Electronic Cigarette Liquid Packaging and Sales Requirements

The increasing use of electronic cigarettes and similar e-devices, such as vape pens, mods, tanks, and personal vaporizers, along with e-liquid refills has created several public health problems requiring policy solutions. One such problem, which governments at all levels have only recently started to consider, is that the concentrated liquid used in these products can lead to nicotine poisoning. This fact sheet takes a brief look at this problem and possible policy approaches for addressing it.

Overview

Although e-cigarette use is not yet at the level of conventional cigarette use, it is increasing dramatically. Approximately one in five U.S. smokers has tried e-cigarettes. According to industry sources, thousands of shops specialize in e-cigarettes and e-liquid in the U.S., and these shops are projected to have over $1 billion in sales in 2014. Additionally, many non-specialty stores, such as gas stations and convenience stores, sell e-liquid.

E-liquid comes in a variety of enticing flavors, such as cherry, chocolate, gummy bear, and bubble gum, many of which appeal to children. According to one source, approximately 7,764 flavors of e-liquid are available through e-cigarette websites.

The problem is that much of the e-liquid on the market contains nicotine, which depending on the concentration, can be extremely dangerous. Nicotine is an acute toxin: exposure to nicotine by swallowing or contact with the skin can result in nausea and vomiting, as well as respiratory arrest, seizures, or even death. A lethal dosage of nicotine is estimated to be between 1 and 13 milligrams per kilogram of bodyweight. The nicotine level in most e-liquid ranges between 1.8 and 2.4 percent, but nicotine concentration can be as high as 10 percent in each vial of e-liquid. On the low end of this estimate, this means that a teaspoon of 1.8 percent nicotine concentrated e-liquid could be fatal for a 200 pound person. Children, drawn to e-liquid because of its many kid-friendly flavors, are especially vulnerable to nicotine poisoning.

Data from poison control centers show that poisoning is more than a theoretical risk. Calls to poison control centers regarding e-cigarettes and liquid nicotine have risen dramatically over the past four years. In 2013, over 1,000 calls linked to liquid nicotine exposure were reported in the
From January through March of 2014, the number of calls was already at 651. In 2013, Minnesota alone had 50 reported children poisonings from e-liquid, a ten-fold increase from 2012. Seventy-two percent of poison control calls in Minnesota were for children three years old or younger, while 60 percent of calls to the Kentucky poison control center involved children six years old or younger.

Laws that require e-liquid to be sold in childproof packaging are one way to reduce the incidence of liquid nicotine poisonings, particularly among children. Some representatives of the e-cigarette industry have stated that they support efforts to require e-liquid to be sold in childproof packaging. Packaging companies are creating and marketing childproof packaging, realizing the need for the product in the growing e-cigarette marketplace.

Select Legislation and Policies

A few states have already enacted legislation requiring childproof packaging for e-liquid, and federal legislation has also been introduced. Below are a few examples of laws and legislation related to e-liquid packaging. Local and state governments might also want to consider other legislative avenues or regulatory options.

Before using any language from the following policies, make sure the provision is practical and legal in your jurisdiction, and identify any issues that could affect implementation. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policy approaches. These select examples are included simply to illustrate how various jurisdictions have approached the regulation of these products.

<table>
<thead>
<tr>
<th>State</th>
<th>Legislation</th>
<th>Select Language</th>
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<tbody>
<tr>
<td>Minnesota</td>
<td>MINN. STAT. § 461.20 (2014)</td>
<td>For purposes of the section, “child-resistant packaging” is defined as set forth in Code of Federal Regulations, title 16, section 1700.15(b)(1), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015 . . . The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, as defined in section 609.685, subdivision 1, that is not contained in packaging that is child-resistant, is prohibited.</td>
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<tr>
<td>New York</td>
<td>Bill A9299D-2013</td>
<td>No person, firm or corporation shall sell or offer for sale any electronic liquid, as defined in paragraph (E) of subdivision one of section thirteen hundred ninety-nine-CC of the public health law, unless the electronic liquid is sold or offered for sale in a child resistant bottle which is designed to prevent accidental exposure of children to electronic liquids.</td>
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<tr>
<td>Vermont</td>
<td>7 V.S.A. § 1012 (2014)</td>
<td>(a) Unless specifically preempted by federal law, no person shall manufacture, regardless of location, for</td>
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Packaging Requirements for Electronic Cigarette Liquid

sale in; offer for sale in; sell in or into the stream of commerce in; or otherwise introduce into the stream of commerce in Vermont: (1) any liquid or gel substance containing nicotine unless that product is contained in child-resistant packaging; or (2) any nicotine liquid container unless that container constitutes child-resistant packaging. (b) As used in this section: (1) “Child-resistant packaging” means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. (2) “Nicotine liquid container” means a bottle or other container of a nicotine liquid or other substance containing nicotine which is sold, marketed, or intended for use in a tobacco substitute. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco substitute if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

Federal S. 2581

The term “liquid nicotine container” means a consumer product, as defined in section 3(a)(5) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(5)) notwithstanding subparagraph (B) of such section, that consists of a container that— (A) has an opening that is accessible through normal and reasonably foreseeable use by a consumer; and (B) is used to hold liquid containing nicotine in any concentration. … The term “nicotine” means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived. … The term “special packaging” has the meaning given such term in section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471). … [N]ot later than 1 year after the date of the enactment of this Act, the [Consumer Product Safety] Commission shall promulgate a rule requiring special packaging for liquid nicotine containers.

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at (651) 290-7506 or publichealthlaw@wmitchell.edu with any questions about the information included in this fact sheet or to discuss local concerns you may have about drafting or implementing any policy.
Notes

1 See the Tobacco Control Legal Consortium’s *Regulating Electronic Cigarettes and Similar Devices* for more background on e-cigarettes and some of the policy issues associated with them.

2 The information contained in this document is not intended to constitute or replace legal advice.


10 Id.


12 Bassett et al., supra note 9.


16 Id.

