



Ohio Vapor Trade Association (OHVTA)

Before the Ohio House Ways and Means Committee

HB96 Opposition Testimony

Ohio Vapor Trade Association (OHVTA)

Submitted by: Scott Eley, President OHVTA

Date: March 5, 2025

Chairman Roemer, Ranking Member Troy, and esteemed members of the Ohio House Ways and Means Subcommittee, thank you for the opportunity to submit this testimony. I am Scott Eley, the President of the Ohio Vapor Trade Association. OHVTA is a non-profit trade association dedicated to supporting Ohio's vapor industry, representing small "mom & pop" vape shops, distributors, manufacturers, and consumers. OHVTA champions fair legislation, combats misinformation, and promotes vaping as a harm reduction tool for adult cigarette smokers.

Today, I urge you to consider three critical issues:

- (1)** Removing any proposed flavor ban on vapor products
- (2)** Rejecting the proposed tax increase from \$0.10/ml to \$0.20/ml
- (3)** Opposing the creation of a restrictive and costly retail vapor licensing scheme under the Department of Health.

These policies, if enacted, would undermine the ability of adult former smokers—like myself and many others—to remain smoke-free, while driving unintended consequences that harm Ohioans and our economy.

1. Removing a Flavor Ban on Vapor Products

The Center for Disease Control data supports, as seen in Figure 1, E-cigarettes, also known as vapor products, were as popular as all other methods combined for adults who stopped smoking completely.



Ohio Vapor Trade Association (OHVTA)

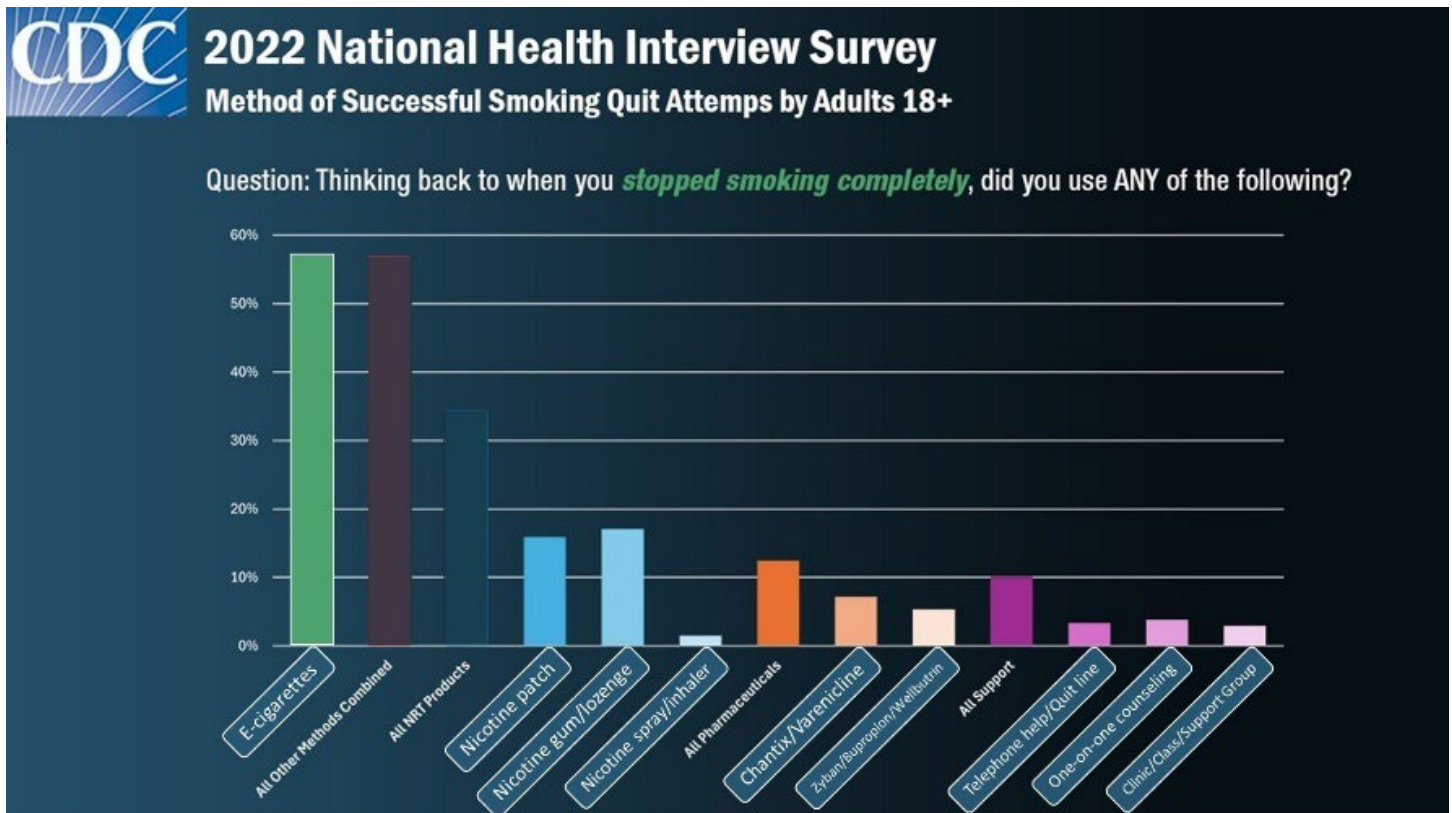


Figure 1

Flavored vapor products are not just a youth issue, they are a lifeline for adults who have quit smoking combustible cigarettes. **Across all social media outlets, your constituents tell a compelling story.**

These aren't isolated anecdotes. A 2018 study in the journal *Harm Reduction*¹ found that flavored e-cigarettes increased the odds of smoking cessation among adults by 40% compared to unflavored options. Banning flavors risks pushing these adults back to cigarettes; a far deadlier alternative! The FDA itself has acknowledged that vapor products are less risky than cigarettes, with its 2019 guidance² noting that e-cigarettes "may present a lower risk of harm" for adult smokers who switch completely. Why, then, would we restrict a tool that helps Ohioans live healthier lives?

¹ Notley, C., Ward, E., Dawkins, L. et al. The unique contribution of e-cigarettes for tobacco harm reduction in supporting smoking relapse prevention. *Harm Reduct J* 15, 31 (2018). <https://doi.org/10.1186/s12954-018-0237-7>

² <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/enforcement-priorities-electronic-nicotine-delivery-system-ends-and-other-deemed-products-market>



Ohio Vapor Trade Association (OHVTA)

In a 2023 study, *Patterns of flavored e-cigarette use among adult vapers in the USA: an online cross-sectional survey of 69,233 participants*³, and published in the *Harm Reduction Journal*:

Results

The most prevalent flavor at the time of quitting smoking was again fruit (83.3%), followed by dessert/pastry/bakery (68.0%) and candy/chocolate/sweet (44.5%). These flavors were considered the most helpful for quitting smoking. Tobacco flavor use at the time of smoking cessation was reported by 15.0%, while 9.3% considered it helpful for quitting smoking.

Conclusion

Non-tobacco flavors were popular among the US adult vapers who participated in the study, and were popular choices at the time of quitting smoking for those who formerly smoked. Tobacco flavor use prevalence was low and was further reduced over time. Regulators should consider the flavor choice of adult consumers, especially those who quit smoking, when preparing legislation on flavored e-cigarettes.

The main purpose of this study was to analyze the patterns of flavored e-cigarette use in a large sample of dedicated adult vapers residing in the USA. Additionally, the study focused on comparing flavor use between current-smoking vapers (dual use) and former-smoking vapers, and on specifically examining patterns of flavor use among former-smoking vapers at the time of quitting smoking.

Understanding the patterns of flavor use among adults is important since any overly restrictive regulatory decisions (e.g., a ban on popular flavors) could have unintended consequences among established adult vapers who may have reduced or quit smoking with the help of e-cigarettes. Risk reduction in people who smoke and quit by switching to e-cigarettes is one of the determinants of the public health impact of e-cigarettes. Therefore, any regulatory framework should consider the balance between protecting population subgroups from unintended and undesired use and causing harm to people who use e-cigarettes as smoking substitutes.

³ Farsalinos, K., Russell, C., Polosa, R. *et al.* Patterns of flavored e-cigarette use among adult vapers in the USA: an online cross-sectional survey of 69,233 participants. *Harm Reduct J* **20**, 147 (2023). <https://doi.org/10.1186/s12954-023-00876-w>



Ohio Vapor Trade Association (OHVTA)

By comparison, and directly addressing the youth use concern, a new study from researchers at the University of Missouri and the Yale School of Public Health, published in JAMA Health Forum, *Flavored E-cigarette Sales Restrictions and Young Adult Tobacco Use*⁴ found:

Key Points

Question: How do policies restricting sales of flavored electronic nicotine delivery systems (ENDS) affect young adult vaping practices and cigarette smoking in the US?

Findings: Using a cross-sectional survey dataset covering 376,963 young adults (age 18 to 29 years), this quasi-experimental analysis found that state **restrictions on flavored ENDS sales** were associated with a 3.6–percentage point (ppt) reduction in daily vaping as well as a **2.2 ppt increase in daily smoking** relative to trends in states without restrictions.

Meaning: These findings suggest that restricting flavored ENDS sales is associated with reduced vaping but increased cigarette smoking among young adults, potentially offsetting these policies' public health benefits.

One of the study's authors, Michael Pesko, commented:

"We should always be cognizant that any policy will have unintended effects, especially in the public health space. In this case, our study finds **flavored e-cigarette restrictions have the unintended effect of sizably increasing cigarette use**. This is not good from a public health perspective because cigarettes are far more dangerous products. It's the equivalence of steering a ship away from a storm straight into a whirlpool."

Clearly, the conversation around instituting a ban on flavored vaping products needs to be very delicately managed to ensure that we are not forcing adult consumers, who quit, to return to smoking. Importantly, OHVTA strongly believes that no youth should use tobacco or vapor products. Lawmakers need to understand the nuance of these policies to ensure that potential public health benefits are achieved as intended. The "ban hammer" is not this nuance and will likely backfire as has been observed in other states that have attempted these same ill-advised policies.

⁴ Friedman AS, Pesko MF, Whitacre TR. Flavored E-Cigarette Sales Restrictions and Young Adult Tobacco Use. *JAMA Health Forum*. 2024;5(12):e244594. doi:10.1001/jamahealthforum.2024.4594



Ohio Vapor Trade Association (OHVTA)

2. Rejecting the Proposed Tax Increase from \$0.10/ml to \$0.20/ml

The current vapor tax of \$0.10/ml is already burdensome but doubling it to \$0.20/ml is exorbitant and counterproductive. To put this in perspective, a typical 100ml bottle of e-liquid would jump from a \$10 tax to \$20, a 100% increase. For a pack-a-day smoker who switched to vaping, this could mean an additional \$180-\$365, on top of the current tax making the net tax burden on that former smoker turned vapor skyrocket to \$360-\$730 per year, assuming they use 5-10ml daily. Compare this to Ohio's cigarette tax of \$1.60 per pack, where a pack-a-day smoker pays about \$584 yearly. The proposed vape tax is disproportionately high for a product that delivers nicotine without combustion's toxic byproducts.

Studies show this approach backfires. In addition, these vapor excise taxes, and the proposed increase, disproportionately impact low-income persons while significantly increasing cost-to-access of safer alternatives while increasing smoking rates of traditional cigarettes. For reference, looking at Ohio's neighboring states, and the realistic scenario of cross-border sales, let's examine datasets: The price percentage **decrease** and the dollar **decrease** for a consumer buying vapor products in a neighboring state.

An increase of Ohio's vapor excise tax to \$0.20/ml means (see in figure 2):

- Ohio's tax rate for a typical 100ml bottle - \$36 (\$16 retail price and \$20 tax)
- Michigan \$16 – 56% savings of \$20.00
- Indiana \$19 – 47% savings of \$17
- Kentucky \$19 – 47% savings of \$17
- West Virginia \$24 – 33% savings of \$12
- Pennsylvania \$19 – 47% savings of \$17

Analysis by the Tax Foundation warned that high vape taxes drive cross-border purchases. Ohioans near all bordering states, where taxes are lower or nonexistent, will simply shop elsewhere, costing Ohio revenue. Actual data from when Massachusetts implemented a flavor ban and high taxes, border sales in New Hampshire spiked by 30% within six months.

This tax increase doesn't protect public health, it jeopardizes it while draining Ohio's tax base. Adults who vape to stay smoke-free deserve affordability, not punishment.



Ohio Vapor Trade Association (OHVTA)



3. Opposing the Proposed Retail Vapor Licensing Scheme

Figure 2

Finally, the proposed retail vapor licensing scheme, handing control to the Department of Health, hiking fees beyond cigarette licensing costs, and imposing stricter rules, is unjustifiable. Ohio's current cigarette retail license costs \$125 annually with straightforward requirements. The proposed vapor retail license cost is \$400, with



Ohio Vapor Trade Association (OHVTA)

Department of Health oversight and added restrictions, creates an uneven playing field. R Street's 2024 report⁵ shows New York's over-regulation shuttered vape shops and boosted black markets.

Ohio's licensing plan risks the same hypocrisy against a harm reduction tool. Hardly a public health win. The FDA's Center for Tobacco Products (CTP) has classified vapor products as less harmful than cigarettes, with CTP Director Brian King stating in a 2023 interview, "*We do know that e-cigarettes — as a general class — have markedly less risk than a combustible cigarette product*"⁶ Yet, this proposal treats vapor product retailers like pariahs compared to cigarette sellers.

Why punish retailers of a less risky product when the FDA's own Brian King supports switching? This scheme risks reversing Ohio's smoking decline and risks shutting down small businesses that support Ohioans' switch from smoking. All while cigarettes remain widely available under lighter rules.

Conclusion

Ohio stands at a crossroads. Flavored vapor products keep adults smoke-free, excessive taxes drive them back to cigarettes or out of state, and punitive licensing undermines a harm reduction tool endorsed by experts like Director Brian King. I implore you to remove any flavor ban, reject the \$0.20/ml tax hike, and scrap the proposed licensing scheme. Let's prioritize adult choice and public health over

misguided restrictions. Thank you for your consideration. I'm happy to provide further data or answer questions.

Respectfully,
Scott Eley

A handwritten signature in blue ink, appearing to read 'S Eley', with a stylized flourish at the end.

President, OHVTA

⁵ <https://www.rstreet.org/research/over-regulation-creates-more-problems-than-it-solves-bans-in-new-york/>

⁶ <https://reason.org/commentary/tobacco-harm-reduction-should-be-on-congress-agenda/>