



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

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

www.nyacs.org

October 24, 2018

Hon. Scott Gottlieb, M.D., Commissioner  
U.S. Food and Drug Administration  
10903 New Hampshire Avenue  
Silver Spring MD 20993

Dear Commissioner Gottlieb:

On behalf of licensed retailers who belong to the New York Association of Convenience Stores, I object to your recent portrayal of convenience stores as more prone to underage sales of e-cigarettes than stand-alone vape shops.

There is absolutely no evidence here in New York to support that blanket assertion. In fact, according to the database of FDA tobacco compliance checks of New York State retail outlets “decided” during August and September 2018, the following five locations identifiable by their names as vape shops were inspected, and two failed – 40 percent:

AKRON VAPE SHOP	10 AKRON STREET	STATEN ISLAND, NY	No Violations Observed
GENERAL VAPE	2001 VICTORY BLVD	STATEN ISLAND, NY	No Violations Observed
PERFECTION VAPES	1839 E RIDGE RD	IRONDEQUOIT, NY	No Violations Observed
VAPE LINQ	2890 ELMWOOD AVE	BUFFALO, NY	Sale to Minor, Warning Letter Issued
VAPORZ	148 ERIE BLVD E	ROME, NY	Sale to Minor, Warning Letter Issued

By contrast, the remaining 657 locations inspected – convenience stores, grocery stores, restaurants, truck stops, tobacco-only stores, and other outlets – had a 12 percent failure rate. Nothing to be proud of, for certain. But a far cry from the dismal performance of shops you claim “generally tend to do a better job of checking ID.” And hardly grounds for letting those shops keep selling e-cigarettes while barring everyone else from doing so.

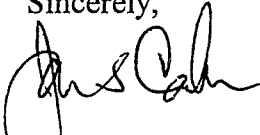
In New York, the truth is that nobody knows how many stand-alone vape shops there are, who they are, or where they are, because they are not required to register with the State of New York, as retail tobacco dealers must do annually. NYACS has helped pass state legislation that would force them to register, in order to subject them to the same undercover sale-to-minor enforcement we experience. Incredibly, Governor Cuomo vetoed it. The FDA would be well advised to address this gaping loophole rather than arbitrarily pointing a finger of blame at us.

CONTINUED →

The vast majority of teenagers who are getting e-cigarettes are getting them from older relatives and friends, rather than from licensed convenience stores. Yet these underage smokers are not held accountable at all. Incredibly, across New York State, it remains perfectly legal for minors to use e-cigarettes they obtain through these social sources. The behavior we're all so alarmed about is not even against the law.

As parents, citizens, and responsible business owners, the members of the New York Association of Convenience Stores share the community's commitment to preventing youth access to tobacco and vaping products. We will keep striving to strengthen our ID policies, operating procedures and front-line execution to drive down the incidence of underage sales. But we will not be scapegoated for a public health problem that has been allowed to intensify by policies and circumstances far beyond our four walls.

Sincerely,



James S. Calvin  
President

cc: Mitch Zeller, J.D., FDA Center for Tobacco Products  
Lyle Beckwith, National Association of Convenience Stores  
Tom Briant, National Association of Tobacco Outlets