



New York Association of Convenience Stores  
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

ONLINE: [www.nyacs.org](http://www.nyacs.org)

**Testimony of James Calvin, President**  
**New York Association of Convenience Stores**  
*before the*  
**NYS SENATE COMMITTEE ON FINANCE**  
*and the*  
**NYS ASSEMBLY COMMITTEE ON WAYS AND MEANS**  
*concerning*  
**Health Issues in the 2020-2021 Executive Budget Proposal**  
January 29, 2020, Albany NY

The New York Association of Convenience Stores is a statewide trade organization representing 8,500 neighborhood mini-marts statewide, most of which are registered with New York State as retail tobacco dealers, and some of which are also registered as retail vaping product dealers.

NYACS is a New York State Department of Health-approved provider of certified tobacco sales training to retail personnel. We have trained over 7,500 clerks, cashiers and managers in the proper techniques for preventing underage tobacco sales, helping improve the statewide retail compliance rate to 95 percent.

We appreciate this opportunity to comment on the numerous tobacco and vaping product retailing provisions of the Executive Budget and their impacts on convenience stores. We believe the Committees should examine them within the context of these overriding concerns:

**1. Rampant Illegal Trade**

New York's pervasive illegal cigarette trade is the worst in the nation. According to the Tax Foundation, more than one of every two packs of cigarettes consumed here are purchased outside the reach of New York taxes, laws and regulations.<sup>1</sup> Intrastate smuggling, Indian enterprises, and online vendors dominate the marketplace, exploiting any advantage. Consequently, every new well-intentioned tobacco control policy action has the frustrating consequence of bolstering the illegal trade scourge, hurting law-abiding retailers, and undermining public health goals.

**2. Kitchen-Sink Approach**

In mid-November, the statewide tobacco purchase was elevated from 18 to 21. In December, stores selling vaping products were required to register with the state and start collecting a 20 percent supplemental sales tax on those products, all in the name of reducing smoking and vaping, especially among youth. Before the effectiveness of these 2019 actions by the Legislature and the Governor have been measured, we are presented with a whole new set of radical tobacco product restrictions designed to address the same problems.

CONTINUED →

### 3. Apples and Oranges

There is no correlation between illnesses and deaths caused by illicitly vaping THC or Vitamin E versus the commercial brands of e-cigarettes convenience stores sell to adults in New York. The need to address a record-high 30% youth vaping rate is urgent, while single-digit (and declining) underage cigar consumption is far less compelling. In sensible policy-making, these types of distinctions need to be drawn.

Against this backdrop, we respectfully offer these observations.

### Tobacco Product Display Ban

S.7507/A.9507 Part Q, Page 268

#### **NYACS Opposes**

Rejected last year, Part Q would prohibit retail stores from displaying the legal tobacco products they are licensed to sell to age-verified customers. They would be forced to hide them from view, instead handing adult customers a tobacco product “menu.” This policy would have far-reaching implications for licensed retailers and illegal trade.

Adult smokers who no longer see their product in our stores would turn to alternative sources beyond the reach of New York State licensing, regulation, and taxation – border states, tribal enterprises, online vendors, and bootleggers – while convenience store customer counts and non-tobacco sales would plummet.

Documenting this phenomenon, independent research on Canada’s existing tobacco display ban shows that “rather than leading to a reduction in tobacco consumption, the venue of tobacco purchase and the nature of tobacco products merely shifts from a legal retailer selling legitimate products, to an illegal seller of untaxed and often counterfeit cigarettes.”<sup>2</sup>

The assertion that the mere sight of cigarettes displayed on a store wall compels young people to start smoking is preposterous. Does the beer display in a supermarket compel underage drinking? Does the lottery ticket display in a convenience store compel minors to start gambling?

### Harsher Penalties for Underage Sales

S.7507/A.9507 Part Q, Page 277

#### **NYACS Opposes**

Civil penalties for selling tobacco or vaping products to minors would increase sharply effective July 1, 2020, as follows.

**First Violation** – Currently \$300 to \$1,000, range would increase to \$1,000 to \$2,000

**Subsequent Violations** – Currently \$500 to \$1,500, range would increase to \$1,500 to \$3,000

**Surcharge** – Current \$50 surcharge on each fine would increase to \$250

**License Action** – Current 6-month suspension of tobacco license for repeat offenses would increase to full year

Consisting of fines, a point system, and license suspension, the existing penalty structure has proven to be a strong deterrent, cutting the rate of underage tobacco sales by more than half – from 11 percent in 2002, when it was enacted, to just 4.17 percent in 2016.<sup>3</sup>

Bootleggers and tax-dodgers who control over half of New York’s cigarette market are immune from the *existing* penalties, let alone the harsher ones proposed. They don’t even have a license, and they’re not exposed to undercover health department stings. Deliberately widening this enforcement gap would be unwise and unfair.

Nevertheless, NYACS, as a partner in preventing underage sales, would welcome the chance to discuss alternative ideas for strengthening the enforcement system.

CONTINUED →

## **Coupon and Discount Ban**

S.7507/A.9507 Part Q, Page 260, 264

### **NYACS Opposes**

Part Q would prohibit tobacco and vaping product price reduction instruments, defined as “any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.”

As desirable as this may sound on paper, in the marketplace it would have the unintended consequence of enhancing illegal trade. Coupons and other discounts are the only tools available to licensed, tax-collecting convenience stores to keep their prices anywhere near competitive with “tax free” Native American smoke shops and bootleggers, who enjoy a cigarette price advantage of at least \$5 per pack while ignoring all state and local tobacco regulations.

## **Flavored E-Cigarette Ban**

S.7507/A.9507 Part Q, Page 256

### **NYACS No Position**

Part Q would ban the sale of flavored e-cigarettes and liquid nicotine starting around May 1, 2020. We still don’t think this is the right solution to the teen vaping crisis, because widespread youth access to the product through ubiquitous illegal trade channels would be unaffected.

However, since we anticipate such a ban will pass this year, our only request is an amendment stipulating that future flavored vaping products earning PMTA authorization from the U.S. Food and Drug Administration may be sold to adults by New York registered retailers.

## **Pharmacy Tobacco Ban**

S.7507/A.9507 Part Q, Page 258

### **NYACS No Position**

Part Q would permanently ban New York pharmacies from selling tobacco products. Convenience stores do not operate pharmacies, and thus NYACS is neutral on this issue. However, we caution that a significant percentage of smokers displaced when their usual retail outlet stops selling tobacco merely shift their tobacco purchases to unlicensed, unregulated, untaxed sources. In addition, we urge the Committees to thoroughly examine the economic impact of this policy on smaller upstate pharmacy chains that currently carry tobacco.

## **Thank You**

Thank you for the opportunity to comment. NYACS is pleased to act as a resource for legislators and staff as these issues are more thoroughly examined in the coming weeks.

---

<sup>1</sup> “Cigarette Taxes and Cigarette Smuggling by State, 2017,” *The Tax Foundation*  
<https://files.taxfoundation.org/20191202120113/Cigarette-Taxes-and-Cigarette-Smuggling-by-State-2017.pdf>

<sup>2</sup> “Canada’s Ruinous Tobacco Display Ban: Economic and Public Health Lessons,” *Patrick Basham, Institute of Economic Affairs, London, July 2010*  
<https://iea.org.uk/wp-content/uploads/2016/07/upldbook517pdf.pdf>

<sup>3</sup> *Youth Access Tobacco Enforcement Program Annual Report, 4/1/15-3/31/16, New York State Department of Health, Pages 13-14*  
[https://www.health.ny.gov/prevention/tobacco\\_control/docs/tobacco\\_enforcement\\_annual\\_report\\_2015-2016.pdf](https://www.health.ny.gov/prevention/tobacco_control/docs/tobacco_enforcement_annual_report_2015-2016.pdf)