

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Ninth Session
March 21, 2017**

The Committee on Taxation was called to order by Chair Dina Neal at 4:07 p.m. on Tuesday, March 21, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Chair
Assemblywoman Irene Bustamante Adams, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Lesley E. Cohen
Assemblyman Edgar Flores
Assemblyman Jason Frierson
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblyman Keith Pickard
Assemblywoman Ellen B. Spiegel

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant



OTHERS PRESENT:

Bryan Wachter, Senior Vice President, Retail Association of Nevada
Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada
Natasha Supancheck, Owner, Nevada Vapor LLC, Reno, Nevada
Michael Hackett, representing Nevada Public Health Association; Nevada Primary Care Association; and Nevada Tobacco Prevention Coalition
Alfredo Alonso, representing Reynolds American Inc., Winston-Salem, North Carolina
Alex Mazzola, Co-Chairman, Nevada Vaping Association
Joe Landolfi, Chairman, Nevada Vaping Association
Stefan Didak, President, NOTBlowingSmoke.org, Oakley, California
William S. Wilson, Chief Operating Officer, eCig Distributors, Inc., Las Vegas, Nevada
William Horne, representing Nevada Vaping Association
Thomas Harmon, Owner, Sin City Vapor, Las Vegas, Nevada
Jamie Homampour, Owner, Blue Diamond Vapors, Las Vegas, Nevada
Deonne E. Contine, Executive Director, Department of Taxation

Chair Neal:

[Roll was taken and Committee rules and protocol were reviewed.] The first order of business today is Assembly Bill 269. I will open the hearing on A.B. 269 and ask the bill sponsor, Assemblywoman Bustamante Adams, to the table to present the bill.

Assembly Bill 269: Provides for the regulation and taxation of vapor products. (BDR 32-873)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:

During the 2013 Session, when I was the Chair of the Assembly Committee on Taxation, I noticed that with technology, new products had been created in certain markets that were not included in our tax structure. For example, with the evolution of the telephone, not until 1973, when the cell phone was invented, did we start thinking of wireless products in the market. Last session, we had the live entertainment tax discussion [Assembly Bill 266 of the 78th Session]. Who would have thought we would have to include outdoor concerts in our tax structure, when back in the 1970s, we mostly had lounge acts and did not have to deal with the issue? This bill deals with something similar.

The history of electronic cigarettes (e-cigarettes) and personal vaporizers goes back to 1963, but the technology did not become widely available or begin to resemble anything that we currently are familiar with. In 2003, a pharmacist from China [Hon Lik] invented what we call the modern e-cigarettes, but it would be between 2006 and 2007 before it would reach western markets. The premise for this bill is that technology has created a new product line within the tobacco market, and it is not in our tax structure.

Currently under Nevada law, we have four categories of tobacco products. In Chapter 370 of *Nevada Revised Statutes* (NRS), we have the definition for cigarettes in NRS 370.010; the definition of "other tobacco product" is in NRS 370.0318 and includes snuff, cigars, et cetera; the definition for "alternative nicotine product" is in NRS 370.003, and includes lotions, dissolvable products, and things not regulated by the Food and Drug Administration (FDA), U.S. Department of Health and Human Services; and then the definition for "vapor product" is in NRS 370.054.

What do we currently tax? In Nevada we have an excise tax on all tobacco products. Cigarettes are at \$1.80 per pack for a carton of 20, or \$2.25 per pack for a carton of 25. We changed that last session. Other tobacco products are at 30 percent of the wholesale price. Even though vapor products are in that product line, it is at zero because we do not capture the revenue.

To give you some history, Senate Bill 225 of the 78th Session, sponsored by Senator Farley in 2015, prohibited the sale of liquid nicotine products to persons under the age of 18. Also in 2015, Senate Bill 79 of the 78th Session, which was carried by the Department of Taxation, included vapor products at 30 percent of the wholesale price. That bill was severely amended in the Senate: Industry created the fourth category we now have in NRS 370.054, "vapor product," instead of including it with "other tobacco product." Additionally, all taxation verbiage was removed. There were other heavy lifts on revenue in 2015, so vapor products were not necessarily on the top of the ticket for the agency. As you know, agencies are limited on the amount of items they can bring forward per session, and since there were other higher priorities this session, I decided to bring forward this bill on vapor products because it was not necessarily one of the highest priorities of the Department.

Section 1 of the bill amends NRS 370.0318, which defines "other tobacco product." It removes the exclusion for the definition of vapor products. The FDA has stated they will be regulating vapor products as tobacco products because they use a liquid containing nicotine.

In section 3, subsection 1, paragraph (b), vapor products are subject to ". . . a tax of 5 cents per fluid milliliter" How did I come up with 5 cents? I looked at other states, to see what they have done. California, Kansas, Louisiana, Minnesota, North Carolina, Pennsylvania, and West Virginia all tax vapor products. I had originally proposed 30 percent of the wholesale price, like we have in law now. The industry thought that was too burdensome, so the negotiation was 5 cents, like North Carolina has. North Carolina has imposed a 5 cents per milliliter since 2014, and even though the argument was it would drive out business, it has not. Louisiana also has the 5 cents per milliliter tax. The highest I have seen is Minnesota. They are at 95 percent of the wholesale price, but there is still a lot of business going on there. There are also local jurisdictions that have instituted the revenue—Montgomery County in Maryland, and Cook County and the City of Chicago in Illinois. Several other states are entertaining taxing vapor products.

You are going to hear some testimony in support, some in opposition, and some neutral. As I said before, I had originally proposed 30 percent of the wholesale price. The industry thought it was too onerous so the negotiation was 5 cents. Another argument you will hear is that small businesses do not want to be taxed, and I know they will bring that forward. You need to take into consideration that the federal government will be regulating the e-cigarette industry. They will regulate e-cigarettes and vapor products as tobacco products because they contain nicotine. They are going to put in regulation that you cannot sell to anyone under the age of 18. That takes effect this year, on August 8. All products must carry a warning label that they have nicotine. That is coming in May 2018. They have to seek marketing authorization from the FDA. Prohibitions of free samples will take effect on August 8, 2017. They are also looking to target flavored cigars for regulation.

The last argument you will hear is this bill should also be about health—that e-cigarettes are less dangerous to a person than a regular cigarette. This is not a health bill. This is a tax conversation on whether or not this new product line should be included. There is another bill on behalf of the Legislative Committee on Health Care [[Assembly Bill 450](#)] that has to do with packaging and labeling and with the Nevada Clean Indoor Air Act. I would prefer that conversation stay there and not to muddy the waters. That ends my presentation. I also have the Department of Taxation here to help answer technical questions on the tax structure.

Assemblyman Flores:

I do not know anything about vaping. I am trying to get an idea how much an individual consumer would be looking to spend? How many milliliters does an average consumer buy? Do you know?

Assemblywoman Bustamante Adams:

I think that would be better answered by the industry, and I know that they are here in support. When looking online, the amount I have seen on the websites is usually about 100 milliliters, about the size of an eye drop bottle. That is what I have usually seen in the general market and online.

Assemblyman Flores:

Do you know what this would translate to annually? What is the projected number the state will capture in taxes?

Assemblywoman Bustamante Adams:

I did do that projection and I have it. I know this is not the Assembly Committee on Ways and Means, but if you want to hear it, I do have the anticipated revenue. I have been trained never to look to see how much you are going to gain because you lose focus. I did not want to get distracted today by looking at the money, but I do have that information. Our fiscal team has done the breakdown of the potential revenue. It is your discretion if you want to hear it, Madam Chair.

Chair Neal:

I am open to hearing it.

Assemblywoman Bustamante Adams:

I would like Mr. Guindon, our fiscal analyst, to comment on the number.

Russell Guindon, Principal Deputy Fiscal Analyst:

For this bill, we looked at a state that had actual information available, North Carolina. As Assemblywoman Bustamante Adams said, North Carolina has the 5 cents per milliliter tax in place. We were able to look at their real-world data. We did not have any Nevada-specific information, and since we are not taxing it, there is nothing being reported to the Department of Taxation. It is difficult to find the actual consumption numbers.

Based on North Carolina and extrapolating their fiscal year (FY) 2016 collections on a per capita basis, and interpolating that into Nevada, the Fiscal Analysis Division of the Legislative Counsel Bureau estimates it would be approximately \$1 million when it would become effective. It could be more because the numbers from North Carolina were for FY 2016, and with this effective date, it would be one or two years down the road in terms of when we would see the full yield.

In addition, in the estimate we attempted to take into account the number of visitors coming into the state by translating them into a full-time equivalent resident in order to pick up that additional effect Nevada would have over other states when you have 46 million to 47 million visitors with some of those consuming vaping products. I can answer any questions the members may have.

Assemblyman Pickard:

My question has to do with the Vapeco letter that was provided to us ([Exhibit C](#)). They raise an interesting point, although I think we are still talking apples and oranges. Has an analysis been done with respect to the 5 cents per milliliter versus the tax on a pack of cigarettes? Obviously we are talking about potentially different dosage amounts of nicotine. Has an analysis been done to see if we are taxing them similarly on a dose of nicotine, or if that is even relevant?

Assemblywoman Bustamante Adams:

Yes, I did get the Vapeco letter ([Exhibit C](#)) and read through it. I would be interested in hearing from the actual business owners. I am open to suggestions if they think something else would work better. You might also ask the Department of Taxation what kind of ownership that puts on them if they have the valve, and maybe it is only 3 percent or 6 percent nicotine. What kind of ownership does that put on the Department of Taxation, and should the tax only be on that? I think that is a conversation we could have with them. I am open. It is not to be onerous; it is to include a new product line and have the conversation if it should be included since we now have the product.

Assemblyman Kramer:

Typically I look at taxes as being two parts: one is to raise revenue but also to design taxes as a public policy to encourage some things or discourage others, as I see it. That is why we have sin taxes. We have taxes on alcohol and tobacco and gaming as well. Because of the

nicotine in this, my assumption is you are saying this should qualify under the sin tax as opposed to the sales tax other products would have and would, therefore, be exempt from sales tax but would have the tobacco tax on it—even though it is technically not tobacco, it is nicotine.

If the idea is to tax it because it has nicotine in it, to try to discourage people through the pricing to get away from it, has there been any consideration as to whether this is, in fact, safer for a person to consume than tobacco? Is it an easier thing to transition from—to quit smoking altogether and to get away from nicotine altogether—than cigarettes are? Those are two elements. From my understanding, it is probably better for a person to do this than tobacco, especially considering it does not smell as bad as tobacco consumption, and to be considered that maybe this is a better route for the public to go for than just tobacco.

It is my understanding this is a product that can be bought on the Internet right now, so how do we capture that in taxes? The taxes on cigarettes are pretty easy to capture because you have the stamp on the bottom, and it is easy to tell if you have a counterfeiter, and we have people who actually do that sort of thing. How would you stamp the bottom of a bottle or that sort of thing? What are the mechanics of actually collecting this tax and ensuring it was not counterfeited?

Assemblywoman Bustamante Adams:

This is where the conversation gets muddy because if you are just looking at a new product line within the market, then you look at the revenue structure. If you start to include the health conversation, that dominates the whole entire policy discussion—whether it is less harmful or is it to help people to quit smoking. I did a small survey with the smokers in the building and they have not gone to vaping. They have tried it but it does not give them whatever they get from smoking. The product does not satisfy that for them.

For the health conversation—if you get to that point—if it does possibly reduce the number of cigarette smokers, that belongs in a health conversation and should not determine whether our tax policy should be leading that conversation to help reduce smoking. I do have statistics on how many people are now vaping, and it is more the millennials. Some of the business owners will testify that some of it does not contain any nicotine at all, so they just do it for the social aspect, and there has been an increase of individuals who have switched to that, but then you do not know what is in the little small vial. That was part of the problem that the FDA found. They did not know what was being included and there were no regulations, but that is a whole other discussion.

Regarding Internet sales, I could not agree with you more. I hope it happens in my lifetime where the federal government takes up the e-commerce issue, and we can talk about taxing Internet sales, so we could have a fair competition with brick and mortar. But that has not happened yet. We are in line; the state of Nevada is in line. We have our ducks in a row. If the federal government does make a judgement on that, we are ready. We have the policy in place. Right now we have to wait for the federal government to decide.

Assemblyman Kramer:

The last part of that question was the mechanics of how you collect it. With a pack of cigarettes, you are putting a stamp on the bottom. With the jars and bottles, I do not know what the vehicle is for doing that. How is it actually being done in North Carolina or other states?

Assemblywoman Bustamante Adams:

I will let the Department of Taxation answer that question from the technical standpoint.

Assemblywoman Spiegel:

Some of the vaping products you said do not have nicotine in them, so would those not be taxed at all? I do not think it would fit into the definition of consumable product you have in section 2, subsection 2.

Assemblywoman Bustamante Adams:

I would agree with that. If it does not contain nicotine, it would not be included in our tax structure.

Assemblyman Frierson:

I had a question more about what other states have done. I am not sure who the appropriate person would be to answer it. In the states that have this, do we have an idea of what they have earmarked it for—say education specifically? Have any other states done that, considered doing that, or had it be part of this discussion at least thus far in this bill?

Assemblywoman Bustamante Adams:

I was asked that question. I decided not to include it in the presentation because it gets muddy. Education possibly wanted the money. Health possibly wanted the money. So, if everybody starts grabbing at the money, you lose the focus on the policy conversation, whether it should be included. I did not do additional research to see what North Carolina does with their revenue, or what the other states do, but I know I have been approached by different entities interested in getting the revenue. The Department of Taxation may know because they made this proposal last session. They might have more information.

Assemblywoman Spiegel:

Was there any thought to why we would not tax all vaping and only tax it if there is nicotine? Was it just looked at as a way of increasing revenues on the sales of nicotine-related products?

Assemblywoman Bustamante Adams:

I was just focused on the nicotine portion, not on the flavored ones that are out there. I think that might be another step, but I did not go that far.

Assemblyman Flores:

In the data from the other states, did they do it the same way—only on vaping products that have nicotine in them? I would extend that question to our fiscal staff. In the data you looked at concerning the amount of money collected in other states, was that for vaping products that included nicotine, or all vaping products?

The other question I had, and Assemblywoman Bustamante Adams, you may not be the most appropriate person to ask, it may be one of the stakeholders. What is the average price now? If I went into the store and bought 100 milliliters, per the number you quoted previously, how much am I spending on average for that?

Assemblywoman Bustamante Adams:

The Department of Taxation indicated that the tax structure was focused on nicotine products, so if it was flavored, it was not included. That aligns with their policy: they define what other tobacco products are and then they put the legislation of the tax structure, so it went hand in hand. Mr. Guindon may be able to answer your question, if the revenue generated from this included flavored or just nicotine. Regarding what the average price is, from the Vapeco letter we received ([Exhibit C](#)), and that is what I am basing this off of, they said a 60 milliliter bottle of e-liquid—they did not define if that contained nicotine or not—was \$3.

Assemblyman Flores:

Who has a greater percentage of the market, nicotine or non-nicotine? Do you know?

Assemblywoman Bustamante Adams:

No, I do not know. I do know that big tobacco would be able to tell you if it has increased in market share, or if there is a trend of people leaving cigars and snuff, and going more toward the vaping products. I am not sure what their market share breakdown is.

Assemblyman Flores:

I misstated my question. What I meant to ask was in the vaping world, nicotine versus non-nicotine, do you know which has the greater?

Assemblywoman Bustamante Adams:

I do not. I think that would be a good question for the business owners who have the products.

Assemblyman Frierson:

I think this may be a question for Mr. Guindon as well. I am curious about the recreational and/or medical marijuana vapes, and if that is already captured in what is being proposed with the excise tax this year, or if that tax proposal is specifically marijuana and not tetrahydrocannabinol (THC). Is it already covered for the recreational and medical marijuana vapes that do not have nicotine and are not flavored?

Russell Guindon:

I would have to put on the record that I am not an expert on any one of these areas. To the best of my knowledge, marijuana does not have nicotine in it. It has THC or cannabinoids, so under this structural definition, it is about nicotine. I do not believe we would be picking up marijuana in any form, whether it is recreational or medical. As Assemblyman Frierson pointed out, those would be covered under the current taxes that exist in law for medical marijuana and/or the ballot question that was approved, or the recommendation that was made by the Governor for the additional retail excise tax on marijuana. It would not be getting picked up here.

In North Carolina, for FY 2016, it was just short of \$3 million in terms of what the 5 cents per milliliter generated. In my research looking at these other states, and the ones Assemblywoman Bustamante Adams mentioned, their tax is all structured around nicotine. If the product does not contain nicotine, it is not brought in under the per milliliter tax, or those states that are taxing it on as a percent of wholesale value.

There was a question about where the money goes. I did not research that part of the law closely, so it could vary. Given the order of magnitude with most of these states, it is probably going into their general fund budget, but that is something staff could research for the members of the Committee.

Assemblywoman Bustamante Adams:

I also heard that cannabis stays in its own lane, whether it is recreational or medical. It is not in this lane. Their tax is actually a lot higher. We could put it in that lane, but I do not think that would sell.

Chair Neal:

Are there any additional questions from the members? [There were none.] I will now accept testimony from those speaking in support of Assembly Bill 269.

Bryan Wachter, Senior Vice President, Retail Association of Nevada:

To speak specifically on the tax question before you, we believe that if the policy decision from the Legislature is to tax nicotine products, then like products should be taxed similarly. I agree with the bill sponsor; perhaps the tax should look more like other tobacco products as opposed to this particular method of taxation, but I think it is important that there is a tax on these products.

From the standpoint of the Retail Association of Nevada, we have been consistent in trying to make sure that as technology improves and as technology advances in the terms and ways we consume and sell products, our legislation needs to be flexible and take into account the evolution of those products and the way that we use them. For instance, I think a perfect example is Internet sales. This Committee, in the past, has been very concerned about that.

In the 2015 Session, you did pass the Nevada version of the Main Street Fairness Act, so that we could begin taxing items that were sold on the Internet, items that were escaping taxation. The laws we were attempting to change were laws that were written in the 1950s and 1960s, when Internet sales were not something we were thinking about.

I think it is very important that items that have the policy decision to be taxed are taxed considerably like those other products. To stress the fact that this is not a health question, and that it is purely a tax question, this is a product the Legislature has already determined should be taxed—nicotine. Whether it is a new marketing method or whether it is a new product line, as the sponsor referred to it, should be irrelevant to the point that we tax nicotine in the state of Nevada. We should continue taxing nicotine in its new and evolved forms.

Assemblywoman Spiegel:

I have been struggling with what a "like product" is. I understand the point of having nicotine be taxed for "like," but I am struggling with vaping. Whether it is nicotine or non-nicotine, both are delivered to the consumer in the same method. It would be like drinking tea: one has caffeine and one is herbal. Should they be taxed differently or should they be taxed the same? Is a cup of tea a cup of tea? Is a vape a vape, or do you say it is different because one is a tobacco product and one is not?

Bryan Wachter:

I think the example you have given may not be as accurate as perhaps an idea that the only difference between the nicotine provided in vaping and the nicotine provided in a combustible cigarette is that the delivery method is different. The nicotine derivative is still present in all forms of tobacco, and it is present specifically in vaporization methods that include nicotine. For us, it is the idea that the Legislature has determined that nicotine is a taxable product, under special taxes and rules, and regardless of the delivery system a person uses to obtain the nicotine into their system, it does not change the fact that we should be taxing products that have the same kind of similarities. For us, the delivery method would be irrelevant to the policy question.

Chair Neal:

Are there any additional questions? [There were none.] I will now take testimony from those who are speaking in opposition to A.B. 269.

Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada:

I am the Legislative Director for the Libertarian Party of Nevada. The Libertarian Party of Nevada staunchly opposes A.B. 269. Taxing and restricting the vapor industry will drive regular consumers back to traditional tobacco products and harm small businesses in Nevada.

Vaping may not be perfectly safe, but research indicates it is far safer than combustible cigarette smoking. Many studies support the notion, including a brand new cross-sectional study from the United Kingdom which found that long-term nicotine replacement therapy-only and e-cigarette-only use is associated with substantially reduced levels of

measured carcinogens and toxins relative to smoking only combustible cigarettes. This is common sense. Even though there are health risks to the consumption of nicotine, e-cigarettes do not contain the same tar and other organic residues present in combustible cigarettes.

By taxing and regulating vaping, you remove the incentive for traditional smokers to switch to e-cigarettes, which could save thousands of lives. More than 443,000 Americans die early from traditional smoking-related causes every year. If even half of traditional smokers switched to e-cigarettes, many of those lives could be saved, but if they are taxed and regulated equivalently, people will not. Moreover, many who have elected to switch to e-cigarettes may switch back to these traditional tobacco products should the cost of vapor products rise. Assembly Bill 269 would directly harm these individuals.

If there was clear and compelling evidence that vapor products posed the same risks to health as traditional tobacco products, we would understand the reasoning behind A.B. 269. However, the scientific research does not support this conclusion. As a matter of individual liberty, economic freedom, and scientific fidelity, the Libertarian Party of Nevada firmly opposes A.B. 269.

Assemblywoman Cohen:

You were speaking very quickly, and I missed the study you cited. Could you repeat it?

Wendy Stolyarov:

Certainly. I will be happy to email you the link. It is a study done in the United Kingdom, and it came out on March 21 [*Nicotine, Carcinogen, and Toxin Exposure in Long-Term E-Cigarette and Nicotine Replacement Therapy Users: A Cross-sectional Study* by L. Shahab, et al.].

Natasha Supancheck, Owner, Nevada Vapor LLC, Reno, Nevada:

I am the owner of Nevada Vapor in Reno. I have been in the e-liquid industry since 2012, and I have been doing retail sales since 2013. We have three locations and we employ ten people. I find it interesting that the previous two speakers do not want health to be part of this discussion when, in fact, I think it is a very important part of this discussion.

When you are presented with a harm reduction technology such as e-cigarettes, why would you want to go after that kind of industry? To me, it is akin to going after other harm-reduction technology like seat belts or lifesaving medicines. When you tax those type of things, it is basically sending a clear message that these products are somehow wrong or a vice, and you are telling consumers they should not be using them. I think that sends the wrong message. When the study that was just cited from the United Kingdom Royal College of Physicians came out, they said that e-cigarettes are 95 percent safer than cigarettes [*Nicotine without smoke: Tobacco harm reduction* by the Tobacco Advisory Group of the Royal College of Physicians].

A previous speaker stated that it does not matter where the nicotine comes from, whether it is in tobacco or e-liquid. I have a problem with that because nicotine exists in its natural form in vegetables such as eggplants and tomatoes, so if you are going to go after nicotine and e-liquid, why not start taxing vegetables as well, which seems ridiculous.

I believe it was one to two years ago I was in this very room arguing against a similar bill, a tax on these products [[Senate Bill 79 of the 78th Session](#)]. It seems like every session this keeps on coming up. You previously agreed to not tax these products because so many people stood before you and said it is going to be harmful to small businesses and harmful to consumers. You agreed not to tax it; yet here we are, once again looking for revenue from this harm-reduction industry. I wholeheartedly agree to tax tobacco and tax cigarettes; those are deadly products. Tax it more, but stop coming after harm-reduction technology such as vaping.

Once again, by claiming this is not a health issue, that is basically side-stepping the whole argument. By instituting this tax, you would be discouraging its use, as has already been said. You are sending a message to consumers that this product is just as bad as cigarettes, and it is not. It is not a tobacco product. Many people would like to lump it in with that, but it is not. There is also a question of how you propose taxing zero nicotine. We do have many customers who use zero nicotine. What a lot of our customers do is start out at a nicotine level to get away from cigarettes, and they slowly step down. They may start at 12 milligrams, step down to 6 milligrams, and by the time they have stepped down to 0 milligrams, I guess you would say they have graduated and no longer need the products. That is the end goal.

You have already decided before not to tax these products, so I ask you today to stand by that. Support the vapor industry. Support the people we employ. Support the customers we help every day to get away from tobacco. Do not implement this tax because it will be harmful to small businesses. They stated they were not sure what the impact was in other states to the small businesses, but I am a member of several vapor groups where I know these businesses have gone out of business because of these kinds of taxes. They close their doors. They say the legislature keeps coming after us year after year, and we cannot handle these type of taxes. We are just going to shut our doors, and they no longer employ people. I do not think this is good policy.

Chair Neal:

Thank you for your testimony. The Committee has questions.

Assemblyman Frierson:

I wanted to put this out here because not everyone is comfortable with the legislative process. Advocating for your position by calling our consideration of a bill ridiculous is certainly not the way to resonate with anyone.

Natasha Supancheck:

I was not calling this bill ridiculous. I think you misunderstood. I apologize.

Assemblyman Frierson:

I will get to a suggestion though. You mentioned that the notion of taxing vapes is like taxing seat belts. Seat belts are required by federal law. I want to make sure we are clear in having a fruitful conversation about the actual policy. If you have evidence that vapes are as healthy as an eggplant, then I would ask you provide the sponsor of the bill with that evidence. If you have evidence that vapes are actually increasing the economy by decreasing the health hazards associated with smoking other products, then I would ask you to provide that information to the sponsor of the bill. Those are tangible things that help us make our decision. It felt like you made some blanket statements about the health benefits of vapes without anything to support them. If you do have something, I would ask that you make it available to the sponsor of the bill and to the Committee as something that would be helpful for our consideration.

Natasha Supancheck:

I am sorry. I did not make myself very clear. I was not saying that this proposed bill was ridiculous; I was saying for us to tax vegetables just because they contain nicotine would be ridiculous. I am sorry I did not make myself very clear.

Assemblyman Pickard:

I had a question about the health issues and the recent reports challenging that, but this is not about health, so I am going to skip over that and go to my next question. I want to make sure I understood your testimony that there are vape shops that have closed because of taxes, and yet my understanding is this is not currently taxed. I am wondering what taxes you are referring to that put them out of business?

Natasha Supancheck:

These are from the groups I am a part of in other states, not in Nevada, reading anecdotes from other business owners who have said these taxes forced them out of business. I understand what Assemblyman Frierson said about seat belts being federally required, but the point is that both are harm-reduction technologies. That was the analogy I was trying to make. You have a product that can help consumers. I believe instead of taxing it, we should not.

Assemblyman Flores:

In your data do you know of individuals who did not smoke cigarettes, but started vaping products with nicotine?

Natasha Supancheck:

It is a very small percentage of our consumer base. I, myself, have been one of them in the past. I enjoy flavors, just for the sake of flavors, instead of munching on a candy bar. I do not have data for the exact percentage of our customers who do that, but it would be extremely small—99.9 percent of our customers come to us because they do not want to smoke cigarettes anymore.

Assemblyman Flores:

Just to be clear, 99.9 percent of your customers who use vape products that have nicotine in them, they are using it as a way to stop smoking.

Natasha Supancheck:

Correct.

Assemblyman Flores:

It does happen occasionally that individuals will start vaping for the first time with nicotine when they have never smoked a cigarette.

Natasha Supancheck:

No. If they have not smoked before they would not use nicotine. It would generally be zero nicotine.

Assemblyman Flores:

Understood.

Michael Hackett, representing Nevada Public Health Association; Nevada Primary Care Association; and Nevada Tobacco Prevention Coalition:

Even though I represent public health authorities and those with interest in public health, my testimony is going to focus on the tax policy of this particular bill, unless the Committee has any questions they would like me to try to entertain.

I would point out that I did have a chance to meet with Assemblywoman Bustamante Adams and her staff to share my concerns about this particular bill. I would like to extend my thanks to them for meeting with me and hearing me out on this particular bill. I also hope that the Committee interprets my opposition as being very tepid in opposition because there are some provisions in this bill that we do support.

Again, on behalf of these organizations, we are in opposition of the bill. What we support in this bill, first and foremost, is the importance of taxing these products by means of an excise tax, just like cigarettes and other tobacco products are taxed. To us this is long overdue. We also support including vapor products in the definition of "other tobacco products," which conforms to the FDAs authority to regulate them as tobacco products. That authority, by the way, covers all vapor products. It is not just limited to vapor products that contain nicotine. We also appreciate putting that definition in statute because that triggers the tobacco wholesaler and retailer licensing provisions and licensing requirements.

The reason we cannot support this bill is simply because we feel taxing vapor products as "other tobacco products" are currently taxed is the better way to generate revenue. We also believe that the "other tobacco products" tax should be on vapor products and their components and any liquid of substance that is put in or sold for use in vapor products.

This would generate more revenue for the state. The model we looked at is what Pennsylvania did. Pennsylvania has a tax very much like I described. It is assessed on all of those particular components at what their current rate of "other tobacco products" taxation is.

From a public health and tobacco control perspective, cost parity, which includes taxes, among tobacco products is an important determinate, so that pricing does not determine or drive consumer behavior. In our opinion, the milliliter tax as proposed is very limited in that it is specific to the nicotine that is contained in the e-liquid. In our opinion, it falls short of providing any degree of parity among other tobacco products. For example, if the state was to bring inline the other tobacco products rate to make it consistent with the per-pack tax on cigarettes, that rate would have to increase from 30 percent to 38 percent. We are not proposing that at all, but as we look at this per-milliliter tax, we feel it is not going to come close to providing parity among these tobacco products.

In closing, we appreciate Assemblywoman Bustamante Adams for bringing this bill forward. Again, we think it is long overdue. We are willing to work with her and the Committee in any way you or she sees fit, but as introduced, for the reasons I stated, we cannot support A.B. 269.

Chair Neal:

Thank you. Do the members have any questions? [There were none.]

Alfredo Alonso, representing Reynolds American Inc., Winston-Salem, North Carolina:

We oppose A.B. 269 as written, not for the same reasons that you just heard. What I think is important to understand with these products is they are brand new. They are barely hitting the market. They are barely understood. I think everyone has questions as to their safety, and no one pretends to claim these are 100 percent safe, but they are certainly significantly safer than a combustible product, so you cannot treat them the same. The idea of parity within these products is absurd because if you want to bring people into a situation where they are considering some of the safer products, you cannot tax them like a combustible.

We completely agree with Assemblywoman Bustamante Adams' way of thinking in that you start somewhere, and you put it within the system. The only concern we have is that A.B. 269 throws us back into "other tobacco products," which is a very confusing category. It contains everything from your typical chewing tobacco to you name it. It is all included in this category. We provided Assemblywoman Bustamante Adams with an amendment that we believe more categorizes these products as they are today. We have shared with her our experience in other states and our experience in states that have done it the wrong way, like Pennsylvania, which basically kills the product. Again, that policy is up to this body, and those are simply our comments. I think that they are fair. I would be glad to answer any questions.

Assemblywoman Cohen:

Did you say the product is dead in Pennsylvania?

Alfredo Alonso:

It has made it very difficult in states that have raised the tax so significantly, like Minnesota and Pennsylvania, that frankly it is a new product that is difficult for people to migrate to. It basically, for all intents and purposes, has no growth. Again we are talking about very small numbers here. If you look at what this would yield, even if you increased it, we are talking extremely small numbers in the grand scheme of things. Again, if you are looking at policy from a pure policy standpoint of how you would treat these products, around the country the discussion has been 10:1—if your combustible is at \$1, then your tax is around 10 percent of that. In most cases, whether it is the experience in Europe or elsewhere, and whether you agree with that or not, they are significantly safer than a combustible product. I cannot tell you how much. No one has actually come up with a medical breakthrough where they can say this is exactly the comparison; but it is a safer product, we do know that.

Chair Neal:

Are there any additional questions? [There were none.] Thank you for your comments. I know that earlier the sponsor clarified her intent on "other tobacco products." I am assuming she will come back to the table and clarify what lane she wanted vape to be in. I will now go down south to those speaking in opposition.

Alex Mazzola, Co-Chairman, Nevada Vaping Association:

I spoke to you and Assemblywoman Bustamante Adams yesterday. I also spoke to Assemblyman Frierson about this. The Nevada Vaping Association is opposing this tax. It will put an additional burden on the small business owners. You mentioned Vapeco earlier; they own two shops here in Las Vegas. We also have Tom Harmon here today, who I believe owns five or six shops now. They employ a lot of people.

The other reason we are in opposition is there is a 30 percent tax in California. Right now, a lot of businesses are moving here to Nevada. They are calling me and asking what is going on with this new tax situation that just came about. They are concerned. Some of them are moving their companies, moving their families, and are buying homes here. Two companies have already moved to Nevada: Local Vape in Henderson as well as eCig Distributors will be starting on March 27, about six days from now. Both are from California. They are uprooting because of the burden of the taxes in California and are moving to other states that are open.

The FDA regulations are already a big burden on a lot of us. Let us deal with those instead of adding additional burdens. I ask everybody to please, do not consider this bill. That is my position on it: the regulations will hurt us.

Joe Landolfi, Chairman, Nevada Vaping Association:

I am the Chairman of the Nevada Vaping Association. Our association is comprised of vape shop owners, manufacturers, and distributors here in Nevada. I am also a wholesale distributor in Nevada, and I own a vape shop. Over the past few years, this industry has grown more and more as people have tried and failed to escape the addiction and harm of

smoking cigarettes. Most people have tried every other method available to quit smoking and have finally found success in using vapor products. The consumers and industry have come together, and we refer to them as the "vaping community." I am one of these people. I was addicted to smoking at a very young age. I smoked for over 30 years. I tried every method available to quit smoking, and I have not smoked since I started vaping four years ago. There have been more and more studies produced to show the use of vapor products is a safer alternative than cigarettes.

Over the past few years, our industry has been under attack with a series of unfair regulations, and it does not make sense. Time and time again, legislators are putting vaping and smoking in the same category. It looks like smoking and mimics smoking, but it is not smoking. There is no combustion, no burning; it is just not smoke. People who vape do not want to be associated with smoking. Another misconception is that vaping is a gateway to smoking, and that could not be further from the truth. Vaping is actually a gateway from smoking.

The vaping community is against any tax or sin tax on vapor products. By imposing a tax on these products, you are punishing people for taking a step in the right direction in reducing the harm caused by smoking cigarettes. By imposing this sin tax, you are legislating that quitting smoking is a sin. Does anyone really believe that quitting smoking is a sin?

Imposing a tax on vapor products will hurt the industry and the consumers who may decide it is cheaper to keep smoking cigarettes. Consumers will find other methods and means to get their products—online or possibly making the liquid themselves. This will hurt small business.

More and more vape businesses are moving to Nevada to escape the taxes imposed by our neighboring states. Nevada should be welcoming this industry with open arms. It is an industry that is helping millions of people escape the harm and death of smoking cigarettes.

We do understand, however, that you may impose this tax. We believe the tax as imposed gives an unfair advantage to the big tobacco companies. The reason for this is the tobacco companies and the vapor companies have two products that are totally different. The vape shops use large vaporizers and our liquid comes in bottles. The most popular size today is a 16 milliliter bottle, and the most popular nicotine strength is 3 percent. Our products come in various nicotine ranges, 0 percent up to 18 percent. The tax on a 16 milliliter bottle would be \$3.

The tobacco companies are offering devices that are cigar-like. These devices contain a cartridge with about 2 milliliters of juice. Based on your tax, the tax on the 2 milliliter cartridge would only be 10 cents, whereas ours is \$3. They are also using 50 milligrams of nicotine in the cartridge because the effectiveness of their device is not as good as what vape shops are selling. So the 3 percent nicotine is the most popular versus 50 percent. It just gives them an unfair advantage.

An equivalent to a 60 milliliter bottle versus a cartridge, we estimate it is about three cartridges per 60 milliliter bottle. This would mean you are facing a 45 cent differential between \$3 and \$0.45, if that makes sense to you. It is an unfair advantage that is going to hurt small business.

We believe the way the tax is structured, it gives the tobacco companies an unfair advantage, and it would hurt our industry. In my opinion, the solution would be to tax the nicotine content, which would mean someone using a higher level of nicotine would be paying more tax, and someone using less nicotine would pay less. It would be more of an incentive to get people to reduce their nicotine level. People who vape start at a higher level to quit smoking, then work their way down: some to 3 percent, some to 0 percent, some quit, and some do not. It just depends, but it is an incentive to give people to reduce their nicotine intake. It only makes sense. We believe zero nicotine should not be taxed at all because it does not contain nicotine, and it is made of vegetable glycerin, propylene glycol, and fruit flavorings. These are all products that are available over the counter.

I want to reiterate that the perception of vaping needs to change. This has been a lifesaving product for millions of people who have been unable to quit smoking by any other methods. For decades the smoking epidemic has caused much harm, death, and despair to people and families. Any technology that eliminates this destruction of life should be embraced.

Chair Neal:

Thank you for your testimony. Do the members have any questions?

Assemblyman Pickard:

I appreciate where you are going with this although I will say the Federal Aviation Administration, and U.S. Department of Transportation disagrees that there is a difference between smoking and vaping, since they ban both from airlines. Are you suggesting if we are going to tax this, we should be taxing it on the dosage of nicotine delivered? Is that correct?

Joe Landolfi:

Yes. That is the only way you can make it fair. One contains 2 milliliters of juice and one is the size that usually sells as 60 milliliters. It is not fair and would create a problem for us.

Assemblyman Flores:

Do you know of any other state that has their tax structure in the manner you suggest, based on the dosage of nicotine?

Joe Landolfi:

No, because the tobacco lobby is so strong we cannot win that argument.

Assemblyman Flores:

I was trying to find out earlier what the percentage is of sales from a vaping product that has nicotine versus one that has no nicotine. What do you sell more of? Could you give me an actual number, an idea of what is more?

Joe Landolfi:

I am sure it is different for every location. In our location, it is about 80 percent nicotine, 20 percent non-nicotine.

Stefan Didak, President, NOTBlowingSmoke.org, Oakley, California:

We are headquartered in California. I am here in opposition of this bill because, first of all, taxation of vapor products does not make sense. I am not going to bore you with the health aspects or cessation aspects. I would say 9 million to 10 million people who have used these products to stay away from smoking should be proof enough.

What this tax will do is make vapor products more expensive than smoking, which basically ends up encouraging people to continue to smoke. While that is really not part of the argument here, in a taxation committee, it is an argument that everybody should keep in mind.

Why I am here is because I deal with a lot of companies in California in this industry. Many of them are looking at the taxation in California, which is now set at 27.3 percent on wholesale, and after this summer is going to move to somewhere between 65 percent and 68 percent of wholesale. We are looking at an exodus of this industry from California, and they are looking to relocate to Nevada or Arizona. We heard earlier that the projection of what this tax might bring in, in revenue, is modeled after numbers in North Carolina. I would like to remind you that Nevada has about 30 percent of the population of North Carolina, so I am not sure if those numbers actually work out. These businesses all want to move. Would you rather see them go to Arizona or would you welcome them with open arms here in Nevada, a state that has been known to be very good for small business?

The other part I want to bring up is if you are implementing a tax policy, is it not usually the case to project this for several years in advance? Based on the FDAs "deeming regulation" [Deeming Tobacco Products To Be Subject to the Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products], by August 2018 this entire industry might cease to exist in its entirety. If you base a tax model upon this industry ceasing to exist, how is that going to work for your budget projections?

Last but not least, retailers support this tax because they always sell products manufactured by big tobacco, which really is not harmed by a 5 cent per milliliter tax, unlike the larger portion of the market which is not represented by convenience stores.

Chair Neal:

Thank you for your testimony. Members, do you have any questions? [There were none.] We will move back to Carson City for more testimony on opposition.

William S. Wilson, Chief Operating Officer, eCig Distributors, Inc., Las Vegas, Nevada:

Thank you for the opportunity to address the Committee today. Our company is actually in the process of moving to Nevada from California. I did not think I would be here today testifying before your Committee regarding a proposed new tax on vaping products.

In November of last year, the California voters passed Proposition 56, the Tobacco Tax Increase Initiative, which put a tax on vaping products starting in April, then increasing the tax again in July of this year. We began looking for alternative locations to move our business in order to survive. We looked at Nevada and Texas. Both states were business friendly. We worked with the Las Vegas Global Economic Alliance, and also the City of Henderson Economic Development Division. They were very helpful in welcoming us, if we would choose Nevada. We chose Nevada. If this additional tax had been proposed in December or January of last year, we would be moving to Texas.

At eCig Distributors, our mission is to create and promote access to the highest quality e-liquid in hopes that everyone around the world has an alternative choice to traditional nicotine products. We strive to offer our customers the best possible selection, quality, service, and value. We are the "Amazon.com" of e-liquid nicotine products. We work with over 850 suppliers in the United States. We currently provide 45 above-average wage jobs, with a robust benefits package, along with tens of millions of dollars of economic activity currently in California, and we plan to grow to 60 jobs this year. We are moving out of California because of the burdensome tax and accounting issues for us, as are over 300 other companies located in southern California that sell liquid nicotine products.

Our executive team has met with half a dozen companies that are also looking to relocate their operations and are considering Nevada. These companies would have a combined economic impact of roughly 150 jobs and \$100 million of revenue into the state. The proposed tax being introduced today has our entire industry rethinking how and where to relocate their business for long-term success.

Our industry does not operate like a traditional tobacco sale in which a manufacturer sells to a distributor, then the distributor sells to a retailer. Our industry sees significantly more companies touch our product, and it is not uncommon for our product to move through three or four states prior to reaching an end user. This market fact makes this new tax very difficult to implement for both the Department of Taxation as well as the companies on which this tax would be imposed.

When I mentioned we were the "Amazon.com" of e-liquid sales, we sell approximately 12 million milliliters of e-liquid product per month. Based on your tax proposal, we would be paying roughly \$600,000 per month in taxes, which would absolutely put us into bankruptcy within three months.

Simply look at a state like Pennsylvania. Pennsylvania legislators, in a rush for more money, passed this law taxing vaping products. After it was passed, they realized it was a mistake and tried to change it before they recessed, but could not. Currently about 50 percent of the vaping stores previously in Pennsylvania are no longer there, and these were all basically mom-and-pop businesses.

Because of the new tax imposed in California, there are at least six other companies considering moving to Nevada. I would be happy to share their names with you. We are hopeful that we will be able to do business in Nevada and continue to create high paying jobs for years to come. This is why we urge you to vote no on A.B. 269.

Assemblyman Frierson:

I was just noting the statistics you cited. When we make decisions based on the numbers of jobs created or destroyed, so to speak, or the amount of projected revenue, this is not a money committee, but those are things we actually take into consideration. You are mentioning there are certain companies considering coming here. How many jobs did you mention came from those companies?

William Wilson:

Based on our projections, this time next year we would be a company of about 100 employees. The other companies would probably be bringing another 150 employees. I currently have 20 employees running all over Henderson right now looking for an apartment to rent or a house to buy because we are moving this weekend. We have committed, and that is why I flew up from Las Vegas. This tax has really hit us smack in the middle of this move.

Assemblyman Frierson:

What is the difference between the tax structure in California and the tax structure here being proposed in this bill?

William Wilson:

What you are looking at, and they are all talking about, is the 30 milliliter bottle. You have milliliters and milligrams. A milliliter bottle only tells you how many milliliters are in it. It does not tell you the milligrams of nicotine in there. It could be 3 milligrams, 12 milligrams, or 18 milligrams. You are basically now going to charge the same tax for a 30 milliliter bottle of 18 milligrams, or 3 milligrams, or 0 milligrams. That does not make sense.

Assemblyman Frierson:

So what is the tax on a bottle in California?

William Wilson:

With the 850 vendors we have, the headache is this industry is not like the cigarette business, where everything is standardized. You have 20 cigarettes to a pack, 10 packs to a carton. It is real easy to understand. You are not selling cigarettes at 3 milligrams of nicotine, and then selling cigarettes at 18 milligrams of nicotine. The standardization of our industry has not reached that level yet. We are a very young industry.

Assemblyman Frierson:

I am not trying to argue with you. I am curious to know if I go to buy a vape pen, go to buy a carton, or go to buy a bottle in California, what is the tax on it?

William Wilson:

Starting April 1, I think it will be 26 percent or 28 percent of whatever stock you have in California. If you have any product in California, they are taxing your entire product at 26 percent, and then in July they are going to raise that again to the 67 percent to 68 percent range.

Assemblyman Frierson:

If passed, what is the proposed impact of this bill in Nevada, with respect to the amount you would pay for that exact same product?

William Wilson:

That is what I just mentioned to you. We sell 12 million milliliters of vaping products per month. If you put 5 cents on every milliliter, that is \$600,000 in taxes to us per month.

Assemblyman Frierson:

So I am comparing apples to apples; I want to know what you would be paying in California and what you would be paying in Nevada under this proposal—apples to apples. Is it more, is it less, what is the difference?

William Wilson:

When Proposition 56 passed, and we understood we were going to have almost 100 percent tax on our products, we made the decision we had to move. We did not do a very thorough set up of exactly what this tax was actually going to cost us. We knew that it was going to put us out of business, no matter what that number was because it was going to be a huge number. We needed to find another place to go, and that is when we started looking at Nevada and Texas. Nevada was very welcoming. The people at the economic council were very helpful to us. They helped us get through the process. They helped us find the place. They were very welcoming. We found a building and we are half way through the move. Then bingo, A.B. 269 shows up.

Assemblyman Frierson:

So you do not know what the difference would be?

William Wilson:

I do not have an estimate for you.

Assemblyman Frierson:

I am always leery when we try to predict the number of jobs that are going to be gained. Hypothetically, if this bill did not pass, could I count on you next session or next year to tell me the hundreds of jobs that came because this did not pass? To the contrary, if it did pass, there would be a tangible calculation of jobs lost. If you had to leave and go to another state, then there would be a tangible number of jobs lost, and that is something we would be able to see next time we come together, either during the interim or next year. I just want to be clear.

William Wilson:

I would personally like to invite you down next year at this time to see our operation, and you can help me count heads. We are hoping to have this business in Nevada and make it grow. With the tremendous taxes that are being imposed in California, we feel if we are here in Nevada and did not have that tax we would have a definite business advantage of dealing with that.

Assemblyman Frierson:

You are not here yet, but are in the process of coming. You anticipate growing to upwards of 100 employees?

William Wilson:

We will be here Sunday. We are moving this weekend.

Assemblyman Frierson:

Upwards of 100 employees?

William Wilson:

Right now, 60. We just hired a human resources person to do the hiring for us. We need the people: warehouse people, office people, and sales people. Again, without this tax, we were looking at a very robust business growth, which would mean more jobs. Again, our salaries are above average and we are told, based on what we brought over from the benefits package, it is a very robust benefits package for our employees.

Assemblyman Frierson:

I think you were trying to make a distinction that it is not easy to compare because California does it with a different methodology. It is not exactly easy to compare each. Did I get that right?

William Wilson:

No, our headache was we could not get an answer from them. They were basically telling us, Do not worry about it. We have a year to figure it out, and once we do, we will retroactively charge you and not charge you a penalty for that first one. The retroactive charge would probably have put us out of business.

Assemblyman Pickard:

I think you may have just answered my question, but I just want to confirm. You are saying there is no ability to analyze what the tax per wholesale price would equate to in terms of a milliliter of product. Assemblyman Frierson made a great point: if we are going to do this comparison apples to apples, we need that data. I imagine you would be in the best spot to provide that. Can you provide the Committee with information with respect to how this tax compares with what they are doing in California? It seems to me we might be able to lower the tax and keep it economically feasible, yet capture the nicotine into the taxation process.

William Wilson:

I think the headache is not that we have not done the analysis. The headache is that the state has not figured out how they are going to do it.

Assemblyman Pickard:

We are talking about 5 cents per milliliter of fluid. That much we know. If you are saying there is a certain quantity in California based on the wholesale price, I am imagining the wholesale price of a milliliter of fluid is going to be dependent upon the quantity of nicotine that is contained in it. I am guessing that the more nicotine, the more expensive that milliliter would be, so there should be a mathematical formula we could use to figure out how much per milliliter you are currently being taxed in California to understand how that compares to this tax.

William Wilson:

You mean currently, before this new tax comes in?

Assemblyman Pickard:

Now or after the new tax comes in. We are talking about a dollar amount.

William Wilson:

I am probably not explaining myself well. The California State Board of Equalization has not figured out how they are going to charge it, what it is, or how it is going to be charged. Is it going to be a milliliter? Is it going to be based on sales? Is it going to be based on stock? They have not made those decisions yet. We have had some pretty high-powered lawyers talking to them, and we have not gotten an answer. They basically want us to trust them; they will figure it out in a year because that is when it is really going to hit, then they will back charge us.

Assemblyman Pickard:

I understand. What would the answer be under the current tax?

William Wilson:

I do not have that right off the top of my head, but I can get you that information.

Assemblyman Flores:

This is for my own education. I have heard multiple times today the idea of taxing the nicotine percentage as opposed to the actual amount, the per milliliter. Do all cigarettes have the same amount of nicotine? Do you know?

William Wilson:

I have no idea. I do not smoke; I never have.

Assemblyman Flores:

I went online and did some research. It is my understanding that not all cigarettes have the same amount of nicotine. I bring that up because I think we do agree that we do tax every pack of cigarettes the same even though they contain different amounts of nicotine. We are not applying that logic there. That is why when we bring the conversation to vaping, we are not making an apples-to-apples comparison when we bring up whether we should tax the level of nicotine because we do not do that even in the regular tobacco world.

We want to create a flat tax for every vaping product that has nicotine; with cigarettes we are already doing that. Every single pack of cigarettes is taxed the same. I just wanted to put that out there for the Committee, and for you as you are reaching out to us and I expect all in opposition will be, just to keep that in mind.

William Wilson:

The cigarette manufacturers do not have specific different nicotine levels in there. The vaping industry does have specific different levels. That is all I was trying to point out—that we did have specific different nicotine levels in the products. Again, when you take a look at 30 milliliters, where you are going to charge another \$3 on it, a bottle that was \$5 becomes \$8, or however you are going to do it. It almost doubles the price. The problem is our products are not only purchased through us. You can buy them anywhere. Why would I want to buy a product that used to cost me \$5 and is now going to cost me \$8 when I can buy it from someone in another state, where it is only going to be \$5? That is the problem.

Assemblyman Flores:

I appreciate your feedback. Again, I just wanted to make it very clear that we are not handling it in the other industry as well.

William Horne, representing Nevada Vaping Association:

We are unfortunately in opposition of A.B. 269. Yesterday one of the members [Mr. Mazzola] made a trip up here and met with Chair Neal and the bill sponsor, and briefly with Assemblywoman Cohen, in an attempt to outline concerns the association and the industry has with A.B. 269. Much has already been said on the concerns with the bill.

I will not rehash those issues. I will say the most compelling argument that has been made by the opposition is this is a burgeoning industry that is taking hold in Nevada. I would say in that regard, we should embrace this industry and allow it to flourish.

Mr. Guindon stated in his analysis the possible levels of revenue that could be generated, approximately \$1 million. If you look at the economic impact that could be had from Mr. Wilson's arrival to the state, arrival from the other two Mr. Mazzola talked about, and others who have sought Nevada out and are looking to move here, I believe the economic impact is likely to be far greater than \$1 million. In that regard, I would say we should embrace that and allow them to flourish. In the interim, we can work on the issues that have come up on how exactly to tax it, and the comparison between the tobacco industry's nicotine delivery system, where it is a smaller unit, but it has a larger percentage of nicotine, as compared to the liquid vape.

In closing, to address Assemblyman Frierson's question, asking whether or not we would be able to sort of count heads, if the bill passed, what would the impact be, and if we would be able to see the impact after it passed as opposed to if it did not pass, and if next session we would be able to see if the industry flourished. I would argue that since we are talking about a low amount of possible tax revenue, you err on the side of caution and allow this industry to grow. Put it on the back of the industry to take count on the number of vaping shops and manufacturers, such as Mr. Wilson and the members of Nevada Vaping Association, to determine what their numbers are in 2017 and to see how they grew with the assistance of the Nevada Legislature. Currently, with the Nevada Vaping Association, there are approximately 150 shops, and their employees are making anywhere from \$10 to \$22 per hour. I anticipate if they keep coming here, like Mr. Wilson's company, we are going to see those numbers increase. I say let us take a look and let us make that happen.

Chair Neal:

Members, do you have any questions? [There were none.] I have a question for Mr. Wilson. I was curious about the California legislation. I was reading a tax bulletin that came out from the California State Board of Equalization, dated September 2016, and it looked like the vape bill they had in 2015 died, and the only thing that came out was to make sure folks who were in the industry to register by January 1, 2017. They did not have the actual tax rate because it was not defined in tobacco products. I was just curious: what legislation in California were you referring to?

William Wilson:

It was Proposition 56. It was on the November 8, 2016, ballot, and it passed.

Chair Neal:

It passed, but there have been no regulations that have been created, right?

William Wilson:

Correct. They have until January 2018 to get the regulations in place, and then they are going back to charge us for the year.

Chair Neal:

There has been a lot of conversation about the federal government regulating in this space. You seem to be a larger business. How will that federal law affect you, the changes?

William Wilson:

We are not really sure because the FDA has not made their position clear. They have decided that even though there are flavors out there that have no nicotine in them at all, they are going to treat them just as if there was nicotine in them. Everybody is holding their breath. Depending on how they come out with their deeming regulations, it could kill this entire industry.

Chair Neal:

Thank you for your testimony. I am going to go back down south to those speaking in opposition.

Thomas Harmon, Owner, Sin City Vapor, Las Vegas, Nevada:

I am probably arguably the godfather of vaping for Las Vegas. It started at a swap meet in 2010 and I have now grown to six shops. I employ 20 people. Our average wage is \$20 per hour. I have management making \$60,000 per year. We are good business corporate citizens. We collect sales tax to the tune of about \$200,000 per year. We pay a lot of payroll taxes, obviously. We provide good benefits.

There is a lot of opposition to this bill coming from a lot of different stakeholders. There is a tremendous amount of competition. This particular bill would make me less competitive. It would give the retail association—the 7-Eleven stores and so on that sell big tobacco products—a distinct advantage.

In reference to your comment on the FDA, our future is extremely uncertain. The FDA regulations, as presented, would stop this industry cold. It amounts to prohibition. The idea that a product that has such potential for improving public health would meet this kind of fate, to me, is morally reprehensible.

I want to be competitive. If I am unable to maintain my competitive edge through my marketing and customer service, merely from the fact that I have to charge \$3 to \$6 more for something that a company on the Internet does not, or a black market is created, that \$1 million dollars in revenue, which in the grand scheme of things is not a great deal of money, the impact on my business would be that I have to lay people off. I have to close shops, stop paying leases, stop buying insurance, and my people go on to collect unemployment. They lose their houses, and so on and so forth. What is the economic impact of creating a less competitive environment for small businesses like mine? That is what this tax does.

Assemblyman Pickard:

I am curious, when you talk about sales tax, do you sell anything outside of vapor products? Obviously you sell the devices, but I wonder how much sales tax the liquids you are generating, if you have disaggregated that already?

Tom Harmon:

Fifty percent of our revenue is in e-liquid sales and 50 percent would be in device sales.

Jamie Homampour, Owner, Blue Diamond Vapors, Las Vegas, Nevada:

I am a member of the Nevada Vaping Association, and I am also the owner of Vape Corp, doing business as Blue Diamond Vapors. I am in Assemblyman Frierson's district. I talked to him on the telephone a few times during the last session, at which time we discussed S.B. 79 of the 78th Session. You knew there were some changes there for him, unfortunately for me.

When we had the conversation about S.B. 79 of the 78th Session, which was the tax bill, the general consensus among everyone was there was too much that was unknown, as to what exactly was happening in our industry—both federally, and as well as questions about composition, et cetera. Here we are two years later, essentially in the exact same position.

To give you an example, right now there is a lot of conversation about this bill rooted in nicotine, but no one has discussed tobacco-free nicotine. The FDA has already said it will consider tobacco-free nicotine once it determines the deeming regulations, but right now the FDA believes that tobacco-free nicotine is not nicotine from tobacco, and therefore, not subject to the Family Smoking Prevention and Tobacco Control Act, and therefore, not subject to regulations by the FDA. In Nevada, we would then have to start considering things like what tobacco-free nicotine means versus traditional nicotine sources from traditional tobacco. When we have this conversation solely about tax and not about the total picture, it definitely makes things clunky, but I want to focus on some tax things.

I have been a business owner in southern Nevada for a significant period of time. Before getting into this industry, I owned a large chain of tanning salons called the Tan Factory. During President Obama's first term, there was considerable discussion about luxury items and their taxes. What came of that was a 10 percent flat tax on all tanning services. Prior to that, federally there was no tax whatsoever on tanning. When we got the 10 percent tax, within one year we began to see a reduction in sales, somewhere in the tune of 12 to 22 percent, depending on the market. The reality was consumers did not find 10 percent more money to make those purchases. They simply made fewer purchases, impacting salons in southern Nevada tremendously during that time frame. We closed two stores specifically because of that loss.

When we are looking at 5 cents to the milliliter, we have to consider how businesses operate. For example, if you were to walk into my brick-and-mortar store right now, and you were to purchase 120 milliliters of e-liquid, regardless of the nicotine level, that price would be \$25. One of the things that is important to consider is that my business model is not the same as

Mr. Harmon's business model or Liz Belcher's business model at Vapeco. You are essentially saying if we were to have this 5 cents to the milliliter, one of my customers would buy a \$25 bottle, then pay \$8-and-change sales tax, and then almost 25 percent additionally in a tax on top of it. That customer would be paying slightly more than \$8 in taxes just on that one purchase. The reality is that customer is not going to buy that product. They are going to buy a smaller product or they are going to start making the decision about whether or not using that product makes sense financially versus buying a pack of cigarettes.

Another thing to consider is the composition of products. One of the things I found when I visited Carson City two years ago with members of the Nevada Vaping Association, is that legislators had not seen devices before, and they had no idea how e-liquid was made. While I do not want to get into too many details on the record, the composition of e-liquid is very unique, and the way that product comes to exist is also very unique. The amount of liquid nicotine per milliliter that goes into a product is very small, so we are essentially placing 5 cents to the milliliter on a product that is probably 95 percent not nicotine. It is glycerin, propylene glycol, and food-grade flavoring. Truly, from a tax perspective, this does not make sense. I could go to Whole Foods right now and buy bottles of vegetable glycerin and bottles of propylene glycol, and go to Wal-Mart and buy flavorings from LorAnn Oils, and there is no price per milliliter tax on those products.

The reality is that on paper, 5 cents to the milliliter sounds like it makes sense. However, when you start looking at the composition of e-liquid, consider things like tobacco-free nicotine and look at how this industry is still emerging in terms of the unknown, it makes zero sense to apply a tax like this.

I believe the sales tax right now is perfectly fine. When I was in Carson City, one of the things I was told was customers are used to being taxed because they are former smokers. That is not okay. If somebody makes a decision not to smoke anymore, they should not then have to suffer the burden of additional taxes because they were a smoker. When the Department of Taxation presented S.B. 79 of the 78th Session, they made the statement on the record that they were told to find the money and they did not know how this product works. This time around Assemblywoman Bustamante Adams said, just an hour ago, that everyone wants a piece of the money. The bottom line is these are people looking for the money. No one is considering the reality of this industry, how it actually came to be, the good that it is doing, or the impact that tax is going to have on those businesses.

Chair Neal:

Thank you for your comments. Members, do you have any questions? [There were none.] Is there anyone else speaking in opposition to A.B. 269? [There was no one.] I will now take testimony from those who are neutral on A.B. 269.

Deonne E. Contine, Executive Director, Department of Taxation:

I am coming up in an attempt to answer some of the questions. I think Assemblyman Kramer had a question about how we would collect this tax. This bill, as it is written, is a wholesale tax just like other tobacco products and tobacco. The wholesalers would have to be

registered with the Department of Taxation. They would have to file a return. They would have to include the amount they sold and the tax rate. It would not be any different than what we are already doing.

I want to make a distinction in the discussion that has occurred today. I do believe there is a difference in taxing just a straight product versus the taxation of what is in a product and having to determine that. For instance, if I have to audit whether someone has sold something that has 3 percent nicotine or 6 percent nicotine, then I need to have staff to do that. That creates a level of complexity. It is comparable to what we are going through right now with marijuana. The marijuana is tested. The testing labs are licensed by the state. They are required to be tested for various things, so that creates that level. Five cents per milliliter is pretty straightforward. The Department is neutral on this bill. You heard testimony today that we attempted to do this in 2015 and were unsuccessful. If there are any other technical questions or collection questions, I would be happy to answer them.

Assemblyman Kramer:

If you are going to rely upon the wholesale billings to collect the taxes, the wholesale statement is going to say 3 percent nicotine or 6 percent nicotine; there is your answer on that. If you want to audit whether they are actually sending 3 percent nicotine or 6 percent nicotine, that is a different question. Right now, cigarettes get a revenue stamp. Somebody could import these products from across the border. Is there going to be a stamp on those, so you know when purchasing from a vape shop which ones had the tax paid on them or not? That is why they put the stamp on cigarettes, to keep the importing from other states and avoiding the tax. I do not know how you would do that with these little bottles of e-liquid. In New York you cannot sell single cigarettes because you have a tax stamp, and that is how you know that pack has been taxed, and if you get rid of the pack you cannot tell. I am saying you have a more fungible product with this. I do not know how you tell. If you are going to use the wholesaler to say how much is delivered, then use the wholesaler to determine what the content is. Those are just some comments.

Deonne Contine:

We already do that. There is a wholesale tax on the can of snuff. It is 30 percent of the wholesale price. That is not a stamp, it is just a wholesale tax. What I was trying to say with respect to the different levels of nicotine is someone could give me a packet and say they sold it. It has 3 percent nicotine and that is why they paid that rate, but how do I know it has 3 percent nicotine, and how does anybody know?

Unlike other industries that may be regulated or there may be some standards, the fact is there is no kind of oversight here, so having to determine a tax rate based on some type of level is harder to do.

Chair Neal:

Are there any additional questions? [There were none.] I will call the bill sponsor back to the table for closing comments.

Assemblywoman Bustamante Adams:

Thank you so much for the conversation and thank you members of indulging me. Like I said, I know last time the health questions got included in the conversation, so we could not focus on tax policy. There is another bill from the Legislative Committee on Health Care that is coming out [Assembly Bill 450] that looks at product labeling that looks at the Nevada Clean Indoor Air Act and several other health issues regarding vapor products.

In the previous conversations we have had in the Assembly Committee on Taxation in past sessions, when trying to include something new into an existing structure, there is always this kind of testimony. I have been through it. I remember when we were trying to look at live entertainment, there was a lot of opposition. Golf courses did not want to be included, outdoor concerts threatened to leave Nevada, and we are still doing well. I want you to take that into consideration. I have sat on the other side and heard the testimony. Some people did leave. They did not want to participate in Nevada, and that was their choice.

I had put it at 30 percent of the wholesale price. The industry thought that was too high. I compromised and said 5 cents, so I think I have shown a willingness to work through it if they want to propose something different. Lastly, I wanted to talk about the godfather of vape. He said he has been here since 2010. Some people pitched that it is a new product and a new industry. They are moving to Nevada for a reason, because it is booming. It took us a lot of sessions to get live entertainment right. It took us a lot of heartache to get through commerce tax discussion last session, and that is why vaping was not a priority.

My question to you is if not now, then when? If you do not want to participate in Nevada, then maybe we are not the right state for you. I think that being business friendly is negotiating on what is right.

[([Exhibit D](#)) was presented but not discussed and is included as an exhibit for the meeting.]

Chair Neal:

I will close the hearing on A.B. 269. I will now open the meeting for public comment. Is there anyone here for public comment? Seeing none, we are adjourned [at 6:00 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblywoman Dina Neal, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated March 20, 2017, in opposition to Assembly Bill 269 to Chair Dina Neal, authored and submitted by Liz Belcher, Owner, Vapeco, Las Vegas, Nevada.

[Exhibit D](#) is a letter dated March 20, 2017, in opposition to Assembly Bill 269 to Assemblywoman Dina Neal and the members of the Assembly Committee on Taxation, authored and submitted by Kevin Dick, District Health Officer, Washoe County Health District.