

MINUTES
Approved by the Committee
Vape/E-Cigarette Regulatory System
Wednesday, September 25, 2024
1:00 P.M.
EW41
Boise, Idaho

Members in attendance: Cochairs Representative Raymond and Senator Harris; Senators Guthrie, Bjerke, and Ward-Engelking; Representatives Barbieri and Burns. Legislative Services Office (LSO) staff: Kyle Slominski, Shelley Woods, and Linda Jensen. Absent and excused: Representative Vander Woude.

Others in attendance: James Corbett, Eastern Idaho Public Health; Andrea Jackson, Big Smoke and Tobacco Connection; Doug Ball, Jackson Food Stores; Sara Westbrook, Idaho Association of Counties; Don Hall, Twin Falls County Commissioner; Quinn Perry, Idaho School Boards; Teresa Molitor, RAI; Suzanne Budge, IPM & CSA.

NOTE: Presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature's website and copies of those items are on file at the Legislative Services Office in the State Capitol. Recordings of the meeting may be available under the committee's listing on the website.

WELCOME AND OPENING REMARKS

Cochair Raymond called the meeting to order at 1:02 p.m.; a silent roll call was taken. Cochair Raymond thanked the committee and those providing comments. He noted that the Legislature heard concerns by citizens for the need to investigate and address the risk of illicit and harmful materials to youth. He added that the intent of today's meeting was to gather information and set subsequent meetings to address the issue. Cochair Raymond stated that over the past three years, the Legislature has tried to find a pathway to curb the usage of vape products by youth. One method was by taxing products, which was not in the appetite of the Legislature. Another method was by working with retailers to curb sales. He stated that 98 percent of retailers are compliant. Cochair Raymond expressed concern over the availability of some vape products on the black market.

EXPOSITION

Don Hall, Twin Falls County Commissioner, reported on his background as a police officer, in the DARE program, as a school resource officer, and as a crime scene investigator. He supports the prevention of youth vaping as products are harmful, destructive, and highly addictive. He acknowledged the prevention and intervention efforts by the health districts. He quoted Dr. Brady Dickinson, Twin Falls School Superintendent, who urged open conversations on the dangers of vaping. Mr. Hall stated that probation officers report that most juveniles vape and that it is easily attainable and easily hidden. Additionally, the Valley County Coroner reports that many autopsies of persons who vaped heavily revealed lungs having a brown, soupy, cottage cheese consistency. Mr. Hall noted the dangers of vaping products laced with high levels of THC and fentanyl and the health issues and mental health ramifications associated with vape products. He added that vaping, tobacco, and marijuana are gateway drugs leading to harder substances. Mr. Hall expressed his support for increasing costs and regulations, taxing vape products similar to tobacco products to help fund education programs, and a directory of electronic smoking devices.

David Sylvia, senior director of public policy, Altria Services. Mr. Sylvia reported that Altria works toward a well-regulated trade to decrease youth use of vape products and to provide approved products for adults. Manufacturers have ignored federal regulations, and many retailers are unaware they are selling illicit and illegal products. He stated that approximately two-thirds of vape products are illegal with approximately 18 million adult users. Mr. Sylvia reported a survey revealed the top

three brands used by middle and high school students were illicit and illegal Chinese brands. He stated that federal regulations were passed without federal authorization prohibiting new products. The regulations were subsequently extended to include flavored cartridges and synthetic products. Mr. Sylvia added that many foreign products are illegal in their own country but are exported into the U.S. in defiance of federal law. He stated that the Chinese national tobacco company is the world's largest cigarette manufacturer, making a significant profit for the Chinese government. Products are manufactured in China and continuously change packaging to avoid U.S. inspections and regulations. Mr. Sylvia stated that the lack of oversight and unknown contents of these products was dangerous and a public health concern. Mr. Sylvia reported that the distribution of illicit and illegal products is elaborate. Illegal products arrive on container ships and pass through customs labeled as common products such as batteries, toys, and flashlights. Products are smuggled into the U.S., and custom documents are falsified, thus evading tariffs. Products are then moved by domestic carriers to retailers or wholesalers. He stated that only three percent of shipments are inspected. Mr. Sylvia stated that Altria supports a vapor directory, which would reduce harm, protect public health, and reduce youth use. Mr. Sylvia presented data from [Louisiana regarding E-Vapor directories](#).

- Representative Barbieri asked if the Louisiana directory positively affected juvenile use. Mr. Sylvia responded no; however, updated survey results should be available soon. He added that retailers are best equipped to prevent youth from buying these products.
- Representative Burns asked why law enforcement was not able to seize illegal products from shelves. Mr. Sylvia responded that local law enforcement did have authority by legislation; however, at the federal level, it may be due to priorities.
- Senator Guthrie asked if tariffs were paid on products smuggled in and labeled as batteries, how these products are then transported to smoke shops. Mr. Sylvia stated that tariffs are paid by classification and carriers operate under the assumption that these products are legal. Altria is educating carriers on this problem. He added that the products are often delivered to warehouses. Senator Guthrie asked about the punitive element. Mr. Sylvia replied that at the retail level, fines include warning letters and civil monetary penalties of \$20,678. At customs, the products are denied entry.
- Senator Ward-Engelking asked if there was any oversight on the repackaging by wholesalers prior to products being sent to retailers. Mr. Sylvia responded no, and that wholesalers may not know what products are illegal.
- Representative Burns asked if law enforcement was able to seize and destroy illegal products in states with directories. Mr. Sylvia responded yes, and added that there was a higher rate of compliance in states with directories. Representative Burns asked how many states have directories. Mr. Sylvia responded that 11 states have directories or expanded laws.

James Corbett, East Idaho Public Health, presented [Vaping & Idaho Youth](#).

- Senator Guthrie asked about the effectiveness of explicit videos showing the impacts on health from vaping. Mr. Corbett noted its importance and referenced *Catch My Breath*, which shows the impact of vaping on lungs.
- Representative Barbieri asked how much of the Millennium Fund was used for advertising. Mr. Corbett responded 100 percent.
- Representative Burns asked if states with tax structures on vape products saw a decrease in usage. Mr. Corbett did not know.

Jennie Sue Wertner, Idaho Public Television, presented on [Idaho Public Television's Know Vape: Be Smart. Don't Start. program](#). Ms. Wertner advised that most of the Millennium Fund is spent on advertising. Information on how it impacts youth usage should be available in October or November. Ms. Wertner played a video from the Idaho Public Television's website about the [Know Vape](#) program. Senator Guthrie noted that statements by peers were more impactful and asked if youth directly impacted by the harmful affects of vaping were asked to participate in advertising.

Ms. Wertner responded that peer-level communication is very effective and through partnership with health districts, a video documentary featuring kids is shown and a kid from the documentary is present to answer questions. She added that all vape related commercials feature kids.

Quinn Perry, deputy director of the Idaho School Board Association, offered support to the committee on what information would be useful to tackle policy. She noted that the State Department of Education is preparing a new Idaho version of a youth wellness survey, which may be useful to the committee. Ms. Perry agreed that youth vaping was an issue, especially the access of the products by students as young as third grades. She encouraged surveying adults as well, including parents, teachers, and administrators; individuals with forward-facing interactions with students to ensure data from all sides was collected. She concluded by suggesting stakeholders meet and work together to provide feedback.

Andrea Jackson, president of Idaho-based Big Smoke and Tobacco Connection, reported that Big Smoke and Tobacco Connection shops sell age-restrictive products and no one under 18 can enter their stores. She reviewed the [NACS 2023 Impact Report](#). She noted that Big Smoke and Tobacco Connection has a 98 percent compliance rate. She stated that last year's bill would have crushed retailers by making most products illegal. Ms. Jackson reported that her stores are all compliant with the FDA and added that a vape registry is not needed because her stores follow the FDA website and remove products that are listed as illegal. Ms. Jackson recommended a holistic solution through enforcement and education. She suggested: publicizing what is legal for retailers and increasing enforcement; encouraging an "Idaho way" by having an effective government; limiting unintended consequences; laws that do not conflict with FDA guidelines and are not more difficult on businesses; not eliminating legal products for adults, thus pushing them to more harmful products; not increasing government or burdening taxpayers with the cost of enforcement. Ms. Jackson recommended the FDA pay for enforcement efforts through its large enforcement budget.

- Representative Burns asked if Ms. Jackson would agree to work on a directory. Ms. Jackson responded that a directory was not necessary, but encouraged everyone to work together for a solution. Representative Burns asked if Ms. Jackson supported a tax structure on vape products. Ms. Jackson responded that a reasonable amount could be supported.
- Senator Ward-Engelking expressed appreciation for Ms. Jackson's comments. She added that, according to students, most products are purchased online, not in stores. Senator Ward-Engelking looked forward to working with retailers to draft legislation and would agree on a tax for vape products.

Doug Ball, tobacco category manager, Jacksons Food Stores, reported there are 310 stores in the southern/western states; 100 of which are in Idaho. He noted that the original store was located in Caldwell. Mr. Ball reviewed the Louisiana directory, which included 502 approved items including vape and nicotine pouch products. He stated that no warning letters or fines have been issued for nicotine pouches. Nicotine pouches have low usage in youth and have helped adults off more harmful products. He noted that the FDA cites growth in the use of nicotine pouches and that they are safer than combustible cigarettes. Mr. Ball stated that a directory would ban unpopular items among youth and would impact adults who use those products to switch from harmful products. Mr. Ball supports education and working with the committee toward a solution.

Erin Bennett, government relations with the American Heart Association, stated that there was no new data since the 2021 Youth Risk Survey, but believed the Department of Health and Welfare to have tracking data. She acknowledged that a lot of work is being done to educate prevention and intervention. She noted concern that some retailers may not be getting permits to sell products, which meant they do not receive compliance checks. Ms. Bennett does not support a regulatory list or directory, but does support enforcement, which would help get answers and eliminate harmful products. Ms. Bennett added that there was a decline in youth use of traditional tobacco when the master tax tobacco settlement agreement was implemented. She stated that current products

are not covered by those regulations. She suggested parity of these products so they are included in those regulations.

- Cochair Raymond asked about black market products. Ms. Bennett stated there was not enough information; however, intuitively it is known that these products are sold online or through social media and can be hacked with other drugs.
- Senator Ward-Engelking asked if vape shop enforcement needed to be tightened. Ms. Bennett agreed and said that retailers without permits should not get compliance checks.

COMMITTEE DISCUSSION AND CLOSING REMARKS

Cochair Harris relayed his personal experience with the affects of vaping as it happened to his son. He confirmed that vaping is easy to start and hide and hard to quit. Senator Guthrie requested clarity on the disparity and disconnect of pending legislation and on what is currently legal.

With no further business, the committee adjourned at 3:10 p.m