

OREGON STATE SENATE

Testimony in Support of SB 1032: Re Sales of Computer Duster Products

Hearing March 27, 2025, 8:00 a.m

Senate Committee on Labor and Business

Chair Taylor, Vice-Chair Bonham and members of the Committee, my name is James Coon. I've practiced law in Oregon state and federal courts for 47 years, the last 30 of it with Thomas, Coon, Newton & Frost, a plaintiff's-side litigation firm in Portland, where I now serve as Appellate Counsel.

My partner, Ray Thomas and I represented the estate of Joleen Braasch-Berry, who was struck and killed on her bicycle by a driver who had bought and inhaled part of a can of difluoroethane ("DFE") Aerosol "Duster" at a Home Depot store in Salem five minutes before his car hit Joleen. I testify in support of SB 1032, because such a law very likely would have prevented Joleen's death and will help to prevent other deaths and injury to innocent bystanders like Joleen in the future. The bill would require retailers who sell DFE products to limit sales to customers at least 18 years of age, to require customer identification and to keep such products out of reach of customers so as to require store staff assistance for purchase.

Our experience in preparing Joleen's case for trial – reviewing cases of DFE intoxication causing injury or death to innocent bystanders -- convinces us that a significant number of those who buy DFE products for the purpose of intoxication are likely to be deterred by these requirements. That almost certainly would have been true in the case of the driver who killed Joleen, who bought only a can of "Duster" and inhaled it in the Home Depot parking lot before driving away. He had previously been at a Walmart store, where Duster products are kept behind the counter but did not try to buy it there.

As plaintiff's-side litigators, we use the law to hold wrongdoers accountable for harm they cause and to deter others from causing harm. But litigation is a blunt, after-the-fact instrument. It takes balanced legislation to make clear the conduct that is required to keep Oregonians safe and to

allocate fairly the burden of doing so. A statute like SB 1032 protects both retailers and innocent bystanders by providing a clear standard of care that a retailer can cite to show it behaved reasonably.

Many Oregon retailers of DFE duster products, such as (Walmart and Staples) already keep them out of reach of the public, requiring store employee assistance to purchase them. I believe SB 1032 reaches a reasonable compromise between unrestricted DFE duster availability and complete prohibition on sale. As a regular Home Depot customer, I know that I have to certify my age as over 18 to buy a can of spray paint because of the risk that such paint will be used to deface buildings, walls and other structures. I have also observed that a wide range of products, from chainsaws to electric wire to power tools and others are locked on shelves and require the assistance of a store employee to gain access and buy them. That is simply to prevent theft. Surely the risk of serious injury, or death as in Joleen's case, warrants similar measures to protect against the damage that can be caused by drivers intoxicated with DFE. The vast majority of customers who shop at stores that sell DFE products arrive and depart by car.

I understand some retailers may resist the changes they would have to make to display DFE duster products "behind the counter" at their stores. SB 1032, however, does not require that. It says a retailer "Shall maintain the entity's inventory of aerosol dusters that contain DFE in a location *that is not directly accessible to the public.*" Section 1, subsection (4)(a). That language would allow the retailer to display DFE dusters on the same shelves they now occupy, locked behind the same kinds of screening or other barriers now used to safeguard, tools, electric wire and other products the retailer wishes to protect against theft.

On behalf of Joleen, her widower and family, I urge the Committee to report this bipartisan legislation out with a "do pass" recommendation.