Maryland for Local Tobacco Regulation

Brooke Torton, Deputy Director, LRC
Blair Inniss, Staff Attorney, LRC
Kathi Hoke, Director, LRC
Laura Hale, MD Gov’t Relations
   Director, AHA

June 30, 2020
Four Forms of County Government

**Charter Home Rule**
- Anne Arundel
- Baltimore
- Cecil
- Dorchester
- Frederick
- Harford
- Howard
- Montgomery
- Prince George’s
- Talbot
- Wicomico

**Commissioner**
- Calvert
- Carroll
- Garrett
- St. Mary’s
- Somerset
- Washington

**Code Home Rule**
- Allegany
- Caroline
- Charles
- Kent
- Queen Anne’s
- Worcester
Health Powers of County Legislatures

“To prevent and remove nuisances; to prevent the introduction of contagious diseases into the county . . . ”

Source of Power:

Commissioner Counties: Art. 25, §3(n)
Charter Counties: Art. 25A, §5(J)
Code Counties: Art. 25B, §13

- Baltimore City: “To provide for the preservation of the health of all persons within the City; to prevent the introduction of contagious diseases within the City, and . . . to prevent and remove nuisances.”

Baltimore City Charter, Article II, §(11); see also Art. II, §(47)
Each county board of health may adopt and enforce rules and regulations on any nuisance or cause of disease in the county. Health-General Article §3-202(d)
Public Health Powers are Vital

• Public health power is implicit in sovereignty, as protection of the public health and safety are imperative to the functioning of a community and its government.

• Police power "is an inherent attribute and prerogative of sovereignty. “Stevens v. City of Salisbury, 240 Md. 556, 564 (1965)

If self-governance means anything, it means having, and using, plenary power to regulate for public health and safety.
Public Health Powers are Broad

• Because the well-being of the community is of such importance, the police power is exceedingly broad:

   It is one of the most comprehensive powers . . . that any government may have.

Presentation Outline

• Federal and state tobacco laws;
• What is preemption?;
• Tobacco and “implied” preemption in Maryland;
• Consequences post “implied” preemption;
• Missed opportunities;
• Forthcoming attempt to reverse “implied” preemption;
• Open forum/discussion
Federal and State Tobacco Laws

- Tobacco 21
- Flavor Restrictions
- Product Placement
- ID Check
- Cigarette Minimum Pack Size
Preemption: Brief Review

- **Preemption**: a higher level of government limits or eliminates the power of a lower level of government to regulate certain issues.

  - **Express preemption** - law explicitly states whether it preempts a lower-level authority.

  - **Implied preemption** - a court decides that even though not explicitly stated, the higher-level authority has preempted the lower-level authority from acting.
Implied Preemption: Maryland

• In 2009, the *Prince George’s County Council* passed an ordinance requiring that all cigars be in a package of at least 5 (exempting premium cigars).

• Plaintiffs, collectively referred to as “*Altadis*” filed suit.

• The Court concluded that the state law “*occupies the field*” of regulating the packaging and sale of tobacco products, including cigars.
Altadis v. Prince George’s County: The Altadis Decision

• *Altadis v. Prince George’s County*, 431 Md. 307 (2013)

• “The tension between state law and local law reinforces the conclusion that state law regulating the packaging and sale of other tobacco products, including cigars, preempts local ordinances.”

• “We shall hold that state law occupies the field of regulating the packaging and sale of tobacco products, including cigars, and thus impliedly preempts the two ordinances enacted by the County Council of Prince George’s County.”
So what does this all mean?

• **2 readings:**
  – **Narrow:** The Court has interpreted that locals are preempted from regulating the packaging, sale, and distribution of other tobacco products including “cigars.”

  – **Broad:** The Court has interpreted that locals are preempted from regulating the packaging, sale, and distribution of all tobacco products, not including electronic smoking devices (ESDs).
The “Fall Out”

• Locals are **prohibited from passing NEW local laws** related to tobacco sales and distribution;

• **Locals** hesitate to enforce **EXISTING** tobacco related law
Break for Questions!
Missed Opportunities

• T21
• Flavored tobacco products

.....to name a few
Attempts at Reversal

• HB1485 (2016): specific Altadis reversal

• MACo bill: public health and implied preemption, generally

• 2021?!?!
2021: *Altadis* “reversal” campaign

Led by Laura Hale, American Heart Association, State Government Relations Director for Maryland
Audience Participation

• Are there issues related to tobacco products in your communities?
• Have you seen policies or actions in other parts of the country that you are interested in seeing in your jurisdiction?
• What has been done in your community to combat (youth) tobacco use?
• What tobacco policies/actions would you like to see in your communities?
Q&A
Contact Information

Legal Resource Center for Public Health Policy
Brooke Torton, Deputy Director
btorton@law.umaryland.edu

American Heart Association
Laura Hale, State Government Relations Director for Maryland
Laura.Hale@heart.org OR
Stuart.Berlow@heart.org