

RESOLUTION

Subject: Regulation of the Marketing, Packaging, and Sale of Electronic Cigarettes in Kentucky

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Referred to: Reference Committee

WHEREAS, an electronic cigarette (e-cigarette) is a disposable or reusable device that operates by heating a liquid solution to create an aerosol that is inhaled, and can come in a variety of designs, resembling regular cigarettes, cigars, pipes, pens, and USB flash drives¹; and

WHEREAS, e-cigarette use among teens is on the rise across the United States, with the number of teen e-cigarette users increasing by nearly 1.5 million from 2017 to 2018²; and

WHEREAS, the rates of e-cigarette use among Kentucky youth exceeds the national average, and use among Kentucky middle and high school students has nearly doubled from 2016 to 2018^{3,4}; and

WHEREAS, 43 percent of young adults who tried e-cigarettes reported that they first tried them because of their appealing flavors⁴, including cotton candy, gummi bear, mango, cucumber⁴; and

WHEREAS, it is estimated that nicotine levels found in the e-cigarette brand JUUL are equivalent to 20 times that of other electronic and traditional cigarettes, and the product labels sometimes do not list the true nicotine content⁵; and

WHEREAS, the brain does not fully develop until mid to late 20's, thus young adults are at increased risk of harm from nicotine, as it impairs adolescent brain development and can cause long-lasting effects, including impulsivity and mood disorder^{2,4}; and

WHEREAS, the aerosol in e-cigarettes contain chemicals, such as formaldehyde and acrolein that can cause irreversible lung damage and have been associated with cancer, lung disease, airway irritation, and heart disease^{6,7}, and at least 10 chemicals identified in e-cigarettes are on the list of carcinogens and reproductive toxins from the Safe Drinking Water and Toxic Enforcement Act of 1986^{5,8}; and

WHEREAS, e-cigarette aerosol has a higher concentration of ultrafine particles than that in conventional tobacco cigarette smoke, and exposure to these particles can worsen respiratory illnesses like asthma and constrict arteries, causing cardiovascular effects such as myocardial infarction⁸; and

WHEREAS, the US Surgeon General concluded in 2016 that second-hand smoke from e-cigarette aerosol contains volatile organic compounds, heavy metals, and flavorings such as diacetyl, all of which are associated with negative health consequences⁹; and

WHEREAS, smoke-free laws are designed to reduce second-hand smoke harm but also have been shown to reduce smoking, increase the success of smoking cessation, and may decrease smoking initiation in youth¹⁰; and

WHEREAS, in 2016, nearly 4 out of 5 middle and high school students and over 20 million young adults reported that they saw at least one e-cigarette advertisement during the year¹¹; and

WHEREAS, e-cigarettes are often marketed as an alternative to smoking cigarettes; however, 40% of users aged 18-24 had never been regular cigarette smokers and the use of e-cigarettes increase the risk of using traditional cigarettes^{2,9,4}; and

WHEREAS, few restrictions regarding e-cigarette marketing exist, allowing companies to promote their products through traditional and modern outlets (including radio, television, magazines and social media) that target adolescent audiences¹¹; and

WHEREAS, tobacco advertising bans showed a reduction in tobacco use and initiation, especially among the youth¹²; and

WHEREAS, increasing the price of tobacco products has been shown to decrease tobacco consumption and reduce initiation of tobacco use^{13,14}; and

WHEREAS, smoking-related health care costs in Kentucky are approaching \$2 billion per year¹⁵; and

WHEREAS, at the time of this resolution's submission, there are no regulations or excise taxes in place on the sale, packaging, and advertising of e-cigarettes in Kentucky¹⁶; now, therefore, be it

RESOLVED, that the Kentucky Medical Association supports regulation of marketing and packaging of e-cigarettes, in a way that mirrors the regulation of traditional cigarettes; and be it further,

RESOLVED, that the Kentucky Medical Association supports a ban on e-cigarette use in locations where tobacco use is prohibited; and be it further,

RESOLVED, that the Kentucky Medical Association supports the extension of laws prohibiting tobacco advertising to e-cigarettes; and be it further,

RESOLVED, that the Kentucky Medical Association supports an excise tax on e-cigarettes and liquid solutions.

References

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RELEVANT AMA POLICY

Electronic Cigarettes, Vaping, and Health H-495.972

1. Our AMA urges physicians to: (a) educate themselves about electronic nicotine delivery systems (ENDS), including e-cigarettes, be prepared to counsel patients about the use of these products and the potential for nicotine addiction and the potential hazards of dual use with conventional cigarettes, and be sensitive to the possibility that when patients ask about e-cigarettes, they may be asking for help to quit smoking; (b) consider expanding clinical interviews to inquire about "vaping" or the use of e-cigarettes; (c) promote the use of FDA-approved smoking cessation tools and resources for their patients and caregivers; and (d) advise patients who use e-cigarettes to take measures to assure the safety of children in the home who could be exposed to risks of nicotine overdose via ingestion of replacement e-cigarette liquid that is capped or stored improperly.
2. Our AMA: (a) encourages further clinical and epidemiological research on e-cigarettes; (b) supports education of the public on the health effects, including toxins and carcinogens of electronic nicotine delivery systems (ENDS) including e-cigarettes; and (c) recognizes that the use of products containing nicotine in any form among youth, including e-cigarettes, is unsafe and can cause addiction.
3. Our AMA supports legislation and associated initiatives and will work in coordination with the Surgeon General to prevent e-cigarettes from reaching youth and young adults through various means, including, but not limited to, CDC research, education and a campaign for preventing and reducing use by youth, young adults and others of e-cigarettes, and combustible and emerging tobacco products.

Sales and Distribution of Tobacco Products and Electronic Nicotine Delivery Systems (ENDS) and E-cigarettes H-495.986

- (1) recognizes the use of e-cigarettes and vaping as an urgent public health epidemic and will actively work with the Food and Drug Administration and other relevant stakeholders to counteract the marketing and use of addictive e-cigarette and vaping devices, including but not limited to bans and strict restrictions on marketing to minors under the age of 21;
- (2) encourages the passage of laws, ordinances and regulations that would set the minimum age for purchasing tobacco products, including electronic nicotine delivery systems ((ENDS)) and e-cigarettes, at 21 years, and urges strict enforcement of laws prohibiting the sale of tobacco products to minors;
- (3) supports the development of model legislation regarding enforcement of laws restricting children's access to tobacco, including but not limited to attention to the following issues: (a) provision for licensure to sell tobacco and for the revocation thereof; (b) appropriate civil or criminal penalties (e.g., fines, prison terms, license revocation) to deter violation of laws restricting children's access to and possession of tobacco; (c) requirements for merchants to post notices warning minors against attempting to purchase tobacco and to obtain proof of age for would-be purchasers; (d) measures to facilitate enforcement; (e) banning out-of-package cigarette sales ("loosies"); and (f) requiring tobacco purchasers and vendors to be of legal smoking age;
- (4) requests that states adequately fund the enforcement of the laws related to tobacco sales to minors;
- (5) opposes the use of vending machines to distribute tobacco products and supports ordinances and legislation to ban the use of vending machines for distribution of tobacco products;
- (6) seeks a ban on the production, distribution, and sale of candy products that depict or resemble tobacco products;
- (7) opposes the distribution of free tobacco products by any means and supports the enactment of legislation prohibiting the disbursement of samples of tobacco and tobacco products by mail;
- (8) (a) publicly commends (and so urges local medical societies) pharmacies and pharmacy owners who have chosen not to sell tobacco products, and asks its members to encourage patients to seek out and patronize pharmacies that do not sell tobacco products; (b) encourages other pharmacists and pharmacy owners individually and through their professional associations to remove such products from their stores; (c) urges the American Pharmacists Association, the National Association of Retail Druggists, and other pharmaceutical associations to adopt a position calling for their members to remove tobacco products from their stores; and (d) encourages state medical associations to develop lists of pharmacies that have voluntarily banned the sale of tobacco for distribution to their members; and
- (9) opposes the sale of tobacco at any facility where health services are provided; and
- (10) supports that the sale of tobacco products be restricted to tobacco specialty stores.

Tobacco Product Labeling H-495.989

Our AMA: (1) supports requiring more explicit and effective health warnings, such as graphic warning labels, regarding the use of tobacco (and alcohol) products (including but not limited to, cigarettes, smokeless tobacco, chewing tobacco, and hookah/water pipe tobacco, and ingredients of tobacco products sold in the United States); (2) encourages the Food and Drug Administration, as required under Federal law, to revise its rules to require color graphic warning labels on all cigarette packages depicting the negative health consequences of smoking; (3) supports legislation or regulations that require (a) tobacco companies to accurately label their products, including electronic nicotine delivery systems (ENDS), indicating nicotine content in easily understandable and meaningful terms that have plausible biological significance; (b) picture-based warning labels on tobacco products produced in, sold in, or exported from the United States; (c) an increase in the size of warning labels to include the statement that smoking is ADDICTIVE and may result in DEATH; and (d) all advertisements for cigarettes and each pack of cigarettes to carry a legible, boxed warning such as: "Warning: Cigarette Smoking causes CANCER OF THE MOUTH, LARYNX, AND LUNG, is a major cause of HEART DISEASE AND EMPHYSEMA, is ADDICTIVE, and may result in DEATH. Infants and children living with smokers have an increased risk of respiratory infections and cancer;" (4) urges the Congress to require that: (a) warning labels on cigarette packs should appear on the front and the back and occupy twenty-five percent of the total surface area on each side and be set out in black-and-white block; (b) in the case of cigarette advertisements, warning labels of cigarette packs should be moved to the top of the ad and should be enlarged to twenty-five percent of total ad space; and (c) warning labels following these specifications should be included on cigarette packs of U.S. companies being distributed for sale in foreign markets; and (5) supports requiring warning labels on all ENDS products, starting with the warning that nicotine is addictive.

Tobacco Advertising and Media H-495.984

- (1) in keeping with its long-standing objective of protecting the health of the public, strongly supports a statutory ban on all advertising and promotion of tobacco products;
- (2) as an interim step toward a complete ban on tobacco advertising, supports the restriction of tobacco advertising to a "generic" style, which allows only black-and-white advertisements in a standard typeface without cartoons, logos, illustrations, photographs, graphics or other colors;
- (3) (a) recognizes and condemns the targeting of advertisements for cigarettes and other tobacco products toward children, minorities, and women as representing a serious health hazard; (b) calls for the curtailment of such marketing tactics; and (c) advocates comprehensive legislation to prevent tobacco companies or other companies promoting look-alike products designed to appeal to children from targeting the youth of America with their strategic marketing programs;
- (4) supports the concept of free advertising space for anti-tobacco public service advertisements and the use of counter-advertising approved by the health community on government-owned property where tobacco ads are posted;
- (5) (a) supports petitioning appropriate government agencies to exercise their regulatory authority to prohibit advertising that falsely promotes the alleged benefits and pleasures of smoking as well worth the risks to health and life; and (b) supports restrictions on the format and content of tobacco advertising substantially comparable to those that apply by law to prescription drug advertising;
- (6) publicly commends those publications that have refused to accept cigarette advertisements and supports publishing annually, via JAMA and other appropriate publications, a list of those magazines

that have voluntarily chosen to decline tobacco ads, and circulation of a list of those publications to every AMA member;

(7) urges physicians to mark the covers of magazines in the waiting area that contain tobacco advertising with a disclaimer saying that the physician does not support the use of any tobacco products and encourages physicians to substitute magazines without tobacco ads for those with tobacco ads in their office reception areas;

(8) urges state, county, and specialty societies to discontinue selling or providing mailing lists of their members to magazine subscription companies that offer magazines containing tobacco advertising;

(9) encourages state and county medical societies to recognize and express appreciation to any broadcasting company in their area that voluntarily declines to accept tobacco advertising of any kind;

(10) urges the 100 most widely circulating newspapers and the 100 most widely circulating magazines in the country that have not already done so to refuse to accept tobacco product advertisements, and continues to support efforts by physicians and the public, including the use of written correspondence, to persuade those media that accept tobacco product advertising to refuse such advertising;

(11) (a) supports efforts to ensure that sports promoters stop accepting tobacco companies as sponsors; (b) opposes the practice of using athletes to endorse tobacco products and encourages voluntary cessation of this practice; and (c) opposes the practice of tobacco companies using the names and distinctive hallmarks of well-known organizations and celebrities, such as fashion designers, in marketing their products;

(12) will communicate to the organizations that represent professional and amateur sports figures that the use of all tobacco products while performing or coaching in a public athletic event is unacceptable. Tobacco use by role models sabotages the work of physicians, educators, and public health experts who have striven to control the epidemic of tobacco-related disease;

(13) (a) encourages the entertainment industry, including movies, videos, and professional sporting events, to stop portraying the use of tobacco products as glamorous and sophisticated and to continue to de-emphasize the role of smoking on television and in the movies; (b) will aggressively lobby appropriate entertainment, sports, and fashion industry executives, the media and related trade associations to cease the use of tobacco products, trademarks and logos in their activities, productions, advertisements, and media accessible to minors; and (c) advocates comprehensive legislation to prevent tobacco companies from targeting the youth of America with their strategic marketing programs; and

(14) encourages the motion picture industry to apply an "R" rating to all new films depicting cigarette smoking and other tobacco use.

Tobacco Prevention and Youth H-490.914

(1) (a) urges the medical community, related groups, educational institutions, and government agencies to demonstrate more effectively the health hazards inherent in the use of tobacco products (including but not limited to, cigarettes, smokeless tobacco, chewing tobacco, and hookah/water pipe tobacco); (b) encourages state and local medical societies to actively advise municipalities and school districts against use of health education

material sponsored or distributed by the tobacco industry; and (c) publicly rejects the tobacco industry as a credible source of health education material;

(2) opposes the use of tobacco products of any kind in day care centers or other establishments where pre-school children attend for educational or child care purposes;

(3) advises public and private schools about the very early smoking habits observed in children and encourages appropriate school authorities to prohibit the use of all tobacco products in elementary through senior high school by anyone during the school day and during other school-related activities;

(4) (a) supports the concept that a comprehensive health education program stressing health maintenance be part of the required curriculum through 12th grade to: (i) help pre-teens, adolescents, and young adults avoid the use of tobacco products, including smokeless tobacco; and (ii) emphasize the benefits of remaining free of the use of tobacco products; (b) will work with other public and private parties to actively identify and promote tobacco prevention programs for minors and encourages the development, evaluation, and incorporation of appropriate intervention programs, including smoking cessation programs, that are tailored to the needs of children; and (c) recommends that student councils and student leaders be encouraged to join in an anti-smoking campaign.

(5) urges state medical societies to promote the use of appropriate educational films and educational programs that reduce tobacco use by young people;

(6) (a) favors providing financial support to promising behavioral research into why people, especially youth, begin smoking, why they continue, and why and how they quit; (b) encourages research into further reducing the risks of cigarette smoking; and (c) continues to support research and education programs, funded through general revenues and private sources, that are concerned with health problems associated with tobacco and alcohol use;

(7) opposes the practice of tobacco companies using the names and distinctive hallmarks of well-known organizations and celebrities, such as fashion designers, in marketing their products, as youth are particularly susceptible;

(8) supports working with appropriate organizations to develop a list of physicians and others recommended as speakers for local radio and television to discuss the harmful effects of tobacco usage and to advocate a tobacco-free society; and

(9) commends the following entities for their exemplary efforts to inform the Congress, state legislatures, education officials and the public of the health hazards of tobacco use: American Cancer Society, American Lung Association, American Heart Association, Action on Smoking and Health, Inc., Groups Against Smoker's Pollution, National Congress of Parents and Teachers, National Cancer Institute, and National Clearinghouse on Smoking (HEW).

FDA to Extend Regulatory Jurisdiction Over All Non-Pharmaceutical Nicotine and Tobacco Products H-495.973

Our AMA: (1) supports the U.S. Food and Drug Administration's (FDA) proposed rule that would implement its deeming authority allowing the agency to extend FDA regulation of tobacco products to pipes, cigars, hookahs, e-cigarettes and all other non-pharmaceutical tobacco/nicotine products not currently covered by the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act; (2) supports legislation and/or regulation of electronic cigarettes and all other non-pharmaceutical tobacco/nicotine products that: (a) establishes a minimum legal purchasing age of 21; (b) prohibits use in all places that tobacco cigarette use is prohibited, including in hospitals and other places in which health care is delivered; (c) applies the same marketing and sales restrictions that are applied to tobacco cigarettes, including prohibitions on television advertising, product placement in television and films, and the use of celebrity spokespeople; (d) prohibits product claims of reduced risk or effectiveness as tobacco cessation tools, until such time that credible evidence is available, evaluated, and supported by the FDA; (e) requires the use of secure, child- and tamper-proof packaging and design, and safety labeling on containers of replacement fluids (e-liquids) used in e-cigarettes; (f) establishes manufacturing and product (including e-liquids) standards for identity, strength, purity, packaging, and labeling with instructions and contraindications for use; (g) requires transparency and disclosure concerning product design, contents, and emissions; and (h) prohibits the use of characterizing flavors that may enhance the appeal of such products to youth; and (3) urges federal officials, including but not limited to the U.S. Food and Drug Administration to: (a) prohibit the sale of any e-cigarette cartridges and e-liquid refills that do not include a complete list of ingredients on its packaging, in the order of prevalence (similar to food labeling); and (b) require that an accurate

nicotine content of e-cigarettes, e-cigarette cartridges, and e-liquid refills be prominently displayed on the product alongside a warning of the addictive quality of nicotine.

RELEVANT KMA POLICY

1) Access to Tobacco by Children: KMA is to use every means at its disposal to support legislation that would contain the following elements:

- A. Opposition to the use of billboards or other mediums which advertise tobacco products visible from school property (K-12);
 - B. Tobacco vending machine usage be restricted to persons over 18 years of age;
 - C. In those areas where free smoking cessation clinics are unavailable, local health departments make available free smoking cessation clinics to children under the age of 18; and
 - D. No person, except adult employees of the school system who smoke in a designated room for that purpose, shall smoke on school property during school hours; outside sporting events are excluded. (Res E as amended, 1991 HOD, p 652; Reaffirmed, Special Report on Policy Sunset, 2001 HOD, p 578; Reaffirmed 2011)
- KMA supports increased fines for those who sell tobacco to minors. (Res 2009-10, 2009 HOD, p 533)
KMA supports penalties on the unlawful sale of tobacco products on the Internet to minors. (Res 2003-12, 2003 HOD, p 617; Reaffirmed 2013)
KMA supports the 100% Tobacco-Free School Campaign calling for all school districts to prohibit tobacco use by staff, students, and visitors 24 hours a day, seven days a week, inside school board-owned buildings or vehicles, on school-owned property, and during school-sponsored student trips and activities. (Res 2010-06, 2010 HOD, p 422)

2) Deleterious Effects of Tobacco Use: KMA encourages physicians to continue educational efforts directed to patients on the deleterious effects of tobacco use and encourages the Kentucky General Assembly to increase its attention to the serious health problem of tobacco product use and the trend of teenage smoking. (Res D, 1992 HOD, p 648; Amended and Reaffirmed, Special Report on Policy Sunset, 2002 HOD, p 576; Reaffirmed 2012)

3) Excise Tax:

- A. New revenues raised by increasing tobacco excise taxes should be applied to Kentucky Medicaid. (Res 2002-116, p 597; Reaffirmed 2012)
- B. KMA supports a substantial increase in the cigarette tax with additional revenues generated to be used to fund health-related initiatives including, but not limited to, tobacco cessation, expansion of insurance coverage for children, nutritional supplements for dialysis patients, and the colon cancer screening and treatment program. (Res 2008-14, 2008 HOD, p 625, Reaffirmed 2018)
- C. KMA seeks introduction and passage of legislation to increase the Kentucky state tax on all forms of smokeless tobacco to at least the national average. (Res 2013-09, 2013 HOD, p 384)

4) FDA Regulations: KMA does not support the use of tax dollars to finance efforts, including lawsuits, aimed at overturning or postponing FDA regulations regarding tobacco. (Res 96-122, 1996 HOD, p 599; Reaffirmed 2006, 2016)

5) Legal Minimum Age: KMA supports legislation that increases the legal minimum sale age for tobacco in Kentucky to 21. (Report of Community & Rural Health Committee, 2004 HOD, p 627; Reaffirmed 2014)

6) Sale of Tobacco: KMA reaffirms support for local municipalities and counties to adopt more stringent laws and regulations governing the sale and use of tobacco in local facilities; that smoking restrictions in state facilities used by the public in local communities be governed by the same local laws or regulations affecting other local businesses and privately owned facilities. KMA continues to support both additional state taxation on tobacco products to discourage use of tobacco products by minors and public funding of the development of agricultural alternatives to growing and processing of tobacco and tobacco products. (Res 97-135, 1997 HOD, p 578; Reaffirmed 2007, 2009)

7) Secondhand Smoke: KMA supports prohibition of smoking in public places including restaurants, bars, hospital campuses and in motor vehicles with children and encourages physicians to counsel patients about the health risks attributed to exposure to secondhand smoke. (Res 2007-06, 2007 HOD, p 664; Reaffirmed 2017)

KMA works with others to increase awareness of the dangers of radon and secondhand smoke as a health risk to Kentuckians. (Res 2010-05, 2010 HOD, p 422)

8) Statewide Ban on Smoking: Any statewide ban on smoking that KMA supports would not preempt local initiatives. (Res 2009-10, 2009 HOD, p 533)

9) Tobacco Use Prevention and Cessation Program: KMA endorses the efforts of the Kentucky Department for Public Health to prevent and reduce the use of tobacco products in Kentucky. (Res 2001-121, 2001 HOD, p 622; Reaffirmed 2009)

10) Workplace Wellness Smoking Cessation Incentives: KMA supports legislation to create an exemption to state law allowing employers to offer workplace wellness smoking cessation incentive programs. (Res 2009-05, 2009 HOD, p 533)