

State and Federal Actions Regarding Vaping

State Administrative Action:

Governor Newsom issued an Executive Order on September 16, 2019, addressing the youth vaping epidemic:

- The Governor has called on the Department of Public Health (DPH) to develop recommendations to increase enforcement efforts against the sale of illicit and counterfeit vaping products.
- The executive order will also aim to establish standards for warning signs and labels in retail stores and on e-cigarette packaging. DPH's deadline for submittal to the Governor's office is October 14, 2019.
- \$20 million raised from Propositions 56 and 64 will be allocated to marketing prevention efforts—educating the public on the potential health risks of vaping nicotine and cannabis.
- The California tax collection department has been directed to step up enforcement of existing fees and regulations of electronic cigarettes.
- The Governor has also made it clear that once the Legislature reconvenes in January, he will press for legislative action geared towards eliminating the sale of flavored nicotine products in California.

State Legislature—Current bills that address vaping and e-cigarettes:

- ***SB 538 (Rubio) Electronic Cigarettes—(Awaiting Governor Action)***

This bill requires a manufacturer of electronic cigarettes to submit specified information to the Department of Public Health (DPH) about electronic cigarettes sold in the state. This bill further requires DPH to post the information on its Web site and to conduct a public outreach campaign to notify specified entities about the information on electronic cigarettes to address the increase in youth usage. It also contains an urgency clause that will make this bill effective upon enactment.

- ***AB 1529 (Low) Cannabis Vaporizing Cartridges: Universal Symbol—(Awaiting Governor Action)***

Requires a cannabis cartridge or integrated cannabis vaporizer that contains cannabis or a cannabis product to bear the universal cannabis symbol that is at least one-quarter inch by one-quarter inch. Contains an urgency clause to ensure that the provisions of this bill go into immediate effect upon enactment.

- ***AB 131 (Cunningham) Electronic Smoking Devices: Manufacturers: Advertising—(Held over until next year)***

Would prohibit an electronic smoking device manufacturer, as defined, from advertising or promoting the electronic smoking device, as defined, in a manner that is attractive to persons under 21 years of age, as specified, or is intended to encourage persons under 21 years of age to use the device. This bill would authorize the State Department of Public Health to assess specified civil penalties against an electronic smoking device manufacturer for each violation.

- ***AB 1639 (Gray) Tobacco Products—(Held over until next year)***

This bill would, among other things, would create various advertising, promotion, packaging, and selling prohibitions on electronic cigarettes in California.

- ***SB 424 (Jackson) Tobacco Products: Single-use and Multi-use Components—(Held over until next year)***

This bill prohibits a person or entity from selling, giving, or in any way furnishing to another person of any age in the state any single-use filters, plastic devices, electronic cigarettes, and vaporizer devices, as specified. Requires the manufacturer of these components to use materials eligible for recycling under state or local recycling programs to make any multiuse, reusable component, and to offer methods for recycling those components, as specified.

Federal Administrative Action:

The Trump Administration policy (via the FDA) is expected to be finalized in the coming weeks. Essentially, it's enforcing rules already on the books but targeting/prioritizing flavored e-cigs.

By way of background: an FDA rule became effective August 8, 2016 that said that all electronic nicotine delivery system (ENDS) products (which includes e-cigarettes) were expected to file premarket tobacco product applications with the FDA within two years (to bring them into similar compliance with traditional cigarettes). Basically, all ENDS products currently on the market are not being legally marketed and are now subject to government action.

The compliance policy the FDA is going to finalize in the coming weeks will outline enforcement policy of this existing rule, in a way that will prioritize flavored over non-flavored e-cigarettes. There will be additional details of how they will address flavored e-cigarettes should the manufacturers come into compliance with the August 2016 FDA rule, but they have not made those public yet. Additionally, there is likely to be some lag between plan announcement and full implementation from an enforcement perspective (likely another few weeks or months).