

Health Department

March 30, 2017

Senate Committee on Health Care
900 Court St. NE - HR B
Salem, Oregon 97301

RE: SB 799 - Exemption in ICAA for Retailers of Vape Products

Chair Monnes Anderson and members of the committee; I am Dr. Jae Douglas, the Environmental Health Services Director for Multnomah County Health Department. Thank you for providing me the opportunity today to testify in strong opposition to SB 799. This bill, if passed, would create an exemption to the Indoor Clean Air Act (ICAA) by allowing the “sampling” of vaping products indoors in certain environments. As currently written, SB 799 creates more questions than answers in providing guidance for the implementation and enforcement of the Indoor Clean Air Act (ICAA).

Of critical concern is section 4 of this bill, which would preempt enforcement of Multnomah County’s local ordinance prohibiting the use of inhalant delivery systems in places of employment. Multnomah County passed our ordinance in March of 2015 prior to the legislature taking action in May of 2015. If this bill passes as written, it could mean we could no longer enforce our ordinance and could be required to allow sampling in vape shops.

Multnomah County supports the ability for local jurisdictions to enact additional requirements for local tobacco control beyond those required by state and federal law. Local control allows for a more agile response to new products that emerge on to the market. Also important, local control means local elected officials can determine the policies best suited to address the ongoing epidemic of tobacco use and associated health impacts in their community.

The intention of the Indoor Clean Air Act is to protect employees, as well as the public, from the dangers of secondhand smoke and aerosols throughout workplaces. Allowing exemptions for ANY indoor vaping - regardless of nicotine content - may lead to additional exemptions in statute and rule that weaken the Indoor Clean Air Act. According to a 2010 Oregon Health Authority ICAA compliance report, after ICAA was weakened to allow smoke shops, applications for hookah smoke shop certifications increased steadily.¹

Currently, free sampling of nicotine-containing liquids through vaping/e-cigarettes is prohibited under federal law², and according to a recent study on consumer purchasing, the data showed that nearly all of e-cigarette product sales contained nicotine.³ However SB 799, Sections 2(2)(e)A & B do not

¹ Oregon Health Authority, Oregon Tobacco Prevention and Education Program. 2010 Indoor Clean Air Act Study. Data were reported through Sept. 2010.
<https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/Documents/2010-icaa-compliance.pdf>. Accessed 3/24/17

²FDA. Retailer Overview of FDA Regulations for Selling Tobacco Products.
<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm205021.htm>. Accessed 3/24/17.

³ Marynak KL; Gammon DG; Rogers T; Coats EM; Singh T; King BA. Sales of Nicotine-Containing Electronic Cigarette Products: United States, 2015. *Am J Public Health* 2017 Mar 21;():e1-e4. doi: 10.2105/AJPH.2017.303660 [Epub ahead of print]. Sales data from vape shops were not available for this study, sales data came from other outlets such as convenience stores, supermarkets, and Department of Defense Commissaries.

specify nicotine-free sampling, and it is unclear how the federal law applies to employee sampling of products.

Multnomah County currently enforces ICAA through an intergovernmental agreement with the Oregon Health Authority. It would be extremely difficult for our inspectors to visually distinguish between the various types of “inhalants” during ICAA site visits, making enforcement challenging, time consuming and costly.

As you know, Multnomah County began licensing tobacco retailers on July 1, 2016. We currently have 737 licensed tobacco retailers and the majority of these retailers sell vape products. Therefore, as we understand this bill, employees at these retailers would be allowed to vape inside the store if the employees are doing so for the purposes of sampling the product. Again, it would be extremely difficult for our inspectors to deal with complaints from the public about vaping by retail employees inside the corner convenience store.

By creating these exemptions to the ICAA, more Oregonians would be exposed to secondhand smoke and aerosols. According to a new study, exposure to secondhand aerosols from e-cigarettes is already commonplace for youth. Nearly a quarter of all middle and high school students in the US reported exposure to secondhand e-cigarette aerosol within the past 30 days.⁴

SB 799 does not include a stand alone requirement for retail premises to qualify for the exemption to allow indoor use of inhalant delivery systems. Therefore, vape “sampling” may occur in a building where other businesses are co-located and share walls and ventilation systems. The odors from indoor inhalant delivery system use may negatively impact the air quality of businesses that neighbor these vape shops.

Additionally, this bill allows for up to 10 seats in an exempted business, creating the potential for a social setting, not limited to just sampling products. If a certification process for vape shops were established, it should mirror the existing exemptions and requirements for certified smokeshops.

As a local public health authority, we are responsible for protecting the health of our entire county. We strongly oppose SB 799 because it weakens the true intent of what this law was established to do - protect workers and the public from the known dangers of secondhand smoke.

We strongly oppose limits in local public health’s authority to take a strong stand to protect the health of people in our community.

Thank you for the opportunity to provide testimony. I am happy to respond to any questions you may have.

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⁴ Wang TW, Marynak KL, Agaku IT, King BA. Secondhand Exposure to Electronic Cigarette Aerosol Among US Youths. JAMA Pediatr. 2017 Mar 20. doi: 10.1001/jamapediatrics.2016.4973. [Epub ahead of print]