

SMOKE-FREE ALTERNATIVES TRADE ASSOCIATION

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February 28, 2023

To: The Honorable Sen. Melissa H. Wiklund, Chair
The Honorable Sen. Alice Mann, Vice-Chair
The Honorable Sen. Paul J. Utke, Ranking Minority Member
Members, Public Health Committee

From: April L. Meyers, Board President & CEO, Smoke-Free Alternatives Trade Association

RE: SF 2123 – Oppose.

Esteemed members of the Health and Human Services Committee:

The Smoke-Free Alternatives Trade Association (SFATA) is the nation’s largest trade organization representing the thousands of small businesses that manufacture, distribute, and sell vapor products throughout the United States. As its Board President, I am writing on behalf of our Minnesota members, which includes myself, to urge you to oppose the devastating legislative measures pending before this Committee and implore you to carefully weigh the health risk to your adult smoking and vaping population.

SFATA always understood that vapor was an adult-only product and pioneered the nation’s first age-restriction program (Age to Vape) for its members to follow. This program placed restrictions on sales to minors based on the legal age for tobacco use in their respective state’s years ahead of any state or federal age laws. SFATA also requires our members to adhere to a strict Member Code of Responsible Conductⁱ that requires responsible marketing practices, which includes limiting marketing efforts only to adults.

We wholeheartedly support the restriction of product sales to all underage persons, however, we do not agree that the Minnesota legislature should ban flavors for adults who rely on them to refrain from using deadly combustible tobacco products, like cigarettes. Such a policy will result in severe adverse impacts on the citizens of Minnesota and should be avoided. This fact is supported by the most recent scientific studies funded by the National Institute of Health (NIH), as well as the American Journal of Public Health (AJPH).

A 2021 research paper conducted by Yale University and funded by NIH found that banning flavors in e-cigarettes, while allowing combustibles to remain on the market, would result in an increase in smoking combustible cigarettes, and that the use of e-cigarettes would decline.ⁱⁱ While the premise of SF 2123 is to protect kids, the included measures could actually do youth

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more harm than good and are almost certain to negatively impact Minnesota’s adult smoking population.

Meanwhile, the FDA, the leading science agency in the country, has yet to decide regarding the role of flavors in vapor products, as they lack the scientific evidence needed to make an informed decision. In fact, a recent review conducted by the Reagan-Udall Evaluation found that the FDA has gotten our industry so wrong that it has called for sweeping changes. The report correctly asserted that the policy issues dealt with by the Center for Tobacco Products (CTP) have “profound social impacts” and noted “at times, a lack of clarity about the distinction between, and the intersection between, policy and science has created controversy within CTP.ⁱⁱⁱ With our nation’s top scientists pausing to ensure they get this market correct, we strongly urge this Committee to reconsider a rush to enact a policy that would have dire unintended consequences, without full scientific information. This is because as time passes, more data becomes available on the benefit of vapor products to public health. The most recent AJPH study is an excellent example of this.

In May of 2021, AJPH released a study titled, “Balancing Consideration of the Risks and Benefits of E-Cigarettes.”^{iv} The study reviewed the health risks of vaping compared to the benefits related to smoking cessation. The fifteen authors, all Society For Research On Nicotine and Tobacco (SRNT) past presidents, point out that e-cigarettes would have a more positive impact if the health community recognized their benefits and that, “While evidence suggests that vaping is currently increasing smoking cessation, the impact could be much larger if the public health community paid serious attention to vaping’s potential to help adult smokers, smokers received accurate information about the relative risks of vaping and smoking, and policies were designed with the potential effects on smokers in mind. That is not happening.” The authors also concluded that, “the need to pay attention to adult smokers is particularly important from a social justice perspective.” This statement was based on findings that current “smokers come disproportionately from lower education and income groups” and that “smoking accounts for a significant proportion of the large life expectancy difference between affluent and poorer Americans.”

In addition to the supporting scientific evidence above, the authors of a January 2018 study by the National Academies of Sciences, Engineering, and Medicine repeatedly state that e-cigarettes are far less harmful than conventional cigarettes.^v “There is conclusive evidence,” the report says, “that completely substituting e-cigarettes for combustible tobacco cigarettes reduces users’ exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes.” The authors also stated that if a smoker is using both cigarettes and vapor products, they should immediately switch solely to vaping. The latter is a telling statement, as

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it acknowledges the lifesaving and harm-reduction qualities of vapor products and confirms what the United Kingdom’s Royal College of Physicians has concluded and continues to reaffirm - that electronic cigarettes and vapor products are at least 95% less harmful than cigarettes.^{vi}

Most recently, the Institute of Psychiatry, Psychology & Neuroscience was commissioned by the United Kingdom’s Office for Health Improvement and Disparities in the Department of Health and Social Care, to perform an independent study. The study represents the most comprehensive review of the risks of vaping to date. It found that, while vaping is not risk-free (particularly for people who have never smoked), it poses a small fraction of the health risks of smoking in the short to medium term and that “the levels of exposure to cancer-causing and other toxicants are drastically lower in people who vape compared with those who smoke.” The report concluded that helping people switch from smoking to vaping should be considered a priority if the Government is to achieve a smoke-free 2030 in England.^{vii}

Yet in Minnesota, the priority appears to be an abstinence-only approach that will never work. This proposed bill seeks to punish the adult population that has made a better health choice and relies on flavored vapor products to remain combustible tobacco-free. Further, the constant attack on flavors sends mixed messages to the adult population who can obtain every flavored alcohol product imaginable at every liquor store they walk into. It is assumed there is an inherent danger to vapor products from the constant barrage of negativity – a level of negativity so profound that many smokers find themselves unwilling to try vapor because they believe it is as bad or worse for them as smoking.

We understand that there is significant fear and misinformation regarding youth use of e-cigarettes and flavored e-liquid as a gateway to combustible tobacco products. However, the real-world evidence over the past decade clearly demonstrates these fears are false. In fact, the 2021 National Youth Tobacco Survey data shows teen youth dropped significantly by 40% from 2020.^{viii} 2022 numbers increased, but not significantly. Of those who reported vaping in 2022, only 1 in 4 are reported to use vapor daily. This means that in 2022, less than 500,000 youth use vapor daily – and there is no conclusive data regarding if these youth previously smoked cigarettes and switched to vapor as a harm reduction alternative. Of those using vapor daily, 55.3%, or roughly 5,530 per state, use disposable systems (closed systems) found in gas stations and convenience stores. Another 25.2% reported utilizing prefilled and/or refillable pod systems, representing an average of approximately 2,520 youth per state. Only 6.7% reported utilizing tanks and mods typically found in retail specialty vape shops. If you are unclear as to the different types of products available, I have attached a graphic for your review at the end of this testimony. Meanwhile, not a single data point shows an increase in combustible smoking that might support a gateway theory.

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Our questions are simple. Why is this Committee considering a dangerous prohibitionist policy over the enforcement of existing age laws, and why is this Committee willing to place its adult voting population at risk of relapse by removing the flavors it relies on?

Surveys confirm that adult consumers prefer flavors over traditional tobacco and menthol, including the largest ever survey (>60,000 people) of people who vape in the U.S. submitted by Dr. Farsalinos to the FDA docket on flavors regulation.^{ix} Flavors are an important aspect of vapor products because they help people who are quitting smoking disassociate nicotine consumption from inhaling smoke and the taste of burning tobacco. Having variety is important as no two adults' taste preferences are the same.

We have shared compelling scientific support for our opposition, as well as the public harm that this legislation will impose on the current users of vapor products in the state. We implore this Committee to reconsider these legislative actions and reject them outright.

SFATA leadership is available to answer any questions you may have, as we prefer to work together to solve the issues of teen vaping, while at the same time, keeping life-saving products accessible to adult consumers in Minnesota who have found success with vapor products and to smokers who may use them in the future.

It is our preference to work with the Committee on a common-sense approach to regulation and to work collaboratively on solutions that will reduce youth use, like our Responsible Industry Network,^x and ultimately end the devastating loss of 480,000 Americans to smoking-related deaths every year, at least 15 of whom lost their lives while you read this opposition.

Sincerely,

April L. Meyers
SFATA Board President & CEO

ⁱ "Smoke-Free Alternatives Trade Association Member Code of Responsible Conduct." Member Code of Conduct - Smoke Free Alternatives Trade Association. Accessed February 24, 2022. <https://sfata.org/membercode>

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- ⁱⁱ Abigail S. Friedman, PhD. “A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco.” JAMA Pediatrics. JAMA Network, August 1, 2021. <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248>.
- ⁱⁱⁱ Program certain components evaluation of operational - reaganudall.org. Reagan Udall Foundation. (2022, December 19). Retrieved January 31, 2023, from <https://reaganudall.org/sites/default/files/2022-12/Tobacco%20report%20210pm.pdf>
- ^{iv} David J. K. Balfour, et al. “Balancing Consideration of the Risks and Benefits of E-Cigarettes”, American Journal of Public Health 111, no. 9 (September 1, 2021): pp. 1661-1672.
- ^v National Academies of Sciences, Engineering, and Medicine. 2018. Public Health Consequences of E-Cigarettes. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24952>.
- ^{vi} “Smoking and Health 2021: A Coming of Age for Tobacco Control?” RCP London, June 22, 2021. <https://www.rcplondon.ac.uk/projects/outputs/smoking-and-health-2021-coming-age-tobacco-control>.
- ^{vii} Nicotine Vaping in England: 2022 evidence update main findings. GOV.UK. (2022, September 29). Retrieved January 31, 2023, from <https://www.gov.uk/government/publications/nicotine-vaping-in-england-2022-evidence-update/nicotine-vaping-in-england-2022-evidence-update-main-findings>
- ^{viii} National Youth Tobacco Survey. (2021, October 1). Notes from the Field: E-Cigarette Use Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021. Center for Disease Control and Prevention.
- ^{ix} *Farsalinos, K., Russell, C., Lagoumintzis, G., & Poulas, K. (2020, October 12). Results from farsalinos study of nearly 70,000 American adult vapers provide evidence that adults rely on flavors to remain smoke-free. SCVA. Retrieved January 31, 2023, from <https://scvapor.org/results-from-farsalinos-study-of-nearly-70000-american-adult-vapers-provide-evidence-that-adults-rely-on-flavors-to-remain-smoke-free/>
- ^x The Responsible Industry Network. “Because Our Members Prefer to Be a Part of the Solution.” The Responsible Industry Network. Accessed February 24, 2022. <https://rinprogram.org/>.