



June 23, 2020

Mr. Speaker, Chairman Webber, and the House Regulatory Reform Committee,

Thank you for the opportunity to review the current drafts of Senate Bills 781 thru 786. The American Cancer Society Cancer Action Network (ACS CAN), the American Heart Association (AHA), and the American Lung Association (ALA) oppose these latest drafts from the Senate. As written, Senate Bills 781 thru 786 raise major concerns around definitions, enforcement, and multi-leveled tax issues, among others. We would like to lay out our concerns and provide a helpful road map to accomplish true protections for Michigan's youth.

### SB 781 Concerns

1. **Excludes e-cigarette devices from taxation and only taxes nicotine-containing "consumable material" at a rate lower than the tax on other tobacco products.** SB 781 would tax "consumable material" at 18% of the wholesale price, much lower than the 32% of wholesale tax on other tobacco products. Additionally, the tax would apply only to the liquid, not e-cigarette devices themselves. And, without a mechanism to independently verify whether nicotine or marijuana is present in the "consumable material," it would be left up to the tobacco industry to self-regulate. At a time when we are seeing skyrocketing rates of youth e-cigarette use, now is not the time to give e-cigarettes a tax break.
2. **Creates a new carve-out definition for "alternative nicotine products" and taxes them at 50 cents per ounce based on the weight reported by the manufacturer.** Tobacco companies favor weight-based taxes on tobacco products to keep the price of their products cheaper for consumers. A weight-based tax will not keep up with inflation or product price increases. As a result, a weight-based tax will erode over time, bringing Michigan lower revenue than a percentage-of-price tax. Weight-based taxes incentivize tax avoidance by tobacco manufacturers which could simply reduce the weight or change the composition of the product to keep the overall price low. Also, by not requiring independent verification of the quantity of taxable contents the state is depending on self-reporting of the tobacco industry. To maximize health and revenue gains, simplify tax collections, and make many dangerous and addictive products that are attractive to kids cost prohibitive, a 32% of wholesale tax should be assessed on all non-cigarette tobacco products.
3. **Retains a cigar tax cap.** In 2017, 9.2% of Michigan high school students currently smoked cigars. Retaining a cap on the cigar tax makes them more appealing to price-sensitive consumers, including youth. Cigars, cigarillos and little cigars may be sold as individual sticks, which can again, make them more appealing to youth.
4. **Fails to tax already stocked inventory.** To eliminate the problem of stockpiling prior to the tax effective date, the tax increase should apply to all inventories on the effective date to minimize stockpiling of shipments by wholesalers, retailers and distributors at the pre-tax rate. States commonly refer to this component of cigarette tax policy as an "inventory tax" or "floor tax." Not including an inventory tax as part of the legislation can significantly reduce the benefits.

### SB 781 Recommendations

**We recommend amending the bill as follows to tax all non-cigarette tobacco products at 32% of their wholesale price:**

1. **Eliminate the definition for "consumable material" and define e-cigarettes as "electronic smoking devices" using a comprehensive definition:** "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the

device. Electronic smoking device does not include any battery or battery charger when sold separately. In addition, electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

2. **Update the “tobacco product” definition to a comprehensive definition to ensure that all tobacco products, including e-cigarettes, are taxed and regulated in the same manner.** We recommend the following definition: *“Tobacco product”* means a product that contains or is made or derived from tobacco or nicotine and that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. Tobacco product includes, but is not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, shisha, snuff, or an electronic device. Tobacco product includes a component, part, or accessory of a tobacco product regardless of whether the component, part, or accessory is sold separately. Tobacco product does not include a product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold solely for the approved purpose.
3. **Eliminate the term and definition for “alternative nicotine products.”**
4. **Eliminate the cap on cigar taxes.**
5. **Establish a floor tax.**

#### **SB 782 Recommendations**

- We recommend that the licensing fee be substantial enough to help cover the costs of enforcement with tax revenue generate from changes in Senate Bill 781.
- We also recommend that significant penalties be issued to those who sell tobacco products without a proper license.
- Include definitions recommended for SB 781.

#### **SB 783 Recommendations**

- Eliminate from the package due to the preemption for e-cigarette flavors.

#### **SB 784 Recommendations**

- We recommend a minimum of at least two compliance checks per year for violations of minimum legal sales age per tobacco retail license. Violations found through compliance checks should also require a recheck, such as within 3 months.
  - SB 784 currently recommends only one check every two years.
- We also recommend that violations of the licenses should fall upon the owner of the establishment.
- Age verification for online sales should be done at a brick and mortar location where the ID can be checked in person rather than through an online service.
- We also recommend that the Purchase, Use, Possession laws (PUP) be eliminated due to the lack of effectiveness and the damage caused to those affected by the laws.

#### **SB 785 & SB 786 Recommendations**

- We recommend the new definition changes outlined in SB 781.
- Eliminate these terms and definitions currently in the bill package:
  - Vapor product
  - Alternative nicotine product
  - Consumable material

#### **Insert these definitions in the bill package**

- **“Electronic smoking device”** means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include any battery or battery charger when sold separately. In addition, electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- **"Tobacco product"** means a product that contains or is made or derived from tobacco or nicotine and that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. Tobacco product includes, but is not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, shisha, snuff, or an electronic device. Tobacco product includes a component, part, or accessory of a tobacco product regardless of whether the component, part, or accessory is sold separately. Tobacco product does not include a product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold solely for the approved purpose.

Michigan ranks 48<sup>th</sup> among 50 states and the District of Columbia in its funding for tobacco prevention and cessation programs. Michigan currently provides \$1.6 million for its tobacco prevention and cessation program, or just 1.5% of the \$110.6 million recommended by the United States Centers for Disease Control and Prevention. Michigan fails to help its citizens quit tobacco. If Michigan did invest in programs to help people who use tobacco quit and prevent kids from starting to use tobacco, we could see declines in tobacco-related diseases, including cancer, and would lessen the financial need for the Michigan Medicaid program. We know that investing in prevention programs is a good return on investment. That is why we implore that the money generated from this tax would go towards prevention efforts and not the general fund.

We appreciate the sentiment of trying to tax and regulate new tobacco products. We are alarmed and disappointed that the tobacco industry, and not public health experts, have been driving those discussions. Big Tobacco created the current skyrocketing rates of youth tobacco use and we can't trust them to come up with a solution that benefits anything other than their bottom line.

If Senate Bill 781 thru 786 move forward in their current form our organizations will have to oppose. Thank you for your consideration.

Respectfully,



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