Altria
Altria Client Services

Nu Mark LLC Submission in Opposition to S6562

On behalf of Nu Mark LLC, Altria Client Services submits the below comments in opposition to Senate Bill 6562.[1] Nu Mark LLC is an Altria company primarily focused on responsibly developing and marketing innovative tobacco products for adult tobacco product consumers. Nu Mark manufactures MarkTen™ electronic vapor products ("e-vapor") and also owns the company that manufactures and markets Green Smoke™ e-cigarettes.

Nu Mark supports science- and evidence-based regulation of e-vapor products. To that end, we have consistently expressed support – along with many other stakeholders – for FDA to issue regulations bringing e-vapor products within its regulatory authority. FDA has now taken that action, proposing rules that, once adopted, will bring e-vapor products within its regulatory control.

Senate Bill S6562 would categorically sweep e-vapor products into the state's indoor smoking ban (Public Health Law Article 13-E). While we agree that policy makers should continue to evaluate whether and to what extent e-vapor products should be regulated, we oppose this bill because we believe it imposes restrictions on adult use of these products in advance of an adequate basis to do so, and because it could prevent e-vapor products from playing a role in reducing harm from tobacco products under an appropriate FDA-regulated framework.

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Senate Bill S6562 treats e-vapor products identically to cigarettes for purposes of the indoor smoking ban. But e-vapor products are different from cigarettes in important ways relevant to indoor smoking restrictions.

E-vapor products are battery-powered devices containing heating elements and cartridges filled with a liquid solution. The heating element vaporizes the liquid, and when inhaled, delivers nicotine. E-vapor products produce vapor only when the consumer is activating the device by inhaling on it. Because e-vapor products do not burn tobacco, they do not generate or emit smoke. Instead, users inhale and exhale a vapor.[2]

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[1] Nu Mark LLC ("Nu Mark") is a wholly-owned subsidiary of Altria Group, Inc. Altria Client Services provides certain services, including government affairs, to the Altria group of companies. "We" is used throughout to refer to Nu Mark.

[2] Riker, et al. (2012), E-Cigarettes: Promise or Peril?, Nursing Clinics of North America 47:159-171.

Given these differences, the Legislature should not categorically sweep e-vapor products into the existing broad-based indoor smoking ban on cigarettes.

Furthermore, imposing broad-based restrictions on indoor use of e-vapor products could prevent these products from playing a role in reducing the harm from cigarette smoking, in an appropriate FDA-regulated environment.

FDA recently issued a proposed rule that would extend comprehensive regulatory authority over e-vapor products. Nu Mark supports FDA extending science- and evidence-based regulatory authority over this category. We believe such FDA regulation could foster innovation in products that may reduce tobacco-related harm. Importantly, FDA's proposed rule acknowledges that some tobacco-derived nicotine-containing products may play a role in harm reduction. According to the proposed rule:

> *[e]merging technologies such as the e-cigarette may have the potential to reduce the death and disease toll from overall tobacco product use depending on who uses the products and how they are used.*[3]

Senate Bill 6562 gets ahead of the fundamental research that FDA will conduct about vapor products and also thwarts Congress' desire of establishing a national, uniform tobacco control policy through the FDA.

We agree that e-vapor products are for adults only, just like all other tobacco products. In that regard, we would support legislation to restrict the use of e-vapor products in schools and other public places meant primarily for children.

Thank you for your consideration.

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[3] Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, A Proposed Rule by the Food and Drug Administration on 25 April 2014, https://www.federalregister.gov/articles/2014/04/25/2014-09491/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the.