

Electronic Cigarettes & Vape Shops

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THE SALE OF ELECTRONIC CIGARETTES and personal vaporizing devices, currently a \$1.5 billion industry, is growing at a rapid rate, estimated to be 25% per year (www.fortune.com). Reuters reports that about 10% of adults now vape and that, in the United States, there are at least 15,000 vape shops, up from virtually none just a few years ago (www.reuters.com). Touted as a safe alternative to smoking, the vaping practice and the e-cigarette devices themselves are not without risk of fire and explosion, in addition to health implications. E-cigarettes are available on the internet, and in a variety of retail outlets, including convenience stores, mall kiosks and specialized vape shops and lounges. Product liability coverage is essential for anyone selling e-cigarettes. Helping clients understand the hazards of e-cigarettes, and insurance coverage needed for those who sell them, is another value-added service of the professional insurance agent.

The devices are tubes where nicotine and various flavors are added to liquid. The liquid is heated by battery power and the vapor is inhaled. While the product and accessories increase in popularity, so does the conflict about safety. There is concern about undetermined effects of inhaling the nicotine and various chemicals, use by teens as a gateway to cigarette smoking, poisoning by accidental ingestion of the liquid by children and injuries caused by exploding batteries.

There is a patchwork of regulations in the 50 states. The Public Health Law Center has prepared a PDF with a listing of the regulations in the various states and some municipalities. (publichealthlawcenter.org) Some states and municipalities have banned sale of electronic cigarettes to those under 18 or 19. New York City bans sales under age 21, while in New York State the age limit is 18. There are also

bans on indoor smoking in some places and requirements for packaging of liquid nicotine in childproof containers. In NJ, there is proposed legislation to ban the sale of flavored electronic cigarette devices, in flavors other than clove, menthol and tobacco. New Jersey already bars the sale of flavored cigarettes.

Explosions of e-cigarettes, are rare, and are believed to be caused by the lithium battery. Of 25 incidents reported between 2009-2014, most occurred while the device was charging (usfa.fema.gov). Some were due to use of an alternate charger that was not originally sold with the device. There have also been recent cases of devices exploding while in someone's pocket or purse, resulting in severe burns. Ecigone offers a list of all reported e-cigarette explosions on their website. Of 214 e-cigarette explosions: 57 happened during use, 79 happened during charging, 44 happened during transport, storage or unknown circumstances, and 34 involved spare batteries for removable battery mods. (ecigone.com)

The Centers for Disease Control (CDC) (www.cdc.gov) reports an increase in poisoning cases from e-cigarettes liquid nicotine, averaging 215 calls per month by February 2014. More than half (51.1 percent) of the calls to poison centers due to e-cigarettes involved young children under age 5.

In 2016, the U.S. Food and Drug Administration (FDA) extended its authority to all tobacco products, including e-cigarettes, cigars, hookah tobacco and pipe tobacco, among others. (www.fda.gov). These regulations were the first national requirements for electronic ciga-



rette vendors, and include: banning sale to anyone under 18 (in person and online); requiring photo ID for age verification; barring sale of tobacco products in vending machines; no distribution of free samples.

The question arises of what steps insurers and agents can take to protect themselves, their clients and consumers. Issues include safety of the liquids and batteries used, childproof packaging, age limits and even the additional liability exposure of the retailers whose shops include lounges and social events. The operations of the insured are important in determining the adequacy of coverages. Is this sales only, or is liquid mixing done? Is there a lounge and are social activities sponsored? What steps are taken to comply with age restrictions, proper labeling, childproof packaging and state/municipal regulations?

In this rapidly changing field of e-cigarette sale and use, it is vital to be aware of research and federal, state and municipal regulations. The professional insurance agent can play a crucial role in educating clients and obtaining the proper coverage for the exposure. Providing information on the regulations for sale and proper use of e-cigarettes is another sign of the true insurance professional.

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