



Ohio Legislative Service Commission

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: [Sub. H.B. 144 of the 130th G.A.](#) **Date:** February 11, 2014
Status: As Reported by Senate Criminal Justice **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 tobacco product 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

- The number of persons charged with violating the bill's expanded tobacco product prohibitions is expected to be relatively small in the context of the total number of charges processed by local criminal and juvenile justice systems annually. Thus, any costs for counties and municipalities to process violators, and any related court cost and fine revenues collected, will be minimal at most annually.

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 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 expanded tobacco 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 by law enforcement agencies across the state alleging violations of current law's above-noted tobacco prohibitions. Roughly 90% of the violators were children. It is important to note that these are reported incidents, and not actual dispositions. It is also likely that many of these incidents were disposed of in a manner that did not require a court appearance or actual trial.

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 as few as four additional incidents (800 × 0.5%) could be reported annually statewide. Irrespective of whether these incidents lead to court appearances or trials, it seems clear that the number of persons likely to be cited for violating the bill's expanded tobacco product prohibitions will be relatively small in the context of the total number of charges processed by local criminal and juvenile justice systems annually.

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

The relatively small number of persons expected to be cited for violating the bill's expanded tobacco product prohibitions means that any additional state court cost revenue collected is likely to be negligible annually. 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 assessed in these situations will total \$29, and be 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 a relatively small number of additional tobacco product violations, they will be minimal at most per year. 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. The relatively small number of likely violators means the amount of additional court cost and fine revenues that counties and municipalities collect annually will be no more than minimal.