

**Testimony before the New Mexico House of Representatives
Health and Human Services Committee
Regarding the Cigarette and Tobacco Products Tax
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Chairwoman Thomson, Vice-Chair Barreras, and Members of the Committee,

Thank you for your time today to discuss the increasing the tax rate on tobacco and vapor products. We represent the Consumer Center at the Taxpayers Protection Alliance (TPA). TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy. TPA's Consumer Center focuses on providing up-to-date information on adult access to goods including alcohol, tobacco and vapor products, as well as regulatory policies that affect adult access to other consumer products, including harm reduction, technology, innovation, antitrust and privacy.

As the nation continues to deal with the economic impact of COVID-19, many lawmakers are considering increasing excise taxes on tobacco and vapor products. Although, excise tax increases on such products do result in an immediate surge in revenue, sin taxes are unreliable and decrease over time. Further, lawmakers should refrain from increasing taxes on tobacco harm reduction products as such products are significantly less harmful than combustible cigarettes and have helped millions of American adults quit smoking.

Tobacco and Vapor Product Use Among New Mexico Youth

The most recent data on youth e-cigarette use in New Mexico comes from the 2019 Youth Risk Behavior Survey.¹ In 2019, 56.3 percent of New Mexico high school students reported ever trying a vapor product. Further, 34 percent reported using an e-cigarette on *at least one occasion* in the 30 days prior to the survey. And, only 5.6 reported daily vapor product use.

It is worthy to note that youth use of combustible cigarettes is at an all-time low. In 2019, according to the YRBS, 30.3 percent of New Mexico high school students reported ever trying combustible cigarettes. This is a 62.8 percent decreases from 1991 when 81.5 percent of high school students had ever tried cigarettes. Further, current combustible use declined by 70.4 percent from 30.1 percent of high school students in 1991 to 8.9 percent in 2019. Daily cigarette use has been decimated, decreasing by 91.3 percent from 10.3 percent of New Mexico high school students reporting using cigarettes daily in 1991, to 0.9 percent in 2019.

Moreover, nationally, the youth vaping rate continues to decline. In 2021, according to the National Youth Tobacco Survey (NYTS), an estimated 11.3 percent of high school students and

2.8 percent of middle school students reported having used a vapor product on a least one occasion in the month prior to the survey.ⁱⁱ Further, only 3.1 percent of high school students and less than one percent of middle schoolers reported daily e-cigarette use. The rate of decline is remarkable: among high school students, vaping rates have declined by 41.8 percent since 2020 and by 58.9 percent since 2019 when 27.5 percent reported using e-cigarettes.

(See supplemental graphs 1.1)

Tobacco Economics 101: New Mexico

In 2019, 16 percent of adults in New Mexico smoked tobacco cigarettes, amounting to 259,359 smokers in 2019.ⁱⁱⁱ Further, 10.7 percent of New Mexico adults (173,446) were daily smokers in 2019. When figuring a pack-per-day, nearly 1.3 billion cigarettes were smoked in 2019 by New Mexico, or about 3.5 million per day.^{iv}

New Mexico last raised the state excise tax on cigarettes in 2019, when the rate increased by \$0.34, to \$2.00-per-pack.^v In 2019, the Land of Enchantment collected \$74.1 million in cigarette excise taxes, when figuring for a pack-a-day habit. This amounts to \$427.05 per smoker per year. Due to the tax increases, in later years, New Mexico will collect \$730 per smoker per year.

In 2019, New Mexico spent \$5.7 million in state funding on tobacco control programs, including education, cessation, and prevention. This amounts to \$21.98 per-smoker, and \$11.98 per resident under age 18.

Vapor Economics 101: New Mexico

Electronic cigarettes and vapor products are not only a harm reduction tool for hundreds of thousands of smokers in the Land of Enchantment, they're also an economic boon.

In 2018, according to the Vapor Technology Association, the industry created 377 direct vaping-related jobs, including manufacturing, retail, and wholesale jobs in New Mexico, which generated \$11.3 million in wages alone.^{vi} Moreover, the industry has created hundreds of secondary jobs in the Land of Enchantment, bringing the total economic impact in 2018 to \$93.1 million. In the same year, New Mexico received more than \$4.8 million in state taxes attributable to the vaping industry.

Unfortunately, efforts by anti-vaping organizations and policymakers have negatively affected vape shops in the Land of Enchantment. The number of employees has decreased by 39.7 percent from 625 in 2018 to 377 in 2021, representing a loss of \$4.7 million in wages.^{vii} Further, state tax collections in 2021 were down 29 percent from 2018's level of \$6.8 million. Overall, the economic output from the vaping industry in New Mexico was reduced from \$115 million in 2018 to \$93.1 million in 2021, a 19 percent decrease.

(See supplemental graph 1.2)

Switching from combustible cigarettes to electronic cigarettes and vapor products will also reduce smoking-related health issues and save persons and states money. WalletHub estimated the “true cost of smoking” including “...cost of a cigarette pack per day, health care expenditures, income losses and other costs.”^{viii} WalletHub estimated the true cost for smoker in New Mexico to be \$43,970 per-smoker per-year in 2022.

In 2020, 16.1 percent^{ix} of adults in the Land of Enchantment were current smokers, amounting to 263,046 smokers. ^x Further, 9.9 percent of New Mexico adults (161,749) were daily smokers in 2020.

Among New Mexico adults, current smoking decreased by 0.6 percent between 2019 and 2020. Moreover, there are an estimated 3,687 smokers in 2020, compared to 2019. Using the WalletHub figures, this represents nearly \$162 million in yearly increase in smoking costs.

Young Adult Smoking Rates

Electronic cigarettes and vapor products were first introduced to the U.S. in 2007 “and between 2009 and 2012, retail sales of e-cigarettes expanded to all major markets in the United States.”^{xi} Moreover, between September 2014 and May 2020, e-cigarette sales in the U.S. increased by 122.2 percent.^{xii}

Examining data from the CDC’s BRFSS finds that e-cigarettes’ market emergence has coincided with a significant reduction in smoking rates among young adults.

In 1998, among current adult smokers, 24.7 percent were 18 to 24 years old. In 2008, this had decreased by 8.5 percent to 22.6 percent of adult smokers in New Mexico being between 18 to 24 years old.

In the years after e-cigarette’s market emergence in the early 2010s, smoking rates among current smokers aged 18 to 24 years decreased by 63.1 percent. Indeed, in 2010, among current smokers in New Mexico, 26.3 percent were between 18 to 24 years old. In 2020, only 9.7 percent of current smokers were 18 to 24 years old.

Interestingly, e-cigarettes’ market emergence was associated with larger declines in average annual percent decreases. Between 1998 and 2008, the percentage of current smokers aged 18 to 24 years old decreased on average by 0.5 percent each year. Between 2010 and 2020, annual percentage decreases average at 6.5 percent.

Further, since 2016, when the U.S. surgeon general issued an alarm about youth e-cigarette use, smoking rates among adults aged 18 to 24 years in the Land of Enchantment have decreased by 49.5 percent, with an average annual decrease of 4.4 percent.

(See supplemental graph 1.3)

Wasted Tobacco Dollars

Deeply problematic with the proposed legislation is the fact that New Mexico spends very little on tobacco control, including education and prevention.

In the mid-1990s, New Mexico sued tobacco companies to reimburse Medicaid for the costs of treating smoking-related health issues. And, in 1998 with 45 other states, New Mexico reached “the largest civil litigation settlement in U.S. history” through the Master Settlement Agreement (MSA).^{xiii}

Under the MSA, states receive annual payments – in perpetuity – from the tobacco companies, while relinquishing future claims against the participating companies. Between 2000 and 2020, New Mexico collected \$791.9 million in MSA payments.^{xiv}

Tobacco taxes and tobacco settlement payments are justified to help offset the costs of smoking, as well as prevent youth initiation. Like most states, New Mexico spends very little of existing tobacco moneys on tobacco control programs – including education and prevention. Between 2000 and 2020, New Mexico allocated only \$126.1 million in state funds towards tobacco control programs.^{xv} This is 9.3 percent of what New Mexico collected in cigarette taxes in the same 20-year time span and only 15.9 percent of MSA payments. In total, in 20 years, New Mexico allocated approximately 5.1 percent of what the state received in tobacco taxes and settlement payments towards tobacco education and prevention efforts. In essence, for every \$100 the Land of Enchantment received in tobacco-related settlement payments, it allocated only \$5.10 for tobacco control efforts.

(See supplemental graph 1.4)

Low-Income Persons Burdened by Excise Taxes

Excise taxes are inherently regressive and tend to burden lower income persons. An article from the Cato Institute found that from 2010 to 2011, “smokers earning less than \$30,000 per year spent 14.2 percent of their household income on cigarettes, compared to 4.3 percent for smokers earning between \$30,000 and \$59,999 and 2 percent for smokers earning more than \$60,000.”^{xvi} For example, in the U.S., in 2020, among current adult smokers, 54.3 percent reported annual incomes of \$24,999 or less. Conversely, only 10.4 percent of adult smokers reported earning \$50,000 or more annually.^{xvii}

In 2020, among current adult smokers in New Mexico, 27.3 percent reported annual incomes of less than \$15,000 and 23.1 percent of current smokers reported earning between \$15,000 and \$24,999 per year. In fact, more than half (50.4 percent) of all current adult smokers earned less than \$24,999 per year in 2020. Only 10.6 percent of current adult smokers in New Mexico reported earning \$50,000 or more a year in 2020.

Interestingly, smoking rates have declined more rapidly among higher income persons in the Land of Enchantment than their low-income counterparts. Between 1995 and 2020, smoking rates among current smokers earning \$24,999 or less increased by 4.1 percent. Conversely,

among persons earning \$50,000 or more, rates decreased by 25.4 percent during the same period. In fact, between 2019 and 2020, smoking rates increased by 18.9 percent among low-income earners, yet increased by only 2.9 percent among higher income smokers.

(See supplemental graph 1.5)

Cigarette Taxes Are Unreliable Sources of Revenue

Existing excise taxes are unreliable revenue sources. Cigarette tax increases result in long-term revenue shortfalls. From 2001 to 2011, “revenue projections were met in only 29 of 101 cases where cigarette/tobacco taxes were increased,” according to the National Taxpayers Union Foundation.^{xviii} Moreover, a decline in cigarette consumption caused cigarette tax revenues “to drop by an average of about 1 percent across all states from 2008 to 2016,” according to a report by Pew Charitable Trusts.^{xix} A 2020 report by the Tax Foundation noted that cigarette tax revenue has fallen in all states and considers cigarette tax revenue to be “so unstable.”^{xx}

In New Mexico, cigarette taxes have been increased three times since 2000. In 2010, the state increased the excise tax on pack of cigarettes by \$0.75, bringing the total tax to \$1.66. Although this led to an immediate 67.6 percent increase in cigarette tax revenue, cigarette tax revenue declined on average by 1.6 percent annually between 2012 and 2020. Indeed, in 2012, New Mexico collected \$79.8 million in cigarette tax revenue, a 14.2 percent decline from 2011’s \$93 million in revenue.

E-Cigarettes and Tobacco Harm Reduction

The evidence of harm associated with combustible cigarettes has been understood since the 1964 U.S. Surgeon General’s Report that determined that smoking causes cancer. Research overwhelmingly shows the smoke created by the burning of tobacco, rather than the nicotine, produces the harmful chemicals found in combustible cigarettes.^{xxi} There are an estimated 600 ingredients in each tobacco cigarette, and “when burned, [they] create more than 7,000 chemicals.”^{xxii} As a result of these chemicals, cigarette smoking is directly linked to cardiovascular and respiratory diseases, numerous types of cancer, and increases in other health risks among the smoking population.^{xxiii}

For decades, policymakers and public health officials looking to reduce smoking rates have relied on strategies such as emphasizing the possibility of death related to tobacco use and implementing tobacco-related restrictions and taxes to motivate smokers to quit using cigarettes. However, there are much more effective ways to reduce tobacco use than relying on government mandates and “quit or die” approaches.

During the past 30 years, the tobacco harm reduction (THR) approach has successfully helped millions of smokers transition to less-harmful alternatives. THRs include effective nicotine delivery systems, such as smokeless tobacco, snus, electronic cigarettes (e-cigarettes), and

vaping. E-cigarettes and vaping devices have emerged as especially powerful THR tools, helping nearly three million U.S. adults quit smoking from 2007 to 2015.

In fact, an estimated 10.8 million American adults were using electronic cigarettes and vapor products in 2016.^{xxiv} Of the 10.8 million, only 15 percent (or 1.6 million adults) were never-smokers, indicating that e-cigarettes are overwhelmingly used by current and/or former smokers.

E-Cigarettes and Vapor Products 101

E-cigarettes were first introduced in the United States in 2007 by a company called Ruyan.^{xxv} Soon after their introduction, Ruyan and other brands began to offer the first generation of e-cigarettes, called “cigalikes.” These devices provide users with an experience that simulates smoking traditional tobacco cigarettes. Cig-alikes are typically composed of three parts: a cartridge that contains an e-liquid, with or without nicotine; an atomizer to heat the e-liquid to vapor; and a battery.

In later years, manufacturers added second-generation tank systems to e-cigarette products, followed by larger third-generation personal vaporizers, which vape users commonly call “mods.”^{xxvi} These devices can either be closed or open systems.

Closed systems, often referred to as “pod systems,” contain a disposable cartridge that is discarded after consumption. Open systems contain a tank that users can refill with e-liquid. Both closed and open systems utilize the same three primary parts included in cigalikes—a liquid, an atomizer with a heating element, and a battery—as well as other electronic parts. Unlike cigalikes, “mods” allow users to manage flavorings and the amount of vapor produced by controlling the temperature that heats the e-liquid.

Mods also permit consumers to control nicotine levels. Current nicotine levels in e-liquids range from zero to greater than 50 milligrams per milliliter (mL).^{xxvii} Many users have reported reducing their nicotine concentration levels after using vaping devices for a prolonged period, indicating nicotine is not the only reason people choose to vape.

Health Effects of Electronic Cigarettes and Vapor Products

Despite recent media reports, e-cigarettes are significantly less harmful than combustible cigarettes. Public health statements on the harms of e-cigarettes include:

Public Health England (PHE): In 2015, PHE, a leading health agency in the United Kingdom and similar to the FDA found “that using [e-cigarettes are] around 95% safer than smoking,” and that their use “could help reducing smoking related disease, death and health inequalities.”^{xxviii} In 2018, the agency reiterated their findings, finding vaping to be “at least 95% less harmful than smoking.”^{xxix}

As recent as February 2021, PHE provided the latest update to their ongoing report on the effects of vapor products in adults in the UK. The authors found that in the UK, e-cigarettes were the “most popular aid used by people to quit smoking [and] ... vaping is positively associated with quitting smoking successfully.”^{xxx}

The Royal College of Physicians (RCP): In 2016, RCP found the use of e-cigarettes and vaping devices “unlikely to exceed 5% of the risk of harm from smoking tobacco.”^{xxxi} RCP is another United Kingdom-based public health organization, and the same public group the United States relied on for its 1964 Surgeon General’s report on smoking and health.

The National Academies of Sciences, Engineering, and Medicine: In January 2018, the academy noted “using current generation e-cigarettes is less harmful than smoking.”^{xxxii}

Cochrane Review: Researchers at the Tobacco Addiction Group analyzed studies that examined the effects of e-cigarettes in helping smokers quit. The researchers found 61 studies that had over 16,700 adults that had smoked. The studies compared the instances of quitting smoking using e-cigarettes to other nicotine replacements including nicotine replacement therapy, nicotine-free e-cigarettes, behavioral support and others. Of the available evidence, the authors found that more people “probably stop smoking for at least six months using nicotine e-cigarettes than using nicotine replacement therapy ... or nicotine-free e-cigarettes.” The authors also found that e-cigarette “may help more people to stop smoking than no support or [behavioral] support only.”^{xxxiii}

Society for Research on Nicotine and Tobacco (SRNT): An article in August 2021 co-authored by 15 past presidents of the SRNT reported that “Many scientists have concluded that vaping is likely substantially less dangerous than smoking”. Furthermore, they found that “A growing body of evidence indicates that vaping can foster smoking cessation” and warned “Studies have found that policies intended to restrict e-cigarette use may have unintentionally increased cigarette smoking”.^{xxxiv}

E-Cigarettes Help Smokers Quit

A 2017 study in *BMJ*’s peer-reviewed journal *Tobacco Control* examined health outcomes using “a strategy of switching cigarette smokers to e-cigarette use ... in the USA to accelerate tobacco control progress.”^{xxxv} The authors concluded that replacing e-cigarettes “for tobacco cigarettes would result in an estimated 6.6 million fewer deaths and more than 86 million fewer life-years lost.”

An earlier October 2020 review in the *Cochrane Library Database of Systematic Reviews* analyzed 50 completed studies which had been published up until January 2020 and represented more than 12,400 participants.

The authors found that there was “moderate-certainty evidence, limited by imprecision, that quit rates were higher in people randomized to nicotine [e-cigarettes] than in those randomized to nicotine replacement therapy.” The authors found that e-cigarette use translated “to an additional four successful quitters per 100.” The authors also found higher quit rates in participants that had used e-cigarettes containing nicotine, compared to the participants that had not used nicotine.

Notably, the authors found that for “every 100 people using nicotine e-cigarettes to stop smoking, 10 might successfully stop, compared with only six of 100 people using nicotine replacement therapy or nicotine-free e-cigarettes.”

Other reports have also noted that substitution of e-cigarettes for combustible cigarettes could save the state in health care costs.

According to the Centers for Disease Control and Prevention (CDC), it is now well known that Medicaid recipients smoke at rates of twice the average of privately insured persons. In 2013, “smoking-related diseases cost Medicaid programs an average of \$833 million per state.”^{xxxvi}

A 2015 policy analysis by State Budget Solutions examined electronic cigarettes’ effect on Medicaid spending. The author estimated Medicaid savings could have amounted to \$48 billion in 2012 if e-cigarettes had been adopted in place of combustible tobacco cigarettes by all Medicaid recipients who currently consume these products.^{xxxvii}

A 2017 study by the R Street Institute examined the financial impact to Medicaid costs that would occur should a large number of current Medicaid recipients switch from combustible cigarettes to e-cigarettes or vaping devices. The author used a sample size of “1% of smokers [within] demographic groups permanently” switching. In this analysis, the author estimates Medicaid savings “will be approximately \$2.8 billion per 1 percent of enrollees,” over the next 25 years.^{xxxviii}

Conclusion & Policy Recommendations:

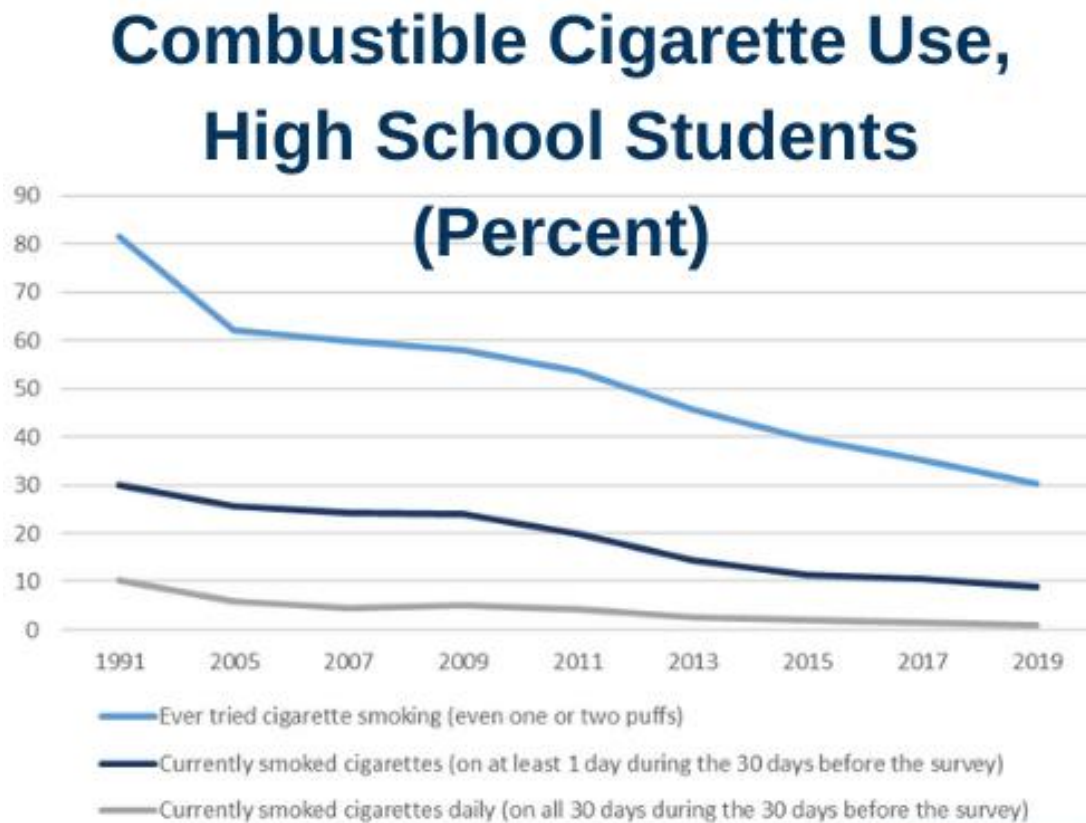
It is disingenuous that lawmakers would purport to protect public health yet increase excise taxes on tobacco and vapor products. Rather than imposing draconian taxes, lawmakers should invest more of already-existing tobacco and vape taxes, as well as tobacco settlement payments, towards tobacco control efforts, including education and prevention.

- Excise taxes on tobacco and vapor products are regressive and unfairly burden low-income persons. In 2020, 50.8 percent of adult smokers in New Mexico reported earning incomes of \$24,999 or less. Indeed, over one-quarter (27.3 percent) of adult smokers in New Mexico earned less than \$15,000 a year in 2020.
- Cigarette taxes are unreliable sources of revenue. Since 2012, cigarette tax revenue has decreased, on average, by 1.6 percent annually.

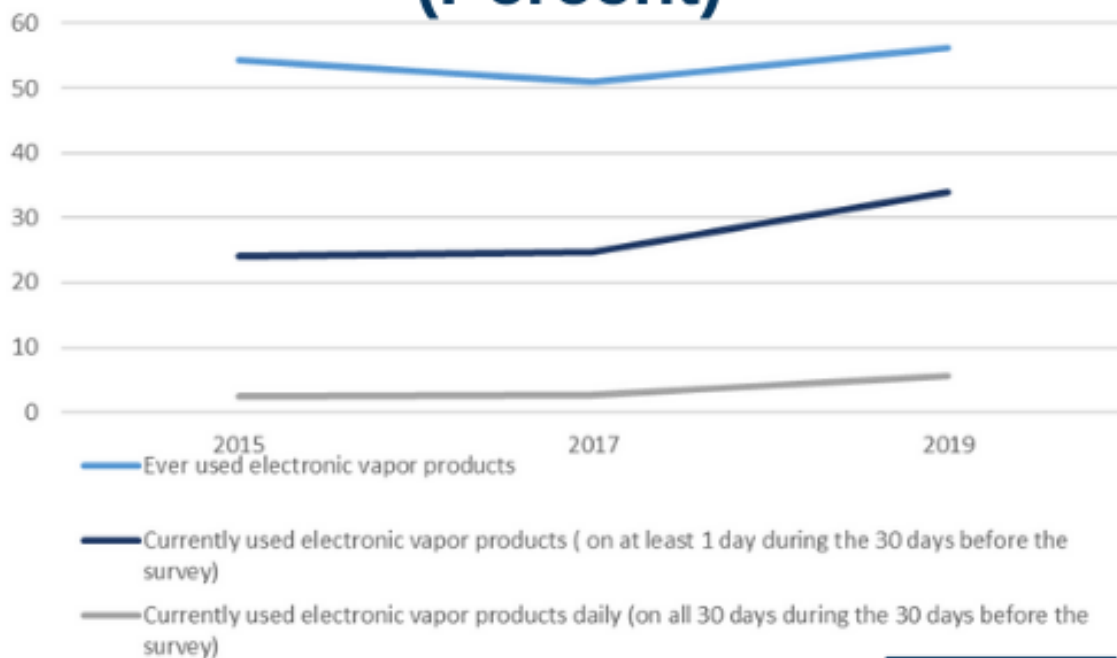
- E-cigarettes' market emergence is associated with low young adult smoking rates. In 2020, among current smokers in New Mexico, only 9.7 percent current smokers were 18 to 24 years old – a 63.1 percent decrease from 2010. Further, since 2016, smoking rates among young adults have decreased by 49.5 percent.
- New Mexico's vaping industry created \$93.1 million in economic activity in 2021 while generating 377 direct vaping-related jobs and contributed more than \$4.8 million in state taxes.
- Unfortunately, anti-vaping efforts have reduced the industry's economic impact. The number of employees decreased by 39.7 percent from 625 employees in 2018, state tax collections were down 29 percent from 2018's \$6.8 million, and overall economic activity was down by 19 percent from \$115 million in 2018.
- New Mexico continues to allocate very little of tobacco-related settlement payments and taxes on tobacco control programs, including education and prevention.
- In 2020, the Land of Enchantment collected \$79.8 million in state cigarette excise taxes and \$33.9 million in tobacco settlement payments, yet allocated only \$5.5 million (1.3 percent) to tobacco control. In 20 years, for every \$100 the state received in tobacco-related payments, it spent \$5.10 funding tobacco control programs.

Supplemental Graphs

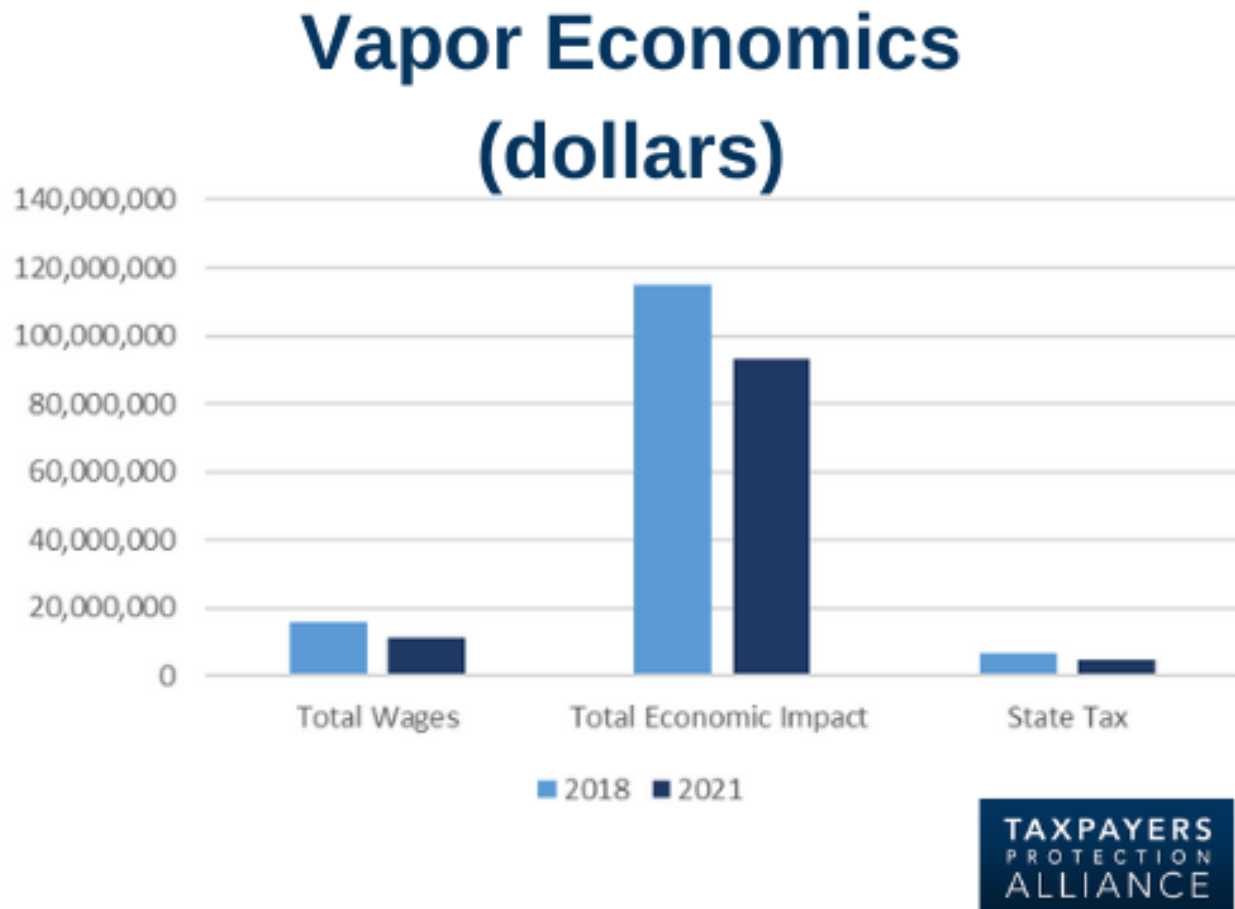
1.1 Youth Tobacco & Vapor Product Use



Vapor Product Use, High School Students (Percent)

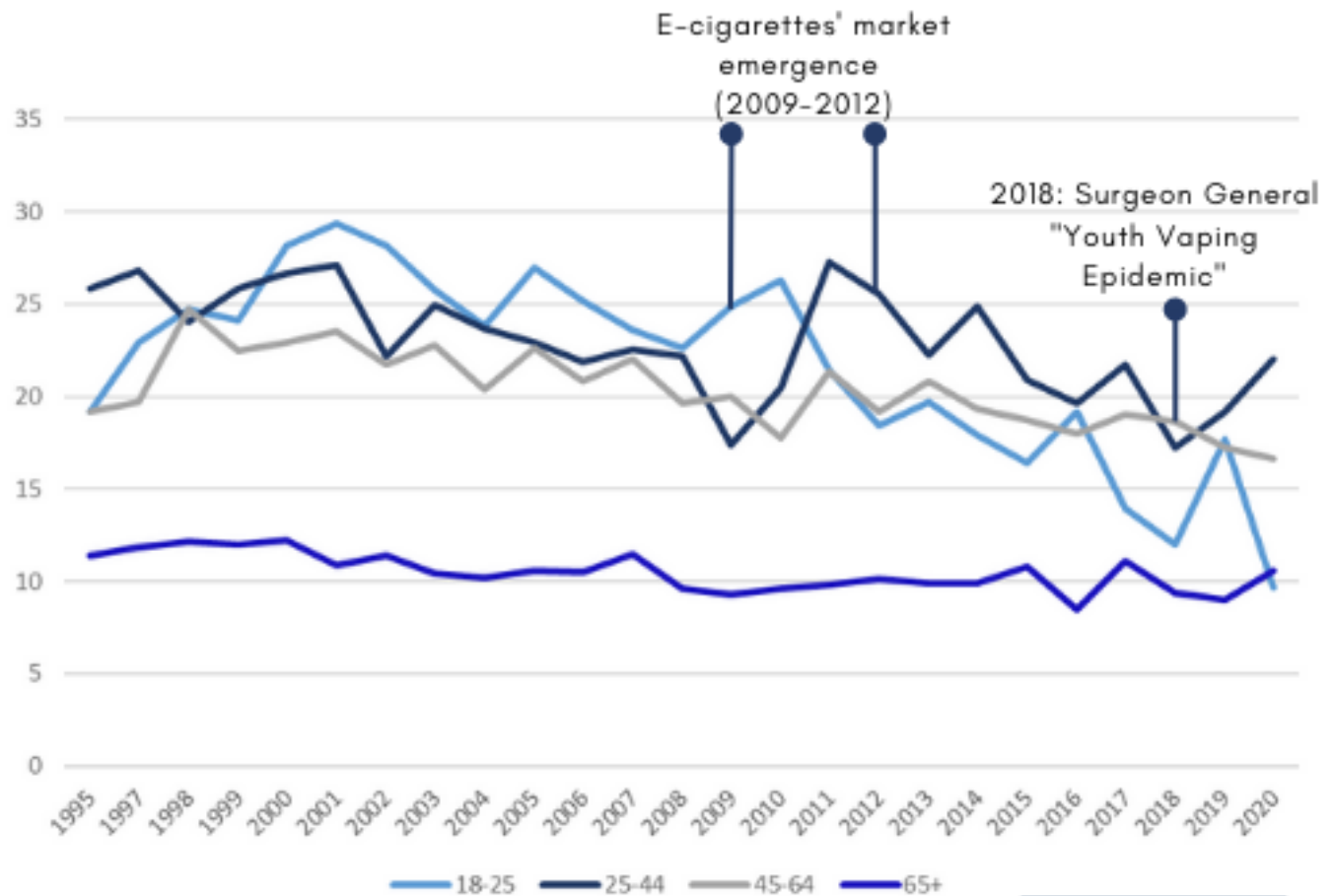


1.2 Vapor Economics



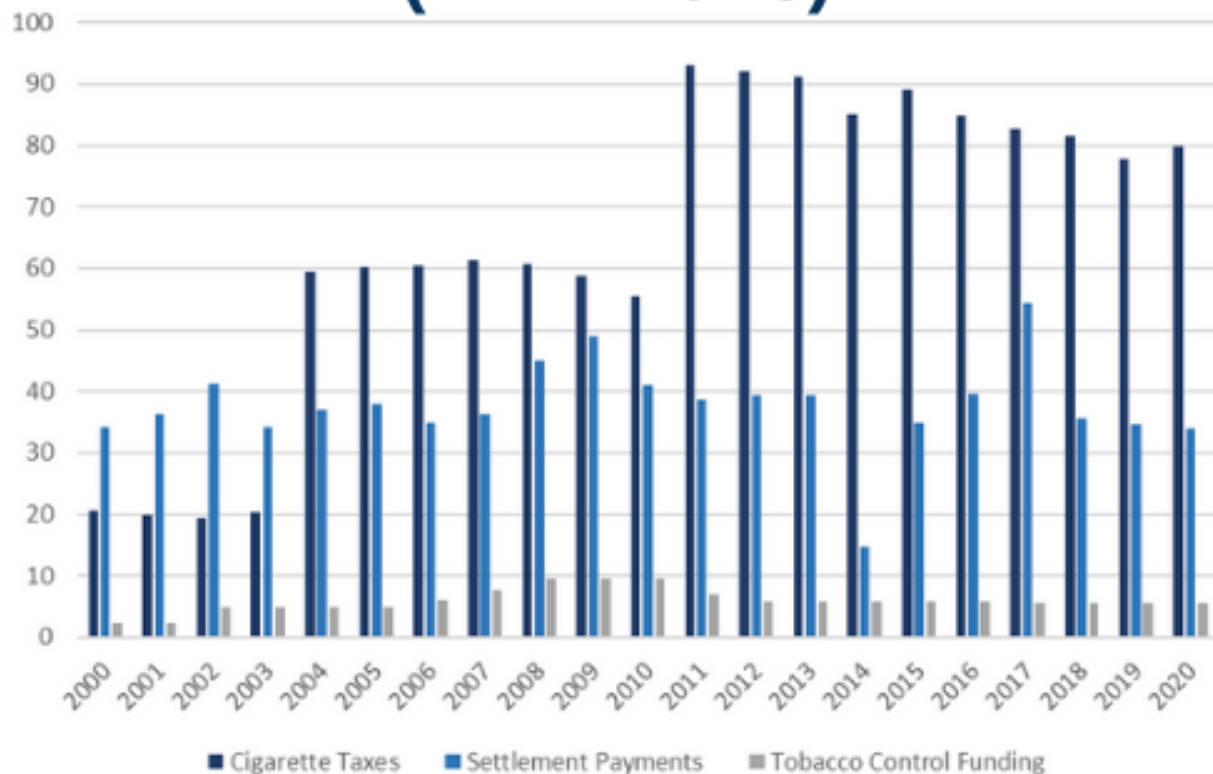
1.3 Smoking Rates by Age

Current Smokers by Age (percent)



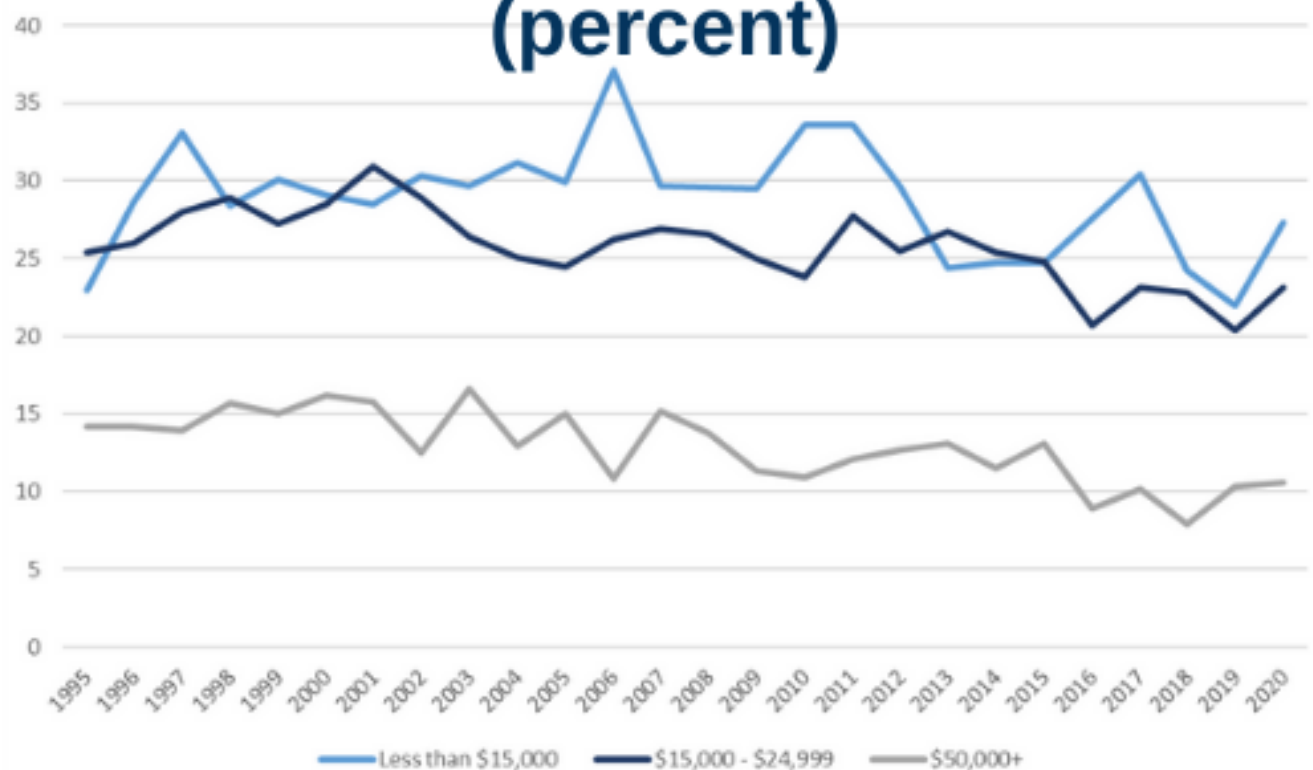
1.4 Tobacco Monies

Tobacco Monies (in millions)



1.5 Lower Income Persons More Likely to Smoke

Current Smokers Household Income (percent)



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