



Smoke-Free Alternatives Trade Association (SFATA) Testimony.

RE: Connecticut Public Health Committee hearing, HB 5020

March 4, 2020

Senator Abrams, Representative Steinberg, Senator Somers and William A. Petit and members of the Committee.

My name is Mark Anton, I am the Executive Director of the Smoke-Free Alternatives Trade Association, based out of Washington, DC.

SFATA, a 501(c)(6) organization, is a national trade association of businesses that work in, or in service of, the vapor products industry, including manufacturers, distributors and retailers. SFATA's mission is to advocate for a reasonably regulated U.S. marketplace which allows its member companies to provide smoke-free products to adult consumers, while promoting a positive public image for vapor products and educating businesses in our industry. All SFATA members must agree to adhere to the association's Statement of Principles which include, among other things, strict marketing and packaging guidelines and can be found here:

[https://www.sfata.org/content.aspx?page\\_id=22&club\\_id=89995&module\\_id=294336](https://www.sfata.org/content.aspx?page_id=22&club_id=89995&module_id=294336)

Today, we are here to discuss the merits of a bill that is meant to reduce the youth use of vapor products. While we agree we should band together to prevent youth from vaping we must also agree that we must do everything in our power to end death and disease due to smoking cigarettes.

In the state of Connecticut 4,300 adults; mothers, fathers, brothers and sisters die every year from smoking combustible cigarettes. While considering banning flavors to prevent youth enticement to these products, we are condemning adult users who rely on these products to remain smoke free.

To date all the EVALI (lung illness from vaping) cases last year have been attributed to black market products containing Vitamin E Acetate. An oil used in products that contain THC (Cannabis). Not one illness has been confirmed by the CDC as being caused by Electronic Nicotine Delivery Systems (ENDS)

If bill HB5020 is passed, it will immediately shutter all dedicated vaping businesses in Connecticut creating financial hardship for thousands of families and potential bankruptcy for many business owners. I am sure this was not the intent of this bill, but it will be the reality of it.

Key findings in an industry study found the average vape store received 75-90% of its sales from flavored e-liquid other than tobacco in bottles. Additionally, the average time in business is 6.1 years at the time of the study.<sup>1</sup>

Vape Stores cannot survive on Tobacco flavor alone, as this bill implies that will be the only flavor left to sell. However, it will be a huge benefit to the large tobacco cigarette manufacturers that manufacture and sell tobacco flavored pods and cigarettes. This will continue to perpetuate the issue of dual use, which is vaping and smoking at the same time.

This ban on flavors would effectively remove the most commonly used legal vaping alternatives to smoking in Connecticut and would cause public harm. Forcing current users to seek other alternatives to acquiring the products they need, such as the internet, the black market or do-it-yourself kits.

While we are in support of the noble goal of preventing youth use. We cannot support this bill with the outcome of hurting adults. Connecticut increased the age restriction to buying tobacco products to 21 last year, we have not even had the time to see if rates drop. We should build on this and make this stronger as an alternative.

Punishing the law-abiding Connecticut Small Vape business owner for youth use is just not in line with actual data. According to the FDA Compliance Check from January 1, 2019 to December 31, 2019, in which the agency used a minor in an attempt to purchase tobacco products.<sup>2</sup> There were 379 total infractions, of these there were a total of 2 infractions by dedicated vape shops. Of all of these infractions there was zero infractions for bottled liquid which is the predominate product our members sell. Vape stores are doing the job of preventing youth access.

While vape stores had a very low rate of violations in Connecticut, 48% of underage violations are pod-based systems by JUUL. The Small Connecticut vape businesses are not the bad actor here and should not be put out of business.

SFATA is concerned for the well-being of the public users and non-users of ENDS products, that is why we have meet regularly with the FDA and have worked in concert with other groups to develop Standardized manufacturing processes, core marketing standards and the AGE to Vape program for ENDS products that the FDA can incorporate in their regulations.

We believe that the FDA is the best scientific body to address this issue on a broad spectrum. The FDA recently announced its "Enforcement Priorities for Electronic Nicotine Delivery Systems and other deemed Products on the Market Without Premarket Authorization", in this guidance the FDA used its data that should youth overwhelmingly use flavored pre-filled pods and have restricted them from the market pending review of their application. While leaving bottled flavored e-liquid available as these are used predominantly by adult consumers.

We also have presented the FDA with solutions to the issue of youth uptake and prevention solutions. While SFATA is concerned with the use of these products by youth and summarily stand opposed to the use of ENDS products by youth. We are a staunch supporter of access of ENDS products for smoking adults and our members who provide these regulated products.

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<sup>1</sup> ECigIntelligence US Vape Store Survey 2019 Main Findings, September 2019, [www.ecigintelligence.com](http://www.ecigintelligence.com)

<sup>2</sup> [https://www.accessdata.fda.gov/scripts/oc/inspections/oc\\_insp\\_searching.cfm](https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm)

We believe if government will work with us, we can fashion regulation and safeguards so that both our youth are protected and adult consumers will still have reasonable access. It does not have to be an either-or situation.

There have been a number of public comments about the potential to outright ban ENDS products or to ban flavored ENDS products. This would be a public health disaster, and would not work at all. Prohibition has never worked. This bill would be prohibition!

We have seen the huge health improvements among the smoking community who have either switched completely to ENDS products or have even transition away completely.

In a statement by the FDA in 2017, previous Commissioner Dr. Gottlieb and Director Mitch Zeller, present the following comments:

“Evidence shows that most cigarette smokers are concerned about their health and are interested in quitting and that most have tried to quit.”

“Nicotine, though not benign, is not directly responsible for the tobacco-caused cancer, lung disease, and heart disease that kill hundreds of thousands of Americans each year.” “Combustible cigarettes cause the overwhelming majority of tobacco-related disease and are responsible for more than 480,000 U.S. deaths each year. Indeed, when used as intended, combustible cigarettes kill half of all long-term users.”

“With these considerations in mind, and led by the best available evidence, the FDA will pursue a regulatory framework that focuses on nicotine and supports innovation to promote harm reduction. This framework will recognize that the core problem of nicotine lies not in the drug itself but in the risk associated with the delivery mechanism.”

“To truly protect the public, the FDA’s approach must take into account the continuum of risk for nicotine-containing products... There are already products, such as electronic nicotine delivery systems, that could conceivably deliver nicotine without posing the dangers associated with tobacco combustion.”

“We are at a crossroads in efforts to reduce tobacco use, with the lives of tens of millions of currently addicted cigarette smokers and future generations hanging in the balance. Even as we evaluate the characteristics of various nicotine-delivery products — and watch the sometimes-divisive debate over these products’ pros and cons — the FDA is focusing squarely on nicotine as the centerpiece of a comprehensive, lifesaving tobacco regulatory strategy. In developing this strategy, we will rigorously assess the best available evidence and provide extensive opportunities for stakeholder input.”

IN 2018, the National Academies of Sciences, Engineering, and Medicine released a report that found “substantial evidence that completely switching from regular use of combustible tobacco cigarettes to e-cigarettes results in reduced short-term adverse health outcomes in several organ systems.” In a follow up question session, they further emphasized that if you are using both products together (Dual Use) the user should switch immediately to e-cigarettes.

This supports the findings of the Royal College of Physicians of 2016, one of the world’s oldest and most prestigious medical societies, RCP noted “ the available evidence to date indicates that e-cigarettes are

being used almost exclusively as safer alternatives to smoked tobacco, by confirmed smokers who are trying to reduce harm to themselves or others from smoking, or to quit smoking completely.

Finally, a 2019 Study in the New England Journal of Medicine found e-cigarettes are twice as effective as nicotine replacement therapy in helping smokers quit.

The proposed legislation HB5020 that the Connecticut government is proposing will be in direct conflict with the FDA and other health agencies if they choose to ban flavors or ENDS products altogether.

The overall public health utility of ENDS depends on it being attractive enough, through the use of flavors, to appeal to as wide a spectrum of adult smokers as possible. Flavored ENDS are appropriate for the protection of the public health because the availability of these products has undoubtedly played a significant role in the continuously falling U.S cigarette smoking rate – which hit yet another all-time low (14%) according to the Centers for Disease Control's National Center for Health Statistics.

Numerous published studies demonstrate the important role that flavored ENDS play in this regard. Most recently, the Harm Reduction Journal published the results of an extensive online survey which assessed the first e-cigarette flavors used by a non-probabilistic sample of 20,836 adult frequent users in the United States. Differences in e-cigarette flavor preferences between current smokers, former smokers and never-smokers and trends in the first flavor used are doing so increasingly with fruit and other non-tobacco flavored ENDS.

The FDA itself has recognized the importance of having palatable cigarette alternatives available in order to reduce harm. Specifically, FDA determined that a variety of Nicorette gum flavors such as White Ice Mint, Cinnamon Surge, Fruit Chill, Fresh Mint and Mint provide a more enjoyable alternative for adult smokers and do not present a significant risk for abuse.

SFATA supports responsible, science-based and appropriately tailored regulations for Electronic Nicotine Delivery Systems (ENDS) based on the "continuum of risk" of nicotine products. As described herein, ENDS including e-liquids—all of which are flavored—are appropriate for the protection of the public health, as they are critical to reducing harm from combustible tobacco by helping cigarette smokers who are otherwise unwilling or unable to quit smoking, transition permanently to less harmful sources of nicotine, such as non-combustible ENDS. The members of SFATA, which include hundreds of small and large businesses across all of the 50 states in the United States, rely heavily on the sale of flavored e-liquids and ENDS products to adults. Any ban or restriction of such products would likely result in these companies going out of business, and be severely detrimental to the public health.

We have two separate distinct issues. One is the incredibly huge amount of deaths every year in Connecticut related to smoking at 4,300 per year according to the CDC. The other issue is the growth of youth picking up vaping for many reasons, whether it is because they smoke and wanted to stop or whether they are seeking euphoric buzz effects from high nicotine or just were curious.

We are at a crossroads and if we partner together, we could see the first-generation smoke-free in our life time.

Here are our suggestions to the committee regarding electronic cigarettes; we recommend looking at the United Kingdoms model as they have seen smokers switch in record numbers and their youth uptake be 1500% less than the United States. The difference is the UK has a limit on nicotine

concentration in the solution. This has less potential for misuse or abuse by teens. These liquids also are not nicotine salt derivations that add acid to the formulation for faster pulmonary delivery.

Survey data shows that vape stores get the bulk 49% of their sales from products that contain .03-.06% nicotine 3/6mg/ml. Higher amounts sold include up to 24mg/ml for those first-time smokers that need higher nicotine to help with the transition.

Another suggestion and we are making this at the federal level is to require all tobacco merchants use electronic age authorization that is interfaced with the stores Point of Sale device. This would lock all sales until a 3<sup>rd</sup> party authentication has been performed. This takes the human element out of the age verification process.

Another solution would be to limit all flavored products to age restricted vape shops or other age restricted facilities. Not allow them in locations frequented by underage purchasers. This would allow adults access and restrict youth.

License and fine changes, license all stores that sell vapor as a separate license, do not allow existing stores with tobacco license to sell unless they get a separate license for vaping. Increase the fines for failure to comply to help in enforcement.

The Smoke-Free Alternatives Trade association stands ready to assist the New Jersey legislature, as it has in the past, to help fashion reasonable regulation that will both restrict youth access and provide life saving alternatives to adult consumers.

Sincerely,

A handwritten signature in black ink that reads "Mark W. Anton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark Anton  
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