

Prince George's County Council Agenda Item Summary

Meeting Date: 11/18/2008
Reference No.: CB-047-2008
Draft No.: 3
Proposer(s): Dean
Sponsor(s): Dean, Campos, Exum, Bland, Harrison
Item Title: An Act concerning the prohibition of the sale, offer or distribution of certain cigar products, intended for use, or designed for use, in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, to minors and in less than packages of five.

Drafter: Todd M. Turner, Legislative Officer
Resource Personnel: Nellvenia W. Johnson, Legislative Aide

LEGISLATIVE HISTORY:

Date Presented:	6/17/2008	Executive Action:	11/24/2008 S
Committee Referral:	6/17/2008 - HEHS	Effective Date:	1/12/2009

Committee Action: 9/11/2008 - HELD
10/16/2008 - FAV(A)

Date Introduced: 10/21/2008
Public Hearing: 11/18/2008 - 10:00 AM

Council Action (1) 11/18/2008 - ENACTED
Council Votes: MB:A, WC:A, SHD:A, TD:A, CE:A, AH:A, TK:A, EO:N, IT:A
Pass/Fail: P
Remarks:

AFFECTED CODE SECTIONS:

12-201, 12-204, 14-151, 14-155.01

COMMITTEE REPORTS:

HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE

Date 10/16/2008

Committee Vote: Favorable as amended, 4-0 (In favor: Council Members Campos, Bland, Harrison and Turner).

Staff presented a Draft 2 and gave an overview of their efforts since the September 11, 2008 Committee worksession. The Legislative Officer addressed the concerns pertaining to legal issues raised after the City of Philadelphia's legislation, upon which CB-47-2008 was modeled, had legal challenges. An opinion was rendered whether a proposed Baltimore City regulation prohibiting the sales of cigars in packages of less than five would be preempted by State law. It was the opinion that the proposed legislation is not preempted by State law which should work in favor of the County's legislation.

Based on the review of the legal case, in Draft 2 a proposed amendment to Sec. 14-155.01 (a)(3) was clarified that a cigar product and blunts must be determined by a court or other authority to be drug paraphernalia under Sec. 14.151(a)(3) to be unlawful. In addition, Draft 2 deleted a proposed amendment in Sec. 14-155.01 (c) making in

unlawful for any person or employee to sell, offer, give or distribute cigars or blunts at any retail or commercial establishment, except those that derives at least 25% of its total revenue from the sale of tobacco products. Additional technical amendments were added to clarify the correct citation to the State Criminal Law article in the Division.

The County's Health Department comments from the September 11, 2008 worksession were incorporated into Draft 2, which consisted of amendments to Subtitle 12 - Health, Division 9 – Environmental Health division of the County Code as follows:

- (1) amending Sec. 12-201 (a)(5)– Definitions – to amend the definition of tobacco products to include certain cigar products.
- (2) adding a new sub-section 12-201 (a)(7) to add a definition of unpackaged cigars as a cigar or cigar products not sealed in a package of at least 5.
- (3) amending Sec. 12-204 (a) to prohibit to purchase, sale, resale, distribution or give away of unpackaged cigars by retailers or wholesalers.
- (4) adding a new sub-section 12-204 (b) to provide for an exemption of single sale of cigars and cigar products for retail and commercial businesses whose primary activity is the sale of tobacco products and accessories.

The Health Department representatives from the Tobacco Control Program, spoke in support of the legislation indicating needed efforts in the education of merchants and youth. A visual demonstration of the various types of cigars and products was provided by Health Department Code Enforcement personnel. This legislation will extend the regulations over distribution of cigars and cigar products which currently exist for cigarettes for minors and product placement at retail and commercial establishments. The representatives recommended one change as follows;

On page 2, line 11 to add “or their agent or employee” after “wholesaler”.

The Director of the University of Maryland School of Law's Center for Tobacco Regulation provided testimony in support of the legislation and explained her efforts to assist in the County's Health Department. In addition, she expressed her efforts to pass additional State-wide legislation.

The Office of Law, through the Legislative Officer, offered one technical change as follows:

Page 2, line 12 and line 14 – add “unpackaged” before “cigars” and delete “cigar products”.

HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE

Date 9/11/2008

Committee Vote: Held in Committee

Staff summarized the purpose of the legislation and informed the committee of referral comments that were received. CB-47-2008 amends the Prince George's County Code to prohibit the sale, offer or distribution of cigar and “blunt” tobacco products intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body by retail and commercial establishments in the County or to person who are under 18 years of age. An exception was provided for establishment that derives at least 25% of it total revenue from the sale of tobacco products and sells loose tobacco intended to be rolled into cigarettes or cigars.

The sponsor indicated that the purpose of CB-47-2008 was to impose certain restrictions in efforts to eliminate drug usage and associated behavior in our communities.

Currently, other jurisdictions, including the City of Philadelphia and the District of Columbia, have similar legislation. The City of Philadelphia legislation had legal challenges which may impact the proposed legislation. The General Assembly has considered similar legislation recently.

Under the County Code, the Police Department would have the authority to enforce a violation of the County drug paraphernalia law as it is a misdemeanor punishable up to 6 months or \$1,000 fine. The code does provide the Health Department with authority, under the Environmental Health section regarding distribution to minors, sale of unpacked cigarettes and the placement of tobacco products in stores. The Health Department authority is limited to civil citations and fines.

The Health Department provided written comments and supports CB-47-2008. The Health Department offered suggestions for considerations. Limit cigar sales to adults to packs of 5 or more in order to reduce sales due to increased expense and eliminate non-premium single cigar sales and enforcement responsibility could be given to the Health Officer or Health Officer designee, via Tobacco Control Program, which currently has responsibility to enforce laws regarding sales of tobacco products to minors and tobacco product placement at the more than 1200 retail establishments in the County selling tobacco products.

The Police Department supports and sighted the number of calls for disorderly conduct and congregation around the establishments that sells these cigar products.

The Office of Audits and Investigations determined that enactment of CB-47-2008 will not have a negative fiscal impact on the County.

Testimony in support of CB-47-2008 was provided by the State's Attorney's Office, Police Department and Substance Abuse Treatment Education and Prevention Network (STEP).

CB-47-2008 was held in committee to allow an opportunity for the Legislative Officer to consult with the Office of Law pertaining to possible legal issues.

BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

The bill would prohibit the sale, offer or distribution of certain defined cigar and "blunt" tobacco products, intended for use, or designed for use, in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, to minors and in less than packages of five. It would also extend both civil and criminal penalties and fines for violation.

CODE INDEX TOPICS:

INCLUSION FILES:
