

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

Senate Bill 697 (Senator McFadden, *et al.*)
 Finance and Judicial Proceedings

Business Regulation - Distribution of Tobacco Products

This bill includes statutory guidelines for identifying the age of a person attempting to purchase tobacco products; establishes penalty provisions for violators and circumstances for the revocation of a cigarette business license; requires the Comptroller’s Office to keep a record of all known violations associated with the sale of tobacco products in the State; and mandates that businesses display a sign that outlines the criminal penalties and prohibitions associated with the sale of tobacco to minors.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$23,100 in FY 2010 due to an anticipated need for additional staff to create and maintain a central repository of violations. Future year expenditure estimates reflect annualization and inflation. No effect on revenues.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	23,100	31,300	32,700	34,100	35,600
Net Effect	(\$23,100)	(\$31,300)	(\$32,700)	(\$34,100)	(\$35,600)

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

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill prohibits a person who sells tobacco products commercially from distributing tobacco products to any person unless the person proves he or she is at least 18 years of age by presenting valid identification that is issued by an employer, government unit, or institution of higher education. This provision does not apply to a reasonably prudent distributor who concludes, on the basis of appearance, that the potential purchaser is at least 27 years old, or at the time of the distribution, the purchaser or recipient was not a minor.

Penalties for the first and second offense relating to the sale of tobacco to a minor are included in current law. However, the bill adds that, if a person is convicted of a second violation within two years of the first violation, an appropriate court may order the Comptroller to suspend, for up to a month, the cigarette business license of the location where the violation occurred. If a third violation occurs within three years, the Comptroller may be ordered to revoke the license.

A license may not be suspended or revoked if the licensee has posted the signage required by the bill; obtained a signed statement from all employees indicating that they were informed of the bill's requirements; adopted and enforced a written policy against the sale of tobacco to minors; and provided any employees who violate the provisions of the bill with training, including testing and role-playing components, to prevent future violations. In addition, a license may not be suspended or revoked if a licensee has not asserted one of the listed defenses more than twice within a two-year period.

The Comptroller's Office must keep a record of all known violations of tobacco, or tobacco paraphernalia, sales to minors. The record must include the name, address, and phone number of the business location where the violation occurred; the date of the violation; and the date on which any applicable civil penalty was paid. These records are considered public information.

The bill also specifies that it is illegal for a minor to attempt to purchase a tobacco product or cigarette rolling paper and that tobacco products may not be sold through a self-service display unless it is located in a retail tobacco business.

Current Law: Retailers who sell cigarettes in the State, including through a vending machine, must have a county license for each separate business or vending machine. Manufacturers, storage warehouses, wholesalers, and subwholesalers in the State must also be licensed. By regulation, the Comptroller's Office requires vendors to display the license prominently in each place of business or on a vending machine. A vending machine must also display a label that discloses the criminal penalties associated with tobacco sales to minors.

Vending machines that dispense tobacco products may only be located in bona fide fraternal or veterans organizations or establishments where minors are prohibited from entering by law. The only vending machines allowed to dispense tobacco products in the State are those that can only be operated with a token, card, or similar device that an individual can only obtain from an owner or employee of the owner. Misdemeanor penalties of \$100 may be assessed upon violators.

A person licensed in the State to distribute cigarettes or other tobacco products may not distribute to a minor a tobacco product, a cigarette rolling paper, 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 cigarette rolling papers 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.

In a prosecution for a violation of distribution of a tobacco product to a minor, 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 18 years of age or older. Additionally, it is a civil offense for a minor to be in possession of a tobacco product or use false identification to obtain one.

Criminal enforcement of underage tobacco violations is conducted by local law enforcement units within the State. Carroll, Garrett, and St. Mary's counties have established civil penalties for individuals who distribute tobacco products to minors.

Background: All 50 states and the District of Columbia prohibit the distribution of tobacco products to minors. Seventeen states and the District of Columbia require a person selling tobacco products to check the identification of a purchaser who appears to be younger than 18.

State Fiscal Effect: The Comptroller's Office advises that the Field Enforcement Division does not currently enforce the violations associated with the bill and that the recordkeeping requirement associated with this bill cannot be absorbed within existing resources. General fund expenditures increase by \$23,105 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost of a part-time administrative aid to create and maintain a central repository of violations. It includes a part-time salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	0.5
Salary and Fringe Benefits	\$18,650
Additional Equipment and Supplies	<u>4,455</u>
Total FY 2010 State Expenditures	\$23,105

Future year expenditures reflect a full annualized part-time salary with 4.4% annual increases and 3% employee turnover and 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 681 (Delegate Vaughn, *et al.*) - Economic Matters.

Information Source(s): Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2009
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