

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 278 (Delegate Frush, *et al.*)
 Judiciary

Criminal Law - Tobacco Products - Minimum Age

This bill raises the minimum age to purchase and use tobacco products or paraphernalia from age 18 to 21.

Fiscal Summary

State Effect: General fund revenues decrease by \$12.1 million in FY 2015 from lost tax revenue as a result of raising the minimum legal age of tobacco product purchases. Future years reflect annualization and the “aging out” of individuals who may currently smoke legally and choose to continue to do so despite the age restriction. Potential minimal fine revenues from illegal distribution and consumption may offset some of these losses. Enforcement can be handled with existing resources.

| (\$ in millions) | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|------------------|----------|----------|----------|----------|----------|
| GF Revenue | (\$12.1) | (\$17.0) | (\$17.8) | (\$18.2) | (\$18.2) |
| Expenditure | 0 | 0 | 0 | 0 | 0 |
| Net Effect | (\$12.1) | (\$17.0) | (\$17.8) | (\$18.2) | (\$18.2) |

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

Local Effect: Enforcement can be handled with existing resources.

Small Business Effect: Potential meaningful to the extent that small businesses in Maryland sell cigarettes and other tobacco products (OTP) to young adults between the ages of 18 and 21.

Analysis

Bill Summary: The bill affects several sections of the Annotated Code of Maryland, including the Business Regulation, Criminal Law, Health – General, Local Government, and State Finance and Procurement articles. In all relevant areas of current law references to “minor” or “18” are modified to be “an individual under the age of 21 years” or “21.”

Current Law:

Business Regulation Article: Restrictions on vending machines that sell tobacco products.

The sale of cigarettes from vending machines is restricted except under certain conditions. Vending machines may dispense cigarettes in an establishment (1) where minors are prohibited by law from entering or (2) that is a fraternal or veterans organization. If a vending machine is located in any other type of establishment, the sale or distribution of cigarettes through a vending machine must be done through the purchase of a token, card, or similar device that can only be purchased or obtained from the owner, an employee, or an agent of the owner of the machine.

Criminal Law Article: Restricts individuals from selling tobacco products to minors, restricts minors from purchasing or possessing tobacco products, and establishes fines and punishments for individuals who violate the statute.

A commercial tobacco distributor may not distribute any type of tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product to a minor, unless the minor is acting solely as the agent of his or her employer (who distributes tobacco products or paraphernalia for commercial purpose). Likewise, someone else may not purchase for, sell to, or distribute to a minor any tobacco product or tobacco paraphernalia. A person that violates these provisions is guilty of a misdemeanor and is subject to a maximum fine of \$300 for a first violation, \$1,000 for a second violation occurring within two years after the first violation, and \$3,000 for each subsequent violation occurring within two years after the preceding violation. However, in a prosecution for a violation, it is a defense that the defendant examined the purchaser’s or recipient’s license or other valid identification that positively identified the purchaser or recipient as being at least age 18.

A minor may not use or possess tobacco products or cigarette rolling paper unless he or she is acting as the agent of the minor’s employer, within the scope of employment. Additionally, a minor is prohibited from using false forms of identification to obtain tobacco products or cigarette rolling paper, including the use of an identification that identifies someone other than the minor. A minor who violates these provisions is guilty of a civil offense.

Health General Article: Establishes funding levels and subject matter for State activities aimed at reducing tobacco use in Maryland.

State funds are used to conduct media campaigns aimed at reducing smoking initiation and encouraging smokers to quit and educating the public about the dangers of secondhand smoke exposure, to enforce existing laws banning the sale and distribution of tobacco products to minors, and to promote and implement smoking cessation programs including school-based tobacco education programs.

Local Government Article: Restricts the sale and distribution of tobacco products to a minor in certain counties and establishes punishment and fines for those who violate the law.

In Carroll, Cecil, Garrett, and St. Mary's counties, a person may not distribute tobacco products, cigarette rolling papers, or a coupon redeemable for a tobacco product to a minor unless the minor is acting solely as the agent of the minor's employer (who is engaged in the business of distributing tobacco products). A person that violates this provision in Carroll or St. Mary's counties has committed a civil infraction and is subject to a civil penalty of \$300 for the first violation and \$500 for any subsequent violation within 24 months after the previous citation. In Cecil County, a person that violates this law has committed a civil infraction and is subject to a civil penalty of \$300 for the first violation, \$500 for a second violation, and \$750 for any subsequent violation. In Garrett County, a person that violates this provision has committed a civil infraction and is subject to a civil penalty of up to \$300. However, in all four counties, a person is not considered to have violated the law if he or she examined the driver's license or other valid government-issued identification presented by the recipient of the product and the recipient was positively identified as being at least age 18.

State Finance and Procurement Article: Establishes the Cigarette Restitution Fund and designates how the fund will be used.

The Cigarette Restitution Fund is used to fund the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; and other various programs aimed at reducing the use of tobacco products by minors, education and public school campaigns to decrease tobacco use, promoting smoking cessation, and other public purposes.

Background: According to the 32nd Surgeon General's report, *The Health Consequences of Smoking – 50 Years of Progress*, smoking rates among teens and adults are less than half what they were in 1964. However, 42 million American adults and 3 million middle and high school students continue to smoke. Further, even though smokers consume fewer cigarettes than 50 years ago, changes in the design and

composition of cigarettes put smokers at a higher risk of developing lung cancer. The Surgeon General estimates that the economic costs attributable to smoking and exposure to tobacco smoke from both direct medical costs and lost productivity approach \$300 billion annually.

According to the National Conference of State Legislatures (NCSL), about one in every five high school students is a smoker and nearly all smokers initiate smoking before age 21. This has led several states and municipalities to increase the minimum legal age to purchase and sell tobacco products. Four states (Alabama, Alaska, New Jersey, and Utah) and three counties (Nassau, Onondaga, and Suffolk counties in New York) have raised the minimum legal age for purchases or sales of tobacco products to 19. Local governments in Massachusetts, New York, and Hawaii have set the minimum age for tobacco sales at 21. However, there are no statewide legal age limits of 21.

According to the U.S. Centers for Disease Control and Prevention (CDC), in Maryland, 9.8% of all adults ages 18 to 25 (in 2008-2009) smoked a cigarette for the first time within the past year, while 5.6% of Marylanders between the ages of 12 and 17 smoked for the first time. Further, according to the CDC, 14.4% of Marylanders between the ages of 18 and 24 *currently* smoke an average of 14 cigarettes per day. It is estimated that, in fiscal 2015, there will be 29,500 smokers in this cohort.

Tobacco Taxes in Maryland

Chapter 121 of 1999 increased the cigarette tax from 36 cents to 66 cents. In addition, Chapter 121 imposed a 15% tax on the wholesale price of OTP such as cigars and smokeless tobacco. Chapter 288 of 2002 increased the cigarette tax from 66 cents to \$1.00 per pack. Chapter 6 of the 2007 special session increased the cigarette tax to \$2.00 per pack. In fiscal 2010, of the total amount of OTP reported sold by wholesalers, 63% was cigars, followed by moist snuff (25%), chewing tobacco (7%), roll-your-own tobacco (4%), and pipe tobacco (1%).

Chapter 2 of the first special session of 2012 increased the OTP tax rate from 15% to 30% of the wholesale price for all products except cigars effective July 1, 2012. The tax rate for cigars that are classified as premium cigars remained at 15% of the wholesale price; all other cigars are taxed at 70% of the wholesale price.

Cigarette and OTP tax revenues accrue to the general fund. In addition, the State sales tax rate of 6% is imposed on the final retail price of cigarettes and OTP. In fiscal 2015, tobacco tax revenues are projected to total \$371.5 million and OTP taxes \$40.5 million.

State Revenues: The bill raises the minimum age to purchase and use tobacco products or paraphernalia from age 18 to 21. As a result, general fund revenues decrease by

\$12.1 million in fiscal 2015 due to a decrease in tobacco taxes, OTP taxes, and sales tax imposed on tobacco products. **Exhibit 1** shows the estimated revenue loss resulting from the bill in fiscal 2015 through 2019.

Exhibit 1
Projected Revenue Decreases Due to the Bill
Fiscal 2015-2019
(\$ in Millions)

| | <u>FY 2015</u> | <u>FY 2016</u> | <u>FY 2017</u> | <u>FY 2018</u> | <u>FY 2019</u> |
|---------------------------|----------------|----------------|----------------|----------------|----------------|
| OTP Tax | \$0.9 | \$1.2 | \$1.3 | \$1.4 | \$1.4 |
| Cigarette Tax | 9.4 | 13.1 | 13.7 | 13.9 | 13.9 |
| Sales Tax | 1.8 | 2.6 | 2.8 | 2.9 | 2.9 |
| Total General Fund | \$12.1 | \$17.0 | \$17.8 | \$18.2 | \$18.2 |

Note: Numbers may not sum to total due to rounding.
Source: Comptroller's Office

This estimate is based on the following facts and assumptions:

- The Comptroller's Office estimates that individuals between the age of 18 and 21 currently purchase about 3% of all cigarettes and OTP in Maryland.
- The Comptroller's Office also estimates that 20% of these individuals will *continue* to consume tobacco products – with purchase in Maryland – in fiscal 2015. This amount is estimated to decrease by approximately five percentage points annually after each of the first three years – as current users are more likely to purchase illegally – until it stabilizes at 5.5%. The Comptroller's Office bases this estimate on CDC data regarding youth (illegal) cigarette use and population projections.
- According to the Tobacco-Free Kids Campaign, the average final retail price of cigarettes in Maryland is \$6.44.

To the extent a higher, or lower, level of consumption by this cohort is realized, tax revenue losses will be greater or smaller. Presumably, fines from distribution to, and consumption by, individuals younger than age 21 increase and slightly offset these tax revenue losses. However, any such impact cannot be reliably estimated. Savings from health improvements are likely not significant in fiscal 2015 or the next four fiscal years.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, SB 325 (Senator Forehand, *et al.* – Judicial Proceedings) is identical.

Information Source(s): Montgomery, Washington, and Worcester counties; Baltimore City; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts), Comptroller's Office; National Conference on State Legislatures; Tobacco Control Legal Consortium; Tobacco-Free Kids Campaign, U.S. Surgeon General; U.S. Centers for Disease Control and Prevention; Department of State Police; Department of Legislative Services

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mc/ljm

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