

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1504 (Delegate Rosenberg, *et al.*)

Economic Matters and Health and
Government Operations

Rules

**Department of Health and Mental Hygiene - Distribution of Tobacco Products to
Minors - Prohibition and Enforcement**

This bill establishes civil penalties for persons who distribute tobacco products, tobacco paraphernalia, or coupons redeemable for tobacco products to minors, and it authorizes county health officers and specified designees of county health officers to issue civil citations for violations. Violators are subject to a civil penalty of up to \$300 for a first violation, up to \$1,000 for a second violation that occurs within 24 months after the first violation, and up to \$3,000 for each subsequent violation occurring within 24 months after a preceding violation. The District Court must remit any penalties collected to the county in which the violation occurred. The bill establishes additional requirements for the Comptroller's Office, the Department of Health and Mental Hygiene (DHMH), and local health departments.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$12,200 in FY 2017 for the Judiciary to make one-time programming changes to reflect the bill's civil citation provisions. The Comptroller's Office and DHMH can handle the bill's reporting requirements with existing resources, to the extent these requirements can be implemented, as discussed below. Revenues are not affected.

Local Effect: Local revenues generally increase minimally due to the bill's civil citation penalty provisions, to the extent of enforcement. Local health departments can handle the bill's enforcement and reporting requirements with existing resources. Expenditures for local law enforcement may increase minimally, to the extent data must be provided to the Comptroller's Office.

Small Business Effect: Minimal. The bill subjects retailers to additional civil penalties for actions that are already proscribed by federal, State, and/or local law.

Analysis

Bill Summary: The Comptroller's Office must provide DHMH's Prevention and Health Promotion Administration each year with the name and address of each licensed cigarette retailer.

A person who distributes tobacco products for commercial purposes may not distribute a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product to a minor. 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.

Local health departments must report violations to the Comptroller's Office. The bill also specifies information that must be included in civil citations and additional procedural requirements.

DHMH, in collaboration and consultation with the Comptroller's Office, local health departments, and local law enforcement agencies, must develop ongoing strategies for enforcement of *criminal* laws prohibiting the sale or distribution of tobacco products to minors and prohibiting a minor's use or possession of tobacco products or obtaining tobacco products with false identification. DHMH must report to the General Assembly by October 1 of each year on the development of enforcement strategies as well as training and assistance to tobacco retailers to improve compliance.

Additionally, for the reporting period, the Comptroller's Office must report to the General Assembly on (1) the aggregate number of licensed tobacco retailers that committed a violation of the criminal law prohibiting the distribution of tobacco products to a minor; (2) the aggregate number of minors who committed a violation of the criminal law prohibiting a minor's use or possession of tobacco products or obtaining tobacco products with false identification; (3) the number of prior violations for these retailers and minors; and (4) the subsequent action taken by the Comptroller's Office against each violator and, for each action taken, the number of violations committed by the violator. The report must be submitted by October 1 of each year.

Current Law: Under § 10-107 of 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.

Under § 10-108 of the Criminal Law Article, 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 a form of identification that identifies someone other than the minor. A minor who violates these provisions is guilty of a civil offense.

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. 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 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 penalties collected to the county in which the violation occurred.

Additionally, through local ordinances, six jurisdictions have established civil penalties for the distribution of tobacco products to minors and have authorized county health officers to issue civil citations: Baltimore City; Baltimore County; Howard County; Kent County; Montgomery County; and Prince George's County.

Federal law also 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 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.

State Expenditures:

Judiciary: The Judiciary advises that, although the bill is not expected to materially impact the District Court's caseload, the Judiciary must make one-time programming changes to reflect the bill's civil citation provisions at a cost of approximately \$12,240.

Comptroller's Office: The bill requires the Comptroller's Office to report the aggregate number of violations committed *by minors* for the use, possession, or obtainment of tobacco products with false identification, as well as prior violations for this offense. Several agencies advise that collection of this data may not be possible.

Specifically, the Comptroller's Office advises that it does not collect such data and that the information must be obtained from the courts; further, records relating to violations by minors are confidential and may not be available. DHMH also does not collect this data and similarly advises that the Comptroller's Office must obtain the data from the courts and/or local law enforcement. The Judiciary advises that, because the violations are civil offenses issued through written citations, the Judiciary cannot track violations in its system, nor is it possible to determine the number of prior violations. Finally, information may not be readily available from local law enforcement either; Montgomery County, for example, advises that this data is not automatically tracked and that programming changes are needed in order to accurately report such violations.

Although data regarding *retailer* criminal violations for distributing tobacco products to minors may be available from counties, the Comptroller's Office advises that it should not report such information due to a potential conflict of interest. The office advises that, since it conducts hearings for county retailers charged with distributing tobacco products to minors, the office should not be involved in data collection that may ultimately affect laws relating to retailer violations as this may jeopardize the office's impartiality. The Department of Legislative Services (DLS) notes this concern but advises that the bill simply requires the Comptroller's Office to obtain data from counties and report actions taken by its own office, which likely presents minimal conflict. DLS, therefore, advises that the Comptroller's Office can handle the bill's reporting requirements regarding *retailer* criminal violations with existing resources.

DHMH: DHMH currently provides training and assistance to tobacco retailers on federal, State, and local laws. DHMH advises that, because the bill specifically requires the development of enforcement strategies and training regarding *criminal* violations for

distributing tobacco products to minors, current retailer training and DHMH reporting structures must be revised. DHMH advises that it must hire one full-time community health educator to manage the new reporting and training requirements and that costs to provide new training materials total approximately \$20,000. DHMH additionally notes that, because the bill institutes reporting requirements for existing criminal laws rather than the bill's proposed civil offense, local enforcement strategies may consequently focus on enforcement of criminal laws rather than on enforcement of the bill's proposed civil offense.

DLS advises that, since DHMH already conducts retailer trainings that encompass compliance with State laws, minimal revision is necessary for DHMH to meet the bill's training and reporting requirements and any changes can likely be handled with existing resources. To the extent training materials or resources must be revised to reflect the bill's focus on State criminal laws, general fund expenditures for DHMH may increase minimally in fiscal 2017.

Local Fiscal Effect: Although the Local Government Article establishes civil citations for the distribution of tobacco products to minors in four counties (Carroll, Cecil, Garrett, and St. Mary's counties), and some local jurisdictions have established their own civil penalties through local ordinances, the bill establishes civil penalties and civil citation authority for county health officers and their designees (local health department employees trained in civil enforcement and retired sworn law enforcement officers employed by county health officers) statewide. DLS notes that the bill does not specifically address whether the bill preempts local ordinances or laws that are more stringent than the bill's requirements. Nevertheless, this analysis assumes that local health departments and their designees issue citations for violations of the bill's provisions rather than for local ordinances.

The bill requires the District Court to remit collected penalties to the county in which the violation occurred. Therefore, revenues generally increase minimally, to the extent of enforcement; counties that do not already have similar civil citation ordinances may realize a greater increase in revenues. The Maryland Association of County Health Officers advises that local health departments are already conducting many of the bill's required enforcement activities; therefore, the bill's requirements can be handled with existing resources. Expenditures for local law enforcement may increase minimally, to the extent data must be provided to the Comptroller regarding specified violations committed by minors and the data is not already readily available; Montgomery County advises that in order to provide such data, it must make one-time programming changes at a cost of approximately \$10,000.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Maryland Association of County Health Officers, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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