

House Finance and Taxation Committee
SB 2189
March 3, 2021

Chairman Headland and Committee Members:

Good morning. I am Senator Brad Bekkedahl, and I am the prime sponsor of SB 2189. Although I will defer to some of the folks who helped work on this bill to answer specific questions about the bill's details, I want to take a moment to explain my support for SB 2189.

Background

Electronic smoking devices are marketed and sold by companies as tobacco products. However, unlike all other tobacco products, these devices are not defined or regulated under North Dakota's tobacco products law. For instance, unlike distributors and dealers of other tobacco products, electronic smoking device dealers and distributors are not required to obtain state licenses or keep records and file reports of their sales. Therefore, it is currently impossible to quantify the number of electronic smoking device sales in the state or hold bad actors accountable for their actions.

What the Bill Does

SB 2189 does three things.

First, the bill defines electronic smoking devices and requires that all distributors and dealers of the devices be licensed – in the same fashion as distributors and dealers of all other tobacco products.

Second, the bill provides that distributors and dealers of the devices must keep records and make purchase and sale reports to the tax commissioner – in the same fashion as dealers and distributors of all other tobacco products.

Third, the bill contemplates a study of “reduced harm nicotine products”. The study proposes a review of products that should be deemed reduced harm nicotine products. I note that the FDA is currently evaluating products that qualify for this designation.¹

¹ https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-tobacco-products?utm_campaign=ctp-pmtase&utm_content=landingpage&utm_medium=email&utm_source=govdelivery&utm_term=stratcomms

The study also seeks to evaluate how a reduction in the tax rate on reduced harm nicotine products might benefit public health by encouraging the use of the products, rather than the use of other products that potentially are more harmful. I also note that North Dakota does not currently tax electronic smoking device sales, some of which deliver nicotine – other than the sales tax for general merchandise.

Why I Support the Bill

In 2019, approximately 1 in 3 North Dakota high school students reported using e-cigarettes.² Hopefully that number will go down with the age 21 laws that have recently passed at the federal level and are being contemplated at the state level this session. However, e-cigarette use is not limited to youth. As a practicing dentist, when I'm doing dental work in the military field, I often ask soldiers, "Do you use tobacco?" Lately, I've noticed a large number of soldiers reporting "vaping" when answering my question.

Due to the unregulated nature of electronic smoking devices and the alarming increase in use by both minors and adults, it is important that we as legislators carefully review our current approach to regulating tobacco products to ensure we are doing so in a manner that is sensible, responsive to the industry's ever-changing products, and beneficial to the state and the health of its residents.

Conclusion

Dealers and distributors of electronic smoking devices should be held to the same licensing and reporting standards as all other tobacco products dealers and distributors. Therefore, I ask that you give SB 2189 a "Do Pass" recommendation, and I will stand for questions.

² https://www.tobaccofreekids.org/problem/toll-us/north_dakota