



## The American Vaping Association

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**February 19, 2020**

**RE: HF 3032; tobacco; banning the sale or distribution of flavored tobacco products**

Chairwoman Halverson and members of the House Commerce Committee:

On behalf of the American Vaping Association, a nonprofit organization that advocates for policies that encourage adult smokers who are unwilling or unable to quit smoking to switch to reduced risk nicotine products, I am writing to urge the committee to reject HF 3032, which would ban the sale of flavored vaping, heated tobacco, and oral nicotine and tobacco products, all of which are much less dangerous than the Marlboro and Camel cigarettes that will be left untouched by this bill.

A study by the National Bureau of Economic Research recently demonstrated that Minnesota's existing 95% wholesale tax on vaping products was already deterring smokers from quitting.<sup>1</sup> With approximately 650,000 adults still smoking combustible cigarettes in Minnesota, adding on top of that tax a ban on the products most likely to be used by adults will not benefit public health. Instead, the result will be more smoking of combustible cigarettes, a slower decline in cigarette sales, and increased use of potentially dangerous products purchased off the street.

### **I. Legal Nicotine Vaping Products Are Far Safer than Smoking & Did Not Cause "Vaping-Related" Illnesses**

- The National Academy of Sciences, an independent research organization that provides scientific advice to the U.S. government, concluded in their report on vaping that the evidence indicates vaping is "likely much less harmful" than smoking cigarettes.<sup>2</sup>
- Despite mass public confusion, the evidence is now clear that legal and FDA-regulated nicotine vaping products were not the cause of so-called "vaping-related" illnesses that made headlines throughout the fall of 2019.
- The CDC and researchers from multiple states have concluded that illicit THC vaping products containing vitamin E acetate are strongly linked to illnesses and deaths.
- The Wall Street Journal recently reported that the CDC is no longer warning adult smokers not to use nicotine vaping products. Instead, the agency is strongly warning against using illicit THC vaping products purchased off the street.

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<sup>1</sup> Saffer, et. al. "E-Cigarettes and Adult Smoking: Evidence from Minnesota." *NBER Working Paper*; December 2019. <<https://www.nber.org/papers/w26589>>

<sup>2</sup> "National Academy of Sciences Releases Report on Public Health Consequences of E-Cigarettes." *American College of Radiology*. <<https://www.acc.org/latest-in-cardiology/articles/2018/01/26/14/14/national-academy-of-sciences-releases-report-on-public-health-consequences-of-e-cigarettes>>

## **II. The Importance of Flavors to Adults has been Demonstrated**

- A study using data from the FDA’s multi-year, population-level PATH study found that among adults aged 25 or older, those using candy or sweet vaping flavors were twice as likely to be trying to quit combustible tobacco. Moreover, among ex-smokers who reported that e-cigarettes helped with their smoking cessation, more respondents used fruit flavors than any other flavor type.<sup>3</sup>
- Researchers from the Yale School of Public Health and other institutions conducted an FDA-funded study of 2,031 adult smokers and recent quitters. The study concluded that banning flavors in vaping products would result in increases in smoking.<sup>4</sup>
- A survey of 69,223 adult vapers from the United States found that among the 81.3% of respondents who were former smokers, just 7.7% and 12.8% of these exclusive vapers used tobacco or menthol flavors, respectively. Ex-smokers overwhelmingly preferred flavors like fruit, dessert, or sweet.<sup>5</sup>

## **III. FDA’s New Flavor Policy Addresses the Products with Highest Youth Usage Rates**

- A new enforcement policy by the Food & Drug Administration is now in effect that temporarily forbids the sale of closed system (non-refillable) pod- and cartridge-based products like JUUL, Vuse, and NJOY in flavors other than tobacco or menthol.
- These products will be able to come back to the market if the FDA determines, through a multimillion-dollar premarket tobacco application (PMTA) process, that each individual product is “appropriate for the protection of public health.” We expect marketing authorizations to be issued in the next year.
- Unlike closed system pods and cartridges, the e-liquid products used in refillable vaping devices and sold by Minnesota vape shops were *not* included in the Trump Administration’s temporary ban because a significantly smaller percentage of youth use them compared to closed system products.
- Alex Azar, the Secretary of Health & Human Services, has committed to streamlining the FDA application process for open system products primarily sold in vape shops.

We share the goal of decreasing youth vaping and Minnesota’s vape businesses and individual vapers want to be a part of the solution, but punishing adults for wanting to quit smoking is not the answer. Minnesota should vigorously enforce its existing Tobacco 21 law, but the Legislature should be very careful before it enacts policies that will have long-lasting impacts on small businesses and adult voters in the state.

Sincerely,



Gregory Conley, J.D., M.B.A.  
President, American Vaping Association

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<sup>3</sup> S. Someji, *et al.* “Flavor Preference Among Adolescent, Young Adult, and Adult E-Cigarette Users: Findings From Wave 2 of the Population Assessment of Tobacco and Health Study.” Poster SYM7D. Presented at SRNT 2018.

<sup>4</sup> John Buckell, Joachim Marti, and Jody L. Sindelar, “Should Flavors Be Banned in E-Cigarettes? Evidence on Adult Smokers and Recent Quitters from a Discrete Choice Experiment.” National Bureau of Economic Research. September 2017. <http://www.nber.org/papers/w23865.pdf>.

<sup>5</sup> Jim McDonald. “Farsalinos Survey Shows Vapers Prefer Fruit and Dessert Flavors.” Vaping360. August 13, 2018. <https://vaping360.com/vape-news/69440/farsalinos-survey-shows-vapers-prefer-fruit-and-dessert-flavors/>