

2017 SENATE JUDICIARY

SB 2328

# 2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2328  
1/30/2017  
27564

- Subcommittee  
 Conference Committee

Committee Clerk Signature 

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

Relating to sale of tobacco to minors and licensure of persons in the business of selling tobacco products; and to provide a penalty.

Minutes:

Testimony attached #

1,2,3

**Chairman Armstrong** called the committee to order on SB 2328. All committee members were present.

**Senator Luick** introduced and testified in support of the bill.

"This bill strengthens the laws regarding the way electronic cigarettes are handed over the counter."

**Barbara Andrist, Statewide Programs Manager at the North Dakota Center for Tobacco Prevention and Control Policy**, testified in support of the bill. (see attachment 1)

**Senator Luick:** "Your amendment on violations for the clerk was actually supposed to be in the bill itself. It was supposed to take the onus off the clerk and on the business itself."

**Barbara Andrist:** "I'd like that. That would further strengthen who is actually there."

**Senator Luick:** "I'm not sure exactly how it was written in here so I will study it a little bit, but we did want to strengthen that to make sure there was (indistinguishable)."

**Barbara Andrist:** "I'd be happy to work with you on that."

**Kristie Wolff, Manager of Tobacco Prevention Advocacy for the American Lung Association of North Dakota**, testified in support of the bill, (see attachment 2)

Kristie Wolff had a briefcase of different types of electronic cigarette devices and flavors which she showed to the committee.

"One of my focuses has been on education across the state for electronic cigarettes, and this includes a lot of education in person and online, as well as with vape-shop owners across the state. So I just want to show you what they look at and the different kinds of products there are. There are disposable products that you throw away after using, usually about 500

puffs per product equivalent to about three packs of cigarettes. There are over 8,000 different flavors. I've discovered in my research that one of the biggest reasons people smoke vape-cigs is because of the taste. There is still nicotine being inhaled which comes from the tobacco plant, so they should be registered as a tobacco product."

**Senator Osland:** "What's the penalty for selling e-cigs out of your home?"

**Kristie Wolff:** "There is none. It is legal to sell them out of your home."

**Chairman Armstrong:** "Unless they sell to a minor, correct?"

**Kristie Wolff:** "Yes."

**Carel Two-Eagle, Chemist,** testified in support of the bill. No written testimony.

"I support the bill but it needs an amendment because there is nothing in there that would make it legal for us to use in our ceremonies. But I do like the bill, I just think it needs an amendment so we can use it for prayer, and other ceremonies. Our traditional teaching is that tobacco is composed of prayer, and if you don't respect it and use it as prayer, it can make it hard for your body parts which can lead to disease and other ailments. We need to not criminalize our ceremonies, that would be a First Amendment issue. It is very important that we don't do that."

**Senator Luick:** "I'd be happy to work with you on that, Carel. So in your estimation, the bill would be fine except for ceremony uses regarding tobacco?"

**Carel Two-Eagle:** "Yes."

**Tyler Kostelecky, Infinite Vapor,** testified in support of the bill. (see attachment 3)

"We are worried about section 4 of this bill. We ask that you eliminate the distributors license all together, or eliminate the one-year requirement and the surety bond requirement."

**Chairman Armstrong** closed the hearing on SB 2328.

No motions were made.

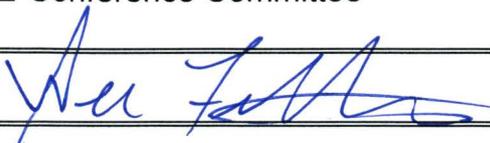
# 2017 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2328 Committee Work  
2/8/2017  
28043

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to sale of tobacco to minors and licensure of persons in the business of selling tobacco products; and to provide a penalty.

**Minutes:**

**Attachments**

1,2

**Chairman Armstrong** began the discussion on SB 2328. All committee members were present.

**Senator Luick's** proposed Amendments were handed out to the committee. (see attachment 1,2)

**Senator Larson:** "Senator Luick and I talked about this amendment presented and we did actually read through what was in another section and then they were adding this section to it. There is one word that is different so we were suggesting that this is the one word that is different on the front page, changing 'which' to 'that.' That's the only word that was listed differently in the two different statutes. So if we are going to be consistent with the statute that is listed on page 2 of your bill under number 1 than we would need to change 'which' to 'that.'"

**Chairman Armstrong:** "We can make a note for our intern to talk to Legislative Council about that."

**Senator Luick** motioned to Adopt the Amendment. **Senator Larson** seconded.

Discussion followed:

**Senator Larson** briefly described the amendments that were handed out. (see attachment 1,2)

**Senator Nelson:** "So when we get down to the end what does this bill do now?"

**Senator Luick:** "When I was asked to introduced this bill, we had issues with teenagers having access more prevalently in our area with E-Cigs. This will be more of a deterrent to

that. There's a new method of ingesting called dripping which makes it a more intoxicating event. It does strengthen the E-cig rules just little bit more. So there should definitely be some stronger laws regarding the sale of electronic cigarettes."

**Senator Nelson:** "So you amended criminal code? But we didn't do much to 57-36?"

**Senator Larson:** "Correct. "This change is for the proprietor and not the customer. It tells them they can't display the E-Cigs for everyone to see, they have to hide them from children. That's the biggest thing that the bill changes."

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.  
The motion carried.

**Senator Luick** motioned Do Pass as Amended. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 4 Nay: 2 Absent: 0.  
The motion carried.

**Senator Nelson** and **Chairman Armstrong** voted no on the bill.

**Senator Luick** carried the bill.

**Chairman Armstrong** ended the discussion on SB 2328.

February 8, 2017

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2328

Page 1, line 1, after the comma insert "subsection 9 of section 12.1-31-03,"

Page 1, line 8, remove "for any person to"

Page 1, after line 20, insert:

**"SECTION 2. AMENDMENT.** Subsection 9 of section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

9. As used in this section:

- a. "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
- b. "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. "Proprietor" means the owner of a retail establishment or an individual to whom the owner has delegated the responsibility for day-to-day management of operations of the retail establishment.
- d. "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.

~~d-e.~~ "Tobacco specialty store" means a retail store that:

- (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and

CM  
2/8/17  
2 of 2

(2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

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

Page 1, line 23, replace the "person" with "proprietor"

Page 3, line 21, after "15." insert "Proprietor" means the owner of a retail establishment or an individual to whom the owner has delegated the responsibility for day-to-day management of operations of the retail establishment.

16."

Page 3, line 22, replace "16." with "17."

Page 3, line 24, replace "17." with "18."

Page 3, line 27, replace "18." with "19."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2328**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0859.01001

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

Motion Made By Senator Luick Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2328**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0859.01001

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 Place on Consent Calendar  
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Motion Made By Senator Luick Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong		X	Senator Nelson		X
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Luick

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

**REPORT OF STANDING COMMITTEE**

**SB 2328: Judiciary Committee (Sen. Armstrong, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2328 was placed on the Sixth order on the calendar.

Page 1, line 1, after the comma insert "subsection 9 of section 12.1-31-03,"

Page 1, line 8, remove "for any person to"

Page 1, after line 20, insert:

**"SECTION 2. AMENDMENT.** Subsection 9 of section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

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  - b. "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. "Proprietor" means the owner of a retail establishment or an individual to whom the owner has delegated the responsibility for day-to-day management of operations of the retail establishment.
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    - (2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

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Renumber accordingly

**2017 HOUSE JUDICIARY**

**SB 2328**

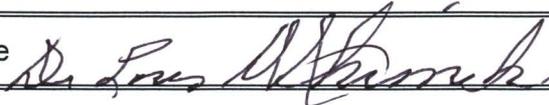
# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2328  
3/15/2017  
29282

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to sale of tobacco to minors and licensure of persons in the business of selling tobacco products; and to provide a penalty.

Minutes:

1,2

**Chairman K. Koppelman:** Opened the hearing on SB 2328.

**Barbara Andrist, Statewide Programs Manager, ND Center of Tobacco Prevention & Control:** (#1) Proposed amendment. Senator Luick is in support of the amendments as well. (#2) Went through testimony. (:50- 5:42)

**Representative Paur:** Could you summarize what you are trying to do with this?

**Barbara Andrist:** There was an oversight with the first engrossment which is Senate Bill engrossed 2328. Prior language was put in. A person was removed on line 8; so people who are not a tobacco dealer were automatically removed from having any penalties and it would still be furnishing a minor. We have added person back into the bill along with proprietor.

**Representative Magrum:** You expect us to make someone guilty because he owned the property or business and someone else does something wrong?

**Barbara Andrist:** In 2016 our compliance rate with tobacco retailers selling for tobacco selling was at 18% of sales when they were checked across the state sold to minors. That is illegal. The Dept. of Human Services got notice that if you are going to reach 20% we will cut your block grants significantly. That SINAR has to decrease. Discussed how they did education to assist in controlling this problem.

**Representative Magrum:** If I own a business how can I be accountable to a proprietor how can I be held accountable for their actions. That doesn't make any sense to me.

**Barbara Andrist:** I don't know; I am not an attorney. When Legislative counsel drafted this we have had everyone say it is legal what we are doing.

**Chairman K. Koppelman:** There are many cases in law where the owner is responsible for the actions of his or her employees.

**Representative Vetter:** Is the bar owner held to the same standard?

**Representative Johnston:** How do you get to 18% sold to minors; also going from \$500 to \$1000 fine; who does it go to?

**Barbara Andrist:** A check is done by using a youth that goes in under cover with permission from their parents and they are accompanied by a police officer usually under cover. They go in and attempt to buy tobacco products just like they could attempt to buy alcohol for compliance. If they are able to purchase that then is taken out of the store and then that store is written up. That is where you get your SINA compliance. Why are 18% selling or why are they doing that? It is because they aren't educated to sell; are they too young and shouldn't be working and they are selling under the site as well.

**Representative Johnston:** Law enforcement uses minors as undercover minors? Law enforcement uses minors as undercover informants?

**Barbara Andrist:** Yes with parent permission. If you look at the first engrossment; that language is deleted so I don't know where that money is going right now and passed out in the Senate.

**Representative Roers Jones:** Minors who are assisting BRAVE ND in intending to purchase tobacco products aren't going this because of any convictions that they have got ongoing so they might reduce the penalty or anything like that. Is there?

**Barbara Andrist:** Yes, that would be correct. There is no corrosion? It is more of a sting operation?

**Representative Johnston:** What does the minor compensated?

**Barbara Andrist:** Nothing. Good will.

**Senator Luick:** Introducing the bill. The last couple sessions there have been efforts to try and enforce putting restraint electronic smoking devices. They are inclining fast.

**Heather Austin, Executive Director of ND Tobacco and Health:** We are in support of this bill and proposed amendments.

**Chairman K. Koppelman:** We did pass a bill to make it illegal to sell e-cigarettes to minors. Do you have evidence that sales to minors are increasing?

**Heather Austin:** I would not be comfortable answering that. I can get that information to you.

House Judiciary Committee

SB 2328

March 15, 2017

Page 3

Opposition: None

Neutral: None

Hearing closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2328  
3/28/2017  
29747

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

**Relating to sale of tobacco to minors and licensure of persons in the business of selling tobacco products; and to provide a penalty.**

**Chairman K. Koppelman:** Opened the meeting on SB 2328.

**Representative Vetter:** I am not liking a lot of different things in this bill. I do not like the proprietor language being charged.

**Do Not Pass Motion Made by Representative Vetter: Seconded by Representative Magrum**

Discussion:

**Representative Nelson:** The reason this is coming about. What happens is a clerk sells to a minor; clerk gets fined and the business fires the clerk and the business keeps right on going the way it was and we have certain businesses that seem to have a history of doing that. It is always the worker who is paying the fine and getting fired and we are not getting control of our law that way. I don't know if I love the language they are using for proprietor either, but that is the reason behind it. We don't do that with a liquor store; no we close the store for three days I guess we could go either way. I think we have a problem the way things are really unenforceable at this point. The people who are responsible for running the business never pay a fine.

**Chairman K. Koppelman:** I think everything you just said is an issue; I don't think it is lack of proper wording in law. I think it may be an enforcement problem. Current law says any person and that can be a human being; an individual, a proprietor, a corporation or a business. The enforcement could go beyond that and could go directly to the proprietor under the word person. Listing proprietor whoever limits it to that.

**Representative Hanson:** The section in the bill that permits the selling of e-cigarettes products in a way that doesn't have a license so like if you were to go on e-bay and we don't want that to happen; it is a growing problem.

**Representative Maragos:** Were there amendments offered? (mike not on)

**Representative Klemin:** We have a whole page of amendments under the name of Senator Luick. That takes care of the proprietor versus person that you mentioned.

**Chairman K. Koppelman:** There are some interests that have pushed hard to get e-cigarettes in the criminal code. There were people that wanted it moved to the tobacco code.

**Representative Maragos:** I am going to resist this motion for two reasons. I don't think Section 7 (mike not on)

**Roll Call Vote: 11 Yes 4 No 0 Absent Carrier: Chairman K. Koppelman**

Closed.

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2328**

House Judiciary Committee

Subcommittee

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

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

Motion Made By Rep. Vetter Seconded By Rep. Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson		✓
Vice Chairman Karls	✓		Rep. Nelson		✓
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin		✓			
Rep. Magrum	✓				
Rep. Maragos		✓			
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

0 Total (Yes) 11 No 4

Absent 0

Floor Assignment Rep. Koppelman

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

**REPORT OF STANDING COMMITTEE**

**SB 2328, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)**  
recommends **DO NOT PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2328 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**SB 2328**



1  
**North Dakota Tobacco Prevention and Control Executive Committee**

Center for Tobacco Prevention and Control Policy  
1680 E Capitol Avenue, Suite A • Bismarck, ND 58501-5603  
Phone 701.328.5130 • Fax 701.328.5135 • Toll Free 1.877.277.5090

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Testimony in Support of Senate Bill 2328  
9:30 a.m. January 30, 2017  
Senate Judiciary Committee  
Senator Kelly Armstrong, Chair

Good morning Chairman Armstrong and members of the Senate Judiciary Committee. I am Barbara Andrist, Statewide Programs Manager at the North Dakota Center for Tobacco Prevention and Control Policy. The Center, also known as "Breathe ND" is the state agency office operated by the ND Tobacco Prevention and Control Executive Committee. I am testifying in support of Senate Bill 2328.

Breathe ND supports efforts proven to reduce youth access to, and use, of tobacco. This bill has the potential to reduce youth access with a few improvements that could be offered as amendments.

Using the term "proprietor" appears to remove the burden of an illegal sale to a minor from the "person," which is usually the clerk, and place it on the tobacco license holder. The bill could include a definition of a proprietor which would clarify who is ultimately responsible for the sale.

"Clerk-operated counter" language may reduce youth access to tobacco but a creative retailer could have a "clerk-operated counter" that customers can still go behind to obtain their product.

The penalty increase from \$500 up to \$1000 might discourage violations. However, the "person" language remains in the bill clouding the intent of the proprietor language in the proposed language change on Page 1, line 8 of the bill. An amendment could limit the infraction only to the retailers/businesses/proprietors and not the clerk.

In August of 2016, the FDA deemed that alternate nicotine products and electronic smoking devices are tobacco products. The placement of these definitions in tax code can be perceived as an implicit acknowledgement that these products need to be taxed by the tax department; therefore requiring licensing of retailers and distributors of alternative nicotine products and electronic smoking devices by the Attorney General. The licensing of retailers and distributors of these products would advance youth access by allowing those entities to be better tracked. An improvement to this section would be to have a single definition of a tobacco product and not separate out alternative nicotine products and electronic smoking devices.

ND youth electronic cigarette use rates among high school students in our 2015 Youth Risk Behavior Survey was 22.3% compared to the smoking rate of 11.7%. Tightening youth access regulations in addition to enforcement and compliance is vital to bringing our youth electronic cigarette rate down quickly.

Any increase in youth access restrictions of tobacco products must be supported by resources for public education to assure high compliance, effective enforcement, and supportive tobacco-free policies that BreatheND and your local public health units provide.

Thank you for the opportunity to testify. I would happily answer your questions and prepare amendments if requested.

2 SB 2328

# WARNING: NICOTINE POISONING

# NICOTINE POISONING CAN HAPPEN EASILY

1/30/17



## SWALLOWING

**1/2 TSP**  
OF LIQUID  
**NICOTINE**  
INGESTED CAN  
BE **DEADLY** TO  
A SMALL CHILD



## TOUCHING

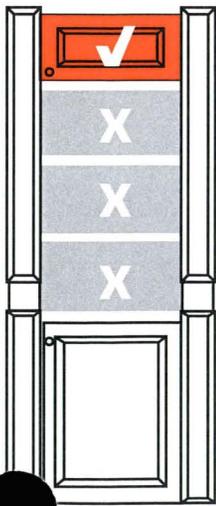
**LIQUID  
NICOTINE**  
IS EASILY ABSORBED  
THROUGH THE  
**SKIN & EYES**  
SKIN ABSORPTION CAN EVEN HAPPEN  
FROM A LEAKING E-CIGARETTE DEVICE



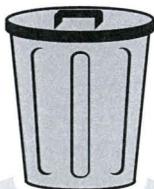
**A 15 ML  
BOTTLE  
IS ENOUGH  
TO KILL  
FOUR  
TODDLERS**

NICOTINE HAS BEEN USED AS AN INSECTICIDE, SO IT SHOULDN'T BE A SURPRISE THAT IT'S POISONOUS TO HUMANS, TOO

## HOW YOU CAN PREVENT POISONING



**STORE**  
E-CIGARETTES  
AND E-LIQUID UP, AWAY  
AND OUT OF SIGHT



**DISPOSE**  
OF  
E-CIGARETTES AND  
E-LIQUID PROPERLY



**REFILL**  
E-CIGARETTES  
WHEN CHILDREN  
AND PETS ARE  
NOT AROUND

**PROTECT**  
WEAR GLOVES WHILE  
HANDLING E-LIQUID TO  
PROTECT  
YOUR SKIN



## SYMPTOMS OF NICOTINE POISONING

-  SEVERE STOMACH PAIN
-  VOMITING
-  HEADACHE
-  DIFFICULTY BREATHING
-  FAST HEART RATE AND HIGH BLOOD PRESSURE
-  DIZZINESS
-  SEIZURES
-  DEATH

CALL POISON CONTROL AT 1-800-222-1222 IMMEDIATELY IF SOMEONE HAS DIRECT CONTACT WITH LIQUID NICOTINE

1/30/17  
1/29/2017

3

1/30/17

SB 2328

- Introduce yourself and your company

- Infinite Vapor supports the provision of SB 2328 that would require retailers of electronic vapor devices and alternative nicotine products to obtain a retail sales license. We understand that retail licensing is how the state tracks retailers of age-restricted products and we want more enforcement of North Dakota's existing ban on the sale of these products to minors.

- However, we are very concerned about Section 4 of this bill, which would setup licenses for distributors of electronic vapor products and alternative nicotine products.

- To be a distributor of these products, you would need to: (1) Have been in the business of distribution for at least one year; and (2) Post a surety bond.

- Distribution licenses only exist to combat tax evasion. Electronic vapor devices and alternative nicotine products are NOT subject to excise taxes, so it seems unnecessary to require such a distributor to get such a license.

- Infinite Vapor has been in existence for several years, so this requirement will not hurt us as a business. However, we do want any other small business – even our competitors – to be burdened by unnecessary licensing laws.

- We respectfully ask that you either: (a) eliminate the distributors license all together; or (b) eliminate the 'one year' requirement and the surety bond requirement, with our preference being for Option A.

If you are asked any hard questions – I am not an expert on this subject. I would be happy to get you an answer if you would allow me to step outside the committee room to make a phone call.

[Quoted text hidden]

①

2/8/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2328

Page 1, line 1, replace the first "subsection" with "subsections"

Page 1, line 1, after "1" insert "and 9"

Page 1, line 6, replace "Subsection" with "Subsections"

Page 1, line 6, after "1" insert "and 9"

Page 1, line 7, replace "is" with "are"

Page 1, line 8, remove "for any person to"

Page 1, after line 20 insert:

"9. As used in this section:

- a. "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
- b. "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. Proprietor means the owner of a retail establishment or an individual to whom the owner has delegated the responsibility for day-to-day management of operations of the retail establishment."
- d. "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it

may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.

~~d.e.~~ "Tobacco specialty store" means a retail store that:

- (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and
- (2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

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

Page 1, line 23 replace "person" with "proprietor"

Renumber accordingly

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<< PROPOSED AMENDMENT LANGUAGE TO SB 2328 >>

Referring to Lines 6 – 12 of SECTION 1. AMENDMENT. Subsection 1 of section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

1. a. It is an infraction for any person a proprietor to sell or for any person to furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.

I suggest 1. b. It is not an infraction for any person to sell, or for any person to furnish to a minor, or procure for a minor, tobacco in any form used in Indigenous Ceremonies, including cigarettes, cigars, snuff, chewing tobacco, whole leaves, twists, or pipe tobacco.

Tobacco in any of the above forms can be used for such ceremonial activities as prayer ties (small bundles of tobacco wrapped inside cloth and tied in strings), burning in open fires or in smudging, prayer sticks (which burn by themselves; we say "the spirits smoke them"), sprinkling, or smoking. While tobacco is best smoked in a Holy Ch'annunpa, commonly called "a Pipe", it is sometimes smoked in some other form. The Spirits know when tobacco is smoked in prayer and They proceed accordingly. We ask, They decide how or if to answer.

When I make prayer ties, for example, I prefer chewing tobacco because it is wetter than any other form, so is easier to form into prayer ties. In my case, easier because I have hand injuries. In the case of some on my grandchildren, they are young so are not as co-ordinated as older youth, and they are just learning how to do these things.

It is not uncommon to start a cigarette, then position it more or less vertically and let the spirits smoke it if they will. A cigarette contains an amount of tobacco that is a kind of standard measure for many purposes, as it turns out.

I don't specify Native minors, because these days especially many non-Native youth come to us asking for spiritual guidance, and I firmly believe that they come to us who Keep Pipes because they haven't found what speaks to their heart of hearts in any other Way. Moreover, I believe to deny non-Natives access to proper procedures in our Ways

is a form of racism, and since the Ch'annunpa was brought to us for helping and healing, we have a responsibility to aid whoever, regardless of race. That which is Holy shows Itself to whomever It wants to see It. So the Spirits have told me and I see no reason to doubt Them. And lastly, of course, there is the First Amendment to the US Constitution, which does not consider race is encouraging freedom of religion and such.

If you want to discuss any of this, you have my email and phone numbers – 701-426-0851 and [OneDakotaWoman@gmail.com](mailto:OneDakotaWoman@gmail.com) .

Thank you for hearing me in a good way now. Carel Two-Eagle, PK

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Prepared by the Legislative Council staff for  
Senator Luick

March 14, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2328

Page 1, line 8, overstrike "It is an infraction for"

Page 1, line 8, remove "a proprietor"

Page 1, line 8, overstrike "to sell or furnish" and insert immediately thereafter "A proprietor commits an infraction if the proprietor or an individual under the proprietor's control sells or furnishes"

Page 1, line 9, overstrike "procure" and insert immediately thereafter "procures"

Page 1, line 11, overstrike "As used in this subdivision, "sell""

Page 1, overstrike line 12

Page 1, line 13, remove "a proprietor"

Page 1, line 13, overstrike "to display or offer" and insert immediately thereafter "a person not licensed under chapter 57-36 or not engaged in a licensed sale to sell or furnish to a minor or procure for a minor cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.

c. A proprietor commits an infraction if the proprietor or an individual under the proprietor's control displays or offers"

Page 1, line 17, overstrike "This subdivision does" and insert immediately thereafter:

"d. It is an infraction for a person not licensed under chapter 57-36 or not engaged in a licensed sale to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display or any display not behind a clerk-operated counter.

e. Subdivisions c and d do"

Page 1, after line 20, insert:

"f. As used in subdivisions a and b, "sell" includes dispensing from a vending machine under the control of the actor."

Page 3, line 9, replace "may not engage" with "commits an infraction if the proprietor or an individual under the proprietor's control engages"

Page 3, line 9, overstrike "sales" and insert immediately thereafter "sale"

Page 3, line 11, after the underscored period insert "It is an infraction for a person not licensed under chapter 57-36 or not engaged in a licensed sale to engage in the sale of liquid nicotine in violation of this section."

Renumber accordingly



**North Dakota Tobacco Prevention and Control Executive Committee**

Center for Tobacco Prevention and Control Policy  
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Testimony in Support of Senate Bill 2328  
10:40 a.m. March 15, 2017  
House Judiciary Committee  
Representative Kim Koppelman, Chair

Good morning Chairman Koppelman and members of the House Judiciary Committee. I am Barbara Andrist, Statewide Programs Manager at the North Dakota Center for Tobacco Prevention and Control Policy. The Center, also known as "Breathe ND" is the state agency office operated by the ND Tobacco Prevention and Control Executive Committee. I am testifying in support of Senate Bill 2328.

Breathe ND supports efforts proven to reduce youth access to, and use, of tobacco. This bill as amended has the potential to reduce youth access. We like to support the proposed amendments to this bill in Section 1(a-f), and Section 3 (3). These amendments clarify the previous deletion of a "person" procuring or selling; this was an oversight. This is important language to add back into the bill because we have reports and evidence that sales of alternative nicotine products being sold by individuals at garage sales and on Facebook. Putting this language back in also assists 18 year olds not to purchase tobacco for a minor.

The amended definition of "proprietor" appears to remove the penalty of an illegal tobacco sale from only the "person," who sells which is usually the clerk, and place it on the tobacco license holder. This definition can strengthen training of clerks because the proprietor now also has some skin in the game.

"Clerk-operated counter" language may reduce youth access to tobacco but a creative retailer could have a "clerk-operated counter" that customers can still go behind to obtain their product. Hopefully tobacco retailers are supporting restricting youth access by keeping all tobacco products not accessible to the public without the intervention or assistance of a tobacco retailer employee.

The penalty increase from \$500 up to \$1000 might discourage violations and continued violations by proprietor and/or an individual delegated by the proprietor.

In August of 2016, the FDA deemed that alternate nicotine products and electronic smoking devices are tobacco products. The placement of these definitions in tax code can be perceived as an implicit acknowledgement that these products need to be taxed by the tax department; therefore requiring licensing of retailers and distributors of alternative nicotine products and electronic smoking devices by the Attorney General.

The licensing of retailers and distributors of these products would advance youth access by allowing those entities to be better tracked. An improvement to this section would be to have a single definition of a tobacco product and not separate out alternative nicotine products and electronic smoking devices.

ND youth electronic cigarette use rates among high school students in our 2015 Youth Risk Behavior Survey was 22.3% compared to the smoking rate of 11.7%. Tightening youth access regulations in addition to enforcement and compliance is vital to bringing our youth electronic cigarette rate down quickly.

In 1982, RJ Reynolds tobacco company documents stated: "If a man has never smoked by age 18, the odds are 3-to-1 he never will. By age 21, the odds are 20-to-1." Any increase in youth access restrictions of tobacco products must be supported by resources for public education to assure high compliance, effective enforcement, and supportive tobacco-free policies that BreatheND and your local public health units provide.

Thank you for the opportunity to testify. I would happily answer your questions.

Barbara Andrist  
328-5125 [bandrist@nd.gov](mailto:bandrist@nd.gov)