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Public Health

FDA bans sale of e-cigarettes to minors

May 13 — The U.S. Food and Drug Administration (FDA) finalized a rule last week that extends the agency's authority to additional products, including e-cigarettes. As part of its new rule, the FDA is prohibiting the sale of e-cigarettes to minors, a step the 84th Texas Legislature took in 2015.

In 2009, Congress gave the FDA certain authority to regulate cigarettes, roll-your-own tobacco, and smokeless tobacco. The rule finalized last week deems all other products that meet the definition of "tobacco product" under the Food, Drug, and Cosmetic Act to be subject to the act's provisions. According to the agency, these include electronic nicotine delivery systems, such as e-cigarettes.

Effective Aug. 8, the rule applies existing requirements for tobacco products to the newly regulated items. For example, manufacturers must register with the FDA and provide product and ingredient listings. New products also must be reviewed and approved by the FDA.

The new rule also prohibits nationwide the sale of covered tobacco products, including e-cigarettes, to people under 18, both in person and online.

The 84th Texas Legislature during the 2015 legislative session enacted SB 97 by Hinojosa, banning the sale of e-cigarettes to minors and imposing additional regulations on the products. The bill established requirements for child-resistant cartridges, delivery sales, and signs where e-cigarettes are sold. It also prohibited the use of the devices at schools. The Department of State Health Services must report by Jan. 5 of each odd-numbered year on the status of e-cigarette use in Texas.

Before the recent actions by the FDA and the Texas Legislature, a number of Texas cities had banned e-cigarette sales to minors.

— by Mary Beth Schaefer

Public education

School finance system passes Texas Supreme Court review

May 31 — The Texas Supreme Court on May 13 said the state's school finance system meets the minimum requirements in the Texas Constitution for an efficient, free public school system and does not function as an unconstitutional statewide property tax. This ruling overturned a trial court's 2014 finding that the system is constitutionally deficient.

Noting that the framers of the Texas Constitution "placed the responsibility for education policymaking squarely with the Legislature," the court said the "judicial role is not to second-guess whether our system is optimal." The justices, in a unanimous opinion, said there is "immense room" for improving the system, but that the authority to act rests with the Texas Legislature.

Constitutional issues. The Supreme Court's ruling said the trial judge had erred in finding the state in violation of two provisions of the state constitution – a provision that prohibits a state property tax and a provision known as the "education clause," which charges the Legislature with establishing and supporting an efficient, free public school system.

(continued on page 2)

State property tax. The court said there is sufficient "meaningful discretion" for school districts to determine their tax rates, noting that about 24 percent of districts with only about 13 percent of students tax at the maximum maintenance and operations (M&O) rate of $1.17 per $100 assessed valuation.

Education clause. The court overturned the trial court's finding that the school funding system was in violation of Tex. Const., Art. 7, sec. 1, which calls for a "general diffusion of knowledge" and which charges the Legislature with establishing and providing suitable support for and maintenance of an efficient, free public school system. The Supreme Court said:

- It is not clear that spending a specific amount correlates with student achievement to allow arrival at a minimum dollar amount as constitutionally necessary for a general diffusion of knowledge.
- Equality of educational achievement among student subgroups is a worthy goal of government but not a constitutional requirement.
- The system is not unconstitutional simply because the state is demanding more of schools and teachers, and they predictably are facing a transitional period of adjusting to more difficult state assessments.
- Ratios that measure differences between wealthier and poorer districts are similar to ratios in previous rulings where no violation of the financial efficiency requirement was found.

Other claims. The Supreme Court also rejected claims raised by a charter school association and a coalition of business interests and school choice advocates.

The charter school operators had objected to funding adjustments and the lack of facilities funding for charter schools compared to school districts. The Supreme Court, agreeing with the trial court, said the charter school plaintiffs had not shown funding differences that were "so arbitrary as to rise to a constitutional violation."

The court agreed with the trial court in responding to a coalition of business interests and school choice advocates that had intervened in the case and argued that greater "qualitative efficiency" could be achieved with changes such as eliminating the statutory cap on charter schools, increasing school choice, and revising teacher employment rules. The court said the Legislature had broad discretion in determining qualitative efficiency and it could not interfere unless the Legislature acted arbitrarily and unreasonably.

The state's case. The court rejected the state's argument that claims related to the education clause of the Texas Constitution are non-justiciable political questions. The court said it had rejected that argument in an earlier school finance case, explaining that the education clause requirements indicate the framers did not intend to give the Legislature absolute discretion.

— by Janet Elliott