

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 1269 (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: Special fund expenditure increase of \$419,200 in FY 2003 to establish the Tobacco Control Program. This is \$80,800 less than the \$500,000 included in the FY 2003 budget (Cigarette Restitution Funds) for enforcement that could be used to implement this bill. 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 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	-	-	-	-	-
SF Expenditure	419,200	494,300	515,100	537,300	560,900
Net Effect	(\$419,200)	(\$494,300)	(\$515,100)	(\$537,300)	(\$560,900)

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.

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

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 10 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 6 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 1 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 takes effect immediately after the notice is received.

DHMH, in consultation with the Office of the Attorney General, 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 any county or a local government enforcement of State and local laws prohibiting the sale of tobacco products to minors.

Current Law: State law 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. A county is not allowed to suspend or revoke a retailer's license to sell cigarettes.

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. The noncompliance rate can be no higher than 20% for fiscal 2003 and beyond. If this rate is not met, the State could lose up to 40% of the SAPT block grant, approximately \$12 million for each year of noncompliance.

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.

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

State Expenditures: Special fund expenditures could increase by an estimated \$419,223 in fiscal 2003, which accounts for the bill's 90-day start-up delay. This estimate reflects the cost of 8.8 new positions (1 program administrator, 1 supervisor, 4 health

investigators, 1 office secretary, 1 fiscal officer, and 0.8 assistant attorney general) to implement the Tobacco Control Program proposed by this bill. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, as well as \$22,461 in contractual services to hire student workers to assist with the inspections of tobacco retailers. The proposed fiscal 2003 budget includes \$500,000 in Cigarette Restitution Funds for enforcement that DHMH would use to implement this bill.

Salaries and Fringe Benefits	\$304,275
Contractual Student Workers	22,461
Other Operating Expenses	<u>92,487</u>
Total FY 2003 State Expenditures	\$419,223

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Local Revenues: Local government revenues are not expected to be affected because the bill will not preempt any county or a local government enforcement of State and local laws prohibiting the sale of tobacco products to minors.

Local Expenditures: Local government expenditures could increase to the extent that local law enforcement agencies that do not currently perform inspections are required to do so by DHMH, pursuant to the bill. The civil penalty provisions of this bill are not expected to significantly affect local expenditures.

Additional Information

Prior Introductions: A similar bill, HB 437, was introduced in the 2001 session and was unfavorably reported from the Environmental Matters Committee.

Cross File: SB 547 (Chairman, Judicial Proceedings Committee) (Departmental – Health and Mental Hygiene) – Rules.

Information Source(s): Comptroller’s Office (Alcohol and Tobacco Tax Division), Department of Health and Mental Hygiene, Department of Legislative Services

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