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TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
SENATOR PETE BRUNGARDT, CHAIR

FROM: CHRISTOPHER J. MASONER,
AMERICAN CANCER SOCIETY

DATE: MARCH 15, 2012

RE: HB 2324

Senator Brungardt, Members of the Committee, thank you for the opportunity to provide testimony today in support of HB 2324, prohibiting the sale of electronic cigarettes to minors.

Electronic cigarettes—or e-cigs—are devices composed of a rechargeable, battery-operated heating element, a replaceable cartridge that may contain nicotine, flavoring, and other chemicals, and an atomizer that uses heat to convert the contents of the cartridge into a vapor, which is then inhaled by the user. Many are shaped like a traditional cigarette, but they can take other shapes such as cigars, pipes, hookahs (water pipes), or even a pen or a USB flash drive. These devices have become increasingly popular over the last couple of years, as more and more people seek to avoid the severe dangers of smoking traditional cigarettes. However, very little is actually known about the content of e-cigarette vapors, and there is no scientific evidence to show that e-cigarettes aid in smoking cessation.

Nearly all e-cigarettes contain nicotine—a highly addictive drug. Initial testing by the Food and Drug Administration determined that some e-cigarettes also contained detectable levels of carcinogens (nitrosamines) and toxic chemicals, including diethylene glycol, a solvent used in brake fluid (among other uses). Furthermore, e-cigarettes are made by numerous different manufacturers with little or no quality assurances and no independent testing of their ingredients. Simply put, e-cigarette users cannot be sure of what they are inhaling.

Perhaps the biggest concern, however, is that e-cigarettes will provide an attractive way to introduce young people to a potentially life-long addiction to nicotine. Because they are not currently subject to the same legal restrictions applicable to cigarettes and other tobacco products, e-cigarettes can be much more accessible to kids. The fact that the user inhales atomized vapor, combined with the available flavors, can make the “vaping” experience more pleasing to young people than the harsher experience of smoking burning tobacco in a traditional cigarette. Once a kid has been hooked on nicotine by an e-cigarette, the use of other tobacco products very well may follow.

Regulation by the Food and Drug Administration

Because e-cigarettes are devices specifically designed to deliver the drug nicotine, the Food and Drug Administration initially sought to regulate them as drug delivery devices. However, e-cigarette manufacturers challenged the FDA in court and a 2010 decision by the DC District Court (*Sottera, Inc. v. FDA*) determined that the devices must be regulated as tobacco products unless they are specifically marketed for their “therapeutic” value. The FDA has decided not to appeal the *Sottera* decision and is in the process of developing regulations concerning the marketing and sale of e-cigarettes.

For more information, we recommend the following FDA website:

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>

E-Cigarettes Under Current Kansas Law

As indicated, there is no current Kansas law prohibiting the sale of e-cigarettes to minors. E-cigarettes are also not clearly included in the definition of “tobacco products” for taxation purposes (K.S.A. 79-3301(w)); and the Attorney General has determined that the use of e-cigarettes is not prohibited under the Kansas Indoor Clean Air Act.

Conclusion

Given the substantial concerns surrounding e-cigarettes and the lack of verifiable data concerning their safety, prohibiting their sale to minors through HB 2324 is a good first step. In the process, we also recommend that the Legislature consider updating other tobacco laws to ensure that all new tobacco (and nicotine-derivative) products—including e-cigarettes, little cigars, and dissolvable tobacco—are properly regulated to the same extent as traditional cigarettes.

Thank you for your time and consideration.