

January 28, 2025

SENT VIA EMAIL:

Rep. Sara Hannan representative.sara.hannan@akleg.gov Co-Chair Zack Fields <u>Representative.Zack.Fields@akleg.gov</u> Co-Chair Carolyn Hall <u>Representative.Carolyn.Hall@akleg.gov</u> House Labor & Commerce Committee House.Labor.And.Commerce@akleg.gov

## RE: Pertaining to HB49; TOBACCO/NICOTINE/E-CIG AGE; E-CIG TAX

Rep Hannan, Chair Field, Chair Hall, and members of the House Labor & Commerce Committee

The Cigar Association of America (CAA) submits the following comments on HB49. CAA is the leading national trade organization representing the interests of cigar manufacturers, importers, distributors, and major suppliers of the industry. CAA was founded in 1937 as a non-profit trade organization. Today, its member companies come from all sectors of the industry, from major manufacturers of handmade premium cigars to the largest producers of machine-made cigars. CAA members manufacture a significant share of the large, premium, little, and filtered cigars sold in the United States. Of particular importance for this bill is that its members also include the largest internet retailers of cigars and pipe tobacco.

We understand the intent of HB49 is to (i) raise the state minimum age of purchase of tobacco products to 21; (ii) impose a tax on e-cigarettes; and (iii) impose restrictions on the shipment of tobacco products into Alaska. We write concerning what appears to be a potential unintended consequence of the bill – which is to prohibit online direct-to-consumer sales of cigars and pipe tobacco to adult Alaska consumers.

Specifically, Section 18 puts provisions in place that online sales of tobacco products can be made to consumers if (i) a company is licensed; (ii) and is shipping to a person who has been verified through a third-party age verification service and the individual is receiving the tobacco products for individual consumption; and (iii) the excise taxes have been paid.

Currently, cigars and pipe tobacco are the only tobacco products that can be shipped direct to consumers under federal law as they were specifically exempted from the federal Prevent All Cigarette Trafficking Act (PACT Act). As such, under federal and Alaska law today, adult Alaskan consumers can order these products online for shipment to their homes. The online cigar and pipe tobacco retailers, if they meet economic requirements, register to collect and remit sales tax on these sales into Alaska, but there is no

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mechanism under current law for these companies (as opposed to tobacco distributors and wholesalers) to be licensed or to calculate tobacco excise tax. If Section 18 were to be included as proposed, there would be unintended consequences of prohibiting these online retailers from selling into the state, as opposed to simply trying to address separate and distinct issues with sales of e-cigarettes.

All CAA member companies who ship cigars and pipe tobacco directly to consumers take age verification seriously, already employ third-party age verification services, and support this requirement being codified in Alaska law. We, however, request further consideration of Section 18 and the inclusions of revisions intended to keep the current status quo regarding online sales to adult cigar and pipe tobacco consumers, with added state laws regarding age verification.

We appreciate the committee's attention to our position and concerns regarding Section 18. We hope that the committee will carefully consider our input during deliberations.

Respectfully submitted,

Scott Pearce President, Cigar Association of America, Inc.

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Re: HOUSE BILL 49 Oppose

Summary of Key Points:

House Bill 49 presents a significant threat to both Alaska's economy and public health by imposing restrictive policies on the vapor industry. While protecting youth from nicotine products is a valid concern, this bill misapplies regulation, contradicts public health research, and inadvertently promotes cigarette smoking through harmful taxation and excessive restrictions.

Key concerns include:

- Taxation Increases Smoking Rates Research indicates that increased taxes on vapor products lead to higher cigarette consumption among adults. A 25% retail tax on closed vapor systems will have unintended negative public health consequences.
- Unnecessary Restrictions & Burdensome Compliance HB49 proposes onerous reporting requirements, nicotine limitations, and shipping restrictions, placing undue hardship on law-abiding businesses while failing to address the actual sources of youth access.
- Federal Regulations Already Exist The vapor industry is highly regulated under federal laws, including the PMTA process, P.A.C.T. Act, and T21 age restrictions. HB49 attempts to override federal regulations and adds unnecessary complexity to compliance.
- Contradicts Recent Public Health Data The 2024 CDC report shows that youth vaping rates have dropped to a 25-year low, largely due to existing federal policies, making additional state-level restrictions unnecessary.
- Economic Harm to Alaska The vapor industry contributes over \$33 million annually to Alaska's economy and generates \$3.8 million in state tax revenue. HB49 would threaten jobs, small businesses, and economic growth in the state.
- Encourages Illicit Markets & Smoking Restricting nicotine levels and increasing taxes will drive Alaskans to seek vapor products out of state or through unregulated markets, ultimately pushing some back to combustible tobacco products.

For these reasons, I urge this committee to vote NO on House Bill 49.

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Co-Chairs Fields and Hall, and Esteemed Members of the Committee on Labor and Commerce,

I am submitting this testimony in opposition to House Bill 49 on behalf of independent vapor product businesses in Alaska. While addressing youth vaping is a shared priority, HB49 undermines tobacco harm reduction efforts, threatens small businesses, and contradicts established public health research.

## Taxation Increases Cigarette Use and Harms Public Health

The 25% retail tax on closed vapor systems proposed in HB49 is based on flawed logic. Research shows that high vapor product taxes lead to increased cigarette use, particularly among young adults (ages 18-25).<sup>1</sup>

Studies, including research from Georgia State University and the Center for Health Economics and Policy Studies, consistently show that when vapor products become more expensive due to taxation, former smokers return to cigarettes, reversing hard-earned public health gains.<sup>2</sup> A study by Michael Pesko, published in the *Journal of Risk and Uncertainty*, found that: *"For every one e-cigarette pod no longer purchased because of an e-cigarette tax, 6.2 extra packs of cigarettes are purchased instead."* 

Similarly, in Minnesota<sup>3</sup>, increased vapor taxes resulted in:

- 8.1% increase in cigarette use
- 1.4% decrease in smoking cessation
- An estimated 32,400 fewer adults quitting smoking

From a public health perspective, any tax policy should ensure that less harmful products remain more affordable than combustible cigarettes. HB49 fails in this regard.

## **Existing Federal Laws Already Protect Youth from Vaping**

<sup>&</sup>lt;sup>1</sup> San Diego State University. (2021, August 30). Intended and Unintended Effects of E-cigarette Taxes on Youth Tobacco Use. Center For Health Economics and Policy Studies - Working Paper Series. https://cheps.sdsu.edu/docs/e-cig-taxes-cheps-working-paper.pdf

<sup>&</sup>lt;sup>2</sup> Pesko, M., Courtemanche, C., & amp; Maclean, C. (2021, May 14). The effects of traditional cigarette and e-

cigarette tax rates on adult tobacco product use. SSRN. Retrieved March 28, 2023, from

https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3844276

<sup>&</sup>lt;sup>3</sup> Saffer H, Dench D, Grossman M, Dave D. E-Cigarettes and Adult Smoking: Evidence from Minnesota. J Risk Uncertain. 2020 Jun;60(3):207-228. doi: 10.1007/s11166-020-09326-5. Epub 2020 Jul 16. PMID: 32943812; PMCID: PMC7491748.

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Many policymakers mistakenly believe that vapor products are under-regulated. However, vapor products have been federally regulated since:

- 2016 Federal Product Registration
- 2017 Ingredients Listing Requirements
- 2020 Pre-Market Tobacco Application (PMTA) Process, requiring all products to be submitted for FDA authorization
- 2021 Inclusion in the P.A.C.T. Act, making online direct-to-consumer sales illegal (except in Alaska, due to federal exemptions)
- 2022-Present Federal Tobacco 21 (T21) law raising the legal purchase age to 21

The 2024 CDC Youth Tobacco Survey confirms that youth vaping rates have already dropped to a 25-year low, largely due to these federal policies. There is no justification for adding additional state-level restrictions that are unnecessary and redundant.

#### HB49 Would Harm Alaska's Economy and Small Businesses

The Alaska vapor industry generates over \$33 million annually, with \$3.8 million in tax revenue.<sup>4</sup> HB49 jeopardizes this economic impact by creating excessive regulatory burdens that will:

- Force small businesses to close due to compliance costs
- Send sales out of state or to illicit markets, reducing state tax revenue
- Increase unemployment, impacting both business owners and employees

Additionally, HB49 seeks to override the P.A.C.T. Act's geographic exemption for Alaska, which would severely restrict shipping options for legal businesses and consumers in rural areas. This would increase logistical costs for Alaskan retailers while doing little to stop underage access, which has already declined under federal law.

#### **Nicotine Limitations Undermine Harm Reduction Efforts**

One of the most troubling aspects of HB49 is its proposed limit on nicotine levels in vapor products. Nicotine levels must be tailored to individual needs to successfully transition smokers away from combustible cigarettes. The FDA has already granted authorization for vapor

<sup>&</sup>lt;sup>4</sup> John Durham & amp; Associates. (2023, September 21). The vapor industry economic impact ... - vaportechnology.org. Retrieved February 15,, 2025, from https://vaportechnology.org/wp-content/uploads/2023/12/US-Vapor-Industry-Economic-Impact-Report-2023-Dunham-Associates-FINAL-COMBINED.pdf

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products that exceed the limits proposed by HB49, meaning the bill challenges federal authority and ignores established harm reduction science.

Restricting nicotine levels in Alaska will:

- Drive consumers to other states to purchase higher-strength products
- Encourage black-market sales of unregulated products
- Push some vapers back to smoking, undoing harm reduction progress

## Alternative Policy Recommendation

Rather than punishing responsible retailers and adult consumers, Alaska legislators should:

- 1. Create a Vaping Advisory Council A coalition of retailers, manufacturers, health officials, and education leaders to collaborate on youth prevention policies.
- Focus on Retailer Compliance FDA data from 2020-2025 shows that only 6% of tobacco compliance inspections in Alaska resulted in violations. Of these, a single violation was related to vapor. Rather than punishing the entire industry, enforcement should target repeat offenders.
- 3. Ensure Harm Reduction Policies Any taxation or regulation should maintain vapor products as a more affordable, accessible alternative to smoking, in alignment with harm reduction strategies used successfully in countries like the United Kingdom.

#### Conclusion: Vote No on HB49

HB49 is a misguided and harmful policy that:

- Increases cigarette smoking rates through unnecessary taxation
- Damages Alaska's small businesses and economy
- Drives consumers to illicit markets or other states
- Contradicts harm reduction science and FDA regulatory decisions

For these reasons, I urge the committee to vote NO on House Bill 49 and to consider alternative policies that protect public health without harming businesses and consumers.

On behalf of SFATA members doing business in Alaska,

April L. Meyers, SFATA Board President & CEO

Members of the Labor and Commerce Committee,

My name is Alex McDonald and I own Ice Fog Vapor in Fairbanks, AK. I am writing today to oppose HB49. This bill is highly flawed and will lead to increased costs to the state, leaving less money for communities, while increasing smoking rates as well. Vapor products help Alaskans across the state quit smoking. I smoked for 19 years and tried a variety of approved traditional methods to quit, with vapor products being the only thing that worked for me. My whole family has been smoke free for 12 years now. A study published in the New England Journal of Medicine 2/14/19 clearly shows these products have been found to be twice as effective as traditional cessation products and the FDA has approved vapor products as a benefit to the protection of public health. Surveys show that youth e cigarette use rate fell from 2022 to 2023 by 15%. Health officials from the FDA say there is no longer an epidemic of youth use.

This bill would cost the state money we do not have. A State Budget Solutions publication in table 4 page 6, shows that in 2012 the State of Alaska brought in \$67 million in tobacco taxes and \$30 million in tobacco settlement payments. The cost to the state for Medicaid for smoking related illness was \$202 million or 108% of what the state received. Keep in mind these figures are before Medicaid was expanded so the savings to the state now would likely be far greater than the 2012 figure. Less people smoking means more savings to the state budget for years to come, leaving more in the budget for communities like ours.

A study from the National Bureau of Economic Research on the effect of vapor taxes in Minnesota, they stated that "Our study suggests that, as intended, e-cigarette taxes raise ecigarette prices and reduce e- cigarette sales. However, an unintended effect is an increase in cigarette sales." They also state that "Therefore, a national e-cigarette tax will increase traditional cigarettes purchased by 6.2 extra packs for every one standard e-cigarette pod of 0.7 ml no longer purchased." The study also points out that "traditional cigarettes continue to kill nearly 480,000 Americans each year (Centers for Disease Control and Prevention 2019a), and several reviews support the conclusion that e-cigarettes contain fewer toxicants (National Academies of Sciences Engineering and Medicine 2018, Royal College of Physicians 2019) and are safer for non-pregnant adults (Royal College of Physicians 2019) than traditional cigarettes." Policies like the ones contained in HB49 have been shown to increase smoking rates instead of decreasing the smoking rates. Smoking is the number one cause of preventable death in this country. We should be putting policies in place that help lower preventable deaths in our state instead of increasing that number.

The American Consumer Institute Center for Citizen Research published a report titled "Are E-Cigarette Regulations Jeopardizing Public Health?" They bring up some very good points and dispel many of the myths regarding vapor products. As far as the products safety they report that "In 2015, Public Health England conducted a systematic review of the evidence and concluded that ecigarettes are at least 95 percent less harmful than conventional cigarettes. Other health organizations, including the Royal College of Physicians, National Academies of Science, Engineering, and Medicine, and American Cancer Society, have also acknowledged. that vaping is a safer alternative for adult cigarette smokers. One 2018 study written by a team of authors from the Georgetown University Medical Center estimated that 6.6 million lives could be saved in the U.S. over the next 10 years." They also point out the need for changes to the Premarket Tobacco Application that will need to be made or these products will be possibly pulled from the market. "companies will still need to submit a "Premarket Tobacco Application" (PMTA) to the FDA... or else be forced to close shop, no easy task as suggested by the first company to submit the application." This application costs around \$1million per flavor of liquid, with no standard of approval, and no small business can afford that cost.

In January 2024, the fifth Circuit court ruled against the FDA and their marketing approval process. In the majority opinion Judge Oldham wrote, "months after receiving hundreds of thousands of applications predicated on its instructions, FDA turned around, pretended it never gave anyone any instructions about anything, imposed new testing requirements without any notice, and denied all one million flavored e-cigarette applications for failing to predict the agency's *volte face*. Worse, after telling manufacturers that their marketing plans were "critical" to their applications, FDA candidly admitted that it did not read a single word of the one million plans." This case was recently herd by the Supreme court and is waiting for a ruling.

The FDA has approved some vapor products over the past year for the protection of public health. These products range from 15mg – 60mg of nicotine. Capping the level of nicotine at 50mg make no sense when the FDA says 60mg products protect public health. The FDA also recently approved Zyn pouches as they were found to be safer and a benefit to protection of public health.

The report also addresses youth use and the myth that it is leading to hooking a new generation. They state, "Indeed, among teens who use e-cigarettes regularly, almost all are (or were) smokers, suggesting that vaping may be an effective substitute for smoking among adolescents. The 2015 National Youth Tobacco Survey, for example, revealed that only 0.3 percent of non-smoking adolescents regularly vaped. A paper in the American Journal of Preventive Medicine found that non-smoking high school students are highly unlikely to use e-cigarettes; only six percent of 12th graders who had never smoked had used e-cigarettes in the past 30 days, and less than one percent used e-cigarettes regularly." From 2016 to 2023 the adult smoking rate in Alaska has fallen 54%! Everyone I know does the best they can to keep products intended to help adults out of the hand of our youth. Brick and mortar stores are the first line of defense to card and ensure these products are sold to adults of age.

The report also finds taxing vapor products counter to public health interests and states, "More than a dozen states have implemented special taxes on e-cigarettes, typically in order to bring them in line with taxes on combustible tobacco products. But while tax parity might seem fair, proposals to jack up prices on e-cigarettes threaten to undermine policymakers 'broader goals of improving public health." They also report "Imposing similar taxes on e-cigarettes runs counter to this logic, since the aggregate public health impact of e-cigarettes, compared to smoking, is positive. For example, a recent study found that, even under pessimistic assumptions, e-cigarettes will deliver significant public health benefits over the next half-century, extending the aggregate longevity of the U.S. population by 580,000 years."

The issue of taxation of vapor products was brought up during the Walker Administration and rejected as bad policy. The legislature found it to be a highly regressive tax hitting lower income Alaskans the hardest. In the publication, Vaping, e-cigarettes and public policy toward alternatives, illustrates this in their finding that "2010 to 2011, smokers earning less than \$30,000 per year spent 14.2 percent of their household income on cigarettes, compared to 4.3 percent for smokers earning between \$30,000 and \$59,999 and 2 percent for smokers earning more than \$60,000." The legislature also stated that the money would be better left for families to spend on their kids while others simply saw it as a money grab that would push people back to smoking.

A similar tax on vapor products was vetoed just years ago by Governor Dunleavy stating that, "A tax increase on the people of Alaska is not something I can support." In a 4/21/22 email, Senator Sullivan is on record against a federal vapor tax that was proposed by Sen. Durbin stating that "many Alaskans have shared stories with me of how e-cigarettes have assisted their efforts to quit smoking. If taxes are raised on these products, I worry that it could exacerbate smoking issues by disincentivizing the use of these safer products." He also noted the regressive nature of these taxes stating, "The US Center for Disease Control and Prevention (CDC) notes that 72% of cigarette smokers in the United States live at or below the poverty level." He then stated that taxing these products is "excessive and unfair, even if done to curb tobacco use." In a separate email from the same date Senator Sullivan stated, "E-cigarettes, vaporizers, and electronic nicotine delivery systems have the potential to assist individuals quit their dependence on traditional tobacco products. I support the use of these products for this purpose and I applaud the many Alaskans who have shared their success stories with me." A similar federal tax on vapor products was removed from the Build Back Better bill as well. A similar bill to this one also failed in the last session.

It was also found to be a job killer and would close small businesses across the state. The issue was brought up for the Fairbanks North Star Borough in 2020 and was rejected as well. It was brought up again last year and imposed a 20% wholesale tax on top of the city 20% wholesale tax on vapor products. These taxes hurt small businesses and their customers. Additional taxes on these products are unnecessary. Kodiak also voted against a similar tax measure as shops could not survive the added costs. Steam Trunk in Kodiak has closed and Arctic Vapor in Fairbanks closed its doors as well even before burdensome taxes took place. The city of Fairbanks raised their tobacco taxes rate to 20% of wholesale beginning 1/1/24 with the borough tax increase it amounts to 40% of wholesale value. This added state tax would close small businesses and restrict consumer choice of safer alternatives to smoking traditional cigarettes further increasing the smoking rates for the state.

People have been fleeing states with burdensome taxes and overreaching regulations that imped their freedom of choice to states with more freedoms and less tax burdens. Alaska should be a destination for people to come to not a place to leave as has been the case in recent years. Out migration has been an issue for the state and its work force, we should avoid things that could exacerbate this issue such as this overreaching flawed bill.

Thank you for your consideration of this matter. I hope we can all work together to make Alaska, and our community a better healthier place.

Alex McDonald

Fairbanks, AK

## Shaun D'Sylva 206.948.1290

Feb 17, 2025

Co-Chairs Fields and Hall, and Members of the Committee on Labor and Commerce Committee:

I am writing in opposition to HB49. As a co-owner of 3 adult only vapors stores in Alaska since 2013, we have seen a dramatic change in the number of adults who have switched to a safer alternative to combustible cigarettes.

In the almost 12 years we have been in open for business, we have helped thousands of Alaskans to rid themselves of a deadly habit. This is evidenced in the lowest smoking prevalence in adults since detailed records have been kept. As of 2023, which was the latest data from the Tobacco Facts Update shows that just under 17% of adult Alaskan smoke with is down almost 25% from 2012. We should expect the next update to show continued trending downward, which mimics the trend for the whole United States.

The 2023 Alaska Youth Risk Behavior Survey shows that since 2019, the youth smoking rate is dropped almost 15% to a record low of 6.5% (Based on one use within the last 30 days). While the youth vaping rate has dropped almost 35% down to 17.3% (Based on one use within the last 30 days).

For the record, the usage rate for marijuana for youth in Alaska is a 17.8% (Based on one use in the last 30 days), which is higher than nicotine vaping usage. Additionally, youth use of alcohol is at 16.8% (Based on one use in the last 30 days).

I would also like to make note that the sponsor of the bill, in her presentation, is using 2019 data, which shows the youth vaping rate to be just as high as in 2015. This is quite a misleading way to present a case to support this bill, when your own Department of Health has data goes all the way through 2023. Additionally, the presentation represents products that have not been on the market, or priced as the presentation asserts for well over 5 years. One other incorrect data point is the graphic showing various nicotine items with the amount of nicotine they contain. The graphic states a pack of cigarettes only has 20mg of nicotine, so it is off by a factor of 10x.

Regarding the 25% excise tax that is being proposed, considering the users of nicotine products are generally from the lower socioeconomic groups and are the least likely to withstand a significant tax. Plus, you must consider the local taxes that are imposed. For example, we have a 55% tax on nicotine e-liquid in Wasilla, a 55% wholesale tax on everything we sell in Anchorage and a 40% wholesale tax in Fairbanks (20% City of Fairbanks, and 20% Borough Tax). By adding significant additional taxes, you are making cigarettes more attractive due to

# Shaun D'Sylva 206.948.1290

price, which will have the unintended consequence of increasing the adult smoking rate. <u>The</u> <u>effects of traditional cigarette and e-cigarette tax rates on adult tobacco product use - PMC</u>

Surely, you did not intend to keep adults away from utilizing a safer alternative to the known dangerous combustible cigarettes.

I urge you to vote no on HB49.

Regards,

Shaun D'Sylva Fatboy Vapors Alaska, LLC

Good afternoon, Co-Chairs and members of the committee,

I oppose HB 49. This bill is still far too overreaching. I have been following along with the AK legislation, since I quit combustible cigarettes with the use of a vape. I have been tobacco free for twelve years!

The Federal Government already has created the PACT ACT, which was put in place to curb online cigarette sales, expanded to include vaping products it is more like shipping guns. Shipments now must be shipped license to license. I believe this has helped cut youth vaping down even more. These products can't be purchased in bulk without a license and sold over social media. This youth access point was brought up as invited testimony for HB 110. This has helped stop our youth from getting them from the black market.

I don't agree with the 25% tax. It would be less expensive to go back to traditional cigarettes. It will be cheaper to smoke combustible cigarettes than it will be for a safer healthier alternative. Please read those two lines again out loud. What are you doing to you constituents? The Royal College of physicians in England have published research that proves it is 95% safer than smoking. This tax has been proven to be very regressive. The legislature during the Walker administration shut this tax down. This tax was vetoed by our Governor and recently a vapor tax was pulled from the Build Back Better bill. Trump has said he will fight for vaping again. We may not currently still be in a pandemic, but the high costs from food, shipping costs to fuel are still having an affect on our communities and hurting small businesses, this tax will hurt small businesses across Alaska even more.

A clause should be added that loops in those who are legally of age can continue to purchase. It is nice to see there are some consequences for those who provide a minor or a minor in possession of a vape. I hope the state ensures more of the \$60 Million brought in from taxes and tobacco settlements, goes to enforcement. We need to make the consequence 'so NOT worth the purchase' to these friends of older siblings, the cool aunties/cousins, the co-workers. As this bill is written you are going to have the cool parents and minors giving to their friends. You're writing it into law. It should never had been approved to let parents/guardians purchase for their minor children.

We need to assist in people sharing their mistakes so others can learn from them. We need to create the generation that learns from others.

I'm very thankful that vaping was introduced to me. I remember trying several approved methods and they didn't work. I remember having a hard time keeping up with my daughter and all her energy. Once I quit smoking combustible cigarettes, it was like night and day, my energy sky rocked! My spouse opened his own store in Fairbanks, AK, because we couldn't find any e liquid or replacement coils for our new devices. We have met so many wonderful people who wanted quit smoking combustible cigarettes for their themselves and their family. So many vaping success stories start with "I have tried many FDA approved ways and nothing worked!" Many of our military customers who have switched to vaping have reported their PT scores have improved!

Other countries are taking a whole different approach to this vaping technology. They are encouraging their residents to switch to Vaping by putting Vape stores in hospitals and giving vouchers for starter kits to help smokers make the switch! Other countries are legalizing vapor products as part of their tobacco control plan. I don't see a reason why Alaska shouldn't be doing this and following the science behind it. This is much different than the state giving out patches and other nicotine replacement therapies that have been found to be half as effective in smoking cessation than vaping. Why not support what works? This would also make the Quitline ads more effective in getting smokers to give up combustible products, support local businesses, and get accurate information out to those in need, unlike the outdated slide show you have been shown. This will save the state way more money in health care costs incurred from smoking related illness than any tax would bring in.

Thank you for your time,

Jessi Walton Fairbanks, AK