SCHEDULE 2

FY17

PLEDGE

TOBACCO, ALTERNATIVE NICOTINE & VAPOR PRODUCT ENFORCEMENT HANDBOOK

ALCOHOLIC BEVERAGES DIVISION
State of Iowa

STEPHEN LARSON, ADMINISTRATOR

Table of Contents

FY 2017

Thank you for taking the I-PLEDGE and partnering with the Iowa Alcoholic Beverages Division (ABD) to help keep tobacco, alternative nicotine and vapor products out of the hands of Iowa's youth. This handbook is a valuable resource to assist in the successful completion of tobacco, alternative nicotine and vapor product enforcement initiatives. Relevant forms, sample letters and suggested procedures are contained in this publication. Feel free to make copies of these documents to complete necessary paperwork.

I. PRESS RELEASE.....2

Inform your community of your partnership with ABD in conducting compliance checks at area tobacco, alternative nicotine and vapor product retail establishments.

II. OFFICER CHECKLIST.....3

Quickly review key program steps before getting started and "check-off" steps as you complete them.

III. COMPLIANCE CHECK RESULTS - UNABLE TO COMPLETE.....4

Learn about circumstances when compliance checks may not be completed.

IV. WEBSITE, USER ID AND PASSWORD.....5

Find the tobacco, alternative nicotine and vapor product enforcement website and learn how to access it.

V. SUBMITTING COMPLIANCE CHECK RESULTS.....6

Enter compliance check results online to receive payment.

VI. COMPLIANCE CHECK PROCEDURES.....7- 8

Follow these detailed procedures in order to successfully conduct a compliance check.

VII. YOUTH CONSENT FORM.....9

Complete the consent form prior to conducting compliance checks with youth "confidential informants".

VIII. COMPLIANCE CHECK FORM.....10

Coordinate, organize and document your compliance checks by using the compliance check form.

IX. ALTERNATIVE NICOTINE & VAPOR PRODUCTS.....11-12

Learn more about these age-restricted products, including popular brands seen in Iowa retail stores as well as common prices for these products.

I. Press Release

FY 2017

[POLICE DEPARTMENT/SHERIFF'S OFFICE] TO PARTNER WITH IOWA ALCOHOLIC BEVERAGES DIVISION FOR TOBACCO, ALTERNATIVE NICOTINE AND VAPOR PRODUCT EDUCATION AND ENFORCEMENT

[COMMUNITY], Iowa ([MONTH ##], 20##) – The [POLICE DEPT/SHERIFF'S OFFICE] has taken a pledge to keep tobacco, alternative nicotine and vapor products out of the hands of [COMMUNITY] youth.

Known as I-PLEDGE, the program is a partnership with the Iowa Alcoholic Beverages Division (ABD) to educate local retailers and to enforce Iowa's tobacco, alternative nicotine and vapor product laws. Since the program's inception in 2000, the statewide tobacco compliance rate has grown to 91%. By participating in the program, the [POLICE DEPT/SHERIFF'S OFFICE] has committed to do its part to increase the compliance rate even more this year.

I-PLEDGE places emphasis on retailer training. Clerks who successfully complete an online training course and then pass an exam will become I-PLEDGE certified. This allows a retail establishment to use an affirmative defense against a civil penalty if the certified clerk makes an illegal sale.

"I-PLEDGE's retailer training is a great way for clerks to prepare themselves to refuse illegal tobacco, alternative nicotine and vapor product sales," [CHIEF/SHERIFF NAME] said. "The training also assists retailers to ensure they maintain a compliant and responsible establishment."

[OFFICERS/DEPUTIES] will also be conducting compliance checks on local establishments as part of the I-PLEDGE program. Underage customers, under the supervision of law enforcement officials, will enter establishments and attempt to buy tobacco, alternative nicotine and vapor products. Clerks who make the illegal sale will be cited on the spot.

Criminal penalties for selling tobacco, alternative nicotine and vapor products to a minor include a $100 fine for a first offense, a $250 fine for a second offense and a $500 fine for third and subsequent offenses. However, handing out citations is not the intent of the I-PLEDGE program.

"By partnering with the Iowa Alcoholic Beverages Division, we hope to educate clerks and maintain a compliant retail environment in our community," [CHIEF/SHERIFF] said. "Moreover, we pledge to help keep tobacco, alternative nicotine and vapor products out of the hands of Iowa's youth."

To take the I-PLEDGE training or search certification records go to https://abd.iowa.gov/.

##

II. Officer Checklist

SCHEDULE 2

FY 2017

☐ **1. Issue a press release** indicating your agency is partnering with the Iowa Alcoholic Beverages Division to conduct compliance checks. A suggested press release is included on page 2 of this handbook and can be downloaded at **https://abd.iowa.gov/**.

► Please do not provide retailers with advance notification of compliance checks.

☐ **2. Visit your city clerk or county auditor** to obtain a current list of licensed tobacco, alternative nicotine and vapor product retailers in your area.

► ABD does not always receive the most current tobacco, alternative nicotine and vapor product permit information. Therefore, it is important that you receive a list from your city clerk or county auditor prior to conducting compliance checks. If you encounter discrepancies between your city clerk's/county auditor's list and ABD's online list, contact ABD Investigator Bill Missman at 515-314-3654 or via email at Missman@IowaABD.com for further instruction. You may also contact Jessica Ekman at 515-281-7434 or Ekman@IowaABD.com.

► You should also contact ABD if you know of, discover, or receive information regarding a retailer that is not on your city clerk's/county auditor's list or ABD's online list.

☐ **3. Complete and submit compliance checks** on or before **January 15, 2017.**

► Try to complete compliance checks on **seasonal businesses** before the end of the 2016 business season but not before **October 1st.**

► Use only Fiscal Year 2017 Tobacco, Alternative Nicotine and Vapor Product Enforcement Program forms included in this handbook, or download current forms at **https://abd.iowa.gov/**.

☐ **4. Immediately issue a criminal citation** to non-compliant clerks. Your agency should notify the city or county attorney within 72 hours for criminal proceedings. Your agency should also notify the business owner or manager of the tobacco/alternative nicoitne/vapor product violation within seven (7) business days.

► Do not obtain the name of the clerk for compliance checks resulting in compliance. ABD does not need this information and the clerk may notify other retailers in the area that compliance checks are being conducted.

☐ **5. Complete and submit a second compliance check on violators only** by **April 15, 2017.**

NOTE: *Compliance checks must be conducted at establishments during regular business hours.*

III. Compliance Check Results - Unable to Complete

FY 2017

Not all compliance checks may be classified as compliant or non-compliant. Below are a few circumstances law enforcement should be aware of to ensure accurate results are reported to ABD:

► **Establishment tells youth that the business no longer sells tobacco, alternative nicotine or vapor products:** The officer should contact the city clerk/county auditor to determine if the business no longer holds a valid permit or if the business simply told the youth that the business no longer sells tobacco, alternative nicotine or vapor products. If the business does have a valid permit, enter the compliance check as "compliant." If the business no longer holds a valid permit, see payment schedule below.

► **Establishment no longer holds a valid permit**: Submit the compliance check as "no longer holds a valid tobacco, alternative nicotine, or vapor product permit." Make sure a compliance check was attempted if this selection is chosen. If you are aware an establishment on ABD's list no longer holds a valid permit prior to attempting to conduct a compliance check at the establishment, contact your ABD investigator.

► **Establishment is out of business**: Submit the compliance check as "out of business." Make sure a compliance check was attempted if this selection is chosen. If you are aware a business is no longer in operation prior to attempting to conduct a compliance check at the establishment, contact your ABD Investigator.

► **Youth is denied entry**: Submit the compliance check as "compliant." These establishments are typically "members only" or the youth is stopped at the door due to age.

► **Establishment is unsafe or inappropriate**: Establishments that are unsafe or inappropriate for a minor to enter can be considered an "unsatisfactory condition." However, to formally designate the establishment as an "unsatisfactory condition," the officer must contact their ABD investigator prior to conducting the compliance check for confirmation. The officer must conduct a "walk-through" of the premises to ensure the establishment is in compliance with Iowa's tobacco, alternative nicotine and vapor product laws.

Reason	Paid Y/N
Out of business	N
Valid permit but no sale	Y
Inaccessible by youth (explain in comments)	?
Private club (explain in comments)	?
Temporary business closure	N
Unable to locate business	N
Wholesale/Carton sale only	N
Broken vending machine	N
Duplicate	N
No longer holds valid permit	N

Reason	Paid Y/N
Unsatisfactory Condition (explain in comments)	?
In operation but closed at time of visit	N
Unsafe to access (explain in comments)	?
Presence of law enforcement officials	N
Youth inspector knows salesperson	N
Moved to new location but not inspected	N
Drive-thru only but youth inspector has no DL	N
Tobacco/alternative nicotine/vapor product out of stock	N
Run out of time	N
Other non-completion (explain in comments)	?

PAYMENT SCHEDULE *(indicates if a compliance check will result in payment)*

NOTE: A "?" in the paid column means payment for the compliance check will depend on the reason given in the comments section of the report. If you question what reason to use or are unsure if your department will be paid for an inspection, contact ABD Investigator Bill Missman at 515-314-3654 or Missman@IowaABD.com.

IV. Website, User ID and Password

FY 2017

The I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website allows law enforcement agencies to electronically file compliance check reports and submit results to ABD for payment online. Please follow the steps below to enter compliance check reports online.

1. Access the site by visiting **https://abd.iowa.gov/;**

2. Click on the ***"I-PLEDGE Training & Enforcement Log In"*** link located under the **TOBACCO** banner at the top of the home page;

3. Choose the ***"Tobacco, Alternative Nicotine and Vapor Product Enforcement Program."*** and enter a "***User ID***" and ***"Password."***

USER ID:
If you are a **Police Department,** your User ID is the name of your city.
Example: If you are entering results for the Polk City Police Department, your User ID is **Polk City** (include space).

If you are a **Sheriff's Department,** your User ID is the name of your county, plus the word "County".
Example: If you are entering results for the Buena Vista County Sheriff's Department, your User ID is **Buena Vista County** (include spaces).

PASSWORD:
You will use the same password that you used during FY2016.

- Your password is case sensitive, meaning capital and small letters must be in appropriate places.
- Your password cannot contain symbols like &, *, or #, etc.
- **DO NOT USE YOUR EMAIL ADDRESS AS A PASSWORD.**

If you experience difficulty accessing the I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website, make sure you are using **Internet Explorer** as your web browser. If you are using **Internet Explorer** and continue to experience difficulty, contact ABD Investigator Bill Missman at 515-314-3654 or via email at Missman@IowaABD.com. You may also contact Jessica Ekman at 515-281-7434 or Ekman@IowaABD.com.

V. Submitting Compliance Check Results

FY 2017

<u>Follow these easy steps to submit compliance reports online:</u>

Login:
Login using your user ID and password. Please note both the user ID and password are case sensitive; ***meaning capital and lowercase letters must be in appropriate places.***

Disclaimer:
A successful login will prompt a disclaimer screen. The disclaimer explains the terms of using the I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website. Agreeing to these terms allows you to enter the website and submit compliance reports for payment.

Locate Retailer:
A screen with a list of retailers will appear. You may sort each column by clicking on the column heading. After locating the appropriate retailer, click on that retailer's name and a screen with the retailer's information will appear. **Note: An accurate list of retailers should be obtained from your city clerk or county auditor. Contact ABD if you find discrepancies between the online list and the list obtained from your city clerk or county auditor.**

Enter Compliance Check Results:
After arriving at the retailer information screen, scroll to the bottom and click on **"*Report Compliance.*"** A screen will appear that will allow you to enter compliance check results. Please complete all applicable fields accurately. If you do not see the "Report Compliance" button, make sure you are using **Internet Explorer** as your web browser.

Submit Compliance Check Results:
After entering the results of the compliance check, click on **"*Submit*"** located at the bottom of the screen. Submitting the results is the same as an invoice, billing ABD $75 per compliance check. Payment will depend on whether the compliance check is eligible for reimbursement. If an explanation is required, please ensure a complete and accurate explanation is provided in the comments section.

Notifications to Retailers:
After receiving the compliance report, ABD will send a notification of compliance to retailers who do not sell tobacco, alternative nicotine or vapor products to underage youth and a notification of non-compliance to those who do sell. The notifications will be sent to retailers monthly. **It is imperative to enter compliance check reports accurately and in a timely manner.** Please contact your ABD Investigator if an error is made when entering a compliance check report.

Questions or Problems?
If you have problems submitting a report or have questions regarding the website, contact ABD Investigator Bill Missman at 515-314-3654 or <u>Missman@IowaABD.com</u>. You may also contact Jessica Ekman at 515-281-7434 or <u>Ekman@IowaABD.com.</u>

VI. Compliance Check Procedures
FY 2017

ABD has created the following suggested procedures for routine and fair monitoring of Iowa retail establishments licensed to sell tobacco, alternative nicotine and vapor products.

Preparing for Compliance Checks

A law enforcement agency (department) should coordinate the participation of a minor to assist with the controlled-buy operation (compliance check).

- **Minors shall be 16 or 17 years of age.** ***Minors under the age of 16 shall not be used to conduct tobacco, alternative nicotine and vapor product compliance checks.***
- All minors should be of good character.
- Minors should have the appearance, demeanor, mannerisms and appropriate dress for their age group. Youth should refrain from wearing high school or college logos while conducting compliance checks.
- All minors shall have a parent or guardian complete a Parent/Guardian Consent Form prior to the scheduled compliance check date. Provide a copy of the consent form to the parent/guardian.

In order to maintain the integrity of the program, the officer conducting compliance checks should wear plain clothes and utilize an unmarked vehicle whenever possible.

The officer should review the list of retail establishments and determine what tobacco/alternative nicotine/vapor products each retailer sells. Payment cannot be made if the minor asks for a product not sold by the retailer.

The citing law enforcement official shall be available for testimony at hearings and district court proceedings at the request of the local/state prosecutor and shall advise local/state prosecutors and their ABD investigator as to the disposition of criminal citations.

A Briefing Shall be Held Prior to Conducting Checks

- **Appearance:** The officer should approve the minor's appearance and a photo should be taken of the minor before each day of compliance checks. The minor's appearance should not be changed after that point.
- **Official Identification:** The officer should verify the minor has proper, official identification showing date of birth. This shall be the only identification carried or presented throughout the course of the compliance check. The official identification should be an Iowa driver's license. Make a photocopy of the minor's ID.
- **Possessions:** The minor should only have buy money provided by the department in his/her possession; no other money should be on his/her person. Check the minor and his/her possessions to ensure there are no tobacco, alternative nicotine or vapor products in his/her possession prior to the check.
- **Instructions:** The minor should be instructed:
  - » As to what product he/she should attempt to purchase;
  - » Go directly to the targeted merchandise to attempt to make the purchase;
  - » Speak only as necessary - at no time should the minor try to persuade the licensee/clerk to complete the sale;
  - » If asked about age, the minor should truthfully respond with how old he/she is;
  - » If asked for ID, the minor should present his/her ID to the licensee/clerk;
  - » If the licensee/clerk takes a minor's ID, tell the minor not to argue but to leave the store and the officer will obtain the minor's ID and congratulate the licensee for compliance;
  - » If a receipt of the purchase is offered, accept and maintain for evidence;
- **Termination:** The officer shall have the authority to terminate the operation at any time for safety reasons.

NOTE: The success of the operation and the minor's continued participation in tobacco, alternative nicotine and vapor product compliance checks is not dependent upon making successful purchases.

Law Enforcement Positioning

- **Tobacco, Alternative Nicotine and Vapor Product Retailers:** If possible, the officer should be stationed either inside the store or at a point from which the officer can observe the sale. The officer should not appear to be with the minor.

- **Bars/Restaurants:** The minor should enter the establishment first and request a tobacco, alternative nicotine or vapor product. If possible, the officer should enter the bar/restaurant after the minor and observe the purchase attempt from a discreet location. The officer should not appear to be accompanying the minor. Most bars/restaurants typically sell traditional tobacco products versus alternative nicotine and vapor products. An establishment where an employee checks the minor's ID at the door and denies the minor access to the premises shall be considered to be compliant.

Unsatisfactory Condition

Establishments that are unsafe or inappropriate for a minor to enter can be considered an "unsatisfactory condition." A minor should never be sent into an adult entertainment facility or bar where the officer feels it is unsafe or inappropriate for the minor. **The majority of bars in Iowa do not fall under this condition.**

However, to formally designate the establishment as an "unsatisfactory condition," the officer must contact their ABD investigator prior to conducting the compliance check for confirmation. Once the establishment has been formally designated as an "unsatisfactory condition," the officer must conduct a "walk-through" of the premises to ensure the establishment is in compliance with Iowa's tobacco, alternative nicotine and vapor product laws. A payment will not be sent to law enforcement agencies that neglect to conduct a "walk-through" of "unsatisfactory condition" establishments. In the event that ABD feels the check can safely be conducted, the department will be asked to complete the check.

Vending Machines

A vending machine which is accessible to a youth under age 18 is in violation of Iowa Code section 453A.36(6). If an establishment has a vending machine, the minor should be instructed to approach the retailer and specifically ask for change for the vending machine. If change is given, the minor should purchase tobacco, alternative nicotine or vapor products from the machine and exit. Asking specifically for change for the vending machine helps to identify who to cite during a non-compliant vending machine sale.

Audio/Video Recording

Audio and video equipment may be utilized during compliance checks in lieu of officer observation.

Criminal Citation

Immediately issue a criminal citation to an employee/clerk who sells a tobacco, alternative nicotine or vapor product to a minor, a violation of Iowa Code section 453A.2(1). A citation must be issued before your department may receive payment. Selling a tobacco, alternative nicotine or vapor product to a minor is a scheduled violation, resulting in scheduled fines as follows:

- 1st Offense: $100.00 plus surcharge and court costs
- 2nd Offense: $250.00 plus surcharge and court costs
- 3rd Offense: $500.00 plus surcharge and court costs

Reporting

The department shall enter the compliance check results into the I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program accessible at **https://abd.iowa.gov/**. For further instruction on this procedure refer to pages 5 and 6.

Additional Information

For further information on tobacco, alternative nicotine and vapor product laws refer to Iowa Code Chapter 453A. The Iowa Code can be viewed at www.legis.iowa.gov/.

VII. Youth Consent Form

FY 2017

Youth Participant's Name: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Home Phone Number: _____ **Date of Birth:** _____

Social Security Number: _____ **Gender:** _____

Youth's Driver License or Identification Card No.: _____

- ► I understand my participation is voluntary and I will be under the supervision of a law enforcement officer at all times.
- ► I understand it is essential to maintain the confidential nature of the program, therefore ensuring the effectiveness, accuracy and validity of the outcome.
- ► I understand my participation in the project can be terminated at any time by myself, a parent or the law enforcement agency.
- ► I understand compliance checks may result in the purchase of tobacco, alternative nicotine and vapor products. I understand tobacco, alternative nicotine and vapor products will be treated as evidence and maintained by the law enforcement agency.
- ► I understand that I may be required to enter bars.
- ► I understand retailers in violation of minimum-age tobacco, alternative nicotine and vapor product laws may receive citations that result in monetary fines, suspension or revocation of their license and that I may be asked to participate in the adjudication process.
- ► I understand the success of the project is not dependent upon making successful, illegal purchases.

My signature on this document verifies my willingness to participate in the project and to follow the rules and procedures outlined in the training.

Youth Signature _____ **Date** _____

I have read the Program Procedures and Youth Participant Guidelines and give my permission for my child to participate in this project.

Parent/Guardian Signature _____ **Date** _____

Program Coordinator _____ **Date** _____

VIII. Compliance Check Form

FY 2017

Retailer: _____ **Address:** _____

City: _____ **State:** _____ **ZIP:** _____

RESULTS (check one):

☐ **Compliant**

Date Checked: _____

☐ **Non-Compliant**

Time Checked: _____

☐ **Unable to Complete** (Not Applicable)

Clerk Information: ☐ Male ☐ Female

(NAME ONLY REQUIRED IF NON-COMPLIANT):

First Name: _____ **Middle Initial:** _____

Last Name: _____ **Case #:** _____

☐ I have issued a criminal citation to the clerk listed above for selling tobacco, alternative nicotine or vapor products to a person under age eighteen. *Iowa Code § 453A.2(1).*

If Unable to Complete the Compliance Check (check one)

☐ Establishment has a **VALID PERMIT** but **Does Not Sell Tobacco, Alternative Nicotine or Vapor Products.**
- Permit Status Verified by City Clerk or County Auditor

☐ Establishment **No Longer Holds a Valid Tobacco, Alternative Nicotine or Vapor Product Permit**

☐ Establishment is **Out of Business**

☐ Establishment is designated as an **"Unsatisfactory Condition"**
- "Unsatisfactory Condition" verified by ABD Investigator
- Officer Conducted a Walk-Through of the Premises
(Explanation Required in Comments Section Below)

► If none of the above reasons apply, write reason and explanation on the back of the form—see page 4 for reason list.

(NOTE: If the compliance check result is Non-Compliant, a citation must be issued before your department may receive payment.)

OFFICER INFORMATION (OFFICER THAT CONDUCTED COMPLIANCE CHECK):

First Name: _____ **Middle Initial:** _____ **Last Name:** _____

Badge: _____ **Department:** _____

CONFIDENTIAL INFORMANT (CI):

CI Age: ☐ 16 ☐ 17 **CI Gender:** ☐ Male ☐ Female **CI Number:** ☐☐☐☐ (Last 4 digits of CI's ID)

CI Ethnicity: ☐ White ☐ Asian ☐ African American ☐ Native American ☐ Hispanic ☐ Other

RESULTS OF ATTEMPTED PURCHASE:

Attempted Purchase Item: ☐ Cigarettes ☐ Smokeless Tobacco ☐ Other Tobacco Product

☐ Vapor Product ☐ Alternative Nicotine Product

Age Requested? ☐ YES ☐ NO

ID Requested? ☐ YES ☐ NO

COMMENTS:

Officer Signature

$75

IX. ALTERNATIVE NICOTINE & VAPOR PRODUCTS

FY 2017

What is an Alternative Nicotine and Vapor Product?

Vapor Product:
Any non-combustible product which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug and Cosmetic Act.

Alternative Nicotine Product:
A product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. Alternative nicotine products do not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug and Cosmetic Act.

Based on advice from the Iowa Attorney General's Office, the last line of the above definition *eliminates cessation products from being included under the law.* **Therefore, the purchase of cessation products should not be attempted during tobacco, alternative nicotine and vapor product compliance checks.** The three types of over the counter cessation products currently approved by the FDA are nicotine gum, transdermal patches, and nicotine lozenges.

Why are some of the retailers listed in the I-PLEDGE Tobacco, Alternative Nicotine and Vapor Product Enforcement Program website highlighted blue?

Retailers that indicated they were an alternative nicotine/vapor store on their permit applications are highlighted in blue within the I-PLEDGE website. This does not mean that these retailers sell only vapor/alternative nicotine products but there is a high likelihood that this is the case. **It is recommended that the officer find out what products these retailers sell prior to conducting compliance checks**. This way the officer can ensure the minor is instructed to attempt to purchase a product the retailer carries. Payment cannot be made if the minor asks for a product not carried by the retailer.

Common Brands and Prices of Vapor Products Carried by Iowa Retailers:

Blu
Starter Kit $34.99, Refill Cartridges $14.99, Single Use Vape $9.99

Finiti
Single Use Vape $6.99, Starter Kit $24.99
New packaging item is called "Fin"

Vuse
Digital Vapor Cigarettes
Vape Starter Kit $24.99, Single Use Vape $9.99,
V-Liquid (Refill Cartridge) $5.99

South Beach Smoke
Advanced Electronic Vaporizer
Starter Kit $29.99, 10ml E-liquid $7.99

NJOY
Vape Starter Kit $29.99, E-Juice $7.99

MarkTEN
Single Use Vape $10

Please note these are only examples of prices and brands carried by some Iowa retailers. This information was collected in 2014 and may have changed since that time. Not all retailers will carry these brands and prices may vary from what is shown. Having the youth attempt to purchase a refill cartridge or single use vape may be the most cost effective option, as these items have prices that are comparable to traditional tobacco products.

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