



April 23, 2015

VIA ELECTRONIC MAIL

Finance, Revenue, and Bonding Committee
Connecticut General Assembly
fintestimony@cga.ct.gov

Re: In opposition to the new application and registration “fees” levied against local retailers (HB 7059)

Honorable Chairmen and through you to the Committee,

CUMBERLAND FARMS URGES YOUR OPPOSITION TO THE ONEROUS REVENUE PROVISIONS CONTAINED IN THIS LEGISLATION.

On behalf of Cumberland Farms, thank you for this opportunity to register our serious concerns with certain revenue-generating elements of HB 7059, “An Act Establishing Registration Fees for Sellers and Manufacturers of Electronic Cigarette Products.” Specifically, we urge you not to impose new taxes on local businesses—which is the *de facto* result of the extreme “fees” that this legislation would extract from hundreds of legitimate Connecticut retailers.

WE ARE A PROFESSIONAL AND RESPONSIBLE RETAILER OF THE LEGAL PRODUCTS THAT OUR CUSTOMERS DEMAND.

Seventy-five years ago, Cumberland Farms was founded here in New England by an immigrant couple with little more than a dairy cow and the dream of a better life for their family. Today, we are one of the largest private companies in the country, operating hundreds of convenience stores along the East Coast—including 60+ locations in Connecticut, where we employ 750+ people, remit \$70+ million in taxes, and invest millions more in capital improvements each year. Although we have grown since our humble beginnings, we are still family-owned, family-operated, and dedicated to making every day easier for the communities we serve.

One reason for our continued success is our adherence to a simple philosophy: in an on-the-go world, we provide the products that our customers demand. On any given day, thousands of Cumberland Farms employees expertly conduct more than half a million retail transactions. Many of those items sold—including tobacco products, beer and wine, motor fuels, and lottery games—are extensively regulated. Therefore, we take great care to comply with relevant laws, and to train employees accordingly. With respect to tobacco products, we are particularly proud of our exceptional record of FDA compliance checks.

Nicotine is addictive, and tobacco use can pose a variety of health risks. Cumberland Farms believes that the decision to consume these products must be limited to adults. We support the statewide minimum purchase age for conventional tobacco, have voluntarily adhered to the same minimum purchase age for e-cigarettes even when not legally mandated, keep all such products safely behind the counter or securely in storage, source directly from manufacturers and reputable wholesalers to ensure supply chain integrity, implement an effective age verification program, and observe all manner of additional requirements unique to each jurisdiction. We also advocate for tough civil and criminal penalties against those who fail to sell these products in a similarly legal and responsible manner.

Many of those measures are illustrative of the commonsense policies already having quantifiable results here and across the country, which no conscientious retailer would oppose. However, while there is a clear role for appropriate regulation, we do not agree that new taxes in this product category are the right vehicle to raise revenues whenever the budget falls short.

USING THE TERM “FEE” IS MISLEADING IN THIS CONTEXT, MUDDYING THE DEBATE OF WHAT REALLY AMOUNTS TO A TAX PROPOSAL.

The legislation before you would charge e-cigarette retailers \$500.00 per store annually, plus an additional \$100.00 surcharge per store in the first year—calling those amounts “fees” for application and registration, respectively. However, since the turn of the 20th century, this state has recognized a difference between fees and taxes. For example, the Connecticut Supreme Court has observed that a so-called “fee” is actually a tax if its intent is to raise revenues—regardless of how it is labeled by the legislature.

That message rings true with HB 7059. The punishing per-store assessments proposed therein would generate revenue grossly in excess of actual administrative costs. Indeed, a reasonable estimate of those costs might be a full order of magnitude less than the dollar amounts currently in the bill—especially given the economies of scale that the state will realize, and the infrastructure already in place for licensure of similarly-regulated products. Furthermore, payment would not be voluntary for existing e-cigarette retailers, and those retailers would not receive any special service in exchange for payment. The sole benefit would be to the state in the form of higher revenues.

Simply put, the supposed “fees” here really amount to a new tax. They should be labeled, debated, and transparently voted upon as such.

THE TAX BURDEN CREATED UNDER HB 7059 IS BAD PUBLIC POLICY THAT IGNORES KNOWN CONSUMER BEHAVIORS AND UNINTENDED CONSEQUENCES.

If this new tax is adopted, it will cost Cumberland Farms nearly \$40,000.00 by January 1, 2016—and tens of thousands of dollars more each year after that. Such a significant bottom-line impact may force retailers to increase e-cigarette prices, or even to discontinue sale of those products altogether if it no longer makes financial sense to sell them in a compliant manner. The resulting negative consequences would hurt not only Cumberland Farms, but the state of Connecticut as well.

As we have seen time and again with regulated products, customers will readily take their business across nearby borders, onto the internet, or even into the black market when given an

incentive to do so. HB 7059 creates just such an incentive, to the extent that e-cigarettes become more difficult or expensive to obtain from local brick-and mortar retailers. Shifting the point of sale beyond the reach and watchful eye of Connecticut authorities would invite disregard for state regulations, and would further harm the local economy.

By their nature, convenience stores strive to offer one-stop shopping, and must do so in a highly competitive marketplace. If our adult customers go elsewhere to purchase e-cigarettes, we also stand a very good chance of losing their business for milk, bread, eggs, motor fuels, and all manner of everyday staples. Each dollar lost in that process—on top of the upfront tax imposed by this bill—is money that cannot be reinvested into our stores, employees, customers, or communities. Likewise, the state stands to lose related revenues, rather than to realize the windfall that this legislation seeks to create.

Instead, public policy should reflect a cautious optimism about the potential of e-cigarette products. Over the years, strict use prohibitions and heavy taxes have contributed to the erosion of tobacco cigarette sales—creating social and economic pressures that discourage smoking, and often leading existing smokers to look for an alternative nicotine product like e-cigarettes. Many customers happily report that by switching to e-cigarettes, they are now able to consume a product they enjoy, while saving money and reducing some of the harmful effects associated with tobacco cigarettes. Of course, these products remain under intense public scrutiny to ensure they are manufactured, sold, and consumed in a responsible manner. To that end, recent scientific inquiries—including a March 2015 study in the peer-reviewed *International Journal of Environmental Research and Public Health*—suggest that e-cigarettes can be many times less harmful than tobacco cigarettes.

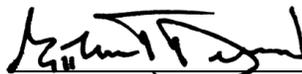
THE COMMITTEE SHOULD REJECT THE TAX CREATED BY HB 7059, IN FAVOR OF MORE REASONABLE FEES AND DIFFERENT REVENUE SOURCES.

Cumberland Farms is a good corporate citizen and remains, as always, a committed partner in responsibly retailing age-restricted items like e-cigarettes. We simply ask that Connecticut pursue regulatory and revenue system grounded in sound public policy. For that reason, and in light of the above discussion, the Committee should amend HB 7059 to reflect more reasonable fees, and look elsewhere for more appropriate sources of tax revenue.

We very much appreciate your consideration of our position, and we look forward to continued participation in this ongoing debate.

Respectfully Submitted,

CUMBERLAND FARMS, INC.



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