



ROB BONTA
ATTORNEY GENERAL

THE STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL



DAVID W. SUNDAY, JR.
ATTORNEY GENERAL

THE COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE ATTORNEY GENERAL



LETITIA JAMES
ATTORNEY GENERAL

THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL



STEVEN BANKS
CORPORATION COUNSEL

THE CITY OF NEW YORK
LAW DEPARTMENT

April 28, 2026

Via U.S. Mail and Email

Matthew Cooper
General Counsel & Corporate Secretary
Capital One Financial Corp
1680 Capital One Drive
McLean, VA 22102
matt.cooper@capitalone.com

Re: Working to Stop Illegal E-cigarette Sales Transactions

Dear Mr. Cooper:

We are writing on behalf of the States of **Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, Wisconsin, the Commonwealth of Puerto Rico, and the City of New York** to express concerns about the widespread and ongoing illegal sales of electronic cigarettes and other vaping products (collectively, “e-cigarettes”) facilitated through the use of credit cards and payment processing services, including Capital One Financial Corp’s (“Capital One”) services. Over twenty years ago, the states similarly reached out to credit card companies to work collaboratively on solutions to reduce youth access to conventional cigarettes sold online.¹ We are reaching out again, but now concerning illegal sales

¹ See B. Tedeschi, Trouble for Online Vendors of Cigarettes, N.Y. Times (Apr. 4, 2005), available at <http://nytimes.com/2005/04/04/technology/trouble-for-online-vendors-of-cigarettes.html>;

of e-cigarettes and requesting your assistance in addressing these illicit transactions online and at brick-and-mortar stores. Our outreach is grounded in the recognition that combating illegal e-cigarette sales requires proactive efforts between government entities and credit card and payment processing companies to stop these unlawful transactions.

By way of additional background, illegal sales of conventional cigarettes, particularly sales to youth, were prevalent in the early 2000s. Addressing this serious issue required not only robust government actions but also cooperation from the companies that enabled illegal transactions through their services such as credit card and payment processing. While important progress has been made since then to halt unlawful sales of tobacco products, particularly sales of conventional cigarettes to youth, significant work remains, largely caused by the popularity among youth of e-cigarettes that emerged in the United States market in the last fifteen years. E-cigarettes are highly addictive and pose significant health risks, particularly to youth.

Federal, state, and local governments across the nation have been working on accelerating policies and programs to reduce e-cigarette use among youth. On the federal regulatory level, every new tobacco product must receive an order from the federal Food and Drug Administration (“FDA”) authorizing its marketing and sale in the United States. *See* 21 U.S.C. § 387j(a)(2)(A). To date, the FDA has authorized only 41 e-cigarette products, none in any flavor other than tobacco and menthol.² E-cigarettes that have not received authorization from the FDA, which constitute nearly all e-cigarettes offered by online sellers, are deemed “adulterated.” 21 U.S.C. § 387b(6)(A). Federal law prohibits the receipt or delivery in interstate commerce of any adulterated tobacco product, 21 U.S.C. § 331(c), and delivery or proffered delivery of adulterated tobacco products is accordingly unlawful under United States law. Of equal weight, the federal Prevent All Cigarette Trafficking Act of 2009 (“PACT Act”), 15 U.S.C. §§ 375–378 and 18 U.S.C. § 1716E, regulates online e-cigarette sales, imposing stringent requirements on online sellers that include use of age verification practices, labeling and weight requirements, and compliance with “*all* State, local, tribal, and other laws generally applicable to sales [of e-cigarettes]”. 15 U.S.C. §§ 376a, (a), (a)(3) (emphasis added). E-cigarette sellers are also subject to compliance with laws imposed by state and local governments such as, for example, age verification, licensing, and tax payment requirements. In addition, “flavor bans” have been enacted in jurisdictions such as California, the District of Columbia, Massachusetts, New York, and New York City deeming the sale of a flavored e-cigarette in their jurisdictions a violation of state or local laws, and hence a violation of the PACT Act as well. Some states such as Connecticut, Oregon, Ohio, Maine, and Vermont completely ban online e-cigarette sales to consumers.

<https://ag.ny.gov/press-release/2005/state-ags-and-atf-announce-initiative-credit-card-companies-prevent-illegal>.

² *See* U.S. Food & Drug Administration, “E-Cigarettes, ‘Vapes’ and Other Electronic Nicotine Delivery Systems (ENDS) Authorized by the FDA,” (Apr. 1, 2026, at 11:50 ET), <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends-authorized-fda>.

The pervasiveness of illegal e-cigarette sales and its consequent harm to public health necessitates a more comprehensive solution. The states and New York City have been working diligently to identify noncompliant sellers and have found that the vast majority of online merchants violate the PACT Act in virtually every regard. Independent studies of online merchants of vaping products report the same widespread noncompliance with the PACT Act requirements.³ The states have been taking actions against illegal online sellers, including litigation and referrals of these sellers to the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) for inclusion on the Noncompliance List (“NCL”) established under the PACT Act, *see* 15 U.S.C. § 376a(e)(1). New York previously identified these issues to Discover Financial Services, Inc., which is now a subsidiary of Capital One, in its April 10, 2024 letter. *See* Exhibit A. Recently, as part of our efforts to engage e-commerce platforms about the illegal activity enabled through their services, the states and New York City sent a letter to Shopify Inc. on November 24, 2025, highlighting the pervasive unlawful conduct by merchants selling e-cigarettes on its platform.⁴ Likewise, our aim in this letter is to discuss the current scope of illegal e-cigarette trafficking and to work with you to halt the use of your services for unlawful transactions.

We request a meeting with Capital One to discuss a comprehensive solution to address unlawful sales of vaping products regulated under federal, state, and local laws, with the goal of Capital One prohibiting e-commerce service providers and merchants from using its services for unlawful purposes. Please provide a response outlining your availability within **15 days** of this letter. Capital One’s response should be directed to Lesya Kinnamon at Lesya.Kinnamon@doj.ca.gov, Edmund “Tad” Berger at eberger@attorneygeneral.gov, Leslieann Cachola at leslieann.cachola@ag.ny.gov, and Eric Proshansky at eproshan@law.nyc.gov.

Sincerely,

/s/ Lesya N. Kinnamon

Lesya N. Kinnamon
Deputy Attorney General
California Office of the Attorney General
1300 I Street, Suite 125
Sacramento, CA 95814

/s/ Edmund “Tad” Berger

Edmund “Tad” Berger
Chief Deputy Attorney General
Tobacco Enforcement Section
Office of Attorney General of Pennsylvania
15th Floor, Strawberry Square
Harrisburg, PA 17120

³ *See* Harati RM, Ellis SE, Satybaldiyeva N, Mejiroado T, Benitez G, Henriksen L, Leas EC. *Online Retailer Nonadherence to Age Verification, Shipping, and Flavor Restrictions on E-Cigarettes*. JAMA. 2024 Dec 24;332(24):2113-2114. doi: 10.1001/jama.2024.21597. PMID: 39527068; PMCID: PMC11555574.

⁴ *See* Letter from various states to Shopify Inc. (Nov. 24, 2025), available at https://oag.ca.gov/system/files/attachments/press-docs/CA_NYC%20Letter%20to%20Shopify_FINAL.pdf.

/s/ Leslieann E. Cachola

Leslieann E. Cachola
Deputy Bureau Chief
New York State Office of the Attorney General
28 Liberty Street
New York, NY 10005

/s/ Douglas Lau

Douglas Lau
Unit Chief – Tobacco Enforcement Unit
Office of the Arizona Attorney General
2005 N. Central Avenue
Phoenix, AZ 85004

/s/ Vanessa L. Kassab

Ian R. Liston
Director of Impact Litigation
Vanessa L. Kassab
Deputy Attorney General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801

/s/ Andrea Law

Andrea Law
Deputy Bureau Chief
Office of the Illinois Attorney General
115 South LaSalle Street
Chicago, IL 60603

/s/ Elizabeth Reardon

Elizabeth Reardon
Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333

/s/ Eric Proshansky

Eric Proshansky
Assistant Corporation Counsel
New York City Law Department
100 Church Street, Room 3-211
New York, NY 10007

/s/ Amor Rosario

Amor Rosario
Assistant Attorney General
Heather Wilson
Deputy Section Chief for
Tobacco Enforcement
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106

/s/ Chelsea N. Okamoto

Chelsea N. Okamoto
Deputy Attorney General
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

/s/ Kara Burgess

Kara Burgess
Deputy Attorney General
Office of Attorney General Todd Rokita
IGCS 5th Floor
302 W. Washington Street
Indianapolis, IN 46204

/s/ John M. Leovy

John M. Leovy
Division Chief
Office of the Attorney General of Maryland
200 Saint Paul Place
Baltimore, MD 21202

/s/ Alda Chan

Alda Chan
Assistant Attorney General
Massachusetts Office of Attorney General
One Ashburton Place
Boston, MA 02108

/s/ Lorin M. Taylor

Lorin M. Taylor
Senior Deputy Attorney General
Office of the Nevada Attorney General
1 State of Nevada Way, Ste. 100
Las Vegas, NV 89119

/s/ Jesse J. Sierant

Jesse J. Sierant
Deputy Attorney General/Section Chief
State of New Jersey
Office of the Attorney General
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

/s/ Charles White

Charles White
Assistant Attorney General
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603

/s/ Adam D. Roach

Adam D. Roach
Special Assistant Attorney General
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903

/s/ Michael R Bell

Michael R Bell
Assistant Attorney General
Michigan Department of Attorney General
2nd Flr, G. Mennen Williams Bldg
525 West Ottawa St.
P.O. Box 30754
Lansing, MI 48909

/s/Warren G. Cormack

Warren G. Cormack
Assistant Attorney General
Office of the Attorney General of
New Hampshire
1 Granite Place South
Concord, NH 03301

/s/Anthony R. Juzaitis

Anthony R. Juzaitis
Assistant Attorney General
Deputy Division Director
New Mexico Department of Justice
408 Galisteo Street
Santa Fe, NM 87501

/s/ Jackson Garcia

Jackson Garcia
Assistant Attorney General
Office of the Attorney General of Oregon
1162 Court Street NE
Salem, OR 97301

/s/ John Sinclair

John Sinclair
Deputy Attorney General
Tennessee Office of the Attorney General
315 Deaderick Street
Nashville, TN 37243
P. O. Box 20207
Nashville, TN 37202-0207

Capital One Financial Corp

April 28, 2026

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/s/ Rosemary M. Kennedy

Rosemary M. Kennedy
Assistant Attorney General
Vermont Office of the Attorney General
109 State Street
Montpelier, VT 05609

/s/ Gregory A. Myszkowski

Gregory A. Myszkowski
Assistant Attorney General
State of Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857

/s/ S. Todd Sipe

S. Todd Sipe
Assistant Attorney General
Washington State Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

/s/ Zulma Carrasquillo Almena

Zulma Carrasquillo Almena
Senior Assistant Attorney
Diana Jordán-González
Assistant Attorney
P.O. Box 7857
Office of Monopolistic Affairs
Department of Justice of Puerto Rico
PO Box 9020192
San Juan, PR 00902

EXHIBIT A



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

EXECUTIVE DIVISION

April 10, 2024

Via First Class Mail & Email

Hope Mehlman
General Counsel
Discover Financial Services
2500 Lake Cook Road
Riverwoods, IL, 60015
HopeMehlman@discover.com

Re: Illegal Transactions Concerning Vapor Products in New York

Dear Ms. Mehlman:

I am writing to request that Discover Financial Services and its affiliated companies (“Discover”) take appropriate steps to ensure that Discover does not facilitate violations of New York’s laws regarding sales of vapor products intended or reasonably expected to be used with or for the consumption of nicotine (“Vapor Products”), including Article 13F of the Public Health Law (“PHL”), or the federal Prevent All Cigarette Trafficking Act (“PACT Act”), 15 U.S.C. § 375, *et seq.* In particular, and for the reasons set forth below, we are requesting that Discover contact its acquiring banks and instruct them not to process credit card transactions for online Vapor Product retailers, unless those retailers agree to comply with New York law and cease the direct shipment of Vapor Products to New York State consumers.

Vapor products pose serious consequences to public health. According to New York State Department of Health data, youth and young adults are the primary users of e-cigarettes, and e-cigarettes are the most commonly used tobacco product by high school students in New York State.¹ Data from the 2022 New York Youth Tobacco Survey showed that 18.7% of high school youth use e-cigarettes.² Flavorings in tobacco products make them even more appealing to youth.³ Indeed, in 2023, 90.3% of high school students and 87.1% of middle school students

¹ https://www.health.ny.gov/prevention/tobacco_control/campaign/e-cigarettes/

² https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume15/n1_youth_tobacco_use.pdf

³ *See id.*

who used e-cigarettes in the past 30 days reported using a flavored e-cigarette during that time.⁴ According to the CDC, youth use of tobacco products in any form is unsafe.⁵

New York State has enacted laws to protect youth from the dangers of nicotine addiction by reducing access to tobacco and vaping products. As you probably are aware, PHL § 1399-ll prohibits the shipment of Vapor Product directly to New York State consumers. In particular, that section provides that no person engaged in the business of selling Vapor Products may “ship or cause to be shipped” any Vapor Products to any person in New York State, except for shipments to: (a) licensed tax agents, wholesaler dealers, and registered retail dealers; (b) export warehouse proprietors; and (c) government employees acting within the scope of their official duties. Additionally, PHL § 1399-mm-1 provides that “No vapor products dealer, or any agent or employee of a vapor products dealer, shall sell or offer for sale at retail in the state any flavored vapor product intended or reasonably expected to be used with or for the consumption of nicotine.” Many online sellers, however, continue to sell Vapor Products directly to New York consumers, even though such shipments are clearly illegal. Moreover, the vast majority of these sales are accomplished through credit card purchases, including purchases using Discover credit cards. Your company should not be facilitating these illegal sales.

In addition to the above state law prohibitions, the PACT Act provides that any business that “sells, transfers, or ships...or who advertises or offers” ENDS for sale in interstate commerce is required to register with the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and with state and local tax authorities in each location that applies its own tax on ENDS, and into which shipments of ENDS are made, and to file monthly reports with state and local tobacco tax administrators documenting the types and quantities of products that were sold within each respective jurisdiction during the preceding month. When ENDS are distributed via delivery sale (e.g., when a consumer submits an order via telephone, the internet, or when the person is not otherwise in the physical presence of the seller), the delivery seller must comply with certain shipping requirements, recordkeeping requirements, and all laws generally applicable to sales of ENDS as if the delivery sale occurred entirely within the specific State and place of delivery, including but not limited to state laws imposing excise taxes, licensing requirements, restrictions on sales to underage individuals. 15 U.S.C. § 376a(a)(1)-(3). Thus, the PACT Act requires all delivery sellers of ENDS to consumers in New York to comply with all New York laws regulating vapor products, including its flavor ban and delivery ban.

Many online Vapor Product retailers appear to be violating the above laws. For example, the website, <https://lousquare.com/pages/online-vape-shops-that-ship-to-ny>, contains the following language: “Looking for online vape shops that ship to New York? Lou Square is your 24 hour vape store for all things vape, except there are actually no stops at all. You can shop our extensive range of products online, finding all your favorite brands and flavors in our collection.” Additionally, the website offers a wide array of flavored Vapor Products for sale such as Mango

⁴ *Id.*

⁵ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/



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EXECUTIVE DIVISION

Ice, Strawberry Kiwi, and Melon Ice, and many others. Indeed, one is able to purchase a flavored Vapor Product for delivery in New York using a Discover credit card.

For the reasons set forth above, it is clear that numerous online Vapor Products sellers: (a) are illegally selling flavored Vapor Products to consumers in New York in violation of PHL § 1399-mm-1; (b) are making shipments that constitute violations of PHL § 1399-ll; and are (c) engaging in delivery sales under 15 U.S.C. § 376a without meeting the requirements for such sales. In addition, where the sales are made to underage individuals these shipments constitute serious additional violations. Many websites make clear that they accept Discover credit cards for payment, and we do not believe that your company should allow its acquiring banks to facilitate these illegal activities. Accordingly, we respectfully request that Discover contact its acquiring banks and instruct them not to process Discover credit card transactions for online Vapor Products sellers unless and until those retailers cease all shipments of Vapor Products to New York State consumers.

Thank you for your assistance, and please contact me at (212) 416-6323 or at wil.handley@ag.ny.gov at your convenience, so that we can discuss what steps will be taken to address this issue.

Very truly yours,

s/ Wil Handley
Wil Handley
Assistant Attorney General
Executive Division