SB 1198 STAFF MEASURE SUMMARY

House Committee On Rules

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Meeting Dates: 6/9

WHAT THE MEASURE DOES:

The measure prohibits the distribution, sale, or allowing of a sale of an inhalant delivery system that is packaged inconsistent with rules adopted by the Oregon Health Authority that have the specific purpose of protecting minors from the negative health effects of unlawfully using inhalant delivery systems.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

An inhalant delivery system is a device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device. These systems, such as vaporizers (vapes) and electronic cigarettes (e-cigarettes), are popular among adults and youth. The Food and Drug Administration's (FDA) 2023 annual National Youth Tobacco Survey found that 2.1 million youth use e-cigarettes, which is down from 3.6 million in 2020. In 2019, the United States Surgeon General declared e-cigarette use among youth to be an "epidemic." While the FDA finalized a rule in 2016 that included electronic nicotine delivery systems (ENDS) in the definition of a tobacco product, the majority of regulation is left to the states.

House Bill 2546 (2015) prohibited the sale of inhalant delivery systems to minors and prohibited inhalant delivery systems marketers from using packaging that would be attractive to minors, as determined by the Oregon Health Authority, by rule. Senate Bill 754 (2017) raised the minimum age for use and purchase of tobacco and vaping products from 18 to 21 years of age, and House Bill 2261 (2021) prohibited the remote sale of inhalant delivery systems in Oregon.

In 2021, a complaint was filed in Multnomah County Circuit Court, stating that the packaging restrictions from HB 2546 (2015) infringe upon the right to free speech. The defendants filed a motion for summary judgment, stating that the circuit court does not have the jurisdiction to review the facial validity of administrative rules, and that the packaging restrictions do not infringe upon the right to free speech. The circuit court agreed. In 2024, the plaintiff filed an appeal, and on December 16, 2024, the Oregon Court of Appeals issued an opinion stating that the packaging restrictions from HB 2546 (2015) do indeed infringe upon the right to free speech.