

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 583

(Delegate Rosenberg, *et al.*)

Economic Matters

Tobacco Products - Distribution - Requirements

This bill repeals provisions of law restricting the sale of tobacco through a vending machine. In addition, the bill prohibits the distribution of tobacco products to minors; requires photo identification checks in connection with the distribution of tobacco products to minors; prohibits a tobacco product retailer from distributing cigarettes for free or in packs of less than 20; and restricts how tobacco product retailers may store or display tobacco products.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances as discussed below.

Local Effect: Local health department and law enforcement can handle enforcement with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: Before distributing a tobacco product to an individual who does not reasonably appear to be at least age 27, the individual distributing the tobacco product must examine the prospective purchaser's driver's license or other valid identification issued by an employer, a government unit, or an institution of higher learning to ensure that:

- the photograph in the identification reasonably appears to be that of the prospective purchaser or recipient;
- the birth date on the identification indicates that the bearer is at least age 18; and
- there is no reasonable indication that the identification has been tampered with, altered, or forged.

Except for tobacco product retailers that do not at any time allow minors into the premises where tobacco products are distributed, a tobacco product retailer may not store or display a tobacco product (including in a vending machine or self-service display) unless it (1) is not immediately accessible to customers; and (2) is accessible only to the tobacco retailer or the retailer's employee.

A violator of any provision of the bill is subject to a civil penalty of \$500.

The bill does not preempt any county or municipal law that regulates tobacco products and must be construed as conforming to the federal Family Smoking Prevention and Tobacco Control Act. The bill does not apply to the distribution of tobacco products to a minor who is acting as the agent of the minor's employer if the employer is a tobacco product retailer.

With the exception of certain provisions related to vending machines, the bill does not repeal any provisions of current law related to the distribution of tobacco products to minors.

Current Law: As specified in the Business Regulation Article, a person may not sell or dispense (or offer to sell or dispense) a tobacco product through a vending machine unless the vending machine (1) is located in an establishment that minors are prohibited by law from entering; (2) is located in an establishment that is a bona fide fraternal or veterans organization; or (3) can only be operated with a token, card, or similar device that an individual can only obtain or purchase from the owner or the owner's agent. A violator is guilty of a misdemeanor and on conviction is subject to a fine of up to \$100.

The Criminal Law Article specifies that 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 a tobacco product for a minor, sell a tobacco product to a minor, or distribute tobacco paraphernalia to a minor. (However, 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.

The Business Regulation Article specifies that tobacco product wholesalers, retailers, or vending machine operators may not sell or distribute packages of cigarettes that contain fewer than 20 cigarettes. There is no penalty provision in statute regarding these sales, but a violation may be grounds for the denial of a cigarette business license. In Baltimore City, the sale or distribution of unpackaged cigarettes is prohibited and violators are subject to a fine of \$500.

As specified in Article 24, Title 15, 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. In addition, six jurisdictions have similar civil enforcement powers through enactment of local ordinances.

Background: Money from the Cigarette Restitution Fund is used in part for enforcement of tobacco control laws in each county. The Governor's proposed fiscal 2012 budget includes \$2.9 million in local public health programs funded by CRF that must be targeted toward activities such as community outreach and education, school-based activities, and smoking cessation. The Field Enforcement Division (FED) of the Comptroller's Office also enforces the sale of tobacco products in the State by manufacturers, wholesalers, and retailers. Sanctions imposed by FED investigators are prosecuted in District Court. FED employs 8 inspectors and 18 agents who routinely inspect cigarette retailers. The division conducts more than 4,000 such inspections annually.

The federal Family Smoking Prevention and Tobacco Control Act, signed into law by President Barack Obama in June 2009, requires the Secretary of Health and Human Services to publish a final rule identical to earlier regulations which governed advertising, promotion, and access to nicotine containing cigarettes and smokeless tobacco products to children and adolescents. (The regulations, which were promulgated in 1996, had been 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 new federal regulations impose an identification check requirement almost identical to the check proposed in this bill.

According to the most recent Maryland Youth Tobacco Survey, conducted in 2006, 18.4% of Maryland youth use tobacco products; according to the Campaign for Tobacco-Free Kids, almost 90% of adult smokers began smoking by age 18. Research indicates that individuals who begin to smoke earlier in life experience increased risks of lung cancer and smoking-related chronic health conditions.

State Fiscal Effect: With the exception of a provision of law in the Business Regulation Article related to vending machines, current provisions of law related to the distribution of tobacco are unchanged by the bill. To the extent that the bill's provisions are inconsistent with current provisions of law found in the Business Regulation, Criminal Law, and Political Subdivisions Articles, it is assumed that the provisions of the bill, if enacted, would prevail and reflect legislative intent. Accordingly, general fund revenues may decrease minimally to the extent that penalties specified in the bill are lower than penalties specified in current law. However, because the bill's provisions are substantially similar to current law, the bill is not expected to materially affect State finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Tobacco Youth Survey; Baltimore, Carroll, Cecil, Montgomery, and St. Mary's counties; Department of Health and Mental Hygiene; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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Analysis by: Jennifer A. Ellick

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