

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

BILL NO. 2014-__

Prohibiting the Procurement of Electronic Nicotine Devices to Minors

SPONSOR(S): Trujillo, Bushee

SUMMARY: At the November 19, 2013 Public Safety Committee meeting, the Public Safety Committee approved a proposed bill that would have created a new section in the City's criminal code that would have prohibited the procurement of electronic nicotine devices by minors.

Thereafter, the City Attorney's Office found that that bill did not conform to the standards of the American Cancer Society so the sponsor withdrew that version of the bill and now proposes the attached bill which will conform to the standards of the American Cancer Society.

The proposed bill will prohibit the procurement of electronic nicotine devices by minors in the same manner as the current Ordinance prohibits the procurement of tobacco by minors. Additionally, the bill amends the definition of "tobacco product" and creates a new definition for "electronic smoking device".

At the December 17, 2013 Public Safety Committee meeting, the Committee proposed amendments to the bill that would remove the following language:

1. "Electronic smoking device does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marked and sold solely for the approved purpose."
2. "Tobacco product does not include any product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold solely for the approved purpose."

PREPARED BY: Rebecca Seligman, Legislative Liaison Assistant

FISCAL IMPACT: No

DATE: December 17, 2013

ATTACHMENTS: Bill
FIR
Tobacco Fact Sheet

ACTION SHEET
ITEM FROM PUBLIC SAFETY COMMITTEE MEETING OF 12/17/13

ISSUE: Proposed ordinance relating to the prohibition of procurement of tobacco by minors; amending subsection 16-15.4 SFCC 1987 to amend the definition of "tobacco product" and create a new definition for "electronic smoking device"

PUBLIC SAFETY COMMITTEE ACTION: Recommend approval with amendments

SPECIAL CONDITIONS OR AMENDMENTS: remove language in paragraph A1,3

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO	X		
VICE-CHAIRPERSON HARRIS	X		
MEMBER MIKE MIER	X		
MEMBER NANCY OWEN-LEWIS	X		
MEMBER PETER MIZRAHI	X		
MEMBER MIKE BOWEN	ABSENT		
MEMBER CHRIS RIVERA	X		

DISK fc1/fcmissue

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2013-__
Electronic Nicotine Devices to Minors

Mayor and Members of the City Council:

We propose the following amendment(s) to Bill No. 2013-__ :

1. On pages 1, line 25 and page 2, lines 1 – 2, ***delete** “‘Electronic smoking device’ does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marked and sold solely for the approved purpose.”*

2. On page 2, lines 11 – 13, ***delete** “‘Tobacco product’ does not include any product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold solely for the approved purpose.”*

Respectfully submitted,

Public Safety Committee

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Yolanda Y. Vigil, City Clerk

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2014-____

INTRODUCED BY:

Councilor Ronald S. Trujillo

AN ORDINANCE

RELATING TO THE PROHIBITION OF THE PROCUREMENT OF TOBACCO BY MINORS; AMENDING SUBSECTION 16-15.4 SFCC 1987 TO AMEND THE DEFINITION OF "TOBACCO PRODUCT" AND CREATE A NEW DEFINITION FOR "ELECTRONIC SMOKING DEVICE".

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Subsection 16-15.4 SFCC 1987 (being Ord. #2005-7, §3) is amended to read:

16-15.4 ~~[Procuring]~~ Prohibiting the Procurement of Tobacco by Minors.

A. Definitions as used in this section:

(1) Electronic smoking device means any product containing or delivering nicotine or any substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. "Electronic smoking device" includes any component part of such product whether or not sold separately. "Electronic smoking device" does not include any product that has been approved by the

1 United States Food and Drug Administration for sale as a tobacco cessation product and is
2 being marketed and sold solely for the approved purpose.

3 ([1]2) *Minor* means an individual who is less than eighteen (18) years of age.

4 ([2]3) *Tobacco product* means any ~~[tobacco cigarette, cigar, pipe tobacco,~~
5 ~~smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking,~~
6 ~~chewing, inhalation or other manner of ingestion]~~ product that is made from or derived from
7 tobacco or contains nicotine or any substance intended to be inhaled or ingested in a way that
8 simulates smoking, and is intended for human consumption or is likely to be consumed,
9 whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other
10 means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco,
11 snuff, snus or an electronic smoking device. "Tobacco product" does not include any product
12 specifically approved by the United States Food and Drug Administration for sale as a
13 tobacco cessation product that is being marketed and sold solely for the approved purpose.

14 B. No person shall knowingly sell, offer to sell, barter or give any tobacco product to
15 any minor.

16 C. No minor shall procure or attempt to procure any tobacco products.

17 D. No person shall sell, offer to sell or deliver a tobacco product in a form other than an
18 original factory-sealed package.

19 E. Evidence of the age and identity of the person may be shown by any document that
20 contains a picture of the person issued by a federal, state, county or municipal government, including
21 a motor vehicle driver's license or an identification card issued to a member of the armed forces.

22 F. Any person selling goods at retail or wholesale may refuse to sell tobacco products to
23 any person who is unable to produce an identity card as evidence that he is eighteen (18) years of age
24 or over.

25 G. No minor shall present any written, printed, or photostatic evidence of age or identity


1 that is false for the purpose of procuring or attempting to procure any tobacco products.

2 H. A person who sells, distributes, promotes or advertises tobacco products shall not
3 provide free samples or tobacco products to a minor. This shall not apply to an individual who
4 provides free samples of tobacco products to a family member or to an acquaintance on private
5 property not held open to the public.

6 I. The police department [~~shall~~] is authorized to conduct random, unannounced
7 inspection of facilities where tobacco products are sold to ensure compliance with the provisions of
8 the section.

9 J. Any person who violates paragraphs B, D and H of this section is guilty of a petty
10 misdemeanor. A person who violates paragraphs C and G of this section shall be referred to the
11 juvenile probation office.

12 APPROVED AS TO FORM:

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14 _____
15 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

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25 *M/Melissa/Bills 2013/Electronic Nicotine to Minors-final*

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X Resolution: _____
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): A bill relating to the prohibition of the procurement of tobacco by minors; amending Subsection 16-15.4 SFCC 1987 to amend the definition of "tobacco product" and create a new definition for "electronic smoking device".

Sponsor(s): Trujillo

Reviewing Department(s): City Attorney's Office

Person Completing FIR: Rebecca Seligman Date: December 3, 2013 Phone: 955-6501

Reviewed by City Attorney: Kelly A. Brennan Date: 12/10/13
(Signature)

Reviewed by Finance Director: [Signature] Date: 12/19/13
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution.

The purpose of this bill is to amend Subsection 16-15.4 SFCC 1987 to amend the definition of "tobacco product and create a new definition for "electronic smoking device."

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

☒ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

Personnel* \$ _____ _____ _____ \$ _____ _____ _____ _____

Fringe** \$ _____ _____ _____ \$ _____ _____ _____ _____

Land/
Building \$ _____ _____ _____ \$ _____ _____ _____ _____

Professional Services \$ _____ _____ _____ \$ _____ _____ _____ _____

All Other Operating Costs \$ _____ _____ _____ \$ _____ _____ _____ _____

Total: \$ _____ _____ _____ \$ _____ _____ _____ _____

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- To indicate new revenues and/or
- Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY	"R" Costs Recurring or "NR" Non-recurring		"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

_____ \$ _____ _____ \$ _____ _____ _____

_____ \$ _____ _____ \$ _____ _____ _____

_____ \$ _____ _____ \$ _____ _____ _____

Total: \$ _____ _____ \$ _____ _____ _____ _____

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Not applicable

Section D. **General Narrative**

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None staff is aware of.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

There would be no regulation in place that would prohibit the sale or procurement of electronic nicotine delivery products or e-cigarettes by minors.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Amending the definition of "tobacco product" and creating a definition for "electronic smoking device" would include prohibiting the sale of electronic smoking devices to minors and would further promote health consciousness in our community.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

TOBACCO FACT SHEET

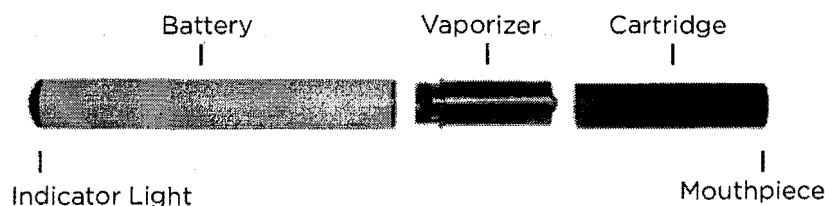
ELECTRONIC CIGARETTES (E-CIGARETTES)



Electronic cigarettes (e-cigarettes or e-cigs), known formally as electronic nicotine delivery systems (ENDS), are devices designed to look similar to cigarettes in shape, size, and general appearance.¹ They operate by vaporizing a solution containing nicotine, creating a mist that is then inhaled.¹ The tips of these devices often have an indicator light, designed to emulate the burning ash of a traditional cigarette.¹ According to product manufacturers, e-cigarette cartridges are available in various flavors, such as vanilla,² menthol,² and piña colada,² and varying claimed levels of nicotine.¹ Using an e-cigarette is commonly referred to as “vaping.” Popular brands of e-cigarettes, sold at convenience stores and gas stations, include “blu” and “NJOY.”

BACKGROUND

- The components of a typical e-cigarette are illustrated below:



- Cartridges generally contain up to 20 mg of nicotine.³
- Some users refill their own cartridges, which may be dangerous because it involves dealing with potentially dangerous concentrations of nicotine.⁴ Refill bottles contain up to 7 grams of nicotine;⁵ the fatal dose of nicotine in adults is estimated at 30–60 mg while for children it is estimated at only 10 mg⁶ — or approximately 4 drops of a maximum strength refill solution. This risk is more consistent with nicotine-based pesticides, rather than traditional tobacco products and pose a danger via inhalation, ingestion, and skin contact.⁷

PREVALENCE

- Between 6.4% and 7.1% of current smokers have ever used an e-cigarette, compared to ever use of e-cigarettes among never smokers (less than 1.0%).⁸

SAFETY & QUALITY

- On July 22, 2009 the U.S. Food and Drug Administration's (FDA) Division of Pharmaceutical Analysis analyzed the ingredients in a small sample of cartridges from two leading brands of e-cigarettes and found that the tested products contained detectable levels of known carcinogens and toxic chemicals. Diethylene glycol, a potentially lethal organic compound,⁹ was found in one cartridge, while nitrosamines were detected in several cartridges.¹⁰
- Other important findings from the FDA include the following:
 - The quality control processes used to manufacture e-cigarettes seem to be inconsistent or non-existent. Three different e-cigarette cartridges with the same label were tested and each emitted a distinct amount of nicotine with each puff.⁹
 - In all but one, the e-cigarette cartridges that were labeled as containing no nicotine had low levels of nicotine.⁹

- The vapor from one high-nicotine cartridge delivered twice as much nicotine when inhaled than was delivered by the control, a sample of FDA-approved nicotine inhalation products.⁹
- Studies^{11,12} suggest adverse effects associated with e-cigarettes, but additional non-biased national and international research is needed to understand the effects of both short- and long-term use

LEGAL STATUS & REGULATION

- The FDA attempted to regulate e-cigarettes as drug-delivery devices but failed after the courts determined that e-cigarettes were properly regulated under the FDA's tobacco authority pursuant to the 2009 Family Smoking Prevention and Tobacco Control Act (FSPTCA) and not the FDA's drug delivery device authority.^{13,14}
- In April 2011, the FDA issued a statement announcing that they intend to regulate e-cigarettes as "tobacco products." This includes: (1) marketing restrictions, (2) mandated ingredient listing, and (3) pre-market review.¹² However, to date, FDA has not asserted its authority over e-cigarettes and they remain unregulated.
- Several state and local governments, including New Jersey¹⁵ and King County, Washington,¹⁶ have included or are in the process of adding e-cigarettes to their smoking bans. Additionally, the U.S. Department of Transportation banned the use of e-cigarettes on planes.¹⁷
- California, Minnesota, New Hampshire, New Jersey, and Utah have prohibited the sale of e-cigarettes to minors since March 2011.¹⁸

MARKETING & COMMERCIAL APPEAL

- The e-cigarette companies advertise their products as a better-smelling, cheaper, and guilt-free alternative to smoking.¹⁹ They are also marketed as a way to circumvent some smoking bans.²⁰
- E-cigarettes are promoted heavily online^{1,21} and are more widely searched than snus and NRTs (nicotine replacement therapy).¹⁹
- There is concern that e-cigarettes may appeal to youth because of their high-tech design, easy availability online or via mall kiosks, and the wide array of flavors of cartridges.²²

ATTITUDES & CONCERNS

- A nationally-representative survey found that 40.2% of Americans have heard of e-cigarettes and more than 70.0% of smokers believe that e-cigarettes are less harmful than regular cigarettes.²³
- The most commonly cited reasons for use by e-cigarette users include: the perception that they are healthier/less toxic than traditional cigarettes, aid in tobacco craving/withdrawal symptoms, smoking cessation facilitator, and relapse avoidance.²⁴
- In addition to the health concerns cited above, recent studies suggest that e-cigarettes could be worrisome regarding relapse of former smokers,²⁵ the "re-normalization" of tobacco,²³ and a gateway for cigarettes.^{23,26} It is also thought that e-cigarettes can contribute to tobacco use by allowing smokers to use nicotine despite ever-increasing smoking bans (dual use).²² Since they recently emerged on the market, however, more research must be done to fully understand the consequences.
- The World Health Organization (WHO) expressed concern with e-cigarettes, stating they may undermine tobacco control efforts, such as smoking bans and FDA-approved NRTs. Several countries, including Australia, China, and Brazil have banned the sale and marketing of e-cigarettes.²⁷

⁹Kuschner, WG, Reddy, S, Mehrotra, N, Paintal, HS. Electronic cigarettes and thirdhand tobacco smoke: Two emerging health care challenges for the primary care provider. *Int J Gen Med*. 2011;4:115-120. doi: 10.2147/IJGM.S16908.

²Flavored cartridges (2012). blu Cig Web site. Available at: <http://www.blucigs.com/cartridges>. Accessed June 29, 2012.

³Cobb NK, Abrams DB. E-cigarette or drug-delivery device? Regulating novel nicotine products. *N Engl J Med*. 2011;365(3):193-195.

- ⁴Yamin, CK, Bitton, A, Bates, DW. E-cigarettes: A rapidly growing internet phenomenon. *Ann Intern Med.* 2010;153:607-609.
- ⁵100ml titanium ice 72mg unflavored – single bottle (5/29/2012). Totally Wicked E-Liquid Web site. Available at: <http://www.totally-wicked-eliquid.com/products/totally-wicked-eliquid/titanium-ice-72mg-eliquid/100ml-titanium-ice-72mg-unflavored-2-product.html>. Accessed June 20, 2012.
- ⁶International Programme on Chemical Safety, INCHEM. Nicotine. [http://www.inchem.org/documents/pims/chemical/nicotine.htm#SubSectionTitle:7.2.1 Human data](http://www.inchem.org/documents/pims/chemical/nicotine.htm#SubSectionTitle:7.2.1%20Human%20data). Published March, 1991. Accessed June 15, 2012.
- ⁷Cobb, NK, Byron, J, Abrams, DB, Shields, PG. Novel nicotine delivery systems and public health: The rise of the “e-cigarette”. *Am J Public Health.* 2010;100(12):2340-2342. doi: 10.2105/AJPH.2010.199281.
- ⁸Pearson, JL, Richardson, A, Niaura, RS, Vallone, DM, Abrams, DB. E-Cigarette awareness, use, and harm perceptions in US adults. *Am J Public Health.* 2012;102(9):1758-1766. doi: 10.2105/AJPH.2011.300526.
- ⁹Wax, PM. Elixirs, diluents, and the passage of the 1938 federal Food, Drug, and Cosmetic Act. *Ann Intern Med.* 1995;122:456-461.
- ¹⁰U.S. Food and Drug Administration, Division of Pharmaceutical Analysis. Evaluation of e-cigarettes. www.fda.gov/downloads/Drugs/ScienceResearch/UCM173250.pdf. Accessed June 13, 2012.
- ¹¹Vardavas, CI, Anagnostopoulos, N, Kougias, M, Evangelopoulou, V, Connolly, GN, Behra, PK. Short-term pulmonary effects of using an electronic cigarette: Impact on respiratory flow resistance, impedance, and exhaled nitric oxide. [published online ahead of print December 22, 2011]. *CHEST.* 2012;141:1400-1406. doi: 10.1378/chest.11-2443.
- ¹²McCauley, L, Markin, C, Hosmer, D. An unexpected consequence of electronic cigarette use. *CHEST.* 2012;141:1110-1113. doi: 10.1378/chest.11-1334.
- ¹³*Sottera v. FDA*, 627 F.3d 891 (D.C. Cir. 2010).
- ¹⁴Deyton, LR, Woodcock, J. Regulation of e-cigarettes and other tobacco products. Letter to stakeholders. U.S Food and Drug Administration Web site. 2011. <http://www.fda.gov/newsevents/publichealthfocus/ucm252360.htm>. Accessed June 13, 2012.
- ¹⁵Blumenfeld, K. Electronic cigarettes (E-cigarettes). http://www.njgasp.org/E-Cigs_White_Paper.pdf. Published June 2012. Accessed June 29, 2012.
- ¹⁶Metropolitan King County Council. Board of Health approves electronic cigarette regulations. 2010. http://www.kingcounty.gov/council/news/2010/December/JP_Ecig.aspx. Accessed June 15, 2012.
- ¹⁷Smoking of electronic cigarettes on aircraft, Final Rule, 76 Fed. Reg. 57008-57012 (September 15, 2011) (to be codified at 14 C.F.R. pt. 252).
- ¹⁸American Lung Association. State Legislated Actions on Tobacco Issues 2010. http://www.lungusa2.org/slati/reports/SLATI_2010_Final_Web.pdf. Accessed June 21, 2012.
- ¹⁹Green Smoke. Green Smoke Web site. <http://www.greensmoke.com/>. 2012. Accessed June 21, 2012.
- ²⁰U.S. Food and Drug Administration. Transcript for FDA’s media briefing on electronic cigarettes (July 22, 2009). Available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm>. Accessed June 21, 2012.
- ²¹Ayers, JW, Ribisl, KM, Brownstein, JS. Tracking the rise in popularity of electronic nicotine delivery systems (electronic cigarettes) using search query surveillance. *Am J Prev Med.* 2011;40(4):448-453. <http://archive.tobacco.org/news/314895.html>. Accessed June 13, 2012.
- ²²U.S. Food and Drug Administration. FDA and public health experts warn about electronic cigarettes [press release]. July, 2009. <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>. Accessed June 15, 2012.
- ²³Pearson, JL, Richardson, A, Niaura, RS, Vallone, DM, Abrams, DB. E-Cigarette awareness, use, and harm perceptions in US adults. *Am J Public Health.* 2012;102(9):1758-1766. doi: 10.2105/AJPH.2011.300526.
- ²⁴Etter, J-F, Bullen, C. Electronic cigarette: User profile, utilization, satisfaction and perceived efficacy. *Addiction.* 2011;106:2017-2028. doi: 10.1111/j.1360-0443.2011.03505.
- ²⁵McMillen, R, Maduka, J, Winickoff, J. Use of emerging tobacco products in the United States. *J Environ Public Health.* 2012;2012(Article ID 989747):8 pages. doi: 10.1155/2012/989747.
- ²⁶Regan, AK, Promoff, G, Dube, SR, Arrazola, R. Electronic nicotine delivery systems: Adult use and awareness of the ‘e-cigarette’ in the USA. [published online ahead of print October 27, 2011]. *Tob Control.* 2011. doi: 10.1136/tobaccocontrol-2011-050044.
- ²⁷WHO Study Group on Tobacco Product Regulation. Report on the scientific basis of tobacco product regulation: Third report of a WHO study group. whqlibdoc.who.int/publications/2009/9789241209557_eng.pdf. Accessed June 13, 2012.