



NEVADA
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RESEARCH BRIEF ON ELECTRONIC CIGARETTES AND “VAPING”

Electronic nicotine delivery systems, also known as electronic cigarettes, “e-cigarettes,” or vaporizers, are battery powered devices that allow users to simulate smoking by vaporizing and inhaling liquid nicotine, flavoring, and other chemicals. In contrast to traditional cigarettes, e-cigarettes do not produce by-products such as smoke and tar. Public opinion is mixed on a variety of issues relating to this relatively new product—including the health effects, appropriate marketing, and youth access. Electronic cigarettes are not currently regulated by the federal government, though the United States Food and Drug Administration (FDA) is considering proposed regulations and many states are implementing their own.

PRODUCT DESCRIPTION

Electronic cigarettes vary significantly in design, level of nicotine, and cost. Both disposable and rechargeable products are available in a variety of forms, including traditional cigarettes, pens, and lipstick containers. They contain varying levels of nicotine, synthetic nicotine, or lobelia, a plant with qualities similar to nicotine, commonly known as “Indian tobacco.” The popularity of e-cigarettes has grown rapidly since the product’s introduction in 2004. Tobacco analysts estimate sales in the U.S. grew from \$1.7 billion in 2013 to \$2.5 billion in 2014.

KEY ISSUES

Health effects

Proponents maintain e-cigarettes and similar devices are a safer alternative to traditional tobacco products because inhalation of liquid nicotine is thought to be less toxic than inhalation of tobacco and associated by-products, which contain known carcinogens. Some advocates consider e-cigarettes a smoking cessation tool because users can reduce the level of nicotine and potentially wean themselves off of tobacco.

Opponents argue the individual and public health effects of e-cigarettes are unknown, and maintain that any level of nicotine can be addictive and harmful. To date, research on the health effects of e-cigarettes has been limited and inconclusive. According to the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, insufficient scientific evidence exists to support e-cigarettes as a successful smoking cessation aid.

Marketing and youth access

The federal government currently does not restrict e-cigarette advertising or access to minors, who may find fruit and candy flavors, as well as product accessories, appealing.

A study published in *Nicotine & Tobacco Research* found that between 2011 and 2013, the use of e-cigarettes tripled among middle and high school students who did not smoke conventional cigarettes. Among those who used an e-cigarette at least once, nearly 44 percent intended to smoke conventional cigarettes—more than twice the rate of those who had never smoked. The CDC expresses concern that e-cigarettes may increase nicotine addiction

among young people, leading them to try conventional cigarettes.

Nicotine contained in e-cigarettes can also be dangerous to children. According to the CDC, the number of monthly calls to poison centers involving nicotine liquid in e-cigarettes rose from 1 call in September 2010 to 215 calls in February 2014. More than half (51 percent) of e-cigarette related calls to poison centers during that time period involved children under five years of age.

FEDERAL AND STATE REGULATION

Federal policy

Unlike traditional tobacco products, the federal government does not regulate e-cigarettes and similar products. In 2010, the U.S. Court of Appeals for the District of Columbia Circuit determined that the FDA could only regulate e-cigarettes and other products “derived from” tobacco through the administrative rule-making process.

In October 2013, the National Association of Attorneys General sent a letter signed by 41 state attorneys general to the FDA urging it to regulate advertising, ingredients, and sales of e-cigarettes to minors. In April 2014, the FDA issued a proposed regulation change that would expand the agency’s authority to regulate additional nicotine products, including e-cigarettes. The regulation change would allow the FDA to restrict sales to minors, require health warnings for product packaging and advertisements, and prohibit vending machine sales. The public comment period for the proposed regulation change closed in August 2014. To date, there has been no subsequent action from the FDA.

ELECTRONIC CIGARETTES IN NEVADA

State policies

In the absence of federal regulations, many states are establishing policies to define and regulate the sale, use, packaging, and taxation of e-cigarettes and other electronic nicotine delivery systems.

According to the National Conference of State Legislatures, at least: (1) 40 states define e-cigarettes, vaporizers, or similar products; (2) 48 states and 2 territories prohibit the sale of tobacco products to minors; (3) 5 states—Delaware, New Jersey, North Dakota, Oregon, and Utah—restrict the use of electronic nicotine delivery systems in bars, restaurants, and non-hospitality workplaces (compared to the 27 states that prohibit conventional smoking in these areas); and (4) 7 states require liquid nicotine containers be sold in child resistant packaging.

States are also considering:

- Restricting online or self-service purchases;
- Restricting flavors and marketing to reduce youth appeal;
- Licensing “vaping lounges” as tobacco retailers; and
- Requiring labels to include ingredients, nicotine level, age restrictions, and potential health warnings.

In addition, states are exploring how and whether to tax electronic nicotine delivery systems. Currently, Kansas, Minnesota, and North Carolina have enacted legislation to tax the products. In contrast, the Missouri and Nevada Legislatures recently passed laws prohibiting e-cigarettes from being taxed as tobacco products.

Although tobacco is regulated in *Nevada Revised Statutes* by Chapters 202 (“Crimes Against Public Health and Safety”) and 370 (“Tobacco: Licenses and Taxes; Supervision of Manufacturers and Wholesale Dealers”), the Nevada Legislature clarified, with the passage of Senate Bill 79 (Chapter 435, *Statutes of Nevada*) during the 2015 Session, that certain alternative nicotine products and vapor products are not to be regulated and taxed in Nevada as other tobacco products. Senate Bill 79 redefines “other tobacco products” to exclude alternative nicotine or vapor products, clarifying that these products are not subject to tobacco taxes.

