

**Testimony before the Hawaii Health Committee
Regarding Banning the Sale of Flavored Tobacco and Vapor Products
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Consumer Center
Taxpayers Protection Alliance
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Chairman Keohokalole, Vice-Chair Baker, Members of the Committee:

Thank you for your time today to discuss the issue of banning flavored sales of tobacco and vapor products. My name is Lindsey Stroud, and I am Director of The Taxpayers Protection Alliance's (TPA) Consumer Center. TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy. TPA's Consumer Center focuses on providing up-to-date information on adult access to goods including alcohol, tobacco and vapor products, as well as regulatory policies that affect adult access to other consumer products, including harm reduction, technology, innovation, antitrust and privacy.

Per the statement from the legislation's sponsor, this proposal is an effort to address youth use of tobacco and vapor products. While such efforts are laudable, policymakers should refrain from excessive prohibition when addressing such issues. Rather, than punish adult former smokers, Hawaii lawmakers ought to fund robust tobacco control programs, including education and prevention.

Youth Use of Tobacco and Vapor Products is Declining

The sponsor of the legislation purports that Hawaiian youth are vaping at "an epidemic level." This is an interesting choice of words given how lawmakers did not ban flavored tobacco products in the 1990s when Hawaiian youth were overwhelmingly using combustible cigarettes, which are far more deadly than tobacco harm reduction products such as e-cigarettes.

According to data from the Centers for Disease Control and Prevention's (CDC) Youth Risk Behavior Surveillance Survey (YRBSS) – and the same survey the legislation relies on – in 1995, 68.8 percent of high school students reported ever-using combustible cigarettes and 32.4 percent were current users, defined as having smoked a cigarette on at least one occasion in the 30 days prior to the survey.¹

While youth of vaping is a reason of concern, it also coincides with a significant decline in youth use of combustible cigarettes. In 2019, 17.8 percent of high schoolers reported ever-trying cigarettes and only 5.3 percent were current users, representing declines of 74.1 percent and 83.6 percent, respectively, from 1995 rates.

Moreover, the legislation is relying on 2019 figures on youth use which disregard recent surveys that have found that youth use of vapor products is on the decline. In 2019, 48.3 percent of Hawaiian high school students reported ever-trying e-cigarettes, 30.6 percent reported past 30-day use, and 7.9 percent reported using vapor products daily.

In 2021, according to the National Youth Tobacco Survey, an estimated 11.3 percent of high school students and 2.8 percent of middle school students reported having used a vapor product on a least one occasion in the month prior to the survey.² Further, only 3.1 percent of high school students and less than one percent of middle schoolers reported daily e-cigarette use. The rate of decline is remarkable: among high school students, vaping rates have declined by 41.8 percent since 2020 and by 58.9 percent since 2019, when 27.5 percent reported using e-cigarettes.

Robust Tobacco Control Funding – Not Bans – to Address Youth Tobacco and Vapor Product Use

Interestingly, in Section 1 of the proposed legislation, when determining the cost of smoking to the Aloha State, the sponsor relies on data from the CDC's *Best Practices for Comprehensive Tobacco Control Programs* 2014 guide.³

According to the CDC, the “2014 edition describes an integrated programmatic structure for implementing interventions proven to be effective and provides the recommended level of state investment to reach these goals and to reduce tobacco use in each state.”⁴ Of the proposed approaches from the CDC, none are bans. For Fiscal Year 2014, the CDC recommended that Hawaii dedicate \$13.7 million annually for tobacco control programs, with \$9.9 million suggested for a minimal.⁵

This is intriguing because the Aloha state spends very little of existing tobacco monies on robust tobacco control programs. In 1939, under the Territorial Government, Hawaii first imposed an excise tax on tobacco products.⁶

Between 2000 and 2020, Hawaii collected an estimated \$2.1 billion in cigarette taxes.⁷ During the same 20-year period, the Aloha State increased the tax rate on cigarettes nine times. The last tax increase raised the rate by \$0.20, to \$3.20 per pack.

Tobacco taxes are not the only form of tobacco-revenue the state collects. In the mid-1990s, Hawaii sued tobacco companies to reimburse Medicaid for the costs of treating smoking-related health issues. And, in 1998 with 45 other states, the Aloha State reached “the largest civil litigation settlement in U.S. history” through the Master Settlement Agreement (MSA).⁸

Under the MSA, states receive annual payments – in perpetuity – from the tobacco companies, while relinquishing future claims against the participating companies. Between 2000 and 2020, Hawaii collected \$974.4 million in MSA payments.⁹

Despite increasing taxes, and perpetual settlement payments, the Aloha State allocates very little of state funding towards tobacco control.

Between 2000 and 2020, Hawaii allocated only \$168.9 million in state funds towards tobacco control programs.¹⁰ This is 7.9 percent of what the state collected in cigarette taxes in the same 20-year time span and 17.3 percent of MSA payments. In total, in 20 years, Hawaii allocated only 5.4 percent of what the state received in tobacco taxes and settlement payments towards tobacco education and prevention efforts. In essence, for every \$100 received in tobacco-related taxes and settlement payments, the state spent \$5.40 funding tobacco control programs.

Moreover, increased taxes did not create increases to state tobacco control funding. For example, in 2010, the state increased the cigarette tax by \$0.60, to \$2.60 per pack. This led to an immediate 14.8 percent increase in cigarette tax collections, from \$104.4 million in 2009 to \$119.9 million in 2011. During the same time period, tobacco control funding decreased by 24.8 percent, from \$10.5 million in 2009 to \$7.9 million in 2010.

If lawmakers truly care about youth use of age-restricted products, especially tobacco products, they ought to invest more funding in robust tobacco control programs. In 2020, Hawaii dedicated only \$6.1 million in state funding to such programs, that amounts to just \$20.62 per person under the age of 18.

Vapor Product Emergence Correlates to Significant Declines in Young Adult Smoking Rates

Electronic cigarettes and vapor products were Aloha introduced to the U.S. in 2007 “and between 2009 and 2012, retail sales of e-cigarettes expanded to all major markets in the United States.”¹¹ Moreover, between September 2014 and May 2020, e-cigarette sales in the U.S. increased by 122.2 percent.¹²

Examining data from the CDC’s BRFSS finds that e-cigarettes’ market emergence has coincided with a significant reduction in smoking rates among young adults.

In 1998, among current adult smokers, 24 percent were 18 to 24 years old. In 2008, this had decreased by 22.1 percent to 18.7 percent of adult smokers in Hawaii being between 18 to 24 years old.

In the years after e-cigarette's market emergence in the early 2010s, smoking rates among current smokers aged 18 to 24 years decreased by 50.9 percent. Indeed, in 2010, among current smokers in Hawaii, 23.2 percent were between 18 to 24 years old. In 2020, only 11.4 percent of current smokers were 18 to 24 years old.

Further, since 2016, when the U.S. surgeon general issued an alarm about youth e-cigarette use, smoking rates among adults aged 18 to 24 years in the Aloha State have decreased by five percent, with an average annual decrease of 4.7 percent.

Adult Vaping Rates

Despite providing annual data on cigarette and smokeless tobacco use, the CDC's BRFSS only reports on adult e-cigarette use for 2016 and 2017.

In 2017, according to the BRFSS, 4.7 percent of Hawaii adults were current e-cigarette users. Similar to income status among smokers, lower income persons are more likely to use vapor products. In 2017, among current adult e-cigarette users, 9.7 percent reported household incomes of \$25,000 or less per year. Conversely, only four percent reported earning \$50,000 a year or more.

Economic Impact of Vaping in Hawaii

In 2021, according to the analysis by the Vapor Technology Association, the industry created 190 direct vaping-related jobs in Hawaii. These jobs generated more than \$8.2 million in wages.¹³ Moreover, the industry has created hundreds of secondary jobs in the Aloha State, bringing the total economic impact in 2021 to \$54.7 million. In the same year, Hawaii received more than \$4.6 million in state taxes attributable to the vaping industry.

Unfortunately, efforts by anti-vaping organizations and policymakers have negatively affected vape shops in the Aloha State. The number of employees has decreased by 57.9 percent from 451 in 2018 to 190 in 2021, representing a loss of \$9.9 million in wages.¹⁴ Further, state tax collections in 2021 were down 51.2 percent from 2018's level of \$9.5 million. Overall, the economic output from the vaping industry in Hawaii was reduced from \$100.7 million in 2018 to \$54.7 million in 2021, a 45.7 percent decrease.

Flavors Are Not Main Reason for Youth E-Cigarette Use

According to the sponsor statement of this proposal, flavors are the reason why Hawaiian youth are using e-cigarettes.

This is simply not true. In 2017, among Hawaiian high school students that had ever used e-cigarettes, 26.4 percent cited flavors as a reason for e-cigarette use, compared to 38.9 percent that reported “other.”¹⁵

Further, in analyses of state youth tobacco use surveys, other factors including social sources are most often cited among youth for reasons to use e-cigarettes and vapor products.

In 2019, among all Connecticut high school students, 5.2 percent reported using e-cigarettes because of “flavors,” 18.2 percent cited “other,” and 12.9 percent reported using e-cigarettes because of friends and/or family.¹⁶

In 2017, among Hawaiian high school students that had ever used e-cigarettes, 26.4 percent cited flavors as a reason for e-cigarette use, compared to 38.9 percent that reported “other.”¹⁷

Among highschoolers in Maryland that used e-cigarettes, when asked about the “main reason” for using e-cigarettes only 3.2 percent responded “flavors.”¹⁸ Conversely, 13 percent reported because “friend/family used them,” 11.7 percent reported “other,” and 3.8 percent reported using e-cigarettes because they were less harmful than other tobacco products.

In 2019, among all Montana high school students, only 7 percent reported using vapor products because of flavors, compared to 13.5 percent that reported using e-cigarettes because of “friend or family member used them.”¹⁹ Further, 25.9 percent of Montana high school students reported using vapor products for “some other reason.”

In 2019, among all students, only 4.5 percent of Rhode Island high school students claimed to have used e-cigarettes because they were available in flavors, while 12.5 cited the influence of a friend and/or family member who used them and 15.9 percent reported using e-cigarettes “for some other reason.”²⁰

In 2017, among current e-cigarette users, only 17 percent of Vermont high school students reported flavors as a reason to use e-cigarettes. Comparatively, 35 percent cited friends and/or family members and 33 percent cited “other.”²¹

In 2019, among high school students that were current e-cigarette users, only 10 percent of Vermont youth that used e-cigarettes cited flavors as a primary reason for using e-cigarettes, while 17 percent of Vermont high school students reported using e-cigarettes because their family and/or friends used them.²²

In 2019, among all Virginia high school students, only 3.9 percent reported using e-cigarettes because of flavors, 12.1 used for some other reason, and 9.6 used them because of friends and/or family members.²³

Flavor Bans Lead to Increased Combustible Cigarette Use

Flavor bans have had little effect on reducing youth e-cigarette use and may lead to increased combustible cigarette rates, as evidenced in San Francisco, California.²⁴

In April 2018, a ban on the sale of flavored e-cigarettes and vapor products went into effect in San Francisco and in January, 2020, the city implemented a full ban on any electronic vapor product. Unfortunately, these measures have failed to lower youth tobacco and vapor product use.

Data from an analysis of the 2019 Youth Risk Behavior Survey show that 16 percent of San Francisco high school students had used a vapor product on at least one occasion in 2019 – a 125 percent increase from 2017 when 7.1 percent of San Francisco high school students reported using an e-cigarette.²⁵ Daily use more than doubled, from 0.7 percent of high school students in 2017, to 1.9 percent of San Francisco high school students reporting using an e-cigarette or vapor product every day in 2019.

Worse, despite nearly a decade of significant declines, youth use of combustible cigarettes seems to be on the rise in Frisco. In 2009, 35.6 percent of San Francisco high school students reported ever trying combustible cigarettes. This figure continued to decline to 16.7 percent in 2017. In 2019, the declining trend reversed and 18.6 percent of high school students reported ever trying a combustible cigarette. Similarly, current cigarette use increased from 4.7 percent of San Francisco high school students in 2017 to 6.5 percent in 2019.

An April 2020 study in *Addictive Behavior Reports* examined the impact of San Francisco's flavor ban on young adults by surveying a sample of San Francisco residents aged 18 to 34 years.²⁶ Although the ban did have an effect in decreasing vaping rates, the authors noted "a significant increase in cigarette smoking" among participants aged 18 to 24 years old.

Other municipal flavor bans have also had no effect on youth e-cigarette use.²⁷ For example, Santa Clara County, California, banned flavored tobacco products to age-restricted stores in 2014. Despite this, youth e-cigarette use *increased*. In the 2015-16 California Youth Tobacco Survey (CYTS), 7.5 percent of Santa Clara high school students reported current use of e-cigarettes. In the 2017-18 CYTS, this *increased* to 10.7 percent.

Further, studies have found that banning flavors in e-cigarettes leads to subsequent combustible cigarette use. A 2018 study published in *Tobacco Control* found that banning flavored "e-cigarettes alone would likely increase the choice of cigarettes in smokers."²⁸ A July, 2021 survey in *Nicotine & Tobacco Research* found that one-third (33.2 percent) of survey respondents would "likely switch to [combustible] cigarettes" if flavors were banned in e-cigarettes.²⁹

In August 2021, an article in *American Journal of Public Health (AJPH)* co-authored by 15 past presidents of the Society for Research on Nicotine and Tobacco (SRNT). This prime academic global organization involved with nicotine and tobacco evidence-based research warned that: "Because both youth and adult smokers find e-cigarette flavors attractive, banning all (or most)

flavors risks reducing smokers' use of e-cigarettes to quit smoking at the same time that it reduces youth vaping.”³⁰

Health Effects of Electronic Cigarettes and Vapor Products

Despite recent media reports, e-cigarettes are significantly less harmful than combustible cigarettes. Public health statements on the harms of e-cigarettes include:

Public Health England (PHE): In 2015, a landmark report relying on 185 studies and produced by PHE (a leading health agency in the United Kingdom), found “that using [e-cigarettes are] around 95% safer than smoking,” and that their use “could help in reducing smoking related disease, death and health inequalities.”³¹ In 2018, the agency reiterated their findings, finding vaping to be “at least 95% less harmful than smoking.”³²

As recent as February 2021, PHE provided the latest update to their ongoing report on the effects of vapor products in adults in the UK. The authors found that in the UK, e-cigarettes were the “most popular aid used by people to quit smoking [and] ... vaping is positively associated with quitting smoking successfully.”³³

The Royal College of Physicians (RCP): In 2016, RCP found the use of e-cigarettes and vaping devices “unlikely to exceed 5% of the risk of harm from smoking tobacco.”³⁴ RCP is another United Kingdom-based public health organization, and the same group which was the first to highlight the link between smoking and lung cancer, and other tobacco related diseases, in 1962.

The National Academies of Sciences, Engineering, and Medicine: In January 2018, the academy noted “using current generation e-cigarettes is less harmful than smoking.”³⁵

Cochrane Review: Researchers at the Tobacco Addiction Group analyzed studies that examined the effects of e-cigarettes in helping smokers quit. The researchers found 61 studies that had over 16,700 adults that had smoked. The studies compared the instances of quitting smoking using e-cigarettes to other nicotine replacements including nicotine replacement therapy, nicotine-free e-cigarettes, behavioral support and others. Of the available evidence, the authors found that more people “probably stop smoking for at least six months using nicotine e-cigarettes than using nicotine replacement therapy ... or nicotine-free e-cigarettes.” The authors also found that e-cigarette “may help more people to stop smoking than no support or [behavioral] support only.”³⁶

Society for Research on Nicotine and Tobacco (SRNT): An article in August 2021 co-authored by 15 past presidents of the SRNT reported that “Many scientists have concluded that vaping is likely substantially less dangerous than smoking”. Furthermore, they found that “A growing body of evidence indicates that vaping can foster smoking

cessation” and warned “Studies have found that policies intended to restrict e-cigarette use may have unintentionally increased cigarette smoking”.³⁷

Menthol Bans Have Little Effect on Smoking Rates, Lead to Black Markets, Lost Revenue and Will Create Racial Tension

Beyond e-cigarettes, policymakers’ fears about the role of menthol and flavorings in cigarettes and cigars are overblown and banning these products will likely lead to black markets.

Data from the National Health Interview Survey (NHIS) finds nearly a third of all American adult smokers smoke menthol cigarettes. In a 2015 NHIS survey, “of the 36.5 million American adult smokers, about 10.7 million reported that they smoked menthol cigarettes,” and white menthol smokers “far outnumbered” the black and African American menthol smokers.³⁸

Although lawmakers believe banning menthol cigarettes will deter persons from smoking those, such a ban will likely lead to black markets. A 2012 study featured in the journal *Addiction* found a quarter of menthol smokers surveyed indicated they would find a way to purchase, even illegally, menthol cigarettes should a menthol ban go into place.³⁹ Further, there is little evidence that smokers would actually quit under a menthol ban. A 2015 study in *Nicotine & Tobacco Research* found only 28 percent of menthol smokers would give up cigarettes if menthol cigarettes were banned.⁴⁰

Moreover, there is no evidence to suggest that menthol cigarettes lead to youth tobacco use. Analysts at the Reason Foundation examined youth tobacco rates and menthol cigarette sales.⁴¹ The authors of the 2020 report found that states “with more menthol cigarette consumption relative to all cigarettes have *lower* rates of child smoking.” Indeed, the only “predictive relationship” is between child and adult smoking rates, finding that “states with higher rates of adult use cause higher rates of youth use.”

Lawmakers should take note that menthol sales bans will strain minority communities. Although white Americans smoke more menthol cigarettes than black or African Americans, “black smokers [are] 10-11 times more likely to smoke” menthol cigarettes than white smokers.⁴²

Given African Americans’ preference for menthol cigarettes, a ban on menthol cigarettes would force police to further scrutinize African Americans and likely lead to unintended consequences.

A 2015 analysis from the National Research Council examined characteristics in the illicit tobacco market.⁴³ The researchers found that although lower income persons were less likely to travel to purchase lower-taxed cigarettes, “having a higher share of non-white households was associated with a lower probability of finding a local tax stamp” and “neighborhoods with higher

proportions of minorities are more likely to have formal or informal networks that allow circumvention of the cigarette taxes.”

Lawmakers in Hawaii should reexamine the case of Eric Garner, a man killed in 2014 while being arrested for selling single cigarettes in the city. In a 2019 letter to the New York City council, Garner’s mother, as well as Trayvon Martin’s mother, implored officials to “pay very close attention to the unintended consequences of a ban on menthol cigarettes and what it would mean for communities of color.”⁴⁴ Both mothers noted that a menthol ban would “create a whole new market for loosies and re-introduce another version of stop and frisk in black, financially challenged communities.”

Conclusion & Summary Points

Despite alarmism, electronic cigarettes are effective tobacco cessation products that have helped thousands of Hawaiian adults quit combustible cigarettes and flavors are essential in this use. Although youth use of vapor products is concerning, lawmakers must refrain from alarmist efforts that would restrict access to flavors. Rather than prohibition, lawmakers ought to invest already-existing tobacco monies to fund robust tobacco control programs including cessation efforts, education, and youth prevention campaigns.

- Combustible cigarette use among Hawaiian high schoolers are at record lows. In 2019, 5.3 percent reported current use of cigarettes, an 83.6 percent decrease from 1995.
- Nationally, current vapor product use among high school students has declined by 41.8 percent since 2020 and by 58.9 percent since 2019, when 27.5 percent reported using e-cigarettes on at least one occasion in the 30 days prior to the survey.
- Hawaii spends very little of existing tobacco monies on tobacco control programs.
- In 2020, the Aloha State collected \$102.4 million in state cigarette excise taxes and \$35.3 million in tobacco settlement payments, yet allocated only \$6.4 million (4.6 percent) to tobacco control. In 20 years, for every \$100 the state received in tobacco-related payments, it spent \$5.40 funding tobacco control programs. This is less than the average price of cigarettes – which is \$9.55 per-pack.
- The vapor industry has been an economic boon to Hawaii, generating \$54.7 million in economic activity in 2021 while creating 190 direct vaping-related jobs. Further, the industry has contributed more than \$4.6 million in state taxes.
- Unfortunately, anti-vaping efforts have reduced the industry’s economic impact. The number of employees decreased by 57.9 percent from 451 employees in 2018, state tax collections were down 51.2 percent from 2018’s \$9.5 million, and overall economic activity was down by 45.7 percent from \$100.7 million in 2018.
- E-cigarettes’ market emergence is associated with low young adult smoking rates. In 2020, among current smokers in Hawaii, only 11.4 percent current smokers were 18 to 24

years old – a 50.9 percent decrease from 2010. Further, since 2016, smoking rates among young adults have decreased by five percent.

- Data from existing youth surveys on tobacco and vapor product use indicate that high school students are not using e-cigarettes because of flavors. Overwhelmingly, high school students cite “friends/family” and “curiosity” as reasons for e-cigarette use.

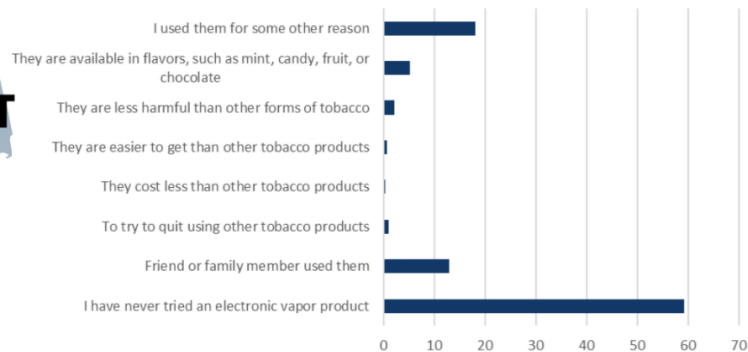
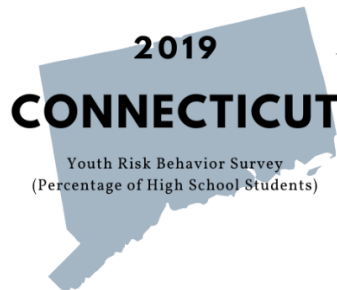
TAXPAYERS PROTECTION ALLIANCE

Reasons for Youth E-Cigarette Use, State Youth Risk Behavior Surveys

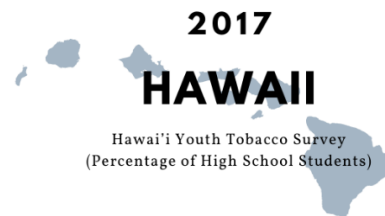
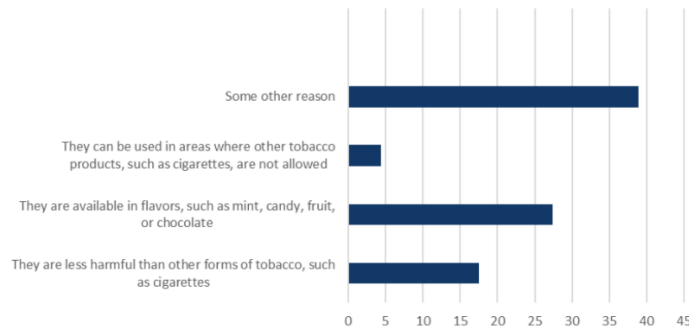
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REASONS FOR E-CIG USE

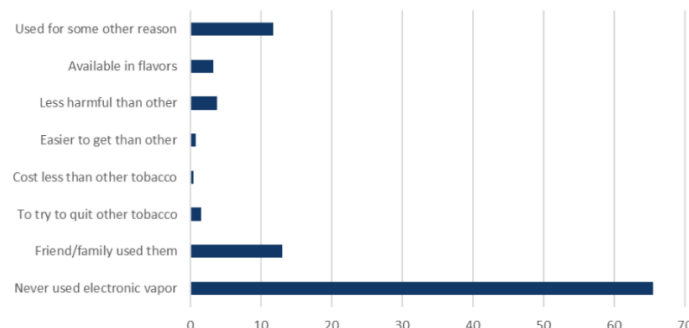
What is the main reason you have used electronic vapor products?



Reasons for e-cigarette use (among ever e-cigarette users, choose all that apply):



What is the main reason you have used electronic vapor products?



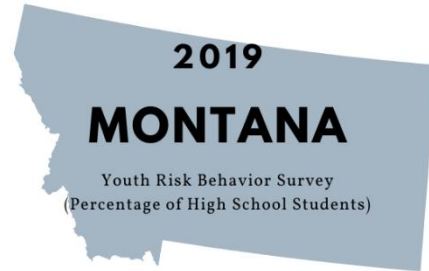
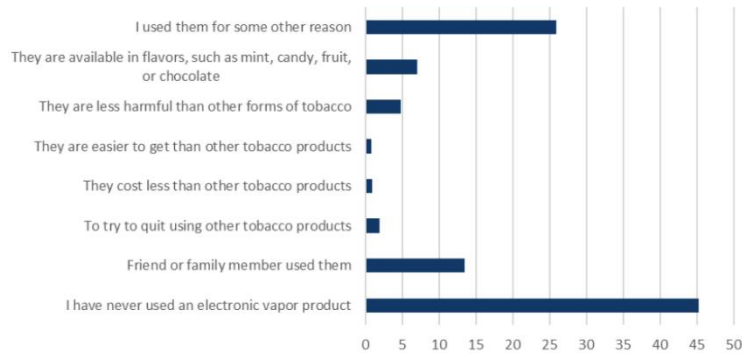
Source: World Health Organization

TAXPAYERS PROTECTION ALLIANCE

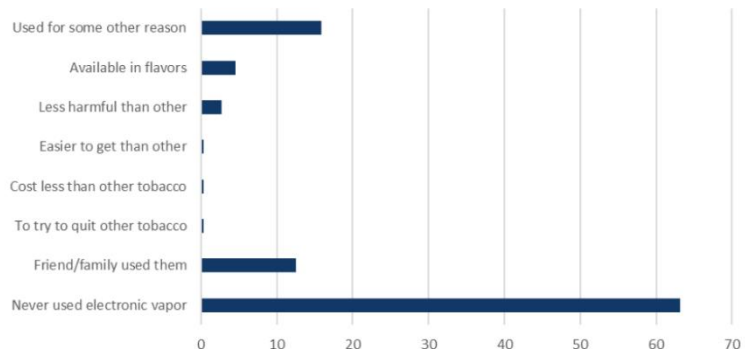
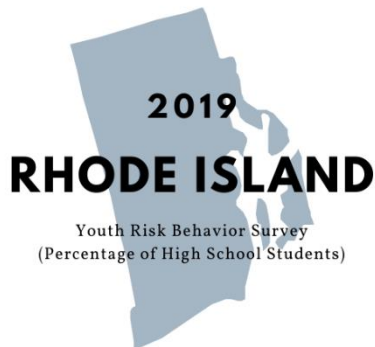
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REASONS FOR E-CIG USE

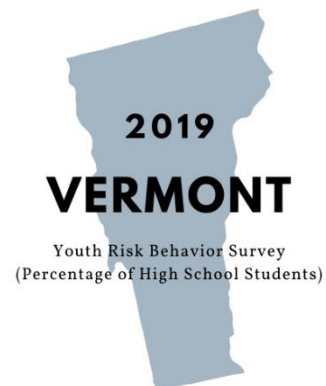
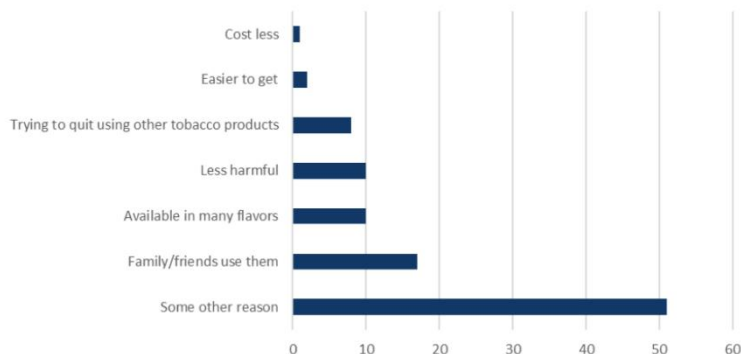
What is the main reason you have used electronic vapor products? (Select only one response.)



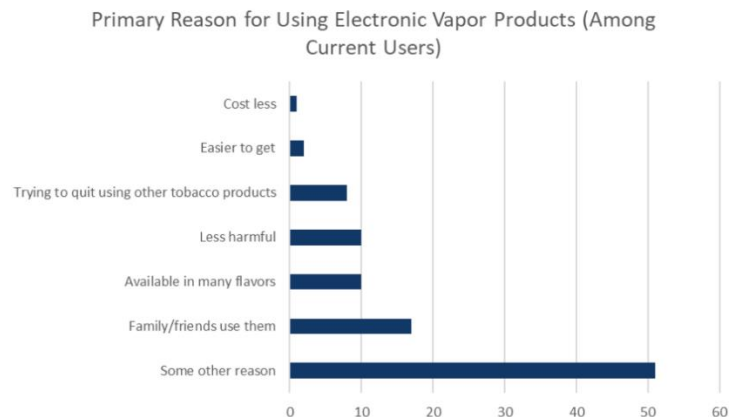
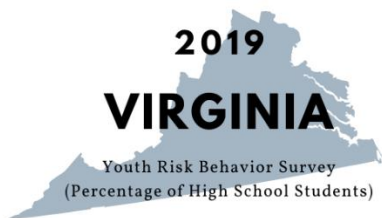
What is the main reason you have used electronic vapor products?



Primary Reason for Using Electronic Vapor Products (Among Current Users)



REASONS FOR E-CIG USE



SOURCES:

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