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IT'S TIME FOR NEW YORK LAWMAKERS TO CLOSE LOOPHOLES IN FLAVORED E-CIGARETTE BAN

Law passed in 2020-21 budget needs updates to enable enforcement

MEDIA CONTACT:

Jen Daly
Gray Media
860.398.3916
daly@graymediagroup.com

(Albany, N.Y.) Organizations representing parents, teachers, physicians, health officials and public health advocates from across New York State are praising Senator Brad Hoylman-Sigal (D-Manhattan) and Assemblymember Linda Rosenthal (D/WF-Manhattan) for introducing legislation ([S08531/A9110](#)) to address loopholes in existing law that the tobacco industry is exploiting to continue to sell flavored e-cigarettes in the state. Today, more than 30 groups have issued a [letter of support](#) to all members of the state Assembly and state Senate, asking for co-sponsorship of the legislation.

Legislation to eliminate the sale of flavored e-cigarettes in New York was passed and signed into law through the SFY 2020-21 budget. However, in the final bill, language was included to exempt products that have received a "Pre-Market Tobacco Product Authorization (PMTA)" from the Food and Drug Administration (FDA). This creates confusion among retailers, health inspectors and consumers. Despite six other states having passed and implemented laws prohibiting the sale of flavored e-cigarettes, New York is the only one to have this exemption. According to the CDC Foundation, New York has the highest continued availability of these products in retail settings.

Other loopholes and vague language make it possible for distributors to keep supplying retailers with prohibited products, for retailers to deny inspectors access to their stores and retailers to falsely claim without penalty that their inventory is intended for sale in other states.

"The tobacco industry continues to find work arounds for even the most straightforward laws and regulations," said Kevin O'Flaherty, Director of Advocacy, Northeast Region, Campaign for Tobacco Free Kids. "New York has been a leader in regulating products that target kids with fun flavors and deceptive marketing and we're grateful that Senator Hoylman-Sigal and Assemblymember Rosenthal are working to ensure that the laws on the books are enforced to keep these products off New York shelves."

Tobacco manufacturers have also developed new technologies that were not directly addressed in the existing flavors ban, which use additives to provide a cooling taste for the user. This loophole would be addressed in the legislation.

“Closing these loopholes will be a critically important step in better protecting our young people from developing addictions to substances proven to cause life-long and life-ending illnesses,” said Dr. Irina Gelman, President of the New York State Association of County Health Officials. “It will also provide additional protections to local public health staff who are routinely barred entry and threatened by many businesses that exploit these gaps in the law.”

Data shows that nearly a fourth of high schoolers in New York use electronic cigarettes. –Schools and parents continue to struggle with responding to and trying to combat this epidemic.

New York State School Boards Association Executive Director, Robert Schneider said, "Addiction to vaping products hinders learning and development and often requires schools to take on additional responsibilities to prevent student vaping. New York lawmakers did the right thing in 2020 by passing legislation to protect young people from addictive vaping products that damage their health. Since then, however, loopholes that enable retailers to continue marketing these dangerous products have become apparent. School boards applaud this legislation introduced by Senator Hoylman-Sigal and Assemblymember Rosenthal to eliminate ambiguity in the law, ban additives that mimic menthol and strengthen enforcement and penalties for those who engage in unauthorized e-cigarette sales."

“Youth vaping-and it’s harms-is a critical issue facing schools, parents, families and educators in New York and across the country,” said Kyle Belokopitsky, Executive Director of NYS PTA. “Let’s be clear—youth vaping is not our children’s fault—they are simply the victims of deceptive marketing tactics and dangerously addictive products from the tobacco industry. We must do all we can to ensure the law works as intended and these products are no longer sold by New York retailers. There is nothing more important than the health and wellness of our children. We must collectively work to support them and stop these harmful practices.”

Evidence shows that nearly 90% of kids who use a tobacco product today are using flavored products. Removing them from the market will reduce both youth addiction and the many challenges these products create in our schools and communities.

“Despite the fact that New York State enacted legislation to eliminate the sale of flavored e-cigarettes in 2020, parents continue to report that these products are still widely available state-wide. Retailers are blatantly selling illegal e-cigarettes without penalty. We cannot allow this lawlessness to continue,” said Meredith Berkman, Co-Founder, Parents Against Vaping (PAVe).

“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. We strongly urge the

state legislature’s support for this critical measure and its inclusion in the final state budget this year,” said Vito Grasso, EVP, NYS Academy of Family Physicians.

Similar proposals were included in the SFY 2023-24 Executive Budget and Senate one-house budget bill but were not enacted in the final budget.

Both bills (S08531/A9110) have been referred to health committees in their respective chambers.

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