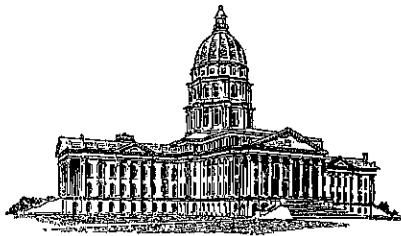


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## HB2563

Thank you Mr. Chairman.

It is a pleasure to appear before you and my fellow Fed and State Colleagues on behalf of HB--2563. This has been in the making for a year as you may recall House Resolution 1605 from last year regarding youth vaping and tobacco use particularly in the age group 20 and under. This bill has been a labor of love with many partners and a great deal of input from them.

Admittedly we got huge assistance from the Federal Government on this issue 12/20/19 in the new federal budget bill signed into law that raises the minimum age to purchase tobacco products to 21. All the discussion points on age of legal access; i.e. voting at age 18, or joining the military at age 18 -- yet being denied the ability to choose and partake in tobacco products is completely irrelevant. It doesn't matter. It is now illegal by the federal mandate. But how we enforce that mandate is up to each state and hence the reason for HB2563. There will likely be guidelines from the FDA but we have the right to codify our own state enforcement. In this bill we also took the initiative to address the pending FDA directive to ban all flavors from E-cigs.

This is not a simple bill. The revisor did a nice job of outlining what this bill does. There are a few highlights I would like to underscore for our committee.

Section 2 are the definitions of the KS Clean Air Act.

Section 3 is basically including vaping of all types within the established language of the Kansas Clean Indoor Act of 7/1/2010. That way all tobacco products are covered in statute now in the updated bill.

Section 5 addresses the use of ALL tobacco products including vaping and e-cigs in public schools. I would refer you to the 2<sup>nd</sup> page of my testimony that explains the evolving policy on comprehensive tobacco-free school grounds from the Kansas State Department of Education.

Section 6 & 7 & 8 eliminate all vending machine sales of tobacco products.

Section 9 does increase the fee for each dealer establishment from \$25 to \$100 for a 2 year license. This is a significant increase –but necessary to monitor compliance to have more controlled buys (at least 2 per year) through KDOR. The wholesale license and salesperson license fees are unchanged.

In section 12 the old criminalization language of tobacco offenders less than 18 is struck on page 17 --- lines 13 – 16. On the same page there is new language regarding signage for notice of age restriction in sales. And on page 18, lines 21-23 we are allowing a “Humador exception” for retailers to promote tobacco products in their stores for persons over 21.

In section 13 there is a new language for penalties for flavored consumable material except menthol found in lines 26 through 41 on page 19. This is the incorporation of the “Barker Bill” into this bill, and I want to thank the Chairman for his help and cooperation. Please understand this is an FDA directive as outlined on the back of the second handout on my testimony. Otherwise any violations by vendors default to the status quo (current law). No increase in any penalties.

And finally, Section 20 simply codifies that each retail dealer will be subject to at least 2 controlled buys each year.

Mr. Chairman: the handouts included in this testimony are there for the committee’s review to lend further support for this very important issue.

## Comprehensive Tobacco-Free School Grounds Policy

The following policy was approved by the Kansas State Board of Education on December 10, 2019. The Kansas State Board of Education encourages Kansas school districts to adopt and implement this Comprehensive Tobacco-Free School Grounds Policy.

**Students and Staff:** The use, possession, or promotion of any tobacco product by any student or staff is prohibited in any district facility; in school vehicles; at school-sponsored activities, programs, or events; and on school owned or operated property at all times.

**Visitors:** The use of any tobacco product by parents, contractors, volunteers, and all other visitors is prohibited in any district facility; in school vehicles; at school-sponsored activities, programs, or events; and on school owned or operated property at all times.

*The following definitions apply to this policy.*

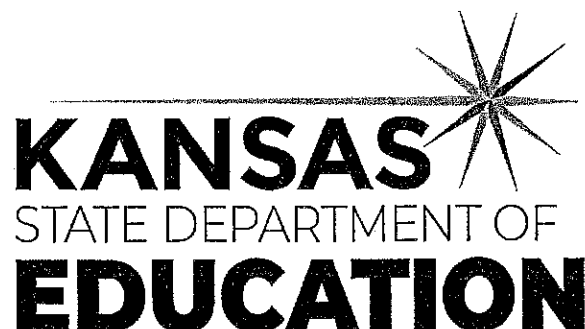
**"Tobacco product"** means any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, Electronic Nicotine Delivery System (ENDS), cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or snus. Tobacco product also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, charging devices, cartridges and any substance used in ENDS, whether or not they contain nicotine. This definition does not include FDA-approved Nicotine Replacement Therapies including transdermal nicotine patches, nicotine gum, and nicotine lozenges.

**"Electronic Nicotine Delivery System (ENDS)"** means any device that delivers a vaporized solution (including nicotine, THC or any other substance) by means of cartridges or other chemical delivery systems. Such definition shall include, but may not be limited to, any electronic cigarette, vape pen, hookah pen, cigar, cigarillo, pipe, or personal vaporizer. ENDS are not FDA-approved Nicotine Replacement Therapy devices.

**"Promotion"** includes, but is not limited to, product advertising via branded gear, bags, clothing, any personal articles, signs, structures, vehicles, flyers, or any other materials.

*Student violations will result in disciplinary actions as outlined by the school district. Disciplinary actions may include parent/guardian notification, participation in a tobacco & electronic nicotine delivery systems education program, referral to a cessation program, and/or community service. Student violations may be reported to law enforcement if use or possession is deemed to be illegal.*

Kansas leads the world in the success of each student.



# Tobacco 21 and FDA Regulations are the Most Effective Tools to Fight Youth Vaping

We are in the midst of a significant shift in how nicotine e-vapor products are regulated. Effective December 20, 2019, Congress raised the federal minimum age to sell tobacco products to 21. This is the most significant and stringent update to tobacco control laws in a decade. Tobacco control groups agree 21 laws take tobacco out of high schools and reduce youth usage, which in all categories except e-vapor are already at historic lows.

In addition, FDA is pulling all flavors except tobacco and menthol from the pod-based vapor category, and moving forward with enforcing a May 2020 deadline for *all* e-vapor products to seek authorization. With these steps, the entire vapor category will be reshaped to combat underage use while ensuring adult smokers have continued access to e-vapor products.

Here are what voices in public health, government, and the media are saying about these landmark actions:

## Tobacco Control Groups Strongly Agree Tobacco 21 Laws Take Tobacco Products Out of Schools and Stop Youth Initiation

*"Nearly 90 percent of adult smokers start the habit before age 18, and most 15- to 17-year-olds get their tobacco from friends who have turned 18. Raising the sales age to 21 will help remove tobacco from high schools altogether."* - American Heart Association<sup>1</sup>

*"Increasing the tobacco age to 21 will reduce tobacco use among youth and young adults... This legislation will also help keep tobacco out of high schools, where younger teens often obtain tobacco products from older students."* - Campaign for Tobacco-Free Kids<sup>2</sup>

*"Because most tobacco users start before age 18, and nearly all start before 26, reducing youth access to tobacco is a key tool in accomplishing our mission. For that reason, we support raising the minimum age of sale for all tobacco products to 21."* - Truth Initiative<sup>3</sup>

## Studies Show Tobacco 21 Is Highly Effective at Decreasing Youth Tobacco Use

*"Strong evidence from states suggests that raising the tobacco purchasing age reduces smoking among both young adults and younger teenagers, who are less likely to have friends who can buy them cigarettes."* - Margot Sanger-Katz, New York Times<sup>4</sup>

*"The first community to raise the age to purchase tobacco to 21 was Needham, Massachusetts, in 2005. Studies conducted in that community showed that past 30-day cigarette smoking among youth was cut almost in half, and frequent smoking in youth dropped by 62 percent. These decreases were significantly larger than those experienced in communities in Massachusetts that did not pass this ordinance."* - Truth Initiative<sup>5</sup>

<sup>1</sup> "McConnell-Kaine bill would increase tobacco sales age to 21 nationally," American Heart Association, Jan. 3, 2020, <https://newsroom.heart.org/news/mcconnell-kaine-bill-would-increase-tobacco-sales-age-to-21-nationally>.

<sup>2</sup> "Maine Becomes Fourth State to Raise Tobacco Age to 21: Statement of Matthew L. Myers, President, Campaign for Tobacco-Free Kids," Campaign for Tobacco-Free Kids, Aug. 2, 2017, [https://www.tobaccofreekids.org/press-releases/2017\\_08\\_02\\_maine21](https://www.tobaccofreekids.org/press-releases/2017_08_02_maine21).

<sup>3</sup> "Where we stand: Raising the tobacco age to 21," Truth Initiative, Oct. 2017, <https://truthinitiative.org/sites/default/files/media/files/2019/03/where-we-stand-tobacco-21-final-10-20-17.pdf>.

<sup>4</sup> Margot Sanger-Katz, "What if a Vaping Tax Encouraged Cigarette Smoking?," The New York Times, Jan. 6, 2020, <https://www.nytimes.com/2020/01/06/upshot/vaping-tax-effect-smoking.html>.

<sup>5</sup> Truth Initiative, *ibid*.

# The FDA Is Using Its Powerful Regulatory Tools and Scientific Expertise to Remove Flavors, Eliminate Youth Access, and Prevent Bad Actors from Marketing to Youth

The FDA has removed all flavors from the pod-based e-vapor category except tobacco and menthol. This action will remove the most popular products from shelves.

*"Coupled with the recently signed legislation increasing the minimum age of sale of tobacco to 21, we believe this policy balances the urgency with which we must address the public health threat of youth use of e-cigarette products with the potential role that e-cigarettes may play in helping adult smokers transition completely away from combustible tobacco to a potentially less risky form of nicotine delivery."* - FDA Commissioner Stephen Hahn<sup>6</sup>

*"FDA intends to prioritize enforcement of the premarket review requirements for certain ENDS products, including against retailers selling such products. Specifically, FDA intends to prioritize enforcement against:*

- (1) Flavored, cartridge-based ENDS products (except for tobacco- or menthol-flavored products);*
- (2) All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; and*
- (3) Any ENDS products targeted to, or whose marketing is likely to promote use by, minors."* - FDA Jan. 2, 2020 Guidance for Industry<sup>7</sup>

## PMTA Applications Due in May 2020 and Apply to all E-Vapor Products and will Remove Many Products from Market while Subjecting those that File to Rigorous FDA Review

*"Starting in May, all e-cigarettes will need to undergo FDA review. Under the premarket tobacco product applications (PMTA) pathway, manufacturers must demonstrate to the agency, among other things, that marketing of the new tobacco product would be appropriate for the protection of the public health."* - CStore Decisions<sup>8</sup>

*"[A]ll vaping products must be submitted for the [Pre-Market Tobacco Application] approval process [...]. This applies to all vaping products and any product not submitted for approval by the deadline cannot be sold legally."* - Newsweek<sup>9</sup>

*"[A]fter May 12, 2020, the FDA intends to also prioritize enforcement against any ENDS products that continue to be sold and for which the manufacturers have not submitted a premarket application."* - HHS Press Office<sup>10</sup>

<sup>6</sup> "FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes That Appeal to Children, Including Fruit and Mint," News Release, U.S. Food & Drug Administration, Jan. 2, 2020, <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

<sup>7</sup> Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization: Guidance for Industry," FDA Center for Tobacco Products, January 2020, <https://www.fda.gov/media/133880/download>.

<sup>8</sup> Isabelle Gustafson, "FDA Bans Most Flavored E-Cigarettes," CStore Decisions, Jan. 3, 2020, <https://cstoredecisions.com/2020/01/03/fda-bans-most-flavored-e-cigarettes/>.

<sup>9</sup> Shane Croucher, "As Trump Touts E-Cigarette Flavors Ban, Vaping Lobby Warns Of Hidden Issue 'That Is Extremely Dangerous' To Industry," Newsweek, Jan. 1, 2020, <https://www.newsweek.com/trump-vaping-ecigarette-flavors-ban-tobacco-1479963>.

<sup>10</sup> "FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes That Appeal to Children, Including Fruit and Mint," Department of Health and Human Services, Jan. 2, 2020, <https://www.hhs.gov/about/news/2020/01/02/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes.html>.

# Major E-Vapor Youth Access Prevention Developments for 2020

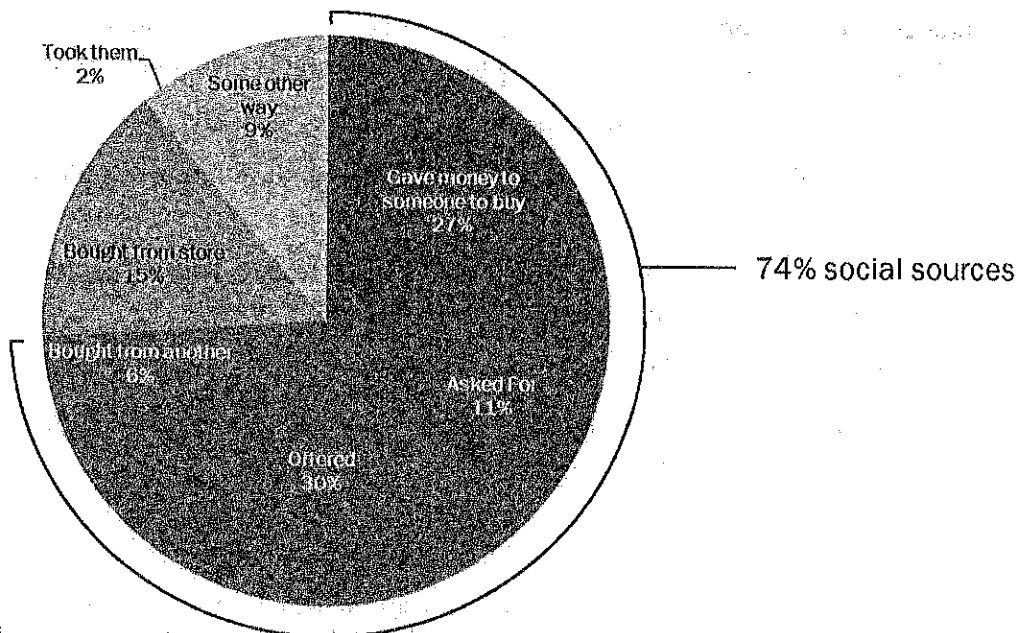
Current rates of youth e-vapor use are unacceptable. In 2019, Congress and the FDA responded—dramatically shifting nicotine e-vapor product regulations and resetting the framework for how e-vapor products are sold and kept out of the hands of teenagers.

We believe these actions are an important step in combatting underage e-vapor use – while preserving e-vapor’s role in harm reduction for adult smokers over the long term.

## 1 A New Federal Minimum Age of 21 for Tobacco

- Congress enacted Tobacco 21 into law at the end of 2019 - effective immediately. Public health experts agree Tobacco 21 is a major step to addressing youth e-vapor use.
- Moving to 21 takes tobacco products out of high schools:
  - 74% of underage e-vapor users get vapor products from social sources like friends or classmates.
  - Most high-school seniors turn 18 by the time they graduate. They are no longer allowed to purchase tobacco products of any kind, for themselves or for younger friends.

### Sources of E-Vapor Products Among 15-17 Year Old Past 30 Day Users<sup>1</sup>

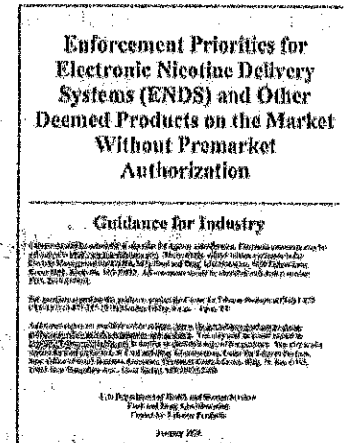


<sup>1</sup> Population Assessment of Tobacco and Health (PATH) Study, Wave 3 data (2015-16). PATH is a joint project of the National Institutes of Health (NIH) and the U.S. Food and Drug Administration (FDA).

## 2 FDA is Acting on Flavored E-Vapor Products

FDA has released guidance effective February 1, 2020 that will shrink the availability of flavored e-vapor products, including those that appeal especially to kids. It is using its enforcement powers to pull:<sup>2</sup>

1. **All flavored cartridge-based e-vapor products** other than a tobacco or menthol flavor,<sup>3</sup>
2. **Any e-vapor product with marketing targeted to minors**, including but not limited to:
  - Products with marketing resembling **juice boxes, candy, or cereal**, or using **cartoon** or animated characters.
  - Products marketed directly to minors by **promoting ease of concealing** the product from parents or teachers.
3. **All other e-vapor products for which the manufacturer has failed to take adequate measures to prevent youth access**.
  - This includes **websites with poor age verification**.



## 3 All Vapor Products Must Submit to FDA Review by May

All e-vapor products must submit a Premarket Tobacco Application (PMTA) by May 12, 2020 to stay on the market. Any product that does not file an application on time will be subject to removal from the market once this deadline passes.

- For each product application, FDA has one year to decide if its sale is **“appropriate for the protection of public health.”** If FDA finds that it doesn’t meet this standard, the product must be removed from the market. In making this determination, FDA must consider:
  - Risks and benefits to the population as a whole, **including kids**
  - The potential for initiation of the product among current non-nicotine users **including kids**
  - Whether current tobacco users would be less likely to quit using tobacco if the proposed new tobacco product were available
  - Manufacturing and product quality controls
- FDA can attach conditions to its market orders to ensure the sale of the product is focused only on adults and not on kids.

<sup>2</sup> “FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint,” FDA Press Release, January 2, 2020, <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>; and Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization: Guidance for Industry,” FDA Center for Tobacco Products, January 2020, <https://www.fda.gov/media/133880/download>.

<sup>3</sup> FDA has found that these products were the most prevalent youth use concern.