



## The American Vaping Association

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**January 19, 2021**

**RE: SB 2189, a bill to impose a tax on vaping products**

Chairman Bell, Vice Chairman Kannianen, and members of the Finance and Taxation Committee

On behalf of the American Vaping Association, a nonprofit organization that advocates for policies that encourage adult smokers who are unwilling or unable to quit smoking to switch to reduced risk nicotine products, I am writing to urge the committee to issue an unfavorable report on SB 2189. SB 2189 seeks to impose an excise tax of 28% of wholesale on all vaping products sold in North Dakota. Neither public health nor North Dakota small businesses will be served by discouraging adult smokers from switching to less harmful alternatives. Furthermore, the fiscal note greatly overestimates the amount of revenue this will generate, likely by a factor of ten or more.

With nearly 100,000 adults still smoking combustible cigarettes in North Dakota, a new tax on vaping products will not benefit public health. Instead, the result will be more smoking of combustible cigarettes, a slower decline in cigarette sales, the closing of small businesses, and increased use of potentially dangerous products purchased off the street.

**I. Vaping products are much less harmful than smoking and are helping adult smokers quit**

- Over forty years ago, Dr. Michael Russell wrote in the British Medical Journal, “Smokers smoke for the nicotine, but die from the tar.” While nicotine can create dependence in users, it is not a carcinogen and does not meaningfully contribute to the death and disease that is principally caused by the habitual inhalation of cigarette smoke.
- The U.S. National Academy of Sciences extensively studied the health effects of vaping products and concluded that vaping is “likely much less harmful than traditional combustible cigarettes” and that their use will result in an overall public health benefit under the most plausible scenarios.
- Respected international bodies, including the Royal College of Physicians and Public Health England, have published expert reports estimating that vaping carries no more than 5% the risk of smoking.
- A 26-month study of 15,943 adult smokers undertaken by the Centers for Disease Control & Prevention (CDC) found that vaping is the most popular method of quitting smoking in the United States. Furthermore, smokers using vapor products were more likely to successfully quit versus those who used conventional methods like the nicotine gum and patch.<sup>1</sup>

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<sup>1</sup> R. Caraballo, *et al.* “Quit Methods Used by US Adult Cigarette Smokers, 2014–2016.” *Prev Chronic Dis* 2017; 14:160600. [https://www.cdc.gov/pcd/issues/2017/16\\_0600.htm](https://www.cdc.gov/pcd/issues/2017/16_0600.htm)

## **II. Tobacco-Style Excise Taxes are Not Justifiable and Will Harm Small Businesses**

- Imposing excise taxes on vaping products will take away a key advantage that these products offer over cigarettes – price competitiveness.
- A study published in the journal *Tobacco Control* estimated that for every 10% increase in the price of vaping products, adult smokers' willingness to use the products decreased by 19%. This tax will lead an unacceptable number of adult smokers to continue to smoke and not attempt to switch.<sup>2</sup>
- Excessive taxation of vaping products has immediate and long-lasting negative impacts on small businesses. In Pennsylvania, a 40% wholesale tax was estimated by numerous media outlets to have closed over 125 small businesses.

## **III. Better Enforcement is the Answer to Youth Misuse, Not New Taxes**

In compliance with federal law, all legal nicotine vaping product manufacturers are currently undergoing an extensive review process at the FDA Center for Tobacco Products. The FDA will judge each individual product based on whether it is “appropriate for the protection of public health.” Without this finding, the products will not be able to stay on the market.

North Dakota should rigorously enforce its existing ban on the sale of all nicotine and tobacco products to minors. However, new excise taxes are not justified by the science that exists today. Indeed, the science suggests that because vaping products and other non-combustible options are helping to reduce and denormalize smoking, taxing vaping products would instead do much more harm than good.

Please reject SB 2189 and keep smoke-free alternatives affordable and accessible for adult smokers in North Dakota.

Sincerely,



Gregory Conley, J.D., M.B.A.  
President – American Vaping Association

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<sup>2</sup> J. Huang, *et al.* “The impact of price and tobacco control policies on the demand for electronic nicotine delivery systems.” *Tobacco Control*, 2014;23:iii41-iii47. <[https://tobaccocontrol.bmj.com/content/23/suppl\\_3/iii41](https://tobaccocontrol.bmj.com/content/23/suppl_3/iii41)>

**Growing list of respected scientific and public health organizations that have reviewed all the evidence and concluded that nicotine vaping is safer than smoking (and helps smokers quit)**

All statements are hyperlinked to original documents. 35+ organizations say “SAFER than smoking.”



**World Health Organization EURO Office:** [“There is conclusive evidence that: Completely substituting electronic nicotine and non-nicotine delivery systems for combustible tobacco cigarettes reduces users’ exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes.”](#)

[International Agency for Research on Cancer](#)



**International Agency for Research on Cancer:** [“The use of e-cigarettes is expected to have a lower risk of disease and death than tobacco smoking... E-cigarettes have the potential to reduce the enormous burden of disease and death caused by tobacco smoking if most smokers switch to e-cigarettes.”](#)



**Cochrane systematic review:** [“We found 50 studies in 12,430 adults who smoked... The studies took place in the USA \(21 studies\), UK \(9\), Italy \(7\), Australia \(2\), New Zealand \(2\), Greece \(2\) and one study each in Belgium, Canada, Poland, South Korea, South Africa, Switzerland and Turkey.”](#)

**FINDINGS:** [“Moderate certainty” that “e-cigarettes with nicotine increase quit rates compared to e-cigarettes without nicotine, and compared to nicotine replacement therapy \[nicotine patches & gum\]... We did not detect any clear evidence of harm from nicotine e-cigarettes” \[up to 2 years\].”](#)



**Public Health England:** [“Our new review reinforces the finding that vaping is a fraction of the risk of smoking, at least 95% less harmful, and of negligible risk to bystanders. Yet over half of smokers either falsely believe that vaping is as harmful as smoking or just don’t know.”](#)



**Royal College of Physicians:** [“Although it is not possible to precisely quantify the long-term health risks associated with e-cigarettes, the available data suggest that they are unlikely to exceed 5% of those associated with smoked tobacco products, and may well be substantially lower than this figure... E-cigarettes are effective in helping people to stop smoking.”](#)



**National Institute for Health and Care Excellence:** [“The evidence suggests that e-cigarettes are substantially less harmful to health than smoking but are not risk free. Many people have found them helpful to quit smoking cigarettes.”](#)



**British Medical Association:** “Significant numbers of smokers are using e-cigarettes (electronic cigarettes), with many reporting that they are helpful in quitting or cutting down cigarette use. There are clear potential benefits to their use in reducing the substantial harms associated with smoking, and a growing consensus that they are significantly less harmful than tobacco use.”



**Cancer Research UK:** “While the long-term health consequences of e-cigarette use are uncertain, the evidence so far suggests that e-cigarettes are far less harmful than smoking. ...There is also growing evidence to suggest that e-cigarettes can work successfully as an aid to cessation. ...There is insufficient evidence to support a blanket indoor ban on e-cigarette use, either on the basis of renormalisation of smoking or harm to bystanders from second-hand vapour.”



**British Lung Foundation:** “Experts have reviewed all the research done on e-cigarettes over the past few years, and found no significant risks for people using e-cigarettes. ...Swapping cigarettes for an e-cig can improve your symptoms of lung conditions like asthma and COPD.”



**Royal College of General Practitioners:** “The evidence so far shows that e-cigarettes have significantly reduced levels of key toxicants compared to cigarettes, with average levels of exposure falling well below the thresholds for concern.”



**Royal Society for Public Health:** “RSPH has welcomed a new comprehensive evidence review on e-cigarettes published by Public Health England (PHE). The report reflects an up-to-date evidence base that is increasingly pointing in the same direction: not only that vaping is at least 95% less harmful than smoking, but also that it is helping increasing numbers of smokers to quit.”



**Stroke Association UK:** “Current evidence shows that the risk to health posed by e-cigarettes in the short term is likely to be considerably less compared to smoking.”



**Action on Smoking and Health UK:** “It has been estimated that e-cigarettes are 95% less harmful than ordinary cigarettes. There is negligible risk to others from second-hand e-cigarette vapour. ...The lifetime cancer risk of vaping has been assessed to be under 0.5% of the risk of smoking. [But] Public understanding of the relative harms of e-cigarettes [vs smoking cigarettes] have worsened over time and are less accurate today than they were in 2014.”



**National Centre for Smoking Cessation and Training:** “Experts estimate that e-cigarettes are, based on what we know so far, around 95% safer than cigarettes. Smoking is associated with a number of very serious health risks to both the smoker and to others around them. Therefore, smokers who switch from smoking tobacco to e-cigarettes substantially reduce a major risk to their health. ...Nicotine does not cause smoking related diseases, such as cancers and heart disease.”



**National Health Service Scotland consensus statement on e-cigarettes:** “Smoking kills. Helping people to stop smoking completely is our priority. ...There is now agreement based on the current evidence that vaping e-cigarettes is definitely less harmful than smoking tobacco.”

This statement was created and endorsed by: Action on Smoking & Health Scotland • Cancer Research UK • Chest Heart & Stroke Scotland • Chief Medical Officer for Scotland • NHS Ayrshire and Arran • NHS Greater Glasgow and Clyde • NHS Lothian • NHS Tayside • Roy Castle Lung Cancer Foundation • Royal College of General Practitioners • Royal College of Physicians of Edinburgh • Royal College of Physicians and Surgeons of Glasgow • Royal Environmental Health Institute of Scotland • Scottish Collaboration for Public Health Research and Policy • Scottish Consultants in Dental Health • Scottish Thoracic Society • UK Centre for Tobacco & Alcohol Studies • University of Edinburgh • University of Stirling



**New Zealand Ministry of Health:** “The Ministry considers vaping products could disrupt inequities and contribute to Smokefree 2025. The evidence on vaping products indicates they carry much less risk than smoking cigarettes but are not risk free. Evidence is growing that vaping can help people to quit smoking. There is no international evidence that vaping products are undermining the long-term decline in cigarette smoking among adults and youth, and may in fact be contributing to it.”



**Cancer Society of New Zealand:** “E-cigarettes and smokeless tobacco products are less harmful than tobacco smoking.”



**Royal Australian & New Zealand College of Psychiatrists (RANZCP):** “Research in Australia shows that 70% of people with schizophrenia and 61% of people with bipolar disorder smoke compared to 16% of those without mental illness. ...RANZCP recognises the potential harm reduction benefits presented by e-cigarettes and vaporisers for people living with mental illness, and the need for legislative reform for these to be realised. The RANZCP therefore recommends: Exemption of nicotine-containing e-cigarettes and vaporisers from the restrictions imposed under the Poisons Standard so that they may be subject to stringent and suitable regulations as consumer products [and] lower rates of taxation for e-cigarettes and vaporisers compared to smokable tobacco products to ensure affordability for low-income smokers, and to provide a financial incentive to switch.”



**Drug and Alcohol Nurses of Australasia:** “People with drug and alcohol dependence have high smoking rates [and] are more likely to die from a tobacco-related disease than from their primary drug problem. E-cigarettes are battery-operated devices that heat a liquid solution, which may or may not contain nicotine into a vapour for inhalation, simulating the behavioural and sensory aspects of smoking, and they are currently seen as a legitimate form of tobacco harm reduction.”



The Royal Australasian  
College of Physicians

**Royal Australian College of Physicians:** “The RACP acknowledges that e-cigarettes may have a potential role in tobacco harm reduction and smoking cessation for smokers unable or unwilling to quit.”



Bundesinstitut für Risikobewertung

**German Federal Institute for Risk Assessment:** “According to current knowledge, e-cigarettes are less harmful than conventional tobacco products when used as intended.”



**French National Academy of Medicine:** “It is established that the vaporette is less dangerous than the cigarette... It is therefore preferable for a smoker to vape. Since 2016, the High Authority for Health (HAS) considers it ‘as an aid to stop or reduce the consumption of tobacco by smokers.’ Santé Publique France indicates that at least 700,000 [French] smokers have quit using electronic cigarettes. ...Smokers who were about to switch to vaporizing instead of tobacco should not hesitate...” [Google Translate from original French]



**French National Academy of Pharmacy:** “The World Health Organization’s [anti-e-cigarette] position is incomprehensible. Tobacco is responsible for 73,000 deaths in France. The e-cigarette helps people quit smoking. Its components are obviously less harmful than tobacco.” [NOTE: This is a Tweet from the Académie Nationale de Pharmacie. Not an official position statement.]



**US National Academies of Sciences, Engineering and Medicine:** “While e-cigarettes are not without health risks, they are likely to be far less harmful than combustible tobacco cigarettes. There is substantial evidence that... exposure to potentially toxic substances from e-cigarettes is significantly lower compared with combustible tobacco cigarettes.”



**US Food & Drug Administration:** “Make no mistake. We see the possibility for ENDS products like e-cigarettes to provide a potentially less harmful alternative for currently addicted individual adult

smokers who still want to get access to satisfying levels of nicotine without many of the harmful effects that come with the combustion of tobacco.”



**US Centers for Disease Control:** “E-cigarettes have the potential to benefit adult smokers who are not pregnant if used as a complete substitute for regular cigarettes and other smoked tobacco products.”



**American Cancer Society:** “Based on currently available evidence, using current generation e-cigarettes is less harmful than smoking cigarettes.” [NOTE: This was the official statement from 2018-2019. As of November 2019, ACS no longer recommends e-cigarettes as a smoking cessation tool. Their stated reason for this change was “e-cigarette use by young people.” Yet their new statement still says, “former smokers now using e-cigarettes should not revert to smoking.” So, obviously, ecigs are LESS HARMFUL.]



**American Heart Association:** “Participants who vaped exclusively showed a similar inflammatory and oxidative stress profile as people who did not smoke cigarettes or use e-cigarettes. ...Compared to participants who smoked exclusively, those who vaped exclusively had significantly lower levels of almost all inflammatory and oxidative stress biomarkers.”



**American Association of Public Health Physicians:** “Smoke-free tobacco/nicotine products, as available on the American market, while not risk-free, carry substantially less risk of death and may be easier to quit than cigarettes. ...Smokers who have tried, but failed to quit using medical guidance and pharmaceutical products, and smokers unable or uninterested in quitting, should consider switching to a less hazardous smoke-free tobacco/nicotine product for as long as they feel the need. Such products include pharmaceutical Nicotine Replacement Therapy (NRT) products used, off-label, on a long term basis, electronic “e” cigarettes, dissolvables (sticks, strips and orbs), snus, other forms of moist snuff, and chewing tobacco.”



**Campaign for Tobacco-Free Kids:** “E-cigarettes could benefit public health if they help significantly reduce the number of people who use combustible cigarettes and die of tobacco-related disease.”



Government of Canada / Gouvernement du Canada

**Government of Canada:** “Vaping is less harmful than smoking. Completely replacing cigarette smoking with vaping will reduce your exposure to harmful chemicals. There are short-term general health improvements if you completely switch from smoking cigarettes to vaping products.”