



February 2024

Members of the NYS Senate

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Re: Support for Closing Enforcement Loopholes to End the Youth E-cigarettes Epidemic in New York State

Dear Senator/Assembly Member,

The undersigned organizations representing public health, health equity, schools, parent and youth organizations, educators and health care providers across New York State respectfully urge you to support eliminating loopholes in New York State's flavored e-cigarette law. **Legislation (S.8531, Hoylman-Sigal/ A.9110, Rosenthal) has just been introduced to do so and we ask that you cosponsor the bill and request its inclusion in your SFY 2024-25 One House Budget bills.**

We are deeply concerned about the prevalence of tobacco use and its effects on New York's children and communities and believe that closing these loopholes will ensure the law enacted in 2020 to prohibit the sale of flavored e-cigarettes will have the intended impact.

When New York State passed legislation within the 2020-21 budget to address the epidemic of e-cigarette use among youth, loopholes were created that have caused challenges to effective enforcement.

For instance, in the finalized language, an exemption was included for products that receive a "Pre-Market Tobacco Product Authorization" (PMTA) from the Food and Drug Administration (FDA). This created ambiguity for retailers, health inspectors, and consumers around which flavored products are legal. **Out of the six states that have implemented comprehensive laws prohibiting the sale of flavored e-cigarettes, only New York has this exemption, and according to CDC Foundation data, it has the highest continued availability of these products in retail outlets.**

Additionally, several other loopholes and vague language in the current law allow retailers to deny inspectors access to their stores, allow distributors to continue to carry and sell prohibited products to merchants, and retailers to claim they are selling products remotely. The tobacco industry also continues to try to find ways around these policies with additives that do not taste like tobacco and create a cooling effect for the user.

This bill would eliminate the above loopholes and give local health department stronger enforcement abilities against unauthorized sales of flavored e-cigarette products by several means:

1. Suspend, revoke, or cancel a vapor product dealer's certificate of registration for unauthorized sales;
2. Cancel all such certificates of registration the dealer may hold in the state after three violations in a five-year period;

3. Provide penalties if a vapor products dealer without a certificate of registration does not allow an authorized inspector to inspect the business.
4. Enhance record retention requirements and include penalties for failing to comply with such requirements.

There is an urgent need to address these loopholes as tobacco manufacturers continue to make tobacco products including e-cigarettes stronger while aggressively targeting young people with fun flavors, enticing packaging, and positive messaging about these products.

Further, recent research and surveys show concerning data. The [National Youth Tobacco Survey](#) shared findings recently that about half of students who ever tried e-cigarettes report currently using them still. And almost all of the students report exclusively using flavored e-cigarettes – one [study](#) found that 71 percent of survey participants between the ages of 14 and 21 would quit if they did not have flavor choices. Effective enforcement of New York’s law can help put a stop to the tobacco industry taking advantage of our youth and protect them from a lifetime of addiction.

Data shows that nearly a fourth of high schoolers in New York use electronic cigarettes, and schools continue to struggle with responding to and trying to combat this epidemic. By effectively removing them from the market we will reduce both youth addiction and the many challenges that these products create in our schools.

We must act now to support educators, parents, youth, and our communities by ensuring that flavored e-cigarette products are not accessible through effective enforcement of New York’s existing laws around these products. **We are asking you to cosponsor and include S.8531/A.9110 in your SFY 2024-25 One House Budget proposals to eliminate loopholes from the 2020 law and put an end to continued access to these flavored products.**

We must protect our state’s young people and future generations from the tobacco industry’s harmful strategies and highly addictive and harmful products.

Respectfully,

Action on Smoking & Health

Albany College of Pharmacy and Health Sciences

American Cancer Society Cancer Action Network

American Heart Association

American Lung Association

American Nurses Association – New York (ANA-NY)

Boys & Girls Clubs of the Capital Area

Campaign for Tobacco-Free Kids

Community Health Care Association of New York State
Healthcare Association of New York State
Healthy Capital District
Korean Community Services of Metropolitan New York, Inc.
March of Dimes
Medical Society of the State of New York
New York Chapter American College of Physicians Services, Inc.
New York Public Interest Research Group
New York School-Based Health Alliance
New York State Council of School Superintendents
New York State Radiological Society
New York State Academy of Family Physicians
New York State American Academy of Pediatrics, Chapters 1, 2 & 3
New York State Association for Rural Health
New York State Council of Health-system Pharmacists
New York State County Health Officials of New York
New York State Parent Teacher Association
New York State Public Health Association
New York State School Boards Association
New York State Society of Anesthesiologists
New York State United Teachers
Parents Against Vaping (PAVe)
Pharmacists Society of the State of New York
St. Peter's Health Partners
Stan Martin Consulting