

>> Including Electronic Cigarettes in Oregon's Tobacco Laws

Lessons for tobacco policy



Acknowledgments

This report was prepared by Oregon Health Authority Program Design and Evaluation Services, including:

Steven Fiala, MPH

Linda Drach, MPH

This report was prepared for Oregon Health Authority Health Promotion and Chronic Disease Prevention Section, including:

Karen Girard, MPA

Sarah Hargand, MPH

Shaun Parkman, MA

Oversight for the evaluation and resulting report was provided by an evaluation advisory group, including:

Morgan Cowling, MPA

Karen Girard, MPA

Sara Hartstein, MPH

Rosa Klein, MPP

Kim La Croix, MPH, RD

Michael Tynan, BA

For more information contact:

Shaun Parkman, MA

Evaluation Lead

Health Promotion and Chronic Disease Prevention Section

Oregon Public Health Division

shaun.w.parkman@state.or.us

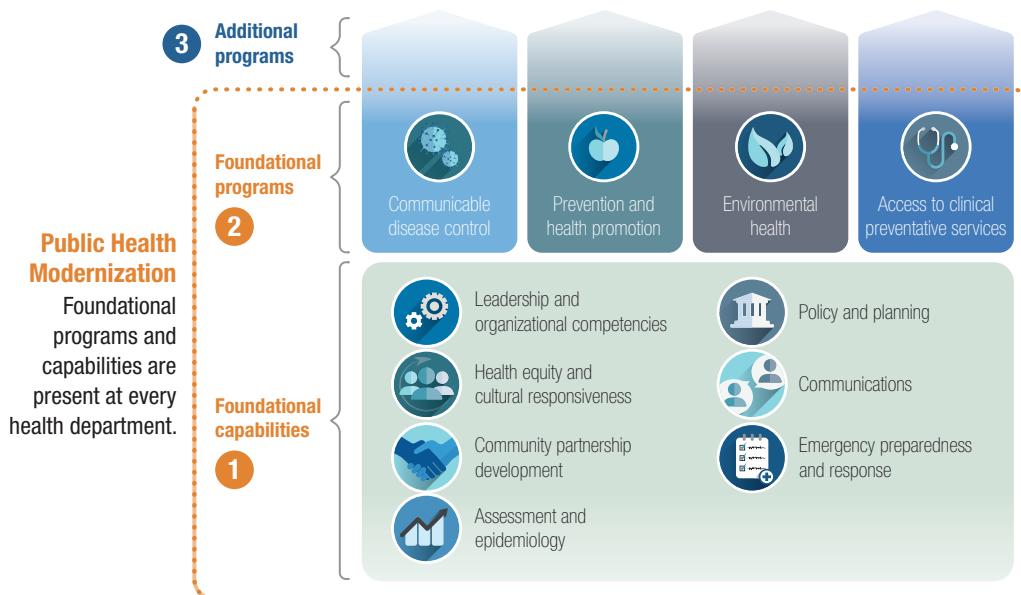
Suggested reference: Oregon Public Health Division. House Bill 2546: Including electronic cigarettes in Oregon's tobacco laws: lessons for tobacco policy. Oregon Health Authority. Portland, OR. 2017 August.

Passing tobacco policy in a modernized public health system

Eighty percent of what shapes our health happens outside the doctor’s office. Public health promotes the health of all people in Oregon in the places where they live, work, learn and play by working across sectors to advance policy changes that promote and support good health.

This evaluation sought to characterize one such policy change and harvest lessons for future tobacco policy successes. Some ingredients for success identified by the evaluation also provide vivid illustration of the foundational capabilities of a modern public health system: health equity and cultural responsiveness, leadership and organizational competencies, emergency preparedness, assessment and epidemiology, communications, policy and planning, and community partnership development. State and local public health demonstrate a firm grasp on assessment and epidemiology in having up-to-date surveillance data on e-cigarette use at-the-ready, and in conducting assessments of e-cigarette availability in local communities. A solid foundation in communications is evidenced by state public health in meeting legislators’ requests for timely, high-quality e-cigarette surveillance data, and by local public health in providing legislative testimony on local e-cigarette use to contextualize the policy. Strategic partners, convened by state and local public health and key legislators, provided testimony on how the policy would be enforced, which proved essential to passing the strongest possible policy. This community partnership development brought new voices to the policy conversation and assisted governmental public health in achieving a collaborative public health goal.

Modernized framework for governmental public health services



The foundation for the success of this policy process was built, in part, on years of comprehensive tobacco prevention and education in Oregon – 20 years, to be exact. Since 1997, the Oregon Public Health Division’s Tobacco Prevention and Education Program has funded and worked with partners in local public health authorities, tribes, regional health equity coalitions, and other community-based and not-for-profit organizations to prevent and reduce tobacco-related deaths in every Oregon community. This tobacco prevention movement continues to implement proven tobacco control strategies rooted in surveillance and evaluation, strategic health communications, and community-level interventions with diverse partners.

The policy initiative described in this evaluation report is a testament to the efficacy of the comprehensive approach that the Oregon Tobacco Prevention and Education Program has been practicing for two decades, and demonstrates how a modernized public health system can amplify its prevention and health promotion work to benefit health and well-being in Oregon’s ever-changing communities.

Executive Summary

Background

On May 26, 2015, Oregon Governor Kate Brown signed House Bill 2546 into law. In addition to including vaping products in existing tobacco sales to minors laws, the policy was considered a success by public health advocates due to the involvement of multi-sectoral partners, the creation of a forward-thinking definition for vaping products that considered substances other than nicotine (e.g., marijuana), and the absence of an exemption to Oregon's Indoor Clean Air Act for sampling inside vape shops.

The Oregon Public Health Division sought to characterize the House Bill 2546 policy process and harvest lessons learned for future policy processes in Oregon, as well as offer a case study for other jurisdictions in the U.S.

What did House Bill 2546 do?

1. Created definition for e-cigarettes termed “inhalant delivery systems”
2. Amended existing laws related to youth tobacco sales and use to equally apply to inhalant delivery systems
3. Created broad term “inhalant” to describe aerosol emitted from device
4. “Inhalant” definition included “cannabinoids” (i.e., marijuana) and non-nicotine substances
5. Included “inhalants” in the Oregon Indoor Clean Air Act

What did House Bill 2546 not do?

1. Did not include Indoor Clean Air Act exemption for indoor sampling of e-cigarette products
2. Did not include component for taxation of e-cigarette products

Evaluation advisory group

The Public Health Division convened an evaluation advisory group representing state and local public health departments and public health lobbyists. The advisory group identified evaluation questions, selected policy stakeholders for key informant interviews, and aided in interpretation of evaluation results.

Key informant interviews were conducted with 15 policy stakeholders, including eight legislators and legislative staff, three public health partners, two public health lobbyists, and two local public health staff.

Evaluation questions

1. To what extent and effect did state government, local government, and lobbyists collaborate?
2. What role did local, state and national tobacco control infrastructure play?
3. What role did external factors in the environment play?

Data collection and analysis

Stakeholder interviews were conducted in October and November 2016 using a standard script. Interviews were recorded with stakeholder permission and transcribed verbatim. Data management was conducted in NVivo version 11. Two coders from the evaluation team independently reviewed and coded all interview transcripts. Discrepancies in coding were resolved through discussion and consensus between the two coders.

Policy process characteristics

Stakeholders identified the following components of the policy process as keys to success:

Legislative leadership in pre-session workgroup and during session, including succession planning from the 2014 to 2015 sessions



Effective pre-session workgroup to draft the bill with representation from legislators, state and local public health, community partners, and the vape industry



Setting clear bill priorities to focus on youth sales and clean air laws (and not tax) allowed for consistent stakeholder messages



Diverse stakeholder voices in pre-session workgroups and in hearing testimony, including non-traditional partners like law enforcement and building managers and owners

2014 legislative session introduced e-cigarettes as a new product to regulate and allowed time to educate legislators and other stakeholders

Bill characteristics

Stakeholders highlighted the following components of the bill as important to policy success:

Novel product definition broad enough to account for future industry innovations, and responsive to future federal regulations

Inclusion of cannabinoids in “inhalants” definition to prepare for implementation of recreational marijuana legalization in Oregon



No Indoor Clean Air Act exemption for indoor sampling in vape shops



Keeping taxation separate to focus on less complex issues like youth sales restrictions and strengthening clean air regulations

“

I work with a lot of different groups and I'm on a lot of committees. This one was so crazy well organized. Sometimes you go to meetings and say, 'why am I here?' This was never the case.

”

“

The work together between the workgroup members was so multidisciplinary, it was inclusive of state government, local government, nonprofit, and community-based folks. I think that was a great model.

”

“

We wanted something that would apply not just to the current devices but any crazy thing that somebody's going to come up with in the future.

”

“

...as we get into the hairy questions of taxation, that's going to take us quickly to questions about harm reduction...those are going to be more difficult waters to navigate...

”

Reasons for bill support

Stakeholders highlighted several reasons for bill support both personally and for other stakeholders:



Protecting children from e-cigarette initiation, a potential gateway to regular tobacco and lifelong nicotine addiction, and from exposure to secondhand e-cigarette vapor



Easier enforcement of the Indoor Clean Air Act given the difficulty of distinguishing between substances used in e-cigarettes

Regulating the vape industry as a growing market with no consistency or safety standards

Lack of research on the health effects of e-cigarette use and exposure to secondhand vapor



Recreational marijuana legalization and prohibiting public use of marijuana was particularly compelling to conservative legislators

Effect on local ordinances and ensuring state policies do not adversely affect strong local policy

External factors affecting the policy process

Stakeholders commented on several external factors that informed the policy process:



Growing, but diffuse, vape industry proved ineffective during legislative session at alleviating concerns with product safety; perpetuated the idea that the new industry needed regulations

Recreational marijuana legalization was top-of-mind for legislators concerned with public consumption of marijuana and youth exposure

“ Young people are my biggest concern. Here are young people vaping. They don't know what's in that. There is no long-term empirical evidence as to the effect of what they're doing. ”

“ ...they [people responsible for enforcement] don't have to figure out what's in the device. If you're using in the prescribed areas then it's a violation... ”

“ There was a lot of concern about the legalization of marijuana and where it will be consumed and how it will be part of our society. Seeing that this bill will encompass marijuana, I think gave relief to Republicans and Democrats both. ”

“ ...an employee of a vape shop, with no certification, no license, no professional background, would go into a room in the back and literally concoct a liquid form and then sell it to a member of the public to inhale. ”



Awareness of vaping increased both from media coverage of emerging research and stakeholders' experiences with e-cigarettes in daily life

Laws and regulations outside Oregon, including other states that had already regulated e-cigarettes and lack of federal regulations

Challenges during the policy process

While relatively smooth overall, stakeholders identified several challenges in the policy process:



Keeping the Indoor Clean Air Act exemption out of the bill was the most-cited challenge; vape shop owners said prohibiting indoor product sampling would harm business and e-cigarette users wanted communal spaces for product use

Small business arguments from vape shop owners warning that regulating vape businesses would stifle a new home-grown industry



Health and cessation claims from vape shop owners and e-cigarette users despite absence of research and lack of FDA approval

Conservative values of many legislators hesitant to regulate a growing industry and expand the role of government in general

Absence of voluntary organizations that did not have national approval to advocate for the bill

Lack of research on the health effects of e-cigarette use and secondhand exposure as reasons to wait before regulating the industry

“ It was amazing who I saw vaping. I’ve seen little mini generations come and go... on the streets where I saw them gathering, there were just too darn many young people smoking the stuff. ”

“ They [e-cigarette users] felt that if they had group settings where they came together and talked about their nicotine addiction... if they are able to vape together in a public space, it would help them. ”

“ ...these young companies have the argument, and I think it’s a decent one, ‘well, you regulated us into a corner before we really even had a chance to find our feet.’ ”

“ They [e-cigarette users] came and provided some very heartfelt, very real testimony that e-cigarettes are really...helping them because they started smoking at a very young age, which we know is the way that nicotine addiction often happens. ”

Future concerns from stakeholders

A few stakeholders expressed concerns that may be relevant in future policy processes:

Further regulating vape businesses may prove difficult given the growing industry is becoming more organized and may have more lobbying power (concerns related to implementing a tax or youth-oriented policies like a flavor ban)



Backlash from the marijuana community who may not have been aware that the law prohibits use of marijuana in public, places of employment



Overstating the health harms of e-cigarettes relative to regular cigarettes makes any future harm reduction conversations more difficult

Stakeholders provided their perspectives on the roles of state and local government and lobbyists:

State government role in policy process

General gratitude toward the Oregon Public Health Division for helping in the process



Contribution to pre-session workgroup, especially on the new product definition

Information sharing including public health surveillance data and vape industry tracking



Funding local programs to assess e-cigarettes in communities, which increased capacity to provide testimony for local and state policies

Local government role



Passing strong local policy provided a precedent and reason to pass state-level e-cigarette policies without indoor sampling exemptions

Providing testimony at bill hearings in both the House and Senate

“ When public health comes on as saying ‘these cigarettes are all bad,’ we’re not giving credit to people who are taking a harm reduction step and that philosophically is an alignment with other public health principles around syringe exchange and a lot of other things we do. ”

“ You know what, I give it all to the state. They were very well organized. I work on a lot of groups with the City and the State and this was a very easy process for me. ”

“ When you actually go and photograph these things for sale in real stores, in real counties, I think that’s very compelling. So, the more pictures and tangibles like that, I think goes a long way. ”

“ I think we benefited a lot from the very strong involvement of the community in Multnomah County that had already started down this road. ”

Lobbyist role



On the ground during legislative session, particularly in the Senate to ensure the bill did not include an indoor sampling exemption

Local tobacco prevention partner group participation to strategize for session



While stakeholders provided few specifics on the role of tobacco prevention programs in the policy process, they referenced lessons learned from tobacco industry tactics, the history of clean air laws, a state-developed counter-marketing ad, and cited both general trends and specific data points from public health surveillance systems. A long history of tobacco prevention in Oregon likely contributed to stakeholder knowledge and perceptions.

Lessons learned for Oregon policy processes

Stakeholders considered the following bill and policy process elements as essential to success:

Legislative champions with succession planning

Pre-session workgroup with representation from all stakeholder groups, including the industry

Diverse partners from multiple sectors in pre-session workgroups and session hearings



Clear bill priorities prior to session for consistent policy messages during session



Strong local policies offer leverage to advocate for similarly strong state regulations

State public health access to legislators to respond to information and data requests



There's all sorts of research showing nationally Americans, and I believe it trickles all the way down to Oregonians, are just frankly done with smoking in public places.



I've been in a lot of workgroups. This one worked really well. How come? We had a very, very circumscribed goal.



[House Bill] 2546 was the big mothership...we needed it to actually pass and we wanted everything else, but it wasn't going to be the priority.



Lessons learned for other tobacco programs

Tobacco control advocates in other states could consider the following lessons learned in their work:



Involve **non-traditional partners** concerned with easy enforcement of smokefree laws



Involve **vape industry representative(s)** in early policy planning to ensure perspectives are understood and considered

Support local jurisdictions in passing **strong, exemption-free ordinances** to leverage in statewide policy discussions



Leverage **recreational marijuana legalization** to garner support from legislators

Create a **broad product definition** to account for future industry innovation

Exclude tax component to moderate opposition from e-cigarette users and anti-tax legislators



Focus on messages related to youth prevention and easier enforcement of clean air laws



For more information on the evaluation, contact:

Shaun Parkman, MA
Evaluation Lead
Health Promotion and Chronic Disease Prevention Section
Oregon Public Health Division
shaun.w.parkman@state.or.us

“ We had a lot of advocates that were going around and talking, and each was emphasizing different aspects of the bill...it wasn't just always health people going to talk...there were lots of different people who were supportive of the bill. ”

“ We made sure that we passed what we wanted in Multnomah County first, because we truly believed that we can enforce and push good public policy by taking the reins up here. ”

This page intentionally left blank



PUBLIC HEALTH DIVISION

Phone: 971-673-0984

Fax: 971-673-0994

This document can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request this publication in another format or language, contact the Publications and Design Section at 503-378-3486, 711 for TTY, or email dhs-oha.publicationrequest@state.or.us