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Written Testimony on Oregon Senate Bill 702

RELATING TO PUBLIC HEALTH; DECLARING AN EMERGENCY.

Submitted to the Senate Committee On Finance and Revenue by Dr. Pritika Kumar, Director of Scientific Engagement, on behalf of PMI US Corporate Services Inc.

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Good morning, Chair Meek, Vice-Chair McLane, and Members of the Senate Committee on Finance and Revenue.

Thank you for the opportunity to provide comment opposing Senate Bill 702, which would effectively ban most sales of flavored tobacco products, including smoke-free alternatives to combustible cigarettes authorized for sale by the U.S. Food and Drug Administration (FDA) and have thus been determined to be "appropriate for the protection of public health."

My name is Dr. Pritika Kumar. I have a PhD in Public Health as well as graduate degrees in community health and mental health, and over two decades of experience in harm reduction research, programs and policy. I am the Director of Scientific Engagement for PMI US Corporate Services Inc., a part of Philip Morris International and its U.S.-based family of companies, which includes Swedish Match (collectively, "PMI US"), which is at the forefront of developing reduced risk tobacco and nicotine products in the United States. PMI US's mission is to reduce smoking by replacing combustible cigarettes with less harmful alternatives for the approximately 28 million American adults who still smoke, which includes over 360,000 adults in Oregon.[1]

Of note, PMI US has never, and will never, sell combustible cigarettes in the United States. Rather, our goal is to offer a portfolio of FDA-authorized smoke-free products that can provide legal-age adult smokers with a better choice than combustible cigarettes. While no nicotine product is risk-free and all products containing nicotine are addictive, smoke-free oral nicotine products are better options for people who would otherwise continue to smoke or use traditional oral tobacco products.

Today, 10.6% of adults in Oregon smoke. This rate represents real and considerable human costs; 5,500 deaths in the state annually and 27.9% of cancer-related deaths are attributed to smoking combustible cigarettes. Smoking also significantly contributes to financial burdens on the state, amounting to $1.79 billion in annual healthcare costs and nearly $373.6 million in annual

[1] Campaign for Tobacco-Free Kids: The Toll of Tobacco in Oregon

Medicaid expenses. Additionally, smoking leads to $3.7 billion in lost productivity in Oregon each year.[2]

In its smoke-free portfolio, PMI's U.S. affiliate, Swedish Match North America, manufactures a product called ZYN, a modern oral nicotine pouch that contains nicotine derived from tobacco but does not contain tobacco leaf like traditional oral tobacco products. Rather, it is a cellulose pouch containing nicotine that is placed between the gum and the cheek or upper lip.

In January, the FDA authorized 20 variants of ZYN, flavored and unflavored.[3] Before concluding a product should be authorized, FDA carefully considers, among other things: risks and benefits to the population as a whole – users, nonusers, and youth; potential health effects; product standards, such as nicotine levels and flavors; and product quality and potential for misuse. After years of independent scientific review, and in one of the Biden Administration's final actions, the FDA determined that ZYN meets the authorization standard of "appropriate for the protection of public health." In making this determination, experts at the FDA—including an engineer, a chemist, a toxicologist, a microbiologist, social scientists, an epidemiologist, a medical reviewer, a behavioral clinical pharmacologist, and a regulatory health project manager, among others—rigorously reviewed millions of pages of submitted scientific data over the course of nearly 5 years.

FDA determined ZYN is "appropriate for the protection of public health" in significant part because the product was found not to pose undue risks of youth use. In its press release announcing ZYN's marketing authorization, FDA noted that it "found that the applicant [Swedish Match USA Inc.] showed these nicotine pouch products have the potential to provide a benefit to adults who smoke cigarettes and/or use other smokeless tobacco products that is sufficient to outweigh the risks of the products, including to youth. As part of its evaluation, the FDA reviewed data regarding youth risk and found that youth use of nicotine pouches remains low despite growing sales in recent years. For example, the 2024 National Youth Tobacco Survey showed that 1.8% of U.S. middle and high school students reported currently using nicotine pouches."[4] Moreover, as conditions of authorization, PMI US is required adhere to stringent marketing restrictions designed to protect youth—and FDA maintains the authority to suspend or withdraw marketing authorization if these obligations are not met or if there is a notable increase in youth initiation.

PMI US has a very clear position: we take under-21 access prevention seriously and no one underage should use nicotine products. Though the sale of tobacco products to anybody under the age of 21 is already illegal under both federal and Oregon law, we know that our ability to help adults move away from smoking and traditional tobacco products hinges on our ability to help keep our smoke-free products out of the hands of anyone under 21. Elements of PMI US's robust underage prevention strategy include that we: only market our products to those aged 21 and over; limit our own social media presence to platforms that enable age-restricted controls; mandate that our advertising features only individuals aged 35 or older; never use paid social media influencers and refuse all requests for influencer partnerships; ,to the extent platforms allow, are vigilant in monitoring user-generated content on social media and requesting takedowns of inappropriate

[2] *Ibid.*
[3] FDA Authorizes Marketing of 20 ZYN Nicotine Pouch Products after Extensive Scientific Review | FDA
[4] FDA Authorizes Marketing of 20 ZYN Nicotine Pouch Products after Extensive Scientific Review | FDA

content; enforce rigorous online age verification (21+) for our branded websites; and, require distributors and retailers to comply with all applicable federal, state, and local laws, including age verification requirements at points of sale. To enhance our retail efforts, PMI US serves as an Advisory Council member for The *We Card* Program, championing comprehensive training for retail employees, alongside in-store signage and point-of-sale materials underscoring the minimum age of 21 for purchasing tobacco and nicotine products.

At PMI U.S. we believe underage prevention is our societal license to operate. Without this commitment, we cannot effectively pursue our critical mission of providing smoke-free alternatives to adults aged 21 and over who would otherwise continue using more harmful forms of tobacco. In its orders granting marketing authorization to ZYN, FDA acknowledged studies showing that ZYN encourages switching from other tobacco products, noting that "nearly one quarter (83 of 346 participants) of those who used the new products completely switched from other tobacco products and reported exclusive use of the new product by end of the 10-week prospective study period."[5] FDA also determined that switching to ZYN has the potential to benefit adults who currently use tobacco products, noting "to the extent that people who currently smoke cigarettes or use most other smokeless tobacco products switch completely to these products instead of using their current products, we would expect their health risks to decline substantially."[6]

Under SB 702, most varieties of ZYN and other FDA-authorized smoke-free products would be effectively banned from most sales environments, severely limiting their availability to 21+ adults across the Beaver State. Oregon is not the first state to consider this policy, and, in fact, two states—Massachusetts and California—in addition to the District of Columbia, have already implemented broad flavor bans. As a result, we do not need to speculate on policy outcomes, as we can look to data from those states to evaluate the effectiveness and shortcomings of statewide flavor ban efforts.

Looking at the data, experts have consistently found that flavor bans have significant unintended consequences, decreasing the appeal of less risky products for adults who smoke, hindering switching to better alternatives, and leading to increases in use of combustible cigarettes.[7] [8] This is, unequivocally, a worse outcome from a public health standpoint.

States that have adopted broad bans on flavored tobacco products also experienced a sharp increase in the illicit marketplace, resulting in increased criminal activity, burdens on law enforcement, and expanded access by youth due to the lack of age-verification in the black

[5] FDA, Technical Project Lead (TPL) Review of PMTAs (Jan. 16, 2025), pg. 27
[6] FDA, Technical Project Lead (TPL) Review of PMTAs (Jan. 16, 2025), pg. 6
[7] Friedman AS, Pesko MF, Whitacre TR. Flavored E-Cigarette Sales Restrictions and Young Adult Tobacco Use. JAMA Health Forum. 2024 Dec 6;5(12):e244594.
[8] Friedman AS. A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California. *JAMA Pediatr.* 2021;175(8):863–865.

market—not to mention reduced tax collection and compliance.[9] [10] Massachusetts, for example, has seen an enormous boost to its illicit tobacco marketplace. According to the state-produced Massachusetts Multi-Agency Illegal Tobacco Task Force Annual Report, seizures of illegal vapor products by the Massachusetts State Police increased nearly 21,000% in just one year, jumping from 1,326 units to 279,432 illegal products in fiscal year 2024.[11] In an evaluation of California and a study on discarded cigarette packs, the Tax Foundation found that nearly one year into the state's flavor ban, only 41.2% of cigarette packs had the proper California tax stamp, and estimates that the forgone excise tax revenue from the illicit packs could be nearly $2 billion per year.[12]

SB 702 would have catastrophic consequences, fail the over 55,000 Oregonians who lose their lives each year to illnesses related to combusted cigarette smoking,[13] contradict Oregon's record of supporting harm reduction policies, and jeopardize the state's tax revenues and tobacco control authority. SB 702 simply tells adults who smoke that they can either quit, or they can die. We strongly urge the committee to make the compassionate choice, the choice supported by science and the FDA, by rejecting SB 702.

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[9] Commonwealth of Massachusetts, "Annual Report of Multi-Agency Illegal Tobacco Task Force," Mar. 2022. [Online]. https://www.mass.gov/doc/task-force-fy22-annual-report/download

[10] Kingsley M, McGinnes H, Song G, Doane J, Henley P. Impact of Massachusetts' Statewide Sales Restriction on Flavored and Menthol Tobacco Products on Tobacco Sales in Massachusetts and Surrounding States, June 2020. Am J Public Health. 2022 Aug;112(8):1147-1150

[11] Convenience Store News: Task Force Report Finds Rise in Illegal Tobacco Market in Massachusetts

[12] Tax Foundation: Californians Still Smoking Menthol after Ban: Evidence from a Discarded Pack Audit

[13] The Toll of Tobacco in Oregon - Campaign for Tobacco-Free Kids