

January 17, 2024

Vermont State Legislature
House Committee on Human Services

Dear Chair Wood and Members of the Human Services Committee,
I watched some of last week's testimony on S.18 and felt that certain points were worth highlighting or clarifying.

- Attorney General Clark made the point that most flavored e-cigarettes young people use are illegally imported and are not from legitimate actors like the tobacco companies.
 - **This is exactly right and why S.18 is a poor policy choice. Illegal companies are already selling illegal flavored vape products in Vermont. Making flavored tobacco illegal will not deter these bad actors who are already acting illegally. It will, however, eliminate the legal face-to-face retail community's participation in preventing youth access to tobacco products. According to Chief Skyler Genest of the Department of Liquor and Lottery, the Vermont retail community has a 91.3% compliance rate.^[1] This also makes the good point that legitimate tobacco companies, who follow FDA regulation and guidance, will cede the market to these bad actors under S. 18, and their products will no longer be available for adults.**

- Chief Skyler Genest of the Dept. of Liquor and Lottery made a couple points worth reiterating.
 - **90+ percent of retailer visits were successful for the retailer. This demonstrates a commitment among the retail community to abiding by the law. It also supports the latest Youth Risk Behavior Survey (YRBS) that shows 92% of youth are NOT purchasing vapor products at retail.^[2]**
 - **Online sales are a problem with only a 42% compliance rate as of 2020. The balance, or about 58% of online sales involving youth, are in violation of state law.^[3]**
 - **These two points of testimony reaffirm that a Vermont retailer is a partner, not a problem. S.18 does not address the problem and will, in fact, make it worse.**

- DPH Commissioner Levine made several points worth unpacking.
 - Sales in New Hampshire have returned to normal after a 1-year increase following the Massachusetts ban.

^[1] Genest, Skyler. "House Human Services 01-10-2024 -9:05 AM." *YouTube*, 10 Jan. 2024, www.youtube.com/watch?v=5xiik_l_8-4

^[2] Vermont Youth Risk Behavior Survey, 2021. <https://www.healthvermont.gov/sites/default/files/document/hsi-yrbs-2021-full-report.pdf>

^[3] Vermont Tobacco Control Program, 2021. https://www.healthvermont.gov/sites/default/files/documents/pdf/HPDP-TCP-FY20-Annual-Brief_0.pdf

- **This is not true and a dangerous misrepresentation of the facts. While sales of menthol cigarettes in New Hampshire, Rhode Island and Vermont continue to fall, they are following the same historical patterns seen prior to the Massachusetts ban. However, because Massachusetts banned menthol cigarettes, sales in those bordering states continue to be far higher than they would have been had not Massachusetts instituted its ban. In other words, the sales that would have otherwise been made in Massachusetts continue to be made in these bordering states.**^[5]
- He stated, “We know what prohibition did and did not do.”
 - **This is exactly right. While the goal of preventing youth from using any tobacco product is noble and laudable, it doesn’t mean that every approach is sound. S. 18 will result in all sorts of consequences Vermont does not want.**

Additionally, a very interesting press release was issued by the Campaign for Tobacco Free Kids on January 10, 2024 describing states shortchanging tobacco prevention programs. It turns out that despite Vermont collecting over \$104 million in tobacco revenue, it has only spent \$2.7 million on tobacco prevention programs - a figure far below CDC recommended spending.^[6] While not the only reason Vermont youth are using flavored vapor products, this underfunding is certainly a contributing factor. Before the Committee supports prohibition of all flavored tobacco, and experiences a host of unintended consequences, perhaps Vermont should fund these programs and do its part in addressing on line sales. Both my kids go to public schools and have informed me that the under age kids purchase vape products on line. I did not believe this was possible. To my surprise I was able to purchase vapes tax free and at a fraction of the cost 2-3 minutes. The product was delivered in two days. No age verification. Just dropped in my mail box. The compliance numbers do not lie. Retailers are doing the part.

This same committee passed legalization of THC (Including candy flavored products such as gummy bears) so is can be regulated and less likely to get to underage kids. Why the change of heart on flavored tobacco and Vape? You should partner with Vermont Retailers to regulate the products. I want to see a bill that will make a difference not make the issue worse.

Respectfully,

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^[5] Orzechowski and Walker, The Tax Burden on Tobacco, Vol. 57.

^[6] Campaign for Tobacco Free Kids, Press Release Jan. 10, 2024. https://assets.tobaccofreekids.org/content/what_we_do/state_local_issues/settlement/FY2024/1_FY202-Rankings-of-Funding-for-State-Tobacco-Prevention-Programs.pdf