

OPINION OF BIG E VAPOR SHOPS, LLC, CONCERNING HOUSE BILL NO. 2563

Before the House is a matter of great concern, not just to Big E Vapor Shops, LLC, but also to every vape shop in the great State of Kansas. Federal law makers considered many of the regulations and restrictions as those proposed the House Bill No. 2563. For several reasons, some of which explained herein, Congress did not restrict the sale of flavored consumable nicotine products (“e-liquid” or “juice”) akin to those sold by tobacco/vape shops, as those establishments restrict access to adults, alone. Safety measures such as “no ID, no entry” prevent minors from purchasing flavored juice. While HB 2563 should not be disregarded in whole, Big E Vapor Shops would like to see a law which does NOT ban flavored-liquid because the law is effective without a ban.

HB 2563 WILL BE AS EFFECTIVE WITHOUT A FLAVOR BAN

The proposed amendments to the Kansas Cigarette and Tobacco Products Act surely aim to prevent those under the age of twenty-one from vaping or smoking. The suggested amendment to Section 12 K.S. A. 79-3321(w) which restricts the sale of, *inter alia*, any flavored consumable material, except menthol-favored consumable material, operates as a death sentence for businesses like Big E. A vast majority of vape shops generate the most revenue from juice sales. Companies with their own brand of juice pride themselves on it, and most of the customers shop at such a store because of the juice selections that store offers. In fact, Big E keeps a database with customer juice preference information because a majority of the patronage involves repeat customers, largely repeat customers of several years. Repeat customers shop to buy juice. Customers do not come in the store every month and buy a new device—they buy juice. A flavor ban would eliminate the top reason that vape shop customers patron our stores.

A. Restricted Access.

A flavor ban does not serve the purpose of HB 2563—prevent teen vaping—because vape shops already restrict access to those persons under the age of twenty-one. Vape shops require a form of photo identification to enter the premises and again at checkout. So if the objective is prevention, a flavor ban does nothing more to further that goal than what is already being done in every Kansas vape shop. However, such a ban would cause a vast majority of customers for a business like Big E to go elsewhere. Why shop at Big E’s to buy the same menthol-flavored juice I can buy at the gas station? If adults over the age of twenty-one choose to vape flavored juice, I strongly urge the Representatives to not use the power of legislative branch to restrict your residents’ liberty in such a manner. To do so despite the fact that vape shops already restrict access is tantamount to sending a message to Kansans that its government knows what is best when it comes to their vaping.

B. Loss of an Industry.

As proposed, a flavor ban would end the vape industry as it currently exists. As stated above, a flavor ban would surely cause the loss of patronage, which in turn causes a loss of revenue for vape shops, thereby causing the termination and dissolution of the business. Currently, vape shops contribute \$15 Billion to State and Federal taxes. Big E pays the State of Kansas several hundred thousand dollars in both sales tax and the juice tax. Remove our customer base, remove

those taxes paid from balance sheet. You have to ask yourselves “how can it be a good thing to gut an industry that contributes millions of dollars in tax revenue to the State of Kansas?” There is no conceivable, legitimate reason that the State would not want this revenue. The industry was responsible for \$7.5 Billion in wages generated for American workers. And had a total economic impact of \$24.5 Billion.¹ This industry provides economic benefit to the State of Kansas, please do not destroy this industry.

The argument to the contrary is that the revenue will be recouped through similar taxes on menthol-flavored and tobacco flavored juice. Not likely. The effect will likely push those who quit smoking, who once vaped those panoply of flavors that helped them quit smoking, to go back to smoking. 10-13 million Americans rely on flavored e-liquids to quit and/or reduce smoking cigarettes. People who do not vape menthol-flavored and tobacco flavored juice refuse because they don’t prefer it. If the only thing keeping our customers from smoking a Marlboro Red is one of our signature juices, and it’s that juice alone, then what makes you think having the option to vape menthol-flavor or no flavor at all is going to do that customer: it will surely drive him or her back to smoking.

With the loss of the vaping industry goes the loss of 166,000 jobs, either directly or indirectly, and closing approximately 14,000 small businesses. Even though the numbers I am using refer to the entire nation, the effect a flavor ban on Kansas small business owners would be catastrophic. Big E has over sixty employees. Several other Kansas vape shops have similar employee numbers. These Kansans depend on their incomes to feed themselves and their families. Many of them have worked for Big E for several years. Those wonderful, hardworking employees will now have to find new jobs. Some will have to relocate. Many will draw unemployment. All of this to stop people not even allowed to enter Kansas vape shops is asinine.

C. Safety Concerns.

Why ban flavors and not all vaping? Because the objective is to prevent teens from vaping, not prevent adults from it. Teens are attracted to e-liquids with candy-like names. However, safety concerns such as lung illness which rose this past year have been linked to black market devices containing THC and not those with nicotine e-liquid, only. The allegations that the recent lung illness was caused by nicotine vapes was incorrect, and the CDC has issued a statement to that effect.² If the issue surrounding recent teen lung illness is caused by vitamin E acetate, which is a thickening agent contained in several black market THC e-liquids, then why would we want to create a situation for more black market vape products to exist. A flavor ban would likely have that effect. Those who vape flavors could turn to black market flavored juice. Some of which may contain vitamin E acetate. So they will be committing a crime and risking their health. I am of the opinion that it is better to continue allow shops to sell flavored e-liquid than to cause the proliferation of black market. Because the former involves regulation and oversight, while the latter involves perpetuating the problem and safety concerns.

¹ <https://vaportechnology.org/wp-content/uploads/2019/09/Vapor-Industry-Economic-Impact-Study-by-Dunham-Associates-2019-Updated.pdf>

² https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#overview

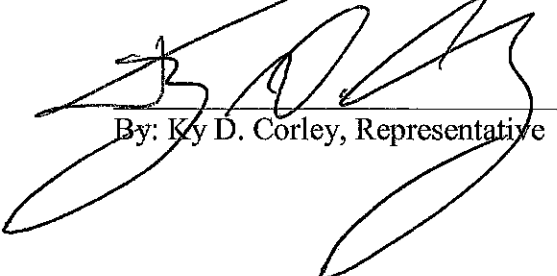
Currently, the FDA regulates Kansas vape shops. We submit lists of flavor combinations to them to ensure safe products enter the market. Vape shops receive multiple surprise inspections from regulators to ensure compliance. Both regulators and law enforcement subject Kansas vape shops to sting buy operations to ensure compliance with age restrictions. Big E gets fined if it makes a sale to an underage customer. The fine is almost \$1000.00. The FDA strictly enforces its regulations which ensures safe products are sold to adults legally allowed to purchase same. Kansas vape shops engage preventative measure to address safety concerns everyday of business. Therefore, we urge the House to refrain from using safety concerns as a justification to pass a flavor ban.

CONCLUSION

No legitimate rationale exists for a flavor ban when considered with the purpose of the proposed amendments to the Kansas Cigarette and Tobacco Products Act. The only result will be the loss an industry, the loss of revenue, the creation of black markets, and the perpetuation of the problems with vaping this legislation attempts to correct. Several other alternatives exist to guard against teen vaping, but a flavor ban will not do it. For the reasons set forth above, I respectfully request that the honorable Representatives of the House remove the proposed flavor ban prescribed in Section 12 K.S. A. 79-3321(w) in its entirety.

Respectfully submitted,

BIG E VAPOR SHOPS, LLC


By: Ky D. Corley, Representative