

**2019 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1446**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1446  
1/28/2019  
31614

- Subcommittee  
 Conference Committee

Committee Clerk: Ellen LeTang

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

Ingredient labeling on nicotine liquid containers.

### Minutes:

Attachment 1, 2, 3, 4, 5

**Chairman Keiser:** Opens the hearing on HB 1446.

**Rep Adams~District 43:** Attachment 1 & 2. Introduces HB 1446. **Attachment 2** is from **Debbie Swanson~Director at Grand Forks Public Health Department.**

**4:00**

**Rep Laning:** How is it the electronic cigarette able to avoid labeling?

**Rep Adams:** The FDA are starting to do that but not very fast. There are only 5 states that have the product labeled.

**Chairman Keiser:** Can you go over your amendment?

**Rep Adams:** Goes over the amendment. They need to tell what the ingredient is, the percentage, volume & nicotine in it.

**Chairman Keiser:** Line 8, after with, we would insert?

**Rep Adams:** Yes.

**Rep D Ruby:** Is this language consistent with other states?

**Rep Adams:** The five states that have it, are all consistent in language. The manufacturer knows what states they shipping & they package according to the state guidelines.

**Rep Schauer:** Miss labeling, how could we trust that it's accurate.

**Rep Adams:** It would be mandatory.

**Rep Schauer:** If the FDA isn't involved, what is the controlling authority that monitors that these labels are accurate?

**Rep Adams:** The FDA, they are still in the study process & so the states stepping up. They say this is an issue & we need to step forward.

**Rep Adams:** How many states manufacture this?

**Rep Adams:** I not sure but with 7,000 different flavorings. One company makes 3 or 4 hundred different flavorings.

**Heather Austin~Executive Director for Tobacco Free ND:** Attachment 3.

13:45

**Rep D Ruby:** Why are you so concerned about this when it's not clearly tobacco?

**Heather Austin:** The vast majority of nicotine is derived from tobacco.

**Rep D Ruby:** Is there other health factors with tobacco that you have concerns with.

**Heather Austin:** Nicotine is a known poison. In some countries it's used as an insecticide. It effects youth's brain development which affects the cortex.

**Rep D Ruby:** There's other products in tobacco that causes concern other than nicotine?

**Heather Austin:** Yes, there are two different chemicals in particular, diacetyl & propylene glycol. Diacetyl causes popcorn lung & propylene glycol to make the cloud show up.

**Rep D Ruby:** The bill only deals with the nicotine products, but would you support labeling on a product, even if it didn't contain nicotine?

**Heather Austin:** Yes, we will.

**Rep D Ruby:** This talks about "or nicotine liquid containers", how do you get an ingredient label on the container?

**Heather Austin:** That covered where they mix your own.

**Rep Richter:** Do they currently label how much nicotine is in the product?

**Heather Austin:** It's a mixed bag, some companies do & others don't.

**Rep Richter:** Is there any studies or information on how many teenagers started with e-cigarettes & graduated to cigarettes?

**Heather Austin:** They are just starting to collecting data for those studies.

**Rep Richter:** The evidence that you have, they still get addicted to the nicotine?

**Heather Austin:** Yes, they do. The electronic devices, the nicotine is higher.

**Rep P Anderson:** I read this bill is, what is in the ingredient. It doesn't warn that it's bad for your health.

**Heather Austin:** Yes, that's how I understand the bill.

**Jack McDonald~Represent the ND Society for Repertory Care:** We support this bill.

**Chairman Keiser:** Anyone else here to testify in support, opposition to HB 1446?

**Alexis Newton~Regional Manager of Infinite Vapers:** Attachment 4.

**26:25**

**Rep Laning:** Are you aware of any manufacturers that don't label?

**Alexis Newton:** I'm not aware of any right now. My understanding is most vape shops won't order any liquids unless they are compliant with the FDA.

**Rep Adams:** Can I put as much in that I want?

**Alexis Newton:** Yes, you choose how much you put in.

**Rep Schauer:** You mentions the FDA has regulation & do you have copy of those regulations?

**Alexis Newton:** I do not have a copy of that but could look for that information.

**Rep P Anderson:** Do you know if convenience stores sell in ND?

**Alexis Newton:** I don't know about convenience stores.

**Rep Richter:** You wouldn't be upset if we went stricter on the labeling? That's correct?

**Alexis Newton:** Yes.

**Rep Richter:** I don't know how much is the nicotine because it's by weight. It doesn't really tell me anything how many milligrams that are in that bottle. Would you be ok with more specific labeling of the nicotine content than what on there?

**Alexis Newton:** I think it would be informing for people that are interested in these vaping products. I would be opposed because average person won't break it down.

**Rep Laning:** If the labeling already exists, do you see that this bill would cause additional harm to your industry?

**Alexis Newton:** The only harm that I foresee is, if the state aligns differently from the FDA. If it's produced on other states & if they are not following just what ND's looking for. We would have to have manufacturing in ND & we don't have very of them.

**Kelly Buettner~Schmidt~PHD, RN, FAAN:** Attachment 5.

**40:00**

**Rep Laning:** Do you know what the actual requirements are for federal labeling on these?

**Kelly Schmidt:** I'm afraid that I'm not current on that.

**Rep Schauer:** This testimony seems to be outdated, it's four years old.

**Kelly Schmidt:** I know & no I don't have more current information.

**Rep D Ruby:** When is the last time the FDA updated the requirements?

**Kelly Schmidt:** I not positive on that.

**Rep Richter:** Would you say that this is significantly problematic that inaccuracies of the labeling that was going on at that time?

**Kelly Schmidt:** My concerned that the labeling is not accurate. I'm concerned that some stores are pouring more nicotine into the bottles.

**Rep P Anderson:** I have one more question for Alexis. Your experience, do people going to vaping trying to go with less & less with nicotine?

**Alexis Newton:** Yes, that is some peoples goal.

**Vice Chairman Lefor:** Anyone else here to testify in the neutral position? Closes the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1446  
1/29/2019  
31676

- Subcommittee  
 Conference Committee

Committee Clerk: Ellen LeTang

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

Ingredient labeling on nicotine liquid containers.

### Minutes:

**Chairman Keiser:** Reopens the hearing on HB 1446.

**Rep Laning:** Complying with federal law. I'm assuming that's in the bill.

**Rep Adams:** I did go & buy a couple of packages. They are labeled & they do say nicotine but the propylene glycol that causes the popcorn lung, doesn't say how much of that for the other ingredients. I worry more about the ingredients & things like that.

**Rep D Ruby:** He didn't have any problems because he is complied with everything in this bill. The patch work of different states could be a problem. With all the products that there is no enforcement. He wished we talked more about enforcement.

**Rep Richter:** There's labeling occurring, but some places mix their own mixture so the label isn't accurate & nobody is overseeing that.

**Rep D Ruby:** Should we put the amendment on that Rep Adams gave us yesterday? I have an issue either way especially about the patch work of other states.

**Rep Adams:** I would keep the amendment on, but the labeling for the other ingredients is not on there.

**Rep Kasper:** The problem is that there is a FDA regulation for labeling & not all manufacturers are complying. If we go beyond, a lot of the manufacturers may say, forget it.

**Rep D Ruby:** Moves the amendment on page 8, after the word "with" insert "the name & percent by weight of".

**Rep M Nelson:** Second.

**Chairman Keiser:** Further discussion on the amendment?

**Voice vote ~ motion carried.**

**Chairman Keiser:** We have HB 1446 before us, what are the wishes of the committee.

**Rep C Johnson:** Moves a Do Pass as Amended.

**Rep M Nelson:** Second.

**Chairman Keiser:** Do you have measures of how much this is present in your high schools in you district & community?

**Rep Adams:** About 20% in the high school & growing.

**Chairman Keiser:** We go on a 30% in Bismarck for some reason.

**Rep Richter:** I have no specific place but the term used is “a lot”. I don’t think this bill will do anything.

**Rep D Ruby:** I’m not going to support the do pass. It’s putting different regulations on it that are more stringent & this case, it will shut down businesses in this state. It could cause a commerce issue.

**Rep M Nelson:** There are some ingredients are dangerous substances. I think we need to keep it alive & work on it more on the senate side. We need to protect our youth.

**Rep P Anderson:** I concerned about the places who mix their own. I’m going to support the bill.

**Chairman Keiser:** The places that are mixing it, how are they going to tell the percent? I don’t like it.

**Roll call was taken for a Do Pass on HB 1446 with 5 yes, 6 no, 3 absent. Motion failed.**

**Chairman Keiser:** Is there an alternative motion?

**Rep D Ruby:** Moves a Do Not Pass as Amended.

**Rep Laning:** Second.

**Chairman Keiser:** Further discussion.

**Rep O'Brien:** I’m in favor that the FDA set the standard & have everyone be in compliance of it. They are also going to do some education.

**Roll call was taken for a Do Not Pass as Amended with 7 yes, 4 no, 3 absent & Rep O'Brien is the carrier.**

DA 1/29/19

19.0605.02001  
Title.03000

Prepared by the Legislative Council staff for  
Representative Adams  
January 28, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1446

Page 1, line 8, after "with" insert "the name and percent by weight of"

Renumber accordingly

Date: Feb 29, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1446

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ 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 Ruby    Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment voice vote - motion carried

line 8 - after "with" insert "the name + percent by weight of"

Date: Feb 29, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1446

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ 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 Johnson    Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep O'Brien		X
Vice Chairman Lefor		X	Rep Richter	X	
Rep Bosch	Ab		Rep Ruby		X
Rep C Johnson	X		Rep Schauer	Ab	
Rep Kasper		X	Rep Adams	X	
Rep Laning		X	Rep P Anderson	X	
Rep Louser	Ab		Rep M Nelson	X	

Total (Yes) 5    No 6

Absent 3

Floor Assignment motion failed

Date: Jan 29, 2019

Roll Call Vote #: 3

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1446

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ 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 Ruby Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	Ab		Rep Ruby	X	
Rep C Johnson		X	Rep Schauer	Ab	
Rep Kasper	X		Rep Adams		X
Rep Laning	X		Rep P Anderson		X
Rep Louser	Ab		Rep M Nelson		X

Total (Yes) 7 No 4

Absent 3

Floor Assignment Rep O'Brien

**REPORT OF STANDING COMMITTEE**

**HB 1446: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). HB 1446 was placed on the Sixth order on the calendar.

Page 1, line 8, after "with" insert "the name and percent by weight of"

Renumber accordingly

**2019 TESTIMONY**

**HB 1446**

Attachment 1  
Jan 28, 2019  
Page 1

Thank you, Chairman Keiser and Committee Members

I am Mary Adams, representative for District 43 Grand Forks

I am here today to introduce HB# 1446

This bill when passed will make it mandatory for all alternative nicotine products such as e-cigarettes, vaping products and e-liquids to identify the type and percentage of ingredients.

We all love that one thing that isn't so good for us. I love Cheetos. They have absolutely no nutritional value, but the package tells me exactly what I am getting. Everything we buy is labeled and, in some instances, tells us it may be harmful.

Why are e-cigarettes and vaping products any different? Nicotine is addictive. Tobacco is addictive. Alcohol is addictive, gambling is addictive, opioids are addictive. It's on the packages, it's on slot machines, why not on the e-cigarette products?

Some of these devices deliver the nicotine almost as efficiently as a cigarette. The JUUL for example delivers nicotine up to 2.7 times faster than other e-cigarettes. While that may make them more attractive to smokers, it increases the potential for youth addiction. Only 37 percent of JUUL users knew that the product **always** contains nicotine. Some of the new e-cigarettes have nicotine salts in the e-liquid. Juul claims this increases the rate and amount of nicotine delivered into the lungs and bloodstream.

How much nicotine is in an e-cigarette? The levels vary greatly from brand to brand. How is one to know as labeling is not a reliable indicator due to mislabeling or no labeling at all.

Using an e-cigarette may also be called vaping. These devices produce an aerosol, not a vapor. This aerosol can contain tiny chemical particles and metals from the heat coil.

There are over 7,000 e-liquid flavors, most of which have not been tested for the toxicity in vapor form. Flavored chemicals certified safe for ingestion may not be safe when inhaled.

Nicotine is addictive. We need laws that require that these products be labeled so we, as citizens know what ingredients are in these products and how toxic they may be.

The pro vaping people will tell you it's not the nicotine but it's the tar that causes lung disease. That may be true, but every person has the right to know what they are inhaling. That is the purpose of this bill.

Thank you

19.0605.02001  
Title.

Prepared by the Legislative Council staff for  
Representative Adams  
January 28, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1446

Page 1, line 8, after "with" insert "the name and percent by weight of"

Renumber accordingly



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

**Grand Forks Public Health**

Attachment 2  
Jan 28, 2019  
Page 1

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151 South 4th Street, Suite N3C

Grand Forks, ND 58201-473

[www.grandforksgov.com/publichealth](http://www.grandforksgov.com/publichealth)

HB 1446

Ingredient Labeling on Nicotine Liquid Containers

January 25, 2019

Submitted by:

Debbie Swanson, Director, Grand Forks Public Health Department

House Industry, Business and Labor Committee

Representative Keiser, Chair

Chairman Keiser and members of the House Industry, Business and Labor Committee:

My name is Debbie Swanson and I am the Director at Grand Forks Public Health Department, which services Grand Forks County. I have worked in Public Health for 33 years and have 26 years of experience in tobacco prevention and control work.

Tobacco use remains the number one cause of preventable death and disease in our state and nation. After decades of decline in the youth smoking rate through the passage of comprehensive policies that protect the public from tobacco's harms and in turn de-normalized tobacco use, e-cigarettes are now the most popular tobacco product among young people, and their popularity is growing with new reports showing a 77 percent increase among high school students.

These trendy products, often referred to as e-cigarettes, JUUL, vapes, mods, e-hookahs have resulted in what the Centers for Disease Control and Federal Drug Administration consider an "epidemic" of electronic smoking amongst youth. Data from the 2017 ND Youth Risk Behavior Survey shows 20.6% of North Dakota students in grades 9-12 report using an electronic nicotine delivery system within the last 30 days, which is higher than the national average of 13.2%. Research tells us the adolescent brain is not fully developed until the age of 25 and nicotine has harmful, long term effects to the developing brain including parts that control attention, learning, mood and impulse control. We know that youth are being targeted with flavors such as cotton candy, sweet tart and strawberry and discrete product designs that resemble USB drives, pens and inhalers. We also know that these products are addictive and highly unregulated. A study conducted in North Dakota and published in the Journal of Pediatric Nursing determined that half (51%) of the labels on e-cigarette liquid nicotine in North Dakota do not accurately reflect the levels of nicotine found in the products. Actual nicotine levels in some products were 172% higher than labeled and 43% of e-liquid containers sampled that were labeled to have 0% nicotine in fact contained nicotine. Mislabeling of e-liquids is common and exposes the user to the harmful effects of nicotine and other unknown substances, including life-long addiction.

Tobacco use can addict users to nicotine for a lifetime and cause needless pain, suffering and costs to both the nicotine-addicted user and their families. Labeling products accurately is a common sense proposal. Working together, we can help keep youth safe from the dangers associated with tobacco use and nicotine addiction.



HB 1446

Attachment 3

P.O. Box 3237  
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[www.tfnd.org](http://www.tfnd.org)

page 1

January 28, 2019

2:30 pm CST

House Industry, Business, and Labor Committee for the 66<sup>th</sup> ND Legislative Assembly

Chairman Keiser, and members of the House Industry, Business and Labor Committee, hello, my name is Heather Austin, and I am the Executive Director for Tobacco Free North Dakota. Thank you so much for your time this afternoon.

Today I am here to encourage a Do Pass on HB 1446, or the bill enacting labeling requirements for nicotine e-liquids. The mission of Tobacco Free North Dakota is to improve and protect the public health of all North Dakotans by reducing the serious health and economic consequences of tobacco use, the state's number one cause of preventable disease and death.

By requiring ingredients be listed for e-liquid products in North Dakota, we take a tremendous step forward in protecting our youth from the dangerous nicotine addiction these products promote. By understanding the chemical content and nicotine levels in these liquids, we can better report potential dangers and better estimate any adverse effects on health.

Although these products are relatively new to the market, the variety of e-liquids available for use in e-cigarettes and electronic devices, has grown exponentially. E-cigarette marketing employs many of the same strategies used for years by cigarette manufacturers that proved so effective in reaching kids, such as celebrity endorsements, slick TV and magazine advertisements, sports and music sponsorships, and of course social media. And not knowing what is in these liquids creates serious concern, not just for our kids, but for all of our citizens.

There is a serious disconnect with our kids believing that these e-liquid tobacco products are somehow safer than traditional cigarettes or standard tobacco. The yummy and familiar flavors give kids a false sense of security. In fact, a national phone survey found that youth (ages 13-17) were more likely to report interest in trying an e-cigarette offered by a friend if it were flavored like fruit, candy or menthol, compared to tobacco. This study also found that youth believed that fruit-flavored e-cigarettes were less harmful than tobacco-flavored e-cigarettes.

And it is precisely these flavors that will sometimes cause inclusion of known harmful chemicals to these e-liquids, in addition to nicotine, like diacetyl and propylene glycol. The former is a known chemical related to the disease colloquially known as "popcorn lung", and the latter is a known allergen causing respiratory and skin reactions similar to those experienced by people with allergies to peanuts, strawberries, or shellfish. Having labels clearly show the contents of these liquids, will give everyone better ability to avoid such harmful chemicals.

While we still have much to learn about these new products, the evidence is already clear that it is unsafe for young people to use e-cigarettes or any other product containing nicotine. As stated by the Surgeon General, "E-cigarette use poses a significant – and avoidable – health risk to young people in

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HB 1446

Attachment 3  
page 2

the United States. Besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body."ii. By requiring labels to show nicotine content and ingredients, we can better educate about the nicotine's danger to youth's undeveloped brains, and hopefully reduce the appeal, and ultimately the use rate of all tobacco products, for our youth.

Finally, with electronic product use at FDA declared "epidemic" levels for our youth, and with new products and flavors being introduced at a lightning pace, we can't risk waiting for national policy or FDA regulation. We can lead the way in North Dakota by labeling the contents of e-liquids. We can lead the way in protecting our kids and all our citizens, and that creates healthier people and a healthier state, and that saves lives.

Again, thank you for this time in front of you, Chairman Keiser, and the Committee. It is very appreciated. Please vote Do Pass on HB 1446.

May I take any questions?

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

i. Pepper, JK, et al., "Adolescents' interest in trying flavoured e-cigarettes," Tobacco Control, 25:ii62-ii66, published online September 15, 2016.

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

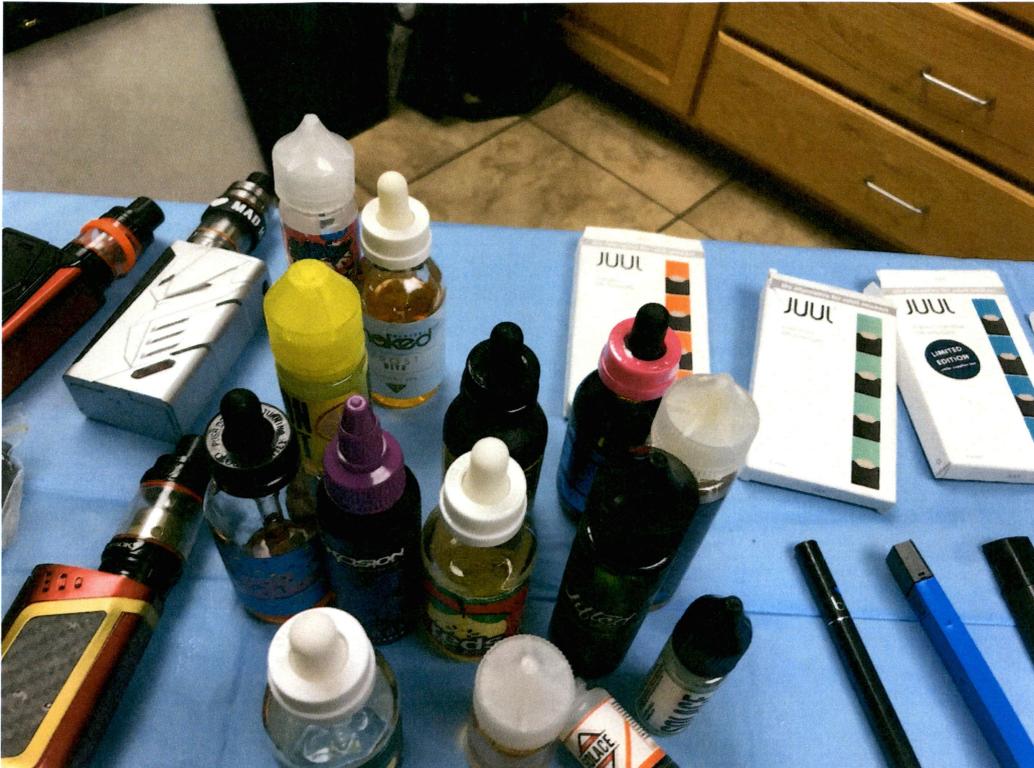


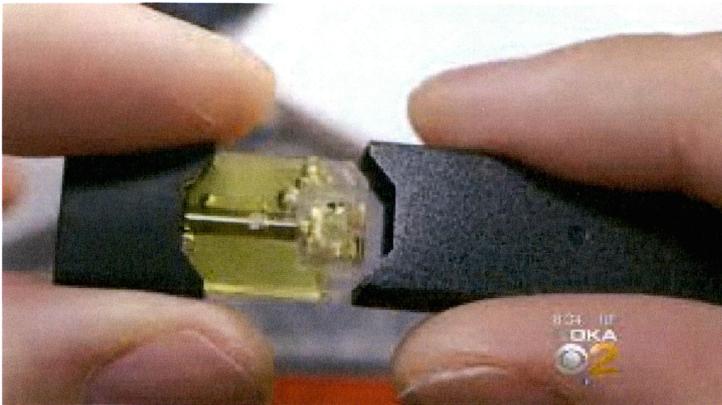
Photo of actual e-juices and electronic tobacco devices confiscated during the fall of the 2018-2019 school year at a North Dakota High School.



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HB 1446

Attachment 3  
page 4

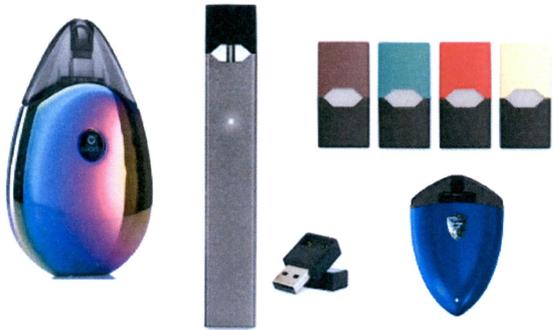


Photos of the JUUL system – one of the most popular ways youth use tobacco e-juices.

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

page 5

## NEW PRODUCTS



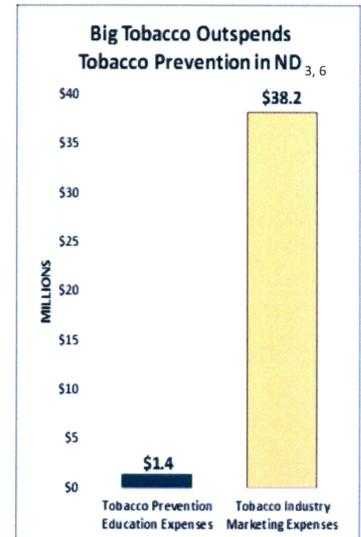
## MORE FLAVORS



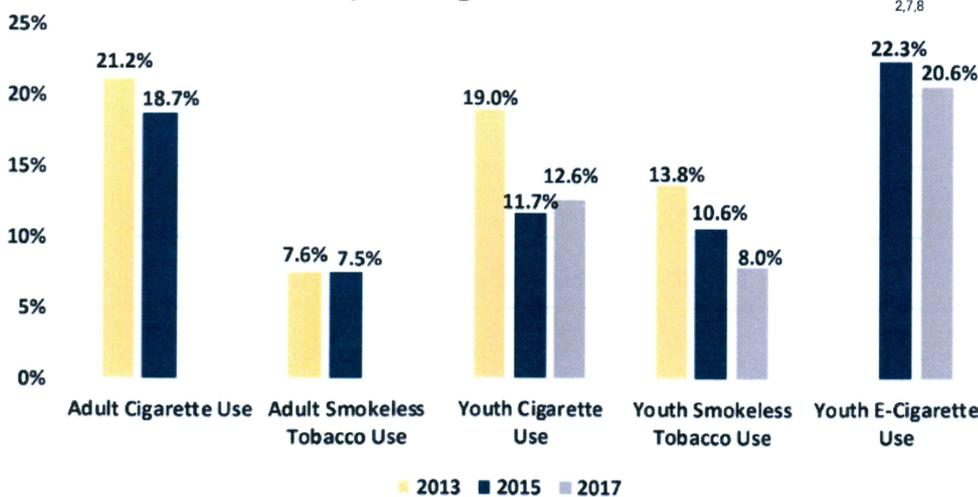
Big Tobacco and the vaping industry are constantly trying to come up with new ways to target youth. Between flavors and high tech/sleek designs its no wonder these products appeal to kids. Their latest products have been showing up in Bismarck/Burleigh County schools. These products CONTAIN NICOTINE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

## What can North Dakota do to protect youth?

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



## Tobacco Use by ND High School Students and Adults



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

# SOURCES

page 6

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



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

Bismarck-Burleigh Public Health

Attachment 4

page 1

HB 1446

Jan 28, 2018

HB 1446  
 NOV 2018- all e-liquid containing nicotine have to have all ingredients listed.  
 Due to the regulations already in place by the FDA we find it unnecessary to duplicate a federal law. We are in favor for making positive changes & to abide by FDA regulations creating a safer environment for usage of e-liquid products.

- Nicotine percentage by volume of bottle size.
- Ingredients
- PG/VG ratios
- 50% <sup>label</sup> warnings

Just like any other product w/ multiple ingredients e-liquid manufactures do not want to give out <sup>product</sup> in depth ingredients that are proprietary to the recipe but are willing to be compliant.

There should be stricter guidelines & penalties for those who are not in compliance w/ labeling & making the e-liquid in non-certified settings.

<sup>label</sup> Copy of FDA regulations stating <sup>maey adams</sup> all vape shops must have labels w/in compliance.

Good Afternoon,  
 Chairman Keiser, & committee members.  
 I am Alexis Newton, the regional manager of 4 infinite vapor locations in North Dakota. Bismarck, Minot, Fargo, & Grand Forks. we <sup>help</sup> serve around 10,000 people in ND <sup>w/ a safer alternative</sup> ~~who are~~ to tobacco.  
 at this time i am neutral, I dont necessarily support or oppose this Bill.

I am here to better understand this Bill & inform you about the <sup>FDA and how</sup> regulations <sup>in</sup> that we are already <sup>in</sup> compliance with. <sup>NOV 2018 - FDA put in place stricter labeling guidelines.</sup>  
 I brought 2 examples of bottles showing FDA compliant <sup>50% warning labels</sup> labels (ISO certified lab w/ a chemist <sup>Child safety cap properly</sup> <sup>we've already been in line w/</sup> <sup>label</sup> <sup>approval</sup> <sup>per</sup> <sup>FDA</sup> <sup>labeling</sup> <sup>requirements</sup> <sup>for</sup> <sup>adults</sup> <sup>are</sup> <sup>you</sup> <sup>looking</sup> <sup>to</sup> <sup>better</sup> <sup>enforce</sup> <sup>what</sup> <sup>the</sup> <sup>FDA</sup> <sup>already</sup> <sup>has</sup> <sup>in</sup> <sup>place</sup> <sup>or</sup> <sup>to</sup> <sup>make</sup> <sup>stricter</sup> <sup>regulations</sup> <sup>that</sup> <sup>would</sup> <sup>have</sup> <sup>the</sup> <sup>chances</sup> <sup>of</sup> <sup>helping</sup> <sup>people</sup> <sup>w/</sup> <sup>harm</sup> <sup>reduction</sup> <sup>from</sup> <sup>tobacco</sup>.)

We want to be responsible and follow guidelines. Due to the regulations already in place by the FDA we find it unnecessary to duplicate a federal law. Since there is <sup>no</sup> <sup>evidence</sup> <sup>that</sup> <sup>the</sup> <sup>law</sup> <sup>has</sup> <sup>been</sup> <sup>fair</sup> <sup>in</sup> <sup>enforcing</sup> <sup>it</sup> <sup>to</sup> <sup>comply</sup> <sup>with</sup> <sup>the</sup> <sup>regulations</sup> <sup>and</sup> <sup>there</sup> <sup>should</sup> <sup>be</sup> <sup>stricter</sup> <sup>penalties</sup> <sup>for</sup> <sup>those</sup> <sup>not</sup> <sup>in</sup> <sup>compliance</sup> <sup>with</sup> <sup>the</sup> <sup>regulations</sup> <sup>and</sup> <sup>to</sup> <sup>the</sup> <sup>best</sup> <sup>of</sup> <sup>my</sup> <sup>ability</sup> <sup>to</sup> <sup>answer</sup> <sup>your</sup> <sup>questions</sup> <sup>and</sup> <sup>concerns</sup>.

**Testimony to the North Dakota House Industry, Business, and Labor Standing Committee  
On House Bill 1446 Related to Ingredient Labeling on Nicotine Liquid Containers**

**By Kelly Buettner-Schmidt, PhD, RN, FAAN**

**Monday, January 28, 2019**

Mr. Chairman Keiser and members of the Industry, Business, and Labor Committee, I am Kelly Buettner-Schmidt. I reside in Fargo and am an Associate Professor of Nursing at North Dakota State University (NDSU). I conducted research in tobacco prevention and control. I am not testifying on behalf of NDSU.

Recently I have conducted research on liquids for electronic cigarettes, also known as e-liquids for e-cigarettes. I have been asked to share some of the findings of this research to this committee. The study was funded with a grant from the North Dakota Center for Tobacco Prevention and Control Policy. Funding for the lab facility was made possible by a National Institutes of Health grant. Portions of the study have been published in the Journal of Pediatric Nursing and in a journal called Tobacco Control. Other portions have not yet been published.

In 2015, my colleagues and I at NDSU conducted research on vape stores, e-cigarettes, and the e-liquid refill bottles sold in each of the 16 vape stores operating in North Dakota. At the time, none of these stores were required to be licensed by the state of North Dakota as tobacco retailers and none were licensed. Today I will focus on the portions of the study relating to labeling of e-liquid refill bottles. We purchased and assessed 94 e-liquid refill bottles. We assessed for 4 things that may be of interest to the committee. First, we determined the accuracy of the labeled amount of nicotine to the actual nicotine content in 93 of the 94 bottles purchased; we could not assess all 94 as one did not have a label indicating the nicotine levels. Second, we noted other characteristics of the labelling. Third, we assessed for the available flavorings of e-cigarettes sold in the stores. And fourth, we asked store clerks if extra nicotine could be added to the e-liquid refill bottles.

In 2015, there were 6 common e-liquid refill bottle strengths of nicotine available, 0 mg/ml, 6 mg/ml, 12 mg/ml, 18 mg/ml, 24 mg/ml, and 36 mg/ml. There were also some strengths that we found that were not common, such as 3 mg/ml and others.

I will now describe the method and results of the nicotine analysis. The nicotine content of each refill bottle was analyzed in a chemistry lab at NDSU using the validated high-performance liquid chromatography method. Our results were described in terms of 10% variance from the labeled amount of nicotine. A 10% variance was used as an entity named the "American E-liquid Manufacturing Standards Association" provided voluntary guidance to e-liquid manufacturers and recommended no more than a 10% variance of the labeled quantity to the actual content of nicotine in e-liquids.

Of the 93 refill bottles labeled for nicotine content, 70 bottles claimed to contain nicotine and 23 bottles claimed to have no nicotine. Of the 70 bottles claiming nicotine, and allowing for a 10% variance from the labeled quantity of nicotine, 36 bottles or 51% were outside the labeled concentration. For these 36 bottles, 24 contained less nicotine and 12 contained more nicotine. Variation ranged from 66% below the labeled amount (2.0 mg/ml rather than the labeled amount of 6.0 mg/ml) to 172% above the labeled amount (13.6 mg/ml rather than the 5.0 mg/ml labeled amount).

Of the 23 refill bottles claiming to not contain nicotine, 10 or 43% did in fact contain nicotine. The average nicotine content was 0.19 mg/ml with the highest at 0.48 mg/ml.

The findings of inaccurate labeling of nicotine content of e-liquid refill bottles has been found in studies conducted in other states and other nations. Other studies in the U.S. found similar trace amounts of nicotine in bottles labeled as having no nicotine and one study found 21 mg/ml in a bottle labeled as having no nicotine

The second item we assessed was taking note of the label characteristics other than the nicotine content. Of interest to this committee may be the fact that some bottles claimed to contain Vitamin C or Vitamin B12; we did not analyze for these constituents. Most bottles had labels provided by the manufacturer, but some bottles had no labels and were written on with black ink marker. Most of the packages stated that the product was not meant to be used by minors and had warnings about the poisonous nature of the product, but the warnings were not consistent. Many labels mentioned that the product was not FDA approved. One label stated that the product was "FDA registered." Although the FDA registers manufacturing establishments, it does not register products; thus, this statement may be misleading to consumers.

The third item we assessed was in regards to the flavorings sold in each of the vape stores. We assessed 2 items regarding flavors. First, the data collectors estimated the number of e-cigarette flavors sold in each store. It was estimated that 7 stores carried more than 100 flavors, 4 stores carried between 51 and 100 flavors, 3 stores carried between 11 and 50 flavors, and 2 stores carried 10 or fewer flavors. The second item assessed was the most common flavor sold as reported by the store clerk. No specific flavor trend was identified. The responses with more than 1 response included: Lava Berry ( $n = 3$ ), Mother's Milk ( $n = 2$ ), unsure ( $n = 2$ ). These flavors each had 1 response: "the flavors that they make in house", watermelon, cappuccino, Island Squeeze, Cloud 13, Burkhart's Brew, Gummy Worms, "did not know", and "many".

The final item we assessed was to inquire if more nicotine could be added to the e-liquid refill bottles. Sales clerks in 4 stores stated they could add more nicotine to the refill bottles and 1 store provided 8 solutions by mixing the concentrations from stock bottles.

Thank you for the opportunity to appear before this committee and I am available for questions.

Respectfully submitted,

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