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H.B. 346
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Patton

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SUMMARY

- Prohibits the sale, distribution, or giving away of flavored electronic smoking devices and flavored vapor products.
- Establishes a committee to study the health risks associated with the use of electronic smoking devices and vapor products.

DETAILED ANALYSIS

Flavored electronic smoking devices and vapor products

Prohibition

The bill prohibits giving away, selling, or otherwise distributing flavored electronic smoking devices or flavored vaping products (see "**Definitions**" below) that have not been approved by the U.S. Food and Drug Administration (FDA). It applies to a manufacturer, producer, distributor, wholesaler, or retailer, an agent, employee, or representative of any of those persons, and any other person. [1] Under existing law unchanged by the bill, these persons and entities are prohibited from giving away, selling, or otherwise distributing any electronic smoking device or vaping product to a person under 21.[2] The prohibition established by the bill applies only to flavored electronic smoking devices or flavored vaping products that have yet to be approved by the FDA, but prohibits these products from being given away, sold, or otherwise distributed to any person, regardless of age.

[1] R.C. 2927.02(B)(7).

[2] R.C. 2927.02(B)(1).

Penalties

Under the bill, any person who gives away, sells, or otherwise distributes flavored electronic smoking devices or flavored vaping products is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. A first time offense of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a fourth degree misdemeanor, punishable by up to 30 days in jail and a fine not to exceed $250. A subsequent offense is a third degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed $500.[3]

Definitions

The bill defines "flavored electronic smoking devices" and "flavored vapor products" as electronic smoking devices and vapor products that have a characterizing flavor.[4] A "characterizing flavor" is:

> A taste or aroma, other than the taste or aroma of tobacco, emitted either prior to or during consumption of a tobacco product. "Characterizing flavors" includes tastes or aromas relating to food or drink of any sort, menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverages, herbs, or spices.[5]

Study committee

The bill also establishes a committee to study the health risks associated with using electronic smoking devices and vapor products. The committee shall consist of the following five members:

- Two members of the House of Representatives, one member from each party, both appointed by the Speaker of the House of Representatives;
- Two members of the Senate, one member from each party, both appointed by the President of the Senate;
- One member appointed by the Governor.

The committee is tasked with conducting a study regarding the health risks associated with the use of electronic smoking devices and vapor products. While conducting this study, the committee is required to consider (1) the prevalence of the use of electronic smoking devices and vapor products in the state and (2) the effects that using these products have on the human body, including the cause of any adverse health effects associated with these products.

[3] R.C. 2927.02(F)(1).

[4] R.C. 2927.02(A)(7) and (8).

[5] R.C. 2927.02(A)(4).

The committee is required to submit a report detailing its findings and recommendations to the General Assembly not later than six months after the effective date of the bill. The committee will cease to exist following the submission of its report.[6]

Background – federal regulation

In 2016, the FDA extended its regulatory authority over tobacco products to include electronic cigarettes and other vaping products. The rule imposed retroactive premarket reviews, which requires manufacturers to receive FDA approval to continue selling certain products. In May 2019, a federal district judge ordered that the FDA require manufacturers to file premarket applications by May 12, 2020, for products that were on the market as of August 8, 2016. On April 22, 2020, the court granted an extension to the application deadline due to the COVID-19 pandemic, making applications due by September 9, 2020. In guidance updated in April 2020, the FDA indicated that it will prioritize enforcement for lack of marketing authorization for flavored, cartridge-based products (other than tobacco- and menthol-flavored products).[7]

HISTORY

Action	Date
Introduced	09-23-19

H0346-I-133/ks

[6] Section 3.

[7] United States Food and Drug Administration, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)* (April 2020), https://www.fda.gov/media/133880/download.