



New York State
VAPOR ASSOCIATION
TRUTH > LIFE > New York JOBS
Representing the **TRUTH** about **VAPING**

Guide to Regulating Vaping in New York

CURBING YOUTH USE OF VAPOR PRODUCTS WHILE
MAINTAINING LIFESAVING ACCESS FOR ADULTS

Nicotine Vapor Products

The Goal of Reducing or Eliminating Death from Smoking

“Vapor Products have the potential to disrupt the 120-year dominance of the cigarette and challenge the field on how the tobacco pandemic could be reversed if nicotine is decoupled from lethal inhaled smoke.” -Dr. David Abrams, NYU College of Global Public Health¹

- ▶ **Delays** in harm minimization **may impede the end of smoking** rather than encourage smokers to switch to safer nicotine delivery products.¹
- ▶ Studies suggest that daily users of e-cigarettes for a month or more are **six times more likely to have quit smoking** cigarettes two years later²
- ▶ E-cigarettes are **twice as effective as NRTs** when used by smokers as an aid to quitting smoking^{2, 3}
- ▶ **Evidence does not suggest e-cigarettes are a gateway to smoking.**^{4, 6}
- ▶ **Smoking cessation** rates were **twice as high for vape shop customers** and internet customers than for retail customers purchasing in non specialty stores.⁵

1. Harm Minimization and Tobacco Control: Reframing Societal Views of Nicotine Use to Rapidly Save Lives, Abrams et al. , College of Global Public Health, New York University, New York, NY 10012, <https://www.annualreviews.org/doi/pdf/10.1146/annurev-publhealth-040617-013849>

2. Biener L, Hargraves JL. 2015. A longitudinal study of electronic cigarette use among a population-based sample of adult smokers: association with smoking cessation and motivation to quit. *Nicotine Tob. Res.* 17:127–33 <https://www.ncbi.nlm.nih.gov/pubmed/25301815>

3. Hajek, P, et al. 2019. A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy. *NEJM*, https://www.nejm.org/doi/full/10.1056/NEJMoa1808779?query=featured_home

4. RPC (R. Coll. Phys.). 2016. *Nicotine Without Smoke: Tobacco Harm Reduction*. London: RPC. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

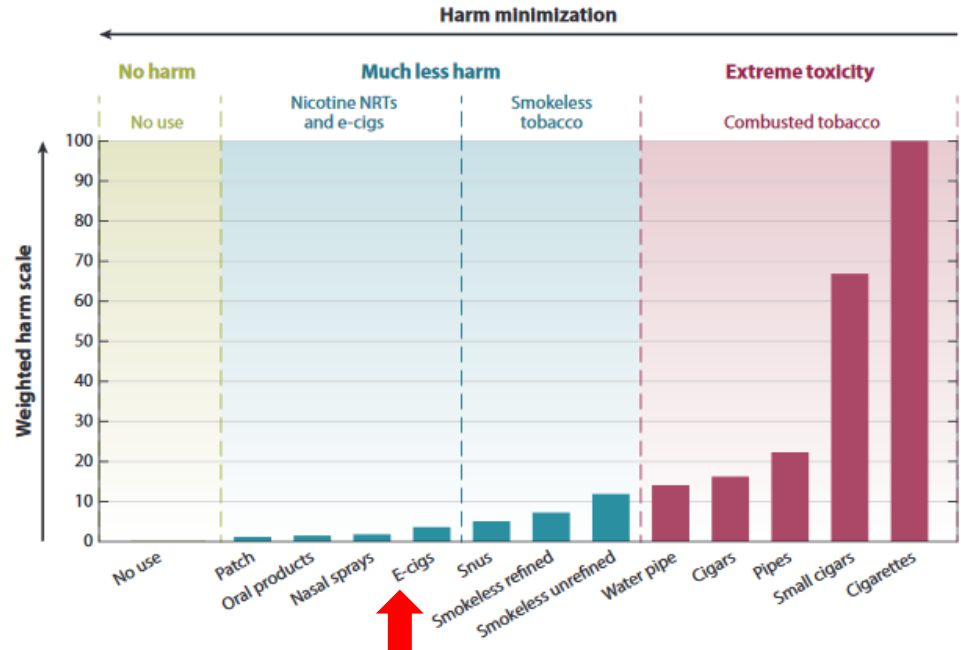
5. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6427541/>

6. CDC's National Health Interview Survey <https://rodotobaccotruth.blogspot.com/2019/07/as-young-adult-smoking-evaporates-teen.html/>

Harm Minimization with Vapor Products

- ▶ “People smoke for nicotine but they die from the tar.” – Michael Russell¹
- ▶ Most reviews of toxicological, clinical, and epidemiological evidence indicate that the chemicals found in e-cigarettes, when used as intended, are far fewer and well below levels seen in cigarette smoke²

FDA’s Continuum of Harm



- ▶ **If smokers could be shifted from smoking to consuming clean nicotine (i.e., without smoke), many lives would be saved²**

1. Russell MA. 1976. Low-tar medium-nicotine cigarettes: a new approach to safer smoking. *BMJ* 1:1430–33; 2.

2. Harm Minimization and Tobacco Control: Reframing Societal Views of Nicotine Use to Rapidly Save Lives, Abrams et al., College of Global Public Health, New York University, New York, NY 10012, <https://www.annualreviews.org/doi/pdf/10.1146/annurev-pubhealth-040617-013849>

Chart: Nutt DJ, Phillips LD, Balfour D, Curran HV, Dockrell M, et al. 2014. Estimating the harms of nicotine containing products using the MCDA approach. *Eur. Addict. Res.* 20:218–25

E-cigarettes and Smoking Cessation- UK

- ▶ In the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK.¹

“It would be tragic if thousands of smokers who could quit with the help of an e-cigarette are being put off due to false fears about safety,” - Prof John Newton, director of health improvement at PHE.

“The false belief that vaping is as harmful as smoking could be preventing thousands of smokers from switching to e-cigarettes to help them quit.” – Dr. Lion Shahab, University College London



1-month experiment, smoking vs. vaping

View 2018 PHE Lab Experiment:
https://youtu.be/ZR_4PsYksfs

Just as PHE in the UK, Boards of Health in the US should encourage and subsidize vaping for smokers.

1. RPC (R. Coll. Phys.). 2016. Nicotine Without Smoke: Tobacco Harm Reduction. London: RPC.
<https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

Black Market THC Cartridges Causing Sudden Lung Illnesses

FDA “This is why today, we’re strengthening our message to the public in an updated [consumer alert](#) stating that they should not use vaping products containing tetrahydrocannabinol (**THC**), the primary psychoactive component of the cannabis plant.”

CDC “**THC** is present in most of the samples tested by FDA to date, and most patients report a history of using THC-containing products.”

Zucker, NYS DOH “One illegal **THC** product in particular is linked to almost every lung illness patient across the state, according to the Department of Health.”

Conflation of nicotine and THC, two completely different products, must be corrected in the media immediately to protect public health and reduce continuing death and illness.

<https://www.fda.gov/news-events/press-announcements/statement-consumer-warning-stop-using-thc-vaping-products-amid-ongoing-investigation-lung-illnesses>

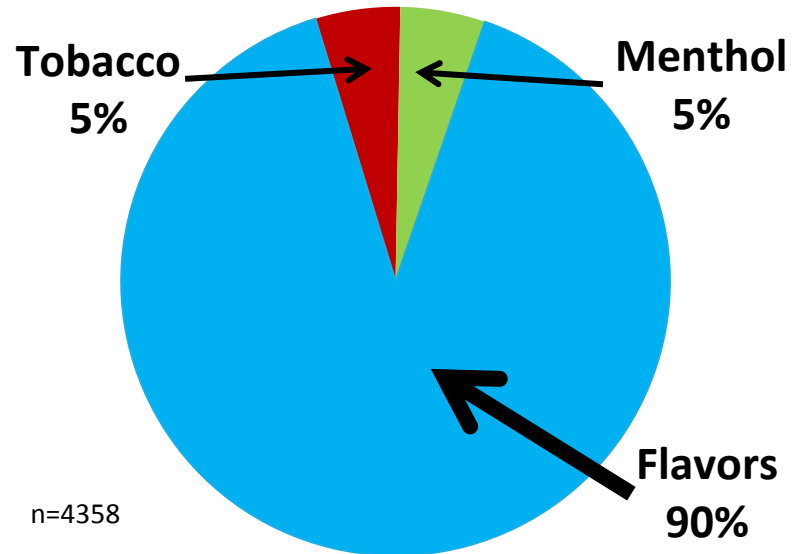
https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

<https://www.news10.com/news/doh-commissioner-just-about-all-ny-vaping-illnesses-are-from-black-market-thc-cartridges/>

Flavors are Key to Successful Quitting

E-Cig Intelligence US Vape Consumer Survey 2018

- ▶ Approximately **90%** of regular e-cigarette users **report using a non-tobacco flavor.** ¹³
- ▶ Flavors are imperative to people's successful transition from combustible tobacco to vapor products ^{1, 2, 3, 4, 5, 6, 7}
- ▶ Former smokers want to distance themselves from tobacco and menthol flavors once they stop smoking. ^{4, 5, 6, 8, 9, 10, 11, 12, 13}
- ▶ FDA recognizes "availability of alternatives to traditional tobacco flavors in some products (e.g., ENDS) may potentially help some adult users who are attempting to transition away from combusted products." *Id.* at 28,977¹⁴



92% of respondents were exclusive vapers who had switched from a pack-a-day or greater use of combustible tobacco*

* EcigIntelligence Survey 2018, March 2019

See sources on next page

Citations – Flavors

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- 2-Saul Shiffman, PhD Mark A. Sembower, MS Janine L. Pillitteri, PhD Karen K. Gerlach, PhD, MPH Joseph G. Gitchell, BA 2015. The Impact of Flavor Descriptors on Nonsmoking Teens' and Adult Smokers' Interest in Electronic Cigarettes, *Nicotine & Tobacco Research*, 17(10), 1 October 2015: 1255–1262 <https://doi.org/10.1093/ntr/ntu333>
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- 8- NYTS National Youth Tobacco Survey (CDC Data) <https://www.cdc.gov/mmwr/volumes/66/wr/mm6623a1.htm#contribAff>
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- 12- Adolescents and e-cigarettes: Objects of concern may appear larger than they are Kozlowski, Lynn T. et al. *Drug & Alcohol Dependence*, Volume 174, 209 – 214 [http://www.drugandalcoholdependence.com/article/S0376-8716\(17\)30023-6/abstract](http://www.drugandalcoholdependence.com/article/S0376-8716(17)30023-6/abstract)
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Choices and Risks After Severely Limiting Access

Consumer Choices

- **Buy on the Street** – Immediate rise of illicit market
- **Buy online** - skirting tax - 56.8% NY cig sales are black market = highest in the nation¹
- **Dangerous Do-It-Yourself**
- **Return to smoking**

Risks

- **No FDA regulation**
- **No licensing /age verification**
- **Reduce/Eliminate vapor tax income**
- **Reversal of 10 yrs of Safety Standards**
- **Mixing at home (See diyordievaping.com for instructions).**
- **Inhaling unregulated substances**
- **High concentration nicotine in homes**
- **Protection of Big Tobacco, Big Pharma and Big Vapor**
- **Unjustified elimination of a robust small business market**

1. Tax Foundation, 2015 <https://taxfoundation.org/cigarette-tax-cigarette-smuggling-2015/>

Previously Enacted Solutions to Curb Underage Sales in New York

Enacted with Governor's Budget Bill 4/1/19: In effect 12/1/19

- Retail Vapor Product License (separate from tobacco license)
- Harsher penalties for underage sales; **NEW** “3-strikes you’re out rule”
- 1. \$5,000 fine
- 2. \$10,000 fine/6-month license suspension
- 3. \$15,000 fine/loss of license
- Only arms-length sale of business after loss of license
- 20% retail tax on e-liquid - funds to go towards enforcement, youth prevention and education of minors

2019 State Bills

- Tobacco 21 State-wide (effective 11/13/19)
73.8% of youth obtain vapor products from social sources (friends and family) according to 2018 NYTS. Curbs access in high schools and reduces students crossing county borders to purchase.¹
- Inclusion of vaping and e-cigarette education to minors in State Tobacco Prevention Program.

1. 2018 National Youth Tobacco Survey, CDC

NYSVA's Suggested Regulations

[Click here for regulatory language](#)

- **Marketing and packaging restrictions**

- No cartoon images of food, animals, children; no animated or non-animated media characters such as superheroes; no IP/trade mark/dress infringement)

- **Mandatory state-approved training for all employees selling vapor products.**

- Vapor Products vastly different than combustible tobacco products.
- Retailer education needed on federal and state regulations
- appropriate IDing techniques
- spotting counterfeit ID

- **Mandatory physical ID scanners at every point of sale.**

- Fake IDs are cheap and accessible easily online, coming in through packaging of shoes, electronics, etc. High quality technology is needed to prevent the sale until age is verified

- **Proper age verification software for all online sales**

Additional Suggestions to Curb Youth Use

Nicotine Cap: Place cap of no more than 3.6% nicotine by volume to be sold in the state. Lowering nicotine contents reduces addictive potential and nicotine “buzz,” which is attracting minors.

Restrict Access: Flavored e-liquid sales in age-restricted retail locations only (as with hard liquor). Allow only menthol and tobacco e-liquid where deadly cigarettes are readily available to enable “accidental quitting.”

Legal and Financial Consequences:

- Financial and/or legal consequences for possession and/or use of vapor and tobacco products by minors. (e.g. Vapor Education Courses, Community Service)
- Criminal penalties for adults knowingly giving or selling tobacco and e-cigarette products to minors to prevent straw purchases, including employees who sell vapor products.
- Legal action/penalties to major online third-party websites such as **eBay and Amazon** that do not age-verify.

Economic Consequences of an E-Liquid Flavor Ban

- ▶ Ind. Vape Shops = **\$539.3M** industry in NY; Flavors = **\$384M** market in New York
- ▶ Immediate closure of hundreds of vape shops (sales of flavored e-liquid represent an average of **72-90% of total sales**)
 - **Immediate unemployment of 2700+ employees and over 700 small business owners**
 - Financial consequences to former employees/individuals (defaults on mortgages/rents and debt, repossessed cars etc.)
 - **Over 700 bankruptcies declared** (leases broken, business loans defaulted)
- ▶ Purchases move online or to neighboring counties/states
 - **Minimum loss of almost \$25M** in Sales Tax
 - **Minimum loss of almost \$28M** in Payroll Tax
 - **Projected loss of nearly \$100M** in Projected new State E-Liquid Tax revenue when 95% of flavors are banned (not including the hundreds of millions lost from c-stores and other sources)

Market Survey of Vape Shop Owners, New York State Vapor Association, Inc., March 2017

About NYSVA

- ▶ Only NY State Trade Association representing 700+ independent vape shops, their 2700+ employees and hundreds of thousands of their customers.
- ▶ Registered and report regularly to the NYS Joint Commission on Public Ethics
- ▶ No funding from Big Tobacco, Big Pharma or any large corporation
- ▶ Board of directors has educated researchers, legislators, government agencies and stakeholders for 10 ye statewide, federally and internationally
- ▶ For more information, visit www.nysva.org

