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**OFFICE OF TOBACCO CONTROL
AND
OFFICE OF LOCAL PUBLIC HEALTH**

**ADMINISTRATIVE ADVISORY
2013**

SUBJECT: Electronic Cigarettes

EFFECTIVE DATE: Immediate

EXPIRATION DATE: None

AUTHORITY:

- *New Jersey Smoke-Free Air Act, N.J.S.A. 26:3D-56 et seq. and Smoke-Free Air, N.J.A.C. 8:6. L.2005, c.383, s.2; amended 2009, c.182, s.1.*

Background: The 2006 New Jersey Smoke - Free Air Act was amended to add, relative to smoking, use of electronic smoking devices in indoor public places and workplaces. It was amended and signed into law [A4227/4228](#) which bans the use of e-cigarettes in public places and workplaces and ban e-cigarette sales to people 19 years and younger. This is the first state law of its kind, in the nation, with the New Jersey Senate and Assembly both voting unanimously in favor of the law.

26:3D-56 “Subject to certain specified exceptions; it is clearly in the public interest to **prohibit** the smoking of tobacco products and the use of **electronic smoking devices in all enclosed indoor places of public access and workplaces. Electronic smoking device** means an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe”.

Call to Action:

Center for Disease Control and Prevention (CDC) Comments: The CDC Director Tom Frieden, MD, MPH states that, “E-cigarette use is growing rapidly. There is still a lot we don’t know about these products, including whether they will decrease or increase use of traditional cigarettes.” Although e-cigarettes appear to have far fewer of the toxins found in smoke compared to traditional cigarettes, the impact of e-cigarettes on long term health must be studied. Research is needed to assess how e-cigarette marketing could impact initiation and use of traditional cigarettes, particularly among young people.

“If large numbers of adult smokers become users of both traditional cigarettes and e-cigarettes - rather than using e-cigarettes to quit cigarettes completely - the net public health effect could be negative,” said Tim McAfee, MD, MPH, and Director of the Office on Smoking and Health at CDC.

FDA Comments: As the safety and efficacy of e-cigarettes have not been fully studied, consumers of e-cigarette products currently have no way of knowing:

1. Whether they are safe for their intended use.
2. How much nicotine or other potentially harmful chemicals are being inhaled during use.
3. If there are any benefits associated with using these products.

Additionally, it is not known if e-cigarettes may lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.

Enforcement Procedure: The violations, fines, penalties; enforcement for 26:3D-62 includes the following:

- The person having control of an indoor public place or workplace shall order any person smoking in violation of this act to comply with the provisions of this act. A person, after being so ordered, who smokes in violation of this act is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. A penalty shall be recovered in accordance with the provisions of subsections c. and d. of this section.
- The Department of Health or the local board of health or the board, body, or officers exercising the functions of the local board of health according to law, upon written complaint or having reason to suspect that an indoor public place or workplace covered by the provisions of this act is or may be in violation of the provisions of this act, shall, by written notification, advise the person having control of the place accordingly, and order appropriate action to be taken. A person receiving that notice that fails or refuses to comply with the order is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense, and \$1,000 for each subsequent offense.
- In addition to the penalty provided herein, the court may order immediate compliance with the provisions of this act. A penalty recovered under the provisions of this act shall be recovered by and in the name of the Commissioner of Health or by and in the name of the local board of health. When the plaintiff is the Commissioner of Health, the penalty recovered shall be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the penalty recovered shall be paid by the local board into the treasury of the municipality where the violation occurred.
- A municipal court shall have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of this act if the violation has occurred within the territorial jurisdiction of the court. The proceedings shall be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a summons or warrant and shall issue only at the suit of the Commissioner of Health, or the local board of health, as the case may be, as plaintiff.
- The penalties provided in subsections a. and b. of this section shall be the only civil remedy for a violation of this act, and there shall be no private right of action against a party for failure to comply with the provisions of this act.

L.2005, c.383, s.8; amended 2012, c.17, s.331.