

**2015 HOUSE JUDICIARY**

**HB 1265**

# 2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1265

2/2/2015

23023

Subcommittee

Conference Committee

Committee Clerk Signature



## .Explanation or reason for introduction of bill/resolution:

Relating to minors and the sale and use of electronic smoking devices; and to provide a penalty.

## Minutes:

Testimony 1,2,3,4,5,6,7,8,9,10,11,12,13,14

**Chairman K. Koppelman:** Opened the hearing with testimony in support.

**Rep. M. Nelson:** Introduced the bill. (See Testimony #1) Went through the bill with the testimony information. (1:00-13:57)

**Rep. G. Paur:** You said one of the main differences is your child proof caps. How many other states have those child proof caps?

**Rep. Nelson:** There are three that are requiring them and several others are considering them.

**Rep. L. Klemin:** If a person was to engage in the business of selling electronic smoking devices in a store and did not also sell tobacco products they would still have to be licensed as a tobacco retailer?

**Rep. Nelson:** Yes that is right. Part of to the reason for that is because they have become the delivery device of choice for designer drugs; and some other more mainline drugs. The tobacco retailer license is not a particularly strong form of regulation, but if there was a head shop or something selling these they would require a tobacco retailers license so it gets us in the door and lets us look at their records. They main not contain any nicotine at all but could include other substances so it allows us to regulate them to some degree.

**Rep. Kretschmar:** Did you consider increasing the criminal penalty for venders of these things?

**Rep. Nelson:** I did think about a lot of things. As a first time bill I didn't want to get sidetracked by some of those things. That is why I hope to piggyback and by definition do things in the tobacco retail licensing because it is all already there. Everybody knows where it is at.

**Rep. Lois Delmore:** Is this close to what the cities that have adopted ordinances already; is there a reflection of that?

**Rep. Nelson:** I don't know.

**Rep. Lois Delmore:** Is there a penalty for a minor who is does purchase these products?

**Rep. Nelson:** Yes it is exactly the same penalty it would be if they bought tobacco today.

**Shane Goettle: Ass't City Attorney, Minot, ND:** (Chuck Barney given out testimony #2) (18:20-19:20)

**Rep. K. Wallman:** The main point of the testimony is that he likes the recommendation to change the tobacco ordinance to include e-cigarettes.

**Shane Goettle:** They are in favor of this approach you see in 1265.

**Whitney Kym, St. Mary's High School Sadd:** (see testimony #3) (20:00-21:28)

**Chase Job, University of Mary Respiratory Therapy student:** (See Testimony #4) (21:40- 23:52)

**Vice Chairman Karls:** Did you study all three of these bills and chose the one you liked?

**Chase Job:** I just studied this one.

**TJ Jerke, Education and Advocacy specialist for Tobacco Free ND:** (See testimony #5) (25:00-30:32)

**Dr. Eric Johnson, President, Tobacco Free ND:** (See testimony #6) (30:50-37:30) This book he showed as fake information from tobacco companies-Chronic Exposure of Mice to Cigarette Smoke. ND has done two things that work very well. We have a smoke free law that is comprehensive. We also have fully funded tobacco cessation programs. In your packet you did see some city ordinances. We don't know if e-cigarettes are safe or if they work. Safety data is lacking.

**Rep. Maragos:** You indicated that the nicotine receptors in the brain never go to sleep. For the compulsive alcohol addiction what happens that sometimes those receptors reduce themselves. How do they come back in to cause the individual to decide he has to have a drink?

**Dr. Eric Johnson:** What happens to the addiction to alcohol over time those brain receptors actually down regulate. They are not as active and there is not as many of them. Nicotine receptors never do that. They stay fully lite and ready to go.

**Rep. G. Paur:** How does nicotine addiction differ from caffeine addiction?

**Dr. Eric Johnson:** What they are ingesting? Nicotine is very addictive. Only 15% of people who consume alcohol will ever become addicted.

**Rep. L. Klemin:** Those kinds of things are excepted out of these bill? This would not have any effect on the over the counter sale of those kind of things.

**Dr. Eric Johnson:** Those products are considered to be separate therapeutic agents that are indicated for tobacco cessation.

**Rep. Maragos:** You stated people who have tried alcohol only 15% will become addicted. For people who attempt cigarettes how may will become addicted.

**Eric Johnson:** 85%-90%.

**Carma Hanson, Coordinator, Safe Kids Grand Forks:** (See testimony #7) (47:00- 53:46)  
Showed the device called e-cigarette. Passed around the devices and liquid.

**Alison Harrington B.S.RRT, TTS:** (See testimony #8) (stopped 57:00)

**Rep. Lois Delmore:** As you work with these patients, what percentage would you say would really try to use the e-cigarettes as a way to quite?

**Carma Hanson:** At least half. We see about 250 patients a month.

**Rep. Lois Delmore:** We had a bill that would have outlawed cigarettes totally. Would you be in favor of outlawing e-cigarettes totally in the state?

**Carma Hanson:** Yes I would be in favor of outlawing them.

Recess for after floor session.

**Chairman K. Koppelman:** Reopened the hearing on HB 11265.

**Rep. G. Paur:** I would like to clarify one of Dr. Johnson's statement. He said nicotine has a negative effective on diabetes where caffeine has a positive effect. I checked and the diabetes association and they agreed that coffee has beneficial effects, but the caffeine doesn't.

**Kristie Wolff, Program Manager, and American Lung Association of ND:** (See testimony #9) Showed us a number of different e-cigarettes for the committee to see. Went through their testimony. (1:04:00-1:18:42)

**Rep. Brabandt:** We know cigarette smoking is hard on your lungs. What would the vapor be on a scale of one to ten on your lungs only?

**Kristie Wolff:** I don't believe I can answer that.

**Karin McNamee, Police Department:** Since the e-cigarettes came into market we noticed kids openly smoking in schools and could not issue any citations. The schools themselves had to change their rules. Since that time the city of Bismarck changed their ordinances to match so e-cigarettes fall under the tobacco ordinance now. Kids can get them readily if you just drive out of town. Kids think it is a safe harmless activity and it is sold over the counter. I spoke with our Chief and the city commission and they are in favor of this bill and HB1078 also has a provision to restrict sales from juveniles under the age of 18. We are in support of that stipulation.

**Rep. D. Larson:** Have you heard anything about powders alcohol because we had a bill on this earlier?

**Karin McNamee:** I haven't seen any of it. There has been some conversation about it. Houlka's were old type smoking devices. Now they are much smaller.

**Chairman K. Koppelman:** We need to get the definitions clear. We need to figure out which ones are the best.

**Krista Headland Fremming, Director of the Chronic Disease Division, NDDoH:** (See testimony #10) (1:27:14-1:30:14)

**TJ Jerke:** (proposed amendment #11) (1:31:25-1:34:20) Forgot to hand out this proposed amendment and Handout from Sergeant Margie Zietz (handout #12)

**Rep. G. Paur:** All the convenience stores would not be able to display cigarettes?

**TJ Jerke:** No this amendment speaks to just a tobacco outlet store. No they only see tobacco products. We want it to speak to just the tobacco outlet stores.

**Rep. G. Paur:** But it doesn't.

**Chairman K. Koppelman:** We will have the subcommittee look at that.

Neutral: None

Opposition:

**Laney Herauf, Greater ND Chamber of Commerce:** (See testimony #13) (1:36:36-1:37:12)

**Rep. D. Larson:** You mentioned two of the bills; did you look at the third one?

**Laney Herauf:** HB1186 best of the three.

**Kelsey Eaton, Regional Manager of Infinite Vapor (1:38:24-1:43:12)** We have a number of issues with this particular bill. The definition of electronic cigarettes and devices is too broad of a category. We don't like them under tobacco supply stores. Madison Wisconsin just passed a law that specifies the store as a vapor store. We don't want to have to have the tobacco license. Oklahoma takes away their tax ID status. As a retailer We fully support child proof caps. Consider a definition for vapor stores. Use a definition of vapor products that are accurate. (Will copy written testimony and give it to me) (Did not do that) Was asked to give us her contact information and did not get that either.

**Rep. P. Anderson:** How much is a tobacco license?

**Kelsey Eaton:** I don't know. I have never had to get one.

**Rep. Brabandt:** If you were to list the ingredients would tobacco be listed anywhere.

**Kelsey Easton:** Only if we were exclusively listing it as nicotine derived from tobacco. Most of the time it just says nicotine.

**Rep. Brabandt:** So your nicotine is derived from tobacco?

**Kelsey Eaton:** Yes it is nicotine derived from tobacco.

Hearing closed

**Subcommittee: 1078, 1186, 1265: Vice Chairman Karls: Rep. Brabandt:  
Rep. D. Larson:**

Testimony handed out after the hearing: (See Testimony #14)

(HOUSE) (SENATE) BILL NO. \_\_\_\_\_ SUBCOMMITTEE OF THE

Judiciary STANDING COMMITTEE

Meeting location: Prairie Room

Date of meeting: 2/9/15

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

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

Others present (may attach attendance sheet):

Topics discussed:

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

Discussed proposed amendment  
Same as HB 1186 amendment #1

Motion and vote:

Time of adjournment: 4:22

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

(HOUSE) (SENATE) BILL NO. \_\_\_\_\_ SUBCOMMITTEE OF THE

Judiciary STANDING COMMITTEE

Meeting location: Pravice Room

Date of meeting: 2/10/15

Time meeting called to order: 4:15 pm

Members present: Chair Karen Karle, Rep Roger Brabant  
Rep Lois Delmore

Others present (may attach attendance sheet):

Topics discussed:

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

Motion and vote:

Time of adjournment: 4:30

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

(HOUSE) (SENATE) BILL NO. \_\_\_\_\_ SUBCOMMITTEE OF THE

Judiciary STANDING COMMITTEE

Meeting location: Prairie

Date of meeting: 2/11/15

Time meeting called to order: 11:30

Members present: Chau K. Karls Rep Brabandt  
Rep Delmore

Others present (may attach attendance sheet):

Topics discussed:

Amendment drawn up to address yesterday's discussion

Motion and vote:

Motion to recommend HB1186 w/ Karls  
amendment 15.0446.02002 to full Judiciary  
Committee 1. Brabandt 2. Delmore  
m/c unanimous

Time of adjournment: 11:45

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

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1265  
2/11/2015  
Job #23682

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kenneth M. Toth*

**Explanation or reason for introduction of bill/resolution:**

Relating to minors and the sale and use of electronic smoking devices; and to provide a penalty.

**Minutes:**

**Rep. Anderson:** Moved Do Pass on HB 1265.

**Rep. Wallman:** Seconded.

**Chairman Koppelman:** Discussion on the Do Pass motion. Some of the language was removed from this bill and was amended into 1186.

**Rep. Anderson:** I voted to Do Pass on this one because it does say these are tobacco products.

**Rep. Delmore:** The decision by the subcommittee was not easily done, and I think one of the reasons this was not the choice was because local ordinances can already do it, and it's really what the bill was modeled after. The other bill leaves that open, so if people want tougher regulations they want to add, they can.

**Rep. Wallman:** I certainly respect the work of the subcommittee. I just would like to say that I believe this bill sends a stronger message of our state what they're getting themselves into when they start e-cigarettes. I would refer to Dr. Johnson's testimony, who said once those nicotine receptors are open, they don't close again. And so, the rate at which our youth are becoming and can become addicted to nicotine, which is a lifelong issue. I have an 11 and a 12-year-old, and I don't want them to use an e-cigarette, thinking it's not the equivalent of smoking a cigarette. It's nicotine from tobacco in there, and we're sending the message that it's something different if we don't pass this bill, and pass the message on that we're regulating like the cigarettes because you can become addicted as if it were a cigarette. It's not candy.

**Rep. Karls:** One of the issues we had with this was that the definition was so narrow that it could cover things like a nebulizer. The description sounded very similar. That was one issue we had with it.

Chairman Koppelman called for the vote on a Do Pass motion for HB 1265.

YES: 4 NO: 7 ABSENT: 1

MOTION FAILED.

**Chairman Koppelman:** What are the wishes of the committee?

**Rep. Maragos:** Moved Do Not Pass

**Rep. Brabandt:** Seconded

**Chairman Koppelman:** Any discussion on that motion? Seeing none, will the clerk call the roll on a Do Not Pass motion on HB 1265.

YES: 9 NO: 3 ABSENT: 1

MOTION PASSES

Rep. Karls will carry.

Date: 2-11-15  
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1265**

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

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

Motion Made By Rep. Anderson Seconded By Rep. Wallman

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

Total (Yes) 4 No 3

Absent 1

Floor Assignment Failed

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

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

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1265**

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

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

Motion Made By Rep Maragos Seconded By Rep Brabandt

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

Total (Yes) 9 No 3

Absent 1

Floor Assignment Rep. Karls

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

**REPORT OF STANDING COMMITTEE**

**HB 1265: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO NOT PASS** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1265 was placed on the Eleventh order on the calendar.

**2015 TESTIMONY**

**HB 1265**

#1  
HB1265  
2-2-15

HB1265

Good morning Chairman Koppelman and members of the House Judiciary Committee.

I stand before you today to speak of the rapidly growing recreational use of electronic smoking devices and their associated products.

The entire product line has sprung up rapidly since the Chinese made the first successful products and today the Chinese still make the vast majority of the electronic devices sold in the US but not many of the liquids consumed in this country come from China.

I first really became aware of them due to the impulse merchandise displays at many convenience stores. As I looked into them more, I became rather alarmed. As an entomologist, I am familiar with the history of nicotine and its use as an organic insecticide and the fact that today we don't let the organic farmers use it due to its rather high risk profile due to toxicity and ability to be absorbed through the skin and such. Though quite natural, it's pretty relatively dangerous in concentrated forms.

Getting back to the convenience stores I found that there were many containers of bright colors and a multitude of flavors that contained a potentially lethal dose of nicotine. I was even more concerned when I found that much of the packaging of the liquids does not consist of child proof containers but is often nothing more complicated than a dropper bottle with a screw cap.

Due to that, I bring to you today HB 1265.

Going through the bill, Section 1 is a list of definitions. The Child resistant packaging is defined according to Federal rules of which I include a copy.

Electronic smoking device is then defined and exempts pharmaceutical products.

Self-service merchandising.

Tobacco product is defined as is paraphernalia.

Tobacco retailer is those licensed or anyone who sells cigarettes, tobacco products or electronic smoking devices.

And Vending machine.

Section 2

Prohibition of selling to a minor as well as self-service or vending machines.

It is also the part that requires the child proof packaging.

#1  
HB1265  
2-2-15

It gives the aggrieved person a right to sue for injunctive relief and actual damages.

The rest of HB1265 is language concerning the offenses of a minor, making it possible for police to use a minor legally just like they do now with tobacco retailers.

Section 2 adds the electronic smoking devices to the definition of unruly child.

Further Discussion. The big things HB1265 does that the other bills you heard this morning is to require the child proof packaging and the tobacco retailers licensing.

As for the child proof packaging. I find it necessary since the nicotine is there in potentially lethal quantities and is made desirable by adding coloring and flavoring. It is easy to find flavors like bubblegum, gummy bears, chocolate, and caramel rolls in addition to tobacco, whiskey, fruits just about anything you eat or drink can be mimicked by the liquids.

There is also the fact that even if a kid simply spills it on himself, that he can get poisoned.

The tobacco retailer or wholesaler license was, in my mind the easiest thing to do for our retailers. They already have in many cases the license, the training of employees would be simple since the products would be treated the same. Enforcement is already worked out, penalties already in place. It just makes it easier for everyone involved and avoids misunderstandings. It also avoids putting our existing retailers at a disadvantage.

HB 1265  
2-2-15

Title 16: Commercial Practices  
PART 1700—POISON PREVENTION PACKAGING

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**§1700.15 Poison prevention packaging standards.**

To protect children from serious personal injury or serious illness resulting from handling, using, or ingesting household substances, the Commission has determined that packaging designed and constructed to meet the following standards shall be regarded as "special packaging" within the meaning of section 2(4) of the act. Specific application of these standards to substances requiring special packaging is in accordance with §1700.14.

(a) *General requirements.* The special packaging must continue to function with the effectiveness specifications set forth in paragraph (b) of this section when in actual contact with the substance contained therein. This requirement may be satisfied by appropriate scientific evaluation of the compatibility of the substance with the special packaging to determine that the chemical and physical characteristics of the substance will not compromise or interfere with the proper functioning of the special packaging. The special packaging must also continue to function with the effectiveness specifications set forth in paragraph (b) of this section for the number of openings and closings customary for its size and contents. This requirement may be satisfied by appropriate technical evaluation based on physical wear and stress factors, force required for activation, and other such relevant factors which establish that, for the duration of normal use, the effectiveness specifications of the packaging would not be expected to lessen.

(b) *Effectiveness specifications.* Special packaging, tested by the method described in §1700.20, shall meet the following specifications:

(1) Child-resistant effectiveness of not less than 85 percent without a demonstration and not less than 80 percent after a demonstration of the proper means of opening such special packaging. In the case of unit packaging, child-resistant effectiveness of not less than 80 percent.

(2) *Ease of adult opening*—(i) *Senior-adult test.* Except for products specified in paragraph (b)(2)(ii) of this section, special packaging shall have a senior adult use effectiveness (SAUE) of not less than 90% for the senior-adult panel test of §1700.20(a)(3).

(ii) *Younger-adult test*—(A) *When applicable.* Products that must be in aerosol form and products that require metal containers, under the criteria specified below, shall have an effectiveness of not less than 90% for the younger-adult test of §1700.20(a)(4). The senior-adult panel test of §1700.20(a)(3) does not apply to these products. For the purposes of this paragraph, metal containers are those that have both a metal package and a recloseable metal closure, and aerosol products are self-contained pressurized products.

(B) *Determination of need for metal or aerosol container*—(1) *Criteria.* A product will be deemed to require metal containers or aerosol form only if:

- (i) No other packaging type would comply with other state or Federal regulations,
- (ii) No other packaging can reasonably be used for the product's intended application,
- (iii) No other packaging or closure material would be compatible with the substance,

HB1265  
2-2-15

(iv) No other suitable packaging type would provide adequate shelf-life for the product's intended use, or

(v) Any other reason clearly demonstrates that such packaging is required.

(2) *Presumption.* In the absence of convincing evidence to the contrary, a product shall be presumed not to require a metal container if the product, or another product of identical composition, has previously been marketed in packaging using either a nonmetal package or a nonmetal closure.

(3) *Justification.* A manufacturer or packager of a product that is in a metal container or aerosol form that the manufacturer or packager contends is not required to comply with the SAUE requirements of §1700.20(a)(3) shall provide, if requested by the Commission's staff, a written explanation of why the product must have a metal container or be an aerosol. Manufacturers and packagers who wish to do so voluntarily may submit to the Commission's Office of Compliance a rationale for why their product must be in metal containers or be an aerosol. In such cases, the staff will reply to the manufacturer or packager, if requested, stating the staff's views on the adequacy of the rationale.

(c) *Reuse of special packaging.* Special packaging for substances subject to the provisions of this paragraph shall not be reused.

(d) *Restricted flow.* Special packaging subject to the provisions of this paragraph shall be special packaging from which the flow of liquid is so restricted that not more than 2 milliliters of the contents can be obtained when the inverted, opened container is taken or squeezed once or when the container is otherwise activated once.

(Secs. 2(4), 3, 5, 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474)

[38 FR 21247, Aug. 7, 1973, as amended at 60 FR 37734, July 21, 1995]

4

#1  
HB1265  
2-2-15

§ 1700.20

16 CFR Ch. II (1-1-12 Edition)

voluntarily may submit to the Commission's Office of Compliance a rationale for why their product must be in metal containers or be an aerosol. In such cases, the staff will reply to the manufacturer or packager, if requested, stating the staff's views on the adequacy of the rationale.

(c) *Reuse of special packaging.* Special packaging for substances subject to the provisions of this paragraph shall not be reused.

(d) *Restricted flow.* Special packaging subject to the provisions of this paragraph shall be special packaging from which the flow of liquid is so restricted that not more than 2 milliliters of the contents can be obtained when the inverted, opened container is taken or squeezed once or when the container is otherwise activated once.

(Secs. 2(4), 3, 5, 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474)

[38 FR 21247, Aug. 7, 1973, as amended at 60 FR 37734, July 21, 1995]

§ 1700.20 Testing procedure for special packaging.

(a) *Test protocols*—(1) *General requirements*—(i) *Requirements for packaging.* As specified in § 1700.15(b), special packaging is required to meet the child test requirements and the applicable adult test requirements of this § 1700.20.

(ii) *Condition of packages to be tested*—(A) *Tamper-resistant feature.* Any tamper-resistant feature of the package to be tested shall be removed prior to testing unless it is part of the package's child-resistant design. Where a package is supplied to the consumer in an outer package that is not part of the package's child-resistant design, one of the following situations applies:

(1) In the child test, the package is removed from the outer package, and the outer package is not given to the child.

(2) In both the adult tests, if the outer package bears instructions for how to open or properly resecure the package, the package shall be given to the test subject in the outer package. The time required to remove the package from the outer package is not counted in the times allowed for attempting to open and, if appropriate, reclose the package.

(3) In both the adult tests, if the outer package does not bear any instructions relevant to the test, the package will be removed from the outer package, and the outer package will not be given to the test subject.

(B) *Reclosable packages—adult tests.* In both the adult tests, reclosable packages, if assembled by the testing agency, shall be properly secured at least 72 hours prior to beginning the test to allow the materials (e.g., the closure liner) to "take a set." If assembled by the testing agency, torque-dependent closures shall be secured at the same on-torque as applied on the packaging line. Application torques must be recorded in the test report. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

(2) *Child test*—(i) *Test subjects*—(A) *Selection criteria.* Use from 1 to 4 groups of 50 children, as required under the sequential testing criteria in table 1. No more than 20% of the children in each group shall be tested at or obtained from any given site. Each group of children shall be randomly selected as to age, subject to the limitations set forth below. Thirty percent of the children in each group shall be of age 42-44 months, 40% of the children in each group shall be of age 45-48 months, and 30% of the children in each group shall be of age 49-51 months. The children's ages in months shall be calculated as follows:

(1) Arrange the birth date and test date by the numerical designations for month, day, and year (e.g., test date: 8/3/1990; birth date: 6/23/1986).

(2) Subtract the month, day, and year numbers for the birth date from the respective numbers for the test date. This may result in negative numbers for the months or days. (e.g.,

$$\begin{array}{r} 8 / 03 / 1990 \\ -6 / 23 / 1986 \\ \hline 2 - 20 \quad 4 \end{array}$$

(3) Multiply the difference in years by 12 to obtain the number of months in the difference in years, and add this

5

#1  
 HB1245  
 2-2-15

Consumer Product Safety Commission

§ 1700.20

value to the number of months that was obtained when the birth date was subtracted from the test date (i.e.,  $4 \times 12 = 48$ ;  $48 + 2 = 50$ ). This figure either will remain the same or be adjusted up or down by 1 month, depending on the number of days obtained in the subtraction of the birth date from the test date.

(4) If the number of days obtained by subtracting the days in the birth date from the days in the test date is +16 or more, 1 month is added to the number of months obtained above. If the number of days is -16 or less, subtract 1 month. If the number of days is between -15 and +15 inclusive, no change is made in the number of months. Thus, for the example given above, the number of days is -20, and the number of months is therefore  $50 - 1 = 49$  months.

(B) *Gender distribution.* The difference between the number of boys and the number of girls in each age range shall not exceed 10% of the number of children in that range. The children selected should have no obvious or overt physical or mental handicap. A parent or guardian of each child shall read and sign a consent form prior to the child's participation. (The Commission staff will not disregard the results of tests performed by other parties simply because informed consent for children is not obtained.)

(ii) *Test failures.* A test failure shall be any child who opens the special packaging or gains access to its contents. In the case of unit packaging, however, a test failure shall be any child who opens or gains access to the

number of individual units which constitute the amount that may produce serious personal injury or serious illness, or a child who opens or gains access to more than 8 individual units, whichever number is lower, during the full 10 minutes of testing. The number of units that a child opens or gains access to is interpreted as the individual units from which the product has been or can be removed in whole or in part. The determination of the amount of a substance that may produce serious personal injury or serious illness shall be based on a 25-pound (11.4 kg) child. Manufacturers or packagers intending to use unit packaging for a substance requiring special packaging are requested to submit such toxicological data to the Commission's Office of Compliance.

(iii) *Sequential test.* The sequential test is initially conducted using 50 children, and, depending on the results, the criteria in table 1 determine whether the package is either child-resistant or not child-resistant or whether further testing is required. Further testing is required if the results are inconclusive and involves the use of one or more additional groups of 50 children each, up to a maximum of 200 children. No individual shall administer the test to more than 30% of the children tested in each group. Table 1 gives the acceptance (pass), continue testing, and rejection (fail) criteria to be used for the first 5 minutes and the full 10 minutes of the children's test. If the test continues past the initial 50-child panel, the package openings shown in table 1 are cumulative.

TABLE 1—NUMBER OF OPENINGS: ACCEPTANCE (PASS), CONTINUE TESTING, AND REJECTION (FAIL) CRITERIA FOR THE FIRST 5 MINUTES AND THE FULL 10 MINUTES OF THE CHILDREN'S PROTOCOL TEST

Test panel	Cumulative number of children	Package openings					
		First 5 minutes			Full 10 minutes		
		Pass	Continue	Fail	Pass	Continue	Fail
1 .....	50	0-3	4-10	11+	0-5	6-14	15+
2 .....	100	4-10	11-18	19+	6-15	16-24	25+
3 .....	150	11-18	19-25	26+	16-25	26-34	35+
4 .....	200	19-30	.....	31+	26-40	.....	41+

(iv) *Test procedures.* The children shall be divided into groups of two. The testing shall be done in a location that

is familiar to the children, for example, their customary nursery school or regular kindergarten. No child shall test

6

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HB1265  
2-2-15

§ 1700.20

16 CFR Ch. II (1-1-12 Edition)

more than two special packages. When more than one special package is being tested, each package shall be of a different ASTM type and they shall be presented to the paired children in random order. This order shall be recorded. The children shall be tested by the procedure incorporated in the following test instructions:

STANDARDIZED CHILD TEST INSTRUCTIONS

1. Reclosable packages, if assembled by the testing agency, shall be properly secured at least 72 hours prior to the opening described in instruction number 3 to allow the materials (e.g., the closure liner) to "take a set." Application torques must be recorded in the test report.

2. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

3. Reclosable packages shall be opened and properly resecured one time (or more if appropriate), by the testing agency or other adult prior to testing. The opening and resecuring shall not be done in the presence of the children. (In the adult-resecuring test, the tester must not open and resecure the package prior to the test.) If multiple openings/resecurings are to be used, each of four (4) testers shall open and properly resecure one fourth of the packages once and then shall open and properly resecure each package a second, third, fourth, through tenth (or other specified number) time, in the same sequence as the first opening and resecuring. The packages shall not be opened and resecured again prior to testing. The name of each tester and the package numbers that he/she opens and resecures shall be recorded and reported. It is not necessary for the testers to protocol test the packages that they opened and resecured.

4. The children shall have no overt physical or mental handicaps. No child with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test.

5. The testing shall take place in a well-lighted location that is familiar to the children and that is isolated from all distractions.

6. The tester, or another adult, shall escort a pair of children to the test area. The tester shall seat the two children so that there is no visual barrier between the children and the tester.

7. The tester shall talk to the children to make them feel at ease.

8. The children shall not be given the impression that they are in a race or contest.

They are not to be told that the test is a game or that it is fun. They are not to be offered a reward.

9. The tester shall record all data prior to, or after, the test so that full attention can be on the children during the test period.

10. The tester shall use a stopwatch(s) or other timing devices to time the number of seconds it takes the child to open the package and to time the 5-minute test periods.

11. To begin the test, the tester shall hand the children identical packages and say, "PLEASE TRY TO OPEN THIS FOR ME."

12. If a child refuses to participate after the test has started, the tester shall reassure the child and gently encourage the child to try. If the child continues to refuse, the tester shall ask the child to hold the package in his/her lap until the other child is finished. This pair of children shall not be eliminated from the results unless the refusing child disrupts the participation of the other child.

13. Each child shall be given up to 5 minutes to open his/her package. The tester shall watch the children at all times during the test. The tester shall minimize conversation with the children as long as they continue to attempt to open their packages. The tester shall not discourage the children verbally or with facial expressions. If a child gets frustrated or bored and stops trying to open his/her package, the tester shall reassure the child and gently encourage the child to keep trying (e.g., "please try to open the package").

14. The children shall be allowed freedom of movement to work on their packages as long as the tester can watch both children (e.g., they can stand up, get down on the floor, or bang or pry the package).

15. If a child is endangering himself or others at any time, the test shall be stopped and the pair of children eliminated from the final results.

16. The children shall be allowed to talk to each other about opening the packages and shall be allowed to watch each other try to open the packages.

17. A child shall not be allowed to try to open the other child's package.

18. If a child opens his/her package, the tester shall say, "THANK YOU," take the package from the child and put it out of the child's reach. The child shall not be asked to open the package a second time.

19. At the end of the 5-minute period, the tester shall demonstrate how to open the package if either child has not opened his or her package. A separate "demo" package shall be used for the demonstration.

20. Prior to beginning the demonstration, the tester shall ask the children to set their packages aside. The children shall not be allowed to continue to try to open their packages during the demonstration period.

21. The tester shall say, "WATCH ME OPEN MY PACKAGE."



22. Once the tester gets the children's full attention, the tester shall hold the demo package approximately two feet from the children and open the package at a normal speed as if the tester were going to use the contents. There shall be no exaggerated opening movements.

23. The tester shall not discuss or describe how to open the package.

24. To begin the second 5-minute period, the tester shall say, "NOW YOU TRY TO OPEN YOUR PACKAGES."

25. If one or both children have not used their teeth to try to open their packages during the first 5 minutes, the tester shall say immediately before beginning the second 5-minute period, "YOU CAN USE YOUR TEETH IF YOU WANT TO." This is the only statement that the tester shall make about using teeth.

26. The test shall continue for an additional 5 minutes or until both children have opened their packages, whichever comes first.

27. At the end of the test period, the tester shall say, "THANK YOU FOR HELPING." If children were told that they could use their teeth, the tester shall say, "I KNOW I TOLD YOU THAT YOU COULD USE YOUR TEETH TODAY, BUT YOU SHOULD NOT PUT THINGS LIKE THIS IN YOUR MOUTH AGAIN." In addition, the tester shall say, "NEVER OPEN PACKAGES LIKE THIS WHEN YOU ARE BY YOURSELF. THIS KIND OF PACKAGE MIGHT HAVE SOMETHING IN IT THAT WOULD MAKE YOU SICK."

28. The children shall be escorted back to their classroom or other supervised area by the tester or another adult.

29. If the children are to participate in a second test, the tester shall have them stand up and stretch for a short time before beginning the second test. The tester shall take care that the children do not disrupt other tests in progress.

(3) *Senior-adult panel*—(i) *Test subjects*. Use a group of 100 senior adults. Not more than 24% of the senior adults tested shall be obtained from or tested at any one site. Each group of senior adults shall be randomly selected as to age, subject to the limitations set forth below. Twenty-five percent of the participants shall be 50-54 years of age, 25% of participants shall be 55-59 years of age, and 50% of the participants shall be 60-70 years old. Seventy percent of the participants of ages 50-59 and ages 60-70 shall be female (17 or 18 females shall be apportioned to the 50-54 year age group). No individual tester shall administer the test to more than 35% of the senior adults tested. The

adults selected should have no obvious or overt physical or mental disability.

(ii) *Screening procedures*. Participants who are unable to open the packaging being tested in the first 5-minute time period, are given a screening test. The screening tests for this purpose shall use two packages with conventional (not child-resistant (CR) or "special") closures. One closure shall be a plastic snap closure and the other a CT plastic closure. Each closure shall have a diameter of 28 mm $\pm$ 18%, and the CT closures shall have been resecured 72 hours before testing at 10 inch-pounds of torque. The containers for both the snap- and CT-type closures shall be round plastic containers, in sizes of 2 ounce $\pm$ 1/2 ounce for the CT-type closure and 8 dram $\pm$ 4 drams for the snap-type closure. Persons who cannot open and close both of the screening packages in 1-minute screening tests shall not be counted as participants in the senior-adult panel.

(iii) *SAUE*. The senior adult use effectiveness (SAUE) is the percentage of adults who both opened the package in the first (5-minute) test period and opened and (if appropriate) properly resecured the package in the 1-minute test period.

(iv) *Test procedures*. The senior adults shall be tested individually, rather than in groups of two or more. The senior adults shall receive only such printed instructions on how to open and properly secure the special packaging as will appear on or accompany the package as it is delivered to the consumer. The senior-adult panel is tested according to the procedure incorporated in the following senior-adult panel test instructions:

#### TEST INSTRUCTIONS FOR SENIOR TEST

The following test instructions are used for all senior tests. If non-reclosable packages are being tested, the commands to close the package are eliminated.

1. No adult with a permanent or temporary illness, injury, or disability that would interfere with his/her effective participation shall be included in the test.

2. Each adult shall read and sign a consent form prior to participating. Any appropriate language from the consent form may be used to recruit potential participants. The form shall include the basic elements of informed consent as defined in 16 CFR 1028.116. Examples of the forms used by the Commission

staff for testing are shown at §1700.20(d). Before beginning the test, the tester shall say, "PLEASE READ AND SIGN THIS CONSENT FORM." If an adult cannot read the consent form for any reason (forgot glasses, illiterate, etc.), he/she shall not participate in the test.

3. Each adult shall participate individually and not in the presence of other participants or onlookers.

4. The tests shall be conducted in well-lit and distraction-free areas.

5. Records shall be filled in before or after the test, so that the tester's full attention is on the participant during the test period. Recording the test times to open and resecure the package are the only exceptions.

6. To begin the first 5-minute test period, the tester says, "I AM GOING TO ASK YOU TO OPEN AND PROPERLY CLOSE THESE TWO IDENTICAL PACKAGES ACCORDING TO THE INSTRUCTIONS FOUND ON THE CAP." (Specify other instruction locations if appropriate.)

7. The first package is handed to the participant by the tester, who says, "PLEASE OPEN THIS PACKAGE ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate.) If the package contains product, the tester shall say, "PLEASE EMPTY THE (PILLS, TABLETS, CONTENTS, etc.) INTO THIS CONTAINER." After the participant opens the package, the tester says, "PLEASE CLOSE THE PACKAGE PROPERLY, ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate)

8. Participants are allowed up to 5 minutes to read the instructions and open and close the package. The tester uses a stopwatch(s) or other timing device to time the opening and resealing times. The elapsed times in seconds to open the package and to close the package are recorded on the data sheet as two separate times.

9. After 5 minutes, or when the participant has opened and closed the package, whichever comes first, the tester shall take all test materials from the participant. The participant may remove and replace the closure more than once if the participant initiates these actions. If the participant does not open the package and stops trying to open it before the end of the 5-minute period, the tester shall say, "ARE YOU FINISHED WITH THAT PACKAGE, OR WOULD YOU LIKE TO TRY AGAIN?" If the participant indicates that he/she is finished or cannot open the package and does not wish to continue trying, skip to Instruction 13.

10. To begin the second test period, the tester shall give the participant another, but identical, package and say, "THIS IS AN IDENTICAL PACKAGE. PLEASE OPEN IT ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction loca-

tions if appropriate.) If the package contains product, the tester shall say, "PLEASE EMPTY THE (PILLS, TABLETS, CONTENTS, etc.) INTO THIS CONTAINER." After the participant opens the package, the tester says, "PLEASE CLOSE THE PACKAGE PROPERLY, ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate.)

11. The participants are allowed up to 1 minute (60 full seconds) to open and close the package. The elapsed times in seconds to open and to close the package are recorded on the data sheet as two separate times. The time that elapses between the opening of the package and the end of the instruction to close the package is not counted as part of the 1-minute test time.

12. After the 1-minute test, or when the participant has opened and finished closing the package, whichever comes first, the tester shall take all the test materials from the participant. The participant shall not be allowed to handle the package again. If the participant does not open the package and stops trying to open it before the end of the 1-minute period, the tester shall say, "ARE YOU FINISHED WITH THAT PACKAGE, OR WOULD YOU LIKE TO TRY AGAIN?" If the participant indicates that he/she is finished or cannot open the package and does not wish to continue trying, this shall be counted as a failure of the 1-minute test.

13. Participants who do not open the package in the first 5-minute test period are asked to open and close two non-child-resistant screening packages. The participants are given a 1-minute test period for each package. The tester shall give the participant a package and say, "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE." The tester records the time for opening and closing, or 61 seconds, whichever is less, on the data sheet. The tester then gives the participant the second package and says, "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE." The time to open and resecure, or 61 seconds, whichever is less, shall be recorded on the data sheet.

14. Participants who cannot open and resecure both of the non-child-resistant screening packages are not counted as part of the 100-seniors panel. Additional participants are selected and tested.

15. No adult may participate in more than two tests per sitting. If a person participates in two tests, the packages tested shall not be the same ASTM type of package.

16. If more adults in a sex or age group are tested than are necessary to determine SAUE, the last person(s) tested shall be eliminated from that group.

(4) *Younger-adult panel.* (i) One hundred adults, age 18 to 45 inclusive, with no overt physical or mental handicaps, and 70% of whom are female, shall

comprise the test panel for younger adults. Not more than 35% of adults shall be obtained or tested at any one site. No individual tester shall administer the test to more than 35% of the adults tested. The adults shall be tested individually, rather than in groups of two or more. The adults shall receive only such printed instructions on how to open and properly resecure the special packaging as will appear on the package as it is delivered to the consumer. Five minutes shall be allowed to complete the opening and, if appropriate, the resealing process.

(ii) Records shall be kept of the number of adults unable to open and of the number of the other adults tested who fail to properly resecure the special packaging. The number of adults who successfully open the special packaging and then properly resecure the special packaging (if resealing is appropriate) is the percent of adult-use effectiveness of the special packaging. In the case of unit packaging, the percent of adult-use effectiveness shall be the number of adults who successfully open a single (unit) package.

(b) The standards published as regulations issued for the purpose of designating particular substances as being subject to the requirements for special packaging under the act will stipulate the percent of child-resistant effectiveness and adult-use effectiveness required for each and, where appropriate, will include any other conditions deemed necessary and provided for in the act.

(c) It is recommended that manufacturers of special packaging, or producers of substances subject to regulations issued pursuant to the act, submit to the Commission summaries of data resulting from tests conducted in accordance with this protocol.

(d) *Recommendations.* The following instructions and procedures, while not required, are used by the Commission's staff and are recommended for use where appropriate.

(1) *Report format for child test.*

A. IDENTIFICATION

1. Close-up color photographs(s) clearly identifying the package and showing the opening instructions on the closure.

2. Product name and the number of tablets or capsules in the package.

3. Product manufacturer.
4. Closure model (trade name—e.g., "KLIK & SNAP").
5. Closure size (e.g., 28 mm).
6. Closure manufacturer.
7. Closure material and color(s) (e.g., white polypropylene).
8. Closure liner material.
9. TAC seal material.
10. Opening instructions (quote exactly, e.g., "WHILE PUSHING, DOWN, TURN RIGHT"). Commas are used to separate words that are on different lines.
11. Symbols, numbers, and letters found inside the closure.
12. Package model.
13. Package material and color.
14. Net contents.
15. Symbols, numbers, and letters on the bottom of the package.
16. Other product identification, e.g., EPA Registration Number.

B. PROCEDURES

1. Describe all procedures for preparing the test packages.
2. Describe the testing procedures.
3. Describe all instructions given to the children.
4. Define an individual package failure.

C. RESULTS

1. Openings in each 5-minute period and total openings for males and for females in each age group.
2. Opening methods (e.g., normal opening, teeth, etc.).
3. Mean opening times and standard deviation for each 5-minute test period.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.
6. Child-resistant effectiveness for the first 5-minute period and for the total test period.

(2) *Standardized adult-resealing test instructions.* CPSC will use the adult-resealing test where an objective determination (e.g., visual or mechanical) that a package is properly resealed cannot be made. The adult-resealing test is performed as follows:

ADULT-RESEALING PROCEDURE

1. After the adult participant in either the senior-adult test of 16 CFR 1700.20(a)(3) or the younger-adult test of 16 CFR 1700.20(a)(4) has resealed the package, or at the end of the test period (whichever comes first), the tester shall take the package and place it out of reach. The adult participant shall not be allowed to handle the package again.
2. The packages that have been opened and appear to be resealed by adults shall be

## § 1700.20

tested by children according to the child-test procedures to determine if the packages have been properly resecured. The packages are given to the children without being opened or resecured again for any purpose.

3. Using the results of the adult tests and the tests of apparently-secured packaging by children, the adult use effectiveness is calculated as follows:

a. *Adult use effectiveness.*

1. The number of adult opening and resecuring failures, plus the number of packages that were opened by the children during the full 10-minute test that exceeds 20% of the apparently-secured packages, equals the total number of failures.

2. The total number of packages tested by adults (which is 100) minus the total number of failures equals the percent adult-use effectiveness.

(3) *Report format for adult-resecuring test.*

### A. IDENTIFICATION

1. Close-up color photograph(s) clearly identifying the package and showing the top of the closure.

2. Product name and the number of tablets or capsules in the package.

3. Product manufacturer.

4. Closure model (trade name).

5. Closure size (e.g., 28 mm).

6. Closure manufacturer.

7. Closure material and color(s) (e.g., white polypropylene)

8. Closure liner material.

9. Symbols, numbers, and letters found inside the closure.

10. TAC seal material.

11. Opening instructions (Quote exactly, e.g., "WHILE PUSHING, DOWN, TURN RIGHT"). Commas are used to separate words that are on different lines.

12. Package model.

13. Package material and color.

14. Net contents.

15. Symbols, numbers, and letters on the bottom of the package.

16. Other product identification, e.g., EPA Registration Number.

### B. PROCEDURES

1. Describe all procedures for preparing the test packages.

2. Describe the testing procedures in detail.

3. Describe all instructions given to participants.

4. Define an individual package failure and the procedures for determining a failure.

### C. RESULTS

#### ADULT TEST

1. Total packages opened and total packages resecured; packages opened by males

## 16 CFR Ch. II (1-1-12 Edition)

and by females; and packages resecured by males and by females.

2. Mean opening times and standard deviation for total openings, total openings by females, and total openings by males.

3. Mean resecuring times and standard deviation for total resecuring, total resecuring by females and total resecuring by males.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

6. Methods of opening (e.g., normal opening, pried closure off, etc.)

#### CHILD TEST

1. Openings in each 5-minute period, and total openings, for males and females in each age group.

2. Opening methods.

3. Mean opening times and standard deviation for each 5-minute test period.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

(4) Consent forms. The Commission uses the following consent forms for senior-adult testing reclosable and unit-dose packaging, respectively.

1. *Reclosable packages.*

[Testing Organization's Letterhead]

#### CHILD-RESISTANT PACKAGE TESTING

The U.S. Consumer Product Safety Commission is responsible for testing child-resistant packages to make sure they protect young children from medicines and dangerous household products. With the help of people like you, manufacturers are able to improve the packages we use, keeping the contents safe from children but easier for the rest of us to open.

Effective child-resistant packages have prevented thousands of poisonings since the Poison Prevention Act was passed in 1970. The use of child-resistant packages on prescription medicines alone may have saved the lives of over 350 children since 1974.

As part of this program, we are testing a child-resistant package to determine if it can be opened and properly closed by an adult who is between 50 and 70 years of age. You may or may not be familiar with the packages we are testing. Take your time, and please do not feel that you are being tested—we are testing the package, not you.

#### *Description of the Test*

1. I will give you a package and ask you to read the instructions and open and properly close the package.

Consumer Product Safety Commission

§ 1701.1

2. I will then give you an identical package, and ask you to open and properly close it.

3. I may ask you to open some other types of packages.

4. The packages may be empty or they may contain a product.

5. I will ask you whether you think the child-resistant package was easy or hard to use.

CONSENT FORM FOR CHILD-RESISTANT PACKAGE TESTING

The Consumer Product Safety Commission has been using contractors to test child-resistant packages for many years with no injuries to anyone, although it is possible that a minor injury could happen.

I agree to test a child-resistant package. I understand that I can change my mind at any time. I am between the ages of 50 and 70, inclusive.

Birthdate \_\_\_\_\_
Signature \_\_\_\_\_
Date \_\_\_\_\_
Zip Code \_\_\_\_\_

Office Use

Site: \_\_\_\_\_
Sample Number: \_\_\_\_\_
Test Number: \_\_\_\_\_
Package Number: \_\_\_\_\_

2. Unit-dose packages.

[Testing Organization's Letterhead]

UNIT DOSE CHILD-RESISTANT PACKAGE TESTING

The U.S. Consumer Product Safety Commission is responsible for testing child-resistant packages to make sure they protect young children from medicines and dangerous household products. With the help of people like you, manufacturers are able to improve the packages we use, keeping the contents safe from children but easier for the rest of us to open.

Effective child-resistant packages have prevented thousands of poisonings since the Poison Prevention Act was passed in 1970.

The use of child-resistant packages on prescription medicines alone may have saved the lives of over 350 children since 1974.

As part of this program, we are testing a child-resistant package to determine if it can be opened by an adult who is between 50 and 70 years of age. You may or may not be familiar with the packages we are testing. Take your time, and please do not feel that you are being tested—we are testing the package, not you.

Description of the Test

1. I will give you a package and ask you to read the instructions, open one unit, and remove the contents.

2. I will then give you an identical package, and ask you to open one unit and remove the contents.

3. I may ask you to open some other types of packages.

4. I will ask you whether you think the child-resistant package was easy or hard to use.

CONSENT FORM FOR CHILD-RESISTANT PACKAGE TESTING

The Consumer Product Safety Commission has been using contractors to test child-resistant packages for many years with no injuries to anyone, although it is possible that a minor injury could happen.

I agree to test a child-resistant package. I understand that I can change my mind at any time. I am between the ages of 50 and 70, inclusive.

Birthdate \_\_\_\_\_
Signature \_\_\_\_\_
Date \_\_\_\_\_
Zip Code \_\_\_\_\_

Office Use

Site: \_\_\_\_\_
Sample Number: \_\_\_\_\_
Test Number: \_\_\_\_\_
Package Number: \_\_\_\_\_

[38 FR 21247, Aug. 7, 1973, as amended at 60 FR 37735, 37738, July 22, 1995]

PART 1701—STATEMENTS OF POLICY AND INTERPRETATION

Sec.

1701.1 Special packaging for substances subject to a standard that are distributed to pharmacies to be dispensed pursuant to an order of a licensed medical practitioner.

1701.3 Applicability of special packaging requirements to hazardous substances in large size containers.

§ 1701.1 Special packaging for substances subject to a standard that are distributed to pharmacies to be dispensed pursuant to an order of a licensed medical practitioner.

(a) In order to assist manufacturers of prescription drugs in discharging their responsibilities under the act concerning such drugs that are distributed to pharmacies, the Consumer Product Safety Commission has codified this statement of its policy concerning which prescription drug packages supplied by manufacturers to pharmacies must comply with the "special" (child-resistant) packaging

12

House Judiciary Committee  
Chairman Koppelman  
Prepared by Chuck Barney, Mayor  
City of Minot  
[mayor@minotnd.org](mailto:mayor@minotnd.org)

#2  
HB1265  
2-2-15

**HOUSE BILL NO. 1265**

Chairman Koppelman, Committee members, my name is Chuck Barney and I am the Mayor for the City of Minot. I am representing the City of Minot to encourage passage of HB 1265.

On February 26<sup>th</sup>, 2014, Holly Brekhus spoke to the City of Minot Public Works and Safety Committee as a representative of STAMP Tobacco Use Prevention Coalition. At that meeting, Ms. Brekhus spoke of the dangers that so-called 'electronic cigarettes' pose to minors, and asked the committee to recommend a change in the current tobacco ordinances that would help prevent the sale of these devices to minors. The committee unanimously passed a motion that the City Council change the existing ordinance, Chapter 23, to include the e-cigarette ban for minors.

Upon a second reading of the revised ordinance on April 7<sup>th</sup>, 2014, the Minot City Council also unanimously voted to change the ordinance.

Although I was not Mayor at the time, I share these concerns regarding the effects that e-cigarettes have on the health of minors. Many arguments are made that these types of nicotine delivery products can be a safer alternative to traditionally smoked cigarettes, however, there is no argument that they can, in any way, be good for a child. As such, I support a DO PASS on House Bill 1265 as an effort at the State level to help prevent minors from possessing and using e-cigarettes. Thank you for your time to listen to Minot's concerns on this bill.

High School

#3  
HB1265  
2-2-15

TESTIMONY SUPPORT OF BILL 1265

Name: Whitney Klym

Chairman Koppelman and Representatives,

My name is Whitney Klym, I am a senior at St. Mary's High School. I am speaking on behalf of St. Mary's High School SADD group. I am here to provide testimony in support of House Bill 1265.

I am concerned about the need for an age restriction on electronic cigarettes, because as youth we don't know the long-term effects of smoking these products. I have seen them used at school, parties, and other events. Kids are choosing to use them because they look cool and their peers are doing it. It is becoming a dangerous social norm among youth.

According to the 2013 National Youth Tobacco Survey the amount of teens trying e-cigarettes in North Dakota has more than doubled. In 2011 4.5% of teens were recorded having tried e-cigarettes, the most recent survey taken in 2013 recorded that the amount of teens trying these products has jumped drastically to 13.4%.

It is not hard to believe that e-cigarettes are being marketed towards youth when the rate of teens trying them continues to increase. E-cigarettes are easy to purchase, because youth can get them in cities that do not have an age restriction in their city ordinance.

Please support Bill 1265 because a statewide age restriction for the sale and use of e-cigarettes to minors will protect the youth in North Dakota who do not have an age restriction on these products in their city ordinance.

✓

Chase Job  
Student, University of Mary  
Support HB 1265

#4  
HB1265  
2-2-15

February 2, 2015

Chairman Koppelman and members of the House Judiciary Committee, my name is Chase Job. I am a Respiratory Therapy student at the University of Mary. I support House Bill 1265.

My concerns are that e-cigarettes are becoming more popular and used by young adults, creating a nicotine addiction. Getting addicted to the nicotine found in e-cigarettes can result in transition to the use of other products such as traditional cigarettes. The vapor in e-cigs contains chemicals that are harmful to the respiratory system and exposes these second hand toxic chemicals to bystanders.

As a young adult, I do think that companies are targeting people of my age. The radio ads I hear talk about how easy they are to carry, because you don't have to carry a whole pack. They are packaged small, easily hidden in pockets, and because the vapor is odorless the products are easy to use in dorm rooms or classrooms undetected. They are also promoted as more affordable than cigarettes, which is important to a college student.

I remember seeing kids in high school using e-cigarettes that older kids bought for them. None of the kids I knew who used them in high school, or those I know who use them in college were regular smokers before using e-cigarettes. The cigarette looking e-cigs are not popular among my peers, in fact I have not seen a single one used, on the other hand the flavored vape pens are very popular.

There are all kinds of different flavors, whether it's fruity or candy flavors, they are intended for younger kids. These flavors catch attention of youth when I don't know of many middle aged adults that choose to buy bubblegum flavored products. These flavored products catch my attention when I see them on the counters at convince stores.

The industry is targeting young people, we need to put these behind the counter and define them as a tobacco product so kids understand these are harmful. Please, pass House Bill 1265.

Thank you.

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#5  
HB 1265  
2-2-15



# Tobacco Free North Dakota

TJ Jerke  
Subject: House Bill 1265 - Comprehensive E-cigarette Legislation  
N.D. House Judiciary Committee  
February 2, 2015

Chairman Koppelman and members of the Judiciary Committee, my name is TJ Jerke. I stand here as an Education & Advocacy specialist for Tobacco Free North Dakota in support of the comprehensive E-cigarette legislation found in House Bill 1265.

Tobacco Free North Dakota is an expansive coalition of healthcare organizations throughout the state.

Tobacco Free North Dakota's mission is to improve and protect the public health of all North Dakotans by reducing the serious health and economic consequences of tobacco use, the state's number one cause of preventable disease and death.

Taking a look back at the history of e-cigarettes, the electronic smoking devices were first conceived by a Chinese pharmacist in 2003 after his father passed away from Lung Cancer. Shortly after, the new device flooded the Chinese market. By 2006 and 2007, the electronic smoking devices made their way through Europe, and into the United States. Since then, as a new, unregulated product, the tobacco industry quickly jumped onto the invention that would become popular overnight. At first, the e-cigarette was marketed as a cessation device, only to be discounted to a lack of supporting scientific data to prove it's ability to be a safer alternative to the harmful cigarette smoking.

According to a Georgetown University Law Center study, "E-cigarettes, Vaping, and Youth," with the decline in recent years in the prevalence of young tobacco smokers – the most profitable long-term consumers – it is no surprise that youth are the key demographic of the unrestricted vaping marketing. Colorful advertisements touting flavors such as bubble gum, or with celebrity actors, conjure images of Joe Camel and the Marlboro Man. The industry skirts accusations of deliberately catering to youthful consumers by asserting that e-cigarettes are a safer alternative to combustible cigarettes, or positioning e-cigarettes as nicotine replacement therapies.

To see some advertising examples, I urge you to take your I-pads and smartphones out right now and Google, "E-cigarette advertising." Check out Youtube as well. Did anyone see the blu E-cig commercial during the Super Bowl? Many of these advertisements are popping up on popular television stations and in magazines popular among kids and young adults.

The Tobacco Industry has been ramping up advertising to cater to youth. According to RTI International, a nonprofit research organization:

- E-cigarette advertising expenditures tripled in the United States from \$6.4 million in 2011 to \$18.3 million in 2012
- Youth exposure to e-cigarette ads increased by 256 percent from 2011 to 2013 and young adult exposure to e-cigarette ads jumped 321 percent in the same time period, suggesting the need for FDA regulation of the positive image of e-cigarettes on television
- More than 75 percent of e-cigarette ad exposure to youth occurred on cable networks, including AMC, Country Music Television, Comedy Central, WGN America, TV Land, and VH1

While advertising increased, so, too, did usage among youth under 18 years old in the United States. According to the journal *Nicotine & Tobacco Research*, the number of youth who had never smoked, but used e-cigarettes, increased from 79,000 in 2011 to more than 263,000 in 2013. The worst part, among those that had never smoked, but used an e-cigarette at least once, 43.9% had an intention to smoke conventional cigarettes.

With the increase in advertising and use, there have also been hundreds of variations of e-cigarettes created, especially as the big Tobacco companies continue to take over the market - from \$10 disposables to MODS, which are assembled using multiple pieces, and range in price from \$20 to well over \$100.

Another piece I'd like to leave you with is that we have heard, and will see, that there are many variations of an E-cigarette. Since they converged on the market, and flooded convenience stores, states are scurrying to properly define, and regulate the smoking device. To ensure state law properly covers all aspects of electronic smoking devices, we need to have one, comprehensive definition.

I've provided you a copy of the study, "The importance of product definitions in US e-cigarette laws and regulations." According to Lempert, Grana and Glantz, How e-cigarettes are defined in laws affects how they are regulated, particularly if they can be included under existing tobacco laws that regulate cigarettes, including sales and marketing restrictions, youth access, smoking restrictions and taxation. Varying terms (e-cigarettes, e-hookah, vape-pens, hookah pens and personal vaporizers), combined with the hundreds of types and brands of e-cigarettes and the fact that

users modify or build their own products, complicates efforts to craft one universal definition.

To avoid confusion about what constitutes an e-cigarette, definitions must be explicit about what they cover and broad enough to anticipate future product innovations. This eliminates ambiguity if new products are released that are similar to e-cigarettes, but do not fall under a narrow definition. When laws aren't clear, they affect things that aren't meant to. Laws are more clear when they say exactly what they mean.

It's important the North Dakota Legislative Assembly passes one, comprehensive definition for an E-cigarette that classifies the product as a Tobacco Product.

Laws that specifically exclude e-cigarettes from the definition of 'tobacco product' or create new product categories for e-cigarettes, separate from the tobacco product category, means that laws governing tobacco products will not apply to e-cigarettes and require new law-making for e-cigarettes. Laws that explicitly define e-cigarettes as 'tobacco products' or define 'smoking' to include e-cigarettes better protect health because they automatically subject e-cigarettes to the same laws and regulations as conventional cigarettes without additional legislation. The definitions of e-cigarettes in legislation (or regulations) should be constructed to allow broad interpretation for applicability to a diverse set of current and future products.

By defining e-cigarettes as a tobacco product, and requiring dealers to obtain a tobacco retail license, it provides more protection for our youth. Tobacco retailers are required to maintain, a tobacco retailers license. If they sell tobacco products to a minor, they will have their license suspended for a varying length of time, depending on multiple offenses, and the frequency of them. No Tobacco retailer will run the risk of losing their license, which gives merit to defining e-cigarettes as a Tobacco product to simply include them under existing law.

As you have listened to testimony regarding e-cigarettes, and will hear from others about these harmful products, please pay close attention to the definitions in each proposal. As I've said already, one of the most important decisions will be how e-cigarettes are defined in state law.

As you look at all the definitions, I urge you to pass House Bill 1265, which offers a comprehensive e-cigarette definition as a tobacco product. In addition, House Bill 1265 incorporates the term, "Inhalation," which is what e-cigarette users do with the toxic vapors emitted from e-cigarettes. So far, no other e-cigarette bill proposes to use the term, inhalation.

To make the point clear, Merriam Webster's Dictionary defines inhalation as, "the act or an instance of inhaling; *specifically* : the action of drawing air into the lungs by means of a complex of essentially reflex actions that involve changes in the diaphragm and in muscles of the abdomen and thorax which cause enlargement of

the chest cavity and lungs." Oxford Dictionaries simply defines inhalation as, "The action of inhaling or breathing in."

Let's not fall back in time to the 1950's when the tobacco industry catered its advertising to youth. We need to have comprehensive regulation over a product we know more about everyday to have disastrous health effects. Our coalition asks that you pass House Bill 1265.



2014

## E-Cigarettes, Vaping, and Youth

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JAMA (2014)

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## VIEWPOINT

## E-Cigarettes, Vaping, and Youth

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**The Family Smoking Prevention** and Tobacco Control Act of 2009 empowered the US Food and Drug Administration (FDA) to regulate tobacco, the leading preventable cause of death. The agency, however, initially exercised authority only over specific tobacco products: cigarettes, cigarette tobacco, roll-your-own (loose tobacco), and smokeless tobacco. This decision left other forms of tobacco unregulated. Five years later, in April 2014, the FDA sought to close this regulatory gap by issuing proposed rules—referred to as “deeming”—to regulate electronic cigarettes, cigars, pipe tobacco, nicotine gels, waterpipe (hookah) tobacco, and orally ingested dissolvable tobacco products. The proposed rules represent a watershed moment in tobacco control but do not go far enough in regulating e-cigarettes, a product with uncertain benefits and potentially significant harms.

As their usage has increased substantially, e-cigarettes have spurred enormous controversy.<sup>1</sup> E-cigarettes, which vary in power and potency, typically contain a nicotine-based liquid that is vaporized and

approval. Further, companies would be permitted to make claims for reduced risk only if the agency confirms the claim based on scientific evidence while also finding a benefit to the health of the public.

Although a vital step forward, the proposed rules leave major issues unanswered, notably those regarding the use of flavored nicotine and marketing practices. By contrast, in February 2014, the European Union issued a Tobacco Products Directive to safeguard youth, including bans on advertising, promoting taste, and nicotine flavorings for e-cigarettes.<sup>2</sup> Other countries, including Brazil, Lebanon, and Singapore, have banned e-cigarettes entirely.

A lengthy rule-making process has compounded the concerns associated with the proposed rules. Mired in litigation, the FDA has been working since 2011 to extend its deeming authority, and it may be years before the proposed rules are finalized. Even then, the FDA plans to wait 2 years before enforcing warning labels and requiring manufacturers to submit product applications. In the interim, new products will be permitted to enter the market without preapproval, while the popularity of youth “vaping,” the colloquial term for e-cigarette use, continues to increase.

### The conundrum is how to regulate e-cigarettes given scientific uncertainty about the nature and extent of harms.

inhaled. Public health advocates have debated whether e-cigarettes are effective harm reduction tools or offer a pathway to smoking. By delivering nicotine and mimicking oral inhalation, e-cigarettes could reduce dependency on combustible cigarettes and prevent relapse. Alternatively, e-cigarettes could become a gateway to smoking by exposing young people to the world of nicotine and relegitimizing tobacco use in society. Probably both scenarios are true: e-cigarettes can help older, entrenched smokers to quit smoking, whereas younger nonsmokers could transition from electronic to combustible cigarettes once they are addicted to nicotine.

#### FDA Proposed Rule

As proposed, the FDA rules would set a federal minimum age of 18 years to use e-cigarettes, require identification to purchase them (currently, just more than half of states impose age restrictions), prohibit most sales in vending machines, mandate warning labels on packaging, and prohibit manufacturers from providing free samples.

Companies would be required to register e-cigarettes with the FDA, submit safety data, and disclose product ingredients. FDA inspectors would monitor compliance. Companies would be able to introduce new products to the market only after FDA review and

#### Balancing Benefits With Harms

Preliminary evidence demonstrates the potential of e-cigarettes to reduce harm by weaning smokers from combustible tobacco, but the benefits appear minimal. At the same time, evidence of harm is emerging. More powerful e-cigarettes, commonly known as tank systems, heat nicotine liquid hot enough to produce cancer-causing carcinogens, such as formaldehyde and acetaldehyde, in their vapor.<sup>3</sup> Further, in a study of human bronchial cells that contained some mutations found in smokers at risk of lung cancer, scientists found a pattern of gene expression in cells grown in a medium exposed to e-cigarette vapor that was similar to the pattern found in cells grown in a medium exposed to combustible tobacco smoke.<sup>4</sup> In addition, the virulence of drug-resistant bacteria can be increased by e-cigarette vapors and affect the ability of cells to destroy bacteria.<sup>5</sup>

The Centers for Disease Control and Prevention reported an increase in calls to poison control centers after unintentional exposure of children to e-liquid, including oral ingestion, eye contact, and inhalation exposure.<sup>6</sup> Public reports commonly associated with e-cigarettes include trouble breathing, headache, cough, dizziness, sore throat, nose bleeds, chest pain, heart palpitations,<sup>7</sup> and allergic reactions such as itchiness and lip swelling. The conundrum is how to regulate e-cigarettes given scientific uncertainty about the nature and extent of harms.

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### A New Youth Culture of Vaping

The increasing popularity of vaping has been associated with a surge in nicotine use among adolescents. It took decades of social mobilization and political action to overcome the perception of smoking as "cool," even after the evidence became clear that smoking is deadly. That intensive campaign—supported by smoke-free laws, advertising bans, and package warnings—could easily be reversed by the popularity of vaping. Even though today's youth grew up inculcated with negative social stigma around the use of combustible cigarettes, vaping products are often marketed as highly palatable and accessible alternatives. In recent years, tobacco companies such as Altria as well as niche manufacturers like NJoy have aggressively entered this market by reinventing brand appeal and normalizing vaping.

With the decline in recent years in the prevalence of young tobacco smokers—the most profitable long-term consumers—it is no surprise that youth are a key demographic of the vaping campaign. Colorful advertisements touting flavors such as bubble gum or with celebrity actors conjure images of Joe Camel and the Marlboro Man. The industry skirts accusations of deliberately catering to youthful consumers by asserting that e-cigarettes are a safer alternative to combustible cigarettes or positioning e-cigarettes as nicotine replacement therapies.<sup>8</sup>

The Centers for Disease Control and Prevention reported that between 2011 and 2012, the proportion of high school students who had tried e-cigarettes doubled from 4.7% to 10%.<sup>9</sup> Although alarming, this figure significantly underestimates the proliferation of nicotine intake by vaping among adolescents. The study directly addressed e-cigarettes but left out a related class of devices that also create a nicotine vapor: e-hookahs, hookah pens, and vape pipes.

The failure of adolescents to equate vaping products generally with e-cigarettes underscores how successful the tobacco industry has been in reinventing a popular "smoking" trend. The FDA em-

phasizes the power of social norms in influencing behavior. For instance, the agency points to the "value of strict access restrictions" to "symbolize and reinforce an emerging social norm that disapproves of tobacco use."<sup>10</sup> However, by failing to restrict advertising and flavored nicotine for e-cigarettes, the agency could be undermining its own conclusions. Child-friendly flavors and slick promotions might encourage young people to experiment with vaping and potentially increase smoking rates among youth. This outcome appears inconsistent with the FDA emphasis on creating social norms to limit the proliferation of tobacco.

### Important Next Steps

The oral satisfaction of e-cigarettes, together with their ability to deliver nicotine without combusting tobacco, poses a double-edged sword for public health. Although it will be easier to replace one highly dangerous addiction (cigarettes) with a seemingly less dangerous alternative (e-cigarettes), the same dynamics may recruit many young people, addicting them to nicotine, with some transitioning to combustible tobacco. There is also a major risk that e-cigarettes will revive the popular smoking culture that has taken decades to dismantle.

The FDA deeming proposal offers the welcome promise of a regulatory structure to ensure that e-cigarettes and other vaping products are safe and effective. However, the agency should move boldly and rapidly to prevent companies from exploiting youth. By bolstering the proposed rules to limit advertising and prohibit flavored nicotine, the agency could prevent proliferation of e-cigarette use among adolescents, while not undermining its regulatory goal of reducing harm. Before the comment period on the proposed rules closes in July, the public health community should speak with a clear voice to urge meaningful and effective regulation to protect US youth against the reinvention of Big Tobacco.

### ARTICLE INFORMATION

**Published Online:** June 30, 2014.  
doi:10.1001/jama.2014.7883.

**Conflict of Interest Disclosures:** The authors have completed and submitted the ICMJE Form for Disclosure of Potential Conflicts of Interest and none were reported.

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# The importance of product definitions in US e-cigarette laws and regulations

#5 p.8

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► Additional material is published online only. To view please visit the journal online (<http://dx.doi.org/10.1136/tobaccocontrol-2014-051913>).

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Received 18 July 2014

Accepted 25 November 2014

## ABSTRACT

**Background** How electronic cigarettes and similar products (e-cigarettes) are defined affects how they are regulated, particularly whether existing laws for cigarettes apply, including sales and marketing, youth access, smoke-free and taxation laws.

**Methods** We examined the text of 46 bills that define e-cigarettes enacted in 40 states and characterised how e-cigarettes and similar products were defined.

**Results** States enact laws creating new product categories for e-cigarettes separate from the 'tobacco product' category (eg, 'alternative nicotine product,' 'vapour product,' 'electronic nicotine device'), with four states explicitly excluding e-cigarettes from 'tobacco products.' Twenty-eight states do not include e-cigarettes in their definitions of 'tobacco products' or 'smoking,' eight include e-cigarettes as 'tobacco products,' three include e-cigarettes in 'smoking.' Sixteen states' definitions of e-cigarettes require nicotine, and five states pre-empt more stringent local laws. Tobacco and e-cigarette industry representatives tried to shape laws that benefit their interests.

**Conclusions** Definitions separating e-cigarettes from other tobacco products are common. Similar to past 'Trojan horse' policies, e-cigarette policies that initially appear to restrict sales (eg, limit youth access) may actually undermine regulation if they establish local pre-emption or create definitions that divide e-cigarettes from other tobacco products. Comparable issues are raised by the European Union Tobacco Products Directive and e-cigarette regulations in other countries. Policymakers should carefully draft legislation with definitions of e-cigarettes that broadly define the products, do not require nicotine or tobacco, do not pre-empt stronger regulations and explicitly include e-cigarettes in smoke-free and taxation laws.

## INTRODUCTION

Electronic cigarettes and similar products (e-cigarettes) are devices that deliver an aerosol by heating a solution typically composed of propylene glycol and/or glycerol (glycerin), nicotine and flavouring agents. How e-cigarettes are defined in laws affects how they are regulated, particularly if they can be included under existing laws that regulate cigarettes, including sales and marketing restrictions, youth access, smoking restrictions and taxation. Creating exceptions for e-cigarettes in smoke-free laws may encourage dual users of e-cigarettes and conventional cigarettes to delay quitting smoking completely. Exempting e-cigarettes from smoke-free laws may expose people to simulated smoking behaviour, thereby undermining efforts to

## What this paper adds

- The popularity of e-cigarettes has skyrocketed across the world.
- Governments are just beginning to enact laws and regulations for e-cigarettes, including their sales and use and taxation.
- The e-cigarette market comprises hundreds of brands and a wide variety of e-cigarette products. Despite the variation in these products, they are referred to (often interchangeably) as e-cigarettes, e-hookah, e-cigars, and vape-pens, among other terms.
- How e-cigarettes are defined impacts how they are regulated.
- In the absence of federal regulations in the USA, states have enacted laws regulating the sales, use and taxation of e-cigarettes.
- Definitions separating e-cigarettes from other tobacco products are common, and allow e-cigarettes to evade sales and marketing restrictions, smoke-free laws and taxation.

denormalise smoking behaviour, potentially interfering with successful tobacco control efforts.

Varying terms (e-cigarettes, e-hookah, vape-pens, hookah pens and personal vaporizers), combined with the hundreds of types and brands of e-cigarettes and the fact that users modify or build their own products,<sup>1</sup> complicate efforts to craft one universal definition. A 2010 court case found that e-cigarettes could not be regulated under the Food and Drug Administration's (FDA) drugs/devices authority unless they are 'marketed for therapeutic purposes,' and could not be regulated under FDA's tobacco product authority unless FDA 'deems' them to be 'tobacco products' under the Family Smoking Prevention and Tobacco Control Act (FSPTCA).<sup>2</sup> In April 2014, FDA issued a proposed rule<sup>3</sup> to extend its tobacco product authority to additional products including e-cigarettes, but as of October 2014, this rule had not been finalised so e-cigarettes escaped federal definition. States and localities, however, have been enacting legislation to regulate the use and sale of e-cigarettes.<sup>4-6</sup> Even after the FDA wins jurisdiction over e-cigarette product standards, states and localities will continue to have authority to enact laws concerning the sales, use or taxation of e-cigarettes because the FSPTCA explicitly preserves state and local authority to regulate the sale, distribution, access to, marketing of or use of tobacco products (including e-cigarettes, should they be 'deemed' tobacco products).<sup>7</sup>

To cite: Lempert LK, Grana R, Glantz SA. *Tobacco Control* Published Online First: [please include Day Month Year] doi:10.1136/tobaccocontrol-2014-051913

## Research paper

E-cigarette and cigarette companies have been actively promoting legislation designed to serve industry interests.<sup>8–11</sup> Laws that specifically exclude e-cigarettes from the definition of 'tobacco product' or create new product categories for e-cigarettes separate from the tobacco product category means that laws governing tobacco products will not apply to e-cigarettes and require new law-making for e-cigarettes. Laws that explicitly define e-cigarettes as 'tobacco products' or define 'smoking' to include e-cigarettes better protect health because they automatically subject e-cigarettes to the same laws and regulations as conventional cigarettes without additional legislation. The definitions of e-cigarettes in legislation (or regulations) should be constructed to allow broad interpretation for applicability to a diverse set of current and future products.

## METHODS

We researched the purpose, status and text of state bills (including the DC, USA) enacted between 1 January 2009 and 15 June 2014 that define e-cigarettes initially using the State Net legislative tracking system and state legislature websites. Search terms included 'electronic cigarette,' 'e-cigarette,' 'electronic smoking device,' 'alternative nicotine product,' and 'vapor product.' We studied news reports on pending legislation and efforts made by industry and public health representatives to influence the language used in the laws. We supplemented our search to capture additional bills using state legislature websites that used other terms including 'derived from tobacco,' 'tobacco substitute,' and 'product containing nicotine.' We analysed each bill to determine its status (introduced, pending, enacted or failed) and 'main purpose' (based on declarations in the bills or our subjective determination of the bill's language), and included enacted bills in our analysis; online supplementary table S1 includes details of enacted bills we analysed.

## RESULTS

The first states to address the sale and use of e-cigarettes by explicitly differentiating and defining these products were New Jersey ('electronic smoking device,' 2009), New Hampshire ('e-cigarette,' 2009) and California ('electronic cigarette,' 2010). By 15 June 2014, 46 laws in 40 states had been enacted that established definitions for e-cigarette products, most often as part of legislation restricting sales to youth. In addition to 'e-cigarette' and 'electronic cigarette' some states used the terms 'vapor product,' 'alternative nicotine product,' 'tobacco derived,' 'tobacco substitute,' 'electronic nicotine device,' 'electronic smoking device,' or 'nicotine product' to define e-cigarettes, or considered e-cigarettes to be 'tobacco products' (table 1).

### Inclusion or exclusion as a tobacco product

Table 2 assesses whether or not the state law excludes e-cigarettes from the states' tobacco product definition. Fourteen states exclude e-cigarettes from 'tobacco products.' Georgia and Kentucky define e-cigarettes as 'vapor products' and exclude vapour products from the definition of tobacco products. South Carolina defines e-cigarettes as 'alternative nicotine products' and excludes 'alternative nicotine products' from 'tobacco products.' Virginia includes e-cigarettes in 'nicotine vapor product' which it excludes from tobacco products. Alabama, Arkansas and South Carolina explicitly exclude tobacco products from their definition of 'electronic cigarette.' Illinois, Mississippi and Ohio include e-cigarettes in their definition of 'alternative nicotine product' and exclude tobacco products from 'alternative nicotine products.' Florida, Nebraska and Wisconsin also include e-cigarettes in their definitions of

other broader categories, and then exclude tobacco products from those classifications. (Florida uses 'nicotine dispensing device,' Nebraska uses 'vapor product,' and Wisconsin uses 'nicotine product.') Alaska's definition of 'product containing nicotine' excludes tobacco products. Two states (Colorado and South Dakota) explicitly include e-cigarettes in the definition of 'tobacco product.' Colorado amended existing law to prohibit furnishing tobacco products to minors and using tobacco products on school property by defining "tobacco product" to include "any product that contains nicotine or tobacco or is derived from tobacco" or "any electronic device that can be used to deliver nicotine to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, cigarillo or pipe." South Dakota includes e-cigarettes in 'vapor products,' then defines 'tobacco product' to include vapour products.

Five states (Minnesota, Nevada, Vermont, West Virginia and Wyoming) consider 'tobacco products' to include products made or *derived* from tobacco. Since most e-cigarettes contain tobacco-derived nicotine, they would be considered 'tobacco products' in these states. However, in cases where companies could demonstrate that their e-cigarettes do not contain nicotine or use nicotine derived from non-tobacco sources, they could argue that these products are not 'tobacco products.' The Minnesota Department of Revenue issued a notice in October 2012 stating it had interpreted the law to mean that e-cigarettes were subject to the tobacco products tax since nicotine cartridges are components of e-cigarettes; the Department assumes that all nicotine is derived from tobacco and places the burden on the taxpayer to prove otherwise.<sup>12</sup> North Carolina considers e-cigarettes 'tobacco products' for purposes of its 2013 minor access restrictions law, but enacted a tax law in 2014 that creates different tax categories for 'vapor products' (includes e-cigarettes) and 'tobacco products' (excludes vapour products and therefore e-cigarettes).

Twenty-eight states do not specify whether e-cigarettes are included in their definitions of tobacco product.

Industry lobbyists attempted to include language in laws that would restrict youth access to e-cigarettes, but also exclude e-cigarettes from existing tobacco control laws, while health advocates wanted legislative language that included e-cigarettes in states' clean air and tax laws.<sup>11 13–28</sup>

### Inclusion in the definition of 'smoking'

New Jersey and Utah amended existing smoke-free laws to include e-cigarette use in their definitions of smoking, and North Dakota included e-cigarette use in its definition of smoking when passing its statewide smoke-free law. New Jersey amended its laws on smoking in indoor public places and workplaces to define "electronic smoking device" as "an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe" and explicitly includes "the inhaling or exhaling of smoke or vapor from an electronic smoking device" in its definition of "smoking," thereby prohibiting the use of electronic cigarettes in all enclosed indoor places of public access and workplaces. Utah's law also explicitly provides that "smoking" means "using an e-cigarette." North Dakota's smoke-free law states: "Smoking" also includes the use of an e-cigarette which creates a vapor, in any manner or any form..."

### Specifying nicotine as a component

New Jersey's definition of "electronic smoking device" states that the device is used "to deliver nicotine or other substances to

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Table 1 Main terms used in state laws defining e-cigarettes

Term	Sample definition	States using term	Number of states using term	Significant features
E-cigarette or Electronic cigarette	'E-cigarette' means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapour of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name or descriptor. (North Dakota <sup>54</sup> )	AL, AR, CA, ID, IN, KS, MS, NH, NY, ND, OH, SC, TN, UT, WY	15	Broadly defined to include other e-products such as e-cigars and e-pipes Does not require nicotine
Vapour product	"Vapor product" means a non-combustible product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a nicotine solution, and includes but is not limited to a cartridge or other container of such nicotine solution, an electronic cigarette, an electronic cigar, an electronic cigarillo, or an electronic pipe. "Vapor product" does not include a product regulated as a drug or device by the USA FDA under chapter V of the federal Food, Drug, and Cosmetic Act." (Iowa <sup>55</sup> )	AZ, CT, GA, IA, KY, LA, NE, NC, OK, SD, VA, WA, WV (Also SFATA model bills)	13	Includes other e-products and cartridges Requires nicotine Excludes Food and Drug Administration (FDA) regulated products Separately defined from 'tobacco products,' so evades tobacco tax and other tobacco regulations
Alternative nicotine product	"Alternative nicotine product" means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. "Alternative nicotine product" does not include cigarettes, tobacco products, or vapour products, or a product that is regulated as a drug or device by the USA FSA under chapter V of the federal Food, Drug, and Cosmetic Act. (Iowa <sup>55</sup> )	AL, AR, GA, IL, IA, KY, LA, MS, NE, OH, SC, VA, WV	13	Excludes cigarettes, vapour products, and e-cigarettes Requires nicotine Excludes FDA regulated products Separately defined from 'tobacco products,' so evades tobacco tax and other tobacco regulations
Tobacco product	(5) (a) As used in this section, 'tobacco product' means: (i) Any product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or (ii) any electronic device that can be used to deliver nicotine to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, cigarillo, or pipe. (b) Notwithstanding any provision of paragraph (a) of this subsection (5) to the contrary, "tobacco product" does not mean any product that the FDA of the USA department of health and human services has approved as a tobacco use cessation product. (Colorado <sup>56</sup> )	CO, MN, NC, NV, SD, VT, WV, WY	8	E-cigarettes treated the same as tobacco products Requires nicotine Excludes FDA regulated cessation products
Tobacco derived or Tobacco substitute	Tobacco-derived product—any non-combustible product derived from tobacco that contains nicotine and is intended for human consumption, whether chewed, absorbed, dissolved, ingested, or by other means. This term does not include a vapour product or any product regulated by the USA FDA under Chapter V of the federal Food, Drug, and Cosmetic Act. (North Carolina <sup>57</sup> )	DE, MN, NV, NC, VT, WV	6	Requires nicotine Excludes FDA regulated products NC definition excludes e-cigarettes, but MN interprets 'tobacco-derived' to include e-cigarettes for tax purposes
Electronic nicotine device or Electronic smoking device	'Electronic smoking device' means any electronic product that can be used to simulate smoking in the delivery of nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe and any cartridge or other component of the device or related product. (Hawaii <sup>58</sup> )	CT, FL, HI, MD, MN, NJ	6	Broadly defined to include other e-products such as e-cigars and e-pipes and cartridges HI definition does not require nicotine, but FL and MN require nicotine Excludes FDA regulated products
Nicotine Product	'Nicotine product' means any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means, but does not include a:1. Tobacco product, as defined in s. 569.002;2. Product regulated as a drug or device by the United States Food and Drug Administration (FDA) under Chapter V of the federal Food, Drug, and Cosmetic Act; or3. Product that contains incidental nicotine. (Florida <sup>59</sup> )	AK, FL, NH, WI	4	Excludes tobacco products Requires nicotine

AK, Alaska; AL, Alabama; AR, Arkansas; AZ, Arizona; CA, California; CO, Colorado; CT, Connecticut; DE, Delaware; FL, Florida; GA, Georgia; HI, Hawaii; IA, Iowa; ID, Idaho; IL, Illinois; IN, Indiana; KS, Kansas; KY, Kentucky; LA, Louisiana; MD, Maryland; MN, Minnesota; MS, Mississippi; NC, North Carolina; NE, Nebraska; NJ, New Jersey; NH, New Hampshire; NV, Nevada; NY, New York; OH, Ohio; OK, Oklahoma; SD, South Dakota; SC, South Carolina; TN, Tennessee; UT, Utah; VA, Virginia; VT, Vermont; WA, Washington; WI, Wisconsin; WV, West Virginia; WY, Wyoming.

**Table 2** Summary of terms used in definitions of e-cigarettes in state laws

State	Main Term Defined										Nicotine			Tobacco product				Pre-emption	
	Electronic cigarette	E-cigarette	Electronic smoking or nicotine device	Alternative nicotine product	Vapour product	Tobacco-derived	Tobacco Product	Tobacco substitute	Nicotine Product	Excludes regulated drugs and devices	Requires nicotine	Does not require nicotine	May require nicotine	Excludes tobacco products	Excludes e-cigs in 'Tobacco Products'	Includes e-cigs in 'Tobacco Products'	E-cigs Included in 'Smoking definition'	Preempts local laws	Does not pre-empt local laws
Alabama	X			X					X		X		X						
Alaska								X		X			X						
Arizona					X				X	X									
Arkansas	X	X		X					X		X		X						
California	X											X							X
Colorado							X		X			X			X				
Connecticut			X		X						X								
Delaware							X		X		X								
Florida			X					X	X	X			X						
Georgia				X	X				X	X					X				
Hawaii			X								X								
Idaho	X											X							
Illinois				X					X	X			X						
Indiana	X											X							
Iowa				X	X				X	X								X	
Kansas	X											X							
Kentucky				X	X				X		X				X				
Louisiana				X	X				X	X		X						X	
Maryland			X						X			X							
Minnesota			X			X	X		X	X (1)	X (2)				X (3, 7)				X
Mississippi	X			X					X		X		X						X
Nebraska				X	X				X	X			X						X
Nevada						X	X		X	X					X (7)			X	
New Hampshire		X						X		X									
New Jersey			X								X						X		
New York	X	X								X									
North Carolina					X	X	X		X			X			X (4)				
North Dakota		X										X					X		
Ohio	X			X					X		X		X						
Oklahoma					X				X		X								X
South Carolina	X			X					X		X		X	X					X
South Dakota					X		X		X	X					X				
Tennessee	X									X									
Utah	X (5)	X (6)								X (5)	X (6)						X (6)		

Continued

Table 2 Continued

State	Main Term Defined				Nicotine							Tobacco product			Pre-emption			
	Electronic cigarette	E-cigarette	Electronic smoking or nicotine device	Alternative nicotine product	Vapour product	Tobacco-derived	Tobacco Product	Tobacco substitute	Nicotine Product	Excludes regulated drugs and devices	Requires nicotine	Does not require nicotine	May require nicotine	Excludes tobacco products	Excludes e-cigs in 'Tobacco Products'	Includes e-cigs in 'Tobacco Products'	E-cigs Included in 'Smoking definition'	Does not pre-empt local laws
Vermont						X					X							
Virginia			X		X					X	X							
Washington				X	X					X	X							
West Virginia			X		X					X	X					X (7)		
Wisconsin								X		X	X		X					
Wyoming	X											X				X (7)		
TOTALS	13	5	6	13	13	6	8	1	4	25	17	13	10	4	8	3	5	3

(1) Nicotine required for taxation purposes, because based on definition of 'tobacco products'.

(2) Nicotine not required for sales, purchase, use, child-packaging, and other protections because based on definition of 'electronic delivery device'.

(3) State law does not explicitly include e-cigs in 'tobacco products', but Dept. of Revenue interprets 'tobacco products' to include e-cigs.

(4) Tobacco products' definition limited to youth access provisions, and explicitly does not apply to taxation.

(5) Utah HB 88 (2010—youth access)

(6) Utah HB 245 (2012—Indoor Clean Air Act)

(7) Requires tobacco-derived nicotine e-cigs, e-cigarettes.

the person inhaling from the device," which could easily be interpreted to include e-cigarettes that deliver other drugs or chemical flavouring (such as chocolate, cherry, and bubble gum) even if marketed as 'nicotine-free.' Twelve other states (Alabama, Arkansas, Connecticut, Hawaii, Kentucky, Minnesota, Mississippi, North Dakota, Ohio, Oklahoma, South Carolina and Utah) use similar language and therefore include e-cigarettes that purportedly do not contain nicotine.

Seventeen states (Alaska, Arizona, Florida, Georgia, Illinois, Iowa, Nebraska, Nevada, New Hampshire, New York, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia and Wisconsin) have definitions of e-cigarettes that require nicotine. Georgia and Nebraska define 'vapor product,' which includes e-cigarettes, to be "any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit..." and New Hampshire defines an "e-cigarette" as a device "that provides a vapour of pure nicotine mixed with propylene glycol...." Nevada does not explicitly define "e-cigarettes," but includes products that are "made or derived from tobacco" in its definition of "tobacco products," so if extended to e-cigarettes, implicitly they would require tobacco-derived nicotine as a component in the devices.

Ten states (California, Colorado, Delaware, Idaho, Indiana, Kansas, Louisiana, Maryland, North Carolina, Wyoming) have definitions with ambiguous language regarding nicotine. For example, California defines "electronic cigarette" as a device "that *can provide* an inhalable dose of nicotine" and Indiana defines "electronic cigarette" to be a device "that *is capable of* providing an inhalable dose of nicotine...." Since e-cigarette devices that 'can' or are 'capable of' providing or delivering nicotine are generally also capable of using cartridges with nicotine-free flavourings, it is unclear whether e-cigarettes that are using cartridges or tanks that claim to be delivering only flavours without nicotine would be covered by these definitions.

### Pre-emption

Five states (Iowa, Louisiana, Nevada, Oklahoma and South Carolina) enacted laws pre-empting stronger local laws and regulations. Louisiana amended its "Prevention of Youth Access to Tobacco Law" making it unlawful to sell, purchase or possess 'vapor products' (including e-cigarettes), alternative nicotine products and tobacco products. The amendment provided that the law superseded existing or subsequently adopted local ordinances or regulations relating to alternative nicotine products and vapour products, in addition to tobacco products. Nevada, Oklahoma, and South Carolina amended existing pre-emption laws to add e-cigarettes. Iowa amended an existing law concerning tobacco taxes that included pre-emption language to create different categories for 'alternative nicotine products' and 'vapor products' (including e-cigarettes), thus prohibiting local governments from enacting laws and regulations relating to e-cigarettes. Three states (California, Minnesota and Nebraska) have language explicitly providing that local governments are *not* pre-empted from adopting more stringent prohibitions related to e-cigarette sales, distribution and/or use.

### DISCUSSION

The e-cigarette market offers hundreds of brands, flavours and nicotine levels in a large variety of products using varied terminology (e-hookah, vape-pens, hookah pens and personal vaporizers) and sometimes including separate components and cartridges.<sup>1</sup> This has created challenges for states' efforts to regulate these diverse and little understood products, resulting in wide variation in e-cigarette definitions in state laws,

## Research paper

including how those definitions are included or excluded from definitions of 'tobacco products' and 'smoking.' These definitions determine whether e-cigarettes will be regulated as other tobacco products and therefore have significant public health implications. The simplest way to include e-cigarettes in tobacco control legislation is to add the short phrase, 'including e-cigarettes' (or whatever term defines e-cigarettes such as 'electronic smoking device' or 'vapor product') in every place where the term 'tobacco products' or 'cigarettes' appear in youth access, smoke-free, and taxation laws without changing other aspects of the existing laws, and to broadly define the products to include current and future devices, regardless of nicotine content.

Excluding e-cigarettes from the tobacco products definition precludes states from regulating e-cigarettes under existing laws and regulations applicable to tobacco products. Constructing different mutually exclusive categories for each type of product, such as tobacco, tobacco-derived, and vapour product, also adds unnecessary complexity and leaves existing laws open to interpretation and interference by protobacco forces. In contrast, including the provision "inhaling or exhaling of smoke or vapour from an electronic smoking device" in the definition of 'smoking' (as three states did) ensures that smoke-free laws include e-cigarette use without concern for whether or not the product contains tobacco, and without the need to convince the legislature to expand existing smoke-free laws.

Many definitions of e-cigarettes require the products to either contain nicotine or to be 'made or derived from tobacco.' This language narrows the reach of the legislation and can create problems for regulating sales, use, marketing or taxation of e-cigarettes. Purportedly 'nicotine-free' e-cigarettes<sup>29-30</sup> would escape regulation, despite the fact that many nominally nicotine-free products contain nicotine.<sup>31-34</sup>

FDA's proposed deeming rule would extend its authority to cover all products meeting the statutory definition of "tobacco product," which is "any product made or derived from tobacco that is intended for human consumption, including any component, part or accessory of a tobacco product..."<sup>35</sup> This definition includes e-cigarettes that use tobacco-derived nicotine; however, it is problematic because e-cigarettes that purport to be nicotine-free, or claim to be made from non-tobacco sources of nicotine, would not meet this statutory definition. For example, companies such as GreenSmartLiving have claimed that their e-cigarettes are 'better for the planet' because they use nicotine derived from non-tobacco plant sources (eggplants, potatoes or tomatoes).<sup>36</sup> This claim is hard to believe because 10 kg of eggplant would be required to obtain 1 mg of nicotine, the amount commonly found in one cigarette.<sup>37</sup> With technological advances, however, non-tobacco derived nicotine could become economical using genetically modified non-tobacco plants<sup>38</sup> or synthetic nicotine. Products that do not contain nicotine are not covered by e-cigarette definitions in the 2014 European Union Tobacco Products Directive,<sup>39-40</sup> New Zealand<sup>41</sup> and Canada.<sup>42</sup> This distinction also makes it possible to sell (and purchase) e-cigarette devices and nicotine cartridges separately, thereby avoiding regulation.<sup>41-43</sup>

Definitions that broadly define e-cigarettes or explicitly include them in definitions of 'smoking' avoid the problems associated with more narrow definitions. For example, New Jersey defines "electronic smoking device" to mean "an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo or pipe" and defines "smoking" to include "the inhaling or

exhaling of smoke or vapour from an electronic smoking device."<sup>44</sup> These definitions do not require nicotine, do not require the product to be made or derived from tobacco, and do not require combustion. Instead, the inclusive language allows regulation of all kinds of devices (including those that do not yet exist but may be developed in the future), and simplifies enforcement because it does not require knowing whether a product contains nicotine or is made or derived from tobacco by looking at it. This definition of 'smoking' helps thwart the renormalisation of smoking by prohibiting public use of e-cigarettes and other products that mimic smoking and simplifies enforcement by observation of smoking behaviour without having to determine whether the product is a combustible cigarette or an e-cigarette.

State laws with language that explicitly provides they do not pre-empt local laws (California, Minnesota, Nebraska) give local legislatures and agencies, which tend to be more nimble and responsive than state legislatures, the ability to craft additional or more rigorous rules and regulations in a more timely and efficient fashion.

States may define e-cigarettes differently in statutory codes applicable to different situations. For example, to be taxed as 'tobacco products' in Minnesota, the state tax code requires e-cigarettes to contain nicotine that is "made or derived from tobacco,"<sup>45</sup> while amendments to Minnesota's Clean Indoor Air Act cover e-cigarettes that do not contain nicotine, since e-cigarettes are included in the definition of 'electronic delivery devices' that can deliver nicotine 'or any other substance.'<sup>46</sup> The definition of "electronic cigarette" in Utah's criminal procedure code restricting youth access to e-cigarettes seems to require nicotine ("electronic cigarette" means any device, other than a cigarette or cigar, intended to deliver vapor containing nicotine into a person's respiratory system"),<sup>47</sup> while Utah's Indoor Clean Air Act defines "e-cigarette" as an electronic oral device "that provides a vapor of nicotine or other substance," so nicotine is not required.<sup>48</sup> Such varying definitions (whether in laws or regulations) have the potential to cause confusion regarding how e-cigarettes are treated by other laws.

### Industry efforts to pass legislation undermining e-cigarette regulation

Tobacco and e-cigarette companies have been using legitimate concerns about sales of e-cigarettes to youth to enact 'Trojan Horse' legislation in which laws nominally restricting sales to youth are used as vehicles to enact problematic definitions and other provisions that will make it more difficult to regulate e-cigarettes. The industry used a similar strategy after Congress passed the Synar Amendment in 1992 that required states to report their efforts to control youth access to cigarettes and threatened states with cuts to their substance abuse funding if they did not demonstrate reduced sales of tobacco to youth.<sup>49-50</sup> Industry lobbyists (inaccurately) told lawmakers that new youth access legislation was required to protect substance abuse funding and won enactment of unenforceable laws that often included pre-emption that prevented localities from enacting stronger laws.<sup>49-51</sup>

Industry efforts to pass Oklahoma's Senate Bill 802 in 2013 illustrates the strategy of protecting e-cigarettes by including definitions in legislation nominally drafted to restrict youth access to e-cigarettes that would exclude these products from existing tobacco control laws. After lobbying by RJ Reynolds, the Senate created separate definitions for 'tobacco-derived product' and for 'vapor product' which included a narrow definition of e-cigarettes.<sup>11-24</sup> The amended bill prohibited

#5 p.14

e-cigarette sales to minors, but also taxed sales of 'vapor products' (defined to include e-cigarettes and cartridges) and 'tobacco-derived products' (including e-liquid and cartomizers containing nicotine) at five cents per 1.48 mL of liquid, a rate 90% lower than conventional cigarettes.<sup>11</sup>

SB 802 was defeated and Oklahoma enacted a different law (SB 1602) in 2014<sup>14</sup> (table 2) that did not expand the definition of 'tobacco products' to include e-cigarettes, but included e-cigarettes in a separate category of 'vapor products' (with or without nicotine), and pre-empted local laws concerning vapour products. It did not tax vapour products.

North Carolina enacted a law in 2013 that restricts minor access to 'vapor products' (table 2) and explicitly includes 'vapor products' in its definition of 'tobacco product,' which facilitates including these products in the state's clean air and tobacco tax laws. However, in 2014 tobacco lobbyists won a tax law that explicitly excludes 'vapor product' (defined to include e-cigarettes and e-cigarette cartridges) from the definition of 'tobacco product.' The law also established an extremely low excise tax for vapour products at five cents per millilitre of nicotine liquid, which equates to five cents/pack of cigarettes<sup>13</sup> (table 2).

In 2014, industry representatives and members of the National Center for Public Policy Research (a conservative organisation with longstanding connections to Philip Morris and RJ Reynolds<sup>17 22</sup>) clashed with health advocates in Iowa, Florida and Oklahoma over efforts to promote bills that would prevent e-cigarettes from being taxed like tobacco products or included in state smoke-free air laws and that would pre-empt stronger local laws.<sup>9 23 26</sup> These states enacted laws creating new categories for e-cigarettes, and Iowa and Oklahoma enacted laws with pre-emption clauses.

The tobacco industry uses state legislation to pre-empt more stringent local sales, youth access, and smoke-free air policies,<sup>49 51-53</sup> often using 'Trojan Horse' bills that nominally restrict youth access to tobacco products, but actually thwart local efforts to enact effective tobacco control laws. State laws with language that explicitly provides they do not pre-empt local laws (California, Minnesota, Nebraska) give local legislatures and agencies, which tend to be more nimble and responsive than state legislatures, the ability to craft additional or more rigorous rules and regulations in a more timely and efficient fashion.

## LIMITATIONS

Since our original search terms ('electronic cigarette,' 'e-cigarette,' 'electronic smoking device,' 'alternative nicotine product,' and 'vapor product') did not capture all bills concerning e-cigarettes, we supplemented our search by adding laws from legislative websites that included other terms including 'derived from tobacco' and 'tobacco substitute.' This process may not have captured every bill that was introduced if other terms were used, and may have excluded some laws classified as 'cigarette tax' bills. This paper is limited to bills that were enacted as of 15 June 2014. Additional state bills concerning e-cigarettes may have been enacted or introduced after that date.

## CONCLUSION

Policy makers must be wary of tobacco and e-cigarette industry influences trying to shape laws that benefit their financial interests, and carefully draft legislation with definitions of e-cigarettes that: (1) broadly define the products to include current and future devices; (2) do not require nicotine; (3) do not require the products to be made or derived from tobacco; (4) do not exclude e-cigarettes from existing definitions of "tobacco

products"; (5) do not exempt e-cigarettes from regulations that concern advertising, marketing, and/or warning labels; (6) explicitly include e-cigarettes in smoke-free and taxation laws; and (7) do not pre-empt stronger regulations at the state or local levels.

**Acknowledgements** The authors thank Pamela M Ling for comments on drafts of the manuscript.

**Contributors** RG and LKL conceived of the study, and performed data collection and analysis. LKL conducted the legal analysis. All three authors participated in writing the manuscript.

**Funding** This project was supported by National Cancer Institute grants CA-060121 and CA-141661 and California Tobacco-Related Disease Research Program grant 21FT-0040. The funding agencies played no role in the selection of the research question, conduct of the research, or preparation of the manuscript.

**Competing interests** None.

**Provenance and peer review** Not commissioned; externally peer reviewed.

**Data sharing statement** All data used for this paper are publicly available at the websites cited in online supplemental table S1.

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HB1265  
2-2-15

The logo consists of a blue outline of a cloud with three rounded lobes, positioned to the left of the text.

# Tobacco Free North Dakota

Testimony in support of House Bill 1265  
From Dr. Eric Johnson  
President, Tobacco Free North Dakota  
To House Judiciary Committee  
Representative Kim Koppelman, Chair  
February 2, 2015

Good morning Chairman Koppelman and members of the Judiciary Committee. I am Dr. Eric Johnson a board certified physician and associate professor at the University of North Dakota School of Medicine and Health Sciences. I am also a Governor-appointed member of the executive committee of the North Dakota Center for Tobacco Prevention and Control, and serve as the President of Tobacco Free North Dakota. Other credentials include: Medical Director of the Physician Assistant Program at UND, and member of the American Medical Association, North Dakota Medical Association, American Academy of Family Physicians, North Dakota Academy of Family Physicians and the North Dakota Rural Voters Board.

House Bill 1265 is the most comprehensive e-cigarette legislation, that provides sound public policy that will protect our youth from accessing e-cigarettes, and their components.

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

We also may think that the use of tobacco is an adult lifestyle choice, but over  $\frac{3}{4}$  of users begin before age 18, and are already addicted by adulthood. Addiction is an even more complicated set of disorders in the developing brain. The age of first use is a predictor of the severity of the addiction that will ensue with any addiction disorder. Brain development continues long past adolescence, well into teenage years and an adults early 20's.

#6  
HB 1245  
2-2-15

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

Tobacco companies now own most of the e-cig manufacturing at this time. They have a long history of public deception. The tobacco companies didn't lose to over 40 states in their big lawsuit in 1998 because people got sick; as I learned at the Mayo Clinic, it was because they knew that their products were harmful as far back as the 1950's, but failed to disclose that information. I often hear that everyone knows tobacco is bad- of course I agree with that, but where we fail is when we don't recognize the sever addiction tobacco produces.

Looking as far back as the 1950's, Tobacco companies did market to children, and continue to find ways to, despite the Supreme Court's requirement for them not to. This isn't my opinion; it's the opinion of the FDA. They are doing it all over again with e-cigs (Hello Kitty). Many kids who use e-cigs have never used regular tobacco...yet. Marketing and sales need to be stopped to children.

The tobacco companies have long relied on a strategy called "harm reduction." They have been to North Dakota to present this to you before. Tobacco companies have coined the phrase, "harm reduction," There is no evidence that "harm reduction" actually exists in the world of tobacco addiction. The basic strategy is to get a cigarette user to switch to chewing tobacco, or now, to e-cigs. We wouldn't tell a meth addict it would be OK to smoke marijuana, would we?

So what does work? North Dakota is one of 2 states that fully funds tobacco prevention and cessation programs. NDQuits, a telephone and online counseling system that is free to North Dakotans, actually has scientific data to show that it works. It is known to be 10 times better than trying to go "cold turkey." Tobacco companies and e-cig manufacturers want you to think they have the answer, but they have NO data to support the claim that e-cigs help stop smoking, and e-cigs don't have any data to show that they are safe. That is why they are not FDA approved.

These companies would like you to think that they have the only answer for a desperate situation. In truth, there are many FDA approved cessation products that actually have data for how well they work, as well as their safety profile. North Dakotans have been successfully beating the urge to go back to their old habit and light up - lets not go backwards over some unproven product. I ask e-cigarette and tobacco companies to bring us the data. Show us that e-cigarettes are not harmful, and do not cause addiction. It would be great to have more ways to help people quit smoking. But until tobacco companies prove that e-cigarettes are the best, safe alternative, I can't recommend them.

#6  
HB 1265  
2-2-15

My last point is that North Dakota is the only state where the voters have made their wishes known on how we should help people quit using tobacco not once, but twice. Once was funding in 2008; the other was including e-cigarettes in the smoke-free law. Every North Dakota legislative district overwhelmingly supported the smoke-free law. This happened because we know secondhand smoke is dangerous, and we don't have enough safety data to recommend e-cigs. As a practicing North Dakota Physician for over 25 years, I want my patients to have access to safe smoking alternatives that actually work.

Thank you for the opportunity to speak today. Please codify the comprehensive language in House Bill 1265 that will ensure North Dakota youth are unable to access e-cigarettes, and treat them like the Tobacco product that they are.

# 7  
HB1265  
2-2-15

**Testimony in Support of House Bill 1265**

**Provided by: Carma Hanson, MS, RN**

**Coordinator – Safe Kids Grand Forks**

**February 2, 2015**

While others providing testimony on this bill today approached it from a tobacco and smoking standpoint, I am going to take a different approach. My name is Carma Hanson and I am a registered nurse at Altru Health System and the Coordinator of Safe Kids Grand Forks. The vantage point at which I would like to address my support of this bill is that of the poisoning risks that e-cigarettes pose. Safe Kids Grand Forks, of which I am the Coordinator, is an injury prevention coalition whose mission is to prevent unintentional injuries and death to children under the age of 19. We are based at Altru Health System but address safety concerns in many other parts of North Dakota as well. We focus our efforts on many risk areas including motor vehicle, pedestrian, falls, fire, and poisoning to name a few. The risks associated with e-cigarettes are some that are emerging on our radar based on the national data and information from our poison control centers and emergency rooms.

House Bill 1265 would help to address some of the concerns associated with these products that are currently available for sale to people of all ages, including those under age 18, which are different than traditional cigarettes.

Electronic nicotine delivery devices such as electronic cigarettes (e-cigarettes) are battery-powered devices that deliver nicotine, flavorings (e.g., fruit, mint, and chocolate), and other chemicals via an inhaled aerosol. E-cigarettes that are marketed without a therapeutic claim by the product manufacturer are currently not regulated by the Food and Drug Administration. One area of concern is the potential of e-cigarettes to cause acute nicotine toxicity. In order for nicotine toxicity to become an issue with traditional cigarettes, a child would need to eat

several cigarettes from the package which is highly unlikely due to their distaste. E-cigarettes are powered by a liquid juice that is usually flavored with appealing flavors such as fruit flavors, cotton candy, chocolate or other "food flavors". These flavors may not only be appealing while being used but give off a pleasant odor while in the bottle. Furthermore, the packaging of these products is not required to be in a childproof bottle as evidenced by the container that I brought here today as a demonstration. Besides the "juice" having appealing flavors and smells, the delivery devices are often made with "youth attractive" patterns such as Hello Kitty and other cartoon characters. These two characteristics make them very appealing to young children.

The number of calls to poison centers involving e-cigarette liquids containing nicotine rose from one per month in September 2010 to 215 per month in February 2014, according to a CDC study published in *Morbidity and Mortality Weekly Report*. The number of calls per month involving conventional cigarettes did not show a similar increase during the same time period. More than half (51.1 percent) of the calls to poison centers due to e-cigarettes involved young children under age 5.

The analysis compared total monthly poison center calls involving e-cigarettes and conventional cigarettes, and found the proportion of e-cigarette calls jumped from 0.3 percent in September 2010 to 41.7 percent in February 2014. Poisoning from conventional cigarettes is generally due to young children eating them. Poisoning related to e-cigarettes involves the liquid containing nicotine used in the devices and can occur in three ways: by ingestion, inhalation or absorption through the skin or eyes. Overdoses of nicotine can cause nausea, vomiting, heart implications, seizures and even death if taken in large enough doses which is easy to achieve in the liquid form. Recently, a toddler from upstate New York was the first confirmed child to die from liquid nicotine.

One teaspoon of liquid nicotine could be lethal to a child, and smaller amounts can cause severe illness, often requiring trips to the emergency department. Despite the dangers these products pose to children, there are currently no standards set in place that require child-proof packaging. House bill 1265 would change that standard and demonstrate the respect that a product such as this should be given.

While we certainly support the provision of restricting sale of these devices to people over age 18, my colleagues have/will testify regarding that provision of the bill. I will limit my comments to the area of the bill that addresses the packaging requirements. Just as medications are required to be in childproof bottles/packaging for the purpose of poisoning prevention, so should these devices/solutions. It is the least that parents and caregivers should expect of a solution that can have similar and even more adverse health risks. Therefore, I ask for your support of House Bill 1265.

Carma Hanson, MS, RN

Coordinator – Safe Kids Grand Forks

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#8  
HB 1265  
2-2-15

Alison Harrington B.S. RRT, TTS  
CHI St Alexius Health  
RT Care Manager and Certified Tobacco Treatment Specialist  
Support HB 1265

February 2, 2015

Chairman Koppelman and members of the House Judiciary Committee, my name is Alison Harrington I am a Respiratory Therapy Care Manager and Certified Tobacco Treatment Specialist in Bismarck.

As a tobacco treatment specialist I have counseled many people who have tried to use the E-cigarette as a cessation device and were unsuccessful.

Reasons and observations:

- 1) Patients vape with the E cigarettes more than they smoke their traditional cigarettes.
- 2) Some patients stopped using the E-cigarette because they didn't "feel" the nicotine kick like they did their cigarettes perhaps due to inconsistent dosage.
- 3) Many patients continue to use their traditional tobacco products along with the e-cigarettes.
- 4) Patients complained about felling sick after using electronic smoking devices with the most common symptoms being dizziness, racing heart, and nausea. Similar effects can be felt from smoking a traditional cigarettes.
- 5) E-cigarettes are not approved as an FDA nicotine replacement. Counseling with the seven FDA approved pharmacotherapy is the most effective treatment for tobacco dependence. There is no scientific evidence that exists to show electronic smoking devices have a higher incidence in assisting people to quit smoking.
- 7) Respiratory Therapists use a science based document, Treating Tobacco Use and Dependence Clinical Practice Guideline from the U.S. Department of Health and Human Services, 2008 for tobacco cessation attempts.
- 8) When treating tobacco dependence, the amount of replacement nicotine is dosed based on the amount the patient smokes. In a FDA study three e-cigarettes that were the same brand, had the same packaging, and the same dose of nicotine listed, all tested had different amounts of nicotine.
- 9) For those patients addicted to nicotine and using E-cigarettes, it is nearly impossible for successful cessation efforts because of inconsistencies of nicotine dosage with the products.
- 10) In my job I see the deadly health effect of the tobacco Industry on a daily basis. I want the most comprehensive policies in place so that the public is not mislead and youth are well protected. This is why I am in support of HB 1265.

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#9  
HB 1265  
2-2-15  
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**Kristie Wolff – Program Manager, American Lung Association in North Dakota  
Support for HB 1265  
North Dakota House Judiciary Committee**

February 2, 2015

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

Based on the American Lung Association’s mission to save lives by improving lung health and preventing lung disease through Education, Advocacy and Research I am here to testify in support of HB 1265.

**Show and Share of products**

There is a large variety of electronic smoking devices on the market. They come in all shapes and sizes and are sold under a variety of names. Many are bright and colorful, and some even contain cartoon characters such as Hello Kitty. (see attachment 1A) Several products are small in size making them easy to hide. Some resemble other common objects such as inhalers or watches. (see attachment 1B) These products produce an aerosol or vapor that dissipates quickly with little to no smell.

Studies have revealed that the vapor emitted from e-cigarettes contain propylene glycol, heavy metals, volatile organic compounds, and tobacco specific nitrosamines albeit at lower levels than traditional cigarettes. Several of these vapor contents are ultra-fine particles which are embedding deeply into the lung tissue.

Nicotine – These electronic smoking devices contain tobacco derived nicotine in varying levels. There is no FDA oversight on the amount of nicotine or other ingredients in the products. The FDA has even found that the nicotine content labeling was not accurate from some manufacturers. They also found nicotine related impurities in some cartridges and refills.

It is not economically feasible to use synthetic nicotine or nicotine from vegetables. For example, it would take 20 lbs of eggplant to get about 9mg of nicotine. Electronic smoking devices are not FDA approved for smoking cessation.

#9  
HB 1265  
2-2-15

Flavors – E-cigarettes and e-juice come in a large variety of fun flavors including gummy bear, cotton candy and banana split. These flavors make products very appealing to youth. Although many of these flavorings are FDA approved for ingestion, they are not approved for inhalation. The number of brands and flavors is rising at an alarming rate. Based on a 2014 study there were 466 e-cigarette brands available, providing a total of 7764 unique flavors.

Disposables – Disposable electronic smoking devices are very popular with youth. They are inexpensive, (around \$9 to \$10 each), small, and easy to hide. They are often brightly colored with fun designs and appealing flavors. Nicotine is part of the product, it is inside the product when purchased and cannot be removed. It is very important to address self-service merchandising as done by HB 1265 Page 1 lines 22-24, to protect our youth from the flashy youth friendly packaging and flavoring of these products.

Mod/Adult Personal Vaporizer/mid-size – These electronic smoking devices are sold under and referred to by variety of names. Products can be purchased as a starter kit, but are often purchased as separate parts or components, then assembled to create an e-cigarette. New components to modify these products are continually becoming available. A comprehensive definition of an electronic smoking device covering all of these products, their components, part, or accessory whether or not sold separately, as found in HB 1265, page 1 lines 14-18, is crucial to cover these quickly evolving products.

E-juice – There is no regulations or oversight on these products including the amount of nicotine in the product. Some local shops are mixing the e-juice or e-liquids in their own facility with no health standards in place. We currently have 13 locally owned e-cigarette shops in North Dakota. (see attachment 2A) These products come in a large variety of flavors. The e-juice smells good, making it easy for children of all ages to mistake it for something edible. E-juice can also be absorbed through the skin or eyes. Nicotine is toxic. Child resistant packaging, as found in HB 1265 page 1 lines 10 - 13, is critical to protect our youth and adults from nicotine poisoning.

FDA approved nicotine replacement therapies which are used for cessation are excluded as a tobacco product under HB 1265.

### **Stealth Vaping**

There is a large amount of information available from the vaping community, primarily online, about deceptive practices which have developed to use these electronic smoking devices. One such practice is called Stealth vaping. This practice is popular in schools and work environments. (see attachment 2B)

Some examples blogs of vapors sharing information on Stealth vaping:

“I usually conceal the light and then hold the vapor in my lungs until it dissipates.”

# 9  
HB 1265  
2-2-15

"I double inhale to stealth... I take one hit off my e-cig, Inhale it down, then take a second breath, then exhale...little to no vapor comes out."

"I've stealth vaped in movie theaters many times. Sit in the back row, off center a bit (left or right) so I can blow the vapor sideways where nobody is sitting."

"Around the end of next month I'm going to be flying out to Las Vegas for an investor's conference. I've been practicing my stealth vaping for the flight and for those times that I'm part of the audience."

"I am so proud of my V2, I even smoke in the office (LOL at school), just not in front of my students."

The use of other substances in electronic smoking devices is also becoming more popular. The CDC has received reports of THC/Marijuana, Heroin, Meth, Powdered Cocaine, and Bath Salts being used in electronic cigarettes. HB 1265 addresses use of other substances on page 1 line 15.

### **Tobacco Product Definition/Product Information**

E-cigarettes are a tobacco product, but instead of just hearing from me, look at what the products packages and inserts say:

#### Flavor Vapes

500 puffs equal to about three packs.

(Price - \$9.00 to \$10.00 each. Three packs of cigarettes approximately \$15.00. Making e-cig product more affordable.)

Instructions:

1. Remove rubber tip
2. Smoke as you would any cigarette

MARKTEN (see attachment 3A)

Ingredients:

Tobacco-Derived Nicotine, Glycerol, Propylene Glycol, Water, Flavors

Warning:

This product is not a smoking cessation product and has not been tested as such. This product is intended for use by persons of legal age or older, and not by children, women who are pregnant or breastfeeding, or persons with risk of heart disease, high blood pressure, diabetes, or taking medications for depression or asthma. Nicotine is addictive and habit forming and it is very toxic by inhalation, in contact with the skin or if swallowed. Nicotine can increase your heart rate and blood pressure and cause dizziness, nausea, and stomach pain. Inhalation of this

#9  
HB1265  
2-2-15

product may aggravate existing respiratory conditions. Ingestion of the non-vaporized concentrated ingredients in this cartridge can be poisonous.

**Disposal:**

The MarkTen e-cigarette contains a lithium-ion rechargeable battery when discarded it must be replaced or disposed of properly in accordance with state or local requirements.

**Warning to reduce the risk of injury:**

If your MarkTen e-cigarette cartridge appears to be leaking do not use it. If the liquid comes in contact with the skin or eyes, wash with large amounts of water and seek medical advice.

**VUSE**

VUSE is a tobacco product because the nicotine used in this product is extracted from the tobacco plant.

**NJOY** (see attachment 4A)

From its size, feel and look to its amazing taste the NJOY king gives you everything you love about the smoking experience. So go ahead and give it a try.

Nicotine is addictive and habit forming and it is very toxic by inhalation, in contact with the skin or if swallowed.

Electronic smoking devices contain nicotine derived from tobacco and should be defined and treated as a tobacco product. HB 1265 page 2 line 1-6 defines these products as a tobacco product, with a comprehensive definition that will best protect our youth.

As a tobacco product, electronic smoking devices should be sold by only tobacco licensed retailers as covered in HB 1265 pg 2 line 15-18. This is a retail friendly method as a tobacco license is inexpensive, and many of the business currently selling these products are already a licensed tobacco retailer so there would be no change in business practice.

In conclusion, HB 1265 provides the most comprehensive policy and will provide the strongest health standards to protection both the youth and adults of our state.

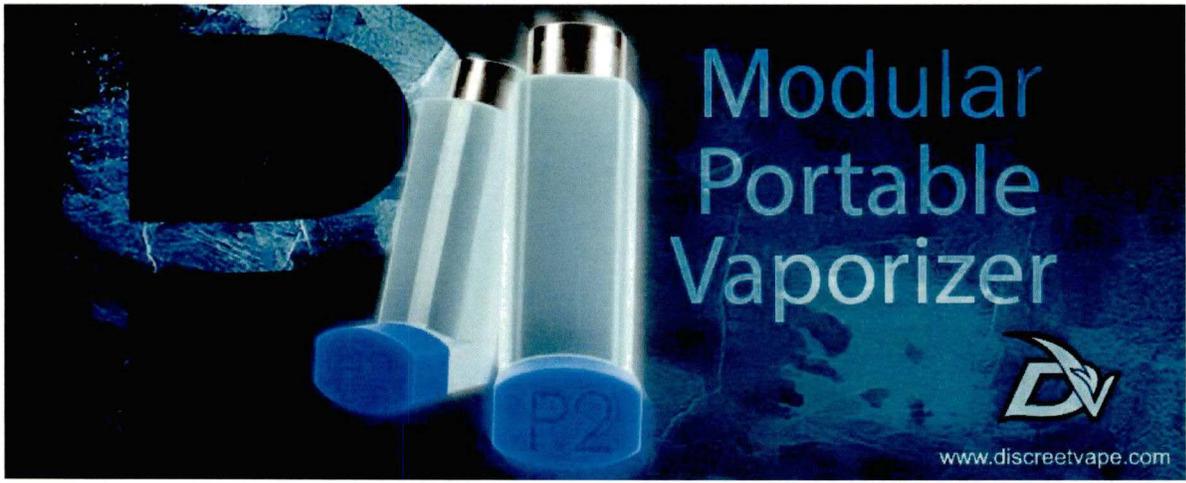
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Attachments

1A



1B



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## 2A

### E-cigarette Shops in ND As of 1.8.15

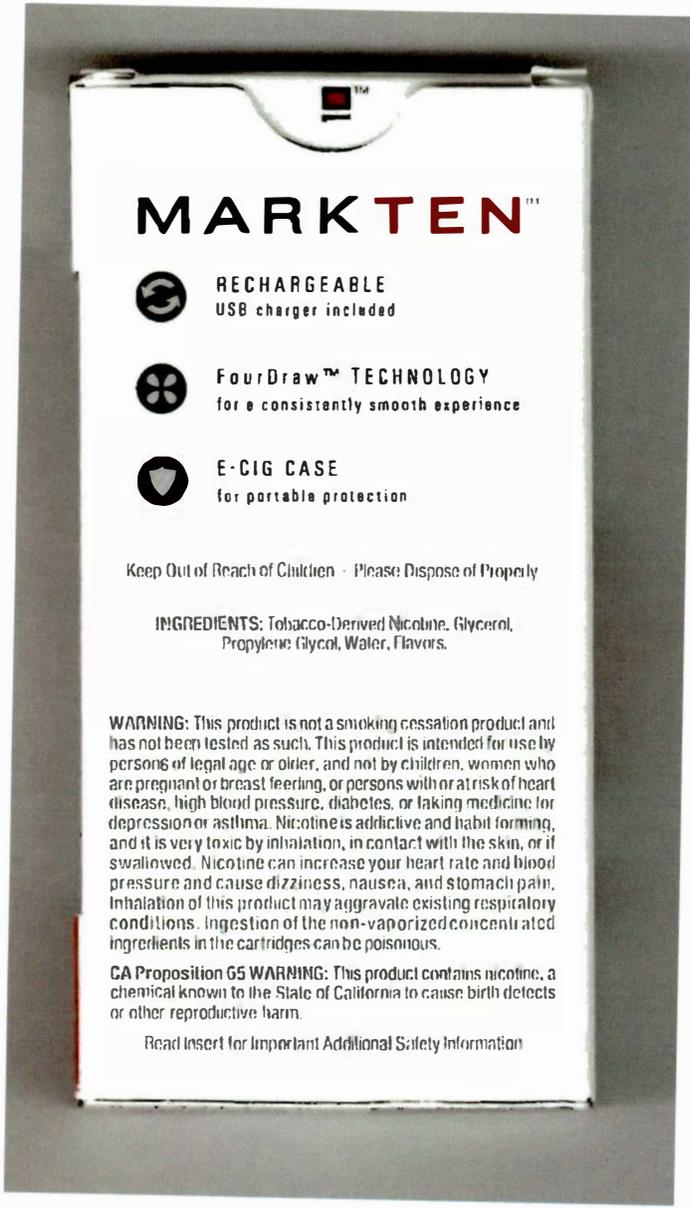
Name	Address	City	State	Zip	Contact Name
VID-CYCLE	3109 13TH AVE S	FARGO	ND	58103	
INFINITE VAPORS	68 BROADWAY	FARGO	ND	58103	KELSEY EATON
E-CIG EMPIRE	4900 13TH AVE	FARGO	ND	58103-7266	BRIAN MALY
SPORTS VAPE	1621 UNIVERSITY DR S STE 3	FARGO	ND	58103	
<del>SMOKEVAPE</del> Closed	4302 13 Ave S #18	FARGO	ND	58103	
SNG VAPORS	809 N 5TH ST	GRAND FORKS	ND	58201	
VAPOR STARS	814 UNIVERSITY AVE	GRAND FORKS	ND	58203	
SPENCERS (IN MALL)	2800 S COLUMBIA RD	GRAND FORKS	ND	58201	
A TO Z FASHIONS (KIOSK)	2800 S COLUMBIA RD	GRAND FORKS	ND	58201	
BOREALIS VAPE	500 WEST MAIN ST	MANDAN	ND	58554	CRAIG RUSSELL
SHARPER VISION (KIOSK)	2400 10TH ST SW	MINOT	ND	58703	
INFINITE VAPORS	317 3RD STREET NW	MINOT	ND	58703	
<del>THE SCENT TRAIL</del> Closed	414 Dakota Avenue	WAHPETON	ND	58075	
VAPOR OUTLAWS	112 MAIN STREET	WILLISTON	ND	58801	
SHELDON'S VAPOR SHACK	5320 134TH AVE NW	WILLISTON	ND	58801	SHELDON LANG

## 2B



#9  
HB1265  
2-2-15

3A



# MARKTEN™

-  **RECHARGEABLE**  
USB charger included
-  **FourDraw™ TECHNOLOGY**  
for a consistently smooth experience
-  **E-CIG CASE**  
for portable protection

Keep Out of Reach of Children - Please Dispose of Properly

**INGREDIENTS:** Tobacco-Derived Nicotine, Glycerol, Propylene Glycol, Water, Flavors.

**WARNING:** This product is not a smoking cessation product and has not been tested as such. This product is intended for use by persons of legal age or older, and not by children, women who are pregnant or breast feeding, or persons with or at risk of heart disease, high blood pressure, diabetes, or taking medicine for depression or asthma. Nicotine is addictive and habit forming, and it is very toxic by inhalation, in contact with the skin, or if swallowed. Nicotine can increase your heart rate and blood pressure and cause dizziness, nausea, and stomach pain. Inhalation of this product may aggravate existing respiratory conditions. Ingestion of the non-vaporized concentrated ingredients in the cartridges can be poisonous.

**CA Proposition 65 WARNING:** This product contains nicotine, a chemical known to the State of California to cause birth defects or other reproductive harm.

Read Insert for Important Additional Safety Information

4A

#9  
HB1265  
2-2-13

## INTRODUCING THE NJOY KING ELECTRONIC CIGARETTE.

From its size, feel and look to its amazing taste, the NJOY King gives you everything you love about the smoking experience. So, go ahead, give it a try.

To begin take one long slow puff on the cigarette – no lighting or charging required. The tip will light up red each time you puff.

Each NJOY King lasts up to two puffs.\*

You'll know it's time for a new one when the red light blinks on and off.

NJOY recycles ♻️. Send NJOY eight used NJOY King's electronic cigarettes and we'll send you one FREE NJOY King!

For more information, go to [njoy.com](http://njoy.com).

NJOY Kings are available in two flavors, traditional and menthol, with two nicotine levels – Bold (4.5% nicotine by volume) and Gold (3.0% nicotine by volume).

### SATISFACTION GUARANTEED

NJOY leads the electronic cigarette industry in product quality and customer service excellence. Visit [njoy.com](http://njoy.com) for our 30-Day Money-Back Guarantee!

If your NJOY King isn't working properly, or you are not 100% satisfied,

**DO NOT RETURN IT TO THE STORE.** For service and help contact: NJOY at [CS@NJOY.COM](mailto:CS@NJOY.COM) or call 1.888.669.6569.

Return/Exchange items should be sent to the following address:

NJOY Customer Service  
15211 N Kierland Blvd, Suite 200  
Scottsdale, AZ 85254

\*Results may vary depending on usage.

BE SURE TO  
TELL YOUR FRIENDS  
AND FAMILY ABOUT  
THE POSITIVE IMPACT  
NJOY PRODUCTS ARE  
HAVING ON YOUR LIFE.



#10  
HB1265  
2-2-15

**Testimony**  
**House Bill 1265**  
**House Judiciary Committee**  
**February 2, 2015; 10:10 a.m.**  
**North Dakota Department of Health**

Good morning, Chairman Koppelman and members of the House Judiciary Committee. My name is Krista (Headland) Fremming, and I am the Director of the Chronic Disease Division at the North Dakota Department of Health (NDDoH). I am here today to testify in support of House Bill 1265.

HB 1265 defines “electronic smoking device” and adds “electronic smoking devices” to the language regulating the sales of tobacco products to minors. Essentially, this bill allows the state to treat and regulate the sale to minors of so-called e-cigarettes and other electronic tobacco delivery devices the same way the state treats and regulates the sale to minors of other tobacco products, such as conventional cigarettes.

Section 1 of the bill proposes to amend Section 12.1-31-03 to add electronic smoking devices to the language regarding sales to minors. Subsections 1(a) through (g) on pages 1 and 2 of the bill add definitions for child-resistant packaging, electronic smoking devices, self-service merchandising, tobacco products, tobacco paraphernalia, tobacco retailer, and vending machines.

The NDDoH feels that it is essential to define electronic smoking devices as tobacco products because (1) the nicotine in them is extracted from tobacco plants and (2) electronic smoking devices have been proven to contain carcinogens and to cause airway inflammation. The definition of “tobacco product” is expanded to include all types of tobacco. The proposed definition of tobacco retailer assures that anyone selling electronic smoking devices carry a tobacco retail license, thereby preventing non-licensed retailers from selling these products. The definition of “tobacco product” is carefully worded to exclude products approved by the Food and Drug Administration (FDA) as tobacco cessation medications, such as nicotine gum.

HB 1265 would also eliminate self-service merchandising of electronic smoking devices, which would prevent youth from being exposed to the trendy and appealing marketing that is used by tobacco companies to sell these devices. Numerous studies show the causal relationship between tobacco marketing and youth smoking initiation.

The Department feels that the child-resistant packaging requirement included in this bill would prevent many nicotine-related poisonings. Electronic smoking devices are often filled with candy-like flavors of nicotine juice, which are appealing to young children. From 2012 to 2013, poison control centers in the United States reported a 219 percent increase in exposures to electronic smoking devices and liquid nicotine. More than half of the reported exposures occurred in children under age six.

The NDDoH is concerned about the rising use of e-cigarettes, and particularly about the increase in use of these devices in children and teens. From 2011 to 2013, the rate of North Dakota high school students who reported trying electronic smoking devices nearly tripled, increasing from 4.5 percent to 13.4 percent. High school students who have tried electronic smoking devices are twice as likely to try conventional cigarettes.

HB 1265 proposes the adoption of a comprehensive public health policy on electronic smoking devices. The NDDoH feels that it is necessary for public health for these or similar provisions to be enacted for regulation of this new and dangerous product.

The Department feels that passage of HB 1265 would help reduce minors' access to these products and thereby reduce their likelihood of experimentation and addiction.

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

#11

HB 1265

2-2-15

Proposed Amendments to House Bill No. 1265

Page 1; Line 22, replace "the open" with "any"

Page 1, line 23 replace "in a manner" with "anywhere other than an area"

Page 1, line 23, replace "accessible to" with "behind a sales counter where"

Page 1, line 24, after "public" insert "is not permitted access"

Page 1, line 25, remove "without the intervention or assistance of a tobacco retailer"

Page 2, line 28, after "merchandising" insert ", unless the tobacco retailer prohibits persons under eighteen from entering the premises"

#12  
HB1265  
2-2-15

Sergeant Margie Zietz  
Minot Police Department  
Subject: Support for HB1265  
N.D. House Judiciary Committee  
February 2, 2015

Chairman Koppelman and members of the Judiciary Committee, my name is Margie Zietz. I am the Crime Prevention Sergeant of the Minot Police Department with over 30 years' experience in law enforcement. In addition, I am also a mother of five boys, four of them teenagers.

I drove down this morning to support House Bill 1265. This bill is a comprehensive bill that provides clear language for the police department to enforce. As a parent, this bill is one that holds the best health interest of our youth at stake.

I would like to highlight some of the key components making this bill the best of the three electronic cigarette bills you have before you today.

- HB 1265 defines an electronic cigarette as an "electronic smoking device" This term puts the focus on the device. It would become a nightmare for local law enforcement to carry a mini laboratory with them to test each product to see if it contains nicotine. Our creative youth would easily think of pouring a nicotine containing e-juice into a bottle that is labeled "0 milligrams of nicotine". In addition, I am sure you are aware, that other drugs such as meth and marijuana are consumed via these electronic devices, and in some cases no odor can be detected. By forming the definition around the word device you are taking the ambiguity out of the equation.
- Because electronic cigarettes have no regulated body, the packaging can easily claim the "juice" contains no nicotine. However, when the FDA took random sample of this product labeled "no nicotine or 0 mg nicotine" they discovered some actually contained nicotine. As the enforcer of the law, we simply cannot set up a lab to test all these products.
- All components that are used with an e-cigarette are included in this definition. This would prevent the youth from being able to purchase, possess, or use the e-juice which may or may not contain nicotine. (I want to reiterate there is no regulating body on these products, what is listed on the label may or may not be in the product).
- Currently law enforcement jurisdictions have conflicting definitions of these components. State legislation would allow peace officers to enforce the law with consistency and serve as a norm for all our communities.
- This bill contains the component of a tobacco license which is an important tool for law enforcement to use to track tobacco retailers. The Minot Police Department conducts periodic tobacco compliance checks to ensure retailers are not selling to minors. If retailers fail to comply with the law, their licenses can be revoked.
- It is important to keep e-cigarettes and all the components behind the counter. Young children can easily be poisoned if they ingest these kid friendly flavors like candy cane and sour patch. Placing these products behind the counter also reduces the temptation for youth to shoplift this type of item.

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Testimony of Laney Herauf  
Greater North Dakota Chamber of Commerce  
HB 1265  
February 2, 2015

Mr. Chairman and members of the committee, my name is Laney Herauf; I am the Government and Regulatory Affairs Specialist for the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in opposition to House Bill 1265.

At GNDC, we see great value in ensuring products end up in the hands of the intended customers. We fully support a ban on sales of vapor products and alternative nicotine products to minors, we feel as if the language set forth in House Bill 1186 brings about a better piece of legislation. HB 1265 doesn't criminalize a person giving the product to or buying the product for a minor, while 1186 does address this issue.

We fully support the intent behind this bill and feel as if HB 1186 is a better vehicle to reach that goal. As such, we oppose HB 1265 and respectfully request a DO NOT PASS recommendation. Thank you and I would be happy to answer any questions.

# 14  
HB 2625  
2-2-15

**North Dakota city ordinances prohibiting e-cigarette sales to minors, restricting e-cigarette self-service and requiring a license for the sale of e-cigarettes. All ordinances below define e-cigarettes as a tobacco product.**

STATUS	DATE ENFORCED	CITY	INCLUDES	COMMENTS
1 PASSED	1/6/2014	Fargo	1) prohibits sales to minors	
2 PASSED	2/11/2014	Bismarck	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
3 PASSED	2/25/2014	Williston	1) prohibits sales to minors	
4 PASSED	3/4/2014	Mandan	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
5 PASSED	3/18/2014	Wahpeton	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Wahpeton tobacco retailer license.	<i>First ordinance to require that e-cigs meet the definition of tobacco and is part of tobacco licensing requirement: Wahpeton does their own tobacco licensing</i>
6 PASSED	3/18/2014	Hankinson	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
7 PASSED	4/7/2014	Minot	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
8 PASSED	4/9/2014	West Fargo	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a West Fargo tobacco retailer license.	<i>Second ordinance to require that e-cigs meet the definition of tobacco and is part of the tobacco licensing requirement: West Fargo does their own tobacco licensing</i>
9 PASSED	5/27/2014	Langdon	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
10 PASSED	6/11/2014	Crosby	1) prohibits sales to minors	
11 PASSED	7/1/2014	Grand Forks	1) prohibits sales to minors, 2) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Grand Forks tobacco retailer license.	<i>Third ordinance to require that e-cigs meet the definition of tobacco and is part of the tobacco licensing requirement: Grand Forks does their own tobacco licensing</i>
12 PASSED	7/7/2014	Cando	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
13 PASSED	7/23/2014	Kindred	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Kindred tobacco retailer license.	

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14	PASSED	7/31/2014	Hazen	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
15	PASSED	8/13/2014	Mohall	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
16	PASSED	9/8/2014	Forman	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays	
17	PASSED	9/10/2014	Harwood	1) prohibits sales to minors, 2) restricts self-service merchandising methods or displays 3) Retail Tobacco License: e-cigs are included in the tobacco license requirement, meaning that if a business chooses to sell an e-cigarette, they must have a Harwood tobacco retailer license.	

*While additional cities may have passed similar local ordinances, the Center is not able to include them on this document until the information has been reported on the local policy progress report and verified by the Center. This document will be updated quarterly.*

House Judiciary Committee  
Chairman Koppelman  
Prepared by Chuck Barney, Mayor  
City of Minot  
[mayor@minotnd.org](mailto:mayor@minotnd.org)

**HOUSE BILL NO. 1265**

Chairman Koppelman, Committee members, my name is Chuck Barney and I am the Mayor for the City of Minot. I am representing the City of Minot to encourage passage of HB 1265.

On February 26<sup>th</sup>, 2014, Holly Brekhus spoke to the City of Minot Public Works and Safety Committee as a representative of STAMP Tobacco Use Prevention Coalition. At that meeting, Ms. Brekhus spoke of the dangers that so-called 'electronic cigarettes' pose to minors, and asked the committee to recommend a change in the current tobacco ordinances that would help prevent the sale of these devices to minors. The committee unanimously passed a motion that the City Council change the existing ordinance, Chapter 23, to include the e-cigarette ban for minors.

Upon a second reading of the revised ordinance on April 7<sup>th</sup>, 2014, the Minot City Council also unanimously voted to change the ordinance.

Although I was not Mayor at the time, I share these concerns regarding the effects that e-cigarettes have on the health of minors. Many arguments are made that these types of nicotine delivery products can be a safer alternative to traditionally smoked cigarettes, however, there is no argument that they can, in any way, be good for a child. As such, I support a DO PASS on House Bill 1265 as an effort at the State level to help prevent minors from possessing and using e-cigarettes. Thank you for your time to listen to Minot's concerns on this bill.

January 30, 2015

Judiciary Committee, North Dakota House of Representative

Re: HB 1078 and HB 1265

Dear Chairman Koppelman and members of House Judiciary Committee:

In February 2014, we amended the City of Bismarck Ordinance to include e-cigarettes as a tobacco product. The reasons for the amendment, is the research that e-cigarettes contain nicotine, a highly addictive chemical derived from the tobacco plant. They are not controlled by the Federal Drug Administration and there is no scientific evidence of the safety of e-cigarettes. The FDA has done preliminary testing that detected cancer-causing materials in them and nicotine.

Bismarck City Commission saw the need in our community to keep enforcement consistent with other tobacco products' regulations by amending the ordinance. I heard from our community members about ways the tobacco industry is marketing e-cigarettes with kid friendly flavors and designs. As a Bismarck City Commissioner, I saw the importance of protecting our youth from a life time of an addiction to nicotine.

I urge you to support HB 1078 and HB 1265. As North Dakota State government, you play an integral role in regulating the sales of electronic cigarettes to minors. Currently, there are 40 states with enacted laws prohibiting Electronic Nicotine Delivery Systems, including e-cigarettes.

Sincerely,

Josh Askvig  
Bismarck City Commissioner



Michael R. Brown  
Mayor

# City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

(701) 746-2607  
Fax: (701) 787-3773

## TESTIMONY ON HOUSE BILLS 1078 and 1265

**House Judiciary Committee  
Representative Kim Koppleman, Chair  
City of Grand Forks, ND  
February 2, 2015**

Chairman Koppleman and Members of the House Judiciary Committee:

In July 2014, the Grand Forks City Council unanimously voted to amend its City Code to include electronic cigarettes within the definition of tobacco products.

Grand Forks City Code Section 9-0217 defines electronic cigarettes as *“any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, which provides a vapor of nicotine or other substances, and the use or inhalation of which simulates smoking. The term shall include any device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other product, name or descriptor.”*

Additionally, the Grand Forks City Code Section 9-0217 defines tobacco products as: *“Tobacco products shall mean, but is not limited to, cigarettes, cigars, smokeless tobacco, tobacco snuff, chewing tobacco, and other kinds of tobacco, prepared in such a manner as to be suitable for chewing or smoking. The term shall also include e-cigarettes.”*

The Grand Forks Youth Commission educated city leaders on the growing issues related to these products. Based on data from the 2013 North Dakota Youth Risk Behavior Survey, the percentage of youth in grades 9-12 who were reporting electronic cigarette use had tripled since the last survey two years prior.

In an effort to eliminate use of these products by youth in our community, we aligned them with traditional tobacco products making it illegal for those under 18 to purchase, possess or use electronic cigarettes, whether they contain nicotine or other substances.

These actions also resulted in Amendments to Grand Forks Code Section 21-2801 requiring local tobacco retail licensure for anyone selling electronic cigarettes.

The Grand Forks Youth Commission and the Grand Forks City Council have taken this action to protect the youth of our community. The City of Grand Forks supports state-wide legislation that defines electronic cigarettes as tobacco products; prohibits sale to, purchase of or possession of electronic cigarettes by minors; requires electronic cigarette retailers to be licensed as a tobacco retailers, and allows local regulation.

We support HB1078 and HB1265 as they are consistent with our local ordinance.

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To whom it may concern,

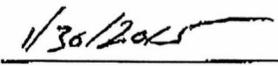
Williston City Ordinance #987 was drafted to amend the city codes of sections 12-71 and 12-72 regarding the sale of tobacco products to minors. The city commission was educated by our local public health unit on electronic cigarettes; how they are currently not addressed under any State of North Dakota laws or federal FDA regulations. Nicotine is the addictive substance found in or derived from tobacco. Even though electronic cigarettes may not physically contain tobacco they contain nicotine, the addictive substance found in tobacco, and the intent of the amendment is to protect and promote the public health, safety, and welfare by regulating the sale of tobacco and prohibiting the sale of tobacco products to minors to address the use and sale of electronic cigarettes.

It is clearly stated in our ordinance that a:

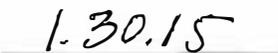
*"tobacco product" means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe, tobacco, chewing tobacco, snuff, snus, or a electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.*

Electronic cigarettes are a new and emerging product which use is rapidly increasing among minors and the city commission felt the need to address these new tobacco products to protect our youth. This amendment to our current ordinance passed unanimously by a vote of 5-0 and was declared adopted February 25, 2014.

  
Tate Cymbalik, Williston City Commissioner

  
Date

  
Taylor Olson, Williston City Attorney

  
Date

January 28, 2015

To Whom It May Concern:

As a parent and a City Council Alderman, I would like to express my concerns regarding the need for age restriction for e-cigarettes and the comprehensive definition of tobacco.

Crosby passed a city ordinance at the recommendation of our local public health unit on June 11, 2014, restricting the sale of e-cigarettes to people under the age of 18. Crosby City Ordinance No. 334, Sec. 12-71 states, "It shall be unlawful for any person to sell to, furnish to, distribute to, or procure for a minor, cigarettes, cigarette papers, cigars, e-cigarettes, snuff, or a tobacco product in any form in which they may be utilized for smoking or chewing."

I feel strongly that e-cigarettes should be restricted to those under 18 years of age. They are just another way to get our kids hooked on nicotine. I do not want my child to be able to walk into a store and purchase an e-cigarette, just because it looks cool and have no idea the harm it could possibly cause.

The definition of tobacco according to Crosby City Ordinance No. 334, Sec. 12-72, 1, g., defines tobacco product as "any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purchase."

I feel that this is an appropriate definition for the state of North Dakota to use as the definition of tobacco. It does not leave room for interpretation by other tobacco manufacturers and companies or leave any loopholes for people to argue about.

I ask that you take my thoughts and opinions into consideration when working on legislation regarding these issues.

Respectfully,



Troy Vassen  
Crosby, ND

2

January 28, 2015

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As a parent and a City Council Alderman, I would like to express my concerns regarding the need for age restriction for e-cigarettes and the comprehensive definition of tobacco.

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The definition of tobacco according to Crosby City Ordinance No. 334, Sec. 12-72. 1, g., defines tobacco product as "any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purchase."

I feel that this is an appropriate definition for the state of North Dakota to use as the definition of tobacco. It does not leave room for interpretation by other tobacco manufacturers and companies or leave any loopholes for people to argue about.

I ask that you take my thoughts and opinions into consideration when working on legislation regarding these issues.

Respectfully,



Brian Lund  
Crosby, ND

January 30, 2015

City of Langdon  
324 8<sup>th</sup> Avenue  
Langdon, ND 58249

To whom it may concern:

Our city chose to pass an ordinance to make sure kids can't use the e-cigarettes for a safety measure. The adults who smoked cigarettes 2 generations ago, all were heavy smokers and had the chance to smoke anywhere they chose. You can see how nicotine is highly addictive. This is physical, in that habitual users come to crave the chemical. This is one of the most heavily used addictive drugs. Now the tobacco industry has produced one more item to try. This would be the e-cigarettes. The nicotine business hasn't changed-with smoke or without. E-cigarettes are a nicotine product and must be included in a comprehensive "tobacco product" definition. E-cigarettes are not regulated by FDA. It is important that regulation take place at local and state level. North Dakota is one of the seven states, including the District of Columbia, with no statewide law preventing the sale of e-cigarettes to minors. E-cigarettes have not been proven safe. Safer than a combustible does not mean it is safe. Young people are using the e-cigarettes at an increasing rate-at twice the rate regular cigarettes:

8.7 % of 8<sup>th</sup> graders reported using an e-cigarette in the past 30 days, compared to 4% reporting use of a traditional cigarette.

16.2% of 10<sup>th</sup> graders report using an e-cigarette, compared to 7.2% reporting use of a traditional cigarette.

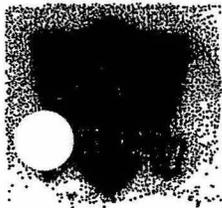
17.1% of 12<sup>th</sup> graders reported e-cigarette use, compared to 13.6 reporting use of a traditional cigarette.

Behind regulations prevent our youth from having direct access to harmful tobacco products.

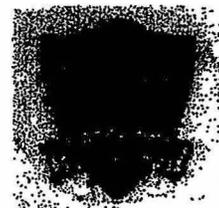
Limits tobacco marketing that targets the kids: studies show a link between youth exposure to tobacco product displays and an increased likelihood that these youth will start smoking.

Prevent child nicotine poisoning: keep nicotine e-juice out of the hands of children.

Connie Schrader  
City of Langdon - Auditor  
324 8th Avenue  
Langdon, ND 58249  
701-256-2155  
701-256-2156  
[auditor@cityoflangdon.com](mailto:auditor@cityoflangdon.com)



# CITY OF CANDO



TO whom it may concern,

We, at the city of Cando are extremely concerned about the effects and impact e-cigarettes have on young people.

The effects of e-cigarettes and the ability of these products to transition young people from them to tobacco.

The city of Cando has incorporated the ban of e-cigarettes into our ordinances in July of 2014. Please be aware of the impact of these products on our young people.

Thank You  
Mark Brehm  
Mayor  
Cando, ND.

January 29, 2015

Attention: Chairperson Koppelman  
& Representatives of the Judiciary Committee

This letter comes from a concerned community member, mother and past Hankinson, ND City Council member from Richland County.

Praise God that while I was active on our local community city council we were able to pass a local ordinance (in 2014) to restrict the sale of e-cigarettes to the kids in our community. Thank goodness our local health authority took the time to educate and inform us. Just the thought of this being available to our kids is revolting to the mass majority of us.

Proven medically and scientifically you will find Nicotine is a highly addictive chemical that is found in the tobacco plant and users will come to crave the chemical. Because e-cigarettes are a nicotine product and because there were no current regulations in place, we as a Council felt without a doubt that it was imperative that this ordinance be included in the comprehensive definition of tobacco products.

Currently in North Dakota, e-cigarettes are not age restricted however we were able to obtain information through our local public health and our city attorney to develop an ordinance to protect the youth in our community.

Young people that have never used traditional tobacco are starting to use e-cigarettes and becoming addicted to nicotine at a very young age. Youth should not have to deal with temptations such as Nicotine which is a poisonous chemical...seriously; we need to keep this product out of the hands of our children. Why tempt these kiddos with death traps. These e-cigarettes are not toys nor should they be even considered entertainment.

This product IS addictive and harmful to the developing brain of children and young adults.

With much excitement I am happy to report that we were able to adopt an ordinance that treats e-cigarettes as traditional tobacco products, including the age restriction and the placement of these products. I feel we have protected our youth as much as we can on this emerging and very important issue and encourage our State Legislators to do the same.

Thank you.

Carolyn Mosher

**SUPPORT OF HB 1265**

**RELATING TO MINORS AND THE SALE AND USE OF ELECTRONIC SMOKING DEVICES**

**House Judiciary Committee**

**Hearing Scheduled at 10:10 AM 2/2/2015**

**Chairman Koppelman & Judiciary Committee Members:**

**HB 1265 prohibiting the sale and use of electronic smoking devices to minors is great progress in limiting the availability of tobacco and tobacco related products to our youth.**

**The Wahpeton City Council unanimously adopted ordinance 958 on March 17, 2014 amending the definition of tobacco products to include e-cigarettes and identifying the sale to minors of electronic cigarettes as an infraction.**

**The Wahpeton City Council worked with the Richland County Health Department Tobacco Prevention Coordinator to develop language to clearly identify e-cigarettes as a tobacco product that is subject to the laws and limitations imposed on other tobacco products in the City of Wahpeton.**

**HB 1265 Section 1 Amendment 12.1-31-03 (f) "Tobacco retailer" includes sellers of electronic smoking devices – this language is especially helpful in the enforcement of local tobacco licensing regulations because it is not uncommon for city ordinances to require tobacco retailers to provide a ND State Tobacco License prior to being issued a city tobacco retailer's license. Enforcement is challenging when a retailer does not sell products currently addressed in the definition of "tobacco products". In example: a local thrift store sells an extensive line of e-cigarettes and vapor cartridges (nicotine products but no cigarettes or products containing tobacco) they are not currently required to have a State of ND Tobacco License. It is difficult to maintain a list of tobacco product retailers subject to compliance checks when they are not subject to licensing requirements.**

**The language of HB 1265 is inclusive and specific and preferred over current House Bills 1186, 1278 or 1354 addressing electronic smoking devices.**

**Submitted with high regard;**

**Darcie Huwe, Finance Director/Auditor  
City of Wahpeton**



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1186

- Page 1, line 1, after "Act" insert "to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers;"
- Page 1, line 3, replace "vapor products" with "electronic smoking devices"
- Page 1, line 3, remove the second "and"
- Page 1, line 4, after "penalty" insert "; and to provide an expiration date"
- Page 1, line 8, replace "vapor products" with "electronic smoking devices"
- Page 1, line 12, replace "vapor products" with "electronic smoking devices"
- Page 1, line 17, replace "vapor products" with "electronic smoking devices"
- Page 1, line 24, replace "vapor products" with "electronic smoking devices"
- Page 2, line 1, remove "vapor"
- Page 2, line 2, replace the first "products" with "electronic smoking devices"
- Page 2, line 5, replace "vapor products" with "electronic smoking devices"
- Page 2, line 6, replace "vapor products" with "electronic smoking devices"
- Page 2, line 13, replace "vapor products" with "electronic smoking devices"
- Page 2, line 15, replace "vapor products" with "electronic smoking devices"
- Page 2, line 15, remove the second "vapor"
- Page 2, line 16, replace the first "products" with "electronic smoking devices"
- Page 3, line 28, replace "vapor product" with "electronic smoking device"
- Page 4, line 1, after "b." insert "\"Electronic smoking device\" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

c."

- Page 4, line 3, replace "vapor products" with "electronic smoking devices"
- Page 4, line 8, replace "c." with "d."
- Page 4, line 11, replace "vapor products" with "electronic smoking devices"
- Page 4, remove lines 15 through 25
- Page 5, line 1, replace "vapor products" with "electronic smoking devices"

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

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

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

Page 5, after line 16, insert:

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

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

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

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

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

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

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

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

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

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

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

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

Page 8, after line 7, insert:

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