

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 669  
Finance

(Senator Kelley, *et al.*)

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Tobacco Products - Minimum Age and Civil Fines

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This bill raises the minimum age to purchase and use tobacco products or paraphernalia and electronic smoking devices from age 18 to age 21, and it establishes civil fines for individuals ages 18 to 20 who purchase or possess tobacco products or paraphernalia in violation of the bill's requirements.

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Fiscal Summary

**State Effect:** General fund revenues decrease significantly from lost tax revenue beginning in FY 2018 as a result of raising the minimum legal age of tobacco product purchasers, as discussed below. Minimal fine revenues from illegal distribution and consumption may offset some of these losses. Medicaid expenditures also likely decrease from reduced health care costs, as discussed below. Enforcement can be handled with existing resources.

**Local Effect:** Local revenues 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.

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## 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.”

The bill specifies that an adult (at least 18 years of age but younger than age 21) who uses or possesses tobacco products or cigarette rolling papers, or who uses false forms of identification to obtain tobacco products or cigarette rolling papers, commits a civil violation subject to a \$25 fine for a first violation and \$50 for a second or subsequent violation.

### 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 one 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, two states (California and Hawaii) and the District of Columbia have raised the minimum age to 21; as of March 2, 2017, at least 215 localities in 14 states have also done so.

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.

CDC reports that, in 2011, the percentage of Maryland youth in grades 9 through 12 who were current smokers was 12.5% and the percentage of youth who were current smokeless tobacco users was 7.2%. In 2015, 8.7% of high school students in Maryland were current smokers and 5.8% were current smokeless tobacco users.

## *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 totaled \$360.4 million, and OTP tax revenues totaled \$34.8 million.

**State Revenues:** The bill raises the minimum age to purchase and use tobacco products or paraphernalia from age 18 to 21. Based on estimates of the continued use among a portion of this cohort and the tax revenues apportioned to their current use, general fund revenues may decrease by as much as \$10.5 million in fiscal 2018 due to a decrease in the collection of the various taxes imposed on such products (tobacco taxes, OTP taxes, and sales tax). **Exhibit 1** shows the potential revenue loss resulting from the bill in fiscal 2018 through 2022; the estimate for fiscal 2018 reflects the bill's October 1, 2017 effective date. (Although the Comptroller's Office did not provide a specific estimate for this bill, the office advises that the estimate for a substantially similar bill introduced during the 2016 legislative session still applies; that estimate is reflected below.)

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**Exhibit 1**  
**Projected Revenue Decreases Due to the Bill**  
**Fiscal 2018-2022**  
**(\$ in Millions)**

	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</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
<b>Total General Fund</b>	<b>\$10.5</b>	<b>\$14.6</b>	<b>\$15.1</b>	<b>\$15.6</b>	<b>\$15.6</b>

OTP: other tobacco products

Source: Comptroller's Office

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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 2018. 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 \$6.64.

Given that the rate of tobacco product use has declined in recent years, the exact impact on use (and, for purposes of this fiscal note, associated tax revenues) of raising the minimum age to 21 is unclear, particularly in future years. Further, in addition to moderating the use among young adults, the bill likely changes the initiation age. According to a 2015 report by the Institute of Medicine (IOM), approximately 90% of adults who are daily smokers report first use before reaching age 19. In that report, IOM also estimated that raising the minimum age to 21 may result in a 12% decrease in the prevalence of smoking by the time current teenagers reach adulthood, and that smoking initiation rates among those ages 18 to 20 may decrease by 15%. However, IOM notes that these estimates are based on national models and do not take into account variations in tobacco use, initiation rates, tobacco

control activities, or the effects of new products (*e.g.*, electronic cigarettes) on future smoking and tobacco use rates.

Presumably, fines from distribution to, and consumption by, individuals younger than age 21 increase and slightly offset these tax revenue losses. Further, the bill imposes civil fines for adults ages 18 to 20 who purchase or possess tobacco products in violation of the bill. However, any such impact cannot be reliably estimated.

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. Maryland-specific sales data for electronic smoking devices is not readily available.

**State Expenditures:** The Maryland Association of County Health Officers notes that the bill likely results in Medicaid savings in the near term, particularly from a potential reduction in preterm births and related hospital stays (as smoking during pregnancy is a contributing factor to such preterm births) and in smoking-related health care costs (*e.g.*, asthma treatment and related emergency department visits), and that out-year savings are also likely realized through a reduction in health care costs associated with tobacco-related diseases (*e.g.*, cancer, heart disease, and stroke). Thus, to the extent the bill results in reduced health care costs covered by Medicaid, general fund expenditures decrease. Medicaid-eligible services are subject to a federal match rate (which varies depending on the coverage group of the individual). Therefore, federal fund expenditures also decrease; federal fund revenues decrease correspondingly. However, the Department of Legislative Services advises that the extent of this impact cannot be reliably estimated at this time, as it depends on whether and to what extent the bill reduces tobacco use in the State.

**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 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 also increase minimally in these counties, to the extent additional civil citations are issued under the bill.

## **Additional Information**

**Prior Introductions:** Similar legislation was introduced in the 2016 and 2014 sessions. HB 775 of 2016 and HB 278 of 2014 both received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Institute of Medicine; Surgeon General; Tobacco Control Legal Consortium; Campaign for Tobacco-Free Kids; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

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