

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 944

(Senator Kelly)

Finance and Judicial Proceedings

Health and Government Operations

Nonprescription Drugs and Devices - Provision by Registered Nurses and Sale of
Contraceptives Through Automatic Devices

This bill repeals the prohibition against and related penalty for selling or offering for sale a *nonlatex condom* by means of a vending machine or other automatic device. Instead, the bill prohibits a person from selling or offering for sale a *natural membrane condom* by means of a vending machine or other automatic device; violators are excluded from existing criminal and civil penalties under current law. The Committee on Registered Nurses Personally Preparing and Dispensing Drugs and Devices in Local Health Departments must include additional information on nonprescription contraceptive drugs and devices approved for over-the-counter (OTC) use within its formulary. A registered nurse (RN) may provide nonprescription drugs and devices, without a prescription, in compliance with specified provisions in current law. The bill also makes other conforming changes.

Fiscal Summary

State Effect: The committee can include the specified OTC nonprescription drugs and devices within the formulary using existing budgeted resources. The repeal of the criminal penalty provision under the bill is not anticipated to have a material impact on State finances or operations, including the work of the District Court.

Local Effect: Any operational impact on local health departments (LHDs) is not anticipated to affect local finances. The repeal of the criminal penalty provision under the bill is not anticipated to have a material impact on local finances or operations, including local law enforcement.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Sale of Condoms by Vending Machine

Under current law (specifically, under the Criminal Law Article), a person may not sell or offer for sale a nonlatex condom by means of a vending machine or other automatic device. A violator is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 for each violation. Each vending machine or other automatic device in violation of this prohibition is considered a separate violation.

The bill repeals the prohibition against, and associated penalty for, selling or offering for sale a *nonlatex condom* by means of a vending machine or other automatic device. Instead, the bill prohibits a person from selling or offering for sale a *natural membrane condom* by means of a vending machine or other automatic device and places that prohibition under the Maryland Food, Drug, and Cosmetic Act (within the Health-General Article).

Under the Maryland Food, Drug, and Cosmetic Act, as administered by the Maryland Department of Health (MDH), a person who violates any prohibition in the Act is subject to both criminal and civil penalties. More specifically, a violator is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$10,000 and imprisonment for up to one year for the first conviction, and a fine of up to \$25,000 and imprisonment for up to three years for a second or subsequent conviction. In addition, a person who violates the Act is subject to a civil penalty of up to \$5,000 in an action in any District Court and can be enjoined from continuing the violation. Each day that a violation occurs is a separate violation.

The bill excludes the prohibition against selling or offering for sale a natural membrane condom by means of a vending machine or other automatic device from the current law penalties under the Maryland Food, Drug, and Cosmetic Act.

Committee on Registered Nurses Personally Preparing and Dispensing Drugs and Devices in Local Health Departments

Chapter 44 of 2015 established the committee to develop and approve a formulary for use by RNs and annually review the formulary to ensure compliance with current prescribing standards.

The bill requires that the formulary also include all nonprescription contraceptive drugs and devices approved by the U.S. Food and Drug Administration for OTC use.

Registered Nurses Preparing and Dispensing Drugs and Devices

Chapter 44 also authorizes an RN to personally prepare and dispense drugs and devices, if the RN (1) complies with the formulary developed by the committee; (2) successfully completes an MDH training program; (3) maintains the patient's health record in a manner that ensures the confidentiality of the patient's drug and device medication record in accordance with State and federal laws; (4) complies with drug and device storage and inventory procedures in accordance with MDH policy; and (5) has received a prescription from an authorized prescriber employed at an LHD.

The bill expands this authorization for an RN to provide, without a prescription, nonprescription drugs and devices, subject to compliance with the specified current law provisions.

Under current law, an RN who complies with the above provisions is also authorized to personally prepare and dispense prescription drugs and devices in an LHD (1) in accordance with the Overdose Response Program or the Expedited Partner Therapy Pilot Program or (2) to patients in need of communicable disease, alcohol and drug abuse, family planning, or reproductive health services.

The bill expands this authorization for an RN in an LHD to provide, without a prescription, nonprescription drugs and devices, subject to compliance with the specified current law provisions.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1171 (Delegate Williams, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland State Department of Education; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Baltimore City Public Schools; Anne Arundel County Public Schools; Baltimore County Public Schools; Montgomery County Public Schools; Prince George's County Public Schools; St. Mary's County Public Schools; Department of Legislative Services

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km/jc

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