1050 17th Street, N.W.
Suite 1150
Washington, DC 20036
202.525.5717

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Thank you, Chairman Tyson, Senator Holland and members of the committee.

My name is Alan Smith, and I'm here today on behalf of the R Street Institute, a non-profit, non-partisan, public policy research organization ("think tank") where I serve as Midwest Region Director and Senior Fellow. Our mission, broadly defined, is to engage in policy research and outreach to promote free markets and limited, effective government.

We are particularly concerned with SB 54 because of its impact on two important public policy areas. First, R Street is interested in "light touch" tax policy that is easy to administer and enforce—two critical concepts if one wants to avoid significant economic disruptions in any market. Second, we focus on policies that reduce adverse health impacts caused by traditional cigarettes ("tobacco harm reduction").

With respect to tobacco harm reduction, the emergence of vapor products is significant. Both vapor and tobacco products include nicotine, but newer vapor products contain far fewer carcinogens than their traditional cigarette counterparts. Placed on the continuum of harm between smoking cessation products containing nicotine and traditional cigarettes, vapor products fall somewhere in the middle.

Accordingly, R Street views vapor products as an opportunity to reduce the public health impacts of tobacco. A 2015 expert independent evidence review published by Public Health England (PHE) concluded e-cigarettes are around 95% less harmful than traditional smoking.

R Street believes innovations which move smokers away from traditional tobacco products deserve a correspondingly lower level of taxation as an incentive for smokers to make the change. SB 54, however, sends the signal that nicotine is the central health risk to consumers. If this is the case, why isn't the tax applied to other smoking cessation products containing nicotine?

Last June, the Kansas Department of Health and Environment gave away nicotine gum, lozenges and patches to encourage Kansans to quit smoking. In an all too familiar tobacco policy paradox,

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while Kansans were urged to use cessation products, the legislature sought to apply a "sin" tax beyond the range of sales taxes.

We also have concerns that limiting the vapor tax to nicotine would be an administrative nightmare that will further diminish the vapor market and, as a result, options for smokers who would like to quit tobacco. Many of you have heard about the radical tax hikes imposed on e-liquid under the new law. Well, it is understandable vapor advocates are looking for ways to reduce their tax exposure, but this isn't the way.

In truth, SB 54 is an end-around a tax grab that should have been less intrusive in the first place. Because the vapor market is developing, there aren't as may vapor consumers as smokers. Tax advocates in the legislature realized the tax would need to be high to generate meaningful revenue. But even if the tax results in more revenue for the state, Kansas' vapor tax remains an impediment to tobacco harm reduction. With this in mind, the *key question* legislators should be asking is whether the current vapor tax is going to reduce tobacco harm in Kansas or increase it.

Taxing nicotine in vapor creates an unequal tax playing field. "Sin" taxes are theoretically imposed to offset the public harms of products such as tobacco and alcohol. Taxing nicotine directly fails to adequately serve this objective and treats products containing nicotine unequally. For example, nicotine gum is taxed at sales tax rates and cigarettes are taxed by the pack.

Administratively taxing nicotine is also difficult to enforce. State officials looking to collect would rely heavily upon vendors to accurately and truthfully disclose nicotine content. The amount of nicotine in various bottles of e-liquid varies from one product to the next. Where the volume of consumable material is relatively easy to verify, the amount of nicotine is not. Thus, SB 54 may well serve as a perverse incentive for less scrupulous vendors to underreport the amount of nicotine in a given product. The measure also creates additional record keeping far more complex than simply applying a volumetric tax to e-liquids regardless of nicotine concentration.

At first blush, withholding a tax on e-liquids containing zero nicotine seems reasonable. But national evidence of consumer behavior in other states demonstrates the tax loophole created by zero content nicotine e-liquid creates incentives for customers to self-manufacture, giving rise to

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public health concerns of unreliable and untested products. A much better approach is to tax all of the liquid at some rate which recognizes comparative harm.

While R Street is sympathetic to vapor community wishes to reduce the tax burden placed upon them, reducing the tax itself is a far better path than the complexity of taxing one constituent ingredient in e-liquids.

Thank you for having me today, and I'll happily answer any questions.

Sincerely,

Alan Smith, R Street Institute