



Maryland for Local Tobacco Regulation

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Four Forms of County Government

Charter Home Rule

- Anne Arundel
- Baltimore
- Cecil
- Dorchester
- Frederick
- Harford
- Howard
- Montgomery
- Prince George's
- Talbot
- Wicomico

• **Code Home Rule**

- Allegany
- Caroline
- Charles
- Kent
- Queen Anne's
- Worcester

Commissioner

- Calvert
- Carroll
- Garrett
- St. Mary's
- Somerset
- Washington

Baltimore City

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)

Powers of the County Boards of Health

*[E]ach 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.

Burley v. City of Annapolis, 182 Md. 307, 315 (1943).

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
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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

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