



The American Vaping Association

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June 29, 2020

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol
400 South Monroe Street
Tallahassee, FL 32399

Subject: Veto Request for CS/CS/SB 810 Tobacco and Nicotine Products

Dear Governor DeSantis:

On behalf of the American Vaping Association, a nonprofit organization that advocates for adults who are unwilling or unable to quit smoking to switch to reduced-risk nicotine products, I am writing to urge you to veto SB 810. Due to a late-added amendment, this bill goes far beyond the authors' original intent of raising the age to purchase tobacco and nicotine products to 21, an action that we would normally support. Regrettably, what started as a simple bill is now a threat to 800,000-plus adult vapers and 5,000-plus direct vapor-related jobs in the State of Florida.

The provision in question – found in Section 6, Part (5)(a) of the bill – would ban the sale of all flavored vaping products in the state beginning on January 1, 2021. The only exception in the bill is for products that have been authorized through the Food & Drug Administration's premarket tobacco application (PMTA) process. Even before the reality of the coronavirus outbreak became clear, using an arbitrary date to needlessly tie Florida's policy on a consumer product to the future actions of the federal government was an idea rife with potential problems. Now, it is more evident than ever that such a system is unworkable and will do great damage.

The FDA has not yet granted or rejected a PMTA for a single vaping product. Now, as result of the coronavirus outbreak, it is highly improbable that the FDA will complete review of PMTAs filed for flavored vaping products before January 1, 2021.

At the time SB 810 passed, the FDA had set May 12, 2020, as the deadline for vaping product manufacturers to submit PMTAs. Companies that submitted by that date would be permitted to keep products on the market for one year (i.e., until May 12, 2021). However, the FDA agreed to move the deadline forward at least four months to September 9, 2020 due to COVID-19. Beyond the functional difficulties being experienced by manufacturers seeking to file applications (labs being closed, clinical trials being impracticable, etc.), the FDA has admitted to experiencing labor force issues. Indeed, the uncertainty created by the coronavirus means that the deadline may need to be extended again, which only further underscores how unlikely it is that the FDA will act on PMTAs for flavored products before January 1, 2021.

The flavor ban found in SB 810 would also contravene federal policy on vaping flavors.

I was fortunate enough to be in the room with President Donald Trump on November 22, 2019, for a stakeholder meeting on vaping regulation. Following that meeting, President Trump and Health & Human Services Secretary Alex Azar formulated a plan designed to address the vaping products most popular with youth, while still leaving adults with the freedom to access effective and safer alternatives.

This enforcement policy, which went into effect nationwide in early-February, temporarily bans the sale of flavored closed-system vaping products (sealed pods and cartridges) until the products obtain market authorization through the PMTA process. The policy left the products sold primarily by vape shops and online retailers – flavored open system vaping products (bottled e-liquids for refillable vaping systems) – on the market for adults.

HHS Secretary Azar has made clear that his and the Trump Administration's focus is on flavored closed-system vaping products, not the open system vaping products sold primarily by vape shops. Secretary Azar has further stated that the Administration is intent on streamlining the PMTA process to shield small businesses from closure. Nonetheless, as you are aware, reforming government takes time. Even if the reforms are achieved before January 1, 2021, applications under such a reformed system could still take months or years to be approved.

Significant progress is being made on this issue by the Trump Administration in Washington, D.C. Yet, this bill would trample on the FDA's discretion-based enforcement policy towards open-system products manufactured, distributed, and sold throughout the State of Florida. Florida citizens need to know that Florida is open for business and remains a land of economic opportunity, not that it is going to be the next state to approve policy ideas being pushed by billionaire nannies like Michael Bloomberg.

The prohibition of flavored products will only lead to more dangerous illegal use.

Last year, when other state governors reacted to lung illnesses and deaths caused by illicit THC vaping cartridges by banning the sale of legal nicotine vaping products, you refused to give in to the hysteria. "***The problem is, if you ban the normal stuff in the store, that could push more people into those dangerous things,***" you warned when speaking to the media.

As you consider signing SB 810, please remember your own words. Congress has already passed a federal law raising the age to purchase tobacco products to 21 and retailers across Florida have rushed to comply with the new law. There is no urgent need for a state bill, especially when the bill before you would needlessly crush small businesses and send adult vaping product users to the black market or back to combustible cigarettes.

If your staff would like to discuss this or any issue, please feel free to call or email me.

Sincerely,



Gregory Conley
President – American Vaping Association