



November 4, 2019,

To: Members of the Senate Committees on Consumer Protection, Health and Education

Oral Testimony: Public Hearing on Vaping and Electronic Cigarette Safety

My name is Cheryl Richter and I'm the executive director of the New York State Vapor Association, the trade association that represents the 700 independent mom and pop vape shops, their 2700 employees, the small businesses that supply them and their hundreds of thousands of customers in NY. We get no funding from Tobacco, Pharma, Juul, or any other large corporation. I appreciate this opportunity to this joint committee about solutions that will work.

I started smoking at 13 years old when all cigarettes tasted like burning tobacco and I continued for 33 years until I got my first flavored e-cigarette. It was a miracle. It was 10 years ago that I started a company right in Senator Mayor's district because I wanted to help my friends, family and community quit their decades long smoking habit like I did.

E-cigarettes have been available in the US since 2007. The earliest vapers were not satisfied with the tobacco and menthol flavors. Flavors were truly a consumer driven market, begun by do it yourselfers in their homes, with recipes shared on vaping forums. Flavors have always been integral to the quitting smoking process. Vapers understood that as soon as their taste buds returned after decades of putting lit cigarettes in their mouths, they didn't want to taste a cigarette anymore. That's why 95% of adult vapers use flavors other than tobacco or menthol and flavors are what help smokers finally disassociate from the taste and smell of tobacco and avoid relapse.

The market has grown up since then due to science, technology, improvements in quality and manufacturing standards. We've learned what we can and cannot inhale. For a number of years now, it has been FDA-regulated. Commercially marketed e-liquid is made in ISO labs and is tested. There are ingredients and warning labels on the bottles and on file with the FDA. Flavored e-liquid, the kind commercially available and legally sold is water soluble--as opposed



to the illegal THC carts cut with heavy oil which is the cause of all of the sudden lung illnesses and death in NY, according to Health Commissioner Zucker.

When things are regulated, there are quality controls in place, and penalties for those who don't follow the law. When items are prohibited, people turn to the streets where there are no regulations, no safety protocols, no age verification.

For years we have been working with legislators and the executive office to bring common sense regulations to help stop teen use of vaping products, while at the same time ensuring they are accessible to the 95% of adult vapers who depend on flavors to keep them from relapsing to smoking.

In December, we were requested by the governor's office to provide our suggestions, and some of them were signed into law with [Governor's Budget Bill 4/1/19](#) (to go into effect on 12/1/19):

(Section UU: <https://www.nysenate.gov/legislation/bills/2019/s1509>)

- Separate vapor licenses for ALL retailers selling vapor products, separate from tobacco licenses (registration opened 10/21/19.)
- Stricter fines and penalties for those who fail compliance checks. Now, if a retailer is caught selling to a minor, there is a "3-strikes you're out rule." This includes a \$5000 fine for the first infraction, a \$10,000 fine and possible 6-month license suspension for the second, and the third time they'll get a \$15,000 fine and lose their license.
- In addition, they can only have an arms-length sale of their business after the loss of their license. In other words, they cannot lose their license and simply transfer their business to their relatives any more.

These fines for selling to minors are steeper than any other age-restricted product including tobacco and liquor. Our members voted for stiffer fines and the "3 strikes you're out rule" because they're not afraid and want to get rid of the bad players.

Also passed as part of the Governor's Budget bill was a 20% consumer retail tax on e-liquid with or without nicotine, which also goes into effect this coming December 1, 2019. A 20% tax is high. However, we wanted that tax revenue to be used for enforcement and education. And written into the language is that the revenue will be go to the health care reform act.

As for education to minors, [a separate bill, S301/A481](#) specifies that education to minors on nicotine use is now included in the State Tobacco Prevention Program.



[Tobacco 21 State-wide](https://www.nysenate.gov/legislation/bills/2019/a558) (effective 11/13/19): 73.8% of teens report getting vapor products from social sources (friends and family) according to 2018 National Youth Tobacco Survey. Perhaps now that it is statewide it will help curb high school students crossing county borders to buy.
<https://www.nysenate.gov/legislation/bills/2019/a558>

In addition to those that are about to become enacted, there were additional regulations included in the Governors Budget Bill that were removed before it was signed. We were told that they would be run through the Department of Health as regulations, but we've not heard any further since September.

NYSVA's Suggested Regulations to NYS DOH [Click here for regulatory language](#)

- **Mandatory state-approved training for all employees selling vapor products.** E-cigarettes are vastly different than combustible tobacco products. Sales people need education on their specific federal and state regulations, appropriate IDing techniques, understand of nicotine levels, spotting counterfeits, and how to effectively communicate with smokers
- **Mandatory physical ID scanners at every point of sale.** Fake IDs are cheap and readily accessible to minors from China, coming in through packaging of shoes, electronics, etc. High quality technology is needed to prevent the sale until age is verified. There are high-tech scanners that can detect fake IDs and prevent the sale and they should be anywhere age restricted products are sold including e-cigarettes.
- **Age verification software for all online sales.** Just like with the physical ID scanners, there is software that can verify the name, age and address of a customer.
- **Marketing and packaging restrictions:** There should be no use of cartoon images of food, animals, children; no animated or non-animated media characters such as superheroes; no IP/trade mark/dress infringement.

Additional suggestions:

- **Nicotine Cap:** Before 2017, there was no such thing as anything higher than 3.6% nicotine by volume, and that was just for a 3-pack a day smoker to get off cigarettes and then start stepping down to lower levels. The rise in teen use of e-cigarettes and the reports of teens becoming addicted coincides directly with the introduction of Juul's 5.9% nicotine, and their patented use of nic salts to mask the harshness, plus their distribution model putting them on every corner grocer, deli, convenience store and gas station in America. Countries in the European Union have a nic cap of 2% and do not have the same youth use and addiction issue. A lower nicotine content does not cause the nicotine "buzz," which is what is attractive to minors.



- **Restrict Access:** Allow flavored e-liquid sales in age-restricted retail locations only (as with hard liquor) or in age restricted areas of stores. Allow menthol and tobacco sales where deadly cigarettes are readily available to continue “accidental quitting.” Keep posters, and signage out of sight of minors.
- **Enact Legal Consequences to Minors:** Financial and/or legal consequences for minors in possession of or selling tobacco and e-cigarette products to peers.
- **Criminal penalties for adults:** Make it a crime for adults to give or sell tobacco and e-cigarette products to minors to prevent straw purchases, including employees who sell vapor products.
- **Legal action or penalties for major online third-party websites such as eBay and Amazon** that do not monitor or age-verify their products.

You will hear a lot from our opponents who are extremely dependent on big pharma, big tobacco and MSA funding, that prohibition of flavors is the only answer. We know that prohibition will only lead to people returning to smoking, buying black market, or doing it themselves - all dangerous. Prohibition will put the independent vape shops, of which there are about the same number as McDonalds in NY, out of business overnight.

We know there are other more viable and less dangerous answers. We hope you let us work with you on common sense solutions that could be put into place very quickly to solve the issue of teen use without damaging the lives of adult consumers who rely on these products to keep them smoke free.

Thank you for the opportunity to be here. I am happy to answer any questions you may have.

Sincerely,
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