



HOUSE OF REPRESENTATIVES

Testimony: House Bill 4078
Rep. Pam Marsh, House District 5
Senate Health Care Committee: 2/18/2020

Thank you, Chair Monnes Anderson and members of the committee. For the record, I'm Pam Marsh, House Representative from District 5, southern Jackson County.

I am here today to urge your consideration of House Bill 4078, which will prohibit internet and telephonic sales of nicotine based inhalant delivery systems, commonly described as e-cigarettes or vaping products, to individual consumers.

In 2017, the Oregon Legislature raised the tobacco and e-cigarette purchase age to 21. Despite the law, teens can easily bypass the age restriction by purchasing products online or over the phone without any verification process. It is time for Oregon to close the internet loophole.

Teen use of e-cigarettes has increased at an alarming rate in the past decade, prompting the US Surgeon General to describe it as an epidemic. In Oregon, e-cigarette use among 11th graders grew from 13% to 23% in the two-year period from 2017 to 2019, an 80% increase. E-cigarettes have surpassed cigarettes, little cigars, and smokeless tobacco as the product of choice among youth.

Make no mistake, this is a problem, because e-cigarettes are bad for kids. The FDA has warned that vaping is "not safe for youth and young adults." Users inhale an aerosol that generally contains flavor additives and other chemicals, including nicotine. The CDC notes that a typical e-cigarette cartridge – the size of a thumb drive -- contains as much nicotine as a pack of cigarettes. Nicotine is highly addictive and affects an adolescent's developing brain, actually changing brain cell activity in the regions responsible for attention, learning and memory. Even breathing e-cigarette aerosol that someone else has exhaled can pose potential health risks for kids.

And it is increasingly apparent that e-cigarettes are a pathway to cigarette use for teens. According to Oregon's 2019 Healthy Teens Survey, 71% of youth who use conventional tobacco products started out vaping. Youth who use e-cigarettes are 2 to 3 times as likely as others to start smoking cigarettes.

Unfortunately, internet sales historically have allowed minors relatively easy access to tobacco. No matter how much so-called "proof" is required to make a purchase online, remote sellers cannot adequately verify the age or identity of online purchasers or assure that products are being delivered to people who are old enough to legally use them. A study conducted by the University of North Carolina found that despite the state's age verification law, 93% of youth were able to purchase e-cigarettes online.

In November 2019, the California Attorney General filed suit against one of the largest manufacturers of these products, charging the company with marketing and selling product to teens., despite the state's rigorous verification requirements. The complaint states that the company has allowed hundreds of thousands of tobacco products to be sold and/or delivered to fictitious individuals at fictitious addresses.

And just last week, the Commonwealth of Massachusetts filed another suit against the same manufacturer for marketing, advertising and selling to underage individuals, alleging thousands of deliveries to individuals with no age verification whatsoever.

Even when age is verified at sale, we have no way to ensure that the product is actually delivered to a person old enough to use it. The Supreme Court, in *Rowe v. New Hampshire Motor Transport Association*, (2008) ruled that Congress preempted state law regulation of the service of any motor carrier (through the Federal Aviation Administration Authorization Act). Rowe makes it clear that a state cannot impose burdens on motor carriers to offer services such as age verification. Any obligations regarding age verification need to be on the actual seller, not on the shipper/carrier.

Face to face contact, on the other hand, ensures that someone lays eyes on the e-cigarette purchasers. I have confidence that the small businesses in our communities are and will step up to ensure that underage individuals are prevented from buying these products.

A ban on internet and telephone sales will achieve multiple benefits:

- Provide maximum enforcement of age purchase restrictions
- Allow us to more easily track product adulteration when it occurs
- Ensure that we are collecting applicable taxes on the purchase of these products
- Protect local vaping vendors from diversion of purchases to out of state sellers
- Align the state's enforcement practices with those already in place for tobacco.

Internet sales of cigarettes and smokeless tobacco are already illegal under state law. Oregon's ban will be enforced by the Department of Justice's Tobacco Enforcement Unit within its existing authority.

Attorney General Ellen Rosenblum testified in support of HB 4078, noting that the Department of Justice is able and eager to assume these responsibilities. There is no fiscal impact created in this legislation.

Four other states have already banned remote sales of inhalant delivery systems. For the sake of our kids, let's make Oregon the next state to close the internet loophole.