

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1357

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1357
01/17/2023

Relating to the definition of tobacco products; to repeal chapter 51-32 of the North Dakota Century Code, relating to remote sales of tobacco products; and to provide a penalty.

Vice Chairman Ostlie called to order 9:01 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner.
Member Absent: Representative Warrey.

Discussion Topics:

- Prohibitive products
- Electronic smoking devices
- Youth availability
- Labeling tobacco products
- Interstate commerce
- Manufacturers accountability
- Penalties

In favor:

Representative Mitskog, District 25 prime sponsor of the bill, #17503
Heather Austin, Executive Director Tobacco Free North Dakota #13642, #13643

Opposed:

Pete Hanebutt, testifying as a private citizen, (no written testimony)

Additional written testimony:

Gregory Conley, Director of Legislative & External Affairs, American Vapor Manufacturers #13773

Vice Chairman Ostlie adjourned the meeting 9:37 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1357
01/31/2023

Relating to the definition of tobacco products; to repeal chapter 51-32 of the North Dakota Century Code, relating to remote sales of tobacco products; and to provide a penalty.

Chairman Louser called the meeting to order 3:16 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Electronic smoking devices
- Age requirements to purchase products
- Committee Action

Representative Boschee moved a do pass
Representative Dakane seconded

Roll call vote:

Representatives	Vote
Representative Scott Louser	N
Representative Mitch Ostlie	AB
Representative Josh Boschee	Y
Representative Josh Christy	N
Representative Hamida Dakane	N
Representative Jorin Johnson	N
Representative Jim Kasper	AB
Representative Ben Koppelman	AB
Representative Dan Ruby	N
Representative Austen Schauer	N
Representative Paul J. Thomas	N
Representative Bill Tveit	N
Representative Scott Wagner	N
Representative Jonathan Warrey	N

Motion failed 1-10-3

Representative Ruby moved a do not pass.
Representative Thomas seconded.

Roll call vote:

Representatives	Vote
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Representative Scott Louser	Y
Representative Mitch Ostlie	AB
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	N
Representative Jorin Johnson	Y
Representative Jim Kasper	AB
Representative Ben Koppelman	AB
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passes 9-2-3

Representative Wagner will carry the bill.

Chairman Louser adjourned the meeting 3:23 PM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1357: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **DO NOT PASS** (9 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). HB
1357 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1357

ONLINE E-CIGARETTE SALES & SHIPMENTS TO CONSUMERS

State Laws Prohibiting Them



This chart is a snapshot of state laws that prohibit online direct-to-consumer sales and shipments of electronic cigarettes. The summary is of laws in effect as of December 1, 2019.



Jurisdiction / Arkansas

Key Provisions

Entities (manufacturers, wholesalers, retailers) cannot deal with, deliver, or cause to be delivered any tobacco, vapor (e-cigarette), alternative nicotine, or e-liquid product to a retailer or consumer in Arkansas without first registering with the Director of Tobacco Control and obtaining a permit. If conducting business from more than one location, each location must register and obtain a separate permit. A permitted wholesaler may function as a retailer only if a retailer permit is also obtained. Amendment to Arkansas Tobacco Products Tax Act of 1977, sec. 11, 2019 Ark. Acts 1071 (to be codified at Ark. Code Ann. § 26-57-214 (a-d)).

A privilege fee for doing business in Arkansas must also be paid before commencing business. Amendment to Arkansas Tobacco Products Tax Act of 1977, sec. 11, 2019 Ark. Acts 1071 (to be codified at Ark. Code Ann. § 26-57-215 (a-d)).

Retailer is defined in Arkansas Code § 26-57-203(27) to include entities that purchase tobacco, vapor, and related products for the purpose of selling those products to consumers in person and over the counter. Online retailers do not meet this definition and thus are ineligible to obtain a permit to sell to Arkansas consumers. Amendment to Arkansas Tobacco Products Tax Act of 1977, sec. 6, 2019 Ark. Acts 1071 (to be codified at Ark. Code Ann. § 26-57-203(11)).

Penalties & Enforcement

Selling, delivering, or causing to be delivered (immediately or in the future), without a valid permit, tobacco, vapor, alternative nicotine, or e-liquid products to retailers or consumers is a Class A misdemeanor.

A person engaged in buying, selling, or otherwise doing business in tobacco, vapor, alternative nicotine, or e-liquid products in Arkansas without a permit is subject to a Class A misdemeanor. Amendment to Arkansas Tobacco Products Tax Act of 1977, sec. 15, 2019 Ark. Acts 1071 (to be codified at Ark. Code Ann. § 26-57-226).

A person who violates any section of this subchapter for which a specific penalty is not provided is subject to a criminal violation and administrative civil penalties. Amendment to Arkansas Tobacco Products Tax Act of 1977, sec. 7, 2019 Ark. Acts 1071 (to be codified at Ark. Code Ann. § 26-57-204).

Jurisdiction / Maine

Key Provisions

Tobacco products may not be shipped to anyone other than a licensed retailer or distributor in the state. Me. Rev. Stat. Ann. tit. 22, §1555-F (2018).

A person may not knowingly transport or cause to be delivered to a person a tobacco product purchased from any person not licensed as a tobacco retailer; this provision does not apply to transportation or delivery of tobacco products to licensed distributors or retailers. Me. Rev. Stat. Ann. tit. 22, § 1555-D (2018).

“Tobacco Product” includes products made or derived from tobacco or that contain nicotine, as well as e-cigarettes and e-liquids (nicotine or non-nicotine). Me. Rev. Stat. Ann. tit. 22, §1551 (3) (2018).

Penalties & Enforcement

Attorney General may bring an enforcement action seeking injunctive relief and fines, penalties, and equitable relief. Me. Rev. stat. ann. tit. 22, §1555-F (3D) (2018).

Violators of this law commit civil violation and are subject to a fine of between \$1,000 and \$5,000 per offense. Me. Rev. stat. ann. tit. 22, §1555-F (3A) (2018).

Jurisdiction / South Dakota

Key Provisions

The shipping of tobacco products to any consumer in the state is prohibited, whether the seller is located within or outside the state. S.D. Codified Laws §10-50-99 (2019).

Vapor products are included in the definition of “tobacco product.” S. D. Codified Laws § 34-46-20 (2019).

Penalties & Enforcement

Injunction to restrain a threatened or actual violation. S.D. Codified Laws § 10-50-100 (2019).

Civil penalty: 1st violation, the greater of up to \$1,000 or 5 times the value of the products. S.D. Codified Laws §10-50-101 (2019).

Jurisdiction / Utah

Key Provisions

Only “licensed persons” can place orders or make purchases via the internet, mail, phone, or other electronic means. Utah Code Ann. § 59-14-509 (2019).

Retailers may only sell tobacco products and e-cigarettes to consumers in face-to-face exchanges. Tobacco specialty stores and adult facilities may have vending machines or self-service displays. Utah Code Ann. § 76-10-105.1 (2019).

A person may not sell, offer to sell, or distribute e-cigarettes without a license (unless the person has a license to sell tobacco products). Licensure to sell e-cigarettes is valid only at one fixed address, and only at a physical location within Utah. Utah Code Ann. § 59-14-803 (2019).

Penalties & Enforcement

A violation is an unfair and deceptive trade practice, the penalty for which is a misdemeanor for each violation (fine no greater than \$5,000, or imprisonment of up to 12 months, or both). The court may order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state for deposit in the General Fund. Each order is a separate violation.

In addition, each violation subjects a violator to the following: a civil penalty of no more than \$5000; an injunction to restrain a threatened or actual violation; and recovery of the state’s costs (investigation; expert witnesses; costs of action; and attorney’s fees). Utah Code Ann. § 59-14-509 (2019).

A violation of Utah Code Ann. §76-10-105.1 (2019) is a class C misdemeanor (1st offense); a class B misdemeanor (2nd offense); and a class A misdemeanor (3rd and subsequent offenses).

A violation of the requirement to be properly licensed to sell, offer to sell, or distribute e-cigarettes is a class B misdemeanor.) Utah Code Ann. § 59-14-803 (2019).

Jurisdiction / Vermont

Key Provisions

No person shall cause tobacco, tobacco substitutes, substances containing nicotine or otherwise intended for use with a tobacco substitute, or tobacco paraphernalia, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a licensed wholesale dealer or retail dealer in this State. 2019 Vt. Acts & Resolves 22 (to be codified at Vt. Stat. Ann. tit. 7, § 1010(b) (2019)).

Penalties & Enforcement

A violation is punishable by up to 5 years imprisonment, \$5,000 fine, or both.

Enforcement: Attorney General

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January 17, 2023

8:30 am CST

House Industry, Business, and Labor Committee for the 68th ND Legislative Assembly

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

Today I am here to encourage a Do Pass on HB 1357, or the bill relating to the internet sales restriction of tobacco products.

By restricting all tobacco products from online sales directly to consumers, we take another step forward in protecting our youth from the dangerous nicotine addiction these products promote. Unrestricted tobacco sales via the internet make it easier for beginners – primarily our kids – to try the product and ultimately become addicted. In many cases, any age-of-purchaser verification is on the honor system, or it can be easily circumvented. In some cases, it doesn't exist.

The ease of purchase allowed by internet sales is an unlimited avenue for kids to get flavored tobacco, stealth products, and products that have not been subjected to any regulation in North Dakota, such as electronic tobacco devices or vapes. And, the evidence is clear that it is unsafe for young people to use tobacco products. Cigarettes, cigars, chewing tobacco, snus, e-cigarettes, vapes, JUULs, or any other product containing nicotine are all detrimental to a person's health, particularly to a young person's health. 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.

If these products must be sold, we encourage over the counter sales for tobacco products to assist in future tobacco regulation, to ensure compliance check capabilities, and to reduce youth/underage access. Several other states have recently enacted the same measures, including our neighbor to the south, and I have included a listing of these states as an attachment. Ultimately, we believe North Dakota business owners are up to the task of fostering reduced youth access to tobacco through face-to-face encounters.

Again, thank you for this time in front of you, Chairman Louser, and members of the Committee. It is very appreciated. Please vote Do Pass on HB 1357.

May I take any questions?

Heather Austin
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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>.



Gregory J. Conley
Director of Legislative & External Affairs
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January 17, 2023

SUBMITTED VIA EMAIL

North Dakota Legislative Assembly
House Industry, Business and Labor Committee

Dear Chair Louser, Vice-Chair Ostlie, and Members of the Committee:

On behalf of the American Vapor Manufacturers Association, I respectfully submit these comments opposing H.B. 1357, which seeks to prohibit the sale of vaping products and other lower-risk, smoke-free products via mail. As an organization, we understand the concerns surrounding youth access to nicotine products and want to see states take effective steps to address it. However, we believe that this can be achieved without compromising the ability of North Dakota adults to purchase legal products from lawful businesses.

As you may be aware, in March 2021, Congress passed a bill amending the 2010 Prevent All Cigarette Trafficking (PACT) Act to apply to vaping products. This law empowers both the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and state attorneys general to take action against those who violate a host of statutory requirements, including: (a) government registrations; (b) excise tax collection, remittance, and reporting; (c) shipping disclosures; and (d) face-to-face verification that the recipient of any package is 21 years of age or older.

Online sales are essentially for many adults, particularly those who are using vaping as a safer alternative to cigarette smoking. A 2022 study by the investment analysis firm Cowen & Company estimated that 20% of the U.S. sales of vaping products took place on the internet. Our data indicates a greater than average demand from rural areas of the country by age-verified adults who are primarily over the age of 35. The reason is simple; cigarettes are easily accessible at every convenience store, but high-quality vaping products are not.

Under normal circumstances, we would urge the committee to update its youth access laws to mirror federal law more closely. However, existing North Dakota law already strictly regulates the shipping of tobacco and nicotine products in a manner substantially similar to the PACT Act. This bill seeks to repeal that statute. If there is a significant problem with illegal shipments of vaping products to minors, which we do not believe has been shown, that is because current law is not being enforced.

H.B. 1357 would only serve to burden law-abiding businesses and limit the access of adult consumers to these products. We believe that enforcing existing North Dakota law and the PACT Act are the most effective way to prevent youth access to vaping products. As a result, we urge the committee to issue a 'do not pass' report.

Best,

A handwritten signature in cursive script that reads "Gregory Conley".

Gregory Conley, J.D., M.B.A.
Director of Legislative & External Affairs
American Vapor Manufacturers Association, Inc.

#1

House Industry Business and Labor Committee

HB 1357

January 17, 2023

Chairman Louser and committee members:

Good morning.

For the record my name is Rep. Alisa Mitskog, I represent District 25-Wahpeton. I am the prime sponsor of HB 1357. Although I will defer to some of the folks who helped work on this bill to answer specific questions about the bill's details, I want to take a moment to explain my support for HB 1357.

Background

When North Dakota's youth are asked about how they get their tobacco products, particularly electronic smoking devices, they often respond that they "get them on the internet."

What the Bill Does

HB 1357 does two things. First, the bill defines "tobacco products" to include electronic smoking devices. Second, the bill prohibits the shipping of tobacco products to any consumer in the state and requires that all sales must be made by face-to-face retail sales transactions.

Why I Support the Bill

This bill is about public health and stopping a lifetime of addiction and tobacco related disease before it starts. I have worked on several bills over the past several years and I have watched a sharp incline in the number of high school students using e-cigarettes. The most recent numbers from 2022 show over 33.1% of high school students using e-cigarettes, 8.3% report using cigarettes, and 7.4% report using cigars.¹

E-cigarette use among youth is of dire concern. The critical development of cognitive function that occurs in children and adolescents can be disrupted by nicotine exposure. Some studies have shown a link to an earlier onset of drug use.

¹ https://www.tobaccofreekids.org/problem/toll-us/north_dakota, Last updated Oct. 19, 2022

² ¹ [JAMA Network](#) November 7, 2022 a

More American youth than ever are so addicted to e-cigarettes that they vape within 5 minutes of waking up in the morning, a new analysis shows.

The intensity at which youths use the products and their addiction to them increased after companies began using protonated nicotine, which is created by adding acid to the e-cigarette liquid, according to the study. This makes the nicotine easier to inhale.

How are these teenagers obtaining these products?

Internet retailers of tobacco products often skirt laws designed to prevent brick-and-mortar retailers from selling to young people. While many online retailers claim to verify age by checking customers' IDs at purchase and delivery, effective compliance monitoring and enforcement is difficult.² Moreover, studies indicate that these age-verification systems are largely ineffective at curtailing youth access to tobacco products via the internet.³

Conclusion

A complete prohibition on all internet sales of tobacco products to consumers would be an effective way to substantially prevent such sales and protect the public health gains accomplished by age-of-sale laws that North Dakota ratified in 2021.

I ask you to seriously consider what's happening to our young people with the significant increase in use of e cigarettes.

Please give HB 1357 a "Do Pass" recommendation.

Thank you.

I will stand for questions.

² In a recent lawsuit filed by the state of California against Juul Labs, Inc., the state alleged that Juul's online age-verification processes contain significant flaws and failed to minimize sales to underage persons. According to the state, it allowed hundreds of thousands of tobacco product sales and deliveries to fictitious persons and addresses, some of whom may have been underage California residents, including deliveries to "Beer Can," "Patricia Juul," "John JUUL Kordahl," and "?zge FIRAT." These flaws, according to the state's Complaint, resulted from the company's intentional decisions, which prioritized maximizing the pass rate for the age-verification process over minimizing underage sales. Complaint at 41-63, *State of California v. Juul Labs, Inc.* (Cal. Super. Ct. Nov. 18, 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

³ Rebecca Williams et al., *Cigarette Sales to Minors via the Internet: How the Story has Changed in the Wake of Federal Regulation*, 26 *Tobacco Control* 415-20 (2016); Rebecca Williams et al., *U. North Carolina, Response to Advance Notice of Proposed Rulemaking on Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products*, Docket No. FDA-2011-N-0467 (Feb. 14, 2012), <https://www.regulations.gov/#!documentDetail;D=FDA-2011-N-0467-0100>.