



**Testimony to the Public Health Committee**  
**March 6<sup>th</sup>, 2020**  
**On behalf of the Vaping Technology Association**  
**Regarding HB 5020 An Act Implementing the Governor's Budget Recommendations Regarding**  
**Public Health**

Senator Abrams, Representative Steinberg, and members of the Public Health Committee, my name is Kinn Elliott and I represent the Vapor Technology Association (VTA). While there are provisions of HB 5020 that we support, such as stronger penalties for retailers selling to minors, we respectfully oppose the flavor ban in the bill.

The Vapor Technology Association is the leading national trade organization representing retailers, manufacturers, wholesalers, distributors, and entrepreneurs who have developed innovative and quality vapor products. Big tobacco and JUUL are not members of our association. In addition, we do not represent CBD or THC interests.

E-cigarettes are 95% safer than traditional, combustible cigarettes. The United Kingdom's Royal College of Physicians has conducted a thorough analysis of the data available to make this determination. In fact, of the 3.6 million vapers in that country, 54% have fully given up smoking. On Wednesday of this week, they reaffirmed their position stating, "the risks associated with long-term vaping are unlikely to exceed 5% of the harm from smoking tobacco."<sup>1</sup>

In the summer of 2019, there were a number of cases of lung illness and deaths incorrectly associated with vaping nicotine products. In early January of this year, the CDC made a definitive statement on the safety of ENDS products and the illnesses' link to vitamin E acetate oil.<sup>2</sup>

The VTA is committed to preventing youth access to e-cigarettes. We are in favor of meaningful reforms designed to target access to these products. As a result, it is important to examine the real issues around youth usage.

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<sup>1</sup> <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-march-2020/vaping-in-england-2020-evidence-update-summary>

<sup>2</sup> [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)



The most recent National Youth Tobacco Survey conducted by the CDC provides some insight into youth behaviors. In the 2019 survey, almost 80% of respondents said that something other than flavors led to trying e-cigarettes. These reasons ranged from curiosity to peer pressure.<sup>3</sup> In addition, the FDA has determined that 86% of youth usage is driven through social sources, meaning a friend or relative provides access to the device.<sup>4</sup>

On February 6 the FDA ban on all pod-based flavored products went into effect.<sup>5</sup> These closed, pod-based systems are the products overwhelmingly used by young people. The FDA guidance on enforcement of ENDS products issued in January of this year states, "Data from the 2019 NYTS also indicate that youth overwhelmingly prefer cartridge-based ENDS products."<sup>6</sup>

I would like to suggest that a flavor ban is not the answer to the problem.

Last year the legislature raised the purchase age for nicotine products to 21 and implemented a tax on vaping products, with the clear intent to prevent youth usage. You do not know the full impact of those actions yet.

Last Tuesday, Attorney General Tong held a forum at a New Haven high school to discuss vaping. During the course of his discussion with students, they made it clear that marijuana use was significantly more prevalent than nicotine based vaping products.<sup>7</sup> In fact, one student was quoted as saying that she had not seen a nicotine vaping product in her school.

The unintended consequence of the proposed legislation would target adults who are seeking an alternative to combustible cigarettes by banning flavors for open systems overwhelming used by adults. The result would push them back to more harmful combustible cigarettes. In addition, it will foster an unregulated black market of products.

I have watched the debate over the legalization of THC products here in Connecticut. How do we rationalize the legalization of those products while making it illegal to use flavored nicotine

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<sup>3</sup> [https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T5\\_down](https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T5_down)

<sup>4</sup> <https://www.cspdailynews.com/tobacco/fda-study-confirms-youth-reliance-social-sources>

<sup>5</sup> <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>

<sup>6</sup> <https://www.fda.gov/media/133880/download>

<sup>7</sup> [https://www.newhavenindependent.org/index.php/archives/entry/tong\\_juul\\_multistate\\_investigation/](https://www.newhavenindependent.org/index.php/archives/entry/tong_juul_multistate_investigation/)



products for adults? I believe that we can create thoughtful solutions to solving the youth usage problem while preserving flavored products for adults seeking an alternative to combustible cigarettes just as you have done for medicinal marijuana.

Before I offer some solutions, I would like to share some data on the economic impact of a flavor ban in the state. Currently, the e-cigarette industry generates a total economic impact of \$28.8 million in jobs, wages, as well as state and local taxes. A ban would transfer 75% of lost sales to other jurisdictions. In addition, the ban would virtually eliminate \$2.5 million in state tax revenue projected in 2021.

Rather than banning flavored products that are clearly used by adults in open systems, I would offer some solutions designed to target the real problem of youth access.

**1. Implement Strict Marketing Standards to prevent nicotine vapor products from being marketed to or attractive to youth.**

Rationale: VTA created the industry's first marketing standards in January 2018. Industry agrees that vapor products should not be marketed to youth. Imposing strict marketing, advertising, labeling and packaging restrictions is the only way to address the real issue. Some of the following provisions go further than other age-restricted industries and should be applied to all tobacco products, including vapor products:

- Ban print advertising except in adult-only publications or media (adults are >85% of audience).
- Ban advertising and/or sponsorship at stadiums, concerts, sporting or other public events that are not primarily targeted to adults (adults are >85% of audience)
- Ban television advertising of any tobacco products, including any vapor products.
- Ban advertising, marketing and sale of tobacco products that:
  - Use the terms "candy" or "candies" or variants in spelling, such as "kandy" or "kandeez," "bubble gum," "cotton candy," and "gummi bear", and "milkshake."
  - Use the terms "cake" or "cakes" or variants such as "cupcake."
  - Use packaging, trade dress or trademarks that imitate those of food such as candy, cookies, juice boxes or soft drinks.
  - Use cartoons or cartoon characters.
  - Use images or references to superheroes.
  - Use a video game, movie, video, or animated television show known to appeal primarily to minors.
- Ban advertising and marketing of tobacco products, including vapor products, that:



- Makes any reference to the product as a smoking cessation device or as a product which may be used to help quit smoking.
- Makes a claim of therapeutic value, as being safe or healthy for consumers, or as not producing secondhand health effects.
- Uses health professionals to market or otherwise endorse a tobacco product, directly or indirectly.
- Ban advertising on outdoor billboards near schools and playgrounds.
- Require labels to include warnings protecting youth such as “Sales to Minors Prohibited” or “Underage Sales Prohibited” and/or “Keep Out of Reach of Children”.

**2. Point of Sale Age Verification.**

Rationale: Eliminate potential purchaser fraud and/or employee error and fake IDs by implementation of third-party software or technology that can verify age and identity.

**3. Brick & Mortar Warning Signs. Tobacco product retailers must display signage indicating that (a) “Unaccompanied Minors Are Not Allowed on Premises” or (b) “Products are Not for Sale to Minors” or (c) “Underage Sale Prohibited.”**

Rationale: Warning signs deter youth. Each clear statement makes it harder for youth to access.

**4. End “Straw Man” Sellers. Make it illegal for any person who is not a licensed tobacco product dealer to sell, barter for, or exchange any tobacco product.**

Rationale: Close to 90% of youth purchases of tobacco products come from social sources (i.e., friends, family, and adults – even strangers – who legally buy those products). Penalizing straw purchasers is a must since this is the primary point of access for underage users.

**5. End Bulk Sales. Prohibit the retail sale of more than 2 devices or 5 packages/bottles of e-liquids in one transaction.**

Rationale: Illegal straw man sellers buy in bulk. This practice should be prohibited for both online and brick and mortar retailers to thwart illicit trade.

Thank you. I would be glad to answer questions from the committee.