Containing vaping

Midwestern states act to keep e-cigarettes away from teenagers as deaths and lung injuries proliferate

by Jon Davis (jdavis@csg.org)

Vaping burst into the national consciousness this summer when hundreds of people reported lung damage and at least 12 people died from what the U.S. Centers for Disease Control and Prevention calls “vaping-associated pulmonary injury.”

As of October, the CDC had reported at least 805 cases of vaping-related injuries from 46 states and the U.S. Virgin Islands, as well as 12 vaping-related deaths, including from Illinois (the first to be reported), Indiana, Kansas and Minnesota.

Vaping is the inhalation of nicotine- or THC-infused steam via an e-cigarette—a handheld, electronic vaporizer that produces an aerosol from heated liquid rather than smoke. (THC is the active ingredient in marijuana.) An e-cigarette can resemble a pen, cigarette or even a USB thumb drive. Proponents say vaping helps adults to quit smoking by providing a healthier alternative to the smoke and tar in regular cigarettes.

Public health officials, however, say the evidence for that is not solid, while evidence of nicotine’s highly addictive nature is. Moreover, they point to studies suggesting that more high-school-age children have taken up vaping in large numbers as e-cigarettes are easily concealed and marketed as safer than regular cigarettes.

Vaping devices have been on the market for about 10 years — and states typically have legislated and regulated them as part of the overall framework of keeping tobacco and tobacco-related products out of teenagers’ hands.

While local school and state health officials noticed and grew concerned about the rising use of vaping by teenagers, the devices hit a public health flashpoint this summer when the Illinois Department of Public Health announced in August that a man had died from vaping.

As more reports of illness and deaths followed from across the country, states swung into action.

In September, Michigan Gov. Gretchen Whitmer issued an executive order banning the sale of flavored nicotine. The Michigan Department of Health and Human Services issued emergency rules two weeks later, and retailers had until Oct. 1 to comply with the ban.

In early October, the first lawsuit to block these rules was filed in late September.

By the end of September, the governors of New York, Massachusetts and Rhode Island had followed Whitmer’s lead, and Ohio Gov. Mike DeWine said he was looking to see if he, too, has authority to issue such a ban.

At the federal level, the Trump administration announced in September it will ban sales of flavored e-cigarettes via rules expected soon from the U.S. Food and Drug Administration.

The FDA also announced it has opened a criminal investigation into vaping-related deaths, and new legislation has been filed in Congress to ban flavors and advertising of e-cigarettes, or to tax them as other tobacco products are taxed.

Getting a grip on the science

While states began addressing e-tobacco prior to 2016, when the FDA asserted jurisdiction over e-cigarettes, lately “the states have been struggling over how to proceed with e-cigarettes because they aren’t sure what’s in them, how they’re made, or what the health effects are in the long term,” says Joelle Lester, director of commercial tobacco-control programs at the Public Law Health Center, a part of the Mitchell Hamline School of Law in Minnesota.

“The challenge for public health is to respond to the current crisis with a

PLEASE TURN TO PAGE 6
Midwest-Canada Relations

Cross-border pipeline closer to being built after decision by Nebraska Supreme Court

Opposition to a proposed pipeline that would bring more oil from Canada to refineries around the United States has come from many directions since being introduced more than a decade ago.

Landowners and Native American tribes along the route have fought the Keystone XL proposal. Environmental groups have said it would trample on sensitive land, endanger water resources and enlarge the nation’s carbon footprint.

For many years, the state of Nebraska has been at the center of this political and legal fight. But it may now be over in the Cornhusker State, as the result of a ruling this summer by the Nebraska Supreme Court affirming a 2017 Public Service Commission decision to OK a pipeline route.

“The people who lost [the case] have not given up, but the governor and other elected officials have said that the pipeline meets all of the state’s requirements,” said state Sen. Myron Dorn, whose district is close to Steele City, the Nebraska town that is the junction for the Keystone pipelines.

The commission’s approved route differed from the one preferred by TC Energy, the pipeline’s owner (formerly known as TransCanada), so that the oil would not pass through environmentally sensitive land.

In their lawsuit, pipeline opponents argued, in part, that the commission had no authority to approve a route not proposed by the applicant (TC Energy). But the state’s highest court said the route was proposed as an alternative in TC Energy’s application.

While there is still active opposition to the pipeline in Nebraska, Dorn says the general feeling in the state is “we have gone through enough with the regulatory process, let’s just get it done.” He has also heard concerns from constituents that if the pipeline isn’t built, oil could be transported by train, a less safe option.

TC Energy has faced many obstacles in its effort to get Keystone XL built.

It filed an application in 2008 with the U.S. Department of State to build the cross-border pipeline. That application was rejected by the Obama administration, but has since been approved by the Trump administration, which also has expedited the environmental-review process.

Keystone XL would have pipes larger in diameter than those in the existing pipeline system. As a result, more oil could come into the United States from the oil sands of Alberta. U.S. produced oil, from Montana and North Dakota, also could be added along the route, TC Energy says.

The energy infrastructure company still must overcome other legal hurdles, including a federal law-suit filed in July by environmental groups in Montana challenging the Army Corps of Engineers’ approval of the pipeline.

Education

Michigan legislators invest more in literacy coaches for schools

With a law on third-grade reading set to take full effect in the spring and fall of 2020, Michigan legislators are doubling down on a key element of its plan to improve literacy among young learners.

The state’s new education budget, signed into law in September, spends an additional $14 million (a total of $21 million) to bring more early-literacy learning coaches into Michigan schools.

“Teaching literacy is complex and challenging,” says Lisa Brown, a program consultant for the Michigan Department of Education. “What the coaches do is break down the research practices for teachers and help with implementation of literacy instruction.”

Hired by Michigan’s intermediate school districts, these coaches get specialized training on how to effectively teach literacy in the early grades. They then go into local schools to share their expertise with teachers in kindergarten through third grade.

Under the grant program, each of the state’s 56 intermediate school districts gets the state’s help (a 50-50 cost share) in hiring one coach. Districts that serve a higher percentage of low-income students get preference in securing additional state grants.

The number of coaches will double (from 93 to 186) as a result of the state’s new funding commitment. Michigan’s investment in these coaches enjoys bipartisan support. The program began under Republican Gov. Rick Snyder, and first-year Democratic Gov. Gretchen Whitmer had proposed even more state dollars ($24.5 million).

“I’m glad we put more funding into it because it’s going to support teachers in the classroom,” says Michigan Rep. Pamela Hornberger, a former teacher.

The literacy-coaching model is part of the state’s 2016 Read by Grade Three Law.

Under the law, students in kindergarten through grade three must be assessed early in the school year on their reading skills. Teachers, parents and school administrators then develop an individualized reading improvement plan for those young learners identified as needing extra help.

Starting with this year’s class of third-graders, students with low reading scores in the spring may be held back from entering fourth grade in fall 2020.

Opponents of this retention piece of the law include Gov. Whitmer, who has said penalizing these children “lies in the face of all the science.”

Rep. Hornberger, though, says she has talked to teachers who support retention because it helps motivate parents to become active participants in the reading improvement plans. She adds that the teachers and parents can seek a “good cause” exemption to avoid a student’s retention in the third grade.
Illinois law to legalize marijuana comes with environmental, efficiency standards for growers

Before they voted to legalize the use of recreational marijuana, legislators in Illinois committed to learning as much as possible from the experiences of other states.

Rep. Kelly Cassidy, lead sponsor of the bill signed into law in June (HB 1438), and others spent two years visiting growers, processors and dispensaries across the United States; they also held more than 100 stakeholder meetings in the state.

The end result: a 600-plus-page bill much different than any other state’s law on marijuana legalization. For example, the bill focuses heavily on ensuring diversity in ownership of the new businesses that come from legalization, and investing in the communities and people disproportionately impacted by enforcement of the state’s old laws on cannabis.

But another facet of the new law stands out as well, and reflects what lawmakers found in their fact-finding work prior to the bill’s introduction: “[W]e were struck by the intensive power and water usage involved in growing marijuana,” Cassidy says.

In response, lawmakers included environmental requirements and efficiency standards for those seeking a license to cultivate marijuana.

Applicants, for example, will provide estimates of their electricity, gas and water usage; plans for energy conservation; and policies for waste management and recycling. The growers’ lighting and watering systems also must meet technology and/or efficiency standards.

“Illinois’ business regulatory system is already very rigorous, even more so for medicinal cannabis growers, so they are already accustomed to strict oversight and reporting,” Cassidy says. She expects state-licensed growers to embrace these and other new goals and requirements around sustainability.

At least initially, the growers of recreational marijuana in Illinois will be limited to the 20 cultivation centers that have been licensed by the state under an existing medical marijuana law. By next year, as many as 40 “craft growers” (up to 5,000 square feet of production) could be licensed by the state Department of Agriculture. No new full-size growers will be permitted until July 2021, and only then once the state makes a determination on the market supply of and demand for cannabis.

Cassidy is hopeful that the coming rise in cannabis-related industries will provide an economic boost to Illinois’ rural areas, some of which have been hurt by recent closings of mines, manufacturing plants or state facilities. “[This] kind of economic development opportunity just doesn’t come along very often, particularly for rural communities,” she says.

Wisconsin working with counties on overhaul of where and how juveniles are housed, treated

Wisconsin remains on a path to dramatically overhaul its juvenile justice system, but to get to the finish line, the state may need to find more money than originally expected.

AB 953, a bipartisan bill passed in 2018, aims to keep most young offenders in smaller, regional facilities, rather than locked up in one of two larger, faraway youth prisons in northern Wisconsin. That goal aligns with research on how to best rehabilitate young people, says Mary Jo Meyers, director of the Milwaukee County Department of Health and Human Services.

“Large, congregate youth prisons do not provide effective treatment or care for our youth involved in the system,” she says, adding that “we can more effectively serve our youth in settings that are close to their families and communities.”

Only juveniles charged with the most serious crimes will be held in one or more newly built state-run detention centers, referred to as “Type 1” facilities. The state’s existing youth prisons — Lincoln Hills School for Boys and Copper Lake School for Girls, both located in northern Wisconsin — must be closed. The Legislature’s move to shut down these larger facilities came after revelations of juvenile offenders being abused and neglected.

Legislators appropriated $25 million for construction of new Type 1 facilities, $15 million to double the capacity of a mental health facility for juveniles in the state’s capital city, and $40 million for counties to build new Secure Residential Care Centers for Children and Youth. The new two-year state budget increased that $40 million figure to $80 million, the Wisconsin State Journal reports, but it still might not be enough.

Four of Wisconsin’s largest counties (Brown, Dane, Milwaukee and Racine, which, combined, account for most of the state’s juvenile commitments) have submitted plans to the Wisconsin Department of Corrections’ Juvenile Corrections Grant Committee. Their initial proposals for construction of the Secure Residential Care Centers totaled $130 million. State officials then asked the counties to reduce their budget requests.

Milwaukee County’s Department of Health and Human Services submitted its final proposal in September, asking for about $24 million, down from its initial $42 million request. Currently, 33 Milwaukee County juveniles are housed in the Lincoln Hills and Copper Lake locations.

Not only will a local Secure Residential Care Center keep these youths closer to home, Meyers says, it will provide them with access to rehabilitative services and to “staff that is trained in trauma-informed care.”

Milwaukee County’s grant proposal reflects this commitment. Though the state law was designed primarily to fund local construction costs, the county included $2.9 million in its proposal for diversionary and post-incarceration transition programs.

“We felt it was important to highlight the community supports and programs necessary to reduce the overall carceral footprint,” Meyers says. She cites, for example, the county’s Project Rise project, which provides more education opportunities, mental health services and job training for youths in the system.

The county is also changing the way it detains girls in the juvenile system. Instead of building more bed space for girls in its Secure Residential Care Center, the county will strive to place them in community-based residential facilities.

Agriculture & Natural Resources

Marijuana laws in Midwest

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<td>Wisconsin</td>
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<td>Yes</td>
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</table>

Location of large juvenile detention facilities/youth prisons in Midwest

Source: Youth First Initiative

“[This] kind of economic development opportunity just doesn’t come along very often, particularly for rural communities,” the says.

Brief written by Carolyn Orr, staff liaison to the Midwestern Legislative Conference Agriculture & Natural Resources Committee. She can be reached at carolyn@strawridgefarm.us. The committee’s co-chairs are Minnesota Rep. Paul Anderson and Illinois Rep. Norine Hammond; its vice chair is North Dakota Sen. Jim Dotzenrod.

Brief written by Mitch Arvidson, CSG Midwest staff liaison to the Midwestern Legislative Conference Criminal Justice & Public Safety Committee. He can be reached at marvidson@csg.org. The committee’s co-chairs are Illinois Sen. Mattie Hunter and North Dakota Rep. Shannon Roers Jones; its vice chair is Indiana Sen. Michael Crider.
Five takeaways for Midwest from new Census Bureau data on health coverage, poverty and income

1. Since 2010, big drop in rates of uninsured, but small jump between 2017 and 2018

The percentage of people without health insurance dropped in every Midwestern state between 2010 and 2018, according to data released in September by the U.S. Census Bureau. The biggest decline occurred in Michigan: 5.4 percent in 2018 vs. 12.4 percent in 2010 (see map for trends in each Midwestern state).

Last year in this region, the rates of people without health insurance ranged from a high of 8.8 percent in South Dakota to a low of 4.4 percent in Minnesota. Every Midwestern state’s rate was below the national average; Minnesota and Iowa have among the lowest uninsured rates in the country.

Nationwide, there was a slight uptick in the rate of uninsured Americans between 2017 and 2018; up to 8.9 percent from 8.7 percent, the bureau’s “American Community Survey” shows. Michigan and Ohio were among the eight U.S. states with “statistically significant” increases during this period.

2. In most Midwest states, Medicaid is covering higher percentage of residents

Health insurance trends over the past decade reflect, in part, the impact of the U.S. Affordable Care Act.

A key component of this 2010 law was expansion of the state-federal Medicaid program. Because of a U.S. Supreme Court decision in 2012, the decision on whether to expand the reach of Medicaid (to cover all adults with incomes below 138 percent of the poverty level) was left to states.

According to the Commonwealth Fund, four states in the Midwest adopted a traditional expansion of Medicaid: Illinois, Minnesota, North Dakota and Ohio. Three others — Indiana, Iowa, and Michigan — expanded their public health insurance programs for the poor via federally approved waiver programs. (Nebraska’s expansion, the result of a successful 2018 ballot initiative, won’t be implemented until next year.)

The Census Bureau data show that in all seven of these expansion states, Medicaid is now covering many more people than it did in 2013. As of last year, at least one in five residents was enrolled in the program in three Midwestern states: Michigan (22.5 percent), Ohio (20.8 percent) and Illinois (20.0 percent).

In contrast, between 2013 and 2018, the percentage of people receiving insurance through Medicaid fell in South Dakota and Wisconsin, two of the Midwestern states that did not expand the program. The rate in the region’s third non-expansion state, Kansas, was largely unchanged (13.7 percent in 2013 vs. 13.9 percent in 2018).

Most Americans still get health insurance through their employers, though the rate has fallen over the past decade — from 58.5 percent in 2008 to 55.1 percent in 2018.

3. Fewer people living in poverty; disparities among age groups, household types

With the exception of Michigan and Ohio, every Midwestern state’s poverty rate in 2018 was at or below the U.S. average of 13.1 percent (see table). Nationally, the rate has fallen for five consecutive years, and states in this region have largely followed this trend. Last year, Minnesota was one of seven U.S. states (the only one in the Midwest) with a poverty rate below 10 percent.

The U.S. Census Bureau also breaks down poverty rates by age group and household type in its latest “American Community Survey.” Here were some of the nationwide findings:

- Young people are much more likely to live in poverty than older people: 18 percent of U.S. children this past year compared to 9.4 percent of adults.
- Among married couples with children under age 18, the U.S. poverty rate is 6.4 percent. That compares to 35.1 percent among families with children under 18 and “no husband present.”

4. Income inequality less pronounced in Midwest, but still on the rise

The U.S. Census Bureau employs the commonly used Gini Index to measure income inequality across the country and within individual states. Compared to the rest of the nation, income is distributed more evenly in every Midwestern state except Illinois. Income equality is greatest in Iowa (third among all 50 states), North Dakota (fourth) and South Dakota (fifth). Between 2010 and 2018, income inequality increased in the United States and in each of this region’s 11 states.

5. Minnesota, Illinois and North Dakota have highest median household incomes

The real median household income in the United States was $61,937 in 2018, a figure surpassed by three states in the Midwest: Minnesota, $70,315; Illinois, $65,030; and North Dakota, $63,837. Last year, Indiana’s median household income level was $55,746, lowest in this region. Here are the median household incomes in the other six Midwestern states:

- Iowa, $59,955
- Kansas, $58,218
- Michigan, $56,697
- Nebraska, $59,566
- Ohio, $56,111
- South Dakota, $56,274
- Wisconsin, $60,773

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Article written by Tim Anderson, CSG Midwest publications manager. He can be reached at tanderson@csg.org.
After years of trying, Iowa lawmakers and others wanting to tweak or completely replace a decades-old system of selecting state Supreme Court judges were able to proclaim legislative victory in 2019. But as of early October, they still needed some wins in court to ensure the change.

At issue is Iowa's 57-year-old merit-based selection process: State supreme court justices are appointed by the governor, whose choices are limited to a list of three candidates submitted by a judicial nominating commission. Four other Midwestern states also use some form of merit selection (see map).

According to Rachel Paine Caufield, a professor of political science at Drake University, merit selection "was the major court innovation of the later part of the 20th century." It began in Missouri, she says, and then gradually spread to other states as a way of limiting the influence of party machines, ensuring the independence of the judiciary, and putting the selection of judges in the hands of the legal community itself.

In Iowa, for example, the 17-member judicial commission traditionally has been split this way: eight non-lawyers appointed by the governor and confirmed by the state Senate; eight Iowa lawyers (two from each congressional district) elected by the bar association; and a resident member of the bar association; and a sitting member of the Iowa Supreme Court serving as the final member (and as commission chair).

But this year's legislative tweak gives Iowa's governor the power to appoint a majority of the commissioners — nine of the 17. (The sitting state Supreme Court justice no longer serves as the final member.) Legislative attempts at such a change (or to eliminate merit selection altogether) date back to 2010, Caufield says, when the state's highest court legalized same-sex marriage. Other controversial, abortion-related rulings followed.

What's happening in Iowa is reflective of a nationwide trend — whereas the mid-20th century was notable for the rise of merit selection, she notes, there is more momentum today for methods of judicial selection that give elected officials (usually the governor) more control.

Eight Democratic members of the Iowa House have mounted a legal challenge to the state Constitution "that every act shall embrace but one subject." SF 638 was a budget bill, including language on the judicial nominating commission violates this "single subject" rule, those House members say.

In late September, the Associated Press reported, the Iowa Supreme Court handed over jurisdiction of this case to the state Court of Appeals. A lower court judge dismissed the lawsuit in June, but plaintiffs in the case appealed the ruling.

Meanwhile, a second lawsuit challenging this year's legislative action on judicial selection was filed in September, according to The Des Moines Register.

Merit selection remains in Iowa, but more power given to governor

**QUESTION OF THE MONTH**

**QUESTION:** In the 11-state Midwest, what groups are required to report cases of child abuse and neglect?

Nearly every state in this region identifies certain professions and workers that must report known or suspected cases of neglect.

Earlier this year in Ohio, for example, police officers joined the state's list of mandatory reporters, the result of legislation signed into law in late 2018 (HB 137). The Ohio statute already was fairly extensive, covering professions ranging from attorneys and podiatrists, to animal control officers and speech pathologists.

Ohio's list also includes the professions most commonly included in the mandatory-reporting statutes of states across the country, according to a study released this year by the U.S. Department of Health & Human Services' Administration for Children & Families. In the Midwest, for example, with the exception of Indiana, every state singles out law enforcement, teachers and other school personnel, and doctors and/or other health care workers as mandatory reporters. Most states in the region also include child care providers in court to ensure the clergy, social workers and counselors.

Indiana is one of three U.S. states that does not specify certain professions. That state's statute instead includes the following blanket language: "An individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report." Nebraska is the only other Midwestern state with "shall report" language for individuals outside of specified professions.

In most jurisdictions, in most cases, mandatory reporters who fail to report child maltreatment can be charged with a misdemeanor. The identity of any person reporting these cases is protected in most cases, depending on the state) on the supreme court

On the seesaw of the history of court selection, the 11-state Midwest region is split: six states use merit selection, while four use non-partisan elections and one uses partisan elections (see map).

In Iowa, for example, the 17-member judicial nominating commission violates this "single subject" rule, those House members say.

Meanwhile, a second lawsuit challenging this year's legislative action on judicial selection was filed in September, according to The Des Moines Register.

Merit selection remains in Iowa, but more power given to governor

**METHOD OF SELECTING SUPREME COURT JUDGES**

- Merit selection: Governor appoints person from list developed by judicial nominating commission
- Nonpartisan elections
- Partisan elections
- Retention elections

1 Retention elections are held after the judge's initial term (one to three years, depending on the state) on the supreme court
2 Sitting supreme court judges run for re-election against other candidates
3 After initially having been selected through partisan elections, sitting supreme court judges then face retention elections every 10 years

Source: National Center for State Courts

**QUESTION OF THE MONTH RESPONSE**

Tim Anderson (tanderson@csg.org)

Tim Anderson is CSG Midwest publications manager. He can be reached at tanderson@csg.org. Question of the Month highlights an inquiry sent to the CSG Midwest Information Help Line: csgmidwest.org or 638.925.1922.
Tobacco product use

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*Cigarette products* include cigarettes, smokeless tobacco (chewing tobacco or snuff), cigars, and pipes.


**States swing into action: Raising the age, taxing vaping products**

While Michigan Gov. Gretchen Whitmer's order "prompted executive offices all around the country to examine their ability to act more quickly than legislators can," Lester acknowledges legislators haven't been idle in 2019.

"Midwestern states are doing some interesting things," she says.

In addition to her executive order, Whitmer signed SB 116, which makes it illegal to sell or provide a tobacco product to someone under 18 years of age, and SB 155, which bans the sale of liquid nicotine containers unless they meet child-resistant effectiveness standards set by the U.S. Consumer Product Safety Commission. That law also requires vapor products to be displayed in a locked case or behind store counters in areas accessible only to employees.

This year, too, Illinois and Ohio legislators raised their states' legal tobacco-buying ages to 21 and began taxing vaping products. Illinois' Tobacco 21 bill (SB 345) was signed into law in March, and the state's new tax on e-cigarettes (SB 690) — 15 percent of the product's wholesale price — took effect in July.

This fall, Illinois legislators will consider at least two other measures: HB 3887, which would ban the sale of flavored tobacco and/or THC products, and HB 3883, which would ban all vaping flavors except for menthol.

In Ohio, the age hike and new vaping tax were folded into the state's new budget (HB 166) as imperatives from Gov. Mike DeWine, according to state Sen. Matt Dolan. Both measures took effect in October.

According to Dolan, legislators agreed that since vaping is a part of smoking, it should be treated, and taxed, like any other tobacco product. While they looked briefly at taxing vaping equip-

ment, Dolan says, legislators instead decided to tax vaping liquid — at a rate of 1 cent per 0.1 milliliter.

"Taxing equipment "would be the next step to look at if we want to use the tax code to encourage behavior," he adds. "If we make it more difficult to procure, the less likely people will be to use it." Raising the age to 21 did create some questions among Ohio legislators, considering that the age of 18 confers so many additional rights on people. But Dolan says "at the end of the day, people understood that with the dangers from nicotine, it was a public health issue."

As for Gov. DeWine exploring the possibility of an executive order to ban vaping flavors, Dolan says he could support it based on a clear public health link. At the same time, though, he doesn't like the idea of setting a precedent with such a heavy intervention in the private sector. "I don't like the slippery slope of 'we just don't like your product,' " he says.

Some Canadian provinces taking action after reports of U.S. vaping illnesses

The recent spate of vaping-associated pulmonary injury incidents in the United States is drawing attention across the border in Canada, and may prompt new legislation in at least one Canadian province this fall.

Dr. Saquib Shahab, chief medical health officer in the Saskatchewan Ministry of Health, says all intensive care units in the province have been told to report any cases of severe vaping illnesses to local health officers, who will investigate and then report findings to the province. (Health officials in Ontario reported what could be Canada's first such case in mid-September.)

As of mid-September, Dr. Shahab said he was not aware of any such reports, but added that monitoring and reporting will go on "until such time as we in Canada and the U.S. have a better sense of what really is underlying the risk factors in terms of the product that may be implicated."

Legislation to treat vaping like tobacco products and to tax it in some form is also under consideration. Saskatchewan Health Minister Jim Reiter said in an August interview with the Canadian Broadcasting Corporation that a bill would be introduced during the Legislative Assembly’s fall term.

I think that's a reasonable thing for us to look at," he said. "If we decide that we're going to treat it as tobacco, I think obviously we need to consider taxing it similarly."

At the federal level, Canada's Tobacco and Vaping Products Act became law last year, supplanting the Tobacco Act of 1997. The 2018 law bans both the sale and passing of vaping products to anyone under 18 years of age as well as the sale of vaping products that appeal to youth in how they look or work. It also bans the promotion of flavors that appeal to young people, advertising campaigns that mislead consumers about the health effects, and the use of certain ingredients.

Similar to Saskatchewan's new directive on the monitoring and reporting of vaping-related illnesses, Ontario Health Minister Christine Elliott issued an order of her own in September. It requires hospitals to provide the province with statistical, non-identifying information related to incidences of vaping-related severe pulmonary disease.

A Manitoba law, which took effect in October 2017, bans the sale of e-cigarettes to minors and bans vaping in enclosed public spaces and other areas where smoking is already banned.
Wisconsin also implemented a tax of 5 cents per milliliter, effective this month, as part of its new biennial budget (AB 36). Kansas taxes vaping liquids at that same rate.

In Minnesota, e-cigarettes are taxed the same as other tobacco products, at 95 percent of the wholesale cost of any product containing or derived from tobacco. (Minnesota legislators in their 2019 session banned vaping indoors under the state’s Clean Indoor Air Act as part of SF 12, an omnibus health and services appropriation bill.)

During legislative interim, states studying next moves on vaping

The idea of taxing e-cigarettes or vaping liquid isn’t popular everywhere, however. Nebraska Sen. Dan Quick says he wanted to tax vaping liquids as part of a bill to raise the legal tobacco product buying age from 18 to 21, but had to accept stripping that tax from an ultimately successful bill (LB 149) just to get the age raised to 19.

After intense news coverage of vaping-related deaths, however, Quick says he thinks those votes might have gone differently. Nebraska legislators also approved LR 173, establishing an interim study for the Health and Human Services Committee “to examine health concerns related to the public use of, and second-hand exposure to, electronic nicotine delivery systems and other products.” The committee held its first hearing on that subject in September.

Quick says he will probably bring new legislation in 2020 to address banning flavors, establishing a Clean Indoor Air Act, and curtailing online vaping sales — though he admits on that last point, “I don’t know how we get there.”

The potential taxation of vaping is also a subject for the North Dakota Legislative Assembly’s Interim Taxation Committee.

At a September hearing, committee members looked at possible taxation, but also wrestled with the more fundamental question of whether vaping cartridges are tobacco products or something else (perhaps more akin to nicotine patches), says Rep. Jim Grueneich, who serves as chairman of the panel.

The hearing also revealed that if legislators were to recommend a tax on vaping liquids, most committee members thought a tax between 5 and 10 cents per milliliter makes the most sense, he says.

But it’s difficult to say whether there should be any tax until there is some regulation of vaping products, Grueneich adds.

Legislators, he says, left the hearing with lots of questions: Should e-cigarettes be considered a taxable product? Is vaping really harmful, or are the cases of vaping-associated pulmonary injury due more to vaping THC? And if vaping liquids are taxed, would the state simply be pushing more people to the black market where products aren’t regulated and are less safe?

“We left with a lot of questions. It’s a challenging topic,” Grueneich says. “Are we looking for a revenue stream or because we think it’s bad for you?”

North Dakota legislators rejected bills in the 2019 regular session to raise the legal tobacco buying age to 19 (HB 1236) and/or to tax “liquid nicotine” (HB 1495). They did approve a resolution (SCR 4007) asking the FDA to prevent the marketing and advertising of e-cigarettes to youth.

Fighting vaping’s allure: Legislation and policies in place across the 11-state Midwest region

**Illinois:** Vaping habits survey hopes to identify causes of injuries, deaths
In addition to the state’s new vaping tax, the Illinois Department of Public Health is asking residents who vape to take an anonymous online survey about their vaping habits. The idea is to understand how and why people vape and perhaps identify reasons why some people are stricken with vaping-associated pulmonary injuries.

**Indiana:** “Vape-Free Indiana” initiative launched
Gov. Eric Holcomb in late August announced a three-pronged initiative to reduce vaping by teenagers, including public education on the dangers of vaping, encouraging teens to join the Truth Initiative’s text-to-quit program, and a $2.1 million social media awareness campaign, “What’s Beyond the Haze.”

**Iowa** launches new program to help teens quit tobacco, vaping
Iowa’s Department of Public Health offers a program, “My Life, My Quit,” targeted at teens who want to stop vaping or using tobacco. Teens can text or call a toll-free number or visit a website to get real-time coaching to quit (and manage stress during that process) and information about tobacco and vaping.

**Kansas:** Board of Education moves to fight vaping in schools
Kansas’s Board of Education in June approved ideas for fighting vaping by schoolchildren including: education for parents, teachers and the public; creating a task force of state officials, students, school administrators, retailers and pharmacists; and adding content on vaping to the state’s model health education curriculum.

**Michigan:** Governor bans flavored vaping cartridges
Rules to enact Michigan Gov. Gretchen Whitmer’s ban on the sale of flavored nicotine vaping cartridges were released in September. Retailers had until October to comply with the renewable 180-day ban. She issued the ban after the Michigan Department of Health and Human Services declared a public health emergency.

**Minnesota:** No more vaping where cigarettes are already banned
Legislators banned vaping indoors, including in bars and restaurants, by adding it to the list of prohibited actions under the state’s Clean Indoor Air Act. The ban, which took effect in August, was part an omnibus health and human services bill (SF 12) signed by Gov. Tim Walz in May.

**Nebraska:** Tobacco-buying age raised; senators study vaping during interim
In addition to raising the legal tobacco-buying age from 18 to 19 (LB 149, effective on Jan. 1, 2020), legislators agreed to an interim study (LR 173) on “the health concerns related to the use of, and second-hand exposure to, vaping. The First Health and Human Services Committee hearing on the topic was held in September.

**North Dakota:** Trio of actions to study vaping’s effects, possible tax
Legislators rejected bills to raise the legal tobacco-buying age to 19 (HB 1236) and tax liquid nicotine (HB 1495), but an interim-study committee is looking at taxation of vaping liquids. The North Dakota Department of Health launched an online portal to report vaping-related illnesses, and participates in the “My Life, My Quit” program.

**Ohio:** New anti-vaping initiatives for schools
Along with the state’s new vaping tax, Ohio’s Department of Health launched new steps to fight vaping in schools, including encouraging vaping bans and warning parents, students and staff about its dangers. The state allocated $53.3 million to develop anti-vaping tools for parents and educators, and $800,000 for a public awareness campaign.

**South Dakota:** Vaping products are tobacco, and no vaping in public or at work
Gov. Kristi Noem signed HB 1209 in March. That new law adds “vapor products” to the legal definition of a “tobacco product” and defines them to include e-cigarettes and vaping pens using liquid nicotine cartridges. The measure also bans vaping in public places or a “place of employment.”

**Wisconsin:** Bills proposed to ban vaping indoors, raise legal tobacco-buying age
In April, Wisconsin State Health Officer Karen McKewen issued a public health advisory about vaping, calling on lawmakers to act to curb vaping use among youth. Legislators are considering bills (AB 442 and SB 442) to raise the legal tobacco-buying age from 18 to 21, and to ban vaping in indoor public spaces (SB 442).

Legislative leader reflects on historic policy steps in her state, including criminal justice reform, legalized cannabis and a $45 billion capital plan

by Mitch Arvidson (marvidson@csg.org)

Illinois Rep. Jehan Gordon-Booth prides herself on being authentic — on being the same person you’d meet inside the halls of the state Capitol or in the aisles of a store in her hometown of Peoria. "One of the things that I love so much about the opportunity and the privilege of being a legislator is that I get to do this job as me," she says.

Q: You were one of the main legislative leaders this year behind HB 1438, which legalized recreational cannabis. What parts of the new law are most crucial to you?

A: We were the first state to really legalize cannabis in an equity-centered way — around criminal justice, equity around who gets into the business, and equity around how you repair the harm from the past 80 years of the "war on drugs."

So there were three areas most important to me: expungement for people who had been convicted of cannabis offenses; ensuring that communities who have been affected by the war on drugs get economic reinvestment, specifically from the buying and selling of cannabis; and ensuring we create an environment that ensures there is diversity in not only the workforce, but in the ownership of our state’s cultivation centers, dispensaries, etc.

I’m proud that we were able to go further than any state in the country has gone in those areas.


✓ in 2008, became first African-American woman elected to represent central region of state in Illinois General Assembly
✓ currently serves as deputy majority leader in Illinois House
✓ previously served on local school board
✓ lives in Peoria with her husband, Derrick, and daughter, Jianna

Q: You’ve talked about the importance of being authentic and true to yourself as a legislator. You also seem to appreciate the chance to work across the aisle, on bills such as the Neighborhood Safety Act. How do you go about building bipartisanship?

A: A lot of it comes from how my mother and my father raised me, and also the community where I come from. I am a black woman who was born and raised in central Illinois. I went to predominantly white schools for most of my life. I learned very early on you have to come to an understanding and find a sense of shared values. If you try, you can do that with almost anybody.

I represent a district that does not always look like me. I still represent my community as exactly who I am. I think I am able to do that because I always look for our shared sense of values — Democrat/Republican, male/female, union-management, etc. I try to find the thing we connect and agree on and build from there.

Also, Peoria is the only community in the state that has a member of the General Assembly who sits in each of the four [party] caucuses. That has been the dynamic the entire time I’ve been a legislator. That was my indoctrination into the legislature, and it allows me to approach situations not from an ideological perspective, but from a perspective of what’s right and what’s wrong. A lot of it is just common sense, too, which can honestly be a superpower.

Q: You’re a member of the highest-ranking legislator from outside of the highest-ranking legislative leader in the General Assembly.

A: Absolutely. Anytime that we as legislators and leaders have the opportunity to bring our unique voices and experiences to any space, I think that makes the collective effort far more balanced and far more inclusive of whatever the agenda or the issues may be. I’m certainly not shy, so whenever there are issues that are pertaining to the spaces that I stand in, I make it my business to lean in — whether it be a Downstate issue, an African-American issue or a women’s issue.

Q: You’ve been a legislator for nearly a decade. What have been the most important issues you’ve worked on?

A: There is no more poignant example of this than her legislative sponsorship of the Neighborhood Safety Act, a 2017 law (SB 2872) that marked one of the most comprehensive criminal justice reforms in state history. The law places a greater emphasis on rehabilitative, rather than simply warehousing, individuals in Illinois’ corrections system.

Q: You were one of the main legislative leaders this year behind HB 1438, which legalized recreational cannabis. You were part of the bipartisan process. How do you go about building bipartisanship?

A: That plan gives us the ability to really have a transformative thinking around where we want to take the next generation of our state — whether you’re talking about high-speed rail, transformation within our higher-education system, the highway system, schools, bridges, roads, etc.

We raised a number of different revenue generators [including a gambling expansion and an increase in the gas tax] in order to be able to do it.

So to be at the forefront and at the negotiating table for both cannabis and capital was a dream year. It will be tough to beat this year.
Expungement bills aim to help deserving people get back on their feet

Clearing of criminal records opens up new opportunities, improves lives

by Michigan Rep. Graham Filler (GrahamFiller@house.mi.gov)

There are tens of thousands of people across the state in similar situations because of their criminal records. People with even minor convictions find it hard to succeed due to barriers that make it more difficult to find jobs, housing and educational opportunities.

Their stories are the inspiration behind our new plan in Michigan to make it easier for people to move beyond their criminal histories.

The legislation (HB 4980-4985), introduced in September by a bipartisan coalition of state representatives, will make Michigan a national leader in criminal justice reform by greatly expanding the number of people who are eligible to clear their records and access opportunities to help them move on with their lives and provide for their families.

Expand the eligibility pool

A University of Michigan Law School study published earlier this year found nothing to suggest that granting someone an expungement puts the public at risk. In fact, researchers found that people who obtain set-asides (the term used in Michigan for any kind of sealing of records) have extremely low subsequent crime rates, comparing favorably to the general population.

The same study found that people whose criminal records are cleared tend to experience a sharp upturn in their wage and employment trajectories. On average, wages went up by 25 percent within two years of the expungement. These results were observed under Michigan’s current expungement law, which is very narrow in scope. Right now, only individuals with one felony or two misdemeanors qualify, and they must wait a minimum of five years before starting the expungement process.

The legislative solution we’re working on would greatly expand this opportunity — for example, to an additional 100,000 people in Wayne County alone (and that’s a low estimate). Our plan would allow for up to three felonies and four misdemeanors to be set aside, expand eligible crimes to include traffic offenses, and shorten the timeline for eligibility.

Another key piece of this legislative package: Ensure that people with past marijuana convictions will have those convictions set aside if the behavior that led to the conviction would be permissible under current law. (The use of recreational marijuana is now legal in Michigan.) Most of these individuals would be eligible to petition for expungement immediately.

Under our plan, too, special consideration would be given to people who have multiple offenses on their record from one bad mistake. It would allow crimes committed within a 24-hour period for the same act to be treated as a single felony or misdemeanor for the purposes of expungement.

The final piece of our plan would provide automatic expungement for people with minor felonies and misdemeanors after 10 years of being crime-free.

Scope of offenses eligible for judicial closure of conviction records, via expungement or sealing of records

- Some, many or most felonies; most misdemeanors
- Few felonies, many misdemeanors
- Misdemeanors only
- No closure of records on convictions

Source: Restoration of Rights Project
Binational, nonpartisan group of legislators advancing policies that protect Great Lakes, ensure clean water

The Great Lakes-St. Lawrence Legislative Caucus continues to expand its membership as well as its work to protect the lakes and ensure clean water across the basin.

CSG Midwest provides staff support to this binational, nonpartisan group, which now counts more than 200 state and provincial legislators as members.

The caucus held two events in recent weeks: an Annual Meeting in Chicago, and a policy institute in Detroit to help states formulate policies to curb nutrient pollution in the Great Lakes.

Recap of caucus’s Annual Meeting

During a site tour on the first day of the Annual Meeting, legislators got a firsthand look at efforts by Illinois, other states and the federal government to control the movement of Asian carp and prevent this invasive species from entering the Great Lakes via the Chicago Area Waterway System. Participants also visited an existing electric barrier and learned about the U.S. Army Corps of Engineers’ proposal to build new controls at Brandon Road Lock and Dam.

The meeting’s second day included sessions with leading Great Lakes scientists and policy experts. Topics included strategies to curb nutrient pollution, the economic impact of cleaning up the basin’s toxic hot spots, and implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact.

Legislators also passed two resolutions: one urging additional research on nonnative fish stocking in the Great Lakes, and the other calling for federal funding to research microplastics in the environment.

Policy institute on nutrient pollution

In October, a small group of legislators gathered in Detroit for the Patricia Birkholz Institute for Great Lakes, and the other calling for federal funding to research microplastics in the environment.

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Most members of the Great Lakes-St. Lawrence Legislative Caucus Executive Committee attended the group’s 2019 Annual Meeting, which was held in September in Chicago.


Bottom (from left to right): Lisa Janairo, director of the caucus for CSG Midwest; Wisconsin Rep. Beth Meyers; Ontario MPP Jennifer French; and Ohio Rep. Michael Sheehy.

Other GLLC Executive Committee members, not pictured, are: Illinois Rep. Robyn Gabel, caucus vice chair; Illinois Sen. Laura Fine; Michigan Sen. Dan Louwers; New York Assemblyman Peter Lawrence; and Quebec MNA Gilles Belanger.

Great Lakes-St. Lawrence Legislative Caucus

Legislative leaders of the caucus

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The Council of State Governments was founded in 1933 as a national, nonpartisan organization to assist and advance state government. The headquarters office, in Lexington, Ky., is responsible for a variety of national programs and services, including research, reference publications, innovations transfer, suggested state legislation and interstate consulting services. The Midwestern Office supports several groups of state officials, including the Midwestern Legislative Conference, an association of all legislators representing 11 states (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin) and the Canadian province of Saskatchewan. The provinces of Alberta, Manitoba and Ontario are MLC affiliate members.
A leader’s guide to inclusive diversity

Unlike many people who unexpectedly find themselves in positions of leadership, elected officials choose to serve. It takes a special type of leader who can stay true to themselves by fueling their personal passion for service — all while still managing the diversity of people, values and positions that emerge within the “machinery” of politics.

Legislative leaders are well served by promoting an inclusive environment where diversity of background and thought can drive your larger agenda. This raises the question: What specific leadership skills are required for legislators to reconcile diversity with the need for party loyalty, bipartisanship and the broad range of constituents’ views?

A cornerstone of my work rests on developing leaders’ potential for promoting inclusion as a tool for harnessing the power of diversity. Whereas diversity is about the differences and similarities among people, inclusion means creating a climate where diversity thrives.

Here are five tips for legislators on promoting diversity and inclusion.

1. Inspire a shared vision of inclusion by knowing and engaging others

Articulate clearly what a culture of inclusion looks like in order to enlist others to put in the energy and effort required to manifest and sustain this climate. Paint a picture of the pathway to inclusion with such precision and conviction that others are compelled to take the journey because they understand its importance for your legislative team, community, region, state or country.

Not only must you vividly describe the inclusive climate you aspire to build, but do it excessively and redundantly. Be sure to engage with those who share your vision, as well as those who may not. In hearing a range of voices, you learn new information that helps fine-tune and recalibrate your strategy.

2. Authenticity trumps any skills deficit

People want to know that, as a leader, you truly believe in inclusion. This is particularly true in today’s climate of election mudslinging and spin. Therefore, you must align your actions with your rhetoric so that the vision of inclusion does not appear to be simply good “PR.”

You must be willing to tell your story so others know why inclusion matters to you. Authentically share what circumstances, events or relationships help you to understand and appreciate diversity and inclusion at a deeper level. Describe how these situations and life experiences have served as a source of motivation for you, your beliefs and your legislative priorities.

3. Care about people; celebrate them and their successes

If you don’t care about your constituents, staff or colleagues, and they don’t care about you, good luck. At best, you’ll get a series of inclusive messages or programs, but a diverse coalition and a climate of inclusion that brings your vision to fruition will be much harder to create and sustain. The celebration of others and their successes must be both personal and purposeful. Meaningful praise sustains the movement toward your own goals and vision.

4. Work with people who take you out of your comfort zone

The next generation of leaders for your party, community, region or state must reflect the increasingly diverse nature of our communities, nation and world. As an effective leader, you must deliberately choose to develop and learn from people who are different from yourself and each other. Choose to work with and engage with others who are different than you — stretch yourself beyond your comfort zone with the purpose of increasing your understanding of self and others. Seek out unique ways for bipartisan partnerships with legislative colleagues in order to enhance professional relationships and your ability to form important coalitions.

5. Leadership development is ongoing and lifelong

Harvard scholar John Kotter reports that lifelong learning is a trait that distinguishes exemplary leaders from others. As a leader, you must be willing to seek out new challenges and reflect honestly and candidly about both your successes and daring failures. Travel both within and outside of your legislative region. Solicit the opinions and ideas from a broad range of others, especially those who are different from you, and demonstrate a propensity to listen fully and with an open mind.
Indiana leading way on policies related to K-12 computer science

In a national report on policies to promote K-12 instruction in computer science, Indiana is singled out as one of the nation’s five leading states.

Authors of the September study say that 45 percent of the nation’s high schools teach computer science. They note, too, that certain groups of students are more likely to attend a school that does not offer instruction in this subject area — minorities, young people living in rural areas, and low-income students.

How can states close this gap? The “2019 State of Computer Science Education: Equity and Diversity” identifies nine policies in areas such as certification, professional development, statewide standards, and a requirement that all secondary schools offer computer science. Indiana has implemented all nine of these policies, authors of the report say. The state has trained more than 1,000 teachers in computer science since 2018, and earlier this year, the legislature (HB 1001) appropriated $3 million to further professional development opportunities.

In the Midwest, Iowa and Ohio also dedicate state funding for teachers to receive training in computer science instruction, according to code.org, a nonprofit group that contributed to the 2019 study on state policies.

New Illinois law aims to protect students with diabetes

Illinois has a new law to ensure that children with diabetes have access to the medical care they need.

Under HB 822, which received unanimous approval in the state General Assembly, schools are given the authority to store an undesignated supply of glucagon. This medication, used to treat low-blood-sugar emergencies, will have to be stored in a secure location that is immediately accessible to a school nurse. The nurse can then administer the glucagon if he or she has such authority under the student’s diabetes care plan. Parents must be notified immediately after the medication has been administered.

According to the Quad Cities Times, Illinois’ glucagon law is believed to be the first of its kind in the nation. It is the result of an incident that occurred at an Illinois middle school in 2018: A seventh-grader collapsed due to dangerously low blood-sugar levels, and the school didn’t have the authority at the time to carry an undesignated supply. The student didn’t have a prescription at school, so the nurse used another student’s prescription.

With the new law in place, every Illinois school can have an undesignated supply on hand. Under the law, if a student doesn’t have a prescription at school, the school nurse can then administer the glucagon if he or she has such authority under the student’s diabetes care plan. Parents must be notified immediately after the medication has been administered.

Michigan expands use of saliva test to detect drugged drivers

Three years after Michigan legislators authorized a pilot program for roadside testing of drug use by motorists (SB 207 and SB 434), law enforcement is taking the initiative to every county in the state.

Police use the saliva of drivers to test for the presence of amphetamines, benzodiazepines, cannabis, cocaine, methamphetamine and opioids. Along with this testing instrument, specially trained “drug recognition experts,” or DREs, rely on field sobriety tests and driver behavior to determine whether a person is impaired. A DRE can require a motorist to submit to the drug test.

The pilot program had been limited to five counties, and Michigan State Police say a larger sample size is needed to determine the effectiveness of the oral fluid testing instrument.

The number of fatal crashes involving drivers impaired by drugs is on the rise in Michigan, police say, reaching 247 in 2018. Nation-wide, in 2016, 43.6 percent of fatally injured drivers with known drug test results were drug-positive, according to the Governors Highway Safety Administration. It adds that two drug families are a particular concern among highway-safety officials: marijuana and opioids.

Judge upholds Iowa statute requiring voter ID at the polls

Parts of a two-year-old Iowa law that require voters to show identification at the polls were upheld by a state District Court judge in September.

Opponents of the 2017 law (HF 516) argued that the ID requirement suppressed voting by certain groups of citizens. Iowa Secretary of State Paul Pate has said the law aims to “make it easy to vote, but hard to cheat.”

Under the law, Iowans wanting to vote must present one of the following: a driver’s license or non-operator ID, a U.S. passport, a U.S. military ID or veteran’s ID, a tribal ID or document, or a state-issued voter ID card. The secretary of state’s office automatically mails voter-ID cards to registered Iowa voters who do not have a driver’s license or non-driver identification.

In the Midwest, states vary considerably on their ID requirements. In Indiana, Kansas and Wisconsin, photo ID must be shown at the polls in order to cast a regular ballot. The laws in Michigan and South Dakota allow individuals without a photo ID to sign an affidavit and cast regular ballots. North Dakota and Ohio have non-photo-ID requirements. No identification is required by most voters in Illinois, Minnesota and Nebraska, according to Vote.org.