Virginia's Liquid Nicotine and Nicotine Vapor Product Directory

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Study purpose

The JCHC directed staff to:

- Describe the requirements of Virginia's Directory, including enforcement mechanisms
- Identify challenges or barriers in implementation of Virginia's Directory
- Identify other states with product directories and their requirements
- Describe the impact of other states' implemented directories
- Identify legislative approaches to improve implementation of Virginia's Directory

Study approved by Commission for the 2026 workplan on June 4, 2026.

Findings in brief

- Nicotine vapor product use is increasing among adults, and use can lead to short- and long-term health harms
- The FDA regulates new nicotine vapor products offered for sale in the U.S., but enforcement is limited
- Virginia established the Directory to limit access to unregulated products
- Limited information on the impact of product directories on access to unregulated products is availabile

FDA = Food and Drug Administration

Agenda

Adult and youth nicotine vapor product use prevalence

Federal regulation and enforcement of the sale of nicotine vapor products

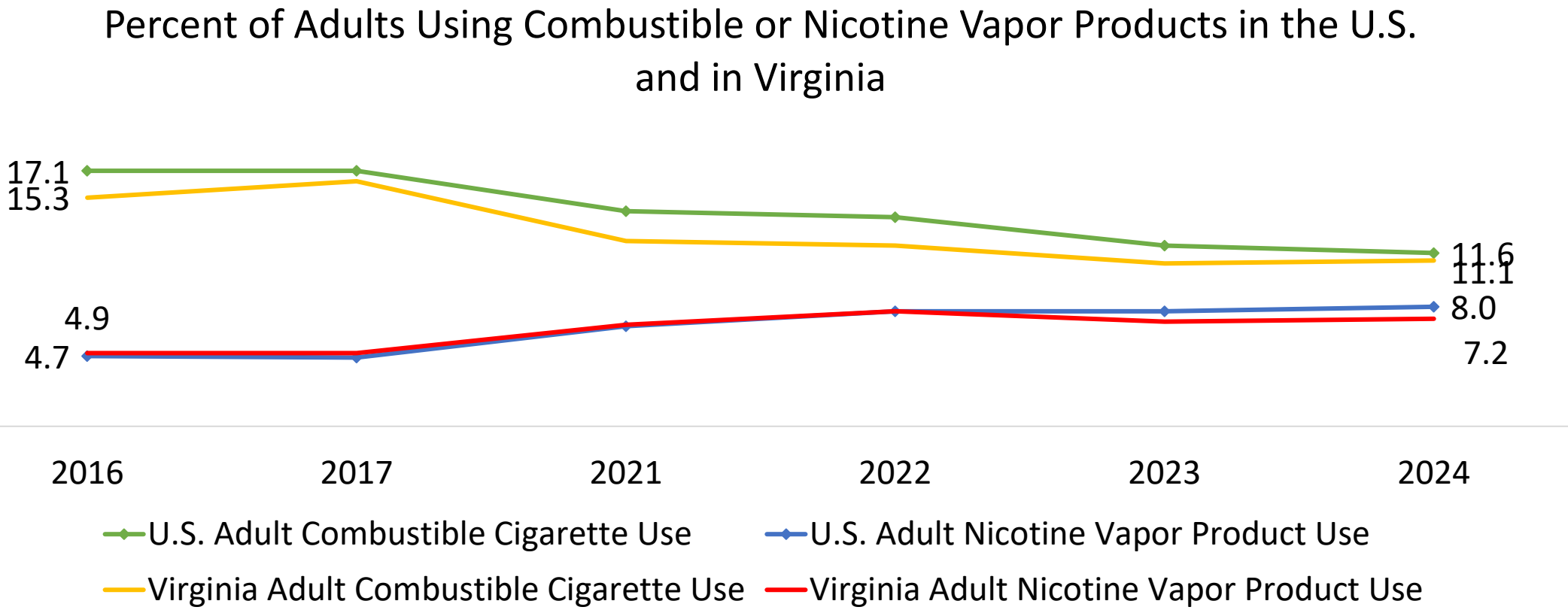
Virginia's approach to the regulation of nicotine vapor products

Strategies to improve implementation of Virginia's product directory

Nicotine vapor products vaporize liquids for inhalation

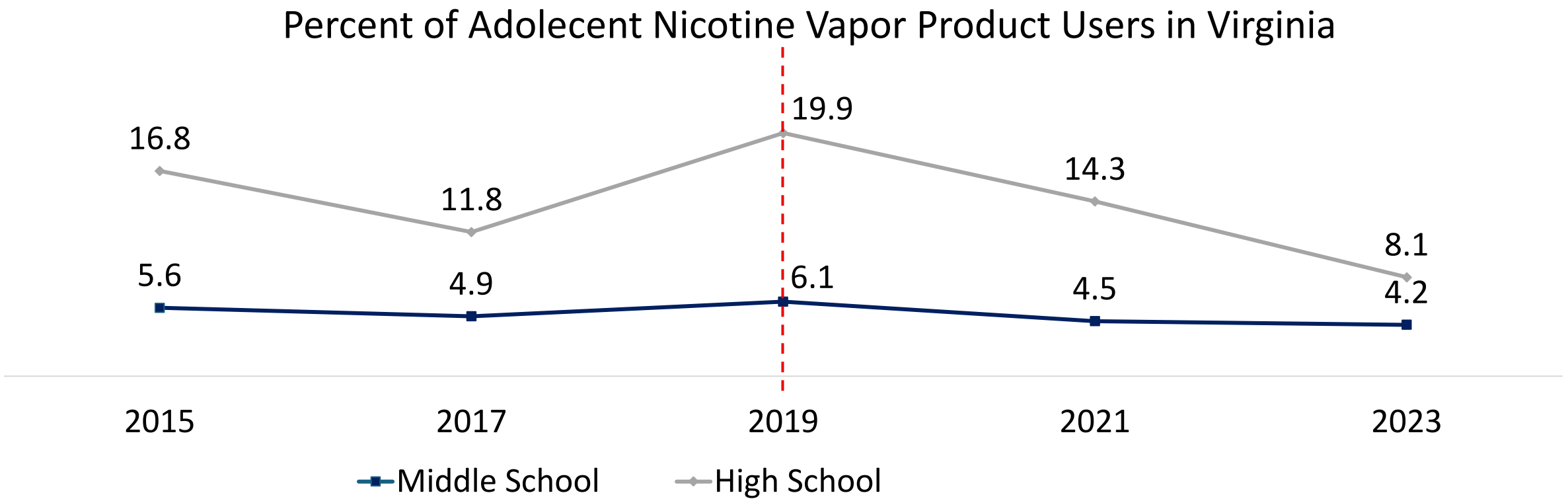
- Nicotine vapor products are devices that allow users to inhale aerosolized liquid nicotine and, in some cases, additional substances like flavorings or illegal compounds
- In Virginia, the number of retail locations selling nicotine vapor products has increased by 46% between 2018 and 2026

The prevalence of adult nicotine vapor product use has increased since 2016



SOURCE: JCHC staff analysis of Centers for Disease Control and Prevention Behavioral Risk Factor Surveillance Survey data, 2026.

Youth nicotine vapor product use rates have fallen, but underage use still occurs



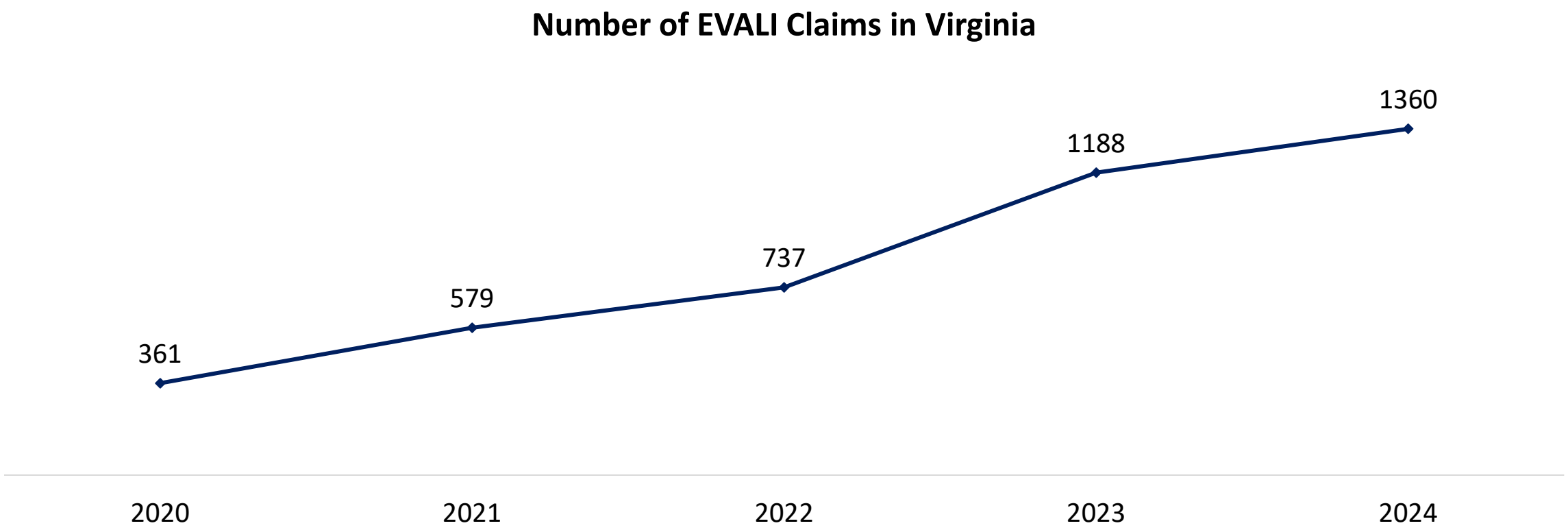
SOURCE: JCHC staff analysis of Centers for Disease Control and Prevention, Virginia Youth Risk Behavior Survey data, 2026.

Nicotine vapor product use has short- and long-term health consequences

- Nicotine can be addictive and harmful to users' health
- Constant nicotine stimulation increases risks of heart attack, stroke, and some pulmonary health conditions
- Compared to non-users, LNVP users have:
  - 30 to 46 percent greater risk of developing asthma
  - 47 percent greater odds of developing COPD

LNVP = Liquid nicotine and vapor product; COPD= Chronic obstructive pulmonary disease

EVALI claims in Virginia have increased by 276 percent since 2020



SOURCE: Virginia All-Payer Claims Database, administered by Virginia Health Information, 2026. EVALI = E-cigarette or vaping use-associated lung injury

Agenda

Federal regulation and enforcement of the sale of nicotine vapor products

The FDA regulates nicotine vapor products offered for sale in the U.S.

- PMTA process requires any person who wishes to market a new tobacco product to obtain approval from the FDA
- Applicants must provide information about product components and health risks relative to other tobacco products
- FDA expanded the definition of tobacco products to include nicotine vapor products in 2016

PMTA = Premarket Tobacco Product Application

Few new products have been approved for sale through the PMTA process

- Since FFY 2021, the FDA has approved 41 of the 26.6 million nicotine vapor products for which it has received applications for sale in the United States
- The FDA has experienced significant application backlogs, delaying product reviews

MGO = Marketing Granted Order; MDO = Marketing Denial Order; FFY = Federal Fiscal Year

Inconsistent PMTA enforcement has led to greater unregulated product availability

- FDA enforcement actions include warning letters, civil monetary penalties, injunctions, and product seizures
- FDA enforcement priorities often result in unregulated products remaining available in the marketplace
- Since 2023, in Virginia there have been 41 charges of unauthorized sales resulting in 35 warning letters and 6 civil penalties but no evidence of product removals

Access to unregulated products is dangerous to the public

- Unregulated products may contain unknown or dangerous ingredients, elevated levels of nicotine not listed on package, or faulty equipment
- Individuals who use unregulated products face unique risks of acute lung injury and long-term cardiovascular damage that may surpass those of regulated products
- Defective products can result in physical injuries from fires or explosions

Agenda

Virginia’s approach to the regulation of nicotine vapor products

Virginia established the Directory to limit access to unregulated products

- In 2024, the Attorney General was mandated to establish and maintain the Directory
- Manufacturers must annually certify that the product has received PMTA approval or remains under FDA review to be legally sold in Virginia
- The Directory gives Virginia a state-level mechanism to identify and act against unauthorized products even when the FDA has not removed them from the market

The OAG, Commonwealth's attorneys, and local attorneys can enforce Directory law

- OAG, Commonwealth's attorneys, and local attorneys may bring an action to prevent violations of the Directory law or order forfeiture of any property seized for violation of the law
- The OAG entered into a MOU with the Virginia ABC for the coordination of the mutual regulation of retail tobacco products, including nicotine vapor products

MOU = Memorandum of Understanding; ABC = Alcoholic Beverage Control Authority; OAG = Office of the Attorney General

Legal challenges delayed initial implementation of the Directory

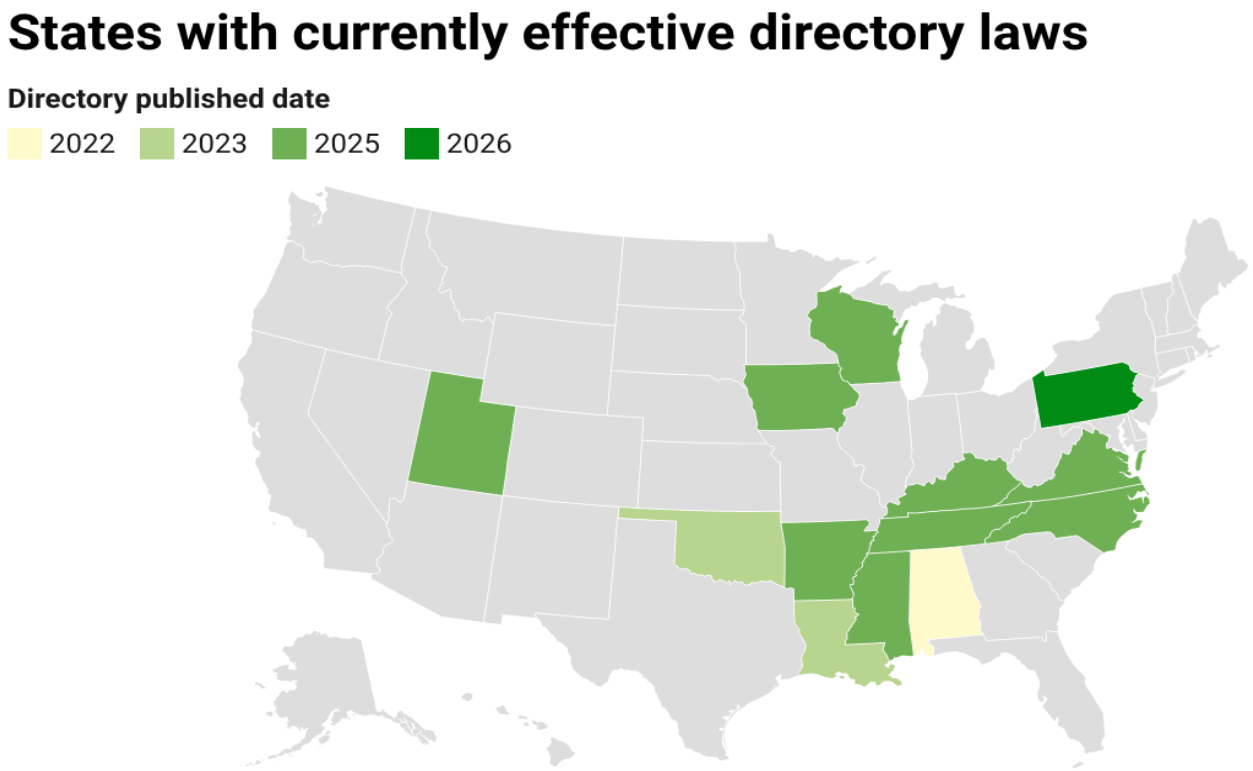
- Nicotine vapor product retailers filed a federal lawsuit in October 2025, alleging that Virginia's Attorney General could not enforce a law whose authority is already assigned to the federal government
- Enforcement was temporarily paused in December 2025 then permitted to proceed in March 2026, allowing the OAG to begin enforcement as of April 1, 2026
- The OAG received $1.8M and 12 FTEs from the ENDS Fund during the 2026 Special Session and have established the RPEU

FTE = Full-time equivalent; ENDS = Electronic Nicotine Delivery Systems; RPEU = Retail Products Enforcement Unit

Lack of resources and procedural challenges may limit local enforcement

- Lack of resources and prioritization of criminal cases creates barriers to enforcing requirements of the Directory
- Lack of clear guidance on enforcement processes also limits Commonwealth’s attorneys' abilities to enforce the law

Thirteen states, including Virginia, have implemented directory laws



SOURCE JCHC staff analysis of state legislation and statues, 2026.

States have faced similar challenges in implementing product directories

- Federal litigation or state district court challenges have impacted states' implementation of directory laws
- In most states, courts halted enforcement temporarily, then later determined that states had the authority to enforce the directory law

Lack of available evidence prevents evaluation of directory effectiveness

- Several states require reports on directory implementation, but none require the state to detail the impact on unregulated product availability
- Delays in implementation and minimal enforcement activity limit availability of information about the impact of the Directory on access to unregulated product
- OAG is not explicitly mandated to report on how enforcement impacts unregulated product availability

Agenda

Strategies to improve implementation of Virginia's product directory

Virginia can improve its understanding of the Directory's effectiveness

- Understanding the impact of the Directory on access to unregulated products requires comprehensive data and information about the products included on the Directory and enforcement activities
- Virginia could obtain additional information by enhancing the OAG's current reporting requirements

Policy Option 1

The JCHC could introduce legislation to amend *Code of Virginia* to require the Attorney General to include additional information about the Liquid Nicotine and Nicotine Vapor Products Directory and enforcement actions in its annual report.

Virginia could conduct a comprehensive evaluation on the Directory's impact

- Virginia could appropriate funding for a comprehensive evaluation that examines the extent to which the Directory accomplishes its goal of reducing access to unregulated products
- Impacts on youth access and market availability of nicotine vapor products in Virginia may also provide greater insight on the impact of the enforcement of the Directory

Policy Option 2

The JCHC could introduce a budget amendment to provide $250,000 to the Virginia Foundation for Healthy Youth to establish a contract to conduct a comprehensive assessment of the impact of the Directory on Virginia's nicotine vapor product market, due no later than October 1, 2029.

Opportunity for public comment

- Submit written public comments by close of business on Monday, November 2nd

  Email: jchcpubliccomments@jchc.virginia.gov

  Mail: 411 E. Franklin Street, Suite 505

  Richmond, VA 23219

NOTE: All public comments are subject to FOIA and must be released upon request.

Member Questions & Discussion

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