

**The Children, Families, Health, and Human Services Interim Committee received the letter reprinted below from 19 different legislators. Rep. David Bedey also sent a letter objecting to the same rules, but his letter differed in part from the one reprinted here.**

July 20, 2020

The Honorable Eric Moore  
Chair  
Children, Families, Health and Human Services Interim Committee  
Montana State Legislature  
Helena, MT 59620

Dear Chairman Moore:

This email is to register my objection to certain administrative rules proposed by the Department of Public Health and Human Services on June 16, 2020 that would prohibit the sale, offer for sale, giving, marketing, advertising, or distribution of flavored electronic smoking devices to all persons within Montana.

It is my intent that this objection be considered submitted in order to fulfill the requirements of 2-4-403, MCA, that states:

“2-4-403(2) If 20 or more legislators object to a proposed rule, the committee shall poll the members of the legislature.”

I specifically object to the following rules: MAR Notice No. 37-923, New Rule I, New Rule II and New Rule III.

On July 2, 2020, the Economic Affairs Interim Committee formally objected to the above stated rules. Unfortunately, public reports indicate that the Department of Public Health and Human Services (DPHHS) has chosen to disregard the effect of the EAIC formal objection and intends to proceed with the rulemaking process with no intent to respond to EAIC. The wanton disregard by DPHHS for legislative will is unconscionable. Further, the Department has not formally presented its proposed rules to the Children, Families, Health and Human Services Interim Committee. While there was some reference to the proposed rules at the last meeting of the CFHHS Interim Committee, the proposed rules were not officially noticed on the agenda and the public was not afforded the opportunity of notice and comment. Unfortunately, the Department seems intent on adopting the proposed rules prior to your next meeting in late August.

I agree with the bipartisan majority of the Economic Affairs Interim Committee:

“The EAIC maintains that DPHHS’s notice was not adopted in substantial compliance with 2-4-305(3) and (5) because there is no statute that clearly and specifically provides authority for DPHHS’s wholesale prohibition on all flavored electronic smoking devices;

therefore, the proposed rule is not within the scope of authority that is statutorily allowed.”<sup>1</sup>

I respectfully request that the Children, Families, Health and Human Services Interim Committee formally poll the entire legislature as to the intent of the proposed rules upon receipt of objections from no less than 20 legislators.

Sincerely,

**Signed by:**

**Senators:** Kenneth Bogner, Dee Brown, Jason Ellsworth, John Esp, Terry Gauthier, Steve Hinebauch, David Howard, Doug Kary, Bob Keenan, Mike Lang, Cary Smith, Fred Thomas, and Roger Webb

**Representatives:** Seth Berglee, Greg Hertz, Mike Hopkins, Mark Noland, Vince Ricci, and Peggy Webb

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<sup>1</sup> EAIC letter to Director Sheila Hogan dated July 2, 2020 formally objecting to the proposed rules in MAR Notice No. 37-923.