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February 10, 2014

To: Chair Tomei, House Committee on Human Services and Housing
From: Sarah Higginbotham, Government Relations Director, American Heart Association

RE: HB 4115 & HB 4073 – E-Cigarettes

The American Heart Association applauds the effort to restrict the sale of e-cigarettes to minors and prohibit the use of e-cigarettes in public, however, we have concerns about the effectiveness of the proposed means for doing so in HB 4073 and HB 4115.

E-Cigarettes Alarming Popularity among Youth

The rate at which the use of e-cigarettes have become popular with youth is alarming, especially considering we know very little about their actual health risks or their impact on youth tobacco use. In one year alone—from 2011 to 2012—the percentage of youth in the U.S. who have used e-cigarettes doubled, according to the Center for Disease Control and Prevention (CDC) report.¹

There are reasonable concerns about the potential for e-cigarettes to act as a gateway drug to traditional tobacco products. Already, 75% of the youth surveyed who used e-cigarettes also smoked conventional cigarettes.

The rapid popularity among youth isn't surprising considering that the marketing techniques employed by the e-cigarette industry mirror those perfected by big tobacco companies to addict youth. Every major tobacco company now offers an electronic cigarette. Available in appealing candy and fruit flavors, e-cigarettes give our youth the wrong idea about smoking: that it's acceptable and harmless.

More research is needed to determine the safety of e-cigarettes, especially over the long-term and their efficacy as a cessation tool. While e-cigarettes are, in the short term, likely less harmful than cigarettes, there are concerns that they may create new tobacco users and reverse efforts that have made smoking socially unacceptable.

Regulating E-Cigarettes without Undermining Tobacco Control Laws

As we consider a pathway forward to ensuring that e-cigarettes are regulated and kept out of the hands of our youth, these points should be taken into consideration:

¹ *National Youth Tobacco Survey*, reported in Sept 5, 2013 Morbidity and Mortality Weekly Report)

- Very little is known about the health risks of e-cigarettes, their impact on youth tobacco use, or whether they are effective in helping smokers quit. No federal agency currently regulates how e-cigarettes are made or how or to whom they are marketed or sold.
- Any state legislation that defines e-cigarettes in a manner other than “tobacco products” could provide the industry with the opportunity for litigation that could further delay regulation.²
- Not including electronic smoking devices in the definition of “tobacco products” and other attempts to change laws for e-cigarettes than currently exists for other tobacco products could in the short or long term undermine existing effective tobacco control laws.
- E-cigarettes are not recommended as a cessation tool by the FDA. While they are likely less harmful than regular cigarettes, we do not have evidence to know that they are any more effective than the thoroughly tested and FDA-approved smoking cessation medications.

Recommendations

- The AHA is concerned about setting up a separate definition of “vapor products.” Rather, we recommend defining “electronic smoking device” and “tobacco products” to encompass e-cigarettes and their paraphernalia.
- The AHA has concerns about a broad exemption for any product regulated by the FDA under Chapter V of the Federal Food, Drug, and Cosmetic Act. An acceptable exemption would be for those products approved by the FDA to treat cessation.
- The AHA recommends that “vape shops” going through the same OHA certification process as “smoke shops” currently undergo. As proposed in HB 4115, they would not.
- The AHA does not support allowances for vaping in vape shops.

Thank you for your consideration and please don’t hesitate to contact me.

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² The U.S. Court of Appeals restricted the Food and Drug Administration (FDA) from regulating e-cigarettes under the drug and device provisions of the Food, Drug and Cosmetic Act absent therapeutic claims. Rather, they ruled that e-cigarettes could be regulated as tobacco products under the Family Smoking Prevention and Tobacco Control Act.