



March 21, 2023

RE: HB 3090 - Relating to characterizing flavors

Chair Nosse, Vice Chairs Goodwin and Nelson, and Honorable Members of the House Committee On Behavioral Health and Health Care,

Thank you for the opportunity to write on behalf of our more than 3,500 members in Oregon expressing our concerns and extreme opposition to HB 3090, which would prohibit sales of low-risk smokeless tobacco and nicotine vapor products in flavors other than tobacco--even if they receive a marketing granted order from the US Food and Drug Administration. Proposals such as this are hasty reactions to an emotionally fueled issue that is only being made worse by well-meaning, but misguided attempts to eradicate nicotine use.

The proposal to ban the sale of smoke-free nicotine and tobacco products sold in flavors other than tobacco will deny people who smoke access to the most popular low-risk smoking replacement products in decades--a few of which have already been authorized for sale by the FDA and received modified risk orders. We think it is a mistake to focus on the issue of flavors to the exclusion of underlying factors affecting youth use. Socioeconomic status, trauma, peer pressure, stress, depression, and a natural inclination toward taking risks all motivate young people to experiment with potentially harmful behaviors and coping strategies. None of these factors are addressed by laws banning flavored nicotine products or any other measures that deal strictly with limiting access to substances like nicotine and other drugs. Arguably, prohibitions such as what's proposed in HB 3090 are more likely to make things worse for the same people it is intended to protect.

The leading indicator of whether or not a young person will smoke is if they live with a parent who smokes. Oregon can do more to promote healthy behaviors among young people by encouraging parents who smoke to switch completely to a low-risk, smoke-free alternative. In order to achieve a rapid and enduring transition to safer nicotine products, people who smoke must have access to products they enjoy. This necessitates the availability of a diverse range of flavored smoke-free products. For these and the following reasons CASAA is urging the committee to reject any proposal to ban flavored smoke-free products in Oregon.

A flavor ban will deprive people who smoke access to life saving products

- **The availability of enjoyable smoke-free nicotine products is helping millions of people quit smoking.**

It is very disappointing that some of the comments the committee will hear on this proposal callously dismiss the experiences of millions of people who quit smoking¹, or are on their way to living smoke-free by switching to a safer nicotine product like vaping. You are being asked to disbelieve the experiences of, for example, surgical patients who will have better outcomes after switching to vaping,² parents and grandparents who will be around longer for their children, and young adults who are quitting before lasting damage is done, or who will never take up smoking because vaping is a better, safer alternative to combustible cigarettes.³

You are right to be skeptical of claims that vaping is unhelpful because just as we all know someone who has died early due to smoking, we are also increasingly more likely to know someone who quit by switching. Enjoyable, flavored products are being linked to positive outcomes in both people *trying* to quit^{4 5} and those who quit by *accident*.⁶ **It is incumbent upon all policy makers to acknowledge that people are quitting smoking by using less harmful alternatives and promote this life saving strategy.**⁷

- **A ban on flavored vapor products will force independent vape shops to close.**

We defer to data being presented by trade representatives from the vapor industry with regard to sales data, but it is our understanding that a majority of purchases involve e-liquid in flavors other than tobacco by people older than the federal minimum legal sales age of 21. To date, we are unaware of any retailer or manufacturer that sells a popular line of unflavored e-liquid.

¹ Clive Bates, The Counterfactual, E-cigarette risk perceptions – an American crime scene, February 3, 2022. Accessed from <https://clivebates.com/e-cigarette-risk-perceptions-an-american-crime-scene/>, February 8, 2022.

² Nolan M, Leischow S, Croghan I, et al. Feasibility of Electronic Nicotine Delivery Systems in Surgical Patients. *Nicotine Tob Res.* 2016;18(8):1757-1762. doi:10.1093/ntr/ntw003

³ Zhu S, Zhuang Y, Wong S, Cummins S E, Tedeschi G J. E-cigarette use and associated changes in population smoking cessation: evidence from US current population surveys *BMJ* 2017; 358 :j3262 doi:10.1136/bmj.j3262

⁴ Friedman AS, Xu S. Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation. *JAMA Netw Open.* 2020;3(6):e203826. doi:10.1001/jamanetworkopen.2020.3826

⁵ Eva C. Rest, Kristin N. Brikmanis, Robin J. Mermelstein, Preferred flavors and tobacco use patterns in adult dual users of cigarettes and ENDS, *Addictive Behaviors*, Volume 125, 2022, 107168, ISSN 0306-4603, <https://doi.org/10.1016/j.addbeh.2021.107168>.
(<https://www.sciencedirect.com/science/article/pii/S0306460321003531>)

⁶ Kasza KA, Edwards KC, Kimmel HL, et al. Association of e-Cigarette Use With Discontinuation of Cigarette Smoking Among Adult Smokers Who Were Initially Never Planning to Quit. *JAMA Netw Open.* 2021;4(12):e2140880. doi:10.1001/jamanetworkopen.2021.40880

⁷ Warner, K.E., Benowitz, N.L., McNeill, A. *et al.* Nicotine e-cigarettes as a tool for smoking cessation. *Nat Med* (2023). <https://doi.org/10.1038/s41591-022-02201-7>

It is unlikely that specialty vapor retailers will be able to remain open if they are restricted to selling just vapor devices and tobacco flavored e-liquid. It is the diversity of vapor products that both supports independent businesses and provides a customizable experience to people who are attempting to transition to a smoke-free lifestyle.

- **Vapor product specialty shops (vape shops) play a vital role in helping people who smoke switch to a low-risk alternative**

Vape shops are a source of peer-to-peer support that is not effectively replicated by current tobacco control interventions. Vape shops provide knowledgeable staff who offer individualized attention to help customers find devices and e-liquid flavors that will help them successfully make the switch. Just as important, vape shops provide a space for peer-to-peer support for people who used to smoke and people who are transitioning to a smoke-free product.

By way of background, vapor retailers and manufacturers in the United States are prohibited by federal law from marketing e-cigarettes as smoking cessation products or even less harmful than cigarettes.⁸ Customers, however, are bound by no such law and it is not uncommon to hear customers exchange successful quit smoking stories between one another in a vape shop. To the casual observer, sharing such a story might not seem like much, but between people who are recovering from a multiyear or multi-decade cigarette addiction, it can mean the difference between living a smoke-free life or returning to the devil they know.

By comparison, vapor retailers in the United Kingdom are not subject to the same limitations on marketing communication in face-to-face transactions. Research conducted in the UK demonstrates that people who shop for vapor products in specialty vapor shops have a remarkable quit rate of >40% after 12 months.⁹ No other smoking cessation intervention comes close to the success rate found in the UK. And while the retail environment studied in the UK is not a 1:1 match with vapor shops in the United States, when we consider customer-to-customer interactions within the retail environment, which are not regulated by federal law, it stands to reason that the results found in the UK may be generalizable to consumers in the United States.

⁸ 21 USC 387k: Modified risk tobacco products, accessed from <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section387k&num=0&edition=prelim>

⁹ Polosa, Riccardo et al. "Quit and smoking reduction rates in vape shop consumers: a prospective 12-month survey" *International journal of environmental research and public health* vol. 12,4 3428-38. 24 Mar. 2015, doi:10.3390/ijerph120403428

For the foregoing reasons we respectfully urge the committee to reject HB 3090, the proposal to ban flavored vapor products prior to scientific review. This legislation will place arguably cruel barriers in front of people that widen gaps in health equity and punish people who would otherwise be improving their health.

Recommendations

- We urge committee members to refocus their attention on the most immediate concern of reducing the early death and disease attributed to smoking by seeking ways the state can help promote safer alternatives to people who smoke, especially among people from historically underserved communities.
- Effective substance use prevention starts by empowering young people with strong social skills, critical thinking, and healthy coping strategies. People are generally resourceful and, historically, find ways to circumvent prohibitions on tobacco, drugs, and alcohol. Strong life skills training during adolescence has a greater potential to positively shape a young person's life well into adulthood.¹⁰

Thank you for considering our comments.

Sincerely,



Alex Clark

CEO

The Consumer Advocates for Smoke-free Alternatives Association

¹⁰ Society of Addiction Psychology, "The Life Process Program," Stanton Peele, July 10, 2020. Accessed from <https://addictionpsychology.org/conference-calls/life-process-program>, Aug. 25, 2022.