

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 80

(Chair, Finance Committee)(By Request - Departmental -
Health and Mental Hygiene)

Finance

Economic Matters

Distribution of Tobacco-Related Products to Minors - Enforcement

This departmental bill repeals provisions that apply in three counties and instead authorizes county health officers and their designees, on a statewide basis, to issue civil citations to persons who distribute any tobacco products, rolling papers, and coupons to minors. Violators are subject to civil penalties of \$300 for the first violation and \$500 for any subsequent violation within a 24-month period from the previous citation. The bill does not preempt any county or municipal law that regulates tobacco products.

Fiscal Summary

State Effect: General fund revenues decrease, depending on the extent to which counties choose civil enforcement over criminal enforcement, in which case civil citations are paid to the county rather than contested in District Court. No effect on expenditures assuming funding for enforcement of the sale of tobacco products to minors remains the same.

Local Effect: Any civil fines from citations for counties that choose the civil enforcement option accrue to that county. Significant operational impact for counties that shift resources and responsibilities from criminal enforcement to civil enforcement.

Small Business Effect: The Department of Health and Mental Hygiene (DHMH) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: A person licensed in the State to distribute cigarettes or other tobacco products may not distribute to a minor a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product. Distribution includes selling, giving, or offering to sell. A person other than a commercial distributor may not purchase for or sell a tobacco product to a minor or distribute tobacco paraphernalia to a minor.

These prohibitions do not apply to the distribution of a tobacco product to a minor who is acting solely as the agent of the minor's employer if the employer distributes tobacco products for commercial purposes.

A violator is guilty of a misdemeanor and subject to the following penalties: \$300 for a first offense; \$1,000 for a second offense occurring within two years after the first offense; and \$3,000 for each subsequent violation occurring within two years after the preceding offense. Alleged violations are tried in the District Court.

In a prosecution for a violation, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least age 18. Additionally, it is a civil offense for a minor to be in possession of a tobacco product or use false identification to obtain one.

St. Mary's, Garrett, and Carroll counties subject persons who distribute tobacco products, cigarette rolling papers, and tobacco-related coupons to minors to civil penalties. Six additional jurisdictions have similar civil enforcement powers through enactment of local ordinances.

Background: Money from the Cigarette Restitution Fund (CRF) is used in part for enforcement of tobacco control laws in each county. The fiscal 2010 budget includes \$3.8 million in local public health programs funded by CRF that must be targeted toward community outreach and education, school-based activities, cessation, and enforcement. County sheriff offices use the enforcement funds to perform compliance checks on tobacco retailers.

Local Revenues: Any civil fines from citations for counties that choose the civil enforcement option accrue to that county.

Local Expenditures: Significant operational impact for counties that choose to shift resources and responsibilities from criminal enforcement to civil enforcement. Currently, most counties appropriate money to local law enforcement agencies to criminally enforce the sale of tobacco products, rolling papers, and coupons to minors. In counties where the local health department (LHD) chooses to civilly enforce such violations, funding to law enforcement agencies for this purpose may be redirected to LHDs for civil

enforcement. The amount of funding for enforcement varies from county to county, so any funding shift also varies. For example, Worcester County receives \$3,565 for this purpose; if the county chooses to redirect the money from local law enforcement back to its LHD, LHD revenues increase by \$3,565, but the expenditures that accompany enforcement activities also increase.

St. Mary's, Garrett, and Carroll counties are not affected since they already civilly enforce violations involving the distribution of tobacco to minors. Garrett County, however, can collect a higher civil fine for subsequent isolations under the bill. The bill removes the language in the code that addresses these counties specifically. The other six counties that have civil enforcement powers may be minimally affected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Garrett, Kent, Montgomery, Prince George's, St. Mary's, Washington, and Worcester counties; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2009
ncs/mwc Revised - Senate Third Reader - April 10, 2009
Revised - Updated Budget Information - May 19, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Distribution of Tobacco – Related Products to Minors - Enforcement

BILL NUMBER: SB 80

PREPARED BY: Office of the Inspector General

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.