



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

BILL: House Bill 477 – Cigarettes, Other Tobacco Products, and Electronic Smoking Devices – Local Law Authorization

SPONSOR: Delegate Fennell

HEARING DATE: March 2, 2022

COMMITTEE: Economic Matters

CONTACT: Intergovernmental Affairs Office, 301-780-8411

POSITION: SUPPORT

The Office of the Prince George's County Executive **SUPPORTS House Bill 477 – Cigarettes, Other Tobacco Products, and Electronic Smoking Devices – Local Law Authorization**, which enables counties and municipalities to enact and enforce local laws regulating the sale and distribution of cigarettes, other tobacco products, and electronic smoking devices that are at least as stringent as state law.

In 2008 and 2009, Prince George's County Council passed two local ordinances to prohibit the sale or other distribution by a retailer or wholesaler of "unpackaged" cigars, defined as "any cigar or product not contained within a sealed original package of at least five (5) cigars or cigar products."¹ The stated intent of the Council action was to address cigars "intended for use, or designed for use, in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body," which the Prince George's County Health Department and Police Department identified in council testimony as a common use for individually-sold cigar products.² The ordinances were codified upon signing by the County Executive in November 2008 and April 2009.³

Shortly thereafter, the County was sued by the cigar industry (referred to in court proceedings as "Altadis"). Altadis argued that these local ordinances were not constitutional due to preemption by less restrictive state laws. A Circuit Court in Prince George's County ruled in favor of the County, which Altadis appealed to the Maryland Court of Special Appeals. In *Altadis U.S.A., Inc., et al. v. Prince George's County*, Maryland, 431 Md. 307 (2013), the Court ruled in favor of Altadis, finding that state law preempts local regulation of minimum packaging requirements for

¹ <https://caselaw.findlaw.com/md-court-of-appeals/1629061.html>

² <https://princegeorgescountymd.legistar.com/View.ashx?M=F&ID=4035940&GUID=1838DF24-F801-4E98-BEE6-CFE0CC349DE8>.

³ <https://caselaw.findlaw.com/md-court-of-appeals/1629061.html>

cigars.⁴ The court decision's language speaks more broadly to preemption for tobacco control in general. Consequently, counties halted local legislation and enforcement of existing laws due to fear of lengthy and expensive legal battles with the tobacco industry.⁵ The Altadis decision paralyzed counties' timely attempts to address emerging issues in their jurisdictions.

Preemption is a well-documented tactic used by the Big Tobacco lobby which often has greater influence at higher levels of government.⁶ The Public Health Law Center cites preemption as the biggest challenge to tobacco control policy, and the American Cancer Society, American Heart Association, American Lung Association, and American Medical Association, among others oppose preemption in tobacco law.⁷

HB 477 would abrogate the Altadis ruling and allow counties to take swift action to protect the health and welfare of their residents. Passage of SB 99 empowers local legislators, public health experts and enforcement officers to act in the best interest of the public.

For the reasons stated above, the Office of the Prince George's County Executive **SUPPORTS HB 477** and asks for a **FAVORABLE** report.

⁴ *Altadis U.S.A., Inc., et al. v. Prince George's County*, Maryland, 431 Md. 307 (2013) <https://caselaw.findlaw.com/md-court-of-appeals/1629061.html>

⁵ Case Law Outline: *Altadis U.S.A., Inc. v. Prince George's County, Maryland*, University of Maryland Legal Resource Center for Public Health Policy, <https://www.law.umaryland.edu/media/SOL/pdfs/Programs/Public-Health-Law/Altadis.FactSheet.Final.pdf>

⁶ *Preemption: The Biggest Challenge to Tobacco Control*, Tobacco Control Legal Consortium, Public Health Law Center: "Because local control is so integral to tobacco control, the tobacco industry and its allies have historically used, and continue to use, preemptive strategies to thwart smoke-free laws, youth access and retailer licensing restrictions, advertising and promotion regulations, and similar policies. This fact sheet is meant to serve as a reminder of the tobacco industry's relentless pursuit of preemption to weaken, impede or defeat tobacco control efforts."

⁷ As referenced in *Preemption: The Biggest Challenge to Tobacco Control*, Tobacco Control Legal Consortium, Public Health Law Center: "For example, each of the following national organizations has taken positions opposing preemption: American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, American Medical Association, Association of State and Territorial Health Officials; U.S. Department of Health and Human Services, Campaign for Tobacco-Free Kids, National Association of County and City Health Officials, National Latino Tobacco Control Network, National African American tobacco Prevention Network, National Association of Local Boards of Health, Tobacco Technical Assistance Consortium, Tobacco Control Network, Americans for Nonsmokers' Rights, and the Tobacco Control Legal Consortium. See, e.g., Americans for Nonsmokers' Rights et al., *Fundamentals of Smokefree Workplace Laws* (2009), available at http://www.no-smoke.org/pdf/CIA_Fundamentals.pdf. Also, the U.S. Department of Health and Human Services' Healthy People 2010 Framework adopted as a critical objective the elimination of state preemption mechanisms that otherwise annul stronger tobacco control laws at the local level. U.S. DEPT. HEALTH AND HUMAN SERVICES, *HEALTHY PEOPLE 2020: A FRAMEWORK FOR ENDING THE TOBACCO USE EPIDEMIC* (2010) (Objective TU-16: Eliminate state laws that preempt stronger local tobacco control laws), available at <http://www.healthypeople.gov/2020/topicsobjectives2020/objectiveslist.aspx?topicid=4>"