



**February 12, 2020**

**Written Testimony of**

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**Concerning**

**H.B. 20-1001: Nicotine Product Regulation**

**Before the**

**House Committee on Health and Insurance**

**Colorado General Assembly**

**Chair: Lontine, Vice Chair: Caraveo, and Members of the Committee,**

On behalf of JUUL Labs, Inc. (JLI), thank you for the opportunity today to provide comments as this committee considers H.B. 20-1001, an act concerning nicotine product regulation.

JLI exists to transition adult smokers away from combustible cigarettes. We pursue this mission while actively combating underage use of our products. A robust regulatory framework that preserves access to vapor products for adults, while addressing access, appeal and underage use is a critical foundation to accomplishing our mission and we support efforts to put that framework in place.

Many of the provisions of H.B. 20-1001 would be valuable additions to the regulatory framework for electronic nicotine delivery systems (ENDS) in Colorado. We strongly support both raising the age of sale of all tobacco and nicotine products to the age of 21 and the enhanced licensure provisions of this legislation. We know from states that have already increased their minimum age that such a policy can be effective at reducing underage access and use. In 2020, it's important that the remaining states, including Colorado, follow suit and make sure that the minimum age of 21 is enforced at the state and local level.

However, we believe the bill will have the unintended consequence of slowing conversion away from combustible cigarettes by adding another barrier for Colorado adult smokers who are looking for non-combustible alternatives, including ENDS, by prohibiting the direct shipment or delivery of these products. As such, we respectfully request that the Committee improve that provision by strengthening the age-verification process for delivery sales and imposing bulk limitations.

### **Cigarette Use Remains an Ongoing Public Health Crisis**

Smoking remains the number one cause of preventable death and disease in the U.S. and the world, killing 480,000 Americans every year.<sup>1</sup> Half of all long-term cigarette users will die from tobacco-related illnesses.<sup>2</sup> JLI's mission is to transition adult smokers away from combustible cigarettes. However, we know that we will not succeed in our mission without a comprehensively

<sup>1</sup>"Tobacco-Related Mortality." *Centers for Disease Control and Prevention*, 17 Jan. 2018, [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/tobacco\\_related\\_mortality/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm).

<sup>2</sup>*Tobacco*. World Health Organization, [www.who.int/news-room/fact-sheets/detail/tobacco](http://www.who.int/news-room/fact-sheets/detail/tobacco).

regulated category that ensures ENDS products only end up in the hands of our intended consumers: current adult smokers.

## **Tobacco 21 (T21)**

As you are likely aware, the federal government recently acted to raise the minimum-purchasing age for tobacco products, including electronic nicotine delivery ENDS, like JUUL products, to 21. JLI applauds this critical step toward reducing underage access to and use of these products. But, as a recent article in *Roll Call*<sup>3</sup> explains, "progress in reducing youth vaping will depend on states to ensure that underage sales are halted." For T21 to work, states still need to pass and enforce laws that ensure 21 is the minimum age for all tobacco products. Moreover, states that do not raise and enforce a minimum age of 21 for the sale of tobacco products risk losing access to federal block grant funding.

### **The Need for Tobacco 21**

- Nearly 94%<sup>4</sup> of smokers started before age 21 and approximately 70-80%<sup>5</sup> of underage users access ENDS products through "social sourcing," obtaining tobacco or vapor products from legal-age adults.
- 80% of high school students turn 18 before graduation—this increases the number of instances where high schoolers above the minimum legal age know many underage people, and the potential for social sourcing to youth.
- A recent study in *Addiction*<sup>6</sup> found that exposure to T21 laws yielded a 39% reduction in the odds of both recent smoking and current established smoking among 18-20-year-olds who had ever tried cigarettes.
- The Oregon Health Authority<sup>7</sup> commissioned an evaluation of their recent T21 enactment, which they found reduced recent initiation among 13-17 year-olds by 26%.
- A California study<sup>8</sup> found a 45% decrease in detected retailer sales to underage youth in the wake of that state's T21 law.

### **Underage Use Prevention**

As a company, it is essential that we do our part in preventing underage use of our products. Underage use is antithetical to our mission, and we have taken definitive steps towards the goal of restricting it, including:

- Voluntarily discontinuing the sale of all flavored products other than Virginia Tobacco, Classic Tobacco, and Menthol prior to FDA's recent ban on such flavored products. Since November 2019 we have offered only tobacco and menthol flavored products. We will not re-introduce any other flavored products unless and until the FDA determines through its

<sup>3</sup> Siddons, Andrew. "Success of Tobacco Age Change Will Depend on State Efforts." *Roll Call*, 8 Jan. 2020, [www.rollcall.com/news/policy/success-of-tobacco-age-change-will-depend-on-state-efforts](http://www.rollcall.com/news/policy/success-of-tobacco-age-change-will-depend-on-state-efforts).

<sup>4</sup> "Tobacco-Related Mortality." *Tobacco-Related Mortality*, Centers for Disease Control and Prevention, 17 Jan. 2018, [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/tobacco\\_related\\_mortality/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm).

<sup>5</sup> See CDC, 2017 Youth Risk Behavior Survey (YRBS).

<sup>6</sup> Friedman, Abigail S., et al. "Tobacco-21 Laws and Young Adult Smoking: Quasi-Experimental Evidence." *Addiction*, vol. 114, no. 10, 2019, pp. 1816-1823., doi:10.1111/add.14653.

<sup>7</sup> "Oregon's Tobacco 21 Law: Impact Evaluation." *Oregon Health Authority*, May 2019, [www.oregon.gov/oha/PH/PreventionWellness/TobaccoPrevention/Documents/Oregon-Tobacco-21-Impact-Evaluation-Report.pdf](http://www.oregon.gov/oha/PH/PreventionWellness/TobaccoPrevention/Documents/Oregon-Tobacco-21-Impact-Evaluation-Report.pdf).

<sup>8</sup> Zhang X, Vuong TD, Andersen-Rodgers E, et al. Evaluation of California's Tobacco 21 law *Tobacco Control* 2018; 27:656-662.

Premarket Tobacco Product Application (PMTA) process that their sale is appropriate for the protection of public health.

- Restricting sales on our e-commerce platform (JUUL.com) through industry-leading age-verification technology, including using third parties to verify the purchaser's personal information against publicly-available records, and limiting the amount of product that can be purchased.
- Establishing our Retail Access Control Standards (RACS) program for retailers of JUUL products, a technological standard at the point-of-sale that requires electronic ID scanning to verify age and ID validity and limits the amount of product that can be purchased. In the spring of 2019, JUUL Labs ran a pilot study among retail outlets that had adopted RACS, which showed that the overall age-verification failure rate fell to just 0.2% after implementation.
- Instituting a "three-strikes policy" as part of our mystery-shopper program that will prohibit authorized retailers from selling JUUL products for at least one year if they incur three violations for either age-verification or quantity purchase limit non-compliance within a calendar year.
- Ceasing the promotion of JUUL products on social media and aggressively enforcing against third-party posts that inappropriately depict, or sell, JUUL products. In partnership with the social media platforms, we have removed close to 2000 inappropriate accounts reaching 1.5 million followers. We have also removed an additional 45,000 illegal social media listings for JUUL products.
- Suspending the advertising and promotion of JUUL products through broadcast media (e.g., television and radio), print publications, and digital channels.

While JLI has taken these actions, we strongly believe that category-wide regulation and enforcement is necessary. We fully support the enhanced licensure and advertising provisions of H.B. 20-1001, as well as the new and enhanced penalties for persons who violate the law. We believe that these provisions are important and necessary to strengthen oversight and regulation of the category.

## **Delivery Sales Ban**

As mentioned, H.B. 20-1001 would prohibit adult consumers from continuing to have nicotine products shipped directly to their home. Such a provision would significantly disadvantage smokers in rural or remote parts of the State. Rather than prohibiting delivery sales to adult smokers, the legislation should establish more robust age-verification requirements. We believe an effective method of online sales age verification is to require:

- 1) the purchaser to create an online profile or account with personal information; and
- 2) that personal information is verified through an independent, third-party that uses commercially-available databases, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification before the online sale is conducted.

For instance, to make a purchase on JUUL.com, a user must first enter a phone number and verify physical ownership of it by entering a code sent to that number (also called two factor authentication). Once the number is verified, the user must then enter their legal name, date of birth, current address and the last four digits of their Social Security Number. That information is

combined with the verified phone number and checked against publicly available databases to confirm that (1) the information is of an adult, and that (2) the user is that adult.

If the user doesn't have or won't provide a social security number, or if their information doesn't fully match, then they are asked to upload a picture of their government issued ID and a real-time photo of themselves. This process again confirms that (1) the information is of an adult, and that (2) the user is that adult. The ID and real-time photo are checked by both computer algorithms and two human reviewers, ensuring a robust verification process. As compared to ID check at delivery, which takes less than 10 seconds, the age verification process online can take up to 5 minutes, allowing a more thorough examination of the ID and real-time photo.

We believe that age-verifications of this kind can be effective at preventing underage people from purchasing ENDS products and that such measures should be a minimum standard for online sales.

**Quantity Purchase Limits**

We also recommend establishing quantity purchase limits that restrict the amount of product that age-verified adults can be obtained in a single transaction, as well as over an established period of time (e.g., month). This approach will address the goals of the legislation without establishing another barrier for adults in search of alternatives to smoking combustible cigarettes.

In conclusion, JLI shares a common goal with policymakers, regulators, parents, school officials, and community stakeholders - combating the use of tobacco and ENDS products, including JUUL products, by America's youth. JLI strongly supports category wide restrictions that help to deter underage use while recognizing the important role that ENDS products serve in off-ramping current adult smokers. To that end, we strongly support the enhanced regulations of this legislation, but ask that this committee improve H.B. 20-1001 by allowing direct shipments of ENDS products to adult consumers, only if the seller complies with rigorous age verification requirements.

Thank you.



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