



Local Strategies to Regulate Vape Shops & Lounges

Vape shops undermine existing clean indoor air laws by allowing the use of electronic smoking device indoors. Exposure to these hazardous chemicals is a health risk; therefore, it is becoming increasingly important to regulate vape shops.

As the use of electronic smoking devices continues to grow, a new kind of business is evolving to serve users. These new businesses, known as “vape shops” or “vape lounges,” sell a full range of products, including electronic smoking devices, their component parts, and e-liquids.

Compared to traditional tobacco retailers, which frequently sell pre-packaged electronic smoking devices, vape shops offer a wide range of e-liquids, with or without nicotine, for customers to sample and purchase to refill their electronic smoking devices. These e-liquids come in a variety of candy and fruit flavors, such as honeydew, bubble gum, chocolate chip cookie, blueberry cheesecake, and gummy bear.¹ Some vape shops mix their own liquids on-site or offer custom blending for customers.

Much like hookah lounges, vape shops create a social environment where people can comfortably gather to vape; sometimes, these businesses will also have TVs, a DJ, or food and drink. The use of electronic smoking devices indoors undermines existing clean indoor air laws and exposes customers and employees to potentially hazardous chemicals, such as formaldehyde, acetaldehyde, lead, nickel, and chromium.²

Additionally, the e-liquids used to refill electronic smoking devices usually contain liquid nicotine, which may be toxic if ingested or absorbed through the skin at relatively low quantities. Calls to poison centers for exposure to electronic smoking devices have increased dramatically in the last three and half years from “one call [per month] in September 2010 to 215 calls per month in February 2014.”³



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The amount of nicotine in e-liquids varies; some bottles contain up to 720 milligrams of nicotine, which is a potentially lethal amount.⁴

Many communities in California have started regulating the use of electronic smoking devices by prohibiting vaping where smoking is prohibited⁵ and requiring e-cigarette retailers to obtain a tobacco retailer license.⁶ However, in many places vape shops are virtually unregulated.

The U.S. Food and Drug Administration (FDA) does not currently regulate electronic smoking devices. In April 2014 the FDA proposed a “deeming rule” to allow the agency to regulate tobacco products other than cigarettes and smokeless tobacco, including electronic smoking devices that are derived from tobacco (e.g., products containing nicotine).⁷ If adopted as proposed, local governments would remain free to regulate most aspects of vape shop operations, such as how electronic smoking devices are sold and where they are used. The deeming rule is unlikely to take effect for at least a year, given the elaborate FDA approval process that involves reviewing public comments and revising the rule accordingly. In fact, some of the proposed measures would not take effect until a year after final approval of the rule.

This fact sheet describes a variety of policy options to regulate vape shops. Please [contact ChangeLab Solutions](#) for more specific information on any of these strategies.

What are electronic smoking devices?

Electronic smoking devices (also known as electronic cigarettes, e-cigarettes, e-hookah, vape pens, or electronic nicotine delivery systems) are battery operated devices designed to deliver nicotine, flavor, and/or other substances through an aerosol inhaled by the user, commonly known as vapor. The devices can be disposable or reusable. The use of electronic smoking devices is referred to as “vaping.”

Electronic smoking devices are often sold with a variety of paraphernalia, such as cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, batteries, and chargers.

E-liquid, or “e-juice,” is a liquid solution filtered through an electronic smoking device to produce an aerosol. Although there are no labeling requirements, studies have shown many of these products contain nicotine amounts that differ from their labeling. Some electronic smoking devices are sold with refillable cartridges containing e-liquid. Once this e-liquid is used up, these cartridges may be refilled.

For more information about electronic smoking devices, see ChangeLab Solutions’ fact sheet: [Regulating Toxic Vapor: A Policy Guide to Electronic Smoking Devices](#)

Moratorium Ordinances

Vape shops have seen explosive growth in the past few years as the use of electronic smoking devices has increased. The website Yelp now offers a search category for vape shops, which included nearly 400 vape shops in the Los Angeles area as of August 2014.

In California, a community can prohibit new vape shops (and other types of tobacco or electronic smoking device retailers) from opening for 45 days by adopting a moratorium ordinance. Policymakers and community members can use this time to research how to regulate the new shops appropriately. The initial 45-day moratorium can be extended for a total of two years if the locality follows the appropriate procedures. For more information, see ChangeLab Solutions’ [Moratorium Ordinance FAQ](#).

A number of California cities have adopted temporary moratoria on electronic smoking device retailers, including Hayward, Union City, Fremont, South San Francisco, Seal Beach, Camarillo, Cerritos, and Duarte.⁸ Both Hayward and Union City used their moratorium periods to consider more comprehensive regulation of tobacco products and electronic smoking devices. Both cities now prohibit new vapor, hookah, and e-cigarette bars and lounges and from opening within city limits.⁹ Rationales for local moratorium ordinances include the lack of federal and state regulation of electronic smoking devices and the potential health risks that are not yet fully understood by the general population, especially youth.



Tobacco Retailer Licensing (TRL) Strategies

A moratorium ordinance will prevent *new* vape shops from entering the market. To regulate *existing* vape shops, communities may wish to consider a tobacco retailer licensing (TRL) law to ensure that such businesses are operating safely and to enforce compliance with federal, state, and local tobacco-related laws. A new or existing TRL law can apply to vape shops (even if they sell only non-nicotine e-liquids) through broad definitions of “tobacco product” and “smoking paraphernalia” that include nicotine products, electronic smoking devices, and their paraphernalia, such as e-liquids. For more information, see ChangeLab Solutions’ Tobacco Retailer Licensing Model Ordinance and Plug-Ins.

More than 70 cities and counties in California require a license to sell electronic smoking devices.¹⁰ Local TRLs vary in the requirements they impose on tobacco retailers. However, if a community’s TRL applies to the sale of electronic smoking devices and paraphernalia, vape shops could be required to

- Check identification for customers who appear to be under the age of 27 (or whatever age is chosen for the TRL);
- Prohibit the self-service display of electronic smoking devices and paraphernalia, such as e-liquids, requiring such products to be in a locked case or behind a counter;
- Prohibit new vape shops from opening within a certain distance (e.g., 1,000 feet) of schools and other youth-populated areas;
- Prohibit new vape shops from opening within a certain distance of other tobacco retailers (to prevent the concentration of vape shops in certain neighborhoods) and/or limit the total number of tobacco retailers (including vape shops) based on the population of the community;
- Prohibit a vape shop from obtaining a TRL if it allows smoking or “vaping” on the premises; and/or
- Prohibit a vape shop from obtaining a TRL if it also sells food or drink for consumption on the premises.

The policy options listed below may be adopted either as stand-alone ordinances or as part of a TRL.

Prohibit free sampling of electronic smoking devices and e-liquids

Sampling of e-liquid flavors is common at vape shops. These stores often have a range of nicotine and non-nicotine flavors in refillable cartridges available for customers to try before purchase. However, unlike an ice cream store, customers are sampling products full of chemicals and exposing themselves and the employees to potentially harmful aerosol. As a result, a community may wish to prohibit sampling of electronic smoking devices and paraphernalia, either by broadening

an existing local sampling law or adopting a stand-alone ordinance. If sampling of electronic smoking devices is prohibited, violation of this provision would also be a violation of the TRL.

Prohibit the sale of all electronic smoking device paraphernalia to minors

Under California law it is currently illegal to sell an electronic cigarette device to a minor.¹¹ However, this law does not prohibit minors from purchasing e-liquids that are sold separately from the electronic smoking device, including both nicotine-based liquids and non-nicotine liquids. Because vape shops increasingly sell e-liquids (including candy and fruit varieties) separately from the electronic smoking devices, a community may wish to prohibit the sale of all electronic cigarette paraphernalia to minors. Violation of such a law would also be a violation of the TRL.



Worker Protection Policies

Vape shop employees face a number of potential safety hazards, from exposure to electronic smoking device aerosol to skin and eye contact with liquid nicotine. Studies have shown that exposure to secondhand electronic smoking device aerosol may result in the passive inhalation of aerosol, which may contain propylene glycol, ultrafine particles, nicotine, and carcinogenic substances.¹² In order to protect vape shop employees, communities may wish to adopt or enforce worker protection standards. These standards could be tied to the tobacco retailer license and/or incorporated into a local smokefree air law, as in the first option listed below. For example, if the vape shop is convicted of violating a local hazardous substances law or an OSHA regulation, then the shop's license to sell tobacco products (including electronic smoking devices) could be suspended. Several policy options relating to worker safety are described below.

Prohibit the use of electronic smoking devices in vape shops

Many communities have extended their local smokefree laws to prohibit the use of electronic smoking devices in places where conventional smoking is prohibited. These laws are likely to apply to workplaces, but they may contain an exemption for retail tobacco shops, which primarily sell tobacco products. If so, the use of electronic smoking devices may be prevalent at vape shops and lounges among both employees and customers. A community can adopt or broaden its local smokefree air law to prohibit the use of electronic smoking devices (with or without nicotine) at all workplaces. Such a law would protect employees of vape shops in the same way that employees of other businesses are protected. See ChangeLab Solutions' *Flowchart for Regulating Electronic Smoking Devices*.

Require the safe handling and disposal of liquid nicotine

Vape shop employees may regularly handle containers filled with liquid nicotine. In some stores, employees mix their own flavors on-site or create custom blends for customers. In order to protect employees from the potential hazards of nicotine exposure, communities can ensure that vape shops comply with local, state, and federal worker protection standards related to nicotine and other hazardous materials.

Both the state of California and the federal Occupational Safety and Health Administration (OSHA) have instituted standards to protect employees from exposure to hazardous chemicals like nicotine.¹³ OSHA has inspected and cited at least one manufacturer of e-liquids for multiple safety violations, including improper eye, face, and hand protection for employees who were exposed to hazardous conditions.¹⁴ Communities can report potential safety violations and request a CAL-OSHA inspection of local e-liquid manufacturers or vape shops that produce or mix e-liquids on-site.¹⁵

Nicotine is classified as a hazardous substance by both California and the federal government.¹⁶ As a result, the storage of certain amounts of nicotine or other chemicals (such as propylene glycol) used in electronic smoking devices may also be regulated by your county's Environmental Health Department. For example, the county may require businesses that handle nicotine to

- Disclose that fact to the county;
- Receive a permit for the use and/or disposal of toxic substances or hazardous materials;
- Create a plan in the event of a spill or leak;
- Post signs (e.g., a Material Safety Data Sheet)¹⁷ with information on procedures for handling or working with nicotine in a safe manner, as well as information about toxicity, health effects, first aid, storage, disposal, and protective equipment; and/or
- Be subject to inspections by the local government.

To find out if nicotine is considered a hazardous substance by your county, and in what amounts, contact your local Environmental Health Department. If nicotine is not already considered a hazardous substance by your county, it could be added via regulation or ordinance. Additionally, local jurisdictions could require

- Hand and/or face protection when handling e-liquids;
- Safe disposal of e-liquids and their components; and/or
- Mandatory reporting of adverse effects, and/or requiring contact info in the event that a consumer experiences adverse effects.

Note that the hazardous substances requirements are likely to apply only if the business produces or mixes e-juice with certain quantities of nicotine on-site. If the store sells only prepackaged e-liquids manufactured off-site, then it may be exempt from these requirements.

Prohibit e-liquid production on-site

Currently, some vape shops produce e-liquids at the same location where the products are sold. Communities may wish to separate the production of e-liquids from the sale of such products by requiring businesses to choose either to sell or to manufacture e-liquids at each location. For example, a TRL law could deny a retail outlet a tobacco license if any open e-liquids are handled on-site. Alternatively, the community could prohibit repackaging or dispensing of any nicotine product.

Advanced Strategies

The policy ideas described above allow local governments to track, regulate, and monitor vape shops to ensure that they are complying with relevant tobacco control laws in a way that is consistent with the regulation of conventional cigarettes and other tobacco retailers. The following policy options are available to communities looking to adopt more comprehensive regulation.

Prohibiting the sale of electronic smoking devices that contain flavored cartridges and their components, such as flavored e-liquids

The liquid in electronic smoking devices is available in more than 7,500 flavors¹⁸, from fruit-flavored disposable e-hookahs to candy-flavored e-juice, with or without nicotine. These flavorings both appeal to young people and help mask the naturally harsh taste of tobacco, making it easier for youth to initiate and sustain tobacco use.¹⁹ Federal law currently does not prohibit flavoring in tobacco products other than cigarettes and the FDA's Proposed Deeming Rule would not extend the ban on flavorings to other tobacco products or to electronic smoking devices.

New York City and Providence, RI, restricted the sale of flavored tobacco products (including electronic smoking devices in the case of the Providence ordinance) and both cities were sued by tobacco companies and retailers.²⁰ In each case, the court found the local law or regulation was not preempted by the Family Smoking Prevention and Tobacco Control Act because it was a restriction on tobacco product sales rather than tobacco product manufacturing. In California, the City of Hayward adopted an ordinance prohibiting new tobacco retailers from selling flavored tobacco products, including electronic smoking devices with or without nicotine.²¹

A community attempting to prohibit the sale of flavored e-cigarette devices and their components should be prepared to face a legal challenge and fierce political opposition from existing vape shops.

A ban on flavored tobacco and nicotine products could be adopted as a stand-alone ordinance or as part of a tobacco retailer licensing law. For more information about the rationale for a restriction on flavored tobacco products, as well as model legislative language to use for an ordinance in your community, see ChangeLab Solutions' *Model Ordinance Restricting Sales of Flavored Tobacco Products*.

Requiring childproof packaging

Currently there are no state or federal requirements governing the packaging of e-liquids. These liquids could contain as much as 720 mg of nicotine, which is a potentially lethal amount of nicotine.²² Candy flavorings tempt children to play with or drink these toxic substances. According to a study done by the Centers for Disease Control, more than half of the calls to poison centers due to electronic smoking devices involved young children under age five.²³



Communities could require all electronic smoking devices or e-liquids to be sold in childproof packaging. Vermont, Minnesota, and Davis County, Utah, have adopted laws or regulations requiring e-liquids to be sold in child-resistant packaging.²⁴ At the time of publication, similar measures were pending in the City of Chicago and the U.S. Congress.²⁵ [Contact ChangeLab Solutions](#) for more information on this strategy.

Conclusion

As the use of electronic smoking devices continues to grow, vape shops are likely to proliferate in the absence of federal, state, or local regulation. Local governments are in a unique position to regulate whether and where vape shops are allowed to open, what products they are able to sell, and how they are able to use and sell such products. In order to protect public health and prohibit the renormalizing of tobacco use, communities can ensure that vape shops and vape lounges are subject to local smokefree air and tobacco retailer licensing laws. Additionally, communities can directly regulate electronic smoking devices and e-liquids by regulating hazardous materials involved (like nicotine), by prohibiting the sale of flavored e-liquids, and/or by requiring childproof packaging.

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Endnotes

- ¹ See, e.g., Pink Spot Vapors, available at <http://pinkspotvapors.com/shopproduct-category/gourmet-e-liquid-flavors/>; Campaign for Tobacco-Free Kids. “Nine E-Juice Flavors That Sound Just Like Kids’ Favorite Treats.” *Tobacco Unfiltered*, June 11, 2014. Available at www.tobaccofreekids.org/tobacco_unfiltered/post/2014_06_11_e-cigarettes?utm_source=rss&utm_medium=rss&utm_campaign=nine-e-juice-flavors-that-sound-just-like-kids-favorite-treats
- ² German Cancer Research Center. (2013). Red Series Tobacco Prevention and Tobacco Control Volume 19: Electronic Cigarettes - An Overview. Available at: www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band_19_e-cigarettes_an_overview.pdf
- ³ Chatham-Stephens K, Law R, Taylor E, Melstrom P, Bunnell R, Wang B, & Apelberg B. “Notes from the Field: Calls to Poison Centers for Exposures to Electronic Cigarettes - United States, September 2010–February 2014.” *Morbidity and Mortality Weekly Report (MMWR)*, 63(13): April 4, 2014, 292–294. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm6313a4.htm
- ⁴ Jean-François Etter, Eva Zäther, and Sofie Svensson, “Analysis of Refill Liquids for Electronic Cigarettes,” *Addiction (Abingdon, England)* (May 23, 2013): 1–9, doi:10.1111/add.12235.
- ⁵ The Center for Tobacco Policy and Organizing, American Lung Association in California. Local Policies on the Use of Electronic Cigarettes, May 2014. Available at <http://center4tobaccopolicy.org/wp-content/uploads/2014/05/Local-Policies-on-Use-of-E-Cigs-May-2014.pdf>; For national data, see also American Nonsmokers’ Rights Foundation. U.S. State and Local Law Regulating Use of Electronic Cigarettes, July 3, 2014. Available at <http://no-smoke.org/pdf/ecigslaws.pdf>
- ⁶ The Center for Tobacco Policy and Organizing, American Lung Association in California. Reducing Youth Access to Electronic Cigarettes Through Tobacco Retailer Licensing, May 2014. Available at <http://center4tobaccopolicy.org/wp-content/uploads/2014/05/E-cigarettes-in-TRL-May-2014.pdf>
- ⁷ Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 79 Fed. Reg. 23,142 (Apr. 25, 2014) (to be codified at 21 C.F.R. pts. 1100, 1140, 1143).
- ⁸ Hayward Mun. Code Ch. 10, Art. 1 § 1.2780; Union City Mun. Code Tit. 5 § 5.42; Fremont Mun. Code Tit. 8 § 8.55; South San Francisco Ord. No. 1478–2014 (amending South San Francisco Mun. Code (SSFMC) §§ 20.420, 20.620.004); Seal Beach Ord. No. 1638 (amending Seal Beach Mun. Code § 11.6.05.010); Camarillo Ord. No. 1088 (amending Camarillo Mun. Code § 9.24); Cerritos Ord. No. 985 (amending Cerritos Mun. Code § 9.49); Duarte Ord. No. 13–O–02 (amending Duarte Mun. Code (DMC) §§ 19.12.020, 19.160.210)
- ⁹ City of Union City, Cal. Title 18, § 18.04.210; City of Hayward, Cal. Chapt. 10, Art. 1, Sec. 10, §§ 10-1.2780–10-1.2797, “Tobacco Retail Sales Establishments.”
- ¹⁰ The Center for Tobacco Policy & Organizing, American Lung Association in California. Reducing Youth Access to Electronic Cigarettes Through Tobacco Retailer Licensing, May 2014. Available at <http://center4tobaccopolicy.org/wp-content/uploads/2014/05/E-cigarettes-in-TRL-May-2014.pdf>
- ¹¹ Cal. Health & Safety Code § 119405 (West 2014)
- ¹² German Cancer Research Center (Ed.). Electronic Cigarettes - An Overview. Red Series Tobacco Prevention and Control, Vol. 19. Hiedelberg, 2013. Available at: www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band_19_e-cigarettes_an_overview.pdf; Schripp T, Markewitz D, Uhde E, & Salthammer T. “Does e-cigarette consumption cause passive vaping?” *Indoor Air*. 23(1), 25–31, 2013. Available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1600-0668.2012.00792.x/pdf>; Schober W, Szendrei K, Matzen W, et al. “Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers.” *Int. J. Hyg. Environ. Health*. 217(6), 628–637, 2014.
- ¹³ See, e.g., California Code of Regulations, Title 8, Subchapter 7. Available at www.dir.ca.gov/Title8/sub7.html; Cal-OSHA Employer Responsibilities. Available at www.dir.ca.gov/dosh/EmployerInformation.htm. The federal guidelines for nicotine exposure are: 0.5 milligrams of nicotine per cubic meter of air (mg/m3) averaged over an eight-hour work shift. U.S. Department of Labor, Occupational Safety and Health Administration. “Occupational Health Guideline for Nicotine.” September 1978. Available at www.cdc.gov/niosh/docs/81-123/pdfs/0446.pdf. In California, the permissible exposure limits for nicotine are 0.075 ppm (parts of gas or vapor per million parts of air by volume at 25°C and 760mm Hg pressure) and 0.5 mg/M3 (milligrams of substance per cubic meter of air at 25°C and 760mm Hg pressure) (www.dir.ca.gov/title8/5155table_a1.html)
- ¹⁴ U.S. Department of Labor, Occupational Safety & Health Administration. Inspection: 315313940 – Braithwaites Consumer Goods, Llc Dba Tasty Vapor. Available at www.osha.gov/pls/imis/establishment.inspection_detail?id=315313940. For an explanation of the violations, see California Code of Regulations, Title 8, Subchapter 7. Available at www.dir.ca.gov/Title8/sub7.html; see also Press Release, U.S. Department of Labor. “U.S. Labor Department’s OSHA fines Lakewood, NJ, manufacturer nearly \$185,000 for exposing workers to chemical, other hazards.” March 27, 2013. Available at www.osha.gov/pls/osha/web/orwadisp.show_document?p_table=NEWS_RELEASES&p_id=23844; U.S. Department of Labor. Citation and Notification of Penalty. Mar. 21, 2013. Available at www.osha.gov/oc/citations/ESmoke-655718.pdf
- ¹⁵ State of California, Department of Industrial Relations, Cal/OSHA Enforcement, www.dir.ca.gov/dosh/EnforcementPage.htm
- ¹⁶ See, e.g., Cal. Code Regs. tit. 8 § 339 (2014) (Nicotine is listed under the Hazardous Substances List.); Cal. Code Regs. tit. 22 App. VIII (2014) and Cal. Code Regs. tit. 22 App. X (2014) (Nicotine is listed as a chemical that is presumed to be Hazardous Waste.); 40 C.F.R. § 355, App. A (2008) and 40 C.F.R. § 355, App. B (2008) (Nicotine is an “Extremely Hazardous Substance.”); 40 C.F.R. § 261.33. 22 (2011) (Nicotine could be considered as hazardous waste which must be properly disposed of.)
- ¹⁷ Cal. Lab. Code §§ 6360 – 6399.7 (West 2014)
- ¹⁸ Zhu S-H, Sun JY, Bonnie E, et al. “Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation.” *Tob Control*, 23:iii3-iii9, 2014. Available at http://tobaccocontrol.bmj.com/content/23/suppl_3/iii3.full
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- ²¹ City of Hayward, Chapter 10, Article 1, Section 10, §§ 10-1.2780–10-1.2797, “Tobacco Retail Sales Establishments.”
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- ²⁴ CHAPTER 291--H.F.No. 2402, amending Minnesota Statutes 2012, section 461.20 (2014), effective Jan. 1, 2015. Available at www.revisor.mn.gov/law/s/?year=2014&type=0&doctype=Chapter&id=291&format=pdf; Act No. 135 (H.217) adding Sec. 8. 7 V.S.A. § 1012 (2014). Available at www.leg.state.vt.us/docs/2014/Acts/ACT135.pdf; Davis County Board of Health, Electronic Smoking Device Regulation (Feb. 11, 2014). Available at www.co.davis.ut.us/health/administration_services/board_of_health/documents/Electronic%20Smoking%20Devices%20regulation%20adopted%202%2011%2014.pdf
- ²⁵ Chicago City Council. Record # O2014-2375 Amendment of Mun. Code Ch. 6-64 Regulating Sale of E-Liquid Products (introduced Apr. 2, 2014). Available at <https://chicago.legistar.com/LegislationDetail.aspx?ID=1691513&GUID=1E96E786-E20C-4383-8CC8-FBE951861F3F&Options=Advanced&Search=>; Stop Selling and Marketing to Our Kids E-Cigarettes (SMOKE) Act, H.R. 5010, 113th Congress, 2nd Session (introduced June 26, 2014). Available at <https://beta.congress.gov/113/bills/hr5010/BILLS-113br5010ib.pdf>; Child Nicotine Poisoning Prevention Act of 2014, S.B. 2581, 113th Congress, 2nd Session (introduced July 10, 2014). Available at <http://thomas.loc.gov/cgi-bin/query/z?c113:S.2581>