

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 32

(Delegate Gordon, *et al.*)

Judiciary

Judicial Proceedings

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**Criminal Law - Candy-Like Products Containing Tobacco - Minors**

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This bill prohibits the distribution of candy-like products that contain tobacco to minors by including candy-like products that contain tobacco in the definition of “tobacco product.”

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**Fiscal Summary**

**State Effect:** Potential minimal increase in revenues to the extent that the bill increases fines. No effect on expenditures.

**Local Effect:** It is expected that enforcement of the bill by law enforcement units and the juvenile court could be handled with existing budgeted resources.

**Small Business Effect:** Potential minimal to the extent that small businesses are fined.

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**Analysis**

**Current Law:** State law defines a tobacco product as a substance containing tobacco, which includes cigarettes, cigars, smoking tobacco, snuff, and smokeless tobacco.

Tobacco products may not be distributed to minors. Violators are guilty of a misdemeanor and subject to the following fines upon conviction: (1) \$300 for the first violation; (2) \$1,000 for a second violation occurring within two years of the first violation; and (3) \$3,000 for each subsequent violation occurring within two years after the preceding violation.

A minor may not use or possess a tobacco product or obtain or attempt to obtain a tobacco product using false identification. A violation is a civil offense punishable in juvenile court.

The U.S. Supreme Court ruled in 2000 that the U.S. Food and Drug Administration (FDA) does not have the jurisdiction to regulate traditional tobacco products as customarily marketed. Other products containing nicotine may be subject to FDA regulation.

**Background:** Public health groups and 40 state's attorney generals, including Maryland's, and the attorney general for one U.S. territory are urging FDA regulation of a product called Ariva – a nicotine, mint-flavored lozenge that looks like a breath mint. Ariva is made from compressed, powdered tobacco in the form of a pellet designed to dissolve in a person's mouth. The states and public health groups seek FDA regulation of Ariva because it is believed that it is attractive to children and is likely to discourage smokers from quitting because they can use it in places they are not allowed to smoke.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Somerset County; Montgomery County; Prince George's County; Charles County; Baltimore County; Department of Health and Mental Hygiene; Frederick County; Campaign for Tobacco-Free Kids; *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2003  
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