

**MINUTES OF THE JOINT MEETING OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT
AND THE
ASSEMBLY COMMITTEE ON TAXATION**

**Eightieth Session
May 27, 2019**

The joint meeting of the Senate Committee on Revenue and Economic Development and the Assembly Committee on Taxation was called to order by Chair Marilyn Dondero Loop at 5:00 p.m. on Monday, May 27, 2019, in Room 4100 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SENATE COMMITTEE MEMBERS PRESENT:

Senator Marilyn Dondero Loop, Chair
Senator Julia Ratti, Vice Chair
Senator David R. Parks
Senator Ben Kieckhefer
Senator Heidi Seevers Gansert

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Chair
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Shea Backus
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Lesley E. Cohen
Assemblyman Chris Edwards
Assemblyman Edgar Flores
Assemblyman Gregory T. Hafen II
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblywoman Heidi Swank

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12

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STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley, Committee Counsel
Barbara Williams, Committee Secretary

OTHERS PRESENT:

Michael Hackett, Nevada Tobacco Prevention Coalition; Nevada Public Health Association; Nevada Primary Care Association; Nevada Academy of Physician Assistants
Andrey Khlystov, Ph.D., Director of Organic Analytical Laboratory, Desert Research Institute
Spencer Flanders
Melanie Young, Executive Director, Department of Taxation
Hillary Bunker, Office of the Attorney General
Julia Peek, Deputy Director, Programs, Department of Health and Human Services
Beth Handler, Deputy Administrator, Community Services, Division of Public and Behavioral Health, Department of Health and Human Services
Kevin Dick, Health Officer, Washoe County Health District
Bryan Wachter, Retail Association of Nevada
Jared Busker, Children's Advocacy Alliance
Tom McCoy, Cancer Action Network, American Cancer Society
Benjamin Schmauss, American Heart Association
Ruby Schmauss
Kimberly Rogers, American Lung Association
Elisa Cafferata, Planned Parenthood Votes Nevada
Mari Nakashima, Nevada State Medical Association
Matt Robinson, Southern Nevada Health District
Sarah Adler, Board President, Healthy Communities Coalition of Lyon and Storey Counties
Matt Walker, Nevada Dispensary Association
Lesley Pittman, JUUL Labs, Inc.
William Horne, Vapor Technology Association
Edith Duarte, Vapor Technology Association
Rob Solomon, eCig Distributors, Inc.

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Paul Enos, Nevada Trucking Association

CHAIR DONDERO LOOP:

Today we will be hearing Senate Bill (S.B.) 263.

SENATE BILL 263: Revises provisions relating to the regulation and taxation of certain vapor products and tobacco products. (BDR 32-700)

SENATOR JULIA RATTI (Senatorial District No. 13):

I have spent a good portion of my life working on behalf of kids, and I spent eight years on the District Board of Health for Washoe County. I believe strongly in the prevention strategies and work that has been done in the public health setting to protect both the individual health of Nevadans and the overall health of our communities.

The 2018 National Youth Tobacco Survey produced some truly alarming results. This information was published in November 2018. High school student use of e-cigarettes and vaping products has increased 78 percent from 2017 to 2018. Middle school student use increased 48 percent in the same period. Nationwide, 3.6 million students use vapor products with 27.7 percent using regularly. We know 90 percent of adults who are addicted to nicotine started use as teenagers. We have an epidemic.

The industry would like to tell you e-cigarettes and vaping are a harm reduction product. The U.S. Food and Drug Administration (FDA) approves smoking cessation products, and this bill specifically excludes from taxation those products designed and approved to reduce smoking.

Let us be clear—the products we are talking about have been demonstrated to cause harm. They may be less harmful than some other tobacco products, but they are still harmful. For many Nevadans, these products are the first nicotine products they have used. They are not using them to quit nicotine, they are getting hooked on nicotine by using them.

Among adults who vape, 11.4 percent of users have never smoked. The rest are trying to quit cigarettes but are still using nicotine. Among kids, 40 percent of vapor product users have never smoked. This is their gateway drug to a life of addiction to nicotine. These are new customers who, because of how

addiction affects the developing brain, have a high likelihood of becoming long-term customers. We should all be alarmed by these trends.

This bill includes a broad range of strategies to address the issue of increased use of these products. It includes four strategies which have been demonstrated to make a difference in the public health sector. The first is regulation and taxation. E-cigarettes, vaping and other nicotine products will be reclassified as other tobacco products (OTP) for the purposes of taxation and regulation. This entire category of products we are talking about today has escaped adequate regulation, and it is only appropriate they be classified and regulated like similar products in which the State's concern is with the long-term effects on consumers and the cost to society. We need to stay away from describing this as anything else but pulling in a class of products that has escaped regulation.

The second strategy is enforcement. We do not have the authority to target specific enforcement efforts of e-cigarettes and vaping products, and we need that authority. When vaping and e-cigarettes have been part of our cigarette and OTP enforcement efforts, the buy rate is too high. These enforcement efforts are instigated by the Office of the Attorney General that hires young people to try to purchase and see how many underage buyers are successful. We are moving beyond the buy rate acceptable to the federal government which threatens our ability to continue to receive funds for enforcement and prevention. If the federal government feels a state is not doing enough to prevent underage usage, it will pull back dollars. We are right on the tipping point of that rate.

We are focusing our enforcement efforts only on the clerk. If a minor purchases from a clerk, the clerk receives a criminal penalty, but the business suffers no consequences. Senate Bill 263 changes the penalty for clerks from a criminal to a civil one. The business is now also on the hook.

The third strategy is prevention. In the State, we have no resources specifically directed at prevention programs for e-cigarettes and vaping. We are proposing a multipronged prevention strategy to include mass media and social media campaigns, youth program interventions, education and information to retailers plus other research-based strategies. We propose following that with surveillance and evaluation to ensure we are making a difference.

Finally, S.B. 263 extends the Clean Indoor Air Act to vaping and e-cigarettes. There are secondhand consequences to bystanders. We want to make sure we are not normalizing tobacco usage again. We are rolling back significant gains won by the work done around cigarettes in the public health setting. It is becoming normal again to use nicotine. Putting all four of these strategies together will be a significant step toward changing that trend.

MICHAEL HACKETT (Nevada Tobacco Prevention Coalition; Nevada Public Health Association; Nevada Primary Care Association; Nevada Academy of Physician Assistants):

Within the public health community, mitigating the health consequences of tobacco use is a priority and shared concern. We support the comprehensive and focused approach to tackling the alarming growth in the use of e-cigarettes, vaping and other nicotine products, particularly among youth. According to the FDA, youth use is an epidemic. A 2018 U.S. Surgeon General's Advisory on E-Cigarette Use Among Youth ([Exhibit C](#)) came to the same conclusion. The use of these products in schools is rampant.

Senate Bill 263 is an important complement to S.B. 81 and Assembly Bill (A.B.) 535, each of which will strengthen tobacco licensing requirements, processes, oversight and enforcement.

SENATE BILL 81 (1st Reprint): Revises various provisions relating to tobacco products. (BDR 32-190)

ASSEMBLY BILL 535: Revises provisions relating to cigarettes and other tobacco products. (BDR 32-1242)

This bill aligns State law with the FDA's final deeming rule of 2016 ([Exhibit D](#)) defining electronic cigarettes and other vaping products, including their components but excluding accessories as tobacco products. When issuing its deeming rule, the FDA stated this move "will result in significant benefits for the public health." It is now the State's turn to act.

Tobacco is complex and touches many areas, including tax policy. Best practice and a long-proven method to combat tobacco use is comprehensive tax policy. Reclassifying vapor products as OTPs has been done in several states. Since S.B. 263 was first heard in the Senate Committee on Revenue and Economic

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Development on March 28, Oregon and Illinois have proposed similar legislation. I would correct my testimony in that meeting when I stated South Dakota has approved similar legislation—that was not the case.

Public health also benefits by prohibiting the use of vapor products under the Nevada Clean Indoor Air Act. Doing so will help to prevent renormalizing tobacco use as acceptable behavior as well as protect Nevadans from the risks of second- and thirdhand exposure. We applaud those businesses and school districts that have implemented vape-free policies. Prohibiting their use where smoking tobacco is prohibited will give weight to those efforts.

The next generation of tobacco and nicotine products is here and has been for over ten years. It will continue to evolve. Tobacco prevention and control programs have struggled to keep up. The only State funding for these programs comes from the tobacco Master Settlement Agreement through the Fund for a Healthy Nevada in the amount of \$950,000 per year. Tobacco-generated tax revenue is not used for this purpose. The appropriation requested in this bill will help considerably.

It is important not to lose sight of the fact that vapor products are harmful. As you will hear, studies conducted by the Desert Research Institute (DRI) show a significant amount of cancer-causing chemicals along with dangerous aldehydes formed during the chemical breakdown of flavored e-liquids and emitted in e-cigarette vapors.

Nicotine is an addictive, harmful chemical. It is the most common addiction in the Country. Nicotine use induces physical and mood-altering effects, causes high blood pressure and increases the risk for heart disease, respiratory issues and stroke. The impact on youth is worse. Hopefully, past lessons learned about tobacco are not lost as we confront its future.

ANDREY KHLYSTOV, PH.D. (Director of Organic Analytical Laboratory, Desert Research Institute):

My research group has been on the forefront of e-cigarette research in the past several years. Our work has been recognized by professional organizations such as the Society for Research on Nicotine and Tobacco and the National Academy of Sciences.

We found e-cigarettes produce carcinogenic and other toxic compounds such as formaldehyde and acrolein. Exposure to these compounds exceeds occupational safety limits by factors of 2 to 290. The amount and types of toxic compounds depend directly on the type and concentration of flavoring compounds in the e-cigarette liquid. The flavors are the main attractive factor for young users.

Since the publication of this data in 2016, six other research groups confirmed our results. While a large fraction of toxic aldehydes is retained by e-cigarette users, significant amounts of these compounds are exhaled and could pose danger to bystanders via secondhand exposure.

In our 2018 study ([Exhibit E](#)), concentrations of formaldehyde in vape shops during operating hours were six times higher than during closed hours. Indoor nicotine concentrations in shops where e-cigarettes are used were comparable to those in smokers' homes.

There is also a risk of thirdhand exposure to nicotine from e-cigarettes via contact with indoor surfaces. Surface nicotine levels in vape shops were 30 times higher than those in smokers' homes and cars.

In conclusion, our findings clearly show e-cigarettes are not harmless nicotine delivery devices as they are often portrayed.

MR. HACKETT:

I would like the Committee to hear from Spencer Flanders. I have known him for several years, and he is an outstanding youth advocate on tobacco issues. He has been recognized by the Campaign for Tobacco-Free Kids. His efforts resulted in his nomination in 2016 for the *Reno-Gazette Journal's* community service award. He is currently an intern in U.S. Senator Catherine Cortez Masto's office as well as a student at the University of Nevada, Reno.

SPENCER FLANDERS:

I am a proud graduate of Douglas High School, class of 2016. I started my passion for tobacco prevention in my freshman year. I saw many of my peers using cigarettes and tobacco products, and I knew how harmful they were. I got involved in the community Drug Abuse Resistance Education program and our local Students Taking on Prevention program. I helped pass the Douglas County smoke-free parks and trails ordinance, served as master of ceremonies multiple

times for youth advocacy summits focusing on tobacco prevention and helped Western Nevada College become a smoke-free campus. I came here today to share with you my concern about youth vaping.

In the three short years since I graduated high school, youth tobacco use has skyrocketed. Traditional tobacco products are decreasing, but vaping is on the increase. I have spent hundreds of hours striving to reduce youth cigarette and tobacco use, and we were winning that battle. From the mid-1990s to 2015, we saw massive decreases in cigarette use. Then e-cigarettes appeared on the scene. They have provided a new, cheap and easily concealable way to consume tobacco and thus become addicted.

Look at the data. We have a nicotine epidemic on our hands. My classmates and their little brothers and sisters are using these devices everywhere. The most popular closed system is the JUUL, which is used by 70 percent of the teenagers who vape. It looks like a flash drive and can be easily concealed. There is little or no odor emitted, so it is hard to detect users. I have seen people use it in class.

By supporting S.B. 263, you can make it too expensive for youth to buy these products, which they should not be buying in the first place. This bill will also direct funding toward tobacco prevention programs and, hopefully, teach kids these products are not as safe as they think.

You have heard the statistics about the increase in usage among high school students. The latest Nevada Youth Risk Behavior Survey, done in 2017, which tracks tobacco use among middle and high school students, shows that approximately 50 percent of high school seniors have tried an e-cigarette.

I am here today because I want our generation to live a productive and healthy lifestyle that does not include a lifelong addiction to nicotine. Please help me and pass S.B. 263.

ASSEMBLYMAN KRAMER:

We have a 30 percent tax on OTP. Does this bill extend that tax to vaping products, or is that in one of the companion bills you mentioned?

SENATOR RATTI:

That is exactly what S.B. 263 does. We have a whole structure of taxation and regulation around cigarettes and an additional structure around OTP. This bill classifies e-cigarettes and vaping products as OTP.

ASSEMBLYWOMAN NEAL:

Can you discuss why you elected to do a wholesale tax rather than a milliliter tax? In the State Excise Tax Rate chart ([Exhibit F](#)), both types are used by different states.

SENATOR RATTI:

We have a structure in place for OTP. In terms of efficiency for the State and our ability to collect revenue, using an existing system was more practical. They are tobacco, they are not a cigarette; by definition, they are OTP.

Last Session, we had a bill that proposed the 5 milliliter model. The fiscal notes on that bill revealed it would not draw much revenue. The data shows we have been successful in reducing cigarette smoking by taxing it significantly. The more we raise the cost of these items, the more the economic behavior of the end user changes. When I looked at the revenue generated from the milliliter tax versus the revenue generated from the OTP, the OTP was the way to go if the goal is to suppress usage.

ASSEMBLYWOMAN NEAL:

In Proposed Amendment 6042 ([Exhibit G](#)), much of the language in section 2, subsection 2 includes the phrase "or a similar product or device," which is broad. In [Exhibit D](#), the FDA Final Deeming Rule excerpts, accessories are excluded. What is the difference between devices and accessories?

SENATOR RATTI:

The entire regulatory environment is struggling with a new class of products evolving at a rapid pace. I agree "or a similar product or device" is a broad term. The laundry list of products in [Exhibit D](#) is what was available at the time. But these products are evolving quickly, and the intent of the law is to include everything that is vaping, e-cigarettes and other nicotine products. Whether the delivery device is a hookah or a JUUL, you cannot skirt around the regulation just because you have put it in a different form.

ASSEMBLYMAN HAFEN:

I look at this bill as fair taxation. It is putting all the tobacco and nicotine products on a level playing field. Did you consider making this bill revenue-neutral and lowering the rate to 25 percent or something similar?

SENATOR RATTI:

I am not sure how to make something revenue-neutral if there is no tax on it currently. The 30 percent tobacco and OTP tax generates a significant amount of money while this additional class will not. Lowering the rate for all products, even by a small amount, would lower the revenue too much.

ASSEMBLYMAN HAFEN:

Will we be able to track how much revenue these products are generating separately from the rest of OTP? Next Session, we could compare and make a decision about the appropriateness of the rate.

ASSEMBLYWOMAN NEAL:

I also would like to know if we will be able to track how much revenue the vaping products generate. What was the internal dialogue administratively about setting a different rate on vaping products from OTP?

SENATOR KIECKHEFER:

If the device can be used for multiple purposes—for example, tobacco or marijuana—where is the decision point made as to whether the device is intended to be used for nicotine delivery?

BRYAN FERNLEY (Committee Counsel):

Section 2, subsection 3, paragraph (b) provides that anything subject to the excise tax on marijuana or marijuana products is excluded from the definition of OTP. The question is if you have a hookah, for example, how do you distinguish one used for marijuana versus tobacco? There is a rule of statutory construction that when you have a list of items like this, they are interpreted to be similar things. The list in S.B. 263 would be interpreted as a list of things used for vaping.

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SENATOR KIECKHEFER:

Would a wholesaler making a sale to a marijuana retailer have the liberty to decide that is not a product intended for nicotine delivery? If the wholesaler were to sell the same item to a vape shop, would the wholesale tax apply?

SENATOR RATTI:

If a marijuana dispensary purchases devices which could be used for vaping as well as marijuana, those devices are not subject to the marijuana excise tax. They would then be subject to the OTP 30 percent tax. A dispensary would have to purchase that portion of its inventory from a licensed wholesaler, and that licensed wholesaler would need to pay the 30 percent tax.

MELANIE YOUNG (Executive Director, Department of Taxation):

To the question posed by Assemblymen Hafen and Neal, the revenue for OTP in 2018 was \$16.4 million.

ASSEMBLYWOMAN NEAL:

What have you projected to be the market share for vape under OTP?

Ms. YOUNG:

That is projected to be \$7.8 million in the first year and \$8 million in the second year.

SENATOR RATTI:

I am looking at all tobacco products. Other tobacco products may be \$16 million, but all tobacco revenue is a big number. I am not sure of the logic of trying to balance that. From the public health perspective, the concept is the 30 percent rate is fair and equal across all classes of products and is enough to change behavior.

ASSEMBLYMAN KRAMER:

What about an asthma inhaler? That is a way of injecting a chemical into my lungs. If someone came up with a way to do that with tobacco, would S.B. 263 include that product? Would we have to come back and add another category of dispensing devices?

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SENATOR RATTI:

I do not believe an inhaler would be categorized as OTP, as it does not include nicotine. The bill excludes products regulated by the FDA.

ASSEMBLYMAN KRAMER:

I am not suggesting it would be approved. I am wondering if someone came up with a way of delivering nicotine through an inhaler, would it be covered by this bill.

SENATOR RATTI:

If a product was used to deliver nicotine, it would fall under the "similar devices" rule. As these products evolve, it would not surprise me to have to come back and expand our list of devices.

ASSEMBLYMAN HAFEN:

My question is about section 1, subsection 2, paragraph (b) of Proposed Amendment 6042. The language lists several forms of identification such as a driver's license and then says "or other written or documentary evidence" of age. What would be covered by that description? Would a student identification card or hunter safety card be sufficient? Would a birth certificate suffice, or does it have to be a photo identification?

HILLARY BUNKER (Office of the Attorney General):

This language exists already in *Nevada Revised Statutes* (NRS) 202.2493. We tell merchants if they are ever uncomfortable with a sale or the identification presented, they should not go forward with the sale. Individuals without driver's licenses can use the State identification card issued by the Department of Motor Vehicles. A social security card would not suffice. We prefer State-issued identification that includes date of birth and photograph.

ASSEMBLYWOMAN NEAL:

In [Exhibit G](#), section 1, subsection 6 says, "a peace officer or any person performing an inspection ... may issue a notice of infraction." Walk me through what that is like.

Ms. BUNKER:

Our Tobacco Enforcement Unit is the one that performs these checks. The Office of the Attorney General has the authority under NRS 202.2496 to

perform the checks, although any peace officer can enforce the law. We hire underage individuals, accompanied by a POST-certified investigator, to attempt to purchase tobacco products. Regardless of whether a sale is made, the kid exits the store. At that point, the investigator goes back in the store and meets with the clerk, giving that person a pass if no sale was made or, if a sale was made, identifying the clerk and working through the penalty procedure.

ASSEMBLYWOMAN SPIEGEL:

What are the provisions for due process for the clerk? Suppose he or she has been presented a fake identification but thought it looked genuine. What is the clerk's recourse?

Ms. BUNKER:

There is a due process in section 1, subsection 8 of Proposed Amendment 6042. Anyone who has been issued a notice of infraction may admit the violation and pay the fine or deny liability and request an administrative hearing to dispute the fine.

SENATOR RATTI:

Section 1, subsection 2, paragraph (c) includes the language "reasonably relies" on a form of identification.

I have submitted two exhibits which fully explain how the Department of Health and Human Services would allocate its budget. One is an overall graphic depiction ([Exhibit H](#)), the other a detailed spreadsheet ([Exhibit I](#)).

ASSEMBLYWOMAN COHEN:

We are seeing more television public service announcements (PSA) about prevention and the danger of vaping. Do we know if those are having any success? Do we know what it will take to reach teenagers?

JULIA PEEK (Deputy Director, Programs, Department of Health and Human Services):

You have probably seen the "Truth" PSAs, and they have been effective. It is called countermarketing. The budget we have submitted includes research on countermarketing by social groups proceeding to a large media campaign.

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ASSEMBLYWOMAN COHEN:

If our research shows those PSAs work, then we would do a campaign, and the national PSAs would also be out there, is that correct?

MS. PEEK:

That is correct. If there is an effective national campaign, we can work with the Centers for Disease Control (CDC) to modify it for our market with our logo and resources, such as the Nevada Tobacco Quitline. We also want to do Statewide research on social groups to target messages specifically.

CHAIR DONDERO LOOP:

Are you planning to do outreach to the school system?

BETH HANDLER (Deputy Administrator, Community Services, Division of Public and Behavioral Health, Department of Health and Human Services):

We will be collaborating with the Department of Education and all of the coalitions and community partners to coordinate prevention efforts.

ASSEMBLYWOMAN NEAL:

I have been reading the Surgeon General's Advisory, [Exhibit C](#). There is a statement about youth using a vaping device to deliver marijuana, but the statement was from 2016. What is happening now? Do we track that here in the State?

MS. PEEK:

The Youth Risk Behavior Survey mentioned previously does ask that question. We could be asking more and better questions. Teenagers do use vaping products for multiple reasons. We hope to do outreach and education to deter this behavior because almost no dollars are going to e-cigarette and vaping prevention.

ASSEMBLYWOMAN SPIEGEL:

I have walked into a few of the vape shops in my district to get a sense of the industry. I have been appalled at advertising posters and flavored products which seem to target kids. Have any states looked at pricing policies and higher tax rates for products that target youth?

MS. PEEK:

The best data we have on pricing policies affecting behavior is on the combustible cigarettes. When the tax is raised, it most affects those on a tight budget. We are hoping to have the same effect on vaping.

There is no doubt the marketing is aimed at youth. The "skins" that come on JUUL products have peace signs and hearts and other graphics which would appeal to my daughter.

SENATOR SEEVERS GANSERT:

There is a great deal of federal regulation on the packaging and marketing of cigarettes. Do those regulations apply to OTP? We have done that around marijuana on a State level.

MS. PEEK:

I am not aware of anything on the federal level being done to regulate OTP marketing.

SENATOR SEEVERS GANSERT:

I appreciate the budget breakdown graphic you have provided us in [Exhibit H](#).

SENATOR RATTI:

As mentioned earlier, S.B. 263 extends the Clean Indoor Air Act to vaping and e-cigarette products. It is primarily the health districts that are charged with enforcing the Clean Indoor Air Act.

ASSEMBLYWOMAN NEAL:

My concern is individuals who are trying to quit cigarettes by vaping. The bill includes a place of employment as subject to these conditions. Are we going too far if we prohibit people who are trying to quit smoking from vaping?

SENATOR RATTI:

They would be in the same situation as coworkers who smoke, in that they must go to a designated outdoor area.

KEVIN DICK (Health Officer, Washoe County Health District):

The Clean Indoor Air Act has been effective for tobacco product use. We receive few complaints of violations. There will likely be a learning curve with vaping and e-cigarettes, but I would expect it to become the new normal.

ASSEMBLYWOMAN NEAL:

I was in a local bar recently and saw a bartender vaping at her post. I worry this has become the accepted practice, and it will be hard to change.

MR. DICK:

This is why this bill is so important, especially with the provisions for prevention funding. We can do a better job educating the public about the risks posed by vaping and the secondhand risks. We heard testimony from DRI about the toxic and carcinogenic compounds present in e-liquid which are also exhaled. We have been able to change common practice with combustible cigarette consumption. I am hopeful the same approach will work with vape products.

SENATOR RATTI:

Assemblywoman Neal's point is interesting. More often we are concerned with the bar full of people vaping and the bartender being exposed to the secondhand effects. That bartender has the opportunity to use any FDA-approved smoking cessation device, such as nicotine patches or gum, while working in order to manage her need for nicotine while trying to become a healthier person. What she does not have the right to do is have her vaping affect her coworkers and members of the public. All of the philosophical arguments used for us to pass the Clean Indoor Air Act in Nevada and many other states apply to e-cigarettes and vaping. We have a duty to protect employees who do not have a choice about being there.

ASSEMBLYWOMAN NEAL:

The argument has been made that e-cigarettes and vaping are less harmful than combustible cigarettes. I would like to hear more about the harmful effects to bystanders.

DR. KHLYSTOV:

Our study was primarily focused on the retention of formaldehyde and other carcinogenic compounds. However, we can use that data to know how much has been exhaled. We measured what comes from the e-cigarette itself and

what was exhaled. Exhaled compounds were a small fraction of the toxins inhaled, but it was still a significant amount. Whatever is coming out is still dangerous to whoever is around. The exhaled nicotine amounts were even higher, leading to second- and thirdhand exposure. Our study was not about thirdhand exposure, but other studies published in peer-reviewed literature show that nicotine after deposition on surfaces can combine with other chemicals to form carcinogenic compounds.

SENATOR SEEVERS GANSERT:

Do you know of studies related to the addictive effects on children developmentally?

MR. DICK:

The Surgeon General's Advisory, [Exhibit C](#), states nicotine exposure during adolescence can impact learning, memory and attention. That is why we are so concerned about the youth epidemic of vaping.

SENATOR SEEVERS GANSERT:

What was the statistic about adult users beginning as adolescents?

MR. DICK:

Yes, 90 percent of adults addicted to nicotine began using it as teenagers.

BRYAN WACHTER (Retail Association of Nevada):

We are in support of S.B. 263. We appreciate the sponsor working with us on the enforcement provision. If we are looking at an increase in the instances in which minor purchasing is occurring, then we are happy to do our part.

JARED BUSKER (Children's Advocacy Alliance):

Every two years, the Children's Advocacy Alliance releases a children's report card. One of the indicators we look at is drug use among children. Overall, we have seen a decrease in drug use with the exception of vapor products, where use has skyrocketed. We are in support of this legislation. Anything we can do to reduce nicotine usage among children is good for our State.

TOM MCCOY (Cancer Action Network, American Cancer Society):

The single-largest preventable cause of death in the United States is smoking. One-third of all cancer deaths in Nevada are due to smoking. Our State's

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healthcare costs are approximately \$1 billion each year associated with smoking-related diseases, much of it Medicaid dollars.

Senate Bill 263 provides an opportunity for us to do something for our youth and keep the next generation from becoming addicted to nicotine.

MR. DICK:

I submitted a letter of support ([Exhibit J](#)) on behalf of all of Nevada's health authorities, the Southern Nevada Health District and Carson City Health and Human Services.

BENJAMIN SCHMAUSS (American Heart Association):

The American Heart Association is greatly concerned with the epidemic rise of tobacco use by youth via e-cigarettes. My letter of support ([Exhibit K](#)) is submitted.

In 1997, the youth tobacco use rate was about 38 percent. With all the tobacco prevention efforts, the rate had dropped to 7.6 percent a few years ago. With e-cigarettes and vaping entering the market, the rate has jumped back to 26.5 percent.

I would like to introduce my daughter, Ruby, who is a sixth-grader at B. Mahlon Brown Junior High School and have her tell you what it is like at a middle school campus.

RUBY SCHMAUSS:

I am here to tell you how much I see vaping at school and after school. I see kids vaping a lot in the bathrooms. There are also people who vape in the back of the bus, and it is not enjoyable. I have a few friends who also do this. I am just a kid, not even a teenager.

It makes me sad that my peers are vaping. I wanted to come with my dad to try and help. Please support this bill.

ASSEMBLYWOMAN COHEN:

Do you know where the kids in your school are getting the vape products from?

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Ms. SCHMAUSS:

I am not sure, but I have seen some kids selling them on campus.

CHAIR DONDERO LOOP:

Are the teachers aware that your friends are vaping on campus?

Ms. SCHMAUSS:

Yes, the teachers know.

SENATOR SEEVERS GANSERT:

What happens when a child is caught vaping? What are the consequences?

Ms. SCHMAUSS:

They are sent to the principal's office, and the device is taken away. Then they are sent to detention the rest of the day.

KIMBERLY ROGERS (American Lung Association):

The American Lung Association strongly supports increasing and equalizing tobacco taxes. This will help prevent young people from starting to use tobacco products like e-cigarettes and help current users to quit. We also support new revenue raised from this tax which will go to tobacco control and prevention programs. They are a proven strategy to help smokers quit and to prevent from starting. We urge you to vote yes on S.B. 263.

ELISA CAFFERATA (Planned Parenthood Votes Nevada):

We appreciate the bill and support its public health goals.

MARI NAKASHIMA (Nevada State Medical Association):

We are here in strong support of this measure. The Nevada State Medical Association is a member of the Nevada Tobacco Prevention Coalition.

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):

I am a medical doctor. I hear stories from other children like Ruby about kids using vape products, even some with marijuana in the cartridge. They use it before school, at lunch and after school. There are challenges. The goals we have are to decrease the harmful chemicals in our children, decrease exposure to others, not harm businesses that sell to responsible adults, have an antivaping campaign to decrease disease and prolong life.

Our method is to find a taxation sweet spot. We need to look at the reality that 18-, 19- and 20-year olds are still developing, so the concept of raising the age to 21 has merit. I appreciate the tiered civil fines and the training that would be required of businesses to help clerks comply with regulations. I appreciate the Clean Indoor Air Act and what it will do to help adults as well as children. The prevention campaign would probably need more than \$2.5 million. It is probably important to allow time for this whole process to take place.

MATT ROBINSON (Southern Nevada Health District):

For all the reasons already stated, we are supportive of S.B. 263 and urge you to pass it.

SARAH ADLER (Board President, Healthy Communities Coalition of Lyon and Storey Counties):

The Healthy Communities Coalition is in support of S.B. 263. This takes a full-court press: prevention, treatment, education and compliance. In rural Nevada, the Healthy Communities Coalitions are able to handle the prevention, treatment and compliance with success when they have the resources to do so.

To your question, Madame Chair, SafeVoice is the student safety tip line. Among the first tips that came in was one from a student reporting that there was vaping going down at the corner of a school property.

MATT WALKER (Nevada Dispensary Association):

The language of S.B. 263 as it stands intends to capture vape products from wholesalers and sold to dispensaries. We respectfully request an exemption for sales to NRS 453A and NRS 453D marijuana licensees. These licensees are prohibited from selling tobacco products, and these products are already heavily targeted by their own industry-specific taxes. The stated public purpose is not appropriate for medical marijuana products being used by a patient at the recommendation of a physician.

LESLEY PITTMAN (JUUL Labs, Inc.):

We applaud the bill sponsor's efforts to address our youth vaping problem and are on board with the four goals she stated: taxation and regulation, enforcement, prevention, and extension of the Clean Indoor Air Act.

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However, we have to oppose this legislation as drafted as the tax portion of the bill will discourage adult smokers from switching to a less harmful product. JUUL was founded to improve the lives of the world's 1 billion adult smokers and to provide an off-ramp from smoking cigarettes. This bill's proposed 30 percent wholesale tax on e-liquids and accompanying products would add yet another barrier for cigarette smokers in Nevada who are looking to stop smoking.

It is not like we have been unwilling to participate in the revenue mechanisms contemplated. We have offered up a number of alternatives; unfortunately, those efforts have been unsuccessful.

The American Association for Cancer Research recommends that tobacco and vapor products "should be taxed proportionate to their harm." Electronic nicotine delivery systems should not be taxed at rates equal to OTP.

If S.B. 263 is truly designed to be a public health bill which reduces youth access to vape and e-cigarette products, we encourage the Legislature to consider alternative policies to reduce youth use, including raising the minimum age of sale and possession of tobacco and vapor products to the age of 21. States and jurisdictions that have raised the legal age to purchase tobacco have realized tremendous results.

Pursuing these strategies will result in a marked decrease in youth access to JUUL and other vapor products without restricting access by adult smokers who seek alternative and less harmful products to help them make the switch from combustibles.

ASSEMBLYWOMAN SPIEGEL:

The tax would be 30 percent for combustible cigarettes and vaping products. If the same tax rate is imposed across the board, how is that a disincentive to an adult tobacco user?

MS. PITTMAN:

E-cigarettes and JUUL are less harmful than combustible cigarettes. We should incentivize adults to use vapor products over traditional cigarettes.

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SENATOR SEEVERS GANSERT:

Smoking cessation products are exempted from this bill. Has JUUL applied to participate in the FDA process of identifying its product as a smoking cessation device?

MS. PITTMAN:

Not that I am aware of.

WILLIAM HORNE (Vapor Technology Association):

The Vapor Technology Association (VTA) represents manufacturers, wholesalers and small business owners who have developed innovative and quality vapor products for sale to adult consumers, and we oppose S.B. 263. These products provide a safer alternative to traditional combustible products.

The members of VTA are leaders in the vapor community, promoting small businesses and job growth, responsible public policy and regulations, and a high standard of safety within the industry. Approximately 125 vape shops in southern Nevada will be negatively impacted by the provisions in S.B. 263.

Other bills in this Session affect OTP products which did not include e-cigarettes and vaping products at the time they were heard. Putting vapor products in OTP with this bill is unfair to the vaping industry which did not have an opportunity to participate in those hearings.

Vape shops are age-restricted to those 18 and older, and the industry is open to labeling regulations. The VTA is opposed to youth vaping. I doubt that the 12-year-old friends of the earlier young testifier walked into a vape shop and bought their product. They are getting it some other way. This tax plan will not prevent that from occurring.

The JUUL system you have been hearing about is a closed system and the one that seems to appeal to youth. It has upward of 50 milligrams of nicotine. My clients sell open systems, used primarily by adults, with zero to six milligrams in a bottle. The tax on a small closed system, per item, will be miniscule compared to the tax on the open system preferred by adults. The small tax on the closed system will not dissuade the youth user.

The vaping industry is quite unique because a manufacturer can also be a retailer or distributor. Although the bill last Session proposing taxing milliliters was unsuccessful, we had hoped to work with the sponsor of that bill during the Interim to structure a tax that made sense, but we were not approached. We would still welcome the opportunity to do so.

Vaping products are not tobacco. The sponsor of S.B. 263 used the words interchangeably, but the only similarity is nicotine. There are better ways to tax it and prevent underage use. The bill harms brick-and-mortar businesses. Many of them will go out of business, and employees will lose their jobs.

ASSEMBLYWOMAN SWANK:

You said your client is not supportive of children vaping. Can I assume your clients have programs to deter children from vaping?

MR. HORNE:

I do not have any information regarding specific programs, but I do know they are diligent about following the law regarding enforcement.

ASSEMBLYWOMAN SWANK:

I would appreciate any further information you can give me after the hearing about work the companies are doing to deter underage vaping. I assume their products come in plain packaging, and the device is not decorated with hearts, unicorns or other decorations attractive to children. Do your clients market products in flavors that appeal to children?

MR. HORNE:

My client is an association, so I do not know all of the products the companies within the association sell.

ASSEMBLYWOMAN SWANK:

You can just discuss a couple of them and their efforts to sell items that are not attractive to children. Please address their appearance and the flavors they come in.

MR. HORNE:

My clients do not have an issue if we need to address labeling on their products. As for flavors, many adults who are using these products as smoking

cessation devices enjoy the flavors. Kids are not the only human beings who like candy. Adult smokers who switch to vaping enjoy the flavors. My clients would be opposed to eliminating flavors as that would discourage adult smokers trying to get off combustibles.

ASSEMBLYWOMAN SWANK:

This reminds me of the candy cigarettes we had as children. Both my parents smoked, and both died young of smoking-related illness. I felt like a grownup when I had the candy cigarettes. We do not have candy cigarettes anymore. Society has recognized the error of making certain items attractive to children that foster unhealthy behavior. I would hope that going forward your clients will be open to making changes to packaging and flavors. Adults may like candy, but we know why people are vaping, and it is not for the candy flavor. As an industry, you need to alter your practices to make the products not overly attractive to children.

EDITH DUARTE (Vapor Technology Association):

We represent the trade association, which does not include all the vape shops you may have associated with marketing and labeling attractive to children. Our clients do abide by higher standards in labeling and advertising. We do not represent the entire industry. We are open to discussing legislation that deals with labeling and other issues. Our companies do not have any vape shop products that mimic candy or apple juice. We support not having any packaging with individuals on it who appear younger than 30. We are prepared to have that discussion.

ROB SOLOMON (eCig Distributors, Inc.):

I serve as general counsel for eCig Distributors, which is a vaping distributor, wholesaler and retailer based in Las Vegas. We moved to southern Nevada from southern California two years ago to escape the confiscatory tax imposed on the vaping industry. We came to Nevada believing it would provide a level playing field. We moved here with 30 employees and now have approximately 70 employees. We service vaping businesses with our online platforms and have no retail outlets. We are honored to be part of the Las Vegas community and have embraced good deeds as part of our mission.

We oppose S.B. 263. We agree with many of the comments I heard in support of the bill. We agree nicotine is harmful to youth and addictive to all. We agree

some level of regulation is appropriate. We agree efforts to prevent underage vaping are highly desirable. To that end, our online platforms have robust age gates.

We do not agree with the demonization of our industry or our product. We disagree with the false equivalency of vaping and smoking. The only relationship between smoking and vaping is that a device placed to the lips has a substance to inhale that may or may not contain nicotine. We strongly disagree with the characterization of the e-juice as tobacco. There is no relationship between tobacco and e-juice. The only commonality is some e-juice contains nicotine derived from tobacco. Some e-juice contains artificially formulated nicotine, and much e-juice contains no nicotine at all. The conflation of e-juice with tobacco is misplaced and has led to distortion with respect to our industry.

We disagree that the use of vaping as a smoking cessation has been minimized. We acknowledge our industry cannot legally characterize vaping products as smoking cessation products. That is a legal and political issue. Peer-reviewed scientific studies have recently identified and provided evidence of the efficacy of vaping as a more effective smoking cessation device than patches or gum.

In terms of formulating public policy, any action which makes it more difficult or more expensive for adults who are desperate to rid themselves of the cancer-causing combustible tobacco product to which they are addicted is not consistent with good public policy.

There are specific problems with the tax that has been proposed. The vaping industry is different than the cigarette industry. Pigeon-holing vaping into the cigarette tax has been portrayed as efficient and fair. More than 90 percent of the products we as a wholesaler bring into the State leave the State. How much money will we pay into the system, even if we later get it rebated or credited? This is going to create chaos and confusion in our industry.

Our industry will enthusiastically cooperate with the public health community. We are opposed to youth vaping, but S.B. 263 is not the answer to this problem.

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PAUL ENOS (Nevada Trucking Association):

We have seen many iterations of this bill. We had concerns with the signature upon delivery requirement. With Proposed Amendment 6042, [Exhibit F](#), our concerns are allayed. Specifically, that delivery requirement has been preempted by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association* which held that under the Federal Aviation Administration Authorization Act of 1994, states could not regulate rates, routes and service of truckers. We appreciate the sponsor taking that section out.

SENATOR RATTI:

I would like to address some of the points brought up. The vast majority of the nicotine sold for e-cigarette and vaping products is derived from tobacco. There are some nascent efforts to use synthetic nicotine, but it is currently cost-prohibitive. There may be a time in the future where more of our nicotine does not come from tobacco, but at this point, tobacco is by far the greatest source of nicotine. That is not just my opinion, that is the opinion of the FDA.

California did pass a 62.78 percent wholesale tax on e-cigarettes and vaping products. The tax proposed in [S.B. 263](#) is less than half that rate.

Although I did want to see signature verification upon delivery, it just did not pass legal muster. The bill does require online age verification and licensed wholesale dealers to mark the product as cigarettes or tobacco when it is shipped. If adults are unknowingly receiving a package on behalf of their child, they will get a clear indication of what is in the package.

This bill has admittedly seen many iterations as we try to ferret out the best solutions that would reduce youth usage.

ASSEMBLYMAN KRAMER:

If a business such as eCig Distributors, as a distributor of vaping products, ships product outside the State, would the 30 percent tax be included?

SENATOR RATTI:

No, it would not.

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SENATOR SEEVERS GANSERT:

This bill is so important. It is clear there is an epidemic—a February CDC report shows 4.9 million youths using tobacco products, an increase of 1.5 million from the prior year. I would like to add my name to this bill as a sponsor.

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CHAIR DONDERO LOOP:

I will close the hearing on S.B. 263. Seeing no further business, this meeting is adjourned at 6:58 p.m.

RESPECTFULLY SUBMITTED:

Barbara Williams,
Committee Secretary

APPROVED BY:

Senator Marilyn Dondero Loop, Chair

DATE: _____

Assemblywoman Dina Neal, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 263	C	4	U.S. Surgeon General	Advisory on E-cigarette Use Among Youth
S.B. 263	D	2	Michael Hackett / Nevada Tobacco Prevention Coalition	Excerpts from FDA Final Deeming Rule
S.B. 263	E	3	Andrey Khlystov / DRI	DRI News Release
S.B. 263	F	3	Campaign for Tobacco-Free Kids	State Excise Tax Rates for Non-Cigarette Tobacco Products
S.B. 263	G	24	Senator Julia Ratti	Proposed Amendment 6042
S.B. 263	H	1	Senator Julia Ratti	Tobacco Prevention Funding
S.B. 263	I	4	Senator Julia Ratti	Budget Proposal
S.B. 263	J	3	Kevin Dick / Washoe County Health District	Letter of Support
S.B. 263	K	2	Benjamin Schmauss / American Heart Association	Letter of Support