KANSAS VAPORS ASSOCIATION
212 SW 8th Avenue, Suite 202
Topeka, KS 66603

February 17, 2016

To: Senate Judiciary Committee

Re: SB 455 – Amending the Kansas Cigarette and Tobacco Products Act

The Kansas Vapors Association requests two changes to Senate Bill 455.

Strike "Shall" and replace with "May"

The word "Shall" binds the Department of Revenue to mandatory penalties, including fines and revocation. "Shall" gives the Department no flexibility to take violations on a case-by-case basis. The word "May" allows the Department to assess maximum penalties, but also the ability to review each case and take all factors into consideration before imposing penalties and revoking licenses.

Add the Following Amendment, insert a new section as follows:

Tax on electronic cigarettes imposed; rates; inventory tax. (a) On and after July 1, ~~2016~~, *2017* a tax is hereby imposed upon the privilege of selling or dealing in electronic cigarettes in this state by any person engaged in business as a distributor thereof, at the rate of $.20 per milliliter of consumable material for electronic cigarettes and a proportionate tax at the like rate on all fractional parts thereof. For electronic cigarettes in the possession of retail dealers for which tax has not been paid, tax shall be imposed under this subsection at the earliest time the retail dealer: (1) Brings or causes to be brought into this state from without the state electronic cigarettes for sale; (2) makes, manufactures or fabricates electronic cigarettes in this state for sale in this state; or (3) sells electronic cigarettes to consumers within this state. (b) The secretary of revenue shall adopt rules and regulations to implement the provisions of this section.

History: L. 2015, ch. 99, § 12; July 1.

This amendment is not an effort to reopen discussion on the tax itself but to simply ensure the tax is implemented properly and without harm to Kansas business owners.

During the 2015 session, without hearings or discussion, the Legislature passed an e-cigarette tax as part of the tax bill. Effective date of the tax is July 2016, assessing a 20 cents per milliliter tax on e-cigarette and vaping products.

The Department of Revenue has not published rules and regulations for the industry to review. This tax will be complicated and create new levels of regulation to the industry. In essence, it is creating a new tax system in the state of Kansas.

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<u>The issues that need addressed include, but are not limited to:</u>

- What components of the product will be taxed?
- How will the Department define consumable goods, which determines what is taxed?
- How will the tax be collected by the Department of Revenue?
- How will the tax be remitted by business owners?
- What kind of record keeping must be kept by owners?
- What, if any, fines and penalties will be applied?
- What process will the Department use to audit records and monitor compliance?
- What level of the industry will this tax be applied?
- Are all products, sold by all retailers, subject to the tax?
- Will a separate license be needed to sell these products, which is not required now, or will changes need to be made to the current tobacco license?

These, and others, are issues not addressed when the tax policy was passed and must be sorted out by the Department of Revenue and industry. The time left to make those determinations between now and July 1 of this year is not enough time to create this new tax system.

It is essential the Department of Revenue and industry have time to craft rules and regulations that are effective, cost efficient and not burdensome to thousands of Kansas outlets selling these items.

Kansas is one of only a handful of states to implement such a tax and the few examples have had numerous issues and harmful impacts to their state and businesses because they did not take the time needed to implement rules and regulations. This amendment ensures proper implementation.

The impact of this change to the state budget is minimal, as the fiscal note on this is a maximum of $2 million in revenue generated and we have been informed it comes with a costly fiscal note to implement. However, negative impacts to the state if not implemented properly exceed the fiscal note if revenue cannot be collected properly or rules and regulations leads to a reduction in outlets selling the product, as has happened in other locations.

Thank you for your consideration of this matter. I am always open to discuss and answer questions.

Respectfully Submitted,

Spencer

Spencer Duncan

The Kansas Vapors Association was founded in 2014 by vaping product consumers and retailers to provide education on vaping products and protect vaper's rights on the local and state level. The KVA consists of consumers, small business owners and employees from across Kansas.

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