



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: S. 0514 Amended by Senate Judiciary on March 29, 2023
Author: Hutto
Subject: Youth Access to Nicotine
Requestor: Senate Judiciary
RFA Analyst(s): Bryant, Boggs, and Gardner
Impact Date: April 10, 2023

Fiscal Impact Summary

This amended bill makes definitional changes relating to the sale or purchase of tobacco products by removing references to “alternative nicotine product”. The amended bill also makes conforming changes to the mandatory tobacco-free local school board policy to remove references to “alternative nicotine product”. Additionally, the amended bill removes exceptions to the prohibition against selling tobacco products through a vending machine. The amended bill also modifies certain penalties for tobacco retailers and specifies that for the purposes of contesting the suspension of a tobacco retail license for violations of these provisions, the jurisdiction is vested in the Administrative Law Court (ALC).

The amended bill transfers responsibility for enforcing the provisions of the bill from the Department of Revenue (DOR) to the State Law Enforcement Division (SLED) and requires SLED to conduct unannounced compliance checks for violations. The results of compliance checks resulting in suspensions of a retail license must be published by DOR annually and made available to the public upon request. Penalties collected pursuant to the provisions of the bill must be used to offset the cost of enforcement.

The director of the Department of Alcohol and Other Drug Abuse Services (DAODAS) must conduct random, unannounced inspections at locations where tobacco products are sold and at locations that have notified DOR that the tobacco retailer sells or distribute tobacco products. The director of DAODAS must also provide for the preparation and annual submission of the report required by Section 1926 of the federal Public Health Service Act to the Secretary of the United States Department of Health and Human Services (DHHS) and otherwise is responsible for ensuring the state's compliance with that provision of federal law and implementing regulations promulgated by DHHS.

The amended bill requires a retailer to submit information about whether it sells tobacco, tobacco products, or any other product used for smoking with its retail application and to update this information annually with DOR. Tobacco retailers and tobacco retail establishments that have a retail license must supplement their retail license application to notify DOR what tobacco products they sell or distribute.

The amended bill further specifies that political subdivisions may not enact any laws, ordinances, or rules pertaining to ingredients, flavors, or licensing, beyond a general business license, related to the sale of cigarettes, electronic smoking devices, e-liquid, vapor products, tobacco products, alternative nicotine products, or any other products containing nicotine that can be ingested into the body. However, laws, ordinances, or rules enacted by political subdivisions prior to December 31, 2020, are exempted from this preemption.

The amended bill will have no expenditure impact on DOR. DOR indicates that transferring responsibility for the enforcement of these provisions and for conducting compliance checks from DOR to SLED will result in no expenditure savings for DOR since DAODAS has already been performing these compliance checks. DOR further indicates that requiring retailers to submit and update information about whether they sell tobacco, tobacco products, or any other product used for smoking with their retail applications creates a new responsibility for DOR that will require system and form updates. However, DOR anticipates that any expenses will be minimal and can be managed with existing staff and resources.

The amended bill will have no expenditure impact on Judicial. The amended bill creates new offenses, which will be within the jurisdiction of general sessions court. Judicial indicates that any increase in caseloads in general sessions court can be managed within existing appropriations.

The expenditure impact of the amended bill on SLED is pending, contingent upon a response.

The amended bill will have no expenditure impact on DAODAS. While the bill may increase the number of individuals who present at local alcohol authorities for training due to violations of the provisions of the bill, the amended bill specifies that this will be at the expense of the tobacco retailer or tobacco retail establishment.

The amended bill will have no expenditure impact on the ALC, the S.C. Commission on Indigent Defense (SCCID), the S.C. Commission on Prosecution Coordination (SCCPC), or the Department of Insurance (DOI), as the agencies report that any expenditure impact can be managed within existing staff and appropriations.

The amended bill will have no expenditure impact on the Department of Health and Environment Control (DHEC) since the bill does not alter the duties or responsibilities of the agency.

The amended bill will have no expenditure impact on the Department of Motor Vehicles (DMV). DMV reports that removing any mention of the department in relation to minors who fail to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court will not result in any cost savings for the agency.

The amended bill will have no expenditure impact on the S.C. Department of Education (SCDE) since the bill does not alter the duties or responsibilities of the agency.

DOR indicates that removing exceptions to the prohibition against selling tobacco products through a vending machine will have a minimal impact on General Fund revenues as there are not many vending machines still in operation in the state. The amended bill also creates new penalty structures for tobacco retailers who violate the provisions of the bill. DOR anticipates that any revenue generated by these penalties will be retained by SLED and used to offset the cost of enforcement. However, the Revenue and Fiscal Affairs Office (RFA) is unable to estimate the number of individual or retailer violations that may occur. Additionally, because the court may require an individual or retailer to successfully complete a DAODAS or DHEC approved program in lieu of the fine, it is unknown how much revenue will be generated by the new penalty structures. Therefore, the revenue impact to Other Funds of SLED is undetermined.

This amended bill creates a new misdemeanor for an individual who distributes a tobacco product sample to a person under the age of eighteen, which may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the increase in fines and fees collections in court.

The overall expenditure impact of this bill on local school districts is undetermined and will vary. SCDE surveyed the seventy-three regular school districts and three charter school districts and received responses from nineteen districts. Of the responding districts, thirteen indicate that the bill will have no expenditure impact since the districts either already have the required policies and signage in place or can manage the provisions of the bill within existing appropriations. Two of the responding districts anticipate incurring minimal expenses due to the cost of printing and posting new signs. The four remaining responding districts indicate that the amended bill may increase expenses by a range of \$1,500 to \$20,000 to develop and implement a new tobacco use policy and print new signs.

Explanation of Fiscal Impact

Amended by Senate Judiciary on March 29, 2023

State Expenditure

This amended bill makes definitional changes relating to the sale or purchase of tobacco products by removing references to “alternative nicotine product” regarding the sale or purchase of tobacco products or alternative nicotine products for minors. The amended bill also makes conforming changes to the mandatory tobacco-free local school board policy to remove references to “alternative nicotine product”. Additionally, the amended bill removes exceptions to the prohibition against selling tobacco products through a vending machine.

The amended bill provides that in lieu of a fine, the court may require an individual who knowingly violates provisions relating to the sale, purchase, or provision of tobacco products to minors to complete a DAODAS approved merchant tobacco program at the expense of the tobacco retailer or tobacco retail establishment. The amended bill also adds a penalty structure for tobacco retailers who knowingly distribute, purchase for, or provide tobacco products to minors. The table below outlines the penalties.

Table 1: Penalties for Individuals and New Penalties for Tobacco Retailers
Pursuant to Section 16-17-500(E)

CURRENT PENALTY STRUCTURE FOR INDIVIDUALS (NO CHANGE) (Misdemeanor Offense)	NEW PENALTY STRUCTURE FOR TOBACCO RETAILERS (Non-Misdemeanor Offense)
1st Violation: <ul style="list-style-type: none"> • Fine (\$200-\$300) 	1st Violation: <ul style="list-style-type: none"> • Warning
2nd/Subsequent Violation: <ul style="list-style-type: none"> • Fine (\$400-\$500), • Imprisonment (not more than 30 days), or • Both 	2nd Violation (within 36 months): <ul style="list-style-type: none"> • Fine (not less than \$300)
	3rd Violation (within 36 months) <ul style="list-style-type: none"> • Fine (not less than \$600)
	4th/Subsequent Violation (within 36 months): <ul style="list-style-type: none"> • Fine (not less than \$1,200), and • Suspended retail license (at least 7 days and not more than 30 days)

A tobacco retailer or tobacco retail establishment may request a contested case hearing for the suspension of the retail license in front of the ALC, pursuant to the South Carolina Administrative Procedures Act. In lieu of the fine and suspension of a retail license, the court may require the tobacco retailer or tobacco retail establishment's employees, at the expense of the tobacco retailer or tobacco retail establishment, to successfully complete a DAODAS approved merchant tobacco enforcement education program.

Additionally, 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 alternative nicotine product or to present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing these products. The amended bill removes the purchase and possession violations for minors and limits violations to those where a minor uses fraudulent or false information to purchase or possess tobacco products. The amended bill maintains the requirement that a minor who misrepresents his age to purchase or attempt to purchase a tobacco product commits a noncriminal offense punishable by a civil fine of \$25. In lieu of the civil fine, the court may require a minor to successfully complete a smoking cessation or tobacco prevention program approved by DHEC or DAODAS or to perform not more than five hours of community service for a charitable institution. The amended bill also eliminates any connection between a minor who fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service and his driving privileges, as well as the requirement that law enforcement officers must notify a minor's parent, guardian, or custodian of the minor's offense within ten days of the issuance of a uniform traffic ticket for a violation of these provisions.

The amended bill also modifies the penalty structure for a person who distributes a tobacco product sample to a minor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is not a defense to an action brought pursuant to this section of the bill. The table below outlines these changes.

Table 2: Penalties for Individuals Pursuant to Section 16-17-502(C)

CURRENT PENALTY STRUCTURE (Non-Misdemeanor Offense)	NEW PENALTY STRUCTURE (Misdemeanor Offense)
1st Violation: <ul style="list-style-type: none"> • Fine (not more than \$25) 	1st Violation: <ul style="list-style-type: none"> • Fine (\$200-\$300)
2nd Violation: <ul style="list-style-type: none"> • Fine (not more than \$50) 	2nd/Subsequent Violation: <ul style="list-style-type: none"> • Fine (\$400-\$500), • Imprisonment (not more than 30 days), or • Both
3rd/Subsequent Violation: <ul style="list-style-type: none"> • Fine (not less than \$100) 	

A tobacco retail establishment that distributes a tobacco product to a minor is subject to administrative penalties as provided in Table 1. A tobacco retailer or tobacco retail establishment that permits an employee to unlawfully sell or distribute a container of e-liquid is also subject to these penalties.

The amended bill transfers responsibility for enforcing the provisions of the bill from DOR to SLED and requires SLED to conduct unannounced compliance checks for violations. The results of compliance checks resulting in suspensions of a retail license must be published by DOR annually and made available to the public upon request. Penalties collected pursuant to these provisions must be used to offset the cost of enforcement. Additionally, the director of DAODAS must conduct random, unannounced inspections at locations where tobacco products are sold and at locations that have notified DOR that the tobacco retailer sells or distribute tobacco products. The director of DAODAS must also provide for the preparation and annual submission the report required by Section 1926 of the federal Public Health Service Act to the Secretary of the United States Department of Health and Human Services (DHHS) and otherwise is responsible for ensuring the state's compliance with that provision of federal law and implementing regulations promulgated by DHHS.

The amended bill requires a retailer to submit information about whether it sells tobacco, tobacco products, or any other product used for smoking with its retail application. The retailer must update this information annually with DOR. Tobacco retailers and tobacco retail establishments that have a retail license must supplement their retail license application to notify DOR what tobacco products they sell or distribute.

The amended bill also specifies that political subdivisions may not enact any laws, ordinances, or rules pertaining to ingredients, flavors, or licensing, beyond a general business license, related to the sale of cigarettes; electronic smoking devices, e-liquid, vapor products, tobacco products, or

alternative nicotine products; or any other product containing nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any means. However, laws, ordinances, or rules enacted by political subdivisions prior to December 31, 2020, are exempted from this preemption.

Department of Revenue. This amended bill removes exceptions to the prohibition against selling tobacco products through a vending machine. The amended bill also transfers responsibility for enforcing the provisions of the bill from DOR to SLED. The results of compliance checks resulting in the suspension of a retail license must be published by DOR annually and made available to the public upon request. The amended bill further requires a retailer to submit information about whether it sells tobacco, tobacco products, or any other product used for smoking to DOR with its retail application.

The amended bill will have no expenditure impact on DOR. DOR indicates that transferring responsibility for enforcing the provisions of the bill to SLED will result in no expenditure savings for DOR since DAODAS has already been performing these compliance checks. DOR further indicates that requiring retailers to submit and update information about whether they sell tobacco, tobacco products, or any other product used for smoking with their retail applications creates a new responsibility for DOR that will require system and form updates. However, DOR anticipates that any expenses will be minimal and can be managed with existing staff and resources.

Judicial. This amended bill adds a new penalty structure for tobacco retailers who unlawfully sell, distribute, purchase for, or provide tobacco products to minors. The amended bill also removes the purchase and possession violations for minors and limits violations to those where a minor uses fraudulent or false information to purchase or attempt to purchase tobacco products. Additionally, the amended bill modifies the penalty structure for a person or tobacco retail establishment that distributes a tobacco product sample to a minor. A tobacco retailer or tobacco retail establishment that permits an employee to unlawfully sell or distribute a container of e-liquid is also subject to this new penalty structure.

The amended bill creates new offenses, which will be within the jurisdiction of general sessions court. Judicial indicates that any increase in caseloads in general sessions court can be managed within existing appropriations. Therefore, the amended bill will have no expenditure impact on Judicial.

State Law Enforcement Division. This amended bill transfers responsibility for the enforcement of the provisions of the bill from DOR to SLED and requires SLED to conduct unannounced compliance checks for tobacco retailer or tobacco retail establishment violations. Penalties collected pursuant to these provisions must be used to offset the cost of enforcement.

The expenditure impact of this bill on SLED is pending, contingent upon a response.

Department of Alcohol and Other Drug Abuse Services. This amended bill specifies that a tobacco retailer that violates the provisions of the bill maybe be required by the court to have the

tobacco retailer or establishment's employees, at the expense of the retailer or establishment, successfully complete a DAODAS approved merchant tobacco enforcement program. The court may also require a minor who misrepresents his age to purchase or attempt to purchase a tobacco product to successfully complete a DAODAS tobacco prevention program. Additionally, the director of DAODAS must conduct random, unannounced inspections at locations where tobacco products are sold and at locations that have notified DOR that the tobacco retailer sells or distribute tobacco products. The director of DAODAS must also provide for the preparation and annual submission the report required by Section 1926 of the federal Public Health Service Act to the Secretary of the United States Department of Health and Human Services (DHHS) and otherwise is responsible for ensuring the state's compliance with that provision of federal law and implementing regulations promulgated by DHHS.

While the amended bill may increase the number of individuals who present at local alcohol authorities for training due to the violations of the retailer or individual codes, the bill specifies that this will be at the expense of the retailer or establishment. Therefore, DAODAS anticipates that the amended bill will have no expenditure impact on the agency.

Administrative Law Court. This amended bill provides that a tobacco retailer or tobacco retail establishment may request a contested case hearing for the suspension of the retail license in front of the ALC, pursuant to the South Carolina Administrative Procedures Act. ALC anticipates that it will manage the provisions of the bill within existing appropriations. Therefore, the amended bill will have no expenditure impact on ALC.

S.C. Commission on Indigent Defense. This amended bill will have a minimal expenditure impact on the S.C. Commission on Indigent Defense. The agency indicates that it can manage the provisions of the bill within existing appropriations.

S.C. Commission on Prosecution Coordination. The implementation of this amended bill will have no expenditure impact on the S.C. Commission on Prosecution Coordination because the bill does not alter the oversight or regulatory activities of the commission.

Department of Insurance. This amended bill removes the requirement that any penalty for a minor in violation of tobacco purchase requirements under the Merit Rating Plan promulgated by DOI must not be considered by any insurance company for automobile insurance purposes or result in any automobile insurance penalty. The repeal of this provision will have no expenditure impact on DOI.

Department of Health and Environmental Control. Under this amended bill, the court may require a minor who misrepresents his age to purchase or attempt to purchase a tobacco product to successfully complete a DHEC approved smoking cessation or tobacco prevention program. The amended bill will have no expenditure impact on DHEC since the bill does not alter the duties or responsibilities of the agency.

Department of Motor Vehicles. This amended bill removes any mention of DMV in relation to minors who fail to pay the civil fine of \$25, successfully complete a smoking cessation or

tobacco prevention program, or perform the required hours of community service as ordered by the court. The repeal of this section will have no expenditure impact or cost savings for DMV.

S.C. Department of Education. This amended bill makes conforming changes to the mandatory public school comprehensive tobacco-free campus policy to remove references to “alternative nicotine product”. The amended bill will have no expenditure impact on SCDE since it does not alter the duties or responsibilities of the agency.

State Revenue

DOR indicates that removing exceptions to the prohibition against selling tobacco products through a vending machine will have a minimal impact on General Fund revenues as there are not many vending machines still in operation in the state. The amended bill also creates new penalty structures for tobacco retailers who violate the provisions of the bill. DOR anticipates that any revenue generated by these penalties will be retained by SLED and used to offset the cost of enforcement. However, RFA is unable to estimate the number of individual or retailer violations that may occur. Additionally, because the court may require an individual or retailer to successfully complete a DAODAS or DHEC approved program in lieu of the fine, it is unknown how much revenue will be generated by the new penalty structures. Therefore, the revenue impact to Other Funds of SLED is undetermined.

This amended bill creates a new misdemeanor for an individual who distributes a tobacco product sample to a person under the age of eighteen, which may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to General Fund revenue and Other Funds revenue due to the increase in fines and fees collections in court.

Local Expenditure

This amended bill makes conforming changes to the mandatory public school comprehensive tobacco-free campus policy to remove references to “alternative nicotine product”. The overall expenditure impact of this bill on local school districts is undetermined and will vary. SCDE surveyed the seventy-three regular school districts and three charter school districts and received responses from nineteen districts. Of the responding districts, thirteen indicate that the bill will have no expenditure impact since the districts either already have the required policies and signage in place or can manage the provisions of the bill within existing appropriations. Two of the responding districts anticipate incurring minimal expenses due to the cost of printing and posting new signs. The four remaining responding school districts indicate that the amended bill may increase expenses by a range of \$1,500 to \$20,000 to develop and implement a new tobacco use policy and print new signs.

Local Revenue

This bill creates a new misdemeanor for an individual who distributes a tobacco product sample to a person under the age of eighteen, which may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and

local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to local revenue due to the increase in fines and fees collections in court.



Frank A. Rainwater, Executive Director