

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 720 (Delegates Bobo and Frush)
Health and Government Operations

Public Health - Nontobacco Nicotine Products

This bill prohibits a person from selling, distributing, or offering for sale a product, or any part of a product, that contains or delivers nicotine intended for human consumption and has not been approved by the U.S. Food and Drug Administration (FDA). The bill does not apply to tobacco products. Violators are guilty of a misdemeanor and subject to a fine of up to \$1,000 per violation.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's penalty provision. No effect on expenditures.

Local Effect: Enforcement can be handled with existing resources, assuming it is based on complaints only and not on inspection of all retailers that sell nontobacco nicotine products.

Small Business Effect: Potential minimal.

Analysis

Current Law: State law does not address nontobacco nicotine products.

With certain exceptions, statute prohibits a person from smoking in an indoor area open to the public, an indoor place in which meetings are open to the public, a government-owned or -operated means of mass transportation, or an indoor place of employment. However, the prohibition does not apply to nontobacco nicotine products.

Background: Electronic cigarettes, or “e-cigarettes,” are battery-operated devices that generally contain nicotine cartridges and often other chemicals to mimic flavors such as chocolate, mint, or strawberry. When a user sucks on an e-cigarette, a light-emitting diode causes the tip to glow, and the inhaled nicotine vapor is exhaled in a cloud that looks like cigarette smoke but dissipates more quickly and does not have a lingering odor.

The American Lung Association, American Cancer Society, American Heart Association, and Campaign for Tobacco-Free Kids have called for e-cigarettes, which are not regulated by FDA, to be removed from the market, saying that children may be attracted to the flavored products and that they have not been proven safe.

In July 2009, the Oregon Attorney General’s Office announced a settlement prohibiting the sale of e-cigarettes in Oregon until they are approved by FDA, or until a court rules FDA does not have the authority to regulate electronic cigarettes. Even if courts decide that FDA does not have regulatory authority, the settlement stipulates, among other things, that electronic cigarettes may not be sold in Oregon unless there is competent and reliable scientific evidence to support product safety claims.

In addition, the California legislature attempted to ban the sale of e-cigarettes in the state entirely, but the bill was vetoed by the Governor in October 2009.

In July 2009, FDA announced that laboratory analysis found that the e-cigarette contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze. However, manufacturers maintain that their products are safe, and in February 2010, a federal judge ruled that FDA cannot regulate electronic cigarettes as drug-delivery devices.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Caroline, Prince George’s, and Montgomery counties; Baltimore City; Department of Health and Mental Hygiene; Comptroller’s Office; Judiciary (Administrative Office of the Courts); American Medical Association; Oregon Department of Justice; *Washington Post*; *Wall Street Journal*; Department of Legislative Services

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