

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 354 (Delegate A. Miller, *et al.*)
 Economic Matters

Clean Indoor Air Act - Use of Electronic Cigarette 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 cigarette 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 cigarette device” as an electronic device that can be used to deliver nicotine or any other substance intended for human consumption to an individual to simulate smoking through the inhalation of vapor or aerosol from the device. The term includes an electronic cigarette, cigar, cigarillo, or pipe.

Fiscal Summary

State Effect: General fund expenditures increase by \$26,800 in FY 2018 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 2019. Special fund revenues increase minimally due to the imposition of existing penalties for violations of the bill.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	-	-	-	-	-
GF Expenditure	\$26,800	\$2,700	\$0	\$0	\$0
Net Effect	(\$26,800)	(\$2,700)	\$0	\$0	\$0

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary: “Electronic cigarette device” does not include a product approved by the U.S. Food and Drug Administration for sale as a drug delivery or medical device.

The bill exempts the following entities from CIAA requirements: (1) a retail electronic cigarette device business in which the primary activity is the retail sale of tobacco products or electronic cigarette devices and accessories; (2) facilities of electronic cigarette device manufacturers, importers, wholesalers, or distributors; and (3) a research or educational laboratory for the purpose of conducting scientific research into the health effects of environmental tobacco smoke and vapor, as defined in the bill.

Current Law: Pursuant to 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 -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.

Electronic cigarette use has been on the rise since first introduced in the United States in the mid-2000s, particularly among youth. According to the U.S. Centers for Disease Control and Prevention, between 2011 and 2015, electronic cigarette use among high school students increased from 1.5% to 16%; among middle school students, usage increased from 0.6% to 5.3%. Put another way, more than 10 times the number of high school students and nearly 9 times the number of middle school students used electronic cigarettes in 2015 than in 2011.

The U.S. Surgeon General reports that the aerosol released from electronic cigarettes can contain harmful and potentially harmful chemicals, including nicotine, ultrafine particles, flavorings linked to lung disease, volatile organic compounds such as benzene, and heavy metals; however, scientists are still examining the health effects of the aerosol for both users and those exposed to the aerosol secondhand.

According to the American Nonsmokers' Rights Foundation, as of January 2017, 10 states (California, Connecticut, Delaware, Hawaii, Maine, New Jersey, North Dakota, Oregon, Utah, and Vermont) prohibit the use of electronic cigarettes in places where smoking is also prohibited, specifically nonhospitality workplaces, bars, restaurants, and/or gambling facilities. Three of these states (Delaware, Utah, and Vermont) specifically exempt electronic cigarette retail establishments from these restrictions. In Maryland, four jurisdictions (Baltimore City and Howard, Montgomery, and Prince George's counties) prohibit use of e-cigarettes in nonhospitality workplaces, bars, and/or restaurants.

In 2016, the U.S. Food and Drug Administration finalized a rule extending its regulatory authority over tobacco products to include electronic cigarettes and components or parts of regulated tobacco products (*e.g.*, e-liquid). Accordingly, effective August 8, 2016, federal regulations prohibit retailers from selling electronic cigarettes to minors and require retailers to check the photo identification of any individual younger than age 27 who attempts to purchase electronic cigarettes. Further, retailers may not sell electronic cigarettes in vending machines or self-service displays (except in adult-only facilities) and may not give away free samples of electronic cigarettes, including components or parts. The regulations also set certain requirements for manufacturers of electronic cigarettes. However, the regulations do not encompass the use of electronic cigarettes, such as where and when they may be used.

State Expenditures: General fund expenditures increase by \$26,751 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate reflects the cost of DHMH hiring one half-time contractual administrative officer for nine months to coordinate and implement regulations, 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 2019.

Contractual Position	0.5
Salary and Fringe Benefits	\$16,956
Outreach Material Expenses	4,920
Operating Expenses	<u>4,875</u>
Total FY 2018 State Expenditures	\$26,751

This estimate does not include any health insurance costs that could be incurred for the specified contractual employee under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Prior Introductions: HB 26 of 2015, a similar bill, received an unfavorable report from the House Economic Matters Committee. HB 1291 of 2014, another similar bill, also received an unfavorable report from the House Economic Matters Committee.

Cross File: SB 624 (Senator Benson, *et al.*) - Finance.

Information Source(s): Maryland Association of County Health Officers; Baltimore City; Montgomery, Washington, and Worcester counties; Maryland Association of Counties; Maryland Municipal League; Comptroller's Office; Department of Health and Mental Hygiene; American Nonsmokers' Rights Foundation; U.S. Centers for Disease Control and Prevention; U.S. Food and Drug Administration; U.S. Surgeon General; Department of Legislative Services

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