Case Study – Regulate the Sale of E-Cigarettes

Alan Dellapenna, Jr.
Injury and Violence Prevention Branch
North Carolina Division of Public Health
NC Senate panels looks to protect kids from e-cigarette liquids

Regulate the Sale of E- Liquid Containers Law

Signed into law - July 8, 2015

- Unlawful to sell e-liquid unless in a child-resistant container (CRC)
- Class A1 misdemeanor (1-60 Days jail 1st offence)
- Liable for damages
- Effective Dec 1, 2015
Problem Identification

Calls to Carolinas Poison Center for e-liquid exposure increase 1,613% over 3 years

Exposures to Electronic Cigarettes and/or Liquid Nicotine Reported to Carolinas Poison Center
What is an E-Cigarette?
- E-cigarettes (also called vapor products) are battery operated devices that heat a liquid solution, normally containing nicotine, to produce an aerosol inhaled by the user.
- Some e-cigarettes use cartridges that can be refilled with a liquid solution (e-liquid).

What is the Danger for Kids?
- Liquid nicotine is extremely toxic.
- Even small amounts of e-liquid, whether swallowed or adsorbed through the skin, can cause vomiting, seizures, or death.
- E-liquid comes in many flavors that are enticing to children.
- E-liquid containers are currently packaged in a way that does not protect against child tampering and opening.
- A child in the United States recently died from e-liquid poisoning.
2 Types of E-Cigarette Systems

Closed or Open

Buy the vape device; product (e-liquid) sold and filled separately.

E-liquid is a new, unregulated industry.

The child injury hazard is the packaging of the e-liquid container.

Big Tobacco

New Players to the Smoking Business
E-Liquid is sold in **7,700+ Flavors**

Containers are attractive to children, packaging isn’t child resistant.

Labeling is typically colorful with images that are enticing to children.
Poison Prevention Packaging Act

Enacted in 1970, requires a number of household substances to be packaged in child-resistant packaging. The packaging required by the PPPA must be designed or constructed to be significantly difficult for children under five years of age to open within a reasonable time, and not difficult for normal adults to use properly.

Haddon’s 10 Strategies for Preventing Injury and Violence

1. Prevent the creation of the hazard. (example: stop producing poisonous agents)
2. Reduce the amount of the hazard. (example: package toxic drugs in smaller, safer amounts)
3. Prevent the release of a hazard that already exists. (example: make bathtubs less slippery)
4. Modify the rate or spatial distribution of the hazard. (example: require automobile air bags)
5. Separate, in time or space, the hazard from that which is to be protected. (example: use sidewalks to separate pedestrians from automobiles)
6. Separate the hazard from that which is to be protected by a material barrier. (example: insulate electrical cords)
7. Modify the conditions under which the hazard acts. (example: improve the host’s physical condition through appropriate nutrition and exercise programs)
8. Make what is to be protected more resistant to damage from the hazard. (example: improve the host’s physical condition through appropriate nutrition and exercise programs)
9. Begin to counter the damage already done by the hazard. (example: provide emergency medical care)
10. Stabilize, repair, and rehabilitate the object of the damage. (example: provide acute care and rehabilitation facilities)

Existing Law in Place

This moment passed in 2010
Addressing the emerging hazard of vaping at the Federal level falls between the jurisdictions of 2 agencies.

**FDA** – Framed by the Tobacco Wars, FDA is locked in by Big Tobacco lawyers - *Is this a tobacco product?*

**CPSC** – One of our Agencies Exists with diminished capacity; *without a congressional mandate* its a very long and slow journey to *regulatory action*.
Strategies and Policy Development

We didn’t want to watch child death and injury pile up while waiting for federal action.

We decided to put a spot light on the issue and let the NC legislators and partners take up the issue.
The Child Fatality Task Force

A legislative study commission

- Examines the causes of child death
- Makes recommendations to the Governor & General Assembly on how to:
  - Reduce child death
  - Prevent abuse and neglect
  - Support safe and healthy child development.

35 Appointed Members

- 4 by the Governor
- 10 by the Speaker of the House (including 5 legislators);
- 10 by the President Pro Tempore of the Senate (including 5 legislators)
- 11 Ex Officio (by virtue of their position in state government).
  + Many Volunteers, like me.

Regulating E-Cigarettes went thru the Unintentional Death Committee, Co-Chair, Alan Dellapenna
North Carolina Division of Public Health team
A collaboration of the **Tobacco Prevention and Control Branch** and **Injury and Violence Prevention Branch** with the support of the **Chronic Disease & Injury Section**

**Chronic Disease & Injury Section**

**Policy & Environmental Change Community of Practice**

- A cross-CDI Section collaborative, critical to our ability to do Policy work
- A learning lab for policy action
- Policy tracker
- Venue to gain leadership support

Dr. Carolyn Crump & Jim Emery
<table>
<thead>
<tr>
<th>Short Title</th>
<th>Bill Number</th>
<th>Status</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 30, 2015</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CDIS Bills and Laws of Interest from 2015 NCGA Session</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chronic Disease &amp; Injury Section Bill Tracker</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Section:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establish State Public Health Authority.</td>
<td>SB235</td>
<td>Referred to Committee On Rules and Operations of the Senate on 03/11/2015</td>
<td>Senate bill referred to Committee On Rules and Operations of the Senate on 03/14/2015</td>
</tr>
<tr>
<td>Study Unified Public Health System.</td>
<td>SB231</td>
<td>Referred to Committee On Rules and Operations of the Senate on 03/11/2015</td>
<td>House bill referred to Com On Insurance on 03/04/2015</td>
</tr>
<tr>
<td><strong>Cancer Prevention and Control</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jim Fulghum Teen Skin Cancer Prevention Act.</td>
<td>HB158</td>
<td>House bill passed the Committee on Health and re-referred to the Committee on Regulatory Reform on 03/16/2015</td>
<td>Senate bill referred to Committee On Rules and Operations of the Senate on 03/11/2015</td>
</tr>
<tr>
<td></td>
<td>SB125</td>
<td>SB re-referred to Committee On Health Care on 03/11/2015</td>
<td></td>
</tr>
<tr>
<td>NC Cancer Treatment Fairness.</td>
<td>HB306</td>
<td>Filed on 03/18/2015</td>
<td></td>
</tr>
<tr>
<td><strong>Injury and Violence Prevention</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NC Toxic-Free Kids Act.</td>
<td>SB81</td>
<td>Re-referred to Commerce. If fav., re-referred to Health Care. If favorable, re-referred to Appropriations/Base Budget on 03/09/2015</td>
<td>Senate bill referred to Committee on Transportation, if favorable, Appropriations 03/16/2015</td>
</tr>
<tr>
<td>Strengthen Controlled Substances Monitoring.</td>
<td>HB165</td>
<td>House bill referred to the Committee on Health, if favorable, Judiciary II on 03/09/2015</td>
<td>Senate bill referred to Committee On Rules and Operations of the Senate 03/11/2015</td>
</tr>
<tr>
<td></td>
<td>SB317</td>
<td>Senate bill referred to Committee On Rules and Operations of the Senate on 03/18/2015</td>
<td>Senate bill referred to Committee on Rules and Operations of the Senate 03/11/2015</td>
</tr>
<tr>
<td>Suicide Prevention Resolution.</td>
<td>HR 83</td>
<td>Referred To Committee On Rules, Calendar, and</td>
<td></td>
</tr>
</tbody>
</table>
Internal Strategies

• **Policy Agenda’s** – include the issue on the Section, Division and Department Policy Agenda

• **Bill Review**

Important steps to *sanction* the activity.

Expecting *help* from internal support is *unrealistic*.

The goal is *lack of opposition* to work on the issue.

Makes working on the issue *official*, creates more space to work than asking for permission.

An official way to communicate about the issue if & when it hits the Gov’s desk

• “Sign the bill into law”,
• “Don’t veto”,
• “This on your official policy agenda.”
External Consultation that helped in Policy Development
External Partners

We can’t meet with Legislators. We rely on partners.

- Legislators need subject matter experts to educate/shape legislation.
- Partners can say and do things we can’t.

Child Fatality Task Force

- Venue to raise the issue,
- Make the case for legislation,
- Gain support/commitment to introduce legislation.

Lobbyist from partner organizations

- Lobbyists for child serving organizations collaborate to work on CFTF bills
- Play an *intermediary* role; work with DPH staff and legislators when DPH staff can’t meet with legislators.
In the 2015 session, the Senate Rules Committee is where bills went to die.

(350+ bills)

Sen Stan Bingham (R)

Legislation that moved in 2015 had a sponsor with seniority, lined up support, & worked behind the scenes to keep the bill moving.
Dec 30, 2015

Anna Stein at DPH prepared the initial draft of the bill, a solid starting point.

Tom V. worked with Sen. Bingham to craft the bill with industry lobbyists.

Most of the Work on the bill was done Before the Bill Hit the First Committee
Crafting the Bill with Industry Lobbyists
Strange Bedfellows in a Big Tobacco State

Big Tobacco, the Vaping Industry, and Public Health collaborated in a new/uncomfortable alliance for this bill.

Big Tobacco backs closed system products, sees the Vape Industry as an unregulated threat to their market.

The Vape Industry recognizes the poisoning hazard of their product packaging, seeks federal regulation, but is in a fight to avoid classification as a tobacco product.

Fed action coming and doesn’t oppose the bill.

Big Tobacco is the Vape Industry’s enemy. Public Health is in a unique positon to press for action, but has to work with Big Tobacco.
Senate Bill 286 / S.L. 2015-141

Regulate the Sale of E-Liquid Containers.
2015-2016 Session

Last Action: Ch. SL 2015-141 on 07/08/2015
Sponsors: Stan Bingham; Don Davis; (Primary)
           Angela R. Bryant; Waddell;
Attributes: Public; Text has changed;
Counties: No counties specifically cited
Statutes: 14 (Chapter); 130A-29, 14-401.18A (Sections)
Keywords: CHARTERED, COMMERCE, COMMISSIONS, PRESENTED, PUBLIC,
           PUBLIC HEALTH, PUBLIC HEALTH COMM., RATIFIED, RETAILING,
           SAFETY, TOBACCO, TOBACCO PRODUCTS

Vote History
Date       Subject          RC.S #  Aye  No  N/V  Exc. Abs.  Exc. Vote  Total  Result
04/22/2015 2:35PM  Second Reading   [S] - 128 48   0   0    2      0     48   PASS
06/25/2015 12:35PM  Second Reading   [H] - 308 106   0   2    12    0    106   PASS
3 days of committee work to pass in the Senate

2 Months in the House, went thru a few more committees
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-141
SENATE BILL 286

AN ACT PROHIBITING THE SALE OF E-LIQUID CONTAINERS WITHOUT CHILD-RESISTANT PACKAGING AND WITHOUT LABELING E-LIQUID CONTAINERS THAT CONTAIN NICOTINE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-401.18A. Sale of certain e-liquid containers prohibited."

(a) The following definitions apply in this section:

(1) Child-resistant packaging. — Packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

(2) E-liquid. — A liquid product, whether or not it contains nicotine, that is intended to be vaporized and inhaled using a vapor product.

(3) E-liquid container. — A bottle or other container of e-liquid. The term does not include a container holding liquid that is intended for use in a vapor product if the container is pre-filled and sealed by the manufacturer and is not intended to be opened by the consumer.

(4) Vapor product. — Any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid solution contained in a vapor cartridge. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, and electronic pipe.

(b) It shall be unlawful for any person, firm, or corporation to sell, offer for sale, or introduce into commerce in this State an e-liquid container unless the container constitutes child-resistant packaging. Any person who violates this section is guilty of a Class A1 misdemeanor.

(c) It shall be unlawful for any person, firm, or corporation to sell, offer for sale, or introduce into commerce in this State an e-liquid container for an e-liquid product containing nicotine unless the packaging for the e-liquid product states that the product contains nicotine. Any person who violates this section is guilty of a Class A1 misdemeanor.

(d) Any person, firm, or corporation that violates the provisions of this section shall be liable in damages to any person injured as a result of the violation."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 1:45 p.m. this 8th day of July, 2015

Final enacted law.

A few changes from draft Anna prepared.
The Child Fatality Task Force sent letters to vape shops informing them of the new law.

The North Carolina CRC (Child Resistant Cap) law goes into effect December 1, 2015. If you are a shop and have e-liquid that is not CRC compliant, you will be in violation of this law. Below is the verbiage of the law for your review.

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read: "§ 14-401.18A. Sale of certain e-liquid containers prohibited. (a) The following definitions apply in this section: (1) Child-resistant packag... See More
Statement by the Press Secretary on S. 142, S. 1115 and S. 1629

On Thursday, January 28, 2016, the President signed into law:

S. 142, the “Child Nicotine Poisoning Prevention Act of 2015,” which requires the packaging of liquid nicotine containers to be subject to existing child poisoning prevention packaging standards;