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Good morning, Chairman Larsen and members of the Senate Industry and Business Committee. I am Neil Charvat, and I serve as the Director of the Tobacco Prevention and Control Program (TPCP) in the Public Health Division of the North Dakota Department of Health and Human Services (Department). I am here to provide testimony in support of House Bill 1412.

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. House Bill 1412 designates electronic smoking devices, or electronic nicotine delivery systems (ENDS), as a tobacco product. This will aid in monitoring the sales and use of ENDS/vaping products and prevent tobacco product use initiation.

The majority of ENDS/vaping products contain nicotine. A study published in the *Journal of American Medicine* found that 99% of all ENDS 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 an 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. In March 2022, Congress passed a new federal law clarifying the FDA's authority to regulate tobacco products containing nicotine from any source, including synthetic nicotine. The law, which went into effect in April 2022, closed a loophole that several companies were using to evade regulation. This federal designation of ENDS/vaping products as tobacco products does not currently apply to North Dakota's tobacco classification, which is what HB 1412 seeks to accomplish.

On September 11, 2018, the FDA declared that youth use of ENDS has reached “nothing short of an epidemic” and requested plans for mitigating youth sales. According to the 2021 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, then to 21.2% in 2021. Data comparing 2020 youth ENDS usage to previous years needs to be analyzed cautiously due to the effects of the COVID19 pandemic. Recent federal (2019) and North Dakota (2021) 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 certain flavors and doesn’t fully address the magnitude of the ENDS problem.

ENDS/vaping products have not been classified by the FDA as tobacco cessation medications, such as nicotine replacement therapies (NRT). NRTs include items 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. Some believe that those seeking to quit smoking combustible cigarettes are the only adults using ENDS products, but the data does not support this. The current North Dakota adult smoking rate (2021) of 15.0% compared to the North Dakota adult ENDS product use rate of 19.3% (2021 Behavioral Risk Factor Surveillance System) may demonstrate that adults who may have never smoked cigarettes are engaging in this addictive behavior. The North Dakota tobacco treatment quitline, NDQuits, treats those using ENDS the same as if they were using any other tobacco product. The TPCP considers ENDS/vaping products as a public health issue affecting all ages.

Whether due to the alarming ENDS/vaping product use statistics or awareness of youth product usage among school-aged children, we have been frequently asked – how many ENDS/vaping products are sold in North Dakota 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. House Bill 1412 would change the classification from general merchandise to tobacco products and require that retailers have a tobacco license to sell these

products. Additional benefits of classifying ENDS as tobacco products 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 the usage of these products.
- Follows the lead of these North Dakota cities that have already passed ordinances classifying ENDS as tobacco products: Bismarck, Lincoln, Fargo, Kindred, Harwood, Mapleton, Grand Forks Wahpeton, Dickinson and Williston.

For the reasons I've cited, the designation of ENDS as tobacco products as required in House Bill 1412 will help reduce ENDS initiation and use.

Thank you for the opportunity to appear before you today. I would be happy to respond to any questions you may have.