

SB 140 (Leno)

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As Introduced January 26, 2015

Expanding Public Health Protections to Electronic Cigarettes

FACT SHEET

SUMMARY

SB 140 (Leno) addresses growing public health concerns about the unregulated use of electronic cigarettes (e-cigarettes) in California by adding e-cigarettes to the Smoke Free Act and the Stop Tobacco Access to Kids Enforcement (STAKE) Act.

BACKGROUND

E-Cigarettes Contain Nicotine, Tobacco & Other Harmful Chemicals

According to the Food and Drug Administration (FDA), e-cigarettes are battery-operated products designed to deliver nicotine, flavor and other chemicals to the user. They turn chemicals, including highly addictive nicotine, into an aerosol that is inhaled by the consumer. The nicotine contained in e-cigarettes is derived from tobacco and is highly addictive. In fact, many e-cigarettes (like those manufactured by Philip Morris International) offer users the same level of nicotine as cigarettes by heating, rather than burning, tobacco.

Some e-cigarettes offer users greater levels of nicotine than traditional cigarettes. For example, users can purchase liquid nicotine solutions of 100 mg/mL for e-cigarette cartridge refills on the Internet. As a point

of context, one regular cigarette contains only \approx 10 to 15 mg of nicotine. FDA lab tests have also found that cartridges labeled as nicotine-free have traceable levels of nicotine.

Given this nicotine and tobacco nexus, it is not surprising that tobacco companies have become heavily invested in the e-cigarette industry. The three major tobacco corporations have been purchasing independent e-cigarette companies and are estimated to share 75% of the profit pool in 10 years.

In addition to nicotine, FDA testing of several leading e-cigarette brands has revealed that e-cigarettes contain known carcinogens and toxic chemicals, including an ingredient used in antifreeze.

Health Effects of E-Cigarettes

Because e-cigarettes have only recently entered the market, they have not been fully studied to the same extent as other tobacco products. However, recent studies show that e-cigarettes offer potentially serious health consequences.

According to the California Department of Public Health's (CDPH) 2015 report on e-cigarettes, mainstream *and* secondhand e-cigarette aerosol contains at least ten chemicals that are on California's

Proposition 65 list of chemicals known to cause cancer, birth defects or other reproductive harm. As a result, CDPH recommends that "[e]xisting laws that currently protect minors and the general public from traditional tobacco products should be extended to cover e-cigarettes."

The Center for Tobacco Control Research and Education at the University of California San Francisco reports that e-cigarettes deliver high levels of nanoparticles, which can trigger inflammation and have been linked to asthma, stroke, heart disease and diabetes.

The federal Centers for Disease Control and Prevention (CDC) has found that nicotine's adverse effects on adolescent brain development can result in lasting deficits in cognitive function.

Industry Claims about E-Cigarettes

Despite widespread claims by tobacco companies that e-cigarettes do not present secondhand smoke concerns, there is no evidence showing that the aerosol emitted by e-cigarettes is safe for non-users to inhale. In fact, two initial studies have found formaldehyde, benzene and tobacco-specific nitrosamines (a carcinogen) coming from the secondhand emissions of e-cigarettes.

Tobacco companies also claim that e-cigarettes are proven cessation devices for those trying to quit smoking traditional cigarettes. Current studies indicate that while many e-cigarette users plan to use the devices to quit or reduce smoking, they are usually using them in a dual-use capacity, especially in places where smoking is restricted. The FDA has not approved any e-cigarette product as a safe or effective method to help smokers quit. A 2014 peer-reviewed study found that among cancer patients enrolled in a smoking cessation program, e-cigarette

users were as likely as individuals who did not use e-cigarettes to still be smoking.

Lack of Regulation

E-cigarettes are wholly unregulated in the state of California, beyond a restriction on the sale of the devices to minors. E-cigarettes are not currently included within the Smoke Free Act, the STAKE Act, and the CA Cigarette and Tobacco Licensing Act.

The Smoke Free Act prohibits smoking at places of work, schools, daycares, restaurants, bars, hospitals and on public transportation. These laws protect nonusers from exposure to secondhand smoke and reduce the acceptability of smoking. In turn, the Act helps reduce the number of people, especially youth, who start smoking and increases quit attempts by smokers. These increased protections have led to reduced smoking rates and lowered rates of heart attacks and cancers among Californians.

The STAKE Act prohibits a person from selling tobacco products to minors. The Act requires retailers to post warning signs, which include a toll-free number for the public to report violations; assures clerks check the identification of youthful-appearing persons prior to a sale; and authorizes law enforcement to conduct sting operations using 15- and 16-year-olds. Prior to the STAKE Act's implementation in 1994, the CA Department of Health found the illegal sales rate to minors was 52.1%. Since the Act's implementation, rates have steadily declined to 5.6% in 2011.

The CA Cigarette and Tobacco Licensing Act created licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes.

The Act requires retailers of tobacco products to pay a one-time \$100 fee.

E-Cigarettes & Public Health Laws

The use of e-cigarettes in workplaces, restaurants and bars can undermine the public health benefits that have been, and continue to be, achieved by the Smoke Free Act. Because many e-cigarettes are designed to look like cigarettes and cigars, the unacceptability of smoking in these places could be compromised. This could lead to new users or a reduction in current users who quit. Additionally, from a practical standpoint, business owners can face difficulty when enforcing smoke-free laws because e-cigarettes so closely resemble banned products like cigarettes.

E-Cigarette Use by Youth

Two recent studies reported that 25% of high school students in Connecticut and 29% of teens in Hawaii have used e-cigarettes. Authors of the Hawaii study noted that e-cigarette use has grown exponentially among youth, doubling every year since 2009. The CDC found that more than a quarter of a million youth who had never smoked a cigarette used electronic cigarettes in 2013—this number shows use by youth has tripled from the CDC’s 2011 numbers. E-cigarettes come in colorful and enticing flavors such as chocolate, bubble gum and mango. Researchers found that these flavors are an important reason why young people like e-cigarettes.

In 2014, 11 members of Congress issued a report accusing e-cigarette companies of using candy-flavored products and social media advertising to hook young users. The report looked at seven e-cigarette companies and found that they sponsored or provided free samples at more than 300 events, many of which attracted youth, such as rock concerts.

While California currently bans the sale of e-cigarettes to minors under the age of 18, many youth are still able to access e-cigarettes. This is because the enforcement and oversight provisions of the STAKE Act do not currently apply to e-cigarettes.

FEDERAL ACTION

In 2014, the FDA issued proposed regulations that would expand the definition of “tobacco products” to include the following: e-cigarettes, cigars, pipe tobacco, waterpipe (hookah) tobacco and novel products like nicotine gels and dissolvables not already under the FDA’s authority. The FDA’s proposed rule also would include tobacco product components or parts that are used in the consumption of a tobacco product, like e-cigarette cartridges.

As a result, e-cigarette companies will be required to register with the FDA and report product and ingredient listings. Companies will be able to market new products only after FDA review and make claims of reduced risk only after the FDA confirms that scientific evidence supports the claim and that marketing the product will benefit public health as a whole.

Companies will no longer be able to sell their products to minors, market e-cigarettes in vending machines, or distribute free samples. E-cigarette companies will also need to include appropriate health warnings on labels.

The FDA’s regulations are expected to be finalized this year.

SOLUTION

SB 140 would ensure that users and nonusers of e-cigarettes are better protected from the potential health risks

associated with these products. The bill aligns state law with the FDA's proposed ruling by defining e-cigarettes as "tobacco products" falling under the restrictions of the CA Smoke Free Act and STAKE Act. Additionally, the bill includes e-cigarettes within the Cigarette and Tobacco Products Licensing Act.

- Community Health Involvement Partners (CHIP)
- Community Action Partnership of Madera County (CAPMC)
- Tobacco Education Network
- Breathe California

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Version: March 11, 2015

STATUS

Senate Health

SUPPORT

- American Heart Association (co-sponsor)
- American Lung Association (co-sponsor)
- American Cancer Society (co-sponsor)
- California Society of Addiction Medicine (CSAM) (co-sponsor)
- San Francisco Medical Society
- Medical Oncology Association of Southern California (MOASC)
- Health Officers Association of California (HOAC)
- City of Oakland
- Los Angeles City Attorney Mike Feuer
- City of Walnut Creek
- Alameda County Tobacco Control Coalition
- Tobacco Free Coalition of Santa Clara County
- Yuba County Tobacco Coalition
- California School Employees Union (CSEA)
- First 5 Association of California
- Coalition Engaged in A Smoke-free Effort (CEASE)
- California Peace Officers' Association (CPOA)
- California Narcotic Officers Association
- California College and University Police Chiefs Association