



16 February, 2021

Chair Freiberg and Committee Members:

On behalf of the Midwest Vapor Coalition (MVC), a business trade group representing manufacturers and retail businesses in Minnesota, Wisconsin and North Dakota, we urge you to oppose HF904 (Frazier), which bans the sale of vapor products containing flavors.

We understand that proponents would have you believe this bill is about protecting our children from Big Tobacco and nicotine addiction; a worthy ambition that we agree with. But that belief is misleading and there are some important things you should be aware of before voting.

Big Tobacco did not invent vaping nor did they even make it popular. Vaping was and still is an industry that is driven by small, independent businesses whose owners, employees and customers know first hand the dangers of smoking and the addictive hold that it can have, as virtually all of them are former smokers who had already tried all of the other cessation products and therapies on the market - with little success. These Vapor products were developed and born from the goal of providing adult, lifetime smokers with an alternative.

Vaping began growing in 2009, driven by small business owners experimenting with mixes and flavor profiles and learning from customer feedback. From the beginning, flavoring has played - and continues to play - a very important role in adults successfully switching to vaping and keeping them from returning back to smoking. This is supported by numerous [studies](#) of adult vapers who were once regular smokers.

Once the industry was established and large enough, Big Tobacco entered the marketplace, introducing closed-system\* high-level nicotine products and limited flavors. Nevertheless, the open-system\*\*, flavored products offered by the small, age-restricted Vapor retailers continued to show steady growth - even as the requested average nicotine levels were dropping; exhibiting that adult vapers want options, including a choice of nicotine level and a variety of flavors. HF904 would eliminate both.

Interestingly, but not coincidentally, as this steady growth in the open-system market continued, the smoking rates of adults dropped to historic lows. Progress in the battle against smoking was (and still is) being made, as more and more adult smokers were (and are) switching to vaping - and flavors were (and still are) a driving force behind that success.

Eventually a new product entered the market, using technology that even Big Tobacco had passed on because of its addictive properties. JUUL's "pod systems" became popular around 2016, using a 5% nicotine solution (20x the strength of our most popular products). Their sleek design, simple use and

high nicotine level became popular with both adults and youth. The FDA limited flavors for POD systems in 2019, yet sales still continue to grow, showing that restricting flavors is not the solution to the youth vaping challenge.

Please note that the distinction between open-system vs closed-system products holds significant relevance to this discussion:

- \* Closed systems are cartridge-based systems with no nicotine level options. The most prominent and most popular is JUUL. These products have nicotine concentrations ranging from 2.4% to over 5%, JUUL has over 5%.
- \*\* Open systems are devices that are sold separately from the liquids. Both devices and liquids have many variations depending on user preferences. The liquids range in nicotine strength from zero up to 2% BUT the most commonly used strengths are .3% & .6%; nearly 1/10th the amount of a JUUL

Flavored open-system products represent over 90% of sales for age-restricted, vapor-only retailers. HF904's ban on all flavors - in all settings - will not just cause a dent in sales, it will **close** most if not all of these small businesses statewide, a majority of which are minority and women owned; effectively eliminating the only cessation option that has worked for so many. Consequently, HF904 would be effectively regressive in nature because without flavored products, virtually all open-system products will be taken off the market, leaving only the pod-based, high nicotine, closed-systems, as options for adults looking to use vapor as an alternative to smoking; all of which contain the highest nicotine levels, are owned by Big Tobacco, and will be available only at stores that are not age-restricted.

To date, the following list of cities have passed flavor restrictions in order to combat youth access, limiting them to age-restricted retail outlets (tobacco and vapor shops) only, much in the same way the majority of liquor is sold only in age-restricted settings in Minnesota.

- Minneapolis
- Saint Paul
- Duluth
- Roseville
- New Hope
- Shoreview

**Passing HF904 will only benefit Big Tobacco and JUUL by allowing their products to remain on the market while eliminating their low-nicotine competitors, resulting in closed businesses all across the state and harming adult former smokers that have successfully used vaping as a means to quit smoking.**

[Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation](#)  
JAMA