



December 20, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Closing Enforcement Loopholes in the SFY 2024-25 Executive Budget to End the Youth E-cigarettes Epidemic in New York State

Dear Governor Hochul:

The undersigned organizations representing public health, health equity, schools, parent and youth organizations, educators and health care providers across New York State respectfully **urge you to eliminate loopholes in New York State's flavored e-cigarette law in your SFY 2024-25 Executive Budget.** We are deeply concerned about the prevalence of tobacco use and its effects on New York's children and communities and believe that closing these loopholes will ensure the law enacted in 2020 to prohibit the sale of these products will have the intended impact.

When New York State passed legislation within the 2020-21 budget to address the epidemic of e-cigarette use among youth, loopholes were created that have caused challenges to effective enforcement. In the finalized language, an exemption was included for products that receive a "Pre-Market Tobacco Product Authorization" (PMTA) from the Food and Drug Administration (FDA). This created ambiguity for retailers, health inspectors, and consumers around which flavored products are legal. **Out of the six states that have implemented comprehensive laws prohibiting the sale of flavored e-cigarettes, only New York has this exemption, and according to CDC Foundation data, it has the highest continued availability of these products in retail outlets.**

Additionally, other loopholes and vague language in the current law allow retailers to deny inspectors access to their stores, allow distributors to continue to carry and sell prohibited products to merchants, and retailers to claim they are selling products remotely. The industry has also found a way around the flavor ban with additives that do not taste like tobacco and create a cooling effect for the user.

These loopholes must be removed quickly as tobacco manufacturers continue to make tobacco products including e-cigarettes stronger while aggressively targeting young people with fun flavors, enticing packaging, and positive messaging about these products. Further, recent research and surveys show concerning data. Despite positive news that national youth e-cigarette rates declined by nearly four points this year, the [National Youth Tobacco Survey](#) shared findings recently that about half of students who ever tried e-cigarettes report currently using them still. And almost all of the students report exclusively using flavored e-cigarettes – one [study](#) found that 71 percent of survey participants between the ages of 14 and 21 would quit if they did not have flavor choices. 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.

Data shows that nearly a fourth of high schoolers in New York use electronic cigarettes, and schools continue to struggle with responding to and trying to combat this epidemic. Evidence shows that 90% of kids today are using flavored products so by effectively removing them from the market we will reduce both youth addiction and the many challenges that these products create in our schools.

We must act now to support educators, parents, youth, and our communities by ensuring that flavored e-cigarette products are not accessible through effective enforcement of New York's

laws. Now is the time to close loopholes from the 2020 law and put an end to continued access to and promotion of flavored tobacco products. We are asking you to include this proposal in your SFY 2024-25 Executive Budget, similar to your proposal in the SFY 2023-24 Executive Budget.

We must protect our state's young people and future generations from the tobacco industry's harmful strategies and deadly products.

Respectfully,

Action on Smoking & Health

Albany College of Pharmacy and Health Sciences

American Cancer Society Cancer Action Network

American Heart Association

American Lung Association

American Nurses Association – New York (ANA-NY)

Boys & Girls Clubs of the Capital Area

Campaign for Tobacco-Free Kids

Community Health Care Association of New York State

Healthy Capital District

Korean Community Services of Metropolitan New York, Inc.

March of Dimes

Medical Society of the State of New York

New York Chapter American College of Physicians Services, Inc.

New York Public Interest Research Group

New York School-Based Health Alliance

New York State Council of School Superintendents

New York State Radiological Society

New York State Academy of Family Physicians

New York State American Academy of Pediatrics, Chapters 1, 2 & 3

New York State Association for Rural Health

New York State Council of Health-system Pharmacists

New York State County Health Officials of New York

New York State Parent Teacher Association

New York State Public Health Association

New York State School Boards Association

New York State Society of Anesthesiologists

Parents Against Vaping (PAVe)

Pharmacists Society of the State of New York

St. Peter's Health Partners

Stan Martin Consulting