



American
Heart
Association.

February 13, 2020

Representative Barker, Chair
House Federal and State Affairs
Opponent, HB 2563

Chair Barker and Committee Members:

I am writing on behalf of the American Heart Association (AHA) regarding HB 2563. The AHA supports the effort for the enhancement of Kansas enforcement to correspond with the federal raise in minimum legal sale age for all tobacco products to age 21. This enhanced enforcement is provided for via the increase in the cost of the tobacco retail licensing fee, allowing for an additional compliance check. Additionally, the AHA sees the removal of youth penalties for purchase, use and possession of tobacco products (PUP) included in HB 2563 as a necessary priority for Kansas. Finally, while we are encouraged by the discussion of policies that seek to eliminate access to highly addictive flavored tobacco and nicotine delivery products, however, **we must oppose HB 2563 due to the exemption of menthol in the flavored e cigarette portion of the bill.**

A discussion of the elimination of the sale of flavored e-cigarettes is encouraging as it acknowledges that age restrictions alone won't reverse the crisis of youth tobacco use, but we strongly caution the committee to not be swayed by the illusion of false compromise that a menthol exemption implies. Youth will simply transition from banned flavors and products to use of flavors that remain available on the market. In 2018, 75.5% of high schoolers used fruit flavored e-cigarettes and 38.1% used mint or menthol flavored e-cigarettes. Between that survey and the following year's survey, Juul, by far the most popular e-cigarette brand, voluntarily stopped selling fruit flavored e-cigarettes, leaving only its mint, menthol, and tobacco flavors on the market. Not surprisingly, in 2019, high schooler's use of fruit flavored e-cigarettes fell to 66.1% and mint and menthol flavored use increased to 57.3%. This is clear evidence that if any flavored products remain accessible to youth, youth will seek out those products to fuel their nicotine addiction.ⁱ

The exemption of menthol flavored cigarettes in federal tobacco policy continues to pose a tremendous public health threat. A 2013 FDA report on the health impact of menthol cigarettes determined that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.ⁱⁱ This is quite troubling as US youths who self-reported using JUUL e-cigarettes in 2019, mint was the most popular flavor.ⁱⁱⁱ Due to the menthol exemption included in HB 2563, it stands to reason that youth will merely transition from "mint" to "menthol." Because menthol products produce a cooling and soothing effect, they are considered good "starter products" for youth and other

inexperienced tobacco users. Far too many people – more than half of all youth and young adult smokers – now smoke menthol cigarettes. Younger populations have the highest rate of smoking menthol cigarettes.

We believe that health policies should adequately respond to and eliminate inequities. For decades, tobacco companies have targeted African American, LGBTQ and other populations with menthol products, which have been shown to encourage tobacco use and enhance the addictiveness and dependence of tobacco within these groups. Menthol cigarettes are heavily marketed to African American smokers, 85% of whom use menthol products and Latinos, 45% of whom use menthol products. A positive step toward addressing inequities is the elimination of “PUP” in HB 2563. Primary enforcement should focus on retailer compliance with not selling to minors rather than on illegal purchases or youth possession. Research has shown that there is differential enforcement of tobacco purchasing and possession laws – Black and Hispanic youth have a higher probability of being cited than their white peers.^{iv}

The AHA supports tobacco policies that are equitable in impact and will curb youth use. It is with these tenants in mind that I respectfully urge the committee to oppose HB 2563 in its current form. **Instead, we request that the e-cigarette flavor language be removed in its entirety.** AHA believes more education and discussion about the harm of flavors is needed and the passage of a noncomprehensive ban distracts from the positive elements for tobacco age enforcement included in the bill. **If the committee is intent in keeping the e cigarette flavor ban, we request that the menthol exemption be removed.**

Sincerely,

Andrie Krahl
Executive Director
American Heart Association, Kansas

ⁱ <https://www.publichealthlawcenter.org/blogs/2020-01-08/much-ado-about-nothing-fda%E2%80%99s-lackluster-effort-restrict-flavors>

ⁱⁱ 4 FDA. Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes (2013).

ⁱⁱⁱ <https://jamanetwork.com/journals/jama/article-abstract/2755264>

^{iv} Gottlieb, N. H., A. Loukas, M. Corrao, A. McAlister, C. Snell, Huang, PP. Minors’ tobacco possession law violations and intentions to smoke: Implications for tobacco control. 2004. Tobacco control 13(3): 237-243.