

Top Senators Urge Stores to Stop Selling Illicit Vapes

Lawmakers want shopkeepers to remove e-cigarettes that were not authorized by the F.D.A. Retailers say it is not that simple.



By Christina Jewett

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The chairmen of five key Senate committees on Thursday warned the chief executives of major convenience stores and wholesalers to stop sales of illicit flavored vaping products that they called “widespread violations of federal law.”

The senators voiced their concerns in letters to the companies, amplifying the frustration among some lawmakers in Congress over the continued availability of e-cigarettes in vivid colors and candy flavors that attract young people who could become addicted to nicotine. The unchecked sales, they wrote, “pose a tremendous public health threat.”

“F.D.A. and the industry must do more to address the youth vaping epidemic and remove unauthorized vaping products from their shelves immediately,” Senator Dick Durbin of Illinois, the Democratic whip, said.

The letters were addressed to retailers including 7-Eleven, Circle K, bp America, Pilot, Kwik Trip and others. The Food and Drug Administration had earlier issued warnings about sales of unauthorized brands like Elf Bar, E.B. Design and Funky Republic.

The senators’ letters reminded the companies that Congress gave the F.D.A. authority over tobacco products in a landmark 2009 law. Selling unapproved items can result in fines or an order to stop selling any tobacco products, the letter notes.

“Today, millions of children use unauthorized e-cigarettes, risking nicotine addiction, respiratory illness, exacerbation of depression and anxiety, and many other harms,” read the letter to Joseph DePinto, the chief executive of 7-Eleven. The company did not respond to a request for comment.

To date, the F.D.A. has approved 23 vaping products and denied millions of applications. It has allowed sales of some vapes that remain under review, including some by Juul and Vuse.

Some retailers at gas stations, represented by the Energy Marketers of America, have found the situation so murky that they formally petitioned the F.D.A. to clarify which e-cigarettes they can sell.

“We have asked F.D.A. numerous times for complete information about what can — and cannot — be sold in stores and they have declined to provide it,” Jeff Lenard, a spokesman for the National Association of Convenience Stores, said in an email. “It is long past time for F.D.A. to provide that clarity and aggressively enforce the law.”

Brian King, director of the F.D.A.’s Center for Tobacco Products, said that the 23 authorized e-cigarette devices are the only ones that can be “lawfully sold in the U.S.” He added that selling other products puts vendors at risk for seizure, injunctions or penalties.

“The F.D.A. will continue our comprehensive actions across the supply chain to protect our nation’s youth from the harms of tobacco products,” Dr. King said. The agency has issued more than 440 warning letters and 100 fines to retailers accused of selling unauthorized tobacco items.

Public health experts have issued repeated calls for the F.D.A. to complete its review of e-cigarette sales applications and clear the market of illicit vapes. The agency has said it will finish the review by June 30. So far, it has authorized only tobacco-flavored e-cigarettes and has recently rejected several menthol varieties.

A study released last summer suggested that limiting flavored vapes could have an effect: About 40 percent of adolescents said they would quit e-cigarettes if only tobacco and menthol were available, and 70 percent would quit if only tobacco-flavored vapes were marketed.

“What that says is that in this context, young people are saying, ‘If tobacco was the only flavor, I don’t know if I would continue using this product,’” said Alayna Tackett, an assistant professor at the Center for Tobacco Research at Ohio State University. She noted that the predicted behavior may not reflect what young people actually do.



Newly rebranded Elf-Bar disposable e-cigarette vape products with fruit flavors and a nicotine warning. Mike Blake/Reuters

Levels of vaping among teenagers have fallen off drastically since a surge in popularity in 2019, when about 28 percent of high school students reported using e-cigarettes within the last month. That level fell to about 10 percent in a similar survey last year.

Supporters of e-cigarettes for adult use cite those statistics as evidence that the teenage crisis has eased, and they say the F.D.A. should keep flavors available to those trying to quit traditional cigarettes.

Concerns about e-cigarette use are mounting worldwide. In January, Britain announced that it would ban disposable, flavored e-cigarettes after a survey showed that one in five young people aged 11 to 17 reported vaping in the previous year.

In December, the World Health Organization called for “urgent action” to protect children from e-cigarettes and said that many nations had no age limit on the products. E-cigarettes are highly addictive, it said, and “generate toxic substances, some of which are known to cause cancer and some that increase the risk of heart and lung disorders.”

Recent studies show the value of e-cigarettes to smokers seeking to quit — alongside risks to those who continue to smoke and vape. One study released in January found that nearly 16 percent of smokers who switched to e-cigarettes remained smoke-free six months later. That rate was similar to those who took the smoking-cessation medication

Chantix, and better than those who used nicotine gum.

Another study released last month found that the so-called dual users of cigarettes and vapes faced higher risks for cardiovascular disease, stroke and asthma.

“E-cigarettes are, for some diseases, as bad as a cigarette,” Stanton Glantz, the study’s lead author, said. “For others, they’re a little bit better. But they’re not a lot better and dual use is always worse.”

Besides Mr. Durbin, the other senators who signed the letter were Ron Wyden, a Democrat of Oregon; Bernie Sanders, an independent of Vermont; Sherrod Brown, a Democrat of Ohio; and Richard Blumenthal, a Democrat of Connecticut.

Christina Jewett covers the Food and Drug Administration, which means keeping a close eye on drugs, medical devices, food safety and tobacco policy. [More about Christina Jewett](#)