

**2021 SENATE FINANCE AND TAXATION**

**SB 2189**



# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2189  
1/19/2021

A BILL for an Act to amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the North Dakota Century Code, relating to the imposition of tax on electronic smoking devices; and to provide a penalty.

**Chair Bell** calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [9:30]

### Discussion Topics:

- Licensing of electronic smoking devices.
- Electronic smoking tax
- Use of vaping products by youth
- Covid 19 and health issues with ENDS/Vaping usage
- Fees
- Internet Sales

**Senator Bekkedahl** introduced the bill and submits testimony in favor #1374. [9:31]

**Heather Austin**, Director North Dakota Executive Director submits testimony in favor and submits a proposed amendment. #1361, 1362, 1363 and 1579. [9:38]

**Mike Krumwiede**, representing American Heart Association submits oral testimony in favor. [9:46]

**Neil Charvat**, ND Department of Health, submits testimony in favor #1284. [9:48]

**Jessica Arndt**, President of the Bismarck Tobacco Free Coalition, submits testimony in favor #1320. [9:55]

**Mike Rud**, President of the Petroleum Marketers Association submits testimony in opposition and submits a proposed amendment #1573 and 1574. [10:00]

**David Sylvia**, Senior Director Government Affairs Public Policy & Stakeholder Engagement - Altria Client Services submits testimony in opposition and proposed amendments #1383, 1577 and 1578. [10:06]

**Lindsey Stroud**, Policy Analyst for Taxpayers Protection Alliance, submits testimony in opposition #982. [10:11]

**Darius Andres**, Owner of Sports Vape (Fargo), submits testimony in opposition #1078. [10:14]



Gregory Conley, American Vaping Association submits testimony in opposition #1493.  
[10:18]

**Additional written testimony:**

**Justin Danberry** submits written testimony in opposition #1455.

**Chair Bell** adjourns the meeting. [10:23]

*Joel Crane, Committee Clerk*



**Senate Finance and Taxation Committee**  
**SB 2189**  
**January 19, 2021**

Honorable Chairman Bell and Committee Members:

Good morning. I am Senator Brad Bekkedahl and I am the prime sponsor of SB 2189. Although I will defer to some of the folks who helped work on this bill to answer specific questions you may have about this bill's details, I want to take a moment to explain my support for SB 2189 and the two things the bill seeks to do.

### **Background**

Electronic smoking devices are marketed and sold by companies as tobacco products. However, these devices are not defined or regulated under North Dakota law. Instead, electronic smoking devices are classified only as general merchandise, and as a result, are not subjected to any tobacco-related taxes. Likewise, the state does not currently license electronic smoking device manufacturers or distributors.

### **What the Bill Does**

SB 2189 does two things. First, the bill requires that all distributors and dealers of electronic smoking devices be licensed in the same fashion as distributors and dealers of traditional tobacco products. Second, the bill imposes a tax on electronic smoking devices at the rate of 28% of the wholesale purchase price – the existing tax scheme and rate for cigars and pipe tobacco.

### **Why I Support the Bill**

This bill is about public health. Studies have shown that increases in price of tobacco products, including those resulting from taxes, prevent initiation of use, promote cessation, and reduce the prevalence and intensity of tobacco use among youth and adults.



In 2019, approximately 1 in 3 North Dakota high school students reported using e-cigarettes.<sup>1</sup> E-cigarette use is not limited to youth, however. As a dentist, when I'm doing dental work in the military field, I often ask soldiers, "Do you use alcohol, and do you smoke?" Lately, I have been writing down vaping as one of the more common things that soldiers do. Vaping results in a much higher risk of developing gum disease and tooth loss. This is because one electronic cartridge (containing 200-400 puffs) can equal the smoking of 2-3 packs of cigarettes. The bottom line is that vaping can be just as dangerous, if not more so, than traditional cigarette smoking and we should take steps to prevent youth access to these products.

Due to the unregulated nature of electronic smoking devices and the alarming increase in use by both minors and adults, it is important that we as legislators carefully review our current approach to regulating tobacco products to ensure we are doing so in a manner that is sensible, responsive to industry's ever-changing products, and beneficial to the state and the health of its residents. I appreciate the efforts of industry to engage with us to promote healthier alternatives to traditional tobacco products and reduce youth entry to nicotine exposure and use, in tobacco and vaping products alike.

### **Conclusion**

There are representatives of the tobacco coalition here that have supporting testimony and may introduce amendments for any discrepancies in the bill. I ask that you support their amendments and give SB 2189 a "Do Pass" recommendation. Chair Bell, I will now stand for any questions.

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<sup>1</sup> [https://www.tobaccofreekids.org/problem/toll-us/north\\_dakota](https://www.tobaccofreekids.org/problem/toll-us/north_dakota)



## **PROPOSED AMENDMENTS TO SENATE BILL NO. 2189 (21.0518.02000)**

Page 3, remove lines 26-27

Page 3, line 28, remove “year prior to filing the license application.”

Page 4, line 5, remove “a.”

Page 4, remove lines 7-8

Re-number accordingly



# #1362



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January 19, 2021

9:30 am CST

Senate Finance and Taxation Committee for the 67<sup>th</sup> ND Legislative Assembly

Chairwoman Bell, and members of the Senate Finance and Taxation Committee, hello, my name is Heather Austin, and I am the Executive Director for Tobacco Free North Dakota. The mission of Tobacco Free North Dakota 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. Thank you so much for your time this morning.

Today I am here to encourage a Do Pass on SB 2189, or the bill relating to the classification and licensing of electronic smoking devices. I also have a friendly amendment to offer at the end of my testimony.

By including electronic tobacco products for licensing, taxation and regulation, alongside other existing tobacco products in North Dakota, we create parity, and we take a tremendous step forward in protecting our youth from the dangerous nicotine addiction these products promote. We can begin to stem the tide in what the FDA has called an "epidemic" for our youth. By updating our laws to reflect our current state needs and the new products that have joined the market in the last 25 years, we can better monitor and regulate tobacco to keep it out of the hands of our youth and to provide further support to health programs and services for ND citizens.

While we still have much to learn about these new electronic smoking devices, the evidence is already clear that it is unsafe for young people to use e-cigarettes, vapes, JUULs, or any other products containing nicotine. As stated by the Surgeon General, "E-cigarette use poses a significant – and avoidable – health risk to young people in the United States. Besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body."i.

These unlicensed and unregulated electronic products make it easier for beginners – primarily our kids – to try the product and ultimately become addicted. SB 2189, simply aims to include electronic tobacco products for licensing, taxation and regulation, alongside other existing tobacco products in North Dakota, and by subjecting them to the current 28% wholesale rate in place for cigars, we avoid creating product "winners and losers" in our tax policy, treating all tobacco products equally with respect to regulation. This makes good sense and provides the added benefit of protecting our kids, and that creates healthier youth and a healthier state.



Again, thank you for this time in front of you, Chairwoman Bell, and the Committee. It is very appreciated. Please vote Do Pass on SB 2189.

May I take any questions?

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[www.tfnd.org](http://www.tfnd.org)

i. HHS, Know the Risks: E-Cigarettes & Young People, accessed March 15, 2018 at <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.



Photo of actual e-juices and electronic tobacco devices confiscated during the fall of the 2018-2019 school year at a North Dakota High School.



# #1363



January 19, 2021

9:30 am CST

Senate Finance and Taxation Committee for the 67th ND Legislative Assembly

Chairwoman Bell, and members of the Senate Finance and Taxation Committee, we propose a friendly amendment to SB 2189.

Unlike traditional tobacco retailers, many electronic smoking device retailers are also product manufacturers, as they regularly fabricate, repackage, compound, and mix products. The proposed friendly amendment will allow these types of retailers to be licensed as both “dealers” and “distributors” under Section 2 of this bill.

Heather Austin

Executive Director, Tobacco Free North Dakota

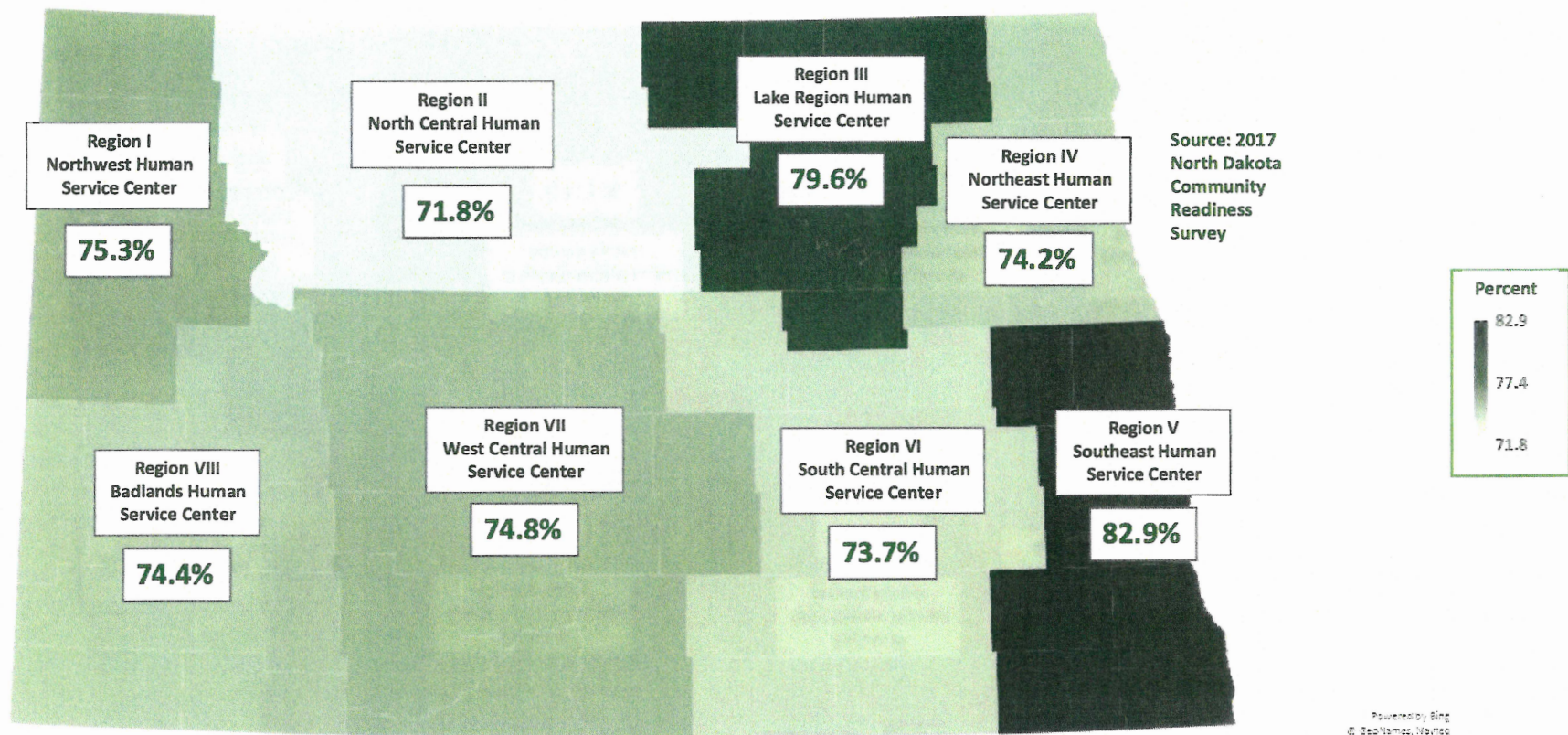
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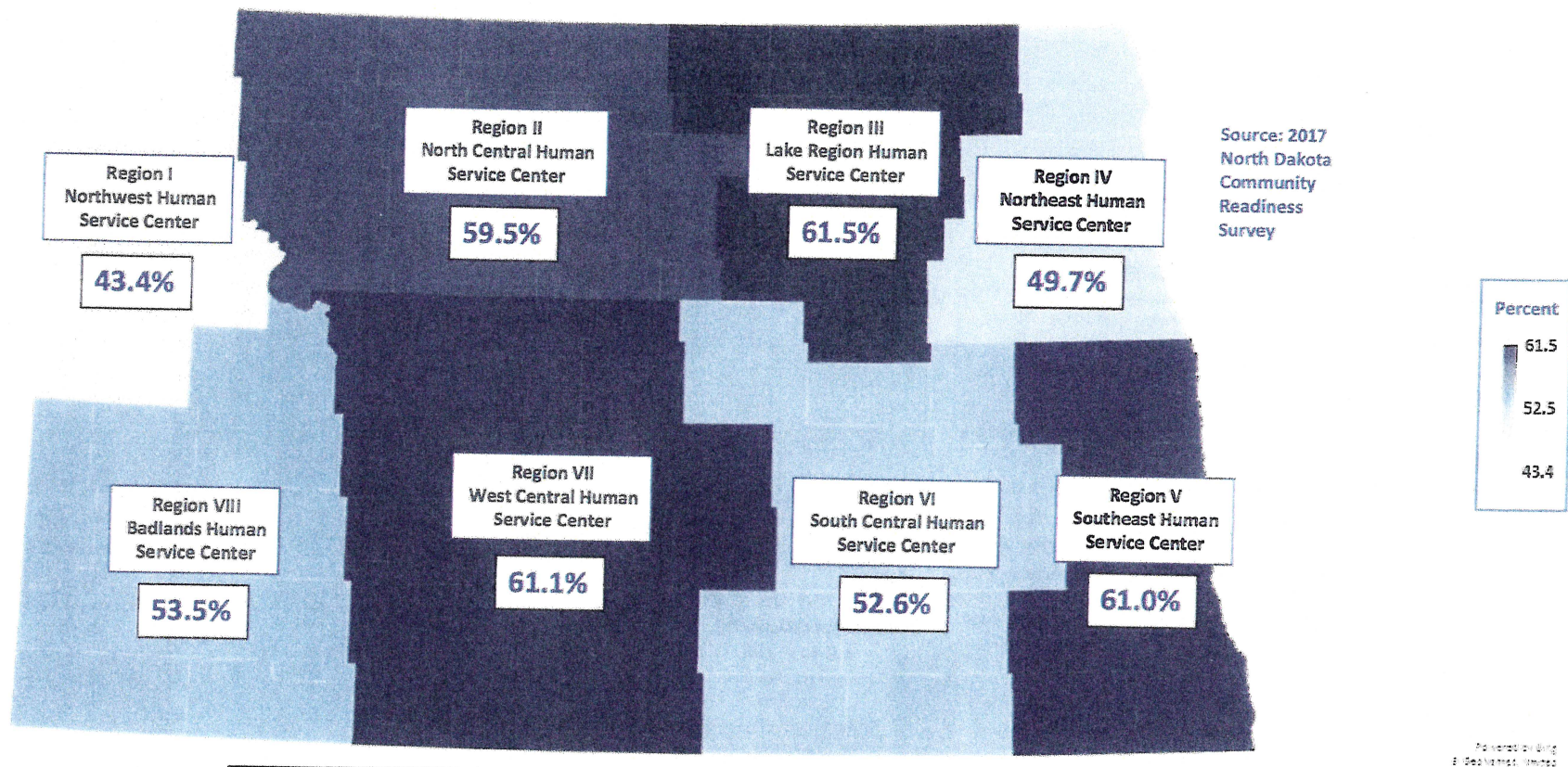
## Three of four adults in North Dakota agree E-cigarettes should be taxed at the same rate as other tobacco products



	Statewide	Region I	Region II	Region III	Region IV	Region V	Region VI	Region VII	Region VIII
Strongly Agree	34.2	35.4	30.5	40.1	39.3	42.8	26.4	37.4	33.1
Agree	41.4	39.9	41.3	39.5	34.9	40.1	47.3	37.4	41.3
Total	75.6	75.3	71.8	79.6	74.2	82.9	73.7	74.8	74.4



## More than half of adults in North Dakota agree the minimum age to purchase and possess tobacco products should be raised to 21

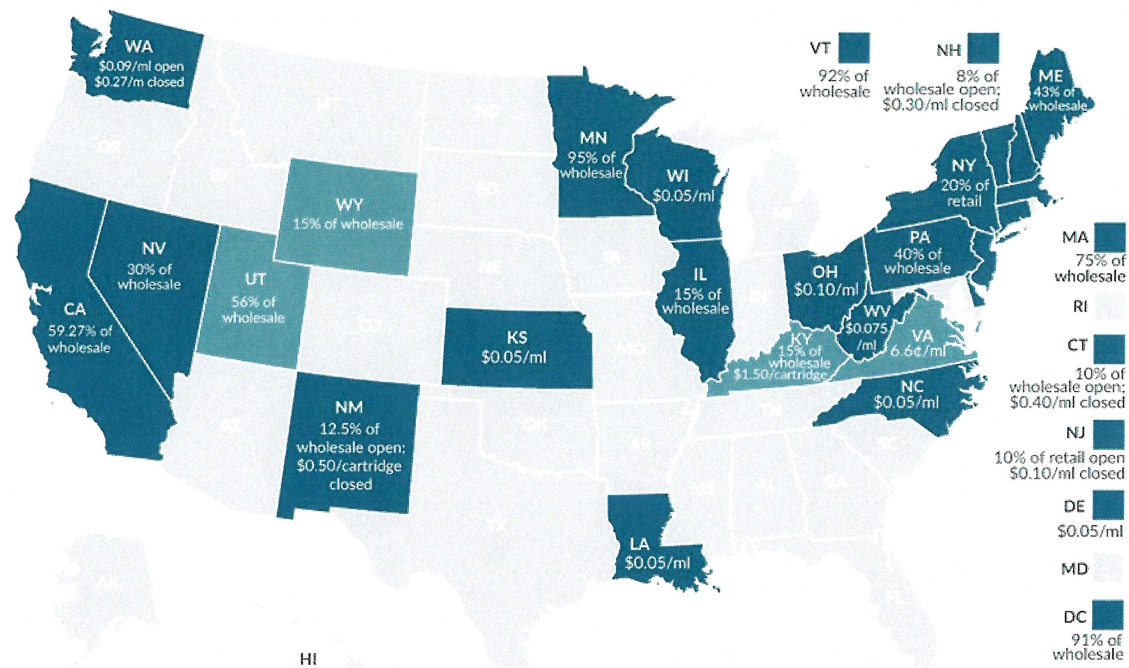


	Statewide	Region I	Region II	Region III	Region IV	Region V	Region VI	Region VII	Region VIII
Strongly Agree	26.7	22.0	24.5	29.6	24.0	35.3	21.2	28.7	24.8
Agree	30.5	21.4	35.0	31.9	25.7	25.7	31.4	32.4	28.7
Total	57.2	43.4	59.5	61.5	49.7	61.0	52.6	61.1	53.5



## How High are Vapor Taxes in Your State?

State Vapor Excise Tax Rates, as of June 2020



Note: Several states levy general sales taxes in addition to the excise tax. Those are not included on the map. CA's rate will change to 56.93% on July 1. Vapor taxes in UT, VA, and WY take effect on July 1. KY's tax goes into effect on August 1.

Open: An open tank allows the consumer to refill the liquid and allows more freedom in voltage and nicotine levels.

Closed: Normally sold as pods or cartridges. Closed systems typically have higher nicotine levels to allow for consumption of the desired amount of nicotine in shorter sessions.

Source: State Statutes & Bloomberg Tax

- Has a Statewide Vapor Excise Tax
- Planned Statewide Vapor Excise Tax
- No Vapor Excise Tax



# Emerging Electronic Tobacco Products

A generational look at the evolution of electronic tobacco products.

## CIG-A-LIKES

Cig-a-likes first entered the market in 2007. These products mimic the size and shape of a tobacco cigarette and the nicotine solution is sold in pre-filled cartridges. Very often they are also disposable.



## E-LIQUID

E-liquid is the flavored liquid that is used in e-cigarettes. Sometimes referred to as e-juice or vape juice, e-liquid is often available in a range of nicotine strengths and flavors.



## VAPE PENS

Vape pens are larger than cig-a-likes and often have the appearance of an ink pen. These devices reach higher temperatures, can have batteries or be rechargeable, and have a refillable cartridge that the user fills with a nicotine or THC solution.



## MODS & TANKS

Mods and tanks are the largest devices. They have a big battery to create more aerosol which allows the user to inhale greater amounts of nicotine and chemicals at a faster rate. The devices have a refillable tank for a nicotine solution.



## POD SYSTEMS

Pod-based systems are typically smaller and can often look like a USB. Pods consist of two parts: a battery and a pod filled with a nicotine solution that connects to it. The pods can be refillable or purchased pre-filled.



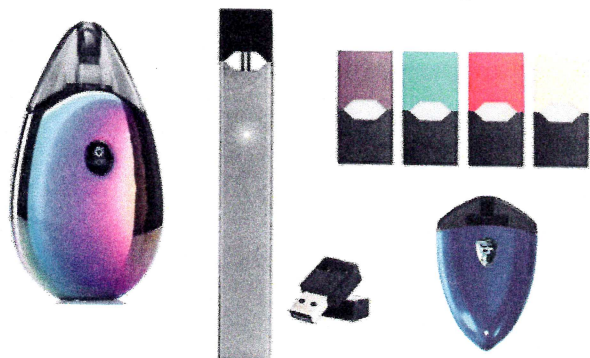
info@cyanonline.org | (916) 339-3424 | www.cyanonline.org

© 2019, California Youth Advocacy Network. This material was made possible by funds received from the California Department of Public Health, under contract #14-10013.



# Tobacco use is **STILL** an issue in ND, especially among youth...

## NEW PRODUCTS









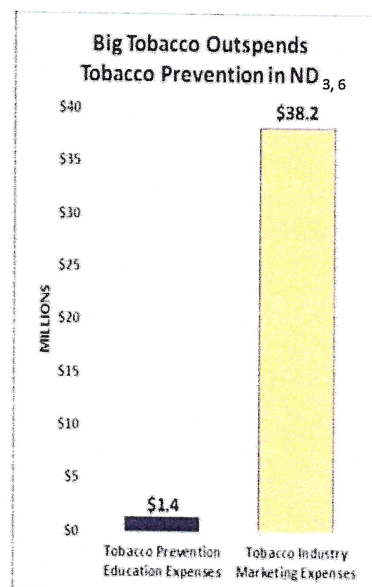
## MORE FLAVORS



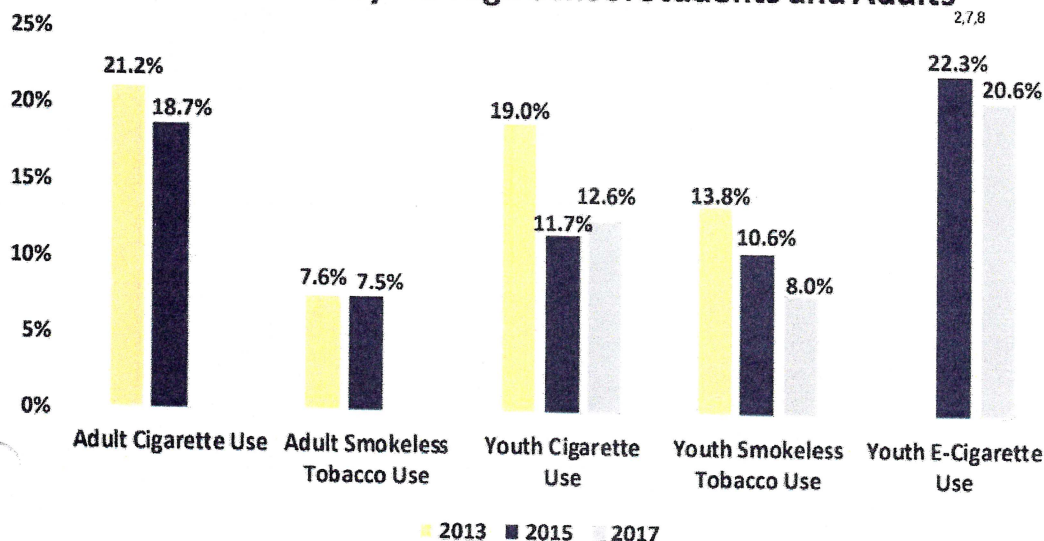
Big Tobacco and the vaping industry are constantly trying to come up with new ways to target youth. Between flavors and high tech/sleek designs its no wonder these products appeal to kids. Their latest products have been showing up in Bismarck/Burleigh County schools. These products **CONTAIN NICOTINE** which is highly addictive and harmful to youth brain development. According to a recent study by TRUTH Initiative, 63% of youth did **NOT** know that one JUUL pod contains the same amount of nicotine equal to one pack of cigarettes or 200 puffs.<sup>1,4-6</sup>

## What can North Dakota do to protect youth?

-  Increase the price on ALL tobacco products including e-cigarettes, vapes, and MODS
-  Ban flavored tobacco products
-  Fund tobacco prevention and control programs at levels recommended by the CDC
-  Implement Multi Unit Housing Smoke-Free Policy
-  Maintain the ND Smoke-Free Law
-  Raise the legal age to purchase tobacco to 21



## Tobacco Use by ND High School Students and Adults



North Dakota ranked in  
**top 10 states**  
for high youth e-cigarette usage.<sup>7</sup>

FOR MORE INFORMATION

[HTTP://WWW.BREATHEND.COM/PUBLICHEALTHUNITS/BISMARCK-TOBACCO-FREE/](http://www.breathend.com/publichealthunits/bismarck-tobacco-free/)



# SOURCES

1. (2018). Retrieved from JUUL: <https://www.juul.com/>
2. *Behavioral Risk Factor Surveillance System*. (2018). Retrieved from Centers for Disease Control and Prevention: <https://www.cdc.gov/brfss/index.html>
3. Commission, F. T. (2016). *Cigarette and Smokeless Tobacco Reports for 2013*.
4. *Get the Facts*. (2018). Retrieved from Know the Risks: E-Cigarettes and Young People: <https://e-cigarettes.surgeongeneral.gov/>
5. *juul e-cigarettes gain popularity among youth, but awareness of nicotine presence remains low*. (2018, April 18). Retrieved from Truth Initiative: <https://truthinitiative.org/news/juul-e-cigarettes-gain-popularity-among-youth>
6. *Toll of Tobacco in North Dakota*. (2018, June 20). Retrieved from Campaign for Tobacco Free Kids: [https://www.tobaccofreekids.org/problem/toll-us/north\\_dakota](https://www.tobaccofreekids.org/problem/toll-us/north_dakota)
7. (2018). *Youth Risk Behavior Surveillance - United States, 2017*. Atlanta, GA: Centers for Disease Control and Prevention.
8. (n.d.). *Youth Risk Behavior Surveillance - United States, 2013 and 2015*. Atlanta, GA: Centers for Disease Control and Prevention.



**Public Health**  
Prevent. Promote. Protect.

Bismarck-Burleigh Public Health





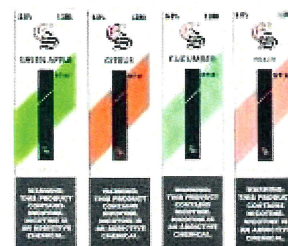
## > JUUL

- Re-chargeable, reusable device
- 3% to 5% nicotine per JUUL pod
- 1 pod = 1-2 packs of cigarettes
- Flavors: Mint, Mango, Fruit Medley, Menthol, Virginia Tobacco



## > EONSMOKE PODS

- Eon Smoke pods compatible with JUUL device
- 4% to 6.8% nicotine
- Flavors: Vanilla Custard, Summer Peach, Tropical Pineapple, Ripe Mango



## > EONSMOKE STIK

- Disposable, one-time use device
- 6.8% to 7% nicotine content
- Flavors: Strawberry, Blue Raspberry, Sweet Grape, Sour Gummy



## > STIG

- Disposable, one-time use device
- 6% nicotine content
- 1 STIG = 1 pack of cigarettes
- Flavors: Tropical Mango, Mighty Mint, Cubano, Lush Ice (watermelon)



## > SUORIN

- Re-chargeable, reusable device
- User fills device with e-liquid purchased separately
- Nicotine content and flavors vary



## > BLU

- Re-chargeable, reusable device
- 0% to 4% nicotine content per pod
- Flavors: Mint-sation, Honeymoon, Neon Dream, Melon Time, Citra Zing, Tobacco



## > MOJO

- Disposable, one-time use device
- 5% nicotine content
- Flavors: Cool Melon, Ice Pineapple, Lemon Dessert, Peach, Strawberry, Classic Tobacco



## > NOVO

- Re-chargeable, reusable device
- User fills device with e-liquid purchased separately
- Nicotine content and flavors vary

## The Bottom Line?

- Sleek, discrete devices.
- Clever branding.
- Dangerous levels of nicotine.
- Flavors that hook kids.





# THE FACTS

design by grace padon

## AN EPIDEMIC

Information courtesy of our survey results

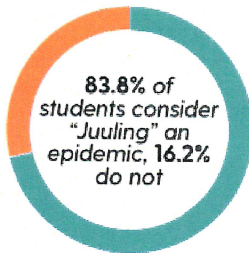
### IS JUULING AN EPIDEMIC?

In Sept. 12, FDA Commissioner, Scott Gottlieb, deemed teenage vape culture an "epidemic."

#### epidemic

#### noun

A widespread occurrence of something in a community at a particular time.



## ADDICTION

Information courtesy of EverydayHealth

### SIGNS OF ADDICTION

#### You can't stop

You feel like you need to use a Juul all the time

#### You experience withdrawal symptoms

Anxiety, irritability, restlessness, difficulty concentrating

#### You find it difficult to not Juul in places you shouldn't

At a church, library, school, movie theater or hospital

### ADDICTION AT EAST



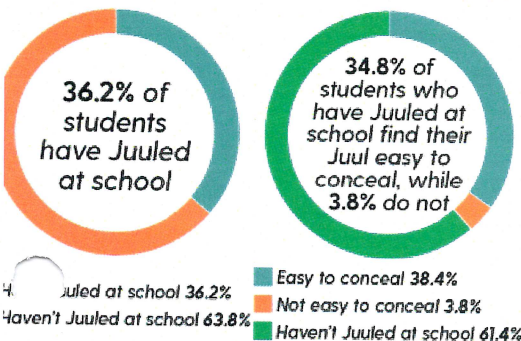
## JUUL IN SCHOOL

“

18 percent of students had seen Juuls used in school in a survey given to more than 1,000 youth between ages 12 and 17 in April 2018.

#### the truth initiative

### STUDENTS WHO HAVE USED A JUUL AT SCHOOL



A breakdown of all things Juul

## THE RISK

Information courtesy of Know the Risk

“

Until age 25, the brain is still growing. Because addiction is a form of learning, teenagers can get addicted more easily than adults.

The nicotine in e-cigarettes can prime the adolescent brain for addiction to other drugs such as cocaine.

#### know the risk

## POD TALK

Information courtesy of the CDC, Esfand Y. Nafisi and our survey results

### NICOTINE CONTENT CAPS

**EU** 20 mg per mL of nicotine fluid  
**US** 60 mg per mL of nicotine fluid

The US's nicotine content cap is **three times** the EU's nicotine content cap.

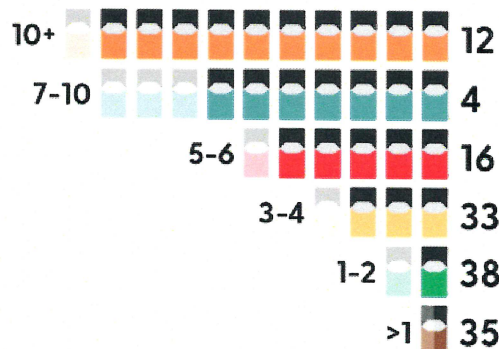


Each Juul Pod contains **59 mg** per mL of nicotine fluid.

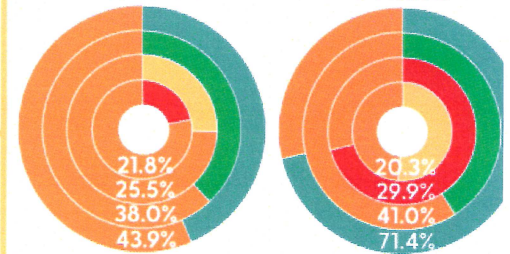
### WHAT'S IN A JUUL POD?

**90%** PROPYLENE GLYCOL AND GLYCERINE creates a vapor  
**2-5%** POD FLAVORING provides the taste profile  
**<4%** BENZOIC ACID provides a cigarette-like satisfaction  
**<5%** NICOTINE a stimulant from the tobacco plant

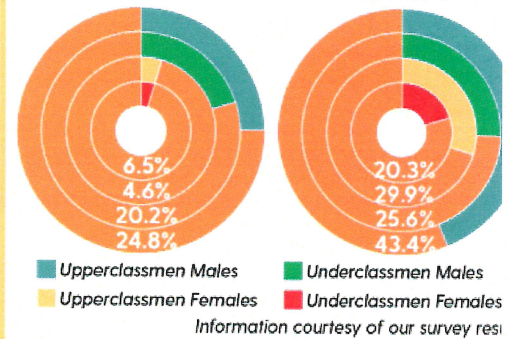
### THE AMOUNT OF JUUL PODS STUDENTS WHO JUUL GO THROUGH IN A WEEK



### STUDENTS WHO HAVE USED A JUUL



### STUDENTS WHO OWN A JUUL



## TIMELINE OF EVENTS

### JUNE 1, 2015

Juul, the electronic cigarette, was introduced by PAX Labs.

### APRIL 3, 2017

The Harbinger published an article about Juuls at East.

### APRIL 2018

Juul Labs committed \$30 million over the next three years dedicated to independent research, youth prevention and community engagement efforts, including parent education.

### JUNE 14, 2018

Juul will no longer use models on social media platforms and will focus on testimonials from adult smokers who switched to Juul.

### SEPTEMBER 2018

The FDA sent letters to Juul Labs giving them 60 days to lay out their plans to address widespread youth use of their products.

### OCTOBER 2, 2018

The FDA made an unannounced inspection of Juul headquarters, seizing more than a thousand documents said to be related to the company's sales and marketing practices.



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



## TESTIMONY SUPPORT OF SB2189

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Chairman Senator Bell, and members of the Finance and Taxation Committee. My name is Jessica Arndt. I currently serve as the President of the Bismarck Tobacco Free Coalition. I am also a respiratory therapist and educator. I have worked in respiratory care for nearly 13 years and am here to provide testimony in support of SB 2189.

This bill is important as it creates a tool to assist with preventing and reducing youth electronic smoking devices & vaping rates. In 2019 North Dakota ranked in the top five states for high youth e-cigarette usage. Our current youth usage rate is 33.1%. Since this bill will require businesses that sell electronic smoking devices to be licensed, it will assist with compliance checks and the monitoring of the sale of electronic smoking devices to youth. Currently, a license is not required making it impossible to know if businesses are selling these products, let alone selling them to our vulnerable youth.

The cities of Bismarck and Lincoln categorize electronic smoking devices as a tobacco product and require businesses to hold a license, assisting with compliance checks. These city ordinances demonstrate support for the state law to also include electronic smoking devices in the definition of tobacco products and the tobacco tax.

The Bismarck Tobacco Free Coalition urges you to support SB 2189 because it classifies electronic smoking products as tobacco. This will create a level playing field with other tobacco products in that they will now require the same licensing and regulation and be subject for inclusion in monitoring in ND. This will be another tool to protect our youth from life-time of addiction.

Thank you for your time and consideration.





ND Petroleum Marketers Association  
ND Retail Association

#1573



Testimony- SB 2189

January 19, 2021- Senate Finance and Tax Committee

Madam Chair Bell and Members of the Senate Finance and Tax Committee:

For the record, I'm Mike Rud, President of the North Dakota Petroleum Marketers Association. On behalf of NDPMA and the well over 600 retail store fronts this association proudly represents, I stand before you urging a **"DO NOT PASS" recommendation on SB 2189.**

NDPMA stands before you offering several more amendments. NDPMA offers these amendments because it believes this is once again another misguided effort to punish retailers for trying to do the right thing. Let me explain further.

Retailers completely agree with the bill sponsor. We do not want young kids in this state using tobacco products. Several sessions ago, we worked with the Breathe ND group to move all vaping products behind the counter and take down all floor displays. We agreed it was the right thing to do to help our youth. If you talk with retailers today, most will tell you they lost a lot of sales to legal aged customers because of the new regulations. But they all would agree they don't want to be part of the problem, They would rather work towards a solution. Today, most retailers our association represents will tell you between the vaping products being hidden behind the counter and the federal legal of age purchase law changing to 21 in 2019, sales of vaping products are very slow.

Quadrupling licensing fees and extending burdensome reporting requirements will only fuel more division. The problem doesn't lie with convenience stores. It lies in other areas, like internet sales and other dark markets. Why put regulations in place to further hamper retailers? I think the answers lie with implementing T21 at the federal and state levels and developing a similar matching agreement with Federal internet laws at the state level as SB 2190 will do.



The amendments brought here before you today are designed to stop the problems we are all concerned about. Youth and Tobacco. Let's do the right thing and find some common ground here. Our members are doing everything asked of them to help the cause, don't penalize them.



NDPMA Proposed Amendments to SB 2189

Section 5: Under distributor records

Line 14: reinstate the word "one"

Line 15: delete the word "Three"

Section 6: Under Outlet records-- Retailer records

Line 23: reinstate "one Year" , delete "three years"



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

#1383

January 19, 2021

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

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

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

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

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

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

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

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

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

<sup>5</sup> Family Smoking Prevention and Tobacco Control Act, 21 U.S. Code § 301

<sup>6</sup> 21 U.S.C. 387j(b)

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



## Appendix

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

#### **Connecticut (2017)**

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

#### **Kentucky (2018)**

Cigarette and OTP SET rates are reduced by:

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

#### **North Carolina (2018)**

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

#### **Washington (2019)**

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

#### **Utah (2020)**

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

#### **Colorado (2020)**

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

#### **What is an MRTP?**

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

- significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and
- benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.”

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



PROPOSED AMENDMENTS TO SENATE BILL NO. 2189

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to the taxation of Modified Risk Tobacco Products;"

Page 4, line 1, remove the overstrike over "twenty-five"

Page 4, line 1, remove "one hundred"

Page 4, line 10, remove the overstrike over "fifteen"

Page 4, line 10, remove "sixty"

Page 4, line 14, remove the overstrike over "fifty"

Page 4, line 14, remove "two hundred"

Page 6, line 8, remove the overstrike over "five"

Page 6, line 8, remove "twenty"

Page 7, line 31, remove the overstrike over "five"

Page 7, line 31, remove "twenty"

Page 9, line 14, remove the overstrike over "five"

Page 9, line 14, remove "twenty"

Page 11, after line 17, insert:

"SECTION 13. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

**Modified Risk Tobacco Product – Rate reduction**

Notwithstanding any other provision of law, any tax imposed under this chapter shall be reduced by fifty per cent for any product as to which a Modified Risk Tobacco Product order has been issued by the Secretary of the United States Department of Health and Human Services pursuant to 21 USC 387k(g)(1), or by twenty-five per cent for any product as to which a Modified Risk Tobacco Product order has been issued by the Secretary of the United States Department of Health and Human Services pursuant to 21 USC 387k(g)(2)."

Renumber accordingly



PROPOSED AMENDMENTS TO SENATE BILL NO. 2189

Page 11, after line 17, insert:

**"SECTION 13.** A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

**Modified Risk Tobacco Product – Rate reduction**

Notwithstanding any other provision of law, any tax imposed under this chapter shall be reduced by fifty per cent for any product as to which a Modified Risk Tobacco Product order has been issued by the Secretary of the United States Department of Health and Human Services pursuant to 21 USC 387k(g)(1), or by twenty-five per cent for any product as to which a Modified Risk Tobacco Product order has been issued by the Secretary of the United States Department of Health and Human Services pursuant to 21 USC 387k(g)(2)."



**Testimony before the North Dakota  
Senate Committee on Finance and Taxation  
Regarding Taxing Electronic Cigarettes and Vapor Products  
Lindsey Stroud, Policy Analyst  
Taxpayers Protection Alliance  
January 19, 2021**

Chairwoman Bell and Members of the Committee,

Thank you for your time today to discuss the issue of taxing electronic cigarettes and vapor products. My name is Lindsey Stroud and I am a Policy Analyst with the Taxpayers Protection Alliance (TPA). TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy.

As traditional tobacco revenues continue to decline, lawmakers across the country are considering applying the same excise taxes – or sin taxes – on electronic cigarettes and vapor products. Numerous studies have shown that e-cigarettes are significantly less harmful than combustible cigarettes and have helped many smokers quit smoking and remain smoke-free. Lawmakers should refrain from enacting excise taxes on such products, as excise taxes are used to deter behavior.

**E-Cigarettes and Tobacco Harm Reduction**

The evidence of harm associated with combustible cigarettes has been understood since the 1964 U.S. Surgeon General's Report that determined that smoking causes cancer. Research overwhelmingly shows the smoke created by the burning of tobacco, rather than the nicotine, produces the harmful chemicals found in combustible cigarettes.<sup>1</sup> There are an estimated 600 ingredients in each tobacco cigarette, and "when burned, [they] create more than 7,000 chemicals."<sup>2</sup> As a result of these chemicals, cigarette smoking is directly linked to cardiovascular and respiratory diseases, numerous types of cancer, and increases in other health risks among the smoking population.<sup>3</sup>

For decades, policymakers and public health officials looking to reduce smoking rates have relied on strategies such as emphasizing the possibility of death related to tobacco use and implementing tobacco-related restrictions and taxes to motivate smokers to quit using cigarettes. However, there are much more effective ways to reduce tobacco use than relying on government mandates and "quit or die" approaches.

During the past 30 years, the tobacco harm reduction (THR) approach has successfully helped millions of smokers transition to less-harmful alternatives. THRs include effective nicotine delivery systems, such as smokeless tobacco, snus, electronic cigarettes (e-cigarettes), and



vaping. E-cigarettes and vaping devices have emerged as especially powerful THR tools, helping nearly three million U.S. adults quit smoking from 2007 to 2015.

In fact, an estimated 10.8 million American adults were using electronic cigarettes and vapor products in 2016.<sup>4</sup> Of the 10.8 million, only 15 percent, or 1.6 million adults, were never-smokers, indicating that e-cigarettes are overwhelmingly used by current and/or former smokers.

E-cigarettes were first introduced in the United States in 2007 by a company called Ruyan.<sup>5</sup> Soon after their introduction, Ruyan and other brands began to offer the first generation of e-cigarettes, called “cigalikes.” These devices provide users with an experience that simulates smoking traditional tobacco cigarettes. Cig-alikes are typically composed of three parts: a cartridge that contains an e-liquid, with or without nicotine; an atomizer to heat the e-liquid to vapor; and a battery.

In later years, manufacturers added second-generation tank systems to e-cigarette products, followed by larger third-generation personal vaporizers, which vape users commonly call “mods.”<sup>6</sup> These devices can either be closed or open systems.

Closed systems, often referred to as “pod systems,” contain a disposable cartridge that is discarded after consumption. Open systems contain a tank that users can refill with e-liquid. Both closed and open systems utilize the same three primary parts included in cigalikes—a liquid, an atomizer with a heating element, and a battery—as well as other electronic parts. Unlike cig-alikes, “mods” allow users to manage flavorings and the amount of vapor produced by controlling the temperature that heats the e-liquid.

Mods also permit consumers to control nicotine levels. Current nicotine levels in e-liquids range from zero to greater than 50 milligrams per milliliter (mL).<sup>7</sup> Many users have reported reducing their nicotine concentration levels after using vaping devices for a prolonged period, indicating nicotine is not the only reason people choose to vape.

### **Health Effects of Electronic Cigarettes and Vapor Products**

Despite recent media reports, e-cigarettes are significantly less harmful than combustible cigarettes. Public health statements on the harms of e-cigarettes include:

**Public Health England:** In 2015, Public Health England, a leading health agency in the United Kingdom and similar to the FDA found “that using [e-cigarettes are] around 95% safer than smoking,” and that their use “could help reducing smoking related disease, death and health inequalities.”<sup>8</sup> In 2018, the agency reiterated their findings, finding vaping to be “at least 95% less harmful than smoking.”<sup>9</sup>

**The Royal College of Physicians:** In 2016, the Royal College of Physicians found the use of e-cigarettes and vaping devices “unlikely to exceed 5% of the risk of harm from smoking tobacco.”<sup>10</sup> The Royal College of Physicians (RCP) is another United Kingdom-



based public health organization, and the same public group the United States relied on for its 1964 Surgeon General's report on smoking and health.

**The National Academies of Sciences, Engineering, and Medicine:** In January 2018, the academy noted “using current generation e-cigarettes is less harmful than smoking.”<sup>11</sup>

A 2017 study in *BMJ*'s peer-reviewed journal *Tobacco Control* examined health outcomes using “a strategy of switching cigarette smokers to e-cigarette use ... in the USA to accelerate tobacco control progress.”<sup>12</sup> The authors concluded that replacing e-cigarettes “for tobacco cigarettes would result in an estimated 6.6 million fewer deaths and more than 86 million fewer life-years lost.”

An October 2020 review in the *Cochrane Library Database of Systematic Reviews* analyzed 50 completed studies which had been published up until January 2020 and represented more than 12,400 participants.

The authors found that there was “moderate-certainty evidence, limited by imprecision, that quit rates were higher in people randomized to nicotine [e-cigarettes] than in those randomized to nicotine replacement therapy.” The authors found that e-cigarette use translated “to an additional four successful quitters per 100.” The authors also found higher quit rates in participants that had used e-cigarettes containing nicotine, compared to the participants that had not used nicotine.

Notably, the authors found that for “every 100 people using nicotine e-cigarettes to stop smoking, 10 might successfully stop, compared with only six of 100 people using nicotine replacement therapy or nicotine-free e-cigarettes.”

### **Tobacco Economics 101: North Dakota**

In 2019, 17 percent of adults in North Dakota smoked tobacco cigarettes, amounting to 107,710 smokers in 2019.<sup>13</sup> When figuring a pack-per-day, over 786 million cigarettes were smoked in 2019 by North Dakotans, or about 2.2 million per day.<sup>14</sup>

In 2019, North Dakota imposed a \$0.44 excise tax on a pack of cigarettes.<sup>15</sup> In 2019, North Dakota collected \$17.3 million in cigarette excise taxes, when figuring for a pack-a-day habit. This amounts to \$160.60 per smoker per year.

North Dakota spent \$5.8 million on tobacco control programs in 2019, or \$53.85 per smoker per year. This is only 33 percent of what the state received in excise taxes in 2019 from North Dakota adult smokers, based off a pack-a-day habit. When figuring amount spent on youth in the state, North Dakota spent \$32.25 per year on each resident under 18 years of age.

### **Vapor Economics 101: North Dakota**

Electronic cigarettes and vapor products are not only a harm reduction tool for hundreds of thousands of smokers in the Roughrider State, they're also an economic boon.



In 2018, according to the Vapor Technology Association, the industry created 151 direct vaping-related jobs, including manufacturing, retail, and wholesale jobs in North Dakota, which generated \$7.7 million in wages alone.<sup>16</sup> Moreover, the industry has created hundreds of secondary jobs in the Roughrider State, bringing the total economic impact in 2018 to \$46,755,200. In the same year, North Dakota received more than \$1.7 million in state taxes attributable to the vaping industry.

The substitution of e-cigarettes for combustible cigarettes could also save the state in healthcare costs.

According to the Centers for Disease Control and Prevention (CDC), it is now well known that Medicaid recipients smoke at rates of twice the average of privately insured persons. In 2013, “smoking-related diseases cost Medicaid programs an average of \$833 million per state.”<sup>17</sup>

A 2015 policy analysis by State Budget Solutions examined electronic cigarettes’ effect on Medicaid spending. The author estimated Medicaid savings could have amounted to \$48 billion in 2012 if e-cigarettes had been adopted in place of combustible tobacco cigarettes by all Medicaid recipients who currently consume these products.<sup>18</sup>

A 2017 study by the R Street Institute examined the financial impact to Medicaid costs that would occur should a large number of current Medicaid recipients switch from combustible cigarettes to e-cigarettes or vaping devices. The author used a sample size of “1% of smokers [within] demographic groups permanently” switching. In this analysis, the author estimates Medicaid savings “will be approximately \$2.8 billion per 1 percent of enrollees,” over the next 25 years.<sup>19</sup>

### **Taxes on E-Cigarettes Unlikely to Deter Youth Use**

Many lawmakers have attempted to thwart youth use of electronic cigarettes and vapor products by apply sin taxes to such products. Although addressing youth use is laudable, many youths in North Dakota are *not regularly using* e-cigarettes. Further, data from youth surveys indicate that excise taxes don’t reduce youth use of vapor products.

In 2019, 33.1 percent of North Dakota high school students reported using a vapor product on at least one occasion in the 30 days prior and only 12.1 percent reported frequent use – or using 20 or more days.<sup>20</sup> According to national data, between 2019 and 2020, youth use of e-cigarettes decreased by 33.3 percent.<sup>21</sup>

Further, there is no data to indicate that youth use of vapor products decreased after implementing taxes on e-cigarettes and indeed, youth vaping has actually increased after other states implemented vapor taxes. Tobacco Harm Reduction 101 examined the effects of vapor taxes in six states. From 2017 to 2019, current e-cigarette use among high school students increased in five states – even with excise taxes imposed on such products.



***Kansas Vapor Tax: \$0.05 per milliliter***

Kansas' tax on e-cigarettes and vapor products went into effect July 1, 2017.<sup>22</sup>

According to Kansas's YRBSS, in 2017, 34.8 percent and 10.6 percent of high school students reported ever and current e-cigarette product use, respectively.<sup>23</sup>

In 2019, ever-use increased by 28.4 percent, to 48.6 percent of Kansas high school students and current e-cigarette use increased by 51.8 percent, to 22 percent of high school students using an e-cigarette on at least one occasion in the 30 days prior.

***Louisiana Vapor Tax: \$0.05 per milliliter***

Louisiana's tax on e-cigarettes and vapor products went into effect August 1, 2015.<sup>24</sup>

According to Louisiana's YRBSS, in 2017, 45.1 percent and 12.2 percent of high school students reported ever and current e-cigarette product use, respectively.<sup>25</sup>

In 2019, ever-use increased by 13.3 percent, to 52 percent of Louisiana high school students and current e-cigarette use increased by 46.7 percent, to 22.9 percent of high school students using an e-cigarette at least one occasion in the 30 days prior.

***North Carolina Vapor Tax: \$0.05 per milliliter***

North Carolina's tax on e-cigarettes and vapor products went into effect July 1, 2015.<sup>26</sup>

According to North Carolina's YRBSS, in 2015, 49.4 percent and 29.6 percent of high school students reported ever and current e-cigarette product use, respectively. In 2017, ever-use decreased by 12 percent, to 44.1 percent of North Carolina high school students and current e-cigarette use decreased by 33.9 percent, to 22.1 percent of high school students using an e-cigarette in the last 30 days.<sup>27</sup>

In 2019, 52.4 percent of high school students reporting having ever used an e-cigarette, this is a 15.8 percent increase from 2017, and a 5.7 percent increase from 2015 rates. Regarding current e-cigarette use, in 2019, 35.5 percent of North Carolina high school students reported using an e-cigarette on at least one occasion in the 30 days prior, this is a 37.7 percent increase from 2017 rates, and a 16.6 percent increase from 2015 rates.

***Pennsylvania Vapor Tax: 40 percent of purchase price***

Pennsylvania's tax on e-cigarettes and vapor products went into effect October 1, 2016.<sup>28</sup>

In 2015, according to Pennsylvania's YRBSS, 40.8 percent and 23.1 percent of high school students reported ever and current e-cigarette product use, respectively. In 2017, ever-use increased by 2.4 percent, to 41.8 percent of Pennsylvania high school students, and current e-cigarette use decreased by 104 percent, to 11.3 percent of high school students using an e-cigarette in the last 30 days.<sup>29</sup>



In 2019, 52.6 percent of high school students reporting having ever used an e-cigarette, this is a 20.5 percent increase from 2017, and a 22.4 percent increase from 2015 rates. Regarding current e-cigarette use, in 2019, 24.4 percent of Pennsylvania high school students reported using an e-cigarette on at least one occasion in the 30 days prior, this is a 53.7 percent increase from 2017 rates, and a 5.3 percent increase from 2015 rates.

***West Virginia Vapor Tax: \$0.075 per milliliter***

West Virginia's tax on e-cigarettes and vapor products went into effect July 1, 2016.<sup>30</sup>

According to West Virginia's YRBSS, in 2015, 49.1 percent and 31.2 percent of high school students reported ever and current e-cigarette product use, respectively. In 2017, ever-use decreased by 10.6 percent, to 44.4 percent of West Virginia high school students, and current e-cigarette use decreased by 118.2 percent, to 14.3 percent of high school students using an e-cigarette in the last 30 days.<sup>31</sup>

In 2019, 62.4 percent of high school students reporting having ever used an e-cigarette, this is a 28.8 percent increase from 2017, and a 21.3 percent increase from 2015 rates. Regarding current e-cigarette use, in 2019, 35.7 percent of West Virginia's high school students reported using an e-cigarette on at least one occasion in the 30 days prior, this is a 59.9 percent increase from 2017 rates, and a 12.6 percent increase from 2015 rates.

**Excise Taxes Are Unreliable Sources of Revenue, Burden Low Income Persons**

Existing excise taxes are unreliable revenue sources. Cigarette tax increases result in long-term revenue shortfalls. From 2001 to 2011, "revenue projections were met in only 29 of 101 cases where cigarette/tobacco taxes were increased," according to the National Taxpayers Union Foundation.<sup>32</sup> Moreover, a decline in cigarette consumption caused cigarette tax revenues "to drop by an average of about 1 percent across all states from 2008 to 2016," according to a report by Pew Charitable Trusts.<sup>33</sup> A 2020 report by the Tax Foundation noted that cigarette tax revenue has fallen in all states and considers cigarette tax revenue to be "so unstable."<sup>34</sup>

Excise taxes are inherently regressive and tend to burden lower income persons. For example, a Cato Journal article found from 2010 to 2011, "smokers earning less than \$30,000 per year spent 14.2 percent of their household income on cigarettes, compared to 4.3 percent for smokers earning between \$30,000 and \$59,999 and 2 percent for smokers earning more than \$60,000."<sup>35</sup>

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Rather than imposing draconian taxes on tobacco harm reduction products that help smokers quit, lawmakers should utilize existing tobacco monies generated by lawsuits and taxes towards programs to prevent youth use and help adults quit smoking. E-cigarettes have helped millions of American adults quit smoking and their use should be encouraged – not burdened by sin taxes.



- <sup>1</sup> Brad Rodu, *For Smokers Only: How Smokeless Tobacco Can Save Your Life*, Sumner Books, 1995, p. 103.
- <sup>2</sup> American Lung Foundation, “What’s In a Cigarette?,” February 20, 2019, <https://www.lung.org/stop-smoking/smoking-facts/whats-in-a-cigarette.html>.
- <sup>3</sup> Centers for Disease Control and Prevention, “Health Effects of Cigarette Smoking,” January 17, 2018, [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).
- <sup>4</sup> Mohammadhassan Mirbolouk, MD et al., “Prevalence and Distribution of E-Cigarette Use Among U.S. Adults: Behavioral Risk Factor Surveillance System, 2016,” *Annals of Internal Medicine*, October 2, 2018, <https://www.acpjournals.org/doi/10.7326/M17-3440>.
- <sup>5</sup> Consumer Advocates for Smoke-Free Alternatives Association, “A Historical Timeline of Electronic Cigarettes,” n.d., <http://casaa.org/historicalline-of-electronic-cigarettes>.
- <sup>6</sup> WHO Framework Convention on Tobacco Control, “Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems (ANDS/ ENNDS),” August 2016, [http://www.who.int/fctc/cop/cop7/FCTC\\_COP\\_7\\_11\\_EN.pdf](http://www.who.int/fctc/cop/cop7/FCTC_COP_7_11_EN.pdf).
- <sup>7</sup> Vaping 360, “Nicotine Strengths: How to Choose What’s Right for You,” February 26, 2019, <https://vaping360.com/best-e-liquids/nicotine-strengthpercentages>.
- <sup>8</sup> A. McNeill et al., “E-cigarettes: an evidence update,” Public Health England, August, 2015, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684963/Evidence\\_review\\_of\\_e-cigarettes\\_and\\_heated\\_tobacco\\_products\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684963/Evidence_review_of_e-cigarettes_and_heated_tobacco_products_2018.pdf).
- <sup>9</sup> A. McNeill et al., “Evidence review of e-cigarettes and heated tobacco products 2018,” Public Health England, February 2018, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684963/Evidence\\_review\\_of\\_e-cigarettes\\_and\\_heated\\_tobacco\\_products\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684963/Evidence_review_of_e-cigarettes_and_heated_tobacco_products_2018.pdf).
- <sup>10</sup> Royal College of Physicians, *Nicotine without Smoke: Tobacco Harm Reduction*, April, 2016, <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>.
- <sup>11</sup> Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems, “Public Health Consequences of E-Cigarettes,” The National Academies of Science, Engineering, and Medicine, 2018, <https://www.nap.edu/catalog/24952/public-health-consequences-of-e-cigarettes>.
- <sup>12</sup> David T. Levy et al., “Potential deaths averted in USA by replacing cigarettes with e-cigarettes,” *Tobacco Control*, October 2, 2017, <http://tobaccocontrol.bmj.com/content/early/2017/08/30/tobaccocontrol-2017-053759.info>.
- <sup>13</sup> “BRFSS Prevalence & Trends Data,” Centers for Disease Control and Prevention, 2019, <https://www.cdc.gov/brfss/brfssprevalence/>.
- <sup>14</sup> “Quick Facts,” United States Census Bureau, 2020, <https://www.census.gov/quickfacts/ND>.
- <sup>15</sup> North Dakota, Tobacco Harm Reduction 101, <https://www.thr101.org/north-dakota>.
- <sup>16</sup> Vapor Technology Association, “The Economic Impact of the Vapor Industry NORTH DAKOTA,” 2019, <https://vta.guerrillaeconomics.net/reports/b8d54e39-443c-4f5e-a1b2-ce8fe2833899?>.
- <sup>17</sup> American Lung Foundation, “Approaches to Promoting Medicaid Tobacco Cessation Coverage: Promising Practices and Lessons Learned,” June 9, 2016, <https://web.archive.org/web/20170623183710/https://www.lung.org/assets/documents/advocacy-archive/promoting-medicaid-tobacco-cessation.pdf>. Accessed June 23, 2017.
- <sup>18</sup> J. Scott Moody, “E-Cigarettes Poised to Save Medicaid Billions,” State Budget Solutions, March 31, 2015, [https://www.heartland.org/template-assets/documents/publications/20150331\\_sbsmediadecigarettes033115.pdf](https://www.heartland.org/template-assets/documents/publications/20150331_sbsmediadecigarettes033115.pdf).
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<sup>24</sup> Louisiana Department of Revenue, “Retail Dealers of Vapor Products,” 2021, <https://revenue.louisiana.gov/ExciseTaxes/RetailDealersOfVaporProducts>.

<sup>25</sup> Centers for Disease Control and Prevention, *supra* note 20.

<sup>26</sup> North Carolina Department of Revenue, “Tobacco Products Tax,” December, 2019, [https://files.nc.gov/ncdor/documents/files/Tobacco-Products-Tax-Bulletin\\_rev\\_12-19-Final.pdf](https://files.nc.gov/ncdor/documents/files/Tobacco-Products-Tax-Bulletin_rev_12-19-Final.pdf).

<sup>27</sup> Centers for Disease Control and Prevention, *supra* note 20.

<sup>28</sup> Pennsylvania Department of Revenue, “Other Tobacco Products Tax,” 2021, <https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/OTPT/Pages/default.aspx#:~:text=E%2Dcigarettes%2FVapor%20products,the%20wholesaler%20on%20the%20following%3A&text=E%2Dcigarette%20devices%20sold%20in,liquid%20or%20substance%20contains%20nicotine>.

<sup>29</sup> Centers for Disease Control and Prevention, *supra* note 20.

<sup>30</sup> West Virginia State Tax Department, “E-cigarette Liquids Excise Tax FAQ,” 2021, <https://tax.wv.gov/Business/ExciseTax/TobaccoTax/HowDoI/Pages/ElectronicCigaretteLiquidsExciseTaxFAQ.aspx>

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<sup>32</sup> National Taxpayers Union Foundation, “Tobacco Taxes: Problems, Not Solutions, for Taxpayers and Budgets,” Issue Brief, July 31, 2013, <https://www.ntu.org/foundation/detail/tobacco-taxes-problems-not-solutions-for-taxpayers-and-budgets>.

<sup>33</sup> Kil Huh et al., Are Sin Taxes Healthy for State Budgets?, The Pew Charitable Trusts and Rockefeller Institute of Government, July 2018, [http://www.pewtrusts.org/-/media/assets/2018/07/sin\\_taxes\\_report.pdf](http://www.pewtrusts.org/-/media/assets/2018/07/sin_taxes_report.pdf).

<sup>34</sup> Ulrik Boesen and Tom VanAntwerp, “How Stable is Cigarette Tax Revenue?” Tax Foundation, July 9, 2020, <https://taxfoundation.org/cigarette-tax-revenue-tool/>.

<sup>35</sup> 1 Kevin Callison and Robert Kaestner, “Cigarette Taxes and Smoking,” Regulation, Cato Institute, Winter 2014-15, <https://object.cato.org/sites/cato.org/files/serials/files/regulation/2014/12/regulation-v37n4-7.pdf>.



- KEY POINTS
- In 2019, 17 percent of North Dakota adults smoked combustible cigarettes, this is a 25.1 percent decrease from 1995.
  - North Dakota has received \$622.9 million in MSA payments from tobacco companies between 1998 and 2020.
  - E-cigarettes appear more effective than MSA payments in reducing smoking rates among younger adults in North Dakota.
  - 10 years after the MSA, smoking rates increased among 18- to 24-year-olds by 8.6 percent. 10 years after e-cigarettes market emergence, smoking rates among 18 to 24 years old decreased by 20.6 percent.



1995	ADULT SMOKING	2019
In 1995, 22.7 percent of North Dakota adults smoked combustible cigarettes, amounting to over 108,207 adults. Among all adults, 20.1 percent (95,814 adults) reported smoking every day in 1995.		In 2019, 17 percent of adults in the Roughrider State were current smokers, amounting to 98,921 smokers. Further, 12.4 percent of North Dakotan adults (72,514 adults) were daily smokers in 2019.
Among North Dakota adults, <b>current smoking decreased by 25.1 percent</b> between 1995 and 2019. Moreover, there are <b>9,286 fewer smokers</b> in 2019, compared to 1995, and <b>23,660 fewer daily smokers</b> .		

MASTER SETTLEMENT AGREEMENT

In the mid-1990s, North Dakota sued tobacco companies to reimburse Medicaid for the costs of treating smoking-related health issues and in 1998, with 45 other states, reached “the largest civil litigation settlement in U.S. history” – or the Master Settlement Agreement (MSA). Under the MSA, states receive annual payments – in perpetuity – from the tobacco companies, while relinquishing future claims against the participating companies.

BETWEEN 1998 AND 2020, NORTH DAKOTA COLLECTED \$622.9 MILLION IN MSA PAYMENTS.

EFFECTS OF MSA ON SMOKING RATES

Ideally, given that states sued tobacco companies to offset the costs of smoking-related illnesses, some of the MSA payments would be directed into programs to help smokers quit – or not take up smoking – and should be reflective in adult smoking rates.

In **1998, 20 percent of North Dakotan adults smoked combustible cigarettes**. This figure decreased to **18.1 percent** of North Dakota adults being current smokers in **2008** – or a **9.5 percent decrease** in the 10 years after North Dakota began participating in the MSA. During the same time period, North Dakota received over \$233.2 million in MSA payments.

Interestingly, between 1998 and 2008 there was an increase in current smoking rates among **18- to 24-year-old adults** in North Dakota. In **1998**, among current adult smokers in North Dakota, **20.5 percent** were 18 to 24 years old. In 2008, this had increased by 15.1 percent, to **23.6 percent** of adult smokers in North Dakota being between 18 to 24 years old.

EFFECTS OF E-CIGARETTES ON SMOKING RATES

Electronic cigarettes and vapor products were first introduced to the U.S. in 2007 “and between 2009 and 2012, retail sales of e-cigarettes expanded to all major markets in the United States.”

In **2009, 18.6 percent** of adults in North Dakota smoked combustible cigarettes amounting to over 96,301 adult smokers. In **2019, 17 percent** of North Dakota adults were current smokers – or 98,921 smokers. This represents a **8.6 percent decrease** in current smoking rates among North Dakota adults between 2009 and 2019.

Among current smokers aged **18 to 24 years old**, smoking rates decreased by 20.6 percent. Indeed, in **2009**, among current smokers in North Dakota, **19.4 percent** were between 18 to 24 years old. In **2019**, only **15.4 percent** of current smokers were 18 to 24 years old.

Sources:

1. Centers for Disease Control and Prevention, "BRFSS Prevalence & Trends Data," 2019, <https://www.cdc.gov/brfss/brfssprevalence/>.
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4. Kids Count Data Center, "Total population by child and adult populations in the United States," The Annie E. Casey Foundation, September 2020, <https://datacenter.kidscount.org/data/tables/99-total-population-by-child-and-adult-populations#detailed/1/any/false/1729,37,871,870,573,869,36,868,867,133/39,40,41/416,417>.
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Chairman Cook and members of the Senate Finance and Tax Committee. My name is Darius Endres and I am here to testify against Senate Bill 2189. I come before you as a small business owner in Fargo, whose predominate business is the selling of vapor products which are also known as electronic cigarettes although my industry has long abandoned that term as we do not see us as selling cigarettes we see ourselves as selling a tobacco cessation product. It is our belief that our products aids in the quitting of cigarette use by the providing of nicotine through inhalation as a vapor, creating the same oral sensation as a cigarette while being absent of the many deadly chemicals such as tar that is used in traditional cigarettes. Our products have been proven in peer viewed studies internationally to aid in the quitting of cigarettes and eventually in the ending of nicotine use altogether. We achieve this by selling various percentages of nicotine with products ranging from 50% to 0%, which allows the individual to gradually lower their nicotine intake each time they purchase new liquid. A customer will typically purchase a bottle of liquid each visit which will approximately last them 2 weeks. Meaning that in an ideal world this customer will be nicotine free after 2 months. In the worst case, the customer will use our product as a substitute for cigarettes but even then they are no longer exposing themselves to the carcinogenic(cancer causing) substances found in traditional cigarettes, meaning that even if they should fail to ween themselves off nicotine, they are no longer ingesting as many harmful chemicals. This means that even when my business fails to reach its goal we are substantially improving the health of our customers by eliminating the exposure to all the harmful chemicals found in traditional cigarettes with the exception of the nicotine. Even when we fail we still succeed by creating a healthier individual, although not as healthy as we would all desire. In this way, while my product contains nicotine is much more comparable to nicorette Gum or a nicotine patch than a tobacco product. The gum and patch are not taxed under this bill because they are cessation products and this is what I believe is the error in this bill. You are treating my products as it is part of the problem when it truly is part of the solution.

If this bill were to pass, there would be drastic consequences for my industry. Currently, my best selling products are sold to me at a wholesale price of \$6 and I retail them for a price of \$9.30. Which means that my gross margin is \$3.30. My competitors in Moorhead also retail their products for the same price. If this bill were to pass, in order to preserve my margins, the price for my customers would increase to \$13 which would make me uncompetitive to my Moorhead neighbor being 40% higher than them. Unfortunately, I can not cut the product price enough to stay competitive with Moorhead should this bill pass. Even in the hypothetical scenario of me cutting my price such that post tax I am equal to Moorhead, I would be left with a 5% gross margin and a net margin of -10%. Meaning I would lose money every time I sold a product. Businesses with negative margins go bankrupt very quickly. As a result, I would be forced to close my store and lay off my multiple employees, which would leave 5 families unable to provide for themselves. Once my store closes, 1 of 2 things would happen. Option 1: my customers drive across the river to Moorhead, MN decreasing your sales tax revenue but they get to continue on their journey to quitting cigarettes. Option 2: the customer is unable to acquire my products, which leads to them continuing to smoke cigarettes therefore increasing their chance of a heart attack, stroke, emphysema, or a variety of cancers causing them great personal suffering or even death.

Senate Bill 2189 if passed, will ensure that individuals are unable to quit smoking cigarettes if they don't live near the border, businesses are forced to close, and will serve only to decrease your sales tax revenue in border cities as people will simply cross the river going to Minnesota to purchase these products. The only benefit I can see to this bill is that current smokers will continue to pay the tobacco tax as they slowly die as they continue their current addiction without the tools to stop it. Vaping ends nicotine addictions, so as a state we have 2 choices. The first is to profit off of the sick and ill as they slowly kill themselves for a few pieces of silver. While the second is to forgo some tax revenue in order to save thousands of lives that would have been destroyed by smoking cigarettes. My mother and grandmother were both smokers, and they both paid the price of their addiction. My grandmother died of cancer relating to smoking, and my mother suffered a massive heart attack which was caused due to smoking cigarettes. The products I sell are designed to make it so that grandchildren don't lose their grandparents and children don't see their parents whither away due to a preventable disease of addiction. If I thought for a second that my products were tobacco products, I would shut my doors immediately. My business gets people off cigarettes, off tobacco, and off nicotine. We are the cure not the disease. And as such, deserve to be treated like other products such as the nicotine patch and nicotine gum. I strongly urge a do not pass on this bill, and am happy to stand for any questions.

Here are a few links to some vaping studies and websites that show some benefits of vaping over smoking:

<https://vaping.org/about-us/what-is-vaping/>

<https://www.greenmarketreport.com/top-10-benefits-of-vaping-over-smoking/>



<https://www.theguardian.com/society/2018/dec/28/vaping-is-95-safer-than-smoking-claims-public-health-england>

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# #1493

## The American Vaping Association

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**January 19, 2021**

**RE: SB 2189, a bill to impose a tax on vaping products**

Chairman Bell, Vice Chairman Kannianen, and members of the Finance and Taxation Committee

On behalf of the American Vaping Association, a nonprofit organization that advocates for policies that encourage adult smokers who are unwilling or unable to quit smoking to switch to reduced risk nicotine products, I am writing to urge the committee to issue an unfavorable report on SB 2189. SB 2189 seeks to impose an excise tax of 28% of wholesale on all vaping products sold in North Dakota. Neither public health nor North Dakota small businesses will be served by discouraging adult smokers from switching to less harmful alternatives. Furthermore, the fiscal note greatly overestimates the amount of revenue this will generate, likely by a factor of ten or more.

With nearly 100,000 adults still smoking combustible cigarettes in North Dakota, a new tax on vaping products will not benefit public health. Instead, the result will be more smoking of combustible cigarettes, a slower decline in cigarette sales, the closing of small businesses, and increased use of potentially dangerous products purchased off the street.

**I. Vaping products are much less harmful than smoking and are helping adult smokers quit**

- Over forty years ago, Dr. Michael Russell wrote in the British Medical Journal, “Smokers smoke for the nicotine, but die from the tar.” While nicotine can create dependence in users, it is not a carcinogen and does not meaningfully contribute to the death and disease that is principally caused by the habitual inhalation of cigarette smoke.
- The U.S. National Academy of Sciences extensively studied the health effects of vaping products and concluded that vaping is “likely much less harmful than traditional combustible cigarettes” and that their use will result in an overall public health benefit under the most plausible scenarios.
- Respected international bodies, including the Royal College of Physicians and Public Health England, have published expert reports estimating that vaping carries no more than 5% the risk of smoking.
- A 26-month study of 15,943 adult smokers undertaken by the Centers for Disease Control & Prevention (CDC) found that vaping is the most popular method of quitting smoking in the United States. Furthermore, smokers using vapor products were more likely to successfully quit versus those who used conventional methods like the nicotine gum and patch.<sup>1</sup>

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<sup>1</sup> R. Caraballo, *et al.* “Quit Methods Used by US Adult Cigarette Smokers, 2014–2016.” *Prev Chronic Dis* 2017; 14:160600. [https://www.cdc.gov/pcd/issues/2017/16\\_0600.htm](https://www.cdc.gov/pcd/issues/2017/16_0600.htm)



## **II. Tobacco-Style Excise Taxes are Not Justifiable and Will Harm Small Businesses**

- Imposing excise taxes on vaping products will take away a key advantage that these products offer over cigarettes – price competitiveness.
- A study published in the journal *Tobacco Control* estimated that for every 10% increase in the price of vaping products, adult smokers' willingness to use the products decreased by 19%. This tax will lead an unacceptable number of adult smokers to continue to smoke and not attempt to switch.<sup>2</sup>
- Excessive taxation of vaping products has immediate and long-lasting negative impacts on small businesses. In Pennsylvania, a 40% wholesale tax was estimated by numerous media outlets to have closed over 125 small businesses.

## **III. Better Enforcement is the Answer to Youth Misuse, Not New Taxes**

In compliance with federal law, all legal nicotine vaping product manufacturers are currently undergoing an extensive review process at the FDA Center for Tobacco Products. The FDA will judge each individual product based on whether it is “appropriate for the protection of public health.” Without this finding, the products will not be able to stay on the market.

North Dakota should rigorously enforce its existing ban on the sale of all nicotine and tobacco products to minors. However, new excise taxes are not justified by the science that exists today. Indeed, the science suggests that because vaping products and other non-combustible options are helping to reduce and denormalize smoking, taxing vaping products would instead do much more harm than good.

Please reject SB 2189 and keep smoke-free alternatives affordable and accessible for adult smokers in North Dakota.

Sincerely,



Gregory Conley, J.D., M.B.A.  
President – American Vaping Association

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<sup>2</sup> J. Huang, *et al.* “The impact of price and tobacco control policies on the demand for electronic nicotine delivery systems.” *Tobacco Control*, 2014;23:iii41-iii47. <[https://tobaccocontrol.bmj.com/content/23/suppl\\_3/iii41](https://tobaccocontrol.bmj.com/content/23/suppl_3/iii41)>



**Growing list of respected scientific and public health organizations that have reviewed all the evidence and concluded that nicotine vaping is safer than smoking (and helps smokers quit)**

All statements are hyperlinked to original documents. 35+ organizations say “SAFER than smoking.”



**World Health Organization EURO Office:** [“There is conclusive evidence that: Completely substituting electronic nicotine and non-nicotine delivery systems for combustible tobacco cigarettes reduces users’ exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes.”](#)

[International Agency for Research on Cancer](#)



**International Agency for Research on Cancer:** [“The use of e-cigarettes is expected to have a lower risk of disease and death than tobacco smoking... E-cigarettes have the potential to reduce the enormous burden of disease and death caused by tobacco smoking if most smokers switch to e-cigarettes.”](#)



**Cochrane systematic review:** [“We found 50 studies in 12,430 adults who smoked... The studies took place in the USA \(21 studies\), UK \(9\), Italy \(7\), Australia \(2\), New Zealand \(2\), Greece \(2\) and one study each in Belgium, Canada, Poland, South Korea, South Africa, Switzerland and Turkey.”](#)

**FINDINGS:** [“Moderate certainty” that “e-cigarettes with nicotine increase quit rates compared to e-cigarettes without nicotine, and compared to nicotine replacement therapy \[nicotine patches & gum\]... We did not detect any clear evidence of harm from nicotine e-cigarettes” \[up to 2 years\].”](#)



**Public Health England:** [“Our new review reinforces the finding that vaping is a fraction of the risk of smoking, at least 95% less harmful, and of negligible risk to bystanders. Yet over half of smokers either falsely believe that vaping is as harmful as smoking or just don’t know.”](#)



**Royal College of Physicians:** [“Although it is not possible to precisely quantify the long-term health risks associated with e-cigarettes, the available data suggest that they are unlikely to exceed 5% of those associated with smoked tobacco products, and may well be substantially lower than this figure... E-cigarettes are effective in helping people to stop smoking.”](#)



**National Institute for Health and Care Excellence:** [“The evidence suggests that e-cigarettes are substantially less harmful to health than smoking but are not risk free. Many people have found them helpful to quit smoking cigarettes.”](#)





**British Medical Association:** “Significant numbers of smokers are using e-cigarettes (electronic cigarettes), with many reporting that they are helpful in quitting or cutting down cigarette use. There are clear potential benefits to their use in reducing the substantial harms associated with smoking, and a growing consensus that they are significantly less harmful than tobacco use.”



**Cancer Research UK:** “While the long-term health consequences of e-cigarette use are uncertain, the evidence so far suggests that e-cigarettes are far less harmful than smoking. ...There is also growing evidence to suggest that e-cigarettes can work successfully as an aid to cessation. ...There is insufficient evidence to support a blanket indoor ban on e-cigarette use, either on the basis of renormalisation of smoking or harm to bystanders from second-hand vapour.”



**British Lung Foundation:** “Experts have reviewed all the research done on e-cigarettes over the past few years, and found no significant risks for people using e-cigarettes. ...Swapping cigarettes for an e-cig can improve your symptoms of lung conditions like asthma and COPD.”



**Royal College of General Practitioners:** “The evidence so far shows that e-cigarettes have significantly reduced levels of key toxicants compared to cigarettes, with average levels of exposure falling well below the thresholds for concern.”



**Royal Society for Public Health:** “RSPH has welcomed a new comprehensive evidence review on e-cigarettes published by Public Health England (PHE). The report reflects an up-to-date evidence base that is increasingly pointing in the same direction: not only that vaping is at least 95% less harmful than smoking, but also that it is helping increasing numbers of smokers to quit.”



**Stroke Association UK:** “Current evidence shows that the risk to health posed by e-cigarettes in the short term is likely to be considerably less compared to smoking.”



**Action on Smoking and Health UK:** “It has been estimated that e-cigarettes are 95% less harmful than ordinary cigarettes. There is negligible risk to others from second-hand e-cigarette vapour. ...The lifetime cancer risk of vaping has been assessed to be under 0.5% of the risk of smoking. [But] Public understanding of the relative harms of e-cigarettes [vs smoking cigarettes] have worsened over time and are less accurate today than they were in 2014.”





**National Centre for Smoking Cessation and Training:** “Experts estimate that e-cigarettes are, based on what we know so far, around 95% safer than cigarettes. Smoking is associated with a number of very serious health risks to both the smoker and to others around them. Therefore, smokers who switch from smoking tobacco to e-cigarettes substantially reduce a major risk to their health. ...Nicotine does not cause smoking related diseases, such as cancers and heart disease.”



**National Health Service Scotland consensus statement on e-cigarettes:** “Smoking kills. Helping people to stop smoking completely is our priority. ...There is now agreement based on the current evidence that vaping e-cigarettes is definitely less harmful than smoking tobacco.”

This statement was created and endorsed by: Action on Smoking & Health Scotland • Cancer Research UK • Chest Heart & Stroke Scotland • Chief Medical Officer for Scotland • NHS Ayrshire and Arran • NHS Greater Glasgow and Clyde • NHS Lothian • NHS Tayside • Roy Castle Lung Cancer Foundation • Royal College of General Practitioners • Royal College of Physicians of Edinburgh • Royal College of Physicians and Surgeons of Glasgow • Royal Environmental Health Institute of Scotland • Scottish Collaboration for Public Health Research and Policy • Scottish Consultants in Dental Health • Scottish Thoracic Society • UK Centre for Tobacco & Alcohol Studies • University of Edinburgh • University of Stirling



**New Zealand Ministry of Health:** “The Ministry considers vaping products could disrupt inequities and contribute to Smokefree 2025. The evidence on vaping products indicates they carry much less risk than smoking cigarettes but are not risk free. Evidence is growing that vaping can help people to quit smoking. There is no international evidence that vaping products are undermining the long-term decline in cigarette smoking among adults and youth, and may in fact be contributing to it.”



**Cancer Society of New Zealand:** “E-cigarettes and smokeless tobacco products are less harmful than tobacco smoking.”



**Royal Australian & New Zealand College of Psychiatrists (RANZCP):** “Research in Australia shows that 70% of people with schizophrenia and 61% of people with bipolar disorder smoke compared to 16% of those without mental illness. ...RANZCP recognises the potential harm reduction benefits presented by e-cigarettes and vaporisers for people living with mental illness, and the need for legislative reform for these to be realised. The RANZCP therefore recommends: Exemption of nicotine-containing e-cigarettes and vaporisers from the restrictions imposed under the Poisons Standard so that they may be subject to stringent and suitable regulations as consumer products [and] lower rates of taxation for e-cigarettes and vaporisers compared to smokable tobacco products to ensure affordability for low-income smokers, and to provide a financial incentive to switch.”





**Drug and Alcohol Nurses of Australasia:** “People with drug and alcohol dependence have high smoking rates [and] are more likely to die from a tobacco-related disease than from their primary drug problem. E-cigarettes are battery-operated devices that heat a liquid solution, which may or may not contain nicotine into a vapour for inhalation, simulating the behavioural and sensory aspects of smoking, and they are currently seen as a legitimate form of tobacco harm reduction.”



The Royal Australasian  
College of Physicians

**Royal Australian College of Physicians:** “The RACP acknowledges that e-cigarettes may have a potential role in tobacco harm reduction and smoking cessation for smokers unable or unwilling to quit.”



Bundesinstitut für Risikobewertung

**German Federal Institute for Risk Assessment:** “According to current knowledge, e-cigarettes are less harmful than conventional tobacco products when used as intended.”



**French National Academy of Medicine:** “It is established that the vaporette is less dangerous than the cigarette... It is therefore preferable for a smoker to vape. Since 2016, the High Authority for Health (HAS) considers it ‘as an aid to stop or reduce the consumption of tobacco by smokers.’ Santé Publique France indicates that at least 700,000 [French] smokers have quit using electronic cigarettes. ...Smokers who were about to switch to vaporizing instead of tobacco should not hesitate...” [Google Translate from original French]



**French National Academy of Pharmacy:** “The World Health Organization’s [anti-e-cigarette] position is incomprehensible. Tobacco is responsible for 73,000 deaths in France. The e-cigarette helps people quit smoking. Its components are obviously less harmful than tobacco.” [NOTE: This is a Tweet from the Académie Nationale de Pharmacie. Not an official position statement.]



**US National Academies of Sciences, Engineering and Medicine:** “While e-cigarettes are not without health risks, they are likely to be far less harmful than combustible tobacco cigarettes. There is substantial evidence that... exposure to potentially toxic substances from e-cigarettes is significantly lower compared with combustible tobacco cigarettes.”



**US Food & Drug Administration:** “Make no mistake. We see the possibility for ENDS products like e-cigarettes to provide a potentially less harmful alternative for currently addicted individual adult



smokers who still want to get access to satisfying levels of nicotine without many of the harmful effects that come with the combustion of tobacco.”



**US Centers for Disease Control:** “E-cigarettes have the potential to benefit adult smokers who are not pregnant if used as a complete substitute for regular cigarettes and other smoked tobacco products.”



**American Cancer Society:** “Based on currently available evidence, using current generation e-cigarettes is less harmful than smoking cigarettes.” [NOTE: This was the official statement from 2018-2019. As of November 2019, ACS no longer recommends e-cigarettes as a smoking cessation tool. Their stated reason for this change was “e-cigarette use by young people.” Yet their new statement still says, “former smokers now using e-cigarettes should not revert to smoking.” So, obviously, ecigs are LESS HARMFUL.]



**American Heart Association:** “Participants who vaped exclusively showed a similar inflammatory and oxidative stress profile as people who did not smoke cigarettes or use e-cigarettes. ...Compared to participants who smoked exclusively, those who vaped exclusively had significantly lower levels of almost all inflammatory and oxidative stress biomarkers.”



**American Association of Public Health Physicians:** “Smoke-free tobacco/nicotine products, as available on the American market, while not risk-free, carry substantially less risk of death and may be easier to quit than cigarettes. ...Smokers who have tried, but failed to quit using medical guidance and pharmaceutical products, and smokers unable or uninterested in quitting, should consider switching to a less hazardous smoke-free tobacco/nicotine product for as long as they feel the need. Such products include pharmaceutical Nicotine Replacement Therapy (NRT) products used, off-label, on a long term basis, electronic “e” cigarettes, dissolvables (sticks, strips and orbs), snus, other forms of moist snuff, and chewing tobacco.”



**Campaign for Tobacco-Free Kids:** “E-cigarettes could benefit public health if they help significantly reduce the number of people who use combustible cigarettes and die of tobacco-related disease.”



Government of Canada    Gouvernement du Canada

**Government of Canada:** “Vaping is less harmful than smoking. Completely replacing cigarette smoking with vaping will reduce your exposure to harmful chemicals. There are short-term general health improvements if you completely switch from smoking cigarettes to vaping products.”





Date: 1/19/2021

Dear Representatives:

I'm a small business owner in Fargo, ND that specializes in selling nicotine vapor related products. I read through SB 2189 and I oppose this bill for a number of reasons. Our community has just been through a very tough time with this pandemic and it seems tough times could be here for the foreseeable future with news of these new covid strains. Many people are struggling right now with just trying to pay their bills and keep food on the table. I personally don't believe now is a good time to be trying to add increased taxation onto not only struggling small businesses like mine but also the thousands of consumers of these products across the state. This tax would be very detrimental to not only my small businesses like mine, but to the thousands of customers we have that depend on these products to keep them off of cigarettes.

This bill doesn't seem to specify what exactly would be taxed. I'm sure most of you are very unfamiliar with this product category. The basic components of "e-cig" products are some form of power source (battery/mod), a tank or pod that either accepts coils or has them built in, and lastly the e-liquid that contains the actual nicotine. My understanding of this bill, and I could be very wrong, is that this tax would be forced onto every one of those listed components. I don't believe that makes any sense. If an excise tax is going to be imposed I believe it should only be on the actual product containing nicotine, which in this product category is only the e-liquid itself.

The last issue I have with this proposed tax is the percentage. Taxing these products the same as a traditional cigarette product is, in my opinion, regressive in the goals of helping people quit smoking. We know, with studies done by the Royal College of Physicians, and statements made by our own FDA, that these products are not anywhere near as harmful as traditional cigarettes and provide a great pathway for current smokers to transition off deadly combustible cigarettes.

Many steps have been taken to curb youth use and to see those numbers continue to decline. That's a great thing and is a shared common goal. Another shared common goal I believe we all have is to see current cigarette smokers get away from deadly combustible cigarettes. What I don't want to see is this wonderful tool for current and former smokers be highly taxed and deter them from trying to make the transition away from cigarettes to a much less harmful product.

In closing I would just like to say thank you for taking the time to read my testimony and if any of you have any questions for me or would be interested in learning more about this product category I've included my phone number and email. I'm not entirely opposed to a tax on these products. I'm opposed to the amount of tax, the timing of the tax, and the broad range of products this tax could affect that have absolutely no nicotine in them whatsoever.

Justin Danberry



# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2189  
2/2/2021  
PM

A BILL for an Act to amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the North Dakota Century Code, relating to the imposition of tax on electronic smoking devices; and to provide a penalty.

**Chair Bell** calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [02:45]

### Discussion Topics:

- Legislative Management tobacco study
- Reporting requirements, fee structure and licensure

**Heather Austin** [2:46], Executive Director, Tobacco Free North Dakota submits an amendment [LC 21.0518.02003] #5021.

**Dee Wald**, [2:54] General Counsel, ND Tax Commissioners Office provided oral information.

**Chair Bell** adjourns the meeting. [02:57]

*Joel Crane, Committee Clerk*



21.0518.02003  
Title.

Prepared by the Legislative Council staff for  
Senator Bekkedahl  
February 1, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2189

Page 1, line 2, remove "57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29,"

Page 1, line 3, replace "the imposition of tax on" with "licensing requirements for"

Page 1, line 3, replace "devices" with "device dealers and distributors; to provide for a legislative management study"

Page 3, overstrike lines 26 and 27

Page 3, line 28, overstrike "year prior to filing the license application."

Page 4, line 1, remove the overstrike over "~~twenty-five~~"

Page 4, line 1, remove "one hundred"

Page 4, line 5, remove "a."

Page 4, remove lines 7 and 8

Page 4, line 10, remove the overstrike over "~~fifteen~~"

Page 4, line 10, remove "sixty"

Page 4, line 14, remove the overstrike over "~~fifty~~"

Page 4, line 14, remove "two hundred"

Page 5, line 14, remove the overstrike over "~~one~~"

Page 5, line 15, remove the overstrike over "~~year~~"

Page 5, line 15, remove "three years"

Page 6, line 8, remove the overstrike over "~~five~~"

Page 6, line 8, remove "twenty"

Page 6, line 23, remove the overstrike over "~~one-year~~"

Page 6, line 23, remove "three years"

Page 6, remove lines 25 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 30

Page 11, remove lines 1 through 4

Page 11, after line 17, insert:



**"SECTION 13. LEGISLATIVE MANAGEMENT STUDY - REDUCED HARM NICOTINE PRODUCTS.** During the 2021-23 interim, the legislative management shall consider studying reduced harm nicotine products. The study must include a review of "modified risk tobacco products," as defined in section 387(k) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 387(k)], and a review of products that should be deemed reduced harm nicotine products based on the product's potential for reducing tobacco-related diseases and the product's benefit to the population as a whole, including benefits to both current and potential tobacco users. The study also must evaluate how a reduction in the tax rate on reduced harm nicotine products might benefit public health by encouraging the use of reduced harm nicotine products, rather than the use of other products that potentially are more harmful. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly



# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2189  
2/3/2021  
AM

A BILL for an Act to amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the North Dakota Century Code, relating to the imposition of tax on electronic smoking devices; and to provide a penalty.

**Chair Bell** calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [09:10]

### Discussion Topics:

- Legislative Management tobacco study
- T21

**Senator Kannianen** [9:11] moved the amendment [LC 21.0518.02003]

**Senator Meyer** second

Motion passed by voice vote

**Senator Kannianen** [9:15] moved DO NOT PASS as Amended

**Senator Piepkorn** second.

Senators	Vote
Senator Jessica Bell	N
Senator Jordan Kannianen	Y
Senator Scott Meyer	Y
Senator Dale Patten	N
Senator Merrill Piepkorn	N
Senator Jim Roers	N
Senator Mark Weber	N

Motion fails 2-5-0



**Senator J. Roers** [9:21] moves DO PASS as Amended  
**Senator Weber** second

Senators	Vote
Senator Jessica Bell	Y
Senator Jordan Kannianen	N
Senator Scott Meyer	N
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Jim Roers	Y
Senator Mark Weber	Y

Motion passes 5-2-0

**Chair Bell** carries.

**Chair Bell** adjourns the meeting. [9:22]

*Joel Crane, Committee Clerk*



February 1, 2021

SK  
1302  
213

PROPOSED AMENDMENTS TO SENATE BILL NO. 2189

Page 1, line 2, remove "57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29,"

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**"SECTION 8. LEGISLATIVE MANAGEMENT STUDY - REDUCED HARM NICOTINE PRODUCTS.** During the 2021-22 interim, the legislative management shall consider studying reduced harm nicotine products. The study must include a review of "modified risk tobacco products," as defined in section 387(k) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 387(k)], and a review of products that should be deemed reduced harm nicotine products based on the product's potential for reducing tobacco-related diseases and the product's benefit to the population as a whole, including benefits to both current and potential tobacco users. The study also must evaluate how a reduction in the tax rate on reduced harm nicotine products might benefit public health by encouraging the use of reduced harm nicotine products, rather than the use of other products that potentially are more harmful. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**SB 2189: Finance and Taxation Committee (Sen. Bell, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2189 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29,"

Page 1, line 3, replace "the imposition of tax on" with "licensing requirements for"

Page 1, line 3, replace "devices" with "device dealers and distributors; to provide for a legislative management study"

Page 3, overstrike lines 26 and 27

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Renumber accordingly



**2021 HOUSE FINANCE AND TAXATION**

**SB 2189**



# 2021 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Room JW327E, State Capitol

SB 2189  
3/3/2021

A bill relating to licensing requirements for electronic smoking device dealers and distributors.

**Chairman Headland** opened the hearing at 10:05am.

Representatives	Present
Representative Craig Headland	Y
Representative Vicky Steiner	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Sebastian Ertelt	Y
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Tom Kading	Y
Representative Ben Koppelman	Y
Representative Marvin E. Nelson	Y
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

### Discussion Topics:

- Electronic smoking devices
- Licensing distributors of electronic smoking devices

**Senator Bekkedahl** introduced bill (#7173).

**Heather Austin, Executive Director for Tobacco Free North Dakota**, testified in support (#7182, 7245 and 7246).

**Neil Charvat, Director for Tobacco Prevention and Control Program for the North Dakota Department of Health**, testified in support (#7099).

**Eric Barker, Director of Regulatory Strategy with Altria Client Services**, testified in support (#7193).



**Additional Testimony:**

**Sara Mannetter, North Dakota Government Relations Director with American Cancer Society: Cancer Action Network**, testimony in opposition #7350 and 7351.

**Chairman Headland** closed the hearing at 10:43am.

*Mary Brucker, Committee Clerk*



**House Finance and Taxation Committee**  
**SB 2189**  
**March 3, 2021**

Chairman Headland and Committee Members:

Good morning. I am Senator Brad Bekkedahl, and I am the prime sponsor of SB 2189. Although I will defer to some of the folks who helped work on this bill to answer specific questions about the bill's details, I want to take a moment to explain my support for SB 2189.

**Background**

Electronic smoking devices are marketed and sold by companies as tobacco products. However, unlike all other tobacco products, these devices are not defined or regulated under North Dakota's tobacco products law. For instance, unlike distributors and dealers of other tobacco products, electronic smoking device dealers and distributors are not required to obtain state licenses or keep records and file reports of their sales. Therefore, it is currently impossible to quantify the number of electronic smoking device sales in the state or hold bad actors accountable for their actions.

**What the Bill Does**

SB 2189 does three things.

First, the bill defines electronic smoking devices and requires that all distributors and dealers of the devices be licensed – in the same fashion as distributors and dealers of all other tobacco products.

Second, the bill provides that distributors and dealers of the devices must keep records and make purchase and sale reports to the tax commissioner – in the same fashion as dealers and distributors of all other tobacco products.

Third, the bill contemplates a study of “reduced harm nicotine products”. The study proposes a review of products that should be deemed reduced harm nicotine products. I note that the FDA is currently evaluating products that qualify for this designation.<sup>1</sup>

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<sup>1</sup> [https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-tobacco-products?utm\\_campaign=ctp-pmtase&utm\\_content=landingpage&utm\\_medium=email&utm\\_source=govdelivery&utm\\_term=stratcomms](https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-tobacco-products?utm_campaign=ctp-pmtase&utm_content=landingpage&utm_medium=email&utm_source=govdelivery&utm_term=stratcomms)



The study also seeks to evaluate how a reduction in the tax rate on reduced harm nicotine products might benefit public health by encouraging the use of the products, rather than the use of other products that potentially are more harmful. I also note that North Dakota does not currently tax electronic smoking device sales, some of which deliver nicotine – other than the sales tax for general merchandise.

### **Why I Support the Bill**

In 2019, approximately 1 in 3 North Dakota high school students reported using e-cigarettes.<sup>2</sup> Hopefully that number will go down with the age 21 laws that have recently passed at the federal level and are being contemplated at the state level this session. However, e-cigarette use is not limited to youth. As a practicing dentist, when I’m doing dental work in the military field, I often ask soldiers, “Do you use tobacco?” Lately, I’ve noticed a large number of soldiers reporting “vaping” when answering my question.

Due to the unregulated nature of electronic smoking devices and the alarming increase in use by both minors and adults, it is important that we as legislators carefully review our current approach to regulating tobacco products to ensure we are doing so in a manner that is sensible, responsive to the industry’s ever-changing products, and beneficial to the state and the health of its residents.

### **Conclusion**

Dealers and distributors of electronic smoking devices should be held to the same licensing and reporting standards as all other tobacco products dealers and distributors. Therefore, I ask that you give SB 2189 a “Do Pass” recommendation, and I will stand for questions.

---

<sup>2</sup> [https://www.tobaccofreekids.org/problem/toll-us/north\\_dakota](https://www.tobaccofreekids.org/problem/toll-us/north_dakota)





P.O. Box 3237  
Bismarck, ND 58502  
701-751-0229  
[www.tfnd.org](http://www.tfnd.org)

March 3, 2021

9:30 am CST

House Finance and Taxation Committee for the 67<sup>th</sup> ND Legislative Assembly

Chairman Headland, and members of the House Finance and Taxation Committee, hello, my name is Heather Austin, and I am the Executive Director for Tobacco Free North Dakota. The mission of Tobacco Free North Dakota 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. Thank you so much for your time this morning.

Today I am here to encourage a Do Pass on SB 2189, or the bill relating to the licensing of electronic smoking devices and offering language for a study on taxation methods.

By including electronic tobacco products for licensing and regulation, and by looking at their taxing structure in relation to other types of electronic products, including modified risk tobacco products, we create parity with all other tobacco products in North Dakota subject to these policies, and we take a good step forward in protecting our youth from the dangerous nicotine addiction these products promote. We can begin to stem the tide in what the FDA has called an "epidemic" for our youth. By updating our laws to reflect our current state needs and the new products that have joined the market in the last 25 years, we can better monitor and regulate tobacco to keep it out of the hands of our youth, and we can better provide further support to health programs and services for ND citizens.

While we still have much to learn about these new electronic smoking devices, the evidence is already clear that it is unsafe for young people to use e-cigarettes, vapes, JUULs, or any other products containing nicotine. As stated by the Surgeon General, "E-cigarette use poses a significant – and avoidable – health risk to young people in the United States. Besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body."i.

These unlicensed and unregulated electronic products make it easier for beginners – primarily our kids – to try the product and ultimately become addicted. It also makes it difficult to get the full scope of tobacco use in North Dakota, as our data sets are often incomplete due to the lack of regulation electronic tobacco products enjoy. Again, SB 2189, simply aims to correct that and include electronic tobacco products for licensing, and regulation, alongside other existing tobacco products in North Dakota, and by subjecting them to this oversight, we avoid creating product "winners and losers" in our policies, treating all tobacco products equally with respect to regulation. This makes



good sense and provides the added benefit of protecting our kids, and that creates healthier youth and a healthier state.

Again, thank you for this time in front of you, Chairman Headland, and the Committee. It is very appreciated. Please vote Do Pass on SB 2189.

May I take any questions?

Heather Austin  
Executive Director, Tobacco Free North Dakota  
Cell: 701-527-2811  
[heather@tfnd.org](mailto:heather@tfnd.org)  
[www.tfnd.org](http://www.tfnd.org)

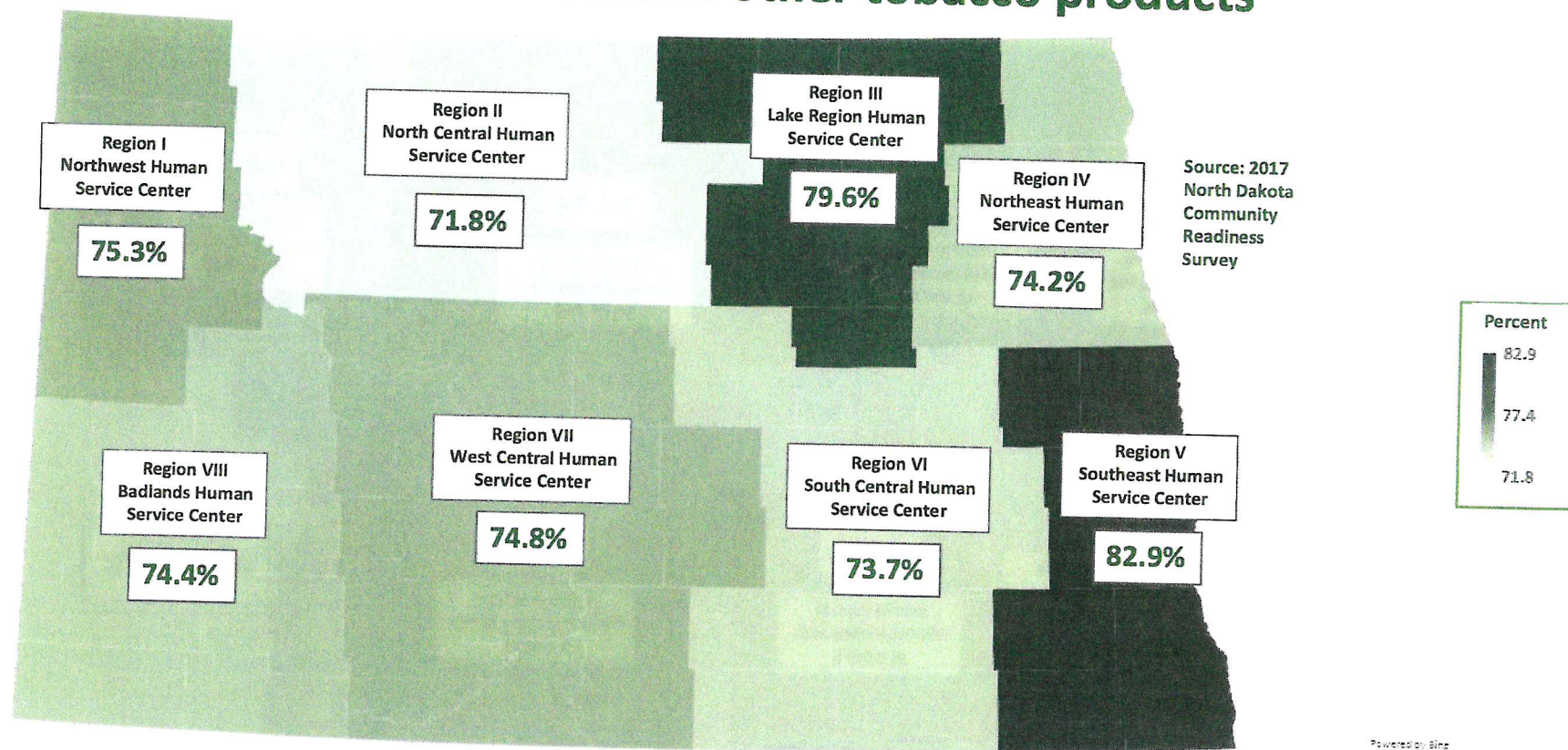
i. HHS, Know the Risks: E-Cigarettes & Young People, accessed March 15, 2018 at <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.



Photo of actual e-juices and electronic tobacco devices confiscated during the fall of the 2018-2019 school year at a North Dakota High School.



## Three of four adults in North Dakota agree E-cigarettes should be taxed at the same rate as other tobacco products

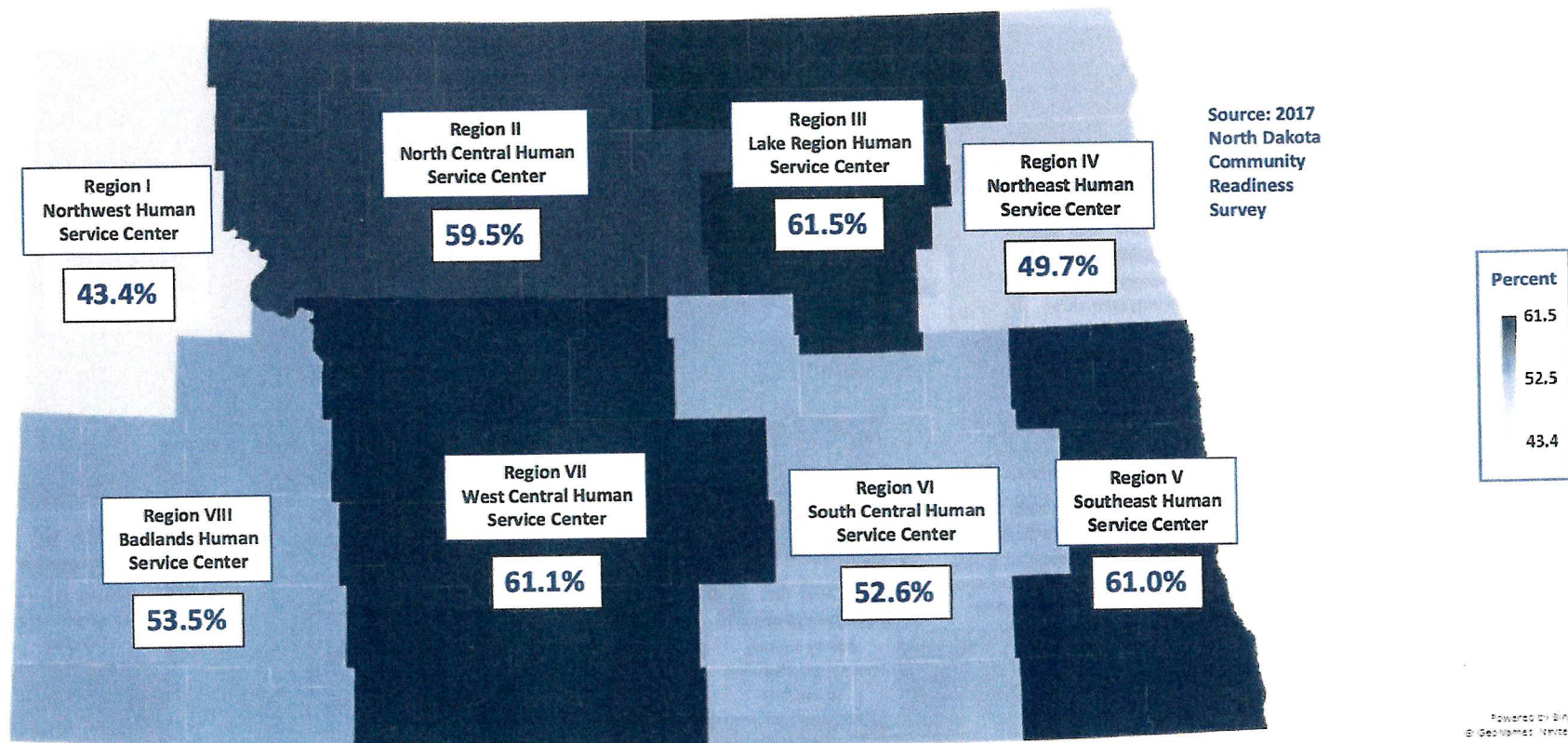


	Statewide	Region I	Region II	Region III	Region IV	Region V	Region VI	Region VII	Region VIII
Strongly Agree	34.2	35.4	30.5	40.1	39.3	42.8	26.4	37.4	33.1
Agree	41.4	39.9	41.3	39.5	34.9	40.1	47.3	37.4	41.3
Total	75.6	75.3	71.8	79.6	74.2	82.9	73.7	74.8	74.4

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## More than half of adults in North Dakota agree the minimum age to purchase and possess tobacco products should be raised to 21

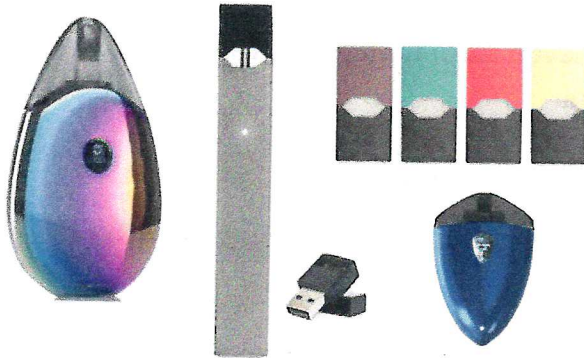


	Statewide	Region I	Region II	Region III	Region IV	Region V	Region VI	Region VII	Region VIII
Strongly Agree	26.7	22.0	24.5	29.6	24.0	35.3	21.2	28.7	24.8
Agree	30.5	21.4	35.0	31.9	25.7	25.7	31.4	32.4	28.7
Total	57.2	43.4	59.5	61.5	49.7	61.0	52.6	61.1	53.5



# Tobacco use is **STILL** an issue in ND, especially among youth...

## NEW PRODUCTS



## MORE FLAVORS



Big Tobacco and the vaping industry are constantly trying to come up with new ways to target youth. Between flavors and high tech/sleek designs its no wonder these products appeal to kids. Their latest products have been showing up in Bismarck/Burleigh County schools. These products **CONTAIN NICOTINE** which is highly addictive and harmful to youth brain development. According to a recent study by TRUTH Initiative, 63% of youth did **NOT** know that one JUUL pod contains the same amount of nicotine equal to one pack of cigarettes or 200 puffs.<sup>1,4-6</sup>

## What can North Dakota do to protect youth?



Increase the price on **ALL** tobacco products including e-cigarettes, vapes, and MODS



Ban flavored tobacco products



Fund tobacco prevention and control programs at levels recommended by the CDC



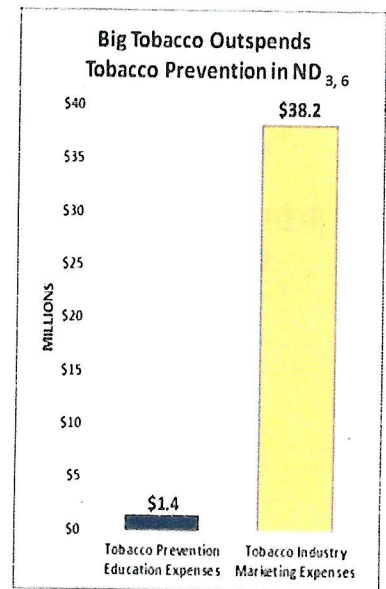
Implement Multi Unit Housing Smoke-Free Policy



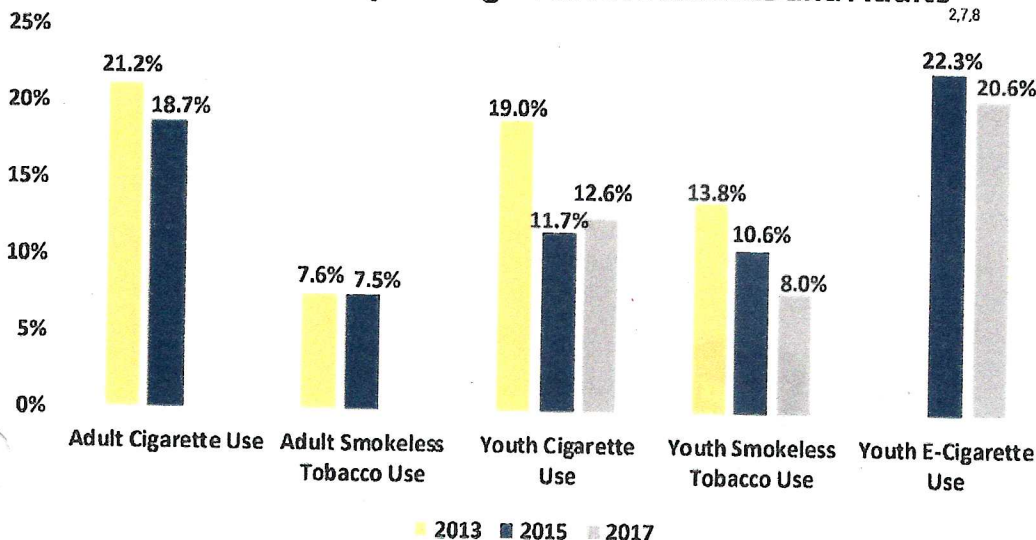
Maintain the ND Smoke-Free Law



Raise the legal age to purchase tobacco to 21



## Tobacco Use by ND High School Students and Adults



North Dakota ranked in  
**top 10 states**  
for high youth e-cigarette usage.

FOR MORE INFORMATION

[HTTP://WWW.BREATHEND.COM/PUBLICHEALTHUNITS/BISMARCK-TOBACCO-FREE/](http://www.breathend.com/publichealthunits/bismarck-tobacco-free/)



# SOURCES

1. (2018). Retrieved from JUUL: <https://www.juul.com/>
2. *Behavioral Risk Factor Surveillance System*. (2018). Retrieved from Centers for Disease Control and Prevention: <https://www.cdc.gov/brfss/index.html>
3. Commission, F. T. (2016). *Cigarette and Smokeless Tobacco Reports for 2013*.
4. *Get the Facts*. (2018). Retrieved from Know the Risks: E-Cigarettes and Young People: <https://e-cigarettes.surgeongeneral.gov/>
5. *juul e-cigarettes gain popularity among youth, but awareness of nicotine presence remains low*. (2018, April 18). Retrieved from Truth Initiative: <https://truthinitiative.org/news/juul-e-cigarettes-gain-popularity-among-youth>
6. *Toll of Tobacco in North Dakota*. (2018, June 20). Retrieved from Campaign for Tobacco Free Kids: [https://www.tobaccofreekids.org/problem/toll-us/north\\_dakota](https://www.tobaccofreekids.org/problem/toll-us/north_dakota)
7. (2018). *Youth Risk Behavior Surveillance - United States, 2017*. Atlanta, GA: Centers for Disease Control and Prevention.
8. (n.d.). *Youth Risk Behavior Surveillance - United States, 2013 and 2015*. Atlanta, GA: Centers for Disease Control and Prevention.



**Public Health**  
Prevent. Promote. Protect.

Bismarck-Burleigh Public Health



# Emerging Electronic Tobacco Products

A generational look at the evolution of electronic tobacco products.

## CIG-A-LIKES

Cig-a-likes first entered the market in 2007. These products mimic the size and shape of a tobacco cigarette and the nicotine solution is sold in pre-filled cartridges. Very often they are also disposable.



## E-LIQUID

E-liquid is the flavored liquid that is used in e-cigarettes. Sometimes referred to as e-juice or vape juice, e-liquid is often available in a range of nicotine strengths and flavors.



## VAPE PENS

Vape pens are larger than cig-a-likes and often have the appearance of an ink pen. These devices reach higher temperatures, can have batteries or be rechargeable, and have a refillable cartridge that the user fills with a nicotine or THC solution.



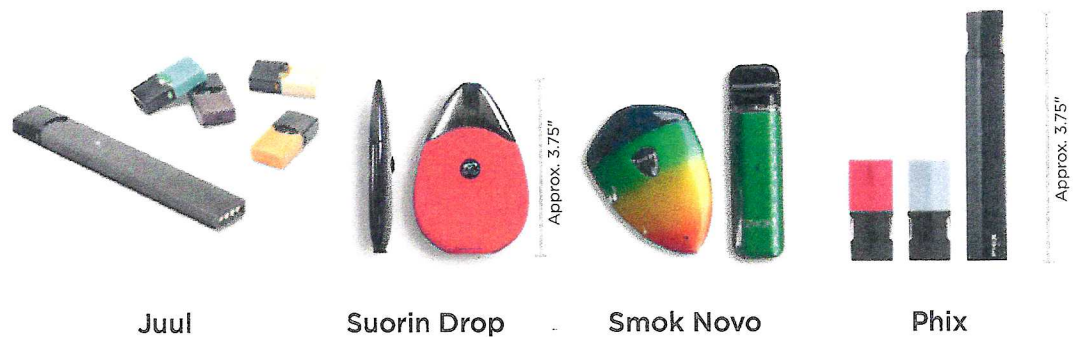
## MODS & TANKS

Mods and tanks are the largest devices. They have a big battery to create more aerosol which allows the user to inhale greater amounts of nicotine and chemicals at a faster rate. The devices have a refillable tank for a nicotine solution.

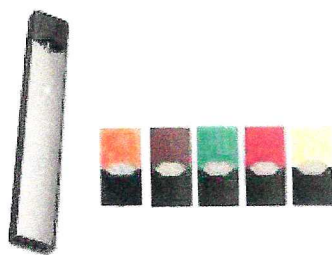


## POD SYSTEMS

Pod-based systems are typically smaller and can often look like a USB. Pods consist of two parts: a battery and a pod filled with a nicotine solution that connects to it. The pods can be refillable or purchased pre-filled.







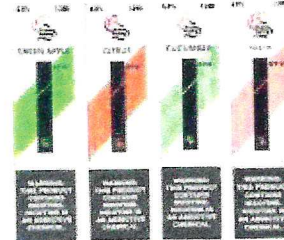
## > JUUL

- Re-chargable, reusable device
- 3% to 5% nicotine per JUUL pod
- 1 pod = 1-2 packs of cigarettes
- Flavors: Mint, Mango, Fruit Medley, Menthol, Virginia Tobacco



## > EONSMOKE PODS

- Eon Smoke pods compatible with JUUL device
- 4% to 6.8% nicotine
- Flavors: Vanilla Custard, Summer Peach, Tropical Pineapple, Ripe Mango



## > EONSMOKE STIK

- Disposable, one-time use device
- 6.8% to 7% nicotine content
- Flavors: Strawberry, Blue Raspberry, Sweet Grape, Sour Gummy



## > STIG

- Disposable, one-time use device
- 6% nicotine content
- 1 STIG = 1 pack of cigarettes
- Flavors: Tropical Mango, Mighty Mint, Cubano, Lush Ice (watermelon)



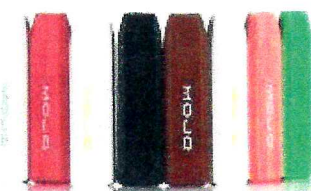
## > SUORIN

- Re-chargable, reusable device
- User fills device with e-liquid purchased separately
- Nicotine content and flavors vary



## > BLU

- Re-chargable, reusable device
- 0% to 4% nicotine content per pod
- Flavors: Mint-sation, Honeymoon, Neon Dream, Melon Time, Citra Zing, Tobacco



## > MOJO

- Disposable, one-time use device
- 5% nicotine content
- Flavors: Cool Melon, Ice Pineapple, Lemon Dessert, Peach, Strawberry, Classic Tobacco



## > NOVO

- Re-chargable, reusable device
- User fills device with e-liquid purchased separately
- Nicotine content and flavors vary

## The Bottom Line?

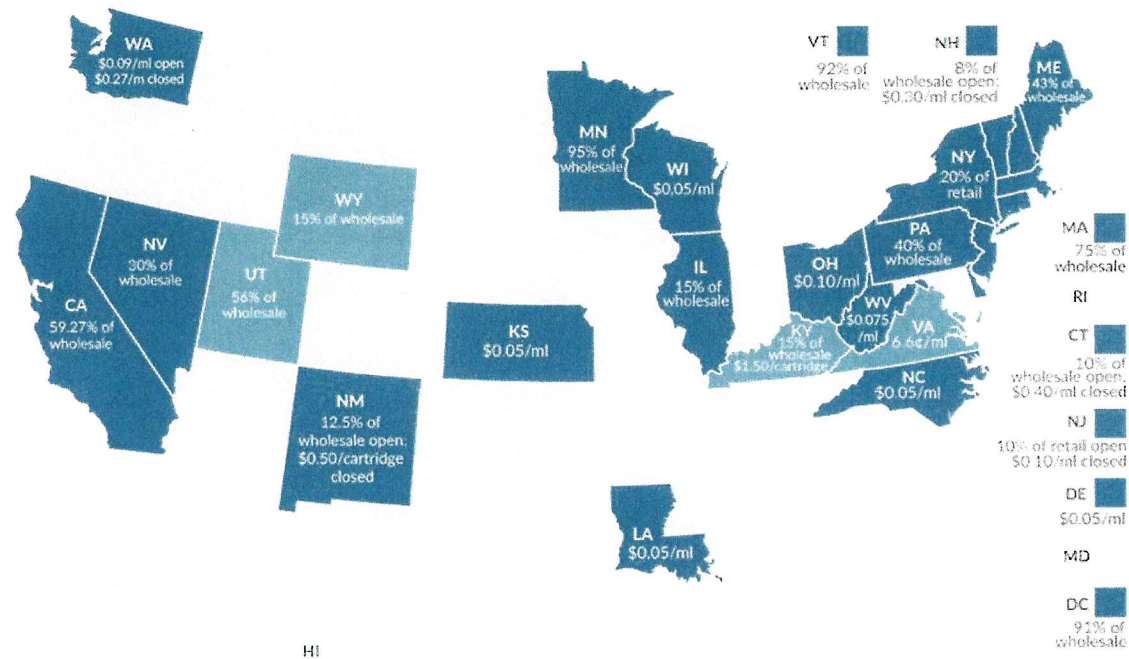
- Sleek, discrete devices.
- Clever branding.
- Dangerous levels of nicotine.
- Flavors that hook kids.





## How High are Vapor Taxes in Your State?

State Vapor Excise Tax Rates, as of June 2020



Note: Several states levy general sales taxes in addition to the excise tax. Those are not included on the map. CA's rate will change to 56.93% on July 1. Vapor taxes in UT, VA, and WY take effect on July 1. KY's tax goes into effect on August 1.

Open: An open tank allows the consumer to refill the liquid and allows more freedom in voltage and nicotine levels.

Closed: Normally sold as pods or cartridges. Closed systems typically have higher nicotine levels to allow for consumption of the desired amount of nicotine in shorter sessions.

Source: State Statutes & Bloomberg Tax

- Has a Statewide Vapor Excise Tax
- Planned Statewide Vapor Excise Tax
- No Vapor Excise Tax



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

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

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

On September 11, 2018, [the FDA declared](#) that youth use of ENDS has reached “nothing short of an epidemic” and requested plans for mitigating youth sales. According to the 2019 North Dakota Youth Risk Behavior Survey (YRBS), North Dakota high school students’ use of ENDS/vaping devices has significantly increased from 1.6% in 2011 to 33.1% in 2019. In addition, any tobacco product use for ND high school students has increased from 28.8% in 2017 to 35.5% in 2019 (ND YRBS). Comparative data from 2021 will not be available until later this year. Data relating to 2020 youth ENDS usage to previous years needs to be analyzed cautiously due to effects from



the COVID-19 pandemic. Recent 2019 federal legislative efforts to increase the sales and use age for tobacco products to 21 and flavor regulation efforts may help with these high numbers. However, this legislation is limited to specific products such as pre-filled pod systems and to certain flavors, so actual results may be limited.

The high school ENDS rate as referenced above is accompanied by an increase in use by North Dakota adults as well, from 16.5% in 2016 to 23.3% in 2018 (North Dakota Behavioral Risk Factor Surveillance System). The 2020 survey data is not available at this time. The NDDoH treats ENDS/vaping products as a public health issue affecting all ages.

In August 2019, a nationwide health epidemic emerged, e-cigarette or vaping product use-associated lung injury (EVALI). EVALI is a pneumonia-like illness related to ENDS/vaping product use. EVALI causes short-term and potential long-term pulmonary damage. Though vitamin E acetate in some vaping products was ruled as the main cause of EVALI, people using vaping products without vitamin E acetate have also succumbed to this disease. Vitamin E acetate is not the sole cause of EVALI.

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

COVID-19 has emerged as another health issue with detrimental effects related to ENDS/vaping use. A recent study addressed the relationship between youth smoking, e-cigarette use and COVID-19 (*Association Between Youth Smoking, Electronic Cigarette Use, and COVID-19 Journal of Adolescent Health*, October 2020). The results of this online, national survey of 13-to 24-year-olds found



that ever users of e-cigarettes were five times more likely to receive a positive COVID-19 diagnosis.

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

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

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

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

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



**North Dakota Legislature  
Finance and Taxation Committee Hearing  
Testimony of Eric Barker**

March 3, 2021

**Altria Client Services Testimony in Support of Amended SB 2189**

Mr. Chairman, Members of the Committee. Good Morning. My name is Eric Barker and I am the Director of Regulatory Strategy at Altria Client Services. I am here today on behalf of Altria and its tobacco company affiliates to support Amended Senate Bill 2189. This morning I would like to focus on Section 8 of the bill, which calls for a study on reduced harm nicotine products, including a review of “Modified Risk Tobacco Products” or MRTPs.

Modified risk tobacco products are “tobacco products that are sold...to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.” Manufacturers must submit extensive data and evidence to the FDA for each product for which they seek an MRTp authorization. The manufacturer must meet the rigorous standard that the “product, as it is actually used by consumers, will “significantly reduce harm and the risk of tobacco-related disease to individual tobacco users and benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.”

This is a high standard, and, to date, the FDA has authorized MRTp applications for a Philip Morris International heated tobacco product and Swedish Match snus products.

An MRTp should be an important indicator for those seeking to implement policies aiming to reduce the harms caused by combustible cigarette use.

We support the legislative management study included in this bill and believe this study presents an opportunity to more fully explore these important issues and identify policies that encourage the long-term goal of tobacco harm reduction.

Public health authorities agree that there is a broad continuum of risk among tobacco products, with cigarettes at the highest end of the spectrum. Some have also described a “risk cliff” reflecting the profound risk differential between combustible and non-combustible product categories as a whole. With the right FDA oversight, non-combustible products can play a significant role in tobacco harm reduction over the long term. Tax policy should support rather than hinder this long-term goal.

For example, Altria believes governments should refrain from taxing products that present reduced risk. If currently taxed, governments should maintain or lower taxes on MST, e-vapor, heated tobacco products, or other non-combustibles to be significantly less than combustible cigarettes.

In another example, 6 states have already determined that MRTp products should face a reduced tax burden. As discussed, the FDA has a rigorous assessment process in place to evaluate the harm reduction potential of tobacco products. If a product meets the designation reviewed through the FDA’s MRTp application, then legislatures should use tax policy to reflect this science and evidence-based conclusion by lowering the tax burden on these products.

Finally, we believe legislatures should also consider modernizing tobacco product definitions in tax statutes to reflect new and innovative reduced-harm tobacco products.



Altria supports a Tobacco Harm Reduction approach that encourages adult smokers who can't or won't quit smoking to switch to reduced harm alternatives – and for that reason we urge you to support Senate Bill 2189 as amended, including the call for study of reduced harm nicotine products including MRTPs.

We hope to be given the opportunity to provide more information to inform the study should this committee give this bill, as amended, a favorable DO pass recommendation.

Thank you.





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[Fightcancer.org/northdakota](http://Fightcancer.org/northdakota)

SB 2189 Do Not Pass Ask  
Sara Mannetter, North Dakota Government Relations Director  
American Cancer Society Cancer Action Network  
March 3, 2021

Chairman Headland, Vice-Chair Steiner and members of the Committee,

My name is Sara Mannetter and I'm the North Dakota Government Relations Director for the American Cancer Society Cancer Action Network.

The American Cancer Society Cancer Action Network (ACS CAN), the nonprofit, non-partisan advocacy affiliate of the American Cancer Society, advocates for public policies that reduce death and suffering from cancer including policies targeted at improving the health of our state by reducing tobacco use.

This morning you heard SB 2189, a bill related to licensing requirements for electronic smoke device dealers and distributors and to provide for a legislative management study around harm reduction.

I apologize for not submitting testimony, but I hope you will accept this letter on my behalf.

**ACS CAN opposes SB 2189 and I ask you for a Do Not Pass vote.**

SB 2189 is specifically problematic for the following reasons:

- **Licensing:**
  - E-cigarettes are a tobacco product and should be taxed and regulated as such, including licensing them as a tobacco product.
  - Including e-cigarettes in licensing should not come at the expense of the existing license structure. It's important that tobacco licensing fees are high enough to cover the cost of enforcement. Currently, licensing is weakened by the reduction in fees included in this bill.
- **Harm Reduction Management Study:**
  - The tobacco industry has a long history of defrauding and misleading the public on the harms of its products.
  - Modified risk does not mean "safe." All tobacco products have health harms.
  - There is an existing federal process that manufacturers can choose to go through to be permitted to make a modified risk claim, there is no reason to duplicate it on the state level.
  - Any action at the state or local level to regulate so-called modified risk tobacco products differently from cigarettes and other tobacco products (OTPs) is premature.
  - Lowering taxes on any tobacco product reduces state tax revenue.



- States should not change state tobacco control laws to accommodate any new product marketing claims.

I ask that you look to proven solutions that support public health and the health of state budgets. We don't want to see attention or resources diverted from proven tobacco control measures, including funding tobacco prevention and cessation according to CDC-best practices, regular and significant tax increases on all tobacco products and a strong, comprehensive smoke-free law with no exemptions.

I've included a factsheet on FDA's regulations of tobacco products and modified risk to read at your leisure.

Thank you for your time and please vote for a Do Not Pass recommendation.

Sincerely,  
Sara Mannetter  
North Dakota Government Relations Director



# FDA Regulation of Tobacco Products: Modified Risk Tobacco Products



fightcancer.org

The Family Smoking Prevention and Tobacco Control Act (TCA) of 2009 granted the U.S. Food and Drug Administration (FDA) the authority to regulate tobacco products for the first time. The agency now has authority to regulate the manufacture, marketing, sale, and distribution of tobacco products. One of the most critical provisions requires tobacco product manufacturers to receive a marketing order in order to make any modified risk claim about the product. The tobacco industry has a long history of defrauding and misleading the public on the harms of its products. This provision aims to put an end to that practice by requiring manufacturers to prove the truthfulness of any claim.

## What are Modified Risk Tobacco Products

The term ‘modified risk tobacco product’ means any product that is sold or distributed for use to reduce the harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. A product manufacturer can apply to make any of the following claims:

- Disease claim: The tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other tobacco products.
- Exposure claim: The tobacco product or its smoke contain a reduced level of a substance or present a reduced exposure to a substance.
- Exposure claim: The tobacco product or its smoke doesn’t contain or is a free of a substance.

Cessation claims, including that a product can help a person quit using tobacco, are medical claims that must be approved by FDA as a medical drug or device. Tobacco products cannot make cessation claims.

## FDA Regulation of Modified Risk Products

A manufacturer can submit an application to FDA for a marketing order to make a modified risk claim. That application must include at a minimum:

- A description of the proposed product and any proposed advertising
- The conditions for using the product
- Sample product labels and labeling
- All documents (including underlying scientific information) relating to the research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related disease and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health
- Data and information on how consumers actually use the tobacco product

FDA must make the application available to the public for comment. In addition, the application is referred to the Tobacco Products Scientific Advisory Committee for its review and recommendation.

## So-called “Light,” “Low,” and “Mild” Cigarettes

As health concerns about smoking started to emerge in the 1950s and 1960s, cigarette manufacturers created so-called “light” cigarettes, marketing them as healthier with less tar and less nicotine. Due to the design of these cigarettes, smokers actually smoked longer, inhaling more deeply and more frequently to get their desired dose of nicotine. These design changes may have led to an increase in lung cancers.

Cigarette manufacturers knew these products posed no less risk, yet fraudulently sold them to Americans as such. Decades later, the TCA outright prohibited the terms “light,” “low,” and “mild.”



FDA can only issue a modified risk marketing order if the applicant has demonstrated that the tobacco product, as *used by consumers*, will:

- *Significantly* reduce harm and the risk of tobacco-related disease to the individual; and
- Benefit the health of *the population as a whole* taking into account both users of tobacco products and persons who do not currently use tobacco products.

In other words, the manufacturer must prove there will be a reduction in risk or a benefit to health based on how consumers would actually use the product. Simply stating a product is less harmful without providing information on how consumers would use it would be insufficient.

In issuing a modified risk marketing order, FDA will determine a fixed time period for permitting the claim at which time the application would have to be renewed. In addition, the manufacturer must conduct post-market surveillance and submit annual reports to FDA. FDA has the authority to remove a modified risk product from the market if it is not having the intended public health effect.

## Where Are We Now

As of November 2020, FDA has permitted modified risk claims for two products: Swedish Match USA, Inc. snus and Philip Morris Products S.A. IQOS. Swedish Match USA, Inc. is permitted to make a disease risk claim for eight of its snus products, including several mint-flavored products. Philip Morris Products S.A. is permitted to make an exposure risk claim for its IQOS products, including menthol-flavored heatsticks. Philip Morris Products S.A. was denied a disease risk claim. In addition, applications are under review for six R.J. Reynolds Camel Snus products, U.S. Smokeless Tobacco Company's Copenhagen Snuff Fine Cut, and two 22<sup>nd</sup> Century Group Inc. low nicotine cigarettes.

## ACS CAN's Position

ACS CAN, with its tobacco control partners, has opposed the existing and proposed modified risk marketing orders. The applications to date have been insufficient in proving that the products as used by consumers would lead to a reduction in risk. In addition, all the applications have lacked any information on the impact on youth – which is required under the law. In addition, local and state governments should not exempt products that have received a marketing order for a modified risk claim from their tobacco control laws, nor tax them at lower rates than cigarettes and other tobacco products. ACS CAN will continue to comment on these applications and urge FDA to deny any applications that are incomplete and do not meet the standard required by the Tobacco Control Act.



# 2021 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Room JW327E, State Capitol

SB 2189  
3/8/2021

A bill relating to licensing requirements for electronic smoking device dealers and distributors.

**Chairman Headland** opened for discussion at 9:40am.

Representatives	Present
Representative Craig Headland	Y
Representative Vicky Steiner	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Sebastian Ertelt	AB
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Tom Kading	AB
Representative Ben Koppelman	Y
Representative Marvin E. Nelson	Y
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

### Discussion Topics:

- Proposed amendment
- Committee decision

**Chairman Headland** proposed an amendment striking all the language in the bill but keeping section eight.

**Representative B. Koppelman** made a motion to adopt the amendment.

**Representative Trottier** seconded the motion.

**Voice vote-motion carried.**

**Representative B. Koppelman** made a motion for a DO PASS AS AMENDED.

**Vice Chairman Steiner** seconded the motion.



**Roll call vote:**

<b>Representatives</b>	<b>Vote</b>
Representative Craig Headland	Y
Representative Vicky Steiner	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Sebastian Ertelt	AB
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	N
Representative Tom Kading	AB
Representative Ben Koppelman	Y
Representative Marvin E. Nelson	N
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

**Motion carried-10-2-2**

**Representative B. Koppelman is the bill carrier.**

**Chairman Headland** closed the discussion at 9:50am.

*Mary Brucker, Committee Clerk*



March 8, 2021

3/8/21

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2189

Page 1, line 1, remove "amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05,"

Page 1, remove line 2

Page 1, line 3, remove "requirements for electronic smoking device dealers and distributors; to"

Page 1, line 4, replace "; and to provide a penalty" with "of reduced harm nicotine products"

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 29

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 3

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**SB 2189, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2189 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05,"

Page 1, remove line 2

Page 1, line 3, remove "requirements for electronic smoking device dealers and distributors; to"

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Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 3

Renumber accordingly