

**Testimony on Senate Bill 364  
Senate Committee on Health and Human Services  
Wednesday, March 11, 2020**

Chairman Testin and members of the Senate Committee on Health and Human Services, thank you for allowing me the opportunity to share my testimony with you today regarding Senate Bill 364.

In December, the federal government passed a law increasing the minimum age for purchasing cigarettes, tobacco products, and nicotine products. This bill aligns Wisconsin to the federal minimum age to purchase these products. In addition, we amended this bill to include non-nicotine vapor products and expanded the definition of retailers to include those selling without a license to also reflect what was put in place by federal law.

We introduced this bill to address the demonstrated public health crisis caused by the rampant use of vapor products by our youth.

Between 2017 and 2018, the use of vapor products increased 78% among high school students, and by 48% among middle school students. These students are either able to purchase the products themselves or obtain them from a friend or classmate. Increasing the smoking age to 21 will get these products out of the schools and ensure that students are not able to buy them for their friends.

There has been significant research to show that vapor products impact adolescent brain development, including parts of the brain most responsible for decision making, impulse control, and sensation seeking.

Unfortunately, we've all seen how quickly these products can effect someone's health, with hundreds of people, mostly young people, being hospitalized due to vaping-related illnesses. Last year, we also saw the first deaths linked to the use of vape products.

Even our military has expressed concerns about the increased use of smoking products by young people. A Military News op-ed written by military officials states that "use of tobacco products among service members is pervasive, harmful, and an urgent public health problem". Some legislators have expressed concerns about increasing the minimum age to 21 when soldiers can enlist at 18. Wisconsin cannot change the federal minimum age to purchase cigarettes, tobacco products and nicotine products. However, if we cannot demonstrate we are complying with this federal law, we could be in jeopardy of losing millions of dollars of federal funding for substance abuse grants.

This problem isn't going away on its own. 19 other states have already passed legislation to increase the tobacco age from 18 to 21, and I hope we can follow their lead to stop this public health crisis. Law enforcement agencies have asked us to pass this in order to be able to enforce these new federal age requirements, and I hope that the Senate can act swiftly to pass this legislation. This bill passed the Assembly unanimously on a voice vote, and I see this proposal being brought up again next session if it is not signed into law this year. Thank you again for allowing me the opportunity to share testimony in support of this bill, and I welcome any questions.



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# HOWARD MARKLEIN

STATE SENATOR • 17<sup>TH</sup> SENATE DISTRICT

**March 11, 2020**

## **Senate Committee on Health and Human Services Testimony on Senate Bill 364**

Good morning! Thank you Chair Testin and committee members for hearing Senate Bill 364 (SB 364), which conforms the state minimum age requirements for sale, purchase, and possession of cigarettes, nicotine and tobacco products, including vapor products, to the federal Food, Drug, and Cosmetics Act, effectively changing the age requirement from 18 to 21.

Changes in federal law impose a nationwide prohibition on retailers selling a tobacco product to any person younger than 21 years of age. Federal law also requires states, within approximately three years, to annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21.

Rep. Spiros and I have drafted a substitute amendment to the original bill. The main provisions of the amendment include linking the change in the minimum age requirements to the federal Food, Drug, and Cosmetics Act. It applies the minimum age requirement to selling, providing, or purchasing vapor products that are not nicotine products, and allows state and local law enforcement to enforce the prohibitions.

Ask any parent or teacher of high school students and they will tell you that vaping is the new threat to the health and wellbeing of young people. Children's Hospital of Wisconsin late last year reported eight cases of hospitalized teenagers with "seriously damaged lungs" who reported vaping in the weeks and months prior to their hospitalization. This story was closely followed by the Wisconsin Department of Health Services (DHS) announcing that doctors have confirmed 12 cases of adults with lung disease tied to vaping marijuana oils, extracts or concentrates and another 13 cases under investigation!

Vaping or JUULing (named after a brand of products) uses an electronic device to deliver nicotine, flavorings and other chemicals into a person's lungs. The devices heat liquid and produce an aerosol, or mix of small particles in the air, which a person inhales. The practice is similar to smoking tobacco-based products. But it is an alternative way to deliver nicotine to the body that some users consider "safer" or "healthier" than smoking tobacco.

Between 2017 and 2018, the use of vaping products increased by 78% for high school students and by 48% among middle school students, according to figures from the Federal Food and Drug Administration (FDA). Studies have shown nearly 40% of 12th graders report using a vaping product in the past 12 months.

It is widely accepted that vaping products, and the nicotine they deliver, uniquely impact adolescent brain development, including parts of the brain most responsible for decision making, impulse control, and sensation seeking. Additionally, a study by the Institute of Medicine of the National Academies found “substantial evidence” that vaping use among youth “increases the risk of transitioning to smoking conventional cigarettes.”

The vast majority of high school and middle school students obtain vaping products from social sources, such as a classmate, friend or sibling. Obtaining the products has proven far too easy for youth, in part because 80% of their classmates turn 18 before they graduate. Parents and educators across the state have passionately voiced their concerns about the prevalence of youth vaping at listening sessions and have urged lawmakers to take action.

Demonstrating the effectiveness of the policy, the Institute of Medicine of the National Academies found raising the minimum legal sales age nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, lead to a 12% reduction in smoking over time, and immediately improve the health of adolescents and young adults.

The increase to age 21 will help ensure fewer social access points to the products in high schools, while aligning e-vapor and tobacco products with other adult products, including beer, wine and distilled spirits. It is true that in most circumstances, the age of 18 is accepted as the entry point to adulthood. However, I believe those concerns are outweighed by the public health consequences of youth vaping.

I am also very concerned about the potential for illegal drugs and narcotics to be added to vaping products with – or without – the consent and knowledge of a user. We are already seeing this issue manifest in emergency rooms and hospitals throughout the state. Teenagers, who acquire their vaping products from others, may be more subject to this type of threat to their health and well-being.

This bipartisan legislation has broad support that includes the American Heart Association; Wisconsin Association of School Boards; Wisconsin Chiefs of Police Association; School Administrators Alliance; Boys & Girls Clubs of Wisconsin; Wal-Mart Stores; Aurora Health Care; Marshfield Clinic Health System; Marshfield Children’s Hospital; Altria Client Services; JUUL Labs, Inc.; RAI Services (formerly Reynolds American Inc.); American Cancer Society; American Lung Association; Ascension Wisconsin; Badger State Sheriffs’; Children’s Hospital of Wisconsin; DCI Group AZ; March of Dimes; Medical College of Wisconsin; Southeastern Wisconsin Schools Alliance; SSM Health; Walgreen Co; Wisconsin Academy of Family Physicians; Wisconsin Association of Distributors; Wisconsin Association of Local Health Departments and Boards; Wisconsin Association of School Nurses; Wisconsin Chapter of the American Academy of Pediatrics; Wisconsin Dental Association; Wisconsin Grocers Association; Wisconsin Medical Society; Wisconsin Petroleum Marketers & Convenience Store Association; Wisconsin Primary Health Care Association; Wisconsin Public Health Association; Wisconsin Retired Educators Association; Wisconsin Sheriffs and Deputy Sheriffs Association.

Thank you again for hearing SB 364, I am proud to be part of the solution to this growing problem in our state and will continue to work with my colleagues to move the Tobacco21 bill through the legislative process.

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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: SENATOR HOWARD MARKLEIN

FROM: Michael Queensland, Senior Staff Attorney, and Steve McCarthy, Staff Attorney

RE: 2019 Assembly Bill 422, Relating to the Legal Age of Sale for Tobacco and Vapor Products

DATE: February 28, 2020

This memorandum responds to your request for a description of current law and 2019 Assembly Bill 422, as engrossed (“the bill”), relating to the legal age of sale for tobacco and vapor products.<sup>1</sup>

## CURRENT LAW

### Recently Changed Federal Law

The recently amended federal Food, Drug, and Cosmetic Act imposes a nationwide prohibition on retailers<sup>2</sup> selling a tobacco product<sup>3</sup> to any person younger than 21 years of age, including imposing fines on retailers for violations of the law. [Further Consolidated Appropriations Act, 2020.]

Federal law also requires states to annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21 and to report to the federal government the activities carried out by the state to ensure that retailers do not sell tobacco products to individuals under the age of 21. The law gives states the opportunity to prove their compliance with the inspection and reporting requirements, including by entering into a negotiated agreement with the federal government. However, if a state ultimately does not comply with the inspection and reporting requirements, it risks losing up to 10 percent of its yearly allocation of Substance Abuse and Treatment Block Grant funds. For reference, Wisconsin received approximately \$27 million in fiscal year 2018-19 for this block grant funding. [Legislative Fiscal Bureau, *Services for Persons with Mental Illness and Substance Abuse Disorders*, Informational Paper 48 (Jan. 2019).]

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<sup>1</sup> The Assembly voted on February 20, 2020, to adopt Assembly Amendment 3 to Assembly Substitute Amendment 1, to adopt the substitute amendment, as amended, and to pass the bill, as amended, on voice votes.

<sup>2</sup> The term “**retailer**” is more broadly defined under federal law than state law. Under federal law, “retailer” means “any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.” [21 U.S.C. s. 387 (14).]

<sup>3</sup> Under federal law, the term “**tobacco product**” is broadly defined to mean any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). [21 U.S.C. s. 321 (rr) (1).] According to the U.S. Food and Drug Administration (FDA), E-liquids that do not contain nicotine or other substances made or derived from tobacco may nevertheless be components or parts of tobacco products and, therefore, subject to the FDA’s tobacco control authorities. [See, <https://www.fda.gov/tobacco-products/about-center-tobacco-products-ctp/commonly-asked-questions-about-center-tobacco-products#14>.]

Federal law also includes the following provisions relevant to state compliance with the inspection and reporting requirements:

- A three-year transition period during which the federal government cannot withhold block grant funds.
- Transitional grants in the amount of \$18,580,790 each fiscal year until 2024 for states to use to ensure compliance with the inspection and reporting requirements or for other tobacco cessation programs if a state shows it can already comply with the inspection and reporting requirements.
- A requirement to provide certain regulations and guidance, which must be updated by the federal government within the first six months of the law's enactment, including guidance on the reporting requirements and the use of transitional grant funds.

## Wisconsin Law

### Key Definitions

Under state law, a “**retailer**” means any person licensed by a city, village, or town to sell, exchange, barter, dispose of, or give away any cigarettes or tobacco products to any person not holding certain licenses or permits. As described below, state law more narrowly defines “tobacco products” than federal law, which in turn further narrows the application of the term “retailer” in state law compared to federal law. [ss. 134.65 (1) and 134.66 (1) (g), Stats.]

“**Retail outlet**” is defined as a place of business from which cigarettes, nicotine products, or tobacco products are sold at retail to consumers. [s. 254.911 (5), Stats.]

Under state law, the term “**tobacco products**” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco products” does not include cigarettes, as defined under s. 139.30 (1m), Stats. [s. 139.75 (12), Stats.]

“**Nicotine product**” is defined as a product that contains nicotine and is not any of the following: a tobacco product; a cigarette; or a product that has been approved by the U.S. FDA for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such an approved purpose. [s. 134.66 (1) (f), Stats.]

Under state law, “**vapor product**” means a noncombustible product that produces vapor or aerosol for inhalation from the application of a heating element, regardless of whether the liquid or other substance contains nicotine. [s. 139.75 (14), Stats.]

## **Minimum Age Requirements**

State law generally applies a minimum age requirement of 18 years to certain actions relating to cigarettes, tobacco products, and nicotine products. [ss. 134.66, 139.345, and 254.92, Stats.] More specifically, state law prohibits the following:

- A person under the age of 18 from purchasing, attempting to purchase, possessing, or falsely representing his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product, with certain exceptions.
- A person from purchasing cigarettes, tobacco products, or nicotine products on behalf of a person who is under the age of 18.
- A person from delivering a package of cigarettes unless the person making the delivery verifies that the person receiving the package is at least 18 years of age.
- A retailer, manufacturer, distributor, jobber, subjobber, or independent contractor or an employee or agent of any of these persons from doing any of the following:
  - Selling or providing cigarettes or tobacco or nicotine products to an individual who is under the age of 18.
  - Providing cigarettes or tobacco or nicotine products to any person for free unless the cigarettes or products are provided in a place where persons under 18 years of age are generally not permitted to enter.
- A retailer or vending machine operator from selling cigarettes or tobacco or nicotine products from a vending machine unless the retailer or vending machine operator ensures that no person under 18 years of age is present on or permitted to enter the premises where the machine is located.

In addition, state law requires retailers and vending machine operators to post certain signage where cigarettes or tobacco products are sold, indicating that sales to a person under the age of 18 is unlawful.

## **Investigations**

Very generally, under current law, a governmental regulatory authority may conduct unannounced investigations at retail outlets to enforce compliance with the requirement that retailers do not sell cigarettes, tobacco products, or nicotine products to anyone under age 18.

## **2019 ASSEMBLY BILL 422**

The bill makes changes relating to the following: the definition of “retailer;” the minimum age requirements described above; and investigations relating to compliance with those minimum age requirements.

### **Definition of “Retailer”**

The bill expands the state definition of retailer to include any person that sells, exposes for sale, possesses with intent to sell, exchanges, barter, disposes of, or gives away any vapor products to any person. However, the bill does not require that persons who sell vapor products must receive a license from the local government. Rather, the bill’s expanded definition of “retailer” only applies with regard to the state level minimum age restrictions.

## **Minimum Age Requirements**

The bill ties the cigarette, tobacco product, and nicotine product minimum age requirements to the minimum age set in the federal Food, Drug, and Cosmetic Act, effectively changing the minimum age requirements from 18 years to 21 years.

The bill also applies those minimum age-related requirements to vapor products. Note that the current minimum age-related requirements cover “nicotine products.” Therefore, one impact of this change is that vapor products that are not nicotine products would be covered by the minimum-age related requirements.

## **Investigations**

The bill changes references in current law relating to investigations concerning the minimum age requirements from 18 years of age to the minimum age set in the federal Food, Drug, and Cosmetic Act and explicitly includes vapor products in the list of products subject to investigation.

## **Effective Date and Initial Applicability**

The bill takes effect on the date after publication and first applies to purchases, attempts to purchase, possession, and false representations of age for the purpose of receiving any cigarette, nicotine product, or tobacco product by persons under the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act on that date. The bill also first applies to sales or the provision of cigarettes or nicotine or tobacco products to persons under the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act on the bill’s effective date.

MQ:SM:jal

**Wisconsin State Legislature  
Senate Hearing on Proposed Amendment to Assembly Bill 422**

**March 11, 2020**

**Proposed Amendment:** Raising the legal age for sale, purchase, and possession of cigarettes and nicotine and tobacco products, providing a legal age for sale, purchase, and possession of vapor products, and providing a penalty.

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**A GRANDMOTHER'S PLEA**

I'm sharing this statement with you not only as a Wisconsin citizen, but as a daughter, sister, mother, and grandmother of living and deceased Wisconsin citizens who has lost half of her immediate family to the ravages of nicotine products, all at a relatively young age. My mother died at 55 with COPD, my father at 67 with mouth cancer, and my brother at 47 with emphysema and lung cancer. I also lost a sister-in-law aged 53 to lung cancer. She was exposed to secondhand smoke, something that I live in fear of developing due to my long-term exposure to it.

The national decline in smoking by young people in the last decade or so gave me hope that nicotine would someday be remembered as a plague the world once endured. It fueled my pipe dream that tobacco companies would go out of business. I might feel sad for the people who lost their job, but certainly not for the industry that purposely and without regard for the consequences, sold a product that included carcinogens and was chemically engineered to cause addiction. My hope was that the politicians who supported them because of financial and/or political gain or the fear of their loss would look back with shame because they'd forgotten that American children, parents, grandparents, neighbors, friends, etc. depended on them to do what was right. Instead, they'd realize that they were manipulated into becoming an employee of the "murderous" industry.

Enter vapor products...Unfortunately, there was little known about their effects when they came on the market. The first remarks I heard about them from people justifying their use were that at least they're better than smoking. I was not so sanguine. Furthermore, I was enraged to see commercials for these products appearing on billboards, in magazines, and on television! All of this has caused an unprecedented explosion of nicotine use by young people who might NEVER have started smoking. I think it's even worse that there is no smoke. My son is a high school teacher and reports that students are secretly and sometimes openly vaping in and around school. I've witnessed it in other places where smoking is banned. Take a look around you. Someone may have just taken a hit. What's really galling, but not surprising, is that the tobacco industry is all in. They always said that if anyone infringed on their profits it would be they themselves.

It took years for people to believe the long-term effects of smoking and many more of secondhand smoke exposure. We're right in the middle of a new study, one that we don't have to wait years to acknowledge the DEADLY effects. I've heard story after story from people I know about a young person in their life who's ended up in an ICU clinging to life because of vaping, with or without added flavoring. If they survive, they leave the hospital with lungs of a 70-80 year old and the uncertainty of improvement. Raising the legal age for sale, purchase and possession of vaping products could at least post-pone exposure by young people who we've ALL heard are particularly vulnerable to its ravages.



**Wisconsin State Legislature**  
**Senate Hearing on Proposed Amendment to Assembly Bill 422**  
**March 11, 2020**

**A GRANDMOTHER'S PLEA**  
**Page 2**

That old game of Nicotine Russian Roulette was just updated to include vaping, but the stakes haven't changed...yet they continue to be misunderstood. It's not live or die. It's die immediately or die a chronically ill, life-shortened death.

It's too late for the family members I've lost to nicotine products, so I'm reaching out to you as a grandmother of this and future generations. I'm embarrassed to say that I don't know what your stand has been on this issue. Frankly, at this point it doesn't matter. What matters is our children's future. Please help! It's YOUR vote, not mine, that will make a difference. Please vote for our children...ALWAYS!

Thank you for the opportunity to share my story at this hearing.

Your anguished and concerned constituent,



Frances J. Skaros  
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Jackson, WI 53037

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American  
Heart  
Association.

TO: Senate Health and Human Services Committee  
FROM: Nicole Hudzinski, Government Relations Director, American Heart Association  
DATE: March 11, 2020  
RE: Support for Sente Bill 364

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Good morning Chairman Testin and members of the committee. My name is Nicole Hudzinski and I am the Government Relations Director here in Wisconsin for the American Heart Association. I'm joined by two of our advocates, Gabby Ralphe and Ann Dodge, to testify in support of Senate Bill 364.

I want to start by thanking Senator Marklein, Representative Spiros, and a great group of bipartisan legislators for introducing this bill. I also want to thank this committee for having a public hearing today.

Tobacco use remains the leading cause of preventable death in the United States, killing 7,900 Wisconsinites each year. Tobacco use steals lives prematurely and significantly drives up health care costs.

Raising the sales age for tobacco products, including e-cigarettes, will help eliminate tobacco use and addiction. Nearly 95 percent of adult smokers start smoking before age 21, and most 15- to 17-year-olds get their tobacco from friends who have turned 18. Raising the sales age to 21 will help remove tobacco from high schools altogether.

Additionally, adolescents' brains are still developing. Studies have shown nicotine can harm brain development and have adverse impacts on learning, memory and attention. Nicotine exposure during adolescence can also cause addiction and increase risk for future addiction to other drugs. Make no mistake about it, nicotine is a highly addictive substance.

There is also overwhelming public support for increasing the sales age. Recent Gallup results show strong support— 73% of Americans believe the minimum age to purchase tobacco products should be 21. Support is higher among women (at 76%), and even includes 64% of current smokers and 74% of former smokers.

In addition to all the aforementioned reasons, we also need to raise Wisconsin's minimum sales age to ensure compliance with recently enacted federal law. Late last year, Congress passed this policy and President Trump signed it on December 20. The law went into effect immediately.

When news of the federal law spread, we were excited and thought our work was done. However, a few short weeks later we started to hear from local law enforcement and others regarding their enforcement limitations. Turns out local law enforcement in Wisconsin can enforce local ordinance and state law; they cannot enforce federal law. To give them the authority to enforce this new federal policy, we must change state law to mirror federal law.

Additionally, Wisconsin's Substance Abuse and Treatment block grant is tied to state compliance. States risk losing up to 10% of their block grant if compliance falls below 80%. In Wisconsin, 10% of our block grant would be approximately \$2.7 million annually.

These products— whether it be cigarettes, cigars, chewing tobacco, or e-cigarettes— are not safe, and do not belong in the hands of our youth. By raising the minimum sales age for all tobacco products, we can help reduce tobacco use, nicotine addiction and tobacco-related disease and death. Moreover, by mirroring recently enacted federal policy, we can clear up confusion, allow for local enforcement, and help prevent loss of federal dollars.

We applaud Senator Marklein, Representative Spiros, and all of the cosponsors of this bill. It is a definite step in the right direction, and once fully implemented, will have an impact on youth usage of tobacco and nicotine products. Please support Senate Bill 364.

March 11, 2020

Good afternoon Chairman Testin and members of the Committee.

My name is Ann Dodge and I'm a Nurse Practitioner in Pediatric Cardiology at American Family Children's Hospital here in Madison. I'm also a volunteer with the American Heart Association, and a resident in Middleton, WI. I am here today to ask for your support of Senate Bill 364.

As part of my career, I help teens and their parents quit nicotine addictions. I currently see patients in Madison and Wausau, and starting next month in Wisconsin Rapids.

We know that there is a huge impact of nicotine on the developing adolescent body including the heart, lungs, and brain. These medical problems that you have heard about today are a result of how extremely addictive nicotine is. Firsthand in my clinic, I have seen the extreme nicotine addiction that these young people are facing. Instead of reporting statistics to you, I want to share my experience from one of my patients I saw in clinic recently. I saw 3 teenagers seeking help for their vaping nicotine addiction in a single day. This patient's name has been altered to protect privacy.

Sarah is a junior in a Madison High School. She is a very good student. She started smoking cigarettes when she was a freshman in high school. She heard about vaping 2 years ago and thought it would be a great way for her to quit cigarettes. She has now been vaping for 2 years. She has tried to quit vaping several times on her own but can't. She told her Mom she was desperate to get help so her mother made an appointment with me for Sarah.

I saw her alone so she could open up about her addiction. Sarah reports vaping 4 Juul pods per day. Each pod contains as much nicotine as a pack of cigarettes. She is spending \$40 per week on ecig supplies. She gets the money from her mom and her Mom thinks this is for her lunches. She needs to vape within 30 minutes of waking up and has to vape at least once per hour to function during the school day. Without it she becomes irritable, stressed and gets headaches. She has started coughing most of the night.

Her favorite flavor was mango until it was restricted, so now she uses mint. She said she really doesn't care about the flavor because it is just the nicotine she needs so badly. Many of her friends are trying to switch to chewing tobacco to quit because they can still use that discretely in school. She tried it but felt "nic-sick", which is the term she and her friends use for the nausea feeling related to nicotine overdose. She told me she is desperate to quit, and just wants to be free. Sarah said 2 of her friends had seizures last year and another friend had a collapsed lung related to vaping. She states she is very worried about her nighttime cough. Sarah said she feels like this is holding her back in her goals. She buys her nicotine e-cig supplies from 18-year-olds in the school.

This is Sarah's story but this could have been any of the 1/3 of our high school students that are using e-cigs.

We need to do everything we can to keep these addictive substances out of the hands of our youth, and the Tobacco 21 bill will do that. We must stop the pipeline of nicotine products being sold by 18 year olds to young children. Please support SB 364. Thank you for your time, and I'm happy to answer any questions you have.

Ann Dodge, NP  
Middleton, WI

To: Senate Committee on Health and Human Services  
From: Gabby Ralphe  
Date: March 11, 2020  
RE: SB 364, raising the minimum sales age for all tobacco products to 21

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Hi, my name is Gabby Ralphe and I'm a 16-year-old junior at Middleton High School. I'm here today to share with you a little about what I see, and my perspective on this issue.

In my high school, e-cigarette use, or what we refer to as "Juuling", has skyrocketed. With the distinguishable sweet smell filling every bathroom, finding pods in the parking lot and seeing glorified videos strewn across social media, it is taking over my generation's lifestyle. With this type of peer pressure everywhere, it is no wonder so many kids are using. However, choosing not to participate should become very easy once we take a second look at the kids who Juul.

When you look behind what may be a 'cool' facade, what you see is not pretty. The kid with the e-cigarette up his sleeve in class is not doing it to be funny or get attention; it is because he cannot last through second period without it. The girl vaping in the stall next to me started using because it was a fun, cool thing to do with friends, but now she is alone and it no longer seems that fun. The boy on SnapChat selling his name brand clothes is not doing this because his closet is too full; it is because his cartridge is too empty, and he needs cash for pods.

My classmates did not ask for this, and they do not deserve this. So many are like this because of the common misconceptions of e-cigarettes being "safe" and because buying pods from 18-year-old siblings and classmates is too easy. All these kids who I have grown up with are going to pay the consequences of nicotine addiction and unknown chemicals in their lungs because they wanted to be cool and accepted at 14.

I want the sale age of tobacco products to be 21 years old because I want these products out of my school. I want people to talk about this issue, because the younger kids in our community need to know the dangers and the risks before they take that first inhale and it is too late. I ask you to support Senate Bill 364.

# Wisconsin Chapter

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN®



March 11, 2020

***Mala Mathur, MD, MPH, FAAP – UW Health, Madison WI***

## **WIAAP**

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Good morning Chairman Testin and members of the committee. My name is Mala Mathur. I am a general pediatrician at UW Health and am Immediate Past President of the Wisconsin Chapter of the American Academy of Pediatrics. I appreciate the opportunity to provide testimony in support of Senate Bill 364.

E-cigarettes are the most common tobacco products used among teenagers, with 25% of teens nationally using e-cigarettes. Currently in Wisconsin, 1 in 5 high school students and 1 in 8 middle school students *self-report* using e-cigarettes. E-cigarettes are so easy to get and easy to hide at school with devices that look like watches, flash drives and pens.

I take care of adolescent patients every day in my clinical practice who are unaware of the harms of e-cigarettes. They are not aware that e-cigarettes contain harmful chemicals some of which can cause cancer. They are not aware that nicotine is addictive in everyone and even more addictive in their adolescent developing brain. They are not aware that using nicotine now can lead to a lifelong habit of smoking, which puts them at increased risk later on for heart disease, stroke and lung cancer. We also know that youth who smoke e-cigarettes are more likely to smoke traditional cigarettes, as they get older. In fact, the earlier in childhood an individual uses nicotine-containing products, the stronger the addiction and the more difficult it is to quit. The vast majority of adult smokers initiated tobacco use before 21 years of age. The adolescents I care for in my pediatric practice do not understand the risks associated with e-cigarettes. We need to limit their access to nicotine and other harmful chemicals now by increasing the age to purchase tobacco products and e-cigarettes to age 21 in order to prevent a new generation of adult smokers in Wisconsin.

I urge you to keep our children and the future adults of Wisconsin healthy by supporting legislation to raise the age to purchase tobacco products to age 21 in accordance with federal law.



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**Senate Committee on Health and Human Services**  
**Wednesday, March 11, 2020**  
**Testimony provided by Brian Williams, MD in support of Senate Bill 364**

Good morning Chairman Testin and members of the committee. My name is Dr. Brian Williams and I work as an adult and pediatric hospitalist for UW Health. I appreciate the opportunity to provide testimony in support of Senate Bill 364.

I'm here to report that today, 20 people are going to die in Wisconsin as a result of smoking cigarettes. And tomorrow, another 20 are going to die, and another 20 after that. That's about 600 people that are going to die this month in our state from smoking cigarettes and about 7,200 this year. One of those was a patient of mine that passed away a few weeks ago from lung cancer. This person died, decades earlier than they should have, but also spent the final few years of their life, suffering from lung disease, severely limited in what they could do, all as a direct result of cigarette use.

Caring for these patients is difficult and I often get to know them on a deep level, rather quickly. Frequently, the topic of cigarette use comes up. Often times, patients express regret, knowing they should've quit, but that they just couldn't, because quitting smoking is extremely difficult. I often ask patients when they first started and every patient describes starting before the age of 21. *Every single one.*

Now there has been steady progress in reducing the smoking rate in Wisconsin over the past several decades and we're currently seeing about 16% of adults smoking cigarettes and under 5% of high school students. Although this is still too high, this is dramatically improved from prior decades.

Sadly, we have a new problem that is threatening to wipe out that progress, and that is the E-cigarette. This device was introduced and advertised to us as a 'safe alternative' to smoking, an 'off ramp' for smokers, and even 'healthy'. This is not true. There is now emerging evidence that E-cigarette use can lead to lung cancer,



emphysema, and heart attacks. The bottom line is these devices are not safe. They contain numerous chemicals and carcinogens that are toxic to the human body.

Unfortunately, E-cigarettes are incredibly appealing to our youth. Since 2014, E-cigarettes have been the most popular nicotine product used by teens and the use of E-cigarettes is climbing every year. We now know that over 1 in 4 high school students is using E-cigarettes. My teenage patients describe E-cigarette use as being everywhere. They see it used in school bathrooms, the library, on the school playground, and even in class. This rapid rise in adolescent use is concerning because we know that in order to become a life-long smoker, you have to start young. In fact, 95% of adult smokers today report having started before the age of 21.

So why is this? The teenage brain is still going through a ton of development, up until the age of 25. When you expose that developing brain to nicotine, whether it's an E-cigarette or regular cigarette, you rewire the pathways in the brain that lead to addiction, making it hard to quit once you've started. We also know that this re-wiring of the brain sets teenagers up for mood disorders, difficulties with attention, and also increases their risk of addiction to other substances. Additionally, we now know that kids that use E-cigarettes are more likely to use traditional cigarettes in the future.

Fortunately, we have tools to reduce tobacco use. Raising the purchase age to 21 is an important one. In 2015, a report by the National Academy of Sciences estimated that tobacco 21 would lead 249,000 fewer premature deaths in those born between 2000 and 2019 along with 45,000 fewer deaths from lung cancer in that cohort.

In short, we have a duty to protect the future health of our next generation and do everything we can to limit their access to E-cigarettes and traditional cigarettes. I worry if we don't act quickly, we're going to see a whole new generation of kids growing up to be addicted to E-cigarettes and traditional cigarettes and suffer the long-term effects on their health that many of our older citizens are suffering from today. Raising the age to buy tobacco products to 21 by passing Senate Bill 364 is an important step to limiting adolescents' access to these products and the health harms that accompany them. We have an opportunity to make a lasting impact on the health of future generations and I hope you can support the legislation before you.

Thank you for your consideration. I'd be happy to take questions at this time.



**TO:** Senate Committee on Health & Human Services  
**FROM:** Sarah Yale, MD, Pediatric Hospitalist & Unit Medical Director, Children's Wisconsin  
**DATE:** Wednesday, March 11, 2020  
**RE:** Support for SB 364 – Raising the legal age for purchase of nicotine, tobacco and vapor products

Chairman Testin and members of the committee, thank you for allowing me the opportunity to testify today. My name is Dr. Sarah Yale and I am a pediatric hospitalist and unit medical director at Children's Wisconsin as well as an assistant professor.

I am here today to express my strong support for Tobacco 21 legislation and ask for your support on this important bill. I applaud the bill's authors Senator Marklein and Representative Spiros, as well as the many bipartisan cosponsors of this legislation. At Children's Wisconsin, we strongly believe that e-cigarette and tobacco use is never appropriate, healthy or safe for kids and teens. As a physician, it's extremely frustrating that after years of progress which resulted in declining teen tobacco use, we are now witnessing an alarming increase in the use of e-cigarettes which should concern parents, providers and policymakers alike. Tobacco 21 represents a positive step to address the e-cigarette epidemic and to continue reducing youth tobacco use.

On a daily basis, our pediatricians see firsthand the prevalence of e-cigarette use and are concerned about the severe risks it poses to kids' health. As you are well aware, Children's has been on the forefront of the nationwide outbreak of severe lung injuries associated with the use of e-cigarette products. We are still learning about the effects of inhaling the aerosol vapors produced by these products and remain concerned about the harmful effects of teen use of tobacco products. Regardless of the contents being used in these devices, they have no place in the hands of our youth.

Let me tell you why we are concerned about youth tobacco and particularly e-cigarette use:

- Tobacco and e-cigarette products contain nicotine. This highly addictive drug has a negative impact on brain development, which continues until the mid-20s. The adolescent brain is exquisitely sensitive to nicotine, which can cause problems with learning and memory, as well as long-term behavioral impairments including depression, anxiety and mood disorders.
- Studies have shown that high exposure to nicotine in children makes them more susceptible to nicotine addiction and puts them at risk for lifelong addiction to tobacco products and other drugs. While there are resources available for youth to quit using traditional tobacco products, there are limited resources addressing youth e-cigarette cessation. Some may turn to using traditional tobacco products instead, which also have significant health risks. As with most public health issues, prevention is critical.
- There is also not sufficient data or research regarding both the short- and long-term health impacts of e-cigarette use among adults, let alone teens. We are still learning about the effects of inhaling the aerosol produced by these products, which contains harmful chemicals, heavy metals and ultrafine particles. Additionally, these products are easy to use: vaping devices and e-liquids come in appealing and pleasant flavors, they are easy to hide and have no residual odor, they are less expensive than traditional tobacco products and they don't require a lighter.
- In Wisconsin, three-quarters of high school students say it is easy to obtain tobacco products. There has been a 154% increase in teen e-cigarette from 2014, with 1 in 5 high schoolers reporting using e-cigarettes in 2018. This effectively represents a new generation of nicotine addicts and potential future traditional tobacco users.

I want to briefly share with you some of my experiences in caring for patients diagnosed with e-cigarette or vaping associated lung injury. As a pediatric hospitalist physician at Children's, I treat pediatric patients who are sick enough to be hospitalized. This past summer we started seeing previously healthy teenagers be hospitalized with a myriad of symptoms – shortness of breath, chest pain, fatigue, abdominal pain, and weight loss, just to name a few. They were requiring supplemental oxygen just to keep their oxygen saturations at normal levels. Even scarier, minimal activity such as getting up to go to the bathroom would make their oxygen saturations drop dangerously low, and measures we routinely use in the hospital would not improve their breathing. These patients had severe respiratory distress, and we called multiple rapid responses for deteriorating patients. Kids who previously spent their time on an athletic field now were in our ICU requiring a breathing tube and ventilator.

You would think that seeing these previously healthy and active kids decompensate would be the worst part, right? Well it wasn't. Looking these teens and their parents in the face and having to tell them that we didn't know what their prognosis looked like and if their lungs would ever return to normal was worse. We don't know the long term effects of e-cigarettes - both to teens' lungs and to their developing brains. I had teenagers telling me they weren't sure if they could go more than an hour without vaping, and the fear they expressed when they realized the severity of their addiction is something that we cannot ignore. This is just a brief snapshot of what I have witnessed firsthand and illustrates why both myself and Children's Wisconsin believes passing a state law here in Wisconsin is so critical.

We are all familiar with the harmful risks associated with tobacco use including various cancers, lung disease, heart disease, stroke and more. We know that tobacco habits start when you're young: 90% of adults who use tobacco started in their teen years and 95% started before age 21. The younger a person starts using tobacco, the faster they become addicted and the harder it is for them to stop. Preventing use in the first place is critical to reducing the number of youth who smoke or use e-cigarette products and Tobacco 21 aims to do just that.

80% of kids turn 18 while in high school; unfortunately, this makes it easy to supply these products to their younger friends and classmates. That's why raising the purchase age to 21 helps make it more difficult for kids to access these products. Younger teens and middle schoolers are not as likely to be friends with 21-year-olds. Adults should be doing what we can to make these products unappealing and as hard as possible for our kids to get their hands on them.

While the federal government recently passed a national law to raise the age to legally purchase tobacco and e-cigarette products from age 18 to age 21, passage of this state bill is necessary. SB 364 will help ensure strong, adequate compliance and enforcement is conducted across the state. Important stakeholders, including law enforcement and retail partners, also need this legislation to ensure they can help keep these harmful products out of the hands of our young people and out of our middle and high schools. Strong enforcement efforts are crucial to ensuring compliance with the law.

We hope to see cross-sector cooperation in preventing e-cigarette possession among our young people. This includes doing what we can to aid enforcement efforts to prevent kids from having easy access to these products and reduce their opportunities to try them in the first place.

Tobacco 21 is an important component of addressing this public health crisis among our youth. It is alarming to see high school tobacco use jumped from 11% in 2017 to 27.5% in 2019 according to the National Youth Tobacco Survey. Together we must work to reverse this alarming trend. I thank you for your time today and ask again for your support for this legislation. I am happy to answer any questions you may have.

*Children's Wisconsin (Children's) serves children and families in every county across the state. We have inpatient hospitals in Milwaukee and the Fox Valley. We care for every part of a child's health, from critical care at one of our hospitals, to routine checkups in our primary care clinics. Children's Hospital also provides specialty care, urgent care, emergency care, dental care, school health nurses, foster care and adoption services, family resource centers, child health advocacy, health education, family preservation and support, mental health services, pediatric medical research and the statewide poison hotline.*

Gregg H. Wieczorek  
Principal  
Arrowhead Union High School  
Testimony SB 364

I started my job as principal at Arrowhead High School nearly 27 years ago. At that time Arrowhead, like most schools, had a significant problem with students smoking on grounds. Gradually the problem started reducing and dropped significantly in the early 2000s. We fought the good battle and got kids to stop smoking. I thought we were done with the nicotine fight at that time.

Just when I thought we had the nicotine problem solved we started seeing vaping pop up in our school. We quickly realized this was a serious problem that was not going to go away anytime soon. The first indication of how addictive vaping really is and how serious a problem we had was when student-athletes who had devoted a lot of their youth to a specific sport were getting caught vaping in school; which resulted in a suspension from their sport. In a short period of time, these students had been caught vaping so many times they lost all eligibility to play a sport they loved. Feeding their addiction to nicotine was more important than their passion for their sport.

These students are so addicted they will vape in the classroom, lunchroom, hallway, or bathroom. When asked why they do this, the common answer is that it calms them down and relieves their stress. When all they are really doing is staving off withdrawal symptoms by putting more nicotine into their body. Across the country, this problem of teen vaping is getting consistently worse. According to the National Youth Tobacco Survey in 2013, only 4.5% of all teenagers had vaped in the past 30 days, in 2019 the number has risen to 27.5 % which equates to 5 Million kids vaping. Even with young people dying or ending up in the hospital all over our country, teenagers are still vaping at an alarming rate. I wonder how many 25-year-olds will be carrying an oxygen tank with them like a 2 pack-a-day 80-year-old with emphysema.

“How are students getting this stuff?” is a common question I hear. One of my students got his 19-year-old brother to legally buy vaping devices, which he then sold to his friends and classmates for a 100% markup on the cost. Young people are going on-line and checking the “Are you 18 Box” yes which enables them to order any device or vape oil they want. The vape oils are marketed to a younger audience with flavors like Cotton Candy and Gummy Bear. It appears as though the companies are luring the youngsters in with flavors that appeal to kids and keeps them coming back with addiction to nicotine. The devices that are available are getting smaller and more easily concealed. Who needs to hide the fact they are vaping; not the adult trying to quit smoking, but the kid who doesn’t want their parents to find out does.

There is significant research on how nicotine negatively affects the developing adolescent brain, specifically In the area of attention, learning, and memory. It comes as no surprise to me that

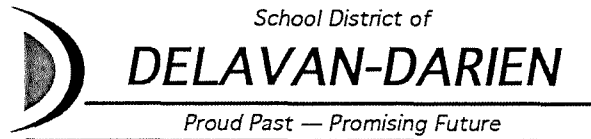
we see our academic scores going down around the state with over a quarter of our students vaping regularly.

At Arrowhead we are training high school students to go back to their middle school and tell the 6th, 7th, and 8th graders about the dangers of vaping in an attempt to be proactive and stop them before they start. I give informational sessions on vaping to the parents in our seven feeder schools to help them fight the battle at home.

I became a principal to help students learn and make an impact on the education of our youth. Unfortunately, I'm spending way too much time tackling the vaping problem when there are other things I should be doing. We are apparently allowing companies to make billions of dollars with no regard for the health of our youth.

I ask that you help us help the youth of this state by passing SB 364.

I brought some of the devices that have been confiscated from some of our students that I would like to show you at this time.



324 Beloit Street • Delavan, Wisconsin 53115 • (262) 233-6800 • Fax (262) 728-5954 • [www.ddschools.org](http://www.ddschools.org)

To: Senate Committee on Health and Human Services

Re: Senate Bill 364, the so-called "Tobacco 21" legislation, relating to: raising the legal age for sale, purchase, and possession of cigarettes and nicotine and tobacco products, providing a legal age for sale, purchase, and possession of vapor products, and providing a penalty.

My name is Jim Karedes, Principal at Delavan-Darien High School in Walworth County. My administrative team is completely for Senate Bill 364, requiring the legal age to purchase vaping products and tobacco to be set at 21 years of age. We have experienced, first hand, the prevalence and rising usage of vaping products by our middle and high school student populations. The flavors that mask the chemicals are marketed directly to developing brains in our middle & high school students. Requiring the purchaser to be at a minimum of 21 years of age will help keep the products out of our building and away from our students for consumption. Too frequently our seniors and 18 year old students are purchasing these items and selling/providing them to our younger students. We fully believe support healthy choices for our youth in the Delavan-Darien community.

I would like to share the data (below) to support SB 364. I have taken the liberty to assemble our Youth Risk Behavior Survey data from the 2018-19 academic year for both Phoenix Middle School & Delavan-Darien High School (both members of the Delavan-Darien School District). Additionally, I was able to further assemble data from 6 of the 13 high schools (public, charter, virtual or other type of school) as only 6 of them (46%) participated in the survey. Participating schools included: Elkhorn Area, Delavan-Darien, Whitewater, East Troy, Lake Geneva Badger and the Walworth County Alternative High School. Finally, there were also 14 public schools in Walworth County that served middle school students. 5 of the 14 (36%) middle schools (public, charter, virtual or other type of school) participated in the survey.

The Youth Risk Behavior Survey (YRBS) asks students about both traditional tobacco products and electronic tobacco products. Questions about electronic tobacco were added to Wisconsin's state YRBS in 2017. The 2019 survey asked about current and lifetime use of electronic vapor products, such as JUUL.

By the tables below, you can see:

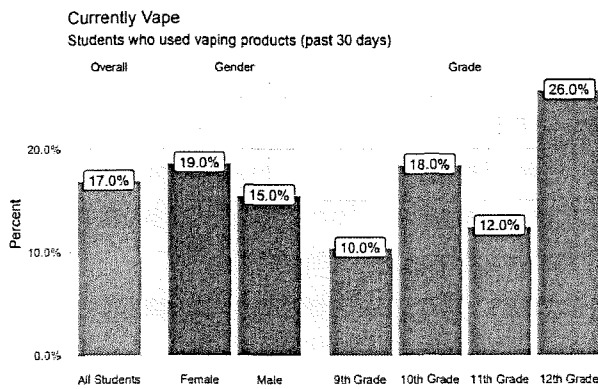
17% of DDHS students reported vaping in the 2018-19 academic year;

18% of Walworth County high school students...

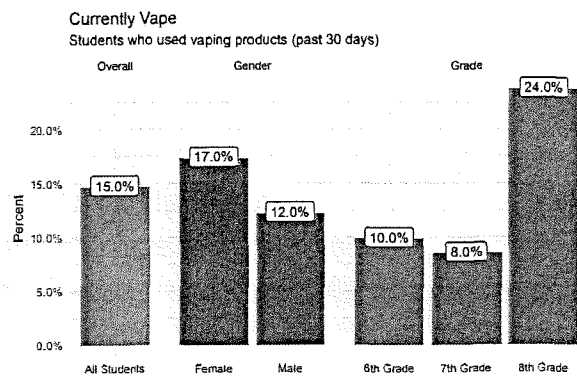
15% of Phoenix Middle School students...

9% of Walworth County middle school students...

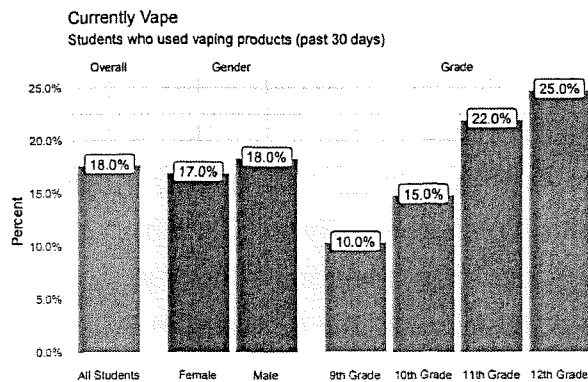
### Delavan-Darien High School



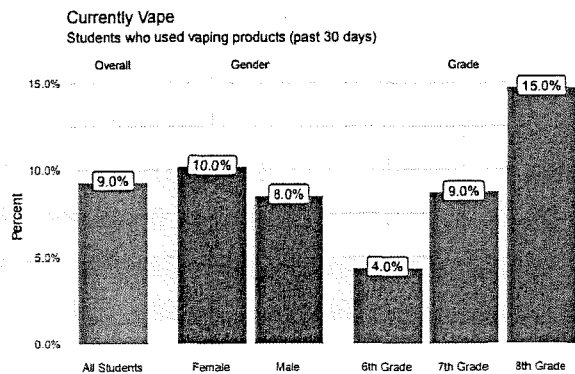
### Phoenix Middle School



### Walworth Cty High Schools



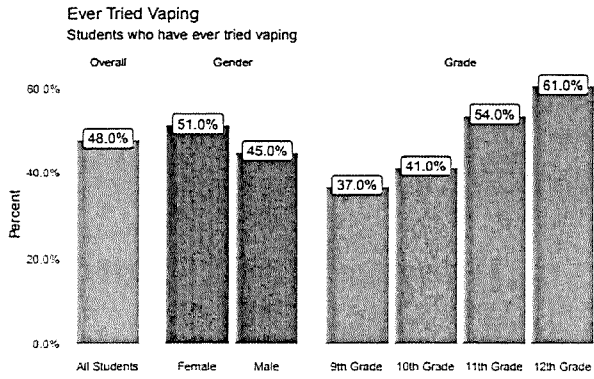
### Walworth Cty Middle Schools



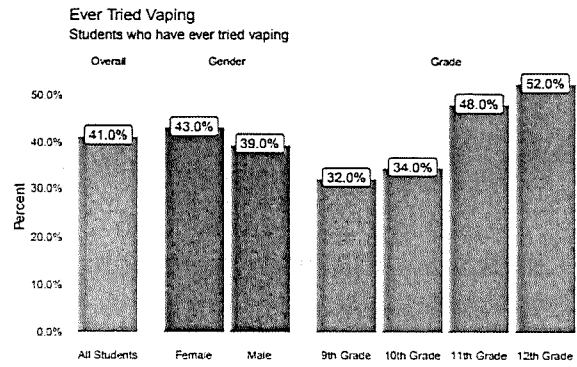
By the tables below, you can see:

48% of DDHS students reported having tried vaping;  
41% of Walworth County high school students...

### Delavan-Darien High School



### Walworth Cty High Schools





Students were asked about a number of other tobacco products, including cigarettes, cigars, and chew or other smokeless tobacco products. The charts below show the percent of students who responded affirmatively to any of these questions about traditional tobacco products.

By the tables below, you can see:

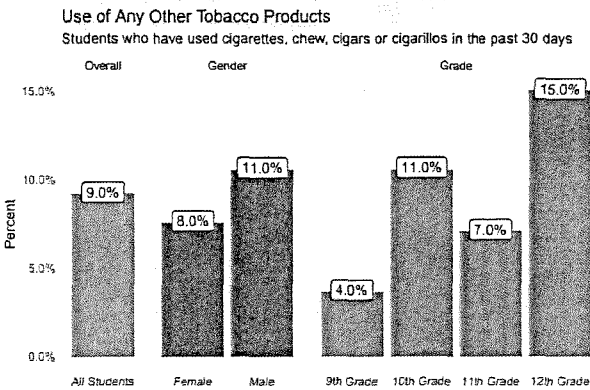
9% of DDHS students reported using "other" tobacco products;

9% of Walworth County high school students...

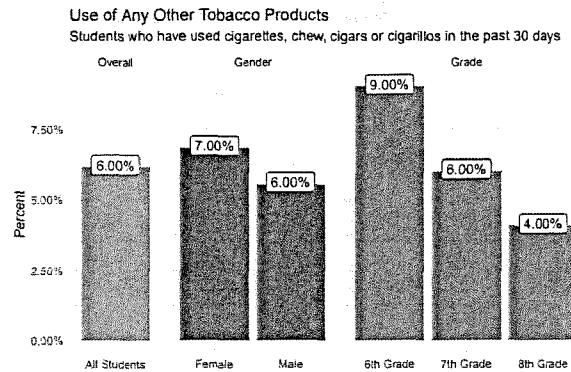
6% of Phoenix Middle School students...

4% of Walworth County middle school students...

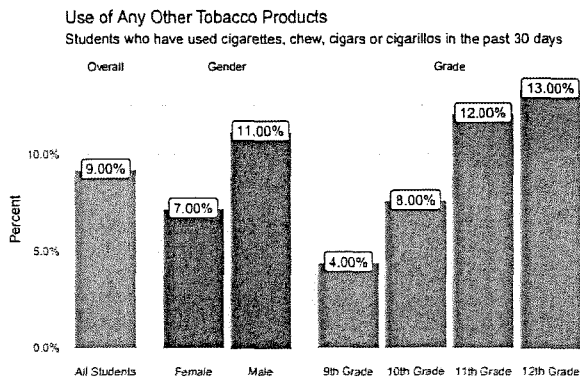
### Delavan-Darien High School



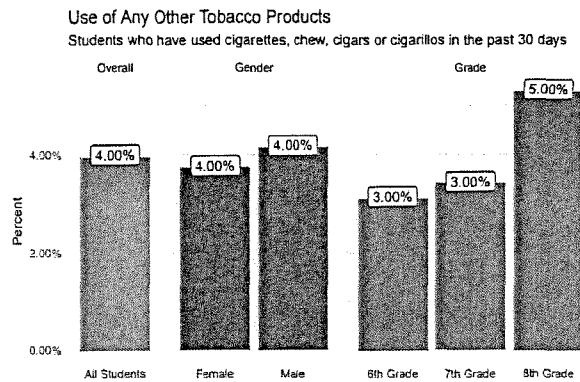
### Phoenix Middle School



### Walworth Cty High Schools



### Walworth Cty Middle Schools



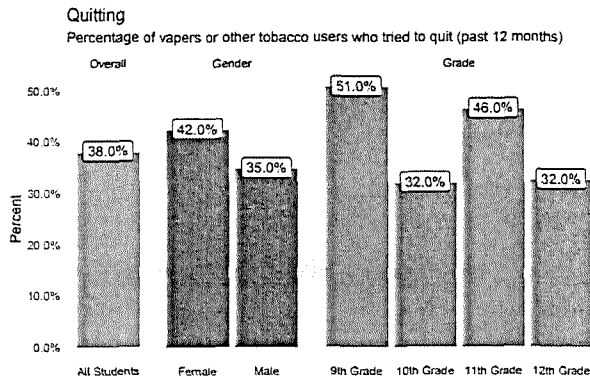
## Tobacco Cessation

Students were asked whether they had tried to quit using any tobacco products, including electronic tobacco products.

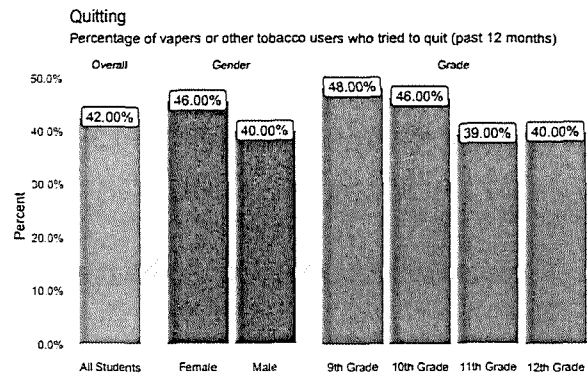
By the tables below, you can see:

38% of DDHS students reported trying to quit vapes or tobacco use;  
42% of Walworth County high school students...

### Delavan-Darien High School



### Walworth Cty High Schools



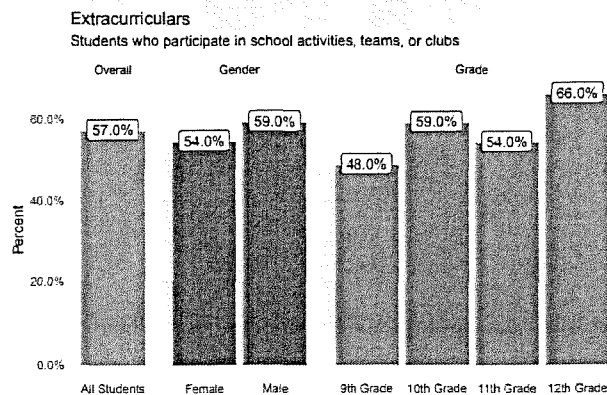
Students were asked how many hours per week they participate in "school activities, such as sports, band, drama or clubs". The chart below shows students who indicated that they spent any time during a typical week participating in such activities.

This data is shared to model that until we get 100% of our students involved in extracurricular activities, there is time for them to make poor choices before or after school hours.

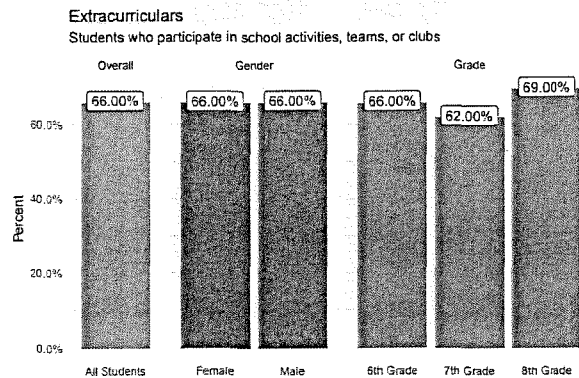
By the tables below, you can see:

- 57% of DDHS students reported vaping in the 2018-19 academic year;
- 67% of Walworth County high school students...
- 66% of Phoenix Middle School students...
- 71% of Walworth County middle school students...

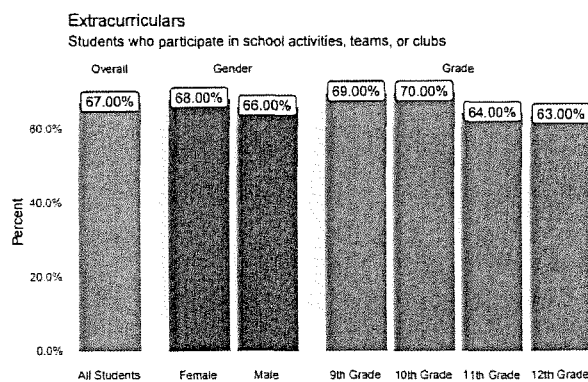
### Delavan-Darien High School



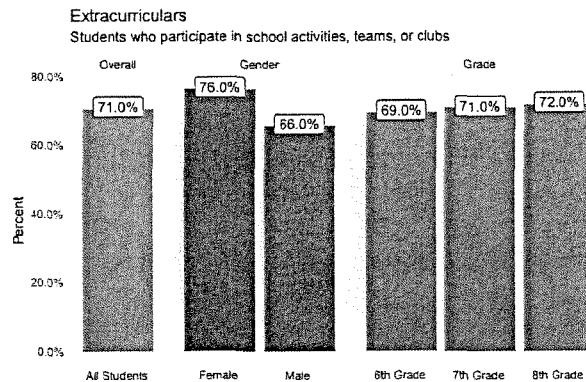
### Phoenix Middle School



### Walworth Cty High Schools



### Walworth Cty Middle Schools



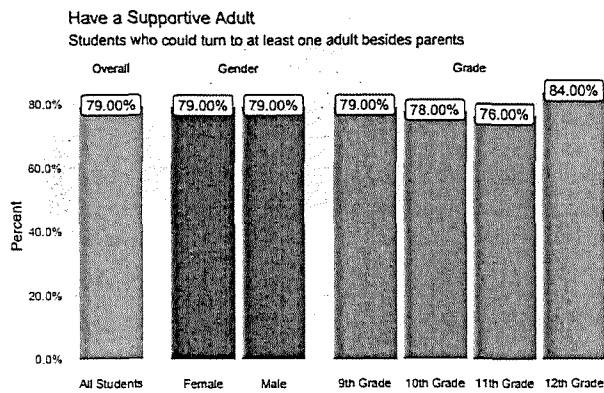
Students were asked how many adults besides their parents they could speak with about an important question affecting their life. The chart below shows students who had at least one such adult.

This data is shared as we know supportive adults are a vital resource in a young person’s life. Parents are a primary source of support for many young people. Having other supportive adults is also important. Until we achieve 100%, we have students receiving advice (including using e-cigarettes) from others that may not otherwise provide the appropriate advice.

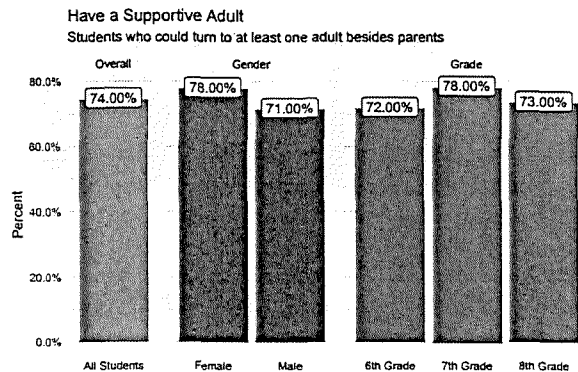
By the tables below, you can see:

- 79% of DDHS students reported having a supportive adult;
- 83% of Walworth County high school students...
- 74% of Phoenix Middle School students...
- 79% of Walworth County middle school students...

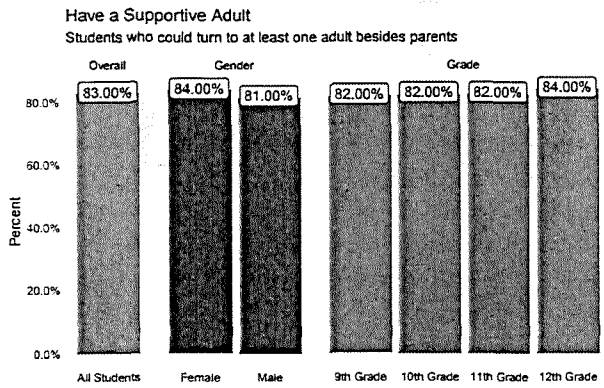
### Delavan-Darien High School



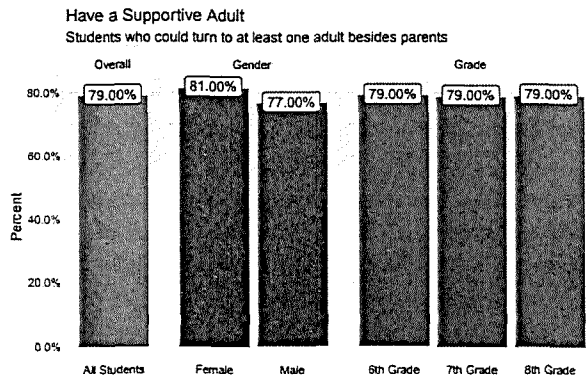
### Phoenix Middle School



### Walworth Cty High Schools



### Walworth Cty Middle Schools



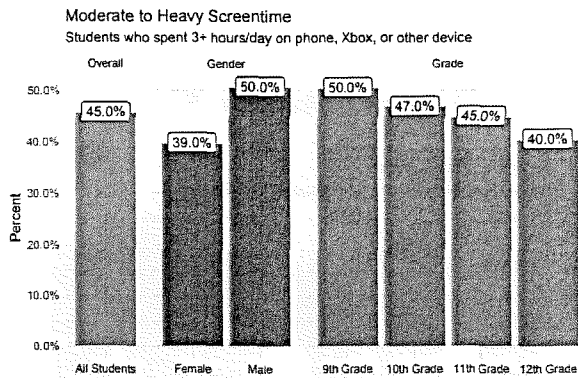
Students were asked the amount of time per day spent watching television and engaging in other forms of media, such as social media or video games.

This data is shared to model that our students are receiving advertisements from the e-cigarette and nicotine companies in all forms a facets, including social media and television.

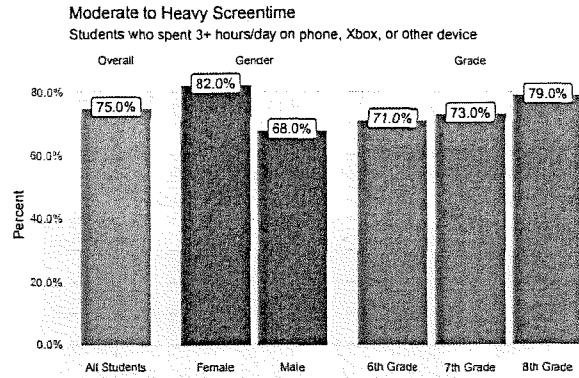
By the tables below, you can see:

- 45% of DDHS students spent 3+ hours per day with screen time;
- 43% of Walworth County high school students...
- 75% of Phoenix Middle School students...
- 57% of Walworth County middle school students...

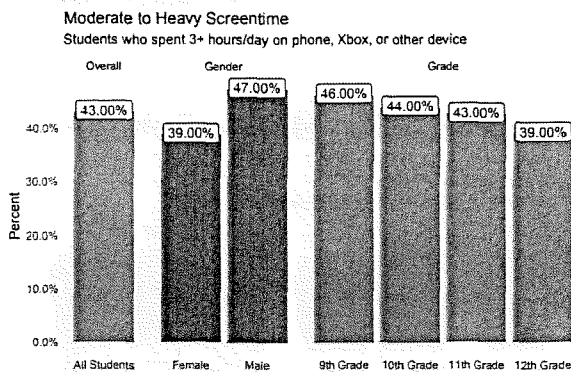
### Delavan-Darien High School



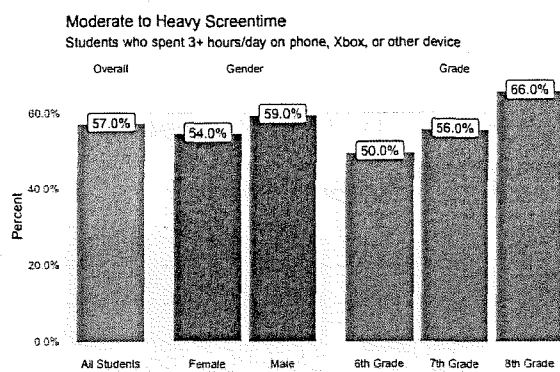
### Phoenix Middle School



### Walworth Cty High Schools



### Walworth Cty Middle Schools

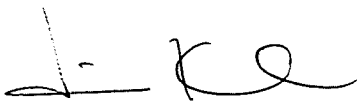


Final Talking Points:

- Delavan-Darien High School has cited 28 students this year for underage vaping
- Delavan-Darien High School has had a minimum of one vaping incident per week this academic year.
- Wisconsin schools are directly experiencing the vaping and e-cigarette epidemic, directly handling the fallout from rising teen nicotine addiction.
- Due to the flavor and marketing campaigns by e-cigarette and vaping vendors, districts have seen an immense increase in students using and selling these products to their peers.
- In Wisconsin, the average is 1:5 high schoolers using e-cigarettes. The middle school use is 1:9.
- The urgency is upon us now, before more illness and deaths associated with vaping occur, to take action to protect our students.
- We have direct links (noted above) that our current 18 year old students are providing our middle & high school aged students with access to e-cigarettes and vapes. Raising the minimum purchasing age from 18 to 21 would not necessarily negate, but would certainly reduce the number of middle and high school aged students that would have access to these products.

Thank you for listening and supporting the legislation (SB 364) to support all students in the Delavan-Darien District, Walworth County and the State of Wisconsin.

Respectfully Submitted,



Jim Karedes, Principal  
Delavan-Darien High School  
262-233-6601

Good morning, Mr. Chairman and committee members,

Thank you for allowing me to testify. I am here on behalf of the American Lung Association in Wisconsin. This testimony is actually provided by one of our local leadership board members, Dr. Todd Mahr. Dr. Mahr is also the chair of the statewide tobacco control coalition, the Partners for a Tobacco Free Wisconsin and its 100+ member organizations. Dr. Mahr is a pediatric allergist at Gunderson Health System. He was not able to testify in person due to his patient schedule.

The American Lung Association supports SB364. This is a change in our earlier position which was neutral. While we still believe that there are important areas, such as retailer licensing that must be addressed, this bill is necessary to clear up confusion between state and federal regarding enforcement authority. The laws currently conflict and the only way to resolve that conflict is by passing this bill.

Dr. Mahr treats many adolescent patients with asthma. Many of those 14-15 year olds are hooked on vaping because of the flavors and nicotine. This of course also worsens their asthma. Just two weeks ago, he met with a 14 year old patient whose FEV1 was down. FEV1 stands for Forced Expiratory Volume – a standard test among patients with asthma to measure the ability to expel air from the lungs). When questioned, she admitted to vaping “pineapple ice” disposables. She also reported that her 19 year old brother obtained them for her from a local vape. She shared that she thought the products were mainly just “water vapor.” Dr. Mahr took the time to look up the specific product with her on line where they discovered that a single unit contains 50 mg of nicotine.

Raising the legal age to purchase tobacco products is not a magic bullet to stop teens from smoking and vaping, especially as long as flavored products exist, but it is a solid step in the right direction.

On behalf of Wisconsin’s teens, Dr. Mahr, the American Lung Association and I urge you to support SB364 to get tobacco products out the hands of kids and raise the legal purchase age to 21.



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[WisconsinGrocers.com](http://WisconsinGrocers.com)

Michelle Kussow  
Wisconsin Grocers Association  
SB 364 Testimony

Good morning Chairman Testin and members of the committee. My name is Michelle Kussow and I am here on behalf of the Wisconsin Grocers Association. We represent more than 600 grocers-both independent and chain stores, convenience stores, grocery warehouses and food manufacturers.

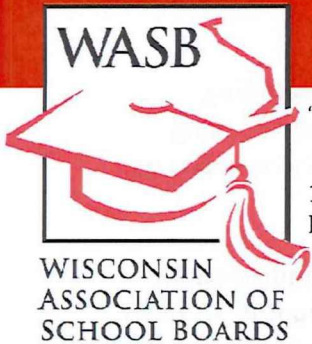
I am here to register support for Senate Bill 364 and ask that the committee act quickly on this issue. As you've already heard, President Trump increased the age to purchase tobacco to 21 in December, 2019. Senate Bill 364 raises Wisconsin's minimum sales age to 21, but more importantly provides consistency to retailers.

We understand there are opponents to raising the tobacco age, but this bill is no longer about raising the legal age to buy tobacco. It is about providing uniformity and consistency to retailers and ensuring state funding for enforcement.

After the federal law changed last December, there was a lot of confusion among many of our members, but they were quick to adopt to the new age requirement. We assume there are retailers, probably not WGA members, that are taking advantage of the lack of enforcement and consistency, and still selling tobacco to minors. This puts the retailers complying with the law at a competitive disadvantage and makes us all look bad. Passage of SB 364 will prevent this by providing a consistent minimum age but also by ensuring enforcement of 21-year old tobacco sales.

Once again, I would like to register Wisconsin Grocers Association's support for SB 364 and encourage the committee to do the same.





"Leadership in Public School Governance"

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

122 W. WASHINGTON AVENUE, MADISON, WI 53703  
PHONE: 608-257-2622 FAX: 608-257-8386

TO: Members, Senate Committee on Health and Human Services  
FROM: Dan Rossmiller, WASB Government Relations Director  
DATE: March 11, 2020  
RE: SUPPORT for SENATE BILL 364, raising the legal age for sale, purchase, and possession of cigarettes and nicotine and tobacco products, providing a legal age for sale, purchase, and possession of vapor products, and providing a penalty.

The Wisconsin Association of School Boards (WASB) is a voluntary membership association representing Wisconsin's 421 locally elected public school boards.

The WASB supports Senate Bill 364, as amended by Senate Substitute Amendment 1, based on our member-approved resolutions, specifically, WASB Resolution 6.02, which states: "The WASB supports school learning environments free of tobacco, nicotine and vaping products and devices."

We view enactment of T-21 legislation as a way to help keep cigarettes, tobacco and nicotine products and vaping products out of schools by raising the legal age for purchase and possession of these products from 18 to 21. As I will describe, these products are harmful to the health of schoolchildren and disrupt the learning environment in schools.

Beyond our concerns about the health of students and staff and the learning environment, our interest is also motivated by existing state and federal laws as well.

Wisconsin school boards are required by section 120.12(20), Wis. Stats., to prohibit the use of tobacco products on premises owned, rented by or under the control of the school district. This prohibition applies to any use of tobacco products, not just smoking, and applies to everyone, not just students and staff.

The federal Pro-Children Act of 2001 also prohibits any person from permitting smoking within any indoor facility that is used to provide regular kindergarten, elementary or secondary education to children and is funded directly by the federal government or funded through state or local governments as part of a federal grant.

The health hazards of tobacco smoking and other tobacco products are well known, as is their potential for causing addiction. It is also well known that the risk of addiction and serious health consequences increases in proportion to the age at which use first begins.

Similar risks are emerging with respect to vapor products, the use of which is already widespread and growing among high schoolers and is rapidly increasing among middle schoolers as well.

Vapor products and devices are being designed specifically to appeal young people, including through the use of flavorings (such as mint, fruit, and bubble gum) that not only appeal to young people but may encourage young people who otherwise might not have been exposed to tobacco or nicotine products or cigarettes to take up vaping.

Studies indicate an alarming number of young people (mistakenly) believe that the liquid used for vaping contains only water and flavoring and are unaware that vape liquid contains nicotine or other harmful chemicals. As a result, they may see vaping as less dangerous than using other tobacco products, such as cigarettes. However, the amount of nicotine in the vape liquid or “juice” can be the same or even more than the amount found in cigarettes and the long-term health effects of inhaling vapor heated to as high as 400 degrees or more remain to be determined.

It is becoming increasingly clear that the use of e-cigarettes and vaping devices poses a significant – and avoidable – health risk to young people. According to the U.S. Surgeon General, beyond increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body. School leaders ask for your help in removing vaping from schools.

Because vaping devices produce vapor rather than smoke, their use is easier to conceal than traditional tobacco products or cigarettes, and their small size and design also makes them easy to conceal, increasing the likelihood they will be used in schools, disrupting the learning environment.

As you will no doubt hear in other testimony today, the use of e-cigarettes and vaping devices has not only become vastly more widespread in schools, but students have become bolder and bolder in their use of these products. Vaping devices are increasingly being passed back and forth between students, often during classes. It is not uncommon to students engaged in a game of dare to see who can “vape” either directly in front of a teacher or as close to a teacher as possible. These shenanigans distract both the perpetrators and fellow classmates from the lessons sought to be imparted by teachers. In addition, the nicotine contained within the vape juice produces its own sort of “high” which, in most cases, is also not conducive to effective student learning.

Schools, for all the above reasons, have a strong interest in limiting both the use of tobacco and the use of e-cigarettes and other vaping products. School leaders are finding this increasingly difficult, as the use of e-cigarettes and vaping devices increases, the potential and serious health hazards from vaping become more and more apparent, and as new and easy-to-concealed devices emerge.

Establishing a legal age of 21 in state law will enable local law enforcement to enforce the federal legal age, which Congress passed, and the President has signed into law. This, in turn, will significantly reduce the social access points through which cigarettes, tobacco and nicotine products, and vapor products can be obtained by school age children and used in their schools. At the same time, it will also align the legal age for vaping and tobacco products with other adult products, including beer, wine and distilled spirits.

History tells us that in large measure, the increase in the legal age for alcohol products from 18 to 21 served successfully to remove alcohol issues from most middle school and high school campuses. We believe that a similar effect will result from the establishment of a legal age of 21 for cigarettes, tobacco and nicotine products and vapor products.

For all of the above reasons, the WASB supports Senate Bill 364, as amended by Senate Substitute Amendment 1, and urges your support as well.



Wisconsin Public Health Association  
Wisconsin Association of Local Health  
Departments and Boards



**WALHDAB**

Public Health In Action

Wisconsin Association of Local Health Departments and Boards

563 Carter Court, Suite B, Kimberly, WI 54136  
920-882-3650 · 877-202-4333

DATE: March 11, 2020

TO: Members of the Senate Committee on Health and Human Services

FROM: Wisconsin Public Health Association, Wisconsin Association of Local Health Departments and Boards

RE: Please Support Senate Substitute Amendment 1 to Senate Bill 364

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Chairman Testin, Vice-Chair Kooyenga, Ranking Member Erpenbach, and Committee Members,

Thank you for the opportunity to provide written testimony on Senate Bill 364. Representing over 1,200 public health professionals statewide, the Wisconsin Public Health Association (WPHA) and the Wisconsin Association for Local Health Departments and Boards (WALHDAB) are dedicated to promoting and protecting public health in Wisconsin, which is vital to a healthy population, lower health care costs and a thriving economy. WPHA and WALHDAB support Senate Substitute Amendment 1 in mirroring federal standards that require retailers to restrict sales to individuals under 21 years of age when selling tobacco products, including e-cigarettes.

The use of e-cigarettes among Wisconsin teenagers is on the rise. According to the 2018 Wisconsin Youth Tobacco Survey, 20.1 percent of Wisconsin high schoolers surveyed admitted to regularly using e-cigarettes, an increase of 154 percent since 2014. Additionally, the data indicate a 272 percent increase in usage of e-cigarettes among middle schoolers since 2014. The addictive nicotine found in tobacco products and e-cigarettes slows brain development in adolescents.

Wisconsin is not unique. E-cigarette use among teenagers has rapidly increased nationwide. In an effort to combat this public health crisis, the federal government raised the age of purchase for all tobacco products to age 21 in December 2019. While the policy set a national standard, without a change in state statute, state and local law enforcement do not have authority to enforce sales to 18, 19, and 20 year-olds, and the WI WINS Compliance Checks Program can only monitor tobacco sales to those under age 18, per Wisconsin law.

Senate Substitute Amendment 1 ensures consistency with federal requirements and also guarantees all e-cigarettes, regardless of nicotine content, will fall under the age 21 standard. Although some e-cigarettes include nicotine, other products do not contain nicotine but do possess a variety of other harmful chemicals.

There has been a well-reported outbreak of vaping-related lung disease nationwide called EVALI. According to the Centers for Disease Control and Prevention, over 2800 have been hospitalized, and 68 people have died. Research identified Vitamin E acetate, an additive in some THC-containing e-cigarettes, as the primary cause of EVALI. Even before the outbreak, two chemicals found in some e-cigarettes – diacetyl and 2,3 pentanedione – had been shown to cause irreparable lung disease.

While Senate Amendment 1 to Senate Bill 364 addresses age-of-sale concerns, more needs to be done to fulfill a comprehensive response to youth tobacco use, including the youth vaping epidemic. A change in minimum age to buy tobacco products is necessary to enforce federal law; however, we would prefer a bill that includes e-cigarettes in the definition of tobacco products (along with other public health model

definitions), that repeals preemption and allows local municipalities to pass more stringent local tobacco and vaping restrictions, and that requires vape shop licensure.

For the sake of uniformity in regulation with federal requirements, WPHA and WALHDAB ask the Senate Committee on Health and Human Services to support Senate Substitute Amendment 1 to Senate Bill 364. However, we also urge this committee and the legislature take a comprehensive approach in addressing the burden of tobacco and e-cigarettes.

If you have any questions, please contact our government affairs team Erik Kanter ([erik@hovenconsulting.com](mailto:erik@hovenconsulting.com)) and Tim Hoven ([tim@hovenconsulting.com](mailto:tim@hovenconsulting.com)).

**To: Members of the State Senate Committee on Health and Human Services**

Thank you for considering Senate Bill 364 to increase the legal age of sale for all tobacco products, including e-cigarettes and vaping devices, from 18 to 21 years of age.

Health experts in Wisconsin have described the devastating consequences of tobacco and e-cigarette use. Many high school-aged patients want to quit but are struggling with the nicotine addiction. High school students and principals have described how rampant e-cigarette use has become in Wisconsin. Freshman and sophomores have no difficulty obtain tobacco products from seniors who are 18. Upperclassmen have no problem making a quick buck by reselling a new Juul to younger aged students.

Medical professionals, school officials, parents and students are asking you for help. This is an epidemic and regulation is needed to get these products out of the hands of our youth.

At least 18 states have already increased the minimum sales age from 18 to 21 as has the Federal Government. Data from many states show that Tobacco 21 helps reduce use of all tobacco products, including e-cigarettes, in middle and high schools.

Some may say, "If you're old enough to serve in the military, you should be old enough to smoke." The surgeon generals of the Air Force, Army, Navy and United States all support efforts that reduce tobacco use among members of our military, because tobacco products threaten the health, fitness and readiness of our nation's soldiers. Smoking is not a freedom, it's a bondage.

I ask all of the members of the committee to support Senate Bill 364 and protect our next generation from the health dangers of smoking.

Tim Sanborn MD, MS

Pleasant Prairie

Member of the Wisconsin Advocacy Committee of the American Heart Association



March 11, 2020

Written Testimony of

**Genevieve Plumadore, Senior Regional Manager  
State Government Affairs, JUUL Labs Inc.**

Concerning

**Senate Bill 364: Raising the legal age for sale, purchase, and possession on cigarettes and nicotine and tobacco products, providing a legal age for sale, purchase, and possession of vapor products, and providing a penalty.**

Before the

**Senate Committee on Health and Human Services  
Wisconsin Legislature**

Chair Testin, and Members of the Committee,

On behalf of JUUL Labs Inc. (JLI), I am writing to express strong support to enact legislation to align state law with federal law and prohibit the sale of tobacco and vapor products to a person under the age of 21. We believe that raising the minimum age is a critical step in combating underage use of cigarettes, tobacco products, and vapor products.

As you are likely aware, Congress recently passed and the President signed legislation to prohibit the sale of tobacco products, including vapor product, to persons under the age of 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>1</sup> explains, "progress in reducing youth vaping will depend on states to ensure that underage sales are halted." For the new federal law to work, states should still pass and enforce laws that ensure that retailers only sell those under 21 and older. As an incentive, states that do not adopt strategies to enforce against retailers selling to underage persons risk losing a portion of federal block grant funding.

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

- Nearly 94%<sup>2</sup> of smokers started before age 21 and approximately 70-80%<sup>3</sup> of underage users access vapor 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 of 18 are in constant contact with many underage students, which raises the possibility of social sourcing to youth.

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<sup>1</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).

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- High school smoking rates in Needham, MA fell 47%<sup>4</sup> after a local policy raising the minimum age to 21 was enacted.
- A recent study in *Addiction*<sup>5</sup> found that tobacco-21 laws reduced the odds of both recent and current established smoking among 18-20-year-olds who had ever tried cigarettes by 39%.
- The Oregon Health Authority<sup>6</sup> commissioned an evaluation of their recent minimum age increase, which found reduced recent initiation among 13-17 year-olds by 26%.
- A California study<sup>7</sup> found a 45% decrease in detected retailer sales to underage youth in the wake of their recent law to increase the minimum age to 21.

### 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, unless and until the FDA determines through its Premarket Tobacco Product Application (PMTA) process that their sale is appropriate for the protection of public health.
- Restricting sales on our ecommerce 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, JLI 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 retailer compliance 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.

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- 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. It will require a more comprehensive regulatory framework, and all parties working collaboratively with regulators, policymakers, and stakeholders to restrict underage access and use, while preserving the availability of vapor products as an alternative for adult smokers.

In conclusion, JLI shares a common goal with policymakers, regulators, parents, school officials, and community stakeholders - **prevent the use of tobacco and vapor products, including JUUL products, by America's youth.** Our mission is to transition the world's one billion adult smokers away from combustible cigarettes. We pursue this mission while actively combating underage use of our products. 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, such as Wisconsin, follow suit and make sure that the minimum age of 21 is enforced. Therefore, we respectfully urge the Wisconsin Legislature to pass SB 364, which would prohibit the sale of all tobacco and vapor products to persons under the age of 21.

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