SUPPORTS

A.2128-A (Rosenthal)

An Act To Amend The Public Health Law And Tax Law, In Relation To Prohibiting The Storage Of Flavored Vapor Products Near Where Vapor Or Tobacco Products Are Sold At Retail Or Wholesale

The New York State Association of County Health Officials (NYSACHO) supports the above-referenced legislation, which prohibits the keeping of inventory, storage, warehouse, processing, packaging, shipping, or distributing of flavored vapor products near where vapor or tobacco products are sold at retail or wholesale. This legislation would eliminate the loopholes in the New York State flavored e-cigarette law.

E-cigarette use has been linked to the onset of various lung diseases, exposure to cancer-causing chemicals, and a dangerous addiction to nicotine. Inhalation of the toxic chemicals (i.e., diacetyl, formaldehyde, and acrolein)[1] produced by e-cigarettes results in a spectrum of diseases referred to as EVALI (e-cigarette or vaping use-associated lung injury). These diseases cause inflammation of the lungs, resulting in symptoms such as chest pain, fever, and shortness of breath. In February 2020, the CDC received 2,668 EVALI hospitalizations reports from across all 50 states. Researchers found the median patient age to be 24 years old, with 15% under 18 and 37% aged 18 to 24 years old[2].

E-cigarette use during adolescence puts children at risk of stunting lung development and inhibiting their ability to reach full functional potential. These devasting side effects raise concerns with tobacco use and its impact on New York's children and communities. Previous laws produced some success in reducing the prevalence of e-cigarette use among our youth, with a decline from 27.4% in 2018 to 18.7% in 2022, as the NYS Department of Health Bureau of Tobacco Control reported[3]. Nevertheless, rates of youth e-cigarette usage are still above the national average of 10%; therefore, we must take additional measures to curtail future use and end the tobacco epidemic among New York's youth.

The 2020 ban on flavored vapor products was intended to address the epidemic of e-cigarette particular the risks posed by appeal of flavored vapor products to youth, however, the statute created loopholes that have caused significant challenges to effective enforcement for health officials. Troubling trends noted by enforcement officials in the field include:

- Retail Inspections loopholes which do not require retailers to make their entire premises available to inspectors; Many retailers assume they can refuse to let an inspector do their job without any civil penalty.
- Increased frequency of persistent violators operating without a license, with expired licenses, or violators who close and reopen under new LLC.
- Out-Of-State Sales exemptions allowing retailers to sell their product to out of state purchasers via remote sales, which allows claims that products stocked in retail establishments are only being sold to out of state purchasers, despite no evidence offered of out of state sales occurring, or even that a method of conducting out of state sales (a website, etc.) exists.
- Lack of authority to remove illegal product(s) from retail sales premises or inspect premises for additional products onsite.

- Distributors continue to be able to sell and ship flavored e-cigarettes that cannot be legally sold in New York to stores within the state with no mechanism to track those deliveries to follow-up and assure they are intended for out-of-state sales.
- Cooling Sensation and "Clear" Vape Products through which the industry sells "non-menthol menthol" cigarettes and e-cigarettes in states which have banned the sales of flavored tobacco products. These products contain additional additives which produce a flavor that does not taste like tobacco and creates a cooling, anesthetic effect, or sensation for the user.
- Increased sale of "camouflage" or deceptive look-alike vape products, where the vape unit is designed to appear like common items, such as hoodie strings, highlighters and pens, backpacks, smart watches or USB drives.
- Loopholes in tax law that create inconsistencies in Department of Taxation and Finance authorities for enforcement of tobacco products vs. vapor products.
- Increased presence of other illicit products, such as unlicensed cannabis sales or illegal drugs, where inspectors report increased safety risks, threats to inspectors, and unwillingness to use minors in compliance checks due to safety concerns.

It is imperative that we address these issues as the tobacco industry continues to reinvent its marketing tactics and strategies with the intent to make tobacco more appealing to youth[4]. This bill would eliminate the above loopholes and for persistent violators, where referral to the Department of Taxation and Finance for action on licensure is warranted, the bill provides 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.

Together, we must protect our young people and our future generations from the tobacco industry's harmful marketing strategies and highly addictive and hazardous products. This legislation strengthens New York's existing statute to assure more effective enforcement and for the reasons stated above, NYSACHO supports this legislation and recommends it be enacted into law.

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Date Issued: 2/12/2025 Date Adopted: 1/11/2024

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[1] What Does Vaping Do to Your Lungs? | Johns Hopkins Medicine

[2] Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products | Electronic Cigarettes | Smoking & Tobacco Use | CDC

[3] https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume15/n1_youth_tobacco_use.pdf

[4] Tobacco: Industry tactics to attract younger generations (who.int)