



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	H. 3754	Introduced on January 27, 2021
Author:	Bernstein	
Subject:	Youth Access to Tobacco Prevention Act of 2006	
Requestor:	House Medical, Military, Public, and Municipal Affairs	
RFA Analyst(s):	Gardner and Payne	
Impact Date:	February 26, 2021	

Fiscal Impact Summary

This bill amends certain provisions of the “Youth Access to Tobacco Prevention Act of 2006” by modifying penalty schedules for unlawful sales or transfers of tobacco products and tobacco product samples to minors, requiring the Department of Revenue (DOR) to issue tobacco retail sales licenses that must be enforced by DOR and agents of the State Law Enforcement Division (SLED), and requiring DOR and the Department of Alcohol and Other Drug Abuse Services (DAODAS) to publish the results of annual compliance checks conducted at tobacco retail establishments.

The Judicial Department reports that the bill would decrease caseloads in magistrate and municipal courts because it turns what was previously a misdemeanor into a civil offense. However, as the overall number of cases is small, the savings are expected to be small. Therefore, there is no expenditure impact to the General Fund of the Judicial Department.

DOR reports that the bill would require the hiring of additional personnel to run the tobacco retail sales licensing program and would require an upgrade of its existing information technology (IT) systems. The cost of the new personnel alone is expected to increase Other Funds expenditures by at least \$4,700,000 in FY 2021-22 (of which \$4,580,000 will recur annually); however, these costs would be offset by the fees the agency would charge tobacco retail establishments for licensure. As DOR currently has no way to estimate the cost of upgrading its IT systems, the net one-time and annual expenditure impacts on the General Fund cannot be determined at this time.

DAODAS reports that the bill will not impact the General Fund, Other Funds, or Federal Funds, as the agency already collects tobacco compliance data.

Revenue and Fiscal Affairs is currently awaiting a response from SLED regarding the impact of this bill on agency operations; therefore, the expenditure impact on the agency’s General Fund, Other Funds, and Federal Funds is pending.

Due to the changes afforded by the bill, tobacco retailers who unlawfully sell or transfer tobacco products to a minor may no longer forfeit the required fines by attending local 301 drug and alcohol authorities’ merchant education programs. This would result in a loss of revenue

generated by those local authorities. However, because the number of program participants fluctuates and can be based on voluntary participation or court-ordered participation, there is no way to determine the amount of revenue that local 301 drug and alcohol authorities would lose as a result of the bill’s implementation. The fines that must therefore be paid would inure to the benefit of local governments. Additionally, local governments would potentially see an increase in fine revenue due to bill’s changes in the penalty structure for the unlawful sale or transfer of a tobacco product to a minor and for failure to verify a purchaser’s age, but the amount cannot be determined because not all of the fines/fees that have been ordered for FY 2019-20 filings have been collected.

Explanation of Fiscal Impact

Introduced on January 27, 2021

State Expenditure

This bill amends a number of sections of existing law relating to the “Youth Access to Tobacco Prevention Act of 2006.” As to provisions for the sale or purchase of tobacco products and related definitions, the bill changes the term “individual to tobacco retail establishment”, removes all references to “alternative nicotine product”, and changes references to a “person engaged in the sale of tobacco products to tobacco retail establishment”. The bill also modifies the definition of “tobacco product” to encompass the former definition of “alternative nicotine product”; defines the terms “tobacco retail establishment”, “tobacco retailer”, and “distribution”; and eliminates the existing definition of “vapor product”.

The bill amends the penalty structure for tobacco retailers who unlawfully sell, furnish, give, distribute, purchase for, or provide tobacco products to minors under the age of 18. The table below outlines these changes.

Current Penalty Structure – Misdemeanor Offenses Which Require Intent	New Penalty Structure – Non-Misdemeanor Offenses Which Do Not Require Intent
<i>1st Offense - <u>Fine</u> (\$200-\$300)</i>	<i>1st Offense - <u>Fine</u> (\$500)</i>
<i>2nd/Subsequent Offense - <u>Fine</u> (\$400-\$500), <u>Imprisonment</u> (≤30 days), or <u>Both</u></i>	<i>2nd Offense (if occurring within a 36-month period after prior offense) - <u>Fine</u> (≤\$750) and <u>Prohibition from Distributing Tobacco Products</u> (7 Days)</i>
	<i>3rd Offense (if occurring within a 36-month period after prior offense) - <u>Fine</u> (≤\$1,000) and <u>Prohibition from Distributing Tobacco Products</u> (≤30 days)</i>
	<i>4th/Subsequent Offense (if occurring within a 36-month period after prior offense) - <u>Fine</u> (≤\$1,000) and <u>Prohibition from Distributing Tobacco Products</u> (3 years)</i>

The bill also removes the option for individuals who violate the tobacco sales provisions to complete a Department of Alcohol and Other Drug Abuse Services (DAODAS) approved merchant tobacco enforcement education program in lieu of paying associated fines. Further, the

bill makes it unlawful for a minor under the age of 18 to enter any tobacco retail establishment and requires these establishments to have signage at each entrance that displays this rule.

It is currently unlawful for a minor under the age of eighteen to purchase, attempt to purchase, possess, or attempt to possess a tobacco product or an alternative nicotine product, or to present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing such products. The bill removes the purchase and possession violations for minors and limits violations to those where a minor uses fraudulent identification to purchase tobacco products. The bill maintains the requirements that a minor who misrepresents his age to purchase or attempt to purchase a tobacco product is guilty of a non-criminal offense punishable by a civil fine of \$25. The bill also eliminates the requirement that the civil fine which must be paid by a minor who misrepresents his age to purchase or to attempt to purchase a tobacco product include all applicable court costs, assessments, and surcharges. The court may require a minor to successfully complete a smoking cessation or tobacco prevention program approved by the Department of Health and Environmental Control, or it may require him to perform not more than five hours of community service for a charitable institution; however, the minor may not substitute either activity for paying the required fine. The bill eliminates any connection between a minor in violation of tobacco purchase requirements and his driving privileges, and it eliminates the requirements that a law enforcement officer (1) issue uniform traffic tickets to minors for violations of tobacco purchase requirements and (2) notify the minor's parents.

The bill also requires all tobacco retail establishments to possess and display a tobacco retail sales license from the Department of Revenue (DOR). Establishments failing to comply with this rule will be subject to a fine of \$1,000 and will be ineligible to receive a tobacco retail license for three years thereafter. The DOR shall determine whether the licenses will be renewable annually or every two years and must set the amount of the renewal fee, which must cover the costs of licensing administration, education and training, retail inspections, and unannounced compliance checks. State Law Enforcement Division enforcement officers will conduct two compliance checks per tobacco retail license per year. Compliance checks will engage persons between the ages of 16 and 18 to attempt to purchase tobacco products from retail establishments, and unannounced follow-up compliance checks for non-compliant establishments must be conducted within three to six months of any violation. The DOR may not issue a license to any tobacco retailer that has outstanding fines for previous violations. DOR and DAODAS must publish the findings of compliance checks at least annually and make those results available to the general public upon request.

The bill also modifies the penalty structure for a person who unlawfully distributes a tobacco product sample to a minor. The table below outlines these changes.

Current Penalty Structure – Civil Penalty	New Penalty Structure – Fine
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1st Offense - <u>Civil Penalty</u> (≤\$25)	1st Offense - <u>Fine</u> (\$500)
2nd Offense - <u>Civil Penalty</u> (≤\$50)	2nd Offense (if occurring within a 36-month period after prior offense) - <u>Fine</u> (≤\$750)
3rd/Subsequent Offense - <u>Civil Penalty</u> (≥\$100)	3rd Offense (if occurring within a 36-month period after prior offense) - <u>Fine</u> (≤\$1,000)
	4th/Subsequent Offense (if occurring within a 36-month period after prior offense) - <u>Fine</u> (≤\$1,000)

Local laws, ordinances, or rules pertaining to tobacco products may only be stricter than state law or regulation.

The bill also makes conforming changes to the mandatory public school comprehensive tobacco-free campus policy to remove all references to *alternative nicotine product*.

Judicial Department. This bill requires tobacco retailers to obtain a license to sell, provides penalties for retailers that fail to obtain a license, redefines *tobacco product*, and increases the fines for sales to minors. The current law provides that an individual is guilty of a misdemeanor for each violation. While the bill increases the fines for violations, the fines will now be civil fines that will be collected by Department of Revenue. The department reports that implementation of the bill would decrease caseloads in magistrate and municipal courts. The department indicates the bill will have a minimal expenditure impact and that any associated costs can be managed with existing General Fund resources.

State Law Enforcement Division. The expenditure impact is pending, contingent upon a response from the agency.

Department of Revenue. This bill establishes a tobacco retail sales license that shall be administered by the Department of Revenue (DOR); this license must be obtained and displayed by retailers who engage in the distribution of tobacco products in South Carolina. The renewable fee for the licenses shall be set by DOR and must be high enough to cover the administration and enforcement of the licenses. The bill requires DOR to conduct two unannounced compliance checks for violations of minimum age of sales laws per licensed tobacco retail location annually. The results of these compliance checks shall be published by DOR and the Department of Alcohol and Other Drug Abuse Services (DAODAS) at least annually.

DOR estimates it will require an additional 59 FTEs to implement the provisions of this bill, of which four will be temporary. The FTE positions will include 46 compliance check agents; three employees to process license applications, renewals, and violations; one employee to handle appeals; one attorney; four managers; and four temporary employees to assist with the issuance of initial licenses. DOR estimates it will initially issue approximately 22,000 licenses. DOR estimates the total salaries and benefits of the 55 permanent employees will increase Other Funds expenditures by \$3,880,000 each year beginning in FY 2021-22. DOR expects that the total salaries and benefits of the four temporary employees will increase Other Funds expenditures by \$120,000 in FY 2021-22. DOR also estimates that the travel expenses of the employees conducting compliance checks will increase Other Funds expenditures by \$700,000 annually beginning in FY 2021-22. Further, DOR indicates it will require updates to its information technology systems to manage licenses and subsequent violations but cannot determine the one-time or annual expenditure impact of those costs at this time. Therefore, this bill is estimated to increase the Other Funds expenditures of DOR by at least \$4,700,000, not including potential system updates, in FY 2021-22, of which \$4,580,000 will recur annually.

Department of Alcohol and Other Drug Abuse Services (DAODAS). This bill requires DAODAS and DOR to publish the results of DOR's licensed tobacco retailer compliance checks at least annually and make the results available publicly upon request. Additionally, this bill amends the penalty fees for individuals violating Section 16-17-500, Subsections (A), (B), (C), (D), or (J). Currently, an individual may face a fine or spend up to 30 days in jail, or both. Currently, in lieu of a fine, a court may require an individual to complete a merchant education program approved by DAODAS. This bill increases the fine amounts and would prohibit violators from distributing tobacco products starting with their second violation in a 36-month period. It also removes the option for a court to require an individual to complete a merchant education program in lieu of a fine.

DAODAS indicates this bill will not impact the expenditures of the agency as it already collects tobacco compliance data through a range of data collection metrics and evaluative tools. DAODAS indicates removing the option to complete a merchant education program approved by the department may reduce participation in the program, which may reduce revenues for the local authorities that operate the program. However, because the number of participants fluctuates and can be based on voluntary participation or court-ordered participation, there is no way to determine the amount of revenue that local 301 drug and alcohol authorities would lose as a result of the bill's implementation. DAODAS indicates changes to this program would not have a fiscal impact on the agency itself. Therefore, this bill will not impact the General Fund, Other Funds, or Federal Funds of DAODAS because it does not materially alter the agency's current operating practices.

State Revenue

Department of Revenue (DOR). This bill establishes a tobacco retail sales license that shall be administered by DOR; this license must be obtained and displayed by retailers who engage in the distribution of tobacco products in South Carolina. The renewable fee for the licenses shall be set by DOR and must be high enough to cover the administration and enforcement of the licenses. DOR estimates it will initially issue approximately 22,000 licenses and anticipates spending at least \$4,580,000 annually to administer and enforce the licenses. DOR indicates that it cannot accurately estimate the license fee that will be charged at this time, but it anticipates the fee will be set at a level that is sufficient to cover the full expenses required to administer and enforce tobacco retail sales licenses. Based on expenditure estimates provided by DOR, the bill is expected to increase Other Funds revenue by at least \$4,700,000 in FY 2021-22 and \$4,580,000 annually in subsequent fiscal years.

Local Expenditure

Currently, tobacco retailers who unlawfully sell or transfer tobacco products to a minor may voluntarily or be court ordered to attend merchant education programs offered by local 301 drug and alcohol authorities in lieu of paying associated fines. As the bill would not allow tobacco retailers to substitute completion of such a program in lieu of paying the required fines, revenue that has been generated in the past by the local 301 drug and alcohol authorities would be lost. Since there is no way to determine how many people have previously attended merchant education programs, the loss of revenue to the local 301 drug and alcohol authorities cannot be estimated.

Local Revenue

During FY 2019-20, there were 412 filings involving the unlawful distribution of tobacco products to a minor or purchase or attempted purchase of tobacco products by a minor. Of those filings, 29 were for the sale or transfer of a tobacco product to a minor, 381 were for the purchase or attempted purchase of tobacco products by a minor, and two were for failure to ensure proper age verification for the sale/purchase of a tobacco product. As for the disposition of those cases, 36 are still pending, \$17,955.49 in fines/fees has been ordered, and \$13,782.17 in fines/fees has been collected. However, it is unclear as to which violations the noted fine/fee amounts apply. It is presumed that since the bill increases the fines for the sale or transfer of a tobacco product to a minor and for failure to ensure proper age verification, should the number of violations remain the same in later fiscal years as in FY 2019-20, the amount of fine and fee revenue would increase for local entities but would be of an undetermined amount.

Also, as noted earlier, the bill would not allow tobacco retailers to substitute completion of a merchant education program in lieu of paying required fines, therefore retailers who unlawfully sell or transfer tobacco products to minors would be responsible for paying associated fines, which would inure to the benefit of local governments and be of an undetermined amount due to the fluctuating nature of the number and nature of program participants.



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