

Testimony Submitted by  
Cheryl Richter  
41 Iroquois Road, Stamford, CT 0690. I  
[C.I.richter@yahoo.com](mailto:C.I.richter@yahoo.com) 203-253-2372

I'm Cheryl Richter, a 28 year resident of Stamford, and I live in Assembly district 146. I am 57 years old and I started smoking when I was 13 years old. I continued for over 30 years until I discovered an e-cigarette 11 years ago and quit the first time I tried one. I am sorry I'm unable to testify in person, but I had a business obligation at the same time.

I became a vaping advocate shortly afterwards and have testified in front of your Public Health Committee many times over the years. I am currently the Executive Director of the New York Vapor Association and I feel I can bring a perspective to the issue of a flavor ban that I hope can help guide you NOT to make the same mistake that New York last May by banning flavored vapor products.

Almost a year ago today, I testified in front of New York's Joint Health Committee and warned the legislators of the terrible consequences a flavor ban would cause to consumers.

**Health Consequences to Consumers:**

- An immediate explosion of a dangerous black market
- Buy online from domestic and international sources
- Do-it-Themselves
- Return to smoking

The elimination of a life-saving industry in the state. When 93% of the products sold are removed from the shelves licensed vapor-tax paying retailers sell were illegal

That banning the sale of more than 93% of the e-liquids currently sold by vapor tax-paying registered Vapor Product Retailers, thus eliminating a life-saving industry; decimate hundreds of small businesses and with the convenience of cigarettes being still readily available on every street corner, people would go back to smoking.

So what are the consumers' health consequences after New York's flavor Ban? They:

- They Are Buying on the Black Market. There was an immediate rise of the black market with no product regulations, no manufacturing standards, no IDing, no licensing, no taxes. Fifty percent of vapers surveys indicated they would resort to the black market to get their flavors if banned and that is now obviously true.
- Plus, today, kids are sourcing vapor products easily from online sites such as Snap Chat and Tik Tok. Please see the recent article from Tech Crunch: [TikTok is being used by vape sellers marketing to teens](#).
- Buy online, skirting tax and age verification.
- Dangerous Do-It-Yourself E-liquid which is very easy to make and very easy to get it wrong. E-liquid ingredients are readily available in supermarkets where consumers can get ingredients that are unsafe to inhale, like McCormick's peppermint oil, and DIYing puts undiluted nicotine in many homes. See [diyordievaping.com](http://diyordievaping.com) for instructions. There is only

one death related to nicotine and it happened when a couple was dying, and they left a bottle of undiluted liquid nicotine open and their toddler drank it. More reason why e-liquid needs to continue to be made in ISO labs.

- Consumers have returned to smoking. Now, in 2021, Altria is boasting of an increase in sales. Between COVID-19 lockdown when people were home and convenience stores and gas stations had cigarettes widely available, and the lack of flavored e-liquid due to flavor bans, ex-smokers returned to smoking for the first time in years. Please see this recent article from the Wall Street Journal: [Smoking's Long Decline Is Over.](#)

The opponents of e-cigarette harm reduction tell you that adults will just switch to tobacco flavored. This makes no sense and it hasn't worked. Why would any adult choose to use a tobacco flavor when that is their relapse trigger? Flavors are the key to their success because it helps them disassociate from the smell, taste and triggers of tobacco smoke. As Judge Cholakis said in her NY court decision, *"There is no evidence in the record to support the inference that once flavored e-liquids are banned, the consumers of vaping products will simply switch to tobacco, menthol or flavorless e-liquid..."* By the way, there's no proof that minors would or wouldn't either.

**During the time of this pandemic, small business has been impacted the most. In New York, it is estimated that 40-50% of vape shops have already closed since the ban went into effect. Of those still in business, many express that the only reason they are still in business is because their leases are deferred right now but they are prepared to close.**

#### **Economic consequences of a flavor ban**

- We warned a ban will force the closure of independent vape shops, and layoffs of employees with retail, wholesale, e-liquid and component manufacturing jobs. So far unfortunately in NY this has proved true. As of now, we estimate a 50% closure rate with the rest hanging on due to the moratorium on lease payments. In Connecticut, the same could be expected.
- Bankruptcies declared
- Movement out of state: Many members have moved to Tennessee, Florida, Texas, South Carolina and Indian Reservations
- Employee layoffs: In NY, it is estimated that 75-80% have laid off employees with the majority having no employees after the May ban
- Leases broken
- Defaults on business loans, mortgages, cars, equipment, etc.

#### **Federal Regulations of E-Cigarettes**

- September 2020: All e-liquid companies must have submitted pre-market applications. Those that did not are considered illegal.

- December 2020: The PACT Act forbids the shipping of vapor products B2C. Fedex and UPS express they will do the same. Therefore in the US, only B2B shipments of vapor products will be legal
- National Tobacco 21<sup>8</sup> (effective 12/10/2019)
- January 2020: The FDA removed from the market of all flavored pod/cartridge-based e-cigarettes<sup>9</sup> other than tobacco or menthol, which they determined to be the preferred products of youth because of the extremely high nicotine content that cause a nic-buzz the kids like. In addition, next Thursday they will prioritize enforcement against all other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; and any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.
- Additional Federal requirements that have been in effect for years include: Tamper/Child resistant packaging and flow-restricted bottles; warnings on labels including nicotine is addictive, the manufacturer's address, percentage of nicotine by volume, and all ingredients<sup>10</sup>. Plus, all label images and ingredients<sup>11</sup> are now uploaded to the FDA's FURL system to ensure that if an ingredient is found harmful it can be recalled.
- The PMTA (pre-market tobacco application) Process went into effect in September 2020<sup>2</sup> E-liquid and hardware manufacturers submitted their premarket applications and are not complying with copious lab results and physiological studies. Many manufacturers have been working with the FDA on these applications for years.

### **Solution:**

As a solution to the surety of an immediate black market, we suggest the "Liquor Store Model" as an amendment to a flavor ban, by simply adding, "exemptions for state licensed vapor retailers that are age-restricted for 21 and above. We do not believe that a store that sells candy and soda needs to sell flavored vapor products. These are adult products, and adult vapers need them to avoid relapse. However, importantly, we believe that wherever cigarettes are sold, an adult should have the right to switch to a harm reduction product spontaneously, so allow tobacco and menthol to stay next to the cigarettes but put them behind or under the counter. Prohibit in-store displays, unless in age-restricted shops. Prohibit posters in windows so general traffic can't see them. The FDA will remove flavored high-nicotine pod systems sold mostly in c-stores and gas stations next week anyway.

### **Here are the things that would actually curb youth vaping:**

- **Restrict Access:** Allow flavored e-liquid sales in age-restricted retail locations only (as with hard liquor). Allow menthol and tobacco sales where deadly cigarettes are readily available to enable "accidental quitting."
- **Nicotine Cap:** No more than 3.6% nicotine by volume to be sold in the state. Lowering nicotine contents will be less addictive and will not cause the nicotine "buzz," which is what is attractive to minors.

- **State-approved training for all employees selling vapor products.** E-cigarettes are vastly different than combustible tobacco products. Employees need education on their specific federal and state regulations, appropriate IDing techniques, understanding of nicotine levels, spotting counterfeits, and how to effectively communicate with smokers
- **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 unless age is verified
- **Age verification software for all online sales** to verify name, age and address
- **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)
- **Restrict tobacco and e-cigarette signage** on store-fronts near schools.
- **Legal Consequences** for minors using or possessing tobacco or e-cigarettes.
- **Steep Penalties** for adults who sell or give them to minors to prevent straw purchases, including employees who sell vapor products.

Thank you for your time.

Sincerely,

*Cheryl Richter*

Cheryl Richter

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**Cheryl L. Richter**

*Executive Director*

*New York State Vapor Association*

[cheryl@nysva.org](mailto:cheryl@nysva.org)

914-517-3550

[NYSVA.org](http://NYSVA.org)