

FOR IMMEDIATE RELEASE

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**Senator Bob Beach Asks Governor Justice for Executive Order  
Prohibiting Sale of E-Cigarettes**

Senator Bob Beach (D-Monongalia) has written a letter to Governor Jim Justice, asking him to issue an Executive Order declaring that a public health emergency exists around the dangers of e-cigarettes. He requested the governor order the West Virginia Department of Health and Human Resources (DHHR), through the Bureau for Public Health (BPH) to promulgate emergency rules to **prohibit the sale** of flavored Electronic Nicotine Delivery Systems.

This request comes on the heels of an incident wherein two Morgantown High School students overdosed on heroin that had been injected into vape pen chemical canisters. Morgantown police seized more than 100 charged vape solutions, marijuana, packaging materials, empty vape cartridges and arrested a juvenile suspect in relation to the incident.

The federal Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA) and state and local health departments nationally are investigating a multistate outbreak of severe lung disease associated with the use of vaping products including, but not limited to, e-cigarettes. National and local authorities—including the US Surgeon General and the WV State Health Officer—have released statements warning of the effects and potential abuses of vape products and e-cigarettes.

States including California, Massachusetts, New York, Rhode Island, Washington, Utah, Oregon, Montana and Michigan have moved to ban the sale of vaping products. In September, the White House announced that the federal government also plans to act to ban flavored e-cigarettes, including menthol-flavored products. Specifically, the U.S. Food and Drug Administration will develop guidelines to remove all e-cigarette flavors, aside from tobacco flavor, from the market. Senator Beach asks for swift action from the Governor to align the state with these coming changes.

A copy of this letter is attached.

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Encl: Senator Beach letter to Governor Justice

*The Senate of West Virginia*  
Charleston



SENATOR ROBERT D. BEACH  
13<sup>th</sup> SENATORIAL DISTRICT

STATE CAPITOL, ROOM 204-W  
304-357-7919

November 12, 2019

Honorable Jim Justice  
Governor's Office  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Governor Justice:

On November 4, 2019, Morgantown police seized more than 100 charged vape solutions, marijuana, packaging materials, empty vape cartridges and arrested a juvenile suspect after two students, one from Morgantown High School and another from University High School, were hospitalized on Friday after a drug overdose. The students overdosed after using vape pens laced with heroin and other chemicals.

This comes after the federal Centers for Disease Control and Prevention (CDC), the federal Food and Drug Administration (FDA), and state and local health departments nationally are investigating a multistate outbreak of severe lung disease associated with the use of vaping products including, but not limited to, e-cigarettes. As of September 19, 2019, the CDC had confirmed 530 cases across 38 states and U.S. territories, including seven fatalities in six different states.

All of these cases have a history of vaping and have indicated a history of using vaping products containing tetrahydrocannabinol (THC), nicotine, or a combination of THC and nicotine. Vaping products use an e-liquid that may contain nicotine, THC and/or cannabinoid oils, in addition to a combination of flavoring, propylene glycol, vegetable glycerin, and other ingredients and may also contain toxic chemicals such as formaldehyde, acrolein, acrylonitrile, propylene oxide, crotonaldehyde and acetaldehyde, as well as metal particles such as nickel, lead, and chromium, which can be inhaled into the lungs. In addition, as we have seen in Morgantown, other nefarious substances can be added to the mix.

Although the recent outbreak is associated with vaping products, the specific cause of the disease is unknown. Cases of vaping-associated pulmonary disease show diverse symptoms and signs of lung injury, including cough, chest pain, shortness of breath, low levels of blood oxygen, abnormal chest X-rays or CT scans, and pathologic evidence of damage to lung tissue that can be severe. Nationally, cases of vaping-associated pulmonary injury have occurred in all age groups, with 83% of cases occurring in those younger than 35 years of age.

Electronic nicotine-delivery system (ENDS) products are being aggressively marketed in West Virginia and across the country, including marketing that promotes flavored ENDS products to youth. Many ENDS products, including e-cigarettes, are colorfully packaged and available in flavors that appealed of the taste and interesting young people, including the approximately 70% of teenagers shopping at convenience stores, who are routinely exposed to such retailer advertising at least once a week.

These kinds of retail marketing efforts threaten to improve decades of progress of reducing the rates of smoking a nicotine addiction in United States, particularly among young West Virginians. ENDS product use among teens is dramatically rising. Nationally, from 2017 to 2018, vaping use among youth has increased 78% among high school students and 48% among middle school students and the total number of children who are currently vaping rose to 3.6 million in 2018. A 2016 study by the FDA showed 44.4% of high school-aged children in West Virginia have at least tried an e-cigarette. In 2017, 14.3% of high school students in West Virginia had used vaping products on at least one day in the past 30 days. Nationally, the rate was 13.2%. Among high school students that used e-cigarettes, 68% reporting using flavored products.

We know that teenagers who use vaping products of any kind are four times more likely to smoke tobacco cigarettes. Nicotine is found to alter the brain development of youth and developing fetuses which can have negative long-term health effects. There is evidence that in addition to nicotine, most ENDS products contain and emit numerous potentially toxic substances such as cadmium and diethylene glycol, which have been linked to lung diseases and breathing problems. The effects of many other substances in the products are yet unknown. In December 2018, the United States Surgeon General Jerome Adams officially declared vaping among youth in the United States an epidemic.

West Virginia public health officials have also raised the alarm. On August 26, the State Health Officer, Catherine Slemple, M.D. issued a health alert that directed all health care providers to ask all patients with severe pulmonary illness of unknown etiology about vaping practices and to immediately report patients with unexplained severe pulmonary illness and recent vaping to their local health department.

The Cabell-Huntington Board of Health released an official statement in October stating that "e-cigarette use among youth and young adults has become a health concern" and recommending against the use of e-cigarettes and related vaping products by all children, youth, young adults, and pregnant women.

In August 2019, a class-action lawsuit was filed in federal court in Charleston against the electronic cigarette company JUUL and two other companies, claiming they targeted teenagers and pre-teens with their addictive nicotine products. On September 25, 2019, Juul Labs agreed to stop advertising its popular e-cigarettes in the United States and announced that its chief executive officer is stepping down as state and federal regulators examine hundreds of cases of people who are sick from what appears to be a vaping-related lung disease.

States including California, Massachusetts, New York, Rhode Island, Washington, Utah, Oregon, Montana and Michigan have moved to ban the sale of vaping products. In June, San Francisco became the first major city in the United States to ban the sale of e-cigarettes. On September 11, 2019, the White House announced that the federal government also plans to act to ban flavored e-cigarettes, including menthol-flavored products. Specifically, the U.S. Food and Drug Administration will develop guidelines to remove all e-cigarette flavors, aside from tobacco flavor, from the market.

It is clear that it is necessary for the state of West Virginia to take immediate action to address this public health emergency. **I am asking that you declare that an emergency exists that is detrimental to the public health in West Virginia, effective immediately.** Additionally, I am requesting that you order:

- The West Virginia Department of Health and Human Resources (DHHR), through the Bureau for Public Health (BPH) to promulgate emergency rules to **prohibit the sale** of flavored ENDS;
- The West Virginia State Police to investigate the sale and distribution of ENDS and ENDS products containing Tetrahydrocannabinol (THC) and the sale of ENDS products to underage youth;
- The DHHR and the BPH to develop recommendations to reduce the availability of ENDS products to persons under 21 years of age, to include, to the extent permissible by law, establishment of warning signs about the health risks of vaping ENDS products at retailers where any ENDS product is sold and in any vaping advertisements, as well as increased enforcement needs regarding illegal sales of ENDS products, and specifically flavored ENDS products to youth;
- The DHHR and BPH to make recommendations regarding the establishment of standards for disclosures and uniform packaging related to flavored ENDS products for purposes of empowering consumers to make informed product purchases;
- All state agencies to incorporate ENDS product use prevention and cessation material into drug and addiction, tobacco, anti-smoking, smoking cessation, pulmonary health, and behavioral health wellness material, programs, or advocacy produced by State agencies, or obtained from third parties, and offered to employees or the general public; and
- The DHHR and BPH to make recommendations regarding the establishment of safety standards for all ENDS products.

Thank you for your time and compassion in this matter.

Sincerely,

A handwritten signature in black ink that reads "Bob Beach". The signature is written in a cursive, flowing style.

Senator Bob Beach