

Senate Health and Social Services Committee Meeting

Official Minutes

150th General Assembly

First Session

Wednesday March 6th, 2019

2:30pm

Senate Majority Caucus Room

Meeting Attendance

Committee Members:

Present:

Senator Bryan Townsend
Senator Brian Pettyjohn
Senator Nicole Poore

Bryan.Townsend@delaware.gov
Brian.Pettyjohn@delaware.gov
Nicole.Poore@delaware.gov

Absent:

Senator Stephanie Hansen
Senator Ernesto Lopez

Stephanie.Hansen@delaware.gov
Ernesto.Lopez@delaware.gov

Legislators Present:

Representative Melissa Minor Brown

Melissa.MinorBrown@delaware.gov

Staff:

Read Scott

Read.Scott@delaware.gov

Attendees

Secretary Kara Odom Walker
Kiki Evinger
Jeanne Chiquoine
George Meldrum
Lt. James Diana
John Yeomans

Organizations

DHSS
DHSS
American Cancer Society
A.I. du Pont Hospital for Children
Division of Alcohol and Tobacco Enforcement
Division of Alcohol and Tobacco Enforcement

Deb Brown	American Lung Association
Kasey Verducci	American Lung Association
Matt Coyle	American Lung Association
Tanny Dickerson	American Lung Association
Andrew W. Dahlke, MD	Medical Society of Delaware
Ellen Valentino	Mid-Atlantic Petroleum Distributors Association
Rob Garagiola	Vapor Technology Association
Kim Hoffman	AHA
Jan White	American Cancer Society/Cancer Action Network
Ebony Brown	St. Francis Hospital
Don Wills	Maxed Out Vape
Brendan Styles	Vapor Retailers and Manufacturers of Delaware
Gregory Conley	American Vaping Association
Don Thompson	Vapor Retailers and Manufacturers of Delaware
Laird Stabler	CLTS, Inc.
Mary Davis	Altria
Elwood Birney	302 Vape
Pam Price	Highmark
Julie Wenger	Delaware Food Industry Council
Brent Stack	Vape Nook
David Eisenhower	Delmar Vapor
Mikayla Allen	Delmar Vapor
Jonathon Kirch	American Heart Association
Thomas Brown	Delaware Department of Justice

Agenda:

SB 25

Senator Townsend brought the meeting to order at 2:30.

Senate Bill 25 - AN ACT TO AMEND TITLE 11, TITLE 16, AND TITLE 30 OF THE DELAWARE CODE RELATING TO DELIVERY AND SALES OF TOBACCO PRODUCTS.

Original Synopsis: This Act restricts access to tobacco products and tobacco substitutes to individuals under age 21 by doing all of the following: 1. Prohibits sales of tobacco products or tobacco substitutes to individuals who are under 21. 2. Imposes a civil penalty for sales to individuals between the ages of 18 and 21. 3. Repeals the ability of a parent or guardian to purchase tobacco products or tobacco substitutes for a minor. 4. Revises the framework by which an employer may use an affirmative defense to the improper sale of tobacco products or tobacco substitutes, aligning the affirmative defense with the minimum age increase. 5. Adopts best practices for enforcement measures by modifying the prohibition against the purchase of tobacco products by minors. 6. Prohibits individuals under age 21 from entering vapor establishments. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Senator Townsend recognized Deb Brown for public comment.

Ms. Brown identified herself as the Chief Mission Officer for the American Lung Association. She noted that seven states, including New Jersey, have taken action to protect youth under the age of 21. She stated that cigarette smoking remains the leading cause of preventable death and disability in Delaware and the United States. She cited a report from the National Academy of Medicine that found that raising the legal smoking age to 21 would significantly reduce smoking rates and save thousands of lives. She continued that the report concluded that youth tobacco use could decrease by 12%. She cited the Campaign for Tobacco Free Kids estimate that there are 17,000 youth under the age of 18 in Delaware today who will ultimately die prematurely from smoking. She stated that e-cigarette use is increasing among youth. She stated that this has kept overall tobacco use trends level, even while traditional smoking declines. She observed that individuals aged 18 to 34 are the age group with the highest levels of tobacco use. She stated that it is imperative to restrict the tobacco access of those under 21. She expressed concern that e-cigarettes are more attractive to youth and easier to conceal from parents or at school. She noted the US Department of Health says that between 2017 and 2018, e-cigarette use of high schoolers rose 78%, and among middle schools it rose 48%. She noted that this is disturbing and said that the Surgeon General has declared it an epidemic. She noted that Delaware has been a leader in tobacco control and is well poised to take on legislation. She summarized what the bill does, reviewing which code sections it changes. She noted that it modernizes the definition of “tobacco products.” She recognized other supporting organizations and restated her organization’s support for the legislation.

Senator Pettyjohn asked Ms. Brown about the use of the word “tobacco” and noted that many products mentioned do not include tobacco.

Ms. Brown said that the definition of “tobacco products” includes a variety of products because that is what they are. She pointed out page 7 as including the definition list and noted that the products include nicotine.

Senator Townsend recognized Secretary Kara Odom Walker.

Secretary Walker identified herself as speaking on behalf of the Delaware Department of Health and Social Services and stated that the DHSS supports the legislation. She stated the Division of Public Health has done a lot of work to decrease smoking among youth and that this bill would have a big impact. She stated that lung cancer accounts for 14% of all new cancer diagnoses and 30% of all cancer deaths in Delaware. She also noted that there is more than just cancer to be concerned about. She observed that illnesses such as asthma, COPD, and emphysema also are an economic drain on the state, when patients end up in the emergency room and suffer from long term effects. She also noted the danger of nicotine in e-cigarettes. She observed that the FDA has observed young people use it as a starter to other products. She also stated that they are tracking adult use of tobacco and she believes this legislation will help them meet their benchmark goals on decreasing adult usage rates. She stated they wish to improve health and reduce costs. She observed that the state contributions to Medicaid due to tobacco use are \$95 million annually.

Senator Townsend recognized Jeanne Chiquoine.

Ms. Chiquoine identified herself as representing the American Cancer Society, Cancer Action Network. She stated their full support for SB 25. She noted that nationally 95% of smokers started before the age of 21. She stated that in the ages under 21 the brain is still developing, including the sections responsible for decision making and impulse control, and that this is strongly related to risk taking and susceptibility for peer pressure. She stated that young adults are a critical population to target with evidenced based tobacco control strategies. She cited the Institute of Medicine's report that this policy nationally could reduce smoking related deaths by 10%. She observed that this would be a significant step to prevent lifelong addiction. She also said that e-cigarettes must be included in the definition to make enforcement effective. She noted that tobacco companies target youth with strategically placed promotions due to their vulnerability to the establishment of lifelong addictions. She stated this policy would keep tobacco out of high schools and would prevent youth from transitioning from experimenting to addiction. She stated that Delaware has always been a leader in comprehensive strategies of tobacco control and she reviewed some of the examples. She quoted their website (Cancer.org) to display their support for preventing the use of tobacco and nicotine products, in any form, by youth.

Senator Townsend recognized David Eisenhower.

Mr. Eisenhower identified himself as being from Delmar Vape Shop. He stated that taking rights away from an individual group should be considered one of the most treacherous things the legislative body does. He stated that individual rights make Americans a free people and the right to choose is preserved for good and bad decisions. He stated that these 18, 19, or 20 year old adults should have the right to make their own decisions whether about skydiving, serving in the military, smoking, or working in a vape shop. He noted that the legislation would require him to fire seven employees. He stated that this might be good for their health but not for their pocket and not for their family. He said rule changes about rights should meet a high standard. He said that taking rights away from 18, 19, 20 year old adults to protect 14 year olds seems questionable. He noted that he has lost family members to smoking and said he finds minors smoking to be a problem. He said that the feel-good legislation would not do much to reduce that problem. He asked that they might write a grandfather clause for those already over 18 and an exemption for those on active duty in the military. He asked that legislators come to vape shop owners to discuss how to reduce youth smoking.

Senator Townsend recognized Adjutant General Michael Berry.

Brigadier General Berry stated that he is responsible for 27,000 Guardsman, both Army and Air. He observed that their ages range from 17 to 60 years old. He stated that the Delaware National Guard supports the bill. He said it would make their job easier and help organizational readiness. He identified three areas—health, dental, and physical fitness—where the bill would benefit them.

Senator Townsend recognized Ellen Valentino.

Ms. Valentino identified herself as representing the Mid-Atlantic Petroleum Distributors Association. She concurred that this policy is a large undertaking although they respect it. She noted that on page 7, line 180 the “accessory” definition was vague. She said that details are important when your license is at stake. She asked that they clarify whether lighters, USB ports, batteries, or cords count. She also pointed out that they may meet pushback and asked for an effective date. She also asked that they be given time for Department of Health outreach, especially because distributors may be the first public face of the measure. She also expressed concern over unintended consequences such as pushing the sales of tobacco into the parking lot. She also expressed concern that there was no personal penalty for the young adults who violate the law.

Senator Townsend recognized Elwood Birney.

Mr. Birney identified himself as the owner of 302 Vape, a store in a tourist area. He noted that finding employees during the peak beach season is difficult. He said it is hard to find people over 21 who wish to work part-time and seasonally. He observed that most of his seasonal employees are 18-21, and are college students who come back season after season. He noted this makes training his employees easier, as he can count on them to come back. He stated that this would not be the case if he could not hire 18-21 year olds.

Senator Townsend recognized Dr. Andrew Dahlke.

Dr. Dahlke identified himself as the President of the Delaware Medical Society. He expressed his organization’s support for the legislation. He noted that head, neck, and bladder cancer are concerns related to smoking as well as lung cancer. He observed that smoking is associated with seven other cancers in smaller degrees. He also stated that the cardiovascular implications of smoking can be even worse. He emphasized that the benefits of reducing smoking include cost savings. He cited that a decrease of 1% in smoking in the U.S. could have led to Medicare saving \$63 billion in 2012. He listed stroke and resulting disability as other smoking related illnesses that can be costly and devastating. He also cited vascular diseases that can lead to amputation as being associated with smoking. He commended the sponsors of the bill and expressed his wishes that it pass. He noted that limiting smoking further should be considered in the future, and he would support even the ban of all cigarette sales in Delaware.

Senator Townsend recognized Rob Garagiola.

Mr. Garagiola identified himself as representing Vapor Technology Association, which represents manufacturers, distributors, wholesalers, vendors, and retailers in the industry. He stated that they agree with 90% of what had been said. He stated that there is an epidemic among youth related to cigarettes and e-cigarettes. He said that the industry is doing a lot to address that.

He said that there is also much data showing that combustible cigarettes are far more harmful than e-cigarettes. He cited the FDA Commissioner, the National Academy of Sciences, and the New England Journal Medicine as reporting this, specifically also that e-cigarettes are twice as effective as other cessation devices at moving people away from harmful cigarettes that kill a half million Americans a year. He cited the American Cancer Society's statement that e-cigarette use is significantly less harmful than combustible cigarettes because they do not contain or burn tobacco, which has 7,000 chemicals, 70 of which cause cancer. He stated that e-cigarettes are not free of harm, but are 95% less harmful than combustible cigarettes. He suggested an amendment that would separate vapor products out of the definition of "tobacco product." He noted they would like to see that language change throughout the bill, which would still raise the age but would distinguish between vapor products and tobacco products. He observed that many of the legislators' constituents are moving away from more harmful cigarettes with vapor products. He objected to the false equivalency. He also expressed support for the idea of inserting a grandfather clause.

Senator Townsend recognized Kim Hoffman and other American Heart Association associates.

Ms. Louie Phillips, accompanied by Ms. Hoffman, identified herself as the Co-Chair of the Policy and Advocacy Committee of Delaware's American Heart Association. She asked the committee to release SB 25. She said that the dangers of tobacco use and addiction are well known by the general population, but the dangers of e-cigarettes and vaping are not. She cited a CDC report that in 2018 about 4.9 million middle and high school students were using some type of tobacco product, an increase from 3.6 million in 2017. She stated that this growth in e-cigarette use is erasing the gains made in Delaware against the harms of tobacco. She stated that it is common for students to use a combination of conventional products and vapor products. She said this bill would measurably reduce youth access to deadly products. She stated that long term, it help Delaware avoid a public health disaster and achieve cost savings while supporting the Governor's healthcare benchmark. She restated her support for the legislation, without amendment.

Senator Townsend noted that he had met with Altria and that they wished to convey their support of the legislation. He noted that they were interested in working on preventing social sourcing, the practice of products being legally purchased by social peers for unauthorized and younger users. Altria's written testimony will also be attached at the end of minutes.

Senator McBride arrived and asked about the anticipated conclusion of the meeting.

Senator Townsend commended Senator McBride's work on the issue of indoor air quality and health.

Senator McBride verified that the room would be free at 3:30pm.

Senator Townsend recognized Don Thompson and Brendan Styles of Vapor Retailers and Manufacturers of Delaware.

At 3:07 an attendee leaned against the light switch and brought about a mild darkness.

Senator Poore offered instructions on the situation's remedy after initial remedial attempts utilized the wrong switch and failed to re-light the room. "No, now you've turned the bells on. No, now you have turned the outside lights on."

Senator Poore admitted "that was a joke, sorry" to laughter.

Senator Townsend requested that this incident appear in the minutes.

Senator Townsend re-recognized Don Thompson.

Mr. Thompson stated that he owns a small business that formulates and bottles liquid for vaping. He stated that he does online sales and wholesale. He said that he has about 1500 customers, 1200 of which he knows on a first name basis. He says they know their stories, including many customers who have stopped smoking. He noted that he lost both of his parents to smoking related lung cancer and all three of his adult sons quit smoking by switching to vaping. He expressed concern about language in the bill regarding shipping. He stated that he is 100% FDA compliant, which means he has an age check verification on his website. He stated that the bill's requirement that he keep a copy of photo identification on his property would cause him to lose his merchant services account. He stated that this is a privacy issue, his providers do not have this mechanism, and customers would not face that barrier elsewhere. He emphasized that he already meets the 18 year old limit sufficiently with his current mechanisms, and does not see why he needs a document on hand. He stated that this would cause him to move out of state, although he did not want to do so. He also stated that barring 18-21 year olds from online purchase would hurt competition, such as Amazon, Breezy, and E-Bay. He noted that E-Bay does not have age checking. He repeated his desire that the language of the bill be changed.

Brendan Styles identified himself as the President of Vapor Retailers and Manufacturers of Delaware. He asked that they table the bill so that his organization could be brought into the discussion. He expressed concern that his industry's input had not been involved in the development process. He stated that the vapor industry works closely with the state to aide their collection of taxes and enforce other regulation. He stated that SB 25 is disproportionately harmful to vapor industry, which is all small business, in compared to other stakeholders in the tobacco and cigarette industry. He cited reports indicating that small, product focused vape shops were much more effective at age verification than other venues. He cited that there was not a single case of a vapor product being sold to a minor in Delaware in 2018. He cited evidence about the safety of e-cigarettes, including that they do not cause COPD, and said that SB 25 is harmful to the goal of harm reduction of tobacco use. He asked that they let the established community of consumer focused vapor businesses have more time for input. He said the wave of

regulation is being pushed across the nation by media outcry and not by data. He noted that the levels of youth smoking conventionally are at record lows and continue to decline. He concluded that this legislation was targeting vapor products, attempting to keep products essentially as harmful as caffeine out of the hands of minors by restricting the legal rights of adults. He cited a multitude of other regulations that his industry supports, and stated that they seek educated discourse.

Senator Townsend recognized Don Wills.

Mr. Wills identified himself as a vape shop owner and the father of twin nineteen year olds. He stated that one son smokes and one son vapes. He stated that he used to smoke. He said that his one son vapes 0 milligrams of nicotine. He said that the legislation was vague about what to do with nicotine free products. He cited that in regards to taxes, nicotine free vapor products do not count.

Senator Townsend clarified that that a nicotine free vapor product is included in the legislation and would be restricted to those over the age of 21.

Mr. Wills asked why.

Senator Townsend recognized Ebony Brown.

Ms. Brown identified herself as the Director of Community Health and Well-Being at Saint Francis Healthcare in Wilmington Delaware. She stated that her father smoked and she smoked her first pack of cigarettes from finding his in the couch. She stated that it took her twenty years to stop smoking and she did not use e-cigarettes. She stated that her daughter's classmate in seventh grade brought an e-cigarette, acquired from her high school senior sister, to the bathroom in school only recently. She said that her father has suffered from various cancers over the years and has been on hospice before. She stated that he is still smoking, despite his near death experiences and currently being in chemotherapy. She stated that she gave him an e-cigarette that did not work and he transitioned back to a pack a day. She restated her organization's support for the bill.

Senator Townsend recognized George Meldrum.

Mr. Meldrum identified himself as a lobbyist for Nemours Children's Health Systems. He read a letter from Dr. Aaron Chidekel, Chief of the Division of Pulmonology at A.I. du Pont Hospital for Children, which is attached at the end of the minutes. He also presented a letter from Dr. Kevin Sheahan, Chief of Delaware Primary Care Pediatrics at Nemours AI duPont Hospital for Children, which is attached at the end of the minutes.

Senator Townsend recognized Gregory Conley.

Mr. Conley identified himself as representing a small not-for-profit organization called the American Vaping Association. He stated that his organization advocates for sensible regulation of e-cigarettes, which he noted the CDC says are the most commonly used means of cessation in America. He asked that they make substantial amendments to the legislation. He noted that Massachusetts included a grandfather clause in their legislation which restricted cigarette products to those above 21. He stated that he was 18 years old in New Jersey when they raised their legal smoking age to 19. He stated that he was not prevented from smoking but he did hold contempt for the New Jersey legislature since they had taken away his right to purchase a product which he had been legally buying as an adult. He called the provision on shipping and online sales a terrible law and requested amendment. He stated that this would only hurt in-state businesses. He asked that they keep the legal age to work in a vape shop at 18, as finding employees over 21 is difficult for their industry. He questioned why Delaware was considering including nicotine free products in the definition of “tobacco.” He noted that for tax purposes, the legislature decided to do otherwise.

Senator Townsend asked John Yeomans of the Division of Alcohol and Tobacco Enforcement to speak to why the penalty in the legislation makes sense in regards to enforcement.

Mr. Yeomans noted that DATE touches every retailer in the state at least once, if not two or three times, during the delivery of educational materials to compliance checks with cooperating underage witnesses, which they follow up on in the event of a failure. He noted that Delaware experiences a high rate of compliance, but there are failures including in vape shops. He stated that last year there were 5 failures in the 35 inspections. He stated that DATE fully supports the legislation.

Senator Townsend asked him to speak to how effective penalties are for retailers, and how this creates a culture of enforcement in contrast to pursuing penalties against individuals.

Mr. Yeomans stated that this has historically been their focus. He said that they have not traditionally targeted possession, unless there is repeated or egregious activity. He stated that they have found this type of enforcement to be effective at deterrence.

SB 25 was circulated for signatures. It was released from committee with U:1, F:1, M:3.

Senator Townsend adjourned the meeting at 3:25pm.

March 6, 2019

Honorable Members of the Senate Health and Social Services Committee
Legislative Hall
411 Legislative Avenue
Dover, DE 19904

Nemours Children's Health System

Dear Members of the Senate Health and Social Services Committee;

Nemours/Alfred I. duPont
Hospital for Children

I am sorry that I cannot attend this important session today in person to deliver these comments into the record, but I was proud to stand with Governor Carney, the other legislators and health advocates, and most importantly, representatives of Delaware's youth to support Senate Bill 25 at yesterday's press conference.

Nemours BrightStart!

Nemours CareConnect

Delaware has a long and proud history of being in the forefront of tobacco control. From Governor Minner's public space smoking ban, which I advocated fiercely for, to the effective and responsible use of tobacco master settlement funding, Delaware has put the health, safety and needs of its citizens first when it comes to tobacco prevention and control. Given the recent explosion in youth use of non-combustible tobacco products, the need to put the health and safety of Delaware's children has never been greater.

Nemours Center for
Children's Health Media

Nemours Children's Clinic

Nemours Children's Hospital

Nemours Children's Primary Care

I have cared for children with lung and breathing disorders for more than 20 years. One of my most important roles as a pediatrician is to prevent nicotine addiction among youth and this bill will make that job easier by limiting access to these dangerous products. Preventing the next generation of smokers or vapers, from becoming addicted to nicotine is a critical public health mission that will pay important dividends for this generation and all those who follow.

Nemours Children's Specialty Care

Nemours Children's Urgent Care

As a physician who treats lung and breathing disorders, children's health problems resulting from exposure to toxic tobacco smoke and toxic aerosols emitted from electronic nicotine delivery systems has kept me far too busy for far too long. Too many children who are exposed to these toxic fumes develop chronic cough, lower respiratory tract infections, and asthma that is more difficult to control; and ironically, children whose parents smoke are at greater risk of becoming nicotine users themselves. By decreasing the ability of young people to obtain these products, this bill will help prevent the next generation of parents from becoming addicted and thereby prevent exposing the next generation of children to toxic tobacco smoke of all kinds.

Nemours duPont Pediatrics

Nemours Estate

Nemours Fund for
Children's Health

Nemours Health &
Prevention Services

Nemours Office of Policy
and Prevention

Finally, as a son whose mother suffered from tobacco related disease and a son-in-law who watched his mother-in-law suffer and eventually suffocate from tobacco related lung cancer it is simply time to say, again, enough is enough. We must continue to do all we can to limit the availability, exposure to and normalcy of these dangerous products. It is time for Delaware to be

Nemours SeniorCare

again in the vanguard of tobacco control and public health. It is time to raise the age. I support passage of SB 25.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Chidekel". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Aaron Chidekel, MD
Chief of the Division of Pulmonology
Nemours/Alfred I. duPont Hospital for Children

March 6, 2019

Honorable Members of the Senate Health and Social Services Committee
Legislative Hall
411 Legislative Avenue
Dover, DE 19904

Nemours Children's Health System

Nemours/Alfred I. duPont
Hospital for Children

Nemours BrightStart!

Nemours CareConnect

Nemours Center for
Children's Health Media

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Nemours Children's Primary Care

Nemours Children's Specialty Care

Nemours Children's Urgent Care

Nemours duPont Pediatrics

Nemours Estate

Nemours Fund for
Children's Health

Nemours Health &
Prevention Services

Nemours Office of Policy
and Prevention

Nemours SeniorCare

Dear Members of the Senate Health and Social Services Committee;

We at Nemours wholeheartedly support SB 25. It aligns with the concerns of the American Academy of Pediatrics and pediatricians across the country.

Ninety percent of smokers start before age 18, and we know that increasingly younger teens have turned to vaping, thinking it is somewhat safer. The fact is that no level of nicotine is safe, as the brains of teens and young adults are more susceptible to its addictive affects as their brains are continuing to develop. I particularly concerned about a brand called JUUL, which is popular among younger vapers. All JUUL e-cigarettes have a high level of nicotine. According to the manufacturer, a single JUUL pod contains as much nicotine as a pack of 20 regular cigarettes.

Aligning the age to purchase tobacco products with laws regarding the purchase of alcohol has the potential to decrease the prevalence of use of tobacco products and tobacco substitutes in the same way raising the drinking age to 21 has helped reduce drunk driving fatalities and reduced alcohol dependences among youth.

I highly encourage the committee to support SB 25. Thank you.

Sincerely,



Kevin Sheahan, MD
Chief of Delaware Primary Care Pediatrics
Nemours|Al duPont Hospital for Children

Delaware Senate
Senate Health and Social Services Committee
Testimony Regarding Senate Bill 25
David Fernandez, Vice President, Government Affairs and Public Policy
Altria Client Services, LLC
March 6, 2019

Chairman Townsend and Members of the Committee, thank you for the opportunity to testify today on the behalf of Altria and its affiliates Philip Morris USA, John Middleton, and US Smokeless Tobacco Company regarding the legal age of purchase for tobacco products.

Altria Supports Prompt Enactment of Senate Bill 25

Altria supports raising the minimum age to purchase tobacco products to twenty-one. We encourage the Delaware Legislature to enact Senate Bill 25 without delay.

Our companies have long supported legislation to prevent underage access to tobacco products. We have advocated for strong minimum age laws in all U.S. jurisdictions. We lobbied for federal legislation enacted in 2009 empowering FDA to comprehensively regulate tobacco products – including provisions specifically intended to reduce underage use.¹ And, most recently, we played a leadership role in advancing legislation in all states extending existing minimum age statutes to cover emerging product categories like e-vapor.

While underage tobacco use of conventional tobacco products is at the lowest levels in a generation,² the use of e-vapor products among twelve- to seventeen-year-olds has increased alarmingly in the past year. Citing data showing increases of e-vapor use of 80% among high schoolers and 50% among middle schoolers, FDA Commissioner Scott Gottlieb has characterized this trend as an “epidemic.”³ The U.S. Surgeon General has reached the same conclusion.⁴

In light of the FDA’s call to address this issue, we believe the time has come to enact legislation raising the minimum age for all tobacco products to twenty-one. We are supporting this step because we believe it is the most effective step available to reverse rising underage e-vapor rates. Data shows that youth under eighteen get tobacco products – including e-vapor –

¹ U.S. Food & Drug Administration, “Family Smoking Prevention and Tobacco Control Act - An Overview,” <https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm246129.htm>.

² Monitoring the Future dataset, University of Michigan, 2018, <http://www.monitoringthefuture.org/data/data.html>. (The survey is funded by the National Institute on Drug Abuse (NIDA), which is housed in the National Institutes of Health (NIH). The survey is conducted by the University of Michigan.)

³ U.S. Food & Drug Administration, “Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to address epidemic of youth e-cigarette use,” Sept. 12, 2018, <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620185.htm>.

⁴ U.S. Surgeon General, “Get the Facts,” 2019, <https://e-cigarettes.surgeongeneral.gov/getthefacts.html>.



primarily through “social access,” that is, from friends or siblings who are eighteen or older.⁵ Approximately 80% of high school students in the U.S. turn eighteen years old before they graduate.⁶ By raising the minimum age to twenty-one, no high school student should be able to purchase tobacco products legally.

We are sensitive to the argument that young people eighteen to twenty are treated as adults in our society for many important purposes – voting, paying taxes, and serving in our military, to name just a few. But the FDA’s recent call to action on underage vapor use has persuaded us that the time has come to take this step. A minimum age of twenty-one will put tobacco products in line with alcoholic beverages, which have been subject to state minimum age laws of twenty-one for decades, and in line with cannabis as well, which is subject to a minimum age of twenty-one in every state that has legalized it recreationally.

We believe this policy change is important for preserving the reduced harm potential of non-combustible technologies like e-vapor. There is a growing public health consensus that products that do not burn and produce no smoke are significantly less harmful than conventional cigarettes.⁷ While nicotine is addictive, it is the smoke from conventional cigarettes – not the nicotine – that leads to most tobacco-related harm.⁸ New and emerging technologies like e-vapor and heat-not-burn tobacco products offer tremendous promise for reducing harm. But FDA has made clear that this harm reduction future cannot be fully achieved without doing more to reverse underage e-vapor use rates.

For these reasons, we join with others calling for a minimum age of twenty-one to purchase tobacco products, and we therefore encourage the Delaware Legislature to promptly pass Senate Bill 25.

⁵ Altria Client Services analysis of Population Assessment of Tobacco and Health (PATH) Study, Wave 3 data (2015-16). PATH is a joint project of the National Institutes of Health (NIH) and the U.S. Food and Drug Administration (FDA).

⁶ “Tobacco 21 Fact Sheet,” Tobacco 21, <https://tobacco21.org/tobacco-21-fact-sheet/>.

⁷ See, e.g., Mitchell Zeller et al., “The Strategic Dialogue on Tobacco Harm Reduction: A Vision and Blueprint for Action in the US,” 18 *Tobacco Control*, 324, 325 (2009); Dorothy K. Hatsukami et al., Developing the Science Base for Reducing Tobacco Harm, 9 *Nicotine & Tobacco Res.* S537, S546 (2007).

⁸ “[W]hat primarily causes death and disease from tobacco use isn’t the nicotine in these products. It’s the act of lighting tobacco on fire to free that drug for inhalation.” FDA Commissioner Gottlieb, <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620185.htm>.

