



# National Conference of State Legislatures LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

JULY 2014

VOL. 22, No. 26

## Electronic Cigarettes and Alternative Nicotine Products

*By Karmen Hanson*

Electronic cigarettes are making headlines across the country, and e-cigarette sales are estimated to top \$2 billion in 2014. Also known as digital cigarettes or “e-cigs,” electronic cigarettes are battery-operated devices used to inhale vaporized liquid, often called e-liquid or e-juice, from cartridges. Most cartridges contain nicotine, and some have flavorings and other ingredients, such as food-grade propylene glycol to act as a propellant. Although designs vary widely, e-cigarettes consist of a plastic or glass tube and often resemble a traditional combustible cigarette or a larger pipe-like device. They may be single-use or refillable, and many versions are on the market. The technology in each cigarette or pipe may be either relatively simple or complex to control the amount of liquid vaporized per puff or number of puffs per cartridge. The products generally are marketed as alternatives to combustible cigarettes or as an alternative nicotine delivery device that does not produce traditional secondhand smoke.

### Did You Know?

- Electronic cigarettes currently are not regulated by the FDA.
- Ingredients and design of electronic cigarettes and vaporizers vary.
- States are taking action to regulate electronic cigarettes in various ways.

Analyses of e-liquid aerosol exhaust vary widely, based on the products tested. Ingredients used in e-liquids currently are not regulated, nor is the manufacturing process. Many of the products are manufactured overseas, which makes it more difficult to regulate their use in the United States.

States That Ban E-cigarettes for Minors



Source: NCSL, 2014.

Scientific studies currently are underway to determine the health effects of vaporizing or “vaping” for both users and the public. Analysis of study results comparing the health risks of combustible tobacco products to vapor or electronic products will take time to complete. Another area of concern for health officials is how much risk liquid nicotine poses for users and others when it is accidentally absorbed or ingested. Liquid nicotine is highly concentrated and intended to be vaporized, so unintentional absorption of the concentrate through the skin or orally may be hazardous to both adults and children.

National Conference  
of State Legislatures

Executive Director  
William T. Pound

Denver  
7700 East First Place  
Denver, Colorado 80230  
Phone (303) 364-7700  
www.ncsl.org

Washington, D.C.  
444 North Capitol Street, NW, Suite 515  
Washington, D.C. 20001  
Phone (202) 624-5400

## Federal Action

The 2009 Family Smoking Prevention and Tobacco Control Act expanded authority of the U.S. Food and Drug Administration (FDA) to regulate and oversee tobacco products and ingredients. It also created the Center for Tobacco Products (CTP) to implement the Tobacco Control Act and tasked it with overseeing and regulating tobacco product marketing, advertising, sales practices and packaging. One of the act's most visible impacts is the requirement for larger warning labels on cigarette and smokeless tobacco products.

The CTP also is allowed to define and regulate “modified risk products,” which manufacturers could claim have fewer negative health effects—such as reduced risk of cancer or respiratory diseases—for the overall population than combustible tobacco products. Although the FDA has not issued new regulations for such modified risk products, those likely to be considered include smokeless tobacco products such as traditional chew, snus, snuff, lozenges and vapor products.

On April 25, 2014, the [FDA released proposed regulations](#) for “Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act.” These regulations would give the CTP oversight of new and existing tobacco products, including electronic cigarettes and other alternative tobacco and nicotine products. Among other enforcement controls available to the CTP, for example, would be for it to take action against products that are adulterated or misbranded, require submission of ingredient lists, and prohibit or regulate modified risk descriptions (for example, light, low, mild). The public comment period is open until July 9, 2014.

## State Action

In the absence of current federal regulations and definitions of e-cigarettes or e-liquid products, several states have passed legislation pertaining to the sale and use of electronic cigarettes and related vapor products. Legislative efforts have increased in the last five years as the products have become more popular and more widely advertised.

At least 38 states prohibit the sale of e-cigarettes or similar items to minors. New Jersey, North Dakota and Utah have added use of a vaping device to their clean indoor air laws, which may ban use in public or government-owned buildings and properties or other smoke-free workspaces. A number of states have added vaping devices to their definition of “alternative nicotine,” “tobacco product” or “tobacco substitute,” which may subject devices or liquids to tax and sales regulations similar to those for traditional tobacco products. While Minnesota currently is the only state with a specific tax for electronic cigarette products, sales in other states may be subject to a general state or local sales tax as allowed by law. In 2014, Minnesota and Vermont passed legislation that requires liquid nicotine cartridges and containers to meet child-resistant effective packaging standards starting Jan. 1, 2015. E-cigarette legislation remains pending in a handful of states and territories as of July 1, 2014.

## NCSL Contact and Resource

Karmen Hanson  
NCSL—Denver  
(303) 856-1423

## Additional Resources

[U.S. Food and Drug Administration e-cig overview](#)  
[U.S. Food and Drug Administration proposed rules](#)

NCSL web page: [Alternative Nicotine Products/ Electronic Cigarettes](#)