



AMERICANS *for* TAX REFORM

January 26, 2121

Maryland Senate Finance Committee
Miller Senate Office Building,
11 Bladen St., A
Annapolis, Maryland,

Members of the Senate Political Subdivisions Committee,

I thank the Committee for the opportunity to present this testimony on behalf of Americans for Tax Reform (ATR), a non-governmental non-profit organization which advocates in the interests of taxpayers and consumers throughout the United States. ATR offers the following testimony in opposition to SB 177 & 273, which seek to restrict access to life-saving reduced risk tobacco alternatives such as electronic cigarettes. These include bans on flavors, restricting entry to vape stores without electronic ID verification, forbidding online/remote sales, and pre-empting the FDA's authority on component and ingredient disclosure. **If enacted, these bills would have a disastrous impact upon not only businesses, but public health throughout the State, and lead to a clear increase in tobacco-related mortality.** SB177 also institutes a ban on all flavored conventional tobacco products, such as menthol cigarettes, which would have a disastrous impact on the Maryland economy and state finances, lead to a boom in illicit smuggling operations, and cause significant harm to minority populations. Given the significant overlap between these two bills in regard to flavors of reduced risk tobacco products, this submission will address these bills in tandem.

The smoking of traditional combustible tobacco products remains one of the leading preventable causes of death in the State of Maryland. It is noted, however, that the negative health effects of smoking combustible tobacco come not from the nicotine, a relatively benign, yet highly addictive substance much like caffeine, but rather the chemicals produced during the combustion process – “people smoke for the nicotine but die from the tar”. For this reason, nicotine replacement therapies such as nicotine patches and gums have been used to help smokers quit for decades.

In more recent years, technology has developed to allow for the creation of more effective alternative nicotine delivery systems, colloquially known as e-cigarettes or personal vaporizers. Through delivering nicotine through water vapor, these mimic the habitual nature of smoking, however, the absence of “smoke” leads to the absence of the carcinogens created through the combustion of tobacco. **As a result, these have been overwhelmingly proven to be 95% safer than combustible cigarettes, while least twice as effective as more traditional nicotine replacement therapies. For this reason, over 30 of the world's leading public health organizations have endorsed nicotine vaping as safer than smoking and an effective way to help smokers quit.** This list includes Cancer Research UK; the British Medical Association; the British Lung Foundation; the New Zealand Minister of Health; the US National Academies of Sciences, Engineering, and Medicine; the American Association of Public Health Physicians; the Royal Australian College of Physicians; the French National Academy of Pharmacy; and the German Federal Institute for Risk Assessment.

It is further noted that studies have repeatedly shown that flavors, which these bill seek to ban, are critical to helping adult smokers make the switch to vaping, and that adults who used flavored e-cigarette products have been found to be more than twice as likely to quit smoking combustible cigarettes than adults using non-flavored vaping products. Multiple studies have shown that banning all flavors in e-cigarettes (except tobacco flavor) would result in a decline in

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the use of e-cigarettes and an increase in the smoking of deadly combustible cigarettes. This deadly shift would occur because flavors “contribute to both perceived pleasure and the effort to reduce cigarette consumption or quit smoking.” One such study found a simple ban on all flavors but tobacco in e-cigarettes would increase smoking by 8.3 percent. In addition, Public Health England canvassed a number of vaper surveys and found that “banning flavored liquids would deter them [vapers] from using vaping products to help them quit or reduce their smoking. It could also push current vapers towards illicit products.” Public Health England therefore concluded that, “[a ban on flavored liquids could have adverse effects and unintended consequences for smokers using vaping products to quit.](#)” Concerningly, one nationwide British survey from 2019 found that if a vaping flavor ban were enacted, then 25 percent of vapers would still try to get flavors through the black market. Nearly 10 percent who use flavored liquids said they would stop vaping, and 20 percent said that they would either smoke more tobacco or return to smoking tobacco entirely.

While flavors in vaping products are critical in helping adults quit smoking, the evidence also demonstrates that they play no role in youth uptake of vaping. A 2015 survey of nonsmoking teens aged 13-17 found interest levels in flavored e-cigarettes at 0.4 out of a possible score of 10. Additionally, fewer than a third of high school students self-report to care about flavors. Academic studies have found that teenage non-smokers’ “willingness to try plain versus flavored varieties did not differ” and a mere 5 percent of vapers aged 14-23 reported it was the different flavors that attracted them to e-cigarettes. It is also worth noting that, despite media reports to the contrary, data from the National Youth Tobacco Surveys demonstrates that youth dependence on nicotine in US high school students has [not increased since the](#) introduction of these products to the market.

We would also like to draw the committee’s attention to the fact that other aspects of SB 273, such as the prohibition on online or remote sales, and the requirement of certain products to be sold to certain stores would significantly reduce access to persons in rural and remote areas of the state. **Were these restrictions enacted, these persons, often in lower socioeconomic demographics and at the highest risk of smoking related mortality, would not have access to these reduced risk products, and would have no choice but to continue smoking combustible tobacco.**

The Food and Drug Administration already requires that every legal nicotine vapor product in the country undergo a lengthy pre-approval process by this May. Part of this review process requires an FDA determination that the continued availability of a vaping product is appropriate for the protection of public health. Without an FDA approval, the product cannot be sold to consumers. It is, as such, inappropriate for the State to attempt to pre-empt the FDA’s authority on component and ingredient disclosure.

Extrapolating from a large-scale analysis by the US’s leading cancer researchers and coordinated by Georgetown University Medical Centre, **if a majority of Maryland smokers made the switch to vaping, close to [150,000 lives would be saved](#). In seeking to reduce access to these life-saving products, these bills place these lives in jeopardy.**

ATR further submits that in addition to the public health disaster that reducing access to reduced risk tobacco alternatives will unleash, these proposals would also have devastating consequences on businesses, at a time they can afford it least. At a time of great hardship due to the Covid-19 pandemic, a bill which would effectively outlaw sections of the Maryland economy costing jobs and business owners their livelihoods, would have a devastating impact in terms of its economic cost.

In addition to the flavor bans imposed by SB 273 and SB 177 on reduced risk tobacco alternatives, SB 177 extends flavor prohibition to menthol cigarettes and other conventional tobacco products. Similar to bans on flavors in reduced risk tobacco alternatives, these would also come with significant negative consequences for the state, with no evidence whatsoever that they have any effect in reducing smoking rates. To the contrary, real world evidence from Massachusetts demonstrates that such bans are counterproductive and come at significant cost.

Since Massachusetts implemented a ban on all flavored tobacco products in the middle of 2020, cross-border purchases and the creation of a booming black market have more than made up a decline in sales in the Commonwealth. In the first six months since the ban was enacted, Massachusetts retailers have sold 17.7 million fewer cigarette packets compared to the same six months in the prior year, while neighboring Rhode Island and New Hampshire have combined to sell 18.9 million more as Massachusetts residents stock up across state lines. **The loss to the state, already in the midst of a fiscal crisis brought on by the Covid-19 pandemic, has thus far been a staggering \$73,008,000.** Given fewer than \$5 million of the over \$500 million the state collects in tobacco excise is spent on smoking cessation programs, the remainder allocated to the general fund, this shortfall will likely lead to further tax increases, hurting struggling families and businesses even further, and there is little doubt a similar effect would occur in Maryland.

While the states of Rhode Island and New Hampshire have been some of the biggest beneficiaries of Massachusetts' ban, collecting close to \$50 million in additional revenue, criminal syndicates have also benefited. Contrary to popular belief that tobacco smuggling a victimless crime consisting of someone purchasing a few extra cartons across state lines, in reality most tobacco smuggling is run by multi-million dollar organized crime syndicates. **These networks, who also engage in human trafficking & money laundering, have also been used to fund terrorist and the US State Department has explicitly called tobacco smuggling a "threat to national security".**

It is also worth noting that paradoxically these bans may therefore increase youth smoking in Maryland. By definition criminals and smugglers are unlikely to obey laws and would not follow rigorous age-verification requirements mandated at reputable outlets.

In addition to lost revenue the financing of criminal activities, and potential increase in youth uptake, another adverse effect of these bans is the disproportionate harm it inflicts upon minority communities. Approximately 80% of blacks and 35% of Latinos who choose to smoke prefer menthol cigarettes, and black adults are 60% of cigarillo and non-premium cigars smokers, with these products often flavored. For this reason, civil liberty organizations such as the ACLU and the Law Enforcement Action Partnership oppose flavor bans as they "disproportionately impact people and communities of color."

For the reasons outlined above, in the interests of public health, protecting the Maryland economy, and preventing the spread of smuggling cartels and the disproportionate targeting of minorities, we call upon the Committee to accept the science and vote against SB 177 & 273.

Sincerely,

Tim Andrews
Director of Consumer Issues
Americans for Tax Reform