

FISCAL NOTE
Requested by Legislative Council
01/12/2019

Bill/Resolution No.: HB 1386

- 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			\$18,200,000			
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).*

HB 1386 imposes a wholesale tax on electronic smoking devices.

- 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 2 of HB 1386 extends the existing licensing requirements to distributors and dealers that provide electronic smoking devices for sale in North Dakota. The Office of Attorney General reports most of these dealers and distributors are currently licensed anyway, with the exception of 'vaping-only' types of establishments, the number of which is unknown.

Sections 8, 9, and 10 impose the wholesale tobacco products tax on electronic smoking devices at the rate of 28% of the wholesale price of the product.

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.*

It is estimated by the Center for Disease Control and Prevention that approximately 4.3% of adults use e-tobacco products in North Dakota, which equates to about 25,000 users in the state. Little is known about the amount of daily usage, or the wholesale price of the products that are consumed. Therefore the estimate of additional state general fund revenue that can be expected in the 2019-21 biennium if HB 1386 is enacted is likely to be between \$12.6 million and \$23.8 million; the midpoint of this range is \$18.2 million, as shown in 1A above.

- 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.*

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Date Prepared: 01/21/2019

2019 HOUSE FINANCE AND TAXATION

HB 1386

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1386
1/22/2019
31191

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the imposition of tax on electronic smoking devices; and to provide a penalty.

Minutes:

Attachments 1-6

Chairman Headland: Opened hearing on HB 1386.

Representative Mary Adams: Introduced bill. Distributed written testimony, see attachment #1. Ended testimony at 2:42.

Chairman Headland: Is it your opinion that they are a tobacco product or is there some type of official definition?

Representative Mary Adams: Distributed information on e-cigarette use among youth and young adults, see attachment #2. You can buy e-cigarettes with tobacco in them but if you go to a vaping store you can buy the liquid then add the nicotine and flavorings to it later. It's not just my opinion. I'm an ex-smoker and I understand needing to have that nicotine. They showed that they use them to sometimes end cigarette smoking addiction but then you're just adding another one because there is nicotine in that. The addiction is to nicotine it's not to the cigarette or the habit.

Chairman Headland: Could the same be said for the Nicorette patch or gum?

Representative Mary Adams: Yes, but you're still getting the rush from the nicotine. It is the same with the patch and the gum.

Chairman Headland: Are you suggesting those should be taxed as tobacco products?

Representative Mary Adams: I'm not sure. If it is sold as a cigarette it should be taxed as a cigarette.

Representative B. Koppelman: Do you think the ones used without nicotine be taxed as tobacco products?

Representative Mary Adams: No, if they clearly state that they don't have nicotine. If it has nicotine, then it should be taxed as a tobacco product.

Representative B. Koppelman: If that's the case then you wouldn't be taxing many of the devices because you would only be taxing the input.

Representative Mary Adams: Just the nicotine.

Chairman Headland: Is there testimony in support?

Heather Austin, Executive Director for Tobacco Free North Dakota: Distributed written testimony, see attachment #3. Ended testimony at 8:38.

Chairman Headland: How are you going to determine what product is going to be taxed and not taxed if we're only looking at taxing the product that contains the nicotine?

Heather Austin: We can't be certain which products contain nicotine because there are no regulations around the labeling of those products. In 2017 a study at NDSU tested 93 vials of the e-liquids used and found that a staggering amount of them were incorrectly labeled showing more or less nicotine, and some that said there was no nicotine actually had nicotine in them. Until those labeling requirements are put in place we would be unsure what contains nicotine and what doesn't. We would recommend an across the board inclusion as tobacco products for all of those.

Chairman Headland: How is it that such a dangerous product for our youth can be unregulated?

Heather Austin: When these products first hit the market the FDA attempted to put rules and regulations in place. A lawsuit was created by opponents and they've been stuck in litigation for many years trying to find out what products would be grandfathered in and what products would be excluded. We're told that litigation won't be resolved until 2022. National news indicates the FDA coming out with more and more recommendations and points of opposition on what these products are doing especially to our kids.

Chairman Headland: You said they were untaxed which isn't true. We are collecting sales tax on the products today.

Heather Austin: I stand corrected. They would be subject to the same sales tax as any other product but they wouldn't be subject to any tobacco taxes.

Representative B. Koppelman: Was it a device that could be used for nicotine or any number of products that could be used in that device, and whether we know it contains nicotine or not be taxed in this bill?

Heather Austin: Correct. There is a difference between the nicotine replacement therapies like the patch and chewing gum and an e-cigarette device. The nicotine replacement therapies don't quite mimic the same nicotine hit that a cigarette gives. It gives a much slower rise to nicotine into the body at a much less dramatic level and then it eases you off. That's

how people are able to use those therapies to quit their nicotine addiction. An e-cigarette is specifically made to mimic what a cigarette hit does which is a fast high spike of nicotine that gets your dopamine receptors fired up and those neuropathways. That's why there is a difference between those products and nicotine replacement therapies and why electronic smoking devices are not an approved nicotine replacement therapy product at this time.

Chairman Headland: The bill sponsor suggested that anything that doesn't contain nicotine shouldn't be taxed as tobacco but you're saying anything that is considered vaping we consider to be dangerous and want it taxed. How does that protect our youth by taxing them? You can suggest they'll do less of it because of a tax but we know that's not true.

Heather Austin: We simply don't know the contents of these liquids. Until labeling is put in place and regulated it's hard to tax the specific ingredients. We have data that shows a correlation between the price increase and a drop in use rate initiation.

Chairman Headland: I'm suggesting that maybe we should look at assuring they are harmful before we start including them in higher taxation.

Representative Ertelt: In the study you mentioned, are there labeling on e-cigarettes those that contain tobacco or nicotine do they reference tobacco and if so, were those in this test found to contain tobacco and nicotine?

Heather Austin: I would have to look to be certain what the study states. That study is being repeated two years later to get an update on where we stand with the labeling and how accurate it is. I can see if tobacco and nicotine is specifically referenced or if it just states nicotine. I can email that information to the committee.

Chairman Headland: Is there further support?

Neil Charvat, Director of the Tobacco Prevention and Control Program for the North Dakota Department of Health: Distributed written testimony, see attachment #4. Ended testimony at 17:20.

Representative Mitskog: The statement from the Surgeon General and the FDA coming out in front of this is due to the epidemic they've now declared youth vaping. There is certainly some underlying health risk because of those warnings. Recent research done by Yale University referenced the American Society of Clinical Oncology and the American Association of Cancer Research so certainly those organizations have an interest in health and potential cancer. When we impose an excise tax such as we've done with cigarettes and alcohol they are done to offset the cost of health to our state and our citizens. Would imposing a tax would be similar to the tobacco tax because of the health costs associated with use of electronic devices or liquid nicotine?

Neil Charvat: I really don't have a comment about the tax. I'm here to get the device designated as a tobacco product so we can regulate that. We don't know the health impacts now because it's so new but we are getting the studies showing the things you're referencing and we know about the addictive link of these products and how they create further addiction into opioids. We can't even tell people how much it's being used. We are hearing from

administrators, principals, and parents that they are stepping on discarded devices and products all the time. I am here to talk about why that's important to say that this is a tobacco product and how much of it is being used, what's the rate, and what can we do about it.

Chairman Headland: We've heard the Surgeon General has suggested it's a dangerous product but Congress has yet to act themselves to confirm that. I think the cart is before the horse here. If there is evidence then show us or if it's just speculation that the youth are doing it, we don't really know if there are harmful effects to this or not. I need clarification.

Neil Charvat: We don't just want to come out and say this contains nicotine and we want to regulate it because of that.

Chairman Headland: But that's what we're hearing.

Neil Charvat: The nicotine patch and things like that have gone through years of testing to make sure they are safe. These products have not been submitted for that test yet. We're seeing that nicotine is poison and the liquid itself is causing sickness and fatalities. We had an incident in Jamestown where a school administrator was poisoned by handling a device that had some of this nicotine liquid on it. It took us 40 years to figure out cigarettes were bad but these are so new that we're not seeing that yet, but we are starting too. These products have some of the same ingredients that cigarettes have so we're seeing the same cancer risks with some of these products. Because of the high levels of nicotine, we're seeing more admissions for elevated heart rate,...

Chairman Headland: But there are all kinds of legal products that can elevate your heart rate.

Neil Charvat: Yes, but we're seeing it is specifically tied to this. We're still compiling that data showing that at this time.

Representative B. Koppelman: You talk about the use of ENDS (e-cigarettes/vaping devices) in your written testimony and you talk about your concern with it being used by minors. Two sessions ago we amended the law in 12.1-31-03 to restrict the sale of these types of products to minors whether or not we know if they have nicotine or not. We didn't put it in the taxing portion because it wasn't a traditional type tobacco product that we could prove was a tobacco product. Apparently somebody is not complying since there is an epidemic. I think we need to stop the kids from getting it not charging them more when they buy them. What are your thoughts on that?

Neil Charvat: You have to be a tobacco retailer to sell cigarettes while these could be sold by anyone. There is no regulation as to who can sell these products. We just don't know who is selling them. There is no regulation for vape shops so they could be selling to minors or somebody is buying it for them. We could do compliance checks at a convenience store and send in youth to see if they could buy the products but we can't do that now because there's no statute that says we can in the state.

Representative B. Koppelman: You can't enforce 12.1-31-03 because you have no authority to enforce something that is clearly breaking the law? In Fargo there are vape

shops. It wouldn't be hard to do a sting type operation in those types of places. Are you saying the law doesn't permit you to try to catch bad actors who aren't following the statute?

Neil Charvat: I'm not suggesting that. I'm suggesting that you could do a sting like that. There was a study done by NDSU and they sent people in to observe. I'm referring to a youth compliance check where they send officers in to check and could write citations if people fail but that is not built into the statute right now.

Chairman Headland: I think these types of products are sold in more than just a vape shop, are they not?

Neil Charvat: I don't know the answer to that. I know they sell them in convenience stores but that's not so much of an issue because those are tobacco retailers. The issue is the other people that could be selling it.

Representative Mary Adams: There is a bill coming up that makes the retailers or wholesalers list the ingredients in the liquid so if there is nicotine in there then that would fall under the tobacco.

Chairman Headland: Is there further support? Is there opposition?

Gregory Conley, American Vaping Association: Distributed written testimony, see attachment #5. Ended testimony at 32:28.

Representative Mitskog: Some states have moved in the direction of taxing the liquid. How has your group responded to that?

Gregory Conley: The intention of taxes on cigarettes and alcohol is to help the state recoup the costs that they incur because of their health effects. With vaping you don't have those health effects. When you have the Royal College of Physicians and Public Health England estimating that long term use of these products is unlikely to cause any risks above five percent that of smoking, it doesn't make sense to impose any additional tax when you still have 100,000 adult smokers in the state. If we were at a point where we had extinguished smoking in America and you just had recreational use of these products, then maybe help the state and have a small tax. But when you still have 100,000 adult smokers why would you take a step that is just guaranteed to lead to a certain number of adults deciding it's better I stay with my Marlboros, that just doesn't make sense.

Representative Mitskog: I think there is a bit of hypocrisy in what you said. Nicotine does have adverse health effects particularly to the brain and it is addictive. To not think that there are no costs associated with that..

Gregory Conley: Nicotine is very similar to caffeine when it is disconnected from inhaling burning smoke. Youth should not use nicotine. They shouldn't use any substance that shoots to the brain, including caffeine because that changes brain patterns. But when it comes to adults there is no evidence that nicotine usage, disconnected from smoke, actually causes any harm. That's why the FDA changed the labeling about three or four years ago on nicotine gum, patch, and lozenge. It used to say to only use this product for 12 weeks,

talk to your doctor, and be scared. They changed the labeling to say if you're a smoker and you want switch to these products to get your nicotine, that is the very same tobacco derived nicotine that is in my vaping product today, that if you want to use this product for five or ten years keep talking to your doctor but it's so much better for you than smoking.

Representative Mitskog: I can appreciate your argument that the risks for lung damage with smoking but going back to the addiction potential with nicotine, it's a very difficult thing to break that addiction. My concern lies with the new users, the youth. How are we going to limit and prevent them from becoming nicotine users?

Gregory Conley: There are state by state numbers on the percentage of youth who have vaped in the last 30 days and there is no correlation between the states that have already taxed vaping products and where their position is on that list. A small tax increase on products that are price comparative to cigarettes, you should have concern about adults and youth. When you look at the evidence on adults then look at the evidence on youth we see that experimentation of vaping has de-normalized cigarette smoking. We prefer the youth not use nicotine or alcohol or marijuana or cigarettes. We have seen tremendous gains in decreasing smoking both at the adult level and the youth level as these products have increased. I don't think the evidence supports this 28% tax on these products.

Representative Mitskog: Could you provide information of those states that have imposed taxes and the effects on rates?

Gregory Conley: Sure, I can absolutely do that.

Chairman Headland: Further opposition?

Bill Boldenow, owner of Infinite Vapor: We have four locations in Bismarck, Fargo, Grand Forks, and Minot. We help thousands of customers at each location each month to quit smoking. I've spoken with customers who are angry that the government wants them to go back to smoking by imposing a tax on liquid nicotine. I understand trying to protect our youth but our job is to protect everybody. North Dakota has borders on all four sides and I've already instructed my managers to find prime locations to move our businesses out of North Dakota if this tax is implicated. It will do major damage to our business and the citizens of our state are going to go to Minnesota to purchase their products. If you want to increase taxes to decrease revenue, then you're going to accomplish that for a majority of the population of the state that lives on the east side of North Dakota. E-cigarettes are not tobacco, there is no tobacco in e-cigarettes. It's frustrating to hear all the false information and fear from the health officials. You have a country like England who says it's 95% safer than smoking and they are successful in getting their people off of cigarettes. I don't understand why people want others to go back to smoking cigarettes, it makes no sense to me. We generate 10s of thousands of dollars a month of tax revenue and if it's 95% safer then maybe you guys should be giving us a credit to get more people off of smoking. I can't imagine the cost of having people go back to smoking cigarettes. You're going to increase that cost to the consumer because I can't eat that as a business. It's going to be passed on to your citizens making it far more likely for them to try and quit or stay quitting when it becomes more expensive to vape than to smoke. I strongly oppose this bill. Three of four cities in the state including Fargo, Bismarck, and Grand Forks have licenses and are

susceptible to compliance checks at any time and we welcome that. I look forward to sensible regulation.

Chairman Headland: Are these types of products only specific to vape shops or are e-cigarettes sold in convenience stores and readily available to the public?

Bill Boldenow: They are available to the public; they are at every gas station.

Chairman Headland: That's what I thought but I wanted to be clear.

Bill Boldenow: If you only tax nicotine what do you think the average consumer or businesses that are trying to skirt that try to do? They are going to sell the nicotine in a bottle by itself. They are going to let the consumer mix the chemical. Just think what would happen if a child spilled a bottle of nicotine on themselves.

Representative Mitskog: The information from the Minnesota Department of Revenue and the taxation in Minnesota state e-cigarettes and e-juice are considered tobacco products and are subject to the tobacco tax which are currently 95% of the wholesale cost of any product containing or derived from tobacco. Can you comment on a 95% wholesale cost?

Bill Boldenow: We have multiple locations in Minnesota also. That is only for products that are manufactured outside of Minnesota and brought into the state. That is a tax on the nicotine brought in. It eliminates a lot of business coming into Minnesota. Minnesota is at a disadvantage than any of my other stores in Wisconsin and Minnesota because of that tax. This current bill would tax 28% of the entire sale.

Chairman Headland: We don't look to Minnesota for our tax policy.

Justin Danberry: I own a store and we strictly sell e-cigarette products. I'm already looking at property in Minnesota. The 95% tax is on the nicotine itself. You have manufacturers that make the e-liquid in Minnesota. Any company outside of Minnesota that is a manufacturer who wants to go into Minnesota, it's 95% on that entire product. If you're a manufacturer and you order liquid nicotine in bulk you're 95% is charged on that. When it comes to the end product it's pennies on the dollar. The 28% is on the entire thing including products that don't have nicotine and accessories to include batteries. In my store I would have to charge my customer 28% more essentially on batteries.

Chairman Headland: Further opposition?

Mike Rud, President of the North Dakota Petroleum Marketers Association: Distributed written testimony, see attachment #6. Ended testimony at 49:40.

Todd Fiechtner, owner of vape shop in Fargo: I respectfully ask for a do not pass on this bill.

Chairman Headland: Is there further opposition? Seeing none we will close the hearing on HB 1386.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1386
1/22/2019
31226

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the imposition of tax on electronic smoking devises; and to provide a penalty.

Minutes:

No attachments

Chairman Headland: Open for discussion.

Representative Dockter: I'm opposing this. It was mentioned in testimony that we really don't have scientific evidence to show that it's harmful at this point in time. It wouldn't be good for the industry until we have more information.

Representative Ertelt: My question to the Tobacco Free North Dakota about the NDSU study was regarding the tobacco nicotine itself. That's the only way I could see a legitimate argument about classifying it as a tobacco product is if it was actually tobacco nicotine. If it was only for that purpose, then I would consider it but it's way too encompassing.

Representative Blum: It didn't seem like it was a safer alternative to cigarettes. I'm not sure we want to take a step to tax something to get people off a more dangerous substance like smoking cigarettes before we have a full picture of what it really is and what it really does to people.

Representative B. Koppelman: I asked what the intent was to the bill sponsor and what they wanted to tax and we got two different answers from the bill sponsor versus Tobacco Free North Dakota. We heard it is unknown what products really contain nicotine then we heard the FDA requires a labeling so I'm not sure who's lying and who's not. I would be ready to make a motion for a do not pass if you're ready.

Representative Eidson: While they might be less dangerous when it comes to what is in tobacco they are not less dangerous when it comes to the amount that you're inhaling. Some of these products are huge and when you take a hit off it by the time you're exhaling it's a good 10 seconds of solid smoke which has nicotine in it. In my experience of buying e-liquid they are labeled with nicotine and to what degree they have nicotine. The general scale is 3 or 5% all the way up to 15% with the higher the percentage being the higher the nicotine and the harsher it is. You're not even allowed to have it in an airport at this time so we are moving

in the direction this bill wants to go. There is a distinction between the ones that have nicotine and the ones that don't. If they don't have nicotine I still think they present a health hazard. I will be supporting this bill.

Chairman Headland: This goes far beyond the taxing of nicotine. It's going to tax those products that don't contain nicotine in the same way as well as those devices used to ingest the vapor, the charging unit, and everything sold in a vaping store. If you were going to support the bill I would hope that you would amend it at least to something that is closely associated as tobacco. This bill is way over the top and for those reasons I am going to oppose this bill as well.

Representative Mitskog: Would the committee be willing to do an amendment to limit, restrict or remove?

Chairman Headland: If they really intended to present a bill that just addressed the nicotine they would have done it. The real goal of this bill is way beyond that. I think most of us sitting here understand that. If you want to offer an amendment, we would certainly address it but I think the fate of the amendment would go along with the fate of this bill.

Representative Mitskog: I had a bill drafted specific to liquid nicotine but due to the number of bills I removed it from consideration.

Chairman Headland: There is a bill in the senate that goes beyond this bill. What are your wishes?

Representative B. Koppelman: **MADE A MOTION FOR A DO NOT PASS.** With all the things that are being put in this bill, can you imagine if that all applied to tobacco? If we were doing a percentage tax on ashtrays, cigarette holders, or any other number of accessories that would be ludicrous.

Representative Steiner: **SECONDED.**

Chairman Headland: Is there further discussion on the bill?

ROLL CALL VOTE: 11 YES 2 NO 1 ABSENT
MOTION CARRIED

Representative B. Koppelman will carry this bill.

Date: 1-22-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1386

House Finance and Taxation 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. Koppelman Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Eidson		✓
Vice Chairman Grueneich	✓		Representative Mitskog		✓
Representative Blum	✓				
Representative Dockter	✓				
Representative Ertelt	✓				
Representative Fisher	✓				
Representative Hatlestad	✓				
Representative Kading	✓				
Representative Koppelman	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	A				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1386: Finance and Taxation Committee (Rep. Headland, Chairman) recommends
DO NOT PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1386 was
placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1386

#1
HB 1386
1-22-19

Chairman Headland, Members of the committee

I am Mary Adams Representative District 43 Grand Forks

I am here to present HB # 1386 Simply put, this bill would add the definition of electronic smoking devices to the Century Code.

Tobacco and its use have been regulated for decades. Reports of the negative public and personal health effects of traditional forms of tobacco have increased consumer awareness. This in turn had people and companies looking for alternatives. Thus, electronic nicotine delivery systems ENDS or E-cigarettes! While they do not have "smoke", they have vapor. The vapor is produced by turning a liquid into a mist. And the liquid in the cartridges have various amounts of tobacco-based nicotine, synthetic nicotine, flavorings or propellants.

States have regulated sales and taxation of traditional combustible and smokeless tobacco products. The FDA began regulating traditional tobacco products in 2009 and have more recently, regulating vapor products and electronic nicotine delivery systems. These items are treated as similar products by the federal government, and we should follow suit. They should be sold and taxed as any tobacco product.

States continue to regulate combustible tobacco and e-cigarette use regarding clean air, youth access and retail sales licensing and locations. Currently 12 states include e-cigarettes in their definition of "tobacco products"

These products while having a different look, are still a tobacco product and should be included in our laws that govern them.

Thank you for your time and consideration of this bill

Please vote for a Do Pass

Mary Adams



E-Cigarette Use Among Youth and Young Adults

A Report of the Surgeon General

#2
HB1386
1-22-19
p. 1

Fact Sheet

This Surgeon General's report comprehensively reviews the public health issue of e-cigarettes and their impact on U.S. youth and young adults. Studies highlighted in the report cover young adolescents (11-14 years of age); adolescents (15-17 years of age); and/or young adults (18-25 years of age). Scientific evidence contained in this report supports the following facts:

E-cigarettes are a rapidly emerging and diversified product class. These devices typically deliver nicotine, flavorings, and other additives to users via an inhaled aerosol. These devices are referred to by a variety of names, including "e-cigs," "e-hookahs," "mods," "vape pens," "vapes," and "tank systems."

E-cigarettes are battery-powered devices that heat a liquid into an aerosol that the user inhales.

The liquid usually has nicotine, which comes from tobacco; flavoring; and other additives.

E-cigarette products can also be used as a delivery system for marijuana and other illicit drugs.

E-cigarettes are now the most commonly used tobacco product among youth, surpassing conventional cigarettes in 2014. E-cigarette use is strongly associated with the use of other tobacco products among youth and young adults, including cigarettes and other burned tobacco products.

In 2015, more than 3 million youth in middle and high school, including about 1 of every 6 high school students, used e-cigarettes in the past month. More than a quarter of youth in middle and high school have tried e-cigarettes.

Among high school students, e-cigarette use is higher among males, whites, and Hispanics than among females and African-Americans.

There is a strong association between the use of e-cigarettes, cigarettes, and the use of other burned tobacco products by young people. In 2015, for example, nearly 6 of 10 high school cigarette smokers also used e-cigarettes.

Research has found that youth who use a tobacco product, such as e-cigarettes, are more likely to go on to use other tobacco products like cigarettes.

E-cigarette use among youth and young adults has become a public health concern. In 2014, current use of e-cigarettes by young adults 18-24 years of age surpassed that of adults 25 years of age and older.

- Among young adults 18-24 years of age, e-cigarette use more than doubled from 2013 to 2014. As of 2014, more than one-third of young adults had tried e-cigarettes.
- The most recent data available show that the prevalence of past 30-day use of e-cigarettes was 13.6% among young adults (2014) and 16.0% among high school students (2015).
- The most recent data available show that the prevalence of past 30-day use of e-cigarettes is similar among middle school students (5.3%) and adults 25 years of age and older (5.7%).
- Among young adults, e-cigarette use is higher among males, whites and Hispanics, and those with less education.

The use of products containing nicotine poses dangers to youth, pregnant women, and fetuses. The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.

- Many e-cigarettes contain nicotine, which is highly addictive.
- The brain is the last organ in the human body to develop fully. Brain development continues until the early to mid-20s. Nicotine exposure during periods of significant brain development, such as adolescence, can disrupt the growth of brain circuits that control attention, learning, and susceptibility to addiction.
- The effects of nicotine exposure during youth and young adulthood can be long-lasting and can include lower impulse control and mood disorders.
- The nicotine in e-cigarettes and other tobacco products can prime young brains for addiction to other drugs, such as cocaine and methamphetamine.

#2
HB 1386
122-19
p. 2

Nicotine can cross the placenta and affect fetal and postnatal development. Nicotine exposure during pregnancy can result in multiple adverse consequences, including sudden infant death syndrome (SIDS).

Ingestion of e-cigarette liquids containing nicotine can cause acute toxicity and possible death if the contents of refill cartridges or bottles containing nicotine are consumed.

E-cigarette aerosol is not harmless. It can contain harmful and potentially harmful constituents including nicotine. Nicotine exposure during adolescence can cause addiction and can harm the developing adolescent brain.

The constituents of e-cigarette liquids can include solvents, flavorants, and toxicants.

The aerosol created by e-cigarettes can contain ingredients that are harmful and potentially harmful to the public's health, including: nicotine; ultrafine particles; flavorings such as diacetyl, a chemical linked to serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead.

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.

E-cigarettes are an estimated \$3.5 billion business in the United States. In 2014, e-cigarette manufacturers spent \$125 million advertising their products in the U.S.

In 2014, more than 7 of 10 middle and high school students said they had seen e-cigarette advertising. Retail stores were the most frequent source of this advertising, followed by the internet, TV and movies, and magazines and newspapers.

The 2012 Surgeon General's Report on tobacco use among youth and young adults found that tobacco product advertising causes young people to start using tobacco products. Much of today's e-cigarette advertising uses approaches and themes similar to those that were used to promote conventional tobacco products.

E-cigarettes are available in a wide variety of flavors, including many that are especially appealing to youth. More than 85% of e-cigarette users ages 12-17 use flavored e-cigarettes, and flavors are the leading reason for youth use. More than 9 of 10 young adult e-cigarette users said they use e-cigarettes flavored to taste like menthol, alcohol, fruit, chocolate, or other sweets.

Action can be taken at the national, state, local, tribal and territorial levels to address e-cigarette use among youth and young adults. Actions could include incorporating e-cigarettes into smokefree policies, preventing access to e-cigarettes by youth, price and tax policies, retail licensure, regulation of e-cigarette marketing likely to attract youth, and educational initiatives targeting youth and young adults.

The Food and Drug Administration (FDA) now regulates the manufacturing, importing, packaging, labeling, advertising, promotion, sale, and distribution of e-cigarettes.

In August 2016, FDA began enforcing a ban on vending machine sales unless in adult-only facilities and a ban on free samples and sales to minors.

Parents, teachers, health care providers, and others who influence youth and young adults can advise and inform them of the dangers of nicotine; discourage youth tobacco use in any form, including e-cigarettes; and set a positive example by being tobacco-free themselves.

Citation: U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General—Executive Summary*. 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.

Website: E-cigarettes.Surgeongeneral.gov



Take this quiz to get the facts on e-cigarette use among youth and young adults.



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True or False?

Question 1 of 5

More than 6 of 10 teens believe that occasional use of e-cigarettes causes only little or some harm.



True



False

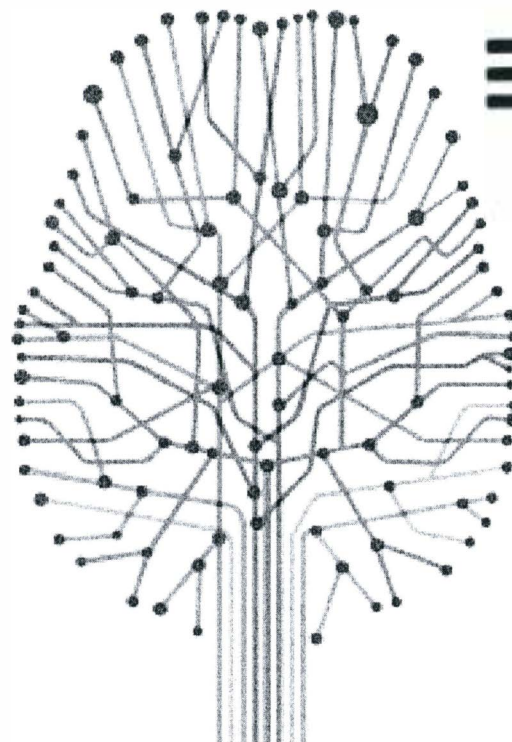
The Bottom Line

Scientists are still learning more about how e-cigarettes affect health. However, there is already enough evidence to justify efforts to prevent e-cigarette use by young people.

Because most tobacco use starts during adolescence, actions to protect our



**Until about age 25,
the brain is still
growing.**

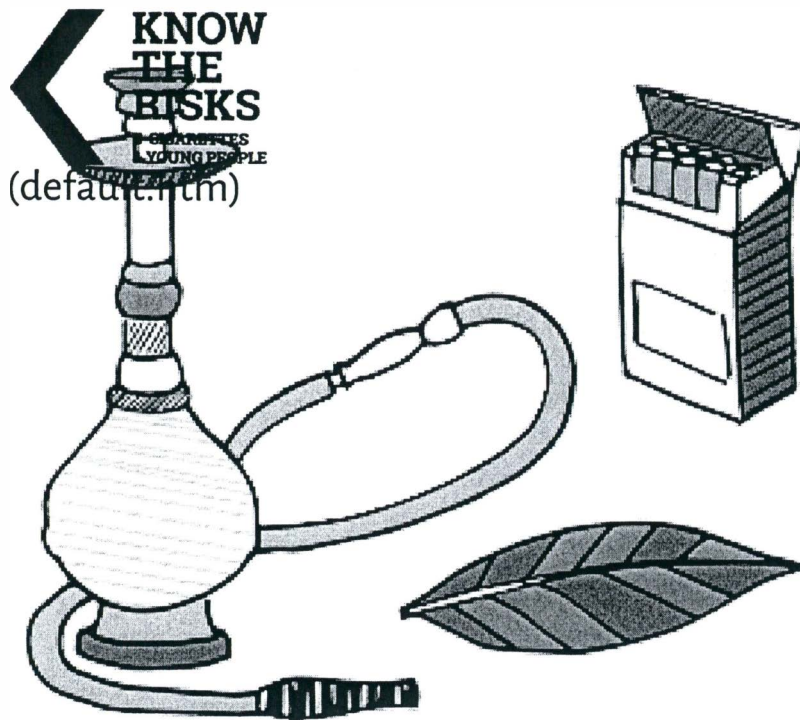


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Addiction

How does the nicotine in e-cigarettes affect the brain? Until about age 25, the brain is still growing. Each time a new memory is created or a new skill is learned, stronger connections – or synapses – are built between brain cells. Young people's brains build synapses faster than adult brains. Because addiction is a form of learning, adolescents can get addicted more easily than adults. The nicotine in e-cigarettes and other tobacco products can also prime the adolescent brain for addiction to other drugs such as cocaine.

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Behavior Risks

E-cigarette use among youth and young adults is strongly linked to the use of other tobacco products, such as regular cigarettes, cigars, hookah, and smokeless tobacco.

Some evidence suggests that e-cigarette use is linked to alcohol use and other substance use, such as marijuana. And certain e-cigarette products can be used to deliver other drugs like marijuana.

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Nearly
3 out of 5
high school smokers
also use e-cigarettes



Use of Two or More Tobacco Products

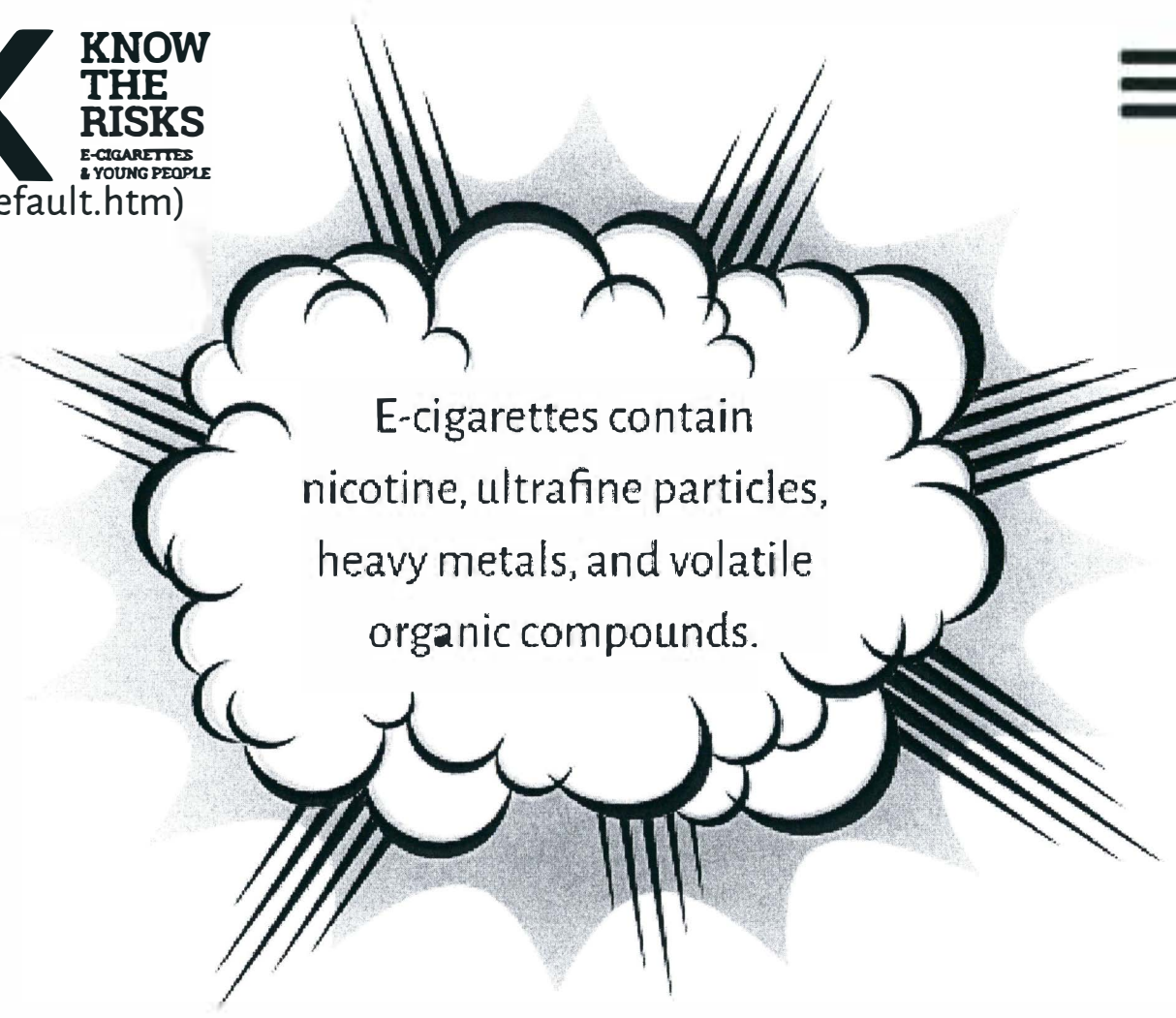
Some people have suggested that use of e-cigarettes by young people might "protect" them from using cigarettes. There is no evidence to support this claim. Some studies show that non-smoking youth who use e-cigarettes are more likely to try conventional cigarettes in the future than non-smoking youth who do not use e-cigarettes. And among high school students and young adults who use tobacco, more use both e-cigarettes and burned tobacco products than use e-cigarettes alone. Burned tobacco products like cigarettes are responsible for the overwhelming majority of tobacco-related deaths and disease in the United States.

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E-cigarettes contain
nicotine, ultrafine particles,
heavy metals, and volatile
organic compounds.

Aerosol and Other Risks

The aerosol from e-cigarettes is not harmless. It can contain harmful and potentially harmful chemicals, including nicotine; ultrafine particles that can be inhaled deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead. Scientists are still working to understand more fully the health effects and harmful doses of e-cigarette contents when they are heated and turned into an aerosol, both for active users who inhale from a device and for those who are exposed to the

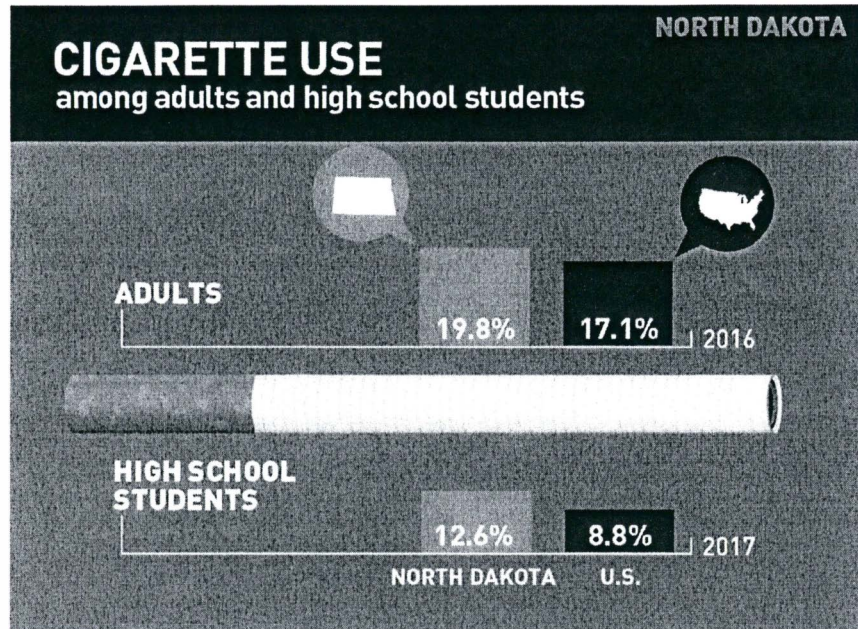


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tobacco use in north dakota

Cigarette use: North Dakota*

- In 2016, 19.8 percent of adults smoked. Nationally, the rate was 17.1 percent.¹
- In 2017, 12.6 percent of high school students smoked on at least one day in the past 30 days. Nationally, the rate was 8.8 percent.²



Other tobacco product use: North Dakota

- In 2015, 2.2 percent of adults used e-cigarettes, 4.9 percent used smokeless tobacco and 2.1 percent smoked cigars.³
- In 2017, 20.6 percent of high school students used e-cigarettes, 8.0 percent used smokeless tobacco and 8.2 percent smoked cigars on at least one day in the past 30 days. Nationally, the rates were 13.2 percent, 5.5 percent and 8.0 percent, respectively.²



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January 22, 2019

9:00 am CST

House Finance and Taxation Committee for the 66th ND Legislative Assembly

Chairman Headland, and members of the House Finance and Taxation 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 1386, or the bill relating to the imposition of tax on electronic smoking devices. 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 including electronic tobacco products for taxation and regulation, alongside other existing tobacco products in North Dakota, we create parity, and 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.

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.

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. Even the tobacco industry acknowledges that raising tobacco taxes reduce smoking, which is why they fight so hard to oppose them. "It is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the Federal excise tax on cigarettes."ii. – Myron Johnson, Philip Morris Executive

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. We can lead the way in North Dakota by classifying these products as what they are: tobacco. And by including them in existing tobacco tax structure at current levels, we can lead the way in protecting our kids, and that creates healthier youth and a healthier state.

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Again, thank you for this time in front of you, Chairman Headland and the Committee. It is very appreciated. Please vote Do Pass on HB 1386.

May I take any questions?

Heather Austin
Executive Director, Tobacco Free North Dakota
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- i. HHS, Know the Risks: E-Cigarettes & Young People, accessed March 15, 2018 at <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.
- ii. Philip Morris Research Executive Myron Johnston, "Teenage Smoking and the Federal Excise Tax on Cigarettes," September 17, 1981, Bates No. TA82034-TA82038

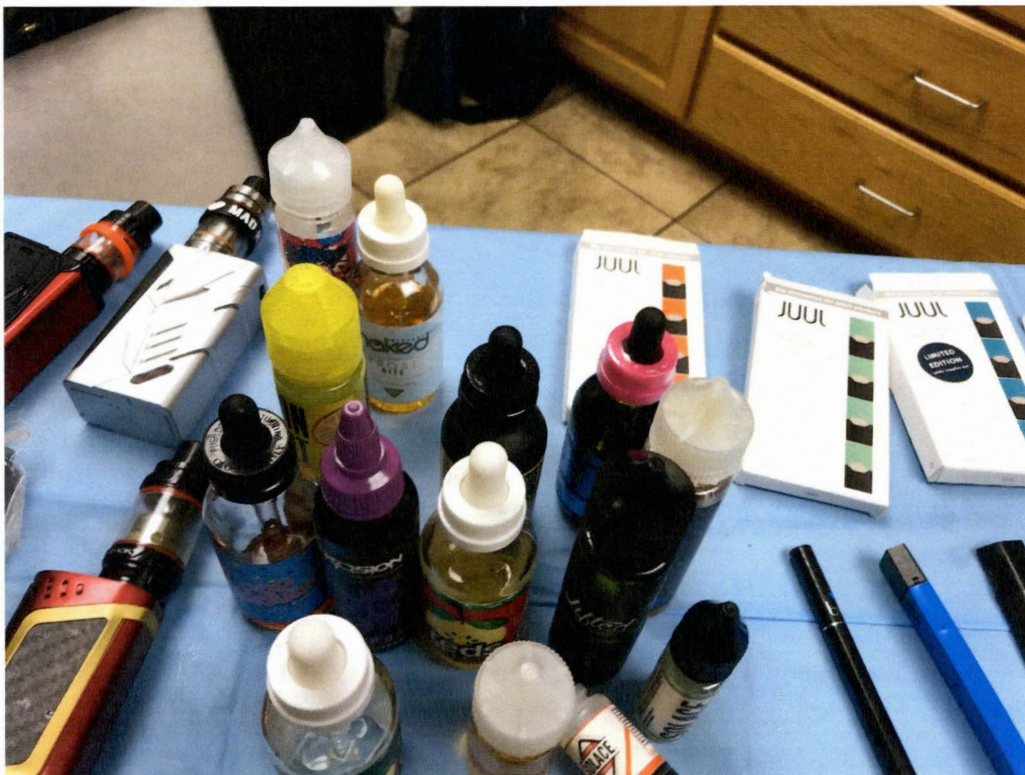
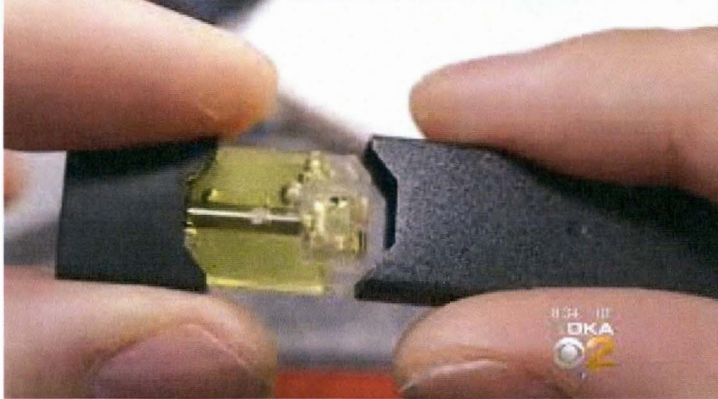


Photo of actual e-juices and electronic tobacco devices confiscated during the fall of the 2018-2019 school year at a North Dakota High School.

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

Good morning Chairman Headland and members of the 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 1386.

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 provide evidence-based interventions to: Prevent tobacco product use initiation; Increase quitting tobacco use; and Reduce exposure to secondhand smoke. House Bill 1386 designates electronic smoking devices, or electronic nicotine delivery systems (ENDS), as a tobacco product. This will help prevent tobacco product use initiation.

Nearly one in five high school students uses tobacco products. Additionally, adolescents' use of ENDS (e-cigarettes/vaping devices) has significantly increased from 1.6 percent in 2011 to 19.1 in 2017 (ND Youth Risk Behavior 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". In addition, new data from the FDA cites an anticipated increase of 77 percent in ENDS use among high school students within the next year.

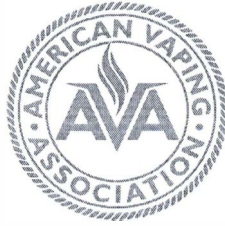
Citing statistics regarding youth use of ENDS is difficult, since these devices are not classified as "tobacco products". HB 1386 would change this classification from general merchandise to tobacco products and require that retailers must have a tobacco license to sell these products. Additional benefits include:

- Helps retailers justify checking for identification for proof of age as they already do with other tobacco products.

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- Assists groups performing tobacco compliance checks in retailer establishments to include youth purchase attempts of ENDS with other tobacco products, such as cigarettes. With ENDS lacking this state-level designation, many compliance statutes are not possible for ENDS.
- Allows closer monitoring of the amount of ENDS sales; thereby, assisting efforts to gather data regarding usage of these products.

Designation of ENDS as tobacco products will help reduce youth initiation and use, helping to lower the "epidemic" of high ENDS usage levels among youth. For this reason, we ask for your support in passing House Bill 1386.



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The American Vaping Association

www.vaping.org

70 Hemlock St, Stratford, CT 06615

(609) 947 - 8059

January 22, 2019

RE: HB 1386, a bill to impose a tax on vaping products

Chairman Headland, Vice Chairman Grueneich, and members of the Finance and Taxation 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 issue an unfavorable report on HB 1386. HB 1386 seeks to impose an excise tax of 28% of wholesale on all vaping products sold in North Dakota. Neither public health nor North Dakota small businesses will be served by discouraging adult smokers from switching to less harmful alternatives.

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."
- The U.S. National Academy of Sciences extensively studied the health effects of vaping products and concluded that vaping is "likely much less harmful than traditional combustible cigarettes" and that their use will result in an overall public health benefit under the most plausible scenarios.
- 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.
- 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.¹
- 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).²

¹ 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

² 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>

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II. Tobacco-Style Excise Taxes are Not Justifiable and Will Harm Small Businesses

- In a state with over 100,000 adult smokers, imposing excise taxes on vaping products will take away a key advantage that these products offer over cigarettes – price competitiveness.
- A study published in the journal *Tobacco Control* estimated that for every 10% increase in the price of vaping products, adult smokers' willingness to use the products decreased by 19%. A 28% wholesale tax will not only send sales to out of state companies that deliver untaxed products through the mail, but will also lead many adult smokers to never attempt to switch.³
- Excessive taxation of vaping products has immediate and long-lasting negative impacts on small businesses. In Pennsylvania, a 40% wholesale tax was estimated by numerous media outlets to have closed over 125 small businesses.⁴
- The definition of 'electronic smoking device' in this bill is among the most expansive used in any tax bill relating to vaping products in the country. Whereas tobacco pipes and cigar cutters are not taxed as 'tobacco products' in North Dakota, this bill would tax standalone devices sold without any liquid nicotine. And it gets worse -- lanyards, if sold for the purpose of being used with a vaping product, would be taxed as an 'accessory,' and even nicotine-free e-liquids would somehow be taxed as 'tobacco products.'

III. Better Enforcement is the Answer to Youth Misuse, Not 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.⁵

North Dakota should rigorously enforce its existing ban on the sale of all nicotine and tobacco products to minors. However, new excise taxes are not justified by the science that exists today. Indeed, the science suggests that because vaping products and other non-combustible options are helping to reduce and denormalize smoking, taxing vaping products would instead do much more harm than good.

Please reject HB 1386 and keep smoke-free alternatives affordable and accessible for adult smokers in North Dakota.

Sincerely,



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

³ J. Huang, *et al.* "The impact of price and tobacco control policies on the demand for electronic nicotine delivery systems." *Tobacco Control*, 2014;23:iii41-iii47. <https://tobaccocontrol.bmj.com/content/23/suppl_3/iii41>

⁴ "Our view: State should revisit vaping tax." *Erie Times News*. October 25, 2017.
<<https://www.goerie.com/news/20171025/our-view-state-should-revisit-vaping-tax>>

⁵ 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



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Testimony- HB 1386

January 22, 2019- House Finance and Taxation

Chairman Headland and Members of House Finance and Tax:

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 1386.**

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. With that said, There are many good reasons for not taxing electronic smoking devices.

The e-vapor market remains extremely small compared to the overall tobacco market. North Dakota should not rush to action and potentially stifle innovation and suppress adult consumer interest in potentially reduced risk products. E-vapor products present a strong harm reduction opportunity compared to combustible cigarettes. In a 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."

There's other data to support this belief. 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 electronic smoking devices. What sense does it make for ND as a state to heavily tax e-cigarette devices, especially when they could

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play a role in reducing tobacco-related harm?

Congress recently empowered FDA to implement science-and-evidence-based regulation to ensure that adult consumers have access to, and accurate information about innovative tobacco products. North Dakota should give the FDA an opportunity to implement the Congressional mandate to develop and implement a national tobacco policy at the federal level. FDA regulation will bring further consistency in the e-vapor category in areas such as product definitions, labeling requirements, and quality standards **that will help states to facilitate a fair tax policy.** ND should support a 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 1386.