

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/05/2019**

Amendment to: Engrossed HB 1477

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1477 prohibits the sale of flavored e-liquid to minors.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of engrossed HB 1477 prohibits the sale to minors of flavored liquid for use in electronic smoking devices. It also imposes a fine of \$500 per package of product on a violating retailer.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed HB 1477 may result in the collection of some fines, but the amount of fines cannot be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701.328.3402

**Date Prepared:** 02/07/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/05/2019**

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**Agency:** Office of Tax Commissioner

**Telephone:** 701.328.3402

**Date Prepared:** 02/07/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/14/2019**

Bill/Resolution No.: HB 1477

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	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1477 prohibits the sale of nicotine-based e-liquid.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of HB 1477 prohibits the sale of flavored liquid nicotine for use in electronic smoking devices. It also imposes a fine of \$100 per package of product on the offending retailer, and a fine of \$10,000 on the manufacturer that is in violation of the law.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, HB 1477 may result in a loss of sales tax revenue unless purchasers switch to other available products. The bill may also result in the collection of some fines. However, neither of these changes in revenue can be estimated as there is very limited information about the use of flavored nicotine products.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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**Name:** Kathryn Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701.328.3402

**Date Prepared:** 01/19/2019

**2019 HOUSE HUMAN SERVICES**

**HB 1477**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Union Room, State Capitol

HB 1477  
1/21/2019  
31109

- Subcommittee  
 Conference Committee

Committee Clerk: Elaine Stromme by Donna Whetham

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

Relating to prohibiting the sale of flavored e-liquid; and to provide a penalty.

## **Minutes:**

Attachment 1-5

**Vice Chairman Rohr:** Opened the Hearing on HB1477. Roll call taken. A quorum is present.

**Representative Alisa Mitskog, District 25:** In support of HB 1477. (See Attachment 1) (1:53 – 4:00)

**Maddy House, a Junior at Century High School:** Speaking on behalf of the Century High School SADD students and the Bismarck Tobacco Free Youth Board in support of HB 1477. (See Attachment 2). 4:00 - 8:45

**Heather Austin, Executive Director for Tobacco Free North Dakota:** In support of HB 1477. (See Attachment 3) 9:10 – 14:41

**Representative Tveit:** Can the e-products be advertised on TV?

**Heather Austin:** It is my understanding that they are not included in the agreement that prohibited tobacco advertising, because they are new. You do see full page advertisements in newspapers where you would not for traditional cigarettes.

**Representative Skroch:** I'm trying to visualize this when you can deliver the equivalent of an entire pack of cigarettes in one hit. What is the risk of overdosing and are you aware of incidents of overdose? Would this limit access to the age of 18?

**Heather Austin:** The pod I referenced it is equivalent to the nicotine content of a pack of cigarette, so it is not one hit it is the entire pod. Nicotine is known to be poisonous. In some countries it is used as an insecticide. There have been many poisoning phone calls. They spiked in 2014 with just shy of 3000 poison phone calls. There have been toddler deaths and pet deaths because they smell really good to pets and they chew through the packaging.

**Vice Chairman Rohr:** You have some data is for the stores in North Dakota that carry this but what is the data for the number of youth using?

**Heather Austin:** The data is climbing in North Dakota, in the data from 2017 showed that 21% of our youth admitted to using these products.

**Reba Mathern-Jacobson, The American Lung Association:** In support of HB 1477. We do support the banning the sale of flavored nicotine products. 18:58-19:04

**Vice Chairman Rohr:** Any further support? Any opposition to HB 1477?

**Gregory Conley on behalf of the American Vaping Association:** In opposition to HB 1477. I strongly urge you to reject HB 1477. (See Attachment 4) (20:23:22)

**Representative Tveit:** This bill is for limiting youth smokers not adults?

**Gregory Conley:** You will deter adult smokers who are switching to these products. If you are an adult who wants to quit smoking a cheap imitation of something designed to taste like a cigarette, remember the e cigarette has no flavor. Tobacco is a flavor. There is no evidence that youth who are looking to rebel or large nicotine hits that go to their brain that if you eliminated flavors that they wouldn't go seek out that hit anyway. We fear you could be restricting adults and do nothing on youth usage. There was a study from Yale that cited the worst effect on public health would be if you banned flavored e cigarettes and did not ban menthol cigarettes. You would end up with more smoking and less quitting. That is what will happen if this bill passes.

**Representative Schneider:** You cited the FDA in support for adults quitting through vaping but are you also aware that there was a study that says this is an epidemic for our youth?

**Gregory Conley:** That is why FDA Commissioner Scott Gottlieb says in one month we are going to put out official policy restricting the sale of flavored vapor products to adult only retail stores. He recognized he wants to ban flavored cigars and menthol cigarettes, but flavored e cigarettes provide a gateway out of smoking for adults.

**Representative Schneider:** Do you know any adults that use gummy bears?

**Gregory Conley:** Yes, I quit with watermelon flavor gummies. If we were talking about marketing of flavors or names what we put on the label, that is very different then just saying 85-90% of products put on the market banned immediately. That is a big difference.

**Representative Schneider:** But that hasn't been proposed?

**Gregory Conley:** No, we have only been talking about a ban that will shut down small businesses.

**Representative Schneider:** Do you think that we will believe that it will undermine adult quitting through vaping if we ban children's type flavors such as gummy bears and skittles?

**Gregory Conley:** You are not simply going after bad companies that are infringing on trademarks there are thousands of adults saying if there were not flavors that they would still be smoking.

**David Owen:** In opposition to HB 1477. I started smoking to relax, then I realized how unhealthy it was. I looked at the single most important thing I wanted to replace in an alternate product. That was the taste of tobacco in my mouth. How I quit smoking I started out with e cigarettes. I started out with grape flavor, it tastes good with no smell. I can have my nicotine in a safe way and in an appealing way to me. If you pass this bill you will take away the single most important benefit in terms of experience over cigarettes. I have been vaping for 2 years.  
30:36

**William Boldenow, owner of Infinite Vapor:** In opposition to HB 1477. Owner of stores that sells e cigarettes. We have been open 5 years now and have been able to help in the tens of thousands of North Dakotans alone. We have 13 stores across 3 states. No one wants these in the hands of children, but we have not been compliance checked in three years. I do think the problem could be curbed with better restrictions on marketing. Everyone who vapes likes flavors, not tobacco. Most people who quits does not want the taste of tobacco or no flavor. If this bill passes we will go out of business and it will push people back to cigarettes. There are many other ways to help stop this, I think sensible legislation is in order but I strongly urge you not to pass this bill. (33:00-35:55)

**Representative Westlind:** What is the average age are your customers?

**David Owen:** I would say average of 30 years old. We have helped a wide range of people to quit smoking.

**Representative Westlind:** Do you sell any other products in your stores and do you think the real reason they are buying your products is to quit smoking?

### **In opposition to to HB 1477**

**David Owen:** With the new CBD becoming federally legal we will have that and other than that we sell strictly a harm reduction electronic cigarette and yes I do think we have helped tens of thousands to quit real cigarettes. 98% of the people we serve are trying to get off cigarettes. (37:27)

**Ty Cox, Dutchman Vapors:** Owner of store that sells e cigarettes with 3 locations in North Dakota as well as a manufacturing facility. I smoked for 22 years and was able to quit with the help of vaping. I tried everything before that. We can help people get off smoking and we help thousands every month quit smoking. We serve about 9000 customers a month. Under 1% of our sales are tobacco flavored products, under 2% of sales are for menthol flavored products the 97% of sales are for all other flavors. You would be cutting out 97% of what I sell every month to customers I help. Customer ages range from 25 to 86. In opposition to this bill. 41:05

**Darius Endres, owner of Sports Vape:** I am extremely opposed to this bill. If this bill passes I will have to close my doors or move to another state. People need these flavored e cigarettes they need another option instead of the tobacco flavored cigarettes. A lot of the adults love all the flavors. It could create a black market because Minnesota has flavors so potentially people could go across the border and buy it. I agree that anyone 17 and under should not have these products. Please turn this bill down. (42:00- 44:50)

**Justin Danberry, owner of Ecig City:** In opposition to HB 1477. A vape shop owner in Fargo. I smoked and started at age 18 and I was able to quit after I found vaping. I didn't want anything that tasted like a cigarette. We have just over 3000 customers a month. I can't remember the last time I sold a product that was tobacco flavored or just menthol. We generally sell a fruit menthol mix. This ban would put be out of business. I tried many ways of quitting but vaping actually helped me quit and I want to help other people quit. I feel like am doing something good and helping others. Nobody wants minors to have these products.

**Mike Rud, President of the North Dakota Petroleum Marketers Association:** In opposition to HB 1477. (See Attachment 5). 49:40-50:08

**Avery Kraemer, owner of Omologato Ecigs in Fargo:** I have been doing this for 3 years. Out of the 50,000 customers I have helped at 8 different stores and I have had only one customer not wanting a flavored juice. In opposition to HB 1477. 50:15-51:25

**Todd Fiechtner, store owner of Ecig City in Fargo ND:** I respectfully ask that you oppose HB 1477.

**Neil Wells, Ecig City:** I work in the industry and I was a 2 pack a day smoker for over 10 years and I am now 30 years old. I quit using flavors that was not tobacco, but I still use grape and menthol. I strongly oppose HB 1477.

**Matthew Clark:** In opposition to HB 1477. I wanted to correct one statistic presented today. One e jewel pod is equivlant to 3 or 4 cigarettes. The average cigarette is about 12 mg of nicotine per cigarette. In one jewel pod you are getting about 50 mg. of nicotine. 52:30

**Brandon Forde, Omologato Ecigs:** In opposition to HB 1477. Without e cigarettes I would still be smoking myself, please oppose the bill.

**Vice Chairman Rohr:** Any one in a neutral position? Seeing none. Closed the hearing on HB 1477.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

HB 1477  
1/30/2019  
31838

- Subcommittee  
 Conference Committee

Committee Clerk Signature Nicole Klamann

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

Relating to prohibiting the sale of flavored e-liquid; and to provide a penalty.

## Minutes:

**Chairman Weisz:** Opened meeting on HB 1477.

**Rep. Gretchen Dobervich:** Considering the testimony and thinking about how we address some of the other smoking related issues. I'm wondering about amending it stating that you cannot market to children, names of flavors not exaggerated. The bill author also discussed increasing the age to purchase flavors to 19.

**Rep. Tveit:** With all the use of labels and wrappers are they infringing on patent rights?

**Rep. Dwight Kiefert:** Valley City has passed an ordinance banning the sale of flavored already.

**Rep. Rohr:** The people in opposition were the business owners that sell the product and chronic smokers as it's helped them.

**Rep. Dobervich:** This is why I was entertaining the amendment because they have helped people, we just need to narrow the audience.

**Rep. Schneider:** The testimony I remember the most was the Century High student. She stated it's an epidemic in the high schools, clearly they are marketing to kids. The widespread use, a whole new generation addicted to nicotine.

**Rep. Skroch:** My concern in part is the ease at which children can get it into the school and the delivery system. I don't know that this bill will fix that. It's concerning that it looks like a flash drive.

**Rep. Tveit:** One thing I remember with testimony is flavorless tobacco, is a flavor.  
I motion for a do pass

**Rep. Kiefert:** Seconded.

**Rep. Rohr:** I am going to resist the motion because I don't think it addresses the issues at hand.

**Rep. Matthew Ruby:** I too am going to resist the motion. There is clearly an issue and this bill is not addressing them.

**Rep. Damschen:** I don't think this is a solution but I am going to support because of the issues vaping is causing. What is the answer?

**Rep. Skroch:** I would be willing to have the sponsor look at it and see if we can fix it somehow. It would be up to the committee to see if we can't address the issue in the schools right now.

**Rep. Dobervich:** Can we change it to a study of the issue VS. Passing or not passing something, maybe we need to look at what can we do.

**Rep. Tveit:** I don't like the study because we would be looking at another 2 years down the road before we do anything with it. I'm more inclined to go with Rep. Skroch's suggestion of having the sponsor make changes. With that I will withdraw my motion

**Rep. Kiefert:** I withdraw my Second.

**Rep. Dobervich:** I will get with Representative Mitskog and see what we can do.

**Chairman Weisz:** Closed meeting

# 2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

HB 1477  
2/4/2019  
32092

- Subcommittee  
 Conference Committee

Committee Clerk: Nicole Klamann

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

Relating to prohibiting the sale of flavored e-liquid; and to provide a penalty.

## Minutes:

**Chairman Weisz:** Opened meeting

**Chairman Weisz:** So if I read this amendment correctly it doesn't ban the sale of flavors anymore except for those under 21 years old.

**Representative Karen Rohr:** I have a question of why 21 years of age and not 18 years of age.

**Representative Clayton Fegley:** Flavorless is the biggest issue in schools. I don't think the bill addresses the issue of them.

**Representative Matthew Ruby:** Motion for a DO NOT Pass

**Representative Todd Porter:** Seconded the motion.

**Chairman Weisz:** Representative Mitzcog? Why 20 and 19 year olds?

**Representative Alisa Mitzcog:** I had discussion with the industry, and we don't want to restrict the sale on things adults want. Liquid Nicotine is falling into the hands of underage. Try to buy flavored Nicotine, you can't buy it. Moving forward to figure out a plausible age we can agree on. Lobbyists were not opposed to 21 years old.

**Representative Mary Schneider:** We heard from Representative Ruby that the teachers are stating it's the unflavored that is posing the problem

**Rep. Mitzcog:** Contrary to what I believe to be the problem, or what I was told. One lobbyist was concerned about illegal sales to underage by an of age individual. We discussed increasing the penalty for selling to a minor. Kids buying from 19 year olds.

**Chairman Weisz:** Further questions?

**Rep. Mitzcog:** I was warned when writing this piece of legislation to avoid an all-out ban. I serve on a local coalition and speaking to school officials, they are concerned by the use of electronic devices-E-CIGS.

**Chairman Weisz:** Current fine for selling to underage by an individual of age. Not the actual store.

**Rep. Mitzcog:** I do not know the specific. I would add, even the Representative from convenient stores wouldn't be opposed to 21 years of age. I asked my local gas station if enforcing that age would be an issue. She stated no because they are already checking the IDs of young people.

**Representative Bill Tveit:** When you are dealing with 21- Throughout the state we recognize 18 year olds as adults. I believe this is the problem.

**Rep. Mitzcog:** I think this product is unlike any we've seen for decades. We need the US Government and Attorney General needs to get on top of this. I respect that at 18 they can buy a cigarette. But increase has become an epidemic.

**Rep. Tveit:** I understand your fears but don't think this bill or amendment addresses the issue.

**Rep. Mitzcog:** What can be done is the million dollar question. I believe limiting the access is a step. The research is indicating higher rates of underage use.

**Representative Greg Westlind:** Flavored Juell products can only be bought online?

**Rep. Mitzcog:** It's my understanding that you can only buy this brand online.

**Rep. Westlind:** How is the age determined over the internet?

**Rep. Mitzcog:** I went to the Juell site and their actions would demonstrate there is an issue here.

**Rep. Schneider:** If this bill isn't the right solution, is there any plan for a study?

**Rep. Mitzcog:** It's been brought up as an option. Per US General, this is an epidemic. I can vet out the statistics, which will put us further behind. How are we going to respond to all the nicotine addicts, underage.

**Representative Chuck Damschen:** Problem is really with under age illegal use, so maybe crack down on the people selling it.

**Rep. Mitzcog:** This was suggested by tobacco lobbyist. Part of the amendment is action, if we don't want to agree to the age restriction of 21. I'd be open to that.

**Representative Dick Anderson:** When I consider 18-21, someone at 21 could still be connected to high school friends. I can understand the requested age limit.

**Rep. Mitzcog:** We can probably all go back to our days when we were underage.

**Rep. M. Ruby**            Infraction Class A misdemeanor. If we can increase that?

**Chairman Weisz:** Sale of tobacco to minor, under 12.1.3103

**Rep. M. Ruby**            57-36-33 Penalties for Underage Sale of Nicotine. If we want to amend to increase fine, I'd be willing to withdraw my motion-If not I'd like it to remain.

**Rep. Dobervich:** Chapter 51-32 in person fine is \$300.00 dollars fine, online \$100-\$1000.00 fine

**Rep. Damschen:** Strike Page 1 lines 4-15, Subsection 2 add "legal age", Section 8 line change 100.00 to 500.00, Strike subsection 4

**Rep. M. Ruby:** Second

**Chairman Weisz:** So everyone is clear, we are striking out the e-flavored, striking manufacture and basically saying if you sell to a minor you will be fined \$500.00. Removing sections 1 and 4 and amending 2 and 3, eliminating 4 leaving 5.

**Voice Vote:** Motion carries to adopt Amendment

**Rep. Schneider**        I would move an amendment to remove on pg 2 subsection 5 and substitute the language on the amendment. Subsection 5 Adds language of class B misdemeanor and gives the defense sale must have been made in good faith. 21 would be replaced with under 18

**Rep. Dobervich:**        Second

**Rep. Tveit**            We are dealing with the sale of, do we need to recognize furnishing of?

**Rep. M. Ruby**            I think I am going to resist this because we aren't consistent here.

**Rep. Schneider**        I don't think we are saying cigarettes are an epidemic and the fact that this would be a class B misdemeanor might have some important noting factors as a court appearance is necessary. The epidemic proportions of this justify the difference.

**Voice Vote:** Undetermined

**Roll Call Vote:** Yes            4            No 8            Absent 2  
Motion to adopt amendment fails

**Rep. M. Ruby** I move do pass on HB 1477 as amended

**Representative Dick Anderson:** Second  
(0:44:54)

**Chairman Weisz:** Previously amended line 6-15 is gone, subsection 3 fine from \$100 to \$500, subsection 4 removed, subsection 2 stays adding language "under the legal age" Subsection 5 should go because it references Subsection 4, but that amendment was not adopted.

**Rep. M. Ruby** I withdraw my motion  
**Representative Dick Anderson:** I withdraw my second

**Rep. Porter** I move to further amendment HB 1477. Page 2, remove subsection 5 lines 1,2 and 3

**Rep. M. Ruby** Second

**Voice Vote:** Motion to Amend Carries

**Rep. M. Ruby** Move a Do Pass as amended  
**Rep. Anderson** Second

**Roll Call Vote:** Yes 11 No 1 Absent 2  
Motion carries, do pass as amended.

**Rep. Damschen:** Carrier.

DA 2/4/19

19.0928.01002  
Title.02000

Adopted by the Human Services Committee

February 4, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1477

Page 1, line 2, after "e-liquid" insert "to minors"

Page 1, line 6, after "e-liquid" insert "to minors"

Page 1, remove lines 7 through 15

Page 1, line 16, replace "2." with "1."

Page 1, line 17, after "e-liquid" insert "to a minor"

Page 1, line 18, replace "3." with "2."

Page 1, line 18, replace "2" with "1"

Page 1, line 19, replace "one" with "five"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 3

Re-number accordingly

Date: 2-4-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1477**

House Human Services 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. M. Ruby Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

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

Absent \_\_\_\_\_

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

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

- Motion Withdrawn

Date: 2-4-19  
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1477**

House Human Services 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. Damschen Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr – Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

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

Absent \_\_\_\_\_

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

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

*Voice Vote: Motion to adopt amendment carries.*  
*Page 1, line 2 add "to minors"*  
*line 6 add to minors*  
*7-15 Remove*  
*16 Replace 2 with 1*  
*17 add to minors*  
*18 Replace 2 with 1*  
*page 1 line 19 - replace 1 with 5*  
*21-24 - Remove*

Date: 2-4-19  
 Roll Call Vote #: 4

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1477**

House Human Services 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. Schneider    Seconded By Rep. Dobervich

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr - Vice Chairman		X	Mary Schneider	X	
Dick Anderson		X			
Chuck Damschen		X			
Bill Devlin		X			
Clayton Fegley	X				
Dwight Kiefert	<del>_____</del>				
Todd Porter		X			
Matthew Ruby		X			
Bill Tveit		X			
Greg Westlind		X			
Kathy Skroch	<del>_____</del>				

Total (Yes) 4    No 8

Absent 2

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

If the vote is on an amendment, briefly indicate intent:  
Roll Call Vote as Voice Vote Undetermined (Vote 3)  
Motion Fails, Adopt Amendment  
page 1, Remove Lines 21 through 24

Date: 2-4-19  
 Roll Call Vote #: 5

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1477**

House Human Services 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. Anderson

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

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

Absent \_\_\_\_\_

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

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

Withdrawn!

Date: 2-4-19  
 Roll Call Vote #: 6

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1477**

House Human Services 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 Porter Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

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

Absent \_\_\_\_\_

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

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

*Voice Vote to Adopt Amendment Carries  
 Page 2, remove subsection 5 lines 1, 2 and 3*

Date: 2-4-19  
 Roll Call Vote #: 7

2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1477

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.0928.01002

- 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. Anderson

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr - Vice Chairman	X		Mary Schneider	X	
Dick Anderson	X				
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert					
Todd Porter	X				
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind		X			
Kathy Skroch					

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Damschen

If the vote is on an amendment, briefly indicate intent:  
Motion carries, Do Pass As Amended

**REPORT OF STANDING COMMITTEE**

**HB 1477: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1477 was placed on the Sixth order on the calendar.

Page 1, line 2, after "e-liquid" insert "to minors"

Page 1, line 6, after "e-liquid" insert "to minors"

Page 1, remove lines 7 through 15

Page 1, line 16, replace "2." with "1."

Page 1, line 17, after "e-liquid" insert "to a minor"

Page 1, line 18, replace "3." with "2."

Page 1, line 18, replace "2" with "1"

Page 1, line 19, replace "one" with "five"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 3

Re-number accordingly

**2019 SENATE JUDICIARY**

**HB 1477**

# 2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1477  
3/19/2019  
#33968 (37:41)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel/ Alicia Larsgaard

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

A BILL for an Act to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the sale of flavored e-liquid to minors; and to provide a penalty.

## **Minutes:**

5 Attachments

**Chair Larson:** Opened the hearing on HB 1477.

**Alisa Mitskog, District 25 Representative: Testified in favor. (See attachment #1)**

**Representative Mitskog:** I encourage the committee to consider an amendment of possibly restricting flavored nicotine to those under 21. I know there is another amendment Senator Bakke has.

**Senator Luick:** Do we know in North Dakota what rate of teen's use is at?

**Representative Mitskog:** There will be those experts following me. One of the challenges is that this is becoming such an emerging issue that getting numbers is so difficult because it's such a new issue.

**Senator Luick:** About two sessions ago, we had that this in front of us when we were trying to determine if it was a tobacco product or not. We had people here with vials of this vaping product. The nicotine was so high that we were told that if that material was put onto an infant's skin, it could be fatal.

**Representative Mitskog:** You raise a significant issue. The potency of the nicotine and the cartridges come in various strengths. Some of the cartridges carry the equivalent of a package of cigarettes. Following my testimony, I could share more specifics on that. The argument has been that this has been a good cessation tool for those who want to quit smoking. This issue is that we have a new segment of users that most likely would not have started smoking cigarettes but they have heard the message that this is a safe product to

use. In talking to school officials, they're seeing users in students that they wouldn't be traditional smokers.

**Senator Bakke:** When you get a pack of cigarettes, it has the Attorney General's warning that it could be harmful to your health. Is that type of warning on e-cigs?

**Representative Mitskog:** I haven't really examined a package. One of the companies has moved out in front of this issue. They have removed the flavored nicotine from bricks and mortar store. They're only available for online purpose. You have to be 21 to purchase. That verification process, I don't know how you do that online. There has been some movement in the industry but probably not soon enough.

**(9:02) Neil Charvat, Director of the Tobacco Prevention and Control Program for the ND DOH: Testified in favor. (See attachment #2)**

**(14:27) Senator Bakke:** Is there a warning label on these devices like there are on packs of cigarettes?

**Neil Charvat:** There is no warning. These are not regulated as tobacco products. There is no warning label required by the FDA or anyone to be on these products.

**Vice Chairman Dwyer:** You are now the head Director of Tobacco Prevention and Control in the Health Department. If this bill passed, would that help you, in including this in your work, to prevent tobacco use amongst teens and so forth?

**Neil Charvat:** This would help, but it's hard to say what percentage it would reduce it to. This is a step in the right direction. In my opinion, we have other steps we could take, but it's a start.

**Vice Chairman Dwyer:** In your efforts to prevent tobacco use, do you also have programs to diminish the use of this as well already?

**Neil Charvat:** We treat this already as a tobacco product. Even though the industry does not require it to be viewed as a tobacco product and it is not taxed as a tobacco product, we treat it as such because it is nicotine from tobacco. We recommend people who want to quit using this product, to do the same thing one would do with the tobacco product. We help people quit this with ND quits. We treat it as an addiction as well.

**Senator Luick:** This bill is engrossed. Is there something here that would make this a better bill?

**Neil Charvat:** I'm not behind any efforts for amendments, I'm just here in support.

**Senator Bakke:** There's a \$500 fine if a person sells these to a minor. Do you feel that's enough of a penalty or it needs to be enhanced?

**Nei Charvat:** Penalties for sale are a good amount. If it's up to me, if it's just after the person selling, is there any culpability for say the store like if it is just the clerk? That is a question I would have to get answered to go forward.

**Chair Larson:** Can you tell be what the penalty is for selling a tobacco product to a juvenile?

**Neil Charvat:** I believe it's \$50 - \$100 and it is an infraction.

**Chair Larson:** We don't have a criminal offense attached to this as it looks.

**(19:15) Heather Austin, Executive Director for Tobacco Free North Dakota: Testified in favor. (See attachment #3)**

**(22:58) Senator Luick:** You said you had an amendment?

**Heather Austin:** Senator Judy Lee was going to submit that amendment to you all.

**Senator Bakke:** You can't buy the e-cigs unless you're 18 or is it 21?

**Heather Austin:** It is 18 in the state of ND.

**Senator Bakke:** So 18 year olds are buying it and giving it to the younger kids?

**Heather Austin:** In some cases, yes.

**Senator Bakke:** Do they have to show identification in order to purchase thee e-cigs?

**Heather Austin:** I believe so, but enforcement of that is difficult because these products are not classified as tobacco so not all vape shops are subject to compliance checks depending on where they are located within the state. Cities that have adopted the ordinance might require that of their vape shops but cities that have not, would not necessarily be doing so.

**Senator Bakke:** What about online? They can just say they are 18 and get it online, correct?

**Heather Austin:** So far as I know, it is the honor system online. I don't know how they would regulate that.

**(24:50) Deb Knuth, Government Relations Director for the North Dakota American Cancer Society Cancer Action Network: Testified in favor. (See attachment #4)**

**(25:49) Senator Luick:** Your language is not the same as Senator Lee's is it?

**Deb Knuth:** The definitions I offered in my testimony are our own. They are probably something stricter than what you're going to see in Senator Lee's.

**(26:53) Genevieve Plumadore, JUUL Labs: Testified in favor. (See attachment #5)**

**Genevieve Plumadore:** While it is not a cessation product in the eyes of the FDA, there is significant data that shows that it is a harm reduction tool. Initial studies that have come out of the U.K. show that utilizing JUUL along with counseling is more effective than utilizing Chantix, Nicorette Gum, or the Patch. There is nicotine included in those cessation tools.

Regarding the warning label, I will show you a sample of our product. We have a warning label on there. Some of the counterfeit products you see, have been associated with a lot of the health risks because they have chemicals that are not included in JUUL and never have been, also have these types of products. There are closed systems. The pods are meant to fit in one device. E-liquids are mixed so the retailer is also considered a manufacturer in the eyes of the law. Those products may not necessarily have warning labels. We proactively, as a company, have put these on our products.

You also had a question about the online verification system. Right now we have a 3 step verification process. You upload your government issued I.D. with the front and the back. You have to give your cellphone number. They do a twostep authentication. You get texted a code. If you look under the age of 30, it will ask you for a selfie. You have to take a picture of yourself and send it in. Then a third party company looks at it and verifies that you match your I.D. The last part is that if your I.D. name says something different than what is on your credit card; for example, Tom and Thomas, you will not be able to purchase the product. It has to match letter for letter. Proactively, we've done it for 21 plus. Regardless of your jurisdiction, if you are 18, you cannot purchase the product.

**Senator Bakke:** What is the nicotine level in your product?

**Genevieve Plumadore:** We have a 5% or 3%. We do not have a 0% because we believe it is a tool to help you off ramp. Someone before me mentioned that one pod has the same nicotine strength as a pack of cigarettes. That is true. One pod is 200 puffs. You as the consumer, decides how many puffs you want to take to emulate having a cigarette. It looks like a USB but it was created by two gentlemen who were design students at Stanford. They did not want smoke anymore and they did not want to have the stigma associated with smoking. They designed this product to be able to smoke at home or at work and not have the stigma. You can choose how much you take of this. We have found that most smokers finish the entire cigarette because it costs money. Here, the consumer has control as to how much they ingest.

**Senator Bakke:** How many would you have to puff to have an adverse reaction or to overdose on the nicotine.

**Genevieve Plumadore:** I don't know the answer to that. I can find out and get back to you on that.

**(34:57) Jack McDonald, ND Society for Respiratory Therapists: Testified in favor.**

The ND Society for Respiratory Therapists are the group that work in the states hospitals and clinics. Many of those respiratory problems are caused by nicotine and cigarettes. They generally support any measures and efforts that would reduce the use of nicotine products. We endorse this bill in any form that it comes out of this committee.

**Chair Larson:** Any further testimony in support? Any testimony in opposition? Neutral?

**Vice Chairman Dwyer:** In the house, I noticed they took out the definitions and increased the penalty from \$100 to \$500. What is the reason for removing those sections?

**Representative Mitskog:** I don't know. As a member of the taxation committee, the definition of tobacco e-cigs has been discussed. There's going to be a study on defining e-cigs and tobacco. Other than my observations, there have been many opinions on this.

**Senator Bakke:** What happens if you buy a pack of cigarettes and give it to a minor?

**Vice Chairman Dwyer:** It is an infraction. There is a fine up to \$1000.

**Chair Larson:** Closed the hearing on HB 1477.

# 2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1477  
3/19/2019  
#33983 (8:46)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

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

A BILL for an Act to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the sale of flavored e-liquid to minors; and to provide a penalty.

## Minutes:

2 Attachments

**Chair Larson** begins discussion on HB 1477.

**(see attachment #1)**

**Chair Larson:** This is a two-page amendment from Senator Judy Lee. This has a list of definitions including an electronic smoking device and a tobacco product.

**Senator Luick:** The whole amendment is a descriptor of the product itself and what the uses are?

**Chair Larson:** Right.

**Senator Luick: Motions to adopt the amendment adding “Electronic smoking device” and “Tobacco product” in the 57-36-01 definitions.**

**Senator Myrdal: Seconds.**

**Chair Larson:** This may make it taxable and may change some of the testimony that we heard.

**Senator Bakke:** What testimony?

**Chair Larson:** My guess is that the people from JUUL that testified in favor may not be supportive of changing their product to be defined as a tobacco product.

**A Roll Call Vote Was Taken: 4 yeas, 1 nay, 0 absent. Amendment is adopted.**

**(see attachment #2)**

**Senator Bakke:** Right now, if someone sells or provides a minor with alcohol, it is a class a misdemeanor. They feel that supplying tobacco to a minor should be a class b misdemeanor; that's what this amendment does.

**Chair Larson:** Joe, do you see any problem with the two amendments working together?

**Joseph Jensen, UND Law Intern, neutral party**

**Jensen:** I don't believe so. I'm sure any changes I would need to make would be cosmetic only.

**Senator Bakke:** If we're going to take a stand on alcohol, we should move this up for cigarettes as well. It will be a deterrent.

**Senator Bakke: Motions to adopt amendment 19.0928.02001.**  
**Vice Chairman Dwyer: Seconds.**

**A Roll Call Vote Was Taken: 4 yeas, 1 nay, 0 absent. Amendment is adopted.**

**Vice Chairman Dwyer: Motions for a Do Pass as Amended.**  
**Senator Bakke: Seconds.**

**A Roll Call Vote Was Taken: 5 yeas, 0 nays, 0 absent. Motion carries.**

**Chair Larson:** I'm not sure if this will get through the House, adding new taxes onto things.

**Senator Bakke will carry the bill.**

# 2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1477  
3/20/2019  
#34055 (19:45)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the sale of flavored e-liquid to minors; to amend and reenact subsection 1 of section 12.1-31-03 and section 57-36-01 of the North Dakota Century Code, relating to prohibiting the sale of tobacco to minors and the definition of tobacco product; and to provide a penalty.

## Minutes:

No Attachments
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**Chair Larson** begins discussion on HB 1477.

**Chair Larson:** The amendments that we put on this bill have some problems with sections of law that they went into. Legislative council came and spoke with me today. Senator Lee's definitions amendments put this into the tax code and has all kinds of tax ramifications that won't work in this bill. Fortunately, they caught that before we sent it through.

**Senator Myrdal: Motions to reconsider the actions by which we passed HB 1477.**  
**Senator Luick: Seconds.**

**Chair Larson:** Emily Thompson from legislative council contacted me. She will explain the concerns that that amendment caused. She did not have a problem with the class b misdemeanor penalty, just the definitions.

**A Roll Call Vote Was Taken: 5 yeas, 0 nays, 0 absent. Motion carries.**

## (3) Emily Thompson, Legislative Counsel, neutral party

**Thompson:** There is language that became the new section 3 of the bill that was in the tobacco tax chapter- 57-36-01. It added definitions for an electronic smoking device and a tobacco product. There was confusion about the intent of why that was added and how it's phrased. For instance, there's a current definition in that chapter for other tobacco products

such as snuff and chewing tobacco. Now we're adding a definition of tobacco product which also is defined to include snuff and chewing tobacco. There are some inconsistencies.

**Chair Larson:** You're talking about a duplication?

**Thompson:** Correct.

**Senator Myrdal:** This amendment didn't go through legislative counsel.

**Thompson:** Correct. I don't know if the intent was to provide definitions in your new section for electronic smoking devices or if that was intended to somehow tax electronic smoking devices. For practical reasons, as that language stands, if we would apply that definition, there would be four sections of that chapter that could potentially be made somewhat confusing and would change that chapter. Those deal with corporate officer liability, governor manager liability and the bonds that they have to place. Right now, the bonds are calculated in an amount equal to the estimated annual tobacco products tax liability of the company. Now we're defining tobacco product as all of these things and electronic cigarettes. Now that would also sweep in the amount of tax liability for electronic smoking devices, which are not taxed as a tobacco product currently; they're taxed as sales tax. There are some ripple effects in that chapter.

**Chair Larson:** We'll reconsider the unnumbered, Judy Lee amendments.

**Vice Chairman Dwyer: Motions to reconsider the amendment of adding "Electronic device" and "Tobacco product" in the 57-36-01 definitions.**

**Senator Bakke: Seconds.**

**A Roll Call Vote Was Taken: 5 yeas, 0 nays, 0 absent. Motion carries.**

**Senator Myrdal:** Do the definitions now include vaping as a tobacco product?

**Thompson:** No. Vaping, electronic cigarettes and liquid nicotine are not taxable right now under the tobacco tax law. The only tax that are applied to those items currently is sales tax. There were bills that did look at taxing electronic cigarettes, and I drafted most of them. It's a multiple hour rewrite of that whole chapter in order to get that taxing structure, so unfortunately it's not as simple as tweaking a definition; it is an overhaul of that whole chapter to incorporate that in.

**Senator Bakke:** Those failed in the House?

**Thompson:** Those bills were unsuccessful.

**Senator Myrdal:** I understand the retraction, but I think vaping is a tobacco product and should eventually be taxed. What I understand is that nicotine is too expensive to produce in a lab and so is derived from tobacco. Tobacco companies are getting away with it, and we're going to be paying hundreds of millions of dollars in healthcare in 20 years.

**Vice Chairman Dwyer:** The way the bill was introduced in the House, it said electronic smoking devices shall mean the same as in 12.1-31-03. They were trying to be consistent on what they were talking about apparently. Then they took that out. I don't know if the intent of this was to put it in the taxation chapter or if it was just to have the definition, I'm not sure. I'm assuming it was for taxation purposes. The bill as we have it before us, do we need to have a definition of electronic device so we're consistent with the criminal code?

**Thompson:** I looked at this bill as it was originally introduced. It prohibited the sale of flavored e-liquid statewide for any age and applied a penalty of \$10,000 to that. Within that language, they did have a definition to an electronic smoking device and said it had the same meaning in the chapter that prohibits the sale of those devices to minors; they mirrored that. It also defined flavored e-liquid. When you read that with the prohibition in 12.1-31-03, which is our current statute that prohibits the sale of electronic smoking devices to minors, it makes sense reading those two together because they were different things. One said you can't sell electronic smoking devices to minors, and this said you cannot sell flavored e-liquid in the state to anyone. They were different and had different penalties. As this was amended in the House, they took out all of those definitions and added the word "to minors" in the title so it changed it from you can't sell flavored liquid in the state, to now you just can't sell flavored e-liquid to minors. When they stripped all of that out, they were left with the language that you have in the bill currently. Now you have somewhat confusing laws at hand. You have the statute in front of you that would be a new statute saying you can't sell flavored e-liquid to minors. If you do, it's a \$500 fine. They're classifying that prohibited sale as either the little e-liquid packets or an electronic cigarette device that comes preloaded with this e-liquid. If you do so, it's now a \$500 fine. Then you also have the current statute in law which prohibits the sale of electronic smoking devices to minors. If you do so, that's an infraction. Now we have two statutes that will be very close to one another in the same chapter of code saying if you sell an e-cigarette to a minor, it's an infraction, which is amended to a class b misdemeanor. Then right next to it you're going to have another statute that says if you sell e-liquid to a minor or an electronic cigarette preloaded with an e-liquid, now it's a \$500 fine. Is it a class b misdemeanor and also a \$500 fine? It seems duplicative. They both apply to selling an electronic smoking device that has potentially e-liquid in both cases with two different fees that apply.

**Vice Chairman Dwyer:** Could we fix that so we have a consistent proposal for both electronic devices and e-liquids?

**Thompson:** It seems like a logical fix would be to take the statute that's currently in law that says you can't sell these devices to minors and include "or the flavored e-liquid" that would be going in these devices, whether it's prepackaged or separately contained. You can add that definition in with the definitions that are already in that section for alternative nicotine products and electronic smoking devices and sweep that right in there as well.

**Chair Larson:** Are you saying to keep it an infraction?

**Thompson:** That would be up to the committee.

**Senator Myrdal:** It seems to me we should kill this bill and put that other language in there plus the infraction could be up to \$1,000.

**Senator Bakke:** We could hog house this bill and take the code that you're saying we should put this in and take what's here to combine it with that. Basically we'd be doing what this bill says but in a different section of the code. I would like to keep the class b misdemeanor simply because it's a class a misdemeanor for giving alcohol to minors, so it's more consistent. We should hog house it and clean it up.

**Chair Larson:** In both places, whether it's the liquid or cigarette itself, we're stopping the delivery to juveniles. When I passed the bill two sessions ago, the reason that I went with an infraction at that point was because that was what the city ordinance said. At this point, I would be more in favor of the class b misdemeanor.

**Thompson:** To clarify, you want the amendment to include the class b misdemeanor, not an infraction.

**Chair Larson:** Correct. They can both be changed to the class b misdemeanor.

**Chair Larson** ends discussion on HB 1477.

# 2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1477  
4/2/2019  
#34439 (16:50)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

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

A BILL for an Act to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the sale of flavored e-liquid to minors; to amend and reenact subsection 1 of section 12.1-31-03 and section 57-36-01 of the North Dakota Century Code, relating to prohibiting the sale of tobacco to minors and the definition of tobacco product; and to provide a penalty.

## Minutes:

2 Attachments

**Chair Larson** begins discussion on HB 1477.

**(see attachment #1)**

**Chair Larson:** As you recall, we had an amendment put on it that put this into a tobacco product which had some taxing problems.

**(see attachment #2)**

**Senator Bakke:** I had some amendments that went with your amendments. I think Legislative Council took your amendments from March 21st and added them to my amendments as well. Because of the way we amended out the definitions and no longer made it a tobacco product as such, there are some stores that don't sell tobacco products. They only sell these e-cigarettes. There's no way to enforce that class b misdemeanor because they're not registered, and no one is monitoring them. We're trying to make sure our youth doesn't start using these and promoting the use, the e-cigarettes and e-liquids. This was originally an infraction, and we changed it to a class b misdemeanor because if you sell alcohol to minors, it's a class a misdemeanor. In keeping with that, if they sell these, that would be a class b misdemeanor. At the bottom of the amendment, we are giving a definition of what e-liquid is. Page 2, section 3 puts in the language that we need as far as the dealer, distributor and what vapor products are so that people are aware of what we're talking about. Then we put in license requirements, so if people are going to sell this e-liquid, they have to have a license so that we know they're there. The attorney general can revoke their license

if they fail to comply with regulations described by the attorney general. It's basically enacting what they already have for tobacco products as far as licensing. It's not making this a tobacco product, but it's holding them accountable for who they're selling to and who's getting access to this. Otherwise we have a class b misdemeanor and no way to monitor it to know how these kids are getting ahold of it. Then a penalty for the violation of the chapter. You don't want to put something in law that you can't monitor and enact.

**Senator Myrdal:** There's currently online sales, so there's no stopping that. Also we can't identify this as a tobacco product, so it's separate licensing from tobacco sales correct?

**Senator Bakke:** Yes. It says each applicant for a license must be accompanied by a fee of \$25, and each license must be prominently displayed on the premises covered by the license. It's making sure that we know who is selling this and make sure they're not selling to minors.

**Senator Myrdal:** Is the attorney general okay with setting up a new licensing? I'm frustrated by the fact that we can't identify it as tobacco. I don't believe in higher taxes, but it is tobacco. Are we opening up a rabbit hole of other things that need to be licensed? I'm trying to figure out if this is a solid project to move forward.

**Chair Larson:** At this late stage, this is opening up a lot for our committee to get this out. The Human Services committee heard this in the House. I'm wondering if we should pass this to the floor, and you can talk to Representative Weisz in the House about these amendments. Maybe then it can go to conference committee, and you can iron things out in committee where you could bring more people in to discuss the bill. That may be the easier way to go about further amending this.

**Senator Bakke:** Senator Myrdal, you talked about trying to get it moved to where I personally feel it should be as well. This is a middle-step. Right now, we can't classify it as a tobacco product, but this is getting it one step closer to that. The misdemeanor is going to be hard to enforce if we don't have these places licensed. This is a companion amendment and basically defining the terms.

**Chair Larson:** The House is going to want to understand what all of these changes are that we're putting on it anyway. It might be a better product coming out of conference committee.

**Senator Bakke:** If we do it in conference committee, we would get more buy-in from the House.

**Chair Larson:** Correct. We would be educating that whole committee at once rather than separately.

**Senator Luick:** What do we have in our hands right now?

**Chair Larson:** Right now, we have this bill with the amendment that Senator Bakke had introduced, the 2001 amendment. That is currently on it as well.

**Senator Bakke:** The amendments that came from Senator J. Lee are not on there. It's just the class b misdemeanor, and in conference committee, these amendments would be presented in order to substantiate the class b misdemeanor.

**Chair Larson:** Yes, and to have it more enforceable. I will also talk to Representative Weisz to explain what some of the fixes need to be.

**Senator Luick: Motions for a Do Pass as Amended.**

**Senator Myrdal: Seconds.**

**Senator Lemm:** We're voting on the 2001 amendment?

**Chair Larson:** It's the full bill, and we added a penalty for selling e-liquids to minors to be a class b misdemeanor.

**Senator Lemm:** Okay, that's what I thought, thank you.

**A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion carries.**

**Chair Larson:** We will talk to the House and ask them not to concur and put a conference committee together.

**Senator Bakke** will carry the bill.

4/2/19  
10/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1477

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 1 of section 12.1-31-03 of the North Dakota Century Code, relating to prohibiting the sale of tobacco to minors;"

Page 1, after line 4, insert:

**"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~~ a class B misdemeanor for any person 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. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
- b. It is an infraction for any person 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. This subdivision does not apply to a:
  - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
  - (2) Self-service display that is located in a tobacco specialty store."

Renumber accordingly

March 19, 2019

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1477

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 1 of section 12.1-31-03 and section 57-36-01 of the North Dakota Century Code, relating to prohibiting the sale of tobacco to minors and the definition of tobacco product;"

Page 1, after line 4, insert:

**"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~~ a class B misdemeanor for any person 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. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
- b. It is an infraction for any person 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. This subdivision does not apply to a:
  - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
  - (2) Self-service display that is located in a tobacco specialty store."

Page 1, after line 12, insert:

**"SECTION 3. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed tobacco and encased in any material except tobacco.  
"Cigarette" also means any product of a cigarette-making machine.
4. "Cigarette-making machine" means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.

- 5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption in this state.
- 6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or any product of a cigarette-making machine.
- 7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
- 8. "Electronic smoking device" means a nonlighted, noncombustible device that employs a mechanical heating element, battery, or circuit, regardless of shape or size, to produce aerosolized or vaporized nicotine for inhalation into the body. "Electronic smoking device" includes a device manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other similar product.
- 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- ~~10-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- ~~11-12.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
- ~~12-13.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
- ~~13-14.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- ~~14-15.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.
- ~~15-16.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other tobacco products for use or consumption in this state.
- ~~16-17.~~ "Tobacco product" means any product that is made from or derived from tobacco, or that contains natural or synthetic nicotine, and is either intended for human consumption or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by other means. "Tobacco product" includes a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, an electronic smoking device, and a nicotine liquid container as defined in section 12.1-31-03.2. "Tobacco product" does not include a drug, device, or combination product, as defined in the Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.] and approved for sale by the United States food and drug administration.

18. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, or other tobacco products."

Renumber accordingly











**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1477**

Senate 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 Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Bakke

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

**REPORT OF STANDING COMMITTEE**

**HB 1477, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1477 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 1 of section 12.1-31-03 of the North Dakota Century Code, relating to prohibiting the sale of tobacco to minors;"

Page 1, after line 4, insert:

**"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~~ a class B misdemeanor for any person 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. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
- b. It is an infraction for any person 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. This subdivision does not apply to a:
  - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
  - (2) Self-service display that is located in a tobacco specialty store."

Renumber accordingly

**2019 TESTIMONY**

**HB 1477**

HB 1477  
#1

## **HB 1477 Testimony**

### **House Human Services Committee**

**Robin Weisz, Chairman**

**January 21, 2019**

Good Morning Chairman Weisz and Committee Members:

For the record, my name is Alisa Mitskog. I represent District 25.

HB 1477 is a bill that would prohibit the sale of flavored e liquid such as nicotine and other chemicals which is sold as a product that may be used in an electronic smoking device.

We must pay serious attention to the recent message from the FDA and the US Surgeon General as they recently have declared teen vaping an epidemic. The FDA says youth vaping is up 75% in the past year. In November, the FDA discussed the possibility of a ban on flavored nicotine. Manufacturers have even acknowledged the problem and one has restricted sales of flavored nicotine in stores as well as shutting down their social media accounts. One might ask why a prohibition on flavored e liquids or nicotine? It is because they have a strong appeal to youth. Examples of some of the flavors are mint, strawberries & cream, peach, mango, bubblegum, watermelon, wild berry, green apple to name just a few.

In a study published in the October 2018 European Neuropsychopharmacology Journal concluded the sweet taste of flavored e cigarettes potentiates the reinforcing effects of nicotine and also talked about the effects of flavor conditioning. Other studies have investigated the effects of adolescent nicotine exposure and the long lasting neurochemical and behavioral changes that result.

Back home in Wahpeton, I serve on Project Yes, which is a community coalition dealing with youth risk behaviors regarding alcohol and smoking. Teen vaping has had extensive focus and discussion the past several months. Administrators and educators are confiscating vaping devices on a regular basis. Others will follow my testimony with more information and data to demonstrate the dramatic increase in youth vaping.

In conclusion, we need to act to act swiftly to protect our youth from a lifetime of addiction by limiting the access to flavored nicotine. I ask this committee to take serious consideration of getting out in front of these troubling products by passing HB 1477.

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TESTIMONY SUPPORT OF HOUSE BILL 1477

Maddy House  
3624 High Creek Road  
Bismarck, ND 58503  
(701)226-5734

Chairman Weisz, and members of the Human Services Committee.

My name is Maddy House; I am a junior at Century High School. I am speaking on behalf of the Century High School SADD students and the Bismarck Tobacco Free Youth Board. I am here to provide testimony in support for House Bill 1477.

The tobacco industry has in recent decades began modeling electronic smoking devices to be sleek and visually appealing. This look appeals to the aesthetic that the millennial generation values and of the I-generation, or gen z. These new models keep vapers coming back to buy the newer product version for the design or capabilities, it is comparable to buying the new iPhone. These e-cigarette products are also easily available to minors at numerous gas stations for 18 year olds who are seniors in high school to simply purchase and distribute, or sell for profit, to classmates that are minors. Century High School, for those of you who don't know, is located directly across the street from the Red Carpet Convenience Store and Carwash.

Perhaps the largest success in the alleged marketing to youth of big tobacco companies would be the availability of appetizing flavored e-liquid. It is hard to believe that the sole purpose of the tobacco industry inventing electronic smoking devices is to help smokers quit when there are over 7,000 flavored e-liquids consisting of flavors like Cinnabun, blue raspberry, mango, and cotton candy. Because these flavors so closely resemble youth and young adults favorite candy, pop, and desert, these flavors easily catch the attention and interest in minors. These flavored products also contain nicotine, which is highly addictive and harmful to youth brain development. Starting a nicotine addiction young means costumers for life, resulting in large profits for tobacco companies in the long run.

To give you an example of how appealing these products are to youth, on the second page of my testimony you will see a picture of candy gummy worms next to a picture of gummy worm flavored e-juice. This is one of many examples of how appealing these products are to young people. I am concerned about the use of flavored e-cigarettes among youth because vaping and specifically juuling has become an epidemic in my generation.

When asked where am I seeing these devices and products used, the real question is where am I not seeing them used by my peers. I see JUULs being consumed by youth in cars in the school parking lot, in school bathrooms during the day, at parties with friends, when I'm shopping, and in the school bathroom. These incidents occur more often than one may think; many kids take advantage of substitute teachers to get their

nicotine fix while in the classroom. I was once in an advance placement class with a substitute teacher who caught a student taking hits off their JUUL during class.

These devices are have little research and are relatively unregulated. There are no studies that are conclusive regarding the long term health effects of these new devices and it is almost certain that the consequences to the use of these products would be negative especially to youth. I care about my generation and that is why I am concerned about how the tobacco industry is targeting my peers with their addictive flavored products.

Please support House Bill 1477 because prohibiting the sale of flavored e-liquid could keep my peers and North Dakota's youth from a lifetime of addiction to nicotine.



CANDY PRODUCT



E-LIQUID (Nicotine Product)



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

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January 21, 2019

9:00 am CST

House Human Services Committee for the 66<sup>th</sup> ND Legislative Assembly

Chairman Weisz, and members of the House Human Services 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 morning.

Today I am here to encourage a Do Pass on HB 1477, or the bill prohibiting the sale of flavored 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 eliminating the sale of these flavored e-liquid products in North Dakota, we take a tremendous step forward in protecting our youth from the dangerous nicotine addiction these products promote. We can begin to stem the tide in what the FDA is now calling an "epidemic" for our youth. In September 2018, the FDA released information related to the flavorings in e-liquids. The Commissioner stated that certain flavors may drive e-cigarette appeal to youth and that it is unacceptable to allow addiction to nicotine to occur to a new generation.i. We agree.

Although these products are relatively new to the market, the variety of flavors available for use in e-cigarettes and electronic devices, has grown exponentially, now numbering over 15,500 flavors. 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.

Flavors are not just a critical part of the product design, but are a key marketing ploy for the industry. The 2016 Surgeon General Report on e-cigarettes concluded that, "E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults."ii.

In addition to the more traditional candy and fruit flavors like cherry and chocolate, the e-liquid solutions are also being sold in such kid-friendly options as cotton candy, root beer float, sour patch kids, gummy bears, and banana split. One study even uncovered over twenty different types of unicorn-flavored e-liquid, often paired with cartoon imagery, undoubtedly appealing to kids.iii.

Research shows that flavored products – no matter what the tobacco product – appeal to youth and young adults. Data from the 2013-2014 Population Assessment of Tobacco and Health (PATH) study found that 80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product, and that 79.8 percent of current tobacco users had used a flavored tobacco product in the past month. Moreover, for each tobacco product, at least two-thirds of youth report using these products "because they come in flavors I like."iv.

There is a serious disconnect with our kids believing that these flavored tobacco products are somehow safer than traditional cigarettes or standard tobacco flavor. 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.v.

JUUL, the standout in the industry with its overwhelming appeal to our youth, comes in sweet and fruity flavors, such as fruit medley, mango, cool cucumber and creme brulee, which make it especially dangerous, since 1 tiny pod is the equivalence of an entire pack of 20 cigarettes.

While we 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 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."vi. By eliminating flavors, we can reduce the appeal, and ultimately the use rate of all tobacco products, for our youth.

Finally, I would like to point out that the tobacco companies know that almost all new tobacco users begin their addiction as kids, in fact 90% of daily addicted users started by the age of 18, but the industry also knows that to novice smokers, tobacco can be harsh and unappealing. Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products to make them more appealing to new users, again, almost all of whom are under age 18.vii. By masking the harshness and soothing the irritation caused by tobacco smoke and/or e-liquid vapors, flavors make it easier for beginners – primarily our kids – to try the product and ultimately become addicted.

With electronic product use at 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. We can lead the way in North Dakota by prohibiting the sale of flavored e-liquids. We can lead the way in protecting our kids, and that creates healthier youth and a healthier state, and that saves lives.

Again, thank you for this time in front of you, Chairman Weisz and the Committee. It is very appreciated. Please vote Do Pass on HB 1477.

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. U.S. Food and Drug Administration. FDA news release. FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufacturers for their roles perpetuating youth access. <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm>. Published September 12, 2018. Accessed October 2, 2018.
- ii. HHS, E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- iii. Jackler, RK, and Ramamurthi, D. "Unicorn cartoons: marketing sweet and creamy e-juice to youth," Tobacco Control, published online August 19, 2016.
- iv. Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," Journal of the American Medical Association, published online October 26, 2015.
- v. Pepper, JK, et al., "Adolescents' interest in trying flavoured e-cigarettes," Tobacco Control, 25:ii62-ii66, published online September 15, 2016.
- vi. HHS, Know the Risks: E-Cigarettes & Young People, accessed March 15, 2018 at <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.
- vii. HHS, Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.

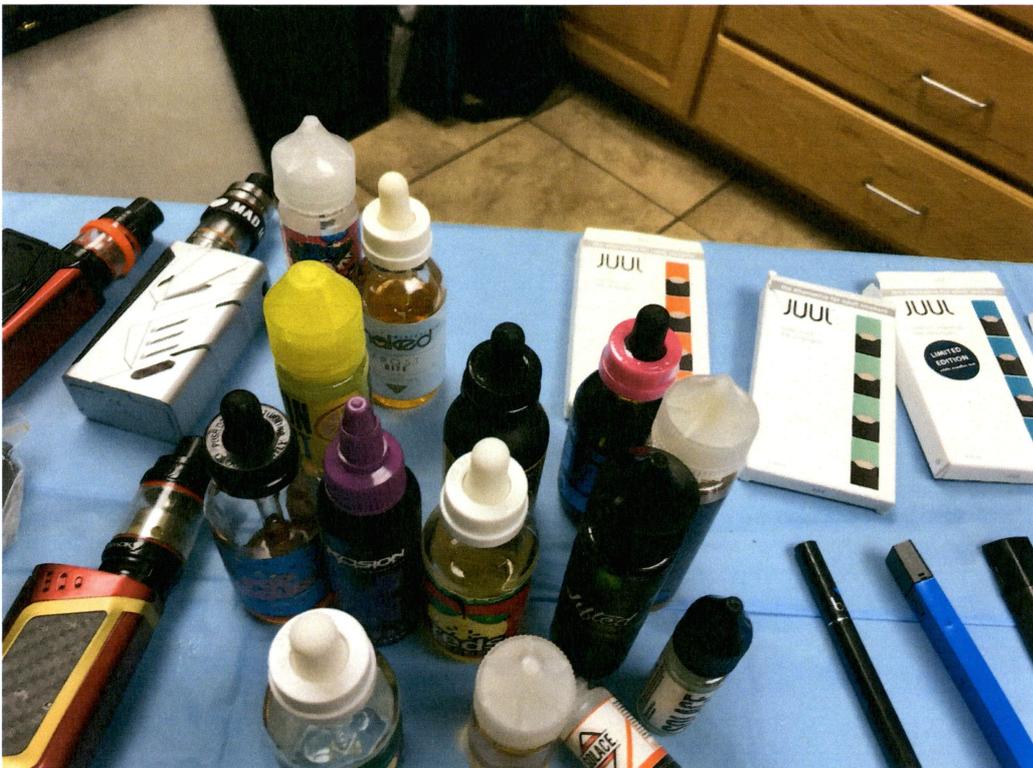
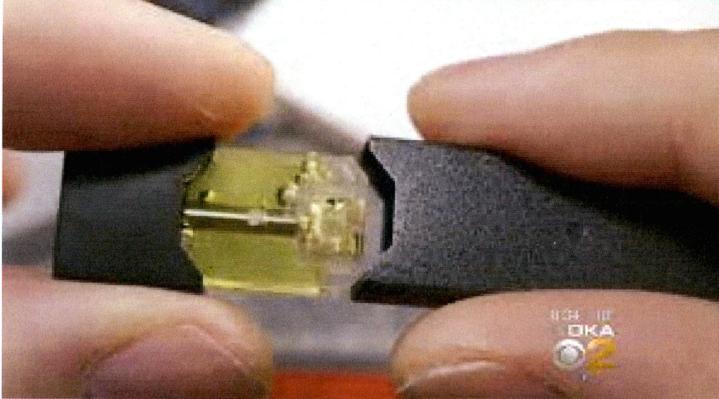
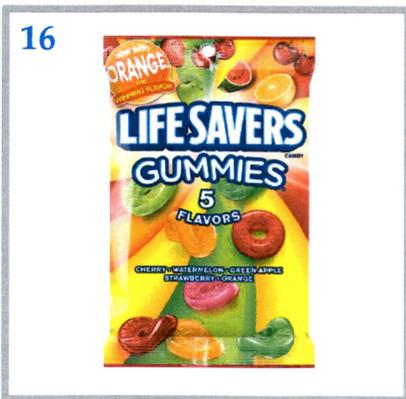
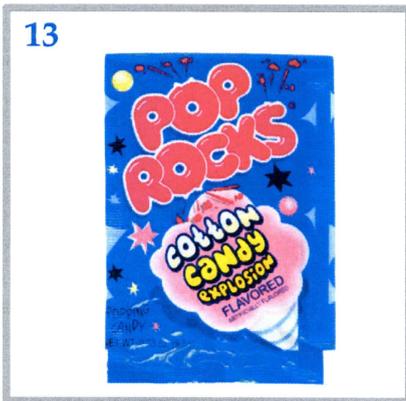


Photo of actual e-juices and electronic tobacco devices confiscated during the fall of the 2018-2019 school year at a North Dakota High School.

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



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## E-cigarette and E-liquid Flavorings

### Summary

- The majority of youth who ever tried an e-cigarette used a flavored product for their first use.<sup>1</sup>
- Youth whose first tobacco product was flavored had a higher prevalence of current use compared with youth whose first tobacco product was not flavored.<sup>2</sup>
- The availability of flavored e-cigarettes was a top reason for middle and high school students who ever used e-cigarettes to begin use.<sup>3</sup>
- In *North Dakota*, in 2015, the majority of vape stores assessed carried at least 50 different flavors of e-cigarettes, including sweet-sounding flavors, such as lava berry, watermelon, and gummy worms.<sup>4</sup>

### Background

#### North Dakota data

In the *North Dakota* e-liquid study<sup>11</sup>, 2 items were assessed regarding flavors. First was an estimated number of e-cigarette flavors sold in each store ( $n = 16$  stores). The estimated number of flavorings per store were:

- 7 stores carried more than 100,
- 4 stores carried between 51 and 100,
- 3 stores carried between 11 and 50, and
- 2 stores carried 10 or fewer flavors.

The second item assessed was the most popular flavor sold as reported by the store clerk. No specific flavor trend was identified. The responses with more than 1 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, Burkhardt's Brew, Gummy Worms, did not know, and many.

#### National or other data

The use of "flavors" is prohibited in conventional cigarettes, except for menthol and tobacco; however, other tobacco products do not have this prohibition.<sup>5(p11)</sup> More than 7,700 unique e-cigarette flavorings have existed.<sup>6</sup> According to the 2016 U.S. Surgeon General Report (SGR),<sup>7</sup> more than 85% of youth e-cigarette users between the ages of 12 - 17 use flavored e-cigarettes and the majority of youth who ever tried an e-cigarette used a flavored product for their first use. In March 2018, the FDA Commissioner<sup>8</sup> stated that youth whose first tobacco product use was flavored had higher prevalence of current use compared to youth whose first use was not flavored.

In 2016, the availability of flavored e-cigarettes, such as mint, candy, fruit, or chocolate, was the second top reason for middle and high school students who ever used e-cigarettes to begin use, with 31.0% reporting

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this reason.<sup>9</sup> The top reason, with 39.0% reporting, was use by a friend or family member.<sup>9</sup> Although not related directly to flavorings, the 2016 SGR<sup>5 (p6)</sup> stated that quitting conventional cigarettes was not a primary reason for youth using e-cigarettes.

A 2018 study<sup>10</sup> found that youth who used e-cigarettes were significantly more likely than adults to report using a flavored e-cigarette and more likely to use fruit flavors. About 41% of youth reported using a single flavor, with fruit and candy/other sweets being the most common, and about 39% using more than 1 flavor in combination, with fruit and candy/other sweets combination being the most common.

In September 2018, the FDA<sup>12</sup> released information related to the flavorings in e-liquids. The Commissioner stated that certain flavors may drive e-cigarette appeal to youth and that it is unacceptable to allow addiction to nicotine to occur to a new generation. Therefore, the FDA may restrict flavorings in e-cigarettes.

**For more information contact: Kelly Buettner-Schmidt, PhD, RN, FAAN; [Kelly.buettner-schmidt@ndsu.edu](mailto:Kelly.buettner-schmidt@ndsu.edu)**

**The above is excerpted and/or edited from:**

- Buettner-Schmidt, K. (2018, December 14). *E-cigarettes and e-liquids: Public health implications for youth and addiction*. (Revised edition). Fargo: School of Nursing, North Dakota State University.
- Buettner-Schmidt, K. (2018, December 14). *E-cigarettes and e-liquids: Public health implications for youth and addiction. At a Glance*. (Revised edition). Fargo, ND: School of Nursing, North Dakota State University.

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2. U.S. Food and Drug Administration. FDA statement. Statement from FDA Commissioner Scott Gottlieb, M.D., on efforts to reduce tobacco use, especially among youth, by exploring options to address the role of flavors - including menthol - in tobacco products. <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm601690.htm>. Published March 20, 2018. Accessed October 2, 2018.
3. Tsai J, Walton K, Coleman BN, et al. Reasons for electronic cigarette use among middle and high school students - National Youth Tobacco Survey, United States, 2016. *MMWR Morb Mortal Wkly Rep*. 2018;67(6):196-200. doi:10.15585/mmwr.mm6706a5. Accessed October 2, 2018.
4. Buettner-Schmidt, K., Miller, D., & Balasubramanian, N. (2015, June 30). *Nicotine content and packaging of electronic cigarette refill liquids and vape store compliance with legal and ethical standards: North Dakota*. [A Report to the ND Center for Tobacco Prevention and Control Policy]. Healthy Communities International, Department of Nursing, North Dakota State University, Fargo, ND.
5. U.S. Department of Health and Human Services. *E-cigarette use among youth and young adults: a report of the Surgeon General*. Public Health Service, Office of the Surgeon General. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_sgr\\_full\\_report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf). Published 2016. Accessed October 2, 2018.
6. Zhu SH, Sun JY, Bonnevie E, et al. Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation. *Tob Control*. 2014;23:3-9. Cited by: Public Health Service, Office of the Surgeon General. *E-cigarette use among youth and young adults: a report of the Surgeon General*. U.S. Department of Health and Human Services. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_sgr\\_full\\_report\\_non-2508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-2508.pdf). Published 2016.
7. U. S. Department of Health and Human Services. E-cigarette use among youth and young adults. A report of the Surgeon General. Fact sheet. Published 2016. Accessed October 2, 2018.
8. U.S. Food and Drug Administration. FDA statement. Statement from FDA Commissioner Scott Gottlieb, M.D., on efforts to reduce tobacco use, especially among youth, by exploring options to address the role of flavors - including menthol - in tobacco products. <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm601690.htm>. Published March 20, 2018. Accessed October 2, 2018.
9. Tsai J, Walton K, Coleman BN, et al. Reasons for electronic cigarette use among middle and high school students - National Youth Tobacco Survey, United States, 2016. *MMWR Morb Mortal Wkly Rep*. 2018;67(6):196-200. doi:10.15585/mmwr.mm6706a5. Accessed October 2, 2018.
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12. U.S. Food and Drug Administration. FDA news release. FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufacturers for their roles perpetuating youth access. <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm>. Published September 12, 2018. Accessed October 2, 2018.



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PI.

## The American Vaping Association

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January 21, 2019

**RE: HB 1477, a bill relating to prohibiting the sale of flavored e-liquid**

Chairman Weisz, Vice-Chair Rohr, and distinguished members of the Human Services Committee:

On behalf of the American Vaping Association, a nonprofit organization that advocates for policies that encourage adult smokers who are unwilling or unable to quit smoking to switch to reduced risk nicotine products, I am writing to urge the committee to reject HB 1477, which would ban the sale of e-liquids used in vaping products by 80%-plus of adult vapers in the United States. Neither public health nor North Dakota small businesses will be served by preventing adult smokers from accessing less harmful alternatives to traditional combustible cigarettes.

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

- Over forty years ago, Dr. Michael Russell wrote in the British Medical Journal, "Smokers smoke for the nicotine, but die from the tar." While nicotine can create dependence in users, it is not a carcinogen and does not meaningfully contribute to the death and disease that is principally caused by the habitual inhalation of cigarette smoke.
- On January 19, 2019, Food & Drug Administration Commissioner Dr. Scott Gottlieb reiterated his position on the benefits of vaping by adults, tweeting, "I believe if every currently addicted adult smoker switched completely to e-cigs it would provide a tremendous public health gain."
- Researchers from the American Heart Association, working from a sample size of over 460,000 Americans, estimated that 7.6% of all ex-smokers in the United States (4.4 million adults) had vaped in the past month, with 5% of all ex-smokers being daily vapers (3 million people).<sup>1</sup>
- A 26-month study of 15,943 adult smokers undertaken by the Centers for Disease Control & Prevention (CDC) found that vaping is the most popular method of quitting smoking in the United States. Furthermore, smokers using vapor products were more likely to successfully quit versus those who used conventional methods like the nicotine gum and patch.<sup>2</sup>
- Respected international bodies, including the Royal College of Physicians and Public Health England, have published expert reports estimating that vaping carries no more than 5% the risk of smoking.
- The U.S. National Academy of Sciences (NAS) extensively studied the health effects of vaping products and concluded that vaping will result in an overall public health benefit under the most plausible scenarios.

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<sup>1</sup> M. Mirbolouk, *et al.* "Prevalence and Distribution of E-Cigarette Use Among U.S. Adults: Behavioral Risk Factor Surveillance System, 2016. *Annals of Internal Medicine.*" *Ann. Intern Med.* <http://annals.org/aim/article-abstract/2698112/prevalence-distribution-e-cigarette-use-among-u-s-adults-behavioral>

<sup>2</sup> R. Caraballo, *et al.* "Quit Methods Used by US Adult Cigarette Smokers, 2014–2016." *Prev Chronic Dis* 2017; 14:160600. [https://www.cdc.gov/pcd/issues/2017/16\\_0600.htm](https://www.cdc.gov/pcd/issues/2017/16_0600.htm)

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## II. The Importance of Flavors to Adults has been Demonstrated

- A study using data from the FDA's multi-year, population-level PATH study found that among adults aged 25 or older, those using candy or sweet vaping flavors were twice as likely to be trying to quit combustible tobacco. Moreover, among ex-smokers who reported that e-cigarettes helped with their smoking cessation, more respondents used fruit than any other flavor type.<sup>3</sup>
- Researchers from the Yale School of Public Health and other institutions conducted an FDA-funded study of 2,031 adult smokers and recent quitters. The study concluded that banning flavors in vaping products would result in increases in smoking, with the greatest increase coming if menthol cigarettes were not also banned (as is the case with this bill).<sup>4</sup>
- A self-selected survey of 69,223 vapers from the United States found that among the 81.3% of respondents who were former smokers, just 7.7% and 12.8% of these exclusive vapers used tobacco or menthol flavors, respectively. Ex-smokers and dual users overwhelmingly preferred flavors categorized as fruit, dessert, or sweet.<sup>5</sup>

## III. Better Enforcement is the Answer, Not Bans & New Taxes

In the next month, FDA Commissioner Scott Gottlieb is expected to officially release new policy guidance that will restrict the retail sale of all flavored vaping products (other than tobacco, mint, and menthol) to adult-only environments like vape shops. Dr. Gottlieb believes this federal policy change and other agency actions will help strike a balance between the goals of preventing youth nicotine initiation and ensuring adult smokers have access to satisfying and effective alternatives.<sup>6</sup>

North Dakota should rigorously enforce its existing ban on the sale of all nicotine and tobacco products to minors. However, new restrictions on flavored non-combustible products are not justified by the science that exists today. Indeed, the science suggests that because flavored vaping products and other non-combustible options are helping to reduce and denormalize smoking, banning flavored e-liquids would actually do great harm.

Please reject HB 1477 and keep flavored smoke-free alternatives available to adults in North Dakota.

Sincerely,



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

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<sup>3</sup> S. Someji, *et al.* "Flavor Preference Among Adolescent, Young Adult, and Adult E-Cigarette Users: Findings From Wave 2 of the Population Assessment of Tobacco and Health Study." Poster SYM7D. Presented at SRNT 2018.

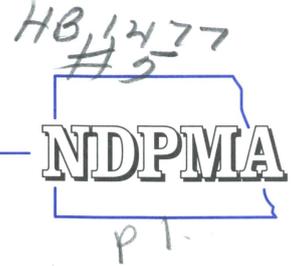
<sup>4</sup> John Buckell, Joachim Marti, and Jody L. Sindelar, "Should Flavors Be Banned in E-Cigarettes? Evidence on Adult Smokers and Recent Quitters from a Discrete Choice Experiment." National Bureau of Economic Research. September 2017. <http://www.nber.org/papers/w23865.pdf>.

<sup>5</sup> Jim McDonald. "Farsalinos Survey Shows Vapers Prefer Fruit and Dessert Flavors." Vaping360. August 13, 2018. <https://vaping360.com/vape-news/69440/farsalinos-survey-shows-vapers-prefer-fruit-and-dessert-flavors/>

<sup>6</sup> While we are supportive of the FDA's mission to reduce youth vaping, we remain concerned that FDA's policy shift will have a disproportionate negative effect on adult smokers in rural states like North Dakota, as many residents live in counties that do not have adult-only tobacco or nicotine stores.



## ND Petroleum Marketers Association ND Retail Association



Testimony- HB 1477

January 21, 2019- House Human Services

Chairman Weisz and Members of the House Human Services Committee:

For the record, I'm Mike Rud, President of the North Dakota Petroleum Marketers Association.

On behalf of NDPMA I urge a **“DO NOT PASS” recommendation on HB 1477.**

There are over 700 convenience stores in ND on the front lines when it comes to tobacco sales.

As you've all heard from us before, retailers take the sale of tobacco products very seriously,

including e-cigs and associated products such as the e-liquids, especially when it comes to

minors. ND retailers have no desire to see kids get hooked on tobacco products. But the reality

remains tobacco products are legal products consumers of the appropriate age are demanding.

As I've stated before, shouldn't personal responsibility trump social engineering? When does it

become the responsibility of an individual to make the right and legal decision? Prohibition has

never been the cure all in our great country.

Supporters of this proposal argue doing away with the flavored e-liquids will stop kids from

Getting started or hooked on e-cigarettes. It's important to keep in mind, that a decade ago,

these same groups pushing this bill today were spreading the word in these halls e-cigs would

some day be one of the keys to curbing tobacco use and now, national experts agree.

Although the e-vapor category is relatively new, some public health and tobacco

control researchers have reached the preliminary conclusion that e-vapor products

may present a compelling risk reduction opportunity compared to combustible

cigarettes.

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In a recent letter to the World Health Organization, 53 global experts on nicotine policy stated:

“The potential for tobacco harm reduction products to reduce the burden of smoking related disease is very large, and these products could be among the most significant health innovations of the 21st Century—perhaps saving hundreds of millions of lives.”

Approximately 50% of adult cigarette smokers demonstrate an interest in innovative nicotine products, such as e-vapor. Approximately 90% of adult e-vapor consumers report using flavored products. North Dakota should respect the preferences of adult consumers to use flavored products, especially when they could play a role in reducing tobacco-related harm.

Any regulation of flavors should occur at the federal level in the context of FDA product regulation. Congress empowered FDA to establish tobacco product standards such as restricting flavors only if FDA determines that such action would be appropriate for the protection of the public health based on science and evidence. Congress is now in a position to consider all of these materials and deliberate on the policy implications. Support this process of developing a national policy on this issue, instead of a patchwork of inconsistent state and local laws.

**NDPMA asks for a “DO NOT PASS” recommendation on HB 1477.**

Good Morning Chairman Larson and Committee Members:

For the record, my name is Alisa Mitskog. I represent District 25.

HB 1477, in its original form, would have prohibited the sale of flavored e liquid which is sold as a product that may be used in an electronic smoking device. The House amended the bill to impose a fine of 500.00 for the sale to anyone under 18.

One might ask why a prohibition on flavored e liquids or nicotine? It is because flavored nicotine has a strong appeal to youth. Examples of some of the flavors are mint, strawberries & cream, peach, mango, bubblegum, watermelon, wild berry, green apple to name just a few. In a study published in the October 2018 European Neuropsychopharmacology Journal concluded the sweet taste of flavored e cigarettes potentiates the reinforcing effects of nicotine and also has an effect on flavor conditioning.

Late in the fall of 2018, the FDA and the US Surgeon General declared teen vaping an epidemic. In the 2018 National Youth Tobacco Survey, there was a 78% increase in current e-cigarette use among high school students and a 48% increase among middle school students. The rapidly rising popularity of high-nicotine e-liquids threatens to addict a generation of youth.

In speaking with school administrators, teachers, SROs, a youth pastor, and high school students, they have all shared with me the seriousness of this issue. I have heard of a high school taking doors off bathroom stalls because of the widespread vaping that is occurring in the school restrooms. A middle school in Arizona recently installed 20 vape detectors in the bathrooms due to widespread vaping by 7<sup>th</sup> and 8<sup>th</sup> grade students and due to students avoiding going to the bathroom out of fear they'd encounter other students vaping and worried they would be falsely accused and suspended from school.

Keeping flavored nicotine out of the hands out of young people needs to be of the highest priority. In the last week, the FDA has rolled out a proposed vaping policy to restrict access to flavored nicotine products. President Trump has proposed 100million dollars in user fees for e-cigarettes to address the issue. In the face of this youth nicotine epidemic, we need to act to act swiftly to protect our youth from a lifetime of addiction and limit the access to flavored nicotine.

I ask this committee to take serious consideration of this issue by getting out in front of these troubling products by amending HB 1477 to prohibit the sale of flavored nicotine to anyone under the age of 21. Thank you.

## Trump wants the e-cigarette industry to pay \$100 million a year in user fees

The fees, if approved by Congress, would pay for federal oversight.

By Laurie McGinley  
March 11 at 4:38 PM

The e-cigarette industry would pay \$100 million a year in user fees under the Trump administration budget proposal released Monday. The funds would go to beefed-up regulatory oversight by the Food and Drug Administration.

E-cigarettes are not subject to such fees now, but several other types of tobacco products are, including cigarettes, cigars and snuff. The agency is expected to collect an estimated \$712 million in user fees in the current fiscal year, with cigarettes accounting for more than 86 percent of the amount.

President Trump's budget plan said the user-fee proposal for the e-cigarette industry "would ensure that FDA has the resources to address today's alarming rise in youth e-cigarette use as well as new public health threats of tomorrow."

Overall, the administration is asking for \$6.1 billion in FDA funding, a \$418.5 million boost over current law. A big chunk, \$2.8 billion, involves user fees from the drug, device and other industries, as well as the proposed e-cigarette fee. The budget request includes increases to promote medical-product innovation, food safety and blood-supply safety.

The FDA's Center for Tobacco Products is funded entirely by user fees. Extending the requirement to e-cigarettes would provide more resources as the agency tries to combat youth vaping and assesses the risks and benefits of e-cigarettes for adults.

The proposed fees on the e-cigarette industry would be imposed on manufacturers and importers of vaping devices and e-liquids. The change would have to be approved by Congress, administration officials said.

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Liz Mair, a strategist for Vapers United, criticized the user-fee proposal. "This is a tax, not a 'user fee,'" she said. "'User fee' is lingo that Republicans and conservative Democrats use when they're about to hike taxes but don't want to admit that's what they're doing." She added that the government should pursue policies to keep vaping taxes low to encourage adult smokers to switch to e-cigarettes.

In a statement, FDA Commissioner Scott Gottlieb acknowledged e-cigarettes may be useful tool for adult smokers wanting to quit regular cigarettes, but said they must be put through "regulatory gates" to assess their risks and benefits. However, "no child should be using an e-cigarette," he said, because researchers still are investigating the long-term effects of e-cigarette use, such as whether vaping ingredients can harm the lungs.

Matthew Myers, president of Campaign for Tobacco-Free Kids, was cautious, noting that details on the proposal were sparse. "This is a potentially positive development," he said, "but it doesn't detract from the need for the FDA to take strong mandatory action to rein in the behavior and products that have caused the youth epidemic." He said the FDA should ban all flavored e-cigarettes and require the companies to curb their marketing.

ADVERTISING

Sen. Jeanne Shaheen (D-N.H) welcomed the proposal, noting it was similar to legislation she recently introduced. "I hope to work with the administration as I rally bipartisan support for my legislation in Congress," she said.

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Concerns at the FDA about youth vaping skyrocketed after federal data showed that e-cigarette use among high school students rose 78 percent between 2017 and 2018. Officials say they want to prevent a new generation of children from becoming addicted to nicotine, which they say raises the risk they will eventually smoke regular cigarettes.

Under the administration proposal, the Center for Tobacco Products would receive \$812 million in user fees for the next fiscal year.

**Laurie McGinley**

Laurie McGinley covers health and medicine for The Washington Post. She focuses on the Food and Drug Administration as well as cancer research and treatment. She was previously The Post's health, science and environment editor. Follow 

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The Washington Post

Health

# FDA unveils sweeping anti-tobacco effort to reduce underage vaping and smoking

Agency targets e-cigarettes, flavored cigars and menthol cigarettes.

By Laurie McGinley and Lenny Bernstein  
 November 15, 2018

The Food and Drug Administration on Thursday launched a multipronged attack on the rising underage use of tobacco products, imposing sales restrictions on flavored e-cigarettes and announcing plans to ban menthol cigarettes and flavored cigars.

The FDA says it will limit sales of many flavored e-cigarettes to bricks-and-mortar outlets that have either age-restricted entry or areas inside stores that are not accessible to people under 18. The agency also will require stepped-up age verification for online sales.

"Our aim is to make sure no kid can access a fruity flavor product in a convenience store," FDA Commissioner Scott Gottlieb said. He added that stores that want to sell fruit-flavored e-cigarette products "need to age-restrict completely or have a separate room that is age-verified. A curtain or a partition won't cut it." Agency officials said they believe that vape and tobacco shops will not have trouble complying.

The new sales restrictions reflect health experts' concerns that e-cigarette use could lead to nicotine addiction early in life and affect the developing adolescent brain and that some e-cigarette users will go on to smoke more dangerous regular cigarettes. The agency also said it will go after products marketed to children — through the use of cartoon characters, for example.

More significant than the e-cigarette steps are the FDA's commitments to propose bans on menthol in cigarettes and cigars, as well as other flavors in cigars. Such prohibitions will require new regulations that could take years to go into effect and could be derailed by opposition from the cigarette industry. If successful, though, the bans could have an especially large impact on African American adults and youth, who smoke menthol cigarettes and flavored cigars at higher rates than other groups.

The tobacco blueprint was released by Gottlieb as the government published new data showing a surge in e-cigarette use among minors. The 2018 National Youth Tobacco Survey, by the FDA and the Centers for Disease Control and Prevention, found that vaping had increased 78 percent among high school students since last year and almost 48 percent among middle schoolers; 3.6 million youngsters reported vaping at least once in the previous 30 days.

Especially concerning to officials was a sharp rise in regular use. Almost 28 percent of high school vapers said they used e-cigarettes at least 20 days a month, and most used flavored products.

"The bottom line is this: I will not allow a generation of children to become addicted to nicotine through e-cigarettes," Gottlieb said, while calling on companies to remove the affected products within 90 days from stores that children can enter and from online sites that don't have adequate age-verification procedures. He said the new policy was designed to get to the "core" of the issue — flavored nicotine products, often in fruity, sweet and creamy flavors, that appeal to kids. The restrictions do not affect mint, menthol and tobacco flavored e-cigarette products.

The FDA's moves on menthol cigarettes and flavored cigars drew widespread praise. But its actions on e-cigarettes were more controversial. Public health experts and Democratic lawmakers lauded the vaping moves as a first step but said they didn't go far enough. For example, Sen. Richard Durbin (D-Ill.) said the agency was finally "moving in the right direction" on e-cigarettes but called on Gottlieb to immediately ban all kid-friendly flavors. Meanwhile, Sen. Ron Johnson (R-Wis.), endorsing the view

of many vaping advocates, said that the FDA effort could hurt adult smokers who use e-cigarettes to try to quit regular cigarettes.

"The proposal to prohibit the sale of menthol cigarettes and flavored cigars has the potential to have a greater impact on youth tobacco use and tobacco use among African Americans than any regulatory measure ever undertaken by the federal government," said Matt Myers, president of the Campaign for Tobacco-Free Kids. But, he said, the e-cigarette actions "fall short of what's needed." In particular, he said, he is worried that some convenience stores will continue to sell the flavored e-cigarettes "by creating an ineffective artificial barrier."

Robin Koval, chief executive of Truth Initiative, a tobacco-control group, also praised the planned menthol and cigar bans but said it was a mistake to exempt mint and menthol e-cigarettes from the planned sales restrictions, given that data shows those flavors are becoming increasingly popular among high schoolers. Public health groups want a ban on all flavored cigarettes, at least until manufacturers can prove the items benefit public health.

But Gottlieb insisted that the exclusion of mint and menthol reflected a "careful balancing" of concerns about youth and the needs of adult smokers using e-cigarettes to quite smoking. And he said he would consider restricting those exempted flavors if youth use didn't decline.

Lyle Beckwith, senior vice president of NACS, which represents convenience stores, said his group would review the proposal carefully but that "sound regulation should ensure that e-cigarettes are sold responsibly and that the market is a level playing field." He also said that any ban on menthol cigarettes would simply shift sales of those products to the black market.

The 2009 tobacco-control act banned all flavors in traditional cigarettes except menthol; the law left that to the FDA. Part of the reason that menthol was left out of the law was because of a split in the black community. For years, the tobacco industry has donated money to black interests such as the Congressional Black Caucus Foundation and marketed heavily to African Americans. But FDA, while long debating a menthol ban, never proposed one.

Black organizations applauded a menthol ban, noting that almost 90 percent of African American smokers choose menthols. "While we're saddened by the number of lives lost and new smokers addicted over the past decade, we're pleased that the FDA is moving in this direction," said Delmonte Jefferson, executive director of the National African American Tobacco Prevention Network. The statement also was signed by the National Urban League, the National Association for the Advancement of Colored People and other groups.

In a statement, the R.J. Reynolds Tobacco company, which makes the nation's best-selling menthol cigarette, Newport, said research does not support differing regulations for menthol and non-menthol cigarettes and hinted at the possibility of a lawsuit.

"Any regulation of menthol in cigarettes must be done through the established comprehensive rulemaking process and must be based on a thorough review of the science while considering the unintended consequences of any rule," the company said. "Failing to do so would mean any such action would not withstand judicial review."

Gottlieb, in pursuing his tobacco strategy, is taking some flak from fellow conservatives. "The administration promised less regulation — without sacrificing protections," said Jeff Stier, a senior fellow at the Consumer Choice Center. "So if the FDA fails to meet both objectives — by announcing a heavy-handed regulatory plan — President Trump should realize that the current leadership at the FDA is not equipped to implement the administration's policy agenda." But Gottlieb's boss, Health and Human Services Secretary Alex Azar signaled his support for the FDA in a statement.

The FDA's e-cigarette crackdown already has had an impact. Juul Labs, which accounts for more than 70 percent of e-cigarette retail sales and has been blamed by the FDA for much of the rise in underage use, announced this week that it would stop selling most of its flavored e-cigarette pods — specifically, mango, fruit, crème and cucumber — in 90,000 retail outlets, and enhance its online protections. The

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Good morning, Chairman Larson and members of the Senate Judiciary Committee. My name is Neil Charvat, and I am the Director of the Tobacco Prevention and Control Program for the North Dakota Department of Health. I am here to provide testimony in support of House Bill 1477.

Tobacco prevention and control efforts in North Dakota focus on guidance provided by the Centers for Disease Prevention and Control (CDC) *Best Practices for Comprehensive Tobacco Control Programs* (Best Practices). Best Practices provides evidence-based interventions to prevent tobacco product use initiation, increase quitting tobacco use, and reduce exposure to secondhand smoke. House Bill 1477 prohibits the sale of flavored e-liquid to minors and increases the fine for selling these products. Prohibiting the sales of flavored e-liquid, or electronic nicotine delivery systems (ENDS) to minors, will assist in preventing tobacco product use for youth.

In 2017, more than one in four (28.8%) high school students reported using tobacco products during the 30 days before the survey (ND Youth Risk Behavior Survey). This includes cigarettes, cigars, smokeless tobacco, or ENDS either alone or in some combination. Additionally, adolescent use of ENDS has significantly increased from 1.6 percent in 2011 to 19.1 percent in 2017 (ND Youth Tobacco Survey). JUUL, an ENDS device resembling a computer USB storage device, has taken over almost three-quarters of the ENDS market in just a few years. JUUL has caused widespread concern because of its popularity with youth. On September 12, 2018, the Food and Drug Administration (FDA) declared that youth use of ENDS has reached "nothing short of an epidemic proportion of growth." This was followed by the December 18, 2019 United States Surgeon General advisory on the E-cigarette epidemic among youth. Increasing any restrictions of the sale of electronic products, including flavored e-liquids, will help reduce youth initiation of tobacco products.

It is important to treat ENDS products, including e-liquids, as the tobacco products they are. The Tobacco Prevention and Control Program views ENDS as tobacco products, so using these products as a replacement for cigarettes is not quitting tobacco, but merely a substitution. The ENDS

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industry is making efforts to confuse the definition of "tobacco" products and "nicotine" products. According to the JUUL Labs website: "Nicotine is a stimulant that comes from the tobacco plant. We use highly purified/USP grade/pharmaceutical grade nicotine" and "No tobacco-based nicotine e-liquid product should be considered safe." There should be no confusion about the source of nicotine for these products.

There are health care advocates that embrace ENDS as a harm reduction product to help curb the thousands of deaths directly caused by cigarette use. They are so focused on this point, they are overlooking the bigger picture: ENDS are not proven to be a safe and effective tool for replacing smoking or quitting smoking.

The current FDA approved nicotine replacement therapy (NRT) products are designed to help people addicted to nicotine quit their addiction by gradually stepping down strength levels of nicotine. The difference between ENDS and NRT is that the NRT products have gone through rigorous FDA testing to prove safety and efficacy. Despite being in existence for over 10 years, no ENDS devices have been approved by the FDA as a cessation medication.

The FDA is investigating the possibility of approving other tobacco products as "modified risk" products, defined as something that can be used instead of cigarettes because they may cause less death and disease than cigarettes do. This is referred to as "harm reduction". The tobacco industry, the ENDS industry, many health organizations and countries (such as the United Kingdom) have embraced this concept. Studies provided to support these efforts lack the current level of scientific proof to conclusively demonstrate the safety of these products. Vague studies and anecdotal evidence do not warrant embracing ENDS to save lives.

Switching from cigarettes to ENDS is merely changing the delivery method for nicotine addiction. New studies show that this is an actual trend. Our own tobacco cessation service, NDQuits, has a lower success rate for people to quit smoking who continue to use ENDS (33.2% vs. 22.5% 30-day abstinence rate at 7-month follow-up). The FDA has discussed plans to identify modified-risk versus full-risk tobacco products. However, plans and studies that use the words "may be safer," "may be less dangerous" and

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other similar statements do not correlate to success in saving lives. The FDA has effectively deferred comprehensive regulation of ENDS products until 2022.

In the short time that ENDS have been in existence, we have seen increased nicotine addiction in youth, poisonings among youth and adults, and exploding devices. A new study released by the University of California, San Francisco relates ENDS use to increased risks of myocardial infarctions (heart attacks). It took medical science 40 years to identify the negative impact of cigarette smoking on populations. Without clear data to prove the safety of ENDS, it would be premature to promote these devices as a safe alternative to nicotine use.

For these reasons, we ask you to support passage of HB 1477. This concludes my testimony. I am happy to answer any questions you may have.



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March 19, 2019

11:00 am CST

House Finance and Taxation Committee for the 66<sup>th</sup> ND Legislative Assembly

Chairwoman Larson, and members of the Senate Judiciary 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 morning. 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.

Today I am here to encourage a Do Pass on HB 1477, or the bill to enact a penalty for the selling of electronic nicotine delivery systems (ENDS) to minors. I'm also here to support the adoption of an amendment to this bill to classify ENDS products as tobacco products to encourage monitoring, data collection, and enforcement of existing law. TFND is excited to work with our Legislators to strengthen North Dakota tobacco prevention policy through HB 1477. We can begin to stem the tide in what the FDA is now calling an "epidemic" for our youth.

While we have much to learn about these new electronic smoking devices, the evidence is already clear that it is unsafe for young people to use e-cigarettes 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 the United States. Besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body."i.

According to a survey by Truth Initiative, 63% of JUUL users don't know that JUUL always contains nicotine, even though this is the case. Nicotine is derived from tobacco and is a highly addictive substance harmful to youth brain development, and JUUL's own website states it is derived from the tobacco plant.

I would also like to point out that the tobacco companies know that almost all new tobacco users begin their addiction as kids, in fact 90% of daily addicted users started by the age of 18. These unregulated and untaxed electronic products make it easier for beginners – primarily our kids – to try the product and ultimately become addicted. With electronic product use at 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 for FDA regulations.

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That is why acknowledging ENDS as tobacco is so important. Currently these products are not subject to tobacco licensing, compliance checks, existing tobacco regulations, or consistent meaningful data collection. By adopting an amendment to call them what they are, tobacco, we can further our understanding of how these products move through our state and how they affect our citizens.

Multiple City Ordinances across North Dakota already classify e-cigarette/vape products as a tobacco product, due to their nicotine content. By adopting this classification, the rest of the state will be caught up, the playing field will be level for businesses, and "bad actors" will have fewer ways to circumvent laws meant to regulate and monitor tobacco usage in North Dakota.

Again, thank you for this time in front of you, Chairwoman Larson, and the Committee. It is very appreciated. Please vote Do Pass on HB 1477.

May I take any questions?

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

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

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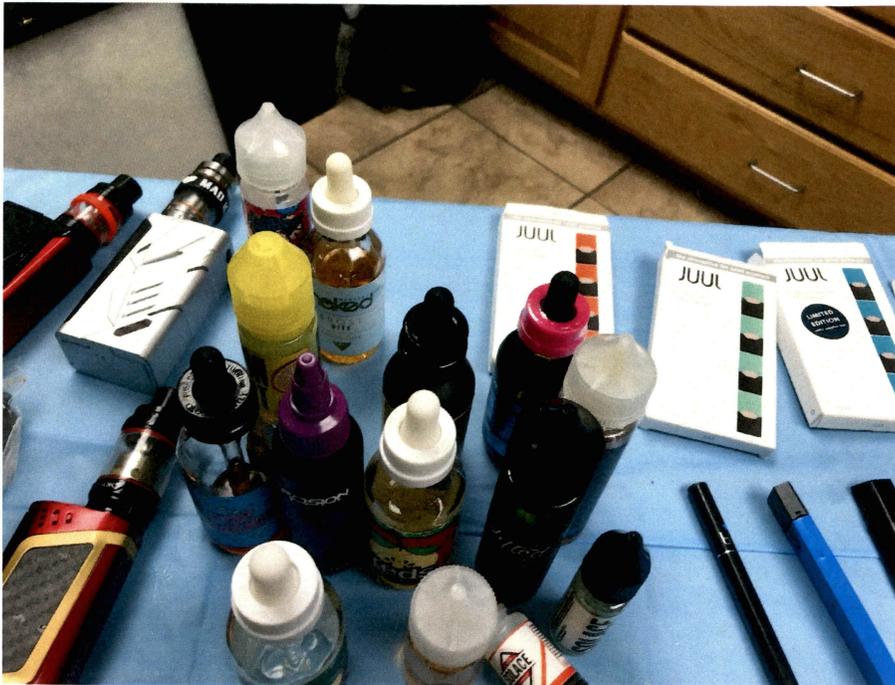


Photo of actual e-juices and electronic tobacco devices confiscated during the fall of the 2018-2019 school year at a North Dakota High School.



Photos of the JUUL system – one of the most popular ways youth use electronic tobacco products. JUUL now accounts for nearly 70% of the market.

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

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## NEW PRODUCTS



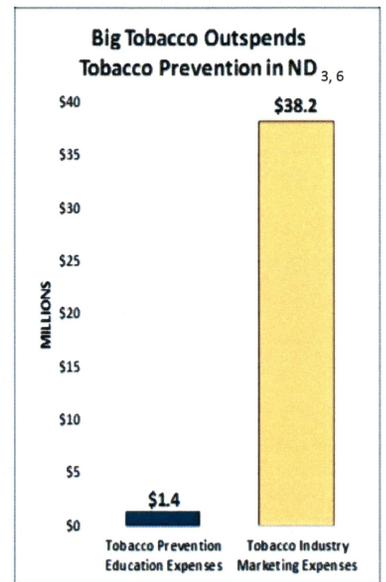
## MORE FLAVORS



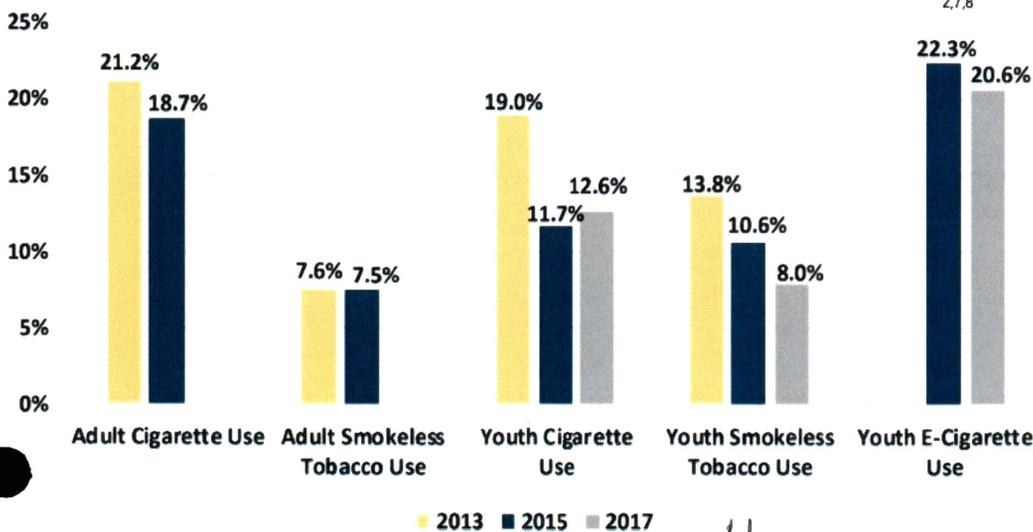
Big Tobacco and the vaping industry are constantly trying to come up with new ways to target youth. Between flavors and high tech/sleek designs its no wonder these products appeal to kids. Their latest products have been showing up in Bismarck/Burleigh County schools. These products CONTAIN NICOTINE 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<sup>2, 7, 8</sup>



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

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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>
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8. (n.d.). *Youth Risk Behavior Surveillance - United States, 2013 and 2015*. Atlanta, GA: Centers for Disease Control and Prevention.

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

**Bismarck-Burleigh Public Health**

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P.O. Box 3237  
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March 19, 2019

11:00 am CST

Senate Judiciary Committee for the 66<sup>th</sup> ND Legislative Assembly

Chairwoman Larson, and members of the Senate Judiciary Committee, hello, my name is Heather Austin and I am the Executive Director for Tobacco Free North Dakota. Again, thank you so much for your time this morning.

TFND and many other organizations have all signed a formal Resolution to Raise North Dakota's Tobacco Tax.

This Resolution has been signed by: The Fargo-Cass Public Health Board of Health, the Grand Forks Board of Health, Grand Forks Tobacco Free Coalition, Bismarck Tobacco Free Coalition, Cavalier County Health District, City-County Health District Board of Health, Nelson-Griggs District Health Unit, Central Valley Health District, Sargent County District Health, North Dakota Public Health Association, and Tobacco Free North Dakota.

The Resolution reads as follows:

Whereas, according to the 2014 US Surgeon General's Report, increasing tobacco excise taxes have proven highly effective in preventing initiation among youth, reducing tobacco use by promoting cessation among current users, discouraging relapse among former users, and reducing consumption among those who continue to use tobacco<sup>i</sup>; and

Whereas, tobacco use remains North Dakota's leading preventable cause of death, killing more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined<sup>ii</sup>; and

Whereas, 11.7% of youth in North Dakota smoke<sup>iii</sup>, and 300 North Dakota children (under 18) become new daily smokers each year<sup>iii</sup>, of whom more than 14,000 will die prematurely because of this addiction<sup>iii</sup>; and

Whereas, 22.3% of youth in North Dakota use electronic nicotine delivery systems (ENDS)<sup>iv</sup>, otherwise known as e-cigarettes, of whom many will develop a lifelong addiction to nicotine/tobacco products, resulting in the health costs related to such; and

Whereas, ENDS have little to no regulation around content, flavorings, and marketing appealing to youth, and stealth-use products and tactics advertised to youth; and

Whereas, ENDS are not currently classified as tobacco products in North Dakota even though they deliver nicotine in the same way for the same purpose as other tobacco products; and

Whereas, ENDS are not currently approved by the FDA as a cessation device, and

Whereas, 19.8% (115,100) of adults in North Dakota smoke<sup>iii</sup> and nearly 1,000 North Dakotans<sup>iii</sup> will die each year from smoking and smoking-related disease, including 27% of cancer deaths in ND that are attributed to tobacco use<sup>v</sup>; and

Whereas, tobacco use in North Dakota imposes economic burden, with smoking-caused direct healthcare costs amounting to \$326 million each year<sup>iii</sup>, smoking-caused productivity losses approximating \$232.6 million annually<sup>vi</sup>, and each household paying \$768 per year in state and federal taxes from smoking-caused government expenditures<sup>vi</sup>, and

Whereas, each year, the North Dakota government Medicaid payments directly related to tobacco use are \$56.9 million<sup>vi</sup>; and

Whereas, the current cigarette tax of \$0.44 per pack<sup>iii</sup>, pipe tobacco and cigar tax at 28% of the wholesale purchase price<sup>vii</sup>, and snuff tax at \$0.60 per ounce<sup>vii</sup>, ranking North Dakota one of the four cheapest tobacco states in the nation<sup>iii</sup> is dangerous to our state's citizens; and

Whereas, the legislative body in North Dakota has not enacted legislation to increase our state's tobacco taxes since 1993; and defeated legislation as recently as 2015; and  
Whereas, the Tobacco Industry spends \$38.2 million each year marketing in ND<sup>vi</sup>; and

Whereas, this resolution addresses commercial tobacco, which is different from traditional tobacco used in American Indian spiritual and ceremonial practices;

Now therefore be it resolved, Tobacco Free North Dakota supports increasing the tobacco tax in North Dakota as a proven way to prevent youth tobacco initiation, encourage a reduction of adult tobacco use, reduce health care costs, and provide an overall benefit to public health.<sup>i</sup> Further, Tobacco Free North Dakota endorses the 2019 legislative effort to raise North Dakota's cigarette tax by \$1.50 for a total tax of \$1.94 per pack and all other tobacco products by a proportional amount, and to include classifying ENDS as tobacco products so they are taxed as such.

Again, thank you for this time in front of you, Chairwoman Larson and the Committee.

Heather Austin  
Executive Director, Tobacco Free North Dakota  
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<sup>i</sup> U.S. Department of Health and Human Services. (2014). *The health consequences of smoking – 50 years of progress. A report of the Surgeon General*. Retrieved from <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/50-years-of-progress-by-section.html>

<sup>ii</sup> Campaign for Tobacco Free Kids. (2018, June 8). *The toll of tobacco in the United States*. Retrieved from <https://www.tobaccofreekids.org/problem/toll-us>

<sup>iii</sup> Campaign for Tobacco-Free Kids. (2018, June 7). *Key State-Specific Tobacco Data and Rankings*. Retrieved from <https://www.tobaccofreekids.org/assets/factsheets/0176.pdf>

<sup>iv</sup> Centers for Disease Control and Prevention. (n.d.). *High School Youth Behavior Risk Survey North Dakota 2015 and United States 2015 Results*. Retrieved from <https://nccd.cdc.gov/youthonline/App/Results.aspx?TT=G&OUT=0&SID=HS&QID=QQ&LID=ND&YID=2015&LID2=XX&YID2=2015&COL=&ROW1=&ROW2=&HT=QQ&LCT=&FS=S1&FR=R1&FG=G1&FSL=&FRL=&FGL=&PV=&C1=ND2015&C2=XX2015&QP=G&DP=1&VA=CI&CS=N&SYID=&EYID=&SC=DEFAULT&SO=ASC&pf=1&TST=True>

<sup>v</sup> National Cancer Institute. (2007, August 17). *President's Cancer Panel's 2006 - 2007 report. Promoting healthy lifestyles: Policy, program, and personal recommendations for reducing cancer risk*. Retrieved from <http://archive.tobacco.org/news/251230.html>

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<sup>vii</sup> ND Office of the State Tax Commissioner. (n.d.). *Cigarette and tobacco tax*. Retrieved from <https://www.nd.gov/tax/tobacco>

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American Cancer Society  
Cancer Action Network  
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ND  
701-471-2859  
Deb.knuth@cancer.org

**Senate Judiciary Committee**  
**Tuesday, March 19, 2019**  
**11:00 a.m.**  
**Chairman Diane Larson**  
**Ft. Lincoln**  
**HB 1477**

My name is Deb Knuth and I am the Government Relations Director for the North Dakota American Cancer Society Cancer Action Network.

The American Cancer Society Cancer Action Network (ACS CAN), the nonprofit, non-partisan advocacy affiliate of the American Cancer Society advocates for public policies that reduce death and suffering from cancer. ACS CAN strongly supports regular and significant tax increases on cigarettes and all other tobacco products, including electronic smoking devices. We recommend the following:

**Definitions for taxing e-cigarettes:**

“Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include any battery or battery charger when sold separately. In addition, electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Tobacco product” means any product that is made from or derived from tobacco, or that contains nicotine, that 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, or snus. “Tobacco product” also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. “Tobacco product” does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

ACS CAN supports including e-cigarettes in the definition of tobacco products and taxing them at a rate parallel to the tax on cigarettes and all other tobacco products. We also urge the Committee to consider

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increasing North Dakota's tax on cigarettes by \$1.50 per pack with an equivalent increase in the tax on all other tobacco products, including e-cigarettes. North Dakota has not increased the cigarette tax since 1993, and it is currently only at \$.44 per pack compared to the national average tax of \$1.79 per pack, and e-cigarettes are not currently taxed as tobacco products at all and they are being used by youth at epidemic levels.

Thank you for allowing me to testify. Are there any questions?



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Chairwoman Diane Larson and Members of the Judiciary Committee,

On behalf of JUUL Labs, thank you for the opportunity to submit testimony in support of HB 1477.

JUUL Labs' mission is to improve the lives of the world's one billion adult smokers by eliminating cigarettes. This mission is driven by the fact that smoking is the number one cause of preventable death worldwide. In the United States alone, smoking kills approximately 480,000 people every year.

We share a common goal with policymakers, regulators, parents, school officials, and community stakeholders - **prevent the use of tobacco and vapor products, including JUUL, by America's youth.** We are committed to stopping youth access of JUUL products, and no young person or non-nicotine user should ever try JUUL.

In November of 2018, we began implementing a number of significant voluntary actions, as outlined in our [Action Plan](#), to address youth access,



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appeal, and use of JUUL products. This included a major reset of how JUUL Labs markets and sells its products, requiring automated sales controls to limit the purchase of certain flavored products to adults 21+. Currently, we only sell these products through our ecommerce platform (JUUL.com), where we utilize sophisticated automated technology, supported by third-parties, to ensure purchasers are 21+ and to prevent bulk purchases.

We also eliminated our U.S. Facebook and Instagram accounts, and are developing new technology to further limit youth access and use. We are committed to working with lawmakers, the Surgeon General, FDA, state Attorneys General, local municipalities, and community organizations as a transparent and responsible partner in this effort. We believe that these efforts combined with ~~increasing the minimum age to purchase tobacco and vapor products to 21,~~ <sup>bills like HB 1477</sup> will drastically reduce youth access of JUUL products.

At JUUL Labs, we are focused on creating an alternative to combustible cigarettes that provides an off ramp for adult smokers. We recognize that we cannot do this without also actively working to pass proven legislative



measures that prevent youth from using tobacco products, including JUUL. We are actively engaged in many states and jurisdictions to support and pass Tobacco 21 legislation. We applaud the state for creating stiffer penalties on those that furnish these products to minors. We look forward to working with you in the future to curb youth usage in the state.

Thank you.

Clear up some misinformation

### \* Harm Reduction Tool

→ We do have data to show that this is a harm reduction tool

→ Initial data shows

↳ More effective than Chantix, The Patch, Nicorette gum

└─┬─┘  
Both contain nicotine

### \* Warning label

### \* Online Verification Demonstration

# JUUL LABS ACTION PLAN

## Honoring Our Commitments

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### STRENGTHENING RETAIL COMPLIANCE

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- ONGOING | Along with escalating penalties against retailers caught by the FDA, we're also stepping up our own monitoring. We are quadrupling our "secret shopper" program of retailers to ensure that they will not sell our product to minors or make bulk sales that might find their way into the hands of minors.

### STOPPING UNAUTHORIZED ONLINE SALES

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- ONGOING | We have filed complaints in the United States International Trade Commission (ITC) against more than two-dozen entities based around the world for selling copycat JUUL products and "JUUL compatible" pods that are often marketed in kid-appealing flavors, and will continue to go after these manufacturers for infringing on our intellectual-property rights.

### DEVELOPING NEW TECHNOLOGY TO TRACK PRODUCTS AND FURTHER LIMIT YOUTH ACCESS AND USE

---

- ONGOING | We are building out an individual-device traceability system to track JUUL products throughout the distribution channel, enabling us to identify and penalize bad-actor retailers that sell to youth.



# JUUL LABS ACTION PLAN

## Honoring Our Commitments

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### STOPPING FLAVORED JUULPOD SALES TO TRADITIONAL RETAIL

---

- ✓ **COMPLETED** | JUUL Labs stopped sales of four flavored JUULpods – Cucumber, Fruit, Creme and Mango – to more than 90,000 retail stores in November, restricting the products to our 21+ age-gated website.

### ENHANCING OUR 21+ ECOMMERCE PLATFORM

---

- ✓ **COMPLETED** | We have further enhanced our industry-leading online age-verification system, adding two-factor authentication and facial-recognition technology to verify purchasers are at least 21.

### STRENGTHENING RETAIL COMPLIANCE

---

- ✓ **COMPLETED** | We have established escalating penalties against retailers that fail FDA age-verification compliance checks, including potential permanent sales bans.

### STOPPING UNAUTHORIZED ONLINE SALES

---

- ✓ **COMPLETED** | This year alone, JUUL Labs has worked to remove more than 25,000 third-party listings of JUUL products and counterfeits.

### EXITING SOCIAL MEDIA

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- ✓ **COMPLETED** | We have eliminated our U.S.-based Facebook and Instagram accounts and restricted the use of Twitter to non-promotional communications.

HB 1477 PROPOSED AMENDMENT

Page 1, after line 12 insert “**SECTION 2. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. “Chewing tobacco” means any leaf tobacco that is intended to be placed in the mouth.
2. “Cigar” means any roll of tobacco wrapped in tobacco.
3. “Cigarette” means any roll for smoking made wholly or in part of tobacco or processed tobacco and encased in any material except tobacco. “Cigarette” also means any product of a cigarette-making machine.
4. “Cigarette-making machine” means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.
5. “Consumer” means any person who has title to or possession of cigarettes, cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption in this state.
6. “Dealer” includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or any product of a cigarette-making machine.
7. “Distributor” includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
8. “Electronic smoking device” means a nonlighted, noncombustible device that employs a mechanical heating element, battery, or circuit, regardless of shape or size, to produce aerosolized or vaporized nicotine for inhalation into the body of an individual, including a device manufactured, distributed, marketed, or sold as an e - cigarette, e - cigar, e - pipe, e - hookah, vape pen, or any other similar product with any other product name or descriptor.
9. “Licensed dealer” means a dealer licensed under the provisions of this chapter.

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10. “Licensed distributor” means a distributor licensed under the provisions of this chapter.

11. “Other tobacco products” means snuff and chewing tobacco.

12. “Person” means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.

13. “Pipe tobacco” means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

14. “Sale” or “sell” applies to gifts, exchanges, and barter.

15. “Snuff” means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.

16. “Storage” means any keeping or retention of cigarettes, cigars, pipe tobacco, or other tobacco products for use or consumption in this state.

17. “Tobacco product” means any product that is made from or derived from tobacco, or that contains nicotine whether natural or synthetic, 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. The term includes a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, an electronic smoking device, and a nicotine liquid container as defined in section 12.1-31-03.2. The term does not include a drug, device, or combination product, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved for sale by the United States food and drug administration.

18. “Use” means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, or other tobacco products.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1477

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 1 of section 12.1-31-03 of the North Dakota Century Code, relating to prohibiting the sale of tobacco to minors;"

Page 1, after line 4, insert:

**"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~~ a class B misdemeanor for any person 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. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
- b. It is an infraction for any person 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. This subdivision does not apply to a:
  - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
  - (2) Self-service display that is located in a tobacco specialty store."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1477

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsections 1 and 9 of section 12.1-31-03 of the North Dakota Century Code, relating to prohibiting the sale of tobacco to minors; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**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~~ a class B misdemeanor for any person 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, e-liquid, or alternative nicotine products. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
- b. It is an infraction for any person 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. This subdivision does not apply to a:
  - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
  - (2) Self-service display that is located in a tobacco specialty store.

**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. "E-liquid" means a liquid composed of nicotine and other chemicals which is sold as a product that may be used in an electronic smoking device.
  - c. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the

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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.].

- e.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.
- e.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."

Renumber accordingly

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1477

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 23-50 of the North Dakota Century Code, relating to regulation of the sale of vapor products; to amend and reenact subsections 1 and 9 of section 12.1-31-03 and subsection 1 of section 57-39.2-11 of the North Dakota Century Code, relating to prohibiting the sale of tobacco products to minors and vapor product reporting requirements; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**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~~ a class B misdemeanor for any person 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, e-liquid, or alternative nicotine products. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
- b. It is an infraction for any person 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. This subdivision does not apply to a:
  - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
  - (2) Self-service display that is located in a tobacco specialty store.

**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. "E-liquid" means a liquid composed of nicotine and other chemicals which is sold as a product that may be used in an electronic smoking device.

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- c. "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.].
- e.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.
- e.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.

**SECTION 3.** Chapter 23-50 of the North Dakota Century Code is created and enacted as follows:

**23-50-01. Definitions.**

1. "Dealer" means any person, other than a distributor, engaged in the business of selling vapor products in this state.
2. "Distributor" means any person engaged in the business of producing or manufacturing vapor products or importing into this state vapor products for the purpose of distribution and sale to dealers.
3. "Vapor products" means an electronic smoking device or e-liquid as those terms are defined in section 12.1-31-03.

**23-50-02. Dealers and distributors - License requirements.**

1. The attorney general shall issue the license required under this section to any dealer or distributor licensed under section 57-36-02. A dealer or distributor licensed under section 57-36-02 is not subject to the application and license fee provisions in this section.

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2. A dealer or distributor that is not licensed under section 57-36-02 shall secure the license required under this section from the attorney general before engaging or continuing to engage in the business of selling vapor products in this state. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in vapor products.
3. A dealer may not be granted a distributor's license unless the dealer performed a distributor's function for at least one year before filing an application for license.
4. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information required by the attorney general.
5. Each application for a distributor's license must be accompanied by a fee of twenty-five dollars. A distributor's license does not authorize the holder to make retail sales.
6. Each application for a dealer's license must be accompanied by a fee of fifteen dollars.
7. Each license issued must be prominently displayed on the premises covered by the license.
8. An annual license issued under this section is valid from July first through June thirtieth of the following year unless sooner revoked by the attorney general or unless the business for which the license was issued is transferred, in either of which cases the holder of the license shall immediately return the license to the attorney general.

#### **23-50-03. Revocation of license.**

1. The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the regulations prescribed by the attorney general or for a violation of section 12.1-31-03.
2. A dealer or distributor may not sell vapor products while that person's license is revoked.
3. A new license may not be issued to a dealer or distributor for one year following the revocation of a previous license.

#### **23-50-04. Penalties for violation of chapter.**

Any person who violates any provision of this chapter is guilty of a class A misdemeanor.

**SECTION 4. AMENDMENT.** Subsection 1 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in section 57-39.2-12 for monthly reports and payments, on or before the last day of the month following the close of the

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first quarterly period, and on or before the last day of the month following each subsequent quarterly period of three months, the retailer shall make out a return for the preceding quarterly period in the form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by the return, and any further information as the commissioner may require to enable the retailer correctly to compute and collect the tax herein levied. A retailer licensed to sell vapor products under chapter 23-50 shall include with the return required under this section a report, in the form and manner prescribed by the commissioner, containing information on purchases and sales of vapor products. The commissioner, upon request by any retailer and a proper showing of the necessity therefor, may grant unto the retailer an extension of time not to exceed thirty days for making a return. If the extension is granted to any retailer, the time in which the retailer is required to make payment as provided for in section 57-39.2-12 must be extended for the same period but interest must be charged upon the amount of the deferred payment at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid."

Renumber accordingly