

# Prince George's County Council

## Agenda Item Summary

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**Meeting Date:** 11/17/2015  
**Reference No.:** CB-034-2015  
**Draft No.:** 2  
**Proposer(s):** Turner, Glaros, Harrison, Lehman, Taveras, Toles  
**Sponsor(s):** Turner, Glaros, Harrison, Lehman, Taveras, Toles  
**Item Title:** An Act defining electronic cigarettes, regulating distribution, placement and packaging of electronic cigarettes, and restricting smoking of electronic cigarettes inside of public housing, senior citizen housing, and eating and drinking establishments.

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**Drafter:** Leroy D. Maddox, Jr., Legislative Officer  
**Resource Personnel:** Tomeka C. Bumbry, Chief of Staff

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### LEGISLATIVE HISTORY:

<b>Date Presented:</b>	6/2/2015	<b>Executive Action:</b>	11/25/2015 S
<b>Committee Referral:</b>	6/2/2015 - HEHS	<b>Effective Date:</b>	1/11/2016

**Committee Action:** 7/9/2015 - HELD  
10/8/2015 - FAV(A)

**Date Introduced:** 10/20/2015  
**Public Hearing:** 11/17/2015 - 10:00 AM

**Council Action (1)** 11/17/2015 - ENACTED  
**Council Votes:** DLD:A, MRF:A, DG:A, AH:A, ML:A, OP:N, DT:A, KT:A, TT:A  
**Pass/Fail:** P  
**Remarks:**

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### AFFECTED CODE SECTIONS:

12-201, 12-202, 12-203, 12-204.01, 19-130, 19-135

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### COMMITTEE REPORTS:

#### HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE

**Date 10/8/2015**

Committee Vote: Favorable as Amended 4-0-1 (In favor: Council Members Toles, Davis, Franklin, Glaros; Abstain: Patterson)

Staff provided an overview of the legislation indicating that CB-34-2015 was previously held in committee on July 9, 2015. The Health Officer spoke in support of CB-34-2015 indicating that there would not be a fiscal impact and would purchase items with their undercover agent. The Director of Housing and Community Development spoke in support of the bill indicating that their Public Housing "No Smoking Policy" would be amended to include e-cigarettes.

A representative from the University Of Maryland School Of Law spoke in support of CB-34-2015 providing additional information and responses to the Committee questions.

A Maryland Group Against Smoker's Pollution (MDGASP) representative spoke in support of the legislation and

suggested the following proposed amendments which were favorable voted on by the committee members:

On page 3, Sec. 12-202., line 13, (e), the following language was deleted “or electronic cigarettes.” Sec. 12-202. (e) provides exception to sales through vending machines. By omitting this language; electronic cigarettes will not be subject to the exception of Sec. 12-202. The University of Maryland representative indicated that County and municipal governments cannot address vending machines; it’s controlled and enforced by the State.

The following language was added on Page 2, Sec. 12-201., Line 12, (2), “E-cigarette does not include any product approved by the Food and Drug Administration for sale as a drug delivery or medical device.”

A Council Member offered the proposed amendment to be added on page 5, Sec. 19-131., after line 23: (c) “use of an electronic cigarette is not prohibited by this section in a facility that has been awarded a video lottery operation license by the Maryland Video Lottery Location Commission under State Government Article, Title 9, and Subtitle 1A. The Committee supported this amendment.

It was suggested that the word “work places” should be included in the first paragraph defining the ACT. However, “work place” is governed by the State law; “any indoor area open to the public.”

The American Cancer Society Cancer Action Network, Inc. provided written comments in support with amendments of CB-34-2015. Further stating that their amendments will strengthen the bill by expanding the definition of tobacco products to include e-cigarettes, expand and clarify the definition of smoking, and eliminate outdated language.

The question was raised regarding the surrounding jurisdiction’s casinos policy on e-cigarettes. The University of Maryland School of Law representative indicated that e-cigarette use is prohibited in 3 of the 5 existing casinos; including the largest revenue producer, Maryland Live.

#### Held in Committee

Staff summarized the purpose of the legislation and written referral comments that were received. This legislation seeks to define electronic cigarettes, regulate distribution, placement, and packaging of electronic cigarettes, and restrict smoking of electronic cigarettes within eating and drinking establishments, public housing, and senior citizen housing as defined in the County Code.

The sponsor of the legislation informed the committee that this legislation attempts to address issues involving electronic cigarettes indicating that similar legislation (CB-91-103) passed out of committee but was held pending the result of the Food and Drug Administration Electronic Cigarettes Research/University of Maryland Tobacco Center of Regulatory Science. The sponsor also noted that Montgomery County recently passed similar legislation.

The Health Officer indicated that the State failed to pass a bill including E-cigarettes in the “Clean Air Act.” In 2012, the Maryland General Assembly enacted a new statute prohibiting the sale of “electronic nicotine devices” to minors. During this past session, the State added language to replace existing criminal penalties with a civil fine.

The Health Officer further indicated that their agency’s Tobacco Enforcement Program has been restored and focuses on the selling of tobacco products (establishments licensed to sell tobacco) and selling to minors. The tobacco officer currently works with two (2) decoys.

A representative from the University of Maryland indicated that Prince George’s County is not preempted by State or Federal Law from regulating the Sale and Use of Electronic cigarettes. He further indicated that Baltimore City and Montgomery County have enacted ordinances similar to CB-34-2015 and neither has been subject to challenge.

The representative further stated that the FDA issued a proposed regulation that would classify electronic cigarettes as tobacco products and subject these devices to FDA tobacco sales restrictions. However, the proposed federal rule has not been finalized and does not have the force of the law.

A representative from Maryland Group Against Smoker's Pollution (MDGASP) spoke in support of CB-34-2015 on behalf of the more than 250 members who reside in Prince George's County. The representative spoke about the product being manufactured by over 250 companies and is unregulated and that the opposition will probably request an exemption for bars and restaurants as long as these places display signs saying vaping is permitted. The representative urged the Council to not support such requests and to support CB-34-2015 as presented.

The Office of Audits and Investigations determined that enactment of CB-34-2015 should not have an adverse fiscal impact on the County since smoking has been previously deemed unlawful with the aforementioned locations. The proposed bill simply adds the smoking, or vaping, or electronic cigarettes as an additional unlawful activity.

CB-34-2015 was held in committee for further consideration of proposed amendments.

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**BACKGROUND INFORMATION/FISCAL IMPACT:**

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

The need to address issues involving electronic cigarettes.

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**CODE INDEX TOPICS:**

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**INCLUSION FILES:**

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