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**Feb. 9, 2015**

**Oregon Legislative Assembly  
State Capitol  
900 Court Street NE  
Salem, OR 97301**

**Statement from Dr. Joel Nitzkin on House Bill 2546**

I submit this comment and request to amend H.B. 2546 in my capacity as a public health physician and my role as senior fellow for tobacco policy with the R Street Institute. I hope to assist in developing a bill that provides optimal public health protection with minimal encroachment on personal freedom.

H.B. 2546 deals with three issues. The first deals with the sale of tobacco, nicotine and cannabis products to persons under age 18. The second deals with extending smoking prohibitions to what the bill defines as “inhalant delivery systems,” more commonly referred to as e-cigarettes. The third deals with identity theft in the context of deception about age.

As a public health physician I strongly support prohibiting the sale of tobacco and inhalant delivery systems to minors, whether defined as 18, 21 or 25 years of age. Such prohibition is justified on the basis of the damage nicotine and marijuana can do to the developing adolescent brain and the tendency for smokers initiating cigarette use prior to the age of 25 to be addicted to cigarettes for life.

Despite hype to the contrary, including bits of scientific evidence taken out of context, there is no public health justification to prohibit inhalant delivery systems in areas where smoking is prohibited. Though e-cigarette aerosol does contain traces of chemical toxins, the levels rarely, if ever, exceed the background levels already present in indoor areas where no one has been smoking. The trace quantities of nicotine in exhaled e-cigarette vapor is well below levels that might be harmful to bystanders, especially considering that the bystanders are also exposed to nicotine in eggplant, potatoes, tomatoes and other common vegetables. I therefore urge the

provisions related to such bans be deleted from H.B. 2546, pending detailed study of this issue by the Oregon Health Authority in collaboration with experts in the science of inhalant delivery systems.

All that being said, there are a number of less substantial but still important issues that may speak to the need to amend H.B. 2546.

1. Line 2, page 2 – the definition of “inhalant delivery system,” as worded includes hookahs (which burn charcoal, not tobacco) and excludes nicotine-free and drug-free e-cigarettes. Perhaps this should be reworded as a device that “is designed for the purpose of delivering nicotine.”
2. Line 37, page 2, dealing with the packaging of cigarettes, should specify “factory-sealed package” to prevent sales of single cigarettes repackaged by the vendor.
3. Line 29, page 3, dealing with reports to be generated by the Oregon Health Authority, should specify annual reports and to whom.
4. To adequately document the progress, or lack thereof, in teen use of tobacco, nicotine and related products, the reporting required of the Oregon Health Authority should cover all nicotine delivery products, including those sold over the counter as pharmaceuticals, and include numbers of teens using any nicotine delivery product by frequency of such use. This is needed because experience to date shows that more than 99 percent of e-cigarette use by teens is by smokers switching to e-cigarettes. The majority of use of e-cigarettes by non-smoking teens is one-time experimentation without continuing or future use.
5. Lines 25 through 28 of page 4, dealing with the definition of tobacco and controlled substance smoke, does not cover hookahs as currently written. Hookahs burn charcoal. The user then sucks the charcoal fumes through flavored tobacco and water for the purpose of extracting nicotine from the tobacco and softening the otherwise overly-harsh taste with the flavoring and water. Hookahs deserve special consideration because of the large quantities of carbon monoxide inhaled, in addition to the full array of other toxic substances found in smoke of any organic substance.
6. Lines 25-28 of page 4 should be amended to specifically reference hookahs.

The provisions of the bill dealing with the Oregon Clean Indoor Air Act should be deleted. Exhaled aerosol from such systems present no measurable risk to bystanders. Prohibiting e-cigarettes in no-smoking areas would likely do more harm than good. It would do nothing to reduce cigarette smoking. It would do nothing to protect bystanders. The only result would be to discourage smokers from switching to much less hazardous inhalant-delivery systems.

All things considered, and as best we can make such estimates at this time, e-cigarettes present less than 1 percent of the risk of potentially fatal tobacco-related illness than tobacco cigarettes. In other words, a smoker who is unwilling or unable to quit can reduce his or her risk of such illness by 99 percent or more by switching to an e-cigarette or related vapor product. Dual users of such products generally reduce their cigarette consumption to less than 5 cigarettes per day, compared to the half-a-pack or more they may have been smoking.

In addition, recently published data strongly suggest that e-cigarettes are less addictive and easier to quit than tobacco cigarettes. In addition, while still unsafe for use by minors, they tend to satisfy the user with far less nicotine than a tobacco cigarette.

The wording of the Clean Indoor Air Act might also deserve amendment with regard to consistency of age cutoff. Age 21 is referenced in line 20 of page 7 and age 18 on line 35 of page 8.

While unrelated to other provisions of the Clean Indoor Air Act, the Oregon Legislative Assembly should consider defining and managing vape shops in a manner similar to their definition and management of cigar bars and smoke shops. This would be appropriate to facilitate enforcement of the prohibition of sales to minors and to set the stage for other inspection activities that may be warranted if and when the Food and Drug Administration imposes regulations on the manufacture and sale of e-cigarettes.

Sincerely,

Dr. Joel Nitzkin  
R Street Institute

**Cc. Public Affairs Counsel; David Spross; Tomi Deveraux; Vape Game LLC; Carol Williams; Aquariusvapors.com; Jeff Borquist; Erika Friend; Gemini II Enterprises; Joey Kim; Rock N Vape; Smokeless NW LLC; StratoMyst LLC; Brennan Venturi; Vaping Cheap; Karen Hyer; Vapor Studio; Matt Grainger; Thad Marney; Thomas Steinkellner; Greg Conley; Matt Minahan; Julie Woessner; Eli Lehrer**