

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 703

(Senator Garagiola, *et al.*)

Finance

Rules and Executive Nominations

Tobacco-Related Products - Distribution to Minors

This bill repeals provisions that apply in four 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. Persons who distribute tobacco products, rolling papers, or coupons to minors are subject to civil penalties of \$300 for the first offense, \$500 for a second offense within a 24-month period from the previous citation, and \$750 for any subsequent violation within 24 months. The bill does not preempt any county or municipal law that regulates tobacco products.

Fiscal Summary

State Effect: General fund revenues may 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: Potential minimal.

Analysis

Bill Summary: Minors may not purchase tobacco products or cigarette rolling papers or purchase or attempt to obtain these items using a form of identification that belongs to another person or is falsified. Minors who violate these provisions are subject to a civil penalty of \$50 and may be referred to a smoking cessation program if one is offered through a local health department (LHD).

The bill specifies that a defendant accused of violating the distribution prohibition of the bill may use, as a defense, the fact that he or she examined the purchaser's or recipient's photo identification issued by a governmental unit, employer, or institution of higher education that positively identified the purchaser or recipient as at least 18 years of age. This is consistent with current criminal law. The bill expresses legislative intent that the identification check provisions be construed as conforming to specified federal legislation and regulations.

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. Other persons 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, Carroll, and Cecil 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 Governor's proposed SB 703 / Page 2

fiscal 2011 budget includes \$3.7 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's offices use the enforcement funds to perform compliance checks on tobacco retailers.

The federal Family Smoking Prevention and Tobacco Control Act, signed into law by President Barack Obama in June 2009, requires, among other things, the Secretary of Health and Human Services to publish a final rule identical to regulations promulgated on August 28, 1996, which governed advertising, promotion, and access to nicotine containing cigarettes and smokeless tobacco products to children and adolescents. The regulations were repealed in 2000 due to a Supreme Court decision ruling that the Food and Drug Administration did not have authority over tobacco or tobacco marketing.

The Department of Health and Mental Hygiene (DHMH) advises that the federal regulation, effective June 2010, resulting from the Act imposes an identification check requirement almost identical to the check proposed in this bill. Therefore, DHMH advises that the bill will not add requirements for tobacco retailers but allow local jurisdictions to enforce identification check provisions that will be required by federal law.

According to the 2006 Maryland Youth Tobacco Survey, 18.4% of Maryland youth use tobacco products, and according to the Campaign for Tobacco-Free Kids, almost 90% of adult smokers began smoking by age 18. Research shows that, the earlier people begin to smoke, the higher the risks of lung cancer and smoking-related chronic health conditions.

According to DHMH, asking for photo identification can significantly reduce the sale and distribution of tobacco products, rolling papers, and coupons to minors. When not asked for identification, 77.3% of minors reported being able to purchase cigarettes in Maryland. In contrast, when asked for identification, only 33.4% of minors reported being able to purchase cigarettes.

State Revenues: Any civil fines from citations for counties that choose the civil enforcement option accrue to that county, thus general fund revenues may decrease.

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 LHD chooses to civilly enforce such violations, funding to law enforcement agencies for

this purpose may be redirected to LHDs for civil enforcement. It is expected that LHDs that offer smoking cessation programs can accommodate minors referred to these programs with existing resources. The amount of funding for enforcement varies from county to county, so any funding shift also varies.

St. Mary's, Garrett, Carroll, and Cecil counties are not affected since they already civilly enforce violations involving the distribution of tobacco to minors. The bill removes the language in statute that addresses these counties specifically. The other six counties that have civil enforcement powers may be minimally affected.

Additional Information

Prior Introductions: SB 80 of 2009, a similar bill, passed the Senate as amended and received a hearing in the House Economic Matters Committee, but no further action was taken.

Cross File: HB 957 (Delegate Tarrant, *et al.*) - Economic Matters.

Information Source(s): Calvert, Caroline, Howard, and Prince Georges counties; Baltimore City; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Campaign for Tobacco-Free Kids, Department of Legislative Services

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Analysis by: Michael T. Vorgetts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510