Massachusetts Vaping Product Ban

On September 24, 2019, Governor Baker declared a public health emergency in the Commonwealth due to severe lung disease associated with the use of e-cigarettes and vaping products and the epidemic of e-cigarette use among youth.

The Commissioner of Public Health has temporarily prohibited the sale and display of all vaping products and e-cigarettes until further notice.

For help quitting:
MakeSmokingHistory.org
1-800-QUIT-NOW
GOVERNOR'S DECLARATION OF EMERGENCY

WHEREAS, the federal Centers for Disease Control and Prevention (CDC), the federal Food and Drug Administration (FDA), and state and local health departments nationally are investigating a multistate outbreak of severe lung disease associated with the use of vaping products including but not limited to e-cigarettes;

WHEREAS, as of September 19, 2019, the CDC had confirmed 530 cases across 38 states and U.S. territories, including seven fatalities in six different states;

WHEREAS, all reported cases have a history of vaping and have indicated a history of using vaping products containing tetrahydrocannabinol (THC), nicotine, or a combination of THC and nicotine;

WHEREAS, vaping products use an e-liquid that may contain nicotine, THC and/or cannabinoind oils, in addition to a combination of flavoring, propylene glycol, vegetable glycerin, and other ingredients and may also contain toxic chemicals such as formaldehyde, acrolein, acrylonitrile, propylene oxide, crotonaldehyde and acetaldehyde, as well as metal particles such as nickel, lead, and chromium, which can be inhaled into the lungs;

WHEREAS, although the recent outbreak is associated with vaping products, the specific cause of this disease is unknown;

WHEREAS, cases of vaping-associated pulmonary disease show diverse symptoms and signs of lung injury, including cough, chest pain, shortness of breath, low levels of blood oxygen, abnormal chest X-rays or CT scans, and pathologic evidence of damage to lung tissue that can be severe;

WHEREAS, nationally from 2017 to 2018 vaping use among youth has increased 78% among high school students and 48% among middle school students and the total number of children who are currently vaping rose to 3.6 million in 2018;

WHEREAS, in December 2018, the United States Surgeon General Jerome Adams officially declared vaping among youth in the United States an epidemic;
WHEREAS, Massachusetts youth usage mirrors national trends with 41% of all youth in 2017 reporting trying e-cigarettes and one in five reporting that they use e-cigarettes regularly;

WHEREAS, vaping products are marketed and sold in a wide variety of flavors that make them easier to use and more appealing to youth;

WHEREAS, nationally cases of vaping-associated pulmonary injury have occurred in all age groups, with 83% of cases occurring in those younger than 35 years of age;

WHEREAS, on September 11, 2019, the Commissioner of Public Health declared cases of unexplained vaping-associated pulmonary disease to be immediately reportable to the Massachusetts Department of Public Health (DPH) and further authorized the DPH to conduct surveillance activities necessary for the investigation, monitoring, control and prevention of this disease;

WHEREAS, to date more than 60 Massachusetts residents have already been reported with lung injury potentially related to vaping to DPH;

WHEREAS, as of September 24, 2019, five of these reports of lung injury meet the CDC case definition of confirmed or probable cases, and Massachusetts joins 38 other U.S. states in reporting cases to the CDC;

WHEREAS, these confirmed and probable cases in Massachusetts are among both teenagers and older adults and are linked to a range of vaped products; and

WHEREAS, it is necessary for the DPH to take action immediately to address this public health emergency;

NOW, THEREFORE, I, Charles D. Baker, the Governor of the Commonwealth of Massachusetts, pursuant to M.G.L. chapter 17, section 2A, declare that an emergency exists which is detrimental to the public health in the Commonwealth.

This declaration of a public health emergency is effective immediately and shall remain in effect until notice is given, pursuant to my judgment, that the public health emergency has terminated.

Given this 24th day of September two thousand and nineteen.

[Signature]

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts
ORDER OF THE COMMISSIONER OF PUBLIC HEALTH PURSUANT TO THE
GOVERNOR’S SEPTEMBER 24, 2019 DECLARATION OF A PUBLIC HEALTH
EMERGENCY

On September 24, 2019, Governor Charles D. Baker issued a declaration that a public health emergency exists in the Commonwealth due to severe lung disease associated with the use of e-cigarettes and vaping products and the epidemic of e-cigarette use among youth. For the reasons set forth in the declaration, in addition to evidence and facts presented at the Public Health Council meeting, and in consideration of the on-going federal and state investigation into the causes of vaping-related disease, I, with the approval of the Governor and the Public Health Council pursuant to G.L. c. 17, §2A, issue the following Order:

The sale or display of all vaping products to consumers in retail establishments, online, and through any other means, including all non-flavored and flavored vaping products, including mint and menthol, including tetrahydrocannabinol (THC) and any other cannabinoid, is prohibited in the Commonwealth.

“Vaping products” means: 1) any product intended for human consumption by inhalation regardless of nicotine content, whether for one-time use or reusable, that relies on vaporization or aerosolization, including but not limited to electronic cigarette, electronic cigars, electronic cigarillos, electronic pipes, electronic vaping product delivery pens, hookah pens, and any other similar devices that rely on vaporization or aerosolization; and 2) any component, part, or accessory of a product or device defined in subsection 1), even if sold separately. “Vaping products” does not include any product that has been approved by the federal Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

While this Order is in effect the Department of Public Health, along with any board of health or authorized agent pursuant to G.L. c. 111, §30, may take any enforcement action permitted by law or this Order to effectuate this Order as it applies to sales of vaping products to consumers.

Pursuant to the authority granted by G.L. c. 17, §2A, this Order may be enforced in the manner of a regulation adopted pursuant to G. L. c. 111, §31, and by injunction through proceedings initiated in the Superior Court. A person or entity found in violation of this Order may also be subject to the maximum fine provided in G. L. c. 111, §31; provided that violations shall be calculated on a per item and per transaction basis and may be punished cumulatively. Subject to valid court order issued by a court of competent jurisdiction, State Police or local law enforcement may seize any vaping products from entities or persons that continue to display or sell vaping products in violation of this Order.

The Cannabis Control Commission and the Division of Agricultural Resources shall enforce this Order to the extent it applies to their registered or licensed entities.

If any provisions of this Order or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or the application thereof to other persons, entities, and circumstances.
This Order takes effect immediately and shall remain in effect, unless extended with the approval of the Governor and the Public Health Council, through January, 25, 2020, or until the declared public health emergency is terminated, or the Order is otherwise rescinded by me, whichever happens first.

IT IS SO ORDERED.

\[\text{Signature}\]

Monica Bharel, MD, MPH, Commissioner
Department of Public Health

[Sept 24, 2019]

Date