

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1272

(Delegate A. Miller, *et al.*)

Health and Government Operations

Finance

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**Public Health - Electronic Cigarettes - Distribution to Minors Prohibited**

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This bill prohibits a person from selling, distributing, or offering for sale to a minor an electronic device – including an electronic cigarette, cigar, cigarillo, or pipe – that can be used to deliver nicotine to the individual inhaling from the device. The bill does not apply to State-regulated tobacco products or to devices that have been approved for human consumption by the U.S. Food and Drug Administration (FDA). A person that violates the bill is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 for each violation. However, the bill specifies that it is a defense in a prosecution for such a violation that the defendant examined the purchaser or recipient’s driver’s license or other valid identification (issued by an employer, government unit, or institution of higher education) that positively identified the purchaser or recipient as at least 18 years of age.

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**Fiscal Summary**

**State Effect:** General fund revenues may increase minimally as a result of the bill’s monetary penalty provision. Expenditures are not affected.

**Local Effect:** Enforcement can be handled with existing resources, assuming it is complaint based.

**Small Business Effect:** Minimal.

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**Analysis**

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

A person licensed in the State to distribute cigarettes may not distribute to a minor a tobacco product, a cigarette rolling paper, or a coupon redeemable for a tobacco product. Distribution includes selling, giving, or offering to sell. A person other than a commercial distributor may not sell a tobacco product to (or purchase a tobacco product for) a minor or distribute cigarette rolling papers to a minor. A violator is guilty of a misdemeanor and subject to the following penalties: \$300 for a first offense; \$1,000 for a second offense occurring within two years after the first offense; and \$3,000 for each subsequent violation occurring within two years after the preceding offense.

**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.

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

Several states (including Arizona, Colorado, New Jersey, and New York) have restricted, or attempted to restrict, the sale of electronic cigarettes to minors. In addition, in July 2009, the Oregon Attorney General’s Office announced a settlement stipulating, among other provisions, that electronic cigarettes may not be sold in Oregon in the absence of reliable scientific evidence to support product safety claims. In October 2009, the Governor of California vetoed a bill that would have prohibited the sale of electronic cigarettes in the state.

In July 2009, FDA announced that laboratory analysis had indicated that electronic cigarettes contain carcinogens and toxic chemicals such as diethylene glycol (an ingredient used in antifreeze). Manufacturers, however, maintain that the products are safe – and in December 2010, a federal appellate court ruled that FDA cannot regulate electronic cigarettes as drug-delivery devices.

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### **Additional Information**

**Prior Introductions:** HB 720 of 2010, a similar bill, received an unfavorable report from the House Health and Government Operations Committee.

**Cross File:** None.

**Information Source(s):** National Conference of State Legislatures; Baltimore City; Harford, Montgomery, and Talbot counties; Department of Health and Mental Hygiene; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Association of County Health Officers; Department of Legislative Services

**Fiscal Note History:** First Reader - March 18, 2012  
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