

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 229
Finance

(Calvert County Senators)

Calvert County - Sale or Distribution of Tobacco and Related Products - Civil Penalties

This bill requires a person who owns or operates a retail tobacco business in Calvert County to store or display tobacco products in a specified manner. It also prohibits a person from distributing a tobacco product, cigarette rolling paper, or a coupon redeemable for a tobacco product to a minor in Calvert County, except under specified circumstances. Violations are civil infractions subject to specified civil penalties.

Fiscal Summary

State Effect: Any increase on the District Court's workload can be handled with existing resources. Revenues are not affected.

Local Effect: Calvert County revenues increase by a minimal amount, to the extent of enforcement. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under the Local Government Article, in Carroll County and Garrett County, a person who owns or operates a business that engages in the retail sale of a tobacco product may not store or display a tobacco product unless the tobacco product (1) is not immediately accessible to customers and (2) is accessible only to the owner or operator of the business or the owner's or operator's agent. The prohibitions do not apply to (1) the sale of a tobacco product from a vending machine that complies with State law; (2) a tobacconist establishment that primarily engages in the sale of tobacco

products other than cigarettes; or (3) a business that engages primarily in the retail sale of beer, wine, and liquor. Violation is a civil infraction subject to a civil penalty of \$100 for the first violation and \$300 for any subsequent violations. A county health officer or the county health officer's designee may issue civil citations for violations. The District Court must remit any collected penalties to the county in which the violation occurred.

The bill expands the applicability of these provisions to include Calvert County.

The Local Government Article additionally establishes that, in Carroll County, Cecil County, Garrett County, and St. Mary's County, a person may not (1) distribute 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; (2) distribute cigarette rolling papers to a minor; or (3) distribute to a minor a coupon redeemable for a tobacco product. In Carroll County and St. Mary's County, violation is a civil infraction 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, violation is a civil infraction subject to a civil penalty of \$300 for the first violation, \$500 for the second violation, and \$750 for any subsequent violation. In Garrett County, violation is a civil infraction subject to a civil penalty of up to \$300. It is a defense if the person examined the recipient's driver's license or other valid government-issued identification which positively identified the recipient as at least 18 years of age. A county health officer or the county health officer's designee may issue civil citations for violations (except in Cecil County, where only a sworn law enforcement officer may do so). The District Court must remit any collected penalties to the county in which the violation occurred.

The bill expands the applicability of these provisions to include Calvert County; the civil penalties already established for Carroll County and St. Mary's County also apply in Calvert County.

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.

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 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.

Local Fiscal Effect: The District Court is required to remit any collected penalties to the county in which the violations occurred. Calvert County revenues increase by a minimal amount, to the extent of enforcement. DHMH reports that, in 2014, tobacco sales compliance checks were conducted in seven facilities in Calvert County and that the violation rate was about 14%.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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