



S.B. 128

124th General Assembly
(As Reported by H. State Government)

Sens. Wachtmann, Nein, White, Blessing, Harris, Mumper, Hottinger, Brady, DiDonato, Prentiss, Austria, Jordan, Armbruster, Coughlin, Hagan, Ryan, Espy

BILL SUMMARY

- Requires the legislative authority of a municipal corporation or township to adopt rules or orders previously issued by a board of health that pertain to the sale or use of cigarettes or other tobacco products before the rules or orders become effective in the political subdivision.

CONTENT AND OPERATION

Background--health districts

Organization

Ohio is divided into health districts, which are distinct political subdivisions, separate from any municipal corporation, township, county, or other local government. Their governing boards, however, are appointed most often by officials from municipal corporations, townships, and counties, and some of those political subdivisions have statutory duties relevant to health districts.

Each city constitutes a health district known as a city health district. Villages and townships in a county are combined into a general health district. (Sec. 3709.01.) City health districts and general health districts may combine in a variety of ways to create combined general health districts (secs. 3709.07, 3709.071, and 3709.10). City health districts also may combine in a specified manner with other city health districts (secs. 3709.051 and 3709.052).

Health districts are governed by boards of health. The board of health of a city health district is generally appointed by the mayor and confirmed by the legislative authority (sec. 3709.05). The board of health of a general health district is appointed by the district advisory council, which consists of the president of the board of county commissioners, the chief executive of each participating

municipal corporation, and the president of the board of township trustees of each participating township (secs. 3709.02 and 3709.03). If the district advisory council fails to meet or select a board of health, the Director of Health with the consent of the Public Health Council may appoint the board of health (secs. 3709.03 and 3709.04).

Cities and general health districts may contract for public health services with another city or general health district. The Department of Health must determine that the health department or board of health of the city or general health district providing the services is organized and equipped to provide adequate health services. (Secs. 3709.08 and 3709.081.)

Orders and rules

Under current law, the board of health of a city health district may adopt orders and rules necessary for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. Those orders and rules "intended for the general public" generally are required to be adopted, advertised, recorded, and certified in the same manner as ordinances of municipal corporations and are required to be given in court the *same effect as municipal ordinances*. Under current law, orders and rules relating to the sale or use of cigarettes or other tobacco products are not differentiated from other board of health orders and rules and are subject to the same requirements as other orders and rules intended for the general public. (Sec. 3709.20.)

Current law grants similar order- and rule-making authority to the board of health of a general health district as well as to health departments or boards of health of city or general health districts that provide public health services to another city or general health district by contract. Orders and rules relating to the sale or use of cigarettes or other tobacco products are not differentiated from other orders and rules and are subject to the same requirements as other orders and rules intended for the general public. (Secs. 3709.08, 3709.081, and 3709.21.)

Changes proposed by the bill

Under the bill, orders and rules (1) that are adopted by a board of health of a city or general health district or by a board of health or health department providing public health services by contract to another city or general health district and (2) that relate to the sale or use of cigarettes or other tobacco products will not be effective within a particular municipal corporation or township unless and until the legislative authority of the municipal corporation or township "adopts" the orders and rules after holding a public hearing. The municipal corporation or township must provide notice of the hearing and a general description of its purpose at least once in a newspaper of general circulation in the

municipal corporation or township one week before adopting the orders or rules. (Secs. 3709.08, 3709.081, 3709.20(A), and 3709.21.)

Boards of health and health departments retain their general order- and rule-making authority for all other types of orders and rules except those relating to the sale or use of cigarettes or other tobacco products. All orders and rules that are not related to the sale or use of cigarettes or other tobacco products, after adoption in the specified manner, continue to have the same effect as municipal ordinances.¹ (Secs. 3709.08, 3709.081, 3709.20(A), and 3709.21.)

As used in the bill, "cigarettes" and "tobacco products" have the following meanings (secs. 3709.08, 3709.081, 3709.20(A), and 3709.21 by cross-reference to sec. 5743.01(E) and (J)):

...

(E) "Cigarettes" includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper, reconstituted cigarette tobacco, homogenized cigarette tobacco, cigarette tobacco sheet, or any similar materials other than cigar tobacco.

...

(J) "Tobacco product" means any product made from tobacco, other than cigarettes, that is made for smoking or chewing, or both, and snuff.

...

¹ *The bill appears to provide that orders and rules related to the sale or use of cigarettes or other tobacco products will not be given the effect of a municipal ordinance in a court. An amendment may be necessary, however, to clarify that such orders and rules, once they become effective after adoption, do have the effect of a municipal ordinance (i.e., the effect of law); otherwise, the bill may have the result that, even though "adopted" by a local government as provided for in the bill, these orders and rules cannot be legally enforced.*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-07-01	p. 631
Reported, S. State & Local Gov't & Veterans Affairs	06-28-01	p. 777
Passed Senate (27-5)	06-28-01	pp. 782-785
Reported, H. State Gov't	10-24-01	p. 982

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