

# Health Department

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February 13, 2020

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

Re: SB 1577 - Prohibits distributing, selling or allowing to be sold flavored inhalant delivery system products.

Chair Monnes Anderson, Vice-Chair Linthicum, and Committee members, my name is Kari McFarlan, Tobacco Control & Prevention Program Supervisor at Multnomah County Health Department. Thank you for the opportunity to provide testimony in relation to SB 1577. We support statewide tobacco retail licensing that preserves the local existing tobacco retail licensing. We support the efforts at resurrecting this policy effort after so many years.

As Multnomah County adopted Tobacco Retail Licensing, we relied on evidence-based concepts laid out by other effective programs across the country and included retailers and stakeholders every step of the way.

Multnomah County's TRL program is five years in the making with extensive community and stakeholder input. It is vital that we retain complete authority to continue with the program, including establishing reasonable fees to support the program costs, without pre-emption.

Recent research shows that strong TRL programs are associated with a reduced risk that teenagers will smoke or vape. Strong TRL programs must include license fees high enough to cover education and training as well as compliance checks and enforcement activities for each store, require an annual application and fee, and include fines and penalties, including suspension and revocation, for any violation of a tobacco retail law<sup>1</sup>. Ineffective programs lack resources or authority to inspect retailers and enforce the law.

Multnomah County licenses about 800 retailers. In 2016, the original license fee was set at \$580. The Board of Multnomah County Commissioners set the fee through

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<sup>1</sup> Astor RL, Urman R, Barrington-Trimis JL, et al. Tobacco Retail Licensing and Youth Product Use. *Pediatrics*. 2019;143(2):e20173536

customary fiscal analysis and public process at a public meeting, following intensive discussions with retailers about how the fee amount would affect them. Fees were recently increased to \$683, which covers costs for 3.95 FTE--a very slim staff to ensure our retailers have access to everything they need to comply with the law and enforcement robust enough to protect community health - especially our youth. We built the program to fit the contours of our community's exposure to tobacco products and our retailer community. For example, Multnomah County provides extensive translation of our retailer materials to serve our large Korean retailer group.

Even though our team provides education and technical assistance, retailers still violate the rules, regulations, and laws governing the sale of tobacco and nicotine products in retail settings. We conduct a yearly compliance inspection of each retailer, and, if a violation is found, we work with the retailer to remediate the violation. We then re-inspect the retailer after a set period of time to verify compliance. If, on re-check, a retailer remains in violation, we issue a penalty, which may be appealed at hearing.

After the state law raising the minimum legal sales age of tobacco and nicotine went from 18 to 21 years old and after extensive education to our retailers, Multnomah County began conducting our Minimum Legal Sales Age (MLSA) inspections. Each licensed retailer receives one MLSA inspection per year unless they fail an inspection. There is no remediation for this violation. A sale of a tobacco product to a youth inspector results in an automatic penalty. However retailers may appeal the penalty. We will conduct MLSA inspections until the retailer passes.

We utilize two inspectors in a store at the same time - one of which is 18, 19, or 20 years old. That youth is trained to use his/her own valid ID while the other inspector acts as a safety monitor and eye witness. These are Multnomah County employees that are trained to do this work in our licensed tobacco retail settings.

To date, we have conducted over 1,516 MLSA inspections and 238 of those inspections have failed. Meaning that in 16% of these inspections, a licensed tobacco retailer is selling a tobacco or nicotine product to a youth inspector. Retailers often ask us how our inspections compare to federal or state MLSA inspections. Because our protocols are different; we do not compare our rate of noncompliance with other inspection programs.

We have found that impactful penalties are a much needed component to ensure retailers are not repeat offenders. We ask that you consider and protect the local public

health authority's ability to work directly with licensed tobacco retailers to support their compliance and, when necessary, utilize all available enforcement to ensure their compliance.

Thank you for your time and I am happy to answer any questions you may have.

Thank you,

Kari McFarlan, MPH  
Tobacco Control & Prevention Program Supervisor  
Multnomah County Health Department