

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1053 Location of Medical Marijuana Centers, Retail Vape Shops, and On-premises Consumption of Alcohol

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Amesty

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|----------|---------------------------------------|
| 1) Regulatory Reform & Economic Development Subcommittee | 12 Y, 0 N, As CS | Thompson | Anstead |
| 2) Health & Human Services Committee | | | |
| 3) Commerce Committee | | | |

SUMMARY ANALYSIS

According to the Centers for Disease Control and Prevention (CDC), the use of e-cigarettes (vapes) is unsafe for kids, teens, and young adults. Most vapes contain nicotine, and nicotine is highly addictive and can harm adolescent brain development. Young people who use vapes may be more likely to smoke cigarettes in the future, and research has found that vapes are significantly easier for underage youth to purchase than cigarettes. Other states have addressed this issue by limiting the distance of vape stores to schools. Florida does not do this for vape stores. However, Florida does limit the distance of certain activities and businesses from schools, as follows:

- **The Florida Clean Indoor Air Act** prohibits any person under the age of 21 from smoking tobacco or vaping within 1,000 feet of real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight.
- **The Medical Marijuana Treatment Center (MMTC) law** prohibits MMTC cultivating, processing, or dispensing facilities from being located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, unless the county or municipality approves such MMTC dispensing locations as promoting the public health, safety, and general welfare of the community.
- **The Florida Beverage law** prohibits businesses licensed for on-premises consumption of alcoholic beverages from being located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community.

The bill, effective July 1, 2024, prohibits the following retail shops or facilities from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school:

- A new MMTC cultivating, processing, or dispensing facility.
- A new retail vape shop.
- A new location for on-premises consumption of alcoholic beverages.

The bill specifies that the distance restrictions do not apply to any of the facilities that were operating before July 1, 2024.

The bill does not appear to have a fiscal impact on state or local government. The bill may reduce the number of youth who use nicotine products and thereby improve public health and safety and related public and private sector costs.

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Youth Access to Vaping Products

E-cigarettes (vaping products) have been found to be significantly easier for underage youth to purchase than cigarettes. Underage purchase attempts of vaping products are 35 percent less likely to trigger an ID request and 42 percent more likely to result in a sales violation, compared to purchase attempts for cigarettes.¹ In 2023, over half (54.7 percent) of 10th grade students reported that it would be easy for them to get vaping devices.²

For youth who purchase their own e-cigarettes, gas stations, convenience stores and vape shops are the most common sources for illegal sales to minors. According to the 2021 National Youth Tobacco Survey (NYTS), 22.2 percent of high school e-cigarette users reported obtaining e-cigarettes from a vape shop or tobacco shop in the past month and 17.7 percent from a gas station or convenience store.³ A study in the Journal of the American Medical Association (JAMA) Pediatrics found that in California, e-cigarette sales to minors violations are significantly higher in tobacco and vape shops than any other type of retailer, with 44.7 percent selling to underage buyers.⁴

An assessment of vape shops in six cities across the US found that one-third of vape shops were within two blocks of schools.⁵ However, e-cigarettes are widely available in other retailers, including convenience stores. Stanford researchers found that in 30 large U.S. cities on average approximately:⁶

- 62 percent of public schools are within 1,000 feet (about 2 city blocks) of a tobacco retailer.
- 70 percent of city residents live within a half mile (about a 10 minute walk) from a tobacco retailer.

A study in New Jersey found that e-cigarette retailer density around schools was positively associated with ever and past-month use of e-cigarettes.⁷

Research has also shown that tobacco retailer density and marketing is higher in minority and low income neighborhoods. Stanford researchers recently found that in 30 large U.S. cities, there are on average nearly five times more tobacco retailers per square mile in the lowest-income neighborhoods than in the highest-income neighborhoods.⁸

¹ Campaign for Tobacco-Free Kids, *Youth Access and Exposure to E-cigarettes at the Point of Sale*, <https://assets.tobaccofreekids.org/factsheets/0412.pdf> (last visited Jan. 17, 2024).

² University of Michigan, 2023 Monitoring the Future Study, *Trends in Availability of Drugs as Perceived by 10th Graders*, <https://monitoringthefuture.org/wp-content/uploads/2023/12/mtf2023table8.pdf> (last visited Jan. 17, 2024).

³ Centers for Disease Control and Prevention, *Tobacco Product Use and Associated Factors Among Middle and High School Students—National Youth Tobacco Survey, United States, 2021*, (Mar. 11, 2022), <https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf> (last visited Jan. 17, 2024).

⁴ The Journal of the American Medical Association (JAMA) Pediatrics, *Assessment of Underage Sales Violations in Tobacco Stores and Vape Shops*, <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2735684> (last visited Jan. 17, 2024).

⁵ Berg, C, et al., “Exploring the Point-of-Sale Among Vape Shops Across the United States: Audits Integrating a Mystery Shopper Approach,” *Nicotine & Tobacco Research*, published online February 28, 2020.

⁶ Advancing Science & Policy in the Retail Environment (ASPiRE) Center, *Retail Tobacco Density & Access* (Aug. 2020), http://aspirecenter.org/wp-content/uploads/2020/08/ASPiRE_RetailTobaccoDensityandAccess_ExecSumm.pdf (last visited Jan. 17, 2024).

⁷ Giovenco, DP, et al., “Association Between Electronic Cigarette Marketing Near Schools and E-Cigarette Use Among Youth,” *Journal of Adolescent Health* 59(6):627-634, 2016.

⁸ Campaign for Tobacco-Free Kids, *Youth Access and Exposure to E-cigarettes at the Point of Sale*, <https://assets.tobaccofreekids.org/factsheets/0412.pdf> (last visited Jan. 17, 2024).

Research shows that making the obtaining of tobacco and nicotine products as inconvenient, difficult and expensive as possible for kids reduces the number of kids who try or regularly use such products.⁹

Medical Marijuana Treatment Centers

Art. X, Sec. 29 of the Florida Constitution establishes Florida's Medical Marijuana Use Program. The law implementing these provisions¹⁰ authorizes patients with any of the following debilitating medical conditions to obtain medical marijuana from Medical Marijuana Treatment Centers (MMTC):¹¹

- Cancer.
- Epilepsy.
- Glaucoma.
- Positive status for human immunodeficiency virus.
- Acquired immune deficiency syndrome.
- Post-traumatic stress disorder.
- Amyotrophic lateral sclerosis.
- Crohn's disease.
- Parkinson's disease.
- Multiple sclerosis.
- Medical conditions of the same kind or class as or comparable to those enumerated above.

To obtain marijuana for medical use from a MMTC, and maintain the immunity from criminal prosecution, the patient must obtain a physician certification from a qualified physician¹² and an identification card from the Department of Health (DOH).

A MMTC is defined in the Florida Constitution as:¹³

...an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

DOH is required to license MMTCs to ensure reasonable statewide accessibility and availability as necessary for qualified patients registered in the medical marijuana use registry and who are issued a physician certification.¹⁴

According to DOH's Office of Medical Marijuana Use, licensed MMTCs are vertically integrated and are the only businesses in Florida authorized to dispense medical marijuana and low-THC cannabis to qualified patients and caregivers. Each MMTC is required to receive authorization at the following three stages prior to dispensing low-THC cannabis or medical marijuana:¹⁵

- Cultivation;
- Processing; and
- Dispensing.

⁹ *Id.*

¹⁰ S. 381.986, F.S.

¹¹ S. 381.986(2), F.S.

¹² To certify patients for medical use of marijuana, a physician must hold an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and comply with certain physician education requirements. See ss. 381.986(1)(m), F.S. and 381.986(3)(a), F.S.

¹³ Art. X, s. 29, Fla. Const.

¹⁴ S. 381.986(8)(a), F.S.

¹⁵ Florida Department of Health, Office of Medical Marijuana Use, *About Medical Marijuana in Florida*, <https://knowthefactsmmj.com/resources/> (last visited Jan. 17, 2024).

DOH is authorized to impose reasonable fines up to \$10,000 on a MMTC for violations of the MMTC law or DOH rule,¹⁶ and may suspend, revoke, or refuse to renew a MMTC license for such violations.¹⁷

Age Restrictions

Florida law does not restrict access to the Medical Marijuana Use Program based on age. However, Florida law has specific requirements for the medical use of marijuana by minors. These requirements include:

- A qualified physician must determine that the medical use of marijuana would likely outweigh the potential health risks for all patients. If the patient is younger than 18 years of age, a second physician must concur with this determination and such concurrence must be documented in the patient's medical record.¹⁸
- A qualified physician may not issue a physician certification for marijuana in a form for smoking to a patient under 18 years of age unless the patient is diagnosed with a terminal condition, the qualified physician determines that smoking is the most effective route of administration for the patient, and a second physician who is a board-certified pediatrician concurs with such determination. Such determination and concurrence must be documented in the patient's medical record and in the medical marijuana use registry.¹⁹
- The parent or legal guardian of a qualified minor patient must provide the OMMU with written consent for the patient to use medical marijuana. The patient's qualified physician must submit the parent's/guardian's Consent for Minor Patient (CMP) form to the OMMU prior to the minor patient beginning an MMUR ID Card application.²⁰
- Qualified patients who are under the age of 18 must designate a caregiver in the qualified patient's application and in the Medical Marijuana Use Registry.²¹
- If a qualified patient is younger than 18 years of age, only a caregiver may purchase or administer medical marijuana for the qualified patient. Patients who are minors may not purchase marijuana.²²

Distance From Schools

The regulation of the cultivation, processing, and delivery of marijuana by MMTCs is preempted to the state, except local governments are authorized to restrict the distance of certain MMTC facilities from schools as follows:

- **MMTC cultivating or processing facilities** are prohibited from being located within **500 feet** of the real property that comprises a public or private elementary school, middle school, or secondary school.²³
- **MMTC dispensing facilities** are prohibited from being located within **500 feet** of the real property that comprises a public or private elementary school, middle school, or secondary school.
 - However; the county or municipality is authorized to approve such MMTC dispensing locations through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community.²⁴

A county or municipality may, by ordinance, **ban** MMTC dispensing facilities from being located within the boundaries of that county or municipality.²⁵

¹⁶ S. 381.986(10)(f), F.S.

¹⁷ S. 381.986(10)(g), F.S.

¹⁸ S. 381.986(4)(a)3., F.S.

¹⁹ S. 381.986(4)(d), F.S.

²⁰ S. 381.986(7)(b), F.S.

²¹ S. 381.986(6), F.S.

²² S. 381.986(6)(f), F.S.

²³ S. 381.986(11)(a), F.S.

²⁴ S. 381.986(11)(c), F.S.

²⁵ S. 381.986(11)(b)1., F.S.

If a county or municipality **does not ban** dispensing facilities under this provision, it **may not place specific limits**, by ordinance, on the number of dispensing facilities that may locate within that county or municipality.²⁶

Counties and municipalities are authorized to determine by ordinance the **criteria for the location** of, and **other permitting requirements** that do not conflict with state law or DOH rule for, **MMTC dispensing facilities** located within their boundaries.²⁷

Except for the 500 feet limitation on the distance from certain schools, a county or municipality is prohibited from enacting ordinances for **permitting or determining the location of dispensing facilities** which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465, F.S.²⁸

A municipality or county is prohibited from charging a MMTC a license or permit fee in an amount greater than the fee charged by such municipality or county to pharmacies.²⁹

These preemption provisions do not prohibit any local jurisdiction from ensuring MMTC facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.³⁰

Vape Shops

The Division of Alcoholic Beverages and Tobacco (ABT) within the Department of Business and Professional Regulation (DBPR) is responsible for the regulation of nicotine products.³¹ Retailers that sell or deal, at retail, in nicotine products are required to have a retail nicotine products dealer permit issued by ABT and are required to comply with certain provisions related to the sale of such products.³²

ABT enforces the nicotine regulations. Operating without a permit is a noncriminal violation, punishable by a fine of not more than \$500.³³ ABT is authorized to suspend or revoke the permit of a dealer upon sufficient cause for violations.³⁴

“Nicotine product” is defined as any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device.³⁵

“Nicotine dispensing device” is defined as any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.³⁶

According to the Centers for Disease Control (CDC):³⁷

²⁶ *Id.*

²⁷ S. 381.986(11)(b)2., F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ S. 381.986(11)(d), F.S.

³¹ *See* ch. 569, F.S.

³² S. 569.32, F.S.

³³ S. 569.34, F.S.

³⁴ S. 569.35, F.S.

³⁵ S. 569.31(4), F.S.

³⁶ S. 569.31(3), F.S.

³⁷ Centers for Disease Control, *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults*,

https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html (last visited Jan. 18, 2024).

- The use of e-cigarettes is unsafe for kids, teens, and young adults.
- Most e-cigarettes contain nicotine. Nicotine is highly addictive and can harm adolescent brain development, which continues into the early to mid-20s.
- E-cigarettes can contain other harmful substances besides nicotine.
- Young people who use e-cigarettes may be more likely to smoke cigarettes in the future.

Age Restrictions

The establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, nicotine products is preempted to the state.³⁸

It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any nicotine product. Violations are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083. Subsequent violations are a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.³⁹

It is unlawful for any person under 21 years of age to knowingly possess any nicotine product. Violations are a noncriminal violation, punishable by 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if locally available.⁴⁰

It is unlawful for any person under 21 years of age to misrepresent his or her age or military service in order to purchase a nicotine product. Violations are a noncriminal violation, punishable by 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if available.⁴¹

In order to prevent persons under 21 years of age from purchasing or receiving nicotine products, the sale or delivery of nicotine products is prohibited, except:⁴²

- When under the direct control or line of sight of the dealer or the dealer's agent or employee; or
- Sales from a vending machine are prohibited and only permissible from a machine that is equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product.

A dealer that sells nicotine products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.⁴³

A dealer that sells nicotine products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.⁴⁴

These provisions do not apply to an establishment that prohibits persons under 21 years of age on the licensed premises.⁴⁵

A dealer or a dealer's agent or employee must require proof of age of a purchaser of a nicotine product before selling the product to that person, unless the purchaser appears to be 30 years of age or older.⁴⁶

³⁸ S. 569.315, F.S.

³⁹ S. 569.41

⁴⁰ S. 569.42(1), F.S.

⁴¹ S. 569.42(2), F.S.

⁴² S. 569.37(1), F.S.

⁴³ S. 569.31(2)(a), F.S.

⁴⁴ S. 569.31(2)(b), F.S.

⁴⁵ S. 569.31(3), F.S.

⁴⁶ S. 569.31(4), F.S.

Nicotine products dealers are required to post a sign in each place of business at which such products are sold that states the sale of nicotine products or nicotine dispensing devices to persons under the age of 21 is illegal, and that proof of age is required for purchase.⁴⁷

Distance From Schools

It does not appear that Florida law addresses the distance of vape shop locations from schools.

However, Article X, section 20 of the Florida Constitution prohibits tobacco smoking and the use of vapor-generating electronic devices in enclosed indoor workplaces. This provision allows the adoption of ordinances that impose more restrictive regulation on the use of vapor-generating electronic devices. However, tobacco smoking and the use of vapor-generating electronic devices are allowed in private residences whenever they are not being used commercially to provide child care, adult care, or health care, and retail tobacco shops, vapor-generating electronic device retailers, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars. The owner, lessee, or other person in control of the use of an enclosed indoor workplace may prohibit or limit smoking or the use of vapor-generating electronic devices.

The Florida Clean Indoor Air Act (FCIAA), implements article X, section 20 of the Florida Constitution. The FCIAA also prohibits any person under the age of 21 from smoking tobacco or vaping within 1,000 feet of real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This does not apply to any person occupying a moving vehicle or within a private residence.⁴⁸

A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.⁴⁹

The Beverage Law

Florida's Beverage Law⁵⁰ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.⁵¹ The Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.⁵²

All parties that plan to engage in the sale of alcoholic beverages in Florida must first obtain:

- Permission from the local government county or city.⁵³
- A license from ABT.⁵⁴

The Beverage Law classifies licensees in three distinct categories:

- Manufacturers.⁵⁵
- Distributors.⁵⁶
- Retailers.⁵⁷

⁴⁷ S. 569.43(1), F.S.

⁴⁸ S. 386.212(1), F.S.

⁴⁹ S. 386.212(3), F.S.

⁵⁰ S. 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561-568, F.S.

⁵¹ See s. 561.14, F.S.

⁵² S. 561.02, F.S.

⁵³ Section 5(a), Article VIII, Fla. Const., provides the exclusive means for a county to authorize or prohibit the sale of alcoholic beverages

⁵⁴ S. 561.17(1), F.S.

⁵⁵ S. 561.14(1), F.S.

⁵⁶ S. 561.14(2), F.S.

⁵⁷ S. 561.14(3), F.S.

Retailers (vendors) sell alcohol beverages only at retail.⁵⁸ Retailers are further classified in the industry as either:

- **On-premise retailers.** On-premise retailers sell beer, wine, or spirits, or some combination of all three for patrons to consume on the licensed premises. Examples of on-premise retail establishments include:
 - bars;
 - restaurants; and
 - nightclubs.
- **Off-premise retailers.** Off-premise retailers sell alcohol in sealed containers for off-premise consumption only. Examples of off premise retail establishments include:
 - liquor stores; and
 - grocery stores.

Violations of any provision of the Beverage Law for which no penalty has been provided are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083. Subsequent violations are a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.⁵⁹

Age Restrictions

A person under 21 years old who possesses alcohol, unless acting within the scope of his or her employment, commits a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine; a second offense is a first degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.⁶⁰ A conviction results in the withholding of an offender's driving privilege.⁶¹

A person who sells, gives, serves, or permits the service or consumption of alcohol to a person under 21 years old commits a second degree misdemeanor.⁶² A person committing the same offense within one year of a previous conviction commits a first degree misdemeanor.⁶³ A conviction may result in the withholding of an offender's driving privilege.⁶⁴

Distance From Schools

Local governments generally control the sale of alcoholic beverages through zoning. Approval to sell is typically granted if the property is zoned commercial and meets certain distance separation requirements that are established to presumably ensure that no adverse impacts occur on surrounding areas resulting from the sale of alcohol. These separation requirements are typically in the range of 250 feet to 1,000 feet from residentially zoned or institutional uses (such as schools, parks, day cares, and governmentally owned property), and that the property is also a certain distance (often as far as 1,000 feet) from other establishments authorized by the local government to sell alcohol.

Nothing contained in the Beverage Law may be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations, of any licensee under the Beverage Law within the county or corporate limits of such municipality.⁶⁵

Except for premises licensed on or before July 1, 1999, and except for locations licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, pursuant to chapter 509, F.S., relating to lodging and food service establishments, **a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school,**

⁵⁸ *Id.*

⁵⁹ S. 562.45(1), F.S.

⁶⁰ Ss. 562.111(1), 775.082, and 775.083, F.S.

⁶¹ S. 562.111(3), F.S.

⁶² S. 562.11(1), F.S.

⁶³ *Id.*

⁶⁴ Ss. 562.11(1)(a)2.-3. and 562.11(2)(c)2., F.S.

⁶⁵ S. 562.45(2)(a), F.S.

middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in s. 125.66(5), F.S., for counties, and s. 166.041(3)(c), F.S., for municipalities.⁶⁶

This restriction may not, however, be construed to prohibit the issuance of temporary permits to certain nonprofit organizations as provided for in s. 561.422, F.S. ABT is prohibited from issuing a change in the series of a license or approving a change of a licensee's location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.⁶⁷

Other State and Local Laws

Other states and local jurisdictions have limited the distance of vaping advertisements, products, and stores to schools. In addition, some states ban giving away free samples of vaping products within a certain proximity of a school or places primarily used by minors. The following are examples of such state and local policies:

- **New York** restricts the public display of tobacco and vaping product advertisements and the display of smoking paraphernalia within 500 feet of a school in New York City and within 1,500 feet of a school in the rest of the state.⁶⁸
- **Indiana** prohibits tobacco and vaping shops from being located within 1,000 feet of public schools (increased from 200 feet).⁶⁹
- **Montgomery County, Maryland** prohibits a manufacturer from distributing any flavored electronic cigarette to any retail store within 0.5 miles of any elementary, middle, or high school, library, or recreational facility in the County.⁷⁰
- **Utah** requires tobacco retail shops to be located 1,000 feet away from schools, churches, playgrounds, youth centers, and other community locations; 600 feet away from other tobacco stores; and 600 feet away from property used for agricultural or residential purposes.⁷¹
- **South Dakota** prohibits the distribution of tobacco product samples in or on a public street, sidewalk, or park that is within five hundred feet of a playground, school, or other facility when the facility is being used primarily by persons under the age of twenty-one.⁷²

Effect of Proposed Changes

MMTC Cultivating or Processing Facilities

Effective July 1, 2024, the bill prohibits a new MMTC cultivating or processing facility from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school.

The bill specifies that this section does not apply to a MMTC cultivating or processing facility that was operating before July 1, 2024.

MMTC Dispensing Facilities

Effective July 1, 2024, the bill prohibits a new MMTC dispensing facility from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school.

The bill also removes the authority of a county or municipality to approve such locations.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ N.Y. Public Health Law, ch. 45., Art. 13-F.

⁶⁹ Ind. Code §. 35-46-1-11.4.

⁷⁰ Montgomery County Code Ch. 24, Health and Sanitation §. 24-15, 24-16.

⁷¹ Utah Code Ann. §§ 17-50-333(4)(a), 10-8-41.6(4)(a), 17-50-333(7), 10-8-41.6(7).

⁷² S.D. Codified Laws §. 34-46-2.

The bill specifies that this section does not apply to a MMTC dispensing facility that was operating before July 1, 2024.

Retail Vape Shops

Effective July 1, 2024, the bill prohibits a new retail vape shop as defined under s. 386.203, F.S., from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, secondary school, or postsecondary school.

The bill specifies that this section does not apply to a retail vape shop operating before July 1, 2024.

Beverage Law

Effective July 1, 2024, the bill prohibits a new location for on-premises consumption of alcoholic beverages from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school.

The bill also removes the authority of a county or municipality to approve such locations.

The bill specifies that this section does not apply to a location for on-premises consumption of alcoholic beverages that was operating before July 1, 2024.

B. SECTION DIRECTORY:

- Section 1: Amends s. 381.986, F.S., relating to preemption.
- Section 2: Creates s. 386.2065, F.S., relating to the regulation of retail vape shops; applicability.
- Section 3: Amends s. 562.45, F.S., relating to penalties for violating Beverage Law; local ordinances; prohibiting regulation of certain activities or business transactions; requiring nondiscriminatory treatment; providing exceptions.
- Section 4: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Making the obtaining of tobacco, nicotine, marijuana, and alcohol products as difficult as possible for kids may reduce the number of kids who try or regularly use such products and thereby improve public health and safety and related public and private sector costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute provides uniformity by clarifying that the distance restrictions in the bill do not apply to any of the facilities that were operating before July 1, 2024.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.