

Department of Legislative Services
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FISCAL AND POLICY NOTE
 First Reader

House Bill 775
 Judiciary

(Delegate Healey, *et al.*)

Criminal Law - Tobacco Products - Minimum Age

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

Fiscal Summary

State Effect: General fund revenues decrease by \$10.5 million in FY 2017 from lost tax revenue as a result of raising the minimum legal age of tobacco product purchasers. 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 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	(\$10.5)	(\$14.6)	(\$15.1)	(\$15.6)	(\$15.6)
Expenditure	0	0	0	0	0
Net Effect	(\$10.5)	(\$14.6)	(\$15.1)	(\$15.6)	(\$15.6)

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

Local Effect: Local revenues may increase minimally from civil citation penalties for the distribution of electronic smoking devices, and from civil citation penalties for the distribution of tobacco products in some counties, to the extent additional citations are issued under the bill. Enforcement can be handled with existing resources.

Small Business Effect: Potential meaningful to the extent that small businesses in Maryland sell cigarettes, other tobacco products (OTP), and electronic smoking devices 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 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 and restricts the sale and distribution of electronic smoking devices to minors.

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.

Pursuant to Chapter 425 of 2015, a person may not sell, distribute, or offer for sale to a minor an electronic device, a component for an electronic device, or a product used to refill or resupply an electronic device that can be used to deliver nicotine to the individual inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe. This prohibition does not apply to a nicotine device that has been approved by the U.S. Food and Drug Administration as a tobacco cessation product and that is being marketed and sold solely for this purpose. A person who violates this law is subject to a civil penalty of \$300 for a first violation and \$500 for any violation that occurs within 24 months after a previous 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 age 18. The District Court must remit any penalties collected to the county in which the violation occurred.

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 (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. Civil penalties vary depending on the county. It is a defense if the person examined the recipient's driver's license or other valid government-issued identification that positively identified the recipient as at least age 18. 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 penalties collected to the county in which the violation occurred.

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 thirty-second 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 Tobacco Control Legal Consortium, four states have raised the minimum legal age for purchases or sales of tobacco products to 19: Alabama, Alaska, New Jersey, and Utah. According to the Campaign for Tobacco-Free Kids, on June 19, 2015, Hawaii became the first state to raise the minimum age to 21; as of February 2016, 125 localities in nine states have also raised the minimum age to 21.

According to the U.S. Centers for Disease Control and Prevention (CDC), the percentage of individuals 18 or older who smoked cigarettes in Maryland was 19.1% in 2011. The rate across all states and the District of Columbia ranged from 11.8% to 29.0%. The percentage of adults who used smokeless tobacco in Maryland was 2.1% during that same time, with a range of 1.4% to 9.8% across all states and the District of Columbia. Maryland had the eleventh-lowest and eighth-lowest percentages across the states in cigarette and smokeless tobacco use, respectively.

In Maryland, the percentage of youth in grades 9 through 12 who used tobacco in 2011 (cigarettes, smokeless tobacco, and/or cigars) was 17.9%, with a range of 7.8% to 31.9% across 36 states. Maryland had the fourth-lowest percentage across those states. Further, according to CDC, 10.7% of Marylanders between the ages of 18 and 24 were current smokers in 2014.

Tobacco Taxes in Maryland

Chapter 121 of 1999 increased the cigarette tax from 36 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.

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 OTPs. In fiscal 2016, cigarette tax revenues are projected to total \$358.6 million, and OTP tax revenues are projected to total \$33.7 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 \$10.5 million in fiscal 2017 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 2017 through 2021.

Exhibit 1
Projected Revenue Decreases Due to the Bill
Fiscal 2017-2021
(\$ in Millions)

	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
OTP Tax	\$0.8	\$1.1	\$1.2	\$1.2	\$1.2
Cigarette Tax	7.6	10.7	11.1	11.6	11.6
Sales Tax	2.1	2.8	2.8	2.8	2.8
Total General Fund	\$10.5	\$14.6	\$15.1	\$15.6	\$15.6

Source: Comptroller's Office

This estimate is based on the following facts and assumptions:

- The Comptroller's Office estimates that individuals between the ages of 18 and 21 currently purchase about 3.6% 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 2017. 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 Campaign for Tobacco-Free Kids, the average final retail price of cigarettes in Maryland is \$6.60.

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 2017 or the next four fiscal years.

The bill also raises the minimum age to purchase electronic smoking devices from age 18 to 21. The State does not currently tax electronic smoking devices as tobacco products. The Department of Health and Mental Hygiene estimates that at least 1,500 retailers sell electronic smoking devices; however, Maryland-specific sales data is not readily available.

Local Revenues: Currently, the District Court is required to remit civil citation penalties collected for the distribution of electronic smoking devices to minors to the county in which the violation occurred. Therefore, local revenues may increase minimally, to the extent additional civil citations are issued under the bill. Additionally, in Carroll, Cecil, Garrett, and St. Mary's counties, the District Court is also required to remit civil citation penalties collected for the distribution of tobacco products to minors to the county in which the violation occurred. Therefore, local revenues may also increase minimally in these counties, to the extent additional civil citations are issued under the bill.

Additional Information

Prior Introductions: HB 278 of 2014, a similar bill, received an unfavorable report from the House Judiciary Committee. SB 325 of 2014, another similar bill, was withdrawn without a hearing in the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Carroll, Dorchester, Garrett, Howard, Montgomery, and St. Mary's counties; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Department of State Police; Campaign for Tobacco-Free Kids; Tobacco Control Legal Consortium; U.S. Centers for Disease Control and Prevention; U.S. Surgeon General; Department of Legislative Services

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