Hawaii Restricts E-Cigarette Sales to Youth
The Hawaii State Department of Health helps implement a new law banning the sale of e-cigarettes to minors.

In recent years, Hawaii has seen the number of kiosks and vendors selling electronic cigarettes (e-cigarettes) in Hawaii malls proliferate. Some of these kiosks were reportedly seen offering the products to youth. Results from Hawaii’s 2011 Youth Tobacco Survey found that 5.1 percent of high school students in Hawaii had used e-cigarettes. After a 2012 effort by Gov. Neil Abercrombie to propose a tax on e-cigarettes failed, Hawaii focused its attention on as bill restricting youth access to e-cigarettes. Supporting the Hawaii State Department of Health (HI DOH) were the state attorney general’s office, the Hawaii Department of Education (HI DOE), tobacco control coalitions, and community partners, who worked collaboratively to pass the bill. The legislation not only restricted the sale of e-cigarettes to persons over 18 years of age, but also eliminated all self-service displays of tobacco products.

Steps Taken:

- In 2013, the governor’s administrative package included proposed legislation to create a legal definition for electronic smoking devices and prohibit sales to persons under 18 years of age.
- The Coalition for a Tobacco-Free Hawaii (CTFH) and HI DOH conducted a statewide opinion poll among adult voters that included questions regarding the restriction of e-cigarette sales to minors.
- The poll results showed a high general awareness of e-cigarettes and strong public opinion in favor of restrictions to minors, with 82% of respondents supporting a ban of e-cigarette sales to those under the age of 18. The demonstration of strong public support helped advance the legislation.
- The 2013 administrative proposal recommended that the bill address only sales to minors rather than criminalizing e-cigarette possession by minors, since the latter approach reprimands youths—the victims—rather than the distributors who sell e-cigarette products to minors.
- HI DOH researched other states’ legislation and consulted with the Tobacco Control Legal Consortium to determine the best language to use in the e-cigarette bill. The proposed bill used the term “electronic smoking devices,” since this terminology is inclusive of the many forms in which e-cigarettes are manufactured. The bill defines electronic smoking devices as “any electronic product that can be used to simulate smoking in the delivery of nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.”

- In 2011, 5.1% of Hawaii high school students had experimented with e-cigarettes.
- In 2013, 82% of Hawaiians supported a ban on e-cigarette sales to minors.
- Hawaii Revised Statute §709-908 banned the sale of electronic smoking devices to minors under 18 years of age starting in 2013.
HI DOH and HI DOE informed legislators by providing data on the increasing use of e-cigarettes and youth experimentation. HI DOE had also previously prohibited the possession of e-cigarettes on all public school campuses for students of any age and cited this in testimony to the state legislature in support of the youth sales restriction.

CTFH, using state tobacco settlement funds to support its advocacy efforts, generated action alerts and organized community partners to provide testimony to the state legislature. REAL, an anti-tobacco youth advocacy group, organized considerable youth testimony (written and oral) to support this measure.

During Hawaii’s 2013 legislative session, the original administrative bill was deferred. However, the language banning e-cigarette sales to minors was subsequently added to another bill, HB 672, which also focused on restricting access to tobacco products.

HB 672 also included enforcement provisions requiring a sign to be placed at the point of sale for e-cigarette products stating that “the sale of tobacco products or electronic smoking devices to persons under 18 is prohibited.”

HI DOH convened a task force of police officers, compliance researchers, and CTFH representatives to design the required signage. HI DOH further led an initiative to distribute the new signage for tobacco product retailers using CDC funding. HI DOH mailed the new signs with instructions to the state’s list of registered tobacco retailers.

HI DOH developed and placed an advertisement in Hawaii Retail Grocer magazine to promote the new legislation and inform merchants about the requirement for new point-of-sale signage.

Results:

- The bill amended Hawaii Revised Statute §709-908 effective July 2013, prohibiting the sale or furnishing of electronic smoking devices to minors under the age of 18.
- The bill also required sales of other tobacco products including smokeless tobacco (but not e-cigarettes) to occur through a direct, face-to-face transaction rather than a self-service display.
- The state ban on e-cigarette sales to minors spurred several localities to also institute stricter regulations. For example, the Island of Hawaii passed a bill in December 2013 that increased the minimum age for sale of tobacco products, including e-cigarettes, from 18 to 21 in the County of Hawaii.
- In December 2013, HI DOH created its own internal policy prohibiting the use of e-cigarettes on all premises where its employees work and in HI DOH vehicles throughout the state. This policy went into effect on Jan. 1, 2014. HI DOH also created a draft policy template and signage for other businesses interested in implementing similar policies.
- The 2013 and 2015 Hawaii Youth Tobacco Surveys will include more detailed questions about e-cigarettes than the 2011 survey. The survey results will be posted on the Hawaii Health Data Warehouse when they are available. These revised questionnaires will measure the legislation’s impact among the diverse youth population of Hawaii. HI DOH and CTFH will conduct a new opinion survey with more questions regarding e-cigarettes. Hawaii has also added new questions regarding e-cigarette use to its BRFSS survey.
- HI DOH has continued to receive calls from businesses, agencies, restaurants, and bars asking about e-cigarettes and their compliance with indoor smoking laws. In response, the Tobacco Prevention and Education Program provides information and shares its draft policy and signage.
Following the success of the 2013 law, several Hawaii legislators proposed new bills in the 2014 legislative session that would include e-cigarettes in the state’s clean indoor air laws and require licensure and permits for wholesalers and retailers selling the devices. This proposed legislation did not pass, but the proposed bills would have provided regulatory ability, such as licensing and taxation, and would have removed e-cigarettes’ visibility in public spaces and workplaces, which could impact social norms for young people.

Lessons Learned:

- Electronic smoking devices are evolving products and they continue to be marketed in many forms, so use a broad definition when deciding on language for legislation.
- Don’t underestimate e-cigarette manufacturers and the tobacco industry as opponents, and be prepared with good research to refute their lobbying efforts. Manufacturers often deemphasize the potential risks of e-cigarettes to legislators, claiming they are not marketing to youth despite youth-appealing flavors like bubble gum. E-cigarette manufacturers know how to appeal to legislators, and now that most brands have been bought by tobacco companies, they have large marketing and advertising budgets along with national distribution networks to sway public opinion. They have also begun to organize and provide scripts with a small business appeal for local merchants to use to provide testimony to the legislature in opposition of e-cig regulations.
- There is still a lot to learn about e-cigarettes and how to inform the public about these devices and their components. Since these are emerging products, few states have examples of e-cigarette PSAs or health communications campaigns. The limited amount of scientific data, combined with the lack of existing messaging, makes it difficult for states for develop media campaigns. More formative evaluation is needed to support the development of creative counter-marketing.
- Show decisionmakers examples of e-cigarette marketing to demonstrate their youth appeal.
- Legislation on e-cigarettes may move incrementally. Hawaii’s successful passage of a ban on sales to youth came after another proposed bill to tax e-cigarettes had been unsuccessful. In 2014, a number of bills were proposed addressing several facets of regulating and taxing e-cigarettes, including new state clean indoor air legislation. Although the process may be long, incremental progress is still important to build support and move toward more comprehensive regulations.

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