



Ohio Legislative Service Commission

Bill Analysis

Nicholas A. Keller

Sub. H.B. 168

131st General Assembly
(As Passed by the House)

Reps. Huffman, Grossman, Kraus, Cupp, Phillips, Scherer, Rezabek, Anielski, Green, Lepore-Hagan, Henne, Blessing, Duffey, Gonzales, Antonio, Barnes, Brown, T. Johnson, Amstutz, Ashford, Boyd, Burkley, Condit, Derickson, Dovilla, Ginter, Hackett, Hagan, Hambley, Koehler, Kuhns, Kunze, LaTourette, Leland, Maag, Manning, M. O'Brien, S. O'Brien, Patterson, Rogers, Ryan, Sheehy, K. Smith, Sprague, Stinziano, Sweeney

BILL SUMMARY

- Prohibits the retail sale of any liquid nicotine container to be used with an electronic cigarette unless the container satisfies certain child-resistant standards.
- Establishes a civil penalty of not more than \$1,000 for each violation.

CONTENT AND OPERATION

Child-resistant standards for liquid nicotine containers

The bill prohibits a person from knowingly selling at retail any liquid nicotine container that does not satisfy either of the following:

(1) Child-resistant effectiveness standards for poison prevention established by the U.S. Consumer Product Safety Commission in federal regulations that are in effect on the bill's effective date. Under these regulations, special packaging must have a child-resistant effectiveness of not less than 85% without a demonstration and not less than 80% after a demonstration of the proper means of opening the special packaging. In the case of unit packaging, there must be a child-resistant effectiveness of not less than 80%.¹

¹ R.C. 2927.28(B)(1)(a). *See also* 16 Code of Federal Regulations 1700.15(b).

(2) Child-resistant packaging standards for liquid nicotine containers established by the Ohio Department of Health (ODH). The bill requires ODH to adopt rules establishing the standards.²

Application and exceptions

Generally, the bill's prohibition applies to a bottle or other container of liquid that contains nicotine and is sold, marketed, or intended for use with an electronic cigarette.³ The prohibition, however, does not apply to any of the following:

(1) A liquid nicotine container that is prefilled and sealed by a manufacturer for use with an electronic cigarette, if the container is not intended to be opened by the consumer;

(2) A liquid nicotine container that is sold at retail on or after the date the U.S. Food and Drug Administration, or another federal agency with jurisdiction, issues final regulations establishing child-resistant effectiveness standards for liquid nicotine containers.⁴

Delayed effective date

Under the bill, the prohibition on the sale of any liquid nicotine container not meeting child-resistant standards does not take effect until 180 days after the bill's effective date.⁵

Penalty

The bill authorizes a court of competent jurisdiction to impose on an offender a civil penalty of not more than \$1,000 for each violation. It requires the clerk of the court to transmit the amount collected from payment of the civil penalty to the county treasurer for deposit into the county treasury.⁶

Enforcement and investigation

The bill requires the Ohio Department of Public Safety (ODPS) to enforce the bill's provisions and ODH's rules relative to child-resistant standards for liquid nicotine

² R.C. 2927.28(B)(1)(b) and (C).

³ R.C. 2929.28(A)(2).

⁴ R.C. 2927.28(B)(2).

⁵ R.C. 2927.28(B)(1).

⁶ R.C. 2927.28(E).



containers.⁷ The bill also requires the ODPS investigative unit to conduct investigations and enforcement activity related to child-resistant standards and liquid nicotine containers.⁸

Electronic cigarettes - background

The bill defines "electronic cigarette" as any electronic product or device that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device to simulate smoking and that is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.⁹

According to the U.S. Food and Drug Administration, an electronic cigarette is a battery-operated product designed to deliver nicotine, flavor, and other chemicals to the user.¹⁰ Most electronic cigarettes consist of the following components: (1) a cartridge or tank holding a liquid solution that contains varying amounts of nicotine, flavorings, and other chemicals, (2) a heating device or vaporizer, and (3) a power source, usually a battery. In many electronic cigarettes, puffing activates the battery-powered heating device, which vaporizes the liquid in the cartridge. The resulting aerosol is then inhaled (commonly called "vaping").¹¹

HISTORY

| ACTION | DATE |
|-----------------------------|----------|
| Introduced | 04-23-15 |
| Reported, H. Health & Aging | 06-17-15 |
| Passed House (97-1) | 06-24-15 |

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⁷ R.C. 2927.28(D) and 5502.01.

⁸ R.C. 5502.13.

⁹ R.C. 2927.02, not in the bill, and 2927.28(A).

¹⁰ U.S. Food and Drug Administration, *News & Events, Public Health Focus, Electronic Cigarettes* (last visited July 29, 2015), available at <<http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm>>.

¹¹ National Institute on Drug Abuse, *Drug Facts: Electronic Cigarettes* (last visited July 29, 2015), available at <<http://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>>.

