

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 865 (Delegate Jacobs, *et al.*)
Economic Matters

**Kent County - Tobacco Products Offenses - Citations Issued by Alcoholic
Beverages Inspectors**

This bill authorizes a Kent County alcoholic beverages inspector to issue a citation, based on probable cause, to a person for (1) the distribution of a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product to a minor or (2) the purchase for or sale of a tobacco product to a minor. A Kent County alcoholic beverages inspector may also issue a citation, based on probable cause, to a minor for (1) the use or possession of a tobacco product or cigarette rolling paper or (2) obtaining or attempting to obtain a tobacco product or cigarette rolling paper with a false form of identification.

Fiscal Summary

State Effect: General fund revenues may increase by a minimal amount if Kent County's alcoholic beverages inspector issues citations for violations of State law. Any increase on the Judiciary's workload can be handled with existing resources.

Local Effect: Kent County operations and finances are not materially affected.

Small Business Effect: None.

Analysis

Current Law: Under the Criminal Law Article, a person may not purchase for or sell a tobacco product to a minor and may not distribute tobacco paraphernalia to a minor. A person licensed to commercially distribute tobacco products may not distribute a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product to a minor. A person who violates this law is guilty of a misdemeanor and is subject to a fine of up to \$300 for the first violation, up to \$1,000 for the second violation occurring within two

years of the first violation, and up to \$3,000 for subsequent violations occurring within two years of the preceding violation. It is a defense against prosecution if the defendant examined the purchaser's valid identification (issued by an employer, government unit, or institution of higher education) that identified the purchaser as at least 18 years of age.

Additionally, except where a minor is acting as an employer's agent within the scope of employment, a minor may not use or possess a tobacco product or cigarette rolling paper. Likewise a minor may not obtain or attempt to obtain a tobacco product or cigarette rolling paper by using a form of identification that is falsified or identifies an individual other than the minor. A law enforcement officer authorized to make arrests may, based on probable cause, issue a citation to a minor for violations. A minor who violates this law is guilty of a civil offense and is subject to proceedings in juvenile court.

Kent County also prohibits the distribution of tobacco products to minors through local ordinance. The ordinance mirrors State law: (1) an owner (a person engaged in the business of selling or otherwise distributing tobacco products for commercial purposes) 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 employer; and (2) any person other than an owner may not buy for or distribute tobacco products or cigarette rolling papers to a minor. It is a defense against prosecution if the person examined a driver's license or another valid identification issued by a governmental entity that identified the purchaser as at least 18 years of age. The Kent County health officer, or the health officer's designee, may issue a citation for violations. Owners are subject to a civil penalty of \$300 for the first violation and \$500 for subsequent violations within a two-year period; any other person is subject to a civil penalty of \$50 for the first violation and \$100 for subsequent violations within a two-year period.

Federal law prohibits the sale and distribution of tobacco products to minors. The Synar amendment to the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992 prohibits the sale or distribution of tobacco products to minors. The Synar amendment requires states to enact their own state laws prohibiting retailers from selling tobacco products to minors and requires states to survey retailer compliance; states must prove that the retailer violation rate is 20% or less or risk losing federal funds. The Substance Abuse and Mental Health Services Administration administers the Synar program. In addition, the federal Family Smoking Prevention and Tobacco Control Act of 2009 prohibits the sale and distribution of cigarettes, roll-your-own tobacco, cigarette tobacco, and smokeless tobacco to minors. Retailers must also examine the photo identification of any purchaser younger than age 27. The U.S. Food and Drug Administration (FDA) contracts with states to conduct compliance checks, with violations resulting in warning letters, civil money penalties, or other enforcement

mechanisms. States may use data from FDA compliance checks to fulfill Synar reporting requirements, provided certain criteria are met.

Background: According to the U.S. Surgeon General, smoking is the leading cause of preventable death and disease in the United States. Smoking is linked to cancer, heart attacks, strokes, and lung diseases. Young people who smoke are susceptible to nicotine addiction, reduced lung function and lung growth, and early cardiovascular damage. Nearly 9 out of 10 smokers start before the age of 18.

In November 2014, the Maryland Department of Health and Mental Hygiene (DHMH) submitted its report on the *FY 2013 Biennial Tobacco Study* to the Governor and General Assembly, in which it summarized trends related to tobacco use behaviors among underage middle and high school youth in Maryland. According to the report, in 2013, the statewide average for underage public high school use of tobacco products was about 16%. In Kent County, the average was about 26%. Additionally, in 2013, about 17% of underage public middle and high school youth in Kent County initiated tobacco use within the past year.

In a December 2014 press release, DHMH reported that about one in four licensed tobacco retailers in Maryland illegally sells tobacco to minors. Specifically, between October 2012 and September 2013, 24% of Maryland tobacco retailers sold cigarettes to underage youth; it is anticipated that Maryland will be the only state in the nation with a violation rate of over 20% for this time period. Additionally, between May 2014 and September 2014, the violation rate increased to 32%. Maryland youth also find that it is easy to buy tobacco, with 26% of youth who smoke reporting that they usually buy their own cigarettes; only 38% reported being asked to show photo identification. In 2014, tobacco sales compliance inspections were conducted in four Kent County tobacco retailer facilities; no violations were reported for these facilities.

Alcoholic beverages licensees are also subject to inspections to ensure compliance with the terms of their licenses. Retail license violations include failing to properly display licenses, operating outside of permitted hours, and selling alcoholic beverages to minors. The Kent County Board of License Commissioners employs alcoholic beverages inspectors to conduct inspections for licensees in the county. According to the Office of the Comptroller's *Alcohol and Tobacco Tax Annual Report: Fiscal Year 2014*, the only reported retailer license violations in Kent County were for the sale of alcoholic beverages to minors (six reported violations in fiscal 2014).

Local Fiscal Effect: The bill authorizes, but does not mandate, Kent County alcoholic beverages inspectors to issue citations for violations of State law. Kent County advises that it employs one alcoholic beverages inspector who already conducts tobacco sales

compliance inspections and that, consequently, the bill does not have a fiscal or operational impact on Kent County. The Department of Legislative Services assumes that the alcoholic beverages inspector is conducting these inspections to enforce Kent County's local ordinance prohibiting the distribution of tobacco products to minors.

Additional Information

Prior Introductions: None.

Cross File: SB 140 (Senator Hershey) - Judicial Proceedings.

Information Source(s): U.S. Food and Drug Administration, U.S. Surgeon General, Kent County, Department of Health and Mental Hygiene, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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