

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Eightieth Session
March 28, 2019**

The Senate Committee on Revenue and Economic Development was called to order by Chair Marilyn Dondero Loop at 1:39 p.m. on Thursday, March 28, 2019, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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.

COMMITTEE MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Michael Hackett, Nevada Tobacco Prevention Coalition; Nevada Public Health Association; Nevada Primary Care Association
Vera Samburova, Ph.D., Associate Research Professor, Desert Research Institute
Kevin Dick, District Health Officer, Washoe County Health District
Matt Alvarez
Joseph P. Iser, M.D., District Health Officer, Southern Nevada Health District
Kelli Goatley-Seals, Health Educator Coordinator, Washoe County Health District
Rick Casazza
Tom McCoy, Cancer Action Network, American Cancer Society
Mackenzie Baysinger, Human Services Network
Svetlana Barbarash, M.D., American Heart Association

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Benjamin Schmauss, American Heart Association
Michael Johnson, M.D., Director of Community Health, Southern Nevada Health District
Cari Herington, Nevada Cancer Coalition
Katelyn Rovig
Keegan Vieyra-Seals
Amanda Solem, Cancer Action Network
Nikki Bailey-Lundahl, Nevada Nurses Association
Mari Nakashima, Nevada State Medical Association
Jared Busker, Children's Advocacy Alliance
Steven Greenhut, R Street Institute
William Horne, Vapor Technology Association
Kinn Elliott, Vapor Technology Association
Alex Mazzola, Nevada Vaping Association
Tom Harmon, Sin City Vape
Jamie Homampour, Blue Diamond Vapor
Gregory Conley, American Vaping Association
Richard Price, Knuckle Dusters Vapor
Nathan Evans, The School of Vape
Sam McMullen, Altria
Joseph Guild, Altria
Erika Pearce, Local Vape Enterprises, Inc.
Michael Torsiello
Oscar Salgado, VapeLife LV

CHAIR DONDERO LOOP:

I will start the meeting with a work session on Senate Bill (S.B.) 32.

SENATE BILL 32: Revises provisions relating to the confidentiality and privilege of the records and files of the Department of Taxation concerning the administration and collection of certain taxes, fees and assessments and the imposition of disciplinary action. (BDR 32-189)

JOE REEL (Deputy Fiscal Analyst):

Senate Bill 32 is sponsored by the Senate Committee on Revenue and Economic Development on behalf of the Department of Taxation and was heard in this Committee on March 26. The Committee has heard the first three amendments. I have submitted the work session document ([Exhibit C](#)).

SENATOR RATTI MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 32.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

MR. REEL:

The next bill is S.B. 62.

SENATE BILL 62: Revises provisions relating to manufacturers and wholesale dealers of tobacco products. (BDR 32-424)

Senate Bill 62 is sponsored by the Senate Committee on Revenue and Economic Development on behalf of the Office of the Attorney General and was heard in this Committee on February 26. I have submitted the work session document ([Exhibit D](#)).

SENATOR RATTI MOVED TO DO PASS S.B. 62.

SENATOR SEEVERS GANSERT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR DONDERO LOOP:

Although S.B. 164 is on the agenda for work session, we are awaiting an amendment and will defer voting on the bill until a later date.

SENATE BILL 164: Recognizes certain virtual currencies as a form of intangible personal property for purposes of taxation. (BDR 32-878)

I will close the work session and open the hearing on 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):

Senate Bill 263 is a bill about public health and how public health interests will be better served by the tax and fiscal proposals presented in the bill. In doing so, it will address a major public issue: the use of electronic cigarettes and other vapor products, particularly among youth.

According to the U.S. Surgeon General's Advisory on E-cigarette Use Among Youth ([Exhibit E](#)), e-cigarette use has become an epidemic among young people. The Advisory goes on to state that "any e-cigarette use among young people is unsafe."

What S.B. 263 proposes to do is align State law with the U.S. Food and Drug Administration's (FDA) final deeming rule issued in 2016 and allow the State to tax vapor products and their components as tobacco products other than cigarettes.

The bill would establish the Account for Public Health Improvement, a fund that would be set up to allow local health authorities to better fund public health priorities under the conditions and processes set forth in the bill. It would also provide a dedicated source of revenue for tobacco prevention and control programs.

Senate Bill 263 would require retailers of vapor products to have a tobacco retailer's license and would impose a fee on that license of \$50 per location. Nevada is one of only five states that does not collect a fee for its tobacco retail license, according to a survey conducted by the University of Maryland.

I want to explain why I personally chose to bring forward this bill. I have spent a good chunk of my career working on behalf of youth. I started my career at Partners in Education, bringing the business community into schools, I was the executive director of an agency that worked on gang prevention and intervention, and most recently, I was the CEO of the Girl Scouts of the Sierra Nevada. While I do not have children myself, I have spent a large amount of my time and energy, both paid and volunteer, making sure our kids here in Nevada have what they need to be successful. Sometimes, that means

protecting them; sometimes, that means ensuring our young people are not engaging in harmful behavior.

The 2018 National Youth Tobacco Survey produced some truly alarming results. This information was published in November of 2018:

- High school student use of these products has increased 78 percent from 2017 to 2018.
- Middle school student use increased 48 percent in the same period. Those students are the age of 11 to 13.
- 3.6 million students use vapor products, with 27.7 percent using regularly.

The industry would like to tell you that e-cigarettes and vaping are a harm reduction product. Let us be clear—these products are the first nicotine products for many users. Even among the adult population, 11.4 percent of users have never smoked. Among kids, 40 percent of vapor product users have never smoked. They are not using the products as a lesser form of harm, this is their first tobacco use. These are new customers who, because of the addictive properties of nicotine, have a high likelihood of becoming long-term customers. We should all be alarmed by these trends.

This bill is not about generating revenue. Estimates based on the Pennsylvania experience suggest it will generate between \$7 million and \$8 million. In relation to the State budget, that is not a lot of money. This is a public health bill. The goal is to reduce usage by raising the price, a public health tactic that has been effective when it comes to tobacco. The intent is to disrupt the industry. This is a companion bill to Assembly Bill 97 that proposes additional public health strategies with the specific intent to intervene now to reduce the use of e-cigarettes and vaping products in our underage population.

ASSEMBLY BILL 97: Revises provisions relating to certain expenditures of money for public health. (BDR 40-529)

We have an amendment ([Exhibit F](#)) as well. I will walk you through the bill first and then cover the amendment.

Sections 1 and 2 define vapor products and their components as other tobacco products (OTP) and identify what those components may include. Section 2 also makes it clear that products regulated by the FDA such as nicotine patches are

not captured by these changes. Section 2, subsection 3 provides that products subject to marijuana excise tax are not captured.

Sections 3 and 5 provide for the tobacco retailer's license fee as well as an increase to the tobacco wholesaler's license fee and conditions related to each. Section 6 requires wholesale dealers to separate sales of vapor products from sales of OTPs. Section 7 sets forth conditions for the Department of Taxation, the State Controller and how revenue from the tax on vapor products is to be deposited and distributed into the Account for Public Health Improvement.

Section 9 establishes the Account for Public Health Improvement and the terms and conditions for that Account and the use of those funds. Sections 10 and 11 require the board of county commissioners where a health district is located to establish its own public health improvement fund in the county treasury and sets forth the terms and conditions for the use of those funds.

I am also presenting an amendment, [Exhibit F](#). The amendment proposes to change all references from "tobacco prevention and treatment" to "tobacco prevention and control." That aligns with how the programs are funded. It also adds "local health authority" as an entity that may receive funds through the public health improvement fund—using that language allows us to include Carson City.

The amendment would change reporting from the board of county commissioners to the health district or health authority's Board of Health. Many of our health districts have their own governing bodies. It adds "alternative nicotine product" to the definition of "other tobacco product."

The amendment would revise the distribution of funds to 80 percent for the health districts and health authority and 20 percent to tobacco prevention and control programs. The original bill proposed a fifty-fifty split. It would also propose to deposit the 20 percent for tobacco prevention and control directly to the Division of Public and Behavioral Health and not into the public health improvement fund.

Finally, it amends section 2, subsection 2 to further define vapor products and amends section 2, subsection 3 to clarify that batteries and battery chargers are not subject to the tax. We have also changed the effective date from July 1 to January 1, 2020, to give the Department of Taxation time to implement.

MICHAEL HACKETT (Nevada Tobacco Prevention Coalition; Nevada Public Health Association; Nevada Primary Care Association):

All the organizations I am representing support S.B. 263. This legislation is long overdue. This bill is one of two this Session that seek to address the risk of using vapor products. This concern has risen to such a level that had the FDA take the extraordinary step of putting the industry on notice to stop marketing the products to youth.

I am submitting excerpts from the FDA Final Deeming Rule of 2016 ([Exhibit G](#)), which deems e-cigarettes and other vapor products, which includes their components but excludes accessories, as tobacco products. It claimed this move will result in significant benefits for public health. Raising tobacco taxes has been proven to reduce usage rates, particularly among youth. As mentioned, S.B. 263 will align State law with the FDA rule and allow the State to tax vapor products and their components as other tobacco products.

The bill also proposes to use the revenue generated by this tax to fund much-needed public health priorities, including tobacco prevention and control programs. Nevada is fiftieth in the Country in terms of public health spending. The only State funding for tobacco prevention and control programs is \$950,000 per year from the Tobacco Master Settlement Agreement (MSA) through the Fund for a Healthy Nevada. The Executive Budget for fiscal year 2020-2021 recommends that same amount.

Guidelines from the Centers for Disease Control and Prevention recommend \$30 million annually for tobacco prevention and control programs. We are a long way off. In addition, no revenue generated from the sale of tobacco products in Nevada, approximately \$198 million annually, is used for tobacco prevention and control programs.

Vapor products are harmful. Research conducted by the Desert Research Institute (DRI) shows a significant amount of cancer-causing chemicals along with dangerous aldehydes which are formed during the chemical breakdown of flavored e-liquids and emitted in e-cigarette vapors. Nicotine is an addictive, harmful drug that conveys an increased risk of heart disease and stroke. The impact on youth is worse. A Juul, which is by far the most popular product among youth, contains the same amount of nicotine as a full pack of cigarettes.

The method of taxation we are proposing, where the tax is assessed on wholesale products, has been done in several states. South Dakota's governor signed legislation recently that taxes vapor products in the same manner S.B. 263 is proposing. Taxing vapor products this way will provide the most benefit to public health and tobacco control efforts. As mentioned previously, taxes and overall pricing can help drive consumer behavior.

A milliliter tax, which has been proposed in the past, is imposed only on e-liquid. It is a limited, specific tax with negligible impact on consumer use that would generate minimal revenue. A similar tax proposed last Session would have generated \$500,000 in new revenue.

You will hear stories about how vaping is a way to quit smoking traditional cigarettes. But how does one quit vaping? It is not easy. The next generation of tobacco products has been here for over ten years with little consideration for public health concerns. Hopefully, the lessons we learned about traditional cigarettes will not repeat themselves. We urge your support for S.B. 263.

VERA SAMBUROVA, PH.D. (Associate Research Professor, Desert Research Institute):

The Organic Analytical Laboratory at DRI has conducted two studies of e-cigarettes ([Exhibit H](#)). In our first study, we analyzed first- and second-generation e-cigarettes. Our results showed during vaping, e-cigarettes produce toxic compounds such as formaldehyde and acrolein. Formaldehyde is carcinogenic to humans, and acrolein contributes to cell mutations and can induce lung cancer.

The amount of carcinogenic and potentially carcinogenic aldehydes in flavored e-cigarette emissions of the tested e-cigarettes is dangerously large. For example, in our study, formaldehyde levels exceeded the occupational threshold limit value-ceiling by factors of 2 to 270.

We also found the production of toxic compounds by e-cigarettes depends on type and concentration of flavoring compounds present in e-cigarette liquid. Studies conducted by other research groups confirmed our results.

Our second study focused on analysis of exhaled e-cigarette breaths of human volunteers. It showed concentrations of toxic compounds, such as formaldehyde and acetaldehyde, are higher by 2 to 125 times in exhaled

e-cigarette aerosols than in background breath. The mean retention of carcinogenic formaldehyde in the respiratory tract was 99.7 percent for all participants, while acetaldehyde retention was 91.6 percent. While a large fraction of formaldehyde is retained by users, significant amounts of this compound are still exhaled and could pose danger to bystanders via secondhand exposure.

Recently, Dr. Yeongkwon Son, a postdoctoral fellow at DRI, has been researching second- and thirdhand exposure to e-cigarette emissions in five vape shops. He found vaping can create secondhand exposure to toxic compounds. For example, concentrations of harmful chemicals, such as formaldehyde and acetaldehyde, during vape shop operating hours were six and three times higher than during closed hours. During that study, indoor nicotine concentrations in shops where e-cigarettes are used were comparable to those in smokers' homes. There is a risk of thirdhand exposure to nicotine from e-cigarettes. Surface nicotine in the vape shops was thirtyfold higher than the surface nicotine levels in smokers' homes and cars. Our findings demonstrate an urgent need to research second- and thirdhand exposure to e-cigarette aerosols.

Other studies have shown noncigarette tobacco products may be related to susceptibility to cigarette smoking among e-cigarette users. There is a high exposure to nicotine among users who vape pod system devices. Pod is a new generation of nicotine vaporizers that are light, ultraportable and easy to use inconspicuously. Pod-type e-cigarettes are now the most commonly sold e-cigarette in the United States and the most popular device among youth. Exposure to nicotine from use of a single pod-type cartridge is roughly equal to a pack of cigarettes or 200 cigarette puffs.

SENATOR SEEVERS GANSERT:

Does formaldehyde occur in all e-cigarettes? Is it naturally occurring, or is it an additive?

DR. SAMBUROVA:

We found formaldehyde in all forms of e-cigarette emissions we tested. We did not find the formaldehyde in e-cigarette liquid. Studies support the finding that the formaldehyde forms in the vaporizing process.

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

Today I am representing Nevada's local health authorities, which include Washoe County Health District (WCHD), Southern Nevada Health District (SNHD) and Carson City Health and Human Services (HHS). Senate Bill 263 has been identified as a legislative priority by the Washoe County Board of Health in its role of safeguarding the health of the over 460,000 residents of Washoe County. This bill will help reduce the epidemic of e-cigarette use and help Nevada fund public health.

The significant growth in youth use of e-cigarettes has already been explained. The U.S. Surgeon General has identified that adolescents are particularly at risk of addiction to nicotine, and nicotine can harm their still-developing brains. The National Academy of Sciences, Engineering, and Medicine found e-cigarette use in youth is alarming because there is substantial evidence that youth and young adults who use e-cigarettes are more likely to transition to combustible cigarettes.

E-cigarettes have been defined as a tobacco product by the FDA. As such, it is appropriate for them to be taxed under Nevada's tax structure for OTPs. Cigarette price increases have been shown to decrease adult and underage smoking, and youth are particularly sensitive to price increases. Every 10 percent increase in the price of cigarettes reduces adult smoking by about 2 percent, but the number of kids who smoke is reduced by 6 to 7 percent.

You will likely hear from the e-cigarette and vape industry that it is in the business of selling these products to reduce harm. They will claim that if you tax them, people will die from smoking combustible cigarettes. The industry may wrap itself in the mantle of harm reduction and public health; actually, it is selling addiction to our youth. This industry must be appropriately regulated. We need to take measures to stem the tide of youth use and addiction.

By now, we should be all too aware of the cynical business of tobacco: addict and sell to the addict over his or her lifetime. Industry will claim its products are safe even if the data show they are not or if insufficient data are available. We have seen the industry target our children with flavored products that appeal to youth, resulting in the epidemic of e-cigarette use that we are now experiencing.

Even if we give industry the benefit of the doubt, what is the harm that will result from this tax? If a company is in business solely to serve those who are already addicted to cigarettes, its product will be available for those adult consumers to use. Smokers are paying high prices for cigarettes which are already subject to cigarette taxes in Nevada. E-cigarettes are not approved by the FDA as a tobacco cessation product. We do not see a youth epidemic in the use of nicotine patches or gum. E-cigarettes are being used recreationally by youth. There is no harm reduction in getting our youth hooked on nicotine.

We know increasing the price of tobacco products is especially effective for reducing youth consumption; we need to use this tool.

This bill would also provide tax revenue to support other public health improvements in the State. Public health is changing and expanding. It is not just about immunizations and sanitation, it is about our communities. Zip Codes are more important than our genetic codes when it comes to health outcomes. Our health authorities are working on community health needs assessments and community health improvement plans to address those needs.

Investment in public health is important to allow health authorities to address the root causes and social determinants of health and to bolster tobacco prevention efforts. Through these actions, we can improve the health of our population, reduce healthcare costs and economic burden of disease, and improve economic development and performance in the State.

Nevada's public health funding status is not good. We are fiftieth in the Nation. We spend only \$1 million per year on tobacco prevention and control programs from the MSA payments we receive, which amounts to about \$6.75 per capita. The national average is \$36.11. We are at about 19 percent of the national average for public health investment.

There is a lot of attention on education funding. The National Education Association ranks Nevada forty-seventh in the Nation with an investment of \$8,615 per student. That investment is 74 percent of the national average for K through 12 education. If we were to invest in public health at 74 percent of the national average, that would amount to \$26.72 per capita, almost \$20 more than we are investing right now. Without investing in public health, Nevada will never be able to control and adequately fund healthcare costs.

Local governments face revenue constraints and limitations imposed on them by statute, yet we lack the State support for public health that most local health departments enjoy. On average, states provide 21 percent of local health department funding, but in Nevada, SNHD and WCHD receive only 1 percent of funding from State grants. Carson City HHS receives closer to 4 percent, but that includes human services funding. Local health departments serve 93 percent of the State population, and the population continues to grow.

Senate Bill 263 provides a proven policy approach to reducing the use of e-cigarette products and addiction in our youth. It provides an opportunity to invest in public health measures aimed at prevention of the diseases which are responsible for ever-increasing healthcare costs borne by the State, our businesses and our residents.

SENATOR RATTI:

In my previous role as a Sparks City Councilwoman, I had the privilege to serve on the Washoe County District Board of Health for eight years. I had the opportunity to work with good public health advocates who are working miracles with little resources. That is why I chose to designate the public health authorities as the recipients of the funds, so they could try to make progress raising Nevada from fiftieth state in the Nation in funding levels.

CHAIR DONDERO LOOP:

When were these types of products introduced?

MR. DICK:

They appeared roughly ten years ago. The statistics show an increase in usage from 1.5 percent of high school students in 2011 to 20 percent today.

SENATOR SEEVERS GANSERT:

Is nicotine the addictive component in e-cigarette products?

DR. SAMBUROVA:

That is correct.

SENATOR SEEVERS GANSERT:

When we look at taxing something, we have options. We can tax on the price or on the milliliters. Is the concentration of nicotine the factor that makes a product more or less addictive?

DR. SAMBUROVA:

It depends on how the e-cigarettes are being used. You can use high concentration just a few times per day, or you can use lower concentration and vape all day. It is hard to control the exposure when vaping.

SENATOR SEEVERS GANSERT:

If an individual is trying to stop using nicotine, does he or she step down the consumption of milligrams of nicotine?

SENATOR RATTI:

Some individuals may use them in that manner, but I would reiterate, they are not approved by the FDA as a step-down therapy. Cigarettes and OTPs also come in various concentrations of nicotine, which is why we believe e-cigarettes and vaping products fit into the OTP category. There is no system where we are taxing based on the concentration of nicotine.

MATT ALVAREZ:

I am a junior at Shadow Ridge High School in Las Vegas. I am representing the more than 125 Clark County high school students who are here today in support of S.B. 263, a bill that will increase the price of e-cigarettes and vapor products. Increasing the price of these products has proven to reduce use since it makes them too expensive for students like me and my peers to buy. I have submitted my written testimony ([Exhibit I](#)).

Here are two bags of nearly 50 e-cigarettes and vapor products that were confiscated at one school in just two months, and these are just from the students who got caught. Many of my fellow students do not know these products are bad for them. That is why we need more education to help people understand the dangers.

JOSEPH P. ISER, M.D. (District Health Officer, Southern Nevada Health District):

I would like to ask everyone from Clark County schools in support of S.B. 263 to stand. There are many people out in the hallway as well.

SENATOR KIECKHEFER:

How much does it cost to vape? How much are we increasing the price for consumers by levying a 30 percent wholesale tax?

MR. DICK:

There is variation among products. A popular one among youth is Juul. An initial investment for the kit includes the pod attachment device. A four pack of pods costs about \$16. The average price of cigarettes in Nevada is about \$6.50. Once you have made the initial investment on the kit, Juul is cheaper than combustible cigarettes.

To Senator Gansert's question, there has been a proposal from industry in some states to use a milliliter tax on the solution. For a Juul, that would increase the price about 4 cents. That would not provide the deterrent we are seeking.

SENATOR RATTI:

The price increase for the user will vary by product, but I will check and get back to you.

SENATOR KIECKHEFER:

I understand the amount of revenue we expect to collect is incremental and is affected by how many users are deterred. What is the price point at which a youth consumer gets priced out of the market?

SENATOR RATTI:

It would depend on the youth income and the elasticity in their budgets. For lower-income youth, every penny is going to matter.

SENATOR KIECKHEFER:

Are there established wholesalers in this industry? Is there vertical integration similar to OTPs, where the tax will be collected by a specific group of people?

SENATOR RATTI:

We have seen some significant consolidation in this industry. The latest number I have seen is Juul has 63 percent of the market share.

SENATOR SEEVERS GANSERT:

To clarify, I was asking about milligrams, not milliliters, which has to do with concentration. How would this tax work with online sales without a middleman? It is my understanding there are a lot of sales of these products online.

SENATOR RATTI:

I do not have the answer to that question, but I will get it to you.

CHAIR DONDERO LOOP:

The Juul device with a pod sounds a lot like a Keurig machine. What is it about the Juul that gives it 63 percent of the market?

DR. SAMBUROVA:

The Juul is easy for youth to use. It does not create a lot of vapor for people nearby to notice, and it is small, resembling a USB drive. It is easy to carry around unnoticed.

SENATOR RATTI:

Although Apple would probably not like me saying it this way, the Juul is more the iPhone of vape products. It is packaged in a slicker, cooler manner that appeals to a youth and millennial market.

CHAIR DONDERO LOOP:

Can Matt Alvarez in Las Vegas show us some of the products?

DR. ISER:

As soon as Mr. Alvarez opened the bag, I could smell the liquid contained.

MR. ALVAREZ:

This is what a Juul looks like, and it is about the size of a flash drive. Another product here is a lot bigger.

SENATOR PARKS:

I have read that vape devices vaporize nicotine and other chemicals. Does a vape store sell products with other substances that have an effect on a person?

SENATOR RATTI:

There are many liquids available in vape shops. Many of them come from China with no testing. Vape shops mix in flavors in a back room without any regulatory oversight. It would be accurate to say there are many chemicals being inhaled with these flavored products, and we have no idea what is in them.

DR. SAMBUROVA:

There are no controls or oversight on how many compounds can be in e-cigarette liquid. There are no studies on the short- or long-term effects of inhaling these compounds. There are no studies on the short- or long-term

effects of inhaling propylene glycol, which is the medium for the liquid in e-cigarettes. We analyzed over 50 e-cigarette liquids and found a wide range of substances in a wide range of concentrations. There are no controls.

KELLI GOATLEY-SEALS (Health Educator Coordinator, Washoe County Health District):

This is an example of the product, Suorin, and the charging unit used with it.

CHAIR DONDERO LOOP:

What does it mean when a product is labeled "herbal"?

SENATOR RATTI:

The point we are making is there is no regulation.

SENATOR KIECKHEFER:

Section 2 of the bill defines vapor product as any noncombustible product containing nicotine or any other substance. I assume that excludes marijuana. Is there a strong marketplace for nonnicotine-infused vapor?

SENATOR RATTI:

There is emerging research showing it as a gateway. Folks who start with nonnicotine-flavored vape products frequently move into a nicotine-based product. The intent is to tax those as well.

SENATOR KIECKHEFER:

The components defined in section 2, subsection 2 are delivery devices—would it include the delivery devices for marijuana?

SENATOR RATTI:

The intent of the bill is to tax both the product and the associated products for delivery. The amendment makes clear these would be the products sold by licensed dealers the same way there are products sold in licensed marijuana dispensaries. In many cases, these are sold as kits. Some are one-time throwaways, so the paraphernalia is part of the product. Other kits include the device and separate pods. Because we try to keep our tax structure as simple as possible, we have written the bill to tax the product and the devices since they are mainly sold together. This reduces the amount of paperwork and oversight needed.

SENATOR KIECKHEFER:

Is it simpler to tax it at the wholesale or retail level?

SENATOR RATTI:

The main argument for putting these items in with OTP is we already have a system in place to do that. The bill does not create a new tax, it simply pulls an existing product into the OTP system.

SENATOR KIECKHEFER:

Are there studies to indicate vape products offer people an ability to quit smoking? I cannot imagine these products are worse than cigarettes.

SENATOR RATTI:

The FDA has not approved these products as tobacco cessation devices. Science has demonstrated there is not just a little harm but significant harm.

MR. HACKETT:

The FDA has a process by which it approves products as cessation devices. It has a similar process to establish and identify a product as a modified risk tobacco product. None of the products affected by this bill have received such a designation.

SENATOR KIECKHEFER:

I do not like streamlining taxes for specific purposes. If we proceed down this path, how we collect the revenue and how it gets allocated is something we need to look at.

SENATOR RATTI:

If we get the tax in place, I am open to a conversation about the distribution. I respect Senator Kieckhefer's belief in the appropriation process. We could consider having this revenue go to the General Fund and then funding the public health needs in this bill through appropriation. That will not be a sticking point for me in terms of moving this bill forward.

DR. SAMBUROVA:

In response to Senator Kieckhefer's question about the relative harm of e-cigarettes as compared to conventional cigarettes, you are not incorrect. There are studies which show e-cigarettes are less harmful than conventional cigarettes. However, many studies show e-cigarettes are not harmless. This is

the important distinction. Many of the e-cigarette liquids have names like tutti-frutti, gummy bear and cotton candy. It is difficult to believe they are aimed at adult users who are converting from Marlboros to gummy bears.

SENATOR KIECKHEFER:

I have two middle school children, and they certainly confirm kids that young are vaping. I agree that we should find an effective strategy to reduce youth consumption and access.

SENATOR SEEVERS GANSERT:

I question how we are going to tax something so readily available for purchase online. The ease and simplicity with which we shop online today is a concern. I agree it is extremely important to try to prevent nicotine addiction at an early age.

SENATOR RATTI:

This Committee is going to hear more about taxation of online sales based on the decision in *South Dakota v. Wayfair, Inc.* There is work to be done on that, and I pledge to bring it back to you.

SENATOR SEEVERS GANSERT:

That case was about retail sales tax.

SENATOR RATTI:

Yes, but specifically the collection of taxes for sales online.

RICK CASAZZA:

I have been a volunteer at every level of the Northern Nevada division of the American Heart Association for 35 years. I come before you today to ask you to support S.B. 263. My support of this bill has become personal. The emergence of e-cigarettes and vaping and the effective marketing of them to youth and young adults has provided a gateway to tobacco use and nicotine addiction in my own family.

There was a question asked regarding how much this costs. I can tell you I have smashed four or more vaporizers that cost \$50 to \$100 each and confiscated many bottles of vaping product. I know my son has spent in excess of \$1,000 in the last couple of years on vaping. Another health effect that has not been

mentioned is the high concentration of sugar in the flavorings. I just spent \$2,000 on filling cavities associated with vaping.

My written testimony is submitted ([Exhibit J](#)).

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

The Cancer Action Network is the advocacy arm of the American Cancer Society. The data clearly illustrates the danger e-cigarettes pose every day in addicting a new generation of young Nevadans. I have submitted my written testimony ([Exhibit K](#)).

MACKENZIE BAYSINGER (Human Services Network):

This measure would make Nevada healthier. Using e-cigarettes has been shown to increase the likelihood of smoking cigarettes among young people, raising concerns that e-cigarettes are acting as an entry nicotine product that may lead to the use of more dangerous nicotine products.

Students are being taken advantage of by big business. Recent reports have found e-cigarette companies are using scholarship offers as a way to recruit youth users. Many students who begin using e-cigarettes are not aware of what is in them. Sixty-six percent of teens believe there is just flavoring in their e-cigarettes, and only 13 percent know there is nicotine. As a student at the University of Nevada, Reno (UNR), I cannot walk to class without seeing at least ten people using e-cigarettes. Eight states and Washington, D.C., have imposed taxes on e-cigarettes. We need to consider the health of Nevada and follow their lead.

SVETLANA BARBARASH, M.D. (American Heart Association):

As a cardiologist in southern Nevada and a mother of three young children, I support S.B. 263. Tobacco taxes work to improve the health of residents, provide revenue for healthcare costs and prevention programs, and have overwhelming public support. My written testimony ([Exhibit L](#)) is submitted.

BENJAMIN SCHMAUSS (American Heart Association):

My organization is in full support of taxing e-cigarettes and committing the revenue to the prevention and control of tobacco. I would ask the Committee to poll any middle school or high school student about the use of e-cigarettes among their classmates. My daughter came home from middle school two days ago and told me her friend is now using an e-cigarette product every day after

they get off the bus together. She just turned 12. This is not an isolated case. Two weeks ago when I came here with a group of 25 middle school students from Washoe County, I asked them how many had seen vaping at school in the last week. All 25 raised their hands. One student told me he sees it every class, every day, every week. He told me they suck on the e-cigarette, pull out the neck of their shirt, and blow it down. The teacher cannot see it or smell it. My written testimony ([Exhibit M](#)) is submitted.

MICHAEL JOHNSON, M.D. (Director of Community Health, Southern Nevada Health District):

I would note there are two additional rooms full of young people who showed up today here in Las Vegas in support of S.B. 263.

There are decades of research that show cigarettes kill. We also see evidence that kids who vape and use e-cigarettes are transitioning to combustible tobacco products or using them dually. Further, there is a long history of the tobacco industry marketing its products to youth. For these reasons, I strongly support S.B. 263.

CARI HERINGTON (Nevada Cancer Coalition):

Due to marketing and the ease of access, e-cigarette use by youth is now more common than their use of conventional cigarettes and is rapidly increasing. The Health Law Institute, Mitchell Hamline School of Law, states that significant gaps remain in e-cigarette regulations both at the national and state level. We are allowing our youth to serve as the guinea pig generation. I do not want my daughter's generation to be the guinea pigs for these products. My testimony is submitted ([Exhibit N](#)).

KATELYN ROVIG:

I am a student at Galena High School. We have a big problem with e-cigarettes at our school. They are extremely easy for teenagers to access and have become popular. Students are vaping in classrooms, bathrooms and on campus grounds. This bill would help reduce teenagers' access to vaping products.

SENATOR KIECKHEFER:

From your experience, where are kids accessing these products?

Ms. ROVIG:

My friends who vape talk about getting it from older kids, like the seniors. The seniors distribute it to the freshmen and sophomores who want it. I am pretty sure they buy it online as well. Some of them have older siblings who buy it for them.

KEEGAN VIEYRA-SEALS:

I am a junior at Reno High School. When I first entered high school, there was a smoker's corner across the street. In the three years since then, the smoker's corner is empty. All the teens use vapor products inside the school now. There is no need to cross the street to smoke. I have a lot of friends addicted to e-cigarettes, and something should be done about it.

CHAIR DONDERO LOOP:

To both Katelyn and Keegan: out of ten friends, how many are using e-cigarettes?

MR. VIEYRA-SEALS:

All ten.

Ms. ROVIG:

At least all of them have tried it, and seven or eight of them are using regularly.

AMANDA SOLEM (Cancer Action Network):

I come here as a mother, a former teacher at Robert McQueen High School and a volunteer for Cancer Action Network. I am here for my young son Miles, who is here with me. Just in one school year while I taught, the amount of kids using tobacco and nicotine products in the smoking area tripled. My 14-year-old students would be smoking e-cigarettes as they were walking into class. My friends who still teach at the school are constantly dealing with students vaping and charging their pods in class. It is similar to the problem we had with cell phones—it disrupts the education process as teachers have to discipline instead of teach.

I want to make sure when my son gets older he will not be peer-pressured into starting a habit that will make him a lifelong smoker with all the health risks.

NIKKI BAILEY-LUNDAHL (Nevada Nurses Association):

We are in full support of S.B. 263.

MARI NAKASHIMA (Nevada State Medical Association):

The Nevada State Medical Association is a member of Anti-Tobacco Coalition and our members are in support of the bill.

JARED BUSKER (Children's Advocacy Alliance):

Every 2 years, the Children's Advocacy Alliance releases a Children's Report Card that grades Nevada and the other 49 states and Washington, D.C., in terms of how children are best served. The report ranks tobacco use, and it has been decreasing. Our most recent report card, however, found a large increase. About 42 percent of high school students reported they had tried vapor products at least once. We are in strong support of this legislation.

STEVEN GREENHUT (R Street Institute):

I am the Western Director for the R Street Institute, a Washington, D.C.-based think tank. We promote pragmatic free market solutions to policy problems. A core tenet of harm reduction—whether drugs, sexual behavior or tobacco use—is that policymakers should not focus on the unachievable goal of abstinence but should make it easier for people to embrace safer strategies.

We all know tobacco is an addictive and dangerous product. If you want to shave ten years off your life, by all means start smoking cigarettes. Public Health England has determined vaping products are 95 percent safer than combustible cigarettes. I hear people testifying that they are not totally safe; of course they are not. That is idea of harm reduction—they are safer. People who want to quit smoking tend to prefer vaping to medically oriented cessation devices such as patches and gum. When you talk to smokers, the reason is obvious. Vaping offers a similar experience. Even the American Cancer Society accepts vaping is less dangerous than combustible cigarettes and can be used to help people break their habit.

Public Health England argues that policymakers ought to promote vaping. My organization does not make that argument, but we are dismayed at the degree to which policymakers in the U.S. are making it much harder and more expensive for people to make the switch through various regulatory and tax policies. When lawmakers raise taxes on vaping, it is not going to stop vaping. Such policies make it more cost-effective for people who are already addicted to nicotine to switch or switch back to conventional cigarettes. We would argue tax rates ought to reflect the relative risk. Nevada's attempt to tax on wholesale cost rather than milliliter of vaping liquid, as some other states are doing, further

drives up the overall cost of vaping and not just the product itself. This adds another disincentive—it is the opposite of harm reduction.

R Street shares concerns about teenagers starting a habit of vaping. Vaping use among kids is a real problem. But when do we tax or further regulate the sale of legal products for adults under the thinking that doing so will make it harder for younger people to get their hands on them? I do not understand that logic. Do we raise taxes on alcohol or ban the building of new casinos under the theory that their prevalence will be a draw to teens? We accept the fact that there are certain products you need to be an adult to use.

I heard the data on the increase in teen use. I have not verified all you have heard, but the 2017 Nevada Youth Risk Behavior Survey from UNR showed that in 2015, 7.5 percent of high school students smoked cigarettes in the past 30 days; in 2017, it was 6.7 percent. In 2015, 19.3 percent of high school kids had smoked marijuana; that figure fell to 17.9 percent in 2017. Drinking behavior was admitted to by 33.5 percent in 2015 and down to 25.3 in 2017. For vaping, the numbers were 25.6 percent in 2015 and 15.5 percent in 2017. Those figures reinforce two points. First, some young people will use adult products no matter what the laws. Second, there may be some encouraging downward trends. We have to look at ways to stop underage use of products that we do not want underage people using, not tax things for adult users. E-cigarettes have the potential to save up to 6 million lives by 2100, if only 10 percent of current smokers switch to e-cigarettes over the next 10 years.

While we do not think lawmakers ought to promote these alternatives, they should not be discouraging them.

WILLIAM HORNE (Vapor Technology Association):

We are here to testify in opposition to S.B. 263. The Vapor Technology Association (VTA) represents manufacturers, wholesalers, small business owners and entrepreneurs who have developed innovative and quality vapor products, providing adult consumers with a safer alternative to a traditional combustible product. Our group and its members are leaders in the vapor community, promoting small business, job growth, responsible public policies and regulations, and a high standard of safety within the industry. The Nevada Vaping Association has 20 members and represents manufacturers and retail shop owners. There are 125 vape shop owners in southern Nevada who will be negatively impacted by the provisions in S.B. 263.

KINN ELLIOTT (Vapor Technology Association):

I am with VTA, representing the 600 members of manufacturers, wholesalers, importers and retailers. The VTA is concerned about youth usage. These products are not intended for young people. They are intended for adults who want a safer alternative. We would be glad to work with the Committee to talk about youth prevention initiatives.

You have heard a lot of discussion today as to the safety of vapor products. All the research confirms vapor products are safer than combustible cigarettes on a risk continuum. They play an important role in providing a safer alternative for the adult smoker. In January 2019, *The New England Journal of Medicine* determined e-cigarettes were more effective for smoking cessation than other nicotine replacement therapies when both products were used in conjunction with behavioral support. There is evidence to suggest vapor products are effective in helping adults quit cigarettes.

One of the difficulties with a wholesale tax is the way this industry is aligned. It is not a vertically integrated industry with a separate set of manufacturers, wholesalers and retailers. There are folks across this industry doing multiple things. There are manufacturers that sell directly to individuals. There are retailers that manufacture products they sell through other means. So a wholesale tax would be difficult to administer across this industry.

You have heard testimony regarding the complexity of this industry. There are closed systems and open systems. There is a variety of products with a variety of nicotine levels. The products are not all consumed the same; the way an individual uses a product can vary a great deal. A wholesale tax actually places the burden on the retailer. Retailers would have to carry the cost of the wholesale tax and then wait to recoup that when product is actually sold.

I would correct a point made earlier. South Dakota did not pass a wholesale tax. It was originally a tax and later changed to a ban on indoor vaping. The experience we have seen in states that have passed wholesale taxes is the entity hurt the most is the small business. In Pennsylvania, roughly half the independent vape shops shut down as a result of the tax. Because of the nature of the industry, this will not generate the kind of revenue you are expecting. The projection for Nevada is between \$7 million and \$8 million. Massachusetts is considering a 35 percent wholesale tax and estimating \$6 million in revenue.

Because of the nature of the industry and the way the product moves, it is difficult to get a realistic estimate.

ALEX MAZZOLA (Nevada Vaping Association):

I want to emphasize how our products are different from traditional cigarettes. The only thing they have in common is nicotine. Our products contain vegetable glycerin, propylene glycol and natural or artificial flavoring. There are approximately 600 ingredients in traditional cigarettes. When burned, cigarettes create more than 7,000 chemicals. That is not the case with e-liquid. Our liquids have helped millions of people switch from cigarettes to the safer alternative. The FDA Commissioner, Dr. Scott Gottlieb, said if everyone switched over to vaping, our world would be a healthier place.

Regarding the epidemic of vaping in youth, the Nevada Vaping Association was instrumental in passing S.B. No. 225 of the 78th Session. I applaud all the kids who were here today to talk about vaping. We are on the same team. We are all against big tobacco. We are against traditional cigarettes. Vaping is a safer alternative. This epidemic is not a product issue, it is an enforcement issue. Let us find out who is selling to minors and fine them or close them down eventually.

We have tried to ask Nevada to accept our industry. We have multimillion dollar companies that moved here from California because of the tax burden, and they will do it again if they have to. We want to avoid that if possible. We still have companies moving in—One-on-One Flavors is moving to North Las Vegas. These companies employ hundreds of people who buy houses and spend their money here. When you put a 30 percent wholesale tax on a product, it destroys our business model which already operates on small profit margins. We ask you to reconsider this bill and understand the difference between closed and open systems. The two products you were shown earlier today are both closed systems. They are not our products. This tax is a huge burden on an already burdensome, stressful business because the FDA guidelines are indistinct. We do not know if we will be in business in two years.

I applaud the youth who came today. When I was 11 years old, I would smoke a cigarette at the bus stop on my way to school. I wish there had been kids and teachers like this who could have prevented me from being addicted to cigarettes for 23 years.

TOM HARMON (Sin City Vape):

I am a retail shop owner with five locations in Las Vegas and Henderson. We employ about 20 people and have been in business since 2010. Economically, this bill will be stressful, if not fatal, to my business. As a retailer, I have to come up with an extra 30 percent. We collect about \$180,000 in sales taxes for Nevada. We pay payroll taxes. We lease commercial space. We offer well-paying jobs. My average employee makes over \$20 an hour. The economic impact cannot be ignored. All of that goes away if this onerous tax is put in place. We are in a highly competitive business, and our margins are not significant. We would lose our competitive edge to online retailers, convenience stores and smoke shops that have other products not subject to this tax.

Dr. Gottlieb of the FDA pointed out there is a difference between a vape shop and a convenience store. Vape shops are good at keeping their products out of the hands of minors, convenience stores are not. We have occasionally had unannounced checks, and we passed them with flying colors. We card, and no one under the age of 18 is allowed in our shop unless accompanied by a parent or guardian, not just an older brother. We do not allow parents to buy products for their underage kids. We do not sell closed systems, which you have heard comprise over 60 percent of the youth market. Because our systems are open, a user can control the amount of nicotine he or she ingests. Many of our customers use this as a step-down therapy.

Starting Sin City Vapor was probably the best thing I ever did—not just from a business standpoint but looking at the impact on society at large. If we can save 450,000 lives a year by having people switch to e-cigarettes, why would we not do that? Our revenue comes from getting people away from tobacco. We are a small industry doing a good thing.

JAMIE HOMAMPOUR (Blue Diamond Vapor):

I own a single vape shop here in southern Nevada. I came today to talk about numbers. I thought this was a revenue and economic discussion, not a health discussion. I am going to talk about the 30 percent wholesale tax and how it will affect industry. We have talked about the two types of devices. You have heard a lot about the Juul. Its retail price point is about \$50 for a kit and \$15 for refill pods. Its wholesale price point is about \$28 for the kit and \$10 to \$12 for the refills, depending on the flavor. We do not sell the Juul. One of the devices we sell in my store is here in my hand. It is a component device, which means it is comprised of multiple parts. This bill would tax all of the parts.

The parts are: a body, which is the device itself, batteries, tank, coil and a mouthpiece. The device's wholesale price is about \$49. The nonspecial-edition tank costs \$21. The batteries cost about \$6. The coil costs between \$2.50 and \$3.00. When you put the parts together and add a 30 percent wholesale tax, you are increasing the price by about \$25. This purchase would total over \$100.

In the last Session, we discussed a tax per milliliter. It was decided closed systems were too small and would not generate revenue. Open systems were not a viable option because the only sellers were small businesses like mine that gross less than \$500,000 annually. This wholesale tax does nothing to impact the product being marketed to youth. It would raise the price of Juul refills by \$2 to \$6, depending on what you are buying. But in my space, where my average customer is 27 years old, it would raise the price \$30 to \$45. It just does not make sense. Our industry is not so streamlined that you can move us into OTP and create a flat tax. This was the reason the industry was shifted out of OTP six years ago.

GREGORY CONLEY (American Vaping Association):

The American Vaping Association advocates for sensible regulatory policy toward vaping products and other innovative smoke-free alternatives to traditional cigarettes. The end goal is maximizing the number of adult smokers who switch to less hazardous alternatives. I urge you to reject S.B. 263. Its enactment would harm public health by discouraging adults from switching to these products and do great detrimental harm to small businesses in Nevada. My written testimony ([Exhibit O](#)) is submitted.

Section 14 of S.B. 263 includes a floor tax. On the day this tax goes into effect, every retail store will owe a check to the Department of Taxation for 30 percent of its inventory.

SENATOR SEEVERS GANSERT:

For the average retailer, what percentage of revenue comes from components and what percentage from the liquids.

MR. CONLEY:

I will defer to a store owner, but my estimate would be 70 percent from liquid refills and 30 percent from the devices themselves. The cost of vaping is

frontloaded. Devices cost \$50 to \$60 and tanks cost \$20, but those are one-time purchases.

RICHARD PRICE (Knuckle Dusters Vapor):

I own a vape shop in Reno. We do not sell the closed systems. In our open-system model, the percentage of sales of devices versus liquid is close to 50-50. I do not have those numbers with me but would be happy to share my books with you at any time. I also thought this meeting was about taxes and not health policy.

Earlier, someone said for every 10 percent price increase, there is a 6 percent to 7 percent decrease in usage. Using this math, this tax would decrease youth use by less than 10 percent. That is setting the bar low.

I have owned my shop for four years. The law prohibiting selling to minors is long-standing. I have never had a compliance check in my store. Whether this bill passes or not, the law needs to be enforced. The underage users are getting the product from someone.

I have three employees. I would be fine with a large fee, perhaps \$1,000 per employee per year, to enable this law to be enforced and stop these products from getting into the hands of youth. This tax does not do that. Enforcement is expensive, so I recommend charging the store owners for compliance checks.

When the FDA catches stores selling to a minor, it sends them a warning letter. If it catches the same seller twice in the same year, the fine is \$285. That is not going to stop anyone. We need to focus on enforcement.

Everyone who supported the bill focused on the pods—the closed systems. The FDA has recognized the pods are actively being marketed to youth. The pod systems have their place as an alternative to smoking but not for underage users.

This bottle contains 1,500 milligrams of nicotine. It would be taxed at \$1.95. This product, which was my best-selling product for over 2 years, contains 180 milligrams of nicotine and would be taxed at \$2.70. One has over ten times the amount of nicotine and will be taxed less than the other.

CHAIR DONDERO LOOP:

This meeting is for revenue and economic development. Unfortunately, the merchandise in question requires us to discuss public health policy as well. We are always happy when our youth are involved in our process. We appreciate you being a good citizen and store owner, but as you know, not everyone adheres to the rules.

MR. PRICE:

I understand and I agree with 90 percent of what has been said here today. We need to keep these products out of the hands of youth. This bill will have a negative impact on my business. There is a serious lack of enforcement when it comes to underage buying.

SENATOR SEEVERS GANSERT:

If the bottle with 1,500 milligrams of nicotine costs less than the much weaker one, there is an incentive to buy the stronger one.

MR. PRICE:

Someone here today said taxes will have a direct impact on consumer habits. I agree. Consumers will buy the products with higher nicotine because they will seem like the better value. I am already seeing a trend in that direction. In the past 6 months, total sales have been fairly steady, but the higher nicotine product sales are up 216 percent. I do not push the higher nicotine products; I feel the lower concentrations are better for cessation efforts. I also suspect store owners will gravitate toward the higher nicotine concentrations because there will be less inventory on shelves to be taxed.

SENATOR KIECKHEFER:

Is there a price difference between concentrations in the same brand?

MR. PRICE:

No, there is no significant price difference.

NATHAN EVANS (The School of Vape):

I own a vape store in Reno. I am in opposition to S.B. 263. Passage of this bill will cripple my business. I was born and raised here, and I love it. If this bill is passed, I will have to close my store and leave.

SAM McMULLEN (Altria):

Altria has been involved in discussions of these products for a long time, and we stand in opposition to S.B. 263. I would echo the comments you have already heard today. The issue of taxation should be an issue of relative risk. We would definitely agree teen smoking and vaping is a big problem and will bring those concerns to any further discussions.

JOSEPH GUILD (Altria):

I would emphasize Altria has been in the forefront of efforts to stop youth use of tobacco products. One big problem with the bill is the definition in section 1 of OTP. Traditionally, OTP describes cigars, chewing tobacco and other products that actually have tobacco in them. By adding vapor products to the definition and then further describing what is defined as a vapor product, there is a conflict in the definitions. The way to solve that conflict is to tax the nicotine. That makes tax sense and removes the illogic inherent in the bill.

ERIKA PEARCE (Local Vape Enterprises, Inc.):

I moved all of my businesses from California to Nevada in 2016 prior to similar taxes passing in California. As product sizing has increased and pricing has changed, our margins have decreased considerably. A 30 percent tax would be more than crippling for me as a wholesaler. I also own companies which manufacture and sell product online. This bill would create confusion and incentivize me to move out of the State to a more business-friendly state.

Altria was just advocating for a milliliter tax. That does not work for manufacturers like me that make products in larger sizes but with lower nicotine concentrations. If this tax were levied on a per milliliter basis, it would strongly favor the closed systems that have become so popular with youth.

MICHAEL TORSIELLO:

I own Vegas Vapor Emporium and have been in business for just over six years. I got into this business to help people stop smoking cigarettes. The underage users are not using product from the local stores. The closed systems are being sold over the counter at convenience stores and gas stations where they do not bother to check identification. A minimum-wage clerk does not care. He just wants to get through his shift. Senator Ratti said this bill was not about money—I always thought tax policy was about money. It has been said this is about discouraging youth usage. Trying to suck money out of businesses that are trying to help people is not the way to do it.

OSCAR SALGADO (VapeLife LV):

I am opposed to S.B. 263. Creating this tax would put a burden on myself and every local vape shop owner. We are completely against youth vaping.

SENATOR RATTI:

I am sympathetic to the impact this bill would have on small businesses. The bottom line for me is I am more sympathetic to those who are becoming addicted to these products. If a disruption in the industry is the price we have to pay for reducing usage, we should consider paying it.

The battle lines are clearly drawn nationwide. The discussion is between integrating into the OTP process and having a milliliter tax. The State Excise Tax Rates for Non-Cigarette Tobacco Products ([Exhibit P](#)) shows what other states have done. It has been said we are doing something draconian that will be out of scale with what other states are doing. California has levied a 62 percent wholesale tax—we would be less than half of our closest neighbor. The District of Columbia levies 96 percent. South Dakota only recently passed a wholesale tax of 35 percent. Minnesota levies a 95 percent wholesale tax. Pennsylvania, which is the state we modeled our legislation after, levies a 40 percent wholesale tax. Among states that have chosen to use the OTP model, we would have the lowest rate. We are doing that for consistency with the OTP products in our State.

In all of these other states, e-cigarettes and vaping have not gone out of business. The industry adapts, the cost is passed on to the consumer and there is a reduction in usage. We have not been able to put the industry out of business. There may be some small shop owners, when faced with the initial wholesale tax on their inventory, who struggle. But that is a consequence we should consider in order to reduce the number of people addicted to these products.

MR. HACKETT:

Based on consultations with our partners in public health and tobacco prevention, the method of taxation we are proposing here is the best method in terms of having an impact on youth usage. Please look at the FDA Final Deeming Rule in [Exhibit G](#) I spoke about previously. It reflects what the bill sets out, that these are indeed tobacco products.

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CHAIR DONDERO LOOP:
This meeting is adjourned at 3:59 p.m.

RESPECTFULLY SUBMITTED:

Barbara Williams,
Committee Secretary

APPROVED BY:

Senator Marilyn Dondero Loop, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	29		Attendance Roster
S.B. 32	C	9	Joe Reel	Work Session Document
S.B. 62	D	1	Joe Reel	Work Session Document
S.B. 263	E	4	Senator Julia Ratti	Surgeon General's Advisory on E-cigarette Use Among Youth
S.B. 263	F	1	Senator Julia Ratti	Conceptual Amendment / Michael Hackett
S.B. 263	G	2	Michael Hackett / Alrus Consulting	FDA Final Deeming Rule
S.B. 263	H	3	Vera Samburova / Desert Research Institute	E-Cigarette Research
S.B. 263	I	1	Matt Alvarez	Written Testimony
S.B. 263	J	1	Rick Casazza	Written Testimony
S.B. 263	K	1	Tom McCoy / Cancer Action Network	Written Testimony
S.B. 263	L	1	Svetlana Barbarash / American Heart Association	Written Testimony
S.B. 263	M	2	Benjamin Schmauss / American Heart Association	Written Testimony
S.B. 263	N	1	Cari Herington / Nevada Cancer Coalition	Written Testimony
S.B. 263	O	2	Gregory Conley / American Vaping Association	Written Testimony
S.B. 263	P	3	Senator Julia Ratti	State Excise Tax Rates for Non-Cigarette Tobacco Products