



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: May 29, 2014

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 309 (Clean Indoor Air Act & Electronic Cigarettes)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 309 which would add e-cigarettes to the Clean Indoor Air Act and would prohibit the operation of e-cigarettes in all public places where smoking is prohibited under current law. As background, see the attached May 1, 2014 News Journal article. It notes that 3 other states ban indoor e-cigarette usage and 9 other states ban use in certain buildings and other venues such as public transportation. The attached American Lung Association Statement on E-Cigarettes observes that e-cigarette vapors include carcinogens. The attached Consumer Reports article describes both pros and cons to usage. SCPD endorses the proposed legislation subject to the following suggestions.

First, consistent with the attached February 27, 2014 industry article, many states are proposing taxes on e-cigarettes. Delaware could consider a similar initiative.

Second, lines 19-20 of the legislation contain an exemption for "any product that has been approved by the United States Food and Drug Administration for tobacco cessation or other medical purpose." The problem with this exemption is that even a very limited FDA approval of e-cigarettes would result in a wholesale exemption from the State law. For example, the FDA could potentially approve e-cigarettes as transitional smoking cessation devices for chronic smokers. Some states do not include an FDA reference in their legislation. See, e.g., the attached enacted N.J. legislation. Other states include an FDA exemption. See, e.g., the attached enacted Kentucky legislation. The sponsors may wish to consider whether the sentence should be deleted.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Bill would ban e-cigarette use indoors

By Jon Offredo
The News Journal

Electronic cigarettes would be prohibited from being smoked in most indoor public places in Delaware under legislation filed Tuesday.

The legislation adds the trendy devices that emit mist of nicotine and chemical vapors to Delaware's 2002 Clean Indoor Air Act, which bans smoking in restaurants, bars, and other indoor public places.

The bill's sponsor, Rep. Debra Heffernan, D-Brandywine Hundred South, said she thought of the idea after she encountered someone using an e-cigarette while she and her family were out to dinner.

"I thought since Delaware was one of the first states to enact the indoor air ban, here we have smoking being normalized again in restaurants and indoor places and I needed to do a bill to ensure that would stop," she said.

Three other states, including New Jersey and North Dakota, ban smoking e-cigarettes indoors and nine others have prohibited their use in buildings like schools, universities or corrections facilities, or on public transportation, according to the National Conference of State Legislatures.

Bethany Beach approved a measure last week adding e-cigarettes to its smoking ban for public beaches, parks and the boardwalk.

Heffernan, a toxicologist, said she thought emissions are bad, but there hasn't been enough scientific studies to determine the actual harm.

"They're not regulated. They're not well-studied.



Yenisley Dieppa tries different flavors as she purchases an electronic cigarette at the Vapor Shark store in Miami in February. GETTY IMAGES

Why take a chance with problems for people inhaling second-hand emissions," she said.

The legislation is supported by the state Division of Public Health and has been endorsed by the Delaware Restaurant Association.

Many eating establishments are confused about the handling e-cigarette use in their establishments, wrote Carrie Leishman, president and CEO of the restaurant association in a letter to lawmakers.

"Potential conflicts can arise between the smoking consumer, nearby customers and staff without clear

"They're not regulated. They're not well-studied. Why take a chance with problems for people inhaling second hand emissions."

REP. DEBRA HEFFERNAN

rules set forth under the current law," she said in the letter.

The U.S. Food and Drug administration does not regulate the devices, but are in the process of reviewing potential limitations on the sale. The Centers for Disease Control and Prevention reported that the percentage of high school and middle school students using e-cigarettes doubled between 2011 and 2012. The National Tobacco Survey shows Delaware's high school students reporting using e-cigarettes jumped from 4.7 percent in 2011 to 10 percent in 2012.

E-cigarettes have exploded in popularity over recent years, especially among those under 18.

House lawmakers recently passed legislation prohibiting the sale of e-cigarettes to minors. The bill is now expected to be heard in the Senate.

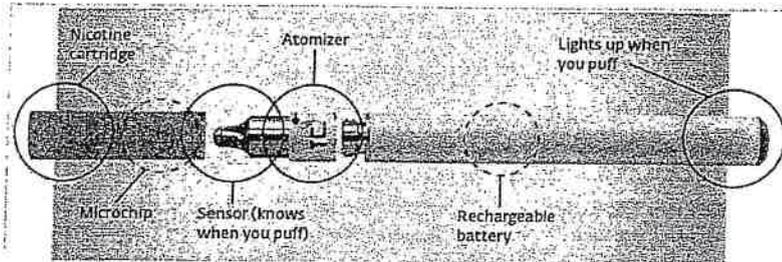
Contact Jon Offredo at (302) 678-4271 or at joffredo@delawareonline.com or on Twitter @jonoffredo.

ConsumerReports.org

Do e-cigarettes help smokers quit?

These battery-powered electronic cigarettes deliver vaporized nicotine without tobacco, tar, or other chemicals

Consumer Reports magazine: May 2012



More than 45 million Americans smoke cigarettes, the leading preventable cause of death in the U.S. Unfortunately, some stop-smoking methods, including nicotine gum and patches, are less effective than previously thought, according to a recent study in the journal *Tobacco Control*.

Enter battery-powered electronic cigarettes, which deliver vaporized nicotine without tobacco, tar, or other chemicals in regular cigarettes. (But nicotine itself has health risks of its own and is extremely addictive.) Their battery heats a cartridge of liquid nicotine solution, creating an aerosolized mist that the user puffs, or "vapes."

Though e-cigarettes emit no smoke, they deliver an experience like smoking, including the way they're held and the LED tip. Last year, 2.5 million Americans tried one. The cost: up to \$100 for a starter kit, which often includes the e-cig unit, two rechargeable lithium batteries, and five flavor cartridges. (Each cartridge equals roughly one pack of cigarettes.)

Fans and foes

Proponents of e-cigarettes say they're more healthful than the conventional type and that they might help smokers quit tobacco. Some research backs that up. In a study published last year in the *International Journal of Clinical Practice*, researchers interviewed more than 100 e-cigarette users and found that most were former smokers who had used the devices to help them quit. They'd tried to stop smoking previously an average of nine times, and two-thirds had tried a cessation drug approved by the Food and Drug Administration. A recent review of the available (albeit meager) scientific evidence on e-cigarettes in the *Journal of Public Health Policy* concluded that "electronic cigarettes show tremendous promise in the fight against tobacco-related morbidity and mortality."

Critics say that too little is known about the safety of e-cigarettes, which are unregulated. Some experts also worry that their availability online—where a user need only click a box saying he or she is 18—could entice children and teens to try them. So could some of the flavors, such as piña colada and vanilla.

In 2010, the FDA tried to block the sale of some e-cigarette brands, arguing that they're marketed as smoking-cessation devices, which the agency regulates. A court disagreed. Now, some states (including Mississippi, New Jersey, and Utah) and cities have proposed or enacted bans on the sale or use of e-cigarettes.

Bottom line. Talk to your doctor before trying to quit smoking with e-cigarettes. Because they're not regulated, safety is a question and you use them at your own risk.

What users have reported to the FDA

News reports that an electronic cigarette exploded in a Florida man's mouth in February spurred us to file a Freedom of Information Act request with the FDA to see what, if any, adverse-event reports it has received on e-cigarettes since they came on the U.S. market in 2006. The agency responded in early March with 39 reports logged through [its adverse-event monitoring system](#). Of them, 31 dealt with negative health effects; eight were complaints about customer service or positive comments about e-cigarettes.

Among the most common complaints were headache, dizziness, nausea, sleepiness, and coughing or other respiratory symptoms. There was only one report of an e-cigarette exploding and causing burns.

Adverse-event reports don't establish causality, nor can they show whether a person was using a product as directed. On the other hand, the FDA estimates that it receives only 1 to 10 percent of all adverse events experienced by the public on products it regulates. Other people using e-cigarettes might have had symptoms but not reported them.

Either way, the reports underscore the need for the FDA to find a way to regulate e-cigarettes, which occupy a sort of regulatory no-man's land between smoking-cessation devices and tobacco products. The agency told us that it plans to develop regulations for e-cigarettes, but no proposed rules have yet been issued.

Copyright © 2006-2014 Consumer Reports. No reproduction, in whole or in part, without written permission.



E-CIGARETTE REVIEWS E-LIQUID RATINGS DISCOUNTS & COUPONS E-CIG INFORMATION NEWS & DISCUSSION

UPDATE: Electronic Cigarette Legislation by State

by Cig Buyer.com | February 27th, 2014

SHARE

For the past year the media and lawmakers have been having a field day with their attack on electronic cigarettes. From e-cigarette safety, to the impact on kids... there's a lot of concern about e-cigs whether it's warranted or not. It seems like every other week there's another city voting on public bans and new statewide proposals are constantly being discussed. To be honest, we've been having a hard time keeping up with all the legal and regulatory action! To get everyone up to speed, here's an update on e-cigarette legislation by state.



Proposed E-Cigarette Taxes

It's a frustrating proposition for vapers, but many lawmakers are trying to lump e-cigarettes in with traditional tobacco products, or they're creating a completely separate subclass of products that can be taxed independently. Here is a list of states trying to impose new e-cigarette taxes:

- Indiana:** House Bill 1174 would include electronic cigarettes under the definition of tobacco products and apply the state's 24% tax on tobacco to e-cigs.
- Kentucky:** Governor Steve Beshear is proposing to tax e-cigarettes at a 20% OTP rate, and several bills are proposing similar rates. House Bill 220 redefines alternative tobacco products to be other tobacco products and imposes a 15% tax on these products. House Bill 319 defines electronic cigarettes as a tobacco product and imposes a 15% OTP tax.
- New Jersey:** Governor Chris Christie proposed a new budget this week that would tax e-cigs at the same rate as traditional cigarettes. Currently, the cigarette tax in NJ is \$2.70 per pack.
- New York:** Senate Bill 6255 would exempt e-cigarettes from state taxation. However, Assembly Bill No. 8594 would impose the state's 75% OTP tax rate on e-cigarettes.
- Oklahoma:** House Bill 2989 imposes a 30% tax rate on e-cigarettes. Senate Bill 1892 would tax tobacco-derived products at a rate of \$.10 per tobacco-derived product unit and the tax shall not exceed one-tenth the rate of the cigarette tax.
- Oregon:** House Bill 4129 would tax electronic cigarettes at 81.25%.
- Rhode Island:** Governor Lincoln Chaffee introduced a budget that includes e-cigs within the state's current definition of "tobacco products" which means they would be subject to Rhode Island's 80% tax on tobacco. House Bill 7133 incorporates the Governor's proposed tax on e-cigarettes.

TOP 5 USER-RATED

- Halo Cigs**
★★★★★
Kits from \$44.99
Visit Website
- V2 Cigs**
★★★★★
Kits from \$34.95
Visit Website
- Apollo E-Cigs**
★★★★★
Kits from \$54.95
Visit Website
- Vapor Zone**
★★★★★
Kits from \$29.99
Visit Website
- Green Smoke**
★★★★★
Kits from \$59.97
Visit Website

* See all e-cig brands

Search



The Vape Shop



- **Tennessee:** Big win if it passes! House Bill 1461 defines vapor products and clarifies that policies applicable to tobacco are not applicable to these devices.
- **Washington:** Senate Bill 6569 would tax e-cigs like tobacco products at a 95% OTP rate.

Bills Banning E-Cig Sales to Minors

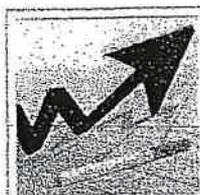
Now here are some regulations we can stand behind! It's safe to say that everyone in the vaping community supports banning electronic cigarette sales to minors. Here is a list of states with proposed (and approved) regulations regarding the sale of e-cigarettes to minors:

- **APPROVED:** These states have already approved banning sales to minors – AL, AK, AR, AZ, CA, CO, IL, IN, KS, MA, MD, MN, MS, NE, NH, NJ, NY, SC, TN, UT, WA, WI, WY
- **Connecticut:** Senate Bill 24 would prohibit the sale of e-cigarettes to minors.
- **Delaware:** House Bill 241 defines tobacco substitute to include electronic cigarettes and prohibits the sale of electronic cigarettes to minors.
- **Georgia:** House Bill 251 defines alternative nicotine products and prohibits the sale of nicotine products, including e-cigarettes, to minors. Senate Bill 347 prohibits the sale of e-cigs to minors.
- **Iowa:** House Bill 2109 and Senate Bill 566 define alternative nicotine and vapor products and prohibit the sale of these products to anyone under 18 years old.
- **Kentucky:** House Bill 299 defines vapor products and prohibits their sale to anyone under 18.
- **Louisiana:** Senate Bill 12 adds "alternative nicotine product" to present law which would prohibit the sale of e-cigarettes to individuals under the age of 18.
- **New Mexico:** House Bill 15 would prohibit the sale of electronic cigarettes to minors.
- **New York:** Prohibits the sale of e-cigarettes to anyone under 18.
- **Oklahoma:** Senate Bill 1835, House Bill 2904 and House Bill 3451 would prohibit the sale of electronic cigarettes and other vapor products to minors.
- **South Dakota:** Senate Bill 181 would prohibit the sale of tobacco, alternative nicotine products and vapor devices to anyone under the age of 18.
- **Vermont:** Very scary! House Bill 632 would ban the sale or possession of electronic cigarettes by anyone of any age – including adults!
- **Virginia:** Senate Bill 96 includes vapor and alternative nicotine products in the definition of tobacco, prohibits the possession by and outlaws the sale to minors.
- **West Virginia:** House Bill 4237 would prohibit the sale of e-cigs to minors.

As vapers, we should stand behind any proposals that limit sales to minors, but most of us can agree that treating them like tobacco products is just plain ridiculous! They contain NO TOBACCO and none of the harmful chemicals found in cigarettes. Almost all of the studies, thus far, have suggested that there's very little risk to electronic cigarette users – and no risk to bystanders. To stay up-to-date with the latest legal and regulatory news, or to **TAKE ACTION**, visit CASAA.org.

Like Tweet 22

Other Related Posts:



E-Cigarette Sales are



Debunking



Attorney Generals



Proposed FDA

NEWS CATEGORIES

- News & Discussion
 - Cig Buyer.com News
 - Product News
 - Editorial & Opinion
 - Legal Updates
 - Surveys & Studies
 - Tips & Advice

RECENT POSTS



It's No Joke... E-Cigs May Actually Improve Your Sex Life



Proposed FDA Regulations For The Electronic Cigarette Industry



Tips for Vaping in "Stealth Mode"



Apollo Is Giving Away One Million Bottles of Free E-Liquid!



Nicotine Poisoning: How Much E-Liquid Does It Take?

NEWSLETTER SIGNUP

Monthly deals, giveaways and **FREE STUFF!**

First Name

Last Name

Email Address

Subscribe ?

FOLLOW US

ASSEMBLY, Nos. 4227 and 4228

STATE OF NEW JERSEY

213th LEGISLATURE

ADOPTED NOVEMBER 23, 2009

Sponsored by:

Assemblywoman CONNIE WAGNER

District 38 (Bergen)

Assemblywoman NANCY F. MUNOZ

District 21 (Essex, Morris, Somerset and Union)

Assemblywoman JOAN M. VOSS

District 38 (Bergen)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman MARY PAT ANGELINI

District 11 (Monmouth)

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

**Assemblywomen Greenstein, Evans, Senators Gordon, Vitale, Codey,
Sarlo and Whelan**

SYNOPSIS

Prohibits use of electronic smoking devices in indoor public places and sale to minors.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Health and Senior Services Committee.

1 AN ACT concerning electronic smoking devices and amending
2 P.L.2005, c.383, P.L.2000, c.87, and P.L.1999, c.90.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to
8 read as follows:

9 2. The Legislature finds and declares that: **[tobacco]**

10 a. Tobacco is the leading cause of preventable disease and
11 death in the State and the nation**], and tobacco]**;

12 b. Tobacco smoke constitutes a substantial health hazard to the
13 nonsmoking majority of the public; **[the]**

14 c. Electronic smoking devices have not been approved as to
15 safety and efficacy by the federal Food and Drug Administration,
16 and their use may pose a health risk to persons exposed to their
17 smoke or vapor because of a known irritant contained therein and
18 other substances that may, upon evaluation by that agency, be
19 identified as potentially toxic to those inhaling the smoke or vapor;

20 d. The separation of smoking and nonsmoking areas in indoor
21 public places and workplaces does not eliminate the hazard to
22 nonsmokers if these areas share a common ventilation system; and
23 **[, therefore]**

24 e. Therefore, subject to certain specified exceptions, it is
25 clearly in the public interest to prohibit the smoking of tobacco
26 products and the use of electronic smoking devices in all enclosed
27 indoor places of public access and workplaces.

28 (cf: P.L.2005, c.383, s.2)

29

30 2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to
31 read as follows:

32 3. As used in this act:

33 "Bar" means a business establishment or any portion of a
34 nonprofit entity, which is devoted to the selling and serving of
35 alcoholic beverages for consumption by the public, guests, patrons
36 or members on the premises and in which the serving of food, if
37 served at all, is only incidental to the sale or consumption of such
38 beverages.

39 "Cigar bar" means any bar, or area within a bar, designated
40 specifically for the smoking of tobacco products, purchased on the
41 premises or elsewhere; except that a cigar bar that is in an area
42 within a bar shall be an area enclosed by solid walls or windows, a
43 ceiling and a solid door and equipped with a ventilation system
44 which is separately exhausted from the nonsmoking areas of the bar

1 so that air from the smoking area is not recirculated to the
2 nonsmoking areas and smoke is not backstreamed into the
3 nonsmoking areas.

4 "Cigar lounge" means any establishment, or area within an
5 establishment, designated specifically for the smoking of tobacco
6 products, purchased on the premises or elsewhere; except that a
7 cigar lounge that is in an area within an establishment shall be an
8 area enclosed by solid walls or windows, a ceiling and a solid door
9 and equipped with a ventilation system which is separately
10 exhausted from the nonsmoking areas of the establishment so that
11 air from the smoking area is not recirculated to the nonsmoking
12 areas and smoke is not backstreamed into the nonsmoking areas.

13 "Electronic smoking device" means an electronic device that can
14 be used to deliver nicotine or other substances to the person
15 inhaling from the device, including, but not limited to, an electronic
16 cigarette, cigar, cigarillo, or pipe.

17 "Indoor public place" means a structurally enclosed place of
18 business, commerce or other service-related activity, whether
19 publicly or privately owned or operated on a for-profit or nonprofit
20 basis, which is generally accessible to the public, including, but not
21 limited to: a commercial or other office building; office or building
22 owned, leased or rented by the State or by a county or municipal
23 government; public and nonpublic elementary or secondary school
24 building; board of education building; theater or concert hall; public
25 library; museum or art gallery; bar; restaurant or other
26 establishment where the principal business is the sale of food for
27 consumption on the premises, including the bar area of the
28 establishment; garage or parking facility; any public conveyance
29 operated on land or water, or in the air, and passenger waiting
30 rooms and platform areas in any stations or terminals thereof; health
31 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
32 seq.); patient waiting room of the office of a health care provider
33 licensed pursuant to Title 45 of the Revised Statutes; child care
34 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);
35 race track facility; facility used for the holding of sporting events;
36 ambulatory recreational facility; shopping mall or retail store; hotel,
37 motel or other lodging establishment; apartment building lobby or
38 other public area in an otherwise private building; or a passenger
39 elevator in a building other than a single-family dwelling.

40 "Person having control of an indoor public place or workplace"
41 means the owner or operator of a commercial or other office
42 building or other indoor public place from whom a workplace or
43 space within the building or indoor public place is leased.

44 "Smoking" means the burning of, inhaling from, exhaling the
45 smoke from, or the possession of a lighted cigar, cigarette, pipe or

1 matter that can be smoked, or the inhaling or exhaling of smoke or
2 vapor from an electronic smoking device.

3 "Tobacco retail establishment" means an establishment in which
4 at least 51% of retail business is the sale of tobacco products and
5 accessories, and in which the sale of other products is merely
6 incidental.

7 "Workplace" means a structurally enclosed location or portion
8 thereof at which a person performs any type of service or labor.

9 (cf. P.L.2005, c.383, s.3)

10

11 3. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to
12 read as follows:

13 1. a. No person, either directly or indirectly by an agent or
14 employee, or by a vending machine owned by the person or located
15 in the person's establishment, shall sell, offer for sale, distribute for
16 commercial purpose at no cost or minimal cost or with coupons or
17 rebate offers, give or furnish, to a person under 19 years of age~~[,]~~:

18 (1) any cigarettes made of tobacco or of any other matter or
19 substance which can be smoked, or any cigarette paper or tobacco
20 in any form, including smokeless tobacco; or

21 (2) any electronic smoking device that can be used to deliver
22 nicotine or other substances to the person inhaling from the device,
23 including, but not limited to, an electronic cigarette, cigar, cigarillo,
24 or pipe, or any cartridge or other component of the device or related
25 product.

26 b. The establishment of all of the following shall constitute a
27 defense to any prosecution brought pursuant to subsection a. of this
28 section:

29 (1) that the purchaser of the tobacco product or electronic
30 smoking device or the recipient of the promotional sample falsely
31 represented, by producing either a driver's license or non-driver
32 identification card issued by the New Jersey Motor Vehicle
33 Commission, a similar card issued pursuant to the laws of another
34 state or the federal government of Canada, or a photographic
35 identification card issued by a county clerk, that the purchaser or
36 recipient was of legal age to make the purchase or receive the
37 sample;

38 (2) that the appearance of the purchaser of the tobacco product
39 or electronic smoking device or the recipient of the promotional
40 sample was such that an ordinary prudent person would believe the
41 purchaser or recipient to be of legal age to make the purchase or
42 receive the sample; and

43 (3) that the sale or distribution of the tobacco product or
44 electronic smoking device was made in good faith, relying upon the
45 production of the identification set forth in paragraph (1) of this

1 reasonable belief that the purchaser or recipient was of legal age to
2 make the purchase or receive the sample.

3 c. A person who violates the provisions of subsection a. of this
4 section, including an employee of a retail dealer licensee under
5 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
6 provides a tobacco product to a person under 19 years of age, shall
7 be liable to a civil penalty of not less than \$250 for the first
8 violation, not less than \$500 for the second violation, and \$1,000
9 for the third and each subsequent violation. The civil penalty shall
10 be collected pursuant to the "Penalty Enforcement Law of 1999,"
11 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
12 before the municipal court having jurisdiction. An official
13 authorized by statute or ordinance to enforce the State or local
14 health codes or a law enforcement officer having enforcement
15 authority in that municipality may issue a summons for a violation
16 of the provisions of subsection a. of this section, and may serve and
17 execute all process with respect to the enforcement of this section
18 consistent with the Rules of Court. A penalty recovered under the
19 provisions of this subsection shall be recovered by and in the name
20 of the State by the local health agency. The penalty shall be paid
21 into the treasury of the municipality in which the violation occurred
22 for the general uses of the municipality.

23 d. In addition to the provisions of subsection c. of this section,
24 upon the recommendation of the municipality, following a hearing
25 by the municipality, the Division of Taxation in the Department of
26 the Treasury may suspend or, after a second or subsequent violation
27 of the provisions of subsection a. of this section, revoke the license
28 issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail
29 dealer. The licensee shall be subject to administrative charges,
30 based on a schedule issued by the Director of the Division of
31 Taxation, which may provide for a monetary penalty in lieu of a
32 suspension.

33 e. A penalty imposed pursuant to this section shall be in
34 addition to any penalty that may be imposed pursuant to section 3
35 of P.L.1999, c. 90 (C.2C:33-13.1).

36 (cf. P.L.2005, c.384, s.1)

37

38 4. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to
39 read as follows:

40 3. a. A person who sells or gives to a person under 19 years of
41 age any cigarettes made of tobacco or of any other matter or
42 substance which can be smoked, or any cigarette paper or tobacco
43 in any form, including smokeless tobacco, or any electronic
44 smoking device that can be used to deliver nicotine or other
45 substances to the person inhaling from the device, including, but not

1 including an employee of a retail dealer licensee under P.L.1948,
2 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a
3 tobacco product or electronic smoking device to a person under 19
4 years of age, shall be punished by a fine as provided for a petty
5 disorderly persons offense. A person who has been previously
6 punished under this section and who commits another offense under
7 it may be punishable by a fine of twice that provided for a petty
8 disorderly persons offense.

9 b. The establishment of all of the following shall constitute a
10 defense to any prosecution brought pursuant to subsection a. of this
11 section:

12 (1) that the purchaser or recipient of the tobacco product or
13 electronic smoking device falsely represented, by producing either a
14 driver's license or non-driver identification card issued by the New
15 Jersey Motor Vehicle Commission, a similar card issued pursuant to
16 the laws of another state or the federal government of Canada, or a
17 photographic identification card issued by a county clerk, that the
18 purchaser or recipient was of legal age to purchase or receive the
19 tobacco product or electronic smoking device;

20 (2) that the appearance of the purchaser or recipient of the
21 tobacco product or electronic smoking device was such that an
22 ordinary prudent person would believe the purchaser or recipient to
23 be of legal age to purchase or receive the tobacco product or
24 electronic smoking device; and

25 (3) that the sale or distribution of the tobacco product or
26 electronic smoking device was made in good faith, relying upon the
27 production of the identification set forth in paragraph (1) of this
28 subsection, the appearance of the purchaser or recipient, and in the
29 reasonable belief that the purchaser or recipient was of legal age to
30 purchase or receive the tobacco product or electronic smoking
31 device.

32 c. A penalty imposed pursuant to this section shall be in
33 addition to any penalty that may be imposed pursuant to section 1
34 of P.L.2000, c.87 (C.2A:170-51.4).
35 (cf: P.L.2005, c.384, s.5)

36
37 5. Sections 1 and 2 of this act shall take effect on the 180th day
38 after enactment, but the Commissioner of Health and Senior
39 Services may take such anticipatory administrative action in
40 advance thereof as shall be necessary for the implementation of
41 those sections. Sections 3 and 4 of this act shall take effect on the
42 60th day after enactment.

[lanereport.com](http://www.lanereport.com)<http://www.lanereport.com/31010/2014/04/bill-banning-sale-of-e-cigarettes-to-kids-signed-into-law/>

Bill banning sale of e-cigarettes to kids signed into law

April 15, 2014

Prohibits sales of all types of e-cigarettes to minors, regardless of whether devices use nicotine

Prohibits sales of all types of e-cigarettes to minors, regardless of whether devices use nicotine

FRANKFORT, Ky. (April 15, 2014) – Calling the measure a big win for efforts to reduce tobacco use in the state and particularly among young people, Gov. Steve Beshear on Monday signed Senate Bill 109 into law, banning the sale of all types of e-cigarettes to minors.

The governor specifically urged legislators to pass this bill during his State of the Commonwealth in January, and identified this effort as a key part of his legislative agenda.

"We have the highest rates of youth smoking in the country," Beshear said. "And we know that if we can keep our children from trying cigarettes – including e-cigarettes – before the age of 18, they are significantly less likely to become smokers later in life. I commend the General Assembly for passing this important bill."

SB109 prohibits the sales of all types of e-cigarettes to minors, regardless of whether the devices use nicotine. Food and Drug Administration testing has found that a number of e-cigarettes sold as "nicotine-free" actually contained the drug, and the largely unregulated nature of e-cigarette products at present creates enforcement issues around youth access for state agencies, retailers, school districts and parents.

The effects of SB109 are especially important now. Between 2011 and 2012, the percentage of all youth in grades 6 to 12 who had tried e-cigarettes doubled, with e-cigarettes being increasingly marketed to minors. The vast majority of youth who have used e-cigarettes have also smoked conventional cigarettes.

"Prohibiting the sale of e-cigarettes to minors is an important step in the right direction for an issue that deserves quick attention," said Rep. Joni Jenkins, D-Shively. "Nicotine products of any kind should remain off-limits to Kentucky's most precious resource – our children. I am thankful for the bipartisan conversation about e-cigarette regulations, and look forward to continue monitoring this issue."

The goal to reduce Kentucky's smoking rate by 10 percent over the next five years is one goal of Beshear's recently created initiative, kyhealthnow, which aims to reduce Kentucky's dismal health rankings and habits through goals and strategies related to seven areas that include obesity, cancer and health insurance.

The initiative's oversight team consists of cabinet secretaries and key state agency officials, and is chaired by Lt. Gov. Jerry Abramson.

"Kentucky has a special incentive to enforce strong restrictions on minor access to tobacco products, given our high rates of smoking both among teens and adults," said Lt. Gov. Abramson. "We hope this bill will prevent our young Kentuckians from trying e-cigarettes and from moving on to traditional cigarettes as a result. One of the kyhealthnow initiative's key priorities is to change the state's culture so that smoking of any kind among young people is not tolerated."



AN ACT relating to the sale of tobacco related products to minors and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

→ Section 1. KRS 438.305 is amended to read as follows:

As used in KRS 438.305 to 438.340, unless the context requires otherwise:

- (1) (a) "Alternative nicotine product" means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.
- (b) "Alternative nicotine product" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;
- (2) "Manufacturer" means any person who manufactures or produces tobacco products within or without this Commonwealth;
- ~~(3)~~(2) "Nonresident wholesaler" means any person who purchases cigarettes or other tobacco products directly from the manufacturer and maintains a permanent location or locations outside this state at which Kentucky cigarette tax evidence is attached or from which Kentucky cigarette tax is reported and paid;
- ~~(4)~~(3) "Proof of age" means a driver's license or other documentary or written evidence that the individual is eighteen (18) years of age or older;
- ~~(5)~~(4) "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes or other tobacco products purchased by that person directly from the cigarette manufacturer on which the cigarette tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state at which the person attaches cigarette tax evidence or receives untaxed cigarettes;
- ~~(6)~~(5) "Sample" means a tobacco product, alternative nicotine product, or vapor product distributed to members of the general public at no cost;

~~(7)(6)~~ "Subjobber" means any person who purchases tobacco products, on which the Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS 138.195, and makes them available to a retail establishment for resale;[-]

(8) (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco product, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in a person's mouth.

(b) "Tobacco product" does not include any alternative nicotine product, vapor product, or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act; and

(9) (a) "Vapor product" means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device. "Vapor product" includes but is not limited to any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device.

(b) "Vapor product" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

→ Section 2. KRS 438.310 is amended to read as follows:

- (1) No person shall sell or cause to be sold any tobacco product, alternative nicotine product, or vapor product at retail to any person under the age of eighteen (18), or solicit any person under the age of eighteen (18) to purchase any tobacco product, alternative nicotine product, or vapor product at retail.
- (2) Any person who sells tobacco products, alternative nicotine products, or vapor products at retail shall cause to be posted in a conspicuous place in his establishment a notice stating that it is illegal to sell tobacco products, alternative nicotine products, or vapor products to persons under age eighteen (18).
- (3) Any person selling tobacco products, alternative nicotine products, or vapor products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of eighteen (18).
- (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure.

→ Section 3. KRS 438.311 is amended to read as follows:

- (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has not attained the age of eighteen (18) years to purchase or accept receipt of or to attempt to purchase or accept receipt of a tobacco product, alternative nicotine product, or vapor product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, alternative nicotine product, or vapor product. It shall not be unlawful for such a person to accept receipt of a tobacco

product, alternative nicotine product, or vapor product from a family member, except if the child has been committed to the custody of the state under KRS Chapters 600 to 645, or from an employer when required in the performance of the person's duties.

- (2) Violation of this section shall be punishable by a fine of fifty dollars (\$50) and twenty (20) hours of community service work for a first offense within a one (1) year period, and a fine of two hundred dollars (\$200) and forty (40) hours of community service work for a second or subsequent offense within a one (1) year period.
- (3) This offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but not make an arrest or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to the section, the court may compel the attendance of the defendant in the manner specified by law.

→ Section 4. KRS 438.313 is amended to read as follows:

- (1) No wholesaler, retailer, or manufacturer of cigarettes, ~~or~~ tobacco products, alternative nicotine products, or vapor products may distribute cigarettes, ~~or~~ tobacco products, alternative nicotine products, or vapor products, including samples thereof, free of charge or otherwise, to any person under the age of eighteen (18).
- (2) Any person who distributes cigarettes, ~~or~~ tobacco products, alternative nicotine products, or vapor products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of

eighteen (18).

- (3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) for each offense. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

→ Section 5. KRS 438.315 is amended to read as follows:

- (1) The sale of tobacco products, alternative nicotine products, or vapor products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (2) The purchase of tobacco products, alternative nicotine products, or vapor products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (3) Except for vending machines located in factories or vending machines located in bars or taverns to which minors are not permitted access, [~~beginning one (1) year after July 15, 1994,~~] any vending machine from which tobacco products, alternative nicotine products, or vapor products are dispensed shall be located in the line of sight of the cashier for the retail establishment.
- (4) Any owner of a retail establishment violating this section shall be subject to a fine

of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.

- (5) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

→Section 6. KRS 438.325 is amended to read as follows:

- (1) Each owner of a retail establishment selling or distributing tobacco products, alternative nicotine products, or vapor products shall notify each individual employed in the retail establishment as a retail sales clerk that the sale of tobacco products, alternative nicotine products, or vapor products to any person under the age of eighteen (18) years and the purchase of tobacco products, alternative nicotine products, or vapor products by any person under the age of eighteen (18) years ~~is~~^{are} prohibited.
- (2) Each owner of a retail establishment selling or distributing tobacco products, alternative nicotine products, or vapor products shall notify each individual employed in the retail establishment as a retail sales clerk that proof of age is required from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).
- (3) The notice to employees that is required in subsection (1) of this section shall be provided before the person commences work as a retail sales clerk, or, in the case of

a person employed as a retail sales clerk on the effective date of this Act [~~July 15, 1994~~], within thirty (30) days of that date. The employee shall signify receipt of the notice required by this section by signing a form that states as follows:

"I understand that under the law of the Commonwealth of Kentucky it is illegal to sell or distribute tobacco products, alternative nicotine products, or vapor products to persons under the age of eighteen (18) years and that it is illegal for persons under the age of eighteen (18) years to purchase tobacco products, alternative nicotine products, or vapor products."

- (4) The owner of the retail establishment shall maintain the signed notice that is required pursuant to subsection (3) of this section in a place and in a manner so as to be easily accessible to any employee of the Department of Alcoholic Beverage Control or the Department of Agriculture conducting an inspection of the retail establishment for the purpose of monitoring compliance in limiting the sale or distribution of tobacco products, alternative nicotine products, or vapor products to persons under the age of eighteen (18) as provided in KRS 438.305 to 438.340.
- (5) Any owner of the retail establishment violating subsections (1) to (4) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department of Alcoholic Beverage Control in a civil enforcement procedure.

➔Section 7. KRS 438.330 is amended to read as follows:

- (1) The Department of Alcoholic Beverage Control and the Department of Agriculture shall carry out annually-conducted random, unannounced inspections of retail establishments where tobacco products, alternative nicotine products, or vapor products are sold or distributed for the purpose of enforcing the provisions of KRS 438.305 to 438.340. The inspections shall be conducted to the extent necessary to assure that the Commonwealth remains in compliance with Public Law 102-321 and applicable federal regulations. The Department of Alcoholic Beverage Control

and the Department of Agriculture shall also ensure that targeted inspections are conducted at those retail establishments where, and at those times when, persons under the age of eighteen (18) years are most likely to purchase tobacco products, alternative nicotine products, or vapor products. Persons under the age of eighteen (18) years may be used to test compliance with the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the direct supervision of the Department of Alcoholic Beverage Control, sheriff, or chief of police, or their employees, and written parental consent has been obtained. The Department of Alcoholic Beverage Control shall prepare annually, for submission by the Governor to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of Subpart 1 of Part B of Title XIX of the Federal Public Health Service Act.

- (2) The Department of Alcoholic Beverage Control shall develop and implement the survey sampling methodologies to carry out the inspections as described in this section.

→ Section 8. KRS 438.335 is amended to read as follows:

The Department of Agriculture shall carry out the provisions of KRS 438.305 to 438.340 as they relate to educating the public and sellers of tobacco products, alternative nicotine products, or vapor products about provisions and penalties of KRS 438.305 to 438.340. The Department of Agriculture shall be entitled to the revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Department of Revenue from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 and to keep fifty percent (50%) of any fines collected under KRS 438.305 to 438.340 to offset the costs of these education efforts.

→ Section 9. KRS 438.350 is amended to read as follows:

- (1) No person under the age of eighteen (18) shall possess or use tobacco products, alternative nicotine products, or vapor products.

- (2) Any tobacco product, alternative nicotine product, or vapor product found in the possession of a person under the age of eighteen (18) and in plain view of the law enforcement officer shall be confiscated by the law enforcement officer making the charge.
- (3) This section shall not apply to persons exempted as provided by KRS 438.311 and 438.330.
- (4) The terms "alternative nicotine product," "tobacco product," and "vapor product," shall have the same meaning as in Section 1 of this Act.

→Section 10. Whereas it is incumbent upon the Commonwealth of Kentucky to protect the health, safety, and welfare of the young people living within its borders, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.