

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 First Reader

House Bill 27 (Delegate Holmes)
 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 Maryland Department of Health (MDH) to make conforming changes to associated regulations and its annual report on enforcement efforts.

Fiscal Summary

State Effect: General fund expenditures increase by \$23,600 in FY 2020 and by \$7,000 in FY 2021. Special fund revenues increase minimally due to the imposition of existing penalties for violations of the bill.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	-	-	-	-	-
GF Expenditure	\$23,600	\$7,000	\$0	\$0	\$0
Net Effect	(\$23,600)	(\$7,000)	\$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: An “electronic cigarette device” is defined 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. “Electronic cigarette device” does not include a product approved by the U.S. Food and Drug Administration (FDA) 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 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 MDH to adopt regulations that prohibit environmental tobacco smoke in indoor areas open to the public. A person who violates the MDH regulations is subject to a written reprimand for a first violation, a civil penalty of \$100 for a second violation, a civil penalty of \$500 for a third violation, and a civil penalty of \$1,000 for each subsequent violation, unless otherwise waived by MDH 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 (“e-cigarettes”) are battery-operated devices that typically contain nicotine cartridges and other chemicals imitating flavors such as chocolate, mint, or strawberry. E-cigarettes can take many forms and can resemble traditional tobacco cigarettes or even everyday items like pens and USB memory sticks.

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

According to the National Academies of Sciences, Engineering, and Medicine' 2018 consensus report, [*Public Health Consequences of E-Cigarettes*](#), millions of Americans use e-cigarettes, particularly young people age 17 and younger. The committee concluded that overall, e-cigarette aerosol contains fewer numbers and lower levels of toxicants than smoke from combustible tobacco cigarettes. Laboratory tests of e-cigarette ingredients, *in vitro* toxicological tests, and short-term human studies suggest that e-cigarettes are likely to be far less harmful than combustible tobacco cigarettes. However, the report noted, long-term health effects, of particular concern for youth who become dependent on such products, are not yet clear.

The report found substantial evidence that e-cigarette use increases the risk of youth ever using traditional cigarettes and moderate evidence that e-cigarette use increases the frequency of use of traditional cigarettes among youth who already smoke. The report also looked at the net public health impact of e-cigarettes and found that although e-cigarette use might cause youth to transition to traditional tobacco products, it might also increase adult cessation of combustible tobacco cigarettes. If e-cigarette use by adult smokers leads to long-term abstinence from combustible tobacco cigarettes, the benefit to public health could be considerable. However, without that health benefit for adult smokers, e-cigarette use could cause considerable harm to public health due to the inherent harms of exposure to e-cigarette toxicants and to harms related to subsequent traditional tobacco use by those who begin using e-cigarettes in their youth.

In a 2016 report, the U.S. Surgeon General outlined the actions that federal, state, and local governments can take to address e-cigarette use among youth and young adults, including incorporating e-cigarettes into smoke-free policies. Some states have banned e-cigarette use only in public buildings, while at least 10 states (including Delaware and the District of Columbia) prohibit the use of e-cigarettes in places where smoking is also prohibited. Virginia and West Virginia have e-cigarette restrictions limited only to schools. In Maryland, four jurisdictions (Baltimore City and Howard, Montgomery, and Prince George's counties) prohibit the use of e-cigarettes in nonhospitality workplaces, bars, and restaurants.

State Expenditures: General fund expenditures increase by \$23,560 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of MDH hiring one half-time contractual administrative officer for one year 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 the first three months of fiscal 2021.

Contractual Position	0.5
Salary and Fringe Benefits	\$13,035
Outreach Material Expenses	4,513
Other Operating Expenses	<u>6,012</u>
Total FY 2020 State Expenditures	\$23,560

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

Additional Information

Prior Introductions: SB 624 of 2017 received a hearing in the Senate Finance Committee but was withdrawn. Its cross file, HB 354, received an unfavorable report from the House Economic Matters Committee. Similar bills, HB 26 of 2015 and HB 1291 of 2014, received unfavorable reports from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Health; National Academies of Sciences, Engineering, and Medicine; National Institute on Drug Abuse; U.S. Food and Drug Administration; U.S. Surgeon General; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

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