

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 26 (Delegate A. Miller)
 Economic Matters

Clean Indoor Air Act - Use of Electronic Smoking Devices - Prohibition

This bill alters the definition of “smoking” for purposes of the Clean Indoor Air Act (CIAA) to include the use of an electronic smoking device. The bill requires the Department of Health and Mental Hygiene (DHMH) to make conforming changes to associated regulations and its annual report on enforcement efforts. The bill defines “electronic smoking device” as an electronic device that can be used to deliver nicotine or other substances to the individual inhaling from the device. The term includes an electronic cigarette, cigar, cigarillo, or pipe.

Fiscal Summary

State Effect: General fund expenditures increase by \$26,400 in FY 2016 for DHMH to hire a half-time administrative officer and to mail outreach materials on the changes associated with the bill. The half-time position transitions to a quarter-time position in FY 2017. Special fund revenues increase minimally due to the imposition of existing penalties for violations of the bill.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	-	-	-	-	-
GF Expenditure	\$26,400	\$2,800	\$0	\$0	\$0
Net Effect	(\$26,400)	(\$2,800)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill’s changes are mainly procedural in nature and do not have a material impact on local government enforcement of the Clean Indoor Air Act.

Small Business Effect: Minimal.

Analysis

Current Law: Pursuant to the Clean Indoor Air Act of 2007 (CIAA), except as otherwise specified, a person may not smoke in (1) an indoor area open to the public; (2) an indoor place in which meetings are open to the public; (3) a government-owned or government-operated means of mass transportation; (4) an indoor place of employment; (5) a private home used by a licensed child care provider; or (6) a private vehicle used for public transportation of children or as part of health care or day care transportation. The prohibition includes bars, clubs, restaurants, pubs, taverns, retail establishments, theaters, concert halls, athletic facilities, financial service institutions, government buildings, educational institutions, museums, and libraries. However, the prohibition does not apply to (1) private homes or residences; (2) private vehicles; (3) a hotel or motel room as long as the total percent of rooms so used does not exceed 25%; (4) specified tobacco facilities and retail businesses; or (5) a laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke. CIAA defines “smoking” as the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

CIAA required DHMH to adopt regulations that prohibit environmental tobacco smoke in indoor areas open to the public. A person who violates the DHMH regulations is subject to a written reprimand for a first violation, a civil penalty of \$100 for a second violation, \$500 for a third violation, and \$1,000 for each subsequent violation, unless otherwise waived by DHMH after the department considers the seriousness of the violation and good faith measures. (Statute requires that the civil penalty for third and subsequent violations be at least \$250.) However, an employer who takes certain retaliatory actions against an employee (who has complained or taken other actions related to violations) is subject to a civil penalty of at least \$2,000 but no more than \$10,000 for each violation. All civil penalty revenue is paid to the Cigarette Restitution Fund.

Background: Electronic cigarettes (sometimes referred to as “e-cigarettes”) are battery-operated devices that typically contain nicotine cartridges and other chemicals imitating flavors such as chocolate, mint, or strawberry. When a user draws on an electronic cigarette, a light-emitting diode causes the tip to glow, and the inhaled nicotine vapor is exhaled in a cloud that resembles cigarette smoke but dissipates more quickly and does not have a lingering odor.

E-cigarette use has been on the rise since first introduced in the United States in the mid-2000s. According to the U.S. Centers for Disease Control and Prevention, between 2010 and 2013, e-cigarette use more than doubled among U.S. adults, with about 20 million individuals trying the products in 2013. Additionally, *The Wall Street Journal* (citing a Wells Fargo industry analyst) reports that the e-cigarette market grew to about \$2.5 billion in 2014.

E-cigarette manufacturers maintain that their products are safe and serve as an alternative to traditional tobacco cigarettes. However, the American Lung Association, American Cancer Society, American Heart Association, and Campaign for Tobacco-Free Kids have called for increased regulation and research of e-cigarettes, claiming that the products have not been proven safe and may also initiate nicotine addiction for youth due to the variety of youth-appealing flavors. The U.S. Food and Drug Administration (FDA) has also stated that consumers do not know the potential risks of using e-cigarettes because they have not been fully studied; an early FDA analysis of a small sample of e-cigarettes found detectable levels of carcinogens and toxins in the products. *The New York Times* has reported that the long-term effects of the nicotine vapor are still unclear, but that there is currently no evidence that the vapor causes cancer or heart disease; however, some high-powered, high-heat e-cigarettes may produce carcinogens at levels similar to traditional tobacco cigarettes.

According to the National Conference of State Legislatures, 41 states, including Maryland (through Chapter 714 of 2012), have prohibited the sale of e-cigarettes to minors. Harford County prohibits the use of e-cigarettes on county property, and Baltimore City prohibits the use of e-cigarettes in enclosed areas that are open to the public or are part of places of employment (with the exception of certain e-cigarette retail establishments, restaurants, taverns, and video lottery facilities). Three states, New Jersey, North Dakota, and Utah, have banned the use of e-cigarettes in public places. This bill is modeled after the 2009 New Jersey Legislation (Assembly Nos. 4227 and 4228).

FDA initially attempted to regulate e-cigarettes as drug/device combination products under the federal Food, Drug, and Cosmetic Act. However, a 2010 federal appellate court held that FDA may not regulate e-cigarettes as drug/device combination products unless manufacturers specifically market the products as tobacco cessation aids. The court did hold, however, that FDA could regulate e-cigarettes as “tobacco products” under the Family Smoking Prevention and Tobacco Control Act of 2009 (TCA). FDA chose not to appeal the ruling and instead moved forward with regulations under its TCA authority. In April 2014, FDA issued its Proposed Rule to deem e-cigarettes as “tobacco products” subject to its regulatory authority. Among other regulations, FDA proposes to require a minimum age of 18 to purchase e-cigarettes (including any components or parts that contain nicotine). The proposed regulations do not encompass the use of e-cigarettes, such as where and when they may be used. The public comment period for the Proposed Rule closed in August 2014, with thousands of comments submitted. FDA must review these comments and issue its Final Rule before the regulations take effect.

State Expenditures: General fund expenditures increase by \$26,387 in fiscal 2016, which accounts for the bill’s October 1, 2015 effective date. This estimate reflects the cost of DHMH hiring one half-time contractual administrative officer for nine months to coordinate and implement regulation, prepare outreach materials, and conduct outreach

with local governments, businesses, and the public. It includes a salary, fringe benefits, one-time start-up costs, and operating expenses. The half-time position transitions to a quarter-time position for three months in fiscal 2017.

Contractual Position	0.5
Salary and Fringe Benefits	\$16,962
Outreach Material Expenses	4,920
Operating Expenses	<u>4,505</u>
Total FY 2016 State Expenditures	\$26,387

Additional Information

Prior Introductions: HB 1291 of 2014 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Baltimore City; Allegany, Harford, Montgomery, Talbot, and Wicomico counties; Department of Budget and Management; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Association of County Health Officers; Campaign for Tobacco-Free Kids; American Cancer Society; American Heart Association; American Lung Association; National Conference of State Legislatures; *The New York Times*; *The Wall Street Journal*; U.S. Centers for Disease Control and Prevention; U.S. Food and Drug Administration; Department of Legislative Services

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