Senate Bill 2189
Senate Finance and Taxation Committee
January 19, 2021, 9:30 a.m.

Good morning Chairwoman Bell and members of the Committee. My name is Neil Charvat, and I serve as the Director of the Tobacco Prevention and Control Program for the North Dakota Department of Health (NDDoH). I am here to provide testimony in support of Senate Bill 2189.

Tobacco prevention and control efforts in North Dakota focus on guidance provided by the Centers for Disease Control and Prevention (CDC) *Best Practices for Comprehensive Tobacco Control Programs* (Best Practices). Best Practices provide evidence-based interventions to prevent tobacco product use initiation; increase quitting tobacco use; and reduce exposure to secondhand smoke. Senate Bill 2189 designates electronic smoking devices, or electronic nicotine delivery systems (ENDS), as a tobacco product. This will help monitor the sales and use of ENDS/vaping products and prevent tobacco product use initiation.

The majority of ENDS/vaping products contain nicotine. A study found that 99% of all e-cigarette products sold at convenience stores, supermarkets and similar outlets contain nicotine (*Sales of Nicotine-Containing Electronic Cigarette Products: United States, 2015*. Journal of American Medicine. October 2, 2018). Nicotine is the addictive chemical derived from the tobacco plant. The Food and Drug Administration (FDA) finalized a rule, effective August 8, 2016, to regulate all tobacco products, including ENDS/vaping products. This federal designation of ENDS/vaping products as tobacco products does not currently apply to North Dakota tobacco classification.

On September 12, 2018, the FDA declared that youth use of ENDS has reached "nothing short of an epidemic". According to the 2019 North Dakota Youth Risk Behavior Survey (YRBS), North Dakota high school students' use of ENDS/vaping devices has significantly increased from 1.6% in 2011 to 33.1% in 2019. In addition, any tobacco product use for ND high school students has increased from 28.8% in 2017 to 35.5% in 2019 (ND YRBS). Recent 2019 federal legislative efforts to increase the sales and use age for tobacco products to 21 and flavor regulation efforts may help with these high numbers. However, this legislation is limited to specific products

such as pre-filled pod systems and to certain flavors, so actual results may be limited.

The high school ENDS rate as referenced above is accompanied by an increase in use by North Dakota adults as well, from 16.5% in 2016 to 23.3% in 2018 (North Dakota Behavioral Risk Factor Surveillance System). The NDDoH treats ENDS/vaping products as a public health issue affecting all ages.

In August 2019, a nationwide health epidemic emerged, Electronic cigarette/Vaping Associated Lung Injury (EVALI). EVALI is a pneumonia-like illness related to ENDS/vaping product use. EVALI causes short-term and potential long-term pulmonary damage. Though vitamin E acetate in some vaping products was ruled as the main cause of EVALI, people using vaping products without vitamin E acetate have also succumbed to this disease.

As of February 18, 2020, a total of 2,807 hospitalized EVALI cases or deaths have been reported to CDC from all 50 states, the District of Columbia, and two U.S. territories (Puerto Rico and U.S. Virgin Islands). In addition, sixty-eight deaths have been confirmed in 29 states and the District of Columbia (CDC). The NDDoH has developed a vaping-related reporting system for providers and the public. While reporting EVALI cases virtually ended in March 2020 with the emergence of COVID-19, we have received anecdotal reports of continued issues with EVALI. As of March 2, 2020, there had been 60 self-reported cases of EVALI with 10 confirmed cases and 10 probable cases (https://www.health.nd.gov/vaping). More surveillance is needed in this area.

COVID-19 has emerged as another health issues with detrimental effects related to ENDS/vaping use. A recent study addressed the relationship between youth smoking, e-cigarette use and COVID-19 (*Association Between Youth Smoking, Electronic Cigarette Use, and COVID-19 Journal of Adolescent Health*, October 2020). The results of this online, national survey of 13-to 24-year-olds found that ever users of e-cigarettes were five times more likely to receive a positive COVID-19 diagnosis.

Regardless of industry claims, ENDS/vaping products have not been classified by the FDA as tobacco cessation medications, such as nicotine replacement

therapies (NRT) like gum, lozenges, or patches. FDA-approved NRTs have gone through extensive evaluation and testing processes to determine safety and efficacy; ENDS/vaping products have not. Whether due to the alarming ENDS/vaping product use statistics or awareness of issues like EVALI and COVID-19, we have been frequently asked – how many ENDS/vaping products are sold and who sells them. The answer to these questions is that we do not know.

Citing statistics regarding North Dakota's use of ENDS is difficult, since these devices are not classified in North Dakota as tobacco products. Senate Bill 2189 would change this classification from general merchandise to tobacco products and require that retailers must have a tobacco license to sell these products. Additional benefits include:

- Helps retailers justify checking for identification for proof of age as they already do with other tobacco products.
- Assists groups performing tobacco compliance checks in retailer establishments to include youth purchase attempts of ENDS with other tobacco products, such as cigarettes. With ENDS lacking this state-level designation, many compliance efforts are not possible for ENDS.
- Allows closer monitoring of the amount of ENDS sales; thereby, assisting efforts to gather data regarding usage of these products.

For the reasons I've cited, designation of ENDS as tobacco products as required in Senate Bill 2189 will help reduce youth initiation and use, helping to lower the "epidemic" of high ENDS usage levels.

This concludes my testimony. I am happy to answer any questions you may have.