

The Wall Street Journal States Dash to Regulate E- Cigarettes

Record Number of Bills Designed to Rein In ‘Vape’ Industry Are Being Considered in 21 State Legislatures

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As the Food and Drug Administration continues to figure out how to regulate the rapidly accelerating use of electronic cigarettes, states are taking matters into their own hands.

California on Wednesday declared e-cigarettes a health threat and issued a 21-page report warning young people could become nicotine addicts if lawmakers don’t step in to regulate the fast-growing industry soon.

A record 60-plus bills designed to rein in the fast-growing “vape” industry are being considered in 21 state legislatures stretching from Oregon to Virginia. This is a major increase from a year ago when 11 bills related to e-cigarettes were under consideration across 10 states, according to the Consumer Advocates for Smokefree Alternatives Association, an e-cigarette advocacy group.

E-cigarette legislative challenges include Oregon bills banning flavors and online sales, an Indiana bill that would require pricey permits for retailers selling liquid nicotine, and a California bill banning e-cigarettes in public places. Gubernatorial proposals include New York Gov. Andrew Cuomo’s budget, which would ban flavors, restrict advertising and prohibit indoor e-cigarette use.

Last April, the FDA issued preliminary rules that would prohibit sales to minors and require e-cig manufacturers to submit products for approval. The FDA said it expects to publish a final rule in June. Meanwhile, U.S. e-cigarette sales topped \$2.5 billion at retail last year and are expected to surpass \$3.5 billion this year, according to Wells Fargo. The bank's analysts predict \$1.5 billion in sales this year will come from e-cigarettes and \$2 billion will come from liquid nicotine and customizable, high-powered vaporizers, barring regulation.

But recent studies have caused alarm among some legislators because they indicate teens are using the devices as an alternative to traditional cigarettes. One, by the Centers for Disease Control and Prevention last year, reported that more than 250,000 youths who had never smoked a cigarette used e-cigs in 2013. The University of Michigan's Monitoring the Future survey last year showed more than twice as many eighth- and 10th-graders had used e-cigarettes as traditional cigarettes in the prior 30 days.

Some state officials have grown frustrated. "The FDA is not addressing it, and I don't think the state of Indiana should sit on its heels and wait for the federal government," said Kevin Mahan, a Republican state representative who introduced a bill that would require licenses for liquid nicotine retailers.

The FDA said in a statement it needed "ample time to fully review and analyze these issues." It said the subject involved "complicated rulemaking."

State and local officials began introducing laws to regulate e-cigarettes around 2010. More than 40 states have since banned e-cigarette sales to minors, and more than 100 cities have banned e-cigarette smoking indoors, including Los Angeles, New York and Chicago. But this year's proposals are more restrictive. They include flavor bans, licensing restrictions and more severe tax

increases.

E-cigarette advocates have supported some past legislation, including prohibiting sales to minors. But most oppose the new measures that they believe could discourage e-cigarettes as an alternative to traditional cigarettes, widely considered more harmful. They say those measures and negative headlines about e-cigarettes already are cutting into e-cig sales.

“Business is flat or down,” said Cheryl Richter, treasurer of the vaping advocacy group, the National Vapers Club, and owner of Port Chester, N.Y.-based VC Vape Den. When new taxes push up e-cigarette prices, she says, “or you have to go stand outside with smokers or you can’t get flavors you like, it all adds up to convince smokers not to switch to an alternative.”

Oregon legislators have introduced seven bills to regulate e-cigarettes, including one requested by the state’s attorney general that would eliminate online sales and another that would ban flavored products.

“Flavoring is just another way to hook people on nicotine,” said Oregon state Sen. Laurie Monnes Anderson, a Democrat co-sponsoring the flavor-ban legislation.

Proposed legislation in Indiana would require retailers that bottle and sell liquid nicotine to pay \$5,000 for state permits and list ingredients. The laws are designed to introduce oversight to the more than 70 “vape shops” in the state by reclassifying retailers that mix and bottle liquid nicotine “manufacturers.”

Indiana vape shop owners estimate security and manufacturing requirements in the Indiana bills could range from \$25,000 to \$100,000 a year, putting financial strains on retailers that typically make less than \$500,000 in annual revenue. Michael Cline, the

owner of Indy Vapor Shop, said, “It’s overreaching regulation, and it has the potential to kill vape shops.”

Several states are weighing e-cigarette taxes. The proposed taxes are higher than existing ones in Minnesota and North Carolina, the first two states to tax e-cigarettes. Washington Governor Jay Inslee’s budget, for instance, calls for an excise tax on e-cigarettes of 95% of the sales price.

Reynolds American Inc., the No. 2 U.S. cigarette manufacturer and producer of Vuse e-cigarettes, supports efforts like the one in Indiana to rein in the liquid nicotine industry. Reynolds American spokesman David Howard said, “We’re all manufacturers. We should all be held to the same standard.”

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