



**VTA CALLS ON REGULATORS & LEGISLATORS TO IMPLEMENT
21 & DONE! A COMPREHENSIVE PLAN TO ADDRESS UNDERAGE USE OF E-CIGARETTES**

**SAYS HHS' and FDA's PLANNED FLAVOR BAN IS NOT A REAL SOLUTION FOR YOUTH USE AND
COMPLETELY IGNORES THE CURRENT DANGER POSED BY BLACK MARKET THC PRODUCTS**

**21 & DONE Would Be the First Serious Action by Government to Limit Youth Access to E-Cigarettes
and End "Marketing to Youth" While Also
Saving 14,000 American Vapor Small Businesses and the 166,000 Jobs That They Create**

On September 25, 2019, the Vapor Technology Association (VTA) called on the Trump Administration, the Food & Drug Administration, the Federal Trade Commission and Congress to implement a comprehensive plan to ensure controlled distribution of all tobacco products, including e-cigarettes, and to impose real limits on access and appeal of all tobacco products to youth.

But, the Department of Health and Humans Services (HHS) continues to announce publicly that the Administration is going to "sweep the market" of all flavored e-cigarettes while making no changes to how deadly cigarettes are sold.

Importantly, the "sweeping" of the market or what HHS and FDA refer to as a "temporary" ban on flavors will result in the *permanent closure* of nearly 14,000 American small businesses and the loss of more than 150,000 American jobs.

Why? Very simply: the American vapor industry is made up of a new supply and distribution channel that is independent of the traditional cigarette distribution channel. The new American vapor channel has thousands of manufacturers and distributors which sell a wide variety of FDA-regulated, flavored nicotine products through 11,500 retail vape shops to approximately 13 million adults who rely on those flavors to quit and/or reduce smoking cigarettes. The distribution chain typically sells products to adult consumers at the ratio of 90% flavored and 10% tobacco/mint/menthol flavors. There is no business model that would enable this chain, particularly vape shops, to remain open if only "tobacco, mint and menthol" flavors remain.

The economic impact will be dramatic. Today, the American vapor industry is competing with the cigarette industry by creating \$24.5 billion in total economic impact; \$7.5 billion in wages generated for American workers; and \$15 billion in federal, state and local taxes.¹ A flavor ban takes that away – virtually overnight. Market competition will be virtually eliminated, product selection will be limited, and worst of all adult smokers and former smokers will have no choice other than to start smoking again or resort to an unregulated and dangerous black market or DIY market.

Fortunately, many alternatives to a flavor ban exist to directly address youth vaping, while preserving e-cigarettes as a alternative for adults to smoking deadly cigarettes and preserving 14,000 American small businesses. Those alternatives are laid out in 21 & DONE!

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

21 & DONE!

A COMPREHENSIVE PLAN TO ADDRESS UNDERAGE USE OF E-CIGARETTES

The Vapor Technology Association (VTA) calls on the Trump Administration, the Food & Drug Administration, the Federal Trade Commission and lawmakers to come together to implement “21 & DONE!” a plan that would raise the age to 21, implement 21 direct bans/restrictions on youth marketing, and impose 9 serious limitations on youth access to e-cigarettes and vapor products. Implementing all of these real solutions and restrictions will demonstrate that we are **done** with youth access and marketing.

1. “Tobacco 21” - Raise the age from 18 to 21 to purchase tobacco and nicotine vapor products, instead of restricting flavors.

Rationale: Nearly 90% of minors obtain vapor products from schoolmates, friends, family, and others, and public health experts say that raising the age to purchase will have the greatest impact in keeping all tobacco products, including vapor products, out of the hands of minors. Leader McConnell has introduced his bill to accomplish this goal, and with support, this major piece of legislation to curtail youth access to tobacco products will be signed this year.

2. Implement 21 Strict Marketing Standards to prevent nicotine vapor products from being marketed to or attractive to youth.

Rationale: VTA created the industry’s first marketing standards in January 2018. Industry agrees that vapor products should not be marketed to youth. Imposing strict marketing, advertising, labeling and packaging restrictions is the only way to address the real issue. Some of the following provisions go further than other age-restricted industries and should be applied to *all* tobacco products, including vapor products:

- (1) Ban print advertising except in adult-only publications or media (adults are >85% of audience).
- (2) Ban advertising and/or sponsorship at stadiums, concerts, sporting or other public events that are not primarily targeted to adults (adults are >85% of audience)
- (3) Ban offers of any school or college scholarships by any company selling tobacco products.
- (4) Ban television advertising of any tobacco products, including any vapor products.
- (5) Ban the use of the terms “candy” or “candies” or variants in spelling, such as “kandy” or “kandeez,” “bubble gum,” “cotton candy,” “gummi bear,” “milkshake,” and “cake” or “cakes” or variants such as “cupcake.”
- (6) Ban the use of packaging, trade dress or trademarks that imitate those of food or other products primarily targeted to minors such as candy, cookies, juice boxes or soft drinks.
- (7) Ban the use of packaging that contains images of food products primarily targeted to minors such as juice boxes, soft drinks, soda pop, cereal, candy, or desserts.
- (8) Ban the use of packaging that imitates a consumer product designed or intended primarily for minors
- (9) Ban the use of cartoons or cartoon characters.
- (10) Ban the use of images or references to superheroes.

21 & DONE!

- (11) Ban the use of any likeness to images, characters, or phrases that are known to appeal primarily to minors, such as “unicorn”.
- (12) Ban the use of references to video games, movies, videos, or animated television shows known to appeal primarily to minors.
- (13) Ban advertising and marketing that makes any reference to the product as a smoking cessation device or as a product that may be used to quit smoking.
- (14) Ban advertising and marketing that makes a claim of therapeutic value, as being safe or healthy for consumers, or as not producing secondhand health effects.
- (15) Ban advertising and marketing that makes uses modified risk descriptors or claims such as “light,” “low,” and/ or “mild”, having no ash or smoke, having no tar, being less harmful, posing lower risk of disease or as containing reduced or zero levels of harmful ingredients.
- (16) Ban advertising that does not accurately represent the ingredients contained in the products.
- (17) Ban the use of health professionals to market or otherwise endorse a tobacco product, directly or indirectly.
- (18) Ban the use of contracted spokespeople or individuals that do not appear to be at least 25 years of age.
- (19) Ban advertising on outdoor billboards near schools and playgrounds.
- (20) Ban sales of products without warning labels protecting youth such as “Sales to Minors Prohibited” or “Underage Sales Prohibited” and/or “Keep Out of Reach of Children”.
- (21) Ban sales of products with advertising that is not accurate or is misleading.

3. **Close Loopholes by Banning Sales on Third-Party Marketplaces like Alibaba, Amazon, eBay, et al.**

Rationale: Third party sales from unregulated, unlicensed tobacco product distributors are not age verified. Third-party online sellers should be prohibited from allowing the sale or re-sale of nicotine-containing products and allowing the sale or re-sale of unregulated cannabis or THC vaping products, including any packaging for unregulated cannabis or THC vaping products. The FTC and FDA should immediately demand that third-party sellers remove all such products from their marketplaces, block the sale of any such products in the future, and actually enforce that policy going forward. Congress should act accordingly. Without strict enforcement, such platforms can provide a third-party sales channel for counterfeit products, unregulated cannabis and THC products, and packaging or other materials that enable black market sales of illicit products.

4. **“Three Strikes and You’re Out” for any retailer accumulating three violations in three years for selling nicotine vapor products to minors lose the right to sell nicotine vapor products.**

Rationale: Enforcement has not kept up with the times. This must change. Today, all retailers, including convenience stores and gas stations, can be cited for selling tobacco products to minors seven (7) times in a three-year period before losing the ability to sell tobacco products. Three strikes in three years is serious and necessary enforcement.

5. **Restrict Sale of “Super High Nicotine” Products to Adult-Only Stores.**

Rationale: Prior to 2018, flavors had been available for sale in the U.S. without any material increase in vaping. The spike in youth vaping appears associated with the wide-spread introduction of a super high nicotine concentration – a product containing a concentration of nicotine higher than 50 milligrams per milliliter. While these “super high nicotine” products can help adult smokers quit

21 & DONE!

smoking combustible cigarettes, restricting such a product to adult-only stores would dramatically limit youth access and potential addiction.

6. Tax, Enforce & Educate. Impose taxes and/or user fees to pay for education and enforcement by implementing a 3% *ad valorem* tax and/or user fees on vapor products instead of restricting flavors.

Rationale: Taxes create a significant deterrent to youth use of tobacco products. Imposing an *ad valorem* tax on vapor products and/or user fees would provide FDA more resources to better enforce the laws and conduct anti youth-vaping education campaigns.

7. Ban Self Service Displays. Require all tobacco products, including vapor products, to be behind a counter or in a locked display and accessible only by an employee.

Rationale: Requiring employee assistance will limit and discourage youth access.

8. Point of Sale Age Verification. Require use of third-party age verification software or technology for all online sales and all brick and mortar sales.

Rationale: Eliminate potential purchaser fraud and/or employee error and fake IDs by implementation of third-party software or technology that can verify age and identity.

9. Brick & Mortar Warning Signs. Tobacco product retailers must display signage indicating that (a) “Unaccompanied Minors Are Not Allowed on Premises” or (b) “Products are Not for Sale to Minors” or (c) “Underage Sale Prohibited.”

Rationale: Warning signs deter youth. Each clear statement makes it harder for youth to access.

10. End “Straw Man” Sellers. Make it illegal for any person who is not a licensed tobacco product dealer to sell, barter for, or exchange any tobacco product.

Rationale: Close to 90% of youth purchases of tobacco products come from social sources (i.e., friends, family, and adults – even strangers – who legally buy those products). Penalizing straw purchasers is a must since this is the primary point of access for underage users.

11. End Bulk Sales. Prohibit the retail sale of more than 2 devices or 5 packages/bottles of e-liquids in one transaction.

Rationale: Illegal straw man sellers buy in bulk. This practice should be prohibited for both online and brick and mortar retailers to thwart illicit trade.

About the Vapor Technology Association: *The Vapor Technology Association is the U.S. non-profit industry trade association whose 1000+ members are dedicated to innovating and selling high quality vapor products that provide adult consumers with a better alternative to traditional combustible cigarettes. VTA represents the industry-leading manufacturers of vapor devices, e-liquids, flavorings, and components, as well as the largest wholesalers, distributors, importers, and e-commerce retailers, in addition to hundreds of hard-working American brick-and mortar retail store owners throughout the United States.*