

Date April 26, 2021

TO: The Honorable Deb Patterson, Chair
Senate Committee on Health Care

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SUBJECT: HB 2261 - Prohibits remote IDS sales

Chair Patterson and members of the committee; I am Dr. Dean Sidelinger, Health Officer and State Epidemiologist with the Public Health Division of the Oregon Health Authority.

I am here to provide information about HB 2261. This bill would prohibit online or telephonic sales of inhalant delivery systems in Oregon, bringing sales restrictions for these products in line with regulations that already exist for cigarettes and smokeless tobacco.

Inhalant delivery systems, also called e-cigarettes or vaping products, have rapidly increased in popularity in the past decade. In Oregon, e-cigarette use among 11th graders increased from 13% to 23% from 2017 to 2019, an 80% increase.ⁱ E-cigarettes have surpassed cigarettes, little cigars, and smokeless tobacco as the most popular tobacco product among youth.ⁱⁱ Most people who vape nicotine are kids and young adults; fewer than one in 20 adults over age 25 use e-cigarettes,ⁱⁱⁱ compared to nearly one in four 11th graders.^{iv} Indeed, according to the U.S. Food and Drug Administration and the U.S. Surgeon General, youth e-cigarette use is an epidemic.^v

Addressing the youth vaping epidemic requires swift action. One component of reducing youth e-cigarette use is making it harder for youth to buy these products illegally. Oregon currently bans online sales of cigarettes and smokeless tobacco. However, there is no similar restriction for inhalant delivery systems. These products are bought online and are mixed or further modified by end-users. Research has shown that these modifications^{vi} and lack of product regulation can produce dangerous circumstances. For example, in Fall 2019 OHA responded to

the E-cigarette and Vaping Associated Lung Injury outbreak which is strongly linked to additives in cannabis vape products that may also be found in nicotine vaping products.^{vii,viii} In Oregon, 23 cases have been reported, 2 of which were fatal.^{ix}

The e-cigarette industry markets heavily online. Brands sponsor “social influencers” across media platforms to outpace advertising restrictions, and sites such as “Vape Wild” encouraged consumers to “Stay Home, Shop Online” during the COVID-19 pandemic.^x And yet, age verification systems for online sales are ineffective^{xi} – which is one reason online sales are prohibited for cigarettes and smokeless tobacco. Nine percent of 11th graders report buying tobacco products online.^{xiii} The Governor’s Vaping Work Group, which convened in spring and summer of 2020, recommended a prohibition on phone and online inhalant delivery system sales as part of a comprehensive approach to reduce youth nicotine addiction.

It is important to note that this bill does not include cigars. Little cigars such as Swisher Sweets are sold in mint and candy flavors and at low cost – often less than \$1– making them appealing to youth.^{xiii} In addition, African American and American Indian and Alaska Native youth use these products more often than white, Latino/a, and Asian youth.^{xiv} The tobacco industry targets youth of color with online advertising for little cigars, through tactics that range from Swisher Sweets music videos of Black artists^{xv} to launching “Black Lives Matter” initiatives that promise to alleviate economic inequity.^{xvi} These tactics illustrate how the tobacco industry appropriates social justice language while marketing the leading cause of death to a new generation of Black and brown youth. Including a prohibition on the sale of cigars online would reduce their availability to youth in Oregon and improve health equity.

Several other states have already banned online e-cigarette sales, including Arkansas, Utah, South Dakota, and Maine.^{xvii} A similar restriction in Oregon would bring online sales laws for inhalant delivery systems in line with those for cigarettes and smokeless tobacco products.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.

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- ⁱ Oregon Health Authority. Oregon Healthy Teens Survey (OHT). 2017,2019.
- ⁱⁱ Creamer, MeLisa R, Sherry Everett Jones, Andrea S Gentzke, Ahmed Jamal, and Brian A King. “Tobacco Product Use Among High School Students — Youth Risk Behavior Survey, United States, 2019” 69, no. 1 (2020): 8.
- ⁱⁱⁱ Oregon Health Authority. Oregon Behavioral Risk Factor Surveillance System (BRFSS), 2018.
- ^{iv} Oregon Health Authority. Oregon Healthy Teens Survey (OHT), 2019.
- ^v U.S. Department of Health and Human Services. “Surgeon General’s Advisory on E-Cigarette Use Among Youth,” 2019, 4. <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.
- ^{vi} Truth Initiative. “E-Cigarette Harms Fact Sheet,” December 2020. https://truthinitiative.org/sites/default/files/media/files/2020/12/Truth_E-cigarette%20Fact%20Sheet_Dec_2020.pdf.
- ^{vii} OLCC. “News Release: OLCC Identifies Potential Consumer Harm in Some Cannabis Vape Products,” December 11, 2020. <https://www.wweek.com/news/2020/12/11/olcc-announces-voluntary-recall-of-potentially-harmful-cannabis-vaping-product/>.
- ^{viii} Center for Disease Control and Prevention. “Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products | Electronic Cigarettes | Smoking & Tobacco Use | CDC,” 2021. https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.
- ^{ix} Hartnett, Kathleen P., Aaron Kite-Powell, Megan T. Patel, Brittani L. Haag, Michael J. Sheppard, Taylor P. Dias, Brian A. King, et al. “Syndromic Surveillance for E-Cigarette, or Vaping, Product Use—Associated Lung Injury.” *New England Journal of Medicine* 382, no. 8 (February 20, 2020): 766–72. <https://doi.org/10.1056/NEJMsr1915313>.
- ^x Ramamurthi D, Chau C, Jackler R. “Exploitation of the COVID-19 pandemic by e-cigarette marketers.” *Tobacco Control* Published Online First: 27 August 2020. doi: 10.1136/tobaccocontrol-2020-055855
- ^{xi} Williams RS, Derrick J, Phillips KJ. Cigarette sales to minors via the internet: how the story has changed in the wake of federal regulation. *Tob Control*. 2017;26(4):415–420. doi:10.1136/tobaccocontrol-2015-052844
- ^{xii} Oregon Health Authority. Oregon Healthy Teens Survey (OHT), 2019.
- ^{xiii} Oregon Health Authority. “Assessing Oregon’s Retail Environment: Shining Light on Tobacco Industry Tactics,” 2019. https://smokefreeoregon.com/wp-content/uploads/2019/07/TARA_StatewideRollup_2019.07.03_Accessible.pdf
- ^{xiv} Oregon Health Authority. Oregon Healthy Teens Survey (OHT), 2019.
- ^{xv} Swisher Sweets Artist Project. Available at: <https://ap.swishersweets.com/>. Accessed March 16, 2021.
- ^{xvi} One example: Black & Mild Black Owned Businesses Initiative. Available at: <https://www.trinketsandtrash.org/detail.php?artifactid=15404&page=1>. Accessed March 16, 2021.
- ^{xvii} Public Health Law Center at Mitchell Hamline School of Law. “Online E-Cigarette Sales and Shipment to Consumers State Laws Prohibiting Them,” December 2019. <https://www.publichealthlawcenter.org/sites/default/files/resources/Online-E-Cigarette-Sales-and-Shipments-to-Consumers-State-Laws-Prohibiting-Them.pdf>.