



To: The Honorable Chair, Delegate Derek E. Davis
From: Melissa S. Rock, Birth to Three Strategic Initiative Director
Re.: **HB 3: Business Regulation - Flavored Tobacco Products - Prohibition**
Date: February 6, 2020
Position: **SUPPORT**

Advocates for Children and Youth applauds this body for all its efforts to limit access to cigarettes to children. Unfortunately, despite those best efforts, across Maryland, 8.2% (or 25,000) high schoolers smoke cigarettes.ⁱ This is significantly higher than the national rate of high schoolers who smoke, which is 5.8%.ⁱⁱ In fact, in Maryland, each year, 1,600 children (under age 18) become new daily smokers.ⁱⁱⁱ Studies show that flavored tobacco products play a large role in young people initiating tobacco use. While the 2009 federal law, the Family Smoking Prevention and Tobacco Control Act prohibited the sale of cigarettes with flavor enhancers other than menthol or tobacco, the rise on non-cigarette tobacco products has restrained the impact of that law on reducing tobacco usage among children.

As the Campaign for Tobacco Free Kids Campaign explains, flavored tobacco products, that are not cigarettes, are on the rise:

- “As of 2017, there were more than 15,500 unique e-cigarette flavors available online. An earlier study found that among the more than 400 brands available online in 2014, 84% offered fruit flavors and 80% offered candy and dessert flavors.” (Internal citations omitted)^{iv}
- “Sales of flavored cigars have increased by nearly 50% since 2008, and flavored cigars made up more than half (52.1%) of the U.S. cigar market in 2015. Further, the number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.3 The vice president of one distributor commented, ‘For a while it felt as if we were operating a Baskin-Robbins ice cream store’ in reference to the variety of cigar flavors available – and, no doubt, an allusion to flavors that would appeal to kids.” (Internal citations omitted)^v

These flavored tobacco products are especially appealing to children:

- According to the National Youth Tobacco Survey of 2019, almost 70% (4.3 million) of the 6.2 million current middle and high schoolers that reported tobacco use used flavored products.^{vi}
- “81% of youth who have ever used tobacco products initiated with a flavored product.” (Internal citations omitted)
- “72.3% of youth tobacco users have used a flavored tobacco product in the past month.” (Internal citations omitted)

- “At least two-thirds of youth tobacco users report using tobacco products ‘because they come in flavors I like.’ ”^{vii}

HB 3 expands Maryland's ban on tobacco products with flavors other than tobacco and menthol beyond cigarettes. In so doing, we can interrupt the staggering statistics cited above. Courts have rejected first amendment objections to these bans.^{viii} Finally, while these vary in scope, there are over 230 localities that restrict the sale of flavored tobacco.^{ix}

By passing HB 3, we can continue protecting Maryland’s children from the negative consequences of being addicted to tobacco.

ⁱ <https://www.tobaccofreekids.org/problem/toll-us/maryland>

ⁱⁱ Id.

ⁱⁱⁱ Id.

^{iv} Bach, Laura, “Flavored Tobacco Products Attract Kids: Brief Overview of Key Issues,” Campaign for Tobacco-Free Kids, at p. 1 (December 6, 2019).

<https://www.tobaccofreekids.org/assets/factsheets/0399.pdf>

^v Id.

^{vi} Wang, TW, et al., “Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019,” MMWR, 68(12): December 6, 2019,

<https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.

^{vii} Ibid. at p. 2.

^{viii} Id. at p. 3 citing: National Association of Tobacco Outlets v. City of Providence, 731 F.3d 71 (1st Cir. 2013); U.S. Smokeless Tobacco Company v. FDA , 708 F.3d 428 (2d Cir. 2013).

^{ix} Id.