

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 508 (Senator Bailey)
Judicial Proceedings

**St. Mary's County - Possession of Tobacco Product or Electronic Smoking Device
by an Individual Under the Age of 21 Years - Prohibition**

This bill prohibits an individual younger than age 21 from possessing a tobacco product or electronic smoking device (ESD) in St. Mary's County. The prohibition does not apply to (1) an individual younger than age 21 who is acting as the agent of the individual's employer within the scope of employment or (2) an active-duty member of the military who is at least age 18 and presents a valid military identification. A violation is a civil offense, and a minor who violates the bill's provisions is subject to the jurisdiction of the juvenile court, as specified. A law enforcement officer authorized to make arrests must issue a citation to an individual younger than age 21 if the officer has probable cause to believe that the individual is committing or has committed a violation.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect St. Mary's County finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill does not specify a penalty for individuals older than age 18 and younger than age 21 who are issued a civil citation under the bill.

Current Law:

Chapter 396 of 2019

Definitions: Chapter 396 of 2019, which took effect October 1, 2019, altered the definition of “tobacco product” under the Criminal Law Article as it applies to specified crimes against public health and safety. “Tobacco product” means a product that is intended for human inhalation, absorption, ingestion, smoking, heating, chewing, dissolving, or any other manner of consumption that is made of, derived from, or contains tobacco or nicotine. “Tobacco product” includes cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and snus; ESDs; and filters, rolling papers, pipes, and liquids used in ESDs, regardless of nicotine content. “Tobacco product” excludes a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration (FDA) under the federal Food, Drug, and Cosmetic Act.

In addition, Chapter 396 renamed “electronic nicotine delivery system” (or ENDS) to be “electronic smoking device” and defined “electronic smoking device” as a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. ESD includes (1) an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen and vaping liquid and (2) any component, part, or accessory of such a device regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device. ESD excludes a drug, device, or combination product authorized for sale by FDA under the Food, Drug, and Cosmetic Act.

Minimum Age: Chapter 396 of 2019 generally raised the minimum age for an individual to purchase or be sold tobacco products from 18 to 21 with specified exceptions for active-duty military members at least age 18 who present valid military identification. In addition, recent federal legislation raised the federal minimum age for a person to purchase or be sold tobacco products from 18 to 21.

Possession of a Tobacco Product by a Minor: Chapter 396 also repealed § 10-108 of the Criminal Law Article, which prohibited a minor from using or possessing a tobacco product, cigarette rolling paper, or an ENDS or from using a false form of identification to obtain a tobacco product, cigarette rolling paper, or an ENDS. A violation of the provision – repealed by the Act – was a civil offense.

Jurisdiction of the Juvenile Court

In general, the juvenile court has jurisdiction over a child alleged to be delinquent or in need of supervision. Pursuant to § 3-8A-03 of the Courts and Judicial Proceedings Article, the juvenile court also has exclusive original jurisdiction over a child who has received a

citation for a violation. Statutory provisions set forth a process for juveniles who are subject to the jurisdiction of the juvenile court. After a Department of Juvenile Services intake officer receives a complaint regarding a juvenile subject to the jurisdiction of the juvenile court, the intake officer must take specified actions, including determining whether judicial action is in the best interests of the public or the child.

Pursuant to statutory provisions, for a citation issued to a minor under § 10-108 of the Criminal Law Article (unlawful use or possession of a tobacco product by a minor) – repealed by Chapter 396 – an intake officer is authorized to (1) refer the child to a smoking cessation clinic or other suitable presentation of the hazards associated with tobacco use; (2) assign the child to a supervised work program for up to 20 hours for a first violation and up to 40 hours for a second or subsequent violation; or (3) forward the citation to the State’s Attorney.

For a citation issued other than under § 10-108, an intake officer has similar authority; however, the child may be referred to an alcohol or substance abuse education or rehabilitation program rather than a smoking cessation clinic.

Background:

Rise in Youth Use of E-cigarettes

According to the National Youth Tobacco Survey, in 2018, 1 in 5 high school students (20.8%) and 1 in 20 middle school students (4.9%) reported using electronic cigarettes (e-cigarettes) at least once in the previous 30 days, an increase of 78% and 48% since 2017, respectively. Among high school students currently using e-cigarettes, use of flavored e-cigarettes increased by 11.3% from 2017 to 2018. The 2019 Monitoring the Future Survey also found significant increases in youth vaping, noting that vaping among grades 8, 10, and 12 more than doubled from 2017 to 2019. According to FDA, increased youth vaping is likely attributable to the popularity of USB-flash-drive-like e-cigarettes that have a high nicotine content, appealing flavors, and the ability to be easily concealed and used discreetly.

Other States’ Action to Restrict Access to Flavored E-cigarette Products

In response to alarming health concerns related to e-cigarette use, several states have taken action through emergency regulations or rulemaking to ban or restrict the sale of flavored e-cigarette products.

As of January 2020, two states – Massachusetts and New Jersey – have enacted legislation banning the sale of flavored vaping products. The Massachusetts legislation, signed into law in November 2019, restricts the sale and consumption of flavored nicotine vaping

products and flavored cigarettes and other tobacco products (as defined in that state), including menthol cigarettes and flavored chewing tobacco, to licensed smoking bars, among other things. The New Jersey legislation, signed into law in January 2020, bans the sale and distribution of flavored vaping products, including menthol flavored products.

For more information on policies to address youth vaping, see *Issue Papers, 2020 Legislative Session*, Department of Legislative Services, pgs. 79-81 (“Addressing Youth Vaping”) (December 2019).

Federal Action to Restrict Flavored E-cigarette Products

On January 2, 2020, FDA announced a policy to ban some, but not all, flavored e-cigarettes. According to FDA, the policy is intended to limit the rise in the use of e-cigarettes by teens – who overwhelmingly prefer flavors – while balancing the potential benefits to adults who already smoke flavored products other than tobacco and menthol.

The policy prohibits the production, distribution, and sale of all flavored cartridge-based e-cigarettes, with the exception of menthol and tobacco flavors, after February 1, 2020. After that date, a manufacturer must show that an unauthorized flavored cartridge is “appropriate for the protection of public health” and receive FDA approval.

The regulation applies to cartridges, or disposable pods, that are enclosed units that hold vaping liquid, which when heated in an e-cigarette is aerosolized into a breathable vapor. The policy does not apply to tank-style vapes, which are larger and run on refillable e-liquids that are customizable at vape shops.

Recent Action by the Comptroller’s Office to Restrict Flavored E-cigarette Products

On February 10, 2019, the Comptroller announced action to prohibit the sale of certain disposable flavored ESDs not covered by the recent FDA policy. According to the Comptroller’s Office, the Field Enforcement Division is prioritizing enforcement action against cartridge-based and disposable ESDs with flavors other than tobacco or menthol.

Additional Comments: Chapter 396 of 2019 repealed § 10-108 of the Criminal Law Article. However, the Act did not repeal existing references to § 10-108 in provisions governing the issuance of citations to minors under the offense. The bill establishes a new § 10-108 of the Criminal Law Article, generally prohibiting the possession of a tobacco product or ESD by an individual younger than age of 21 in St. Mary’s County. It is assumed, for purposes of this fiscal and policy note, that existing references to § 10-108 of the Criminal Law Article apply to the bill’s provisions.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): U.S. Food and Drug Administration; Office of the Comptroller; Massachusetts; New Jersey; Maryland Association of County Health Officers; St. Mary's County; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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