North Dakota Legislature
Finance and Taxation Committee Hearing
Testimony of David Sylvia

January 19, 2021

Chairperson and Members of the Committee, thank you for the opportunity to speak today. My name is David Sylvia. I offer testimony on Senate Bill 2189 on behalf of Altria and its affiliates Philip Morris USA, John Middleton and U.S. Smokeless Tobacco Company. We submit this testimony in opposition to SB 2189 in its current form. If the Committee were to adopt this amendment that would reduce the tax burden on products that have been authorized by the Food & Drug Administration as Modified Risk Tobacco Products (MRTP), we would withdrawal our opposition to the bill.

The goal of reducing harm from tobacco products starts with preventing underage use. Today, underage use of traditional tobacco products such as cigarettes, cigars, and smokeless tobacco is at generational lows and continuing to decline.[1] After underage use of e-vapor products accelerated to totally unacceptable levels in 2018, Congress enacting a national minimum age on all tobacco products to 21 last year.[2] Since then we have seen underage e-vapor rates begin to decline.[3] But more should be done, which is why we support states like North Dakota raising the state minimum age under state law to 21 as well.

But tobacco harm reduction policies should also take adult tobacco consumers into account. Public health authorities agree that there is a broad continuum of risk among tobacco products. Cigarettes are at the highest end of the spectrum. While nicotine is addictive, it is the smoke from conventional cigarettes that causes most tobacco-related harm.[4] Today the FDA has broad authorities to regulate tobacco products.[5] One of its most important powers relates to its ability to review individual tobacco products to determine – based on the science – whether they are less harmful for adult smokers.[6] If the FDA reaches that conclusion under this rigorous MRTP process, it can authorize communication of reduced exposure or reduced harm information to adult smokers, and in that way help adult smokers interested in switching to less harmful products do so.

We believe tax policy should recognize this reality. Today, roughly 17 percent[7] of North Dakota adults are smokers. If a product makes it through the science- and evidence-based evaluation and FDA determines that it meets the high standards of the MRTP designation, the excise tax on that product should be reduced to reflect its reduced harm potential. SB 2189 would do exactly that if the MRTP risk-based taxation amendment is adopted. Other states have taken this step to support the goal of expanding the availability of FDA-authorized reduced harm products for adult smokers.

I encourage this committee to adopt this amendment and if so adopted, we will withdrawal our opposition to SB 2189. Thank you for your time and I will be happy to answer any questions.

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[1] Recently released data from CDC's National Youth Tobacco Survey (NYTS) shows year-over-year declines in middle school and high school past 30-day use across all tobacco categories, including cigarettes (4.3% to 3.3%), cigars (5.3% to 3.5%), smokeless tobacco (3.5% to 2.3%), and e-vapor (20% to 13.1%),https://www.cdc.gov.

[2] https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21.

[3] https://www.cdc.gov (NYTS data showing reductions in middle- and high-school past 30-day use of e-vapor from 20% in 2019 to 13.1% in 2020).

[4] U.S. Food and Drug Administration, "Protecting American Families: Comprehensive Approach to Nicotine and Tobacco," June 28, 2017, https://www.fda.gov/NewsEvents/Speeches/ucm569024.htm.

[5] Family Smoking Prevention and Tobacco Control Act, 21 U.S. Code § 301

[6] 21 U.S.C. 387j(b)

[7] Centers for Disease Control and Prevention, *Behavioral Risk Factor Surveillance System; Prevalence and Trends Data; Nationwide (States and DC) – 2019 Tobacco Use*, Centers for Disease Control and Prevention, https://www.cdc.gov/brfss/brfssprevalence/index.html.

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Appendix

States Using the FDA's Modified Risk Tobacco Product Application Authorization (MRTP) to Reduce Rates on Less Harmful Products

Connecticut (2017)

- Provides a 50% reduction in the cigarette SET rate and a 50% reduction in the OTP SET rate for any product the FDA determines is a modified risk tobacco product.

Kentucky (2018)

Cigarette and OTP SET rates are reduced by:

- 50% for any product that receives an MRTP order under 21 U.S.C. § 387k(g)(1); or
- 25% for any product that receives an MRTP order under 21 U.S.C. § 387k(g)(2).

North Carolina (2018)

- Reduces by 50% the tax imposed on a product that has received an order under 21 USC 387k(g)(1) (risk modification),
- Reduces by 25% the tax imposed on a product that has received an order under 21 USC 387k(g)(2) (exposure modification).

Washington (2019)

- Reduces tax by 50% for any product that receives an MRTP order under 21 U.S.C. § 387k(g)(1); or
- Reduces tax by 25% for any product that receives an MRTP order under 21 U.S.C. § 387k(g)(2).

Utah (2020)

- Cigarette SET and the OTP SET rates shall be reduced by:
- 50% for any product that receives an MRTP order under 21 U.S.C. §387k(g)(1); or
- 25% for any product that receives an MRTP order under 21 U.S.C. §387k(g)(2). Effective 7/1/2020.

Colorado (2020)

- The statutory tobacco product tax shall be reduced by 50% for any product which has been issued an authorization to be marketed as a modified risk tobacco product in accordance with 21 U.S.C. §387k. Provision does not apply to e-vapor products.

What is an MRTP?

Modified risk tobacco products (MRTPs) are "tobacco products that are sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products." Manufacturers must apply to the FDA for each product they would like to claim is an MRTP. In the application, the manufacturer must meet the rigorous standard that the "product, as it is actually used by consumers, will:

A. significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

B. benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products."

The FDA has authorized MRTP applications on both heat-not-burn and snus products.