

Smoke-Free Alternatives Trade Association

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Phone: 202-251-1661



Dear Finance Committee Members,

We, the undersigned, submit this testimony in opposition to SB 45 as representatives of the independent vapor products businesses and constituents of the state of Alaska. As such, we urge this Committee to pull back this policy, which is destructive not only to the economics of our state, but also detrimental to its public health.

In the attempt to address youth vaping, if not careful, legislature will significantly hinder – or worse, extinguish – tobacco harm reduction options for our adult consumers. Senate Bill 45 is a smorgasbord of bad “solutions,” including a ban on e-cigarettes flavors, a 75 percent wholesale tax on everything except batteries, and a 10-million-dollar manufacturer liability insurance requirement. The proposed legislation would also increase the legal age to purchase tobacco and vapor products to those 21 years of age or older.

Senate Bill 45 seemingly intends for the Tobacco 21 (T21) legislation to match federal law enacted on December 20, 2019, which, as a matter of policy, makes sense. However, to apply an “Other Tobacco Products” tax to vapor products to reduce youth tobacco use is a policy contradiction to the current 2021 CDC report on youth nicotine usage that clearly demonstrates a dramatic decline in youth one-time use in the past 30 days. Indeed, one-time use is down to 10.8%, while daily youth usage for 2021 sits at 3.1%, a significant drop of 62% since the federal adoption of vapor into existing T21 laws. These percentages are particularly significant in that they represent lower statistics than seen in 2014, a full 3 years prior to the start of our nation’s “youth epidemic.”

Aside from federal T21 laws, another factor playing a critical role in the steep decline in underage youth use is the inclusion of vapor products under the P.A.C.T. Act, passed as part of the Consolidated Appropriations Act of 2021. Under the P.A.C.T. Act, it is illegal for any tobacco products (and now also nicotine vapor products) to be shipped directly to a consumer. Essentially, the law has stopped youth obtainment through the most cited of methods.

The bill’s sponsor says that electronic cigarettes and vapor products are under-regulated and questions their effectiveness in helping adult smokers quit. As a matter of fact, the regulation of the vapor products industry began with federal product registration in 2016 and was followed by federal ingredients listing in 2017. Further, as of September 9, 2020, all electronic cigarette product manufacturers were required to submit their products for evaluation and testing to the FDA via the Pre-Market Tobacco Application process (PMTA). All vapor products not submitted were to be removed from the market by that same date. The PMTA process has led to numerous companies exiting the market and will ensure that the remaining legal products are deemed appropriate for the protection of public health by the FDA. Although we agree that addressing youth use of all age-restricted products is a worthwhile endeavor, the proposed legislation does not help in that regard, but rather, becomes a punishment to the hard-working adult men and women of Alaska.

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Despite the rhetoric, older adults – the overwhelming majority of whom are former smokers – rely on flavors to not only transition away from deadly combustible tobacco, but to remain smoke-free. In fact, [a 2020 study](#) by the Journal of the American Medical Association (JAMA) examined flavored eliquid use and smoking cessation among nearly 18,000 participants and noted that “adults who began vaping non-tobacco-flavored e-cigarettes were more likely to quit smoking than those who vaped tobacco flavors.” Medical professionals were so intrigued by this that a subsequent JAMA-sponsored cohort study was conducted, revealing in [December of 2021](#) that “of 1600 adult daily cigarette smokers who did not initially use e-cigarettes and had no plans to ever quit smoking, subsequent daily e-cigarette use was significantly associated with an 8-fold greater odds of cigarette discontinuation compared with no e-cigarette use.” The findings of the most recent JAMA study mirror the sentiments of the American Journal of Public Health’s 15 former presidents, who called for a more balanced policy approach in a [May 15, 2021](#) publication. In fact, the JAMA policy recommendations are that “these findings call for consideration of smokers who are not planning to quit when evaluating the risk-benefit potential of e-cigarettes for smoking cessation in the population”.

Despite the all-too-rampant alarmism, e-cigarettes are significantly less harmful than combustible tobacco and, in some countries – primarily those with socialized healthcare – governments are actively promoting the transition from deadly combustible tobacco to the far less harmful vapor products category. As recently as April 2021, the [UK Cross-Party Group of Parliamentarians](#) recommended the UK deny “any decision to ban vaping and other reduced risk alternatives to smoking,” reaffirming the country’s position as a global leader in harm reduction. As a reduced risk product, vapor products should not be subjected to an exorbitant excise tax. Excise, or sin taxes, are used to deter persons from harmful and risky behavior. As a product that has been demonstratively proven over and over again to be at least 95 percent less harmful than combustible tobacco, policymakers must refrain from enacting excise taxes that are at the same, similar to, or in excess of the tax rates on deadly combustible tobacco products. Further, evidence indicates that high tax rates lead former smokers back to combustible tobacco and inhibit quit rates. [A 2020 study](#) examining the impact of Minnesota’s 95 percent excise tax on vapor products found that quit rates declined and that “similar e-cig taxes in other states will also reduce the smoking quit rate nationwide.” In addition to declining quit rates, [a 2019 study](#) found that taxes on vapor products “will increase the purchase and use of cigarettes.”

Ultimately, the proposed legislation in SB 45 will punish adults who have already quit smoking combustible tobacco, those who have not yet considered it, and law-abiding retailers, including brick and mortar specialty vapor shops that are doing a great job of preventing youth access to the age-restricted products they sell. According to data from the [FDA’s tobacco compliance inspections](#), between June 2014 and April 2020, the FDA conducted a total of 2,520 inspections. Of these inspections, 251 (10 percent) resulted in a warning letter because the business sold a minor a tobacco and/or vapor product. Of the failed inspections, only 15 of the 251, or 5.9%, of all infractions were due to the sale of a vapor product to a minor, and only a single violation was from the open-source refillable e-liquid category typically sold in specialty vapor stores. We find

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it important to note that the single offender was never a member of our organization and is no longer in business. To compare, 214 warning letters, or 85%, of infractions were issued to retailers who failed inspections for selling combustible tobacco products to a minor – yet this bill seeks to punish the minority offenders whose total category violations for this period are less than 1%.

Lastly, we must address the product liability insurance requirement and can state, with confidence, that imposing such is no different than enacting a total ban. Too often, policymakers confuse the vapor industry with Big Tobacco interests. So let us be clear in stating that most vapor products manufacturers are former smokers who pursued the American dream in true entrepreneurial spirit. The remaining legal manufacturers of vapor products are in review by FDA and will either be rejected or deemed appropriate for the protection of public health by the Agency. Imposing a policy costing an average of \$350K annually while a company is in review is no different than signing an industry death warrant. This policy, along with the other destructive policies included in SB 45, should be pulled back immediately.

Rather than punish responsible vapor product retailers, manufacturers, and the adult former smokers they serve, Alaska lawmakers should consider establishing an advisory council consisting of vapor product retailers, manufacturers, adult consumers, and officials in both the education and health departments to collaboratively create robust policies that address youth use. The vapor product category's potential for helping smokers transition away from lethal products is too great, as is the economic boon, to be snuffed out.

In close, we ask you to carefully consider why legislature should choose to threaten the existence of an industry that provided more than a \$40 million economic impact to Alaska in 2018 while generating over \$6 million in state wages and simultaneously acting as a shield against youth use. We urge this Committee to vote no on SB 45.

Sincerely,

Shaun DSyva, Fatboy Vapors

Jason Jones, Legion Vapor LLC

David Parrot, 5150 Vapes

Sarah Eaton, Alaska Elixirs Vape, LLC

Alex McDonald, Ice Fog Vapor, Inc.