

Testimony prepared for:
Senate Appropriations – Government Operations
Donnell Preskey, NDACo
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Re: HB 1003 – Electronic Smoking Device Directory

Chair Wanzek and committee members, the North Dakota Sheriff's & Deputies Association (NDSDA) strongly supports the passage of the Electronic Smoking Device Directory contained in Appropriations bill HB 1003.

The Electronic Smoking Device Directory included in HB 1003 will bring transparency, compliance and accountability to the currently chaotic market for electronic smoking devices, also commonly referred to as vapor products. North Dakota Sheriffs are concerned about the influx of illicit vapor products into our state as direct, imminent and present danger to our citizens and especially our youth.

The current vapor market is in a state of disarray, with illicit products, primarily coming from China, overtaking legal and regulated products. The CDC has stated that *more than half* of the vapor market is made up of disposable vapor products, and these are almost entirely illicit. These illicit vapor products are designed and targeted to appeal to our youth. They come in shiny packaging, with fruit and candy flavors, which are all banned under Federal Law and some illicit vapor products even come with video game screens attached to them. Furthermore, most of the products these companies ship to the U.S. are prohibited from being sold within China.

The FDA has been unable to bring the vapor market into compliance. In 2020, the FDA banned the sale of all flavored cartridge-based vapor products but excluded disposable vapor products. The FDA also requires all new tobacco products, including vapor products, to go through the Product Marketing Authorization (PMTA) process to determine whether they can legally remain on the market. To date, the FDA denied 99% of the nearly 26 million PMTA applications it has received and has only authorized 34 vapor products and devices. While some applications are still pending or working their way through court challenges, this likely means that most vapor products offered in North Dakota are currently illicit under Federal law and should be illicit under state law.

All these illicit products are smuggled into the country by deliberately evading U.S. Customs and Border Control. As a result, illicit products that ignore FDA rules and guidelines continue to flood into our state unabated. Right now, we have no way of knowing what products are legal, and what ones are not.

State lawmakers have an opportunity to enact legislation that cleans up the illicit electronic smoking device or vapor market by requiring the state to maintain a list, or directory, of legal, compliant electronic smoking devices. This proposed legislation would require the Attorney General to promulgate rules to enforce this legislation, including at least two unannounced compliance checks.

This is not a novel concept for our state, already the North Dakota Attorney General publishes an up-to-date directory of certified cigarette products. This bill would require the AG to publish the same type of list for electronic smoking devices. Twelve other states have already enacted similar legislation, and the results are very promising. Louisiana for example, one of the first states to implement a comprehensive directory, saw illicit products completely disappear from its regulated market.

In conclusion, NDSDA urges the state legislature to pass this commonsense law to implement a electronic smoking device directory.