

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 631 (Delegate Frush)
Health and Government Operations

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

This bill requires the Department of Health and Mental Hygiene (DHMH), in consultation with the Office of the Attorney General, to design, implement, and administer a compliance check program to eliminate the sale of tobacco products to minors. The bill establishes civil penalties for retailers who violate the bill's provisions, allows for the suspension of retailers' licenses, creates an education program, and includes other provisions. The bill does not preempt any additional measures by a local government to reduce illegal sales of tobacco products to minors.

The bill takes effect July 1, 2003.

Fiscal Summary

State Effect: DHMH currently investigates retailers' compliance with laws prohibiting the sale of tobacco products to minors. The FY 2004 budget allowance includes \$241,575 in federal Substance Abuse and Treatment Block Grant funds that covers the salaries and benefits for a program administrator, three health investigators, student contractual workers to attempt to purchase the cigarettes, and travel expenses. It is expected that this bill could be implemented within those budgeted funds. The civil penalty provisions of this bill are not expected to significantly affect State finances.

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: For small businesses that are penalized for selling tobacco products to minors, this bill could have a fiscal impact.

Analysis

Bill Summary: DHMH, which must conduct the compliance checks, may designate any office of local government, including local health departments or law enforcement agencies, to perform the checks, provided that the entities operate a compliance check program that meets DHMH standards.

DHMH, or its designee, may recruit minors to enter retail establishments to purchase tobacco products. If minors are used, a representative of DHMH or its designee must be accessible to or on site to supervise the compliance check process. A minor's participation in this process does not constitute a violation of State law or of any other law or regulation, criminal or civil, in any jurisdiction prohibiting the purchase of any tobacco product by a minor.

If a retailer sells, or attempts to sell, a tobacco product to a minor during a compliance check, the DHMH designee or representative must issue a citation to the retailer and administer an appropriate penalty, as outlined in the bill.

The civil penalties for retailers are:

- first violation, a fine between \$500 and \$1,000;
- second violation in a two-year period, a fine between \$1,000 and \$2,000 or the suspension of the retailer's license to sell cigarettes for not less than 10 days nor more than 30 days, or both;
- third violation in a two-year period, a fine between \$2,000 and \$3,000 or the suspension of the retailer's license to sell cigarettes for not less than 30 days nor more than six months, or both; and
- subsequent violations within a three-year period, a fine between \$3,000 and \$4,000 or the suspension of the retailer's license for one year.

A retailer is not subject to prosecution for distributing a tobacco product to a minor or liable for any civil penalty under the business regulation statute licensing cigarette retailers for the same violation for which the retailer is penalized under this section.

DHMH or its designee must conduct an additional compliance check within 90 days of any violation or attempted violation of the bill's provisions. DHMH may adopt regulations to carry out the bill's provisions.

In addition to the civil penalties, a retailer who sells tobacco products to a minor is subject to the DHMH-developed education program. DHMH must develop the program in consultation with the Office of the Attorney General. The program will include a review of all laws that prohibit or restrict the sale of tobacco products to minors. In addition to violators, DHMH must offer the education program to all retailers that voluntarily request to take the program. The education program must be offered at least once per calendar year in Central Maryland, the Eastern Shore, Southern Maryland, and Western Maryland.

Before the Secretary of Health and Mental Hygiene takes any final action, retailers facing penalties under this bill must have the opportunity to have a hearing. If, after due notice is given, the person against whom the action is contemplated does not appear, the Secretary or the Secretary's designee may hear and determine the matter. Notification of a suspended retailer license must be given to the Comptroller who must suspend the license. DHMH may delegate its authority to the Office of Administrative Hearings to issue either a proposed or final order. A decision reached in a hearing may be appealed to the circuit court in the county where the violation occurred, within 30 days of the decision.

In a proceeding for a violation of the bill's provisions, it is an affirmative defense that the retailer examined the purchaser's or recipient's driver's license or other valid identification that positively identified the individual as at least 18 years old.

The bill does not preempt the Comptroller's authority to suspend or revoke a license under the business regulation statute.

For jurisdictions with an enforcement program, DHMH, on the jurisdiction's recommendation, may order the imposition of the appropriate civil penalties under this bill. A violation of a local ordinance, resolution, or rule constitutes a violation under this bill.

Current Law: A person who distributes tobacco products for commercial purposes may not distribute to a minor a tobacco product, a cigarette rolling paper, or a coupon redeemable for a tobacco product. A violation of this prohibition is a misdemeanor, punishable by a fine not exceeding \$300 for a first violation, \$1,000 for a second violation occurring within two years, and \$3,000 for each subsequent violation occurring within two years.

The Comptroller may deny a license to sell cigarettes, reprimand a licensee, or suspend or revoke a license if the applicant or licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for the applicant or another person;
- fraudulently or deceptively uses a license;
- fails to comply with the Maryland Cigarette Sales Below Cost Act or regulations adopted under that Act;
- fails to comply with State statute regarding cigarette sales of less than 20 per package;
- buys cigarettes for resale in violation of a license or from a person who is not a cigarette manufacturer, licensed subwholesaler, licensed vending machine operator, or licensed wholesaler;
- is convicted, under federal law or the laws of any other state of a felony or a misdemeanor that is a crime of moral turpitude and directly related to the fitness and qualification of the applicant or licensee; or
- has not paid a tax due before October 1 of the year after the tax became due.

Except for a violation of the criminal law for distributing a tobacco product to a minor, whenever a retailer's license to sell cigarettes is suspended or revoked by the Comptroller, the licensee may petition the Comptroller to pay a sum of money in lieu of serving the suspension or revocation. Money paid in lieu of license suspension or revocation must be paid into the State's general fund. The amount of money may not exceed \$2,000 for retail licensees, and not exceed \$50,000 for other licensees. The Comptroller may allow the payment if the public welfare and morals would not be impaired by allowing the licensee to operate during the suspension or revocation period, and the payment will achieve the desired disciplinary purposes.

The Comptroller also may deny a county license to sell cigarettes, reprimand a county licensee, or suspend or revoke a county licensee if the applicant or licensee fraudulently or deceptively obtains or attempts to obtain a license for the applicant or another person, fraudulently or deceptively uses a license, or fails to comply with the Maryland Cigarette Sales Below Cost Act and regulations adopted under the Act.

Background: DHMH's Alcohol and Drug Abuse Administration (ADAA) currently performs retail establishment tobacco inspections. The department's Family Health Administration already trains local health departments to provide retailer education programs similar to the program outlined in this bill.

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: The fiscal 2004 budget appropriation includes \$241,575 in federal Substance Abuse and Treatment Block Grant funds that cover the salaries and benefits for a program administrator, three health investigators, student contractual workers to attempt to purchase tobacco products, and travel expenses. ADAA expects to use existing resources to implement the requirements of this legislation. The Family Health Association already trains local health departments to provide retailer education programs similar to the program required under this bill. Expenditures could increase over the budgeted amount to the extent that implementing the bill requires the department to hire additional staff. DHMH expects that it may be able to use federal funds for that purpose.

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, SB 896, was introduced in the 2002 session but did not have a hearing before a committee.

Cross File: SB 162 (Senator Forehand) – Judicial Proceedings.

Information Source(s): Allegany County, Montgomery County, Prince George's County, Comptroller's Office, Department of Health and Mental Hygiene, Baltimore City, Office of the Attorney General, Department of Legislative Services

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