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TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 entitled:

AN ACT

To repeal sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof seven new sections relating to alternative nicotine or vapor products, with penalty provisions.

I disapprove of Senate Substitute for Senate Committee Substitute for Senate Bill No. 841. My reasons for disapproval are as follows:

Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 would exclude “alternative nicotine products” and “vapor products” – including “electronic cigarettes” – from the definition of “tobacco products” and prohibit them from being regulated or taxed as “tobacco products” under Missouri law. This bill, which is supported by sellers of such products and at least one major tobacco manufacturer but is opposed by leading health organizations, creates a façade of regulation and is actually harmful to Missourians because of the special exemptions it provides for these dangerous products. As a result, it does not meet with my approval.

“Electronic cigarettes” are nicotine delivery devices that resemble traditional tobacco cigarettes in appearance, use and function, and share a signature ingredient – the highly addictive chemical nicotine, which is derived from tobacco. Electronic cigarettes typically consist of a cartridge and battery that deliver nicotine to users by heating a liquid solution containing propylene glycol (which can cause eye and respiratory irritation), glycerine, flavoring agents, and nicotine. This process creates a nicotine-infused aerosol that, similar to tobacco smoke from traditional tobacco cigarettes, the smoker inhales and exhales. Studies have also noted the presence of formaldehyde (a known carcinogen) and acetaldehyde (a possible carcinogen) in the aerosol. Electronic cigarettes are frequently marketed and branded with names reflecting flavors added to the nicotine aerosol. Though electronic cigarettes are relatively new, having been patented in 2003 by a Chinese pharmacist and sold in the United States only since 2007, they are growing in

popularity with sales projected to top \$1.5 billion in the United States this year. These electronic cigarettes are increasingly manufactured by big tobacco companies.¹

Because Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 would limit any additional state regulation of these products and would contravene pending federal regulations, it does not receive my approval.

First, Missouri law should not limit the regulation of products derived from tobacco that contain a highly addictive chemical and carcinogenic, noxious chemicals. Not unlike traditional tobacco cigarettes, these products may carry significant health risks to users and others through direct and secondhand inhalation in a manner not unlike traditional tobacco cigarettes. Leading health organizations oppose Senate Substitute for Senate Committee Substitute for Senate Bill No. 841, including the American Cancer Society; the American Lung Association; the American Heart Association; the Missouri State Medical Association; the Missouri Association of Osteopathic Physicians; the Missouri Academy of Family Physicians; the Campaign for Tobacco-Free Kids; and Tobacco Free Missouri, and for good reasons. Through direct and secondhand exposure, e-cigarette smokers inhale an aerosol containing nicotine, which is addictive and derived from tobacco; propylene glycol, which can cause eye and respiratory irritation; and also likely formaldehyde, a known carcinogen, and acetaldehyde, a possible carcinogen. Studies have also found the presence of heavy metal particles such as tin, nickel, copper, lead and chromium in the aerosol, which can deposit in smokers' lungs and cause respiratory problems. A 2009 FDA study also detected the presence of diethylene glycol, a toxic chemical commonly used in antifreeze, in e-cigarette samples. These products are barely a decade old, and their sales are skyrocketing. We should not enact an outright ban on regulating and taxing as "tobacco products" these tobacco-derived products that contain harmful substances, including carcinogens, particularly when the short and long-term health risks of these products are still being evaluated. The special treatment for these tobacco-derived products provided in Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 would validate the as yet unproven claim that they are safer than traditional tobacco products.

Second, Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 would harm the health of Missourians because it would contravene and undermine more comprehensive proposed federal regulation. Unlike Senate Substitute for Senate Committee Substitute for Senate Bill 841, federal FDA regulations proposed earlier this year would classify electronic cigarettes and similar nicotine products as "tobacco products." The proposed FDA rules would prohibit sales to minors (as would this bill), but, unlike Senate Substitute for Senate Committee Substitute for Senate Bill No. 841, would also require electronic cigarette manufacturers to provide health warnings; register with the FDA and report product and ingredient listings; market new products only after FDA review; make claims of reduced risk only if the FDA concludes that there is supporting scientific evidence and that marketing the product will benefit public health; not distribute free samples; and not sell in vending machines, unless in locations off limits to youths. Considering that these products contain the tobacco derivative and highly addictive chemical compound nicotine, mimic traditional tobacco cigarettes in use, appearance, and function, pose significant health risks that are still being evaluated, and are increasingly manufactured by big

¹ The bill also encompasses other relatively new "alternative nicotine products" such as flavored dissolvable pellets or flat strips containing ground tobacco.

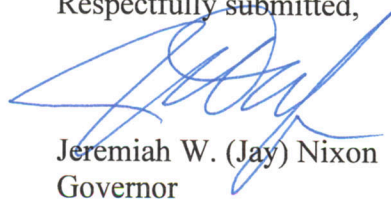
tobacco companies, regulating them as traditional tobacco products, as the FDA is proposing, does not seem unreasonable.

Proponents of Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 tout its ban on sales to minors, but the proposed FDA regulations also ban sales to minors. In light of this ban in the FDA regulations, the primary and more significant consequence of Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 is its limitation on additional regulations. I would support legislation banning sales to minors and classifying these products as "tobacco products" as appropriate first steps in state regulation without impeding additional federal regulation, but I will not support the false pretense of reform and circumvention of more stringent federal regulation that would result from Senate Substitute for Senate Committee Substitute for Senate Bill No. 841.

As noted above, leading health organizations uniformly oppose this bill. By contrast, manufacturers of alternative nicotine products, sellers of such products, and at least one major tobacco manufacturer are supporters of the bill. At a minimum, prohibiting the regulation and taxation as "tobacco products" of products that are derived from tobacco is premature and would create uncertainty around the proposed FDA regulations. At worst, this prohibition may be part of a larger strategy by the tobacco industry to stop the implementation of the FDA regulations or ensnare them in protracted litigation. Whether Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 is merely premature or instead motivated by more insidious reasons, the bill is harmful to the health of Missourians.

In accordance with the above stated reasons for disapproval, I am returning Senate Substitute for Senate Committee Substitute for Senate Bill No. 841 without my approval.

Respectfully submitted,



Jeremiah W. (Jay) Nixon
Governor