers, lesbian, gay, and bisexual smokers, smokers with mental health problems, socioeconomically disadvantaged populations, and pregnant women.¹⁹

Prohibiting the sale of menthol cigarettes will help to reverse health disparities and accelerate the decline in smoking rates across Maryland. Cigarette sales data show that declines in menthol cigarette sales lag behind those of non-menthol cigarettes. From 2009 to 2018, sales of non-menthol cigarettes have declined by 33.1% nationally, while sales of menthol cigarettes have declined by only 8.2%. Of the decline in cigarette sales between 2009 and 2018, 91% is attributable to non-menthol cigarettes.²⁰ By reducing smoking cessation, menthol has slowed the progress in reducing overall smoking.

The Tobacco Industry Targets African Americans and Youth with Menthol Cigarette Marketing

The tobacco industry wants you to believe that African Americans have always smoked menthol cigarettes, but the use of menthol cigarettes among African Americans seen today is no coincidence and it doesn't reflect an inherent preference for menthol cigarettes by African Americans. This disparity is a direct result of a decades-long marketing campaign by the tobacco industry. Just 5% of African Americans smoked menthol cigarettes in the early 1950's; by 1968 the number had risen to 14%, and today the number is now well over 80%.²¹ Make no mistake—this is a crisis that is the direct result of the conscious decisions of the major tobacco companies.

¹⁷ American Cancer Society, *Cancer Facts & Figures 2019*, <https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2019/cancer-facts-and-figures-2019.pdf>.

¹⁸ HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998, http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf.

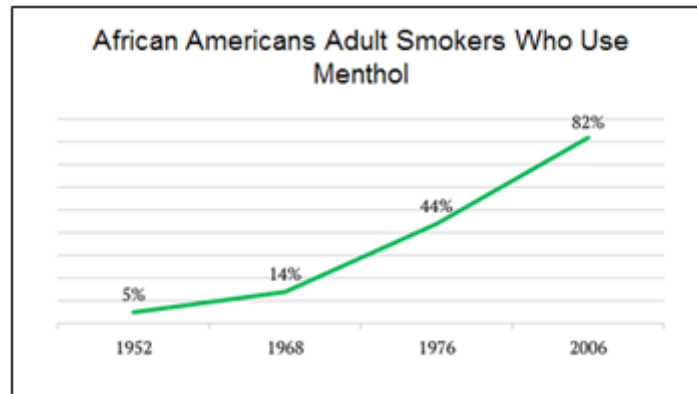
¹⁹ Cristine D. Delnevo, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.

²⁰ Christine D. Delnevo, et al., *Assessment of Menthol and Nonmenthol Cigarette Consumption in the US, 2000 to 2018*, 3 JAMA Network Open e2013601, 2020, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2769132>.

²¹ Slide credit: Phillip S. Gardiner http://www.acbhcs.org/tobacco/docs/conference/Dr_Gardiner_Tob_Industry_AA_Menthol.pdf
Sources include: Gardiner, PS, "The African Americanization of menthol cigarette use in the United States," *Nicotine & Tobacco Research*, February 2004; Roper, B.W. (1953). *A Study of People's Cigarette Smoking Habits and Attitudes Volume I*. Philip Morris, Bates No. 2022239249; MSA, Inc. (1978) *The Growth of Menthols, 1933 -1977*; Brown & Williamson, Bates No. 670586709-785; National Survey on Drug Use and Health, 2004-2008.

Slide Courtesy of Phillip S. Gardiner

http://www.acbhcs.org/tobacco/docs/conference/Dr_Gardiner_Tob_Industry_AA_Me



Decades of research and the tobacco industry's internal documents demonstrate that the industry knowingly employed campaigns and strategies to aggressively target African Americans. Dating back to the 1950s, the tobacco industry has targeted these communities with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, and marketing in the retail environment. Many of these efforts, including the Kool Inner City Music Program and the Newport Van Program, which distributed free samples of menthol cigarettes, targeted African American neighborhoods in cities like Baltimore.²²

The tobacco industry has also used popular African American magazines like *Ebony* and *Jet* to advertise menthol cigarettes to African Americans since the 1960s, and this practice continues today. From 1998 to 2002, *Ebony*, a magazine tailored to the African American culture, was 9.8 times more likely than *People* to contain ads for menthol cigarettes.²³ An assessment of menthol cigarette ads run from June 2012 to February 2013 found that the tobacco industry spent an estimated \$31 million on menthol cigarette direct mail, email, print and online advertisements in just a 9-month period. During this time, 61 percent of Newport print ads featured at least one African-American model. These ads ran in twenty publications including *Jet*, *Ebony*, and *Essence*, which have predominantly African-American readership.²⁴

²² Yerger, VB, et al., "Racialized geography, corporate activity, and health disparities: Tobacco industry targeting of inner cities," *Journal of Health Care for the Poor and Underserved*, 18: 10-38, 2007. See also R.J. Reynolds. *Black Street Scenes: review and recommendations*. Winston-Salem, NC: R.J. Reynolds Tobacco Company, 1983. Available at <http://legacy.library.ucsf.edu/tid/onb19d00>.

²³ Landrine, H, et al., "Cigarette advertising in Black, Latino and White magazines, 1998-2002: An exploratory investigation," *Ethnic Disparities* 15(1):63-7, 2005.

²⁴ Richardson, A, et al., "How the industry is marketing menthol cigarettes: the audience, the message, and the medium," *Tobacco Control*, 24: 594-600, 2015.

Kool salutes Black History Month.

Black contributions in music are legendary. In sports, standards are set, and sustained by Blacks. In fact, Black achievement has grown to affect every part of our society.

As the list of Black American names grows, these political leaders are effecting changes long dreamed of. A Black educator in Chicago has challenged the very basis of teaching young people to read. Martin Luther King has become the first Black to be honored by a national holiday.

Progress in the Black Community in the past 25 years has been remarkable. Kool has been there every step of the way. We salute the strides made to get here, and look eagerly forward to continued gains.

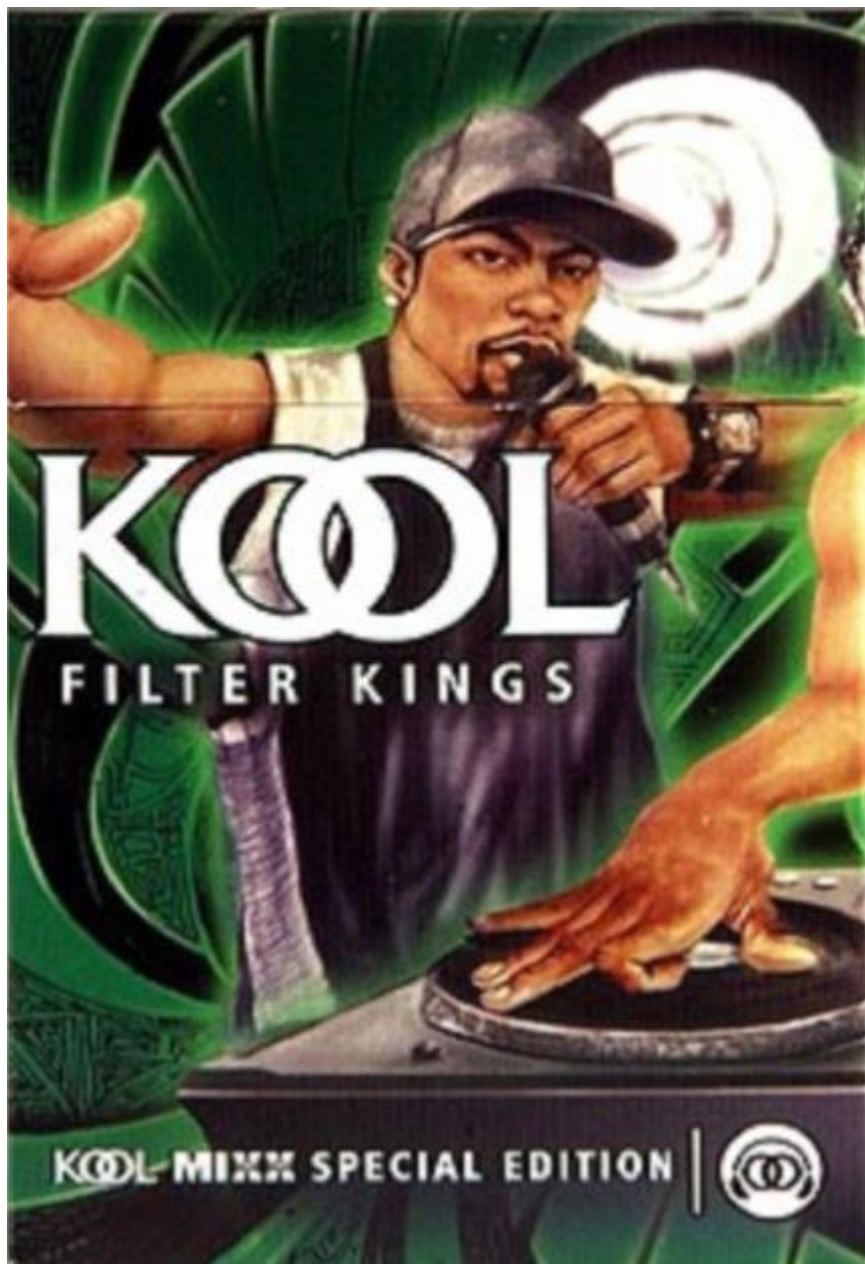
Long: 17 mg. "tar", 1.1 mg. nicotine av. per cigarette by FTC method. "tar", 1.2 mg. nicotine av. per cigarette by FTC method. © 1984.

Warning: The Surgeon General Has Determined That Cigarette Smoking is Dangerous to Your Health!

There's only one way to play it.



1984





Images courtesy of Stanford Research Into the Impact of Advertising (SRITA) and TrinketsandTrash.org.

In magazines and other marketing materials, the industry used advertisements characterized by slogans, relevant and specific messages, or images that have a great appeal among those in the black community or depict African Americans in an appealing light.²⁵ In 2004, Brown & Williamson started an ad campaign for their Kool brand cigarettes clearly aimed at youth—and African-American youth, in particular. The Kool Mixx campaign featured images of young rappers, disc jockeys and dancers on cigarette packs and in advertising. The campaign also included radio giveaways with cigarette purchases and a Hip-Hop disc jockey competition in major cities around the country. The themes, images, radio giveaways and music involved in the campaign all clearly have tremendous appeal to youth, especially African-American youth. Attorneys General from several states promptly filed motions against Brown & Williamson for violating the Master Settlement Agreement.²⁶

This targeting continues today: magazine advertisements continue to target African Americans and menthol cigarettes continue to be heavily advertised, widely available, and priced cheaper in certain African American communities, making them more appealing, particularly to price-sensitive youth.²⁷ Nationally, Newport cigarettes (the most popular menthol brand among African Americans) are significantly less expensive in neighborhoods with higher proportions of African Americans.²⁸ A wealth of research indicates that African-American neighborhoods have a disproportionate number of tobacco retailers, more price discounts for tobacco products, pervasive tobacco marketing, and in particular, more marketing of menthol products.²⁹

²⁵ Hutchinson, EO, "Joe Camel Dominants More Than Billboards in Black America," June 23, 1997, <http://www.pacificnews.org/jinn/stories/3.13/970623-cigarettes.html>

²⁶ Hafez, N, & Ling, P, "Finding the Kool Mixx: how Brown & Williamson used music marketing to sell cigarettes," *Tobacco Control*, 15: 359-366, 2006.

²⁷ Rodriguez, D, et al., "Predictors of tobacco outlet density nationwide: a geographic analysis," *Tobacco Control* 22(5):349-55, 2013. See also Lee, JG, et al., "Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study," *Journal of Epidemiology and Community Health* 71(5):487-492, 2017. Henriksen, L, et al., "Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods," *Nicotine & Tobacco Research* 14(1):116-21, 2012.

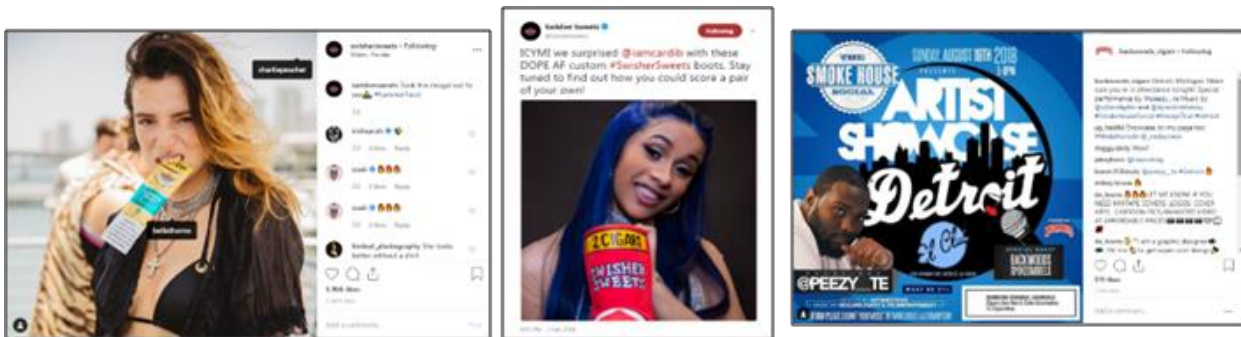
²⁸ Resnick, EA, et al., *Cigarette Pricing Differs by U.S. Neighborhoods—A BTG Research Brief*. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago, 2012, www.bridgingthegapresearch.org.

²⁹ Moreland-Russell, S, et al., "Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies," *International Journal of Environmental Research and Public Health*, 10: 4571-4583, 2013. Schleicher, N, et al., "Tobacco Marketing in California's Retail Environment (2008-2011), Final report for the California Tobacco Advertising Survey. Stanford, CA: Stanford Prevention Research Center, July 2013. Henriksen, L., et al., "Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods," *Nicotine & Tobacco Research*, June 24, 2011. Seidenberg, AB, "Cigarette Advertising Differs by Community Demographic Profile," *American Journal of Health Promotion* 24(6):e26-e31, July/August 2010.

Flavored Cigars Remain Popular Among Youth, Especially African Americans

In recent years, cigars have surpassed cigarettes in popularity among young people, and they are disproportionately used by Black youth. In Maryland, 7.5% of high school boys are current cigar smokers (versus 3.5% nationally).³⁰

A primary reason for the popularity of cigars among youth is the wide array of available flavors. In fact, 73.8% of youth cigar smokers smoked cigars “because they come in flavors I like.”³¹ Flavored cigars have proliferated in recent years and now make up more than half the U.S. cigar market.³² Sales of cigars (i.e., large cigars, cigarillos, and small cigars) have more than doubled between 2000 and 2019, and much of the growth is attributable to smaller types of cigars, many of which are flavored and inexpensive (e.g., 3 or 4 cigars for 99 cents).³³ There are over 250 cigar flavors, including of “Banana Smash,” Brownie, and Strawberry Kiwi.³⁴ Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking.



Similar to e-cigarettes, cigars are marketed using social media, hip hop and rap music event sponsorship, celebrity endorsements and point-of-sale promotions.³⁵

³⁰ CDC, 2019 Youth Risk Behavior Survey, Available at <http://nccd.cdc.gov/youthonline/>.

³¹ Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014,” *Journal of the American Medical Association*, published online October 26, 2015.

³² Delnevo, CD, Giovenco, DP, & Miller, EJ, “Changes in the Mass-merchandise Cigar Market since the Tobacco Control Act,” *Tobacco Regulatory Science*, 3(2 Suppl 1):S8-S16, 2017.

³³ U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Tobacco Statistics.

³⁴ Delnevo, CD, et al., “Changes in the mass-merchandise cigar market since the Tobacco Control Act,” *Tobacco Regulatory Science*, 3(2 Suppl 1): S8-S16, 2017.

³⁵ Ganz, O, et al., “Swisher Sweets ‘Artist Project’: using musical events to promote cigars,” *Tobacco Control*, published online February 8, 2018.

FDA has concluded that “all cigars pose serious negative health risks” and that “all cigar use is harmful and potentially addictive.”³⁶ According to the National Cancer Institute, smoking cigars causes serious health consequences, including cancer of the oral cavity, larynx, esophagus and lung, and cigar smokers are also at increased risk for aortic aneurysms.³⁷ Each year, about 9,000 Americans die prematurely from regular cigar use.³⁸ Cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke.³⁹

In addition, there is mounting evidence that youth use of cigars is associated with subsequent uptake of cigarette smoking. According to an analysis of data from the FDA’s PATH study, decreasing the cigar use among youth could prevent up to 4.6% of youth cigarette initiation overall and 9.1% among Black youth specifically.⁴⁰

E-cigarette Use by Youth Remains A Serious Public Health Concern

Make no mistake – the e-cigarette epidemic is an epidemic of historic proportions and its devastating impact on Maryland’s youth is the direct result of deliberate decisions made by tobacco companies/e-cigarette companies to follow the same path tobacco companies have always followed - maximize sales and profits without regard to the consequences or the impact on our citizens and youth. In Maryland, 27.4% of high school students were current tobacco product users in 2019, an increase from 21.6% in 2017.⁴¹

When e-cigarettes were introduced, the e-cigarette industry claimed the target was adult smokers who could not quit. The reality has been entirely the opposite. E-cigarettes have been marketed in over 15,000 flavors that have fueled use by our kids.⁴² They are sold in devices that deliver potent doses of nicotine in a manner that masks its risks and leads to rapid, intense addiction. They are packaged as sleek, high-tech devices that youth who would never consider smoking perceive as cool and risk free and that enable youth to use without being discovered by parents or teachers. And they are marketed on social media websites popular with youth using images identical to those used by the cigarette industry to attract generations of kids.

There is no doubt that e-cigarettes are reversing decades of progress that Maryland has made in reducing youth tobacco use and are addicting a new generation of kids.

Flavored E-Cigarettes Have Fueled the Popularity of These Products Among Kids

The evidence is clear that flavored e-cigarettes, like mint, mango and gummy bear, have fueled this epidemic. In recent years, there has been an explosion of sweet-flavored e-cigarettes. As of 2017, there were more than 15,500 unique e-cigarette flavors available online, including many kid-friendly flavors like gummy bear, cotton candy, and peanut butter cup.⁴³

³⁶ 81 Federal Register 29020, 29022 (May 10, 2016).

³⁷ NCI, *Cigars: Health Effects and Trends. Smoking and Tobacco Control Monograph No. 9*, 1998, http://cancercontrol.cancer.gov/Brp/tcrb/monographs/9/m9_complete.pdf. See also, Baker, F, et al., “Health Risks Associated with Cigar Smoking,” *Journal of the American Medical Association* 284(6):735-740, 2000. See also, Shapiro, JA, Jacobs, EJ, Thun, MJ, “Cigar Smoking in Men and Risk of Death From Tobacco-Related Cancers,” *Journal of the National Cancer Institute*, 92(4):333-7, February 16, 2000.

³⁸ Nonnemaker, J, et al., “Mortality and Economic Costs from Regular Cigar use in the United States, 2010,” *American Journal of Public Health* 104(9):e-86-91, September 2014.

³⁹ NCI, *Cigars: Health Effects and Trends*, 1998. Chang, CM, et al., “Systematic review of cigar smoking and all cause and smoking related mortality,” *BMC Public Health*, doi 10.1186/s12889-015-1617-5, 2015.

⁴⁰ Stokes, A, et al., “Racial/Ethnic Differences in Associations of Noncigarette Tobacco Product Use with Subsequent Initiation of Cigarettes in US Youth,” *Nicotine & Tobacco Research*, published online September 19, 2020.

⁴¹ CDC, 2019 Youth Risk Behavior Survey, Available at <http://nccd.cdc.gov/youthonline/>.

⁴² Hsu, G, et al., “Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites,” *Journal of Medical Internet Research*, 20(3), published online March 12, 2018

⁴³ Zhu, S-H, et al., “Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites,” *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.



Research shows that flavored products are not only popular among youth, but play a role in initiation and uptake of tobacco products. As the recent Surgeon General Report on Smoking Cessation succinctly stated, “the role of flavors in promoting initiation of tobacco product use among youth is well established.”⁴⁴ The 2016 Surgeon General Report on e-cigarettes concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults.⁴⁵

If anything, these official government figures under report the percentage of youth who use flavored e-cigarettes. Prior to schools being closed due to COVID-19, if you spoke with any teacher, school principal or high school student, they would tell you that virtually every kid who uses an e-cigarette, uses a flavored e-cigarette. It is the reason that banning flavored e-cigarettes is an essential step in reversing the youth e-cigarette epidemic. Anything less will fail.

As with menthol cigarettes, e-cigarettes didn’t become popular with kids by accident. E-cigarette makers have introduced products with thousands of flavors that appeal to young people and engaged in the kind of marketing that mirrors what the cigarette industry did for decades. The 2016 Surgeon General Report on e-cigarettes concluded that, **“E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.”**⁴⁶

The use of flavors in e-cigarette products is of even greater concern because e-cigarettes are the subject of extensive advertising campaigns, and there is evidence that young people are exposed to significant amounts of e-cigarette advertising. By mimicking the tobacco industry’s strategies, including celebrity endorsements, slick TV and magazine advertisements, and sports and music sponsorships, e-cigarette advertising has effectively reached youth and young adults. The 2019 NYTS found that 7 out of 10 middle and high school students—18.3 million youth—report being exposed to e-cigarette advertisements.⁴⁷

Nicotine Use Has Serious Health Consequences for Youth

Though there is insufficient research on the long-term effects of using e-cigarettes in general, there is a growing body of evidence of immediate harms, many of which are caused by the intense addiction caused by the high levels of nicotine these products deliver. Nicotine is a highly addictive drug and young people are especially vulnerable to nicotine addiction. Nicotine can have lasting damaging effects on adolescent brain development, because brain development continues until about age 25. According to the Surgeon General, “because the adolescent brain is still developing, nicotine use during this critical period can disrupt the formation of brain circuits that control attention, learning, and susceptibility to

⁴⁴ HHS, Office of the Surgeon General, “Smoking Cessation: A Report of the Surgeon General,” 2020 <https://www.hhs.gov/sites/default/files/2020-cessation-sgr-full-report.pdf>.

⁴⁵ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

⁴⁶ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

⁴⁷ Gentzke, A, et al., “Tobacco Product Use and Associated Factors Among Middle and High School Students—National Youth Tobacco Survey, United States, 2021,” *MMWR* 71(5): 1-29, March 10, 2022, <https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf>.

addiction.”⁴⁸ Nicotine can also prime the brain for addiction to other drugs.⁴⁹ Because of these risks, the Surgeon General found that, “The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.”⁵⁰

E-cigarette use, has permeated the daily life of hundreds of thousands of youth. It is clear that large numbers of teen e-cigarette users are struggling with nicotine addiction and withdrawal. The problem is so bad that FDA convened a public hearing to gather input on how to help youth addicted to the nicotine in e-cigarettes. No one is quite sure how to help these youth quit. Banning flavored e-cigarettes will prevent these kids from ever getting hooked.

Youth E-Cigarette Users Are At Increased Risk of Smoking Cigarettes

E-cigarettes are addicting a new generation of kids and threaten to reverse decades of progress in reducing youth tobacco use. Alarming, evidence also continues to build that e-cigarette use in young people increases the likelihood of smoking cigarettes.

- In 2016, the Surgeon General concluded that while more research is needed, evidence from several longitudinal studies suggests that e-cigarette use is “strongly associated” with the use of other tobacco products among youth and young adults, including conventional cigarettes.⁵¹
- In 2018, the National Academies of Science, Engineering & Medicine (NASEM) released a comprehensive report finding substantial evidence that e-cigarette use increases risk of ever using cigarettes among youth and young adults. The NASEM report also concluded, “There is moderate evidence that e-cigarette use increases the frequency of subsequent combustible tobacco cigarette use” among youth and young adults.⁵²
- An analysis of PATH data found that from 2013 to 2016, youth (ages 12-15) e-cigarette use was associated with more than four times the odds of trying cigarettes and nearly three times the odds of current cigarette use. The researchers estimate that this translates to over 43,000 current youth cigarette smokers who might not have become smokers without e-cigarettes.⁵³

⁴⁸ CDC, Office of the Surgeon General, “Health Care Professionals: Educate Your Young Patients About the Risks of E-cigarettes,” https://e-cigarettes.surgeongeneral.gov/documents/SGR_E-Cig_Health_Care_Provider_Card_508.pdf

⁴⁹ US Department of Health and Human Services (HHS), *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

⁵⁰ CDC, Office of the Surgeon General, “Know the Risks: E-Cigarettes and Young People, Frequently Asked Questions,” https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_ECig_FAQ_508.pdf

⁵¹ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. See also, Leventhal, AM, et al., “Association of Electronic Cigarette Use With Initiation of Combustible Tobacco Product Smoking in Early Adolescence,” *Journal of the American Medical Association*, 314(7): 700-707, 2015. Wills, Thomas A, et al., “Longitudinal study of e-cigarette use and onset of cigarette smoking among high school students in Hawaii,” *Tobacco Control*, published online first January 25, 2016. Wills, TA, et al., “E-cigarette use is differentially related to smoking onset among lower risk adolescents,” *Tobacco Control*, published online August 19, 2016. Barrington-Trimis, JL, et al., “E-Cigarettes and Future Cigarette Use,” *Pediatrics*, 138(1), published online July 2016.

⁵² Barrington-Trimis, JL, et al., “E-Cigarettes and Future Cigarette Use,” *Pediatrics*, 138(1), published online July 2016. Wills, TA, et al., “E-cigarette use is differentially related to smoking onset among lower risk adolescents,” *Tobacco Control*, published online August 19, 2016.

⁵³ National Academies of Sciences, Engineering, and Medicine. 2018. *Public health consequences of e-cigarettes*. Washington, DC: The National Academies Press. <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

⁵⁴ Berry, KM, et al., “Association of Electronic Cigarette Use with Subsequent Initiation of Tobacco Cigarettes in US Youths,” *JAMA Network Open*, 2(2), published online February 1, 2019.

Multiple studies have also demonstrated that many youth who use e-cigarettes are kids who are among those least at risk of cigarette smoking. For these kids, e-cigarettes are not replacing cigarettes, they are turning non-tobacco users into tobacco users.⁵⁴

FDA Has Failed To Use Its Regulatory Authority Over E-Cigarettes to Protect Kids

Although Congress gave FDA broad regulatory authority over tobacco products in the Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act), the agency has largely failed to use that authority to regulate e-cigarettes.⁵⁵ Delayed regulation by the FDA necessitates state action to protect Maryland's youth.

Despite the requirement in the Tobacco Control Act that new tobacco products (i.e. those introduced after February 15, 2007) obtain an FDA order authorizing their marketing,⁵⁶ not a single e-cigarette product currently on the market has been reviewed and authorized by the FDA. Thus, it is essential for Maryland and other states to utilize their authority to protect the health of its residents and especially its youth.

Conclusion

We are facing an epidemic in youth e-cigarette use. Parents, school officials, and health care providers from across the country have recognized that a new generation of young people are becoming addicted to nicotine with potentially devastating long-term consequences. In addition, largely because of the marketing of flavored cigars and menthol cigarettes, higher rates of smoking and other forms of tobacco use persist among populations the tobacco industry has targeted, especially African Americans, burdening these communities with higher rates of cancer, heart disease, and pulmonary disease attributable to tobacco use. These challenges will not go away absent strong, clear and decisive government action.

The scientific evidence leaves no doubt that flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, increase the number of people, particularly kids, who initiate tobacco use and become addicted. Prohibiting the sale of menthol cigarettes and other flavored tobacco products is an essential step toward protecting our children and our community from the tobacco industry's aggressive efforts to hook children to these dangerous, addictive products.

This issue is quite simple—it is about common sense and protecting our kids and populations that the tobacco industry has targeted and continues to target.

Eliminating health disparities and many of the factors that disproportionately impact many of our citizens can be complicated and difficult to solve. But we have the tools and ability to dramatically reduce the health disparities caused by tobacco use in our state.

Thank you for the opportunity to testify on this important issue.

⁵⁴ Barrington-Trimis, JL, et al., "E-Cigarettes and Future Cigarette Use," *Pediatrics*, 138(1), published online July 2016. Wills, TA, et al., "E-cigarette use is differentially related to smoking onset among lower risk adolescents," *Tobacco Control*, published online August 19, 2016.

⁵⁵ Pub. L. No. 111-31, 123 Stat. 1776 (2009)(codified at 21 U.S.C. §§ 387-387u).

⁵⁶ 21 U.S.C §387j.

NCADD-MD - 2023 SB 259 FAV - Flavored Tobacco Ban

Uploaded by: Nancy Rosen-Cohen

Position: FAV



Senate Finance Committee

February 16, 2023

Senate Bill 259

Business Regulation - Flavored Tobacco Products - Prohibition

Support

NCADD-Maryland supports support Senate Bill 259. Just like other drugs, nicotine is an addictive substance complete with cravings and withdrawal symptoms when a person tries to quit. The research is clear that the younger a person starts using any substance, including nicotine or tobacco, the greater the chances that a person will develop an addiction. Since flavored products are targeted to youth, they are especially dangerous.

There are over 15,000 flavors of tobacco and nicotine products, including cotton candy, gummy bear, mango, mint, and menthol. 80% of youth who have ever used tobacco started with a flavored product.¹ According to the FDA, 70% of youth electronic smoking device users say these use electronic smoking devices because they come in appealing flavors.² Additionally, the 2019 National Youth Tobacco Survey, mint and menthol flavored e-cigarettes were the second most popular flavor category among high school users.³

The tobacco industry has targeted the marketing of these products to youth—especially among communities of color and LGBTQ youth—hoping to create lifetime of dependence. Menthol in particular, is a flavor proven to be especially addictive and hard to quit. Allowing menthol flavored products to stay on store shelves disproportionately, negatively impacts communities of color, LGBT communities and lower socioeconomic communities and leads to higher unequal burden of disease and death.

For these reasons, we ask for a favorable report on SB 259.

¹ Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014,” *Journal of the American Medical Association*, published online 26 October 2015.

² FDA, Guidance for Industry: Modifications to Compliance Policy for Certain Deemed Tobacco Products, 14 March 2019.

³ Cullen KA, Gentzke AS, Sawdey MD, et al. e-Cigarette Use Among Youth in the United States, 2019. *JAMA*. 2019;322(21):2095–2103. doi:<https://doi.org/10.1001/jama.2019.18387>

SB0259-FIN-FAV.pdf

Uploaded by: Nina Themelis

Position: FAV



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB 0259

February 16, 2023

TO: Members of the Finance Committee
FROM: Nina Themelis, Interim Director of Mayor's Office of Government Relations
RE: Senate Bill 259 – Business Regulation - Flavored Tobacco Products - Prohibition
POSITION: Support

Chair Griffith, Vice Chair Klausmeier, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill (SB) 259.

SB259 aims to prohibit the sale of flavored tobacco products in the state of Maryland. This bill will play a crucial role in protecting the health and well-being of our youth. Flavored tobacco products, such as flavored e-cigarettes and cigars, are marketed specifically towards young people. The use of these products has skyrocketed in recent years, with a significant portion of youth and young adults becoming regular users.¹ A government study found that 81% of youth who have ever used tobacco started with a flavored product, and most tobacco users start young.² This is a cause for great concern, as flavored tobacco products contain harmful chemicals that can have long-term health effects, such as nicotine addiction, respiratory problems, and even cancer.³

Moreover, the availability of these flavored products makes it easier for young people to start using tobacco, as they are drawn in by the appealing flavors and misleading advertisements.⁴ This puts them at a higher risk of developing a lifelong addiction and suffering the associated health problems. E-cigarettes almost always contain nicotine, an addictive drug that can harm adolescent brain development and affect young peoples' learning, memory and attention.³

By enacting this bill, Maryland will take a bold step towards protecting our youth from the dangers of flavored tobacco products. This bill will make it harder for young people to access these products, reducing the number of new users and saving countless lives. Passing SB 259 will send a strong message that the health and well-being of our youth is a top priority.

For these reasons, the BCA respectfully requests a **favorable** report on SB 259.

¹ Wang, T. W., Gentzke, A. S., Creamer, M. R., Cullen, K. A., Holder-Hayes, E., Sawdey, M. D., Anic, G. M., Portnoy, D. B., Hu, S., Homa, D. M., Jamal, A., & Neff, L. J. (2019). Tobacco Product Use and Associated Factors Among Middle and High School Students - United States, 2019. *Morbidity and mortality weekly report. Surveillance summaries* (Washington, D.C.: 2002), 68(12), 1–22. <https://doi.org/10.15585/mmwr.ss6812a1>

² Ambrose, B. K., Day, H. R., Rostron, B., Conway, K. P., Borek, N., Hyland, A., & Villanti, A. C. (2015). Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *JAMA*, 314(17), 1871–1873. <https://doi.org/10.1001/jama.2015.13802>

³ U.S. Department of Health and Human Services. (2023). Know the Risks – E-Cigarettes and Young People. Retrieved from <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>

⁴ Pepper JK, Ribisl KM, Brewer NT. (2016). Adolescents' interest in trying flavoured e-cigarettes. *Tobacco Control*; 25:ii62-ii66.

SB0259_FAV_MedChi, MDCSCO, MDAAP_Flavored Tobacco

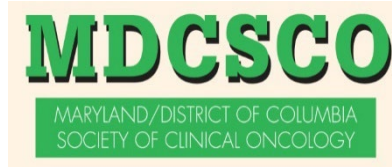
Uploaded by: Pam Kasemeyer

Position: FAV



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TO: The Honorable Melony Griffith, Chair
Members, Senate Finance Committee
The Honorable Clarence K. Lam

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Andrew G. Vetter
Christine K. Krone
410-244-7000

DATE: February 16, 2023

RE: **SUPPORT** – Senate Bill 259 – *Business Regulation – Flavored Tobacco Products – Prohibition*

On behalf of the Maryland State Medical Society, the Maryland/District of Columbia Society of Clinical Oncology, and the Maryland Chapter of the American Academy of Pediatrics, we **support** Senate Bill 259.

Senate Bill 259 prohibits the sale of flavored tobacco products into or within the State. Smoking remains one of the leading causes of preventable death in the United States. Nicotine can slow brain development in youth, particularly in the areas of impulse control, attention span and the ability to learn. It can also prime the brain for further addiction to other drugs.

Prohibiting flavorings for all tobacco products is likely to reduce tobacco use, especially among young people. Candy and fruit flavored products are particularly attractive to young people because sweet or minty flavors are often perceived to be safer though they have the same or worse health effects as other tobacco products.

Passage of Senate Bill 259 will help prevent young people from using tobacco products or becoming smokers. The bill reflects Maryland's historical commitment to reducing tobacco product use and the associated health consequences. A favorable report is requested.

MdPHA_testimony_SB259_Tobacco-Flavor-Ban-FNL.pdf

Uploaded by: Raimee Eck

Position: FAV



Mission: *To improve public health in Maryland through education and advocacy*

Vision: *Healthy Marylanders living in Healthy Communities*

SB259 Business Regulation-Flavored Tobacco Products-Prohibition

Hearing Date: 2/16/23

Committee: Senate Finance

Position: SUPPORT

Chair Griffith and members of the Senate Finance Committee: The Maryland Public Health Association would like to express SUPPORT for SB259 “Business Regulation – Flavored Tobacco Products - Prohibition”. The bill will effectively remove all flavored tobacco products from the market, including menthol cigarettes, flavored e-cigarettes, vapes, cigars, and smokeless tobacco, which is an important step in the right direction for public health.

Even though it is a leading preventable killer in the United States, 7,500 people each year in Maryland alone die because of tobacco use. By eliminating a harmful way young people and communities of color in Maryland are targeted, SB259 will reduce tobacco-related illnesses and deaths, reduce health disparities, and save Maryland hundreds of millions of dollars in healthcare savings.

For decades, the tobacco industry has marketed flavored tobacco products, most commonly menthol cigarettes, to Black and Brown communities. As a result, over 85% of all African American smokers and 7 in 10 African American youth smokers smoke menthol cigarettes. The predatory targeting of these communities furthers already existing health disparities. Massachusetts and California have already enacted bans on menthol products, along with numerous states and localities that have banned the sale of flavored tobacco products.

Current trends show that e-cigarettes are used by high schoolers 5 times more often than adults. This trend is fueled by the creation and sale of flavored products like cotton candy, mango, and mint. Flavoring tobacco lures children into tobacco use that can last a lifetime.

Data also shows that nearly 9 in 10 adults who smoke daily begin before the age of 18, and over 80% of youth smokers begin smoking with a flavored tobacco product. This trend continues throughout their tobacco use. In 2020, 85% of high schoolers who used tobacco within the last 30 days reported using flavored tobacco.

Reducing the number of individuals who smoke has proven to save lives and have a positive economic impact. The Maryland Center on Economic Policy (MDCEP) estimates that the prohibition of flavored tobacco will reduce illness associated with use, and in turn, reduce healthcare costs by billions of dollars. With the savings from reduced tobacco consumption

individuals and families will recycle this income back into the economy, providing much needed stimulation.

We encourage you to support the passage of a clean SB259.

The Maryland Public Health Association (MdPHA) is a nonprofit, statewide organization of public health professionals dedicated to improving the lives of all Marylanders through education, advocacy, and collaboration. We support public policies consistent with our vision of healthy Marylanders living in healthy, equitable, communities. MdPHA is the state affiliate of the American Public Health Association, a nearly 145-year-old professional organization dedicated to improving population health and reducing the health disparities that plague our state and our nation.

Maryland Public Health Association (MdPHA)
PO Box 7045 · 6801 Oak Hall Ln · Columbia, MD 21045-9998
GetInfo@MdPHA.org www.mdpha.org 443.475.0242

MDDCSAM - 2023 SB 259 FAV - Flavored Tobacco Ban -

Uploaded by: Scott Whetsell

Position: FAV

SB 259 Flavored Tobacco Products - Prohibition

SUPPORT Senate Finance Committee February 16, 2023

Nishant Shah, MD, MPH

MDDCSAM is a chapter of the American Society of Addiction Medicine whose members are physicians and other health providers who treat people with substance use disorders.

I am writing to support SB 259 to prohibit the sale of flavored tobacco and vaping products in the State of Maryland. Maryland will be joining 8 other states that have already banned flavored e-cigarette, and will lead the nation in banning all flavored nicotine products, including menthol flavored cigarettes. Federal law banned the majority of flavored cigarettes in 2009, and many cities and counties have banned all flavored tobacco products, similar to the proposed legislation.

Flavored tobacco products have been historically used to entice youth and non-smokers to try tobacco products. Flavored vaping products have followed a similar form of enticement, especially for youth smokers. In the State of Maryland, 13% of high school students have used a vaping product¹. Vaping products marketed as “juice pods” and in flavors titled “Pineapple Crush, Bubble Gum, and Mango” are products intentionally designed to target youth. In addition to flavored products, youth are targeted through promotional advertising in store windows, sports event sponsorship, and social media marketing campaigns.

In addition, vaping products deliver more concentrated amounts of nicotine to youth in higher volumes. As a result, youth are at higher risk of developing dependence on nicotine. Nicotine dependence with e-cigarettes is associated with a higher rate of cigarette smoking in the future².

Youth smoking is the strongest predictor of adult smoking; nearly 90% of adult smokers started smoking before the age of 18³. It is therefore essential to limit youth exposure to nicotine products if we are going to reduce the number of adults smoking.

Finally, smoking is the leading cause of preventable death in the United States, contributing to increased rates of cancer, heart attacks, and strokes. Our goal to improve health outcomes for Marylanders is dependent on helping people quit smoking, this bill will limit access to the products that will create the next generation of Maryland smokers.

As Health professionals tasked with addressing the needs of individuals with substance use disorders, the Maryland DC Society of Addiction Medicine supports the passage of SB 259.

¹ Source NYTS 2018. Accessed January 28, 2020. <https://www.tobaccofreekids.org/problem/toll-us/maryland>

² Barrington-Trimis JL et al. “E-cigarettes and future cigarette use.” *Pediatrics*, July 2016

³ CDC. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. 2012 and CDC. E-Cigarette use among youth and young adults: A Report of the Surgeon General. 2016

1d - SB 259 - FIN - MACHO - LOS.docx.pdf

Uploaded by: State of Maryland

Position: FAV



SENATE BILL 259

Business Regulation – Flavored Tobacco Products - Prohibition

WRITTEN TESTIMONY BEFORE THE SENATE FINANCE COMMITTEE

Nilesh Kalyanaraman, MD, FACP,

Health Officer, Anne Arundel County Department of Health, MACHO President

For the Maryland Association of County Health Officers (MACHO)

Position: Support – February 16, 2023

The Maryland Association of County Health Officers (MACHO) supports SB 259. MACHO is the professional association of the chief executives of the state's 24 local public health departments (LHDs). Prohibiting the sale of all flavored tobacco products, including menthol cigarettes, small, flavored cigars, and vape products is the most powerful step possible to reverse the recent wave of nicotine addiction. SB 259 will substantially decrease health disparities among Maryland's African American population who have been targeted by the tobacco industry for decades with menthol products, and immediately begin to reverse the proliferation of teen vaping and nicotine addiction. Prohibiting flavored tobacco products will reduce health insurance costs for small and large businesses, lead to hundreds of millions of dollars in Medicaid savings over coming years, and help pave the way to a healthier and more productive workforce in Maryland.

The U.S. Surgeon General states that the use of nicotine in any form, including e-cigarettes, is unsafe and can have potential lifelong health effects. The introduction of nicotine to the adolescent brain is especially detrimental. It causes alterations in normal brain chemistry, affecting mood, appetite, attention, cognition, and memory, and establishes pathways that increase the likelihood of neurobiological dependence, and future addiction to other drugs, including opioids. The adolescent brain does not reach full development until age 25, meaning it does not yet have the full capacity to balance short-term rewards with long-term goals, control impulses, delay gratification, or foresee and weigh possible consequences of behavior.

Use of flavored tobacco products is highest in youth and young adults: four (4) out of five (5) youth who use tobacco products and three (3) out of four (4) young adults ages 18-24 years use flavored products.¹ Adding flavors to cigars increases appeal and make them easier for youth and young adults to use.² According to the 2022 National Youth Tobacco Survey, cigars were the most commonly used combustible tobacco product with half a million young users.³ One (1) large cigar can contain as much nicotine as an entire pack of cigarettes.⁴

Electronic cigarettes and vape devices are the most common tobacco products used by youth. Nearly one (1) in five (5) Maryland middle school students have tried an electronic vapor product with nearly 2% reporting using a vapor product six (6) or more days in a month.⁵ Use increases for Maryland high school students to 40% with over 10% reporting using electronic vapor products six (6) or more days a month. Both the Maryland middle- and

615 North Wolfe Street, Room E 2530 // Baltimore, Maryland 21205 // 410-937-1433

¹ Flavored Tobacco Product Use in Youth and Adults: Findings From the First wave of the PATH Study (2013-2014); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5522636/>

² U.S. Food and Drug Administration,, <https://www.fda.gov/news-events/press-announcements/fda-proposes-rules-prohibiting-menthol-cigarettes-and-flavored-cigars-prevent-youth-initiation>

³ https://www.cdc.gov/mmwr/volumes/71/wr/mm7145a1.htm?s_cid=mm7145a1_w

⁴ American Lung Association, <https://www.lung.org/blog/dangers-flavored-cigars#:~:text=Cigars%2C%20including%20flavored%20cigars%2C%20contain,cigarettes%20but%20that%20is%20untrue.>

⁵ Maryland Youth Risk Behavior Survey/Youth Tobacco Survey 2018-2019, <https://health.maryland.gov/phpa/ccdpc/Reports/Pages/YRBS2018.aspx>

high school students who had tried or routinely used electronic vapor products have something in common: nearly all reported using flavorings such as fruit, candy, and menthol. There is growing evidence that long-term use of e-cigarettes can impair blood vessels which increases the risk for heart disease, like that experienced by chronic smokers.⁶

Menthol is a minty flavor additive that reduces the harshness of smoking, which increases the appeal of cigarettes for youth and young adults. According to the FDA, “menthol also interacts with nicotine in the brain to enhance nicotine’s addictive effects”, increasing the likelihood that youth who start using menthol cigarettes will progress to regular use.⁷

The focus of the tobacco industry’s marketing effort is on promoting flavored products that appeal to adolescents. E-cigarettes come in fruit, candy, and other kid-friendly flavors, such as mango, fruit, and crème. The Surgeon General reports, “E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.” According to the 2022 National Youth Tobacco Survey (2022 NYTS), more than four (4) out of five (5) kids who use e-cigarettes use a flavored product.⁸ Many report using e-cigarettes because they are curious about these new products, and because they believe these products to be less harmful than conventional cigarettes.

For these reasons MACHO strongly encourages support for this critical public health legislation. For more information please contact Ruth Maiorana, Executive Director, MACHO, at rmaiora1@jhu.edu or 410-937-1433.

⁶ National Institutes of Health,
<https://www.nih.gov/news-events/news-releases/nih-funded-studies-show-damaging-effects-vaping-smoking-blood-vessels#:~:text=Long%2Dterm%20use%20of%20electronic,either%20of%20these%20products%20alone>.

⁷ U. S. Food and Drug Administration,
<https://www.fda.gov/news-events/press-announcements/fda-proposes-rules-prohibiting-menthol-cigarettes-and-flavored-cigars-prevent-youth-initiation>

⁸ <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey>

1a -SB 259 - FIN - MDH - LOS.docx.pdf

Uploaded by: State of Maryland (MD)

Position: FAV



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 16, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 259 - Business Regulation – Flavored Tobacco Products – Prohibition – Letter of Support

Dear Chair Griffith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support for Senate Bill (SB) 259 - Business Regulation – Flavored Tobacco Products – Prohibition. SB 259 is an emergency bill that prohibits businesses licensed to manufacture, sell, buy, and store tobacco products from manufacturing, shipping, importing, or selling any flavored tobacco products. Such tobacco products include cigarettes, electronic smoking devices (ESDs), and other tobacco products.

In 2018, the U.S. Surgeon General declared youth vaping an epidemic, evidenced by a 78 percent increase in current ESD use among high school-aged youth between 2017 and 2018.¹ Research indicates that youth are more likely to try flavored ESDs and are unaware that nearly all ESDs contain nicotine.^{2,3} As was the case with cigars, when flavors excluding menthol are removed, youth turn to menthol tobacco products.⁴ During the 2018-19 school year, nearly 1 in 5 high school students reported using menthol, mint, or wintergreen flavors in their ESDs.⁵ ESDs are not a U.S. Food and Drug Administration (FDA) approved cessation device, and use may lead to dual use of ESDs and cigarettes with associated health risks.⁶ In 2022, Juul Labs was held liable

¹ <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

² Willett JG, Bennett M, Hair EC, *et al* Recognition, use and perceptions of JUUL among youth and young adults *Tobacco Control* 2019;28:115-116. <https://tobaccocontrol.bmj.com/content/28/1/115.info>.

³ Kristy L. Marynak, Doris G. Gammon, Todd Rogers, Ellen M. Coats, Tushar Singh, and Brian A. King, 2017: [Sales of Nicotine-Containing Electronic Cigarette Products: United States, 2015](https://doi.org/10.2105/AJPH.2017.303660) *Am J Public Health* 107, 702_705, <https://doi.org/10.2105/AJPH.2017.303660>.

⁴ Truth Initiative, “Five important things to Know about the removal of menthol cigarettes and flavored cigars from the market,” 08 April 2022, Accessed on 27 January 2023,

<https://truthinitiative.org/research-resources/traditional-tobacco-products/5-important-things-know-about-removal-menthol#:~:text=A%20study%20found%20that%20many%20youth%20simply%20switched.%2856.4%25%29%20support%20a%20federal%20ban%20on%20menthol%20cigarettes.>

⁵ 2018-19 Maryland YRBS/YTS Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000-2018. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control, August 2020.

<https://health.maryland.gov/phpa/ohpetup/Documents/HG%20c2%a713-1004%28d%29%2c%20FY%202020%20Biennial%20Tobacco%20Stu%20dv%2c%20Cigarette%20Restitution%20Fund%20e2%80%93%20Tobacco%20Use%20Prevention%20and%20Cessation%20Program.pdf>

⁶ Dharma N. Bhatta, PhD, MPH; Stanton A. Glantz, PhD Electronic Cigarette Use and Myocardial Infarction Among Adults in the US Population Assessment of Tobacco and Health *J Am Heart Assoc.* 2019;8:e012317. DOI: 10.1161/JAHA.119.012317.

for their aggressive marketing to youth and entered into a settlement with 33 states, paying \$434 million (including \$13 million to Maryland).⁷ Menthol flavoring has been evidenced to intensify nicotine dependence and the urge to smoke, making it harder for smokers using menthol to quit.⁸ The FDA's Tobacco Products Scientific Advisory Committee stated, "Removal of menthol cigarettes from the marketplace would benefit public health in the United States."⁹ Statewide, in 2021, 53.5 percent of everyday adult cigarette smokers usually smoked menthol cigarettes.¹⁰ While ESD unit sales decreased, menthol flavored ESD sales in Maryland increased by 26 percent between 2018 and 2022; this may be due to the FDA's prohibition on the sale of all flavored non-disposable ESDs, and Maryland's ban on the sale of all flavored cartridge-based and disposable ESDs, other than menthol, which both began in early 2020.¹¹ Menthol tobacco products are aggressively marketed and used at disproportionately higher rates by racial/ethnic minorities; persons of lower socio-economic status; and lesbian, gay, bisexual, transgender, and queer (LGBTQ+) populations.^{12,13} In 2022, the FDA proposed a ban on menthol as a characterizing flavor in cigarettes and cigars to prevent youth initiation. However, the final rule determination may take several years before becoming effective and enforced.¹⁴ Over 360 U.S. municipalities have passed varying restrictions on the sale of flavored tobacco products with at least 170 restricting the sale of menthol cigarettes.¹⁵

If you would like to discuss this further, please do not hesitate to contact Megan Peters, Acting Director of Governmental Affairs at megan.peters@maryland.gov or (410) 260-3190.

Sincerely,



Laura Herrera Scott, M.D., M.P.H.
Secretary

⁷ Brian Frosh, Attorney General Frosh, Plus 32 States and Territories, Reach Agreement of Over \$434.5 Million with Juul Labs, 6 December 2022, Maryland Attorney General, Accessed 27 January 2023 <https://www.marylandattorneygeneral.gov/press/2022/120622.pdf>

⁸ Ahijevych, K and BE Garrett, The role of menthol in cigarettes as a reinforcer of smoking behavior. *Nicotine Tob Res*, 2010 12 Suppl 2:p S110-6. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3636955>.

⁹ Tobacco Products Scientific Advisory Committee (TPSAC), FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011, <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>

¹⁰ 2021 Behavioral Risk Factor Surveillance System (BRFSS), (unpublished)

¹¹ Monitoring U.S. E-Cigarette Sales: State Trends: Figure 17. Maryland E-Cigarette Unit Sales by Product Type, 4 week Estimates 1/2018-10/2022, October 2022, CDC Foundation, Accessed on 27 January 2023 <https://www.cdcfoundation.org/State-E-CigaretteSales-DataBrief-2022-Octo30?inline>.

¹² Fallin A et al., Menthol Cigarette Smoking among Lesbian, Gay, Bisexual, and Transgender Adults. *American Journal of Preventive Medicine*. 2015;48(1):93-97 <https://www.ncbi.nlm.nih.gov/pubmed/25245795>.

¹³ Lawrence, D et al. National patterns and correlates of mentholated cigarette use in the United States. *Addiction*. 2010 Dec;105 Suppl 1:13-31. doi: 10.1111/j.1360-0443.2010.03203.x.

¹⁴ FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death, 28 April 2022, U.S. Food and Drug Administration, Accessed 27 January 2023 <https://www.fda.gov/news-events/press-announcements/fda-proposes-rules-prohibiting-menthol-cigarettes-and-flavored-cigars-prevent-youth-initiation>

¹⁵ Campaign for Tobacco-Free Kids, "STATES AND LOCALITIES THAT HAVE RESTRICTED THE SALE OF FLAVORED TOBACCO PRODUCTS," Accessed on 27 January 2023, <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>.

SB259_NAACP.docx.pdf

Uploaded by: Willie Flowers

Position: FAV



NAACP

Maryland
STATE CONFERENCE

**CHAIR; MELONY GRIFFITH
FINANCE COMMITTEE
TESTIMONY IN SUPPORT OF SB-259
FEBRUARY 16, 2023 **

**WILLIE FLOWERS; PRESIDENT
NAACP MARYLAND STATE CONFERENCE**

MY NAME IS WILLIE FLOWERS; PRESIDENT OF THE NAACP MARYLAND STATE CONFERENCE.

I AM WRITING IN SUPPORT OF SB-259 - BUSINESS REGULATION - FLAVORED TOBACCO PRODUCTS - PROHIBITION.

AS YOU KNOW, THE NAACP IS A CIVIL RIGHTS ORGANIZATION FOUNDED IN 1909 TO FIGHT FOR THE CIVIL RIGHTS OF AFRICAN AMERICANS. WE ARE HERE TODAY TO REMIND EVERYONE THAT FIGHTS CONTINUES AND THOSE CIVIL RIGHTS EXTENDS TO THE PROTECTION OF THE SAME AFRICAN AMERICANS AND THEIR FAMILIES IN REGARD TO TOBACCO, BIG TOBACCO AND THE CONTINUED ATTACK ON OUR COMMUNITIES WITH MARKETING SCHEMES THAT ADVANCE TOBACCO USE THROUGH PROMOTING FLAVORED TOBACCO TO YOUNG PEOPLE.

THIS MUST END.

7,500 MARYLAND RESIDENTS DIE EACH YEAR BECAUSE TOXIC TOBACCO PRODUCTS. THEY ARE FAMILY AND COMMUNITY LEADERS WHO COULD HAVE HELPED TO MAKE OUR STATE BETTER.

THE EXPLOITATION AND MANIPULATION BY BIG TOBACCO IS ONE OF THE REASONS BUT IT STARTS WITH TARGETING CHILDREN FOR FIRST USE AND THEN THE GOAL OF CONTINUED USE OF A PRODUCT THAT IS KNOWN TO CAUSE ADDICTION AND CANCER OF THE LUNGS, MOUTH AND THROAT. WHILE IT IS NOT THE CASE THAT

EVERYONE DIES OF CANCER DUE TO SMOKING IT IS THE CASE THAT ANYONE WHO IS AROUND A SMOKER FOR ANY POINT FEELS THE PHYSICAL IMPACT OF SMOKING. AGAIN, THE ADDS THAT ARE DESIGNED BY BIG TOBACCO RUN THE GAMBIT. THERE ARE OVER 15,000 PRODUCTS THAT FIT AND ARE DEVISED TO MIMIC NORMAL PRODUCTS THAT CHILDREN ENJOY: POP TARTZ, STRAWBERRY SHORTCAKE, COTTON CANDY AND OTHER TRICKY ENTICEMENTS.

WE DON'T NEED THIS IN MARYLAND.

THE NAACP WOULD LIKE TO BE A ORGANIZATION TO MAKE THE COMMUNITY AWARE OF THESE TACTICS TO THAT FAMILY CAN LIVE AND BE HEALTHY WITHOUT THE SICKNESS AND FUNERALS THAT ARE A PART OF A LIFETIME OF TOBACCO ADDICTION.

IT MUST BE SAID HERE THAT BLACK, BROWN AND POOR COMMUNITIES ARE THE TARGET FOR ALL OF THIS. WE SEE IT AS OUR JOB IN THE NAACP TO FIGHT FOR FAMILIES AND COMMUNITIES.

RAISING AWARENESS AND REDUCING FIRST USE IS A GOOD START. SB-259 HELPS WITH THAT MOVE.

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2023-02-16 SB 259 (Support with Amendments).pdf

Uploaded by: Hannibal Kemerer

Position: FWA

ANTHONY G. BROWN
Attorney General



CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

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February 16, 2023

TO: The Honorable Melony Griffith
Chair, Finance Committee

FROM: John Leovy
Chief Counsel, Tobacco Enforcement Unit, Office of the Attorney General

RE: SB 0258 – Business Regulation – Flavored Tobacco Products – Prohibition
(Support with Amendment)

The Office of the Attorney General encourages the Finance Committee to issue a favorable report with amendment on Senate Bill 259, sponsored by Sen. Clarence Lam.

Senate Bill 259 would prohibit the manufacture, shipment, importation or sale of flavored tobacco products in Maryland by authorized licensees. The bill achieves this goal by stating that the manufacture, shipment, importation, or sale of flavored tobacco products is not an authorized action under the terms of the license, and such unauthorized use is a misdemeanor violation subject to a fine of up to \$1000, 30 days imprisonment, or both.

The ban on flavored tobacco products would apply to cigarettes, other tobacco products (“OTP”), and electronic smoking devices (“ESD”). Flavored tobacco products have been proven to be more attractive to youth consumers and may be more difficult to quit. Nearly all adult consumers of tobacco products began using tobacco products before the age of 18. A ban on the sale of flavored tobacco products would be beneficial to the public health by preventing the sale of products that are attractive to youth. Any decrease in revenue from tobacco taxes resulting from decreased consumption is likely to be offset in future years because of reduced spending on health care for tobacco-related diseases.

Notably, the bill would not criminalize the possession or use of tobacco products by consumers, and thus should not result in unintended enforcement actions against youth or other consumers. The enforcement mechanism is targeted solely at cigarette, OTP, and ESD license holders. While there may be a spike in violations of this provision upon enactment, it is

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

expected that after a certain amount of time, Maryland retailers and wholesalers would fully adjust to the new requirements, as these businesses are likely to comply due to the desire to continue to operate and sell legal tobacco products.

We recommend amendments to alter the definition of “Tobacco Product” which occurs at three spots in the bill. At Bus. Reg. §§16-101(h)(3), 16.5-101(u)(3), and 16.7-101(L)(3), the bill states that “‘Tobacco Product’ Does not include a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.” We believe that this carveout was intended to protect products approved by the FDA as an authorized tobacco cessation product. However, as written, the carveout could be interpreted to cover *any* product that has been authorized for sale by the FDA under one of several pathways created by the Family Smoking Prevention and Tobacco Control Act of 2009. These pathways are intended for general approval of new and traditional tobacco products. Such approval does not suggest that the authorized products have any mitigated health risks or cessation properties, and therefore they would not be the sort of products intended to be captured in the carveout.

Therefore, we recommend the inclusion of the phrase “as an authorized tobacco cessation product” be inserted into the text of the bill before the period in each of the three provisions identified above. Further, the quoted language is currently also in Bus. Reg. §16-3A-01(c)(3) and similar language creates a carveout from the definition of Electronic Smoking Device in Bus. Reg. §16.7-101(c)(3). To maintain consistency, we recommend inserting the phrase “as an authorized tobacco cessation product” in those two sections as well.

The Office of the Attorney General recommends a favorable report of Senate Bill 259 with those modest amendments.

cc: Members of the Committee

CASAA - MD - SB 259 (Flavor Ban) - Written Testimo

Uploaded by: Alex Clark

Position: UNF



February 16, 2023

RE: SB 259

Chair Griffith, Vice Chair Klausmeier, and Honorable Members of the Senate Finance Committee,

Thank you for the opportunity to write on behalf of our members in Maryland expressing our concerns and extreme opposition to SB 259, which would prohibit sales of low-risk nicotine vapor products in flavors other than tobacco--even if they receive a marketing granted order from the US Food and Drug Administration. Proposals such as this are hasty reactions to an emotionally fueled issue that is only being made worse by well-meaning, but misguided attempts to eradicate nicotine use.

The proposal to ban the sale of vapor products sold in flavors other than tobacco will deny people who smoke access to the most popular low-risk smoking replacement product in decades. We think it is a mistake to focus on the issue of flavors to the exclusion of underlying factors affecting youth use. Socioeconomic status, trauma, peer pressure, stress, depression, and a natural inclination toward taking risks all motivate young people to experiment with potentially harmful behaviors and coping strategies. None of these factors are addressed by laws banning flavored nicotine products or any other measures that deal strictly with limiting access to substances like nicotine and other drugs. Arguably, prohibitions such as what's proposed in SB 259 are more likely to make things worse for the same people it is intended to protect.

The leading indicator of whether or not a young person will smoke is if they live with a parent who smokes. Maryland can do more to promote healthy behaviors among young people by encouraging parents who smoke to switch completely to a low-risk, smoke-free alternative. In order to achieve a rapid and enduring transition to safer nicotine products, people who smoke must have access to products they enjoy. This necessitates the availability of a diverse range of flavored smoke-free products. For these and the following reasons CASAA is urging the committee to reject any proposal to ban flavored smoke-free products in Maryland.

A flavor ban will deprive people who smoke access to life saving products

- **The availability of enjoyable smoke-free nicotine products is helping millions of people quit smoking.**

It is very disappointing that some of the comments the committee will hear on this proposal callously dismiss the experiences of millions of people who quit smoking¹, or are on their way to living smoke-free by switching to a safer nicotine product like vaping. You are being asked to disbelieve the experiences of, for example, surgical patients who will have better outcomes after switching to vaping,² parents and grandparents who will be around longer for their children, and young adults who are quitting before lasting damage is done, or who will never take up smoking because vaping is a better, safer alternative to combustible cigarettes.³

You are right to be skeptical of claims that vaping is unhelpful because just as we all know someone who has died early due to smoking, we are also increasingly more likely to know someone who quit by switching. Enjoyable, flavored products are being linked to positive outcomes in both people *trying* to quit^{4 5} and those who quit by accident.⁶ **It is incumbent upon all policy makers to acknowledge that people are quitting smoking by using less harmful alternatives and promote this life saving strategy.**⁷

- **A ban on flavored vapor products will force independent vape shops to close.**

We defer to data being presented by trade representatives from the vapor industry with regard to sales data, but it is our understanding that a majority of purchases involve e-liquid in flavors other than tobacco by people older than the federal minimum legal sales age of 21. To date, we are unaware of any retailer or manufacturer that sells a popular line of unflavored e-liquid.

¹ Clive Bates, The Counterfactual, E-cigarette risk perceptions – an American crime scene, February 3, 2022. Accessed from <https://clivebates.com/e-cigarette-risk-perceptions-an-american-crime-scene/>, February 8, 2022.

² Nolan M, Leischow S, Croghan I, et al. Feasibility of Electronic Nicotine Delivery Systems in Surgical Patients. *Nicotine Tob Res.* 2016;18(8):1757-1762. doi:10.1093/ntr/ntw003

³ Zhu S, Zhuang Y, Wong S, Cummins S E, Tedeschi G J. E-cigarette use and associated changes in population smoking cessation: evidence from US current population surveys *BMJ* 2017; 358 :j3262 doi:10.1136/bmj.j3262

⁴ Friedman AS, Xu S. Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation. *JAMA Netw Open.* 2020;3(6):e203826. doi:10.1001/jamanetworkopen.2020.3826

⁵ Eva C. Rest, Kristin N. Brikmanis, Robin J. Mermelstein, Preferred flavors and tobacco use patterns in adult dual users of cigarettes and ENDS, *Addictive Behaviors*, Volume 125, 2022, 107168, ISSN 0306-4603, <https://doi.org/10.1016/j.addbeh.2021.107168>.
(<https://www.sciencedirect.com/science/article/pii/S0306460321003531>)

⁶ Kasza KA, Edwards KC, Kimmel HL, et al. Association of e-Cigarette Use With Discontinuation of Cigarette Smoking Among Adult Smokers Who Were Initially Never Planning to Quit. *JAMA Netw Open.* 2021;4(12):e2140880. doi:10.1001/jamanetworkopen.2021.40880

⁷ Warner, K.E., Benowitz, N.L., McNeill, A. *et al.* Nicotine e-cigarettes as a tool for smoking cessation. *Nat Med* (2023). <https://doi.org/10.1038/s41591-022-02201-7>

It is unlikely that specialty vapor retailers will be able to remain open if they are restricted to selling just vapor devices and tobacco flavored e-liquid. It is the diversity of vapor products that both supports independent businesses and provides a customizable experience to people who are attempting to transition to a smoke-free lifestyle.

- **Vapor product specialty shops (vape shops) play a vital role in helping people who smoke switch to a low-risk alternative**

Vape shops are a source of peer-to-peer support that is not effectively replicated by current tobacco control interventions. Vape shops provide knowledgeable staff who offer individualized attention to help customers find devices and e-liquid flavors that will help them successfully make the switch. Just as important, vape shops provide a space for peer-to-peer support for people who used to smoke and people who are transitioning to a smoke-free product.

By way of background, vapor retailers and manufacturers in the United States are prohibited by federal law from marketing e-cigarettes as smoking cessation products or even less harmful than cigarettes.⁸ Customers, however, are bound by no such law. It is not uncommon to hear customers exchange successful quit smoking stories between one another in a vape shop. To the casual observer, sharing such a story might not seem like much, but between people who are recovering from a multiyear or multi-decade cigarette addiction, it can mean the difference between living a smoke-free life or returning to the devil they know.

By comparison, vapor retailers in the United Kingdom are not subject to the same limitations on marketing communication in face-to-face transactions. Research conducted in the UK demonstrates that people who shop for vapor products in specialty vapor shops have a remarkable quit rate of >40% after 12 months.⁹ Other than quitting “cold turkey,” no other smoking cessation intervention comes close to the success rate found in the UK. And while the retail environment studied in the UK is not a 1:1 match with vapor shops in the United States, when we consider customer-to-customer interactions within the retail environment, which are not regulated by federal law, it stands to reason that the results found in the UK may be generalizable to consumers in the United States.

For the foregoing reasons we respectfully urge the committee to reject SB 259, the proposal to ban flavored vapor products prior to scientific review. This legislation will place unnecessary barriers in front of people who would otherwise be improving their health.

⁸ 21 USC 387k: Modified risk tobacco products, accessed from <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section387k&num=0&edition=prelim>

⁹ Polosa, Riccardo et al. “Quit and smoking reduction rates in vape shop consumers: a prospective 12-month survey” *International journal of environmental research and public health* vol. 12,4 3428-38. 24 Mar. 2015, doi:10.3390/ijerph120403428

Recommendations

- We urge committee members to refocus their attention on the most pressing concern of reducing the early death and disease attributed to smoking by seeking ways the state can help promote safer alternatives to people who smoke, especially among people from historically underserved communities.
- Effective substance use prevention starts by empowering young people with strong social skills, critical thinking, and healthy coping strategies. People are generally resourceful and, historically, find ways to circumvent prohibitions on tobacco, drugs, and alcohol. Strong life skills training during adolescence has a greater potential to positively shape a young person's life well into adulthood.¹⁰

Thank you for considering our comments.

Sincerely,



Alex Clark

CEO

The Consumer Advocates for Smoke-free Alternatives Association

¹⁰ Society of Addiction Psychology, "The Life Process Program," Stanton Peele, July 10, 2020. Accessed from <https://addictionpsychology.org/conference-calls/life-process-program>, Aug. 25, 2022.

balaram-paudel.pdf

Uploaded by: Balaram Paudel

Position: UNF

Date-02/15/2023

Balaram Paudel (Business Owner)
2101 harford rd, Baltimore, MD, 21218

Flavored tobacco products account for 50%–70% of in-store sales, and the business is mostly dependent on flavored tobacco products. With the banning of flavored tobacco products, many businesses in our industry might shut down.

How can you embrace cannabis at the same time and bills like SB 259 ban flavor? Taking away retail customers and store profits. This bill will not accomplish anything except drive business down the tobacco road leading to VA, DE, and neighboring states. Marylanders can bring 5 cartons back to Maryland tax free and legal. Maryland retailers check ID and age requirements; by banning flavors, you are not only hurting honest retailers but enhancing an already robust illegal market that checks No ID and collects No Maryland tax. These illicit outlets are not licensed, taxed, or regulated in any way. Tax revenue from these products is a huge loss, but a big plus for illicit sales.

Regards,
Balaram Paudel

Maryland CAA Testimony.pdf

Uploaded by: Brett Lininger

Position: UNF



Senate Finance Committee

Testimony in OPPOSITION to SB 259

Dear Chair Griffith and the Members of the Senate Finance Committee,

The Cigar Association of America (CAA) appreciates the opportunity to submit this testimony in opposition to SB259. CAA is the premier voice of the cigar industry in the United States and the leading national trade organization representing the interests of cigar manufacturers, importers, distributors, and major suppliers of the industry. CAA was founded in 1937 as a non-profit trade organization. Today, its member companies come from all sectors of the industry, from major manufacturers of handmade premium cigars to the largest producers of machine-made cigars. CAA members manufacture a significant share of the large, premium, little, and filtered cigars sold in the United States. Its members also include internet retailers of cigars, as well as leaf, and other suppliers to the cigar industry. CAA is a key stakeholder in any discussion of regulation of cigars, as changes in laws and/or regulations significantly affect its members' ability to conduct business.

CAA submits this testimony in opposition to S.B. No. 259 (the "Proposed Flavor Ban").¹ Put simply, there is no legal, factual, or scientific basis to prohibit the sale of flavored cigars and pipe tobacco. Doing so would be detrimental to Maryland businesses and deprive adult cigar and pipe tobacco consumers of their right to a legal product.

The Proposed Flavor Ban seeks the same sweeping action -- banning flavors and removing adult consumers' ability to choose -- across nearly all categories of tobacco products. Such draconian measures, however, are simply not justified for cigars or pipe tobacco, as there is no youth epidemic of use of or access to these products. CAA estimates that flavored cigars represent up to 47% of the cigar market, and nearly all pipe tobacco can be considered flavored based simply on the process used to manufacture the product. Passage of the Proposed Flavor Ban would be a deeply flawed decision, causing great financial harm to Maryland businesses selling these products.

Critically, extending the Proposed Flavor Ban to cigars and pipe tobacco is not supported by scientific data. Surveys conducted or funded by government agencies all show that youth usage of cigars, *including flavored cigars*, is at historic lows, and youth usage of pipe tobacco is nearly unmeasurable. In fact, youth usage of cigars, including flavored cigars, is at an all-time low both in Maryland and nationwide.

In Maryland, the most recent survey data available from 2019 showed that youth usage of cigars was 6.0%, down from 9.0% in 2017.² While updated data is not available for Maryland, nationwide there have been steep declines in youth usage of cigars since 2019. The National Youth Tobacco Survey tells us that

¹ CAA submits these comments solely to address the impropriety of the Proposed Flavor Ban as applied to cigar and pipe tobacco products. CAA does not address herein the propriety of the Proposed Flavor Ban as it would apply to other categories of tobacco products.

² Maryland YRBS Survey Results, Current Cigar Use, 2017 and 2019. [Youth Online: High School YRBS - Maryland 2019 Results | DASH | CDC](#)





in 2022, youth usage of cigars was at 1.9% and in 2021, youth usage of flavored cigars was at 0.6%.³ In contrast, the 2019 Maryland Youth Risk Behavior Survey reported that in 2019, 23.0% of Maryland high school students reported current e-cigarette / vapor products use while 17.6% of Maryland high school students reported current marijuana use.

Evidence from other localities demonstrates that if a flavor ban is enacted, consumers will purchase products from out of state or on a black market. More importantly, it shows that flavor bans can increase youth *cigarette* smoking rates. A study done after a flavor ban instituted in San Francisco, CA found that “Difference-in-differences analyses found that San Francisco’s flavor ban was associated with more than doubled odds of recent smoking among underage high school students relative to concurrent changes in other districts (adjusted odds ratio, 2.24 [95% CI, 1.42-3.53]; P = .001.”⁴

The Proposed Flavor Ban does nothing but restrict the choices of adult tobacco consumers, damage Maryland businesses, and encourage unregulated illicit market sales. Flavored cigars and pipe tobacco are sold through licensed businesses that are vigilant at age verifying purchases of such products. Imposing a prohibition on the legal sale of these products will do nothing but drive adult consumers to purchase these products (i) through an untaxed illicit market; or (ii) in neighboring states.

We have seen this exact situation in Massachusetts after a flavor ban was enacted there in 2020. The data show that the flavor ban has done little to alter consumer consumption behavior – other than to force Massachusetts consumers to purchase flavored tobacco products in other states.⁵ The Tax Foundation stated this upon analyzing the impact of the Massachusetts flavor ban:

The end result of the ban, in fact, is that Massachusetts is stuck with the societal costs associated with consumption, while the revenue from taxing flavored tobacco products is being raised in neighboring states. In fact, the flavor ban has been far from successful, as sales in both New Hampshire and Rhode Island experienced double-digit growth—almost making up for the entire decrease in Massachusetts.⁶

Further, enacting the Proposed Flavor Ban would do nothing but substantially decrease Maryland tax revenues. Maryland tobacco excise taxes were in excess of \$479 million dollars in fiscal year 2022.⁷ This figure does not also account for the corresponding sales tax revenue collected from the sales of these products. The Proposed Flavor Ban would eliminate a large amount of this revenue, and in the case of cigars potentially up to 47% of the market. In short, S.B. No. 259 is a solution in search of a problem.

³Park-Lee E, Ren C, Cooper M, Cornelius M, Jamal A, Cullen KA. Tobacco Product Use Among Middle and High School Students — United States, 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:1429–1435. DOI: <http://dx.doi.org/10.15585/mmwr.mm7145a1>; See Consilium Sciences, “Evaluation of Flavored Cigar Products as they Relate to Questions of Public Health – Supplement to October 2020 Report” (2022), Appendix Tables 1 and 3. (on file with author and available in CAA’s publicly filed comments to FDA’s Proposed Product Standard on Characterizing Flavors in Cigars).

⁴ Abigail Friedman, *A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California*, *JAMA Pediatrics* 175:8; 863-865 (2021).

⁵ Bosen, U. Massachusetts Flavored Tobacco Ban: No Impact on New England Sales. Tax Foundation (Feb. 3, 2022) <https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study/>

⁶ *Id.*

⁷ <https://www.marylandtaxes.gov/finances/revenue/detailview/default.aspx>





Thank you for the opportunity to present this testimony. For the foregoing reasons, the Cigar Association of America is OPPOSED to S.B. 259.

Respectfully Submitted,

A handwritten signature in blue ink that reads "David M. Ozgo". The signature is written in a cursive style.

David M. Ozgo
President
Cigar Association of America, Inc.



SB 259 Opposition.pdf

Uploaded by: Candice Gott

Position: UNF

Flavored e-cigarettes help adults quit smoking and are a harm reduction tool. Per data gathered by reputable sources, flavored e-cigarettes help adults quit and abstain from smoking combustible cigarettes. Moreover, flavors are not the reason teens are using e-cigarettes.

- Small business vape shops and big tobacco are not the same thing.
 - o We do not sell the same products.
 - o Flavor bans kills small business and only leaves corporate entities like big tobacco to survive.
- Small business vape shops help adults quit smoking.
 - o Flavors are an incentive to switch. In a study conducted by Penn State, “participants in our study indicated that they used e-cigarettes as a means to quit smoking or avoid relapse, and these flavors may be part of the reason why they end up using e-cigarettes in the long-term.” (Reference 1)
 - o A study from Public Health New England (PHE) shows that vaping is at least 95% less harmful than combustible cigarettes. Additional studies and research continue to support PHE’s study. (Reference 3)
- Nationally, between 2019 and 2021, teen vaping decreased by 63 percent.
 - o This comparison was made using the FDA’s National Youth Tobacco Survey
- The 2021 National Youth Tobacco Survey showed that of the teens that used e-cigarettes, only 13.4% cited using them because of flavors.
 - o 43.4% cited using them to self-medicate for being depressed or anxious.
- In 2018 a survey was conducted amongst highschoolers in Maryland. When asked about the “main reason” for using e-cigarettes only 3.2 percent responded “flavors.” Conversely, 13 percent reported because “friend/family used them,” 11.7 percent reported “other,” and 3.8 percent reported using e-cigarettes because they were less harmful than other tobacco products. (Reference 4)
- Places that have passed flavors bans and seen an increase in smoking combustible cigarettes. Yale School of Public Health conducted a study using San Francisco who passed a flavor ban in 2018. The study, published in JAMA pediatrics found that the flavor ban may have had the opposite effect. After the ban was implemented, high school students’ odds of smoking conventional cigarettes doubled in San Francisco’s school district relative to trends in districts within California without the ban. (Reference 2)
- Bans create illicit markets (feel free to check out craigslist in New York City). According to a study published by NIH’s Tobacco and Nicotine Research, “Banning vaping products may have unintended outcomes, such as increased demand for illegal products” (Reference 5)
 - o Prohibition has never worked (IE: Marijuana)
 - o “Do-it-yourself” e-juice is dangerous, and the materials are not hard to find.
 - o Maryland is not a large state. Importation of products from other states is certain.
 - o No tax revenue for the state of Maryland.

Please do not make the huge mistake of banning a product that helps adults quit smoking. Many will go back to cigarettes, seek these products out in a black market, or go across state lines to obtain them. This product is a new technology and should be viewed that way. Please stop pushing draconian prohibitions that DO NOT WORK and have never worked. The Maryland Vapor Alliance stands by ready to assist with recommendations on sensible regulations that address the actual problem.

References:

1. Penn State study:

<https://www.psu.edu/news/research/story/research-suggests-adults-not-just-teens-electronic-cigarette-flavors/#:~:text=The%20researchers%20studied%20changes%20in,and%20other%20sweet%20flavors%20increased.>

2. Yale School of Public Health Study- published in JAMA Pediatrics:

<https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248>

3. Public Health New England- expert review of the latest evidence concludes that e-cigarettes are around 95% safer than smoked tobacco and they can help smokers to quit

<https://www.gov.uk/government/publications/e-cigarettes-an-evidence-update>

4. Maryland Department of Public Health, "Maryland High School Survey Detail Tables – Weighted Data," 2018 Youth Risk Behavior Survey, 2018

<https://phpa.health.maryland.gov/ccdpc/Reports/Documents/2018%20YRBS%20YTS%20Reports/Maryland/2018MDH%20Detail%20Tables.pdf>.

5. The Illegal Experimental Tobacco Marketplace I: Effects of Vaping Product Bans

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8403238/>

6. The unchecked power of philanthropy: Bloomberg Philanthropies' crusade against vaping is doing more harm than good.

<https://medium.com/the-great-vape-debate/the-unchecked-power-of-philanthropy-e71e426b91b8>

CWilson-Letter to MD Senate Finance Committee.pdf

Uploaded by: Charles Wilson

Position: UNF

Charles P. Wilson

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Beltsville, MD 20705
(401) 465-9152
cpwilson22@verizon.net

February 16, 2023

In Opposition to Senate Bill # 0259

To the Distinguished Members of the Senate Finance Committee,

My name is Charles Wilson. I am a retired career law enforcement officer of more than 45 years' service, the immediate past Chairman of the National Association of Black Law Enforcement Officers, Inc. (NABLEO), a non-profit organization representing over 10,000 men and women of color working as criminal justice system practitioners, and a resident of the State of Maryland. I wish first to say thank you for allowing me to submit written testimony and the opportunity to speak to you regarding what must be considered as the unintended consequences of Senate Bill 0259.

While your efforts to address the dangers of smoking, reduce inequities in health care, and reduce tobacco-related disease and illnesses are commendable, this bill fails to consider the direct and consequential impact it will have on communities of color throughout the state.

It is estimated that there are nearly 18.6 million current smokers of menthol cigarettes, and of the total number of menthol smokers, 85% are African Americans. Consequently, your proposed legislation will specifically place African American smokers at risk of racially discriminatory government action and interventions, while leaving all other cigarette smokers to enjoy the product of their choice in complete safety and at peace. Research shows that there has not been a decline in Black youth preferring to smoke menthol cigarettes between 2011-2018. And there is no factual basis which tends to indicate that a ban of this type will stop or even reduce smoking.

As well, your proposed legislation mentions the direct impact of the Maryland criminal code not less than eight separate times. Invoking the criminal code means, with little exception, that law enforcement will be empowered to enforce the ban. This will undoubtedly result in increased opportunities for officers to detain and engage on the basis of simply attempting to determine if a person has proscribed or contraband materials in their possession, so as to determine the source, as it must readily be understood that there is no way to visually tell if a cigarette is mentholated or non-mentholated from a moving patrol car. The enforcement of this legislation

will, unfortunately, lead to encounters that are likely to be escalated to the unnecessary use of force, arrests, and possibly deadly force.

Prohibitions and flavor bans, including menthol, such as the one you consider, will not only lead to overcriminalization, but will result in growing an already robust illicit market and increase the influx of dangerous, unregulated substitutes which negatively impact public health. Illicit marketers and traffickers will not care about age restrictions.

History has shown that every effort to ban or proscribe certain products has been an initiative in failure. From the prohibitions on alcohol in the 1920's to the War on Drugs in the 1980's. No legislative action has stopped the use of or proliferation of its intended target. They have, instead, created underground, illicit markets that have themselves created more crime and social devastation in our communities.

It with these things in mind that I strongly urge you to reconsider the establishment of a prohibition of menthol related tobacco products which will only continue to widen the gap in the already strained relationships between police and those they must serve, particularly in communities of color. I believe that you will ultimately find that a focus on expanding anti-smoking education, and prevention and cessation resources for those who need it most will be infinitely more useful and productive.

Again, I thank you for your time and consideration.

Respectfully,

A handwritten signature in cursive script that reads "Charles P. Wilson". The signature is written in black ink and is positioned above the typed name.

Lieut. Charles P. Wilson (Ret.)

Immediate Past National Chairman

National Association of Black Law Enforcement Officers, Inc. (NABLEO)

NHCA statement - MD SB259.pdf

Uploaded by: Chris Hudgins

Position: UNF



Preserving Hookah Culture & Protecting Hookah Tradition across the USA

February 16, 2023

The National Hookah Community Association (NHCA) brings together, and serves as the voice of, hookah producers, distributors, sellers, lounge owners, consumers, and community members who support the preservation of hookah's cultural traditions. We are writing to request that as you consider SB 259, a ban on flavored tobacco products, you acknowledge the cultural significance of hookah to minority and immigrant populations as well as the lack of youth access to, and use of, the product. California took a historic step just last month by enacting a statewide ban on flavored tobacco products, which exempted hookah, for these reasons. NHCA has worked with California, and with many other state and local governments including Colorado, Columbus, OH, Denver, San Diego, San Jose, Los Angeles, and others, to include exemptions for hookah in recent flavor ban legislation.

Hookah is a small category in the tobacco space, making up only roughly 0.005% of nicotine product sales. However, hookah is an important cultural practice to many and one that has existed for centuries, originating in the Middle East and India. Today, a broad cross-section of immigrants in the U.S. from around the world enjoy hookah at home and in lounges as a centerpiece for cultural, business, and social gatherings. Hookah is widely used by Middle Eastern, Armenian, Turkish, East African, Indian, Persian, Indonesian, and other minority immigrant citizens. Hookah lounges across the country have come to serve as safe gathering places for many diverse ethnic and religious communities. Despite the importance of this social practice and tradition, NHCA members continue to find that many policymakers are often unfamiliar with hookah, its practice, and its community.

NHCA fully supports efforts to eliminate youth access and usage of tobacco products, including hookah. Hookah is unlikely to be used or consumed by youth for many reasons. Hookah water pipes are expensive, several feet tall, not easily concealed, and the setup for use is a lengthy process. Lounges that offer hookah are restricted to of-age customers, preventing teens from accessing the product. Recent research by the Centers for Disease Control and Prevention (CDC) found that just 1% of middle and high school students used hookah in the past 30 days, ten times less than the number of teens who vape.

Shisha, the product used in hookah, is a combination of tobacco and a sugar substance such as honey or molasses, and the total product is only comprised of approximately 15% tobacco. As has been the practice for hundreds of years, hookah is, by nature, a flavored product. Unfortunately, noble efforts to address the teen vaping epidemic by **banning flavored tobacco also would result in the ban of ALL hookah.**

A ban on hookah would not only eliminate this important cultural practice for many U.S. citizens, but could also shutter many small, independent, and minority owned businesses. Many of these businesses serve as community gathering places for immigrant populations in cities across the country. Many hookah users are part of religious or ethnic populations that already face discrimination. Eliminating this cultural practice would make many feel as though they are misunderstood and targeted as an outsider by lawmakers and regulators.

We ask that you do not target this important cultural practice and shutter minority and immigrant owned businesses. Please grant an exemption hookah for both retail and lounges from the scope of any flavored tobacco ban legislation.

National Hookah Community Association

SB259 unfavorable.pdf

Uploaded by: Debbie Robins

Position: UNF



NATIONAL CONVENIENCE DISTRIBUTORS



allenbrothers
PHILADELPHIA
120 W. Erie Avenue
Philadelphia, PA 19140
800.207.2553



ROCKVILLE
15710 Crabbs Branch Way
Rockville, MD 20855
301.212.9100



FARMINGDALE
21 Banfi Plaza N
Farmingdale, NY 11735
800.325.2512



CHICOPEE
705 Meadow St.
Chicopee, MA 01013
800.447.6537

www.thencd.com

Dear Chair Griffith and Members of the Senate Finance Committee,

My name is Lori Rodman, Vice President of Sales with Century Distributors. We are a full-line convenience store distributor servicing over 2,000 retail locations in the Baltimore/Washington Metro area, Maryland, Delaware, and Northern Virginia. I am here today to express our opposition to Senate Bill 259. This bill has a direct impact on our business and the retailers we service in the State of Maryland.

We carry over 5,000 products in our Maryland warehouse including frozen and refrigerated items, beverages, health and beauty products, as well as tobacco products. I will tell you that flavored tobacco accounts for more than 40% of all tobacco products we deliver to stores. The tax collected in Maryland for these products is millions of dollars in both cigarette and OPT. In fiscal 2021, cigarette tax revenues were projected to total **\$299.0 million***, and OTP tax revenues were projected to total **\$42.6 million***. In addition, the State of Maryland sales tax rate of 6% is imposed on the final retail price of cigarettes and OTP. It is a key contributor to a retailer's overall sales and bottom line. Now, there are people who will claim that retailers can make up those sales elsewhere. That's not true. Consumers are already spending less in their stores due to increased product costs and high fuel prices. Retailers cannot afford to lose any more sales and revenue due to a flavored tobacco ban, or they will eventually be put in a position where they must cut back on employees or even worse, close their doors.

If Maryland does proceed in banning flavored tobacco products, you should also expect cross border sales. Adults will seek out their preferred products even if that means crossing state lines into Pennsylvania, Virginia, Delaware and West Virginia where flavored products are legal. Century Distributors is actually 1 of 5 divisions for National Convenience Distributors, which services 12 states along the I-95 corridor. Because of that, I am in a unique position to share some of the data and phenomenon that took place when Massachusetts banned flavored tobacco a few years ago. Let's take menthol cigarettes as an example. When the Massachusetts ban took effect, the menthol cigarette volume in that state didn't just disappear. Instead, our sister division based in Massachusetts, J. Polep Distribution, saw that very volume shift to stores in either New Hampshire or Rhode Island, where the menthol purchases in those two states increased by 59% and 24% respectively.

I agree with your goal of protecting our youth and keeping adult-oriented products out of their hands. There has been some recent FDA-funded data that shows youth are 10x more likely to drink alcohol, but that certainly doesn't mean those products should be banned either. Prohibition hasn't worked in the past, and it is not the answer now. Please don't give Maryland residents a reason to go spend their money in another state on legal adult-oriented products. Instead, our state should direct resources to support and strengthen the retail community with their current age-verification efforts for all adult-restricted products as well as provide funding for the necessary enforcement needed to keep unregulated and counterfeit tobacco products out of our community and away from our youth.

On behalf of Century Distributors, we respectfully request an unfavorable report from this Committee on SB 259.

*

Maryland OTP & CIG Taxes paid in 2022 From Century Distributors

| OTP | Cig | Total taxes |
|--------------|---------------|---------------|
| 7,659,623.70 | 55,425,752.58 | 63,085,376.28 |

ATR MD SB 259 Testimony (1).pdf

Uploaded by: Dennis Hull

Position: UNF



February 14, 2023

To: Members of the Maryland Senate Finance Committee
From: Americans for Tax Reform

Dear Senator,

On behalf of Americans for Tax Reform (ATR), a non-profit organization which advocates in the interests of taxpayers and consumers throughout the United States, I urge you to reject SB 259, misguided legislation which seeks to restrict access to lifesaving reduced risk tobacco alternatives such as electronic cigarettes through banning flavors proven critical to the process of helping adults quit smoking. **The evidence clearly demonstrates that if enacted, this bill would have a disastrous impact upon not only businesses, but public health throughout Maryland, and lead to a clear increase in tobacco-related mortality.**

ATR further submits that in addition to the public health disaster that reducing access to reduced risk tobacco alternatives will unleash, these proposals would also have devastating consequences on businesses, when they can afford it least at this time of high inflation. It would kill countless jobs and would cost small business owners their livelihoods. SB 259's total economic cost would be devastating.

Studies have repeatedly shown that flavors in vapor products, which SB 259 would prohibit, are critical to helping adult smokers make the switch to vaping. Adults who use flavored vapor products are 43% more likely to quit smoking than an adult who uses unflavored products, according to a recent [study](#) from ten of the world's top experts in cancer prevention and public health.

Further, bans on flavored vaping products are shown to cause increased youth cigarette smoking. A [study](#) from Dr. Abigail Friedman at the Yale School of Public Health found that when San Francisco imposed a flavor ban in 2018, youth smoking doubled. Before San Francisco's flavor ban, the city had lower youth smoking rates than comparable counties like New York and Los Angeles. After the flavor ban, San Francisco's youth smoking rate rose to 6.2% while comparable districts had an average rate of 2.8%.

Contrary to the claims of anti-vaping advocates, flavors play no role in youth uptake of vaping. Academic studies have found that teenage non-smokers "willingness to try plain versus flavored varieties did not differ" and a mere 5% of vapers aged 14-23 reported it was flavors that drew them to e-cigarettes. National Youth Tobacco Survey results have shown [no increase in nicotine dependency](#) among youths since flavored products entered the market.

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Along with the flavor bans imposed on reduced risk tobacco alternatives, SB 259 extends flavor prohibition to menthol cigarettes and other conventional tobacco products. Like bans on flavors in reduced risk tobacco alternatives, these would also come with significant negative consequences for Maryland, with no evidence whatsoever that they have any effect in reducing smoking rates.

Additionally, real world evidence from Massachusetts demonstrates that such bans are counterproductive and come at significant cost. Since Massachusetts implemented a ban on all flavored tobacco products in the middle of 2020, cross-border purchases and the creation of a booming black market have more than made up for the decline in sales in the Commonwealth. In the first six months since the ban was enacted, Massachusetts retailers have sold 17.7 million fewer cigarette packets compared to the same six months in the prior year, while neighboring Rhode Island and New Hampshire have combined to sell 18.9 million more as Massachusetts residents stocked up across state lines. **This policy failure is costing Massachusetts more than \$10 million each [month](#) in excise tax revenue.**

While the states of Rhode Island and New Hampshire have been some of the biggest beneficiaries of Massachusetts' ban, criminal syndicates have also benefited. Contrary to popular belief that tobacco smuggling is a victimless crime consisting of someone purchasing a few extra cartons across state lines, in reality, most tobacco smuggling is run by multi-million dollar organized crime syndicates. These networks, who also engage in human trafficking & money laundering, have also been used to fund terrorist and the **US State Department has explicitly called tobacco smuggling a "[threat to national security](#)".**

Paradoxically these bans may therefore increase youth smoking in the state: By definition, criminals and smugglers are unlikely to obey laws and would not follow rigorous age-verification requirements mandated at reputable outlets.

Prohibitions on menthol-flavored cigarettes will disproportionately impact minority populations and communities of color. Banning menthol cigarettes will also significantly increase the policing of minority communities and lead to a rise in negative interactions between law enforcement and people of color. This proposal would ensure that every menthol cigarette in Maryland is untaxed, and therefore illegal, subjecting the possessor to search and arrest. **SB 259 prioritizes criminalization over harm reduction and public health.**

Civil liberty organizations such as the American Civil Liberties Union (ACLU), the Law Enforcement Action Partnership, and the Drug Policy Alliance are all [opposed](#) to bans on menthol and other flavored tobacco products for these same reasons. Further, law enforcement officials [overwhelmingly](#) oppose a menthol ban because it will spur smuggling, counterfeit cigarettes, and increase organized crime.

About E-Cigarettes and Vapor Products:

- Traditional combustible tobacco remains one of the leading preventable causes of death in Maryland. **The negative health effects of combustible tobacco come from the chemicals produced in the combustion process, not nicotine.** While highly addictive, nicotine is a relatively benign substance like caffeine and nicotine use “does not result in clinically significant short- or long-term harms”.
- Nicotine replacement therapies such as nicotine patches and gums have helped smokers quit for decades. In recent years, advancements in technology have created a more effective alternative: vapor products and e-cigarettes. These products deliver nicotine through water vapor, mimicking the habitual nature of smoking while removing the deadly carcinogens that exist in traditional cigarettes.
- The [CDC](#) has found that only 3.1% of youths use e-cigarettes daily, disproving the myth of an ongoing “youth vaping epidemic.”

Benefits of E-Cigarettes and Vapor Products:

- Vapor products have been [proven to be at least 95% safer](#) than combustible cigarettes. A comprehensive analysis of nicotine product harm estimates that e-cigarettes expose users to just 4% of the harm of combustible cigarettes.
- E-cigarettes are also more than [twice as effective](#) at helping smokers quit than traditional nicotine replacement therapies. According to one [study](#), someone who smokes and is attempting to quit with an e-cigarette has an estimated 323% higher chance of achieving complete cessation compared to someone using a traditional nicotine replacement therapy like nicotine-containing patches, gum, or mouth spray.
- Vaping has been endorsed by over 100 of the world’s leading [public health organizations](#) as safer than smoking and an effective way to help smokers quit.
- When e-cigarettes entered the market in 2003, the U.S. adult cigarette smoking rate was 21.6%. Due to increased access to vaping, the U.S. adult smoking [rate](#) has plummeted to 13.7% as of 2018.
- An [analysis](#) by Public Health England demonstrated just how effective vaping is in helping people quit smoking, noting that in just one year, over 50,000 British smokers, who would have continued smoking otherwise, quit smoking with vaping.
- A study from Value in Health Journal [found](#) that legislative actions banning flavored electronic cigarettes is directly correlated with increased traditional cigarette sales.

- A University of Glasgow study showed that e-cigarettes particularly [help disadvantaged](#) people quit smoking. SB 259 will have a tremendously negative impact on public health and would fail to decrease socioeconomic disparities by reducing adult access to products shown to improve public health.
- Large-scale [analysis](#) from Georgetown University Medical Center estimates that 6.6 million American lives can be saved if most cigarette smokers switched to vaping. This would save more than 130,000 lives in Maryland.

For the reasons outlined above, in the interests of improving public health, protecting the Maryland economy, and preventing the spread of smuggling cartels, we call upon you to **vote against SB 259**. Over one hundred thousand lives quite literally depend upon it.

Sincerely,

Dennis Hull
State Affairs Coordinator
Americans for Tax Reform

CCC Testimony - SB0259 Maryland Legislature.pdf

Uploaded by: Elizabeth Hicks

Position: UNF

Testimony on Maryland's SB0259 - "Business Regulation - Flavored Tobacco Products - Prohibition"

Dear Chairs and Members of the Finance Committee,

My name is Elizabeth Hicks, I'm the US Affairs Analyst at the global consumer advocacy group known as the Consumer Choice Center, and I want to thank this committee for their time.

Simply put, SB0259 will do more harm than good if passed. Enacting a flavor ban on vaping products will push adult consumers to switch back to smoking combustible tobacco. Sadly, 7,500 citizens of Maryland lose their lives to smoking-related illnesses every year. Considering that [studies have shown vaping to be 95% less harmful than smoking](#) and that adults who use flavored vaping products are [2.3 times more likely](#) to quit smoking cigarettes, ensuring that adult consumers have access to the vaping products they prefer will ultimately lead to fewer cigarette smoking-related deaths in Maryland.

Smoking-related illnesses are serious and can lead to cancer. After being around second-hand smoke most of my life, this past year I unfortunately received my own cancer diagnosis, undergoing 12 rounds of chemotherapy, 20 sessions of radiation, 9 cycles of immunotherapy and multiple surgeries - and I can assure you that I would not wish this on anyone. Embracing vaping as a harm reduction tool here in Maryland will help ensure that your citizens are less likely to end up in a situation similar to mine.

More than 3% of Maryland's adult population uses vaping products, accounting for over 200,000 citizens throughout your districts who have switched to a less risky alternative to combustible tobacco. Banning flavored vaping products will encourage these former smokers to switch back to smoking cigarettes, and will ultimately lead to increases in smoking-related healthcare costs, which are already costing Maryland's taxpayers over \$619 million annually through Medicaid expenses.

Furthermore, while this bill is intended to protect youth from tobacco use, [data from the Journal of the American Medicine Association](#) shows that when flavored vaping products are banned, combustible smoking rates **increase** for youth aged 18 and younger. This unintended consequence would only exacerbate the problem Maryland is trying to fix, making this particular bill unviable in achieving its desired outcomes.

Additionally, if a flavor ban is enacted in Maryland, then consumers will look towards the illicit market in order to get access to their preferred flavored vaping products. This presents serious concerns for public health in Maryland as vapers will be purchasing unregulated products that could be extremely dangerous to their wellbeing. Additionally, unlike vape shops, the illicit market does not abide by age restrictions therefore making it easier for youth to acquire these products illegally.



February 16, 2023

For perspective, Massachusetts enacted a ban on flavored vaping products in 2019 and the [results](#) have been less than desirable. Since the ban, there has been a massive influx of interstate smuggling of tobacco products which has resulted in a thriving illicit market, lost tax revenue for the state, and criminalization of adult consumers. Instead of copying Massachusetts' failed policies, I urge Maryland legislators to learn from them and do better for the consumers within your state.

I appreciate that this bill is certainly well-intentioned, but it's important to look at the evidence showing how misguided a flavor ban actually is. If this committee truly wishes to protect public health, small businesses, and consumer choice within Maryland then I strongly encourage you to reject this bill.

Thank you for your time and I'm happy to answer any questions you may have.

Elizabeth Hicks
US Affairs Analyst
Consumer Choice Center
elizabeth@consumerchoicecenter.org



SB 259 written.pdf

Uploaded by: Kirk McCauley

Position: UNF



WMDA/CAR Service Station and Automotive Repair Association

February 16, 2023

Chair: Melony Griffith
Members of Senate Finance Committee

RE: SB 259 Flavored Tobacco Products – Prohibition

Banning Flavored tobacco and electronic smoking devices will have unintended consequences on adult smokers, state taxes, tobacco retailers, and underage youth.

- Loss of business/profits to retailer not only of tobacco products but other store sales and motor fuel and associated taxes. Customers want convenience.
- Illegal street sales exist now, banning flavors which average over 50% of Maryland sales, will create more crime, and gang activity.
- Surrounding states will benefit just as they have in Massachusetts Flavor ban where ME, VT, NH, CT, and NY all picked up sales.
<https://taxfoundation.org/massachusetts-flavored-tobacco-ban/>
- Underage buying will increase with more illicit sales taking place. These outlets ask for no I.D. and very well could be selling other illicit products to underage buyers. Not good and extremely dangerous.
- Maryland collected a combined *\$473,453,096.00 from tobacco and other tobacco products. Maryland also collected 6% sales tax on total. With over 50% of Maryland sales either going to other states or into back ally outlets we are talking a massive hit in state revenue.
- In summary, Maryland retailers are the best controlling age restrictions, and collecting taxes that can be used for cessation education. Prohibition only empowers illicit markets, benefits surrounding states, while costing retailers and hundreds of million in state taxes, while accomplishing nothing.

*Alcohol and Tobacco Tax Annual report FY 2022
Please give SB 259 unfavorable report

WMDA/CAR is a trade association that has represented service stations, convenience stores and independent repair shops since 1937. Any questions can be addressed to Kirk McCauley, 301-775-0221 or kmccauley@wmda.net

PCA_OnePager_Public_Health_2019_02.pdf

Uploaded by: Matthew Bohle

Position: UNF

SETTING THE RECORD STRAIGHT: NIH & FDA DATA ON PREMIUM CIGAR USE AND PUBLIC HEALTH IMPACT



Data from recent government-funded and government-led studies definitively prove that premium cigars are a unique product category that are almost exclusively enjoyed by older adults infrequently.

WHY THIS MATTERS:

PCA used the FDA's comment period as an opportunity to remind the administration that even their own data does not support the regulation of premium cigars. These data points prove why regulating cigars is ineffective in accomplishing that goal.

.02%

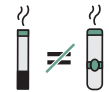
Only **.02%** reported smoking a premium cigar in the past 30 days



Over half (52%) of current premium cigar smokers (25 and older) have a **college degree**—compared to 32% across the US population



The average age of an individual's first premium cigar is **30 years old**—compared to 16.7 years old for cigarettes



There is **no meaningful correlation** between premium cigars and cigarette smoking



The average premium cigar consumer smokes **1.2 days out of every 30**—compared to 29.6 days out of 30 for cigarette smokers



97% of all premium cigar consumers do not smoke daily



No statistically significant increase in risk for smoking related diseases can be found between non-daily premium cigar smokers and non-smokers in general

THE STUDIES:

PATH Study: The Population Assessment of Tobacco and Health (PATH) study is a joint study by the FDA and the National Institutes of Health (NIH) that covers a multi-year cross section of youth and adult. PATH is one of the few government studies that effectively identified and analyzed data specific to premium cigars.

National Longitudinal Mortality (NLM) Study: An article published in the Journal of American Medicine (JAMA) analyzed the NLM study which tracked a population of 350,000 Americans for nearly 3 decades. The article, Association of Cigarette, Cigar, and Pipe Use with Mortality Risk in the US Population, examined the relationship between mortality, risk and use across a range of tobacco products over a population of over 350,00 individuals for nearly 3 decades.

Visit www.cigaraction.org to learn more.

Sb 259 amd - cigar retailers - flavor tobacco bill

Uploaded by: Matthew Bohle

Position: UNF

BY: Premium Cigar Retailers Association of Maryland

AMENDMENT TO SENATE BILL 259

(First Reading File Bill)

AMENDMENT NO. 1

On Page 2, after line 20 insert (3) “FLAVORED TOBACCO PRODUCT” DOES NOT INCLUDE PREMIUM CIGAR OR PIPE TOBACCO.”

AMENDMENT NO. 2

On Page 7, after line 22 insert (3) “FLAVORED TOBACCO PRODUCT” DOES NOT INCLUDE PREMIUM CIGAR OR PIPE TOBACCO.”

SB259.pdf

Uploaded by: Matthew Milby

Position: UNF

February 15, 2023 SB0259

Chair Griffith, Vice Chair Klausmeier I am here to testify against SB0259. My name is Matthew Milby and I am a small business owner in Carroll County. This bill would effectively ban all flavors in ENDS products and put me out of business. My business is the sole support of my family which include Myself, my wife and 3 children. I have 3 school age children ages of 13, 9 and 6 years old. My business is exclusively catered to adults using flavored ENDS products to switch from deadly cigarettes to a vapor product which has been proved by science to be at least 95% safer alternative to smoking. This research is readily available to view by the Royal College of physicians. This is the same body of physicians that told us back in 1962 that smoking of cigarettes was bad for us and caused disease and the United States did not listen then until about 10-15 years later when the first warnings were put on cigarette packs. Lets not repeat history we should be ashamed of. 480,000 people die every year from smoking cigarettes. Over in the UK vape shops are common in hospitals because they know that smoking kills!
<https://www.rcplondon.ac.uk/news/promote-e-cigarettes-widely-substitute-smoking-says-new-rcp-report>

We get a lot of information from the National Youth tobacco Survey and since 2020 when SB0259 was introduced and defeated youth use of ENDS products have dropped over 63%. This survey also concluded that a very small number of youth reported flavors and the reason they use. Most reported that they use ENDS products to help with anxiety and depression. I would rather see these kids get the help they need other than turning to the use of substance. National Youth tobacco survey can be found here. https://www.cdc.gov/tobacco/data_statistics/surveys/nyts/data/index.html

If flavors are banned vape shops will be put out of business and convenience stores, tobacco stores, gas stations, and other smoke shops who sell these products will survive. Why is that important? Its important because we need to look at violations, who is selling these products to minors in the State of Maryland? If you look at the reports most of the business mentioned above are the ones selling to minors. You will be hard pressed to find a pure vape shop on that list. There are hundreds and hundreds of violations. Don t take my word for it, please look and confirm. All the violations are readily available to view.

In closing I urge you to vote unfavorably on this bill. Stop small business owners from being put out of business, especially since our sole purpose is harm reduction for adults!

Thank you
Matthew Milby

SB 259 - Reason Foundation Testimony.pdf

Uploaded by: Michelle Minton

Position: UNF



Maryland

Senate Finance Committee

Testimony: SB 259 Flavored Tobacco Products – Prohibition

Michelle Minton, Senior Policy Analyst, Reason Foundation

February 16, 2023

Chairperson Griffith and members of the committee:

My name is Michelle Minton and I am a senior policy scholar at the Reason Foundation, a 501(c)(3) nonprofit, nonpartisan public policy research organization. As an expert in public policy, a Maryland resident, and former smoker, I am grateful for the opportunity to submit my testimony regarding the proposed prohibition on flavored tobacco products.

The aim of the proposed prohibition to reduce adult smoking and discourage youth initiation of any tobacco or nicotine product is a laudable one. However, based on science and historical evidence, we fear this proposal will not achieve its goal, but rather lead to greater health disparities and criminal justice inequities while radically increasing the size and danger of the illicit tobacco market.

There is no question that smoking is deadly, but guilt by association is a poor foundation for government policy. Lumping everything under the definition of “tobacco” doesn’t change the scientific fact that noncombustible sources of nicotine (such as patches, gums, e-cigarettes, and snus) are vastly less harmful than the combustible cigarettes that will continue to be freely available throughout our state. Treating products that pose less than five percent of the risk of smoking the same as deadly combustible cigarettes, which kill half their users, is simply bad health policy.

This proposal would prohibit the sale of any flavored tobacco product, including noncombustible, and therefore less harmful substitutes for cigarettes. This would include the flavored versions of products, like snus, on which many adults in Maryland rely to stay smoke-free and the availability of which the U.S. Food and Drug Administration (FDA) has deemed to be in the best interests of public health. If this proposal is enacted, Maryland would be outlawing, under criminal penalty, the sale of safer products that exist now or will exist in the future.

Youth

As with nearly all prohibitions, SB 259 is predicated mainly on the need to protect youth. While concern over youth experimentation with or use of nicotine-containing products is worthy of attention, lawmakers should recognize that most youth do not use any form of tobacco at all. Recent data from the Centers for Disease Control and Prevention (CDC) indicates that less than two percent of youth currently smoke and just over 14 percent use e-cigarettes.¹²

In 2021, the Maryland Youth Risk Behavior Survey found that just 11 percent of Maryland high schoolers reported the use of electronic cigarettes, with the highest prevalence among white students (15 percent compared to 5 percent among black students); a significant decline from 2018 when 23 percent of high school students in Maryland reported any past-month e-cigarette use.³

Outlawing legal sales of flavored e-cigarettes and other products is unlikely to make more progress for several reasons. First, the research continues to indicate that youth do not initiate vaping because of flavors. CDC surveys show the main reason youth cite for vaping as “curiosity,” followed by peer influence or family members.⁴ The results are similar for Maryland, with 39 percent of youth citing “curiosity” as their reason for using electronic cigarettes, followed by 19 percent who said they used them because a friend or family member does. Flavor availability was cited by just 9 percent of Maryland youth as the reason they use them.⁵

Second, most youth do not acquire the tobacco products they use from licensed retailers, but rather from friends, family, or illicit sources. For example, of the 23 percent of Maryland youth who indicated current e-cigarette use in 2018, nearly half said they got them by borrowing it from a friend.⁶

Given the current size of the illicit tobacco market and the massive increase we expect to occur in the wake of a menthol cigarette ban, the current proposal may unintentionally provide youth with *greater* access to flavored tobacco products through illicit dealers who typically do not verify the ages of their customers. Moreover, youth who do avail themselves of the illicit market may have greater access not just to tobacco, but other substances as well. For example, when the Department

¹ Royal College of Physicians, "Nicotine without smoke: tobacco harm reduction," April 28, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>.

² Park Lee E, Ren C, Cooper M, Cornelius M, Jamal A, Cullen KA. Tobacco Product Use Among Middle and High School Students – United States, 2022. *Morbidity and Mortality Weekly Report*, 2022; 71:45.

³ 2021 Maryland Youth Pandemic Behavior Survey (YPBS-21) <https://health.maryland.gov/phpa/ohpetup/Documents/2021%20Youth%20Pandemic%20Behavior%20Survey%20Detailed%20Report.pdf>.

⁴ 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

⁵ 2021 Maryland Youth Pandemic Behavior Survey (YPBS-21) <https://health.maryland.gov/phpa/ohpetup/Documents/2021%20Youth%20Pandemic%20Behavior%20Survey%20Detailed%20Report.pdf>.

⁶ 2018 Youth Risk Behavior Survey <https://health.maryland.gov/phpa/ccdpc/Reports/Documents/2018%20YRBS%20YTS%20Reports/Maryland/2018MDH%20Detail%20Tables.pdf>. World Health Organization, "Fact Sheet on Tobacco," May 24, 2022. <https://www.who.int/news-room/fact-sheets/detail/tobacco>.

of Justice arrested two brothers in Baltimore for conspiracy to traffic \$6.6 million worth of contraband cigarettes, they were also found to be dealing in illicit oxycodone.⁷

Illicit suppliers may also choose to make their own flavored tobacco products instead of buying them where they are legal and transporting them to Maryland. With regard to menthol cigarettes, this task would be exceedingly simple, requiring nothing more than a would-be trafficker to legally purchase unflavored cigarettes and add menthol-flavoring with flavor beads, eucalyptus oil, sprays and numerous other methods, the safety of which depend entirely on what is used as a flavoring agent. If this prohibition is enacted, Maryland lawmakers should probably be prepared for another outbreak of “vaping-related” lung injuries like we saw in the illicit market for cannabis oil vaping cartridges during the summer of 2019.⁸

Lastly, laudable as the desire to prevent youth tobacco use may be, research suggests that banning flavored tobacco products may result in the perverse outcome of increasing youth smoking. For example, Yale University’s Abigail Friedman found that after the city of San Francisco enacted its ban on all flavored tobacco products in 2018, youth in San Francisco were twice as likely to smoke compared to adolescents in similar jurisdictions without such bans.⁹

Illicit Sales

Supporters of this and similar prohibition proposals argue that outlawing products for which there is significant demand, particularly among Marylanders of color, will not lead to increased illicit tobacco trafficking nor cause increased interactions with law enforcement. But the experiences of other jurisdictions which have attempted similar bans, as well as Maryland’s own experience with drug prohibition, make such assertions hard to believe.

The harm or benefit of any prohibition largely depends on how those living under it respond. With regard to this proposal, some current users of flavored tobacco may respond by quitting tobacco use altogether, eliminating the risks to those individuals. However, according to the Food and Drug Administration’s own analysis of its proposed national menthol cigarette ban, around half will simply switch to equally non-menthol cigarettes, conferring zero health benefit.¹⁰ Moreover, the federal government estimated that roughly half of the public health benefits anticipated by outlawing combustible menthol cigarettes would come as a result of

⁷ Department of Justice “Brothers Plead Guilty To Conspiracy To Distribute Over \$6.6 Million In Contraband Cigarettes,” January 29, 2015. <https://www.justice.gov/usao-md/pr/brothers-plead-guilty-conspiracy-distribute-over-66-million-contraband-cigarettes>.

⁸ Centers for Disease Control and Prevention, “Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products,” February 25, 2020. https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.

⁹ Friedman AS. “A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California.” *JAMA Pediatr*. Published online May 24, 2021. doi:10.1001/jamapediatrics.2021.0922 <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248>

¹⁰ Federal Register, “Tobacco Product Standard for Menthol in Cigarettes: a proposed rule by the Food and Drug Administration,” May 4, 2022. <https://www.federalregister.gov/documents/2022/05/04/2022-08994/tobacco-product-standard-for-menthol-in-cigarettes>.

smokers switching to flavored non-combustible products, which Maryland's proposed prohibition would also outlaw.¹¹

In Maryland, menthol cigarettes account for about half of all cigarettes sold in the state.¹² Even without including all of the other flavored tobacco products, this represents a significantly-sized market which, if this proposal is enacted, would be pushed into the arms of the unlicensed tobacco dealers already operating in our state. Rather than encouraging healthier behaviors from Maryland residents, this could increase risks to their welfare, increase enforcement costs, and divert millions in tax revenue to other states and criminal operations.

Case Study: Massachusetts

Massachusetts implemented the country's first state-wide ban on flavored tobacco products in June 2020. My colleague Jacob Rich, a policy researcher for both Reason Foundation and the Center for Evidence-Based Care Research at the Cleveland Clinic, analyzed the ban's impact by comparing cigarette sales in Massachusetts before and after its implementation. His analysis of national cigarette sales data show that in the year following the prohibition, sales of menthol and non-menthol cigarettes declined in Massachusetts. However, sales in bordering counties increased, leading to a net overall increase in cigarette sales within the region of approximately 7.2 million packs.¹³ This indicates that the ban in Massachusetts merely diverted current menthol smokers to equally harmful non-menthol cigarettes and pushed sales of both menthol and non-menthol cigarettes to neighboring states.

The result was no decrease in overall tobacco use and \$125 million lost tobacco tax revenue for Massachusetts.¹⁴ In Maryland, tobacco trafficking is likely to be significantly worse than for Massachusetts given our residents' proximity and access to neighboring states which do not yet outlaw flavored tobacco.

Public Health

The FDA acknowledges a "continuum of risk" for the variety of tobacco and nicotine products currently on the market, with cigarettes being the most dangerous and noncombustible alternatives, such as snus, e-cigarettes, heated tobacco, and nicotine pouches, being least dangerous.¹⁵ The FDA has already authorized some of these products, deeming their availability to be in the best interest of public health, and allowed some to even be marketed as reduced-risk substitutes for smoking.

¹¹ Competitive Enterprise Institute comment on Tobacco Product Standard for Menthol in Cigarettes, June 30, 2022. <https://cei.org/wp-content/uploads/2022/06/CEI-Comments-on-FDA-Proposed-Menthol-Standard.pdf>.

¹² Nicole M Kuiper, Doris Gammon, Brett Loomis, et al., "Trends in Sales of Flavored and Menthol Tobacco Products in the United States during 2011–2015," *Nicotine and Tobacco Research*, No. 3 Issue 6 (2018). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5711620>.

¹³ Jacob Rich. "Estimates of Cross-Border Menthol Cigarette Sales Following the Comprehensive Tobacco Flavor Ban in Massachusetts." MedRxiv. April 27, 2022. <https://www.medrxiv.org/content/10.1101/2022.04.24.22274236v1>.

¹⁴ Ulrik Boesen. "Massachusetts Flavored Tobacco Ban: No Impact on New England Sales." Tax Foundation. February 3, 2022.

¹⁵ U.S. Food and Drug Administration. "FDA Authorizes Modified Risk Tobacco Products." May 2020

The proposal before this committee would unnecessarily strip adults in Maryland of access to these FDA-authorized and potentially life-saving alternatives, now and in the future.

According to a 2020 study by Yale School of Public Health researchers, e-cigarette flavors are positively associated with smoking cessation outcomes for adults but not associated with increased youth smoking.¹⁶ Moreover, the prestigious Cochrane Review concluded that e-cigarettes are more effective than traditional nicotine replacement therapies in helping smokers quit smoking cigarettes.¹⁷ Criminalizing the sale of flavored e-cigarettes in Maryland, which are overwhelmingly preferred by adult vapers, risks driving users of these alternatives back to smoking while also fueling illicit tobacco markets, causing net harm to our state's public health, social welfare, and economic well-being.

Nicotine is not risk-free and the interest in preventing youth uptake is understandable. We all want to see fewer people smoking and fewer youth experimenting with any tobacco. But the desire to protect adolescents from all risks, even those that are relatively small, does not justify at-any-cost measures like the one currently under consideration. Regulators must show regard for the needs of other populations, including youth once they reach adulthood, and consider the harm such laws may have on their welfare.

If Maryland's state and local authorities are competent enough to regulate flavored alcohol and soon-to-be-legalized flavored cannabis in ways which preserve adults' ability to purchase them safely and legally without encouraging youth use, they should be similarly capable of limiting the sale of flavored nicotine products to adults in Maryland, especially when they offer current and future smokers in the state a life-saving alternative to combustible cigarettes.

Thank you for your time and I am happy to answer any questions or provide additional analysis upon request.

Sincerely,

Michelle Minton, Senior Policy Analyst, Reason Foundation

Michelle.minton@reason.org

¹⁶ Abigail S. Friedman, PhD; SiQing Xu, BS. "Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation." *JAMA*. June 5, 2020. <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2766787>.

¹⁷ Cochrane Review. "Updated Cochrane Review shows electronic cigarettes can help people quit smoking." November 17, 2022. <https://www.cochrane.org/news/latest-cochrane-review-finds-high-certainty-evidence-nicotine-e-cigarettes-are-more-effective>.

Neill Franklin MD SB259 Flavored Tobacco Prohibiti

Uploaded by: Neill Franklin

Position: UNF



LAW ENFORCEMENT ACTION PARTNERSHIP

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Date: February 16th, 2023

Re: SB259 - Business Regulation - Flavored Tobacco Products - Prohibition

Position: **OPPOSE**

To: Maryland Senate – Finance Committee

Distinguished Senators of Maryland,

Thank you for the opportunity to submit written testimony. I am representing myself and the Law Enforcement Action Partnership (LEAP), of which I am the executive director. LEAP is a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience to endorse evidence-based public safety policies. Our mission is to make communities safer by focusing law enforcement resources on the most serious priorities, promoting alternatives to arrest and incarceration, addressing the root causes of crime, and healing police-community relations. My colleagues and I at LEAP oppose SB259 because it is an unscientific, reactionary policy that would have negative public safety outcomes.

I understand why you're considering this legislation. It comes from the same desire I had as a narcotics task force commander to stamp out the drug sales that were causing harm to my community. We are all on the side of public health and safety, but I can practically guarantee that SB259 would take us further from our shared goals.

Having spent 34 years working drug cases for the Maryland State Police and Baltimore Police Departments, I've learned that drug bans (prohibitions) endanger the health and safety of communities even more than drugs themselves.

Banning menthol is not going to make the demand for menthol products go away. We know this because illegal drugs are used by people in every community in every state across this country. What does that say about prohibition? It says that when there is a high demand, an illegal market will fill the void if a legal, regulated market does not. Rather than reduce or eliminate harmful activities, drug bans actually create crime that need police resources to enforce.

LawEnforcementActionPartnership.org

Formerly known as Law Enforcement Against Prohibition

It is a well-known fact that over 80 percent of African Americans who smoke prefer menthol cigarettes. There is no factual basis to assert that a menthol cigarette ban will stop African Americans from smoking. In fact, the unintended consequences of such a racially discriminatory ban will set the stage for more negative and counterproductive interactions between law enforcement and African Americans.

Many of us understand the urgent need for dramatic police reform. We understand that many police-citizen encounters “gone wrong” began with a mere traffic stop or street corner field interview. As such, many communities have already begun restricting the police from making minor traffic stops. If passed, SB259 would be counterproductive to the very police reforms we are working so hard to enact. A profitable illicit menthol cigarette market will be born, it will grow, it will promote violent competition among street crews and gangs, and the police will be summoned to manage it. It would give the police one more reason to target black and brown citizens.

Law enforcement leaders like Law Enforcement Action Partnership (LEAP), National Organization of Black Law Enforcement Executives (NOBLE), National Latino Officers Association (NLOA), Grand Council of Guardians, and National Association of Black Law Enforcement Officers (NABLEO) have stated countless times that a ban on menthol cigarettes will have unintended negative consequences, especially for African Americans.

Menthol bans are not neutral policies designed to reduce all types of smoking. If we truly believed that bans would stop smoking, we would outlaw all cigarettes. Instead, by going after menthol products, we only criminalize the selling of tobacco products favored by Black smokers, creating yet another reason for police to go into communities of color. We don't need another Eric Garner, who was stopped by police while selling loose cigarettes illegally and died in police custody and we certainly don't need another Freddie Gray.

Thank you for your time,



Major Neill Franklin (Ret.)

Formerly with the Maryland State Police and Baltimore Police Department

Tobacco ban - SB0259.pdf

Uploaded by: rakesh gandhi

Position: UNF

Dear Members of the Senate Finance Committee,

As a small business owner in the state of Maryland, I am incredibly frustrated to hear that you are proposing a ban on flavored tobacco. This proposal is reckless and has the potential to devastate small business owners and customers alike.

I take pride in offering a wide variety of goods and products, including tobacco products, to the customers in my community. People rely on my store just as much as I rely on their business to support my family.

Like most convenience store owners, tobacco products account for one-third of my inside sales. If you implement this flavor ban, you will be killing the majority of my tobacco sales. I cannot even imagine how this revenue hit would impact my store's ability to stay open.

The typical cycle of a customer in my store is as follows: a customer enters the store and asks, "Do you have Newport & Marlboro Menthol?" They then go to the ATM to draw money, buy soda and chips, come to the register, ask for some lottery tickets and tobacco products, and finally pay for gas before walking out happily.

Loss of business -ATM-Soda-Lottery-Tobacco-Gas

Any regulation that further attacks my sales will force me to take drastic action such as laying off employees, raising prices, and possibly closing my doors for good. This is not taking into consideration the 40-year high in inflation right now. You know as well as I do how hard things are today, with no sign of much relief on the horizon.

As a legislator, it is your job to support policies that grow our tax base without killing small businesses, jobs, and Maryland's safety net. For evidence, you do not have to look further than the cautionary tale of Massachusetts and soon-to-be California. The Bay State lost hundreds of millions of dollars in revenue, and worse yet, overall tobacco use hardly declined.

Your actions will only generate more tax revenue for states like Virginia, Delaware, West Virginia, or Pennsylvania. You may think this statement is bold, but the demand does not disappear if you ban flavored tobacco products. Instead, it transfers to other states, which is precisely what happened in Massachusetts.

I am scared that if you implement this ban, the same thing will happen to my store and other businesses here in Maryland. Please reconsider this reckless proposal and stand with Maryland small business owners, who have already undertaken a significant financial burden during this pandemic, and do not continue making Maryland a mockery of its already hostile business climate.

I am a responsible retailer, and I do my part to keep tobacco out of the hands of Maryland youth. Please do not punish me by limiting access to my store's most popular goods.

I urge you to stand with Maryland's small and local business owners and vote NO on this proposal.

Sincerely,
Rakesh Gandhi
Owner, Aashiwaad LLC

SB259_RobertMelvin_UNF

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Position: UNF



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Testimony from:

Robert Melvin, Senior Manager, State Government Affairs for the Northeast Region, R Street Institute

R Street Testimony in Opposition to Flavor Bans for Vapor Products and Smokeless Tobacco in Maryland

February 16, 2023

Maryland Senate Finance Committee

Chairwoman Griffith and members of the committee,

My name is Robert Melvin, and I am the senior manager of state government affairs for the Northeast region with the R Street Institute. The R Street Institute is a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including tobacco harm reduction. This is why SB 259 is of interest to us.

The R Street Institute has long been worried about the health effects of inhaling combustible cigarettes, and have been steadfast proponents for limiting the ability to purchase tobacco products to individuals at least 21 years of age. We have concerns that SB 259—which would prohibit the sale of flavored electronic nicotine delivery systems (ENDS), such as e-cigarettes and vapes—could undermine efforts to curb the smoking of combustible cigarettes.

To minimize the dangers of smoking effectively, we believe less risky alternatives should be accessible to the public as abstinence is not a viable harm reduction strategy. While nicotine-related products all carry some degree of risk, non-combustible products such as e-cigarettes, vapes, snus and chewing tobacco are significantly less hazardous than products like cigarettes.¹ This view is shared by public health agencies, including the National Academies of Science, Engineering, and Medicine; the U.S. Food and Drug Administration; Royal College of Physicians; and Public Health England.² This is because e-cigarettes and vapes do not burn tobacco, which release the 7,000 chemicals found in combustible cigarette smoke.³

An examination of e-cigarettes by the Royal College of Physicians led them to conclude that the “hazard to health from long term vapor inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco.”⁴ ENDS are a viable and safe alternative for individuals who are attempting to quit smoking.⁵ The world leader in tobacco control, the United Kingdom, endorses e-cigarettes as an effective and practical method that encourages the termination of smoking.⁶ Studies are showing ENDS are more productive at curtailing combustible tobacco use than other prevention tools—



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like the nicotine patch or gum—and are producing larger declines in smoking than previously.⁷ Adult smokers should not be restrained from accessing a wide variety of products that deliver nicotine while minimizing the harm brought by combustion.

The professed aim that is behind efforts to forbid the sale of flavored e-cigarettes is to inhibit the use by underage individuals; however, reports have found that youth use is not precipitated by flavor variety. According to the U.S. Centers for Disease Control and Prevention, 55 percent of minors who use e-cigarettes indicated curiosity was the primary motivator to try them, and about 22 percent stated that flavors were the reason.⁸

Adolescents are not the ones who would bear the burden of a ban on flavored e-cigarettes; instead, it would affect adult smokers who are attempting to cease their smoking habit. It is well documented that flavors are critical for motivating smokers to quit; one study of over 4,500 former and current smokers who used ENDS found that 48.5 percent of former smokers indicated that limitations on flavor options would increase their cravings for cigarettes.⁹ Another 39 percent of participants reported that banning flavors would have discouraged them from quitting smoking.¹⁰

Forbidding the sale of flavored e-cigarettes would foster the development of an illicit market that would be built around unregulated products that lack safety protocols for products currently available to the public.¹¹ We have seen this play out in Massachusetts. When the state adopted a flavor ban in June 2020, it resulted in cross-border trade with sales declining in Massachusetts, but increasing by equal measure in surrounding states.¹² A flavor ban in Maryland is likely to have a similar outcome.

Finally, the penalties imposed by the bill—punishments of up to \$1,000 in fines and 30 days incarcerated—would result in additional interactions with law enforcement. It is well documented that when an individual is detained it results in a greater propensity for that individual to engage in future criminal activity.¹³

The R Street Institute encourages you to consider all facts around this issue as you review SB 259. In Maryland, the rate of adults who ingest combustible cigarettes is 12.7 percent, and imposes a cost of \$2.7 billion and 7,500 lives annually.¹⁴ While we support efforts to reduce smoking, this bill subverts efforts to discourage cigarette consumption. Removing the important harm reduction tools offered by flavored e-cigarettes and smokeless tobacco will not only harm adult consumers of nicotine products while doing little to reduce the rates of youth use, it can also lead to the formation of an illicit market driven by cross-border sales, and reduced public safety. For these reasons, we strongly urge you to oppose SB 259.

Thank you,



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¹ Chris Proctor et al., "A Model Risk Continuum for Tobacco and Nicotine Products," Food and Drug Law Institute, last accessed Jan. 30, 2023. <https://www.fdi.org/2017/08/spotlight-tobacco-model-risk-continuum-tobacco-nicotine-products>.

² National Academies of Science, Engineering, and Medicine et al., "Public Health Consequences of E-Cigarettes," National Library of Medicine, Jan. 23, 2018. <https://pubmed.ncbi.nlm.nih.gov/29894118>; U.S. Food and Drug Administration, "FDA announces comprehensive regulatory plan to shift trajectory of tobacco-related disease, death," U.S. Department of Health and Human Services, July 27, 2017. <https://www.fda.gov/news-events/press-announcements/fda-announces-comprehensive-regulatory-plan-shift-trajectory-tobacco-related-disease-death>; Tobacco Advisory Group, "Nicotine without smoke: Tobacco harm reduction," Royal College of Physicians, April 28, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>; Health and Wellbeing Directorate, "E-cigarettes: a new foundation for evidence based policy and practice," Public Health England, August 2015. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/E-cigarettes_a_firm_foundation_for_evidence_based_policy_and_practice.pdf.

³ National Cancer Institute, "Harms of Cigarette Smoking and Health Benefits of Quitting," National Institutes of Health, Dec. 19, 2017. <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet>.

⁴ Tobacco Advisory Group. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>.

⁵ Centers for Disease Control and Prevention, "Smoking & Tobacco Use: About Electronic Cigarettes (E-Cigarettes)," U.S. Department of Health and Human Services, Nov. 10, 2022. https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html#e-cigarettes-less-harmful; Jamie Brown et al., "Real-world effectiveness of e-cigarettes when used to aid smoking cessation: a cross-sectional population study," *Addiction* 109:9 (September 2014), pp. 1531-1540. <https://onlinelibrary.wiley.com/doi/full/10.1111/add.12623>.

⁶ "Using e-cigarettes to stop smoking," National Health Service, Oct. 10, 2022. <https://www.nhs.uk/live-well/quit-smoking/using-e-cigarettes-to-stop-smoking>.



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⁷ J Hartmann-Boyce et al., “Can electronic cigarettes help people stop smoking, and do they have any unwanted effects when used for this purpose?,” *Cochrane*, Nov. 17, 2022.

https://www.cochrane.org/CD010216/TOBACCO_can-electronic-cigarettes-help-people-stop-smoking-and-do-they-have-any-unwanted-effects-when-used%20; Peter Hajek et al., “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy,” *The New England Journal of Medicine* 380 (Feb. 14, 2019), pp. 629-637.

<https://www.nejm.org/doi/full/10.1056/nejmoa1808779>.

⁸ Teresa W. Wang et al., “Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019,” *Surveillance Summaries* 68: 12 (Dec. 6, 2019), pp. 1-22.

<https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm>.

⁹ Konstantinos E. Farsalinos et al., “Impact of Flavour Variability on Electronic Cigarette Use Experience: An Internet Survey,” *International Journal of Environmental Research and Public Health* 10:12 (Dec. 17, 2013), pp. 7272-7282.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166>.

¹⁰ Farsalinos et al. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166>.

¹¹ Peter Reuter, “Can tobacco control endgame analysis learn anything from the US experience with illegal drugs?,” *Tobacco Control* 22 (May 2013), pp. i49-i51. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632990>.

¹² Ulrik Boesen, “Massachusetts Flavored Tobacco Ban: No Impact on New England Sales,” Tax Foundation, Feb. 3, 2022. <https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study>.

¹³ Paul Heaton et al., “The Downstream Consequences of Misdemeanor Pretrial Detention,” *Stanford Law Review* 69 (2017), p. 711. <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>.

¹⁴ Centers for Disease Control and Prevention, “Extinguishing the Tobacco Epidemic in Maryland,” U.S. Department of Health and Human Services, Oct. 13, 2022. <https://www.cdc.gov/tobacco/stateandcommunity/state-fact-sheets/maryland/index.html>.

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Position: UNF

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Written Testimony

To: Maryland Senate Finance Committee
From: Ronald A. Ward Jr., Esq.
Date: February 16, 2023
Re: Maryland Senate Bill 259

I. Introduction

My name is Ronald Ward and I am a life-long resident of Maryland. I have been a vaper for over 10 years, a smoke free alternatives activist for over a decade and have owned and operated an electronic cigarette shop in Baltimore County, MD for more than 9 years.

Senate Bill 259, as written, shows a lack of knowledge of the products it intends to regulate, namely Electronic Smoking Devices (hereinafter "ESDs") and contains a highly subjective, overly broad definition of "Flavored Tobacco Product". Most importantly, it attaches criminal penalties to an extremely vague and subjective definition. Also, SB 259 is an emergency bill that would leave thousands of Maryland businesses under the weight of crippling amounts of unsellable inventory and would leave them with virtually no inventory that would be legal to sell. Additionally, this regulation is an inappropriate and unfeasible approach to flavored tobacco products, particularly vaping products. For these reasons, SB 259 will enact a vague product standard that will complicate compliance for retailers and will be inevitably ripe for unfair enforcement standards. As a possibly unintended consequence of its language, it will only allow for unflavored ESD liquid which will destroy the grassroots, mom and pop vaping industry in Maryland. SB 259 will also force former smokers back to the big tobacco companies or the black market.

I respectfully urge this Committee to issue an unfavorable report for Senate Bill 259, or, in the alternative, create an exemption for licensed retailers or, more narrowly, an exemption for ESD liquids as they are currently active in the Food and Drug Administration's Pre-Market Tobacco Application (hereinafter "PMTA") process and have and are currently expending vast amounts of time and money researching, testing and applying for approval of their various flavored ESD liquids.

II. Proposed Legislation

Proponents of this Bill have been attempting to advance this extremely flawed legislation in 2020 and in 2021, without any noticeable edits in needed to possibly create a reasonable piece of legislation. There are sections of this bill that would allow for prohibited activity because its language is dated, unedited and misinformed. Nonetheless, it is my opinion that no edit would make SB 259 an acceptable piece of legislation.

It should be noted that, for over a decade, our industry has been under attack at the federal and state level and falsely blamed for people dying from using nicotine vapor products. Opponents of ESDs have even made the ridiculous claim, despite strong scientific evidence to the contrary (will provide additional information upon request), that ESDs are as harmful as smoking tobacco. Due to this misinformation campaign, the sales of our family business have significantly declined while we struggle to help former smokers and survive this COVID pandemic and crippling recession. We must also charge our customers a sales and use tax at the rate of 12%.

Different people have different senses of taste and smell. The smell of the liquid itself, the flavor of the vapor and the exhaled vapor most definitely smell like different things to different people. I have not vaped a single tobacco flavor with an exhaled aroma of tobacco. Unlike tobacco smoke, the taste and smell of vaped flavors are not obvious.

The definition of “Flavored Tobacco Product,” on Page 2, lines 13 to 20, and elsewhere in the bill, would, by its language, constitute a prohibition of ALL flavored ESD liquid, including tobacco flavors. More importantly, the definition is highly vague in that it is defined as “a taste or smell, other than that of tobacco, that is distinguishable by an ordinary consumer either before or during the consumption process”. This definition is repeated multiple times in SB 259 without a definition of the senses of taste and smell of the “ordinary consumer” or a definition of the “ordinary consumer”. Most egregiously, on page 13, lines 19-21, SB 259 imposes criminal penalties against anyone who sells any flavored tobacco product with each day constituting a separate offense.

The Bill goes even further on page 18, line 16 to page 19, line 2 where it creates the presumption that a tobacco product is flavored based simply upon a public statement that the flavor produces a taste or smell other than tobacco. Cigarettes contain flavors other than tobacco without publicly disclosing the fact, whereas, U.S. ESD liquid companies have always been transparent and detailed with the descriptions of their products. Note that no ESD liquid product currently on the market can claim a one-to-one flavor or aromatic experience with combustible tobacco. Much like cigarettes, ALL tobacco flavored ESD liquids have other flavors (including mint and menthol) added to the harsh and unpalatable untreated “tobacco leaf” flavor. Senate Bill 259 would prohibit ALL flavored ESD liquids, including tobacco-based flavors. The language of this bill would leave only completely unflavored ESD liquid on the market in Maryland.

Additionally, The Food and Drug Administration (FDA) is already taking action on this matter. Rather than claim this regulatory authority, the legislature would better serve Maryland citizens by deferring to the more deliberative FDA in this matter. As stated previously, American companies producing ESD liquids are currently active in the Food and Drug Administration's PMTA process and have and are currently expending vast amounts of time and money seeking approval for their ESD liquids by the FDA. I can provide additional information on this issue upon request as it is quite relevant.

III. Importance of legitimate access to flavors for adult ESD users

ESD products do not rely on combustion of leaf tobacco to work. Instead, a liquid solution is aerosolized by a heating element which makes the flavor experience, in both liquid and vapor form, remarkably different from that of the taste and smell of combustible tobacco products (before and after the actual burning of the product). This allows many adults to transition away from the deadly habit of smoking tobacco. ESD vapor does not even leave a lingering smell like that of smoke.

If all flavors were prohibited in the State of Maryland, the consequences could be severe to the health of these former adult smokers. Also, many people who vape report that tobacco flavored ESD liquids can act as a relapse trigger and, therefore, wish to vape flavors other than tobacco, including fruits and menthol. Flavors are the reason why ESD liquids work to help adult smokers switch from smoking traditional cigarettes. Most vapers find tobacco flavors unappealing and find unflavored liquid unacceptable. Specialized Vape Shops like my business rely heavily on the sale of flavored ESD liquid and, if Maryland consumers are unable to purchase flavored ESD liquid from reputable, licensed retail establishments, they will inevitably turn to the black market or attempt to manufacture their own liquid by buying the components online or elsewhere. E-liquid is not extremely complicated and black-market players and/or untrained and uneducated consumers could easily obtain the component parts, including flavorings, to illegally manufacture flavored e-liquid without an effective State law enforcement component. Of course, all our neighboring states would allow flavored ESD liquid. Even worse, many smokers will revert to smoking tobacco. This would only worsen the situation in that it would allow for more youth access, youth smoking and will create ESD liquid safety concerns.

Plus, as an emergency bill, it would give retailers no time to adjust and many would lose significant inventory and money. Furthermore, it is against the interest of public health to make these products inaccessible to former adult smokers in order to possibly make them less appealing to children. No legislation will keep children from mimicking forbidden adult behaviors regardless of flavor.

But, if this committee intends to move forward with a favorable report for Senate Bill 259, I urge you to amend the bill to include an exemption for adult-only specialty tobacco and vapor retailers. Vape shops, such as mine, act as the true "gatekeepers" against youth use. The proof is in the numbers. According to the FDA Compliance Check Inspection of Tobacco

Product Retailers (through November 30, 2019), out of 222 violations, not a single vape shop was cited for selling vapor products to underage consumers. Vape shops only sell ESD products and provide expert instruction and technical support to adults over the age of 21 who are transitioning from cigarettes. Due to these facts, vape shop owners take youth usage very seriously and are acting as a vital part of the solution. We must also consider that the Tobacco 21 laws have been effective which make these drastic measures, that basically constitute prohibition, highly unnecessary. If SB 259 becomes law, it will actually allow for more youth usage of potentially dangerous products in an unregulated black market with little to no State enforcement of the law. We must also look at this issue as compared to the recent legalization of marijuana in Maryland. I never thought that I would see the day when Maryland legalized marijuana the same year that they banned flavored nicotine delivered in a safer manner than smoking.

It is also relevant that this Committee has contemplated banning the indoor use of ESDs since 2010 and has declined to issue any favorable reports. Now, in the current climate, this Committee is contemplating whether to destroy the entire ESD small business community in Maryland. That is quite a leap. We are, also, like most other small businesses, seriously struggling during these unprecedented times.

V. Conclusion

I recommend that the Senate Finance Committee issue an unfavorable report for Senate Bill 259. Thank you for considering my comments and please contact me with any questions or concerns. I will contact your staff to bring your attention to my written testimony and express my desire to discuss this issue.

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Position: UNF



SB259 Business Regulation - Flavored Tobacco Products - Prohibition
Senate Finance Committee
February 16, 2023

Position: Oppose

Background: SB259 would ban the sale of all flavored tobacco products in Maryland.

Comments: The Maryland Retailers Association (MRA) opposes the outright prohibition of the sale of flavored tobacco products. We advocate for a regulated market that allows consenting adults to have access to known, regulated, and legal tobacco products, and the enforcement of current counterfeit laws to cease the sale of illegal items. History has proven that the prohibition of undesired materials drives those items to an unregulated underground market. A lack of regulation and enforcement results in dangerous products, like the counterfeit vaping pods that caused mysterious lung illnesses in over 1,000 Americans in recent years.

This legislature took aggressive steps to curb youth sales in 2019, raising the legal age for buying tobacco products in Maryland to 21. The increased age for the purchase of tobacco products serves as an effective barrier against the sale of any such products to minors. In fact, many small businesses that focus on tobacco sales check ID upon entry in order to ensure that minors are not accessing these products while underage.

Restricting or prohibiting the sale of products is often well-intentioned and seems like the simplest solution to curb tobacco use: ban or make it difficult for tobacco customers to buy their products, and they'll stop using them. We know from cases around the country where governments pass flavored tobacco bans that this is not the case. Customers who cannot purchase these products in Maryland will go to another state to buy the product they are looking for. Users who face a barrier to travel will simply get their products online or illegally from the black market.

The CDC reports that states use a very small amount of money received from tobacco taxes and lawsuits to prevent and control tobacco use. Not only will a ban on flavored tobacco products decimate small businesses, but it will likely have no impact on youth vaping or smoking, one of the reasons the authors of such proposals often cite as the reason to ban products. Ultimately what has been shown to stop smoking and prevent minors from starting is education and preventing marketing to minors. We would urge the State to use the millions of dollars from taxes it collects from tobacco products and money from lawsuits against cigarette companies to prevent smoking and help smokers quit.

Thank you for your consideration, and we urge an unfavorable report on SB259.

MVA SB259 Final.pdf

Uploaded by: Tyler Bennett

Position: UNF

Melissa Hendrix

114 Tennessee Road

Stevensville, MD 2166

Vape Loft

167 Mitchells Chance Rd

Edgewater, MD 21037

SB259 Business Regulation - Flavored Tobacco Products – Prohibition - OPPOSED

Hello, my name is Melissa Hendrix and own the Vape Loft in Edgewater, MD. I quit cigarettes in 2013 with the help of vape. At first it was not easy I was back and forth however I stuck with it and no longer smoke cigarettes. I am on my way off the vape because I can drop my nicotine down to nothing. I just had a checkup with my doctor who said my lungs sound great along with my heart. Changing over to vape has also changed my way of living to a healthier option from eating and exercising. I would not have been able to quit smoking cigarettes if I didn't have the vape that offered vanilla flavored options.

Banning flavored vapes does nothing but hurt small businesses in the state of Maryland and keeps tobacco and menthol flavored prefilled high nicotine vapes available in convenience retail locations which have been known to sell to underage kids. Kids or teens do not care what the flavor is inside of the vape all they care about is the little head high that is provided. Banning flavored vape is not a good option as it just opens a black-market of vape products. People will begin to make their own flavored liquid for their vapes while others will just go back to combustible cigarettes. Also, Maryland is not a big state, banning flavored vapes will push people to travel outside of the state to purchase vapes as it is already happening because of the 60% tax increase on vape liquid 5mLs or less.

If this bill is imposed it would shut my shop down and I would have to let go 5 employees. However, the gas station on the corner from my shop will still be able to operate and sell flavored vapes because tobacco, menthol, mint are all different flavors we must add to the liquid (to make it that flavor) legally because for some reason we think this will discourage kids or teens from using them. Anybody can walk into those retail locations without parental supervision to purchase whatever they want especially if they know someone. If someone walks into my store and looks 40 and under I and the rest of my staff cards them. Customers are sometimes confused that I am carding them because of how rarely they get carded for alcohol.

Adults like flavors regardless of what you all may believe; however, teens are just looking to alter their brain chemistry, no matter what it tastes like. Maryland has increased the age to vape to 21 years of age in 2019 and we have seen a drop in teen use of vape products. Banning flavored vapes again only hurts small businesses and adults that use those products. As we sit here today trying to ban flavored vapes, we are also developing legislation to legalize cannabis so clearly banning stuff did not work.

Elmer Bailey
The Vapor Emporium
11717 Old National Pike, #3B
New Market, MD 21774

SB259 Business Regulation - Flavored Tobacco Products – Prohibition - OPPOSED

Hello and thank you for the opportunity to speak on SB259 and voice my concerns and opposition. My name is Elmer Bailey, owner of the The Vapor Emporium in New Market Maryland, current member of the Maryland Vapor Alliance. We will be marking our 10 year anniversary this month in helping thousands of Maryland citizens transition and quit combustible cancer causing tobacco.

During this time, we have worked with our esteemed legislators and the state in crafting responsible rules and regulations concerning ENDS products. To be clear, our singular and sole mission has and will always been to provide the adult citizens of Maryland the best and safest products available, and the expertise to help them quit smoking, and lead healthier lifestyles without cancer causing combustible tobacco

We supported the state's efforts, ahead of the federal government, to increase the age requirement for the purchase of tobacco to 21. We had a seat at the table with the State Comptroller's Office to again, help craft responsible rules and regulations for the state and address underage use. We have a proven track record of compliance and assistance to the state in keeping these products out of the hands of youth. Additionally, we support state and local efforts to increase the penalties for selling to underage youth.

We have worked hard to not only decrease cigarette smoking rates in the state, but to also provide safe products and expertise to our customers, the citizens of Maryland. We have provided jobs and generated income to the state, as well as the added benefit of decreasing combustible cancer causing tobacco in our state. We were the leaders in creating responsible and cohesive licensing requirements in the state concerning ENDS products. We worked with the state to create responsible taxation policies.

We believe this bill will take the state's progress and hard work backward and undo the hard work done by the state and our industry. The facts and past record of our member shops and legislators have made our state a leader in responsible legislation and regulation. This bill risks the creation of dangerous black markets, loss of businesses, jobs, revenue to the state, and most certainly will serve to increase smoking rates.

We respectfully ask for an unfavorable report on SB259.

Ashley Kessler
COO
TV Vapor, Baltimore and Harford Counties

SB259 Business Regulation - Flavored Tobacco Products – Prohibition - OPPOSED

To Whom it May concern,

My name is Ashley Kessler and I am the Chief Operating Officer at TV Vapor. We have been open since mid-2015 and have grown to three retail locations across Maryland. I have personally watched, got to know and helped thousands of adults switch from combustible tobacco to vaping. The flavor ban proposed would be a detriment to not only those adults, but to the countless others who still use combustible tobacco products.

An absolute ban on flavors would destroy our business and the ripple effect would be far reaching. We employ close to 40 adults aged between 21 and 50 year old that work to support their families, their children and themselves. Forty adults, from my business alone, would be left without a job and forced to find other work. Forcing people to find alternative employment during a recession is a ripple effect of this ban that needs to be considered as well.

In addition to the personal choices of adults being controlled, the individual financial strain, it is also important to note the economic factor at play. We pay taxes. For the fiscal year of 2022, we paid close to \$500,000.00 in sales tax and tobacco tax alone. A complete flavor ban would reduce this to zero. To ignore the impact of destroying an entire industry and erasing millions of tax dollars is reckless and ignorant.

Banning flavors does not eliminate access or the creation of these products. Just look at what happened in late 2019 and early 2020. Black market and illicit products caused a wave of people to endure hospitalization and long term lung damage. It creates an even larger problem due to a lack of oversight and regulation.

Our industry has been scrutinized for years for a problem that there are very clear solutions to. Banning flavors is not the answer. We have passed every sting operation and with pride and continue to promote the only important narrative that vaping is for adults who are looking for an alternative way to reduce their amount of nicotine intake. Brick and mortar vape shops are not your problem, flavored e-liquid is not the problem.

We are not on separate sides of the bigger issue. We believe that our products and our industry is for adults and adults alone and are confident that a total flavor ban would only create more problems with far greater repercussions.

Thank you for your time,
Ashley Kessler

Aaron Mee

TV Vapor

SB259 Business Regulation - Flavored Tobacco Products – Prohibition - OPPOSED

My name is Aaron Mee and I have been working at TV Vapor for 3 years. This job has helped me tremendously and continues to help me currently. I have been able to help so many people quit smoking and continue to help people every day. There are so many people out there who want to quit, but nothing that they have tried worked for them until they tried vaping. Vaping offers a cleaner and less harmful consumption of nicotine that can help soothe the cravings of cigarettes and help kick the habit completely.

Flavored juice is one of the main reasons that people quit smoking. Tobacco flavored juice is not appealing to those people trying to get away from cigarettes because they are just getting the same flavor that they are trying to get rid of. It just gives them the tobacco taste which can unfortunately lead them back to smoking. Different flavors appeal to different people and having a variety of different things to try allows for vaping to help more and more people. Just like food, everyone has their own taste and certain flavors don't work for certain people, so having a variety of different options allows for us to cater to as many people as possible.

If the industry were to have a flavor ban, it would cause almost every vape shop to shut down, and force tons to lose their jobs. This job is my primary source of income and finding a decent paying job right now is hard and with the amount of people that would be unemployed by this, it would make things even harder. I have coworkers that range from 21-50 and all of us are in the same boat. We all need this job to help pay for our bills and to have our business abruptly end with a flavor ban would put all of us in a tremendously bad spot.

Please consider the people that are helped by vaping and the employees that work so hard to help as many people as they can when considering this flavor ban. It would hurt a large amount of people who have no other way quit smoking as well as cause a lot of people to lose their jobs. All this industry wants to do is help people quit smoking and enforcing a flavor ban would be detrimental to that goal.

Rich Wesley

Owner, Wesley's Vape Shop, Cecil and Harford Counties

SB259 Business Regulation - Flavored Tobacco Products – Prohibition - OPPOSED

My name is Rich Wesley and I own 3 vape shops in the state of Maryland. Two in Cecil County and one in Harford County. I was a combustible cigarette smoker for 25 years and had always wanted to quit smoking but just couldn't find the right alternative. I used every method available including all over the counters FDA approved methods and was not able to kick the habit. A friend of mine introduced me to vaping, as they had used this method to quit, and I was able to quit combustible cigarettes. Before I started vaping as a method to quit cigarettes, I did extensive research into this method. I found multiple reports that it was a much better way to get my nicotine and that it was found to be 95% safer by multiple global institutions. So, I made the decision to start vaping. From day one I never picked up another combustible cigarette. After a week of vaping I felt 100% better. My taste came back, I was able to breath better, and I personally smelled better. As I continued to use this method to stay off cigarettes my health continued to improve. After a month I was able to do all my normal activities without losing my breath and I was back to a normal sleep routine. Plus, the greatest thing was I started out at a high nicotine percentage, and was able to continually reduce my nicotine percent. What also made the transition possible was the flavor options. If it was not for the availability of flavors I would not have been able to continue vaping and would of definitely returned to combustible cigarettes. Just having tobacco flavors available would of definitely sent me back to cigarettes. Artificial tobacco flavors do not taste like tobacco, and is why most adults prefer other flavors. Since vaping worked so well for me that is why I started my own vape shop. I wanted to give this opportunity to everyone that was a current cigarette smoker. It was such a great thing that it needed to be available to everyone.

Now, my concerns about a flavor ban. If a flavor ban was to happen people would not continue to use this life saving

method to quit deadly combustible cigarettes. What I see with my customers in my shops is when a customer comes in for the first time to purchase a vape to quit smoking cigarettes, they want to start with a tobacco flavor. They do this because it is what they are accustomed to. But what I always see is on their second visit they want to switch to a different flavor. Tobacco reminds them to much of smoking cigarettes and in order to stay away from cigarettes, they would like to get away from tobacco flavors. They claim that if they continue with tobacco flavors they are going to go back to combustible cigarettes. Right now, tobacco flavors only account for 2% of my e-liquid sales, while 100% of my customers are adults.

In conclusion if flavors were to be removed people would go back to smoking combustible cigarettes. We already have 480,000 American in this country that dies each year from smoking and smoking related illnesses. And without flavors that number will continue to increase. I can wholeheartedly say that vaping has saved my life and I 100% contribute that to the available of flavored e-liquid.

In my businesses I employ 15 people who basically work full time. I provide health insurance and a 401k retirement plan. If a flavor ban was to go into place my sales would drop off so significant that I would have to layoff a minimum of 11 employees and close two shops. Plus the state of Maryland would lose on my tax revenue as I currently contribute about \$10,000 +/- in tax revenue monthly alone. Not to mention all the other taxes we are paying.

So I am asking that a flavor ban not be put into place for the reasons mentioned above. Along with the fact that we are a 21 and over shop. We use scanning devices to prove their age so there are no sales to minors. And on that note, to close this out, there has not been one vape shop in Maryland that has had a violation for selling to minors.

Thank you for listening,

Rich Wesley

Wesley's Vape Shop

Kyle Vega

11519 Lipscomb Way

White Marsh, MD 21162

SB259 Business Regulation - Flavored Tobacco Products – Prohibition - OPPOSED

Good Afternoon members of the committee,

My name is Kyle Vega. I am a 33-year-old small business owner in Maryland, with two vape stores. My stores have been open for almost ten years, and before opening, I was smoking combustible cigarettes, starting at the age of 16. I tried everything to quit smoking, patches, gum, pills, etc. nothing worked. It wasn't until I discovered vaping, and more importantly, flavored e-liquid that I was able to give up combustible cigarettes.

This bill, as written, will surely close my three stores. 90% + of my e-liquid sales are flavored e-liquid. The average age of the customers that visit my stores is 38 years old. Grown adults are vaping flavors, and that is what they prefer. Closing my doors would mean my employees, who count on me, will be out of a job, with no income and bills still needing to be paid. I will be liable for the remaining lease balances for my two locations, on top of losing my own financial income.

If this bill stays as written, it will cause 1 of 3 things to happen, if not all at once.

1. The responsible business owners (vape stores) will be forced to close their doors.
2. A black market will emerge as consumers search for flavored e-liquid.
3. Many will go back to smoking combustible cigarettes, the top preventable cause of death in the U.S.

In closing, I would like you to know what the members of the Maryland Vaper Alliance, the stores we represent, and myself stand for. We are ex-smokers, who started small businesses in or near the same areas we grew up in, with a passion for helping others find a healthier alternative to combustible cigarettes. We care about our customers because we have been in their position before. We want to help current combustible cigarette smokers live long enough to see their children, grandchildren, nieces, nephews, etc. grow by moving them away from combustible cigarettes. Please do not take away the rights of grown adults to have the products they want.

Thank you for your time.

MD SB 259_NEWA_Testimony_2.15.2023.pdf

Uploaded by: Vincent J Mayor

Position: UNF



Dear Chair Griffith and Members of the Senate Finance Committee,

My name is VJ Mayor, CAE, and I am the executive director for the Northeast Wholesalers Association, NEWA. I am here today to voice our association's opposition to SB 259. NEWA encompasses states throughout the northeast and is designed to amplify our collective voice on issues concerning our businesses.

SB 259 is bad for business and promises results it cannot achieve. To illustrate this, I will give you two examples. Massachusetts was the first state in the union to pass a flavored tobacco ban. Today, the results are horrendous. After the Massachusetts ban went into effect tax stamp sales in New Hampshire jumped from 108.8 million in 2020 to 123.1 million in 2021. This difference netted New Hampshire an additional \$25.5 million in excise revenue from cigarettes alone. This jump happened at the same time smoking rates in New Hampshire dropped by 1.6%. There is no logical answer besides cross border sales to explain these anomalies. They also prove the Massachusetts experiment failed.

Further, we see a similar story in New Jersey. In 2020 New Jersey Governor Phil Murphy enacted SB3265 banning the sale of all flavored vapor products. Today, according to Grail Insights from 2022 it is estimated that 50 percent of all vapor sales in the state of New Jersey are illicit disposable flavored nicotine e-cigarettes. New Jersey's lack of enforcement cost the state an estimated \$8.8 million in lost revenue due to non-taxed product while all other states saw vapor tax revenue grow 24 percent.

These two examples are just the surface. As an association we understand the intent of this bill is noble, but as we were all reminded of due to the ongoing inflation issue supply and demand still rule a capitalist economy. This bill addresses one thing: supply. However, as New Jersey and Massachusetts show you cannot legislate demand.

Instead, you are going to send product to the black market where it is untaxed, unregulated, and unsafe. I am not here asking you to endorse tobacco use. There are plenty of things adults do in this country I don't personally agree with. However, the essence of freedom is the ability of an adult to decide what they want to do or products they use with the best information available to them.

You say this is about protecting Maryland youth, but according to the Maryland Tobacco Control Resource Center youth smoking rates decreased among middle and high school students from 11 percent in 2011 to 4.6 percent in 2022. I remind you this was done without prohibition.

Rather than divide us over solution let's unite behind education and enhanced penalties for bad actors. We will gladly support that legislation.

Thank you,

VJ Mayor, CAE
Executive Director
Northeast Wholesalers Association

02-16-2023 Taxpayers Protection Alliance Testimony

Uploaded by: Lindsey Stroud

Position: INFO

**Testimony before the Maryland Senate Finance Committee
Regarding Banning the Sale of Flavored Tobacco and Vapor Products
Lindsey Stroud, Director, Consumer Center
Taxpayers Protection Alliance
February 16, 2023**

Chairwoman Griffith, Vice-Chair Klausmeier and Members of the Committee:

Thank you for your time today to discuss banning flavors tobacco and vapor products. My name is Lindsey Stroud and I'm Director of the Consumer Center at the Taxpayers Protection Alliance (TPA) and a Visiting Fellow at the Independent Womens Forum. TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy. TPA's Consumer Center focuses on providing up-to-date information on adult access to goods including alcohol, tobacco and vapor products, as well as regulatory policies that affect adult access to other consumer products, including harm reduction, technology, innovation, antitrust and privacy.

While addressing youth use of age-restricted products is laudable, lawmakers must refrain from prohibitionist bans on both products that adults responsibly consume and on products that may help adults quit smoking. Youth use of traditional tobacco products has reached record lows, while youth vaping has halved in recent years. Bans will only force adult consumers to seek out illicit products from clandestine sources, which may cause more harm.

- Youth vaping has decreased by 53 percent between 2019 and 2022, while youth use of traditional tobacco products is at record lows.
- In 2022, among middle and high school students that had used a tobacco or vape product on at least one occasion in the 30 days prior, 9.4 percent reported using e-cigarettes, 1.9 percent had used cigars, 1.6 percent has used combustible cigarettes and 1.3 percent had used smokeless tobacco products.
- Youths are not using e-cigarettes because of flavors.
 - Among highschoolers in Maryland that used e-cigarettes in 2019, when asked about the "main reason" for using e-cigarettes only 3.2 percent responded "flavors." Conversely, 13 percent reported because "friend/family used them," 11.7 percent reported "other," and 3.8 percent reported using e-cigarettes because they were less harmful than other tobacco products.
 - In 2021, among middle and high school students that were currently using e-cigarettes, 43.4 percent had used them because of feelings of anxiety, stress and/or depression, compared to 13.2 percent who had cited using them because of flavors.
- In 2021, 10.1 percent of Maryland adults were currently smoking cigarettes. White adults accounted for 57.6 percent of the state's current smoking population. More than one-fifth

(20.9 percent) of adults who earned \$25,000 were currently smoking in 2021, compared to only 6.8 percent of adults earning \$50,000 or more.

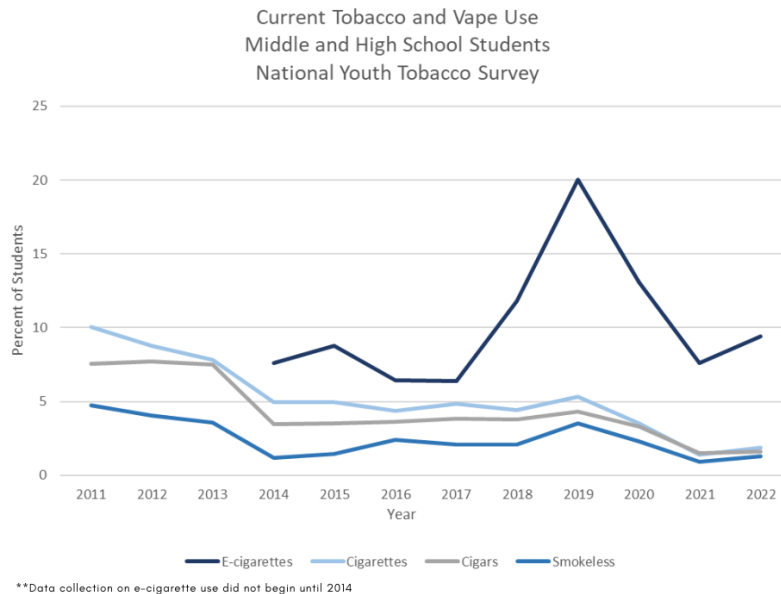
- In 2021, 4.5 percent of Maryland adults were currently using e-cigarettes, which was a 36.3 percent increase from 2017.
- In three of four states with current flavored tobacco and vape bans, smoking rates among young adults increased, while nationally, they decreased on average.
- An illicit market is thriving on internet marketplaces from New York City to California.
- Maryland (and the nation's) youth are facing an epidemic of fake pills.
- According to the Centers for Disease Control and Prevention (CDC), drug overdose deaths among youth aged 14 to 18 years old increased by 94 percent between 2019 and 2021, and additional 20 percent between 2020 and 2021. Meanwhile, youth vaping decreased by 62 percent between 2019 and 2021.
- Maryland woefully underfunds tobacco control programs.
 - In 2021, for every \$1 the state received in tobacco monies, it spent \$0.02 on tobacco control efforts.

Youth Tobacco and Vapor Product Use

Despite headlines, youth use of traditional tobacco products is at record lows, while youth e-cigarette use peaked in 2019 and has steadily declined in the years since.

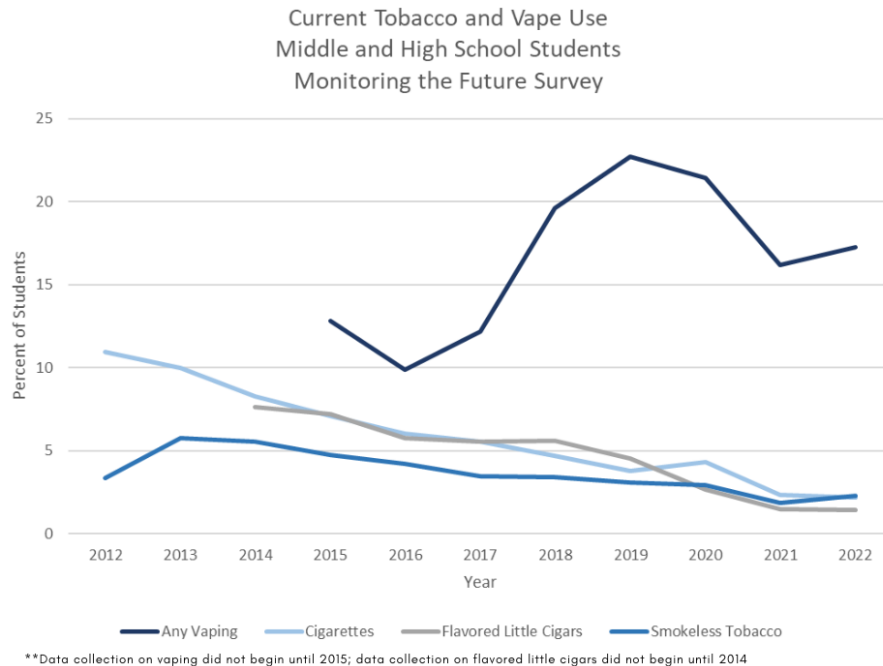
According to the National Youth Tobacco Survey (NYTS), in 2022, among middle and high school students that had reported current tobacco product use (defined as having used the product on at least one occasion in the 30 days prior), 1.9 percent had used cigars, 1.6 percent had used combustible cigarettes and 1.3 percent had used smokeless tobacco products.¹ These are some of the lowest levels recorded. In fact, in the 10 years between 2012 and 2022, current cigar use declined by 75.3 percent, cigarette use by 81.7 percent and smokeless tobacco use by 67.9 percent. These declines have come all the while flavored tobacco and vapor products remain available for sale.

Regarding vaping use, according to the NYTS, vaping seems to have peaked in 2019 when 20 percent of middle and high school students had used an e-cigarette in the 30 days prior to the survey. In 2022, only 9.4 percent of U.S. youth were currently vaping, a 53 percent decrease from 2019's levels.



Other national survey data has found significant declines in youth use of tobacco and vapor products. According to the Monitoring the Future Survey (MTFS), in 2022, among middle and high school students, 2.2 percent reported current combustible cigarette use, 2.3 percent reported currently using smokeless tobacco and 1.4 percent reported using flavored little cigars.² Again, these are some of the lowest levels recorded. In 2012, more than one in ten U.S. youth (11 percent) reported current cigarette use. In ten years, smoking rates among U.S. youth declined by 78.7 percent. During the same period smokeless tobacco use among youth decreased by 59.6 percent. Between 2014 and 2022, the percent of youth reporting current use of flavored cigars declined by 81.2 percent.

Similar to the NYTS, the MTFS also found that youth vaping peaked in 2019, when 22.7 percent of U.S. youth reported “any vaping” – i.e., using a vapor product to vape either nicotine or other substances. Between 2019 and 2022, the percent of youths reporting any vaping decreased by 23.9 percent.



The CDC continues to delay publishing state-specific data from the 2021 Youth Risk Behavior Survey (YRBS). However, nationally, only 18 percent of high school students reported using vapor products in the 30 days prior to the survey in 2021.³ This is a 45 percent decrease from 2019 when 32.7 percent of high schoolers reported current vapor product use.

As the YRBS is an aggregate of all state data, Maryland lawmakers should refrain from excessive taxes to address outdated figures on youth vapor product use in the state.

Youth Are Not Using E-Cigarettes Because of Flavors

National and state surveys consistently find that youth are not overwhelmingly using e-cigarettes because of flavors.

Among highschoolers in Maryland that used e-cigarettes in 2019, when asked about the “main reason” for using e-cigarettes only 3.2 percent responded “flavors.”⁴ Conversely, 13 percent reported because “friend/family used them,” 11.7 percent reported “other,” and 3.8 percent reported using e-cigarettes because they were less harmful than other tobacco products.

In 2019, among all Connecticut high school students, 5.2 percent reported using e-cigarettes because of “flavors,” 18.2 percent cited “other,” and 12.9 percent reported using e-cigarettes because of friends and/or family.⁵

In 2017, among Hawaiian high school students that had ever used e-cigarettes, 26.4 percent cited flavors as a reason for e-cigarette use, compared to 38.9 percent that reported “other.”⁶

In 2019, among all Montana high school students, only 7 percent reported using vapor products because of flavors, compared to 13.5 percent that reported using e-cigarettes because of “friend or family member used them.”⁷ Further, 25.9 percent of Montana high school students reported using vapor products for “some other reason.”

In 2019, among all students, only 4.5 percent of Rhode Island high school students claimed to have used e-cigarettes because they were available in flavors, while 12.5 cited the influence of a friend and/or family member who used them and 15.9 percent reported using e-cigarettes “for some other reason.”⁸

In 2017, among current e-cigarette users, only 17 percent of Vermont high school students reported flavors as a reason to use e-cigarettes. Comparatively, 35 percent cited friends and/or family members and 33 percent cited “other.”⁹

In 2019, among high school students that were current e-cigarette users, only 10 percent of Vermont youth that used e-cigarettes cited flavors as a primary reason for using e-cigarettes, while 17 percent of Vermont high school students reported using e-cigarettes because their family and/or friends used them.¹⁰

In 2019, among all Virginia high school students, only 3.9 percent reported using e-cigarettes because of flavors, 12.1 used for some other reason, and 9.6 used them because of friends and/or family members.¹¹

This state data is supported by even more recent national survey data. According to the 2021 NYTS, among middle and high school students that reported current e-cigarette use, 43.4 percent cited using them because they were “feeling anxious, stressed, or depressed,” compared to only 13.2 percent who cited using them because they were available in flavors.¹²

Among students that reported having ever tried an e-cigarette, 57.8 percent cited using them because a friend uses them, compared to 13.5 percent who cited the availability of flavors.

| Reasons for first e-cigarette use | | | |
|---|--|-------------------------------------|--|
| National Youth Tobacco Survey, United States, 2021 | | | |
| | | Among ever e-cigarette users | Among current e-cigarette users |
| A friend [used/uses] them | | 57.8 | 28.3 |
| I [was/am] curious about them | | 47.6 | 10.3 |
| I [was/am] feeling anxious, stressed, or depressed | | 25.1 | 43.4 |
| To get a high or buzz from nicotine | | 23.3 | 42.8 |
| A friend family member [used/uses] them | | 18.6 | 8.7 |
| I [could/can] use them to do tricks | | 16.5 | 20 |
| They [were/are] available in flavors, such as menthol, mint, candy, fruit, or chocolate | | 13.5 | 13.2 |
| I [could/can] use them unnoticed at home or at school | | 10.8 | 13 |
| They are less harmful than other forms of tobacco such as cigarettes | | 8.3 | 10.3 |
| They [were/are] easier to get than other tobacco products, such as cigarettes | | 4.8 | 6 |
| I've seen people on TV, online, or in movies use them | | 4.5 | 2.9 |
| To try to quit using other tobacco product, such as cigarettes | | 2.5 | 4.6 |
| They cost less than other tobacco products, such as cigarettes | | 2.2 | 4.7 |
| Some other reason | | 10.6 | 19.5 |

If lawmakers want to address youth vaping, they must understand why youths are vaping.

Adult Tobacco and Vape Use

In 2021, 10.1 percent of adults in Maryland were currently using cigarettes.¹³ Smoking rates were highest among 45- to 64-year-old adults, with 12.5 percent reporting current use.

Among all adults earning \$25,000 annually or less in 2021, one-fifth (20.9 percent) reported currently smoking, compared to only 6.8 percent of adults who earned \$50,000 or more per year.

In Maryland in 2021, adults identifying as American Indian/Native Alaskan reported smoking at a greater percentage of their identified race at 21.9 percent. This is compared to 13.9 percent of Multiracial, non-Hispanic adults, 11.2 percent of White adults, 10.7 percent of Black adults, 8.5 percent of Other, non-Hispanic adults, six percent of Hispanic adults and 3.8 percent of Asian adults.

Yet, White adults made up a significantly larger percentage of Maryland's total adult smoking population. In 2021, White adults accounted for 57.6 percent of the state's current adult smoking



population, compared to American Indian/Native Alaskan adults who accounted for only 0.9 percent. Black adults accounted for 31 percent, Hispanic adults accounted for six percent, Asian adults made up 2.5 percent, Others accounted for one percent, and Multiracial, non-Hispanic adults accounted for less than one percent of Maryland’s adult smoking population in 2021.

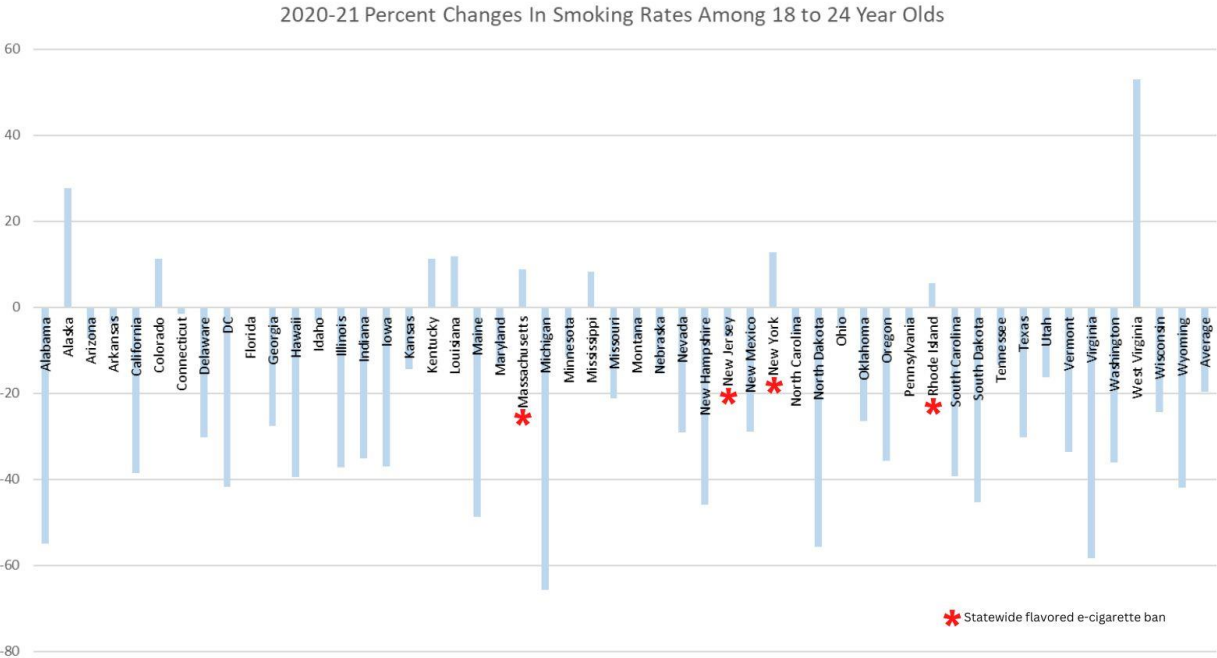
The CDC provides data on adult e-cigarette use for only 2016, 2017, and 2021.

In 2021 (among all Maryland adults), 4.5 percent were currently using e-cigarettes. This is a 36.3 percent increase from 2017 when 3.3 percent of Maryland adults were current e-cigarette users.

In 2021 (among all Connecticut adults), 13.3 percent of 18- to 24-year-olds, 6.1 percent of 25–44-year-olds, 2.3 percent of 45–64-year-olds, and 0.9percent of 65+ year-olds were currently using e-cigarettes cigarettes.

Effects of Current Flavor Bans

As of January 2023, five states have active statewide bans on the sale of flavored vapor products, including two states which have also banned the sale of flavored traditional tobacco products. Opponents claim that prohibition will work to reduce smoking and thus liberate resources for states due to reduced health care costs attributed to smoking. Yet, evidence from existing states find flavor bans correlate with increases in young adult smoking, all the while states lose revenue and neighboring states lose profit.¹⁴



In 2021, 14.4 percent of American adults were currently smoking. This is a 7.1 percent decrease from 2020's 15.5 percent. Among young adults (aged 18 to 24 years old), a miniscule 7.4 percent were current smokers.

Among all states (minus Florida), smoking rates among adults aged 18 to 24 years old decreased by 19.7 percent on average between 2020 and 2021. Only nine states saw young adult smoking rates increase during the same period. Alarming, three of those states are home to flavored e-cigarette bans. Lawmakers should avoid pushing prohibitionist flavor policies forward.

In Massachusetts, 7.4 percent of 18- to 24-year-olds were current smokers in 2021. This is an 8.8 percent increase from 2020's 6.8 percent. In New York, young adult smoking rates increased by 12.7 percent from 5.5 percent in 2020 to 6.2 percent in 2021. In Rhode Island, between 2020 and 2021, smoking rates among young adults aged 18 to 24 years old increased by 5.7 percent.

Of the then-four states with active flavored e-cigarette bans, only New Jersey saw a reduction (6.8 percent) in young adult smoking rates. This is significantly lower than the average rate of reduction among all U.S. young adults.

Flavored tobacco bans have also failed to meaningfully reduce smoking rates while significantly reducing cigarette tax revenue and transferring it to other states.

The Massachusetts flavored tobacco and vape ban went into effect in 2020. Between 2020 and 2021 state excise tax revenue decreased by 22.3 percent, representing a loss of over \$106 million. Meanwhile, smoking rates among all adults only decreased by 4.5 percent (11.1 percent of adults in 2020 to 10.6 percent in 2021).

Neighboring New Hampshire saw an 11.5 percent reduction in adult smoking rates between 2020 and 2021, yet cigarette excise tax revenues increased by 14.4 percent during the same period.

Given the poor effects of flavored tobacco bans on young adult smoking and the failed experiment in Massachusetts, lawmakers should refrain from restricting the sales of flavored tobacco and vapor products.

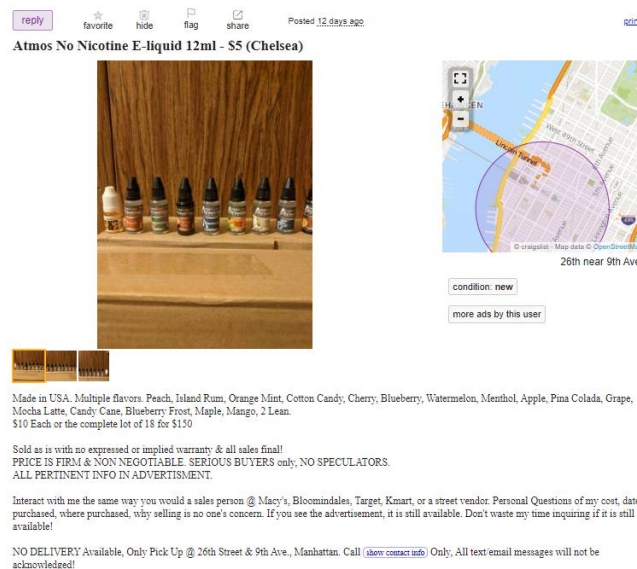
In Thriving Illicit Market, Unregulated Products Harm Users

Flavored tobacco and vape product bans only punish responsible retailers while incentivizing clandestine actors to engage in new illicit marketplaces. Unregulated tobacco and vapor products pose a risk to all consumers, both youth and adults alike. Nonetheless, consumers have indicated they would seek out illicit products should their product of choice be banned. There are already rogue sellers using online marketplaces to sell these unregulated products.

TAXPAYERS PROTECTION ALLIANCE

One study examining a possible menthol ban found that at least 25 percent would “find a way to buy a menthol brand.”¹⁵ An experiment examined current e-cigarette users under a hypothetical flavor ban found that banning “vaping products from the marketplace may shift preference towards purchasing vaping products in the illegal marketplace.”¹⁶ An international survey of vapers from Canada, the United Kingdom, and the United States, found that over one-fourth (28.3 percent) “would find a way to get their banned flavor(s).”¹⁷

There is already a booming marketplace online. Examples are relatively easy to find. A Craigslist ad in New York City offers for sale a variety of flavored e-liquid products, from peach to cotton candy.¹⁸ The seller informs the potential customer to “[i]nteract with [them] the same way [one] would a sales person.” Alarming, this seller is not interested in providing potential customers with information regarding the products that they may be consuming, noting that any questions about their “cost, date purchased, where purchased, why selling is no one’s concern.” In California, which recently enacted a ban on flavored tobacco and vapor products, “menthol man” is offering to deliver menthol cigarettes for \$15 a pack.¹⁹



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Atmos No Nicotine E-liquid 12ml - \$5 (Chelsea)

condition: new
more ads by this user

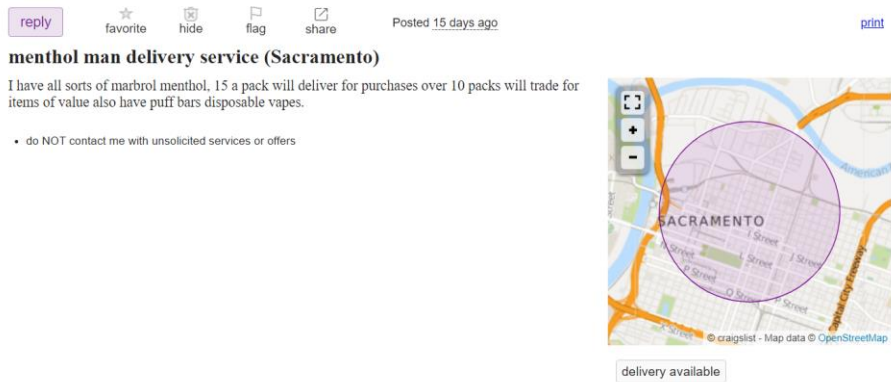
Made in USA. Multiple flavors. Peach, Island Rum, Orange Mint, Cotton Candy, Cherry, Blueberry, Watermelon, Menthol, Apple, Pina Colada, Grape, Mocha Latte, Candy Cane, Blueberry Frost, Maple, Mango, 2 Lean.
\$10 Each or the complete lot of 18 for \$150

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(202) 930-1716, www.protectingtaxpayers.org**



There is an even larger international market of counterfeit vapor products, with officials in numerous countries attempting to stem their flow.

In January 2021, the FDA worked with other federal agencies and seized 42 shipments of counterfeit disposable vapor products from China.²⁰ In March 2021, Customs and Border Protection officers in Chicago seized \$1.5 million in counterfeit vapes.²¹

In 2022, officials in Australia, China, Singapore, and the United Kingdom have all reported massive seizures of counterfeit vapor products.^{22 23 24 25} The illicit products are so prevalent that a vapor product company has been actively working with government officials in China and has successfully shut down more than 20 factories manufacturing counterfeit vapes.²⁶

Maryland Youth Already Facing Epidemic of Fake Pills

In January this year, officials in Montgomery County reported that youth overdoses increased by 78 percent between 2021 to 2022, while fatal overdoses increased by 120 percent.²⁷

According to the CDC, drug overdose deaths among youth aged 14 to 18 years old increased by 94 percent between 2019 and 2021, and additional 20 percent between 2020 and 2021.²⁸

Consistent with reasons youth are using e-cigarettes, youths are seeking out common prescription drugs, unknowingly being exposed to illicit fentanyl in fake, unregulated pills.

Fake, counterfeit vapor products not only pose a risk to youth, but to adults as well. While the instances of fentanyl-vapes have been few and far between, pushing all products into an underground market could create more issues.

Currently, fentanyl vapes seem to be user-created. In 2019, the Drug Enforcement Agency seized a fentanyl vape pen, as well as other narcotics, after a suspected overdose death in San Diego.²⁹ In February 2022, the Rocky Mountain Poison Center issued a warning to Coloradan parents

about an increase in calls to the poison center about “young people, adolescents, who [had] been experimenting with vaping fentanyl.”³⁰ According to Dr. Christopher Hoyte, the center has started “noticing that young people are getting fentanyl in liquid form and putting the cartridges in vaping pens and vaping fentanyl.”

Maryland Woefully Underfunds Tobacco Control

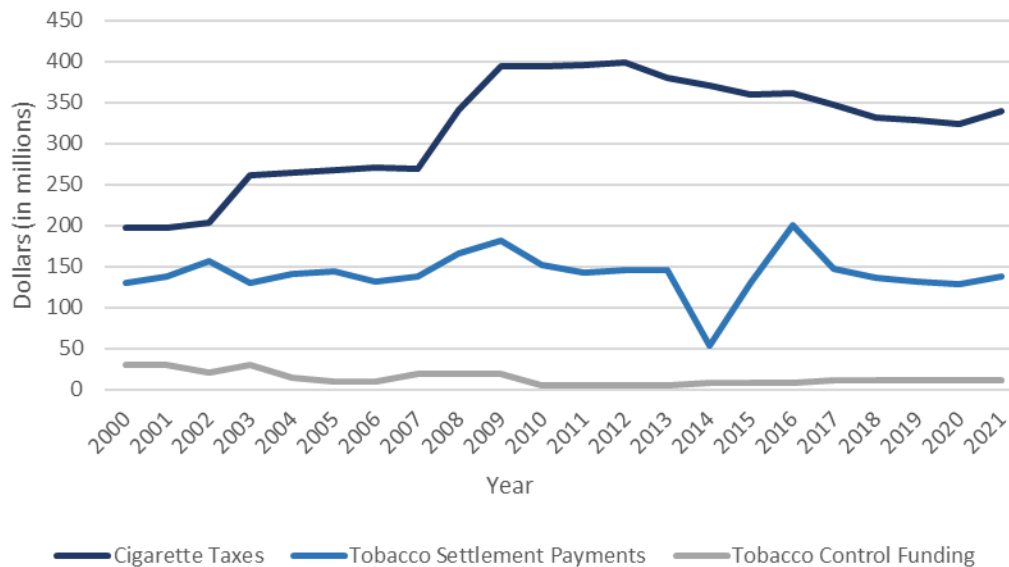
If lawmakers truly want to address youth use of tobacco products and help adults quit smoking deadly combustible cigarettes, they ought to spend more funding on tobacco control programs.

In 2021, the Old Line State collected \$338.4 million in state excise tax revenue from combustible cigarettes.³¹ This was a 4.9 percent increase from 2020. Between 2000 and 2021, Maryland has collected over \$6.9 billion in cigarette taxes.

Since 2000, Maryland has collected annual payments from tobacco manufacturers based on the percentage of cigarettes and tobacco products sold in the state in that year. Maryland collected \$137.5 million in settlement payments in 2021.³² Since 2000, the state has collected over \$3.1 billion in tobacco settlement payments.

While Maryland collected \$476.9 million in tobacco-related monies in 2021, the state allocated only \$10.8 million in state funding towards tobacco control programs, including cessation, education, and youth prevention efforts, which was a 2.9 percent increase in funding from 2020 levels.³³ This amounts to 3.2 percent of taxes and 7.9 percent of settlement payments. In 2021, for every \$1 the state received in tobacco monies, it spent \$0.02 on tobacco control efforts.

Maryland Tobacco Monies



¹ Eunice Park-Lee, et al., “Tobacco Product Use Among Middle and High School Students — United States, 2022,” *Morbidity & Mortality Weekly Report*, Centers for Disease Control and Prevention, November 11, 2022, https://www.cdc.gov/mmwr/volumes/71/wr/mm7145a1.htm?s_cid=mm7145a1_w.

² University of Michigan, “1975-2022 Data for In-School Surveys of 8th, 10th, and 12th Grade Students,” *Monitoring the Future*, 2022, <https://monitoringthefuture.org/results/data-products/tables-and-figures/>.

³ Centers for Disease Control and Prevention, “Youth Risk Behavior Survey Data Summary & Trends Report,” February 13, 2023, https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf.

⁴ Maryland Department of Public Health, “Maryland High School Survey Detail Tables – Weighted Data,” *2018 Youth Risk Behavior Survey*, 2018, <https://phpa.health.maryland.gov/ccdpc/Reports/Documents/2018%20YRBS%20YTS%20Reports/Maryland/2018M-DH%20Detail%20Tables.pdf>.

⁵ Connecticut Department of Public Health, “Connecticut High School Survey Codebook,” *2019 Youth Risk Behavior Survey Results*, 2019, https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/CSHS/2019CT_Codebook.pdf.

⁶ Lance Ching, Ph.D., et al., “Data Highlights from the 2017 Hawai’i Youth Tobacco Survey,” Hawai’i State Department of Health, June 29, 2018, http://www.hawaiihealthmatters.org/content/sites/hawaii/YTS_2017_Report.pdf.

⁷ Montana Office of Public Instruction, “2019 Montana Youth Risk Behavior Survey High School Results,” 2019, http://opi.mt.gov/Portals/182/Page%20Files/YRBS/2019YRBS/2019_MT_YRBS_FullReport.pdf?ver=2019-08-23-083248-820.

⁸ State of Rhode Island Department of Health, “Rhode Island High School Survey Detail Tables – Weighted Data,” *2019 Youth Risk Behavior Survey Results*, 2019, <https://health.ri.gov/materialbyothers/yrbs/2019HighSchoolDetailTables.pdf>.

⁹ Vermont Department of Health, “2017 Vermont Youth Risk Behavior Survey Report Winooski SD Report,” 2018, https://www.healthvermont.gov/sites/default/files/documents/pdf/WINOOSKI_SD_%28SU017%29.pdf.

¹⁰ Vermont Department of Health, “2019 Vermont Youth Risk Behavior Survey Statewide Results,” March, 2020, https://www.healthvermont.gov/sites/default/files/documents/pdf/CHS_YRBS_statewide_report.pdf.

¹¹ Virginia Department of Health, “Virginia High School Survey Detail Tables – Weighted Data,” *2019 Youth Risk Behavior Survey Results*, 2019, <https://www.vdh.virginia.gov/content/uploads/sites/69/2020/06/2019VAH-Detail-Tables.pdf>.

¹² Andrea S. Gentzke *et al.*, “Tobacco Product Use and Associated Factors Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021,” *Morbidity & Mortality Weekly Report*, Centers for Disease Control and Prevention, March 11, 2022, <https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf>.

¹³ Centers for Disease Control and Prevention, “Behavioral Risk Factor Surveillance System,” 2022, <https://www.cdc.gov/brfss/brfssprevalence/>. Accessed December 2022.

¹⁴ Lindsey Stroud, “Statewide Flavored E-Cigarette Bans Have Led to Increases in Young Adult Smoking,” *Townhall*, October 21, 2022, <https://townhall.com/columnists/lindseystroud/2022/10/20/statewide-flavored-e-cigarette-bans-have-led-to-increases-in-young-adult-smoking-n2614807>.

¹⁵ Richard J. O’Connor *et al.*, “What would menthol smokers do if menthol in cigarettes were banned? Behavioral intentions and simulated demand,” *Addiction*, April 4, 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3370153/>.

¹⁶ Roberta Freitas-Lemos *et al.*, “The Illegal Experimental Tobacco Marketplace I: Effects of Vaping Product Bans,” *Nicotine & Tobacco Research*, October 23, 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8403238/>.

¹⁷ Shannon Gravely *et al.*, “Responses to potential nicotine vaping product flavor restrictions among regular vapers using non-tobacco flavors: Findings from the 2020 ITC Smoking and Vaping Survey in Canada, England and the United States,” *Addictive Behaviors*, October 14, 2021, <https://pubmed.ncbi.nlm.nih.gov/34695685/>.

¹⁸ Craigslist, “Atmos No Nicotine E-liquid 12ml - \$5 (Chelsea),” <https://web.archive.org/web/20230125180105/https://newyork.craigslist.org/mnh/for/d/new-york-atmos-no-nicotine-liquid-12ml/7577982709.html>. Accessed January 2023.

¹⁹ Craigslist, “menthol man delivery service (Sacramento),” <https://web.archive.org/web/20230125181307/https://sacramento.craigslist.org/bar/d/sacramento-menthol-man-delivery-service/7577129096.html>. Accessed January 2023.

²⁰ U.S. Food and Drug Administration, “CBP, FDA Seize Counterfeit, Unauthorized E-Cigarettes,” January 13, 2021, <https://www.fda.gov/news-events/press-announcements/cbp-fda-seize-counterfeit-unauthorized-e-cigarettes>.

²¹ U.S. Customs and Border Protection, “CBP Officers in Chicago Capture \$1.5 Million in Counterfeit Vaping Pens,” March 11, 2021, <https://www.cbp.gov/newsroom/local-media-release/cbp-officers-chicago-capture-15-million-counterfeit-vaping-pens>.

²² Mary Ward, “More than \$2 million worth of vapes seized in state health crackdown,” *The Sydney Morning Herald*, February 14, 2022, <https://www.smh.com.au/national/nsw/more-than-2-million-worth-of-vapes-seized-in-state-health-crackdown-20220128-p59s0m.html>.

²³ Diana Caruana, “Hong Kong Customs Seize Thousands of Vape Products Worth a Total of HK\$10 Million,” *Vaping Post*, June 6, 2022, <https://www.vapingpost.com/2022/06/06/hong-kong-customs-seize-thousands-of-vape-products-worth-a-total-of-hk10-million/>.

²⁴ Vapor Voice, “Singapore Seizes Nearly \$1 Million in Illegal Vapes,” June 2, 2022, https://vaporvoice.net/2022/06/02/singapore-seizes-nearly-1-million-in-illegal-vapes/?utm_source=rss&utm_medium=rss&utm_campaign=singapore-seizes-nearly-1-million-in-illegal-vapes.

²⁵ Charlotte Lillywhite, “Massive £100k shipment of dodgy vapes seized near Heathrow Airport,” *MyLondon*, August 9, 2022, <https://www.mylondon.news/news/west-london-news/massive-100k-shipment-dodgy-vapes-24708471>.

²⁶ Kiran Paul, “Elf Bar helps close 20 counterfeit factories in China, seizing million fake vapes,” *Asian Trader*, July 15, 2022, <https://www.asiantrader.biz/elf-bar-helps-close-down-20-counterfeit-factories-in-china-seizing-over-a-million-fakes/>.

²⁷ Cheyenne Corin, “Deadly drug overdoses among young people in Montgomery County increase 120% in a year,” *DC News Now*, January 20, 2023,

²⁸ Laruen J. Tanz *et al.*, “Drug Overdose Deaths Among Persons Aged 10–19 Years — United States, July 2019–December 2021,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, December 16, 2022, <https://www.cdc.gov/mmwr/volumes/71/wr/mm7147a1.htm>.

Taxpayers Protection Alliance, 1101 14th St. NW, Ste 1101, Washington, D.C. 20005

(202) 930-1716, www.protectingtaxpayers.org

²⁹ Drug Enforcement Agency, “Fentanyl Used in Vape Pens,” *DEA Bulletin*, September 2020, https://www.dea.gov/sites/default/files/2020-09/Fentanyl%20Used%20in%20Vape%20Pens_PRB%20FINAL.pdf.

³⁰ Ashley Michels, “Teens are vaping fentanyl, poison control warns,” *KDVR*, February 9, 2022, <https://kdvr.com/news/local/fentanyl-vaping-overdose-teens/>.

³¹ Orzechowski and Walker, “The Tax Burden on Tobacco Historical Compilation Volume 56, 2021. Print.

³² Campaign for Tobacco Free Kids, “Actual Annual Tobacco Settlement Payments Received by the States, 1998-2022,” December 20, 2022, <https://www.tobaccofreekids.org/assets/factsheets/0365.pdf>.

³³ Campaign for Tobacco-Free Kids, “Appendix A: History of Spending for State Tobacco Prevention Programs,” 2022, https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/settlement/FY2023/Appendix-A.pdf.

Tobacco & Vaping 101:

Maryland 2023

Lawmakers are often bombarded with misinformation on the products used by adults in their state. This annual analysis provides up-to-date data on the adults who use cigarettes and e-cigarette products in Maryland, youth use, impacts of e-cigarettes and analyses of existing tobacco monies.

Key Points:

- In 2021, 10.1 percent of adults were currently smoking in Maryland. This is a 7.3 percent decrease from 2020.
- In 2021, among all Maryland adults, 4.5 percent of 18- to 24-year-olds, 11.2 percent of 25–44-year-olds, 12.5 percent of 45–64-year-olds, and 7.6 percent of adults aged 65 years or older were currently smoking combustible cigarettes.
- Among all adults earning \$25,000 or less in 2021, 20.9 percent were current smoking compared to only 6.8 percent of adults earning \$50,000 or more.
- Among all smoking adults in 2021, 57.6 percent were White, 31 percent were black, six percent were Hispanic, 2.5 percent were Asian, one percent identified as Other, and less than one percent were American Indian/Native Alaskan.
- Cigarette excise taxes in Maryland disproportionately impact low income, low education persons, while failing to significantly reduce smoking rates among that class.
- The number of percent of Maryland adults earning \$25,000 or less that were smoking decreased by 11.8 percent between 2008 and 2021, while the percent of adults earning \$50,000 or more that were smoking decreased by 39.8 percent during the same period.
- Among Marylanders who did not graduate high school, smoking rates decreased by 32.4 percent, yet rates among adults with a college degree decreased by 44.3 percent.
- In 2021, 4.5 percent of adults reported past-month e-cigarette use, which was a 36.3 percent increase from 2017.
- Youth vaping seems to have peaked in 2019, when 20 percent of youth reported current e-cigarette use. Between 2019 and 2022, current e-cigarette use declined by 53 percent.
- Traditional tobacco use among youth is at record lows. In 2022, only 1.9 percent of U.S. youth reported current cigar use, 1.6 percent reported current combustible cigarette use and 1.3 percent reported using smokeless tobacco products.
- The introduction of e-cigarettes has not led to increases in cigarette smoking, but rather, correlates with significant declines in smoking rates among young adults.
- Between 2007 and 2018, young adult smoking rates declined by 66.7 percent. Since 2018, young adult smoking rates have decreased another 43.8 percent, with average annual declines of 17.1 percent.
- Maryland woefully underfunds programs to prevent youth use of tobacco and/or vapor products and help adults quit smoking, while simultaneously receiving millions of dollars from the pockets of the adults who smoke. In 2021, for every \$1 the state received in tobacco monies, it spent \$0.02 on tobacco control efforts.

Tobacco & Vaping 101: Maryland 2023

Adult Combustible Cigarette Use

In 2021, according to data from the annual Behavioral Risk Factor Surveillance System survey (BRFSS) conducted by the Centers for Disease Control and Prevention, 484,494 adults, or 10.1 percent of Marylanders, were currently smoking. This is a 7.3 percent decrease from 2020 when 10.9 percent reported current cigarette use. In 2021, 6.7 percent of Maryland adults reported smoking every day.

Smoking rates in the Old Line State have significantly declined since 1995 when the BRFSS first began reporting combustible cigarette use. That year, 21.3 percent of Maryland adults were then-currently smoking. Between 1995 and 2021, smoking rates have decreased by 52.6 percent, with average annual decreases of 2.5 percent.

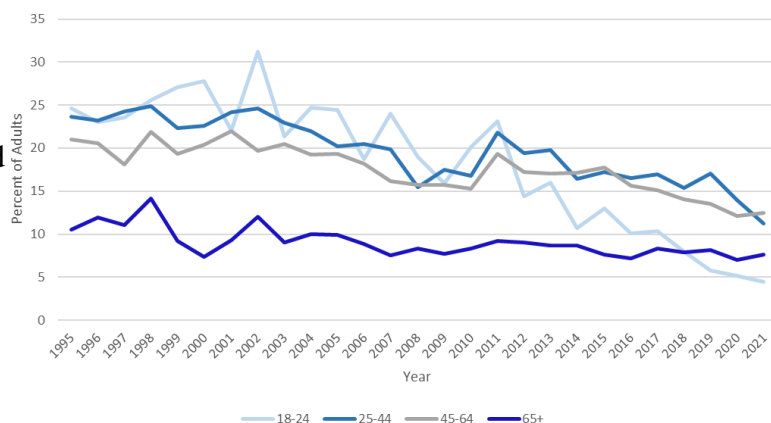
In 2021, among all Maryland adults, 4.5 percent of 18- to 24-year-olds, 11.2 percent of 25-44-year-olds, 12.5 percent of 45-64-year-olds, and 7.6 percent of adults aged 65 years or older were currently smoking combustible cigarettes.

Among all adults earning \$25,000 annually or less in 2021, one-fifth (20.9 percent) reported currently smoking, compared to only 6.8 percent of adults who earned \$50,000 or more per year.

In Maryland in 2021, adults identifying as American Indian/Native Alaskan reported smoking at a greater percentage of their identified race at 21.9 percent. This is compared to 13.9 percent of Multiracial, non-Hispanic adults, 11.2 percent of White adults, 10.7 percent of Black adults, 8.5 percent of Other, non-Hispanic adults, six percent of Hispanic adults and 3.8 percent of Asian adults.

Yet, White adults made up a significantly larger percentage of Maryland's total adult smoking population. In 2021, White adults accounted for 57.6 percent of the state's current adult smoking population, compared to American Indian/Native Alaskan adults who accounted for only 0.9 percent. Black adults accounted for 31 percent, Hispanic adults accounted for six percent, Asian adults made up 2.5 percent, Others accounted for one percent, and Multiracial, non-Hispanic adults accounted for less than one percent of Maryland's adult smoking population in 2021.

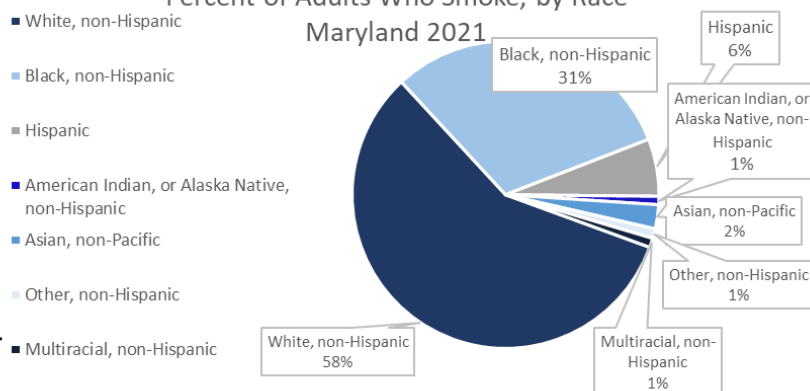
Adult Smoking Rate by Age
Maryland



Percent of Adults Who Smoke, by Income
Maryland 2021



Percent of Adults Who Smoke, by Race
Maryland 2021



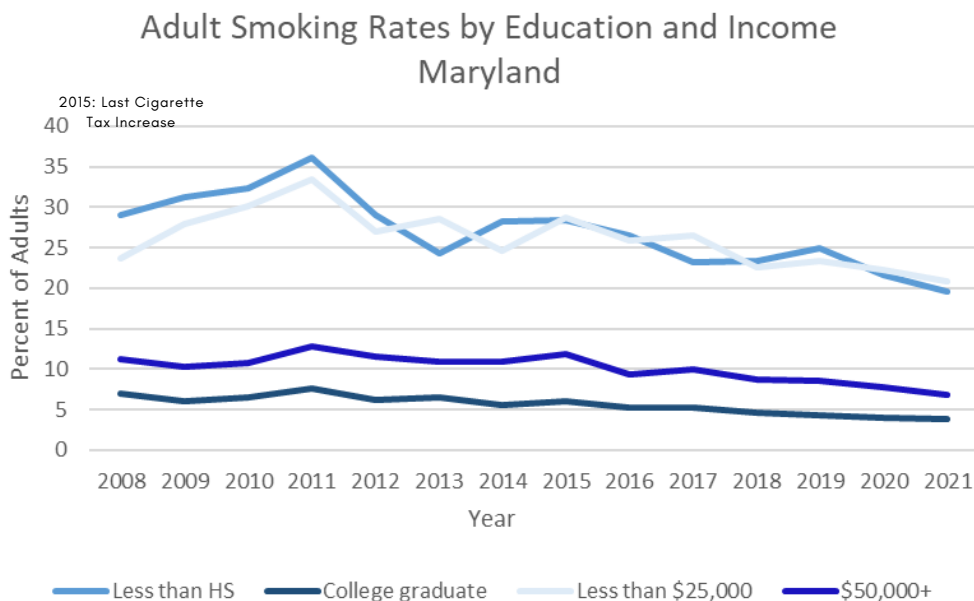
Tobacco & Vaping 101: Maryland 2023

Effects of Cigarette Taxes

Maryland last increased its state cigarette excise tax in 2008 from \$1.00 to \$2.00-per-pack. Lawmakers often justify excise taxes on cigarettes to deter persons from using combustible cigarettes, yet, such taxes disproportionately harm lower income, lower educated adults, as well as fail to significantly reduce smoking rates among those persons.

The number of percent of Maryland adults earning \$25,000 or less that were smoking decreased by 11.8 percent between 2008 and 2021, while the percent of adults earning \$50,000 or more that were smoking decreased by 39.8 percent during the same period. Among Marylanders who did not graduate high school, smoking rates decreased by 32.4 percent, yet rates among adults with a college degree decreased by 44.3 percent.

Lawmakers should refrain from enacting further increases in cigarette taxes given their disproportionate effect on low-income persons, while failing to reduce smoking rates.



Adult E-Cigarette Use

The CDC provides data on adult e-cigarette use for only 2016, 2017, and 2021.

In 2021, among all Maryland adults, 4.5 percent were currently using e-cigarettes. This is a 36.3 percent increase from 2017 when 3.3 percent of Maryland adults were current e-cigarette users.

In 2021, among all Maryland adults, 13.3 percent of 18- to 24-year-olds, 6.1 percent of 25–44-year-olds, 2.3 percent of 45–64-year-olds, and 0.9 percent of 65+ year-olds were currently using e-cigarettes.

Among adults earning \$25,000 or less, 5.8 percent reported current e-cigarette use, compared to 4.1 percent who reported earning \$50,000 or more.

In Maryland, 5.4 percent of White adults, 3.8 percent of Hispanic adults, and 3.1 percent of Black adults were currently vaping 2021. There is no data for other races.

Tobacco & Vaping 101: Maryland 2023

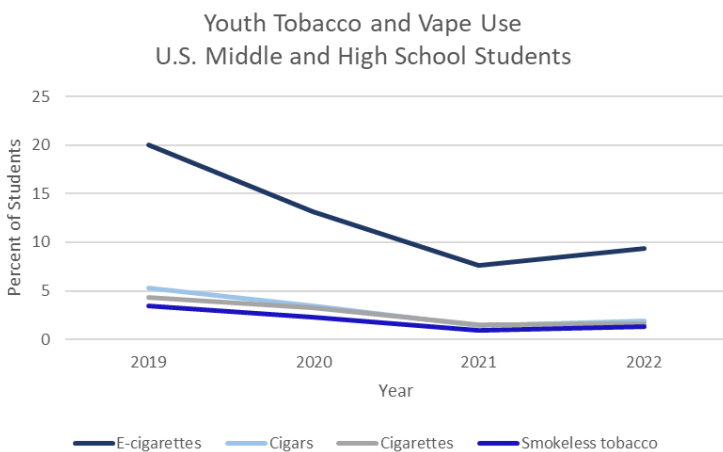
Youth Smoking and Vaping Rates

The CDC continues to delay publishing the 2021 results of the Youth Risk Behavior Survey resulting in state-specific data being unavailable at the time of this publication. Nonetheless, youth use of vapor products has declined significantly in recent years and youth use of traditional tobacco products is at record lows.

According to the National Youth Tobacco Survey, in 2022, only 9.4 percent of middle and high school students reported current use of e-cigarette products, defined as having used a product on at least one occasion in the 30 days prior to the survey. Youth vaping seems to have peaked in 2019, when 20 percent of youth reported current e-cigarette use. Between 2019 and 2022, current e-cigarette use declined by 53 percent.

Regarding traditional tobacco products, in 2022, only 1.9 percent of U.S. youth reported current cigar use, 1.6 percent reported current combustible cigarette use, and 1.3 percent reported using smokeless tobacco products. Between 2019 and 2022, current cigar use declined by 64.2 percent, current cigarette use decreased by 62.8 percent and smokeless tobacco use by 62.9 percent.

Given the record lows in youth tobacco use and continued declines in youth vapor product use, policymakers must refrain from prohibitionist policies that would hinder adult access to harm reduction products.



Young Adult Smoking Rates

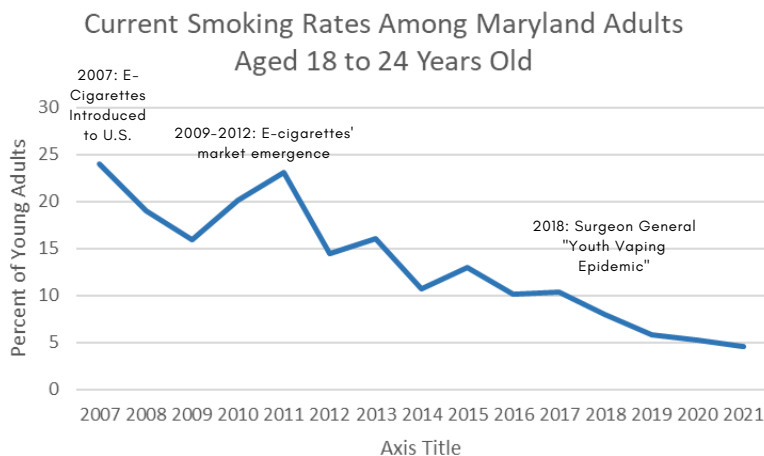
As e-cigarettes have disrupted the traditional tobacco market, policymakers have shifted their attention towards youth use and subsequent smoking initiation. Despite the rhetoric, the introduction of e-cigarettes has not led to increases in young adult cigarette smoking, but rather, correlates with significant declines.

E-cigarettes first came to U.S. market in 2007 when 24 percent of Marylanders aged 18 to 24 years old were currently smoking. In 2018, public health purported to a so-called “youth vaping epidemic,” when eight percent of young adults in the Old Line State were smoking. Between 2007 and 2018, young adult smoking rates declined by 66.7 percent. Since 2018, young adult smoking rates have decreased another 43.8 percent, with average annual declines of 17.1 percent.

Though data is limited to only three years, increases in vaping correlate with decreases in smoking.

In 2017, (among 18- to 24-year-olds) 10.4 percent and 5.4 percent were currently using combustible cigarettes and e-cigarettes, respectively. Between 2017 and 2021, current cigarette use among young adults decreased by 56.7 percent while vapor product use increased by 146.3 percent.

Given the epic lows in young adult smoking rates, lawmakers must refrain from policies that restrict access to alternatives to smoking.



Tobacco & Vaping 101:

Maryland 2023

Tobacco Monies

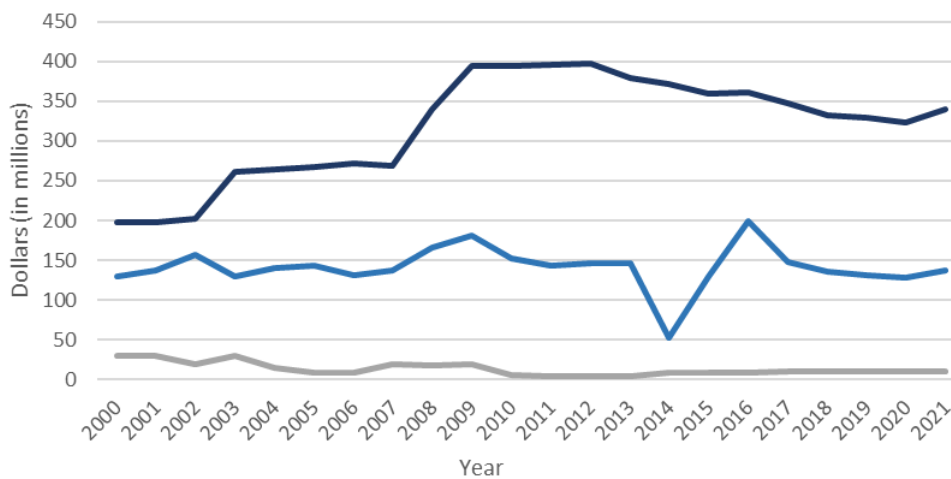
Each year, states receive millions of dollars borne out of the lungs of persons who smoke. This revenue includes excise cigarette taxes and settlement payments. Yet, each year, states spend miniscule amounts of tobacco-related monies on programs to help adults quit smoking and prevent youth use.

In 2021, the Old Line State collected \$338.4 million in state excise tax revenue from combustible cigarettes. This was a 4.9 percent increase from 2020. Between 2000 and 2021, Maryland has collected over \$6.9 billion in cigarette taxes.

Since 2000, Maryland has collected annual payments from tobacco manufacturers based on the percentage of cigarettes and tobacco products sold in the state in that year. Maryland collected \$137.5 million in settlement payments in 2021, a seven percent increase from 2020's \$128.5 million. Since 2000, the Old Line State has collected over \$3.1 billion in tobacco settlement payments.

While Maryland collected \$476.9 million in tobacco-related monies in 2021, the state allocated only \$10.8 million in state funding towards tobacco control programs, including cessation, education, and youth prevention efforts, which was a 2.9 percent increase in funding from 2020 levels. This amounts to 3.2 percent of taxes and 7.9 percent of settlement payments. In 2021, for every \$1 the state received in tobacco monies, it spent \$0.02 on tobacco control efforts.

Maryland Tobacco Monies



References

— Cigarette Taxes — Tobacco Settlement Payments — Tobacco Control Funding

1. Data on adult smoking rates comes from the Centers for Disease Control's Behavioral Risk Factor Surveillance Survey including sections on "Demographics - Race," Tobacco Use - All Categories," and "E-Cigarette Use." Accessed December, 2022. <https://www.cdc.gov/brfss/brfssprevalence/>
2. Data on race was compiled using population data from the Annie E. Casey Foundation (<https://datacenter.kidscount.org/>) and Demographic data from the CDC to cross reference the racial population. Then, data from Smoking and Race was used to determine the percent of adults who were smoking in 2021.
3. Data on youth tobacco and vapor product use comes from the National Youth Tobacco Survey, accessed in December, 2022. https://www.cdc.gov/tobacco/data_statistics/surveys/nyts/index.htm.
4. Data on tax information comes from Orzechowski and Walker, "The Tax Burden on Tobacco Historical Compilation Volume 56, 2021. Print.
5. Data on tobacco settlement payments is from Campaign for Tobacco-Free Kids, "Actual Annual Tobacco Settlement Payments Received by the States, 1998-2022." Accessed December, 2022. <https://www.tobaccofreekids.org/assets/factsheets/0365.pdf>.
6. Data on tobacco control funding is from Campaign for Tobacco-Free Kids, "Appendix A: A History of Spending for State Tobacco Prevention Programs," Accessed December, 2022. <https://www.tobaccofreekids.org/assets/factsheets/0209.pdf>.

Tobacco Harm Reduction 101

An estimated 30.8 million American adults smoked in 2020, or approximately 12.5 percent of the U.S. population.[1] Smoking-related disease and deaths cost the United States more than \$300 billion each year, including \$225 billion attributed to medical costs and more than \$156 billion due to lost productivity.[2]

For many years, policymakers have staunchly pushed forward with only one approach: quit or die. This failed method of smoking prevention and cessation has negligibly reduced smoking rates over the years. Yet, there is another approach: tobacco harm reduction for those who are unwilling or unable to quit smoking. In 1976, famed tobacco research Michael Russell remarked “people smoke for the nicotine, but die from the tar.”[3] Today, cigarettes contain nearly 600 ingredients and when ignited release more than 7,000 chemicals in the tobacco smoke, including 69 which are known to cause cancer.[4]

Nicotine, while not benign, is not responsible for causing cancer or the other ill effects caused by combustible cigarette smoke. In fact, the U.S. Food and Drug Administration,[5] the Centers for Disease Control and Prevention,[6] and the American Cancer Society[7] all acknowledge that nicotine has addictive properties but is not responsible for the harms caused by various tobacco products.

Given that nicotine itself is not the harm-causing property of tobacco, consumers and manufacturers have moved forward with giving adults the options to try and switch to less harmful tobacco products, otherwise known as tobacco harm reduction.

Tobacco harm reduction takes into account the science and the individual, all the while reducing the harms related to cigarette smoking. Rather than shaming persons addicted to nicotine, tobacco harm reduction offers them an opportunity to use a less harmful product, while delivering nicotine in a manner that is effective at reducing their cravings.

Reduced harm tobacco products include: electronic cigarettes/vaping devices, heated tobacco products, nicotine replacement therapy, and smokeless and snus products. These products deliver nicotine to adult consumers in a manner that is significantly less harmful than combustible cigarettes. Moreover, there is a plethora of evidence to their reduced risks.

- **E-Cigarettes:** Despite media alarmism, e-cigarettes are significantly less harmful than combustible cigarettes, as noted by numerous public health agencies. In 2015, Public Health England found e-cigarettes to be 95 percent less harmful than combustible cigarettes.[8] In 2021, the agency noted that “vaping is positively associated with quitting smoking successfully.”[9] In 2016, the UK Royal College of Physicians declared that e-cigarettes were unlikely to exceed five percent of the harms that are caused by smoking.[10] Not only does the UK government subsidize e-cigarettes as a cessation tool for people who smoke, vape shops can be found in hospitals in the country. In the United States, in 2018, of the estimated 10 million vapers, approximately 3 million had previously used combustible cigarettes.[11] In 2021, the FDA, through a new regulatory pathway, authorized the first e-cigarette product, finding that the product is “significantly less toxic than combusted cigarettes” and “could benefit addicted adult smokers who switch ... by reducing their exposure to harmful chemicals.”[12]
- **Heated Tobacco:** The US FDA has not only allowed for the marketing of a heated tobacco product, the manufacturer has been permitted to market it with a reduced risk claim, including that due to the product heating tobacco and not burning it, the process “significantly reduces the production of harmful and potentially harmful chemicals.”[13] While the rollout in America has been limited (and currently hindered by a patent dispute), in other countries, heated tobacco products have been linked to significant reductions in adult smoking rates. A 2020 study by the American Cancer Society remarked that heated tobacco products “likely reduced cigarette sales in Japan.”[14]

Tobacco Harm Reduction 101

- **Nicotine pouches:** Nicotine pouches are used the same way as snus but deliver nicotine via infused fillers like plant-based fibers instead of pasteurized tobacco. They are the newest innovation on the nicotine market and they are as or less harmful than snus. As a result, they have been rising in popularity across the world. For example, a May 2022 study assessed the potential effect of nicotine pouches if introduced in the U.S. in 2000. The study estimated there would have been about 700,000 fewer deaths by 2050.
- **Nicotine Replacement Therapy (NRT):** NRT is the most endorsed form of tobacco harm reduction and is subsidized by federal and state health care quit-smoking programs. NRT includes gums, patches, lozenges, and prescription medication. Studies have found that similar rates of cessation success among users of various NRT products and smokeless and snus products.[15] Other tobacco harm reduction products have been found to be more effective. For example, a 2019 randomized controlled trial found that e-cigarettes were almost twice as effective as NRT in aiding in smoking cessation.[16]
- **Smokeless:** Smokeless tobacco poses much lower risks than smoking, all while containing nicotine. A 2009 Biomed Central study analyzed 89 studies of smokeless tobacco use and cancer finding “very little evidence” of smokeless tobacco producing elevated cancer risks.[17] A 2011 review of epidemiologic studies found that snus and smokeless tobacco use to be “99% less hazardous than smoking.”[18]
- **Snus:** Snus is an oral moist tobacco often used in pouches. It originated in Sweden and has been part of the country’s “tobacco culture” for more than a century. Snus has been directly linked to reducing smoking rates in the country. Swedish men, who have the highest rate of smokeless tobacco use in Europe and the lowest smoking rate, “also have the lowest rates of lung cancer and other smoking-related diseases in Europe.”[19] Further, a 2020 long-term study of Swedish snus users that were former smokers concluded that over “80% found snus of great importance to succeed with smoking cessation.”[20]

As cigarettes remain available, it is imperative that policymakers offer the consumers access to less harmful tobacco products. Policymakers should avoid excessive regulations, unfair taxation, and outright prohibition when enacting policies regarding novel tobacco harm reduction innovations. Lawmakers should put forth policies that both inform consumers of the wide variety of less harmful products, as well as allow the market to introduce products that are effective at both delivering nicotine in a less harmful manner and reducing smoking rates.

References

1. Centers for Disease Control and Prevention, “Current Cigarette Smoking Among Adults in the United States,” *Smoking & Tobacco Use*, March 17, 2022, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.html.
2. Office of the Associate Director for Policy and Strategy, “Health Topics – Tobacco,” Centers for Disease Control and Prevention, September 30, 2021, <https://www.cdc.gov/policy/polaris/healthtopics/tobacco/index.html>.
3. M. A. H. Russell, “Low-tar medium-nicotine cigarettes: a new approach to safer smoking,” *British Medical Journal*, June 12, 1976, <https://www.bmj.com/content/bmj/1/6023/1430.full.pdf>.
4. National Cancer Institute, “Harms of Cigarette Smoking and Health Benefits of Quitting,” December 19, 2017, <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet>.
5. U.S. Food and Drug Administration, “Nicotine Is Why Tobacco Products Are Addictive,” June 29, 2022, <https://www.fda.gov/tobacco-products/health-effects-tobacco-use/nicotine-why-tobacco-products-are-addictive>.
6. Centers for Disease Control and Prevention, “Quit smoking medicines are much safer than smoking,” *Tips From Former Smokers*®, January 7, 2022, <https://www.cdc.gov/tobacco/campaign/tips/quit-smoking/quit-smoking-medications/3-reasons-to-use-medicines-when-you-quit/quit-medicines-are-safer-than-smoking/index.html>.
7. American Cancer Society, “Health Risks of Smokeless Tobacco,” October 28, 2020, <https://www.cancer.org/healthy/stay-away-from-tobacco/health-risks-of-tobacco/smokeless-tobacco.html>.
8. A. McNeill et al., “E-cigarettes: an evidence update,” *Public Health England*, August 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733022/E-cigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England_FINAL.pdf.
9. Ann McNeill et al., “Vaping in England, an evidence update including vaping for smoking cessation,” February 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf.
10. Royal College of Physicians, “Nicotine without smoke: Tobacco harm reduction,” April 28, 2016, <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>.
11. Nicholas Bakalar, “From 0 to 10 Million: Vaping Takes Off in the U.S.,” *The New York Times*, August 31, 2018, <https://www.nytimes.com/2018/08/31/health/vaping-cigarettes-nicotine.html>.
12. U.S. Food and Drug Administration, “FDA Permits Marketing of E-Cigarette Products, Marking First Authorization of Its Kind by the Agency,” FDA News Release, October 12, 2021, <https://www.fda.gov/news-events/press-announcements/fda-permits-marketing-e-cigarette-products-marking-first-authorization-its-kind-agency>.
13. [1] U.S. Food and Drug Administration, “FDA Authorizes Marketing of IQOS Tobacco Heating System with ‘Reduced Exposure’ Information,” FDA News Release, July 7, 2020, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-iqos-tobacco-heating-system-reduced-exposure-information>.
14. [1] Michael Stoklosa et al., “Effect of IQOS introduction on cigarette sales: evidence of decline and replacement,” *Tobacco Control*, July 29, 2020, <https://pubmed.ncbi.nlm.nih.gov/31209129/>.
15. [1] Paul R. Nelson et al., “Randomized Trial to Compare Smoking Cessation Rates of Snus, With and Without Smokeless Tobacco Health-Related Information, and a Nicotine Lozenge,” *Nicotine & Tobacco Research*, January 24, 2018, <https://academic.oup.com/ntr/article/21/1/88/4823099>.
16. [1] Peter Hajek et al., “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy,” *The New England Journal of Medicine*, February 14, 2019, <https://www.nejm.org/doi/full/10.1056/nejmoa1808779>.
17. [1] Brad Rodu, “New Study Documents the Health Effects from Snus Use: Almost Zero,” *Tobacco Truth*, January 19, 2011, <https://rodotobaccotruth.blogspot.com/2011/01/new-study-documents-health-effects-from.html>.
18. [1] Brad Rodu et al., “Vaping, E-Cigarettes, and Public Policy Toward Alternatives to Smoking,” *The Heartland Institute*, February 20, 2017, <https://www.heartland.org/publications-resources/publications/vaping-e-cigarettes-and-public-policy-toward-alternatives-to-smoking>.
19. [1] Brad Rodu, “Smoking in the European Union: How Swede It Could Be,” *Tobacco Truth*, August 3, 2009, <https://rodotobaccotruth.blogspot.com/2009/08/smoking-in-european-union-how-swede-it.html>.
20. [1] Tove Sohlberg and Peter Wennberg, “Snus cessation patterns – a long-term follow-up of snus users in Sweden,” *Harm Reduction Journal*, September 10, 2020, <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-020-00405-z>.

Tobacco Harm Reduction 101

The Role of Flavors

A vitally important aspect of vaping is that, in addition to having a fraction of the risk of smoking combustible tobacco, the act of vaping is more pleasing for adults. Flavors are essential to help transition adults away from smoking and help them remain smoke-free.

Flavors are appealing to adults in a wide variety of consumer goods, and it is no different with vaping. Importantly, flavored vapes create a disassociation between smoking and vaping which is instrumental in preventing relapse for former smokers who found it difficult to quit by other means. While some vapers stick to a tobacco flavor, the vast majority do not.

A wide choice of devices, nicotine strengths, and flavored liquids are integral to the success of vaping as an alternative to smoking because it enables individuals to tailor the vaping experience to suit their particular needs.

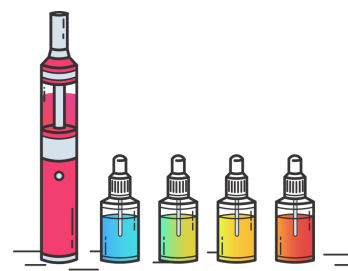
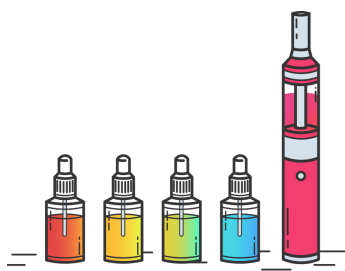
Flavors are also important in distinguishing combustible tobacco from vaping. There is no comparison between an attractive fruit flavor and the flavor of burned tobacco. Vaping is effectively a means of denormalizing tobacco and normalizing the use of a far safer alternative.

Research

A 2018 survey of nearly 70,000 American adult vapers “found flavors play a vital role in the use of electronic cigarettes and vaping devices.”[i] In fact, 83.2 percent and 72.3 percent of survey respondents reported vaping fruit and dessert flavors, respectively. Most respondents indicated restricting flavors would make vaping “less enjoyable.”

Analysis of EcigIntelligence’s 2019 user survey found that fruits, sweets and candy, and desserts and bakery flavors “are among the most preferred flavors across all age groups.”[ii] Use of tobacco flavor was preferred by less than 5 percent of those who vape. In the event that legal sales were restricted to tobacco flavor only, 69 percent of respondents said they would try to acquire their flavors from alternative methods and 25 percent stated that they would be willing to drive over 100 miles to obtain supply. This illustrates that flavors are important to the appeal of vaping over smoking and that proposals to ban flavored vaping products are more an attempt at prohibition by stealth than a serious public health measure.

A 2020 study found an association between flavors and smoking cessation. In a cohort study of more than 17,900 participants, the authors found that “adults who began vaping nontobacco-flavored e-cigarettes were more likely to quit smoking than those who vaped tobacco flavors.”[iii]



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Tobacco Harm Reduction 101

Restricting Vape Flavors Perpetuates Smoking

Many lawmakers are being convinced into proposing a ban on vape flavors in the mistaken belief that they are the only driver of youth vaping. It seems to have been forgotten that youth experimentation with much more harmful combustible tobacco was at very high levels in the past when there was only tobacco flavor to offer.

Since vaping is a substitute for smoking in those who want to use nicotine, restricting vaping increases the appeal of combustible tobacco.

A July, 2021 survey in *Nicotine & Tobacco Research* found that one-third (33.2 percent) of survey respondents would “likely switch to [combustible] cigarettes” if flavors were banned in e-cigarettes. [i]

More alarmingly, a 2021 Yale University study found that “San Francisco’s ban on flavored tobacco product sales was associated with increased smoking among minor high school students” and that “reducing access to flavored electronic nicotine delivery systems may motivate youths who would otherwise vape to substitute smoking.”[ii] Further, there is a correlation between state flavored e-cigarette bans and increases in young adult smoking rates.[iii]

This should not come as a surprise because of the substitution effect of competing nicotine delivery products. Nicotine use has been prevalent for many hundreds of years, restricting less harmful nicotine-containing products effectively protects sales of harmful, combustible cigarettes.

A variety of vape flavors are beneficial to public health for several reasons:

- They provide intense competition for the cigarette trade by presenting an attraction that combustible tobacco cannot match.
- Flavors provide a more appealing alternative to smoking and lead to population level reduced harm from nicotine use if uptake and initiation of vaping instead of smoking is widespread.
- Most people who smoke do so as a result of peer pressure, whether as adolescents or adults.
- Flavors help more people to enjoy vaping instead of smoking and therefore optimize the chance that future nicotine users will be more likely to initiate with a vape than with a combustible cigarette.

Lawmakers should recognize the crucial role that flavors play in reducing combustible tobacco use and put forth policies that inform consumers of the wide variety of less harmful products on the market.

References

[1] Konstantinos Farsalinos, “Submitting to the FDA the findings of the largest ever survey on e-cigarette flavors use by US vapers,” *E-Cigarette Research*, August 11, 2008, <http://www.ecigarette-research.org/research/index.php/whats-new/2018-2/266-us-flav>.

[2] Consumer Advocates for Smoke-free Alternatives Association, “ECigintelligence User Survey 2019,” August 25, 2020, <https://casaa.org/ecigintelligence-user-survey-2019/>.

[3] Abigail S. Friedman and SiQing Xu, “Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation,” *JAMA*, June 5, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7275248/>.

[4] Heather Posner et al., “Reactions to Sales Restrictions on Flavored Vape Products or All Vape Products Among Young Adults in the United States,” *Nicotine & Tobacco Research*, March 2022, <https://academic.oup.com/ntr/advance-article-abstract/doi/10.1093/ntr/ntab154/6332852?redirectedFrom=fulltext>.

[5] Abigail S. Friedman, “A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California,” *JAMA Pediatrics*, May 24, 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8145156/>.

[6] Lindsey Stroud, “Statewide Flavored E-Cigarette Bans Have Led to Increases in Young Adult Smoking,” *Townhall*, October 21, 2022, <https://townhall.com/columnists/lindseystroud/2022/10/20/statewide-flavored-e-cigarette-bans-have-led-to-increases-in-young-adult-smoking-n2614807>

Tobacco Harm Reduction 101

Flavors Are Not Main Reason for Youth E-Cigarette Use

In 2019, many lawmakers sought to address the increase in youth e-cigarette use by enacting various policy proposals, including banning non-tobacco flavors in e-cigarette products. According to e-cigarette opponents, flavors are designed to only attract youth and have no value in tobacco harm reduction.

While addressing youth use of any age-restricted product is laudable, numerous state and national surveys indicate that flavors are not the most commonly cited reason for e-cigarette use among youth. Rather than enacting draconian bans, lawmakers should focus on the underlying reasons for youth e-cigarette use.

State Survey Data

The Centers for Disease Control and Prevention (CDC) conducts the Youth Risk Behavior Survey (YRBS) which examines various youth data points, including tobacco and vaping use. While data is limited, some states have sought to examine why youth are using e-cigarettes.

In 2019 in aggregate analysis of four state surveys (Connecticut[i], Montana[ii], Rhode Island[iii], and Virginia[iv]), among all high school students, 59.6 percent reported having never used an e-cigarette. Of the remaining students, 18 percent cited using e-cigarettes for “some other reason,” 12.1 percent reported using them because a family member and/or friend had, and only 5.2 percent reported using e-cigarettes because they were “available in flavors.”

In one 2019 state survey (Vermont) of high school students that were current e-cigarette users, 51 percent reported using e-cigarettes for some “other reason,” 17 percent had used them because family and/or friends, and only 10 percent reported current e-cigarette use because of flavors.[v]

National Survey Data

The Centers for Disease Control and Prevention annually conducts the National Youth Tobacco Survey (NYTS), which measures “tobacco-related behaviors, attitudes, beliefs, and exposure to pro- and anti-tobacco influences.”[vi] Since 2016, the NYTS has examined why youth have tried and/or are using e-cigarettes.

In 2016, among middle and high school students that had ever used an e-cigarette, 39 percent reported using them because a “friend or family member used them,” 31 percent cited “other,” and 31 percent reported using them because they “are available in flavors such as mint, candy, fruit, or chocolate.”[vii]

In 2019, among middle school and high school students that were current e-cigarette users, 55.3 percent reported vaping because they were “curious about them,” 30.8 percent cited using them because a “friend or family member used them,” and only 22.4 percent cited using e-cigarettes because of flavors.[viii]

The NYTS went further in 2021 and offered additional reasons for e-cigarette use than prior surveys. [ix] The results are interesting and indicative of a different trend in youth substance youth, including issues of anxiety and/or depression.

Tobacco Harm Reduction 101

For example, in 2021, among middle and high school students that were current e-cigarette users, 43.4 percent reported using them because they were “feeling anxious, stressed, or depressed,” 42.8 percent had used e-cigarettes to get a “buzz from nicotine,” 28.3 percent had used them because a friend had used them, and only 13.2 percent reported using e-cigarettes because of flavors.

Among middle and high school students that had ever used e-cigarettes, 57.8 percent reported trying them because of a friend, 47.6 percent cited curiosity as a reason for use, 25.1 percent reported trying them because they were “feeling anxious, stressed, or depressed,” 23.3 percent had tried them to get a “buzz from nicotine,” and only 13.5 percent had reported trying e-cigarettes because they are available in “flavors, such as menthol, candy, fruit, or chocolate.”

As policymakers seek to reduce youth use of age-restricted products, it is imperative that they understand the reasons why youth are using such products, including e-cigarettes. State and national data indicate that flavors is often cited as the third reason for youth e-cigarette use, and other factors are contributing to their use that will not be impacted by misguided policies such as flavor bans.

References

1. [1] Connecticut High School Survey, “2019 Youth Risk Behavior Survey Results,” 2019, https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/CSHS/2019CT_Codebook.pdf.
2. [1] Montana Office of Public Instruction, “2019 Montana Youth Risk Behavior Survey, High School Results,” 2019, https://opi.mt.gov/Portals/182/Page%20Files/YRBS/2019YRBS/2019_MT_YRBS_FullReport.pdf?ver=2019-08-23-083248-820.
3. [1] Rhode Island High School Survey, “2019 Youth Risk Behavior Survey Results,” 2019, <https://health.ri.gov/materialbyothers/yrbs/2019HighSchoolDetailTables.pdf>.
4. [1] Virginia High School Survey, “2019 Youth Risk Behavior Survey Results,” 2019, <https://www.vdh.virginia.gov/content/uploads/sites/69/2020/06/2019VAH-Detail-Tables.pdf>.
5. [1] Vermont Department of Health, “2019 Vermont Youth Risk Behavior Survey, Statewide Results,” March, 2020, https://www.healthvermont.gov/sites/default/files/documents/pdf/CHS_YRBS_statewide_report.pdf.
6. [1] Office of Disease Prevention and Health Promotion, “National Youth Tobacco Survey,” <https://health.gov/healthypeople/objectives-and-data/data-sources-and-methods/data-sources/national-youth-tobacco-survey-nyts>.
7. [1] James Tsai et al., “Reasons for Electronic Cigarette Use Among Middle and High School Students
8. — National Youth Tobacco Survey, United States, 2016,” Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, February 16, 2018, https://www.cdc.gov/mmwr/volumes/67/wr/mm6706a5.htm?s_cid=mm6706a5_w.
9. [1] Teresa W. Wang et al., “Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019,” Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, December 6, 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6903396/pdf/ss6812a1.pdf>.
10. [1] Andrea S. Gentzke et al., “Tobacco Product Use and Associated Factors Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021,” Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, March 11, 2022, <https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf>.

ATC - Letter of Information - SB259 - Flavored Tob

Uploaded by: Thomas Akras

Position: INFO

Wes Moore
Governor

Aruna K. Miller
Lt. Governor



Jeffrey A. Kelly
Executive Director

Maryland Alcohol and Tobacco Commission

February 16, 2023

Hon. Melony Griffith
Chair
Finance Committee
Maryland State Senate
State of Maryland
3 East, Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Information – Senate Bill 259 – Flavored Tobacco Products - Prohibition

Chair Griffith:

The Alcohol and Tobacco Commission (“ATC”) takes no position on Senate Bill 259 but offers the following information for the Finance Committee’s consideration.

Senate Bill 259 (“bill”) would ban the sale of flavored tobacco products – to include menthol and mint flavored products - in the State of Maryland. Specifically, this bill would apply the flavor ban to all tobacco products in the State to include Cigarettes, Other Tobacco Products, and Electronic Smoking Devices.

Passage of this bill would prohibit manufacturers creating such products, wholesalers selling and/or distributing such products to retailers, and retailers selling such products to consumers in the State. This bill also creates misdemeanor penalties for the manufacturing, wholesaling, or retailing of flavored tobacco products in the State of Maryland.

If flavored tobacco products are prohibited in Maryland, the illicit market for such products would greatly expand within the State. In 2020 when the ban on flavored tobacco products was last proposed, there was testimony given by a representative from the convenience store industry that testified that 46% of all cigarette sales in the State of Maryland were menthol cigarettes.

If this testimony was even relatively accurate, the illicit market for such products would be in the millions on a per unit basis, given that this ban would impact all tobacco

products. The agency would likely see increased expenditures in four areas: (1) Enforcement Agents; and (2) Equipment and Vehicles; and (2) Secure Storage; and (4) Contractual Services.

The ATC would need at least five (5) new sworn law enforcement positions (1 supervisor and 4 field agents), to ensure that the agency has the adequate resources necessary to address the surge in contraband product. These agents need to be outfitted with the equipment and vehicles necessary for them to conduct enforcement around the State.

Currently, the ATC maintains approximately 3600 square feet of secure storage space at its headquarters located at the Treasury Building, 80 Calvert Street, Annapolis, MD 21401. Within this allotted storage space, the ATC houses all the evidence associated with enforcement activities related to alcohol and tobacco. Stored evidence related to tobacco products seizures amount to approximately 2500 square feet of space. This amounts to 70% of all the ATC's allotted secure storage space.

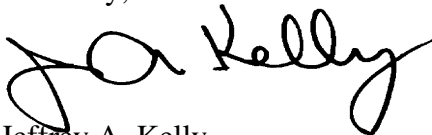
A prohibition against flavored tobacco would result in a surge of out of State contraband driven into the marketplace, given that surrounding States to include Virginia, Pennsylvania, and West Virginia do not have similar bans. As a result, the agency estimates that it would need at least 2500 more square feet of secured storage space to ensure it has the capacity to seize and secure evidence related to contraband flavored tobacco immediately upon the passage of this emergency piece of legislation.

Lastly, the ATC currently contracts with multiple vendors to ensure that contraband tobacco products are destroyed in a safe and appropriate manner. Such contractual costs include transportation and fees associated with controlled burns of tobacco products at an off-site facility.

While the ATC would work faithfully to ensure the ban on Flavored Tobacco Products is enforced if Senate Bill 259 becomes law, the agency would require an immediate influx of the aforementioned additional resources to successfully uphold this important prohibition.

I welcome the opportunity to address any questions or concerns the Finance Committee may have for the ATC regarding this Letter of Information concerning Senate Bill 259.

Sincerely,



Jeffrey A. Kelly
Executive Director