



VAPOR TECHNOLOGY ASSOCIATION

FROM THE TRENCHES: VTA UPDATE

June 30, 2017



Happy Independence Day!

THE FEDERAL FRONT

NEW HOUSE APPROPRIATIONS BILL FILED



This week, the House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies marked up its FY 2018 Subcommittee bill ("Agriculture Appropriations") giving FDA \$2.8

billion in discretionary funding. Last year, we had to fight to get a change to the predicate date amended *into* the House Agriculture appropriations bill. This year, the Committee has included the predicate date change in the base bill. This is a significant development since our industry will not have to wage a fight to include it again.

In addition to including what we previously referred to as the Cole-Bishop amendment language, the new bill also includes a provision attempting to deal with a very real and serious concern in Congress about flavors, how they are being used by industry, and their perceived impact on youth. Specifically, the language would require FDA to engage in a rulemaking process pursuant to Section 907 of the Tobacco Control Act to address "characterizing flavors."

The notion of flavors being addressed is understandably concerning to many. To be sure, it is of great concern to VTA which is proud to have on its Board and in its membership the largest flavor companies, e-liquid manufacturers and e-liquid distributors in the United States, as well as hundreds of vape shops. However, as with anything else, it is important to understand the complete picture before reacting. To that end, our federal team and Board dug in to determine what transpired and have begun to analyze what this might mean for the industry. There is more to be considered, but here are some initial thoughts.

The issue is real. There is no question that both Republican and Democratic members have serious concerns about this issue. Not only was it raised at the confirmation hearing of Commissioner Gottlieb, but this new language was inserted by GOP members who controlled the drafting process. It is important for our industry to realize that we must address this issue or risk alienating even our most ardent supporters.

What the language means. The language does not "ban" flavors, it does not require FDA to ban flavors nor, for that matter, even consider banning flavors. If passed, the language would require FDA to *start* a rulemaking process on "characterizing flavors" within 21 months of the effective date of the Act and to complete the process within 36 months. Since the bill likely wouldn't pass or be signed until January 1, 2018 - or thereafter - that means FDA would have to initiate its rulemaking process by September 2019 and somehow complete that rulemaking process by January 1, 2021.

What we know about the rulemaking process. Rulemaking is slow. Notwithstanding the fact that the bill, if passed, would require FDA to complete its work within three years, that is a very aggressive timeframe for notice and comment rulemaking. It is highly unlikely that FDA would be able to complete its work in that period of time.

The good news? Congress has the power to ban flavors - just as it did with respect to tobacco cigarettes - for the vapor industry. In this bill, not only is Congress essentially ceding its authority to the FDA, it asks FDA to focus only on "characterizing flavors." Also, unlike Congress, FDA **must** establish a scientific basis for *any* product standard it publishes on characterizing flavors. In fact, the bill expressly requires FDA to issue a notice of proposed rulemaking, ensuring the lengthy notice and comment process.

Shoe on the Other Foot? Much like manufacturers, which are now being required to prove the positive individual and public health benefit of vapor products to satisfy the onerous PMTA requirements, in order for FDA to implement a regulation on characterizing flavors FDA must establish scientific evidence that addresses the "risks and benefits to the population as a whole, including users and nonusers of tobacco products, of the proposed standard" among other things. Doing so will be *extremely difficult* for FDA for a number of reasons, including the fact that the language is focused on "characterizing flavors." As a point of reference, despite a significant body of scientific and survey data, over the past 8 years FDA was unable to establish a justification for banning the #1 flavor in the world to date - menthol.

Keeping all of this **perspective** in mind, VTA already is working on a solution that that will address the issues of greatest concern. We are evaluating options and determining how best to proceed to defend our industry. That said, **our industry must have a serious conversation** about how we are going to address this issue.

To that end, **we are inviting you to join us in Washington, D.C. on July 18-19 for Vape & the FDA 2.** There **we will convene an all-star panel on flavors** that will explain what "characterizing flavors" means, what the Agriculture Appropriations bill does, were it to be enacted as filed, how FDA would be required to address flavors, and how our industry can move forward in a responsible way to defend this vital part of our industry.

You want to be part of this conversation! You need to be part of this conversation!



VAPE & THE FDA 2 INDUSTRY CONFERENCE

Surviving & Thriving in A New Regime for Vapor



One year post-Deeming.

A new Administration is engaged.

Deadlines are moving.

Congress is filing new bills.

What does it all mean?

Where is it all headed?

VTA's **Board of Directors**, which has unparalleled experience operating in a heavily regulated world, **knows the information that you need** and is putting together another industry conference that will address the biggest and most pressing issues facing our industry.

So, whether you are an e-liquid or device manufacturer, vape shop owner, supplier, distributor, or importer, this is a conference you must attend!

[CLICK HERE TO REGISTER NOW!](#)

[The room block is filling up fast!](#)

JULY 17, 2017 - PRE-MEETING ACTIVITIES

6:00 p.m. - Greeting Cocktail Reception

Location: Americans for Tax Reform
722 12th Street NW, 6th Floor, Washington, D.C.

JULY 18, 2017 - VAPE & THE FDA 2 CONFERENCE

8:00 a.m. - Registration and Hot Breakfast

9:00 a.m. - Plenary Session Kicks Off

12:00 p.m. - Luncheon with Noted Speaker(s)

1:30 p.m. - Dual Manufacturer & Retailer Tracks

6:00 p.m. - Networking Reception in Lincoln Library

Location: Trump International Hotel

1100 Pennsylvania Avenue, NW, Washington, D.C.

JULY 19, 2017 - DAY ON CAPITOL HILL

with West Front Strategies

8:00 a.m. - Advocate Round Up & Assignment of Hill Teams

9:00 a.m. - Advocate Send Off

9:30 - 4:00 p.m. - Meetings on Capitol Hill



VTA
VAPOR TECHNOLOGY ASSOCIATION

VAPE & THE FDA 2

JULY 18-19, 2017

Surviving & Thriving in A New Regime for Vapor

One year post-Deeming. A new Administration is engaged. Deadlines are moving. But, where is it all headed?

VTA's Board of Directors, with enormous experience in operating and surviving in a heavily regulated world, knows the information that you need.

So, whether you are an e-liquid or device manufacturer, vape shop owner, supplier, distributor, or importer, this conference is for you!

VTA's 2-day conference will provide practical information on how our industry will survive & thrive on Day 1, then we will go to Capitol Hill on Day 2.

DAY ONE July 18, 2017	DAY TWO July 19, 2017
VAPE & THE FDA 2 CONFERENCE 8 a.m. - Registration 9 a.m. - 6 p.m. Conference	DAY ON THE HILL with WEST FRONT 8 a.m. - Round Up 9 a.m. - 4 p.m. Hit the Hill

Trump Int'l Hotel
1100 Pennsylvania Ave
Washington, D.C.

U.S. Capitol

ADMISSION
VTA Members \$250 / person
Non-Members \$500 / person

HOTEL ACCOMMODATIONS
You will need to make your own hotel reservations and payments. We have negotiated a VTA block room rate of \$285 night. You can find the hotel registration link in VTA's Conference Registration Portal

SPEAKER LIST (in formation)
Dr. Scott Gottlieb, FDA Commissioner (invited)
Andrew Bromberg, Director, Domestic Policy Council (invited)
Chairman Ron Johnson (R-WI) (invited)
Rep. Tom Cole (R-OK) (invited)
Rep. Sanford Bishop (D-GA) (invited)
Patricia Kovacs; Nicopure Labs
David Graham - Reveritas Group
Alex Clark & Julie Woessner - CASAA
Ashley Davis - West Front Strategies

TOPICS TO BE COVERED
Shifting Deadlines, Timelines & Requirements •
Retailer Requirements & FDA Inspection •
PMTA Strategies •
Federal Vapor Strategies •
State Legislative Round Up •
Growing State Vapor Associations •
Organizing for Local Vapor Fights •
Litigation Update and more! (detailed agenda to follow)

Register at:
VTA'S CONFERENCE REGISTRATION PORTAL

Last year's Vape & the FDA Conference was great success, attended by **200** industry professionals representing **67** companies from **26** states and **4** countries.

Check out this [one-minute video](#) to get a glimpse.

Don't miss out this year! Register now by using [VTA's Conference Registration Portal](#) where you can also access the hotel reservation information and the group room rate.

Our government affairs team will set up meetings with your Congressmen and Senators. All you have to do is register!

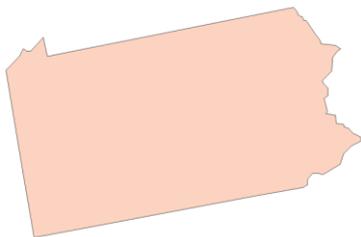
Please forward this invitation to anyone you think may be interested in attending!

Shortly we will be publishing a detailed agenda of the numerous timely topics that will be covered.

GET ON THE MAP! In order to stand up and continue to push for regulatory changes at the federal level, and work to stop anti-vapor policies at the state level, VTA has created an interactive **Vape Company Map Initiative** to show regulators just who we are. This is being shared with White House, your members of Congress, and state legislative leaders to show them that vapor is in "every corner of every state"! Are you on the Map? If not, stand up and be counted today! [This will take you less than 5 minutes - sign up now!](#)

THE STATE OF THE STATES

Despite the fact that the legislative session has ended in several states, there are several local ordinances and rulemakings occurring in states which will not only affect your vapor business in the short-term, but will also set the stage for state legislative fights next session. There are a number of issues which we need vapor businesses to get involved in. We must get organized and fight back.



Moving Mountains: Pennsylvania Vape Association & VTA Move Tax Repeal Bill Out of Committee

This year the **Pennsylvania Vape Association** stepped forward and put together a strong team to repeal the small business killing 40% wholesale tax. House Bill 1477 eliminates the onerous 40% wholesale tax on vapor products and replaces it with a per milliliter tax. This week, the bill passed out of the House Finance Committee on strong 19-5 vote.

PVA Board Member Amelia Rivera and VTA State Affairs Manager **Jake Butcher** testified before the House Finance Committee on June 27, 2017.

There was much debate in the House Finance Committee over the amount of revenue which should be expected from the Pennsylvania vapor tax. The Department of Revenue estimated that the tax could bring in approximately \$23 million to the State of Pennsylvania. House Finance Committee members were prepared to push back hard, questioning the Department's numbers stating that the average collections would only produce closer to \$15.5 million in revenue annually. To place this projection in perspective, the current bill's \$0.05 (5 cent per ml) tax would generate approximately \$9 million dollars annually while a \$0.075 (7.5 cent per ml) tax would generate approximately \$14 million dollars annually. The budget committees have told the PVA that any proposal must be *revenue neutral* to be considered.



PVA and its lobbyists are moving mountains and changing the entire discussion in Harrisburg this session. The fact that a change of this nature is still in play, given the state's budget crisis, is a true testament to **the Kinser Group's** efforts. Right now, they are working to ensure that the key decision makers keep the vapor tax change on the list of priorities.

PVA & VTA will keep you updated in the coming days as we continue to work to ensure that the final budget discussions repeal the 40% tax. Thanks to all those who have worked to repeal this devastating tax policy. The Pennsylvania legislature will return after the July 4th Holiday.

Another One Bites the Dust: Ohio Vapor Trade Association Kills 69% Wholesale Tax

Governor John Kasich (R-Ohio) proposed a 69% wholesale tax on vapor products this session as part of a broader package to address state revenue needs. The **Ohio Vapor Trade Association** took it head on and spent over five months meeting with legislators to provide information on the impact of tax policies implemented in other states, the latest research on vapor products, as well as providing testimony to House and Senate Finance committees on the specific impacts a vapor tax would have on Ohio vapor businesses and consumers.



OHVTA
OHIO VAPOR TRADE ASSOCIATION



Picture of perfect collaboration. VTA worked hand-in-hand with **Ohio Vapor Trade Association** and its lobbyist, providing insights and guidance, drafting testimony, traveling to Ohio to testify in Committee on national trends, current health related studies on vapor, as well as the federal regulations affecting the vapor industry. VTA also initiated multiple calls to action and collaborated with **CASAA** so that the powerful the message from consumers also reached the Ohio legislators. Thanks to all who worked so hard to defeat this regressive tax policy. And a special congratulations to **OHVTA President James Jarvis**, who showed remarkable leadership in his first year, the entire **OHVTA Board** and team which has been dogged in their defense of vapor, and, **Charlotte Hickcox**, of **ZHF Consulting**, who provided steady, sound and smart guidance on the ground in Columbus.

Local Flavor Bans Decimate Vapor Businesses

Local flavor bans on tobacco products including vapor products have been proposed and are being acted on at the local level. This week the San Francisco City Council passed a ban on flavored tobacco products. **Not Blowing Smoke** spearheaded an aggressive campaign with **CASAA** challenging the local ordinance and should be congratulated for their efforts. VTA, the **California Smoke Free Organization** and as well as other advocates sent multiple calls to action to raise awareness and objection to ordinance.



If unchanged, this irresponsible and dangerous ban will mean that San Francisco small businesses will close and consumers will have limited access to flavored e-liquids. This action highlights the need to be vigilant and active at the local level, even though a majority of state legislatures are not in session. Education of state legislators and local officials is a year-round process. Meeting legislators in vapor shops when they are out of session is the best way to educate them on your businesses and the services you provide to their constituents. There have already been flavor bans introduced in New Jersey and New York at the state level! We must organize and be ready to act!

Utah to Begin Early Implementation of Deeming: Labeling Requirements to Change on July 1, 2017

The **Utah Department of Public Health** has indicated to the Utah Smoke Free Association that they will essentially begin early implementation of FDA deeming rules regarding labeling effective July 1, 2017.

The **Utah Smoke Free Association** is working to educate the Department of Public Health on the effects of this decision. The rule requires

that a label follow the same safety standards as the required by the FDA, and that the safety warning take up 30% of the container's display panel. [Click here to read the full rule.](#) Join the Utah Smoke Free Association today by contacting Tad Jensen at tjensen@utsmokefree.org to fight back.



California E-Cigarette Tax Increase In Effect as of July 1, 2017

The implementation of Proposition 56 will continue in California this week. As of April 1, 2017, distributors began remitting 27.30 percent of wholesale cost of nicotine delivery devices, including e-liquids. As of July 1, 2017, the tax rate on tobacco products, including electronic cigarettes and other nicotine delivery devices sold in combination with nicotine, will increase at a rate equivalent to the increase on cigarettes.



The **California Smoke Free Organization** is still working with the Board of Equalization to limit the adverse impact of the tax on various fronts. For example, CSFO is ensuring that devices sold "in combination with" e-liquids are not taxed. To bring everyone up to date on what CSFO has done and is doing to address these issues, on July 11, 2017, CSFO will be hosting a webinar to discuss these issues. More information will be available after the July 4th holiday.



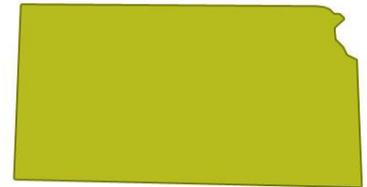
Iowa Sales Tax on Online Sales Effective July 1, 2017

A law which legalized online sales within Iowa goes into effect on July 1, 2017. SF 516 requires that online sellers remit sales tax beginning July 1, 2017. It is important to note that all online retailers who sell to consumers in Iowa must be licensed, and further must be bonded. SF 516 also requires age verification at the point of sale, as well as signature of a person at least 18 years of age upon delivery. [Click here to learn more information about](#)

[the licensure and remitting sales tax.](#)

Kansas Vapor Taxes Cut by 75%

The **Kansas Vapor Association** scored a huge victory last week when Governor Sam Brownback signed HB 2230 last week lowering the tax on e-liquids to from \$0.20 per milliliter to \$.05 per milliliter. This legislation is another a monumental step in educating legislators on the differences between combustible tobacco and vapor products. This legislation also continues the broader trend of state legislative bodies rejecting vapor tax increases and seeking to lower already implemented vapor tax policies. Congratulations to the **Spencer Duncan** and the Kansas Vapor Association for your remarkable leadership on this issue!



State of New York Adds Vapor Products to Clean Indoor Air Act

The State of New York, which had rejected adding vapor to clean air bills for the past three years unfortunately, passed an expansion of the New York Clean Indoor Air Act this week that would add vapor products to the Act. The law will prohibit vaping in any space in which smoking is currently prohibited, lumps vapor with smoking and unfortunately cites the effects of second hand vapor, treating vapor products for all practical purposes in the same manner as combustible

cigarettes.

As anti-vaping groups celebrated, the only silver-lining is that the law carves out vapor shops that generate at least 75% of their revenue from vapor products. Thank you to all those who worked so hard to defeat this legislation including **CASAA**, the **New York State Vapor Association**, and the many **VTA members in New York**. VTA will continue to work to educate NY legislators and work to repeal these damaging policies. [Read VTA's memo in opposition to the legislation.](#)

NOW IS THE TIME TO JOIN VTA!

As you can see from the foregoing, VTA is set up for success. We have an outstanding Board of Directors comprised of vapor manufacturers and retailers who have deep FDA and industry experience, we have a bi-partisan team of five lobbyists (known as the vapor lobbyists) on Capitol Hill, we have a bi-partisan public affairs team who are expert at messaging, and we have a State Affairs Manager (also a state lobbyist/lawyer) who is in constant touch with state vapor leaders and their lobbyists.

Our members get access to these professionals and lots of meaningful guidance on all the federal and state regulatory and strategic issues affecting our industry. And, if ever you want to get me on the phone, here's the number: 312-498-6060.

In short, if you like what you read in this update and if you want to be a part of securing our industry's future, then join us and the hundreds of other companies we are proud to call VTA Members today! All you need to do is fill out this [VTA Membership Application](#) and return it to us.

To learn more, check us out at www.vaportechnology.org and www.SaveVapor.org. And, don't forget to follow us on [Facebook](#) and [Twitter](#).

Finally, have a safe Fourth of July weekend and thank you for all you do to defend vapor!



Tony Abboud
Executive Director
Vapor Technology Association