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December 9, 2015

To: Assembly Health and Senior Services Committee

From: Sal Risalvato, New Jersey Gasoline, Convenience Store, Automotive Association

Re: OPPOSE A-3254/S-602, Raises minimum age for purchase and sale of tobacco products and electronic smoking devices from 19 to 21.

Unfortunately, I will not be able to attend the December 10th committee hearing on this bill, but I wanted to ensure that you were aware of this Association's position on the issue. While I respect the sponsors' intent with this piece of legislation, I must oppose this proposal which infringes upon the rights and freedoms of adults by taking away their ability to be sold legal products and does so by placing additional burdens on small businesses.

In the end, the main people who will have been affected by this ban are the small businesses who are losing a customer, a customer who often times will purchase a cup of coffee or a soda or one of the other higher profit margin items that allow these men and women to stay in business and continue to employ New Jersey residents. The biggest hit to the small business isn't the loss of the tobacco sale; it's the loss of the sale of these other products.

How costly will this be? With real world sales data provided to us by a member in Paramus, we estimate that the average business will lose about \$8,000 a year in profits on almost \$40,000 a year in sales of these products and the items that often accompany them¹. This in and of itself will not force the business to close, but it is certainly enough to bring about hardship. It is like taking an \$8,000 per year pay cut.

Reasonable minds can disagree over whether this cost is worth a 3% decline in tobacco purchases, but they should not disagree that the proposed bill will not eliminate 19 and 20 year old adults from using these products; it will simply drive many of them across state lines, or have others make purchases for them, as is done now for those under the age of 19.

Almost all of the residents of this state live within a 90 minute drive of the Pennsylvania border (much less for most). A huge proportion of the 19 and 20 year old adults who will be banned by this bill would have access to a car to periodically drive over, purchase tobacco products, and come back. They already have this incentive due to the state's tax rates, now they will essentially be required to do it. On average, a consumer would save about \$26 just on the taxes from buying two cartons of cigarettes in Pennsylvania, effectively covering the cost of the trip².

Perhaps they will pick some up for a friend as well, and in effect this 20 year old will become a criminal tobacco smuggler, a crime which just two years ago the Legislature and Governor increased the

penalties for. While they are across the border maybe they will visit a casino, do some shopping, take in the sights in Philadelphia, or otherwise stimulate the Pennsylvania economy when they could and should be stimulating our own, all while using the same amount of tobacco products they use currently.

A 2009 study from the New Jersey Treasury determined that 40% of the cigarettes smoked in New Jersey were purchased out of state and illegally smuggled in, costing the State over \$500 million a year. A policy like this bill will just make that problem worse. Businesses will suffer without the social benefit of a declining smoking rate and according to OLS the State will lose another \$19 million a year.

I would also like to specifically point out that if the goal of the advocates of this legislation is to reduce the number of people who smoke cigarettes; then it is counterproductive to reduce access to electronic cigarettes and vaping devices. 19 and 20 year old adults who started smoking at an earlier age (which is almost all all 19 and 20 year old smokers) will find it much more difficult to switch to vaping devices, which are near universally considered to be a healthier alternative to other forms of tobacco.

Partly because vaping devices are a fairly new product to the marketplace, there remain a lot of questions and suspicions about them, due in part to a lack of data. Now though, the data and research is coming in and it is disproving many of the fears that had been associated with them.

Just a few months ago, a study conducted by the government of the United Kingdom determined that “e-cigarettes are 95% less harmful than tobacco and could be prescribed on the NHS [National Health Service] in future to help smokers quit”³. The study also found that the rise in the use of vaping devices has been matched by a decrease in cigarette smoking. Just in the last week it was revealed that starting next month the NHS will start giving out prescriptions to smokers for free vaping devices, because of the products’ effectiveness in helping smokers quit. At the very least these products should not be included in this ban.

If our young men and women are old enough to vote their representatives, get married, serve their nation in the armed forces, join the state police, and be legally adult members of society at 18, then there is no reason to delay their decision to purchase or not purchase tobacco products until 21 years of age. This bill implies that the State of New Jersey trusts 20 year olds enough to enlist in the National Guard and possibly be sent to foreign battlefields and operate multimillion-dollar equipment, but that they cannot be trusted to make the decision for themselves whether or not to smoke a cigar.

It is true that alcohol purchases are not allowed until the age of 21, but this is an inaccurate comparison. Alcohol is a mind altering substance which irresponsible use on one occasion can and has led to the injury and/or death of the user and of other people. Tobacco use only affects the individual making the choice to use it over a prolonged period.

The current laws have already turned service station owners and convenience store clerks into virtual police officers, checking the ID of anyone they suspect to be under the age of 19. In an age where young people can easily obtain fake driver’s licenses and other false identification, my members have already morphed from store clerks and gas attendants into untrained detectives and law enforcement officers,

trying to stop illegal purchases. Do we really want to further burden them by extending this gambit to people who can currently purchase tobacco products legally? People who are already legally adults?

This bill also maintains the outdated loophole in the law which only penalizes the seller of the tobacco product, not the purchaser. If an individual attempts to manipulate a convenience store employee to unlawfully dispense a tobacco product, that individual should be held accountable for their actions. The current system creates a perverse incentive in which a person under the legal age has no reason not to try and buy tobacco products on the off chance that the clerk will forget to ask. The alcohol prohibition does penalize attempted underage customers.

It is not in the interests of our society to infantilize 19 and 20 year old adults. The 26th Amendment demands nothing less and neither should the citizens of New Jersey.

Statistics show that almost 90% of smokers begin smoking before they reach the age of 18, despite the fact that the law already forbids them from purchasing tobacco. Only a very small percentage begins smoking at the age of 19 or the age of 20. It is hard to see how increasing the age limit two more years will reduce consumption in a meaningful way.

The people this proposal is trying to protect are lawful adults, who have a right to make any number of decisions for themselves, including the foolish choice to smoke. In the process it must be acknowledged that my members are not police officers, and should not be additionally burdened with guarding fellow adults from making foolish choices. The ultimate effect of this bill is to unnecessarily hurt small businesses and make law violators out of small business owners and 19 and 20 year old adults.

I ask you to oppose it. Thank you.

Sincerely,



Sal Risalvato
Executive Director

¹ OLS and the CDC estimate this bill will reduce sales of these products by 3% overall. That decline will mean the aforementioned business owner will lose about \$4,800 in sales of tobacco-related products. He estimates that 60% of tobacco customers make additional purchases, on average \$5 worth, the profit margin of those products averages 30%, which results in the remaining \$3,200.

² <http://fairreporters.net/health/prices-of-cigarettes-by-state/>

³ <http://www.nhs.uk/news/2015/08August/Pages/E-cigarettes-95-per-cent-less-harmful-than-smoking-says-report.aspx>