



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

June 4, 2014

The Honorable Jack Markell  
Tatnall Building - 2nd Floor  
William Penn Street  
Dover, DE 19901

RE: H.B 241 [Ban Sales and Distribution of E-Cigarettes to Minors]

Dear Governor Markell:

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 241 which would ban sales and distribution of e-cigarettes to minors. It would also ban minors from purchasing or attempting to purchase e-cigarettes. Minors who violate the law could be fined \$50 or ordered to perform 25 hours of community service for a first offense. SCPD realizes that the proposed legislation has passed both the House and Senate, but wanted to provide the following observations.

Background is provided in the preamble to the legislation and the attached excerpt from the April 25 issue of the House Minority Caucus Newsletter. Use of electronic cigarettes among middle and high school students is increasing at an alarming rate. For example, the percentage of such students using e-cigarettes doubled between 2011 and 2012. The e-cigarettes contain nicotine which is highly addictive. In September, 2013, forty-one (41) Attorneys General asked the FDA to regulate e-cigarettes. In April, 2014, the FDA decided to regulate e-cigarettes but the process to adopt federal regulations could be extended. See attached Associated Press article. In the meantime, at least twenty-seven (27) states have banned sales of e-cigarettes to minors.

SCPD endorses the proposed legislation. Council's only concern is that the bill (lines 55-59) uses the term "tobacco substitute" to cover e-cigarettes. The definition excludes devices approved by the FDA for tobacco cessation or other medical purposes. As a result, even very limited FDA approval of the devices as a transitional smoking cessation product would effectively render the Delaware law meaningless. Vendors could sell and minors could buy e-cigarettes since they would not meet the definition of a "tobacco substitute". Some states have adopted definitions of "e-cigarettes" without the FDA reference. See, e.g., the attached enacted N.J. legislation. Other states include an FDA exemption. See, e.g., the attached recently enacted Kentucky legislation. The sponsors may wish to consider whether the FDA exemption could be deleted or modified.

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

Sincerely,

A handwritten signature in black ink, reading "Daniese McMullin-Powell". The signature is written in a cursive style with a large initial "D".

Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

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

HB 241 electronic cigarettes and minors 6-4-14

EXCERPT:  
4-25-14  
DEL HOUSE OF  
REPRESENTATIVES  
REPUBLICAN  
CAUCUS  
E-NEWS LETTER



One popular e-cigarette starter kit.

**NEWS:**

**Bill to Ban Sale of e-cigarettes to Minors Will Move Ahead Despite Federal Action**

A Delaware bill seeking to ban the sale of e-cigarettes to minors will move forward, despite action announced by the U.S. Food and Drug Administration (FDA) yesterday that seeks the same goal.

An e-cigarette is a battery-powered device that converts liquid nicotine into a vapor that can be inhaled. Because the devices do not create second-hand smoke and do not contain some of the harmful chemicals associated with smoking tobacco, they are sometimes marketed as a healthier alternative to smoking.

The FDA proposed rule would extend the agency's tobacco authority over products including e-cigarettes, cigars, pipe tobacco, nicotine gels, and waterpipes.



**State Rep.  
Deborah Hudson**

Under federal law, this merchandise meets the statutory definition of "tobacco product."

Among other things, the rule change would prohibit the sale and distribution of e-cigarettes to minors.

State Rep. Deborah Hudson, R-Fairthorne, said the FDA proposal will do nothing to alter plans to pass a bipartisan bill she is sponsoring with the same objective. House Bill 241 -- also sponsored by State Sen. Patricia Blevins, D-

Elsmere -- cleared the House April 10th on a unanimous vote.

The bill has not yet been assigned to a Senate committee.

"I support the FDA's decision, but I still want our bill to become law," Rep. Hudson said. "It could take many months, or longer, for the FDA to finalize and promulgate their regulations. At least 27 other states have already banned the sale of e-cigarettes to minors and I do not see any reason for us to wait for the federal government."

Rep. Hudson added that enacting the bill will clarify that state officials have the authority and jurisdiction to enforce the prohibition.

The FDA action was not unexpected. The agency has expressed concerns about the possible health implications of e-cigarette use for many years. Agency officials say consumers currently have no way of knowing whether e-cigarettes are safe for their intended use; how much nicotine or other potentially harmful chemicals are being inhaled by users; and if there are any benefits associated with using the products.

Last September, 41 attorneys general -- including Delaware's Beau Biden -- urged the FDA to test and regulate e-cigarettes.

Trepidation regarding e-cigarettes has grown with their usage and amid increasing evidence they are being aggressively marketed to minors and young adults.

The Centers for Disease Control and Prevention reported that the percentage of U.S. high school and middle school students using e-cigarettes doubled between 2011 and 2012. The National Youth Tobacco Survey revealed that approximately 1.8 million young people tried e-cigarettes in 2012.

Some companies sell the vapor device with flavors of liquid nicotine in the cartridge including cotton candy, bubble gum and Fruit Loops.

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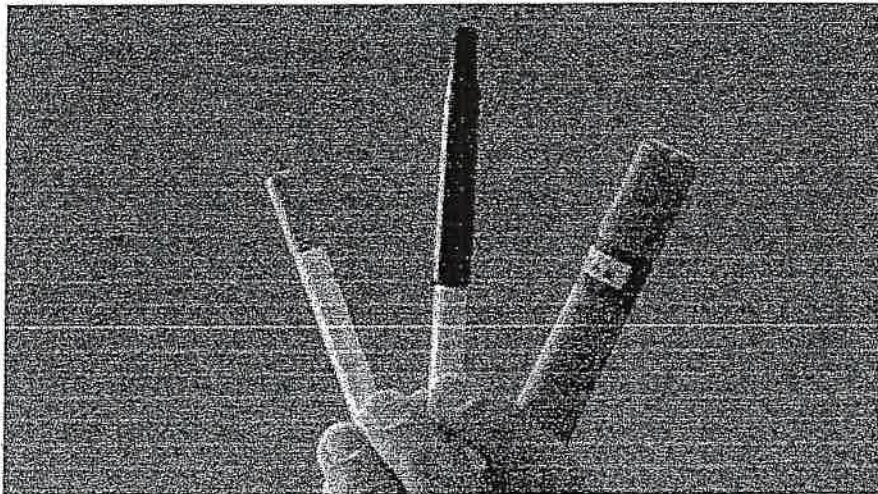
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## FDA proposes ban on e-cigarette sales to minors



Associated Press

Posted on April 24, 2014 at 9:06 AM

Updated Thursday, Apr 24 at 12:28 PM

WASHINGTON (AP) -- The U.S. government wants to ban sales of electronic cigarettes to minors and require approval for new products and health warning labels under regulations being proposed by the federal Food and Drug Administration.

While the proposal being issued Thursday won't immediately mean changes for the popular devices, the move is aimed at eventually taming the fast-growing e-cigarette industry.

The industry started on the Internet and at shopping-mall kiosks and has rocketed from thousands of users in 2006 to several million worldwide who can choose from more than 200 brands. Sales are estimated to have reached nearly \$2 billion in 2013. Tobacco company executives have noted that they are eating into traditional cigarette sales, and their companies have jumped into the business.

The agency said the proposal sets a foundation for regulating the products but the rules don't immediately ban the wide array of flavors of e-cigarettes, curb marketing on places like TV or set product standards.

Any further rules "will have to be grounded in our growing body of knowledge and understanding about the use of e-cigarettes and their potential health risks or public health benefits," Commissioner Dr. Margaret Hamburg said.

Once finalized, the agency could propose more restrictions on e-cigarettes. Officials didn't provide a timetable for that action.

Members of Congress and public health groups have raised concerns over e-cigarettes and questioned their marketing tactics.

"When finalized (the proposal) would result in significant public health benefits, including through reducing sales to youth, helping to correct consumer misperceptions, preventing misleading health claims and preventing new products from entering the market without scientific review by FDA," said Mitch Zeller, the director of the FDA's Center for Tobacco Products.

The FDA said the public, members of the industry and others will have 75 days to comment on the proposal. The agency will evaluate those comments before issuing a final rule but there's no timetable for when that will happen. The regulations will be a step in a long process that many believe will ultimately end up being challenged in court.

E-cigarettes are plastic or metal tubes, usually the size of a cigarette, that heat a liquid nicotine solution instead of burning tobacco. That creates vapor that users inhale.

Smokers like e-cigarettes because the nicotine-infused vapor looks like smoke but doesn't contain the thousands of chemicals, tar or odor of regular cigarettes. Some smokers use e-cigarettes as a way to quit smoking tobacco or to cut down. However, there's not much scientific evidence showing e-cigarettes help smokers quit or smoke less, and it's unclear how safe they are.

Some believe lightly regulating electronic cigarettes might actually be better for public health overall, if smokers switch and e-cigarettes really are safer. Others are raising alarms about the hazards of the products and a litany of questions about whether e-cigarettes will keep smokers addicted or encourage others to start using e-cigarettes, and even eventually tobacco products.

"Right now for something like e-cigarettes, there are far more questions than answers," Zeller said, adding that the agency is conducting research to better understand the safety of the devices and who is using them.

In addition to prohibiting sales to minors and requiring health labels that warn users that nicotine is an addictive chemical, e-cigarette makers also would be required to register their products with the agency and disclose ingredients. They also would not be allowed to claim their products are safer than other tobacco products.

They also couldn't use words such as "light" or "mild" to describe their products, give out free samples or sell their products in vending machines unless they are in a place open only to adults, such as a bar.

Companies also will be required to submit applications for premarket review within two years. As long as an e-cigarette maker has submitted the application, the FDA said it will allow the products to stay on the market while they are being reviewed. That would mean companies would have to submit an application for all e-cigarettes now being sold.

AP-WF-04-24-14 1252GMT

**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~~L,I~~:

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/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~~<sup>are</sup> 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.