

Department of Legislative Services  
 Maryland General Assembly  
 2014 Session

FISCAL AND POLICY NOTE

House Bill 1291 (Delegate A. Miller, *et al.*)  
 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 to include the use of an electronic smoking device. The bill requires the Department of Health and Mental Hygiene to make conforming changes to associated regulations. 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 \$52,100 in FY 2015 for DHMH hire an administrative officer and to mail outreach materials on the changes associated with the bill. Special fund revenues increase minimally due to imposition of existing penalties for violations of the bill.

| (in dollars)   | FY 2015    | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|----------------|------------|---------|---------|---------|---------|
| SF Revenue     | -          | -       | -       | -       | -       |
| GF Expenditure | \$52,100   | \$0     | \$0     | \$0     | \$0     |
| Net Effect     | (\$52,100) | \$0     | \$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, 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; or (4) an indoor place of employment. The prohibition does not apply to (1) private homes or residences; (2) a hotel or motel room as long as the total percent of rooms so used does not exceed 25%; (3) specified tobacco facilities and retail businesses; and (4) a laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke.

DHMH is required to adopt regulations that prohibit environmental tobacco smoke in indoor areas open to the public. Generally, a person who violates a DHMH regulation is subject to a civil penalty, including a fine of \$100 for a second violation and at least \$250 for each subsequent violation, unless otherwise waived by DHMH after the department considers the seriousness of the violation and good faith measures. 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. According to the National Conference of State Legislatures, at least 27 states, including Maryland (Chapter 714 of 2012), have prohibited the sale of e-cigarettes to minors.

E-cigarette use has been on the rise since first being introduced in the United States in the mid-2000s. According to estimates by a Wells Fargo Securities analyst, e-cigarette sales approached \$1.7 billion in 2013, more than doubling 2012 levels. In February 2014, *The New York Times* reported cities such as Boston and New York, along with at least two states, New Jersey and Utah, have banned smoking e-cigarettes in public places. This bill is modeled after the 2009 New Jersey Legislation (Assembly Nos. 4227 and 4228).

**State Expenditures:** General fund expenditures increase by \$52,135 in fiscal 2015. This estimate reflects the cost of DHMH hiring one 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.

|   |                 |
|---|-----------------|
| Contractual Position                    | 1               |
| Salary and Fringe Benefits              | \$43,410        |
| Outreach Material Expenses              | 3,920           |
| Operating Expenses                      | <u>4,815</u>    |
| <b>Total FY 2015 State Expenditures</b> | <b>\$52,135</b> |

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Dorchester, Garrett, and Montgomery counties; Department of Budget and Management; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Maryland Association of Counties; National Conference of State Legislatures, *The New York Times*, Department of Legislative Services

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Analysis by: Joshua A. Lowery

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510