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Senate Judiciary Committee for the 69th ND Legislative Assembly

Chairwoman Larson, and members of the Senate Judiciary Committee hello, my name is Heather Austin, and I am the Executive Director for Tobacco Free North Dakota. The mission of Tobacco Free North Dakota (TFND) is to improve and protect the public health of all North Dakotans by reducing the serious health and economic consequences of tobacco use, the state's number one cause of preventable disease and death. We work to facilitate coalitions and to promote policy discussions across North Dakota, along with providing education and resources that are used to help prevent kids from ever starting the dangerous addiction to tobacco and nicotine. Thank you so much for your time this morning.

Today I am hoping to encourage an amendment to SB 2037 and its section addressing underage tobacco possession and use. TFND recommends striking out the proposed changes to create new age categories for penalties under state law.

SB 2037 presents several equity concerns in how it distinguishes categories of minors under 21 years of age. Current law regards the purchase, use, or possession of tobacco products by any minor under 21 years old as a non-criminal offense and assigns a penalty for persons between 14 and 20 years old. We are concerned about how the proposed changes in SB 2037 would single-out 14-to-17-year-olds for what appears to be heightened scrutiny for their purchase, use, or possession of tobacco products, while at the same time imposing much lighter consequences for 18-to-20-year-olds and for those under the age of 13.

As proposed, SB2037, would shift the non-criminal offense penalty to only 18-to 20-year-olds, and would now require our 14-to-17-year-olds to go to juvenile court, and at the same time de-offend the purchase, use, or possession of tobacco products by persons 13 years of age or younger, which would then be in contradiction to current State and Federal laws.

This proposed distinction appears to regard the use of tobacco products by one category of minor (a 14- to 17-year-old) as worse than the same use of tobacco products by another category of minor (18- to 20-year-olds and 13-year-olds and

younger), without justification or rationale for why. Federal law considers any person under 21 years of age a minor for the purposes of minimum legal sales age for tobacco products. North Dakota would then be deviating from Federal law by creating categories of minors. Implicitly, SB 2037 renders section 12.1-31- 03(2) of North Dakota Century Code as non-applicable to a person 13 years old or younger – meaning, their purchase, use, or possession of tobacco products is not clearly unlawful so far as this state law would be concerned.

And while TFND wishes that none of our young people would use commercial tobacco or nicotine products, creating new age categories and shifting penalties and consequences to our youth is unlikely to advance health equity or close health disparity gaps. Arbitrarily throwing one group of teenagers into the court system can have significant, and sometimes long-term, effects on those teenagers: including stigmatization, school and extracurricular consequences, as well as other unintended considerations. In that context, it seems that creating a new infraction for use of tobacco products by a subcategory of minor – particularly in the absence of the rationale for why such a subcategory exists or is needed – might run opposite to what North Dakota has been trying to accomplish with respect to preventing youth commercial tobacco and nicotine product use. Better tactics for tobacco prevention may be to fund retailer education and additional compliance checks for age 21 at the point of purchase, or to raise the fines for non-compliant retailers selling the products.

Chairwoman Larson and members of the Committee, I encourage you to amend SB 2037 to take out the new age classifications and selective punitive consequences for underage tobacco use and keep the existing language in place.

Thank you for your consideration. I am happy to answer any questions if needed.

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