

Public Health Committee JOINT FAVORABLE REPORT

Bill No.: SB-367

AN ACT CONCERNING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND

Title: VAPOR PRODUCTS.

Vote Date: 3/23/2022

Vote Action: Joint Favorable

PH Date: 3/14/2022

File No.:

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

The Public Health Committee

REASONS FOR BILL:

As a society we have a responsibility to protect the health and safety of our youth. We know that using tobacco products is harmful yet many of our youth continue to engage in this behavior. Several years ago, Connecticut passed the "Tobacco 21" legislation to curb this behavior in youth. However, an alarming number of youths now engage in the use of e-cigarettes. This bill continues the effort to protect our youth by banning the sale of Electronic Nicotine Delivery Systems (ENDS) and flavored vaping products. Beginning on January 1, 2023, e-cigarette dealers would be prohibited from selling, delivering, giving, or possessing with the intent to sell, e-cigarettes with a nicotine content greater than 35 milligrams per milliliter or contain a flavoring agent other than tobacco. Manufacturers of e-cigarettes would be required to provide dealers with the nicotine content of their products and dealers would be required to maintain this information. In addition, the Department of Mental Health and Addiction Services would be required to conduct unannounced visits to e-cigarette dealers. Any dealer not in compliance would be reported to the Department of Revenue and could face civil penalties. This bill increases the penalties for dealers selling these products to individuals under the age of 21 as well as for dealers who violate the flavor ban and nicotine content requirements. Increased penalties would also apply to the owners of establishments with cigarette vending machines who allow sales of individuals under the age of 21.

RESPONSE FROM ADMINISTRATION/AGENCY:

Manisha Juthani, Commissioner, the Department of Public Health:

DPH supports this bill. The use of ENDS and vaping products among Connecticut high school students has increased rapidly over the past few years. ENDS products have become more appealing with continuously increasing levels of nicotine. Many young people are unaware that ENDS contain nicotine and there is a general belief that flavored ENDS are less harmful than products with tobacco flavors. Connecticut youth are using ENDS products that are five times more potent than cigarettes. We also know that nicotine is a highly addictive drug that can cause lasting harm to the developing adolescent brain impacting attention, learning, mood, and impulse control. Prohibiting the sale of these products to our youth will help to reduce not only continued use, but hopefully to even initiating this harmful behavior.

Charles K. Brown, Board Secretary, Central Connecticut Health District:

In his testimony, Mr. Brown shared that in the same way menthol was originally added to traditional cigarettes to lessen the caustic flavor of the tobacco, flavors have been used to attract a new generation to nicotine use with ENDS and vaping products. The use of ENDS has continued to increase in youth and young adults. In 2018 vaping was labelled an epidemic. Although legislation restricting the sale of tobacco products to youth under 21 was passed a few years ago, a recent CDC CT Youth Risk Factor Survey, found only one third of youths questioned reported being asked for proof of age when purchasing tobacco products in a store. Hopefully raising the age to 21 has had an impact on this issue. In 2020, the FDA restricted some flavors in e-cigarettes but exempted menthol and left flavored and disposable e-cigarettes available in many flavors. By 2020 menthol -flavored products constituted more than half of all e-cigarette sales. It is time for us to join our neighboring states of Massachusetts, New York, New Jersey, and Rhode Island and ban all flavors with no exemptions.

NATURE AND SOURCES OF SUPPORT:

Connecticut Hospital Association (CHA):

CHA supports these commonsense public policy initiatives. Everyday caregivers in Connecticut hospitals see the impact of disease and illness related to the use of tobacco products. The best way to reduce the harm caused by smoking would be to abstain from smoking altogether, or at least delay the start of smoking. We know that adding flavors to otherwise harsh flavors of tobacco only serve to entice more users and increases the appeal to youths and young adults. CHA supports stronger tobacco control laws and urges passage of this legislation.

Connecticut State Medical Society (CSMS):

Nicotine is highly addictive and has been proven to have adverse effects on brain development in youth. CSMS cites a 2019 University of North Carolina-Chapel Hill study that found flavored e-cigarettes increase the willingness of youth to try this product. Flavors in e-cigarettes contribute to a false perception that they are not harmful. Consistent evidence shows that flavors attract both youth and adults to the use of e-cigarettes. Limiting the sale of flavored tobacco products is critical to reversing an epidemic among our youth. CSMS noted reports beginning in August 2019 indicated that lung injuries were occurring in otherwise healthy individuals who reported using vaping products. CSMS urges passage of this bill which is a critical step to reducing the use of e-cigarettes among youth and adults.

Daniella Arias, MPH, Program Director of the Hub:

The Hub is South Western Connecticut's designated Regional Behavioral Health Action Organization (RBHAO) supporting and coordinating behavioral health initiatives including substance abuse. The Hub provides tobacco and nicotine prevention and treatment resources to fund and support other community organizations to reduce the use of vaping among our youth. Connecticut is becoming an "island of addition" since our surrounding states of Massachusetts, Rhode Island, New Jersey, and New York have enacted bans on the sale of flavored e-cigarettes. This has resulted in youth crossing borders to obtain flavored ENDS. One of government's primary concerns should be the health and safety of our youth. The Hub supports this legislation as a vital step toward that end.

NATURE AND SOURCES OF OPPOSITION:

Dr. Abigail Friedman, Associate Professor of Health Policy at the Yale School of Public Health:

Dr. Friedman presents her testimony as a health researcher and a mother and should not be construed as reflecting Yale's position as an institution. The bulk of evidence regarding e-cigarettes is that they are less lethal than combustible tobacco products. We know that the goal of the state is to implement policies that have the best chance of reducing tobacco-related disease and deaths. However, to achieve this goal requires careful attention to the effects of e-cigarette policies on smoking. Flavor bans pose two concerns: one, it might cause youths to turn to the use of more lethal combustible tobacco products; and second, that these bans might reduce the chances of adults to stop smoking. Dr. Friedman shares that the evidence supports both concerns. She notes that multiple studies show increased youth smoking after a flavor ban went into effect in San Francisco. These results concur with extensive studies that show flavor bans tend to increase youth and adult smoking. Regarding adults specifically, studies show that adult smokers who use flavored e-cigarettes are more likely to quit smoking than those who use tobacco -flavored e-cigarettes. Dr. Friedman notes that youth and adult tobacco use are related. Many adults are parents and parental smoking is one of the primary risk factors affecting youth tobacco use. Getting more adults to quit is beneficial for youths. DR. Friedman concludes that banning the sale of flavored e-cigarettes is not a solution to this problem. She makes two suggestions; one, to restrict the sale of all tobacco and nicotine products and their accessories to adult-only locations or second, to require retailers who allow underage patrons to keep tobacco and nicotine products and accessories out of sight and ban in-store advertising of these products. By covering all nicotine and tobacco products and their accessories, like flavor cards, would accomplish a goal that an e-cigarette flavor ban cannot. These policies would apply to current and future tobacco and nicotine products preventing youth access now and in the future.

Nickey Kollie, Director of Legislative Affairs, CT Energy Marketers Association:

This Association represents over 600 family-owned gasoline and convenience store owners across Connecticut. They are completely supportive of the goal to eliminate underage vaping but also support the sale of legal products to adults 21 and older. Since both Connecticut and the federal government have deemed that individuals 21 and over may purchase tobacco products, they believe that flavored products like menthol should remain available for purchase. She notes that the federal government has already taken regulatory action to ban millions of flavored e-cigarettes and flavored nicotine liquid products Soon, the FDA will have

purview over synthetic nicotine products which is the current "loophole" that allows flavors. We believe that with the FDA taking action, there is no need for the state flavor ban bill. Ms. Kollie notes that since Massachusetts banned flavored vapes in 2020 their primary challenge for tobacco enforcement has been cross-border smuggling of untaxed ENDS, cigars, and menthol cigarettes. A ban of flavored vapor products in Connecticut could consequently shift sales from law-abiding retailers to potentially illegal sources. The stores of the Association employ conscientious trained individuals who implement age verification methods to ensure that only people of legal age purchase these products. Finally, this bill will prevent the collection of \$130 million in tax revenue for the state, leaving the state to find alternative revenue streams to make up this huge loss.

Alex Clark, CEO, The Consumer Advocate for Smoke-free Alternatives (CASAA):

Mr. Clark testifies on behalf of 3000 members in Connecticut expressing concerns and strong opposition to the legislation. This bill will deprive people who smoke the most popular low risk smoking replacement product in ages. Vapor products have been successful in helping people switch from smoking because they are not one-size-fits-all medications. Contrary to anti-smoking activists, vapor products are helping millions of people to quit smoking. Having a diverse range of products to choose from is the best approach to helping people quit smoking. Regarding our youth, empowering young people with strong life skills during adolescence has a greater potential to prevent young people from smoking. Our state spends only a fraction of the amount recommended by the CDC on tobacco cessation and prevention strategies. CASSA notes that if Connecticut believes that traditional tobacco control programs are effective, then compliance and enforcement should be fully funded and given the chance to succeed.

Additional Sources of Opposition include:

- The New England Convenience Store & Energy Marketers Association (NECSEMA)
- Nicolas Carton, Senior Manager State Government Affairs, Juul Labs
- Gregory Conley, President, American Vaping Association
- Guy Bentley, Director of Consumer Freedom, Reason Foundation
- Tim Andrews, Director of Consumer Issues, Americans for Tax Reform
- Elizabeth Hicks, US Affairs Analyst, Consumer Choice Center
- Kyle Feldman, National Convenience Distributors
- Todd Baumberger, Petroleum Partners, Inc.
- Andrew O'Bright, Consultant
- Sarah Wall, Government Affairs Region Manager, Northeast Region, R Street Institute
- Martin Cullip, Taxpayer Protection Alliance

Reported by: Kathleen Panazza

Date: 4/4/2022