

Department of Legislative Services
 Maryland General Assembly
 2001 Session

FISCAL NOTE

House Bill 437 (Chairman, Environmental Matters Committee, *et al.*)
 (Departmental – Health and Mental Hygiene)
 Environmental Matters

Department of Health and Mental Hygiene - Comprehensive Tobacco Control Program - Sale of Tobacco Products to Minors

This departmental bill requires the Department of Health and Mental Hygiene (DHMH) to design, implement, and administer an inspection program to eliminate the sale of tobacco products to minors.

Fiscal Summary

State Effect: General fund expenditure increase of \$408,300 in FY 2002 to establish the Tobacco Control Program. This is \$91,700 less than the \$500,000 included in the proposed FY 2002 budget (Cigarette Restitution Funds) for enforcement. Future year estimates reflect full salaries and ongoing operating expenses. The civil penalty provisions of this bill are not expected to significantly affect State finances.

(in dollars)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
GF Revenue	-	-	-	-	-
SF Expenditure	408,300	498,900	522,900	548,500	575,700
Net Effect	(\$408,300)	(\$498,900)	(\$522,900)	(\$548,500)	(\$575,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government expenditures could increase to the extent that local law enforcement agencies that do not currently perform inspections, are required to perform inspections by DHMH pursuant to the bill. Potential local government revenue loss.

Small Business Effect: DHMH has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: State law (Article 27, Section 404) prohibits the sale of tobacco products to minors. This law is enforced by local jurisdictions. Violators are subject to a \$300 fine for a first offense; a \$1,000 fine for a second violation occurring within a two-year period of a prior violation; and a \$3,000 fine for a third or subsequent violation occurring within a two-year period of a prior violation.

Bill Summary: In administering the inspection program, DHMH is required to conduct on-site inspections of retailers to determine whether they are selling or attempting to sell tobacco products to minors. DHMH may designate local health departments, local law enforcement agencies, or any other entity to perform inspections of retailers, provided that these designees operate an inspection program that meets the standards set by DHMH. If a retailer sells or attempts to sell tobacco products to a minor, the entity conducting the inspection is required to issue a citation to the retailer stating that the retailer has violated the law against selling tobacco products to minors.

A retailer who sells or attempts to sell tobacco products to minors is subject to the following civil penalties:

- for a first violation -- a fine of not more than \$1,000;
- for a second violation occurring within a two-year period of the first violation -- a fine of not more than \$2,000 or the suspension of the retailer's license to sell cigarettes that is not less than ten days or more than 30 days, or both;
- for a third violation occurring within a two-year period of the prior violation -- a fine of not more than \$3,000 or the suspension of the retailer's license to sell cigarettes that is not less than 30 days or more than six months, or both; and
- for any subsequent violations occurring within a three-year period of the prior violation -- a fine of not more than \$4,000 or the suspension of the retailer's license for one year, or both.

In a proceeding for a violation, it shall be an affirmative defense that the retailer examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, governmental entity, or institution of higher education that positively identified the purchaser or recipient as at least 18 years old. Retailers are not subject to other penalties for the same violation for which the retailer is penalized under the bill.

If DHMH issues an order to suspend a retailer's cigarette license, the Comptroller is required to immediately suspend the license, upon written notification from DHMH. The Comptroller is required to notify the licensee. The suspension may not take effect until five business days after the notice of the suspension.

DHMH is also required to develop an education program that includes a review of all laws that prohibit or otherwise restrict the sale of tobacco products to minors. The program is to be offered to all retailers who violate the provisions of the bill and to all retailers who request to take the program. DHMH is required to offer the program annually in Western Maryland, Central Maryland, Southern Maryland, and the Eastern Shore.

The bill may not be construed to preempt or prevail over any local ordinance, resolution, or rule that is more stringent.

Background: Maryland currently receives approximately \$29 million in Substance Abuse Prevention and Treatment (SAPT) federal grant money each year. The Synar Amendment, which took effect in 1996, requires the states to decrease the sale of tobacco products to minors each year until a final goal of no more than 20% noncompliance is met. Maryland has to inspect 10% of its tobacco retailers each year to determine the noncompliance rate. Noncompliance rates can be no higher than 33% for fiscal 2000, 30% for fiscal 2001, 25% for fiscal 2002, and 20% for fiscal 2003 and beyond. If these rates are not met, the State could lose up to 40% of the SAPT block grant.

Chapter 18 of 2000 created the Tobacco Use Prevention and Cessation Program in DHMH. The program is supported by the Cigarette Restitution Fund, and has the goal of reducing tobacco use, especially among minors.

Maryland is actively trying to reduce the use of tobacco by minors. Enforcement has shown to be a critical component of any intervention to reduce the sale of tobacco to minors. Currently, there is no active process for consistently conducting tobacco retailer compliance checks and enforcing the State's tobacco law. The bill seeks to establish an enforcement entity.

State Expenditures: The State is currently in noncompliance with the Synar Amendment. This is due in part to the fact that the State does not have a coordinated enforcement mechanism in place to address the sale of tobacco products to minors. The bill grants this enforcement authority to DHMH in order to monitor compliance of State tobacco restrictions with the requirements of the federal Synar Amendment. The Governor's proposed fiscal 2002 budget includes \$210,000 in federal funds to conduct compliance inspections. DHMH advises that Cigarette Restitution Funds would be used

to carry out the provisions of the bill so that the federal substance abuse grant funds can be used for substance abuse programs. The Governor's proposed fiscal 2002 budget includes \$500,000 in Cigarette Restitution Funds for the enforcement of the Synar Amendment. These funds would presumably be used to fund this program, although no positions are included in the proposed fiscal 2002 budget for the program.

DHMH advises that the \$500,000 in the proposed budget would be used to implement the Tobacco Control Program proposed by the bill. However, DHMH indicates that a general fund expenditure of \$408,303, which is \$91,697 less than what is included in the proposed budget, would be required to meet the needs of the program. Even though no positions are included in the proposed fiscal 2002 budget, DHMH advises that it would need to hire 8.35 full-time equivalent (FTE) positions (1 program administrator, 4.6 administrative officers, 1 office secretary, .75 assistant attorney general, and 1 fiscal specialist) to implement the Tobacco Control Program proposed by the bill. This includes administration, legal and fiscal support, and vendor investigations. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, as well as \$27,300 in contractual services to hire student workers to assist with the inspections of tobacco retailers. Future year expenditures reflect: (1) full salaries with a 6.5% increase in fiscal 2003 and a 4.5% increase each year thereafter, with 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

DHMH advises that currently its Alcohol and Drug Abuse Administration conducts compliance checks at 10% (800) of the 8,000 licensed cigarette retailers in the State each year. DHMH indicates that this rate of inspection would continue under the bill. Assuming that some portion of these inspections results in violations that are appealed, it could result in more cases being heard by the Office of Administrative Hearings. However, because it is not known how many additional hearings could result from the bill, it is assumed that initially any additional workload could be handled with existing budgeted resources.

The civil penalty provisions of this bill are not expected to significantly affect State revenues.

State Revenues: The civil penalty provisions of this bill are not expected to significantly affect State revenues.

Local Revenues: Montgomery County advises that it would no longer be able to issue fines under its local tobacco ordinance. As a result, revenues could decrease by approximately \$70,000-\$80,000 annually. However the bill states that it may not be construed to preempt or prevail over local restrictions that may be more stringent.

Local Expenditures: Local government expenditures could increase to the extent that local law enforcement agencies that do not currently perform inspections are required to perform inspections by DHMH, pursuant to the bill. Caroline and Howard counties indicate that they would incur increased expenditures if the local health departments are chosen as designees pursuant to the bill.

The civil penalty provisions of this bill are not expected to significantly affect local expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene (Alcohol and Drug Abuse Administration); Comptroller of the Treasury (Alcohol and Tobacco Tax Division); Judiciary (Office of Administrative Hearings); Caroline, Calvert, Montgomery, and Prince George's counties; Department of Legislative Services

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