

Vaping Products: Challenges of Remote Age-Verification Processes

Summary

Some states have attempted to require remote sellers to verify the ages of e-cigarette purchases. However, research shows that age verification is not effective in preventing youth from purchasing e-cigarettes over the internet. A study conducted by the University of North Carolina found that despite North Carolina's age verification law, the youth purchase rate for study participants was 93.7%. A "face-to-face" provision such as what we are proposing in HB 4078 brings the consumer into the retail store, where the seller physically sees the purchaser and can verify identification, and verify that the purchaser is over age 21 and legally eligible to purchase the products. Below are some of the ways in which online age verification processes fall short.

- **Attestation** – With remote sales, the seller does not physically see the purchaser and relies on representations made over the computer to conduct age verification. Some sellers simply rely on the purchaser's attestation that they are of lawful age to purchase the product. Minors can also use identification and payment methods that belong to someone who is of legal age to purchase these products.
- **Imperfect match of information** – Sellers set the sensitivity of their procedures, so a purchaser can be verified even if there is not an exact match with government databases.
- **Technological limitations** – Even with a system in place, technology is imperfect. Systems go down or approve purchasers who are underage or don't exist. For example, Washington D.C. alleges in its complaint against JUUL Labs, Inc. (JLI) that a purchase was allowed using a May 11, 2015 date of birth. California's lawsuit against JLI highlights thousands of deliveries made to phony names such as "Beer Can," "Patricia Juul" or "?zge FIRAT." Shipments were also sent to nonsensical addresses such as "10 Los Angeles" "none, San Fransciso" and "no signature needed, Palo Alto."
- **Father/son scenario** – Individuals living in the same household who share a name, or a very similar, name are able to make underaged purchases.
- **Multiple "do over" opportunities** – Age-verification programs can be designed to give purchasers infinite opportunities to amend their personal information if a match is not found.
- **Photo identification not required** – In most cases, sellers do not require purchasers to upload photo identification. Photo identification is not checked at delivery.
- **Shipment to P.O. boxes** – Address is not used in the age-verification process.
- **Pre-paid debit cards** – Payment with pre-paid debit cards allows minors to avoid detection of using a parent's credit card or allowing the association with a name or address used on a credit card account.
- **Failure to comply with confirmation call laws** – some states require the sellers to place phone calls to confirm orders and detect fraud (e.g., California), but these rules have been ignored.

- **Warranty replacements** – Underaged users have gamed the warranty system by using serial numbers of products purchased by age-verified customers to get replacement cartridges sent to them without additional age-verification procedures.
- **Email marketing** – Even if a purchase is denied by age-verification procedures, the purchasers will automatically add them to an email marketing list and continue to send promotional material for age-gated products to the denied purchaser.
- **Shippers cannot verify** – Under federal law states are prohibited from requiring common carriers such as FedEx or UPS to conduct age verification at the point of delivery. *See Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008). So, these imperfect or nonexistent age verification process are the only means of ensuring that underage purchases in Oregon do not have unfettered access to vaping products. We need to do more.