

DATE: June 1, 2015

TO: The Honorable Mark Hass, Chair
Senate Finance and Revenue Committee

FROM: Lynne Saxton, Director
Oregon Health Authority

SUBJECT: SB 663

Good morning, Chair Hass and members of the committee. For the record, my name is Lynne Saxton, Director of the Oregon Health Authority.

Tobacco use remains the No. 1 preventable cause of death and disease in Oregon, killing 7,000 people each year. Tobacco use is a major risk factor for developing asthma, arthritis, diabetes, cardiovascular disease, stroke, tuberculosis, and ectopic pregnancy—as well as lung, liver, colorectal and other forms of cancer. It also worsens symptoms for people already battling chronic diseases. This burden falls hardest on lower-income Oregonians and certain racial and ethnic communities who use tobacco at higher rates and suffer the harshest consequences.

Yet whether or not we use tobacco, all Oregonians pay its price. The medical expenses and lost wages that result from tobacco-related disease and premature death cost Oregon \$2.5 billion each year, or \$1,600 for every household in our state, or 13.4% of the total OHA budget (total budget \$18.7B).

If we are serious about saving taxpayer dollars within the health care budget in the future – this should be the critical focal point.

Why Do Kids Start Smoking?

Tobacco is cheap, easily accessible to youth, heavily promoted, and marketed in retail outlets near the places where kids hang out. It's also still considered glamorous. The 2012 Surgeon General report states, "Tobacco companies spend approximately 90% of their marketing dollars on point-of-sale promotion and price discounts. They invest billions at the point-of-sale because they know that their marketing pays off in the form of new, young customers who, because of the powerful addictive properties of nicotine, are likely to be life-long tobacco users." ⁱ The Surgeon General's report makes it clear that tobacco marketing – and marketing at the point-of-sale in particular – is increasing youth tobacco use rates.

To Senator Baertschiger's previous comments, parental influence is important – parental use of tobacco, supervision, and communication are significant factors as to whether a young person will take up this deadly habit (this is backed up by survey data from the U.S. Department of Human Services and the Centers for Disease Control).

What Works

Addiction to nicotine starts in adolescence. Nine out of ten adults who smoke started smoking before turning 18.ⁱⁱ Higher levels of tobacco marketing at the retail space, lower tobacco prices, an assortment of flavors and greater availability of tobacco coupons and promotions are associated with product uptake among middle and high school students.ⁱⁱⁱ Thus, policies need to focus on these retail locations, to effectively reduce the amount and impact of tobacco marketing at the point of sale and prevent youth from initiating tobacco use.

Tobacco licensure is a system to enforce sales to minors laws as well as prevention policies that have a meaningful impact on youth use of tobacco. When used to enforce effective policies, licensing can reduce the number of Oregon children and young adults that become addicted to tobacco, help current tobacco users quit, and reduce health care costs for the State of Oregon.

A retail licensure system that includes the following core components creates a straight-forward method for identifying businesses that sell tobacco products and managing enforcement of tobacco laws, such as sales to minors restrictions.

- A license fee that provides for full implementation of the program, including administration, retailer education, and compliance inspections.
- Compliance inspections conducted by minor decoys to ensure retail outlets are complying with the law. Inspections should occur at a minimum of once per year, per outlet. Ideally, it would be quarterly. Retail outlets who sell tobacco to the minor decoy should be re-inspected and mandated to complete a training program. Compliance checks should be allowed by other units of government for the purpose of enforcing appropriate federal, state, or local laws related to tobacco.
- A graduated penalty for the outlet (retailer) for selling tobacco to minors where the consequences of each offense are progressively more severe, up to and including suspension or revocation of the tobacco retail license.
- No preemption that restricts local governments from enacting stronger, tailored policies that reflect community needs and values.
- Inclusion of inhalant delivery systems in the indoor clean air act provisions.
- Banning of all product sampling, and the use of coupons or other incentives, to encourage the use of tobacco products.
- Currently, 38 states and the District of Columbia require retailer licensure for over-the-counter tobacco sales. Of the states that do not require retail licensing, nine of them ranked among the top 20 for Retailer Violation Rates (RVR) for sales of tobacco to a minor during the fiscal year 2013.

Where We Want To Go

Tobacco is the number one cost driver of our health care system. If we want to continue to bend the cost curve and save billions in taxpayer dollars, we have to implement proven practices and be aggressive in our regulation and enforcement.

SB 663A includes some core licensing components, but also includes policies that are detrimental to protecting the public's health. These include:

1. Exemptions for inhalant delivery systems in the Indoor Clean Air Act (ICAA);
2. Preemption that constrains local communities from innovating and taking action to meet the needs of their community

The **figure in Appendix A** (attached) highlights that a tobacco retail license system can be an effective mechanism to enforce prevention policies in the future.

The -13 amendment addresses these issues. The -13 amendments include:

- Meaningful fees and penalties associated with the license are critical to enforcement of local, state and federal laws in the retail setting. The bill allows the Department of Revenue to set licensing fees and fines that fully cover all program costs, including administration, inspection, education, and enforcement ensure a sustainable and effective licensing system.
- Graduated penalties for the outlet (retailer) for selling tobacco to minors where the consequences of each offense are progressively more severe, up to and including suspension or revocation of the tobacco retail license.
- Ability to suspend or revoke a license is an important tool to maintain compliance with the law. Removing a retailer's ability to generate revenue from tobacco products is more effective than a fine for violations.
- No preemption that restricts local governments from enacting stronger, tailored policies that reflect community needs and values.

Oregon can build a licensing system that will support enforcement of current tobacco laws and support our communities in promoting health and protecting our kids from tobacco.

If this responsibility is given to the Oregon Health Authority, we intend to closely monitor our retailer compliance progress and produce reports on a quarterly basis.

Where We Are

At the Oregon Health Authority, we are currently disjointed in our tobacco oversight and we will be remedying this with our agency restructure. Our Education and Prevention programs reside within the

Public Health Division and our Inspection and Enforcement programs are within the Addictions and Mental Health Division. Within our inspections program, we have 3 programs: the federal Synar program, the FDA program, and the State Retailer Enforcement program – which is the only program that issues on the spot citations (to the clerk). I want to thank Senator Boquist for his tenacity and focus on efficiency with regard to our enforcement programs. We are restructuring our programs for efficiency while maintaining compliance with federal regulations. It is our intent to do this to the maximum extent possible under the law.

The Bottom Line

We cannot afford the status quo. Tobacco use at the current rate is detrimental to our youth, adults, and our health systems sustainability. The Oregon Health Authority is committed to doing this work; we look to you to give us the tools we need to succeed.

Thank you, Chair Hass, for inviting me to testify today on the importance of tobacco retail licensure. With that, I'm happy to address any questions you might have.

i U.S. Department of Health and Human Services. Office of the Surgeon General. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General (2012) (Page 8). <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>. Accessed April 3, 2015.

ii Centers for Disease Control and Prevention. "Preventing Tobacco Use Among Youth and Adults: A Report of the Surgeon General." 2012. pg. 2. http://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf

iii Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. Arch Pediat Adol Med. May 2007;161(5):440-445. <http://archpedi.jamanetwork.com/article.aspx?articleid=570320>.

Appendix A. Tobacco retail license system as an effective tool for reducing youth tobacco use

Core components of a tobacco retail license

An effective tobacco retail license system includes **all** of the following components



1 Meaningful fees and penalties that fully cover all program costs

2 Ability to suspend or revoke a license for violations of laws

3 No preemption that restricts local governments from enacting stronger, tailored policies

A licensing system is a **key mechanism** for monitoring and enforcing current and future laws that keep kids from using tobacco

What works

Raising the price of tobacco

The Community Preventive Services Task Force **recommends** increasing the price of tobacco based on strong evidence of effectiveness in reducing tobacco use

Other effective prevention policies include:

- Prohibit redemption of tobacco coupons
- Require minimum pack size for little cigars
- Prohibit sale of flavored tobacco
- Raise sales age to 21
- Restrict proximity of retailers to youth locations
- Prohibit pharmacies from selling tobacco
- Require minimum distance between retailers

Sales to minors laws alone

The Community Preventive Services Task Force finds **insufficient evidence** to determine the effectiveness of laws directed at minors' purchase, possession, or use of tobacco products when implemented alone

Less effective