

2015 HOUSE JUDICIARY

HB 1186

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1186

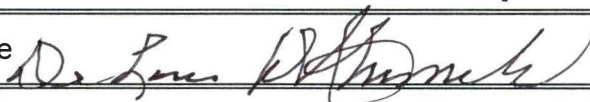
2/2/2015

22988

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the sale and use of nicotine devices by minors; and to provide a penalty.

Minutes:

Testimony 1,2, 3; 4,5,6,7,8,9,10;

Vice Chairman Karls: Opened the hearing with testimony in support.

Chairman K. Koppelman: Introduced the bill. (Testimony #1) (2:50-6:00) Electronic vapor products are relatively new and recently on the market. Kids are flocking to these products and we must stop it. CDC reported in December that the use tripled in 2011-2012, It is clear other states are ahead of us on taking action on this product. Went over the sections of the bill. (6:00-11:45) the folks who were looking at this changed the definition so that they could get around the laws. Section 3 amends the definition of unruly child. Toward the end of the bill, item 2 on the last page Present and amendment (proposed amendment #2) new data from the American Association of Poison Control Centers shows some frightening trends. In 2011 there were 271 calls to poison control centers involving exposures to e-cigarettes and nicotine. By 2013 that number increased to 1543 and last year there were 3957 calls. A 156% increase in just one year. This amendment addresses that issue. More than half the calls involved a child under the age of six. I encourage the committee to amend this bill before giving it a do pass.

Rae Ann Kelsch, Reynolds American Inc. (testimony # 3) (15:26-20:18)

Rep. L. Klemin: Top of page 4 of your testimony indicates it is illegal; what did you mean there when you said gross misdemeanor Class A?

Rae Ann Kelsch: That was to mean a Class A misdemeanor. When we originally looked at this ill it would be an infraction. If the committee would like to make it a Class A misdemeanor that would be acceptable.

Doug Bar, Director of the Civil Litigation Division of the ND Office of Attorney General: The Attorney General does not take a position regarding a particular bill. The AG does support that a bill be passed to protect minors and the use of minor's alternative products that dispense nicotine. AG does suggest that this bill does get a do pass and it should include at a minimum the following provision: 1 it should broadly and clearly define the products that are regulated. 2. Prohibits the sale of these products to minors. 3. No vending machines 4. Prohibits selling these products through self-service display. (See handout #4)

Rep. K. Wallman: Are e-cigarettes a tobacco product?

Doug Bar: They do not fall under ND's current definition of a tobacco product. That is why they are not currently regulated by ND.

Rep. K. Wallman: Is the nicotine come from tobacco?

Doug Bar: That is an alternative the legislature could do. The legislature could redefine the meaning of tobacco products and apply all those laws to these types of things. Youth excess is growing.

Rep. K. Wallman: Redefinition or just adding e-cigarettes to the current definition?

Doug Bar: You would have to add and redefine the tobacco definition. That would mean taxes and any other regulations would go with those. That is a policy decision by this committee and the legislature.

Rep. K. Wallman: I read that the tobacco industry wanted to band e cigarettes?

Doug Bar: I had not heard that. They manufacture them. It could be other products like gum. They are not tobacco products as defined under ND law.

Rep. K. Wallman: You said the AG said that a definition would be helpful and clearly defined.

Rep. Brabandt: Can nicotine only be abstracted from tobacco? Does it exist in any other plants?

Doug Bar: I don't know.

Rep. L. Klemin: Sometimes you could get a patch or gum to quite. That could happen to a minor and I don't see an exception here for that sort of thing. Could there be?

Doug Bar: There maybe but I have not personally thought about that situation. If such an exception were made we should require a sign off or something to confirm how they are using it if they are a minor. There has to be some way to be sure they are using it for cessation purposes.

Rep. L. Klemin: On the penalty does the AG have any opinion on that. I don't know if the penalty is the same on all three of the bills. I did not specifically talk to him about that. If you felt a Class A misdemeanor was warranted?

Doug Bar: I did not specifically talk to him about the penalties. It would seem reasonable to parallel that to traditional cigarettes.

Rep. G. Paur: Do you know you can go to Target and get patches, cigarettes, gum languages. Do you have to be 18 to get that?

Doug Bar: It would be regulated how we do the e-cigarettes or other things and this stuff is all regulated.

Rep. G. Paur: Then Target will have to take them off their shelves. Then they would have to sell them differently.

Doug Bar: Yes they would have to do it in a different method. Most of the states have already passed this.

Rep. D. Larson: In the Century Code Chapter 23-12.09 under health in the Century Code it does go under #15 it says it includes the use of an e-cigarette which creates a vapor in any manner or any form or any use of any use of any oral smoking device of circumventing the probation of smoking in this act so this seems to put it together with tobacco products too.

Doug Bar: I think that has to do with smoking in a public building. That is different than the retail of these items. We are here to protect the youth.

Rae Ann Kelsch: According to the ND Dept. of Health they state that e-cigarettes are battery operated and don't contain tobacco. You can get nicotine from plants and I will get that information for you.

Rep. K. Wallman: If there is no tobacco what is Reynolds interest in this?

Rae Ann Kelsch: Views is one product and it is e-cigarettes are sold by Reynolds.

Chairman K. Koppelman: What is the industry trying to restrict the sale of a product you make?

Rae Ann Kelsch: I think the industry is tired of being beat up so they are trying to ban minors from getting e-cigarettes and we agree with that. We have initiated this in most states.

Chairman K. Koppelman: I have only seen one of these one time.

Rae Ann Kelsch: At the stop light on south seventh and they were smoking one.

Rep. K. Wallman: Does Reynolds Tobacco Corporation that makes e-cigarettes thinks that they should be taxed like other tobacco products?

Rae Ann Kelsch: The debate is the prohibition of minors for e-cigarettes.

Rep. K. Wallman: If we are defining this product for the sake of keeping these out of the hands of minors should it be defined as a tobacco product?

Rae Ann Kelsch: Even ND Dept. of Health says it does not contain tobacco so we need to tax it based on something other than tobacco.

Rep. K. Wallman: It is nicotine from tobacco, but not a tobacco product.

Rae Ann Kelsch: It is also the opinion of the code.

Chairman K. Koppelman: Do you know if the nicotine gum and others are taxed like tobacco?

Rae Ann Kelsch: I don't know.

Rep. Brabandt: In regular cigarette smoking there is carbon monoxide? I assume there is no carbon monoxide in e-cigarettes, correct?

Rae Ann Kelsch: That is correct.

Rep. L. Klemin: Page 4 on the definition of vapor products it says the term does not include any product regulated as a drug or device by USFDA? Does the FDA regulate some of these products now or what do they do?

Rae Ann Kelsch: The FDA does regulate some products. It is some of the products used for cessation.

Rep. L. Klemin: This is not smoking, but when someone is smoking an e-cigarette is that the right verb. Is this smoking or isn't it?

Rae Ann Kelsch: It is interesting. I don't know what you should call it. Smokers that have stopped are using vapor products and if you ask them what they are doing they are smoking, but maybe it should be vaping.

Chairman K. Koppelman: Vapors are people who do this. On the FDA question I did see some information that they are working on regulations but they are not final. Lots of states have enacted laws

Mike Rud; President of the ND Petroleum Marketers Assoc. (See Testimony #5)
(48:00-52:47)

Rep. L. Klemin: Have we had situations where FDA. Have we had situations where retailers in ND have been prosecuted under federal law? Maybe we should increase our penalties.

Mike Ruud: No ND retailer has been penalized to the point of \$11,000 yet. I think FDA will come out with guidelines when they are finished.

Rep. K. Wallman: 1. ND Petroleum Marketing Assoc. What does that mean and why are they interested in it.

Mike Rud: Petroleum Marketing Association has two entities: We represent the retailers who sell the gasoline and the convenience stores. There are about 1000 outlets in ND.

Rep. K. Wallman: Page 2 not only does HB 1168 require vapor and e-cigarettes be behind a counter, but the law would apply to all tobacco products. Are they a tobacco product?

Mike Rud: If you go by what the state is saying no they are not, but they have nicotine so we want to be sure everything is behind the counter.

Chairman K. Koppelman: Nicotine is the common denominator.

Mike Rud: I would agree with you on that.

Rep. Brabandt: Since 2007 how much have the sales increased?

Mike Rud: I don't have those figures. There is a variety of kinds of them. I think it is a growing market.

Laney Herauf, GNDC: (See testimony #6) (57:55-57:50)

Opposition:

TJ Jerke, Education & Advocacy, Tobacco Free ND: (See testimony #7) Read the View labels. The Views e-cigarette that is on the market today on the back of it it specifically says views is a tobacco product because the nicotine used in this product is extracted from the tobacco plant. (1:00:40-1:11:20)

Rep. Lois Delmore: Are cigarettes and snuff required to be behind lock and key as you are asking now?

TJ Jerke: Yes.

Rep. Lois Delmore: We have lots of definitions in law that mean the same thing. What specific part of the bill do you have an objection to?

TJ Jerke: It is the fact there are two confusing terms that are being defined; one for alternative nicotine products and one for vapor products. We want to see one definition.

Rep. Lois Delmore: This bill provides for cities to have stronger ordinances than is in the bill. I think the flexibility in this bill tries to cover all forms. I am wondering if it is more important to be modeled after cities or what we are told will cover all things including those in the future.

TJ Jerke: Currently there is a growing number of cities in the state that have defined e-cigarettes as tobacco products. Wahpeton, Grand Forks and Fargo are three of these cities.

Rep. Lois Delmore: So if something else was put into these cigarettes (mike not on)

TJ Jerke: If it is harmful to our youth we will be back up here. On page 4 of my testimony I speak on the definition of vapor products. Vapor products is defined in this bill as being heating elements, power sources, electronic circuits or other electronically chemical or mechanical means. This isn't comprehensive language and isn't going far enough. A bill later today will define the product.

Chairman K. Koppelman: The section you were reading on page 4 says (reading the bill) (1:16:00-1:16:56) Sounds like it is there.

TJ Jerke: I was merely comparing apples to apples when you look at the definition of vapor product in this bill and then the definition of electronic smoking devices.

Chairman K. Koppelman: Page 1 line b, line 15 I am not clear what we're referring to?

TJ Jerke: On line 18 when it says this subdivision does not apply 1. Vending machine or other coin operated machine as permitted under section 12-1-31.03. We want to make sure this vending machine is broadly defined.

Dr. Eric Johnson, President, Tobacco Free ND: (See testimony #8) (1:19:21-1:23:09)

Rep. L. Klemin: These liquid in this bottle do you know is this nicotine derived solution?

Eric Johnson: It does contain other stuff. It does have nicotine. Most of these are in glycol carriers. They are a huge family of chemicals which also include antifreeze and other chemical vehicles. The safety of glycol is not understood.

Chairman K. Koppelman: What about the products like Nicorette gum?

Eric Johnson: They are for 18 year olds and older.

Chairman K. Koppelman: As a doctor could you prescribed by prescription? The FDA has probably written the explanation but it is the comment period that is going on.

Eric Johnson: Comment period is a general term where we want to get feedback from the public. You have to publish more than one study to get the product and they met that standard.

Chairman K. Koppelman: Discussed comment period and how it works.

Eric Johnson: FDA can choose to redraft their regulations at any time.

Chairman K. Koppelman: You made it sound like the regulations are not complete and the information is not there and that is why the FDA is holding it up?

Chairman K. Koppelman: I read the FDA has created a regulation; the public comment period is pending and as soon as that is done the regulation will be active.

Rep. L. Klemin: When is a prescription required for smoking cessation?

Eric Johnson: Yes patches, gum and loungers are considered to be in the same therapeutics category.

Rep. L. Klemin: In the instance of a minor it would be an infraction to sell any of these alternative smoking products to a minor.

Eric Johnson: Address these in one of the other bills.

Kristie Wolff, Program Manager, American Lung Association in ND: (See Testimony #9) (1:31:22-1:32:57)

Chairman K. Koppelman: There are names of several legislatures on all the bills we are hearing today, but never an industry name on any bill.

Rep. K. Wallman: What has lead the American Lung Association to suspect that this is a tobacco industry bill that is being shopped around?

Kristie Wolff: Just as I serve ND and our local office there are offices around the nation that are seeing the exact same language that is in this bill and they are being promoted and supported by the tobacco industry.

Chairman K. Koppelman: This bill is identical to most of our laws in other states?

Kristie Wolff: Based on information from the American Lung Association organizations across the nation and other local offices in other states this language is being supported by the tobacco industry and being brought forward by them.

Chairman K. Koppelman: Since they have passed the bills does that indicate they are not concerned?

Kristie Wolff: Some states have not passed those bills.

Chairman K. Koppelman: We have heard a lot saying the science is unclear. Is nicotine damaging to lungs?

Kristie Wolff: I will be in much greater detail in what is in these products at a later testimony.

Margie Zietz, Minot Police Department: (See testimony#10) (1:36:09-1:39:49)

We need to keep these products locked up. It is behind the counter and sold in one specific area. We need consistency in the definitions. It is very difficult for law enforcement when there is not definite defined definition for these products.

Rep. Lois Delmore: I did not mean to imply that this bill is a cure all. We will make this bill as tough as we can on minors. That is the intent of every sponsor on all three bills. What I said was some cities may enact an ordinance that is stronger.

Kelsey Eaton, Regional Manager for Infinite Vapor: Supporting to ban of sales of vapor products to minors. ND would be the 41 state to band these sales. I do not like the verbiage in the bill. (Neutral) We have three concerns on this bill: Page 4, line 8: Definition for a vapor specialty store. We have concerns about regulations governing online sales of the products. ID Check on delivery by mail so effectively any adult between the ages of 18-20 are not going to get these products in the mail. We want this bill to ban all vapor to minors. Not just those that contain nicotine.

Chairman K. Koppelman: You talked about vapor products that don't contain nicotine. What do they contain?

Kelsey Eaton: Liquid and the types of devices that we sell and the majority of the vapor industry are actually composed of four ingredients or three if they don't contain nicotine. Vegetable glycerin, which is a sugar derived from vegetables; provolone glycol is an inhalers and oxygen masks you see in the ER. Also an ingredient for flavor.

We are going to suspend the hearing on HB 1186.

(HOUSE) (SENATE) BILL NO. _____ SUBCOMMITTEE OF THE

Judiciary STANDING COMMITTEE

Meeting location: Prairie Room

Date of meeting: 2/9/15

Time meeting called to order: 4:00 p.m.

Members present: Chair Karen Karls, Rep. Roger Brabandt
Rep. Lois Delmore

Others present (may attach attendance sheet):

Topics discussed:

Went through all 3 bills; discussed definitions,
penalties, clarified testimony. Agreed to meet
again Tues.

Discussed proposed amendment #1

Motion and vote:

Time of adjournment: 4:22

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

(HOUSE) (SENATE) BILL NO. _____ SUBCOMMITTEE OF THE

Judiciary STANDING COMMITTEEMeeting location: Pravie RoomDate of meeting: 2/10/15Time meeting called to order: 4:15 pmMembers present: Chair Karen Karle, Rep Roger Brabandt
Rep Lois DelmoreOthers present (may attach attendance sheet):

Topics discussed:

amendments taken from 1265 and added to
1186; Chair Karle will work with LC to craft the
new language and present the amendments
tomorrow to the subcommittee - the goal: to keep
e-cigs away from young peopleMotion and vote:

_____Time of adjournment: 4:30

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

(HOUSE) (SENATE) BILL NO. 1186, 1078, 1215 SUBCOMMITTEE OF THEJudiciary STANDING COMMITTEEMeeting location: PrairieDate of meeting: 2/11/15Time meeting called to order: 11:30Members present: Chair K. Karls Rep Brabandt
Rep DelmoreOthers present (may attach attendance sheet):

Topics discussed:

Amendment drawn up to address yesterday's
discussion

Motion and vote:

Motion to recommend HB 1186 - w Karls
amendment 15.0446.02002 to full Judiciary
Committee 1. Brabandt 2. Delmore
m/c unanimous)Time of adjournment: 11:45

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1186
2/11/2015
#23679

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Beckie Struge

Minutes:

Proposed amendment #1,2,3,4

Chairman K. Koppelman: Opens hearing on HB 1186.

Vice Chairman Karls: Discussed the subcommittee meetings and all three bills: HB 1186, HB 1078 and HB 1265. Our opinion was we need to send forth a vehicle that keeps these devices and substances out of the hands of minors. We decided HB 1186 is probably the strongest of the bills. Representative Koppelman submitted an amendment when he testified to put the child resistant packaging in his bill. From HB 1265 we took the definition of an electronic smoking device and added that to 1186. The other part that is new to that amendment is the middle section on page 2, number 2, those two parts will fit into pages 4 & 5 of the original bill. (See proposed amendment #1)

In the subcommittee we had a motion to recommend that HB 1186 with the amendment. We had a 3-0 vote.

Chairman K. Koppelman: We have the subcommittee report with the amendment submitted, motion moved by Representative Karls.

Rep Maragos: Seconded

Voice Vote carried.

Rep. K. Wallman: We have protections in place already under the tobacco laws, and I think this should go under the tobacco laws. I have one amendment for a more comprehensive definition and another amendment that states clearly where these products can be placed. And I have a third amendment that defines a vending machine.

Chairman K. Koppelman: The subcommittee recommended alternative amendments that dealt with the same issue.

Rep K. Wallman: I brought the committee minutes with Doug Barrs testimony, that the Attorney General doesn't take a position regarding a particular bill. I believe this amendment does broadly and clearly define it. (Proposed Amendment #2)

Chairman K. Koppleman: Which amendment?

Rep K. Wallman: The first one with the definition. On page 4 after line 7 it would insert b. (and the definition of tobacco products). The second one was the testimony by Doug Barr as to the Attorney General's position.

Chairman K. Koppleman: The first amendment looks like it's removing language on page 3 and inserting the definition of "tobacco product" on page 4. Representative Wallman moves that amendment.

Rep P. Anderson: Seconded

Rep K Karls: We discussed adding this amendment in the committee. It would place this statute into the tobacco section. We are dealing with a criminal code here. By putting it in the tobacco section we then have to deal with taxation and a lot of other issues. We are not a taxation committee.

Rep P. Anderson: I remember one of the first votes we had on the floor that was taxation tobacco products regarding e-cigarettes. They said they would leave it up to Judiciary to define them before putting them into the tax bill. I think we should define them as tobacco products.

Chairman K. Koppleman: The purpose of this bill was to deal with the criminal issue. There are ramifications of classifying it as a tobacco product. There is a bill that Finance and Tax is dealing with that specifically deals with taxing these products.

Rep M. Johnson: The original bill does not define tobacco products.

Rep K Koppleman: Some of the other bills do that.

Rep K. Wallman: The Attorney General did request a comprehensive definition. We already have protections in place that we could capitalize on.

Chairman K. Koppleman: As I read the current bill, it looks like a comprehensive definition.

Rep. K. Wallman: My thoughts are this need to be in the section of law. It has been requested by the Attorney General's office. And this spells it out.

Chairman K Koppleman: So does the bill. Why is this more comprehensive than the bill? We have two issues here: 1) what section of code to put it in, 2) is it comprehensive enough? As I read them both, I think they are both comprehensive enough.

Rep K. Wallman: Vending machines get the definition in here. I think all the components of a good bill and good law are well defined.

Chairman K Koppleman: So the clarity of calling it a tobacco product versus calling an alternative nicotine product is your focus? Ok.

Rep D Larson: Representative Wallman, when you are defining "tobacco product" does that have anything to do with e-cigarette?

Rep K Wallman: If we have a definition of tobacco product that includes these devices, then we have defined what those are, too.

Chairman K Koppleman: It appears that the original bill focuses on these e-cigarettes. The definition you are proposing expands it to include cigarettes, cigars.

Voice Vote was taken, unsure if it carried.

A roll call vote was taken. Yes: 4 No: 8 Absent: 1

Motion fails.

Chairman K Koppleman: Representative Wallman, please walk us through the next amendment proposed.

Rep K Wallman: Page 4, line 1, it would replace "a" with "any". Page 4, line 1, inserts language. Page 4 removes lines 2-7. (Proposed Amendment #3)

Chairman K Koppleman: So you would be changing the definition of a self-service display, to one that is no accessible.

Rep K Wallman: I can explain the intent. The tobacco products can't be anywhere except behind the sales counter. My intention was to make it perfectly clear that these vaping products need to be behind the counter. Self-service display does not mean behind the counter.

Chairman K Koppleman: What we are missing in the original bill is in "b." The original intent in that section was that if you had a product like this in a tobacco store, that it wouldn't have to be behind the counter, but anywhere else it would.

Rep K Wallman: It could be redundant.

Rep Paur: It appears to me that a self-service display is not a self-service display.

Chairman K Koppleman: Right. What the original bill says is you cannot offer these products in a display unless it's in a tobacco specialty store.

Rep K. Wallman: I motion to move the amendment

Rep P. Anderson: Seconded

Rep K Wallman: I just wanted to add that the second part is to remove lines 2-7. This would actually replace the definition of self-service in the bill.

Rep K Hawken: (inaudible)

Voice vote failed.

Chairman K Koppleman: The third amendment deals with vending machines.

Rep K Wallman: On page 4, after line 25, insert a definition of "vending machine". Motion to move to adopt amendment. (Proposed Amendment #4)

Chairman K Koppleman: Do you know if "vending machine" is defined elsewhere in law, and if this is consistent with that?

Rep K Wallman: I did search the century code and did not see that definition.

Chairman K Koppleman: In the bill it refers us to this section. It does not define vending machines. What are remote control locking mechanisms?

Rep K Wallman: I don't know.

Rep. P Anderson: Seconded

Voice Vote carries. Amendment is adopted.

Rep K Wallman: If the three bills that were looked at committee, if one rises to the surfaces are the other two immediately defeated?

Chairman K Koppleman: No, we will vote on all the bills.

Rep D Larson: Did the subcommittee discuss HB 1078?

Rep K Karls: We looked at all three bills. We read them before-hand.

Rep D Larson: Was there any discussion on HB 1078?

Rep K Karls: Not a lot.

Chairman K Koppleman: We have the twice amended HB 1186, once with amendment recommended by subcommittee and once with the "vending machine" definition amendment.

Rep Maragos: Motion to move a Do Pass as twice amended on HB 1186.

Rep Paur: Seconded

Rep K Wallman: Why shouldn't this be regulated and categorized with the other nicotine tobacco products that are regulated in North Dakota?

Chairman K Koppleman: The answer I've heard repeatedly is that classifying these products as a tobacco product is not necessarily wrong but it has other ramifications - mainly regulation and taxation. This one is designed to strictly keep the products out of the hands of minors.

Rep K Wallman: A speaker once said 'what you permit, you promote', and in many ways we are promoting them, saying you can side step the harm of smoking a cigarette by using e-cigarettes. There is research that says kids don't realize that these are tobacco products - there is nicotine from tobacco in them, and they are flavored like skittles.

Rep Paur: On other things like Nicorette lozenges, patches, gum etc., would they all be considered tobacco products?

Rep K Wallman: That's a good question. The problem is the tobacco industry is spending millions of dollars marketing to kids.

Rep Maragos: I think the remark 'if you permit it, you promote it' is a totally inappropriate remark. We don't promote anything, though we may or may not permit.

Rep M Johnson: On that statement I understood to mean we as a society, not we as they legislature.

Rep K Wallman: You are correct Representative Johnson.

Chairman K Koppleman: One point that is very important to be made and reiterated is despite what we heard discussed, I feel all these bills are coming from people who want to do the right thing. Everyone wants to do the right thing. What we really want to do is get these things out of the hands of kids.

Chairman K Koppleman: We'll call roll on a DO Pass on a twice amended motion on HB 1186.

A roll call vote was taken. Yes: 9 No: 3 Absent: 1

Chairman K. Koppleman: Vice Chair Karls will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

Page 1, line 1, after "Act" insert "to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers;"

Page 1, line 3, replace "vapor products" with "electronic smoking devices"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to provide an expiration date"

Page 1, line 8, replace "**vapor products**" with "**electronic smoking devices**"

Page 1, line 12, replace "vapor products" with "electronic smoking devices"

Page 1, line 17, replace "vapor products" with "electronic smoking devices"

Page 1, line 24, replace "vapor products" with "electronic smoking devices"

Page 2, line 1, remove "vapor"

Page 2, line 2, replace the first "products" with "electronic smoking devices"

Page 2, line 5, replace "vapor products" with "electronic smoking devices"

Page 2, line 6, replace "vapor products" with "electronic smoking devices"

Page 2, line 13, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, remove the second "vapor"

Page 2, line 16, replace the first "products" with "electronic smoking devices"

Page 3, line 28, replace "vapor product" with "electronic smoking device"

Page 4, line 1, after "b." insert "\"Electronic smoking device\" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

c. "

Page 4, line 3, replace "vapor products" with "electronic smoking devices"

Page 4, line 8, replace "c." with "d."

Page 4, line 11, replace "vapor products" with "electronic smoking devices"

Page 4, remove lines 15 through 25

Page 5, line 1, replace "vapor products" with "electronic smoking devices"

Page 5, line 8, replace "vapor products" with "electronic smoking devices"

Page 5, line 12, replace "vapor products" with "electronic smoking devices"

Page 5, line 15, replace ""vapor products"" with ""electronic smoking devices""

Page 5, after line 16, insert:

"SECTION 3. Section 12.1-31-03.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for liquid nicotine containers.

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred."

Page 5, line 30, replace "vapor products" with "electronic smoking devices"

Page 6, line 2, replace ""vapor products"" with ""electronic smoking devices""

Page 6, line 6, replace "**vapor products**" with "**electronic smoking devices**"

Page 7, line 23, replace "vapor products" with "electronic smoking devices"

Page 7, line 24, replace "a vapor product" with "an electronic smoking device"

Page 7, line 25, replace "vapor products" with "electronic smoking devices"

Page 7, line 30, replace "vapor product" with "electronic smoking device"

Page 8, line 4, replace "vapor product" with "electronic smoking device"

Page 8, line 6, replace ""vapor products"" with ""electronic smoking devices""

Page 8, after line 7, insert:

"SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective until the date the attorney general certifies to the legislative council that final regulations issued by the United States food and drug administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective."

Renumber accordingly

PROPOSED AMENDMENT TO HOUSE BILL 1186

Page 3, remove lines 24 through 30

Page 4, line 1, replace "b." with "a."

Page 4, after line 7, insert:

"b. "Tobacco product" means any product containing, made from, or derived from tobacco, in whole or in part, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, consumed, or ingested by any other means, including cigarettes, cigars, noncumbustible cigarettes, pipe tobacco, chewing tobacco, snuff, snus, liquid, or other kinds and forms of tobacco. "Tobacco product" includes any product or device that contains nicotine, in any form, that is derived from tobacco. Any product that contains nicotine shall be presumed to contain nicotine derived from tobacco unless the nicotine is confirmed to be derived from a different source. "Tobacco product" does not include any cigarette as defined in section 57-36 or any product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.]"

Renumber accordingly.

PROPOSED AMENDMENTS TO HOUSE BILL 1186

Page 4, line 1, replace "a" with "any"

Page 4, line 1, after the second comma, insert "or tobacco products anywhere other than an area that is behind a sales counter where the public is not permitted to access."

Page 4, remove lines 2 through 7

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

Page 4, after line 25, insert:

"e. Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms."

Renumber accordingly.

February 11, 2015

2/11/15
1/3

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

Page 1, line 1, after "Act" insert "to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers;"

Page 1, line 3, replace "vapor products" with "electronic smoking devices"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to provide an expiration date"

Page 1, line 8, replace "**vapor products**" with "**electronic smoking devices**"

Page 1, line 12, replace "vapor products" with "electronic smoking devices"

Page 1, line 17, replace "vapor products" with "electronic smoking devices"

Page 1, line 24, replace "vapor products" with "electronic smoking devices"

Page 2, line 1, remove "vapor"

Page 2, line 2, replace the first "products" with "electronic smoking devices"

Page 2, line 5, replace "vapor products" with "electronic smoking devices"

Page 2, line 6, replace "vapor products" with "electronic smoking devices"

Page 2, line 13, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, remove the second "vapor"

Page 2, line 16, replace the first "products" with "electronic smoking devices"

Page 3, line 28, replace "vapor product" with "electronic smoking device"

Page 4, line 1, after "b." insert "\"Electronic smoking device\" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

c."

Page 4, line 3, replace "vapor products" with "electronic smoking devices"

Page 4, line 8, replace "c." with "d."

Page 4, line 11, replace "vapor products" with "electronic smoking devices"

Page 4, replace lines 15 through 25 with:

- 2/3
- "e. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms."

Page 5, line 1, replace "vapor products" with "electronic smoking devices"

Page 5, line 8, replace "vapor products" with "electronic smoking devices"

Page 5, line 12, replace "vapor products" with "electronic smoking devices"

Page 5, line 15, replace ""vapor products"" with ""electronic smoking devices""

Page 5, after line 16, insert:

"**SECTION 3.** Section 12.1-31-03.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for liquid nicotine containers.

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred."

Page 5, line 30, replace "vapor products" with "electronic smoking devices"

Page 6, line 2, replace ""vapor products"" with ""electronic smoking devices""

Page 6, line 6, replace "**vapor products**" with "**electronic smoking devices**"

Page 7, line 23, replace "vapor products" with "electronic smoking devices"

Page 7, line 24, replace "a vapor product" with "an electronic smoking device"

Page 7, line 25, replace "vapor products" with "electronic smoking devices"

Page 7, line 30, replace "vapor product" with "electronic smoking device"

Page 8, line 4, replace "vapor product" with "electronic smoking device"

Page 8, line 6, replace ""vapor products"" with ""electronic smoking devices""

Page 8, after line 7, insert:

3/3

"SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective until the date the attorney general certifies to the legislative council that final regulations issued by the United States food and drug administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective."

Renumber accordingly

Date: 2-14-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1186

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0446.02002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. K. KARLS Seconded By Rep. M. ARAGOS

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-11-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1186

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: See below

Recommendation: ☒ Adopt Amendment #1)
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. K. Wallman Seconded By Rep. P. Anderson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman		✓	Rep. Pamela Anderson	✓	
Vice Chairman Karls		✓	Rep. Delmore		✓
Rep. Brabandt		✓	Rep. K. Wallman	✓	
Rep. Hawken		✓			
Rep. Mary Johnson		✓			
Rep. Klemin	A				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos		✓			
Rep. Paur	.	✓			

Total (Yes) 4 No 8

Absent 0

Floor Assignment Failed

If the vote is on an amendment, briefly indicate intent:

A comprehensive definition of "tobacco product"

Date: 2-11-15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1186

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: see below

Recommendation: Wallman #2
☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Wallman Seconded By Rep. P. Anderson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Location of self-service display of tobacco products.

Date: 2-11-15
Roll Call Vote #: 4

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1182

House JUDICIARY

Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: See below

Recommendation: Wallman #3
☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐

Motion Made By Rep. Wallman

Seconded By

Rep. P. Anderson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

"Vending machine" definition.

Date: 2-11-15
Roll Call Vote #: 5

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1186

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0446.0200.3

Recommendation: ☒ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended 2 ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Moragos Seconded By Rep. Paur

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson		✓
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman		✓
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	A				
Rep. Kretschmar	✓				
Rep. D. Larson		✓			
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 9 No 3

Absent 1

Floor Assignment Rep. Karls

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1186: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1186 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers;"

Page 1, line 3, replace "vapor products" with "electronic smoking devices"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to provide an expiration date"

Page 1, line 8, replace "vapor products" with "electronic smoking devices"

Page 1, line 12, replace "vapor products" with "electronic smoking devices"

Page 1, line 17, replace "vapor products" with "electronic smoking devices"

Page 1, line 24, replace "vapor products" with "electronic smoking devices"

Page 2, line 1, remove "vapor"

Page 2, line 2, replace the first "products" with "electronic smoking devices"

Page 2, line 5, replace "vapor products" with "electronic smoking devices"

Page 2, line 6, replace "vapor products" with "electronic smoking devices"

Page 2, line 13, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, remove the second "vapor"

Page 2, line 16, replace the first "products" with "electronic smoking devices"

Page 3, line 28, replace "vapor product" with "electronic smoking device"

Page 4, line 1, after "b." insert "\"Electronic smoking device\" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

c."

Page 4, line 3, replace "vapor products" with "electronic smoking devices"

Page 4, line 8, replace "c." with "d."

Page 4, line 11, replace "vapor products" with "electronic smoking devices"

Page 4, replace lines 15 through 25 with:

- "e. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms."

Page 5, line 1, replace "vapor products" with "electronic smoking devices"

Page 5, line 8, replace "vapor products" with "electronic smoking devices"

Page 5, line 12, replace "vapor products" with "electronic smoking devices"

Page 5, line 15, replace ""vapor products"" with ""electronic smoking devices""

Page 5, after line 16, insert:

"SECTION 3. Section 12.1-31-03.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for liquid nicotine containers.

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred."

Page 5, line 30, replace "vapor products" with "electronic smoking devices"

Page 6, line 2, replace ""vapor products"" with ""electronic smoking devices""

Page 6, line 6, replace "**vapor products**" with "**electronic smoking devices**"

Page 7, line 23, replace "vapor products" with "electronic smoking devices"

Page 7, line 24, replace "a vapor product" with "an electronic smoking device"

Page 7, line 25, replace "vapor products" with "electronic smoking devices"

Page 7, line 30, replace "vapor product" with "electronic smoking device"

Page 8, line 4, replace "vapor product" with "electronic smoking device"

Page 8, line 6, replace ""vapor products"" with ""electronic smoking devices""

Page 8, after line 7, insert:

"SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective until the date the attorney general certifies to the legislative council that final regulations issued by the United States food and drug administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective."

Renumber accordingly

2015 SENATE JUDICIARY

HB 1186

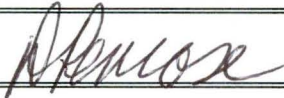
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1186
3/18/2015
25045

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23

Ch. Hogue: We will open the hearing on HB 1186.

Rep. K. Koppelman: Sponsor, support (see attached 1,2).

Rep. Marvin Nelson: Support (see attached #3).

Sen. Luick: Can you tell me how you would handle this. Let's say we do consider this being a tobacco product and it truly is not a tobacco product or related to tobacco, are we going to be taxing them under tobacco laws.

Rep. M. Nelson: I think they could be taxed at a percentage of the cost if we didn't do anything or put an exemption in and not tax it. Frankly, from a safety standpoint, I'm not that worried about whether do or don't tax them. The problem comes when you start defining them as different things, it's such a continuum and things are changing so much, so fast. This bill, as it's written, really goes beyond tobacco products, beyond even nicotine products. That's probably necessary. The thing is you can find electronic cigarettes that have tobacco in them today. You could take a vaporizer leaf and use it. Then, at the same time, we have these e-liquids. Most e-liquids just consist of four products. More things are starting to show up. To get hung up on "is it tobacco" or not, whatever word we use, it just becomes much easier for the retailers because it's like in training their employees. If we just treat it like tobacco, or tobacco-like, then it's very easy for them to train their employees. They treat the products like they have been treating tobacco. If we carve it out and start separating it, there are going to be products where it will be very hard to classify them. Are they going to be a tobacco product or one of these products? Let's not get hung up on the technical aspects of it, potentially a person could have synthetic nicotine. It's not done because it is much more

expensive, but if for some reason we suddenly really get hung up that the nicotine has to be from a tobacco product, somebody could potentially go out there and create an artificial one. I just don't think it is that helpful with this rapidly changing environment and market to really try to make those fine distinctions, because if you leave a crease, this market is going to find it.

Ch. Hogue: Thank you. Further testimony in support.

Rae Ann Kelsch: Support of HB 1186 representing Reynolds American Inc. There is a consultant here from Reynolds American Inc. and she has national experience on this issue and can get into the technical questions and will give you the technical support that you need to make your decision on this bill (see attached 4,5,6).

Sen. Armstrong: Questions? Thank you. Further testimony in support.

Heidi Tring, consultant with Reynolds American, Inc.: Support (see attached #7). Thirty-two states have acted to keep vapor products out of the hands of minors. ND is one of the 8 remaining states. I've worked on these bills in a number of states across the country. As you know, HB 1186 bans the sale of vapor products, aka e-cigarettes and other alternative nicotine products to minors. Reynolds has an electronic cigarette called VUSE. It's the only electronic cigarette product manufactured in the US. It is targeted only to adult smokers as a non-combustible alternative product for those smokers. It is a closed system. Some of the previous witnesses that testified were mentioning the liquid bottles of nicotine. That was one of the main reasons that Reynolds was the last to market on this. They took a lot of time for research and development to ensure that it was packaged in child-resistant packaging in a closed system. It also, as Rae Ann mentioned, it's an electronic product that actually got a lot of attention at the Consumer Electronics show last year when it was first unveiled because of its smart memory system. It uses nicotine, but it is not tobacco. As you know, HB 1186 passed the House by a vote of 71-20. We believe this is the strongest bill before the legislature this session. It regulates vapor products and alternative nicotine products, which is important. You may have seen Snus, lozenges, sticks, gum, there are a lot more products coming out on the market and HB 1186 ensures that they are included in that. The bill also prohibits vending machine sales. It adds a definition and prohibits self-service displays except in tobacco stores where minors cannot enter. You've heard a lot of testimony about the child-resistant packaging and we believe that was an important addition. It includes language prohibiting internet and mail sales. We again

believe that it properly defines electronic cigarettes and alternative vapor products; not as tobacco but defined in the criminal code, which is important to ensure that the law is actually acting as a deterrent.

Sen. Casper: When you talk about a closed system, is that in a cartridge you have to crack to get in to the product.

Heidi Tring: Yes. Reynolds purposely chose not to manufacture the additional liquid nicotine. You buy additional cartridges in those systems.

Sen. Casper: So we are putting a child safety cap on the bottles.

Heidi Tring: Yes, that's been included in a number of those other states that I mentioned as well.

Sen. Casper: Have most of these states, as part of their laws, moved the products behind the counters, as well.

Heidi Tring: Yes, similar restrictions. It is state by state, so it's not across the board consistent, but again one of the things we feel is key and this came up earlier, the way that it's defined in HB 1186, is the way we feel it should be defined. If you define it as a tobacco product, really we see that as a back door way to tax them. That's something that the FDA has regulations that are going to be coming out. We really feel that's the most appropriate, to wait and see how the feds. deal with it. Then states can take those steps. Right now, the most important thing is to keep them out of the hands of minors. This bill does it in a way that really has a broad consensus on the approach.

Sen. Grabinger: Isn't nicotine a derivative of tobacco, or is there another source to get nicotine.

Heidi Tring: There are other sources but the way that it's used in the way that we derive it, is certainly from the tobacco plant. It's not combustible and it is just nicotine, it's not tobacco.

Sen. Grabinger: So it's a derivative.

Heidi Tring: Yes.

Sen. Armstrong: When every state does this, you either have to market to the most restrictive rules or just not market to a particular state when you are doing it from a business model standpoint.

Heidi Tring: Yes, it is state by state. There is a lot of administrative effort put into ensuring that they are complying with each individual state's laws. There are only two states currently that tax the e-cigarettes right now, MN and NC. The rest of the states and most of them have deferred and are waiting for the FDA to decide how they are going to regulate it.

Sen. Armstrong: My question is for the safety packaging and how you actually send it out. I am assuming you only make the packaging one way; you don't do it 17 different ways.

Heidi Tring: Yes, as I mentioned, we were one of the last to market, primarily because we were very deliberate about ensuring that this product was marketed to adult smokers as an alternative for adult smokers. Currently they are placed in the same place that cigarettes are placed. Our displays are very deliberate and not marketed towards children.

Sen. Armstrong: Thank you. Further testimony in support.

Katie Leary, Sophomore at Century High School, Bismarck: Support (see attached #8).

Sen. Armstrong: What is the arm band for?

K. Leary: The arm band is in support of "kick butts day", which is a nationwide awareness campaign for cigarettes and now has come to include e-cigarettes in many locations. The arm bands are in support of us because we are the generation that can end smoking permanently.

Sen. Armstrong: Thank you. Further testimony in support.

Jayden Heidt: I am speaking on behalf of Mandy Jordan, who wasn't able to be here today. This is her testimony (see attached 9).

Sen. Nelson: Your sign says you're an artist. Katie says she is a singer. Those are kinds of industries that were portrayed for many years with the cigarette. What is the message you are trying to send with the arm band.

Jayden Heidt: To answer your question, my nametag says that I am not a replacement; I am an artist and a SADD representative. It's really just another aspect of our celebrating our "Kick Butts Day", which is why we are wearing the "end it" bands, which is just to try and end smoking and using cigarettes. I portray myself to be an artist. I'm not just somebody who can be replaced, used as a consumer for cigarettes, so if somebody dies from using cigarettes, they can't take me and put me in their place instead.

Ch. Hogue: Thank you. Further testimony in support.

Victoria Brucker, sophomore at University of Mary, on behalf the Health Pro Students: Support (see attached #10).

Ch. Hogue: Thank you. Further testimony in support.

Mike Rud, President ND Petroleum Marketers and ND Retail Association: Support (see attached 11). A majority of our members already treat these products as tobacco products. They don't sell to minors; we don't want to be involved in this. We want what is in the best interests of all our customers to be taken care of and HB 1186 will do that. It is by far the most comprehensive bill that is out there. We did look at all three bills and we sided with HB 1186 just because of that fact. It not only deals with what we are seeing right now, but it's going to take us into the future until the FDA says otherwise. I did attach a "We Card Sheet". We take this issue seriously when it comes to selling any products to minors. You can see what we're up against. The FDA is showing up in the North Dakota stores right now and some of the fines get pretty heavy there; if you take a look at between \$10,000-11,000 for a sixth violation within a 48 month period. The first time they come through you get warned, but after that they start taking money from you. Our guys are aware of what is going on out there and we want to do all we can to make sure that we're selling tobacco products and, for that matter, e-cigarettes to adult consumers.

Sen. Grabinger: Were you able to see this picture in the store, is that a violation of the FDA's rules now.

Mike Rud: I can't speak to that right now because I don't think the FDA rules have been finalized. Until I actually see the final promulgation of those rules, it's going to be pretty hard for me to say what is considered a violation. I assume that will be a violation. That's why we opted for this bill. It contains language about the self-serve displays being behind the counter and most of

our members right now do have a lot of these products behind the counter. I've never seen that big of a display in a store, but that's a first. It just depends on much showroom space you have. We strongly support moving these products behind the counter and making sure that they are sold to adults only.

Ch. Hogue: Thank you. Further testimony in support.

Laney Herauf, Greater ND Chamber of Commerce: Support (see attached #12).

Ch. Hogue: Thank you. Further testimony in support.

Doug Barr, Office of Attorney General: Support (see attached #13).

Ch. Hogue: The key feature, in terms of distinguishing HB 1078 from HB 1186 is that HB 1186 addresses alternative nicotine products and any permutations from these products that will come forth in the future. Is that the gist of the difference?

Doug Barr: There are two differences. One is that it goes beyond vapor products, but includes alternative nicotine products. The second is that HB 1186 has the self-service display provision which to my recollection is that HB 1078 does not. As noted, there was an amendment to 1186 to add the packaging requirement. I don't believe that HB 1078 has anything like that. Those are the major differences. I think the Health Dept. testified yesterday regarding the definition, falling under tobacco or not, too. The two points on our handout is the broader coverage, because it includes alternative nicotine products and prohibits self-service displays.

Ch. Hogue: Thank you. Further testimony in support.

TJ Jerka read testimony of Dr. Eric Johnson, Tobacco Free ND, UND School of Medicine: Support (see attached 14).

TJ Jerke, Education and Advocacy for Tobacco Free ND: Support (see attached 15, 16).

Ch. Hogue: Were these amendments offered in the House.

TJ Jerke: They were not. The issue you may have heard already is taxing e-cigarettes. Many are concerned; the Petroleum Marketers are considering

taxing them. Those amendments include a definition of tobacco products. Unless that definition in the amendments of tobacco products is in chapter 57-36, to my knowledge, they will not be taxed. That definition in those proposed amendments would encapsulate everything relative to tobacco products and it would address the alternative nicotine product which we are asking you to move as you will hear from later testimony.

Sen. Nelson: On the chart that you handed out, it lists Wahpeton, West Fargo, Grand Forks, Harwood, Mapleton as having their own tobacco retailer license. Is that in addition to the state?

Mr. Jerke: From my understanding currently, best practice says to allow local communities to adopt more stringent ordinances. It's important that we require the tobacco retailer's license for e-cigarettes at the statewide level because there are many communities that don't have local ordinances. There are also stores that don't sell tobacco products but can sell e-cigarettes.

Ch. Hogue: Thank you. Further testimony in support.

Krista Fremming, Director of Chronic Disease Division at ND Dept. of Health: Support (see attached #17).

Ch. Hogue: Thank you. Further testimony in support.

Alison Harrington, Respiratory Therapy Care Manager and certified tobacco treatment specialist: Support (see attached #18).

Ch. Hogue: Do you have any clinical experience with this being a gateway to tobacco.

Alison Harrington: I do, yes. I see that they are not only addicted to nicotine or tobacco, but also other drugs, many times.

Ch. Hogue: Thank you. Further testimony in support.

Kristie Wolff, Program Manager, American Lung Association of ND: Support (see attached 19). She showed many different examples of e-cigarettes.

Sen. Luick: This looks like a bong.

Kristie Wolff: It does look kind of like that. It would be called a "mod" or adult personal vaporizer. Many of these products are being used for other substances as well. That is addressed in HB 1186, the use of other substances. We encourage that is in there. CDC has a list of things such as THC, bath salts and other products that are being used, but yet they are being used as drug delivery devices. I actually went online and searched how to make hash oil in my crock pot for my e-cigarettes.

Sen. Luick: This is actually pretty cool (was holding a silver and glass delivery pipe). The mechanics of this is cool. Is there an additive like testosterone that you could put in there?

Kristie Wolff: I am not aware of that.

Ch. Hogue: Thank you. Further testimony in support.

Renae Byre read testimony of Sargent Margie Zietz, Minot Police Dept.: Support (see attached #20).

Ch. Hogue: Thank you. Further testimony in support.

Deb Knuth, Government Relations Director, American Cancer Society Cancer Action Network for ND: Support (see attached #21).

Ch. Hogue: Thank you. Further testimony in support.

Patty Olson, Safe Kids Grand Forks: Support (see attached #22). Patty Olson read the testimony of Carma Hanson, Coordinator, Safe Kids Grand Forks.

Ch. Hogue: Thank you. Further testimony in support.

Katie Fitzsimmons read testimony of Courtney Koebele, ND Medical Association: Support (see attached #23).

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

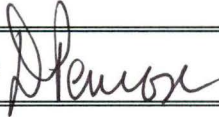
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1186
3/25/2015
25427

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: Let's take a look at HB 1186.

Sen. Casper: After looking through everything, I am okay with the bill's language unless there is a suggestion to change that. I have to assume that the reason the products are behind the counter now; they're not sitting out front on the counters that the stores choose to do that. I didn't look into whether there was a licensing requirement, but I didn't see anything there.

Ch. Hogue: We will table for now. We will take a look again at HB 1186.

Sen. Casper: Explained his amendment (see attached #1). I worked with the Attorney General's office and counsel on this. This goes to what I was saying this morning. My main concern with this, the way it was currently drafted was being clear about these products behind the counter, not being sold on the counter. I think the way the bill is drafted now, they couldn't sell them on the counter. Now, it's clear that you couldn't sell the bottles that we're adding the provision to have the child safety cap on. You couldn't have that right next to 5 hour energy bottles and grab one or the other as a customer. I think you could have a case right next to the 5 hour energy bottles that would have those bottles in them, that the customer couldn't serve themselves, they couldn't open the case and take them, but could ask the cashier for one bottle, just like they can for a pack of cigarettes that is behind the counter. I think that I do not want to see those products on the counter. I'd like to see them beyond arm's length from customers in the store. I don't think it is too much of a burden for the stores to do this. They are already doing this with a number of other products. Very simply, on page 1, line 20 I think it adds some clarity to say that "in any location that is accessible to the public". We are requiring that the products be behind the counter, not on the counter. The next change

is going to be on the definition sections, page 4, lines 11-17, we do not need the self-service display definition because there won't be access for the public without having to ask the cashier for the product.

Sen. Armstrong: Does this apply to cigarettes too.

Sen. Casper: It applies to section b, all items are off limits.

Sen. Armstrong: I understand this for large convenience stores. What about the incredibly small tiny gas station in Regent that does not have behind counter space? They have everything on the counter. They are locked in their case and they have to open them from the back, but they don't have behind the counter space. Will they have to remodel or no longer sell tobacco products because I think they are the only one after 9:00 pm in that community and there might be some grouchy smokers?

Sen. Casper: Under this provision, with this amendment, the technical answer is that they couldn't have the products in any location that are accessible to the public. The answer is "no".

Sen. Armstrong: If they have them in a locked case on the counter, this would make that unacceptable.

Sen. Casper: Yes.

Sen. Armstrong: Without this amendment, though, they are still locked. If this amendment doesn't go through, a customer cannot take it on their own.

Sen. Casper: Yes.

Sen. Armstrong: An employee would have to help them.

Sen. Casper: Yes.

Ch. Hogue: That is the amendment you are recommending.

Sen. Casper: Yes.

Sen. Nelson: Who worked on those amendments? Was there a subcommittee.

Sen. Casper: Just me.

Sen. Nelson: Not any of the groups that testified.

Sen. Casper: I discussed with every one sitting in the room currently. The original draft I worked with the attorney from the AG's office that works with the ND Breathe ND, Center for Tobacco Prevention.

Ch. Hogue: I wanted to talk about the other amendments that were proposed by witnesses. It's kind of an interesting dynamic because from the House and one faction is that they don't want this to be regarded or technically defined as a tobacco product for fear that it will trigger some tax liability and open the door for taxing the product and on the other side, is the concern that they want to be able to identify everybody who is selling the product. A way to do that is to have them get a retailer's license so the House apparently came out on the side that didn't want those amendments.

Sen. Casper: Moved the Sen. Casper amendments, Sen. Grabinger seconded the motion but later they withdrew their motions and the bill was tabled.

Sen. Armstrong: I'm not going to support the amendment, I think now we have branched out of the e-cigarette realm and we're placing further restrictions on cigarettes. I think we are getting into a scope of something that wasn't originally in the bill. I think that as long as businesses are keeping these out of reach, it should be up to the businesses as to how they will do it; so long as they are secured and not easily available.

Ch. Hogue: Your objection is that now it includes cigarettes and snuff in the restrictions of how accessible the products are by the retailer. Is that right.

Sen. Armstrong: Yes, I think it expands into how they have to operate. I don't have a problem if they are in a locked case. I don't know why we have to further restrict it. They have to go through the process of getting somebody to open the case for them, whether its cigarettes or the e-cigs.

Ch. Hogue: In your example I thought you were saying that the small convenience stores in small communities don't have the space to have that physical separation between the customer and the clerk.

Sen. Armstrong: My concern is that if you have this locked in and sitting on the counter, which is where a lot of times this happens for both big and small stores, with the larger stores, with room, it's not necessarily a big deal. I was actually in the gas station on the north side of the interstate. It seems to be the busiest gas station in ND every time I pull in there. They have a locked case sitting on the counter where you check out and the case opens from behind, but they are sitting in the case. Well to me, that is available to the public. If this passes, they would have to move behind the counter, instead of being on the counter under this definition. I think how they are locked currently is sufficient. Somebody has to open it.

Sen. Grabinger: How is that different than the cigarettes up behind the counter? They are visible to the public, rows and rows of cigarettes, right up there for everyone to see. How is that any different, it's inaccessible to the public. They can't get to them because they are behind the counter. You can still see them, but the public can't get them.

Ch. Hogue: I think the merchant has an interest in making them inaccessible because of theft. I don't have a concern about the amendment.

Sen. Casper: It comes down to the interpretation of a location that is inaccessible to the public. I'm thinking about the place where they have the locked humidor where you go to a shop to purchase a cigar. Those are locked; you ask for the one you want and the person comes over and opens that out and give you the cigar you want. It's locked.

Sen. Armstrong: If you look at what is struck out on page 4, the last sentence is particularly concerning to me. That specifically talks to my concern.

Sen. Casper: Maybe the better way to go about this is to limit this section to electronic smoking device or alternate nicotine products. My concern is having it on the counter, the vial of the product that is accessible that someone could grab, and there is a difference between what we heard in testimony, what's in as compared to what is in a pack of cigarettes, because they are talking about people being poisoned for just getting it on their skin. I think that product, in particular, is what I am after getting behind the counter.

Ch. Hogue: How about if you took the sentence out of page 4, line 16 and said that if the products are held behind the locked doors or secured that does not constitute accessible. If they are on the counter, but are locked and secured in some way that isn't accessible.

Sen. Casper: I looked at that for the past couple of days. This is where it gets back to what is or isn't accessible, and what's on the counter. Is it locked on the counter?

Sen. Nelson: On page 3, line 26, where you start the definition section. Maybe you should have a definition of accessible to the public. You could still delete out "c" because you don't want to define self-service display because you're not using that anymore, but you are using accessible to the public and what do you mean for it to say in this section. Put it in the definition and then use it.

Sen. Armstrong: Doesn't the original language preclude self-service displays unless you are in a tobacco store. So, what's the additional barrier we're trying to create and why are we trying to create it? Under the current language, I don't think you can go and pick the flavor. You can't just walk in and grab it from the counter. So we're just creating a second barrier.

Sen. Casper: We're not putting the products on the counter. That's what I am trying to get at.

Sen. Armstrong: If you unstrike the last language in "c", that would go against what you are trying to do too. That would exclude exactly what you are trying to do.

Sen. Casper: Yes.

Sen. Nelson: You don't have to define a self-service display because you are never using that term. Why do you have to have that language in there?

Sen. Casper: I see the point because it's the other items that we are concerned about; to create unintended consequences here beyond the vials of the refills and other products.

Ch. Hogue: I think the amendments are creating a modified version of what it means to have a self-service display and then taking that definition out.

Sen. Nelson: Maybe you can just say accessible to the public means "available without the help of a store employee".

Ch. Hogue: We will table this discussion and take it up later. I appoint Sen. Casper and Sen. Grabinger to come up with a new amendment.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1186

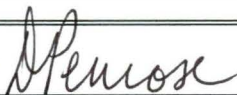
3/30/2015

25583

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: Let's take a look at HB 1186.

Sen. Nelson: I went to get gas last night and saw these e-cigs behind the counter on the bottom shelf. They were just in a case with all the other kinds of cigarettes. They were asking for ID to sell cigarettes. I didn't see anyone buying e-cigs, but they were there.

Ch. Hogue: Which city.

Sen. Nelson: Fargo, at the Holiday Station.

Sen. Grabinger: You asked Sen. Casper and me to get together if we wanted to come up with any amendments to this bill. We looked it over and had many conversations with people regarding it. I think we both agree that no amendments should be made and I would support passing the bill as is.

Sen. Casper: I concur. My thinking over the weekend was if we do something too quick and have to deal with unintended consequences. I'm certainly going to be paying attention to the way Sen. Nelson was through the next 1.5 year and see what we come up with next time.

Sen. Nelson: My husband went into the Empire Liquor Store, they were also behind the counter, up at eye level, but you couldn't jump the counter because it was too high.

Sen. Armstrong: I move a Do Pass.

Sen. Casper: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Grabinger

Date: 3/30/2015

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1186

Senate

JUDICIARY

Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick		✓			

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Grabinger

REPORT OF STANDING COMMITTEE

HB 1186, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1186 was placed on the Fourteenth order on the calendar.

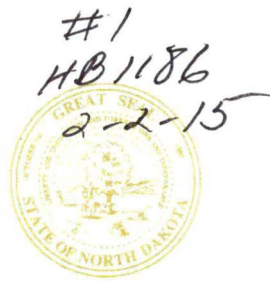
2015 TESTIMONY

HB 1186

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



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COMMITTEES:

Judiciary, Chairman
Political Subdivisions

2-2-15

TESTIMONY ON HB 1186

by Rep. Kim Koppelman

Vice Chairman Karls and members of the House Judiciary Committee, I appear before you today to encourage your favorable consideration of House Bill 1186, in order to ensure that we protect North Dakota's children from a dangerous product, which is rapidly gaining popularity among our youth.

Electronic Vapor Products (commonly referred to as e-cigarettes) are relatively new products on the market. They offer nicotine vapor to smokers and "vapers" (a new term for those who use them) without burning tobacco. Kids should not use any tobacco product, including e-vapor products!

Some advocate these products, claiming that they're a better alternative to cigarettes and can even help people trying to quit smoking, while others claim that they're incredibly dangerous, cause cancer, and introduce harmful new chemicals never even before identified. I'm not a smoker or a "vaper", so I'm no expert.

One fact, however, is undeniably clear. Kids are flocking to these products and we must stop it. A national survey release last month showed teen use of e-cigarettes surpassing their use of regular cigarettes for the first time. 17.1% of 12th graders, 16.2% of 10th graders and 8.7% of 8th graders reported using an e-cigarette in the past 30 days, compared with 13.6%, 7.2%, and 4%, respectively, who reported using a conventional cigarette. The CDC reported in November that e-cigarette use among high school students tripled between 2011 and 2013.

As some of you know, I had the privilege of serving as the national chairman of the Council of State Governments (CSG) a few year ago. As I speak with other state officials from around the country, it's clear that other states are ahead of us in taking action on this issue. I'd like to pass out information from the National Conference of State Legislatures (NCSL), which contains some pertinent facts, helpful information, and state-by-state comparisons.

Although some local ordinances ban the sale of these products to minors, we are *one of only 9 states* which do not prohibit the sale of e-vapor products to minors, state-wide. I ask you to support this legislation and add North Dakota to the list of states taking responsible action to ensure that only adults can purchase these new types of nicotine products.

With your permission, I'd like to highlight just a few of the features of the bill and then present an amendment for your consideration.

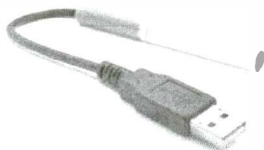
I'm going to ask you to hold any questions which you might have for others who will testify, because they have greater knowledge of the technicalities of these products, how things work in the marketplace, and how this bill, specifically, seeks to protect minors from purchasing and using them.

I ask for your help to do the right thing for North Dakota's youth and act now to amend and pass House Bill 1186.

#1
HB1186
2-2-15

ALTERNATIVE NICOTINE PRODUCTS | ELECTRONIC CIGARETTES

1/11/2015



Tobacco and its use have been regulated for decades. Reports of the negative public and personal health effects of traditional forms of tobacco use have increased consumer awareness. This, in turn, has encouraged people and companies to look for alternative or potentially safer forms of adult tobacco and nicotine use.

Electronic nicotine delivery systems (ENDS) --also known as vaporizers, digital, electronic or e-cigarettes--do not produce a combustible "smoke" like traditionally burned cigarettes, nor do they contain tar, a by-product of burning tobacco. Instead, they contain a small battery that converts a liquid from small cartridges into a water-based mist, which is expelled as vapor or aerosol. They come in many forms, but most often look like a plastic or glass cigarette or rod. The liquid cartridges or tanks may contain various amounts of tobacco-based nicotine, synthetic nicotine, or no nicotine at all, and flavorings and propellants. Research studies on the personal and public health effects of the vapor produced by these products have been inconclusive.

This lack of consistent, scientific research has health groups divided. Some public health organizations believe that the products are not a safe alternative to traditional tobacco consumption and would like the Food and Drug Administration to regulate products as new or other tobacco products, as is allowed under the Family Smoking Prevention and Tobacco Control Act of 2009. Other health professionals assert that nicotine vapor products may be a risk-reduced method of nicotine use and therefore may help reduce use of traditional forms of tobacco with more serious health risks. While the FDA stated in 2011 that it planned to regulate e-cigarettes as a tobacco product, no regulations have been issued.

On April 25, 2014, the FDA released proposed regulations for "Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act". These regulations would include electronic cigarettes and other alternative tobacco and nicotine products. The 75-day public comment period was extended through August 8, 2014.

Electronic cigarette and liquid cartridge manufacturers, which include some traditional tobacco companies, state that they are looking for new, potentially safer ways, to allow adults to use nicotine and tobacco products where they otherwise face restrictions on smoking in public places.

Vaporizers have been gaining popularity in the U.S. and some state legislatures are taking action to regulate these products either similarly to other tobacco products, or as different products altogether.

The following actions have been taken in recent years to regulate the sale and use of electronic vaporizing products. **At least 41 states and 1 territory currently prohibit sales of electronic cigarettes or vaping/alternative tobacco products to minors. Michigan's bill to prohibit sales to minors is pending governor's signature as of mid-September.**

Table is a work in progress and hyperlinks will be updated as soon after new laws are adopted. This table may not necessarily include all state statutes or actions on this issue.

The box allows you to conduct a full text search or use the dropdown menu option to select a state.

State/Citation	Summary of policy/policies
Alabama Ala. Code §28-11-2 (2013)	Defines alternative nicotine products, bans sales to minors under 19.
Alaska Alaska Stat. §11.76.109 (12)	Defines criminal behavior to include selling, giving or exchanging a product containing nicotine to a minor under 19.
Arizona Ariz. Rev. Stat. Ann. §13-3622	Defines vapor product and crime of furnishing a vapor product to a minor under 18.
Arkansas Ark. Stat. Ann. §5-11-101	Defines e-cigarette/vapor device and prohibits sale, giving or exchanging of products to minors under 18.

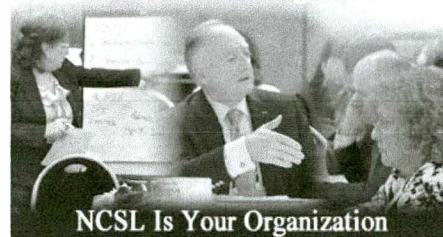
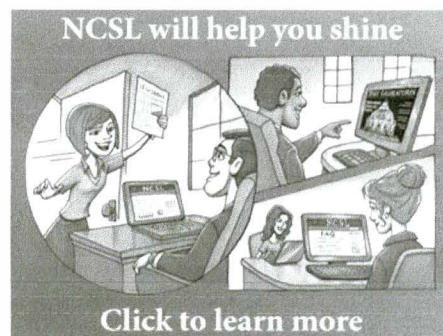
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Health

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- Public Health and Prevention

Other Research Topics

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3

27-233 (2013)

California Cal. Health & Saf Code § 119405 (2013)	Defines e-cigarette device and prohibits sale or transfer of product to a minor under 18.
Colorado Colo. Rev Stat § 18-13-121 (2014)	Defines e-cigarette as a tobacco product and prohibits sale or transfer of product to a minor under 18.
Connecticut SB No. 24 Public Act No. 14-76	Defines electronic nicotine delivery system, vapor product, and prohibits sale of products to a minor under 18. (Effective 10/1/2014)
Delaware HB 241 (2014)	Defines tobacco substitute and prohibits the sale of products to a minor under 18. (Signed by governor 6/12/14)
Florida SB 224 (2014)	Prohibits the sale of nicotine dispensing devices to anyone under 18. (Signed by governor 6/13/14, effective 7/1/14)
Georgia HB 251 (2014)	Defines alternative nicotine product and prohibits the sale to minors under 18. (Effective 7/1/14)
Hawaii Hawaii Rev. Stat. § 709-908	Defines electronic smoking device and prohibits sale or furnishing of product to a minor under 18.
Idaho Idaho Code § 39- 5702 (2013) Idaho Code § 39- 5703 (2013) Idaho Code § 39- 5705 (2013) Idaho Code § 39- 5706 (2013) Idaho Code § 39- 5708 (2013) Idaho Code § 39- 5714 (2013) Idaho Code § 39- 5715 (2013) Idaho Code § 39- 5717A (2013)	Defines e-cigarette and prohibits sale or transfer of product to minor under 18 through in-person or vending machine sales. Imposes a fine for sales to minors. Prohibits delivery to a minor.
Illinois 720 ILCS 675/1 5	Defines alternative nicotine products and prohibits distribution to a minor. Imposes a fine for sales to minors under 18.
Indiana Ind Code § 35-46- 1-1.5 Ind. Code § 35-46- 1-10 Ind Code § 6-7-2- 5 Ind Code § 35-46- 1-10.2	Defines electronic cigarette and tobacco products, and prohibits distribution to a minor. Imposes a fine for sales to minors under 18.
Iowa HF 2109 (2014)	Defines electronic cigarettes as vapor products, also defines alternative nicotine product and prohibits distribution to a minor under 18. (Signed by governor 5/23/14)
Kansas Kan. Stat. Ann § 79-3321 (2012)	Prohibits sale or distribution to a minor. Imposes a fine for sales to minors under 18.
Kentucky SB 109 (2014)	Prohibits sale to a minor under 18. (Passed 3/31/2014, signed by governor 4/14/14)
Louisiana SB 12 (2014)	Defines alternative nicotine products, electronic cigarettes and vaporizers, and prohibits sale to a minor under 18. (Signed by governor 5/29/14)
Maryland Md. Health- General Code Ann. § 24-305 (2013)	Defines electronic device and prohibits sale or distribution to minors under 18.
Michigan SB 668 (2014)	Adds vapor and alternative nicotine products to youth tobacco act and prohibits sale or distribution to minors under 18. (Passed legislature, ordered enrolled 6/12/14- NOT YET LAW)
Minnesota Minn. Stat. § 609.6855 Minn. Stat § 297F.01 Minn. Stat. § 297F.01	Defines nicotine delivery products, tobacco-related devices and electronic delivery device, and prohibits sale to minors under 18. Defines the taxing methods applied to ecigarettes and alternative nicotine/vapor products. Requires child-resistant packaging for liquid nicotine containers.

Specific

e-cig/vapor tax

information

Mississippi Defines alternative nicotine product and electronic cigarette and prohibits sale to minors under 18.

Miss. Code

Ann. §97-32-

(2013)

Missouri

SB 841

Defines alternative nicotine and vapor products, and prohibits sale to minors under 18. States that alternative nicotine and vapor products are not to be regulated or taxed as tobacco products. Vapor product does not include any alternative nicotine product or tobacco product. (Sent to governor 5/12/14, who vetoed on July 15, 2014, but legislature overturned on September 10, 2014)

Nebraska

LB 863 (2014)

Defines alternative nicotine and vapor products and prohibits sale to minors. (Signed by governor on 4/9/14)

Nevada

2013 Nev

Stats. Chap. 326

Nev. Rev

Stats §202 2485-

§202 2497

Defines products made or derived from tobacco, which also prohibits sale to minors under 18.

New Hampshire

N.H. Rev. Stat

Ann. §126-K:2

(2013)

Defines e-cigarette, liquid nicotine, and tobacco product. Also prohibits sale to minors under 18.

New Jersey

N.J. Stat. Ann.

§2A:170-

5:14 (2013)

Defines and adds e-cigarette to list of tobacco-related items that cannot be sold to minors under 19. Creates a fine for selling to a minor.

New York

N.Y. Public Health

Law §1399-aa

(2013)

N.Y. Public Health

Law §1399-cc

(2013)

Defines tobacco products, e-cigarette and bans sales to minors under 18.

North Carolina

N.C. Gen.

Stat. §14-313

HB 1050 (2014)

Defines tobacco-derived products and vapor products, and bans sales to minors under 18. Taxes liquid nicotine at 5 cents per milliliter.

North Dakota

NDCC 23-12-09

Defines e-cigarette as a smoking device as it pertains to clean indoor air regulations. **Does NOT currently have a law prohibiting sales to minors.**

Ohio

HB 144 (2014)

Defines e-cigarette as an alternative nicotine product and prohibits sales to minors under 18. (Signed by governor 3/4/14, effective 8/2/14)

Oklahoma

SB 1602 (2014)

Defines vapor product, prohibits sale to minors under 18 and prohibits use within 300 feet of schools. (Effective 11/1/2014)

Oregon

(judicial order)

OR DOJ Settlement prohibits sale of e-cigarettes until they are FDA approved, or until court rules FDA cannot regulate them and scientific research can prove them safe. In addition, the companies must give the Attorney General advance notice that they intend to sell electronic cigarettes in Oregon, provide copies of all electronic cigarette advertising, and provide copies of the scientific studies they maintain substantiates their claims. ***State does not claim to prohibit sales to minors.**

Rhode Island

HB 7021 (2014)

Defines and adds electronic nicotine delivery system to definition of tobacco products and prohibits sale to minors under 18. (Signed by governor 6/30/14)

South Carolina

S.C. Code Ann.

§16-17-500

Defines alternative nicotine product and e-cigarette, also prohibits sale to minors under 18 if the product includes nicotine.

South Dakota

SB 181 (signed by

governor 3/31/14)

Defines vapor product as a tobacco product and adds to list of products prohibited for minors under 18.

Tennessee

Tenn. Code Ann

§39-17-1502

(2013)

Tenn. Code Ann.

§39-17-1503

(2013)

Defines electronic cigarettes and adds to list of tobacco products prohibited for minors under 18.

Texas

Tex. Health and

Safety Code Ann

§161.252

Adds tobacco substitute or tobacco products to definition of tobacco products prohibited for minors under 18. **The state does not consider electronic cigarettes a "tobacco substitute," therefore the state does NOT prohibit e-cigarettes sales to minors.**

Utah Utah Code Ann §76-10-105.1 Utah Code Ann, §76-10-101	Defines e-cigarettes and requirements to sell e-cigarettes, and prohibits e-cigarettes for minors under 19.
Vermont Vt. Stat. Ann. tit. 32 § 7702 Vt. Stat. Ann. tit. 7 §1005 Vt. Stat. Ann. tit. 7 §1003 VT SB 239 (2014, Effective Jan. 1, 2015)	Defines tobacco substitutes, paraphernalia and products, to includes e-cigarettes and other vapor devices. Also prohibits sale to minors under 18. Adds liquid nicotine cartridges to the list of products that must meet federal child-resistant effective packaging standards to be sold in the state of Vermont.
Virginia § 18.2- 371.2 Chapter 357 (Signed 3/27/2014) § 22.1-79.5 - Chapter 326 (2014)	Prohibits the sale, distribution and use of electronic cigarettes, vapor products and other alternative nicotine products to persons under the age of 18. Bans the use of electronic cigarettes on/in school property.
Washington Wash. Rev. Code §26.28.08	Adds vapor product to items prohibited for minors under 18.
West Virginia HB 4237	Prohibits the sale, distribution and use of electronic cigarettes, vapor products and other alternative nicotine products to persons under the age of 18. (signed by governor and effective 6/6/14)
Wisconsin Wis. Stat. §134.66	Adds "nicotine products" to items prohibited for minors under 18.
Wyoming Wyo. Stat. §14-3- 301(a)(i)	Defines "tobacco products" to include any product that is made from or contains nicotine. Defines electronic cigarette. Also prohibited for minors under 18.
US Virgin Islands ALS 7595 (2014)	Defines "electronic cigarette" and "alternative tobacco product" and prohibits sale to minors.

Additional Resources

Resources and News Items*

*NCSL has gathered information from many health and tobacco-related blogs and organizations that study this issue. Some of these resources come from an advocacy or industry perspective, and inclusion on this list does not imply an endorsement from NCSL.

NCSL **LegisBrief**: Electronic Cigarettes and Alternative Nicotine Products

American Association of Public Health Physicians

American Cancer Society

American Public Health Association

Association of State and Territorial Health Officials (ASTHO)

ASTHO and NACCHO (National Association of County and City Health Officials) co-hosted webinar: *E-Cigarettes: A Path to Policy, Perspectives from Local and State Health Departments*

Americans for Nonsmokers' Rights, including state and local laws regarding electronic cigarettes

Centers for Disease Control & Prevention (CDC)

CDC's MMWR report about calls to poison centers for exposure to e-cigarettes (p. 292)

2014 Surgeon General's Report: The Health Consequences of Smoking- 50 Years of Progress

E-Cigarette Politics (supportive of tobacco harm-reduction methods)

FDA statement about electronic cigarettes and other tobacco products

FDA News & Events about electronic cigarettes

Tobacco Control Legal Consortium: Regulating Electronic Cigarettes and Similar Devices

Smokers Who Try E-Cigarettes to Quit Smoking: Finding From a Multiethnic Study in Hawaii

Tobacco firms plead case at White House, Dec. 2, 2013

Information from Industry

R.J. Reynolds Vapor Company

NJOY FAQs and disclaimers

NuMark, an Altria company

Go

7

#1
HB 1186
2-2-15

AMENDMENT TO HB 1186

Proposed by Rep. Kim Koppelman 2-2-15

New data from the American Association of Poison Control Centers shows frightening trends.

In 2011, there were 271 calls to poison control centers involving exposures to e-cigarettes and liquid nicotine. By 2013, that number increased alarmingly, to 1,543 and last year, there were 3,957 such calls, a 156% increase in just one year.

More than half the calls involved a child under the age of six. Sadly, last month, a one-year-old child in Fort Plain, NY became the first person in the United States to die from swallowing nicotine liquid.

This exponential increase in the danger these products represent, when children have access to them, demands further action.

Because the FDA has not yet finalized its regulations, North Dakota must act to ensure that open container systems containing nicotine are packaged with child-resistant closures. This amendment will do just that and I strongly encourage the Committee to amend HB 1186 with this requirement, before giving it a "Do Pass" recommendation.

(Clarification re. "open container systems" Because closed container systems are closed, they are already feature child-resistant packaging, as they do not require and are not designed for consumers to refill the liquid nicotine)

8

#2
HB 1186
2-2-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

Page 1, line 1, after "Act" insert "to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers;"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to provide an expiration date"

Page 5, after line 16, insert:

"**SECTION 3.** Section 12.1-31-03.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for liquid nicotine containers.

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in a vapor product. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product, if that cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred."

Page 8, after line 7, insert:

"**SECTION 6. EXPIRATION DATE.** Section 3 of this Act is effective until the date the attorney general certifies to the legislative council that final regulations issued by the United States Food and Drug Administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective."

Renumber accordingly

House Judiciary Committee

#3
HB 1186
2-2-15
Pg 1

North Dakota Legislative Assembly

Monday, Feb. 2, 2015

Public Hearing to Discuss House Bill No. 1186

A bill to amend and reenact sections of the North Dakota Century Code relating to the sale to minors and use by minors of vapor products or alternative nicotine products, and to provide a penalty

Prepared Testimony by:

Rae Ann Kelsch

On behalf of Reynolds American Inc. and its operating companies

Chairman Koppelman and Members of the Committee:

Thank you for the opportunity to testify on this important measure. On behalf of Reynolds American and its operating companies, we applaud your effort here today, and we want to voice support for your proposal to ban the sale of vapor products to minors, and prohibit youth use and possession of vapor products.

As background, Reynolds American Inc. is the parent company of R.J. Reynolds Vapor Company, which makes the VUSE Digital Vapor Cigarette. Reynolds American Inc. is also the parent company of R.J. Reynolds Tobacco Company, the second-largest U.S. tobacco company. RAI also includes American Snuff Company, the second-largest manufacturer of smokeless tobacco products; Santa Fe Natural Tobacco Company, manufacturer of Natural American Spirit tobacco products; and Nicovum USA and Nicovum AB, which market innovative nicotine replacement therapy (NRT) products in the U.S. and Sweden, respectively, under the ZONNIC brand name.

All of our companies are guided by a strong belief that minors should never use any form of tobacco or tobacco-derived nicotine products, including vapor products, also known as e-cigarettes.

North Dakota is one of only eight states that has not acted to restrict access by minors to vapor products. This is a loophole in state law that we hope you will

close during this legislative session. Our companies have supported legislation in the 42 states where action has been taken, and we are working to address this in the few remaining states where minors can still legally purchase vapor products.

Vapor products are a relatively new form of tobacco-derived product. Industry analysts have stated that the vapor business is worth about \$2 billion a year. It is appropriate for legislators to seriously consider the most responsible manner in which to treat these products. We share your interest in keeping these products out of the hands of minors.

North Dakota law currently prohibits anyone from selling or giving tobacco products to anyone under the age of 18. The law specifically names cigars, cigarettes, cigarette papers or wrappers and tobacco in any form, but it does not include e-cigarettes, which were introduced into the U.S. market around 2007. The current law also provides for conviction of a gross misdemeanor for anyone violating this law.

Vapor products are fast emerging as a non-combustible alternative to smoking traditional cigarettes, but they still contain nicotine, which is addictive and, therefore, not appropriate for use by minors. These vapor products are being sold in more and more stores, and are also easily available online.

This bill would properly define vapor products and would make it illegal for anyone to sell or give a vapor product to anyone under the age of 18. Anyone

convicted of doing so would be found guilty of a gross misdemeanor, which we believe would act as a deterrent. I have been asked the question about ingesting and inhaling vapor products and what is the difference. HB 1186 includes and covers Alternative Nicotine Products (ANPs). Only vapor products are inhaled. ANP's are meant to capture everything else, which could be inhaled or ingested.

RAI and its operating companies believe that reducing youth tobacco use is essential for the integrity of our businesses. Significant headway has been made in dramatically reducing teen smoking over the past 20 years, but we believe that more can, and should, be done to further reduce youth tobacco use. And, as part of our strategy to transform the tobacco industry, we are working to accelerate the decline in youth tobacco use through many corporate, legislative and educational initiatives such as the Right Decisions Right Now: Be Tobacco Free youth tobacco prevention program.

House Bill 1186 is a very necessary step to close the legal loophole on youth tobacco use and strengthen youth tobacco prevention in this state, and I urge legislators to adopt it without reservation.

I am also providing to you a research document from NCSL, a national legislative organization that North Dakota pays dues to be a member, outlining the 50 states and the ANP and e-cigarette laws that have been passed. This is a resource document for your perusal only.

Thank you for your time and consideration.

	1078	1186	1265
REGULATES:	Nicotine Devices	Alternative Nicotine Products/Vapor products	Electronic Smoking Devices
Inhalable	✓	✓ Vapor only	✓
Non-inhalable		✓ Alternative nicotine products	✓
LIMITATIONS ON SALES			
Prohibits vending sale	✓	✓ except as permitted under § 12.1-31-03.1	✓
Restricts mail or internet sale	✓	✓	
Prohibits self-service display		✓ except in tobacco specialty store	✓
Prohibits sale to minors	✓	✓	✓
PENALTIES:			
Infraction	✓	✓	✓
Retail license suspension			✓
Private action for injunctive relief			✓
Juvenile – non criminal offense	✓	✓	✓
14 or older, \$25 fee	✓	✓	✓
Unruly if under 14	✓	✓	✓

51-2-0
HB 1181
#4



ND PETROLEUM MARKETERS ASSOCIATION

1025 N 3rd Street • PO Box 1956 • Bismarck, ND 58502
Telephone 701-223-3370 • www.ndpetroleum.org • Fax 701-223-5004

#5
HB 1186
2-2-15

Testimony- HB 1186

February 2, 2015- House Judiciary Committee

Vice Chairman Karls and Members of the Committee:

For the record, I'm Mike Rud, President of the North Dakota Petroleum Marketers Association. On behalf of our nearly 400 members, NDRA would like to see a "DO PASS" recommendation on HB 1186.

Federal law is often slow to keep up with technology, and that appears to be the case with electronic vapor (e-vapor) products, commonly referred to as e-cigarettes. In the absence of federal regulation, 41 state governments have implemented minimum age restrictions on how e-vapor products can be sold.

NDPMA is here this morning supporting HB 1186 because as stated in earlier testimony, HB 1186 with the amendments presented is the most encompassing, far reaching piece of legislation that not only deals with today's vapor products, but lays the groundwork for future vapor product regulations in our state.

NDPMA members take the selling of tobacco products of any kind to minors very seriously. You can see by the handout attached to my testimony the legal sale of tobacco products is given high priority in the retail world. Through programs like "WE CARD", marketers are able to share educational handouts and instructional training dvds with their store employees helping them make sure they are doing all they can to prevent the sale of tobacco to minors, including

vapor products. No marketer has an interest in selling tobacco products to minors. No marketer wants a reputation of being a business that doesn't look out for the best interests of its customers, including minors.

The Food and Drug Administration (FDA) is working to put in place regulatory authority over e-vapor products. The FDA's regulation is expected to cover many aspects of e-vapor products from manufacturing to marketing and sales, and to empower the agency to do more in the future to address underage access to these products.

HB 1186 also does away with all self-serve displays. All tobacco products will be placed behind the counter when this bill becomes law. While it is common practice for most retailers to keep tobacco products "behind the counter," it is NOT the law in ND. Not only does HB 1186 require vapor and e-cigs to be behind the counter, but the law would apply to "all" tobacco products.

A recent FDA audit found that 94.4% of ND retailers were in compliance with existing FDA regulations barring the sale of tobacco products to minors. The same retailers – our members – can be equally effective in responsibly selling e-vapor products to adults only.

Again, NDPMA urges a "DO PASS" recommendation on HB 1186.

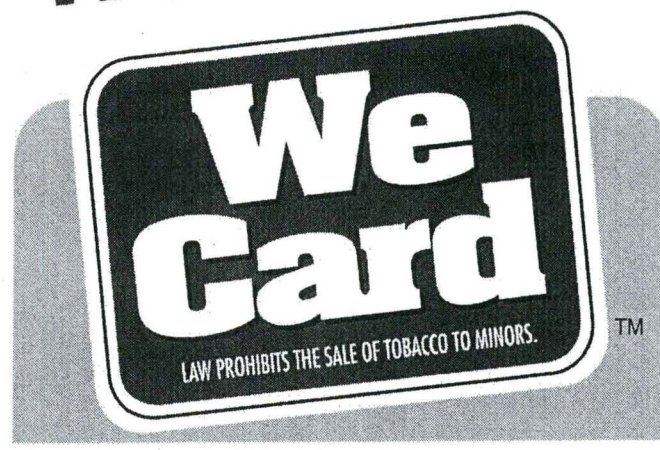
FDA Is Showing Up In North Dakota Stores

According to updated FDA guidance, retailers illegally selling FDA regulated tobacco products will face a steeper penalty increasing from \$10,000 to \$11,000 for a sixth violation within a 48 month period. Currently, first time violators receive a warning letter for the first offense, and with every following violation, fines climb from \$250 to \$11,000 for six violations within a 48 month time frame. Fines for fewer violations were not raised, only the highest level fine.

FDA data show the number of inspections has increased in 2014 to 113,000 store inspections performed through the end of August as compared to more than 109,000 store inspections in the entire year of 2013.

For the full NACS store click [here](#).

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#2
HB1186



Testimony of Laney Herauf
Greater North Dakota Chamber of Commerce
HB 1186
February 2, 2015

Mr. Chairman and members of the committee, my name is Laney Herauf; I am the Government and Regulatory Affairs Specialist for the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of House Bill 1186.

You'll frequently hear throughout this legislative process that a bill is needed to clean up the language of century code; a bill is needed to fill gaps or needed to close loopholes. This bill closes the loopholes created by new technology. Nicotine based vapor products and alternative nicotine products are relatively new on the market, being introduced around the year 2007. Our century code needs to include these in the list of products that should only be sold to adults. GNDC works closely with our business members to ensure a responsible business climate in North Dakota is achieved. Everyone involved with these legal products agree that they should only be available to adults, and this bill makes the necessary changes to ensure that happens.

We respectfully request a DO PASS recommendation on HB 1186. I would be happy to answer any questions you may have.



PO Box 2639 P: 701-222-0929
Bismarck, ND 58502 F: 701-222-1611

www.ndchamber.com

#7
HB 1186
2-2-15

S

The logo features a blue outline of a cloud on the left. To its right, the words "Tobacco Free" are written in a bold, black, sans-serif font. Below "Tobacco Free", the words "North Dakota" are written in a black, cursive script font.

Tobacco Free North Dakota

TJ Jerke
Education & Advocacy - Tobacco Free North Dakota
Subject: House Bill 1186
N.D. House Judiciary Committee
February 2, 2015

Chairman Koppelman and members of the Judiciary Committee, my name is TJ Jerke. I stand here as the Education & Advocacy specialist for Tobacco Free North Dakota. Tobacco Free North Dakota is an expansive coalition of healthcare organizations throughout the state.

Tobacco Free North Dakota's mission 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.

I stand here today in opposition to House Bill 1186.

Before we look at this Bill and I explain why the public health community opposes it, I would like to first point out that I think we have common ground on one point. It seems we can all agree that there are new products in our stores that are in need of regulation. These products allow people to inhale nicotine in a vaporized form, and come under many names. Most of us know them as "e-cigarettes." This Bill calls them "vapor products."

I think we can all agree that we need to restrict sales of e-cigarettes to our youth. And while House Bill 1186 does that, it does so in a way that should make all of us question whether this Bill is really intended to protect our youth. We believe there are serious implications to this bill, and its exemptions, that will make state law difficult to interpret, and

question whether our youth will truly be kept safe and free from electronic smoking devices.

While we have a number of concerns with this Bill, I will try to target the two most critical issues of concern; 1) How it treats the display of these new products (and all tobacco products), and 2) How it defines these new products. Let me address the display issue first, because it is rather straightforward.

Please look to page 1; section 1; line 18, this Bill's restrictions on displays do not go far enough to protect our youth. The Bill allows e-cigarettes, and in fact every tobacco product, to be displayed anywhere throughout a store, and not in a locked cabinet—whether on the front edge of a sales counter at the eye level of a 12-year-old, in the candy aisle where 6 year olds notice the bright and shiny rainbow colors and flavors of these products, or anywhere else in the store. The bill does this with section 1, and, if you would please turn to page 4; line 1, when it defines a, "self-service display." In this definition on page 4, it explicitly says, "A display case that holds those products behind locked doors does not constitute a self-service display." Let's make sure we put e-cigarette's, and their components, such as e-juice, and all tobacco products, behind a sales counter, and in a locked cabinet. In this way, our youth will be less exposed to these products and less likely to use them.

Second, HB1186 wants us all to accept the false idea that these products are something other than what they really are. These are tobacco products. They contain nicotine that is pulled out of tobacco, and put into a new piece of technology in order to be consumed. Make no mistake about it—these are tobacco products. To call them something else is false and confusing, and will end up causing harm to our youth. Does anyone really believe that products that take the most addictive part of tobacco—combines it with other chemicals and places it into a new type of delivery device—turns it into something other than what it is?

If you find yourself wondering whether these really might not be tobacco products, please ask yourself one question. If we take the nicotine out of regular cigarettes, how many nicotine-free cigarettes

would people buy? These products sell because nicotine is the addictive part of tobacco—and is the key to their sales. Anything that contains nicotine that comes from tobacco, is a tobacco product.

I understand that when we look at this nicotine juice, it doesn't look like a tobacco leaf. It's highly processed and squeezed into something that doesn't look tan and leafy.

Well, the same can be said for the tobacco in a cigarette or can of snuff. Those forms of tobacco are also nothing like the leaf that grows on the tobacco plant. The material contained in them is highly processed as well. The tobacco leaves are cut, chopped, ground up, processed, have many chemicals added to them, have portions removed, are pressed into sheets, and go through many other processing steps, before the material is placed into the finished product. Yet it is without a doubt that these items are still tobacco products. Just like this newer vaporizable liquid is still a tobacco product.

I don't think we want to get into the business of drawing the line around how much processing of a tobacco leaf makes tobacco no longer tobacco. If something contains the most addictive aspect of tobacco, it is a tobacco product. As a Representative said on the House Floor just last week, 'we could pass a law that calls blue black, but that doesn't make it black.' Doing so is not only confusing, but dangerous. So I hope you will reject this false idea.

And as a last point before I go on to talk about the specifics of HB1186, I would like to address an idea that we hear often. That is—but how do you know if the nicotine in a certain product is derived from tobacco? It is proven that there is nicotine in some vegetables, such as tomato's and eggplants. It is also proven that there is no commercially viable way to use the nicotine derived from these other items into these electronic products. However, if you put credence into the idea that the nicotine in these products comes from another source, we urge you to amend the Bill so that a) companies would be required to demonstrate that their e-cigarettes do not contain nicotine, or use nicotine derived from tobacco, and b) those companies document all the ingredients in their products, and scientifically demonstrate how they were able to create nicotine from one of these non-viable sources.

Now I want to take a quick minute to look a little closer at HB1186 and the way it tries to put lipstick on a pig by relabeling these tobacco products as 'not' being tobacco products.

Please look to the definition of "vapor products" on page 4, line 15.

It is important to remember the first idea I spoke about today. Regulations should be put over these new e-cigarette products that allow for the inhalation of vaporized nicotine. But look at HB1186's definition of "vapor product." It seems to go out of its way to avoid using the word inhalation. Why avoid using the word "inhalation," which is what e-cigarette users do with the toxic vapors emitted from e-cigarettes. We feel that it is important to ensure the term "inhalation" is incorporated into e-cigarette legislation, like the bill you will be hearing next. To leave out this idea seems to invite confusion and lead to a less-than-complete definition.

The definition of "vapor products" also specifically speaks to heating elements, power source, electronic circuit, or other electronic chemical or mechanical means. Please consider an alternative, comprehensive definition using, "component, part, and accessory, or accessory of such a product, whether or not sold separately." This language will cover a considerably larger grouping of existing, and emerging products.

We urge that the definition is clarified so that it recognizes that these products are tobacco products. A bill you will hear later does provide a clearly defined definition of Tobacco products.

Please turn with me to page 3, line 24, which seems to be one of the more confusing and unhelpful aspects of this Bill, and the least useful—the definition of "Alternate Nicotine Products."

As you look at this definition, it is important to keep in mind what the existing law already does. NDCC 12.1-31-03 already makes it illegal to sell "tobacco in any ... form in which it may be utilized for smoking or chewing." So, it is already illegal to sell minors any product that contains tobacco that can be smoked (cigarettes, cigars) or chewed (snuff,

dissolvable, orbs, chewing tobacco). This has been the simple law for quite some time with little, if any, confusion.

So what does this definition of “alternate nicotine products” do?

It confuses this simple idea.

First, this definition seems to imply that some new product—an “alternative nicotine product”—is being added to the prohibitions of this law. But what is the thing? We already have the definition of the new e-cigarette item - vapor product. Is this something more they seek to regulate, and if so, can they explain what it is? Because I’m reading this Bill and am not having an easy time understanding what this new thing is. A product that contains nicotine that can be ingested by ways other than inhalation is a tobacco product. And because it’s a tobacco product, it is already regulated by the existing law.

Aside from regulating something that is already regulated—which makes the definition unnecessary—this definition also seems extremely confusing. We are to expect enforcement agents to understand a definition of something that is ‘a product that contains nicotine that can be chewed, but which at the same time is not a product that contains tobacco that can be chewed.’

How e-cigarettes are defined in laws affects how they are regulated, particularly if they can be included under existing laws that regulate cigarettes, including sales and marketing restrictions, youth access, smoking restrictions and taxation. Varying terms (e-cigarettes, e-hookah, vape-pens, hookah pens and personal vaporizers), combined with 400 types and brands of e-cigarettes and the fact that users modify or build their own products, gives reasoning to the need for one, unambiguous, definition. Laws are clearer when they say exactly what they mean.

Finally, our last concern, is on page 1, line 19. The language here would exempt the use of a vending machine, or other coin-operated machine permitted under section 12.1-21-03.1. What is the vending machine? Does North Dakota Century Code already have a definition for vending machine? I ask that before anything is exempted, we know exactly what

is being exempted. As technology continues to advance at warp speed, if there is a definition, does this definition cover all forms of vending machines that are out there today?

Thank you for your time today. I will stand by for any questions.

#8
HB1182
2-2-15



Tobacco Free North Dakota

Testimony in opposition of HB 1186
From Dr. Eric Johnson
President, Tobacco Free North Dakota
To House Judiciary Committee
Representative Kim Koppelman, Chair
February 2, 2015

- Electronic cigarettes have a lack of safety data and lack proof that they help people stop smoking. As a result, to date, they are not FDA approved.
<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>
- Concerns exist that these are marketed to our youth. Many youth smoke e-cigs who've never used tobacco. These numbers are increasing dramatically in North Dakota and the U.S.
<http://www.cdc.gov/media/releases/2014/p0825-e-cigarettes.html>
<http://www.tobaccobytes.com/2014/05/youth-access-to-e-cigs/>
- Quality control and nicotine delivery are an issue with E-cigarettes. As well, the lack of childproof packaging exposes children to toxic and potentially fatal doses of nicotine. "Secondhand" exposure to "Vape" harm is unknown.
<http://m.ntr.oxfordjournals.org/content/15/2/615.short>
<http://m.tobaccocontrol.bmj.com/content/20/1/47.short>
<http://no-smoke.org/pdf/ecigarette-secondhand-aerosol.pdf>
- There are many FDA approved treatments, both pharmaceutical and non-pharmaceutical, that are known to be effective to stop tobacco use and have published safety profiles.
<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm198176.htm>
NDQuits.com

"I'm often asked my opinion on e-cigs, usually framed with the question "they MUST be better than regular cigarettes, right?"

My answer is pretty simple. We simply don't know, because safety data is lacking (and in the last year, some averse), there's no good data that they promote quitting tobacco, and no one knows if they are cost effective. In fact, it appears that for young people, it's just a vehicle to nicotine addiction. As a result, they are not FDA recommended.

This contrasts with medicines that are on the market, have data that shows they work, and have published safety profiles. It's disappointing e-cigs don't have better data, because it would be good to have something else to combat tobacco use. As a result, I need to follow the science"

-Eric L. Johnson, M.D.

University of North Dakota School of Medicine and Health Sciences

President Tobacco Free North Dakota

Executive and Advisory Committees Center for Tobacco Prevention and Control

Member Society for Tobacco and Nicotine Research

12 North Second Street
Bismarck, ND 58501
Phone: 701-223-5613
Fax: 701-223-5727

800-LUNG USA
www.LungND.org

Kristie Wolff – Program Manager, American Lung Association in North Dakota

Opposition for HB 1186

North Dakota House Judiciary Committee

February 2, 2015

Chairman Koppelman and members of the House Judiciary Committee, my name is Kristie Wolff, I am the Program Manager for the American Lung Association in North Dakota.

Based on the American Lung Association's mission to save lives by improving lung health and preventing lung disease through Education, Advocacy and Research I am here to testify against passage of HB 1186.

The American Lung Association in North Dakota stands in opposition to this bill because this is a tobacco industry sponsored bill. Public health policy is not in the tobacco industry's business plan.

The language in HB1186 is being shopped around the nation from North Dakota to Missouri, Kentucky, and South Carolina to name a few. The tobacco industry is using this confusing language of alternative nicotine product and vapor product under the guise of restricting sales of e-cigarettes to minors. These bills are Trojan horses to enact changes to how e-cigarettes are defined. These changes make it more difficult to regulate e-cigarettes as a tobacco product. E-cigarettes are tobacco products.

So I ask each of you to please consider this question. Do we want policy in our state that is being used nationwide and brought forward by an industry that has a long history of deceptive practices and has been charged with racketeering? I hope your answer is no.

#18
HB1186
2-2-15

Sergeant Margie Zietz
Minot Police Department
February 2, 2015
Opposition to House Bill 1186

Chairman Koppelman and members of the Judiciary Committee, my name is Margie Zietz. I am the thirty year veteran of the Minot Police Department and assigned as the Sergeant in Crime Prevention. In addition, I am also a mother of five sons, four of them are teenagers.

I drove down this morning to oppose House Bill 1186. This bill is not comprehensive, and does not addresses many issues which cause great harm and consideration among our youth and law enforcement.

I'd like to touch on a few critical definitions and components within this bill, and I would hope you strongly consider amending if you pass this bill.

- HB 1186 defines both "alternative nicotine products" and "vapor product". These two are essentially the same product. Having two definitions causes confusion for both the public and for law enforcement.
- Both of those definitions use the term nicotine. The issue with using the word nicotine in the definition is some of the electronic smoking devices claim e-juice contains no nicotine. Youth can claim the e-cigs they are using aren't nicotine, making it difficult for police officers to enforce and parents to make a distinction.
- It is important to have all components used with an e-cigarette included in the definition. A youth could have an adult buy them the device, and they could purchase the refill cartridges or e-juice themselves. If youth can purchase e-juice, they can put it into soft drinks, for example.
- The tobacco license is an important tool for law enforcement to use to track tobacco retailers. To ensure that retailers are not selling to minors, the Minot Police Department conducts tobacco compliance checks. If retailers fail to comply with the law, their licenses can be revoked. Because a license is not required to sell electronic cigarettes, it is difficult for law enforcement to track retailers and utilize this tool to use for enforcement.
- Because youth are creative with various substances put in these smoking devices, it is important to keep e-cigarettes and all the components behind the counter. It is tempting for youth to shoplift this type of item if it is within their reach. Young children can easily be poisoned if they ingest these products as well. Often e-juice is sold in kid friendly flavors like candy cane and sour patch making it more appealing.
- Current laws prohibit individuals from smoking within 20 feet of entrances, exits, operable windows and air vents. It applies to tobacco products and electronic smoking devices and is not pertinent to just nicotine devices. A proposed house bill should include the same definition and components of the law so it is consistent for officers to enforce and our public as a whole to be able to understand. HB1186 does not accomplish this.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

Page 1, line 1, after "Act" insert "to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers;"

Page 1, line 3, replace "vapor products" with "electronic smoking devices"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to provide an expiration date"

Page 1, line 8, replace "vapor products" with "electronic smoking devices"

Page 1, line 12, replace "vapor products" with "electronic smoking devices"

Page 1, line 17, replace "vapor products" with "electronic smoking devices"

Page 1, line 24, replace "vapor products" with "electronic smoking devices"

Page 2, line 1, remove "vapor"

Page 2, line 2, replace the first "products" with "electronic smoking devices"

Page 2, line 5, replace "vapor products" with "electronic smoking devices"

Page 2, line 6, replace "vapor products" with "electronic smoking devices"

Page 2, line 13, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, remove the second "vapor"

Page 2, line 16, replace the first "products" with "electronic smoking devices"

Page 3, line 28, replace "vapor product" with "electronic smoking device"

Page 4, line 1, after "b." insert "\"Electronic smoking device\" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

c."

Page 4, line 3, replace "vapor products" with "electronic smoking devices"

Page 4, line 8, replace "c." with "d."

Page 4, line 11, replace "vapor products" with "electronic smoking devices"

Page 4, remove lines 15 through 25

Page 5, line 1, replace "vapor products" with "electronic smoking devices"

Page 5, line 8, replace "vapor products" with "electronic smoking devices"

Page 5, line 12, replace "vapor products" with "electronic smoking devices"

Page 5, line 15, replace ""vapor products"" with ""electronic smoking devices""

Page 5, after line 16, insert:

"SECTION 3. Section 12.1-31-03.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for liquid nicotine containers.

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred."

Page 5, line 30, replace "vapor products" with "electronic smoking devices"

Page 6, line 2, replace ""vapor products"" with ""electronic smoking devices""

Page 6, line 6, replace "**vapor products**" with "**electronic smoking devices**"

Page 7, line 23, replace "vapor products" with "electronic smoking devices"

Page 7, line 24, replace "a vapor product" with "an electronic smoking device"

Page 7, line 25, replace "vapor products" with "electronic smoking devices"

Page 7, line 30, replace "vapor product" with "electronic smoking device"

Page 8, line 4, replace "vapor product" with "electronic smoking device"

Page 8, line 6, replace ""vapor products"" with ""electronic smoking devices""

Page 8, after line 7, insert:

"SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective until the date the attorney general certifies to the legislative council that final regulations issued by the United States food and drug administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective."

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

Page 1, line 1, after "Act" insert "to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers;"

Page 1, line 3, replace "vapor products" with "electronic smoking devices"

Page 1, line 3, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to provide an expiration date"

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Page 1, line 12, replace "vapor products" with "electronic smoking devices"

Page 1, line 17, replace "vapor products" with "electronic smoking devices"

Page 1, line 24, replace "vapor products" with "electronic smoking devices"

Page 2, line 1, remove "vapor"

Page 2, line 2, replace the first "products" with "electronic smoking devices"

Page 2, line 5, replace "vapor products" with "electronic smoking devices"

Page 2, line 6, replace "vapor products" with "electronic smoking devices"

Page 2, line 13, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, replace "vapor products" with "electronic smoking devices"

Page 2, line 15, remove the second "vapor"

Page 2, line 16, replace the first "products" with "electronic smoking devices"

Page 3, line 28, replace "vapor product" with "electronic smoking device"

Page 4, line 1, after "b." insert "Electronic smoking device means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

c."

Page 4, line 3, replace "vapor products" with "electronic smoking devices"

Page 4, line 8, replace "c." with "d."

Page 4, line 11, replace "vapor products" with "electronic smoking devices"

Page 4, remove lines 15 through 25

Page 5, line 1, replace "vapor products" with "electronic smoking devices"

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Page 5, line 15, replace ""vapor products"" with ""electronic smoking devices""

Page 5, after line 16, insert:

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1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred."

Page 5, line 30, replace "vapor products" with "electronic smoking devices"

Page 6, line 2, replace ""vapor products"" with ""electronic smoking devices""

Page 6, line 6, replace "**vapor products**" with "**electronic smoking devices**"

Page 7, line 23, replace "vapor products" with "electronic smoking devices"

Page 7, line 24, replace "a vapor product" with "an electronic smoking device"

Page 7, line 25, replace "vapor products" with "electronic smoking devices"

Page 7, line 30, replace "vapor product" with "electronic smoking device"

Page 8, line 4, replace "vapor product" with "electronic smoking device"

Page 8, line 6, replace ""vapor products"" with ""electronic smoking devices""

Page 8, after line 7, insert:

"**SECTION 6. EXPIRATION DATE.** Section 3 of this Act is effective until the date the attorney general certifies to the legislative council that final regulations issued by the United States food and drug administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective."

Renumber accordingly

PROPOSED AMENDMENT TO HOUSE BILL 1186

#2
HB 1186
2-11-15

Page 3, remove lines 24 through 30

Page 4, line 1, replace "b." with "a."

Page 4, after line 7, insert:

"b. "Tobacco product" means any product containing, made from, or derived from tobacco, in whole or in part, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, consumed, or ingested by any other means, including cigarettes, cigars, noncumbustible cigarettes, pipe tobacco, chewing tobacco, snuff, snus, liquid, or other kinds and forms of tobacco. "Tobacco product" includes any product or device that contains nicotine, in any form, that is derived from tobacco. Any product that contains nicotine shall be presumed to contain nicotine derived from tobacco unless the nicotine is confirmed to be derived from a different source. "Tobacco product" does not include any cigarette as defined in section 57-36 or any product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.]"

Renumber accordingly.

PROPOSED AMENDMENTS TO HOUSE BILL 1186

#3
HB1186
2-11-15

Page 4, line 1, replace "a" with "any"

Page 4, line 1, after the second comma, insert "or tobacco products anywhere other than an area that is behind a sales counter where the public is not permitted to access."

Page 4, remove lines 2 through 7

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

4
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Pg 1

Page 4, after line 25, insert:

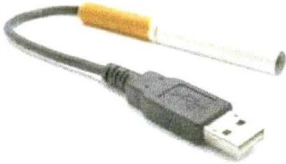
"e. Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms."

Renumber accordingly.

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1-1

ALTERNATIVE NICOTINE PRODUCTS | ELECTRONIC CIGARETTES

2/26/2015



Tobacco and its use have been regulated for decades. Reports of the negative public and personal health effects of traditional forms of tobacco use have increased consumer awareness. This, in turn, has encouraged people and companies to look for alternative or potentially safer forms of adult tobacco and nicotine use.

Electronic nicotine delivery systems (ENDS) --also known as vaporizers, digital, electronic or e-cigarettes--do not produce a combustible "smoke" like traditionally burned cigarettes, nor do they contain tar, a by-product of burning tobacco. Instead, they contain a small battery that converts a liquid from small cartridges into a water-based mist, which is expelled as vapor or aerosol. They come in many forms, but most often look like a plastic or glass cigarette or rod. The liquid cartridges or tanks may contain various amounts of tobacco-based nicotine, synthetic nicotine, or no nicotine at all, and flavorings and propellants. Research studies on the personal and public health effects of the vapor produced by these products have been inconclusive.

This lack of consistent, scientific research has health groups divided. Some public health organizations believe that the products are not a safe alternative to traditional tobacco consumption and would like the Food and Drug Administration to regulate products as new or other tobacco products, as is allowed under the Family Smoking Prevention and Tobacco Control Act of 2009. Other health professionals assert that nicotine vapor products may be a risk-reduced method of nicotine use and therefore may help reduce use of traditional forms of tobacco with more serious health risks. While the FDA stated in 2011 that it planned to regulate e-cigarettes as a tobacco product, no rules or regulations have been issued.

On April 25, 2014, the FDA released proposed regulations for "Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act". These regulations would include electronic cigarettes and other alternative tobacco and nicotine products.

Electronic cigarette and liquid cartridge manufacturers, which include some traditional tobacco companies, state that they are looking for new, potentially safer ways, to allow adults to use nicotine and tobacco products where they otherwise face restrictions on smoking in public places.

Vaporizers have been gaining popularity in the U.S. and some state legislatures are taking action to regulate these products either similarly to other tobacco products, or as different products altogether.

The following actions have been taken in recent years to regulate the sale and use of electronic vaporizing products. **At least 41 states and 1 territory currently prohibit sales of electronic cigarettes or vaping/alternative tobacco products to minors. Michigan's bill to prohibit sales to minors is pending governor's signature as of mid-September.**

Table is a work in progress and hyperlinks will be updated as soon after new laws are adopted. This table may not necessarily include all state statutes or actions on this issue.

The box allows you to conduct a full text search or use the dropdown menu option to select a state.

State/Citation	Summary of policy/policies
Alabama Ala. Code §28-11-2 (2013)	Defines alternative nicotine products, bans sales to minors under 19.
Alaska Alaska Stat. §11 76.109 (2012)	Defines criminal behavior to include selling, giving or exchanging a product containing nicotine to a minor under 19.

Home

Health

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Other Research Topics

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Arizona Ariz. Rev. Stat. Ann. §13-3622	Defines vapor product and crime of furnishing a vapor product to a minor under 18.
Arkansas Ark. Stat. Ann. §5-27-233 (2013)	Defines e-cigarette/vapor device and prohibits sale, giving or exchanging of products to minors under 18.
California Cal. Health & Saf Code §119405 (2013)	Defines e-cigarette device and prohibits sale or transfer of product to a minor under 18.
Colorado Colo. Rev. Stat §18-13-121 (2014)	Defines e-cigarette as a tobacco product and prohibits sale or transfer of product to a minor under 18.
Connecticut SB No. 24 Public Act No. 14-76	Defines electronic nicotine delivery system, vapor product, and prohibits sale of products to a minor under 18. (Effective 10/1/2014)
Delaware HB 241 (2014)	Defines tobacco substitute and prohibits the sale of products to a minor under 18. (Signed by governor 6/12/14)
Florida SB 224 (2014)	Prohibits the sale of nicotine dispensing devices to anyone under 18. (Signed by governor 6/13/14, effective 7/1/14)
Georgia HB 251 (2014)	Defines alternative nicotine product and prohibits the sale to minors under 18. (Effective 7/1/14)
Hawaii Hawaii Rev. Stat. §709-908	Defines electronic smoking device and prohibits sale or furnishing of product to a minor under 18.
Idaho Idaho Code §39-5702 (2013) Idaho Code §39-5703 (2013) Idaho Code §39-5705 (2013) Idaho Code §39-5706 (2013) Idaho Code §39-5708 (2013) Idaho Code §39-5714 (2013) Idaho Code §39-5715 (2013) Idaho Code §39-5717A (2013)	Defines e-cigarette and prohibits sale or transfer of product to minor under 18 through in-person or vending machine sales. Imposes a fine for sales to minors. Prohibits delivery to a minor.
Illinois 720 ILCS 675/1.5	Defines alternative nicotine products and prohibits distribution to a minor. Imposes a fine for sales to minors under 18.
Indiana Ind. Code §35-46-1-1.5 Ind. Code §35-46-1-10 Ind. Code §6-7-2-5 Ind. Code §35-46-1-10.2	Defines electronic cigarette and tobacco products, and prohibits distribution to a minor. Imposes a fine for sales to minors under 18.
Iowa HF 2109 (2014)	Defines electronic cigarettes as vapor products, also defines alternative nicotine product and prohibits distribution to a minor under 18. (Signed by governor 5/23/14)
Kansas Kan. Stat. Ann. §79-3321 (2012)	Prohibits sale or distribution to a minor. Imposes a fine for sales to minors under 18.
Kentucky SB 109 (2014)	Prohibits sale to a minor under 18. (Passed 3/31/2014, signed by governor 4/14/14)
Louisiana SB 12 (2014)	Defines alternative nicotine products, electronic cigarettes and vaporizers, and prohibits sale to a minor under 18. (Signed by governor 5/29/14)
Maryland	Defines electronic device and prohibits sale or distribution to minors under 18.

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- Md. Health-General Code
Ann. §24-305
(2013)

Michigan
SB 668 (2014)

Adds vapor and alternative nicotine products to youth tobacco act and prohibits sale or distribution to minors under 18. **(Passed legislature, ordered enrolled 6/12/14- VETOED BY GOVERNOR on 12/31/14)**

Minnesota
Minn.
Stat. §609.6855
Minn.
Stat. §297F.01,
subd. 19
Specific
ecig/vapor tax
information

Defines nicotine delivery products, tobacco-related devices and electronic delivery device, and prohibits sale to minors under 18.

Defines the taxing methods applied to ecigarettes and alternative nicotine/vapor products.
Requires child-resistant packaging for liquid nicotine containers.

Mississippi
Miss. Code
Ann. §97-32-
51 (2013)

Defines alternative nicotine product and electronic cigarette and prohibits sale to minors under 18.

Missouri
SB 841

Defines alternative nicotine and vapor products, and prohibits sale to minors under 18. States that alternative nicotine and vapor products are not to be regulated or taxed as tobacco products. Vapor product does not include any alternative nicotine product or tobacco product. (Sent to governor 5/12/14, who vetoed on July 15, 2014, but legislature overturned on September 10, 2014)

Nebraska
LB 863 (2014)

Defines alternative nicotine and vapor products and prohibits sale to minors. (Signed by governor on 4/9/14)

Nevada
2013 Nev
Stats Chap. 326
Nev. Rev.
Stats. §202.2485-
§202.2497

Defines products made or derived from tobacco, which also prohibits sale to minors under 18.

New Hampshire
N.H. Rev. Stat.
Ann. §126-K:2
(2013)

Defines e-cigarette, liquid nicotine, and tobacco product. Also prohibits sale to minors under 18.

New Jersey
N.J. Stat. Ann.
§2A:170-
51.4 (2013)

Defines and adds e-cigarette to list of tobacco-related items that cannot be sold to minors under 19. Creates a fine for selling to a minor.

New York
N.Y. Public Health
Law §1399-aa
(2013)
N.Y. Public Health
Law §1399-cc
(2013)

Defines tobacco products, e-cigarette and bans sales to minors under 18.

North Carolina
N.C. Gen.
Stat. §14-313
HB 1050 (2014)

Defines tobacco-derived products and vapor products, and bans sales to minors under 18.
Taxes liquid nicotine at 5 cents per milliliter.

North Dakota
NDCC 23-12-09

Defines e-cigarette as a smoking device as it pertains to clean indoor air regulations. **Does NOT currently have a law prohibiting sales to minors.**

Ohio
HB 144 (2014)

Defines e-cigarette as an alternative nicotine product and prohibits sales to minors under 18. (Signed by governor 3/4/14, effective 8/2/14)

Oklahoma
SB 1602 (2014)

Defines vapor product, prohibits sale to minors under 18 and prohibits use within 300 feet of schools. (Effective 11/1/2014)

Oregon
(Judicial order)

OR DOJ Settlement prohibits sale of e-cigarettes until they are FDA approved, or until court rules FDA cannot regulate them and scientific research can prove them safe. In addition, the companies must give the Attorney General advance notice that they intend to sell electronic cigarettes in Oregon, provide copies of all electronic cigarette advertising, and provide copies of the scientific studies they maintain substantiates their claims. ***State does not claim to prohibit sales to minors.**

Rhode Island

Defines and adds electronic nicotine delivery system to definition of tobacco products and

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HB 7021 (2014)	prohibits sale to minors under 18. (Signed by governor 6/30/14)
South Carolina S.C. Code Ann. §16-17-500	Defines alternative nicotine product and e-cigarette, also prohibits sale to minors under 18 if the product includes nicotine.
South Dakota SB 181 (signed by governor 3/31/14)	Defines vapor product as a tobacco product and adds to list of products prohibited for minors under 18.
Tennessee Tenn. Code Ann. §39-17-1502 (2013) Tenn. Code Ann. §39-17-1503 (2013)	Defines electronic cigarettes and adds to list of tobacco products prohibited for minors under 18.
Texas Tex. Health and Safety Code Ann. §161.252	Adds tobacco substitute or tobacco products to definition of tobacco products prohibited for minors under 18. The state does not consider electronic cigarettes a "tobacco substitute," therefore the state does NOT prohibit e-cigarettes sales to minors.
Utah Utah Code Ann. §76-10-105.1 Utah Code Ann. §76-10-101	Defines e-cigarettes and requirements to sell e-cigarettes, and prohibits e-cigarettes for minors under 19.
Vermont Vt. Stat. Ann. tit. 32 § 7702 Vt. Stat. Ann. tit. 7 §1005 Vt. Stat. Ann. tit. 7 §1003 VT SB 239 (2014, Effective Jan. 1, 2015)	Defines tobacco substitutes, paraphernalia and products, to includes e-cigarettes and other vapor devices. Also prohibits sale to minors under 18. Adds liquid nicotine cartridges to the list of products that must meet federal child-resistant effective packaging standards to be sold in the state of Vermont.
Virginia § 18.2- 371.2 Chapter 357 (Signed 3/27/2014) § 22.1-79.5 - Chapter 326 (2014)	Prohibits the sale, distribution and use of electronic cigarettes, vapor products and other alternative nicotine products to persons under the age of 18. Bans the use of electronic cigarettes on/in school property.
Washington Wash. Rev. Code §26.28.080	Adds vapor product to items prohibited for minors under 18.
West Virginia HB 4237	Prohibits the sale, distribution and use of electronic cigarettes, vapor products and other alternative nicotine products to persons under the age of 18. (signed by governor and effective 6/6/14)
Wisconsin Wis. Stat. §134.66	Adds "nicotine products" to items prohibited for minors under 18.
Wyoming Wyo. Stat. §14-3- 301(a)(i)	Defines "tobacco products" to include any product that is made from or contains nicotine. Defines electronic cigarette. Also prohibited for minors under 18.
US Virgin Islands ALS 7595 (2014)	Defines "electronic cigarette" and "alternative tobacco product" and prohibits sale to minors.

Additional Resources

Resources and News Items*

*NCSL has gathered information from many health and tobacco-related blogs and organizations that study this issue. Some of these resources come from an advocacy or industry perspective, and inclusion on this list does not imply an endorsement from NCSL.

NCSL LegisBrief: [Electronic Cigarettes and Alternative Nicotine Products](#)

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- American Association of Public Health Physicians

- American Cancer Society

- American Public Health Association

- Association of State and Territorial Health Officials (ASTHO)

- ASTHO and NACCHO (National Association of County and City Health Officials) co-hosted webinar: *E-Cigarettes: A Path to Policy, Perspectives from Local and State Health Departments*

- Americans for Nonsmokers' Rights, including state and local laws regarding electronic cigarettes

- Centers for Disease Control & Prevention (CDC)

- CDC's MMWR report about calls to poison centers for exposure to e-cigarettes (p. 292)

- 2014 Surgeon General's Report: The Health Consequences of Smoking- 50 Years of Progress

- E-Cigarette Politics (supportive of tobacco harm-reduction methods)

- FDA statement about electronic cigarettes and other tobacco products

- FDA News & Events about electronic cigarettes

- Tobacco Control Legal Consortium: Regulating Electronic Cigarettes and Similar Devices

- Smokers Who Try E-Cigarettes to Quit Smoking: Finding From a Multiethnic Study in Hawaii

- Tobacco firms plead case at White House, Dec. 2, 2013

Information from Industry

- R.J. Reynolds Vapor Company

- NJOY FAQ's and disclaimers

- NuMark, an Altria company

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NORTH DAKOTA HOUSE OF REPRESENTATIVES

2-1



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COMMITTEES:

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Political Subdivisions

TESTIMONY ON HB 1186

3-18-2015

Chairman Hogue and members of the Senate Judiciary Committee, I appear before you today to encourage your favorable consideration of House Bill 1186, in order to ensure that we protect North Dakota's children from a dangerous product, which is rapidly gaining popularity among our youth.

Electronic Vapor Products (commonly referred to as e-cigarettes) are relatively new products on the Market. They offer nicotine vapor to smokers and "vapers" (a new term for those who use them) without burning tobacco. Kids should not use any tobacco or nicotine product, including e-vapor products!

Some advocate these products, claiming that they're a better alternative to cigarettes and can even help people trying to quit smoking, while others claim that they're incredibly dangerous, may cause cancer, and introduce harmful new chemicals never before even identified. I'm not a smoker or a "vaper", so I'm no expert.

One fact, however, is undeniably clear. Kids are flocking to these products and we must stop it. A national survey release last month showed teen use of e-cigarettes surpassing their use of regular cigarettes for the first time. 17.1% of 12th graders, 16.2% of 10th graders and 8.7% of 8th graders reported using an e-cigarette in the past 30 days, compared with 13.6%, 7.2%, and 4%, respectively, who reported using a conventional cigarette. The CDC reported in November that e-cigarette use among high school students tripled between 2011 and 2013.

As some of you know, I had the privilege of serving as the national chairman of the Council of State Governments (CSG) a few years ago. As I speak with other state officials from around the country, it's clear that other states are ahead of us in taking action on this issue. I'd like to pass out information from the National Conference of State Legislatures (NCSL), which contains some pertinent facts, helpful information, and state-by-state comparisons.

Although some local ordinances ban the sale of these products to minors, we are *one of only 9 states* which do not prohibit the sale of e-vapor products to minors, state-wide. I ask you to support this legislation and add North Dakota to the list of states taking responsible action to ensure that only adults can purchase these new types of nicotine products.

In the House, we also amended the bill to include a provision calling for childproof packaging.

New data from the American Association of Poison Control Centers shows frightening trends.

In 2011, there were 271 calls to poison control centers involving exposures to e-cigarettes and liquid nicotine. By 2013, that number increased alarmingly, to 1,543 and last year, there were 3,957 such calls, a 156% increase in just one year.

More than half the calls involved a child under the age of six. Sadly, last month, a one-year-old child in Fort Plain, NY became the first person in the United States to die from swallowing nicotine liquid.

This exponential increase in the danger these products represent, when children have access to them, demands further action.

Because the FDA has not yet finalized its regulations, North Dakota must act to ensure that open container systems containing nicotine are packaged with child-resistant closures. HB 1186 will also accomplish that.

I'd be happy to try to answer questions, but experts are here, so I'm going to ask you to hold most questions which you might have for others who will testify, because they have greater knowledge of the technicalities of these products, how things work in the marketplace, and how this bill, specifically, seeks to protect minors from purchasing and using them.

I ask for your help to do the right thing for North Dakota's youth and act now to pass House Bill 1186.

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Chairman Hogue and members of the Senate Judiciary Committee I am Representative Marvin Nelson of District 9.

I come today to support HB1186 but to also ask for additional amendments.

It is critical to have child proof packaging, to move the products behind the counter and to prevent sales to underage minors. Most retailers either have already done these things or are rapidly moving to them. However, every industry has those people who do not do such things unless they are forced to do them.

A part of being able to restrict the unscrupulous is a license. As it stands, the penalty for violation is limited to an infraction. Pay your fine and keep on doing what it is you are doing. As I read it, I believe the penalty would be on the employee, not the business. I believe it is necessary to have a license in order that those few special cases can be stopped.

Now I don't really care that much what that license is called, but cities and retailers have contacted me and they want it to be a tobacco license. Reasons are that they in most cases already have a tobacco license. Training their employees is very easy, just treat it like tobacco. The more similar we treat these products like tobacco, the easier it is for our retailers. They can basically seamlessly comply with the law and the public can be protected.

I really don't see it ever happening that a normal retailer would see his license threatened. We need the license for things like if some head shop starts to push out designer drugs in e-liquids, or to combat if mail order is being used to circumvent our laws. We need something to be able to penalize the business and stop them from selling, without bothering the legitimate businesses.

Thank you.

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Senate Judiciary Committee

North Dakota Legislative Assembly

Wednesday, March 18th, 2015

Public Hearing to Discuss House Bill No. 1186

A bill to amend and reenact sections of the North Dakota Century Code relating to the sale to minors and use by minors of vapor products or alternative nicotine products, and to provide a penalty

Prepared Testimony by:

Rae Ann Kelsch

On behalf of Reynolds American Inc. and its operating companies

4-2

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on this important measure. On behalf of Reynolds American and its operating companies, we applaud your effort here today, and we want to voice support for your proposal to ban the sale of vapor products to minors, and prohibit youth use and possession of vapor products.

As background, Reynolds American Inc. is the parent company of R.J. Reynolds Vapor Company, which makes the VUSE Digital Vapor Cigarette. Reynolds American Inc. is also the parent company of R.J. Reynolds Tobacco Company, the second-largest U.S. tobacco company. RAI also includes American Snuff Company, the second-largest manufacturer of smokeless tobacco products; Santa Fe Natural Tobacco Company, manufacturer of Natural American Spirit tobacco products; and Nicotivum USA and Nicotivum AB, which market innovative nicotine replacement therapy (NRT) products in the U.S. and Sweden, respectively, under the ZONNIC brand name.

All of our companies are guided by a strong belief that minors should never use any form of tobacco or tobacco-derived nicotine products, including vapor products, also known as e-cigarettes.

North Dakota is one of only eight states that have not acted to restrict access by minors to vapor products. This is a loophole in state law that we hope

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you will close during this legislative session. Our companies have supported legislation in the 42 states where action has been taken, and we are working to address this in the few remaining states where minors can still legally purchase vapor products.

Vapor products are a relatively new form of tobacco-derived product. Industry analysts have stated that the vapor business is worth about \$2 billion a year. It is appropriate for legislators to seriously consider the most responsible manner in which to treat these products. We share your interest in keeping these products out of the hands of minors.

North Dakota law currently prohibits anyone from selling or giving tobacco products to anyone under the age of 18. The law specifically names cigars, cigarettes, cigarette papers or wrappers and tobacco in any form, but it does not include e-cigarettes, which were introduced into the U.S. market around 2007. The current law also provides for conviction of an infraction for anyone violating this law.

Vapor products are fast emerging as a non-combustible alternative to smoking traditional cigarettes, but they still contain nicotine, which is addictive and, therefore, not appropriate for use by minors. These vapor products are being sold in more and more stores, and are also easily available online.

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This bill would properly define vapor products and would make it illegal for anyone to sell or give a vapor product to anyone under the age of 18. Anyone convicted of doing so would be found guilty of an infraction, which we believe would act as a deterrent.

RAI and its operating companies believe that reducing youth tobacco use is essential for the integrity of our businesses. Significant headway has been made in dramatically reducing teen smoking over the past 20 years, but we believe that more can, and should, be done to further reduce youth tobacco use. And, as part of our strategy to transform the tobacco industry, we are working to accelerate the decline in youth tobacco use through many corporate, legislative and educational initiatives such as the Right Decisions Right Now: Be Tobacco Free youth tobacco prevention program.

House Bill 1186 is a very necessary step to close the legal loophole on youth tobacco use and strengthen youth tobacco prevention in this state, and I urge legislators to adopt it without reservation.

Thank you for your time and consideration.

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OUR OPINION: E-cigs bring benefits in smoking reduction

By [Tom Dennis](#) on Mar 15, 2015 at 5:00 a.m.

[Email](#)

[News Alerts](#)

Vaping looks like smoking.

And many regulators, including the FDA, want to treat vaping like smoking.

But vaping isn't smoking. Nor is vaping -- inhaling the nicotine-laced vapors of e-cigarettes -- akin to tobacco use; simply put, e-cigs don't contain any tobacco.

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Instead, vaping is best thought of as a method of quitting smoking. As such, it can be a public-health tool. Because while e-cigarettes are not "safe," meaning zero risk, they're proving to be both dramatically safer than regular cigarettes and effective at helping people cut back on or quit smoking.

The public-health benefits of this latter achievement are huge. Regulators should keep those benefits in mind -- which means they should avoid heavy-handed rules that target vaping simply because the activity looks like smoking.

The strongest proponent of this view is Micheal Siegel, a professor at the Boston University School of Public Health. Siegel has impeccable credentials as an antismoking crusader. He has conducted tobacco research for 25 years and been a strong supporter of strict smoking

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and secondhand-smoke policies.

So, "when electronic cigarettes came to the U.S. about 2007, I was skeptical," Siegel wrote in January in a Wall Street Journal op-ed.

"My assumption was they were a ploy by the tobacco industry to hook more people into smoking under the guise of being a safer product. ... But as I talked to many e-cigarette users, known as 'vapers,' conducted research (Journal of Public Health Policy, 2011) and reviewed a growing body of scientific evidence, I became convinced that e-cigarettes have dramatic potential for reducing disease and death caused by smoking."

That attitude has strengthened since then, as the evidence has grown that e-cigarettes offer significant public-health benefits (through smoking reduction) at comparatively low risk.

Importantly, Siegel is not calling for the FDA to abandon its regulatory role. Just the opposite: The agency "should set uniform safety standards for e-cigarettes and 'vaping' products," he wrote.

"These standards should include childproof packaging, battery safety, quality-control standards for nicotine labeling and the production of e-liquids" and the like.

But heavily regulating e-cigarettes as tobacco products is overkill. Such rules mean fewer smokers would quit smoking -- and that would be a public-health loss.

-- Tom Dennis for the Herald

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TOBACCO Facts

Electronic Cigarettes (E-Cigarettes)

- Electronic cigarettes, or e-cigarettes, are nicotine delivery devices that are relatively new to the U.S. market. E-cigarettes are battery operated and do not contain tobacco, but are designed to look and feel like a cigarette. The potential user is lead to believe that e-cigarettes are a healthier alternative to smoking cigarettes and can be used to help stop smoking.



- The U.S. Food and Drug Administration (FDA) has not approved the e-cigarette as a cessation aid and it has not been shown to be safe. Preliminary FDA tests of e-cigarettes indicate they contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze.¹
- Nicotine solutions for e-cigarettes are offered in differing strengths and vary by company. Solutions are very concentrated and contain from 500 to more than 1,000 mg of nicotine in one 30 ml or 1 oz. bottle. This creates the potential for overdosing or poisoning as the lethal dose of nicotine for adults is 30 to 60 mg if swallowed, and for children is just 10 mg.²
- E-cigarettes model smoking behavior to youth. Many of the nicotine solutions come in fruit and

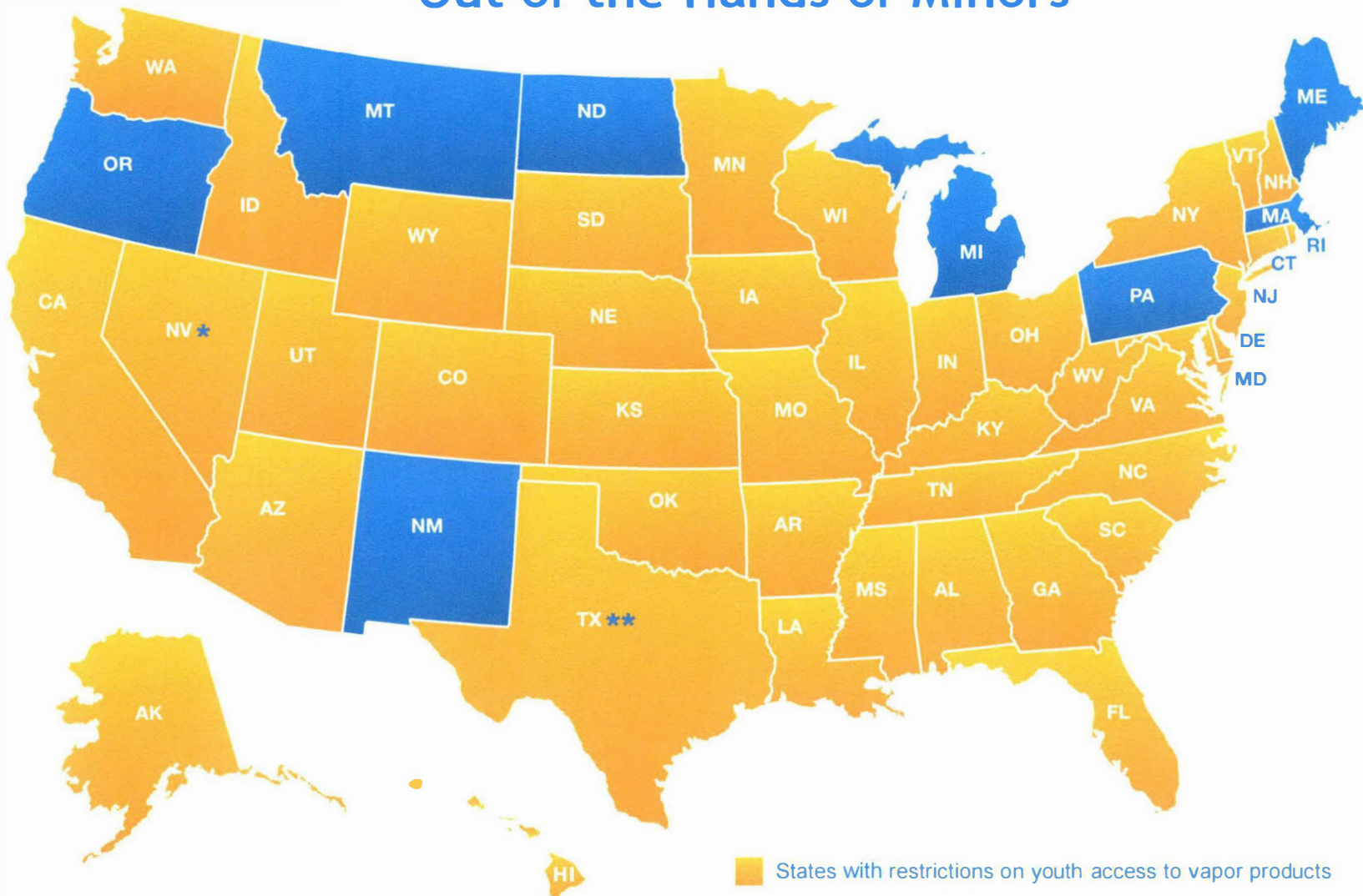
candy flavors that appeal to young people, including vanilla, chocolate, strawberry, grape, bubble gum, cherry, mint and peach cobbler, among others. This increases the appeal of e-cigarettes to youth, paving the way for them to become a "gateway" to tobacco use.³

- E-cigarettes do not just emit harmless water vapor. Secondhand e-cigarette aerosol contains nicotine, ultrafine particles and low levels of toxins known to cause cancer. The particle concentration is higher than in conventional cigarettes.⁴
- The best advice for the health of tobacco users is to quit using tobacco. Eliminating tobacco use improves your health and saves you money. For help with quitting, contact NDQuits by calling 1.800.QUIT.NOW (1.800.784.8669) or visiting www.ndhealth.gov/ndquits.
- For more information about E-cigarettes, visit the American Legacy Foundation website at www.legacyforhealth.org/3228.aspx.

Sources:

- Graphic of E-cigarette provided by American Legacy Foundation.
- ¹ FDA Warns of Health Risks posed by E-cigarettes. U.S. Food and Drug Administration. (2009, July) from <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2009/ucm173222.htm>.
- ² Indiana Tobacco Prevention and Cessation (2009, May 27). *E Cigarettes* Retrieved from <http://in.gov/itpc/files/ECigarettes.pdf>.
- ³ West Virginia Division of Tobacco Prevention and Control. News 2 Use (Summer 2009) E-cigarettes Remain Controversial And Lack The Proof Of Any Health Benefits.
- ⁴ Fuoco, F.C., Buonanno, G., Stabile, L., "Influential parameters on particle concentration and size distribution in the mainstream of e-cigarettes." Environmental Pollution 184: 523-529, January 2014.

42 States Have Acted to Keep Vapor Products or E-Cigarettes Out of the Hands of Minors



States with restrictions on youth access to vapor products

- * Statute enabling counties to enact youth vapor legislation - definition of tobacco products

Administrative ruling banning youth purchase of vapor products

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Definition

\$-1
3/18/19

TESTIMONY SUPPORT OF BILL 1186

Name: Katie Leary

Chairman Hogue, and members of the Judiciary Committee.

My name is Katie Leary; I am a sophomore at Century High School. I am speaking on behalf of the Century High School SADD students. I am here to provide testimony in support for House Bill 1186.

Century High school is located directly across the street from the Red Carpet carwash and convenience store. Everyday students are running across the street to get coffee from Gloria Jeans, pizza from Happy Joes, and various items from the convenience store. The convenience store has everything that a teenager could need to get through the day from PowerAde, teas, candy bars, to cookies.

However, when students go up to pay for the items, they are bombarded with advertising and e-juice products. The picture with my testimony is a picture at the Red Carpet carwash, there are two large cases of flavored products for electronic smoking devices that are very likely to contain the same flavor of the items the students are holding in their hands. The only catch is that this is e-juice contains addictive nicotine and other chemicals.

Students are attracted to the e-juice and e-hookah display because they are bright and colorful. When looking closer at the e-juice in the display we can read the different flavors that the e-juice comes in which appeals to youth like me such as gummy bear flavor, sugar cookie flavor and Orange Crush flavor. The same items we are purchasing.

You will also notice in the picture the e-hookah and e-juice products on the counter at eye level to be easily seen by younger generations. It is hard not to look at them when their colors and flavors match those of our favorite candies and beverages, which are located right next to the displays. If electronic smoking devices, e-juice, and other vape products were behind the counter with the other tobacco products, they would be less noticeable and accessible to children and youth, who are too young to have those products in the first place.

Please support House Bill 1186 because a statewide age restriction will prevent youth from using e-cigarettes and with the amendment to have these products behind the counter. Our state can protect its youth from a lifelong addiction to nicotine.

8-2



Establishment: Red Carpet

Location: 2921 North 11th Street, Bismarck, ND 58503

Date Photo was Taken: 3/17/2015

TESTIMONY SUPPORT OF BILL 1186

Name: Mandy Jordan

Chairman Hogue, and members of the Judiciary Committee.

My name is Mandy Jordan, I am an advisor for Century SADD. I am speaking on behalf of the Century High School students. I am here to provide testimony in support for House Bill ~~1078~~ 1186.

I've never personally used e-cigarettes, but I have watched my peers and friends fall for the lies that the tobacco companies tell us about their "safety." These are kids who would never think to smoke an actual cigarette, but because the e-cigarettes are so cleverly disguised and portrayed, they think that they are completely safe. They strictly smoke them for something to do, not realizing they can become addicted to it.

It is no secret that the tobacco companies are targeting today's youth. They do this through making smoking easier to cover up, making it smell better or taste better, and making it more appealing to the eye. Most people think that actual cigarettes are disgusting, but because of the appearance of an e-cigarette and the fact that it doesn't smell, they are much more satisfied with allowing youth to smoke them, and tobacco companies spend a lot of money to do so. In 2010 tobacco companies reported spending \$5.6 million on advertising for e-cigarettes, but as they spent more money on marketing these products their popularity among consumers grew. In 2013 tobacco companies spent \$82.1 million dollars, that's huge increase in spending over the last 3 years on e-cigarettes alone.

We need to have an age restriction at a state level because these products are harming our youth. They are creating an addiction to nicotine that could last a kids lifetime. If we develop a restriction right now we are more likely to put an end to this epidemic that could become an addiction.

Many of my peers in high school smoked e-cigarettes, because they could not get their hands on traditional cigarettes. This product is cleverly disguised and it is much easier for a minor to get away with smoking an e-cigarette than with a traditional cigarette. If there is an age restriction, these teens will not be able to get e-cigarettes so easily.

Please support House Bill 1186 because a statewide age restriction on e-cigarettes will prevent youth from being able to purchase this product and prevent the social norm from becoming youth using electronic cigarettes just because they can.

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TESTIMONY SUPPORT OF BILL 1186

Name: Victoria Brucker

Chairman Hogue, and members of the Judiciary Committee.

My name is Victoria Brucker; I am a sophomore at University of Mary. I am speaking on behalf of University of Mary Health Pro students. I am here to provide testimony in support of House Bill 1186.

In college, students have turned to using e-cigarettes and vape pens instead of traditional tobacco products. Students use them because they are easy to disguise, carry around, and they believe that it's a cool way to smoke without all the harmful effects. Many teens believe that they will not become addicted to nicotine using e-cigarettes, but the truth is that nicotine, found in all tobacco products, is a highly addictive drug, no matter what delivery device is used.

We have seen e-cigarettes being used at parties and other functions. It's not uncommon for students to use them to relieve stress from the week and to let loose.

Because we are a group that focuses on health and have seen the use of e-cigarettes rapidly evolve on campus, University of Mary Health Pro works hard to educate our peers on these devices. As a way to educate students, staff, and faculty at U of Mary, Health Pro has designed "Toilet Talks, which are posters with facts that are hung up in bathroom stalls so people can learn while using the restroom. We have also put up informational booths to educate students, staff, and faculty about the dangers of e-cigarettes. A topic we focus on when educating on e-cigarettes is how toxic liquid nicotine, or e-liquid, can be. According to a study conducted by the *New England Journal of Medicine, Nicotine Poisoning in an Infant*, a small 15 mL dropper bottle of liquid nicotine can contain over 500 mg of nicotine and would be enough nicotine to kill four toddlers.

Another study, the *Morbidity and Mortality Weekly report from the Centers for Disease Control and Prevention*, reports that in 2010 Poison Control recorded 1 phone call per month relating to nicotine poisoning. That number skyrocketed to 215 per month in 2014. This alarming statistic

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is good reason why e-juice needs to have child proof packaging. All children's medications and even children's gummy vitamins have child safety locks, so why is it not mandatory for products that cause seizures and vomiting by simply getting too much on your skin?

One of the reasons e-cigarettes are becoming the tobacco product of choice is because they are unregulated. Tobacco companies are free to market – and sell – these products to anyone, regardless of age. Although some cities have passed restrictions that prohibit selling to minors, many cities do not have age-restrictions on the sales of e-cigarettes, making the product easy, and perfectly legal to purchase, by minors.

The lack of marketing restrictions lets tobacco companies promote e-cigarettes at sporting events and on TV. The advertising appeals to college students by using clever packaging, and sex appeal, and leads students to believe these products are not harmful or addictive. In addition, there are no retailer restrictions on marketing e-cigarettes in the retail stores, like gas stations and grocery stores. This means that e-cigarettes can be displayed upfront and within reach – just like candy or soda pop - making e-cigarette purchases easy and tempting.

As a health group, we believe more restrictions need to be put in place on these addictive tobacco products by prohibiting the sales of e-cigarettes to anyone under age 18 and restricting the display of these products by allowing them only to be displayed behind the counter.

Another reason there should be an age limit is because the younger a person becomes addicted to nicotine, the longer they will be using them over their life time. Nicotine addiction can also lead to other addictions, such as illegal drugs or alcohol abuse.

Protecting the health of North Dakota's youth should be a priority. Please support House Bill 1186. We ask that you recognize that e-cigarettes are a harmful tobacco product, which need regulation. We need child protective packaging. We need to prohibit sales to anyone under age 18, and to keep all e-cigarettes behind the counter – out of reach to protect our youth. We as North Dakotans need to do all that we can to protect our youth and guide them to make the healthiest decisions.

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ND PETROLEUM MARKETERS ASSOCIATION

1025 N 3rd Street • PO Box 1956 • Bismarck, ND 58502
Telephone 701-223-3370 • www.ndpetroleum.org • Fax 701-223-5004

11-1

Testimony- HB 1186

March 18, 2015- Senate Judiciary Committee

Chairman Hogue and Members of the Committee:

For the record, I'm Mike Rud, President of the North Dakota Petroleum Marketers and North Dakota Retail Association.

On behalf of over 700 members and well over one thousand retail outlets we represent,

NDPMA/NDRA is asking for a "DO PASS" recommendation on HB 1186.

Federal law is often slow to keep up with technology, and that appears to be the case with electronic vapor (e-vapor) products, commonly referred to as e-cigarettes. In the absence of federal regulation, 41 state governments have implemented minimum age restrictions on how e-vapor products can be sold. Let's make North Dakota # 42.

The Food and Drug Administration (FDA) is working to put in place regulatory authority over e-vapor products. The FDA's regulations are expected to cover many aspects of e-vapor products from manufacturing to marketing and sales, and to empower the agency to do more in the future to address underage access to these products.

NDPMA is here this morning supporting HB 1186 because as stated in earlier testimony, HB 1186 with the amendments presented is the most encompassing, far reaching piece of legislation that not only deals with today's vapor products, but lays the groundwork for future vapor product regulations in our state.

NDPMA members take the selling of tobacco products of any kind to minors very seriously.

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You can see by the handout attached to my testimony the legal sale of tobacco products is given high priority in the retail world. Through programs like "WE CARD", marketers are able to share educational handouts and instructional training dvds with their store employees helping make sure they are doing all they can to prevent the sale of tobacco to minors, including vapor products.

No marketer has an interest in selling tobacco products to minors. No marketer wants a reputation of being a business that doesn't look out for the best interests of its customers, including minors.

A recent FDA audit found that **about 95% of ND retailers were in compliance** with existing FDA regulations barring the sale of tobacco products to minors. The same retailers – our members – have been and continue to be equally effective in responsibly selling e-vapor products to adults only.

HB 1186 also does away with all self-serve displays. All tobacco products will be placed behind the counter when this bill becomes law. While it is common practice for most retailers to keep tobacco products "behind the counter," it is NOT the law in ND. Not only does HB 1186 require vapor and e-cigs to be behind the counter, but the law would apply to "all" tobacco products.

Again, NDPMA urges a "DO PASS" recommendation on HB 1186.

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FDA Is Showing Up In North Dakota Stores

According to updated FDA guidance, retailers illegally selling FDA regulated tobacco products will face a steeper penalty increasing from \$10,000 to \$11,000 for a sixth violation within a 48 month period. Currently, first time violators receive a warning letter for the first offense, and with every following violation, fines climb from \$250 to \$11,000 for six violations within a 48 month time frame. Fines for fewer violations were not raised, only the highest level fine.

FDA data show the number of inspections has increased in 2014 to 113,000 store inspections performed through the end of August as compared to more than 109,000 store inspections in the entire year of 2013.

For the full NACS store click [here](#).

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Testimony of Laney Herauf
Greater North Dakota Chamber of Commerce
HB 1186
March 18, 2015

Mr. Chairman and members of the committee, my name is Laney Herauf; I am the Government and Regulatory Affairs Specialist for the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of House Bill 1186.

You'll frequently hear throughout this legislative process that a bill is needed to clean up the language of century code; a bill is needed to fill gaps or needed to close loopholes. This bill closes the loopholes created by new technology. Nicotine based vapor products and alternative nicotine products are relatively new on the market, being introduced around the year 2007. Our century code needs to include these in the list of products that should only be sold to adults. GNDC works closely with our business members to ensure a responsible business climate in North Dakota is achieved. Everyone involved with these legal products agree that they should only be available to adults, and this bill makes the necessary changes to ensure that happens.

We respectfully request a DO PASS recommendation on HB 1186. I would be happy to answer any questions you may have.

	1078	1186
REGULATES:	Nicotine Devices	Alternative Nicotine Products/Vapor products
Inhalable	✓ Nicotine Device	✓ Electronic Smoking Device
Non-inhalable		✓ Alternative Nicotine Product
LIMITATIONS ON SALES		
Prohibits vending sale	✓ except as permitted under § 12.1-31-03.1(2)	✓ except as permitted under § 12.1-31-03.1(2)
Restricts mail or internet sale	✓	✓
Prohibits self-service display		✓ except in tobacco specialty store and as permitted under § 12.1- 31-03.1
Prohibits sale to minors	✓	✓
PENALTIES:		
Infraction	✓	✓
Retail license suspension		
Private action for injunctive relief		
Juvenile – non criminal offense	✓	✓
14 or older, \$25 fee	✓	✓
Unruly if under 14	✓	✓

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Tobacco Free North Dakota

Testimony in support of House Bill 1186
From Dr. Eric Johnson
President, Tobacco Free North Dakota
To Senate Judiciary Committee
Senator David Hogue, Chair
March 18, 2015

Good morning Chairman Hogue and members of the Senate Judiciary Committee.

I am Dr. Eric Johnson, Associate Professor at the University of North Dakota School of Medicine and health sciences, where I hold several teaching and administrative appointments. I also maintain a clinic practice in diabetes and long term care services. I have been the physician consultant for ND Quits, President of Tobacco Free North Dakota and serve on the Governor appointed Advisory and Executive Committees for the Center for Tobacco Prevention and Control.

We often treat tobacco use as a bad habit, and although it has many behavior components, the fact is that nicotine is one of the most addictive drugs in the world. Addiction is characterized by compulsive drug seeking and abuse, even in the face of negative health consequences. It is well documented that most smokers identify tobacco use as harmful and express a desire to reduce or stop using it, and nearly 35 million of them want to quit each year. Unfortunately, more than 85 percent of those who try to quit on their own relapse, most within a week. Nicotine addiction is just like any other addictive disorder- we treat it like it is something special or different, but it's the same. 480,000 people die every year in the U.S. from tobacco related diseases including heart disease, cancer of multiple organ systems, stroke, or lung disease. That's 10 times as many as who die from alcohol. Unlike most other addiction disorders, the parts of the brain responsible for nicotine addiction never really reduce function or shutdown. When nicotine is used again, these areas become very active almost immediately. E-cigs are nicotine delivery devices and thus promote nicotine addiction.

We may think that the use of tobacco is an adult lifestyle choice, but over $\frac{3}{4}$ of users begin before age 18 and are already addicted by adulthood. Addiction is an even more complicated set of disorders in the developing brain. The age of first use is a predictor of severity of addiction with any addiction disorder.

14A2

As we address addiction, we should note that Tobacco combustion (i.e., cigarettes, cigars, pipes) is the most efficient route to deliver a drug to the brain. It takes about 2 heartbeats to deliver nicotine to the brain through this route. That's faster than an IV. E-cigs use a battery powered electric combustion system to put the nicotine and other additives into a vapor that is inhaled, resulting in extremely efficient delivery of nicotine. The vapor is not water, it is usually a liquid from the glycol family of chemicals, which are similar to antifreeze products. Some e-cig companies have attracted the attention of the FDA, as there are problems with contamination from toxins like heavy metals, and aldehyde compounds. Aldehyde compounds are known cancer-causing agents, and a recent study by the Japanese FDA equivalent showed very high amounts of these substances in e-cigs.

Tobacco companies now own most of the e-cig manufacturing at this time. They have a long history of public deception. The tobacco companies didn't lose their big lawsuit in 1998 because people got sick; as I learned at the Mayo Clinic, it was because they knew that their products were harmful as far back as the 1950's, but failed to disclose that information. I often hear that everyone knows tobacco is bad- of course I agree with that, but where we fail is when we don't recognize the severe addiction tobacco produces.

Tobacco companies market to children. This isn't my opinion; it's the opinion of the FDA. They are doing it all over again with e-cigs (Hello Kitty). Many kids who use e-cigs have never used regular tobacco...yet. Marketing and sales need to be stopped to children.

The tobacco companies have long relied on a strategy called "harm reduction." They have been to North Dakota to present this to you before. Tobacco companies have coined the phrase, "harm reduction," There is no evidence that "harm reduction" actually exists in the world of tobacco addiction. The basic strategy is to get a cigarette user to switch to chewing tobacco, or now, to e-cigs. We wouldn't tell a meth addict it would be OK to smoke marijuana, would we? We wouldn't tell an alcoholic to switch from whiskey to beer. I teach a section of addiction medicine at the medical school. The standard medical practice is to get the person to abstinence with a combination of medication and counseling. The fact is that "harm reduction" is not a medical term, and is really promoting diversification of use of different types of tobacco products, all of which have inherent danger. I recently saw a presentation on this at a national tobacco research meeting in Philadelphia. What does work? North Dakota is one of 2 states that fully funds tobacco prevention and cessation programs. NDQuits, a telephone and online counseling system that is free to north Dakotans actually has scientific data to show that it works. It is known to be 10 times better than trying to go "cold turkey". Tobacco companies and e-cig manufacturers want you to think they have the answer, but they have NO data to make the claim that e-cigs help stop smoking, and e-cigs don't have any data to show that they are safe. That is why they are not FDA approved. As well, tobacco products like e-cigs have packaging that says things like "not a safe alternative to cigarette smoking", or "not intended as a smoking cessation device". These are plainly visible on their own packaging, so its disingenuous from them to come in and say that harm reduction is an effective accepted strategy.

These companies would like you to think that they have the only answer for a desperate situation. In truth, there are many FDA approved cessation products that actually have data for how well they work,

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as well as their safety profile. North Dakotans have been successfully beating the urge to go back to their old habit and light up - lets not go backwards over some unproven product. I ask e-cigarette and tobacco companies to bring us the data. Show us that e-cigarettes are not harmful, and do not cause addiction. It would be great to have more ways to help people quit smoking. We'd love to have more tools in the toolbox, and I hope we do someday. But until tobacco companies prove that e-cigarettes are the best, safe alternative, I can't recommend them.

You will hear that electronic cigarettes or vaping are not a tobacco product. We did not run into this issue when cities across North Dakota were instituting an age of 18 for purchase of the products. In Grand Forks, city government told us the best way to do this was to amend codes on tobacco regulation to include e-cigs and similar devices under the definition of tobacco. There was no opposition testimony from the e-cig retailers or industry,, and no city council opposition. You don't need to take my word for it, a leading e-electronic cigarette spokesperson defines them as tobacco products: Tom Kiklas, co-founder and chief financial officer of the industry group, the Tobacco Vapor Electronic Cigarette Association, agrees that e-cigarettes should be regulated as tobacco products. The group represents dozens of companies involved in the manufacture and sales of e-cigarettes.

USA Today 9/24/13

To close, I think it's important for someone like myself, a practicing physician for 25 years in North Dakota, to cut through the hype surrounding e-cigarettes.

These products do not have sufficient safety data nor sufficient evidence to recommend them to stop smoking. You will hear many anecdotal stories that they may have helped. To reiterate, I would love to have another "tool" in the "toolbox" to recommend for stopping smoking. Unfortunately, e-cigs have not met the burden of proof, and there are many other FDA approved products that have. E-cigs even say on their labels that they are not for smoking cessation. As well, North Dakota has a stop tobacco program that is free to all North Dakotans- NDQuits.com. This program follows evidence based nicotine addiction treatment.

E-cigs are not allowed to advertise themselves as stop smoking products. In fact, if you look at the packaging on any of these products, none of them will say that is what they are for. It's because they don't have any data.

23 cities in ND have already disallowed sales to minors. Let's get on board as a state and take this important step.

Thank you for the opportunity to speak today. Please codify the comprehensive language, with amendments, in House Bill 1186 that will ensure North Dakota youth are unable to access e-cigarettes, and treat them like the Tobacco product that they are.

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40 AGs urge tight regulation of e-cigarettes

Mark Pratt, Associated Press 2:29 p.m. EDT September 24, 2013

A letter to the FDA raises concerns about the marketing of e-cigarettes to children.



(Photo: Ed Andrieski, AP)

BOSTON — Forty attorneys general sent a letter to the U.S. Food and Drug Administration on Tuesday urging the agency to meet its own deadline and regulate electronic cigarettes in the same way it regulates tobacco products.

The letter, co-sponsored by Massachusetts Attorney Martha Coakley and Ohio Attorney General Mike DeWine, says e-cigarettes are being marketed to children through cartoon-like advertising characters and by offering fruit and candy flavors, much like cigarettes were once marketed to hook new smokers.

At the same time, e-cigarettes are becoming more affordable and more widely available as the use of regular cigarettes decline as they become more expensive and less socially acceptable.

"Unlike traditional tobacco products, there are no federal age restrictions that would prevent children from obtaining e-cigarettes, nor are there any advertising restrictions," DeWine wrote.

Electronic cigarettes are metal or plastic battery-powered devices resembling traditional cigarettes that heat a liquid nicotine solution, creating vapor that users inhale. Users get nicotine without the chemicals, tar or odor of regular cigarettes.

E-cigarettes are being advertised during prime-time television hours at a time when many children are watching, according to the letter, which has led a surge in sales and use.

The health effects of e-cigarettes have not been adequately studied and the ingredients are not regulated, the letter said.

"People, especially kids, are being led to believe that e-cigarettes are a safe alternative, but they are highly addictive and can deliver strong doses of nicotine," Coakley said.

Citing a National Youth Tobacco Surveys conducted by the Centers for Disease Control and Prevention, the attorneys generals said 1.8 million middle and high school students said they had tried e-cigarettes in 2012, mirroring increases in the use of the product by adults.

The letter urges the FDA to meet an Oct. 31 deadline to issue proposed regulations that will address the advertising, ingredients and sale to minors of e-cigarettes. The decision has been delayed in the past.

Tom Kiklas, co-founder and chief financial officer of the industry group, the Tobacco Vapor Electronic Cigarette Association, agrees that e-cigarettes should be regulated as tobacco products. The group represents dozens of companies involved in the manufacture and sales of e-cigarettes.

"We're in agreement with responsible restrictions on the marketing and sales of these products," including a ban on marketing aimed at children, he said. "What I cringe at is when e-cigarettes get demonized."

The other states and territories joining the letter to the FDA, according to Coakley's office, are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Washington, and Wyoming.

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Tobacco Free North Dakota

Testimony in support of House Bill 1186
From TJ Jerke
Education & Advocacy - Tobacco Free North Dakota
To N.D. Senate Judiciary Committee
Sen. David Hogue, Chair
March 18, 2015

Chairman Hogue and members of the Judiciary Committee, my name is TJ Jerke. I stand here as the Educator & Advocate for Tobacco Free North Dakota.

Tobacco Free North Dakota is an expansive coalition of healthcare organizations throughout the state with a mission 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.

I stand here today in support of House Bill 1186, but with some reservations and hope that you will consider enhancing this bill to truly protect our youth from e-cigarettes.

Tobacco Free North Dakota loves that this bill:

1. Restricts e-cigarette sales to minors
2. Defines E-cigarettes as Electronic Smoking Devices
3. Has a comprehensive definition for a vending machine

Our organization hopes you will consider:

1. Defining E-cigarettes as a Tobacco Product
2. Require e-cigarette retailers to obtain a Tobacco Retailers License
3. Remove the unnecessary, "Alternative Nicotine Product" language.
4. Strengthen state penalties for retailers that commit multiple violations over a specific period of time

So why define E-cigarettes as a Tobacco Product?

Simply put, they are tobacco products. I refer you to the backside of the e-cigarette placed in front of you. These e-cigarettes clearly state they are Tobacco Products.

If we don't define these as tobacco products, it may create a slippery slope towards exempting other tobacco, and nicotine-derived tobacco products, from North Dakota's current tobacco product laws.

E-cigarettes contain nicotine that is pulled out of tobacco, and put into a new piece of technology in order to be consumed. If you find yourself wondering whether these really might not be tobacco products, please ask yourself one question. If we take the nicotine out of regular cigarettes, how many nicotine-free cigarettes would people buy? These products sell because nicotine is the addictive part of tobacco—and is the key to their sales. Anything that contains nicotine that comes from tobacco should be defined as a tobacco product.

As one lawmaker has said, 'we could pass a law that calls blue black, but that doesn't make it black.' Doing so is not only confusing, but dangerous.

For youth restrictions, it makes sense that all tobacco products are treated the same way in North Dakota law.

23 communities

Because e-cigarettes flooded the market so quickly, 23 North Dakota cities have acted quickly to regulate them. All 23 restrict sales to minors. Three of which define e-cigarettes as tobacco products. I've included a chart of what each community specifically does right now. I've also included a letter in support of this bill from the City of Grand Forks.

The letter addresses why the city defines e-cigarettes as tobacco products, citing the effort to eliminate use of e-cigarettes by youth by aligning them with traditional tobacco products.

You should have already received an email from the Wahpeton City Finance Director, addressing why they define e-cigarettes as tobacco products, and urging you to do the same.

Tobacco retailer license

If the state continues without the Tobacco product classification for e-cigarettes, we will miss an opportunity for true statewide enforcement mechanisms that have been proven to drastically cut sales of tobacco products to minors.

By defining e-cigarettes as a Tobacco product, one tremendous enforcement element would come along with the distinction, a tobacco retailer's license.

A state licensing law that requires all businesses within a city or county to obtain a license if they plan to sell e-cigarettes is a tool that is proven to reduce illegal tobacco sales to minors and increase compliance with local, state and federal tobacco laws.

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Requiring a Tobacco retailer's license for e-cigarette retailers would be an easy, nonburdensome way, to ensure proper compliance of North Dakota law.

Inherent benefits of retail licensing e-cigarettes as a tobacco product include:

- A. Identification of retailers: A state licensing ordinance creates an accurate list of tobacco retailers in a community on an annual basis, which can be used to educate, monitor and encourage retailers to comply with tobacco laws. The North Dakota Attorney General's office has a 64-page document, or 1,474 tobacco retailers, all listed with the licensee name, business name, address, phone and city information, which can be found on the Attorney General's website. The list can be updated when new businesses apply for licenses, and when businesses renew their licenses.

Currently, there are stores in North Dakota that sell e-cigarettes, but do not have a Tobacco Retailers license, such as Spencer's Gifts in the Kirkwood Mall here in Bismarck. Requiring a license will ensure the state has proper identification of stores that don't typically sell Tobacco products. Similarly, a license will identify the small shops, in small communities around the state that do not have local ordinances.

- B. Education of retailers: The licensing process can be used to conduct merchant education regarding the rules and regulations surrounding tobacco sales in the state.

- C. Monitoring of retailers: Licensing does establish a fair, methodical, and ongoing process to monitor compliance with all tobacco laws.

- D. Encouragement of compliance: A state tobacco retailer's license is a powerful tool for encouraging retailers to comply with all existing tobacco-related laws. For many merchants, tobacco sales make up a substantial portion of their revenue. Temporarily losing the authority to sell tobacco products costs far more than the state law fine of several hundred dollars—which is usually levied against the clerk, and not the store. Put another way, the threat of license suspension or revocation encourages compliance with state and local tobacco laws because licensing makes compliance matter.

Requiring a Tobacco retailer's license is not only a tremendous law enforcement asset, but it is also business-friendly. The mechanisms are already in place across North Dakota, retailers already know what they can and cannot do, and there is no financial burden on the retailer.

I've included the Attorney General's Application for a license to sell tobacco products. You'll see that it is a rather simple; one page application, and only costs \$15.

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Behind the Counter

We also hope you will consider amending the bill to put e-cigarette displays behind the counter. We place all other harmful tobacco products behind the counter, why not e-cigarettes?

Putting them behind the counter will:

1. Keep them out of reach of children.
2. Put them out of eye-level from children.
3. Keep children free from the colors and smells that are specifically marketed to them.

It seems many are in favor of this idea. Those that sell e-cigarettes, the Petroleum Marketing Association, when asked if e-cigarettes are tobacco products told the House Judiciary Committee, "If you go by what the state is saying, no they are not, but they have nicotine so we want to be sure everything is behind the counter."

Vending Machines

My last point I want to touch on is the vending machine language on page 4 lines 25-28. We are ecstatic that a comprehensive vending machine definition is in the bill as we continue to see many new, innovative and very sophisticated vending machines today. Many, of which, allow consumers to use their credit card to purchase a product. The House of Representatives included this language to ensure the state properly addresses all new and emerging forms of vending machines.

I've included two examples with my testimony. The first, you will see, shows a cigarette vending machine that has interchangeable spirals for other items and can easily include a credit & debit card reader. The second example is that of a vending machine in an airport. I'm sure we have all seen these at some point and know how advanced vending machines are becoming as we see, this particular machine can dispense items of all shapes, sizes and weight.

Please consider following what one lawmaker has already said and pass a bill that does not call blue black. I urge you to amend House Bill 1186 and truly protect our youth from electronic smoking devices.

Thank you.

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Tobacco Product Definition

Defining e-cigarettes as a Tobacco Product will:

1. Require a Tobacco Retailers License at the state level.
2. Require E-cigarettes be placed behind the counter, and out of reach of children.
3. Create a significant deterrent for noncompliance.
4. Streamlines and keep Tobacco laws in tact.
5. Doesn't create new, separate, tobacco laws.
6. E-cigarette packaging, and advertisements, say they are Tobacco products.

Tobacco Retailer License

Requiring a Tobacco retailer license to sell e-cigarettes will:

1. Reduce illegal e-cigarette sales to minors.
2. Identify retailers – give local authority and the state an accurate list of retailers for compliance and enforcement purposes.
3. Educate retailers – Allow local authorities, or the state, to conduct merchant education regarding the rules and regulations of tobacco sales
4. Encourage compliance – Losing a tobacco retailers license is a significant deterrent to encourage retailers to comply with local and state laws.
5. Be business friendly – the process is already in North Dakota law, and places no financial burden on the e-cigarette retailer.
6. No extra time or training will be needed for retailers and their employees – they are already familiar with state law.
7. The retailer would face the penalty, not the employee that illegally sold the e-cigarette.

Behind the Counter

Putting e-cigarettes behind the counter will:

1. Keep them out of reach of children.
2. Put them out of eye-level from children.
3. Keep children from being attracted to the colors and smells that are specifically marketed to them.

North Dakota city ordinances prohibiting e-cigarette sales to minors, restricting e-cigarette self-service and requiring a license for the sale of e-cigarettes. All ordinances below define e-cigarettes as a tobacco product.

STATUS	DATE ENFORCED	CITY	INCLUDES	COMMENTS
1 PASSED	1/6/2014	Fargo	1) prohibits sales to minors	
2 PASSED	2/11/2014	Bismarck	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
3 PASSED	2/25/2014	Williston	1) prohibits sales to minors	
4 PASSED	3/4/2014	Mandan	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
5 PASSED	3/18/2014	Wahpeton	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Wahpeton tobacco retailer license.	First ordinance to require that e-cigs meet the definition of tobacco and is part of tobacco licensing requirement: Wahpeton does their own tobacco licensing
6 PASSED	3/18/2014	Hankinson	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
7 PASSED	4/7/2014	Minot	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
8 PASSED	4/9/2014	West Fargo	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a West Fargo tobacco retailer license.	Second ordinance to require that e-cigs meet the definition of tobacco and is part of the tobacco licensing requirement: West Fargo does their own tobacco licensing
9 PASSED	5/27/2014	Langdon	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
10 PASSED	6/11/2014	Crosby	1) prohibits sales to minors	
11 PASSED	7/1/2014	Grand Forks	1) prohibits sales to minors, 2) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Grand Forks tobacco retailer license.	Third ordinance to require that e-cigs meet the definition of tobacco and is part of the tobacco licensing requirement: Grand Forks does their own tobacco licensing
12 PASSED	7/7/2014	Cando	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
13 PASSED	7/23/2014	Kindred	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Kindred tobacco retailer license.	

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14	PASSED	7/31/2014	Hazen	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
15	PASSED	8/13/2014	Mohall	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
16	PASSED	9/8/2014	Forman	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
17	PASSED	9/10/2014	Harwood	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Harwood tobacco retailer license.	
18	PASSED	10/6/2014	Lisbon	1) prohibits sales to minors	
19	PASSED	10/8/2014	Harvey	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
20	PASSED	10/15/2014	Casselton	1) prohibits sales to minors	
21	PASSED	11/1/2014	Devils Lake	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
22	PASSED	11/7/2014	Rutland	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
23	PASSED	11/12/2014	Mapleton	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Mapleton tobacco retailer license.	

While additional cities may have passed similar local ordinances, the Center is not able to include them on this document until the information has been reported on the local policy progress report and verified by the Center. This document will be updated quarterly.



Michael R. Brown
Mayor

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City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

(701) 746-2607

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TESTIMONY ON HOUSE BILL 1186

Senate Judiciary Committee
Senator David Hogue, Chair
City of Grand Forks, ND
March 17, 2015

Chairman Hogue and Members of the Senate Judiciary Committee:

In July 2014, the Grand Forks City Council unanimously voted to amend its City Code to include electronic cigarettes within the definition of tobacco products. We support HB1186 as it is consistent with our local ordinance.

Grand Forks City Code Section 9-0217 defines electronic cigarettes as *"any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, which provides a vapor of nicotine or other substances, and the use or inhalation of which simulates smoking. The term shall include any device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other product, name or descriptor."*

This section also defines tobacco products as: *"Tobacco products shall mean, but is not limited to, cigarettes, cigars, smokeless tobacco, tobacco snuff, chewing tobacco, and other kinds of tobacco, prepared in such a manner as to be suitable for chewing or smoking. **The term shall also include e-cigarettes.**"*

Additionally, the Grand Forks City Code Section 9-0217 states: *"It is unlawful for any person to sell or dispense any tobacco product through the use of a vending machine, except from a vending machine located in a licensed on-sale alcoholic beverage establishment or a licensed off-sale alcoholic beverage establishment where the vending machine is located within the immediate vicinity, plain view, and control of a responsible employee, so that all tobacco purchases will be readily observable by that employee. The vending machine shall not be located in any coat room, restroom, unmonitored hallway, outer waiting area, or similar unmonitored area; nor shall the vending machine be accessible to the public when the establishment is closed."* This eliminates the possibility of tobacco products including e-cigarettes from vending machines that are easily accessible by youth.

The Grand Forks Youth Commission educated city leaders on the growing issues related to these products. Based on data from the 2013 North Dakota Youth Risk Behavior Survey, the percentage of youth in grades 9-12 who were reporting electronic cigarette use had tripled since the last survey two years prior.

In an effort to eliminate use of these products by youth in our community, we aligned them with traditional tobacco products making it illegal for those under 18 to purchase, possess or use electronic cigarettes, whether they contain nicotine or other substances.

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These actions also resulted in Amendments to Grand Forks Code Section 21-2801 requiring local tobacco retail licensure for anyone selling electronic cigarettes.

The Grand Forks Youth Commission and the Grand Forks City Council have taken this action to protect the youth of our community. The City of Grand Forks supports state-wide legislation that defines electronic cigarettes as tobacco products; prohibits sale to, purchase of or possession of electronic cigarettes by minors; requires electronic cigarette retailers to be licensed as a tobacco retailers, and allows local regulation.

We support HB1186 as it is consistent with our local ordinance.

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**APPLICATION FOR LICENSE TO SELL CIGARETTES,
CIGARETTE PAPERS, SNUFF, CIGARS OR TOBACCO**
NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 16687 (3/2013)

License Number (Office Use Only)

--

PLEASE TYPE OR PRINT LEGIBLY

Name of Applicant (If corporation, LLC, etc., enter legal name)

Name of Business				
------------------	--	--	--	--

Business Address (Where tobacco products will be sold)	City	State	ZIP Code	County
--------------------------------------------------------	------	-------	----------	--------

Mailing Address (if different than above)	City	State	ZIP Code	County
-------------------------------------------	------	-------	----------	--------

Business Telephone Number	Other Contact Telephone Number
---------------------------	--------------------------------

List a person we may contact with questions regarding the application and related documents.			
----------------------------------------------------------------------------------------------	--	--	--

Name	Position with Company	Telephone Number	E-mail Address
------	-----------------------	------------------	----------------

Kind of Business

Intended Beginning date to sell tobacco products

Are you taking this business over from another? <input type="checkbox"/> Yes <input type="checkbox"/> No

If Yes, give name of previous owner

Signature of Applicant	Date
------------------------	------

Print Name of Applicant	Official Position
-------------------------	-------------------

All tobacco licenses expire on June 30th of each year.

LICENSE FEE:

Retail \$15.00

Wholesale \$25.00 (A \$1,000 surety bond must accompany each wholesale license application)

PAYABLE TO: Office of Attorney General

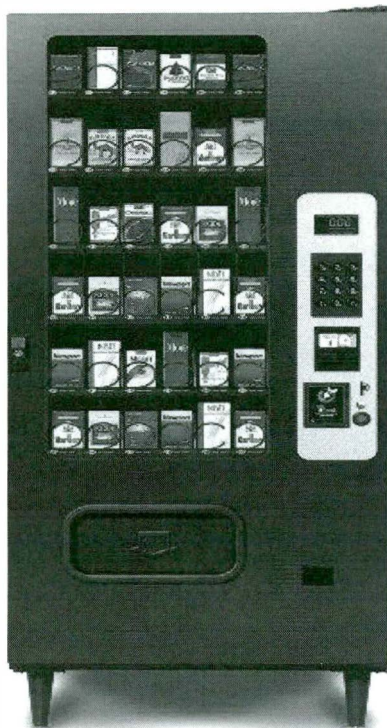
RETURN TO: Office of Attorney General
Licensing Section
600 E Boulevard Ave Dept. 125
Bismarck, ND 58505-0040
Telephone: 701-328-2329

For Licensing Use Only

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3000 Series Tobacco Center
ADA Ready • MDB • DEX

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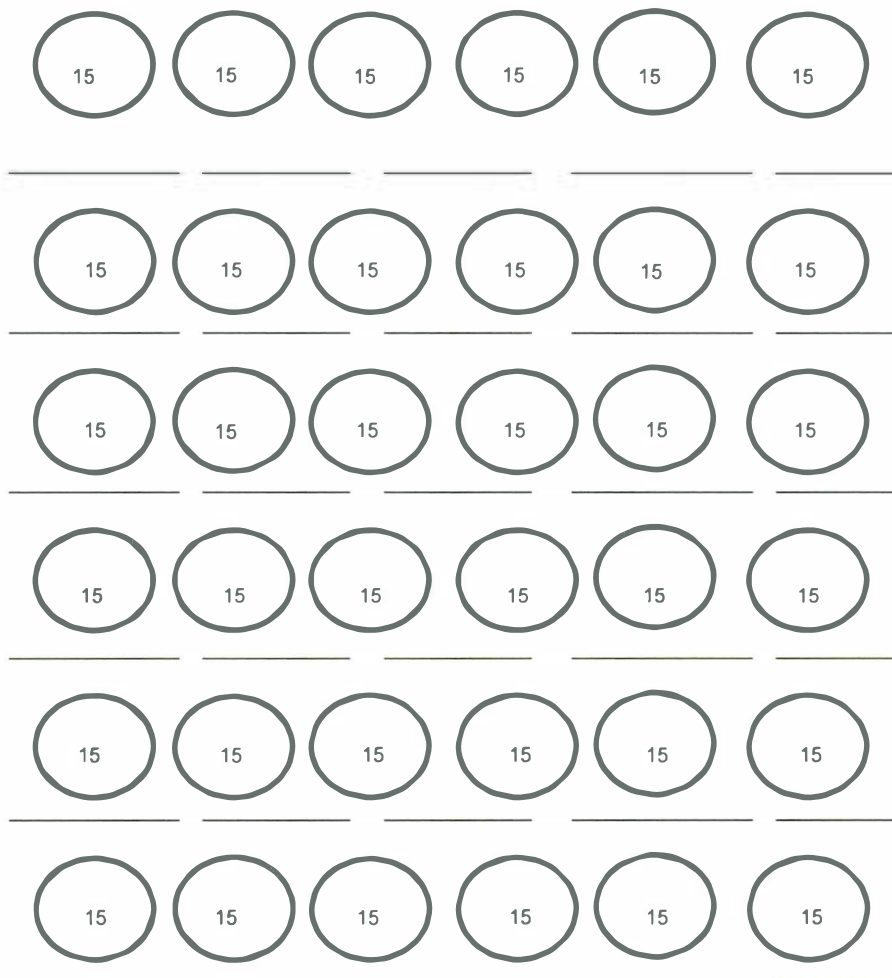
- **36-Selections Capacity - 540 Cigarettes**
- Five Tube Changer
- Bill Acceptor \$1-\$20 Bills
- **Interchangeable spirals for other items.**
- **Optional credit & debit card reader**
- Individual price settings up to \$655
- i-Vend Guaranteed Delivery
- 12-60 Select models available
- Spirals and trays can be changed to accommodate almost any vending item

DIMENSIONS:

72" h X 29.3" w X 34.75" d

Shipping weight 445 lbs

115 VAC/60hz 1.2 AMPS



Numbers in the center of the circle = capacity per spiral.

YOU CAN MIX OR MATCH EVERY TRAY OR SELECTIONS / SPIRALS INTERCHANGEABLE, ETC.

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Companies are able to use vending machines to sell products of all shapes and sizes.

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PROPOSED AMENDMENTS TO ENGROSSMENT HOUSE BILL NO. 1186

Page 1, line 1, remove "create and enact section 12.1-31-03.2 of the North Dakota Century Code"

Page 1, line 2, remove "relating to child resistant packaging for liquid nicotine containers; to"

Page 1, line 4, replace "electronic" with "tobacco"

Page 1, line 5, remove "smoking devices or alternative nicotine"

Page 1, line 5, after the first semicolon insert " and"

Page 1, line 5, remove "; and to provide an"

Page 1, line 6, remove "expiration date"

Page 1, line 10, replace ", electronic smoking devices, or alterative nicotine" with "or tobacco"

Page 1, line 12, overstrike "person" and insert immediately thereafter "tobacco retailer"

Page 1, line 13, overstrike "cigars, snuff,"

Page 1, line 13, after "tobacco" insert "products"

Page 1, line 13, overstrike "other"

Page 1, line 13, overstrike "in"

Page 1, line 14, overstrike "which it may be utilized for smoking or chewing"

Page 1, line 14, replace ", electronic smoking devices or" with "intended for human consumption"

Page 1, line 15, remove "alternative nicotine products"

Page 1, line 16, overstrike "the actor" and insert immediately thereafter "a tobacco retailer"

Page 1, line 17, replace "person" with "tobacco retailer"

Page 1, line 17, after "to" insert "use a self-service display to"

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Page 1, line 18, remove "cigars, snuff,"

Page 1, line 18, after "tobacco" insert "products"

Page 1, line 18, remove "other"

Page 1, line 18, replace "which it may be utilized for" with "intended for human consumption"

Page 1, remove line 19

Page 1, line 20, remove "through a self service display"

Page 1, line 20, replace "a:" with "vending machines or self-service displays"

Page 1, remove lines 21 and 22

Page 1, line 23, remove "(2) Self-service display that is"

Page 1, line 23, remove "a"

Page 1, line 23, replace "store" with "stores"

Page 1, after line 24, insert

"c. It is an infraction for any tobacco retailer to sell nicotine in liquid form unless the liquid is contained in child-resistant packaging.

d. In addition to any other penalties described in this section, a license issued under section 57-36 to a tobacco retailer found to have violated this section:

(1) on three occasions within any twenty four month period shall be suspended for ten calendar days;

(2) on four occasions within any twenty four month period shall be suspended for thirty calendar days; and

(3). on five occasions within any twenty four month period shall be suspended for ninety calendar days.

e. Any person aggrieved by a violation of this section may bring an action for injunctive relief to prevent future such violations or to recover such actual damages as he or she may prove."

Page 2, line 2, overstrike "cigars,"

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Page 2, line 2, overstrike "snuff,"

Page 2, line 2, remove the overstrike over "or"

Page 2, line 2, after "tobacco" insert "products"

Page 2, line 2, overstrike "other"

Page 2, line 2, overstrike "in which it may be utilized"

Page 2, line 3, overstrike "for smoking or chewing"

Page 2, line 3, replace ", electronic smoking devices, or alternative nicotine products" with "intended for human consumption"

Page 2, line 5, remove "electronic smoking devices, or alternative nicotine"

Page 2, line 8, remove ", electronic smoking devices, or"

Page 2, line 9, remove "alternative nicotine products"

Page 2, line 9, remove ", electronic smoking"

Page 2, line 10, remove "devices, or alternative nicotine products"

Page 2, line 14, overstrike "cigars,"

Page 2, line 15, overstrike "snuff,"

Page 2, line 15, remove the overstrike over "or"

Page 2, line 15, after "tobacco" insert "products"

Page 2, line 15, overstrike "other"

Page 2, line 15, overstrike "which it may be utilized for"

Page 2, line 16, overstrike "smoking or chewing"

Page 2, line 16, replace ", electronic smoking devices, or alternative nicotine products" with "intended for human consumption"

Page 2, line 17, remove the underscored comma

Page 2, line 18, remove "electronic smoking devices, or alternative nicotine"

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Page 2, line 19, remove “electronic smoking devices, or alternative nicotine”

Page 3, line 27, replace “Alternative nicotine product” means any noncombustible product containing” with ““Child-resistant packaging” has the meaning set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.”

Page 3, remove lines 28 through 31

Page 4, remove lines 1 and 2

Page 4, line 11, replace “a” with “any”

Page 4, line 12, remove “cigars, snuff,”

Page 4, line 12, after tobacco” insert “products”

Page 4, line 12, remove “other form which it may be utilized for smoking or”

Page 4, remove line 13

Page 4, line 14, replace “located in” with “location other than”

Page 4, line 14, remove “openly accessible to the retailer’s customers, and from”

Page 4, remove lines 15 and 16

Page 4, lines 17, replace “not constitute a self-service display” with “behind a sales counter where the public is not permitted access”

Page 4, after line 17, insert

“d. “Tobacco product” means tobacco or any product containing, made from, or derived from tobacco, in whole or in part, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, consumed, or ingested by any other means, including cigarettes, cigars, electronic smoking devices, pipe tobacco, chewing tobacco, snuff, snus, liquid, or other kinds and forms of tobacco. “Tobacco product” includes any product or device that contains nicotine, in any form, that is derived from tobacco. Any product that contains nicotine shall be presumed to contain nicotine derived from tobacco unless the nicotine is confirmed to be derived from a different source.

e. “Tobacco Retailer” means any person who:

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- (1) is a licensed dealer or distributor under chapter 57-36; or
(2) Sells, offers for sale, or offers to exchange for any form of consideration, cigarettes or tobacco products.

Page 4, line 18, replace "d." with "f."

Page 4, line 19, replace "seventy-five" with "eighty-five"

Page 4, line 20, remove "cigars, snuff,"

Page 4, line 20, replace "in any other form in" with "products"

Page 4, remove line 21

Page 4, line 22, remove "or alternative nicotine products"

Page 4, line 23, remove "unless accompanied by a"

Page 4, line 24, remove "parent or legal guardian"

Page 4, line 25, replace "e." with "g."

Page 5, line 2, overstrike "person" and insert immediately thereafter "tobacco retailer"

Page 5, line 2, overstrike "cigars,"

Page 5, line 3, overstrike "snuff"

Page 5, line 3, after "tobacco" insert "products"

Page 5, line 3, overstrike "other"

Page 5, line 3, overstrike "in which it may be utilized for smoking or chewing"

Page 5, line 3, remove the underscored comma

Page 5, line 4, remove "electronic smoking devices, or alternative nicotine products"

Page 5, line 5, overstrike "as provided in subsection 2."

Page 5, remove line 6.

Page 5, line 7, overstrike "a. A" and insert immediately thereafter "a"

Page 5, line 7, overstrike "an area in which minors are not permitted" and insert immediately thereafter "a tobacco special store"

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Page 5, remove line 8 through 13

Page 5, line 14, overstrike "cigars,"

Page 5, line 15, overstrike "snuff,"

Page 5, line 15, after "tobacco" insert "products"

Page 5, line 15, overstrike "other"

Page 5, line 15, overstrike "in which it may be utilized for smoking or chewing"

Page 5, line 15, remove the underscored comma

Page 5, line 16, remove "electronic smoking devices, or alternative nicotine products"

Page 5, line 19, replace "electronic smoking device" with "tobacco product"

Page 5, line 19, replace "alternative nicotine" with "tobacco retailer"

Page 5, line 20, remove "products"

Page 5, after line 20, insert

"5. In addition to any other penalties or remedies described in this section,

a. A license issued under section 57-36 to a tobacco retailer found to have violated this section:

(1) on three occasions within any twenty four month period shall be suspended for ten calendar days;

(2) on four occasions within any twenty four month period shall be suspended for thirty calendar days; and

(3) on five occasions within any twenty four month period shall be suspended for ninety calendar days.

b. Any person aggrieved by a violation of this section may bring an action for injunctive relief to prevent future such violations or to recover such actual damages as he or she may prove."

Page 5, remove lines 21 through 31

Page 6, remove lines 1 through 8

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Page 6, line 26, replace "electronic smoking devices" and "alternative nicotine" with "tobacco"

Page 6, line 27, replace "have" with "has"

Page 7, line 1, replace the underscored comma with "or"

Page 7, line 2, remove ", or alternative nicotine products"

Page 7, line 15, overstrike "smoker" and insert immediately thereafter "person"

Page 7, line 15, after "age" insert "for tobacco products"

Page 8, remove lines 17 through 31

Page 9, remove lines 1 through 7

Renumber accordingly

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Testimony
House Bill 1186
Senate Judiciary Committee
March 18, 2015; 9:00 a.m.
North Dakota Department of Health

Good morning, Chairman Hogue and members of the Senate Judiciary Committee. My name is Krista (Headland) Fremming, and I am the Director of the Chronic Disease Division at the North Dakota Department of Health (NDDoH). I am here today to provide testimony on House Bill 1186.

House Bill 1186 addresses the sale and use of electronic smoking devices and alternative nicotine products by minors. The NDDoH is concerned about the rising use of electronic smoking devices, and particularly about the increase in use of these devices in children and teens. From 2011 to 2013, the rate of North Dakota high school students who reported trying electronic smoking devices nearly tripled, increasing from 4.5 percent to 13.4 percent. High school students who have tried electronic smoking devices are twice as likely to try conventional cigarettes.

Section 1 of the bill defines “electronic smoking devices” and “alternative nicotine products” and adds them to the list of nicotine items that cannot be sold to minors. The NDDoH feels that both electronic smoking devices and alternative nicotine products should be defined in this bill as tobacco products because the nicotine contained in them is derived from tobacco plants. The ingredients in electronic smoking devices have been found to contain carcinogens. Defining electronic smoking devices and alternative nicotine products as tobacco products would allow the state to treat and regulate the sale of these products to minors in the same way the state treats and regulates the sale to minors of other tobacco products, such as conventional cigarettes. This would include requiring stores to carry a tobacco retailer license to sell electronic smoking devices and alternative nicotine products. Currently, 23 cities in North Dakota use a tobacco definition to define nicotine devices/electronic smoking devices.

Section 1 of the bill also prohibits the sale of nicotine devices through self-service displays and specifies that a salesperson must control the dispensation of nicotine devices if they are sold in a store that allows minors. The department recommends adding the requirement that the electronic smoking devices and alternative nicotine products must be kept behind the counter. Requiring the products to be kept behind the counter is important because minors cannot readily see the trendy and

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appealing marketing. These limitations on access and visual appeal have been shown in numerous studies to decrease youth tobacco use.

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

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My name is Alison Harrington I am a Respiratory Therapy Care Manager and Certified Tobacco Treatment Specialist trained at the Mayo Clinic Nicotine Dependence Center in Rochester MN.

As a tobacco treatment specialist I have counseled many people who have tried to use the E-cigarette as a cessation device and they were unsuccessful.

Reasons and observations:

- 1) Patients vape with the E cigarettes more than they smoke their traditional cigarettes.
- 2) Some patients stopped using the E-cigarette because they didn't "feel" the nicotine kick like they did their cigarettes perhaps due to inconsistent dosage.
- 3) Many patients continue to use their traditional tobacco products along with the e-cigarettes.
- 4) Patients complained about feeling sick after using electronic smoking devices with the most common symptoms being dizziness, racing heart, and nausea. Similar effects can be felt from smoking a traditional cigarette.
- 5) E-cigarettes are not approved as an FDA nicotine replacement. Counseling with the seven FDA approved pharmacotherapy is the most effective treatment for tobacco dependence. There is no scientific evidence that exists to show electronic smoking devices have a higher incidence in assisting people to quit smoking.
- 6) Tobacco treatment specialists and health care providers use a science based document, Treating Tobacco Use and Dependence Clinical Practice Guideline from the U.S. Department of Health and Human Services, 2008 for tobacco cessation treatment.
- 7) When treating tobacco dependence, the amount of replacement nicotine is dosed based on the amount the patient smokes. In a FDA study three e-cigarettes that were the same brand, had the same packaging and the same dose of nicotine listed, all tested had different amounts of nicotine.
- 8) For those patients addicted to nicotine and using E-cigarettes, it is nearly impossible for successful cessation efforts because of inconsistencies of nicotine dosage with the products.
- 9) E-cigarettes do not have sufficient safety data nor sufficient evidence to recommend them to stop smoking. You will hear many anecdotal stories that the e-cigarette may have helped.
- 10) A longitudinal international study found that, although 85% of smokers who used e-cigarettes reported using them to quit, e-cigarette users did not quit more frequently than nonusers. Among US quit line calls, e-cigarette users were less likely to have quit at 7 months than nonusers.
- 11) In my job I see the deadly health effect of the tobacco industry on a daily basis. I want the most comprehensive policies in place so that the public is not misled. This is why I am in support of HB 1168.

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Kristie Wolff – Program Manager, American Lung Association in North Dakota
Support for HB 1186
North Dakota Senate Judiciary Committee

March 18, 2015

Chairman Hogue and members of the Senate Judiciary Committee, my name is Kristie Wolff, I am the Program Manager for the American Lung Association in North Dakota.

Based on the American Lung Association's mission to save lives by improving lung health and preventing lung disease through Education, Advocacy and Research I am here to testify in support of HB 1186.

HB 1186 provides a good foundation and with some changes will provide a comprehensive policy that will protect our youth.

Show and Share of products

There is a large variety of electronic smoking devices on the market. They come in all shapes and sizes and are sold under a variety of names. Many are bright and colorful, and some even contain cartoon characters such as Hello Kitty and super heroes. (Attachment 1A, pg 5) Several products are small in size making them easy to hide. Some resemble other common objects such as asthma inhalers or watches. (Attachment 2A, pg 6) These products produce an aerosol or vapor that dissipates quickly with little to no smell.

The vapor emitted from e-cigs is not just water vapor. Studies have revealed that the vapor or aerosol emitted from e-cigarettes contains propylene glycol, heavy metals, volatile organic compounds, and tobacco specific nitrosamines albeit at lower levels than traditional cigarettes. Several of these vapor contents are ultra-fine particles which are embedding deeply into the lung tissue.

Nicotine – These electronic smoking devices contain tobacco derived nicotine in varying levels. There is no FDA oversight on the amount of nicotine or other ingredients in the products. The FDA has even found that the nicotine content labeling was not accurate from some manufacturers. They also found nicotine related impurities in some cartridges and refills.

It is not economically feasible to use synthetic nicotine or nicotine from vegetables to mass produce e-cigarettes. For example, it would take 20 lbs of eggplant to get about 9mg of nicotine. Electronic smoking devices are not FDA approved for smoking cessation and cannot be advertised as such.

Flavors – E-cigarettes and e-juice come in a large variety of fun flavors such as gummy bear, cotton candy and banana split. These flavors make products very appealing to youth. Although many of these flavorings are FDA approved for ingestion, they are not approved for inhalation. The number of brands and flavors is rising at an alarming rate. Based on a 2014 study there were 466 e-cigarette brands available, providing a total of 7764 unique flavors.

Disposables – Disposable electronic smoking devices are very popular with youth. They are inexpensive, (around \$9 to \$10 each), small, easy to hide, they are often brightly colored with fun designs and appealing flavors. Nicotine is part of the product, it is inside the product when purchased and cannot be removed. It is very important to address self-service merchandising as done by HB 1186 Page 1 lines 17-20, to protect our youth from the flashy youth friendly packaging and flavoring of these products. Amending this bill to put these protects behind the counter and out of sight of our youth would strengthen the protections provided in this bill.

Mod/Adult Personal Vaporizer/mid-size – These electronic smoking devices are sold under and referred to by variety of names. Products can be purchased as a starter kit, but are often purchased as separate parts or components, then assembled to create an e-cigarette. New components to modify these products are continually becoming available. A broad and all-encompassing definition of an electronic smoking device covering all of these products, their components, part, or accessory whether or not sold separately, as found in HB 1186, page 4 lines 3-10, is crucial to cover these quickly evolving products.

E-juice – There is no FDA regulations or oversight on these products including the amount of nicotine in the product. Some local shops are mixing the e-juice or e-liquids in their own facility with no health standards in place. We currently have 13 locally owned e-cigarette shops in North Dakota. (Attachment 3A, pg 7) These products come in a large variety of flavors. The e-juice smells good, making it easy for children of all ages to mistake it for something edible. E-juice can also be absorbed through the skin or eyes. Nicotine is toxic. Child resistant packaging, as found in HB 1186 page 5 lines 23 - 28, is critical to protect our youth and adults from nicotine poisoning.

It is important that we do not hinder smoker's access to proven cessation products. FDA approved nicotine replacement therapies, such as gum, patches and lozenges which are used for cessation are excluded as a tobacco product under HB 1186.

Stealth Vaping

There is a large amount of information available from the vaping community, primarily online, about deceptive practices which have been developed to use these electronic smoking devices.

One such practice is called Stealth vaping. This practice is becoming more popular in schools and work environments. (Attachment 4A, pg 8)

Some examples blogs of vapors sharing information on Stealth vaping:

"I usually conceal the light and then hold the vapor in my lungs until it dissipates."

"I double inhale to stealth... I take one hit off my e-cig, Inhale it down, then take a second breath, then exhale...little to no vapor comes out."

"Around the end of next month I'm going to be flying out to Las Vegas for an investor's conference. I've been practicing my stealth vaping for the flight and for those times that I'm part of the audience."

"I am so proud of my V2, I even smoke in the office (LOL at school), just not in front of my students."

In a March 2014 article Gregory Conley, President of American Vaping Association, had this to say regarding a Philadelphia City Council Meeting:

Vapers could just hold their breath. Sitting in the back of the room through two hours of testimony, he told the committee, he had used his e-cigarette 20 or 25 times, "and no one noticed."

I encourage you to take the time and do a google search for Stealth Vaping.

The use of other substances in electronic smoking devices is also becoming more popular. The CDC has received reports of THC/Marijuana, Heroin, Meth, Powdered Cocaine, and Bath Salts being used in electronic cigarettes. HB 1186 addresses use of other substances on page 4 line 4.

Strengthening HB1186

HB 1186 includes many beneficial elements that will protect our youth. However with a few changes and additions, this bill would provide the strongest health standards to protection the residents of our state.

Tobacco Product Definition - Electronic smoking devices contain nicotine derived from tobacco and should be defined and treated as a tobacco product

As a tobacco product, electronic smoking devices should be sold by only tobacco licensed retailers. This is a retail friendly method as a tobacco license is inexpensive, and many of the business currently selling these products are already a licensed tobacco retailer so there would be no change in business practice.

The Office of the Attorney General in testimony for an e-cigarette bill asked to have a broad expansive definition that will include all of these products, the most expansive definition is the tobacco product definition offered in the amendments today and does meet the AG's requests.

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Tobacco product means tobacco or any product containing, made from or derived from tobacco, in whole or in part, that is intended for human consumption, whether chewed, smoke, absorbed, dissolved, inhaled, snorted, sniffed, consumed or ingested by any other means, including cigarettes, cigars, electronic smoking devices, pipe tobacco, chewing tobacco, snuff, snus, liquid, or other kinds and forms of tobacco. "Tobacco product" includes any product or device that contains nicotine, in any form, that is derived from tobacco. Any product that contains nicotine shall be presumed to contain nicotine derived from tobacco unless the nicotine is confirmed to be derived from a different source."

Alternative Nicotine Product Definition – (Page 3 lines 27-31 and Page 4 lines 1-2) Constructing exclusive categories for each type of product is unnecessary and leaves existing laws open to interpretation, interference, and will make it more difficult to regulate products. It also creates a loophole for regulation of emerging products.

Revo - Currently being test marketed in Wisconsin. Tobacco does not combust. What definition does this fall under? How will this be regulated? The broad inclusive tobacco product definition would cover this product.

A paper titled "The importance of product definitions in US e-cigarette laws and regulations" which was published in December 2014 in the British Medical Journal states that "Definitions that broadly define e-cigarettes or explicitly include them in definitions of 'smoking' avoid the problems associated with more narrow definitions. Instead, the inclusive language allows regulation of all kinds of devices (including those that do not yet exist but may be developed in the future), and simplifies enforcement because it does not require knowing whether a product contains nicotine or is made or derived from tobacco by looking at it."

The products that would currently fall under the new alternative nicotine products definition are already covered under current tobacco law language. There is no need for the duplicative language.

In conclusion, with amendments, HB 1186 will provide a comprehensive policy and the strongest health standards to protection both the youth and adults of our state. Today I am asking for a Do Pass recommendation for this bill.

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Attachments

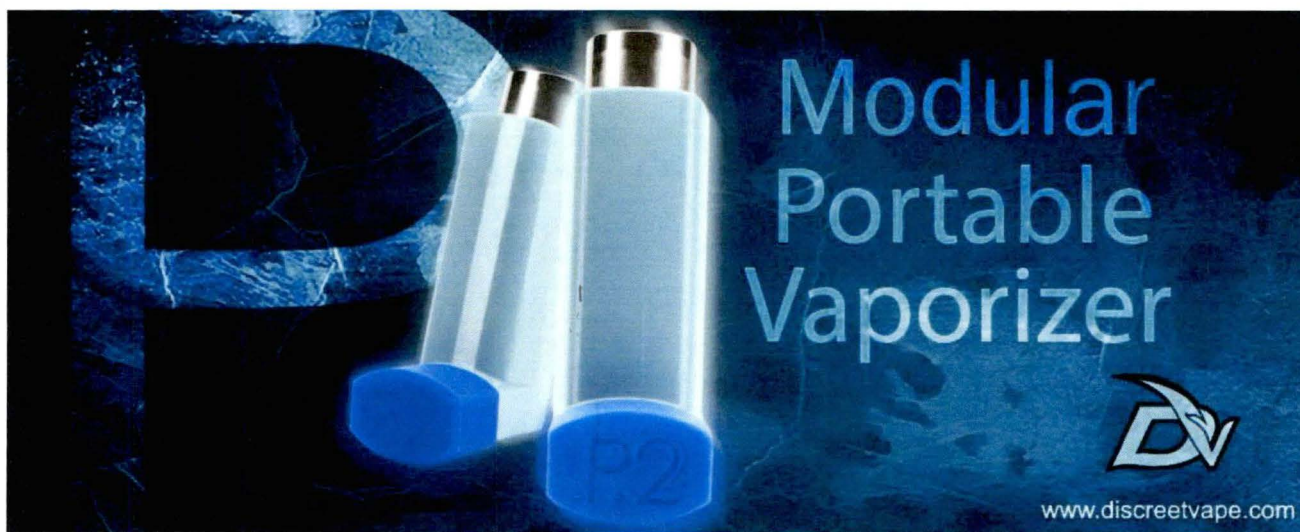
1A – Cartoon Characters



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2A – Watch/Inhaler



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3A - ND E-cigarette Shops

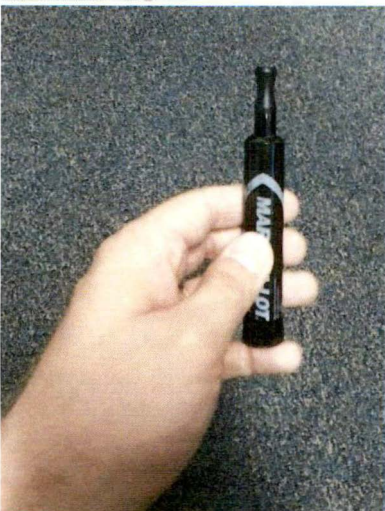
E-cigarette Shops in ND
As of 1.8.15

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Contact Name</u>
VID-CYCLE	3109 13TH AVE S	FARGO	ND	58103	
INFINITE VAPORS	68 BROADWAY	FARGO	ND	58103	KELSEY EATON
E-CIG EMPIRE	4900 13TH AVE	FARGO	ND	58103-7266	BRIAN MALY
SPORTS VAPE	1621 UNIVERSITY DR S STE 3	FARGO	ND	58103	
SMOKENVAPE Closed	4302 13 Ave S #18	FARGO	ND	58103	
SNG VAPORS	809 N 5TH ST	GRAND FORKS	ND	58201	
VAPOR STARS	814 UNIVERSITY AVE	GRAND FORKS	ND	58203	
SPENCERS (IN MALL)	2800 S COLUMBIA RD	GRAND FORKS	ND	58201	
A TO Z FASHIONS (KIOSK)	2800 S COLUMBIA RD	GRAND FORKS	ND	58201	
BOREALIS VAPE	500 WEST MAIN ST	MANDAN	ND	58554	CRAIG RUSSELL
SHARPER VISION (KIOSK)	2400 10TH ST SW	MINOT	ND	58703	
INFINITE VAPORS	317 3RD STREET NW	MINOT	ND	58703	
THE SCENT TRAIL Closed	414 Dakota Avenue	WHAPETON	ND	58075	
VAPOR OUTLAWS	112 MAIN STREET	WILLISTON	ND	58801	
SHELDON'S VAPOR SHACK	5320 134TH AVE NW	WILLISTON	ND	58801	SHELDON LANG

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4A – Stealth Vaping



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E-Cigarettes

March 2015

POSITION:

The American Lung Association:

- Supports including e-cigarettes in smokefree laws and ordinances.
- Supports state laws that would prohibit the sale of any flavored e-cigarette product.
- Supports taxing e-cigarettes at a rate equivalent with all tobacco products, including cigarettes.
- Supports eliminating e-cigarette sales to youth, otherwise restricting youth access to e-cigarettes and requiring e-cigarette retailers to be licensed. E-cigarettes should be defined as tobacco products.
- Opposes creating new definitions for “vapor products” and/or “alternative nicotine products” in state laws. This tactic, which the tobacco industry is promoting in numerous states, has the potential to undermine existing tobacco control laws, including smokefree laws and tobacco taxes.

Background

- On April 24, 2014, the U.S. Food and Drug Administration (FDA) issued its proposal to begin oversight over e-cigarettes as tobacco products. Comments were due to FDA on August 8, 2014. The American Lung Association has urged FDA to finalize this regulation no later than April 24, 2015.
- According to the FDA, electronic cigarettes, or e-cigarettes, are devices that allow users to inhale a vapor containing nicotine or other substances.¹
- Unlike traditional cigarettes, e-cigarettes are generally battery-operated and use an atomizer to heat liquid from a cartridge until it becomes a chemical-filled aerosol.
- E-cigarettes are often available in flavors that may appeal to children and teens, including cotton candy, bubble gum, chocolate, strawberry and mint.²
- There are almost 500 different brands of e-cigarettes on the market today, and e-cigarettes come in 7,700 different flavors.³
- The class of e-cigarettes also includes e-hookahs, e-pens, e-cigars and other electronic products, all of which would be subject to FDA oversight.

Who Uses E-Cigarettes?

- An increasing number of youth:
 - According to CDC, the number of students in grades 6-12 reporting having ever used an e-cigarette more than doubled from 3.3 percent to 7.7 percent from 2011 to 2013.^{4,5} Recent use of e-cigarettes among high school students tripled from 1.5 percent to 4.5 percent in this time frame, including a 61 percent from 2.8 percent in 2012.^{6,7}
 - Another national study, “Monitoring the Future,” found recent e-cigarette use among teens exceeded traditional cigarette smoking in 2014 for the first time ever. E-cigarette use among 8th and 10th graders was double that of traditional cigarette smoking.⁸

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- Adults: According to CDC, during 2010 to 2013, adults reporting that they have ever used an e-cigarette increased among every demographic group except those aged 18-24 years old, Hispanics, non-Hispanic Others, and those living in the Midwest.⁹
- Former and current smokers: In 2013, close to one in ten former and more than one in three current cigarette smokers had used an e-cigarette, which was an increase compared to 2011 for both groups. E-cigarette use among those who never had smoked cigarettes was a much lower 1-2 percent and did not increase over this period.¹⁰
- Current smokers: From 2010-2011, 72.0 percent of people who recently used e-cigarettes also currently smoked conventional cigarettes. That number rose to 76.8 percent during 2012-2013.¹¹
- Additional and on-going research is needed to understand the full public health impact of e-cigarettes, including their impact on youth initiation, and whether current smokers are switching to these products instead of quitting or are using them in conjunction with regular cigarettes.

What are the Health Effects of E-Cigarettes?

- The health consequences of the use of e-cigarettes and exposure to secondhand e-cigarette emissions are unknown. There is currently no scientific evidence establishing the safety of e-cigarettes.
- In initial lab tests conducted in 2009, FDA found detectable levels of toxic cancer-causing chemicals, including an ingredient used in anti-freeze, in two leading brands of e-cigarettes and 18 various cartridges.¹² The lab tests also found that cartridges labeled as nicotine-free had traceable levels of nicotine.
- There is no evidence that shows the aerosol emitted by e-cigarettes is safe for non-users to inhale. In fact, two initial studies have found formaldehyde, benzene and tobacco-specific nitrosamines (a carcinogen) coming from the secondhand emissions from e-cigarettes. The use of e-cigarettes in public places and workplaces may also complicate efforts to enforce and comply with smokefree laws. The American Lung Association supports including the use of e-cigarettes in worksites and public places under smokefree laws.

Can E-Cigarettes Help Someone Quit Smoking?

- The FDA has not approved any e-cigarettes as a safe or effective method to help smokers quit. The U.S. Public Health Service has found that the seven therapies approved by the U.S. Food and Drug Administration in combination with individual, group or phone cessation counseling is the most effective way to help smokers quit. Until and unless the FDA approves a specific e-cigarette for use as a tobacco cessation aid, the American Lung Association does not support any direct or implied claims that e-cigarettes help smokers quit.
- A 2014 study published in the journal *Cancer* found that among cancer patients enrolled in a smoking cessation program, e-cigarette users were as likely or less likely as individuals who did not use e-cigarettes to still be smoking.¹³

Why Are E-cigarettes Tobacco Products?

- In 2010, the U.S. Court of Appeals for the District of Columbia determined that e-cigarettes should be regulated as tobacco products except when a product makes a therapeutic (quit smoking) claim.
- E-cigarette companies sued FDA to be regulated as tobacco products.
- The nicotine used in e-cigarettes is derived from tobacco.

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- E-cigarette marketing mirrors strategies used by cigarette companies in the past, which they are no longer allowed to use because they appeal to youth.
- FDA has not found e-cigarettes safe and effective in helping smokers quit.

For More Information Please Contact:

Kristie Wolff - Program Manager - American Lung Association in North Dakota

701-223-5613 - kristie.wolff@lung.org

¹ U.S. Food and Drug Administration. "E-Cigarettes: Questions and Answers." September 9, 2010. Available at: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm225210.htm>.

² U.S. Food and Drug Administration. "FDA Warns of Health Risks Posed by E-Cigarettes." July 23, 2009. Available at: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>.

³ Zhu SH et al. "Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation." *Tobacco Control*. July 2014; 23 Suppl 3:ii3-ii9.

⁴ Centers for Disease Control and Prevention. "Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012." *Morbidity and Mortality Weekly Report*. September 6, 2013; 62(35):729-30.

⁵ Centers for Disease Control and Prevention. National Youth Tobacco Survey Raw Data, 2013. Analysis by the American Lung Association Research and Health Education Division using SPSS software.

⁶ Centers for Disease Control and Prevention. "Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012." *Morbidity and Mortality Weekly Report*. September 6, 2013; 62(35):729-30.

⁷ Centers for Disease Control and Prevention. "Tobacco Use Among Middle and High School Students — United States, 2013." *Morbidity and Mortality Weekly Report*. November 14, 2014; 63(45):1021-6.

⁸ Johnston, LD, O'Malley, PM, Miech, RA, Bachman, JG, Schulenberg, JE. "Monitoring the Future national results on adolescent drug use: Overview of key findings, 2014." 2015. Ann Arbor, Mich.: Institute for Social Research, the University of Michigan.

⁹ King, BA, Patel R, Nguyen K, Dube S. "Trends in Awareness and Use of Electronic Cigarettes Among U.S. Adults, 2010-2013." *Nicotine & Tobacco Research*. September 2014; ntu191v3-ntu191.

¹⁰ King, BA, Patel R, Nguyen K, Dube S. "Trends in Awareness and Use of Electronic Cigarettes Among U.S. Adults, 2010-2013." *Nicotine & Tobacco Research*. September 2014; ntu191v3-ntu191.

¹¹ King, BA, Patel R, Nguyen K, Dube S. "Trends in Awareness and Use of Electronic Cigarettes Among U.S. Adults, 2010-2013." *Nicotine & Tobacco Research*. September 2014; ntu191v3-ntu191.

¹² U.S. Food and Drug Administration. "Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA." July 22, 2009. Available at: <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>.

¹³ Borderud, S. P., Li, Y., Burkhalter, J. E., Sheffer, C. E. and Ostroff, J. S. (2014), Electronic cigarette use among patients with cancer: Characteristics of electronic cigarette users and their smoking cessation outcomes. *Cancer*. doi: 10.1002/cncr.28811

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Sargent Margie Zietz
Minot Police Department
Subject: Support of House Bill 1186
N.D. Senate Judiciary Committee
March 18, 2015

Chairman Hogue and members of the Senate Judiciary Committee, I am Sgt. Margie Zietz. I am the Crime Prevention Sargent of the Minot Police Department with over 30 years' experience in law enforcement. In addition, I am a mother of a young adult and 4 teenage boys.

HB1186 addresses many issues that are causing concern and anxiety among our youth and law enforcement. I hope you will consider making some changes in the current language of this bill. Which, I feel, would make it a stronger bill that would be in the best interest for the health of our youth.

I'd like to touch on a few critical components within this bill.

- HB1186 provides a comprehensive definition for the police department to use for enforcement. All components that are used with an e-cigarette are included in the Electronic Smoking Device definition. It is important to have all the components (the device, e-juice, etc) that are used with an e-cigarette included in the definition. If youth can purchase the e-juice, they can be very inventive and put it into foods or soft drinks.
- The problem with using the word nicotine in the definition is that some of the electronic smoking devices claim that the e-juice contains no nicotine. Youth can claim that the e-cigs they are using doesn't contain nicotine and it is impossible for law enforcement to distinguish.
- It would become a nightmare for local law enforcement to carry a mini laboratory with them to test each product to see if it contains nicotine. Our creative youth would easily think of pouring a nicotine containing e-juice into a bottle that is labeled "0 milligrams of nicotine" In addition, I am sure you are aware, that other drugs such as meth and marijuana are consumed via these electronic devices, and in some cases no odor can be detected
- Adding tobacco license language to HB1186 is an important tool for law enforcement to use to track tobacco retailers. To ensure that retailers are not selling to minors, the Minot Police Department conducts tobacco compliance checks. If retailers fail to comply with the law, their licenses can be revoked. Because no license is required to sell electronic cigarettes, it is hard for law enforcement to track retailers and therefore we don't have an effective tool to use for enforcement.
- It is extremely important to keep e-cigarettes and all the components behind the counter. It is tempting for youth to shoplift this type of item if it is within their reach. Many of the e-juice products are sold in kid-friendly flavors like candy cane and sour patch. Young children can easily be poisoned if they ingest these products.

Thank you for your time and consideration of including these suggestions into the language of HB1186.

Senate Judiciary Committee

HB 1186

Wednesday

March 18, 2015

9:00 AM

Good morning Chairman David Hogue and members of the Senate Judiciary Committee. My name is Deb Knuth, Government Relations Director, American Cancer Society Cancer Action Network for North Dakota.

The American Cancer Society Cancer Action Network (ACS CAN) of North Dakota appreciates the opportunity to provide feedback regarding HB 1186. Over the last several years, there has been a dramatic growth in the marketing and sale of e-cigarettes and in the claims being made by E-cigarette manufacturers, as well as a proliferation in the various types of E-cigarettes being sold. Despite the dramatic rise in the use of E-cigarettes, very little is known about their actual health risks or their impact on youth tobacco use or whether they are effective in helping smokers quit. No federal agency currently regulates how E-cigarettes are made or how and to whom they are marketed and sold. We do know that youth are trying E-cigarettes at an alarming rate. A recent Centers for Disease Control and Prevention (CDC) report (National Youth Tobacco Survey, reported in Sept 5, 2013 Morbidity and Mortality Weekly Report) shows that in the United States from 2011 to 2012— just one year—the percentage of youth (middle and high school students) using E-cigarettes more than doubled. Furthermore, more than 75% of the youth surveyed who used e-cigarettes also smoked conventional cigarettes. As well, 1 in 5 who used E-cigarettes had never tried traditional cigarettes. This could indicate that E-cigarettes are a gateway to traditional tobacco products. The E-cigarette industry is using many of the marketing techniques created and perfected by big tobacco companies to addict youth. From candy and fruit flavors like cotton candy and gummy bears, attractive packaging and designs, to targeted print, television and online advertising, and free giveaways of “starter kits,” these products are luring our youth, portraying smoking behavior as glamorous, and taking a page right out of Big Tobacco’s marketing manual. In fact, every major tobacco company now offers an electronic cigarette.

In regard to HB 1186, ACS CAN is concerned that it contains a definition for alternative nicotine product, has a poor definition of “Nicotine Liquid Container”, does not have strong enough penalties, and does not include electronic smoking devices within the definition of tobacco products. This concern stems out of the ruling by the U.S. Court of Appeals in Washington, D.C. that restricts the Food and Drug Administration (FDA) from regulating E-cigarettes under the drug and device provisions of the Food, Drug and Cosmetic Act absent therapeutic claims. Instead the ruling states E-cigarettes can be regulated as tobacco products under the Family Smoking Prevention and Tobacco Control Act. Any state legislation that defines them in a manner other than tobacco products provides the industry with the opportunity for litigation that we fear will further delay regulation. In addition, not including electronic smoking devices in the definition of tobacco products sets the stage for these products to be treated differently than other tobacco products in North Dakota and ACS CAN opposes attempts to change laws for E-

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cigarettes that could in the short or long term undermine existing effective tobacco control laws. We also prefer that all E-cigarettes, and their components, be kept behind the counter and that E-cigarette dealers be required to obtain a tobacco Retailers License.

- While E-cigarettes are, in the short term, likely less harmful than cigarettes, there are concerns that they may create new tobacco users and reverse efforts that have made smoking socially unacceptable.
- ACS CAN does not recommend E-cigs as a cessation tool. While they are likely less harmful than regular cigarettes, we don't have evidence to know if they are more effective than the thoroughly tested and FDA-approved smoking cessation medications.
- ACS CAN strongly supports FDA regulation of E-cigs, including restricting sales to minors.
- ACS CAN opposes attempts to change laws for E-cigs that could undermine tobacco control laws.
- More research is needed to determine the safety of E-cigarettes, especially over the long-term, and their efficacy as a cessation tool.

Thank you for your time and consideration.

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Testimony in Support of House Bill 1186

Provided by: Carma Hanson, MS, RN

Coordinator – Safe Kids Grand Forks

March 18, 2015

While others providing testimony on this bill today approached it from a tobacco and smoking standpoint, I am going to take a different approach. My name is Carma Hanson and I am a registered nurse at Altru Health System and the Coordinator of Safe Kids Grand Forks. The vantage point at which I would like to address my support of this bill is that of the poisoning risks that e-cigarettes pose. Safe Kids Grand Forks, of which I am the Coordinator, is an injury prevention coalition whose mission is to prevent unintentional injuries and death to children under the age of 19. We are based at Altru Health System but address safety concerns in many other parts of North Dakota as well. We focus our efforts on many risk areas including motor vehicle, pedestrian, falls, fire, and poisoning to name a few. The risks associated with e-cigarettes are some that are emerging on our radar based on the national data and information from our poison control centers and emergency rooms.

House Bill 1186 would help to address some of the concerns associated with these products that are currently available for sale to people of all ages, including those under age 18, which are different than traditional cigarettes.

Electronic nicotine delivery devices such as electronic cigarettes (e-cigarettes) are battery-powered devices that deliver nicotine, flavorings (e.g., fruit, mint, and chocolate), and other chemicals via an inhaled aerosol. E-cigarettes that are marketed without a therapeutic claim by the product manufacturer are currently not regulated by the Food and Drug Administration. I have brought a sample of an e-cigarette that was recently purchased to show the members of the committee today. This sample, as you can see, comes in a storage case that is similar to a pencil case and is decorated in what could be a pattern appealing to a young child. The colors of the cigarette are also "fun" and appealing. If you open the bottles of the liquid nicotine, you will find them to smell appealing in flavors that are attractive to young children. The flavors that I have brought are Skittleberry and Blue Razz. Not only do the flavors smell good in the bottles but the vapor from them is sweet flavored as well. The charging cord for the e-cigarette is similar to that of a cell phone and is most likely used in places with an outlet that is easily accessible.)

One area of concern is the potential of e-cigarettes to cause acute nicotine toxicity. In order for nicotine toxicity to become an issue with traditional cigarettes, a child would need to eat several cigarettes from the package which is highly unlikely due to their distaste. E-cigarettes are powered by a liquid juice that is usually flavored with appealing flavors such as fruit flavors, cotton candy, chocolate or other "food flavors". These flavors may not only be appealing while being used but give off a pleasant odor while in the bottle. Furthermore, the packaging of these products is not required to be in a childproof bottle as evidenced by the container that I brought here today as a demonstration. Besides the "juice" having appealing flavors and smells, the delivery devices are often made with "youth attractive" patterns such as Hello Kitty and other cartoon characters. These two characteristics make them very appealing to young children.

The number of calls to poison centers involving e-cigarette liquids containing nicotine rose from one per month in September 2010 to 215 per month in February 2014, according to a CDC study published in *Morbidity and Mortality Weekly Report*. The number of calls per month involving conventional cigarettes did not show a similar increase during the same time period. More than half (51.1 percent) of the calls to poison centers due to e-cigarettes involved young children under age 5.

The analysis compared total monthly poison center calls involving e-cigarettes and conventional cigarettes, and found the proportion of e-cigarette calls jumped from 0.3 percent in September 2010 to 41.7 percent in February 2014. Poisoning from conventional cigarettes is generally due to young children eating them. Poisoning related to e-cigarettes involves the liquid containing nicotine used in the devices and can occur in three ways: by ingestion, inhalation or absorption through the skin or eyes. Overdoses of nicotine can cause nausea, vomiting, heart implications, seizures and even death if taken in large enough doses which is easy to achieve in the liquid form. Recently, a young child from upstate New York was the first confirmed death from liquid nicotine.

One teaspoon of liquid nicotine could be lethal to a child, and smaller amounts can cause severe illness, often requiring trips to the emergency department. Despite the dangers these products pose to children, there are currently no standards set in place that require child-proof packaging. House Bill 1186 would change that standard and demonstrate the respect that a product such as this should be given.

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While we certainly support the provision of restricting sale of these devices to people over age 18, my colleagues have/will testify regarding that provision of the bill. I will limit my comments to the area of the bill that addresses the packaging requirements. Just as medications are required to be in childproof bottles/packaging for the purpose of poisoning prevention, so should these devices/solutions. It is the least that parents and caregivers should expect of a solution that can have similar and even more adverse health risks. Therefore, I ask for your support of House Bill 1186.

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Senate Judiciary Committee

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March 18, 2015

Chairman Hogue and Committee Members, I'm Courtney Koebele and I serve as executive director of the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents and medical students. **The North Dakota Medical Association supports HB 1186 and the proposed amendments** because it addresses one of NDMA's legislative priorities to support public health initiatives including reducing youth smoking.

The preferred way to ensure that e-cigarettes are regulated in the interest of public health is to revise the existing definition of a tobacco product to make clear that e-cigarettes -- and other novel nicotine-containing vapor products -- are tobacco products subject to any restrictions generally applied to tobacco products, including the minimum age law.

North Dakota is one of only a handful of states that have not already restricted the sale of e-cigarettes to minors. Several studies on e-cigarettes have identified the major components of e-cigarettes (nicotine, propylene glycol, and/or glycerin). There is no water in e-cigarettes. However, because these are unregulated products with poor quality control, physicians and public health experts are concerned about the lack of information on the precise amount and

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type of compounds in the many different brands of e-cigarettes, and the potential short- and long-term health effects of the compounds produced by heating in these devices.

The marketing to young people of these products worries physicians. We join others in expressing concern that young people using these products will also use other tobacco products. The Centers for Disease Control and Prevention has reported e-cigarette use among U.S. students in grades 6-12 doubled from 2011 to 2012. And while cigarettes, little cigars, and spitting tobacco are the tobacco products most likely to be used by high school students, in 2013 almost 5 percent of high school students reported using e-cigarettes. This is why many health organizations have called for prompt response from U.S. Food and Drug Administration (FDA) on regulating e-cigarettes. Public health officials also have expressed concern that wider e-cigarette use will "normalize" this behavior and lead to greater tobacco use.

The World Health Organization, American Cancer Society, Campaign for Tobacco Free Kids, American Lung Association, and American Heart Association urge caution in recognizing e-cigarettes as a tobacco-cessation or harm-reduction strategy for current tobacco users because of the lack of scientific evidence on the safety of these products. E-cigarettes also have not been approved as either a cessation or a replacement product for cigarettes by FDA. While regulations are expected from FDA on e-cigarettes in the future, the market and use for e-cigarettes is growing rapidly. We must continue to respond to new public health threats to the health of our children, and we believe HB 1186 is a responsible step to take in this direction.

Thank you.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1186

Page 1, line 20, replace "through a self-service display" with "in any location that is accessible to the public"

Page 1, line 23, replace "Self-service" with "A"

Page 4, line 11, remove "Self-service display" means a display that contains cigarettes, cigarette papers,"

Page 4, remove lines 12 through 17

Page 4, line 18, remove "d."

Page 4, line 25, replace "e." with "d."

Renumber accordingly