

CAPITOL RESEARCH

● ● ● HEALTH POLICY

E-CIGARETTES: REGULATION AND TAXATION

Early in 2015, Michigan Gov. Rick Snyder vetoed a trio of bills left over from the 2014 legislative session that would have prohibited selling, giving or furnishing minors e-cigarettes and other vapor products. The bills also would have prohibited e-cigarettes from being defined or regulated as a tobacco product.

“We need to make sure that e-cigarettes and other nicotine-containing devices are regulated in the best interest of public health. It’s important that these devices be treated like tobacco products and help people become aware of the dangers e-cigarettes pose,” Snyder said in his veto statement.¹

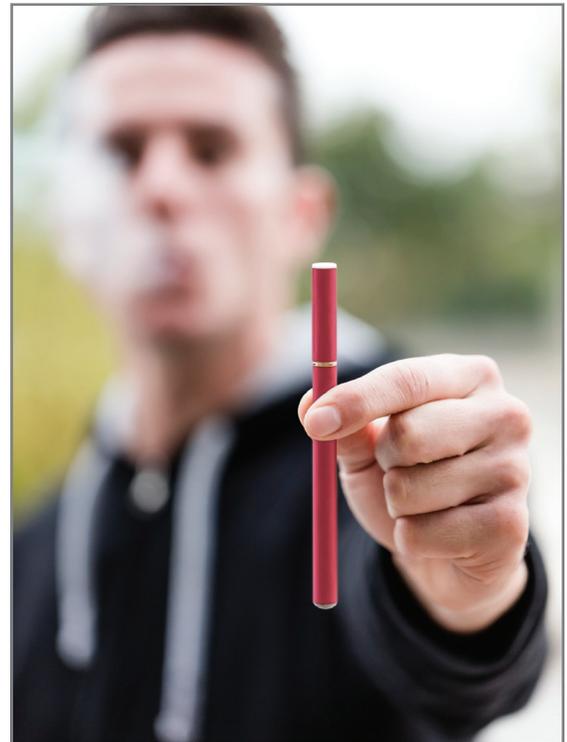
E-Cigarettes and Health Concerns

E-cigarettes are a nicotine delivery system. They heat liquid containing nicotine and flavorings into a vapor by passing it over a small electronic battery. According to *The Wall Street Journal*, sales grew from \$2 million in 2009 to \$722 million in 2013.²

The product originally was sold prepackaged as a cigarette-looking device imported from abroad. American cigarette companies—Altria, Reynolds and Lorillard—now make e-cigarettes with disposable cartridges that contain the nicotine liquid. Consumers increasingly are building their own vaping devices and loading them with liquids purchased at small vape shops or online.

E-cigarettes are widely believed to be less toxic than combustible tobacco cigarettes. Some believe that smokers can switch to e-cigarettes as a means to stop or reduce smoking, although no comprehensive research has been released. Some health advocates fear that e-cigarettes may create new smokers, but the product is too new to have scientific studies to support or rebut the claim.

The U.S. Food and Drug Administration in April 2014 released proposed regulations on e-cigarettes. The FDA is using its statutory “deeming” authority to issue regulations on additional tobacco products, including electronic cigarettes, cigars, pipe tobacco, hookah tobacco, and novel products such as nicotine gels and dissolvables. The new regulations also would include e-cigarette cartridges.³ The original comment period, set to end July 9, 2014, was extended 30 days to Aug. 8, 2014. The FDA declined to extend the comment period again. It has not yet issued final regulations.



Regulating Use of E-Cigarettes

The Michigan veto illustrates one of the primary policy debates related to regulation of e-cigarettes and vaping products. Policymakers have either added e-cigarettes and vapor products to existing definitions of tobacco products, thereby bringing these new products under tobacco restrictions, or they have adopted new policies totally separate from tobacco or smoking policies.

- Three states prohibit e-cigarettes in all public places.
- New Jersey was the first to prohibit e-cigarettes. The state in 2010 added electronic smoking devices to its 2006 New Jersey Smoke-Free Air Act. Utah followed in 2012, amending its Indoor Clean Air Act to include e-cigarettes and heated tobacco products.
- Voters in every North Dakota county approved a ballot initiative ban on smoking in public places and in most workplaces on Nov. 6, 2012. The ban covers the use of electronic smoking devices by including the use of e-cigarettes and heated tobacco in the definition of smoking.

- Thirteen other states have laws or executive orders that regulate the use of e-cigarettes in certain places. These policies apply to schools, state office buildings or correctional facilities.
- At least 224 local jurisdictions in 27 states ban the use of e-cigarettes in otherwise smokeless venues.
- Vermont is the only state that requires child resistant packaging for nicotine-containing liquids or gels. The law went into effect Jan. 1, 2015.

Prohibiting Purchase of E-Cigarettes by Minors

Most states have adopted laws to prohibit the purchase of e-cigarettes and related products by minors.

- Laws in 41 states prohibit the purchase of e-cigarettes by minors.
- Five of those states—Alabama, Alaska, Nebraska, New Jersey and Utah—define minor for the purpose of the ban as anyone under 19. The other states define minors as youth under 18.
- In addition to Michigan, eight other states—Maine, Massachusetts, Montana, New Mexico, North Dakota, Oregon, Pennsylvania and Texas—have not adopted purchase bans for minors.

Taxing E-Cigarettes

Only two states impose any type of excise tax on e-cigarettes or vaping products. The debate on taxes extends beyond the question of whether to tax; it also includes how to tax. E-cigarette manufacturers and retailers argue against a tax equivalent to tobacco (combustible) cigarettes. They say an equivalent tax will discourage the use of e-cigarettes as a less risky alternative to tobacco.

- Minnesota imposes a tax of 95 percent of the wholesale cost of e-cigarettes and e-vapor liquids. The tax is equivalent to that on combustible cigarettes.
- North Carolina assesses a tax of 5 cents per liquid milliliter of liquid nicotine. North Carolina-based Reynolds American Inc., the nation's second largest tobacco company that also sells e-cigarettes, did not oppose the North Carolina tax during the 2014 deliberations.⁴
- In 2014, taxing proposals were defeated in 12 states—Delaware, Hawaii, Indiana, Kentucky, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont and Washington.⁵
- Tax proposals are still pending in 2015 in the Michigan, New York and Ohio legislatures.⁶
- E-cigarette tax bills have been filed in Hawaii and Arkansas for 2015.
- As 2015 legislative sessions gear up, taxing proposals have been floated in several states, including Indiana, New Jersey, Utah and Washington.⁷
- When Missouri adopted its 2014 law to prohibit sale of e-cigarettes to minors, it also included provisions that e-cigarettes cannot be regulated or taxed as a tobacco product.

RESOURCES

- ¹Gov. Rick Snyder vetoes bills relating to 'e-cigarettes.' Press release, Jan. 16, 2015. http://www.michigan.gov/snyder/0,4668,7-277-57577_57657-345491--,00.html.
- ²"Big Tobacco's E-Cigarette Push Gets a Reality Check," *The Wall Street Journal*, Aug. 26, 2014. <http://www.wsj.com/articles/big-tobaccos-e-cig-push-gets-a-reality-check-1409078319>.
- ³Issue Snapshot on Deeming: Regulating Additional Tobacco Products, FDA, <http://www.fda.gov/downloads/TobaccoProducts/NewsEvents/UCM397724.pdf> and Federal Register, Vol. 79, No. 80, April 25, 2014. <http://www.fda.gov/downloads/TobaccoProducts/GuidanceComplianceRegulatoryInformation/UCM394914.pdf>.
- ⁴"E-cig tax proposal goes to full House," *Winston-Salem Journal*, May 16, 2014. <http://myfox8.com/2014/05/16/e-cig-tax-proposal-goes-to-full-house/>.
- ⁵"A Look Back at Tobacco Legislation in 2014," *Convenience Store and Fuel News*. <http://www.cspnet.com/category-news/tobacco/articles/look-back-tobacco-legislation-2014>.
- ⁶Ibid.
- ⁷"States Look to Tax E-Cigarettes," *Stateline*, Jan. 23, 2015. http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/1/23/states-look-to-tax-e-cigarettes?utm_campaign=2015-01-23%20Stateline%20Daily.html&utm_medium=email&utm_source=Eloqua.



Debra Miller, CSG Director of Health Policy, dmiller@csq.org

NOTES:

*Note for Kansas: In 2011, Kansas Attorney General Derek Schmidt found the Kansas Indoor Clean Air Act of 2010 does not apply to e-cigarettes; e-cigarettes excluded from March 12, 2010, smoking prohibition in workplaces, restaurants, bars, gambling facilities and public places generally.

**Note for Vermont: Child-resistant packaging is required for the sale of liquid or gel containing nicotine after Jan. 1, 2015, excluding cartridges not designed to be opened by consumers.

SOURCES:

"U.S. State and Local Laws Regulating Use of Electronic Cigarettes, as of Oct. 1, 2014," American Nonsmokers' Rights Foundation, www.no-smoke.org;

"Tobacco Fact Sheet: Electronic Cigarettes," May 2014, American Legacy Foundation, <http://www.legacyforhealth.org/content/download/582/6926/file/LEG-FactSheet-eCigarettes-JUNE2013.pdf>;

"Alternative Nicotine Products/Electronic Cigarettes," Sept. 23, 2014, National Conference of State Legislatures, <http://www.ncsl.org/research/health/alternative-nicotine-products-e-cigarettes.aspx>; and

CSG original research on state-specific laws and executive orders.



Photo Courtesy: Watchdog.org

STATE AND LOCAL LAWS ON E-CIGARETTES

State	State Laws or Policies Prohibiting Use of E-Cigarettes	Local Laws Prohibiting Use of E-Cigarettes in Smoke-free Venues	State Laws Prohibiting Sale of E-Cigarettes to Minors	State Taxation of E-Cigarettes
Alabama		10 jurisdictions	Yes, under 19	
Alaska		2 jurisdictions	Yes, under 19	
Arizona		2 jurisdictions	Yes, under 18	
Arkansas	On school district property		Yes, under 18	
California		34 jurisdictions	Yes, under 18	
Colorado	On school property, unless approved by FDA as cessation device	2 jurisdictions	Yes, under 18	
Connecticut			Yes, under 18	
Delaware	In all state workplaces, indoors and outdoors, as well as in parking lots and state vehicles operated on state workplace property		Yes, under 18	
Florida		5 jurisdictions	Yes, under 18	
Georgia		3 jurisdictions	Yes, under 18	
Hawaii	On all Dept. of Health property where smoking is prohibited		Yes, under 18	
Idaho		1 jurisdiction	Yes, under 18	
Illinois		4 jurisdictions	Yes, under 18	
Indiana		1 jurisdiction	Yes, under 18	
Iowa			Yes, under 18	
Kansas*	On all Dept. of Corrections property and grounds by inmates and employees		Yes, under 18	
Kentucky	In state executive branch buildings, state-owned vehicles and some state property	6 jurisdictions	Yes, under 18	
Louisiana		4 jurisdictions	Yes, under 18	
Maine			No	
Maryland	On MARC commuter trains		Yes, under 18	
Massachusetts		63 jurisdictions	No	
Michigan			No	
Minnesota		7 jurisdictions	Yes, under 18	95 percent of the wholesale cost
Mississippi		35 jurisdictions	Yes, under 18	
Missouri		4 jurisdictions	Yes, under 18	
Montana			No	
Nebraska			Yes, under 19	
Nevada			Yes, under 18	
New Hampshire	In public educational venues and grounds		Yes, under 18	
New Jersey	In all smoke-free venues		Yes, under 19	
New Mexico		1 jurisdiction	No	
New York		3 jurisdictions	Yes, under 18	
North Carolina			Yes, under 18	Excise tax of 5 cents per fluid milliliter
North Dakota	In all smoke-free venues	2 jurisdictions	No	
Ohio		1 jurisdiction	Yes, under 18	
Oklahoma	In Dept. of Corrections facilities, vehicles and grounds		Yes, under 18	
Oregon	For state employees in state agency buildings and adjacent grounds	2 jurisdictions	No	
Pennsylvania		1 jurisdiction	No	
Rhode Island			Yes, under 18	
South Carolina		4 jurisdictions	Yes, under 18	
South Dakota	On all Dept. of Corrections property and grounds by inmates and employees		Yes, under 18	
Tennessee			Yes, under 18	
Texas		9 jurisdictions	No	
Utah	In all smoke-free venues, except until 7/1/17 for retailers selling e-cigarettes		Yes, under 19	
Vermont**	On school grounds and child care facilities, both indoors and outdoors		Yes, under 18	
Virginia	On school buses, school property or during a school-sponsored activity		Yes, under 18	
Washington		2 jurisdictions	Yes, under 18	
West Virginia		15 jurisdictions	Yes, under 18	
Wisconsin		1 jurisdiction	Yes, under 18	
Wyoming			Yes, under 18	