
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
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December 16, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0476 – Tobacco Distribution – Conforming
Modifications

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0476 for form and legal sufficiency. The bill amends Subtitle 5 of Title 12 (Tobacco Products) of the Health Article of the Baltimore City Code in two significant ways. First, it removes electronic smoking devices from the Subtitle. Second, it replaces the word “minor” with “under the age of 21.” Both changes are intended to allow the City to comply with existing state laws.

Existing state laws on tobacco are extensive and generally local governments have little room in which to legislate on the topic. *Altadis USA, Inc. v. Prince George’s County*, 431 Md. 307, 316 (2013) (In discussing the state’s business and professional regulations, the Court held that “State law comprehensively regulates the packaging, sale and distribution of tobacco products, including cigars, and thus preempts this field.”). However, the state prohibition on sales of tobacco to minors is contained in Section 10-107 of the Criminal Law Article of the Maryland Code. There is nothing in that section preventing concurrent local criminal legislation. In fact, other counties do have similar laws preventing sales to minors. *See, e.g.*, Montgomery County Code, §§24-11; 24-13. Moreover, there is a program in state law that allows local health departments to monitor retail compliance with the prohibition on sales to those too young to buy tobacco. Md. Code, Health-Gen., §24-307.

Thus, City legislation forbidding tobacco sales to minors is within the City’s general power to “provide for the preservation of the health of all persons within the City,” “to prevent and remove nuisances” and to “pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.” *See* City Charter, Art. II, §§11, 47.

The City law used to prohibit sales to minors but now must be updated to comply with a change in state law that prohibits sales to more than mere minors, but to all under 21 years of age unless they actively serve in the military. 2019 Md. Laws, ch. 396 (codified in Md. Code, Crim. Law, §10-107). State law was also recently changed to include electronic smoking devices within

the definition of tobacco. 2019 Md. Laws, ch. 396 (codified in Md. Code, Health-Gen., §13-1001). Therefore, this bill's elimination of the definition of "electronic smoking device" from the City code is not eliminating City regulation of the product but merely including it in the definition of tobacco.

The Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Matthew Stegman, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor