

MINUTES
Approved by the Committee
Vape E-Cigarette Regulatory System
Friday, November 22, 2024
9:00 A.M.
Room EW 41
Boise, Idaho

Members in attendance: Co-chairs Representative Raymond and Senator Harris; Senators Ward-Engelking and Bjerke; Representatives Vander Woude, Barbieri (via teleconference) and Burns. Absent and excused: Senator Guthrie. Legislative Services Office (LSO) staff: Kyle Slominski, Kelci Karl-Robinson, Jennifer Kish, and Linda Jensen.

Others in attendance: Zach Eddy, Fast Eddy's; Evan Fischer, Isaac Lopez, Ignatius Tellez, Larry S. (?), Durity Distribution LLC; Dayne Arbony, Durity Vape and Smoke; Michael Larsen, Lance Churchill, Lotus Vaping/Vape LLC; Brandon Stewart, The Vaping Outlet LLC; Carlene Steward, Dylan Jagneaux, Shanum Group LLC; Ben Bosworth, Outlaw Vapor; Tim Dellgard, North End Chevron; Jason Kreizenbeck, Altria; Tess Molitor, RAI; Doug Ball, Jacksons Food Stores; Andrea Jackson, Big Smoke and Tobacco Connection.

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.

At 8:59 a.m., Co-chair Raymond called the meeting to order.

[Further in the hearing, Co-chair Raymond noted a review of the minutes from Oct. 22nd. A motion was made, and the minutes were approved unanimously.]

At 9:01 a.m., **Ross Edmunds**, Administrator, Division of Behavioral Health, Dept. of Health and Welfare (DHW), discussed the department's current effort around the prevention of access by minors to smoking products. He pointed out the number of permits and how they are issued and that of the 1,704 permits, 180 are vape exclusive permits. He spoke to the funding of the program and inspections, and he noted that \$7,000 per year is collected for fines but highlighted that not many fines are issued. He explained the protocol around inspections and related the timelines around violations. He said that on behalf of DHW, violations are operated through a contractor called Benchmark, and 100% of money in the budget goes to that contract.

- Rep. Vander Woude asked under what authority did Idaho State Police (ISP) transfer the ability for the contractor to write citations, and what statute it fell under. Mr. Edmunds said Section 39, Chapter 57, identified law enforcement, the attorney general, and DHW as having the ability to issue civil penalties under this code. Rep. Vander Woude noted the first fine goes to the clerk and asked where subsequent fines go. Mr. Edmunds answered to the individual selling and the retailer. Rep. Vander Woude asked whether they all go to the clerk and not to the establishment. Mr. Edmunds said the statute didn't specifically say whether a fine was for retailers or individuals, but there was the ability to not have to pay the fine if they can demonstrate compliance through a training program.
- Sen. Harris asked whether Mr. Edmunds experienced products not approved by the FDA. Mr. Edmunds answered no, and that it was not DHW's responsibility to inspect the products sold.
- Rep. Burns asked whether once a year compliance checks per location was adequate. Mr. Edmunds opined that if a person was found out of compliance, they should get inspected more often.

- Co-chair Raymond asked how to tell if one has a permit. Mr. Edmunds said the department didn't have the ability to inspect or ensure who had permits.
- Rep. Vander Woude offered a scenario if a vape business came up that wasn't on his list, could he check to see if they applied for a permit. Mr. Edmunds said the contractor would inform ISP.
- Sen. Bjerke noted posted permits in elevators and asked Mr. Edmunds if it was too big a responsibility to have a business display a permit and make it a requirement in statute. He further noted his curiosity as to why language was changed from "must" to "may." Mr. Edmunds replied that the department did not seek that change, and that he couldn't speak to the motivation behind it or the benefit of having permits displayed, as it may not have any impact on customers. Sen. Bjerke mentioned the previous meeting about an FDA list of approved products and asked for Mr. Edmunds' thoughts on having it displayed in vape shops. Mr. Edmunds replied that if customers wanted to ensure they use approved products, having a list may make it simpler for them, but he did not have a solid answer.

At 9:21 a.m., **Elena Gonzalez**, STC Tax Research Specialist, Idaho State Tax Division, gave a presentation titled [Tobacco and Other Tobacco Products](#). She reviewed the topics that would be under discussion and expounded on taxes in relation to tobacco that was shown throughout the PowerPoint. Also featured was the Prevent All Cigarette Trafficking (PACT) Act reporting versus tax reporting.

- Rep. Burns referred to the online sales taxes collected and asked how many self-reported and filled out the Form 1350U, Idaho Self-Assessed Tobacco Tax. Ms. Gonzalez said the division could run a report to see how many returns were received. Rep. Burns asked whether it was vastly underreported. Ms. Gonzales deferred the question to **James Hammack**, Idaho State Tax Division, who opined that it was underreported.
- Co-chair Harris questioned the process when someone does not comply. Mr. Hammock replied that after being notified, the division opens an audit, sends a letter, determines how long they have been in business, collects the tax, and has them start filing returns moving forward.
- Sen. Bjerke noted that the committee is tasked with how to keep youths from vaping and asked for recommendations about taxing internet sales of vape products. Ms. Gonzalez noted the difficulty to isolate internet sales, and currently, they rely on self-reporting. When the division is made aware, they act then, she said, and added there may be an issue with interstate commerce law.
- Co-chair Raymond asked whether the PACT Act was a federal act and Idaho was not running linear with it. Ms. Gonzalez confirmed it was a federal act and added that it registered with the tax commission; however, the definitions were different. She further noted that vape is only subject to sales tax and no additional excise tax.
- Rep. Burns asked if there was something akin to a tobacco directory for vaping products being monitored. Ms. Gonzales stated that currently there was not.

At 9:39 a.m., **Ellen Upton**, Science and Technology Fellow, LSO, gave a presentation, titled [Vape and E-Cigarette Research Overview](#).

- Co-chair Raymond referred to slide 4 on the topic of Ethylene glycol and whether it was a risk. Ms. Upton said the exposure of Ethylene glycol was found below the safety factor limit and it had also been known to be a component of antifreeze. Co-chair Raymond (sound cut out).
- Rep. Burns referred to slide 5 and asked whether there was a raising of an existing cigarette tax. Ms. Upton said she did not recall that comparison, but she could research and get back to him.
- Rep. Vander Woude noted it was illegal to sell vape products to 8-12th graders; therefore, why would adding a tax decrease the use when it's illegal for them to buy. Ms. Upton said the study was done 2015-2019 and she did not recall when the 21-age limit went into effect. It may indicate youths are getting products from internet sources that do not check age restrictions, she said.

At 9:52 a.m., **Kelci Karl-Robinson**, Revenue Analyst, LSO, joined the presentation and addressed Rep. Vander Woude. She said the survey was based on use before and after the tax, not on purchase. She proceeded to charts on slides 7 and 8 and summarized vaping taxes by state and what Idaho could look like if it went that road. She went through the estimates.

Ms. Upton began another presentation, titled [FDA Regulatory Process for Vapes and E-Cigarettes](#) covering information on the FDA regulations process which she noted is readily available on their website.

- Co-chair Harris referred to slide 6 and asked whether the FDA looked at illicit products and what they do about it. Ms. Upton replied there is a website containing all market order denials not fit for consumption, but she could not explain why many do not make it to that stage. She said she could defer to an FDA representative.
- Sen. Bjerke asked how many filings granted were from outside of the U.S. Ms. Upton reiterated that the list showed all granted market orders and offered her belief it could be determined if they were foreign manufacturers, but she did not know the specific numbers.
- Rep. Vander Woude asked whether there was a study that showed why filings were denied. Ms. Upton referred to slide 4 addressing “considerations,” but proclaimed the question may be better answered by the FDA.
- Rep. Burns asked whether products under review are sold online. Ms. Upton said she did not believe they could be sold; they would be out of compliance with FDA standards.

At 10:11 a.m., Co-chair Raymond opened public testimony.

Zack Eddy, Fast Eddys, said he gave public testimony in support of Chevron retailers. He noted he did not use any tobacco/vaping products but took the laws very seriously. He opined that this is about retailers versus big tobacco. If vapes leave, then cigarettes will come back and no matter what is done, usage will continue. People should be able to buy whatever item they want - no matter the product - without raising the price. He said he believed there should be more checks for all retailers. He concluded that DHW deserved more funding.

Evan Fisher, Durity Distribution, gave public testimony. He summarized his business and brought up online sales, pointing out that Utah had none, which helped with regulation. He opined that it should be left to the 95 percent doing their job as retailers in Idaho. He referenced other states that he gets contacted from and that these states want to “skirt around” the high vape taxes. He said he believed that there needed to be a vaping tax and questioned what it would look like. He echoed the previous testifiers’ assumption that there is a big push and monopolization by big tobacco companies.

Michael Larsen, Lotus Vaping Technologies, gave public testimony. He said that of the Premarket Tobacco Product Application (PMTA) process, 6 million applications were received but 99 percent were denied by the FDA with a requirement change. Based upon the rule change, only 23 products were approved but he emphasized they were owned by big tobacco. He said that he wanted to see a regulatory apparatus that worked for his industry and to help get people off of smoking. He pointed out that vaping helps smokers lower their nicotine level and they can eventually quit, and he stressed that taxation should focus on nicotine content, which is what is harmful in these products.

- Sen. Ward-Engelking asked Mr. Larsen if he put ranges of flavors in the vapes. Mr. Larson said everyone has a favorite flavor and the products he sells varied. He reiterated that the goal was to help a long-time smoker find the right product so they can eventually give up the habit.

Lance Churchill, Lotus Vaping Technologies, gave public testimony and related that he had a legal background and provided the scope of his work. He said it was not disputed vaping was safer than smoking, but it was less risky and further echoed Mr. Larson’s thoughts on vaping versus smoking. He spoke to youth vaping and that it fell 70 percent. He pointed out it was Altria that was pushing for the registry. He said their products are a small part of the market and they know their industry is done unless they can take over the vape market.

- Rep. Burns asked Mr. Churchill whether any of his businesses' products sold had vapor directories. Mr. Churchill clarified that vapor directories had different definitions relating to approvals.

Andrea Jackson, Big Smoke and Tobacco Connection, stated neither she nor Doug Ball would testify today due to committee time constraints.

Co-chair Raymond turned the time to the committee and discussed drafting a letter to leadership to show the findings of these meetings. He shared four points from the school resource officers (IDSRO) that were deemed important: accessibility of products online; increase the fine for use or establish a tiered system so each offense is not the same; increase penalties to stores selling to minors; cessation treatment for youth caught vaping several times.

Rep. Burns offered his recommendations: an increase in cigarette tax and monies get directed to Millenium Fund; allow distributors or retailers with authorized products to market their products; ban online sales; fines for being caught selling to youths.

Sen. Ward-Engelking suggested further review of the information Ms. Upton and Ms. Karl-Robinson provided. She shared further thoughts: legislation should focus on online sales; increase cigarette tax; increase fines for distributors who are consistently in trouble.

Rep. Vander Woude stressed to refocus Millenium Funds into the schools and the issue of vaping.

Sen. Bjerke offered his suggestions: research on cessation for adults; more effort towards prevention for youth; increase of enforcement and getting the contract back with the FDA; curtailing online purchases.

Co-chair Harris shared his recommendations to focus on youth, illicit products, and build awareness. He added that vaping is an important topic for kids and shared an example of his own child.

Co-chair Raymond spoke to the next steps of co-chairs drafting a letter, submitting it to the committee, then sending the approval to leadership.

There being no further business, the Vape E-Cigarette Regulatory System meeting adjourned at 10:48 a.m.