



The American Vaping Association

www.vaping.org

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January 20, 2021

RE: SB 2190, a bill relating to tobacco product shipping

Chairman Klein, Vice Chairman Larsen, and members of the Industry, Business and Labor 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 smoke-free nicotine products, I am writing to urge the committee to issue an unfavorable report on SB 2190, which seeks to prohibit mail order sales of all tobacco and nicotine products.

This bill would unnecessarily repeal existing North Dakota law governing online sales of tobacco and nicotine products. It will do nothing to stop youth from acquiring these products through Internet social sources.

In 2016, the North Dakota State Legislature enacted Chapter 51-32 – Remote Sales of Tobacco Products within the State's laws governing sales of tobacco products, alternative nicotine products, and electronic smoking devices (vaping products) to minors. This existing law requires numerous steps to be taken – including using a mail service that must verify age of the recipient upon delivery – or else the seller faces a penalty for each violation.

This existing law closely mirrors what federal law will be starting in March 2021. At the end of December, President Trump signed the COVID-19 / omnibus government funding bill into law.

A new provision contained within that bill -- the Preventing Online Sales of E-Cigarettes to Children Act -- requires vaping products to abide by the same requirements found in the existing federal law covering cigarettes and smokeless tobacco.

FEDERAL LAW REQUIREMENTS:

(effective date for vaping products – approximately March 29, 2021)

Requirements for vaping products, cigarettes, or smokeless tobacco retailers to send an order by mail:

(1) Register with the U.S. Attorney General	(2) Verify age of customers using a commercial available third-party database
(3) Use only private shipping services (USPS shipping is prohibited)	(4) Require an adult signature to be collected upon delivery (offered by delivery carriers for a surcharge)
(5) If selling to a state, local government, or Native American tribe that taxes vaping products, sellers must register with the tobacco tax administrators in that locality.	(6) Must collect all applicable excise states for the state or locality of delivery.
(7) Every 30 days, remit excise taxes collected to each local government and state + report the names and addresses of every customer sold to and the quantities of each product sold.	(8) Maintain records for five years

Why change the law now? For four years, North Dakota law has laid out precise steps that must be taken to complete an online sale of tobacco products, alternative nicotine products, and electronic smoking devices. Now, federal law is going to require registrations, tax payments, and nearly the exact same steps already present in North Dakota statutes.

Instead of banning mail order sales, we need enforcement of existing law, particularly now that there will be federal penalties attached to noncompliance.

Especially during COVID, adults across North Dakota are now relying more on online sales than they ever have. As I am sure many of you recognize, not everyone lives in a big city where they can easily access products they want. The adults who order vaping products online are overwhelmingly ex-smokers who are trying to stay away from combustible cigarettes. We should not put additional barriers in front of these adults seeking to make a healthier choice.

Without enforcement, the only online retailers that will stop shipping to North Dakota are the ones currently following the law. Many consumers will turn to unregistered online websites, unregulated Facebook groups, Snapchat sellers, suppliers on the gray and black market, etc.

Please reject SB 2190 and keep smoke-free alternatives accessible for adult smokers in North Dakota.

Sincerely,

A handwritten signature in cursive script that reads "Gregory Conley".

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

CHAPTER 51-32
REMOTE SALES OF TOBACCO PRODUCTS

51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking devices, or alternative nicotine products to minors.

1. It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:
 - a. Before mailing or shipping the product, the person receives from the individual who places the order the following:
 - (1) A copy of a valid government-issued document that provides the name, address, and date of birth of the individual; and
 - (2) A signed statement from the individual providing a certification that the individual:
 - (a) Is a smoker of legal minimum purchase age in the state;
 - (b) Has selected an option on the statement as to whether the individual wants to receive mailings from a tobacco company; and
 - (c) Understands that providing false information may constitute a violation of law.
 - b. Before mailing or shipping the product, the person:
 - (1) Verifies the date of birth or age of the individual against a commercially available database; or
 - (2) Obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order.
 - c. Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section 51-32-04.
 - d. In the case of an order for a product pursuant to an advertisement on the internet, the person receives payment by credit card, debit card, or check for the order before mailing or shipping the product.
 - e.
 - (1) The person employs a method of mailing or shipping the product requiring that the individual purchasing the product:
 - (a) Be the addressee;
 - (b) Have an individual of legal minimum purchase age sign for delivery of the package; and
 - (c) If the individual appears to the carrier making the delivery to be under twenty-seven years of age, take delivery of the package only after producing valid government-issued identification that bears a photograph of the individual, indicates that the individual is not under the legal age to purchase cigarettes, and indicates that the individual is not younger than the age indicated on the government-issued document.
 - (2) The bill of lading clearly states the requirements in subdivision e and specifies that state law requires compliance with the requirements.
 - f. The person notifies the carrier for the mailing or shipping, in writing, of the age of the addressee as indicated by the government-issued document.
2. It is unlawful for any person in the business of selling electronic smoking devices or alternative nicotine products to take an order for an electronic smoking device or alternative nicotine product, other than from a person who is in the business of selling electronic smoking devices or alternative nicotine products through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails

the product or ships the product by carrier, and the person fails to comply with each of the following procedures:

- a. Before the sale of the electronic smoking device or alternative nicotine product verifies the purchaser is at least eighteen years of age through a commercially available database that is regularly used by business or governmental entities for the purpose of age and identity verification; and
 - b. Uses a method of mailing, shipping, or delivery which requires an individual of legal minimum purchase age to sign for delivery before the electronic smoking device or alternative nicotine product is released to the purchaser.
3. As used in subsection 2, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

51-32-02. Rule of construction regarding common carriers.

This chapter may not be construed as imposing liability upon any common carrier, or officer or employee of the carrier, when acting within the scope of business of the common carrier.

51-32-03. Electronic mail addresses.

A person taking a delivery sale order may request that a prospective purchaser provide an electronic mail address for the purchaser.

51-32-04. Disclosure requirements.

The notice required under subdivision c of subsection 1 of section 51-32-01 must include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum age are illegal;
2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal Cigarette Labeling and Advertising Act [15 U.S.C. 1333(a)(1)] rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 51-32-01; and
4. A prominent and clearly legible statement that cigarette sales are subject to tax under sections 57-36-06 and 57-36-32, and an explanation of how the tax has been, or is to be, paid with respect to the delivery sale.

51-32-05. Registration and reporting requirements.

1. Before making a delivery sale or shipping cigarettes in connection with a sale, a person shall file with the tax commissioner a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.
2. Not later than the tenth day of each month, each person that has made a delivery sale or shipped or delivered cigarettes in connection with any sale during the previous calendar month shall file with the tax commissioner a memorandum or a copy of the invoice, which provides for each delivery sale:
 - a. The name and address of the individual to whom the delivery sale was made;
 - b. The brand of the cigarettes that were sold in the delivery sale; and
 - c. The quantity of cigarettes that were sold in the delivery sale.

51-32-06. Taxes.

Each person accepting a purchase order for a delivery sale of any tobacco product shall remit to the tax commissioner any taxes due under chapter 57-36 with respect to the delivery sale. This section does not apply if the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes already have been paid to this state.

51-32-07. Penalties.

1. Except as otherwise provided in this section, a person that violates this chapter is subject to a fine of not more than one thousand dollars. In the case of a second or subsequent violation of this chapter, the person is subject to a fine of not less than one thousand dollars nor more than five thousand dollars.
2. Any person who knowingly violates any provision of this chapter is guilty of a class C felony.
3. Any individual who knowingly and falsely submits a certification under paragraph 1 of subdivision e of subsection 1 of section 51-32-01 in another individual's name is guilty of a noncriminal offense and is subject to the penalty provided under subsection 1.
4. Any person that fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of fifty percent of the tax due but unpaid.
5. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this chapter are forfeited to the state and must be destroyed.

51-32-08. Enforcement.

The attorney general or any person who holds a permit under 26 U.S.C. 5712 may bring an action in the appropriate court in the state to prevent or restrain a violation of this chapter by any person.

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.”

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.”