



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 144 of the 130th G.A.](#)

Date: May 21, 2013

Status: As Introduced

Sponsor: Rep. Kunze

Local Impact Statement Procedure Required: No

Contents: Restrictions involving alternative nicotine products

State Fiscal Highlights

- As a result of violations of the bill's expanded prohibitions, a negligible amount of annual revenue, in the form of state court costs, may be collected locally and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

- There are expected to be relatively few violations of the bill's alternative nicotine product prohibitions statewide per year. Thus, any costs for counties and municipalities to process violators, and any related court costs and fine revenues collected, will be minimal at most annually in any given local jurisdiction.

Detailed Fiscal Analysis

Expanded prohibitions

Possession or use

Current law prohibits children from: (1) possessing, using, purchasing, or receiving tobacco products, and (2) knowingly furnishing false information for the purpose of obtaining tobacco products. The bill expands these prohibitions to include "alternative nicotine products." Under current law, unchanged by the bill, an appearance before the juvenile court can be waived by the child's parent, guardian, or custodian and payment of a \$100 fine. If the appearance is not waived and a juvenile court finds that a violation has occurred, the court can require the child to attend an approved smoking education/treatment program (if one is available), impose a fine of not more than \$100, or both.

Illegal sale or distribution

The bill expands the existing offenses of illegal distribution of or permitting children to use cigarettes or other tobacco products to include "alternative nicotine products." Under current law, unchanged by the bill, a violation of either prohibition is a misdemeanor of the fourth degree, which carries a fine of up to \$250. A subsequent violation elevates to a misdemeanor of the third degree, which carries a fine of up to \$500. Jail time would be very unlikely in most cases.

Violations

Violations of the bill's expanded prohibitions will occur, thus creating additional cases for counties and municipalities to dispose of. It seems clear from the review of the literature that most of the concern with alternative nicotine products centers on electronic cigarettes, otherwise known as e-cigarettes. Although sales have expanded dramatically each year since they entered the market around 2005, they remain a small segment of the overall U.S. tobacco market. The e-cigarette market as a whole generates an estimated \$500 million in sales, which constitutes about 0.5% of the overall \$100 billion U.S. tobacco market.

The key question herein is how many new cases will be generated as a result of individuals violating the bill's alternative nicotine product prohibitions? Data from the Ohio Incident-Based Reporting System (OIBRS) suggests that, over the past three years, there have been, on average, around 800 or so incidents reported annually to law enforcement agencies across the state alleging violations of current law's above-noted tobacco prohibitions. Roughly 90% of the violators are children. It is important to note that these are reported incidents, and not actual dispositions. It is also likely that many of these incidents are disposed of before a hearing before the appropriate court is required.

These incidents, of course, involve actual tobacco products. How many additional cases would be created by including e-cigarettes in the prohibitions? As previously mentioned, e-cigarettes are estimated to comprise only about 0.5% of the overall U.S. tobacco market. If we assume, all things being equal, that violations involving e-cigarettes would constitute about 0.5% of the total incidents involving tobacco prohibitions, then we could estimate the bill would produce approximately four additional incidents (800 x 0.5%) annually statewide. Irrespective of whether these incidents lead to court hearings or trials, it seems clear that the bill will create very few new cases for juvenile, municipal, and county courts to dispose of.

This conclusion is further bolstered by data suggesting that e-cigarettes are used largely as a means to help individuals stop smoking. There are currently an estimated 45 million smokers in the U.S., and according to the Centers for Disease Control in Atlanta, approximately 52% of smokers have attempted to quit. A recent study also found that about 21.2% of current smokers, or 9.5 million, have used e-cigarettes. Assuming that most smokers seeking to quit will be adults with more established habits, this suggests that the comparatively small e-cigarette market is dominated by adults that are seeking smoking alternatives.

State fiscal effects

A few additional misdemeanor convictions stemming from violations of the bill's expanded prohibitions annually statewide may generate a negligible amount of state court cost revenue. This revenue is collected locally and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs total \$29 for a misdemeanor. This \$29 misdemeanor amount is divided as follows: \$20 to Fund 5DY0 and \$9 to Fund 4020.

Local fiscal effects

To the degree that counties and municipalities incur any costs to process alternative nicotine product violations, they will be minimal at most per year, as there will be relatively few such violations. The court generally imposes upon an offender found to have committed a violation local court costs and a fine. The political subdivision with legal authority over the court retains the court costs, while the fine is deposited in the treasury of the county in which the court is located. Given the few likely violations, the amount of additional court cost and fine revenues that counties and municipalities may actually collect annually will be no more than minimal.