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S.288 – Ending the sale of all flavored tobacco

The American Cancer Society Cancer Action Network (ACS CAN), the nonprofit, non-partisan advocacy affiliate of the American Cancer Society advocates for public policies that reduce death and suffering from cancer which include policies aimed at reducing tobacco use.

ACS CAN supports ending the sale of all flavored tobacco products, including e-cigarettes and menthol cigarettes. We thank this committee for its time, and we appreciate Senator Lyons' work to make this critical public health issue a priority.

Ending the sale of all flavored tobacco products, including e-cigarettes and menthol cigarettes, would be a significant step in reducing tobacco use in Vermont. Removing these flavored tobacco products from the market can be a critical component to a comprehensive strategy to reduce initiation and lifelong addiction. Laws aimed at ending the sale of flavored tobacco products, including e-cigarettes and menthol cigarettes are only effective when combined with interventions to educate retailers, mobilize the community, and actively enforce the laws. These laws have the potential to reduce youth and young adult initiation of tobacco products.

Tobacco remains the leading preventable cause of death nationwide. In Vermont, it is estimated that 1,000 adults die from smoking every year.<sup>i</sup> There are 10,000 Vermont children who are alive today that will die prematurely due to smoking-related disease.<sup>ii</sup> Vermont spends \$348 million a year on health care costs directly caused by smoking.<sup>iii</sup>

Flavors are a marketing weapon the tobacco manufacturers use to target youth and young people to a lifetime of addiction. Altering tobacco products' ingredients and design, like adding flavors, can mask the harsh effects, facilitate nicotine uptake, and increase a product's overall appeal.<sup>iv</sup> Candy, fruit, mint and menthol flavorings in tobacco products are a promotional tool to lure new, young users, and are aggressively marketed with creative campaigns by tobacco companies.<sup>v</sup> Products with flavors like cherry, grape, cotton candy, and gummy bear are clearly not aimed at established, adult tobacco users and years of tobacco industry documents confirm the intended use of flavors is to target youth.<sup>vi</sup> Furthermore, youth report flavors as a leading reason they use tobacco products and perceive flavored products as less harmful.<sup>vii</sup>

Flavored e-cigarettes have proliferated on the market, with one study identifying more than 15,500 distinct flavors available to consumers – twice as many as 2014.<sup>viii</sup> **According to the 2019 Vermont Youth Risk Behavior Survey, 28% of high school students in this state now use some form of tobacco – up nearly 10% from two years ago. This stunning increase is driven predominantly by e-cigarette use, with one in every two Vermont high school students reportedly trying an e-cigarette. And current e-cigarette use has more than doubled in the last two years, with 26% of students of using these products compared to 12% in 2017.**

An effective flavor restricting law will include all tobacco products, including electronic cigarettes, and all flavors including menthol cigarettes. To ensure this bill is as strong as possible, a few important changes need to be made:

- **Remove definitions that reference “e-liquid(s).”**
  - These products, regardless of nicotine content, are already covered in Vermont's definition of tobacco products. We don't want to create a loophole for the tobacco industry to exploit by defining these products separately in this bill.

- **Remove purchase, use and possession (PUP) language.**
  - Evidence shows that penalizing the user is not effective, and research has also shown that these laws are disproportionately applied to communities of color—the very communities who have been targeted and marketed to by the tobacco industry, and the same communities who bear a disproportionate burden from health disparities.
  - Holding kids responsible is a tactic the tobacco industry supports, while continuing to market their deadly products to these young people.
  
- **Remove the contraband and seizure section**
  - This section of the code allows for seizure of property as well as contraband and levies a fine of \$500 to \$1000 on persons who possess flavored tobacco products. As we stated regarding the purchase, use and possession language, it is the retailers who need to be held responsible for selling these products - not the kids who have been lured into using them by the same industry who supports making them the responsible party.
  
- **Insert meaningful penalties for retailers.**
  - We would like to see penalties increased for retailers, and that they be no less than those used for retailers who sell to persons under the age of 21 as outlined in 7 V.S.A. § 1007.
  - The best way to reduce access to flavored tobacco is to assure that it is not sold anywhere within the state. Enforcement should fall on the retailers who are profiting from selling these products to young people, and the retailer should be held responsible for complying with laws that pertain to that sale.

Data from the 2016-2017 PATH study, the largest national longitudinal study looking at tobacco use and its effects, found that among teens who use e-cigarettes, 97% regularly used a flavored product.<sup>ix</sup> Also, among those teens who had ever tried an e-cigarette, 96.1% used a flavor product for the first time. In 2018, among high school e-cigarette users, use of any flavored e-cigarette significantly increased from 60.9% to 67.8% and use of a menthol- or mint-flavored e-cigarette increased from 42.3% to 51.2% in just one year.<sup>x</sup> Among young adults who reported using e-cigarettes every or some days in 2013-2014, 91.6% used a flavored product.<sup>xi</sup>

So-called “little cigars” have the look and feel of a cigarette, and are smoked like a cigarette, yet are often sold individually and are available in a variety of flavors and have likely benefited the most from the cigarette flavor prohibition. In fact, in 2016, the U.S. Food and Drug Administration (FDA) sent warning letters to four tobacco manufacturers stating that they were illegally selling flavored cigarettes labeled as “little cigars.”<sup>xii</sup> Large cigars and cigarillos, which can resemble either “little cigars” or large cigars, can come in a variety of flavors. Cigars were the most popular product among black high school students.<sup>xiii</sup> Among all teen cigar users, more than 60% had smoked a flavored cigar in the past 30 days in 2014,<sup>xiii</sup> and according to another study, more than 70% of teens who have ever smoked a cigar smoked a flavored product.<sup>xvi</sup>

Smokeless tobacco companies have a long history of using flavorings, such as mint, cherry, apple, and honey, and other product manipulation to gradually get new, young users addicted to “starter” products, keep them using, and shift them on to more potent smokeless tobacco products. In 2014, almost 60% of middle and high school students who used smokeless tobacco had used a flavored

product in the last month.<sup>xvii</sup> According to another study, more than 70% of teens who had ever used smokeless tobacco used a flavored product the first time.<sup>xviii</sup>

For waterpipe or hookah use, more than 60% of current middle and high school users used a flavored product,<sup>xix</sup> and almost 90% of those surveyed who had ever smoked hookah used a flavored product the first time in 2014.<sup>xx</sup> What's troubling, is that the flavorings used in waterpipe tobacco, the sweet aromas and use of water make users misperceive this practice as safer than cigarette smoking.<sup>xxi</sup> In fact, hookah tobacco and smoke are as dangerous as cigarettes, and contain carcinogens and other substances that can cause cancer and other diseases.<sup>xxii</sup> An hour-long waterpipe or hookah session typically involves 200 puffs of smoke, whereas smoking a single cigarette typically involves 20 puffs of smoke.

Long before cigarette companies started adding fruit, candy, and alcohol flavorings to cigarettes, they were manipulating levels of menthol to addict new, young smokers. Menthol acts to mask the harsh taste of tobacco with a minty flavor and by reducing irritation at the back of the throat with a cooling sensation. Additionally, menthol may enhance the delivery of nicotine. Knowing that youth who experience less negative physiological effects of smoking are more likely to continue smoking regularly, the tobacco industry has spent decades manipulating its menthol brand-specific product line to appeal to youth and, in particular, African Americans. The FDA's preliminary scientific investigation on menthol cigarettes concluded that the weight of the evidence supports menthol cigarette smoking with increased initiation and progression to smoking, increased dependency, and reduced cessation success, particularly among African American smokers.<sup>xxiii</sup> Among youth in 2014, menthol use was high overall (53.6%), and even higher for non-Hispanic black students (70.5%).<sup>xxiv</sup>

To understand a consequence to limiting the flavor prohibition to only cigarettes and exempting menthol flavoring, an analysis evaluated youth tobacco use before and after the prohibition.<sup>xxiv</sup> The analysis found a decrease in the likelihood of being a smoker (17.1%) and fewer cigarettes smoked (59%) associated with the flavor prohibition, but also a 45% increase in the probability that the youth smoker used menthol cigarettes. Furthermore, the flavor prohibition was associated with increases in both cigar use (34.4%) and pipe use (54.6%). This suggests that youth smokers, in the absence of flavored cigarettes, are substituting with menthol cigarettes or cigars and pipe tobacco, for which the flavor prohibition does not apply.

**The aggressive use of flavors and marketing tactics by the tobacco industry, rapid increased use of flavored products by youth and young adults, and under regulation of these products requires the public health community to take action to protect youth and young adults, and the public health at-large.**

As of November 2019, 2 states and at least 230 localities have enacted flavor restrictions. It's time for Vermont to join them.

Ending the sale of flavored tobacco will make it harder for the tobacco industry to target youth and young adults with enticing flavors. This legislation is one part of a comprehensive tobacco control strategy that includes regular and significant tobacco tax increases, implementing comprehensive smoke-free laws, and fully funding best practice tobacco prevention and cessation programs to reduce youth initiation and help tobacco users quit. We urge your support.

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<sup>i</sup> Campaign for Tobacco-Free Kids. The Toll of Tobacco in Vermont. Updated January 15, 2020.  
[https://www.tobaccofreekids.org/facts\\_issues/toll\\_us/vermont](https://www.tobaccofreekids.org/facts_issues/toll_us/vermont)

- <sup>ii</sup> Campaign for Tobacco-Free Kids. The Toll of Tobacco in Vermont. Updated January 15, 2020. [https://www.tobaccofreekids.org/facts\\_issues/toll\\_us/vermont](https://www.tobaccofreekids.org/facts_issues/toll_us/vermont)
- <sup>iii</sup> Campaign for Tobacco-Free Kids. The Toll of Tobacco in Vermont. Updated January 15, 2020. [https://www.tobaccofreekids.org/facts\\_issues/toll\\_us/vermont](https://www.tobaccofreekids.org/facts_issues/toll_us/vermont)
- <sup>iv</sup> FDA Guidance for Industry and FDA Staff, “General Questions and Answers on the Ban of Cigarettes that Contain Certain Characterizing Flavors (Edition 2) (“FDA Guidance on Characterizing Flavors”).
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